THE CODEX OF JUSTINIAN

The Codex of Justinian is, together with the Digest, the core of the great Byzantine compilation of Roman law called the *Corpus Iuris Civilis*. The Codex gathers legal proclamations issued by Roman emperors from the second to the sixth centuries CE. Its influence on subsequent legal development in the medieval and early modern world has been almost incalculable. But the Codex has not, until now, been credibly translated into English. This translation, with a facing Latin and Greek text (from Paul Krüger's ninth edition of the Codex), is based on one made by Justice Fred Blume in the 1920s, but left unpublished for almost a century. It is accompanied by introductions explaining the background of the translation, a bibliography and glossary, and notes that help in understanding the text. Anyone with an interest in the Codex, whether an interested novice or a professional historian, will find ample assistance here.

FRED H. BLUME was appointed to the Wyoming Supreme Court in 1921 and retired from the bench in 1962 as a greatly honored jurist. He began his translation of the Codex of Justinian in 1919, a labor with which he continued for much of his life.

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Justice Fred H. Blume, circa 1921, the year he acceded to the Wyoming Supreme Court and shortly after he had begun his translation of the Codex of Justinian.

THE CODEX OF JUSTINIAN

A New Annotated Translation, with Parallel Latin and Greek Text

BASED ON A TRANSLATION BY
JUSTICE FRED H. BLUME

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THE CODEX OF JUSTINIAN

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VOLUME 1

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Justice Fred H. Blume and the Translation of Justinian's Codex

Timothy Kearley

Friedrich Heinrich Blume, or Fred H. Blume, as he came to call himself, would be delighted to know that an expert panel had used his solitary work of more than two decades as the jumping-off point for this translation of Justinian's Codex. Blume, for over forty years a justice – sometimes chief justice – of the Wyoming Supreme Court, was an accomplished, but modest, man who was accustomed to collaborating.[1]

Born in Winzlar, Germany on January 9, 1875, Friedrich Blume immigrated to the United States by himself at age 12 to join his elder brother Wilhelm. After working on farms and in a law office, he studied at the State University of Iowa (now the University of Iowa), graduating as a member of the Phi Beta Kappa scholastic honor society in 1898. He "read law" and was admitted to practice in Iowa the next year. In 1905, Blume and his wife moved west to the young state of Wyoming where he entered into a law firm partnership and began a promising political career as a member of the Republican Party's progressive wing. This latter career lost its momentum in 1912, however, when the party splintered and Blume supported Theodore Roosevelt, the presidential candidate of its reform-oriented offshoot, the Progressive, or Bull Moose, Party.[2] When Roosevelt lost, Blume knew a further political career in Wyoming would be problematic.

Justice Blume later recalled: "I decided on that day that I would quit politics and spend the time which I had devoted [to politics] to something else."[3] This "something else" began with extensive readings on the history of Western civilization and ended up as a solo effort to create an annotated English-language translation of Justinian's Codex and Novels. In 1919, in the course of reading

[1] For details of Justice Blume's life, and especially his judicial career, see Golden (1993). For an extensive description of his work on Justinian's Codex and with Clyde Pharr on the Theodosian Codex, see Kearley (2007).

[2] See Golden (1993: 216), for a discussion of Blume's political career.

[3] The archival sources for this and subsequent references to Justice Blume's correspondence are cited in Kearley (2007).

Roman history, he discovered to his great surprise that no one had yet translated either Justinian's Codex or the Theodosian Codex into his adopted language. Writing to Professor Clyde Pharr of this in 1943, Blume recollected:

> So ruminating on the subject, I wondered if I might not be able to add my little mite to the culture of the world by translating at least one of these Codices. Here was the germ of the thought of the translation of the Justinian Code, although I did not realize at that time the difficulties that lay ahead.

Those difficulties included working on his translation while also ably carrying out his duties as a justice of the Wyoming Supreme Court, to which he was appointed in 1921, and struggling with what probably was carpal tunnel syndrome. In describing his translation work to Pharr, Justice Blume explained:

> I devoted to it substantially every evening until eleven o'clock or later, and every Saturday afternoon and Sunday with few exceptions. I limited my social life to the minimum. I wrote everything in long hand, until, after a year or two after I began, my right hand and arm would work no longer, so I had to resort to a typewriter, which is not so good for a translator. It took me a year or so before I could write long hand again.

Justice Blume had recently finished the first draft of Justinian's Codex translation when, in February 1924, he wrote to Thomas W. Swann, Dean of the Yale University Law School about it and received an encouraging response that renewed his enthusiasm for the endeavor.

For the remainder of the 1920s and throughout the 1930s, Justice Blume studied Roman law using the extensive private collection he had developed. He then employed his learning in revising the first draft of his translation and in writing extensive annotations for it. During this period he also taught Roman law at the Northwestern University Law School one summer at the request of its eminent Dean, John Wigmore; wrote on Roman law for American law reviews; addressed the Riccobono Seminar of Roman Law in America (at the Catholic University of America) on the topic of "The Code of Justinian and its Value";[4] and used Roman law in many of his Wyoming Supreme Court opinions. (In Justice Blume's 700 published opinions, he cited Roman law seventy-nine times in nineteen cases and referred to Roman law or Roman history in twelve other cases.[5])

Perhaps more importantly for Justice Blume, the decades of the 1920s and 1930s also saw him come to the attention of Pharr, Professor of Greek and Latin at Vanderbilt University. Having heard of Blume's draft Codex

[4] For a description and history of the seminar, see Randazzo (2002).

[5] Evjen (1980: 214).

translation, Professor Pharr wrote to him in 1933 to ask if he would join the board of his "Project for a Variorum Translation into English of the Entire Body of Roman Law," which he was in the process of organizing. Pharr proposed to use Justice Blume's Codex translation as the basis for the project's version of that document. Blume readily agreed, but he also asked Pharr if he was familiar with S. P. Scott's translation of the Codex that had been published the previous year.[6] Blume told Pharr that seeing it had nearly halted his own work on the *Annotated Justinian Code*, but he went on to note: "I have gone through one book of the Code and found what I thought so many glaring mistakes that I concluded to go on with my work ..." Responding three weeks later, Pharr replied in a similar vein: "A more careful examination [of Scott's translation] has unfortunately confirmed my earlier impression and I am convinced his work is valueless."[7] So, the two agreed to pursue the proposed project.

In the end, Professor Pharr's ambitious plans yielded only two works: *The Theodosian Code and Novels, and the Sirmondian Constitutions* (Princeton University Press, 1952), and *Ancient Roman Statutes: A Translation* (University of Texas Press, 1961). However, the correspondence between the classics professor and the Wyoming Supreme Court justice continued sporadically for more than two decades. Moreover, Justice Blume was pleased to participate actively on Pharr's editorial board and to see his work on Justinian's Codex and Novels applied to the Theodosian Codex translation. Regarding the use he was making of Blume's earlier efforts, Pharr told him: "You will find how much we are plundering from your work when you receive our [draft] issue of the second book of the Theodosian Code." Recent scholarship has noted Pharr's "enormous debt to Blume" in Pharr's product.[8] When the Theodosian Codex was finally published, Pharr devoted a paragraph of his preface to highlighting Blume's contributions.[9]

After the Theodosian Codex translation was published in 1952, Justinian's Codex was to be taken up next. However, for several reasons, including the lack of a needed subvention for this expensive undertaking, Blume's long-hoped-for dream never came to fruition. By 1957, when Justice Blume wrote to University of Wyoming President George Humphrey concerning the honorary

[6] *The Civil Law* (S. P. Scott ed. and trans., 1932).

[7] For a further information about S. P. Scott and his work see Kearley (2014).

[8] Linda Hall Jones points out that in the first draft of the Theodosian Code translation Pharr mailed for criticism to his editorial consultants, he referred to Justice Blume's annotated translation of the Justinian Code and Novels, stating: "Several years ago we ... examine[d] Justice Blume's work and found it of much higher quality than anything else that has been done in this field ... We are finding both his translation and his notes invaluable in the interpretation of many difficult and obscure passages of the Theodosian Code." L. H. Jones (2012: 17) (quoting Pharr (gen. ed.) and T. S. Davidson (assoc. ed.) (1944) (unpublished manuscript)).

[9] Pharr (1952: viii).

Doctor of Laws degree being bestowed upon him, the justice expressed his resignation, saying he doubted the translation would be published in his lifetime. Despite this disappointment, Justice Blume retired from the bench in 1962 as a greatly honored jurist. His reputation in the American legal community was such that New York University's *Annual Survey of American Law* dedicated that year's issue to him,[10] and over the course of his career sixty-four of his decisions were chosen as the subjects of annotations in the *American Law Reports.*

When Justice Blume died in 1971, at the age of 96, Clyde Pharr's Roman law translation program had long since ceased, with only one publication other than the Theodosian Codex.[11] However, Blume's decades of effort are now springing back to life. Justice Blume bequeathed his manuscript Codex and Novels translation (along with his private library) to the University of Wyoming in the hope that, as he wrote to President Humphrey, "some day [you may have] a student at the University who will be interested in the subject, and if so my translation and the notes should be of immense value to him." That manuscript lay largely unknown for decades in the University of Wyoming College of Law Library's Blume Room, but it caught my attention when I was examining the room's contents upon becoming Director of the Law Library and Professor of Law at the university in 1993.

Over a decade more passed, however, before I was able to partially realize Justice Blume's dream by editing and publishing his *Annotated Justinian Code* on the Internet.[12] This Internet publication did not fully accomplish Justice Blume's goal, though. He knew that he, or any individual, would benefit greatly from working collegially on such a challenging undertaking. This is why he happily agreed to work with Professor Pharr and his board, and to allow his translation to be the basis for that group's proposed version of the Codex.[13]

Therefore, I was pleased to share with Professor Frier and his panel the electronic documents I was creating of Blume's work, in order that they might use it as the starting point for the translation you have before you. I knew Justice Blume would have been thrilled to see the results of his labors used in this way. Justice Blume's nephew and literary heir, Fred Blume, felt the same way and thus graciously gave his permission for this use. So here, after nearly a century of gestation, the seed Fred Blume sowed finally comes into full bloom after much careful cultivation by others.

[10] Reid (1962: VIII).

[11] Johnson, Coleman-Norton, and Bourne (1961).

[12] Blume, *Code* (n.d.), available at: www.uwyo.edu/lawlib/blume-justinian.

[13] In discussing his translation, Justice Blume had told Pharr: "In fact, it was my original idea that if it should come to the point when I should be able to find a publisher ... I not only wanted to go over the translation carefully again ... but wanted to find others who were competent to go over it as well."

Revising Justice Blume's Translation of Justinian's Codex

Bruce W. Frier

with a note on the dating of constitutions by Noel Lenski

Although the Emperor Justinian clearly intended that his Digest and Codex should be read together, as a single body of law, the Codex has long been less favored than the Digest when it comes to translation. The reason has surely to do with the format of the Codex: long lists of imperial legal pronouncements, mandates, and decrees, grouped by subject matter into titles, but then, within each title, arranged in a chronological order that stretches from Hadrian to Justinian, a span of just over four centuries during which the Roman Empire changed profoundly. There is, in the Codex, little of the agile, sustained play of intelligence that characterizes the writing of the Roman jurists in the Digest: the openness to possibilities, the drawing of adroit distinctions.

By contrast, the Emperors, in issuing their decisions, seldom strayed far from the sober industry of declaring law. And the Digest compilers also made at least a perfunctory effort to organize its contents through substance, so that its titles often have a bit of intellectual coherence that is missing in Codex titles. As compensation, however, the Codex offers an entirely unparalleled depiction of Roman law as a lived reality during the later Empire. The Emperor's gaze – or, at any rate, that of his bureaucrats – ranged far and wide, high and low: from the intricate details of building codes for Constantinople (Zeno, C. 8.10.12), to the size, composition, and provisioning of staffs for the newly re-conquered prefecture of Africa (Justinian, C. 1.27.1–2); from prohibitions on Consuls scattering money to crowds in order to garner popularity (Valentinian and Marcian, C. 12.3.2), to provisions on what happens when a legal formality, such as the execution of a will, is interrupted because one of the participants urgently needs to use the bathroom (Justinian, C. 6.23.28.1–3).

Only one complete English translation of Justinian's Codex has previously been published, that of Samuel P. Scott, as part of his seventeen-volume translation of most major Roman legal sources, published posthumously in

1932.[1] The dissatisfaction with Scott's entire project was immediate and has remained constant since its publication. Already in 1933, W. W. Buckland had declared that: "the work cannot be regarded as at all a safe guide to the Roman Law."[2] Roscoe Pound, in 1943, concurred: "This work must be used with caution since the best texts were not used and at some points the translations are not reliable."[3] The consensus of scholarly opinion was summed up by Stephen Sass in 1963:[4]

> Ironically, this tremendous task was based, without exception, on antiquated text editions. For the *Corpus Juris*, for instance, not the standard edition of Krüger, Mommsen, Schoell and Kroll was used, but the less reliable text established by the Kriegel Brothers which contains many medieval insertions. The resulting mistranslations are due, to a great degree, to the defects in the original texts. Added to that, the translator did not follow the well-established practice of Anglo-American translators and translated highly technical Roman law terms into doubtful English equivalents instead of leaving them untranslated with explanations in the footnotes. These shortcomings reduce the value of the work, but do not render it valueless. For reference purposes it can very well be used; moreover, occasionally one cannot avoid using it since it is the only complete translation of Justinian's enactments.

Generations of Roman law students have accordingly been advised to shun the Scott translation altogether, or to use it only "with great caution," as Arthur Schiller counseled.[5] Nonetheless, *faute de mieux*, the unwary still have not infrequently cited it without appreciating the risks. In the case of Justinian's Digest, such perils were obviated by the subsequent appearance of a generally reliable English translation in 1985.[6] But the Codex has, until now, languished.Unfortunately, the publication of Scott's massive translation may well have militated against subsequent publication of the far more scholarly

[1] Scott (1932). It has often been reprinted and is also available online in several locations. On Scott himself (1846–1929), see Kearley (forthcoming) Although not much is known about the circumstances that led to Scott's translation of all major Roman legal sources, the scope of the enterprise was breathtaking, and Scott's influence – largely negative though it may be – is not to be denied. See Randazzo (2002: 125 n. 12). Scott's earlier translations of *The Visigothic Code* (1910) and *Las Siete Partidas* (1931; but apparently completed by 1913, information from Tim Kearley) were somewhat more scholarly.

[2] Buckland(1932–1933: 632). Riccobono's (1935: 318) reaction was a bit more positive, noting that the defects in translation "non infirmano il valore pratico della traduzione."

[3] Pound (1943: 212).

[4] Sass (1963: 229). The edition of the *Corpus Iuris Civilis* by Albert and Moritz Kriegel was published in three volumes from 1836 to 1853, and frequently reprinted thereafter in a revised form by Emil Herrmann and Edouard Osenbrüggen. The Codex is in the second volume.

[5] Schiller (1978: 31). Compare Donahue (1987: 1062).

[6] Watson (ed.) (1985), with facing text from Mommsen's *editio maior* of 1870. A somewhat updated version of the English translation only is available in Watson (ed.) (1998). Further corrections are listed in the *Roman Law Resources* website at: http://iuscivile.com/materials/digest/received .shtml. Translations of Justinian's Institutes have always abounded.

Codex translation by Justice Fred Blume, even though the large-scale translation project organized by Clyde Pharr – a project clearly undertaken in full awareness of the defects in the Scott translation – offered him some hope for a time. But the Blume translation, though seemingly lost to scholarship at the time of his death in 1971, was not entirely forgotten. Arthur Schiller took note of its existence in 1977, and Harold Evjen also discussed it briefly in a 1980 article on Blume's use of Roman law in his Wyoming judicial opinions.[7]

These two sources originally awakened my own interest in the fate of Blume's translation. Periodically thereafter I inquired about what had happened to his manuscript. However, apart from learning that it was preserved at the University of Wyoming School of Law library, I advanced no further until 2006, when an email from Noel Lenski arrived with details about Timothy Kearley's ambitious plan to digitize Blume's text and place it online. My subsequent communication with them led to the establishment of our Codex Project in May 2007; Prof. Kearley also served as an invaluable intermediary in subsequently arranging with Justice Blume's estate for us to use the electronic form of the manuscript as our starting point.[8]

The general goals of the project were first set out in a Prospectus dating from July 2007:

> In handling Blume's translation, the first aim must be to accurately represent the original Latin or Greek; all other aims are subordinate to this one ... [A]t times this may mean reproducing the vagueness of the original, or its florid style, simply so as not to mislead readers through a false clarity. After accuracy, there are two further aims. First, it is important that the translation read as easily as possible, even where this means, for instance, altering the order of Blume's clauses, or otherwise altering his phrases; while we may acknowledge obscurity in the source, we do not intend to introduce obscurity ourselves. Second, we hope to remain as faithful as possible to the spirit of Blume's translation. This is the major basis for guaranteeing a bit of stylistic unity within the finished product.

In order to carry out these goals, we used, as our target text for the Latin and Greek constitutions, the standard (so-called stereotype) edition, originally published by Paul Krüger in 1877 and frequently reprinted in slightly improved versions, the latest from 1914.[9] Krüger adapted this edition from his

[7] Schiller (1978: 39); Evjen (1980: 213, 215).

[8] By the terms of our agreement, all royalties from publication will go to a non-profit account that will be used to promote study of the Codex.

[9] Krüger (1877). Our target text was the 9th edition of 1914, the last overseen by Krüger. (This edition is often dated to 1915, erroneously.) Subsequent editions are virtually identical as to the text, but – readers should be warned! – in a few cases do not report Krüger's final text changes, particularly those from the Cologne fragment (*Colon.*) for C. 3.32.4–12. The likely reason is that later editions actually reproduce not the 9th, but the 7th or 8th edition. In addition, editions after the 11th of 1954 omit the Addendum of the 9th edition (514–516), which contained many of Krüger's final textual observations.

own *editio maior* published more or less simultaneously in 1877, a stunning reconstruction of the original text of the Codex, particularly by inclusion of Greek constitutions that were omitted in many medieval manuscripts.[10] In both the *editio maior* and the stereotype edition, Krüger also took pains to restore the correct headings and subscriptions of constitutions, where these could be known even through reasonable surmise. The subsequent stereotype editions contained further textual improvements, albeit generally of a less revolutionary nature; and it has frequently been reprinted since. Blume appears to have used this stereotype edition. For our facing original text, we were able to purchase the excellent, virtually error-free version that Dutch and Belgian scholars created for the Dutch translation.[11] Our textual deviations from the stereotype edition are footnoted; often these deviations originate in suggestions made by Krüger himself or by Theodor Mommsen.

Once we had provisionally committed to the project, our first step was to determine whether the Blume translation was of sufficient scholarly quality to warrant a revised version. After we had inspected it, we unanimously felt that Blume's translation was a great deal more than adequate for our purposes.

Three brief, but fairly representative, passages may serve to illustrate the problems with Scott's translation and the virtues of Blume's. The first is C. 2.7.1, a 214 constitution of Caracalla from the Codex title *De Advocatis Diversorum Iudiciorum* ("The Advocates of the Various Courts"):

> *Imp. Antoninus A. Doloni.* Si patronum causae praevaricatum putas et impleveris accusationem, non deerit adversus eum pro temeritate commissi sententia, atque ita de principali causa denuo quaeretur. Quod si non docueris praevaricatum, et calumnia notaberis et rebus iudicatis, a quibus non est provocatum, stabitur.
>
> *PP. III k. Oct. Antonino A. IIII et Balbino conss.*

Here is Scott's translation:

> *The Emperor Antoninus to Dolo.* If you think that the advocate in the case has been guilty of prevarication, and you prove the charge, sentence shall be passed upon him in accordance with the gravity of the offence which he has committed, and the suit shall again be commenced. But if you do not establish the prevarication, you will be branded as guilty of false accusation, and the case shall stand as decided, unless an appeal has been taken.

[10] Krüger (1877). Krüger laid out his understanding of the textual tradition in Krüger (1867); see also Krüger (1888: 342–343). On Krüger's handling of Codex manuscripts, see Radding and Ciaralli (2007: 14–17).

[11] Spruit, Chorus, and de Ligt (eds.) (2005–2010). The Dutch text reproduces Krüger's *editio maior*; we have mechanically corrected to the text of the 9th stereotype edition.

> Given on the third of the *Kalends* of October, during the Consulate of Antoninus, Consul for the fourth time, and Albinus, 214.

There are a considerable number of difficulties with this version,[12] but much the most serious is the rendering of *praevaricari* through its derivative "prevaricate," an English verb with the normal meaning "to speak falsely or misleadingly; deliberately misstate or create an incorrect impression; lie." Thus, Caracalla's constitution is taken to establish liability if advocates speak falsely in court. In fact, however, the Latin verb refers to an entirely different kind of forensic dishonesty: collusion by an advocate with the other party, that is, not so much deception of the court, as betrayal of a client.[13] Scott's version, which imposes an unexpectedly high duty of truthfulness on trial advocates, is highly deceptive unless the reader consults the original text.

Now here is Blume's version of C. 2.7.1:

> Emperor Antoninus to Dolon. If you think that your advocate has been guilty of collusion with the opposite party, and you prove the accusation, condemnation of him for the temerity of his crime will not be lacking, and the principal cause will then be tried anew. But if you do not prove such collusion, you will be branded as one guilty of false accusation, and the adjudication in the main suit, from which no appeal has been taken, will stand.
>
> Promulgated September 29 (213).

This translation is self-evidently a huge improvement on Scott's, and so in numerous respects (including getting the constitution's date and the recipient's name correct); but above all else Blume correctly understood the meaning of *praevaricatio*. Our final version fairly closely follows Blume's, with changes mainly in format:

> *Emperor Antoninus Augustus to Dolon.* If you think that the advocate for your case has colluded (with the other side), and you prove the accusation, there will not be lacking a judgment against him in proportion to the rashness of his crime, and so the principal case will be heard anew. But if you fail to show such collusion, you will be branded for vexatious litigation (*calumnia*) and the (principal) issue, unless appealed, will stand as adjudicated.
>
> *Promulgated September 29, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).*

[12] *Albinus* stems from the pre-modern edition that Scott used; Krüger corrected to *Balbinus*, which was also already in the Kriegel edition.

[13] See, e.g., Ulpian (6 *ad Ed.*), D. 3.2.4.4: "Praevaricator autem est quasi varicator, qui diversam partem adiuvat prodita causa sua."

Similar is a second passage, C. 7.39.3, a constitution of Theodosius setting a thirty-year statute of limitations for most private actions; it comes from the Codex title *De Praescriptione xxx vel xxxx Annorum* ("Prescription of Thirty or Forty Years"). The first sentence reads:

> *Impp. Honorius et Theodosius AA. Asclepiodoto pp.* **pr.** Sicut in rem speciales, ita de universitate ac personales actiones ultra triginta annorum spatium minime protendantur ...
> *D. XVIII k. Dec. Constantinopoli Victore cons.*

Scott renders this:

> *The Emperors Arcadius and Honorius to Asclepiodotus, Praetorian Prefect.* The right to bring special actions *in rem*, or general personal actions, cannot be extended beyond the term of thirty years ...
> Given at Constantinople, on the *Kalends* of September, during the Consulate of Victor.

Scott gets the imperial heading and the date wrong, for reasons that pass understanding.[14] But the cardinal error stems once more from his failure to recognize and comprehend the technical vocabulary of Roman law. *Actiones speciales in rem* are suits for particular pieces of property (*species*); *actiones de universitate* are suits to claim an inheritance (the late Roman version of *hereditatis petitiones*; a *universitas* is an amalgamation of things or persons); and *actiones personales* are suits *in personam* – all three classes of actions, and only these, being now subjected to a new statute of limitations.[15] Scott's interpretation, constructing a dichotomy between "special" property claims and "general" personal claims, is misguided and misleading.

Now here is Blume's translation of C. 7.39.3:

> Emperors Honorius and Theodosius to Asclepiodotus. Just as actions in rem as to special pieces of property, so actions in rem as to an aggregation of properties (e.g., an inheritance) and personal actions shall not be extended beyond thirty years; ...
> Given at Constantinople November 14 (424).

As will be seen, Blume correctly captures the procedural distinctions in the original. This is our translation of 7.39.3:

[14] In fact, however, the Codex heading is also factually wrong; by 424 Theodosius was ruling alone, as Krüger notes (and so already the Kriegel edition). Both the *lex geminata* in the C.Th. (4.14.1) and the other excerpt in the C.Th. (2.12.7) get this right.

[15] On the statute of limitations, see Kaser and Hackl (1996: 607–608). On the procedural distinctions in C. 7.39.3 pr., see Berger (1953: s.v.) "iudicia generalia" and "actio de universitate."

> *Emperors Honorius and Theodosius Augusti to Asclepiodotus, Praetorian Prefect.* **pr.** As with actions *in rem* for specific property (*speciales*), so also with inheritance claims (*de universitate*) and personal actions, these may not be extended beyond thirty years.
>
> *Given November 14, at Constantinople, in the consulship of Victor (424).*

A third example is C. 11.16.1 pr., an undated constitution of Leo (457–465) from the title *De Pistoribus* ("Bakers"), with Scott's translation:

> *Imp. Leo A. Viviano pp.* **pr.** Quicumque ex mancipibus comitis horreorum dignitatem et officium vel ambitione vel gratia vel pecunia seu quolibet alio modo posthac fuerit adsecutus, exutus dignitate, quam contra interdictum nostrae serenitatis adeptus est, multatus etiam viginti libris auri ad mancipum denuo consortium collegiumque revocetur.

> *The Emperors Gratian, Valentinian, and Theodosius.* Any slave of the Superintendent of the Public Warehouses, who either through intrigue, favor, the use of money, or by any other means, may hereafter obtain a dignity or an office, shall be deprived of what he acquired in violation of Our order, and, having been fined 20 pounds of gold, shall be returned to the body to which he formerly belonged ...

Again, Scott inexplicably alters the heading.[16] He also badly mangles the substance, chiefly because he confuses *manceps* ("public contractor," here "public baker") with *mancipium* ("slave").[17]

Here is Blume's version:

> Emperor Leo to Vivianus, Praetorian Prefect. If any public baker (manceps) hereafter obtains the rank and office of count of storehouses by unlawful solicitation, favoritism, money or in any other manner, he shall be shorn of the rank which he received in violation of the interdict of Our Serenity, shall be punished [by] a fine of 20 pounds of gold and shall be recalled to the association and corporation of public bakers ...

And our version:

> *Emperor Leo Augustus to Vivianus, Praetorian Prefect.* **pr.** Whoever henceforth from among the baking contractors (*mancipes*) has gained the rank and office of Count of the Granaries (*horrea*), either by solicitation, influence, money, or any other means, shall be stripped of the

[16] The later Kriegel editions already had the correct heading, but Scott follows some earlier editions.

[17] The reading in some inferior manuscripts, *mancipiis* for *mancipibus*, makes no sense in a title on bakers. The Kriegel edition already had it right.

> rank that he gained in violation of the interdict of Our Serenity, be fined 20 pounds of gold, and be recalled anew to his partnership with the contractors and to his guild (*collegium*).

The point is easily made. Such errors, repeated many, many hundreds or thousands of times, render Scott's translation almost entirely unsuited to its purpose. Blume's translation is indisputably preferable. In general, our translation aims to be fuller than Blume's in rendering both the heading and the subscription, and, within the constitutions themselves, to signal more clearly when we introduce supplementary wording or when the Latin or Greek technical vocabulary helps in understanding the original text. Still, our debt will be obvious.

However, we are not entirely faithful to Blume's translation. While broadly satisfying, it presents some real difficulties as well. His sentence structure tried faithfully to follow the original, even when the resulting sentences were too complex for ready English comprehension; we simplified, sometimes fairly radically, in one case, for instance, rendering a single coiling Latin sentence with four shorter English sentences. But there were also not infrequent instances, particularly with Greek, where Blume obviously had problems understanding the text. In general, and in accord with our agreement with the Blume estate, the editors of individual books were each given considerable latitude in determining how closely they wished to stick to Blume's wording for particular texts. Readers wishing to compare more closely can easily consult the online version of Blume's text.[18] Blume extensively annotated his translation, often at quite considerable length. The modern practice – witnessed in the Dutch, German, and Italian on-going translations of all or parts of the Justinianic *Corpus Iuris Civilis*, as well as in the English Digest edited by Alan Watson[19] – is to reduce such annotation to the minimum required for comprehensibility by a lay reader, and to eliminate bibliography from footnotes altogether.

However, the Codex presents obstacles in this regard. In the first place, the text of the Codex as we now most commonly know it (in its Krüger form) is, in fact, largely a scholarly re-creation.[20] The Codex was never entirely lost during the Middle Ages, but medieval European jurists and scribes, whose primary

[18] Blume, *Code*, available at: https://uwacadweb.uwyo.edu/blume&justinian.

[19] Dutch: Spruit, Chorus, and de Ligt (eds.) (1993–2011), now complete; on it, see at: http://rechtsgeschiedenis.wordpress.com/2011/10/17/twelve-volumes-of-roman-law-in-dutch-translation. German: Behrends *et al.* (eds.) (1990–), currently in the middle of the Digest. Italian: Schipani (ed.) (2005–), currently in the middle of the Digest. English: Watson (ed.) (1985); a corrected version of the translation alone was subsequently published as Watson (ed.) (1998). Compare also Crogiez-Pétrequin *et al.* (eds.) (2009), part of an on-going project. On general issues associated with translating Roman legal sources, see Minieri and Sacchi (2009).

[20] This point is rightly stressed in Dondorp and Schrage (2010: 7–56), esp. 15–16 on the Codex, which was a very different document before 1877.

interest lay in the substantive rules laid down by Roman emperors, tended to omit the Greek constitutions and to treat with some indifference the headings and subscriptions to all the constitutions. Krüger's central achievement was to have restored the Codex to something resembling its original shape, or at any rate as close as may be possible in the light of surviving sources.[21] Also, even in its earliest form, the compilers of Justinian's Codex had used an extensive scissors-and-paste methodology: sometimes reproducing the same constitution in different titles of the Codex (so-called *leges geminatae*, which may contain variations of wording); sometimes breaking up and redistributing the same constitution into various titles; frequently rewriting or condensing their source materials; and so on. The technique of the compilers can often be reconstructed, especially by reference to constitutions drawn from the Theodosian Codex of 429–430 and from other late imperial collections.[22] All of this necessitates a considerably higher number of footnotes than is required, for instance, for Justinian's Digest.

Second, the constitutions themselves, generated over many centuries, evolved considerably in their form. The earlier constitutions, through Diocletian, tend to be rescripts written nominally by the Emperor in response to legal inquiries from around the Empire; usually, such inquiries raise questions of private law.[23] Here the obstacle is that, although the rescript is normally stating a rule, we do not have the inquiry and hence may find it difficult to appreciate the situation to which the rescript applies.

Blume's annotations are marvelous in this respect. Although they were patently informed by his extensive scholarly reading, he also had an indisputable "case sense," obviously derived from his long experience with common law, that often shines through in his restoration of the original dispute. For example, C. 8.26.1 pr. of 239 CE deals with the situation when a debt, which is secured by a pledge of a debtor's property, is, with the creditor's consent, "novated" by substituting a new debtor for the original debtor; essentially, although the creditor remains the same, the original debt is extinguished and the new one, from a different debtor, supersedes it.

> *Imp. Gordianus A. Festo.* **pr.** Pignus intercidit, si novatione facta in alium ius obligationis transtulisti nec, ut ea res pignoris nomine teneretur, cautum est ...

> *Emperor Gordian Augustus to Festus.* **pr.** A (right to a) pledge is lost if by novation (*novatio*) you transferred to a third party a right from an

[21] This process has become clearer recently owing to the rediscovery of Krüger's notebooks: Hessler (2011), which makes use of the original materials preserved in the US Library of Congress.

[22] Of considerable help, in this respect, is the Projet Volterra, available at: www.ucl.ac.uk/volterra, although it is not yet complete.

[23] On forms of imperial law-making, see, e.g., Schiller (1978: 463–524); Peachin (forthcoming).

[24] See in addition D. 20.4.12.5, 21 pr.

> obligation, but it was not (also) provided that this property be held as a pledge (for the obligation) ...

This terse holding is a slog even when one is familiar with the legal institutions involved. Blume's note on the text sets out the situation in crystal-clear fashion:

> The case supposed is as follows: A, debtor of B and owner of property pledged to the latter, sold the land to C and the agreement was made [through a novation] that C should be held for the debt [of A]. Here was a new debtor, and in order to keep the lien alive, agreement to that effect was required to be made with C. See also D. 20.4.3 pr.[24]

This note, accurate and lucid, is invaluable to a translator. But in many instances such notes may also be of considerable service to all readers, and for this reason we have on occasion provided similar case statements or other explanatory material either from Blume's original manuscript, or of our own devising. Nonetheless, this translation does presume an elementary knowledge of Roman private law, though a glossary at the end should help with some technical terms – the translation of which we have tried to make reasonably uniform throughout.

Third, late imperial constitutions present a different array of perplexities. Almost entirely they take the form of instructions (*edicta* or *mandata*) directed by the Emperor to imperial officials, and they are also markedly more concerned with imperial administration rather than with private law. These constitutions, whether Latin or (less commonly) Greek, are also not infrequently written in a style that is grammatically complex and grandiloquent, rendering them potentially difficult to translate into plain English. The beginning of C. 4.18.2, a constitution of Justinian from 531, is an admittedly rather extreme example. Justinian is describing his decision to expand *constitutum debiti*, an informal device whereby a debtor expressly recognizes and promises to pay a pre-existing debt:[25]

> *Imp. Iustinianus A. Iuliano pp.* **pr.** Recepticia actione cessante, quae sollemnibus verbis composita inusitato recessit vestigio, necessarium nobis visum est magis pecuniae constitutae naturam ampliare. **1.** Cum igitur praefata actio, id est pecuniae constitutae, in his tantummodo a veteribus conclusa est, ut exigeret res quae in pondere numero mensura sunt, in aliis autem rebus nullam haberet communionem et neque in omnibus casibus longaeva sit constituta, sed in speciebus certis annali spatio concluderetur, et dubitaretur, si pro debito sub condicione vel in diem constituto eam possibile est fieri et si pure constituta pecunia contracta

[25] See Berger (1953: s.v.), "constitutum debiti"; Kaser (1975: II, 383–384).

[26] For these changes, important is A. H. M. Jones (1964).

valeret, hac apertissima lege definimus, ut liceat omnibus constituere non solum res quae pondere numero mensura sunt, sed etiam alias omnes sive mobiles sive immobiles sive se moventes sive instrumenta vel alias quascumque res, quas in stipulationem possunt homines deducere: et neque sit in quocumque casu annalis, sed (sive pro se quis constituat sive pro alio) sit et ipsa in tali vitae mensura, in qua omnes personales sunt actiones, id est in annorum metis triginta: et liceat pro debito puro vel in diem vel condicionali constitui:

et non absimilem penitus stipulationi habeat dignitatem, suis tamen naturalibus privilegiis minime defraudata: sed et heredibus et contra heredes competat, ut neque recepticiae actiones neque alio indigeat res publica in huiusmodi casibus adminiculo, sed sit pecuniae constitutae actio per nostram constitutionem sibi in omnia sufficiens, ita tamen, ut hoc ei inhaereat, ut pro debito fiat constitutum (cum secundum antiquam recepticiam actionem exigebatur et si quid non fuerat debitum), cum satis absurdum et tam nostris temporibus quam iustis legibus contrarium est permittere per actionem recepticiam res indebitas consequi et iterum multas proponere condictiones, quae et pecunias indebitas et promissiones corrumpi et restitui definiunt.

Emperor JUSTINIAN *Augustus to Julian, Praetorian Prefect.* **pr.** Since the action against a banker's undertaking is dormant (*recepticia actione cessante*), which, composed in customary words, has receded as an outmoded vestige, it has seemed necessary to Us to amplify the nature of the promise to pay an existing debt (*constitutum*). **1.** Since, therefore, the aforesaid action, that is, for an existing debt of money (*pecuniae constitutae*), was confined by the ancient jurists solely to these circumstances, (namely) that there might be a claim for things that are calculable in weight, number, or volume, but that it might have nothing in common in other matters and not be established in all cases to be long-lasting, but to be confined in certain matters to the space of a year, and there was doubt whether it can arise for a debt under a condition or one due to be paid on a certain date (*in diem constituto*) and whether the promise for money contracted unconditionally was valid, in this pellucid law We define that it be permitted to everyone to establish a claim not only for things that are calculable in weight, number, or measure, but also for all other types of property, whether they are movable or immovable or self-propelling or documents or any other types of things that people can make part of a stipulation; and it should not be for a year in any case, but – whether one makes a claim for himself or for another – it should also be for such a duration of life that applies to all actions *in personam*, that is, within a limit of thirty years; and it should be permitted that a claim be made for a pure debt or for one due on a future date (*in diem*) or for a conditional one.

> And it should have a status not at all dissimilar from a stipulation, however not at all deprived of its natural privileges; but it should also be available to heirs and against heirs, so that the republic not require actions for a banker's undertaking (*recepticiae actiones*) or another support in cases of this type, but that the action on the payment of an existing debt of money be self-sufficient for all matters through Our constitution, with this restriction, that this remain part of it, that there be a claim for a debt – since in accordance with the old action on a banker's undertaking one could also make a claim if something had not been owed – since it is quite absurd and contrary both to Our times and to just laws to allow the pursuit of things not owed through the action on a banker's undertaking and again to set forth many types of claims (*condictiones*), which define how both sums of money not owed and promises are corrupted and restored.

Section 1 of this "pellucid law" (*apertissima lex*) – in reality, anything but! – unfolds as a single breathtaking sentence of more than 250 words. We have left this sprawling disquisition largely intact, apart from breaking it up into two sentences. In this circumstance as well, readers will need some orientation from footnotes. They may also want help when, especially, late imperial historical circumstances require some explication.

Fourth, the entire text of the Codex bears thinking about. The imperial constitutions in Justinian's Codex stretch over at least four centuries, during which the form and fortune of the Roman Empire altered profoundly.[26] Its law, as well, was hardly static; and this is true even if we look aside from the major reforms enacted by Justinian himself. The Codex amalgamates lightly edited sources in a way that might tend to conceal such changes, at any rate for the incautious reader. Words written by the chancellery of Septimius Severus in 200 CE could mean something quite different three centuries later, in a changed procedural and institutional context; they might acquire new connotations, or become embedded in novel legal constructions. Further, a process of deliberate selection was involved: what the compilers preserved, as balanced against what they decided, for whatever reason, to abbreviate or exclude. Finally, Justinian also permitted the compilers to adjust the original wording where deemed necessary, in order to bring the Codex into conformity with prevailing law. In some cases these interpolations are obvious, in others much more covert.[27] The problems here are considerably less significant than for the Digest, but they are still real, and readers may on occasion need to be alerted. (To assist with this,

[27] Alleged interpolations detected before 1936 are collected by Broggini (ed.) (1969). On criticism of interpolations, Schiller (1978: 62–83); Johnston (1989).

[28] My thanks to Professor Lenski for compiling this information.

we have provided a glossary with definitions of the major technical terms in the Codex.) By and large, however, we have left the surviving text alone, as is the modern practice.

The long and the short of it is that our annotation is rather more copious than we had initially envisaged. *Habent sua fata libelli.* It is also probably fair to say that this edited translation remains true more to the spirit of Justice Blume's translation than to its format and exact wording. Nonetheless, my collaborators rightly feel that having Blume's translation before them as they worked made all the difference. Usually he at least indicated the right path for translation; and where one of us felt impelled to depart from his wording or his understanding, it was always still with respect. More broadly, if Blume's translation had not been available, the entire project of translating Justinian's Codex into English would have been far more laborious. The depth of our gratitude to Justice Blume, whose decades of work went largely unrewarded for so long, is enormous. As one co-editor wrote to me: "I think you've had more than one encomium from me about FB, but – if you can tolerate one more – against all my expectations, my esteem for the man has only increased over the arc of my translating. His knowledge of law is superb, and his skill in Latin not bad either. I don't know what the others are telling you, but this would have been a much less attractive endeavor without his translation. I trust you will allude to such in your Preface – to my mind you can't praise him enough. I'm not claiming perfection for him, but that's not the issue. His accomplishment amazes, and that it was done without a word processor, on-line Latin dictionaries, and the like."

The formulaic headings and subscriptions of imperial constitutions present a different kind of challenge. As noted above, they are poorly preserved. Many constitutions have lost one or both altogether, but even where they survive they are often corrupt or outright erroneous. These headings and subscriptions are of enormous historical significance; in some instances, it is even possible to follow an imperial court geographically as it pursues its daily business, or to study from them how a particular problem was taken up and dealt with over time. Because of their potential consequence, modern scholars have combed through them (along with those in the Theodosian Codex, which overlaps to a large degree, and other sources). A translation such as the present one simply cannot serve as an authoritative source of reference on vital questions of this kind. At best, we can convey only a reasonable sense of where problems may lie. We have contented ourselves, therefore, with noting many instances where problems may lurk; in his note at the end of this introduction, Noel Lenski explains the process we used.[28] For additional information, readers will need to consult more specialized literature. As always, *caveat lector.*

[29] Paul/Julian/Callistratus, D. 50.15.84, 201, 220.3.

Translation involves choices. One of these was how to render the technical vocabulary of Roman law: how much Latin to retain, how much to rely on common law vocabulary that often has a different conceptual background, and so on. By and large we have tried to limit Latin, except for some hard-to-render expressions like *paterfamilias*, *suus heres*, *sui iuris*, *tutor* and *curator*, *dos profecticia*, *res mancipi*, *in factum*, and *in personam*, and so on, plus some of the quasi-legal honorific titles of the late imperial elite like *vir illustris* and *vir clarissimus*. Otherwise, editors have been encouraged to translate into English, but place the Latin term in parentheses, to assist in orienting readers. A second choice concerned gender-neutral language. Although the Roman Empire's government and society were, obviously, strongly male-dominated, and although Roman legal sources regularly presume that legal actors are male, the rules of Roman law not infrequently apply to both sexes indifferently; and even strongly gendered words like *filius*, "son," could designate both sons and daughters.[29] But monotonous repetition of "he or she," "him or her," soon becomes distracting, while circumlocutions take one too far from the text. By and large, therefore, we have preserved the nominal gender bias of the sources.

Beyond these relatively superficial issues, there remains the far more important problem of the Codex language itself. For the unwary, dangers abound: technical terms and phrases, often looking temptingly like ordinary Latin words, but with unusual twists in a legal context. A splendid example, perfectly representative, is *utiliter* in C. 9.9.21 pr.; it is easy to miss the implied reference to *annus* or *dies utilis*, the "effective" time units prescribed for pressing claims, without counting, for instance, days when courts are not in session.[30] A humble word like *collatio* ("collection" or "contribution") is pressed into service to describe the requirement that an emancipated child with independently acquired property, or a daughter with a dowry, must add this property into a decedent's estate prior to the division of that estate among heirs (C. 6.20: *collatio bonorum*) – a concept unfamiliar to almost all modern readers, even under its modern common law equivalent the rarely encountered "hotchpot." And for some major social and legal institutions, like the late imperial colonate, the affected persons are usually just described as *coloni*, a maddeningly multivalent word that is the subject of persistent scholarly controversy.[31] We can do no more than vainly hope to have navigated these shoals successfully, without the loss of either cargo or passengers.

[30] "Ob commissa adulteria atque accusandas uxores certa tempora, quae utiliter computari solent, praescripta sunt." Blume got it right: "only judicial days are counted in that period."

[31] See the note on C. 11.48.

To make sure that readers are not shipwrecked, we have frequently given our best translation and then placed the technical term (*terminus technicus*) in parentheses. Admittedly, such parentheses, used also for ellipses in the text, are intrusive. They are meant to be. Their purpose is to slow down readers who may have been anticipating a nice easy read, and to alert them of possible significant dangers.

The Codex is just under 400,000 words in length, or somewhat less than half the size of Justinian's Digest. All of us are certainly conscious that we are unlikely to have the last word on the meaning and correct translation of many, many passages. In fact, we have on occasion argued among ourselves about the best translation of disputed texts; and what we print represents no more than our collective best judgment. Each book of the Codex was read by at least two of our collaborators, and corrections were continuous throughout the process of editing. Nonetheless, it is likely that some translation errors remain undetected, and that on occasion the true solutions simply eluded us. At our urging and with our thanks, Prof. Ernest Metzger, of the University of Glasgow, has established a website where readers are warmly invited to register their corrections, see at: www.iuscivile.com/materials/codex.

Finally, I am happy to acknowledge help received from Alex Conison, a former Michigan graduate student in Classical Studies, and from Sandy Zeff, a Michigan law librarian. Also, my work on this project was supported over many summers by the William W. Cook Faculty Research Fund of the Michigan Law School.

The work put into this publication by Cambridge University Press has been extraordinary in its extent and its quality. I, like my editors, am especially grateful to Michael Sharp, the Senior Editor who arranged for the project's submission in the first place and who has guided it to completion; and to Christina Sarigiannidou, the Content Manager who saw us through the various stages of production. We are all also indebted to Elizabeth Hanlon, the Editor who did much to prepare the manuscript for publication; Phil Treble, the Text Designer; Lyn Flight, the copy-editor, and Frances Hiller, the Senior Editorial Services Controller who helped a great deal with initial copy-editing; and Henry Maas, the inexhaustible proofreader for the press.

But above all I want to thank my fellow editors, whose immense knowledge and loving concern for the project over many years were a most important aid to me in bringing these volumes together. Work on the Codex is by no means easy; doubts as to meaning and context often obtrude, from several viewpoints. But the editors of this volume have assumed an intelligent, invariably optimistic attitude in confronting all the many difficulties. I am most profoundly appreciative. You are steely-eyed Codex wranglers, all of you!

Note on the dating of Constitutions, by Noel Lenski

Many laws in Justinian's Codex are transmitted with incorrect headings and subscriptions. Mistakes can involve, among other things, the name or names of recipients, the offices they held, the law's place of issuance, and the question of whether the text transmitted was "given," "written," "received," or "posted" on the date and in the place reported.

But far and away the most common errors affect the dating of the law. Such errors have several causes. First, both calendar and annual dates are almost always abbreviated, leading to mistakes in comprehension and transmission on the part of the copyists of manuscripts. To take just one example, "Ian(uarius)," "Iun(ius)," and "Iul(ius)" were regularly mistaken for each other. Second, Roman calendar dates are counted backwards from fixed days in a month: the kalends (which always fell on the first and was abbreviated as "k"), the nones (which fell on the fifth or seventh, depending on the month, and was abbreviated as "non." or even "n."), and the ides (which fell on the thirteenth or fifteenth, and was abbreviated as "id."). Here again, these abbreviations were regularly interchanged, esp. "k." and "id." So, too, the Roman numerals used to record calendar dates: II and V, for example, were regularly confused, and the vertical strokes recording individual digits were regularly omitted or falsely increased (I, II, III, IIII). Finally, solar years were calculated not using numerals, but were based on the names of the Consuls who took office each January 1. This too could lead to confusion, particularly in years where the Emperors held the consulship, for emperors generally held multiple consulships during their reigns, and copyists regularly failed to record the number of these many consulates accurately.

Scholars have done considerable work to emend headings and subscriptions of the laws in the Codex. This includes alterations to the names and offices of recipients, the place of issuance or receipt, the question of whether the transmitted copy of the law was given, received, or posted. Nevertheless, because of the problems described above, it is a law's dates that are far and away most likely to attract scholarly intervention. (See also below, cxli–cxliii.)

It is often abundantly evident that a mistake was made in the dating of a law, whether by the copyists of the law in its original form, by the compilers of the Codex, or by subsequent copyists of the manuscripts. Often two copies or parts of one original constitution bear different dates – this might be evident from *leges geminatae*, from two versions of the same law preserved in the *Codex Justinianus* and some other source like the *Codes Theodosianus* or the *Collatio*, or from two or more sections of what were clearly a single law transmitted under different titles in the same code. Furthermore, many laws record their place and date of issuance, so that, when these are analyzed in the chronological order in which they were produced, they can be used to reconstruct the itineraries of the Emperors who created them. Using these itineraries, historians have

demonstrated with a high degree of probability that the date or place of issuance transmitted for a number of laws must be incorrect. Building on these same itineraries and applying the principles of paleography and textual criticism, historians have thus attempted to redate those laws that are clearly aberrant.

Scholars have suggested such emendations for centuries, in fact, so many of them and in such varied venues that it would be nearly impossible to take every possible emendation into account. Nevertheless, the editors of these volumes are well aware that readers will benefit from the ready availability of well-reasoned suggestions for emendations to the transmitted text. With this in mind, we have chosen to include limited references to emendations *to the dates only* of those constitutions that have been treated systematically by scholars since the publication of Krüger's text. For these purposes, we utilized five studies, all comprehensive in scope and devoted to the question of dating:

- Theodor Mommsen, *Gesammelte Schriften* (1905), which lays out the dates and places of issuance for all constitutions issued under the tetrarchs between 284 and 305. Mommsen's study had been published before Krüger's ninth edition of the *Codex* and was utilized by Krüger in his work. Nevertheless, Krüger did not always accept Mommsen's emendations in his printed text, even if he often mentioned them in his notes. Where Mommsen's datings differ from those published in the body of Krüger's text, we report these in footnotes.
- Otto Seeck, *Regesten der Kaiser* (1919), which examines all constitutions from 311 to 476, and offers detailed explanations for its principles and their application to individual laws. This and later studies were obviously never used by Krüger. Again, we report where Seeck's datings differ from Krüger's text.
- Timothy D. Barnes, *New Empire* (1982), which examines the dating of constitutions issued from 284 to 337, insofar as these impinge on the itinerary of the respective emperors. We print Barnes' datings only where they differ from Krüger, Mommsen, or Seeck. In instances where Barnes also differs from Mommsen or Seeck, we print their suggested emendations as well.[32]
- Sebastian Schmidt-Hofner, "Die Regesten der Kaiser Valentinian und Valens" (2008), which examines systematically the headings and subscriptions of all constitutions issued between 364 and 375.[33] We print

[32] A palingenesia of the tetrarchic rescripts with some new suggested datings is also offered by Tony Honoré, *Emperors and Lawyers* (1994); unfortunately, it is published only on 3.5-in. floppy disks that are no longer readable. The same is true of the palingenesia of Theodosian laws in Honoré, *Crisis of Empire* (1998).

[33] A similar study was completed by Pergami, *La legislazione di Valentiniano e Valente* (1993). Schmidt-Hofner takes Pergami's work into account and supersedes it.

Schmidt-Hofner's re-datings only where they differ from Krüger or Seeck; in these instances, we also print Seeck's suggested emendations.

- Tēlemachos C. Lounghis, Vasilikiī Vlysídou, and Stelios Lampakis, *Regesten der Kaiserurkunden des Oströmischen Reiches* (2005), which catalogs all known imperial legal pronouncements from the end of the Western Empire down to the death of Justinian. Lounghis *et al.* incorporate the important article of Krüger revising the chronology of the Justinianic constitutions in the *Codex*, material Krüger included in the notes, but not generally the text of his ninth edition.[34] They also offer ranges of dates for constitutions undated in Krüger's ninth edition by using the *Prosopography of the Later Roman Empire* to establish termini for the offices held by the laws' recipients.[35]

All these studies derived their conclusions from the principles of paleography (emending mistakes commonly made by scribes), codicology (emending mistakes based on preferable manuscript readings), prosopography (emending mistakes based on dates established for the offices held by a law's recipient or addressee), and the known itineraries of the Emperors who issued the laws. Additional suggestions for chronological emendations made by Tony Honoré on the basis of stylistic criteria were not incorporated into our text.[36]

To avoid cluttering the text with unnecessary citation, we kept references to emendations to a minimum, mentioning only instances where subsequent scholarship has emended the date transmitted in the text of Krüger, and even then mentioning only the first person to have suggested that emendation. At times, we have also mentioned instances where a subsequent scholar rejects an emendation proposed by his predecessor. It should also be noted that a small number of constitutions in Book 7 have been re-dated in accord with suggestions made from the Vallicelliana fragments republished by Corcoran in "New Subscripts" (2009). We have also not infrequently referred readers to the dates and other information given by the Projet Volterra's (still incomplete) online publication of late imperial constitutions.[37]

[34] Krüger (1873).
[35] Martindale, *PLRE*, vol. II (1980), vol. III (1992).
[36] *Emperors and Lawyers* (1994); *Crisis of Empire* (1998).
[37] See at: www.ucl.ac.uk/volterra/#intro. Thanks are due to Graham O'Toole for collating all redating of constitutions from Seeck's *Regesten der Kaiser und Päpste*.

The Codex of Justinian: The Life of a Text through 1,500 Years

Simon Corcoran

Justinian: the man and his projects[1]

Justinian became Roman Emperor on April 1, 527 CE in Constantinople, initially as co-ruler with his uncle, the ailing Justin I (r. 518–527), then as sole ruler on the latter's death on August 1 of the same year. Although already in middle age, Justinian was to reign for almost four decades, only dying in November 565. His long reign was marked by three great projects, undertaken with ceaseless energy, although differing greatly in their short-term and long-term results. The first was the defence of the Empire's existing territories and the recovery of those lost in the previous century. In this he was superficially very successful. By his death, a large portion of the western provinces had been reconquered from the Germanic rulers of the successor states: first Africa from the Vandals, then Italy from the Ostrogoths, and finally even a sliver of Spain from the Visigoths. The cost, however, in men and money was enormous, while the recovered territories, especially those in Italy, were left ravaged and exhausted, with the imperial grip less than firm. Even in the east, the Empire only just held its own against the challenge of Sasanian Persia under her own "Justinian," Khusro I Anoshiravan (r. 531–579), whose sack of Antioch in 540 was a particular humiliation for the Romans.[2] As a result, when the Lombards invaded Italy only three years after Justinian's death, much of it was swiftly lost and the rest held only with difficulty. Weaknesses elsewhere were punishingly exposed when, in the first half of the seventh century, first the Persians (temporarily) and then the Arabs (permanently) overran great swathes of the eastern provinces. Justinian's sixth-century empire was still a superpower, if resting to a great extent upon prestige and illusion. By the late seventh century, the diminished empire was struggling simply to survive. Justinian's territorial successes had proved to be short-lived.

[1] For general accounts of Justinian and his reign, see Moorhead, *Justinian* (1994); Evans, *Age of Justinian* (1996); Cameron, "Justin I and Justinian" (2000).

[2] For the Sasanian Empire, including Khusro and his reign, see Daryaee, *Sasanian Persia* (2008); Canepa, *Two Eyes of the Earth* (2009), 170–174 (sack of Antioch). For the Roman–Persian wars of this period, see Greatrex and Lieu, *Roman Eastern Frontier* (2002), 82–134.

The second great matter for Justinian was that of Christian unity. Ever since Constantine became Christian in the early fourth century, emperors had struggled with Christian dispute and schism over issues of authority, liturgy, and theology (especially Christology, disputes about the nature of Christ). Justinian was perhaps more forceful and dogmatic in these areas than many of his predecessors, with a pronounced tendency to intolerance of non-conformists, a habit of strong-arming senior clerics, as Pope Vigilius (r. 535–557) learned to his cost, and a belief in his own acumen as a theologian. However, despite a series of major meetings (the Synod of Constantinople in 536, the Council of Constantinople in 553),[3] the most important division in the church, essentially that between Chalcedonians and non-Chalcedonians (who disagreed about how Christ's human and divine natures could or should be combined or reconciled), was never resolved and perhaps contributed to the imperial weakness later revealed in Syria and Egypt.[4]

The final matter was that of the law. Here Justinian's efforts were soonest rewarded, with the rapid and successful codification of existing Roman laws and legal writings, and an overhaul of legal teaching, all carried out in the short period between 528 and 534. But, although hardly given to modesty, even Justinian would probably not have imagined that Roman law as he codified it would be legally authoritative into the modern age, and that the Civil Law tradition stemming from it would continue to provide the bedrock for numerous legal systems not only in many former parts of the Empire, but even in places far beyond the purview of Rome, right into the twenty-first century.[5] The only other achievement of Justinian to prove so durable is his Church of the Holy Wisdom (Hagia Sofia) in Constantinople.

Justinian's legal policy 528–534[6]

On February 13, 528 Justinian wrote to the Senate in Constantinople setting out his plan for a new codex (*novus codex*) of imperial constitutions (laws) (*Const. Haec*).[7] This codex was to subsume and supersede the three pre-existing codices of imperial constitutions, the Gregorian, Hermogenian and

[3] Millar, "Rome, Constantinople" (2008); Price, *The Acts of the Council of Constantinople* (2009).
[4] Menze, *Justinian and the Making of the Syrian Orthodox Church* (2008).
[5] For the long-term legacy of Roman law, see Feenstra, "Law" (1992); Stein, *Roman Law in European History* (1999).
[6] For general accounts of Justinian's legal activities, see Jolowicz and Nicholas, *Historical Introduction* (1972), 478–500; Mousourakis, *Legal History* (2007), 183–191; Humfress, "Law and Legal Practice" (2005).
[7] As explained below in relation to the Gregorian and Hermogenian Codices, "codex" denotes here the physical format of a bound book, without having the modern connotations of the word "code" as a codified body of material. Therefore, the word "Codex" rather than "Code" is used in this chapter and throughout the rest of these volumes for the ancient works of Justinian, Theodosius, etc.

Theodosian (described below), as well as later imperial legislation, including the recent laws of Justinian himself, replacing them with a single authoritative recompilation, which was to carry Justinian's own name (*Const. Haec. pr.*; cf. *Const. Summa* 1).[8] The stated aim of this project was to reduce the complexity of the law and the length of litigation.[9] The commission of high officials and legal experts appointed to carry out this task was granted wide editorial powers, so it could cut away the irrelevant, harmonize the incongruent, suppress the obsolete, and, indeed, add, alter, remove, or merge material to make the law clearer (*Const. Haec.* 2; cf. *Const. Summa* 1). Texts were to be divided (if necessary) and arranged under suitable titles in chronological order. The resultant Codex in twelve books was promulgated by means of a letter from Justinian to Menas, Praetorian Prefect of the East, dated April 7, 529 (*Const. Summa*), to come into force on April 16. This seems to have been a complete project in and of itself. By creating a single authoritative, harmonised and coherent collection of laws issued by emperors over the previous 400 years (as far back as Hadrian), Justinian felt that he had superseded his predecessors. That he had already at this point conceived plans for even more amibitious legal reform and codification, to which the Codex was simply the prolegomenon, is far from certain.

What happened next was that over the following summer the Emperor's chief legal officer, the Quaestor Thomas, fell from power and, by September, his place had been taken by Tribonian (Quaestor 529–532 and 535–542), who had already served in a junior role on the Codex commission.[10] The energetic and visionary Tribonian soon formulated a far more ambitious codification project.[11] Roman law rested upon more than just the pronouncements of emperors, but comprised a patchwork of statutes (laws (*leges*) passed by the popular assemblies, decrees of the Senate), magistral edicts (primarily the Edict of the Urban Praetor, put into fixed form *c.* 130 CE[12]), and, most of all, the commentaries upon these by the classical jurists, which were not purely academic exercises, but were legally authoritative and had standing in court.[13] Although all these forms of legislation and legal writing had each in turn fallen

[8] At *Buildings* 1.10, Procopius publicly praises the Codex, but in his *Secret History* 11.2 opines that this was one of the Emperor's vanity projects intended simply to create something new for the sake of carrying his name.

[9] "To make law suits less long-winded" (*Const. Haec. pr.*). This claimed purpose is reflected also in the report on the Codex's publication in John Malalas' *Chronicle* 18.38 (Jeffreys and Scott, *Chronicle* (1986), 262). See also Scott, "Malalas" (1981).

[10] Corcoran, "Anastasius, Justinian" (2009), 201–202. Tribonian is listed sixth in *Const. Haec* 1 and *Const. Summa* 2, but is always named first among participants in the later law commissions.

[11] Honoré, *Tribonian* (1978); Honoré, *Justinian's Digest* (2010).

[12] The text does not survive intact, but has been partially reconstructed (Lenel, *Das Edictum Perpetuum* (1927) (English translation in *ARS*, No. 244)).

[13] Thus, Hadrian ruled that agreement among the jurists had the force of law (Gaius 1.7).

into obsolescence, so that the Emperors had come by the late third century to enjoy a monopoly of law-making, the existing laws and texts remained valid. In 429, Theodosius II had envisaged codifying not only imperial laws, but also the juristic writings (C.Th. 1.1.5), although this was never carried out. Instead, his Codex, which contained only imperial constitutions from Constantine onwards, included a fragment of a law from 426 (C.Th. 1.4.3), the so-called "Law of Citations," which limited use of jurists' works in court to a "Mighty Handful" (Papinian, Paul, Gaius, Ulpian, Modestinus), and under which, where juristic opinion differed, the majority would prevail (or Papinian's view in case of a tie).[14] This text, possibly modified, had been taken by Justinian into his new Codex.[15]

However, for Tribonian it was clearly not regarded as sufficient. Therefore, engaging with the opinions and controversies in the writings of the classical Roman jurists from almost the first constitutions he wrote as Quaestor in Justinian's name,[16] he conceived a plan to resolve numerous disagreements between these jurists. As a result, a series of laws, which came to be known as the Fifty Decisions (*Quinquaginta Decisiones*), was issued to settle various of these controversies definitively, promulgated in batches between summer 530 and spring 531.[17] This was only the start, however, for in December 530 Tribonian, again in Justinian's name, wrote to himself a long constitution setting out a plan to gather together and boil down into a "nutshell" all the writings of the great jurists who had flourished in the period between Augustus (r. 27 BCE–14 CE) and Diocletian (r. 284–305), thus making of them a reduced, manageable, clear, consistent, and harmonious whole (*Const. Deo Auctore* (= C. 1.17.1)). A commission was set up to put this into effect, and they toiled for three years. Even the Nika Riot, a serious disturbance that broke out at Constantinople in January 532 and turned into a revolt that almost toppled the Emperor,[18] did not derail the project, with Tribonian remaining in control of it, despite being dismissed as Quaestor as part of the appeasement of the rioters.

The major output of this industry, published on December 16, 533, was the Digest, a weighty fifty-book compilation, although slight compared with the great mass of writings from which it derived. Edited extracts from the jurists were woven together under suitable titles, although dominated by the writings

14 Honoré, *Crisis of Empire* (1998), 250; Watson, *Law Out of Context* (2000), 4–8.

15 *P. Oxy.* XV 1814, lines 44–45; Corcoran, "Justinian and His Two Codes" (2008). 96–99. Justinian also issued his own law on this matter, but its contents are unknown.

16 Already a mention of Paul at C. 3.28.33.1 (September 17, 529).

17 Honoré, *Tribonian* (1978), 142–146; Russo Ruggeri, *Studi sulle Quinquaginta Decisiones* (1999).

18 For the Nika revolt, see Greatrex, "Nika Riot" (1997); also Cameron, "Justin I and Justinian" (2000), 71–72.

of Ulpian (d. 223), which furnished some 40 percent of the text.[19] The content was supposed to be internally consistent and not contradictory, brought into harmony and updated in accord with the legal changes of the Fifty Decisions and other recent enactments. The Digest was accompanied by the Institutes (published on November 21, 533), a brief four-book work, which was to serve as an introductory text for first-year law students, modeled upon the Institutes of Gaius (second century), which it now replaced. Both these works formally came into force as legally authoritative, superseding absolutely all previous juristic writing, on December 30 (*Const. Tanta* (= C. 1.17.2); *Const. Imperatoriam Maiestatem*). There was also issued a law reforming legal education (*Const. Omnem*), which was now to be confined to the two law-schools of Constantinople and Beirut, and whose revised five-year syllabus was designed around Justinian's new materials, the Institutes, Digest, and Codex.

Given all this legal activity, the law as contained in the Codex of 529 was now seriously out of date. Therefore, Justinian ordered that his intervening legislation, including the Fifty Decisions, be edited into the Codex, with the existing material altered to reflect the changes he had enacted. As a result, texts were added and deleted, emended and relocated, to produce a second edition, the *Codex repetitae praelectionis*, which was published on November 16, 534 by means of a letter to the Senate of Constantinople (*Const. Cordi*), to come into force on December 29, superseding The *Novus Codex* and representing the concluding act of Justinian's codification of Roman law. It is this revised Codex that survives and is translated in these volumes.

The making of the Codex: the sources

Justinian is explicit about the source material that was to be used for his original Codex (the *Novus Codex*), namely, the three existing codices of imperial constitutions (the Gregorian, Hermogenian, and Theodosian) plus the subsequent legislation of emperors down to his own reign (*Const. Haec pr.*; *Const. Summa* 1). For the revised edition (the *Codex repetitae praelectionis*), the Fifty Decisions and the other laws he had himself issued between 529 and 534 were to provide the new material (*Const. Cordi* 2).

Of the various sources, the Theodosian Codex is best known, since it is the one most fully and independently preserved.[20] It was compiled on the orders of Emperor Theodosius II between 429 and 437, being issued in a public ceremony at the time of the wedding of Valentinian III, his cousin and

[19] On the making of the Digest, see Honoré, *Justinian's Digest* (2010).

[20] Edition: Mommsen and Meyer, *Codex Theodosianus* (1905); English translation: Pharr, *The Theodosian Code* (1952).

Emperor in the west, to Theodosius' daughter Eudoxia at Constantinople in October 437, and promulgated throughout the Empire, both east and west, during the following year.[21] Taking as models the two earlier codices (Gregorian, Hermogenian; C.Th. 1.1.5), it comprised sixteen books of imperial constitutions from the reign of Constantine onwards (covering the years 313–437), edited and abbreviated, sliced and diced under appropriate titles. Books 6–16 survive almost intact; Books 1–5 much less so.[22] Almost all the material in Justinian's Codex dating between 313 and 437 must derive from the Theodosian Codex.[23] Indeed, for the deficient books of the Theodosian Codex, Justinian's Codex itself is often the only witness to otherwise missing material. Nonetheless, the fact that the Theodosian Codex survives so substantially means that there is a host of control texts for examining what Justinian's commissioners did to their sources, in terms of both selecting and editing material.[24] Sometimes, indeed, albeit rarely, we have control texts for the Theodosian Codex also, so that we can follow the manner in which an imperial law was transmitted and edited from its original issue through the successive codifications of Theodosius and Justinian. Thus, two laws attested in fuller forms in contemporary fourth-century inscriptions are found edited into each codex in turn.[25] As noted earlier, Theodosius had originally intended to proceed to a more comprehensive codification of all imperial constitutions and juristic texts (C.Th. 1.1.5), but, achieving only the first stage of his plan, had to be satisfied with his more modest, if still substantial, codex of recent imperial laws. It was Justinian who in due course succeeded where Theodosius failed.

[21] The story of the Codex's compilation and dissemination can be seen from four contemporary texts: C.Th. 1.1.5 (1st commission, 429); 1.1.6 (2nd commission, 435); Theodosius II, *Novel* 1 (promulgation in the east, 438); *Gesta Senatus* (in Mommsen, *Codex Theodosianus*, I.1, 1–4) (reception in Italy, 438). See Matthews, *Laying Down the Law* (2000); Salway, "The Publication of the Theodosian Code" (2012).

[22] For issues over the reconstruction of Books 1–5, see Matthews, *Laying Down the Law* (2000), 101–118. At least a half, perhaps even two-thirds, of these books is missing.

[23] Some texts, with their explicit mention of Licinius (r. 308–324), who was subsequently damned (C.Th. 15.14.1), appear anomalous and may have derived from the Hermogenian or perhaps Gregorian Codex (C. 3.1.8, 6.1.3, 7.16.41, 7.22.3). See Corcoran, *Empire of the Tetrarchs* (2000), 274–280.

[24] Mommsen's Theodosian Codex edition contains extensive and explicit indications in separate boxes next to the texts usefully indicating the Justinian Codex variants.

[25] Thus, Galerius' (or Constantine's) Edict on Accusations (305 or 314/320; *FIRA* 1.94; *ARS* No. 302) appears in a short edited version at C.Th. 9.5.1, shortened again at C. 9.8.3 (discussed by Matthews, *Laying Down the Law* (2000), 254–270, and Corcoran, "Galerius's Jigsaw Puzzle" (2007)). Similarly, Julian's letter on judges-delegate (362; *CIL* III 459 and 14198; now *L'Année Épigraphique* 2000.1370; *ARS* No. 309) appears at C.Th. 1.16.8, thence C. 3.3.5. See Salway, "Words and Deeds" (2012), 147–150. For the other editorial practices of the Theodosian compilers, see Matthews, *Laying Down the Law* (2000), chs 6, 8, and 9.

The Gregorian and Hermogenian Codices, which Theodosius had invoked as models and Justinian used as sources, do not survive.[26] Outside Justinian's Codex, only limited cannibalized fragments of them remain in other late Roman legal compilations.[27] It is presumed that all pre-Constantinian material in the Codex, covering the period from Hadrian (r. 117–138)[28] down to 305, must derive from one or other of these two Codices. Since the other sources to cite these Codices tend to give specific attributions to one or other of them, it is possible to get a broad picture of their chronology and content, although precision is impossible. Both the Codices were issued in the 290s, during the reign of Diocletian. The Gregorian Codex contained imperial constitutions, mostly private rescripts (thus addressed to ordinary petitioners rather than to office-holders), arranged under titles across at least thirteen books. Starting from some point in the second century (probably during the reign of Hadrian), it went down to 291, although it seems to have provided very uneven representation of emperors and years. It also contained some further material from later in the 290s. The Hermogenian Codex, by contrast, comprised overwhelmingly private rescripts of Diocletian from only the two years 293 and 294 arranged under titles in a single book.[29]

Hermogenian was *magister libellorum* (Master of Petitions) and later Praetorian Prefect to Diocletian,[30] so that his Codex may have been official or at least semi-official. Of Gregorius, however, nothing is known. By analogy with Hermogenian, it is sometimes supposed that he also held office at the court of Diocletian, but he may have been operating outside the administration.[31] We simply do not know. One or both Codices may have had later material added to them, but it is unclear whether either was issued in anything

[26] Recently some meagre fragments have been identified as probably coming from a fifth-century manuscript of the Gregorian Codex, which reveals overlap with text in C. 7.62 (Corcoran and Salway, "Fragmenta Londiniensia Anteiustiniana" (2012)).

[27] On these Codices, see Corcoran, *Empire of the Tetrarchs* (2000), ch. 2; Corcoran, "The Gregorianus and Hermogenianus" (2013). No substantial full text reconstruction of the two Codices is possible. For partial attempts, see Hänel, *Codicis Gregoriani* (1837); Krüger *et al.*, *Collectio III* (1890), 236–245. The most important pre-Justinian legal works to quote the codices are the *Collatio Mosaicarum et Romanarum Legum* or *Lex Dei* (fourth century), the *Consultatio Veteris Cuiusdam Iurisconsulti* (fifth century), and the Gregorian and Hermogenian sections in the Breviary of Alaric (506). Useful comparative material is also preserved in the so-called *Fragmenta Vaticana* (fourth century). On these various works, see Schiller, *Roman Law* (1978), 50–54; Jolowicz and Nicholas, *Historical Introduction* (1972), 456–458 and 466–467; Mousourakis, *Legal History* (2007), 165–167 and 182.

[28] For the single rescript of Hadrian in the Codex, see C. 6.23.1.

[29] On the material in Hermogenian's Codex, see Connolly, *Lives Behind the Laws* (2010).

[30] Corcoran, *Empire of the Tetrarchs* (2000), 85–90; Corcoran, "The Gregorianus and Hermogenianus" (2013), 293–295.

[31] Corcoran, *Empire of the Tetrarchs* (2000), 90; Corcoran, "The Gregorianus and Hermogenianus" (2013), 295–297.

like a formal "second edition."[32] One important point to note is that although these two collections soon came to be called codices, this was because they had been published in "codex" form; that is, they were not written on one side only of separate rolls, but on both sides of pages bound into volumes with hinged spines in the format still standard for books.[33] This major shift from roll to codex took place essentially during the third century, and meant that large legal collections could be navigated as reference works for teaching or practice more easily than ever before, with running headers and summary indexes. Thus, the legal "codices" were so called because of their format, and it is only modern usage that has given us the sense of a "code" as a codified body of material. The Gregorian and Hermogenian Codices are also notable as furnishing the paradigm for structured collections of imperial constitutions, which went beyond previous assemblages of emperors' pronouncements, although they were still very far from being complete or comprehensive "codes."[34] This is why, as noted earlier, this chapter and these volumes prefer to use the term "codex" rather than "code" to describe the ancient collections of constitutions.

The material in Justinian's Codex subsequent to the three earlier codices (i.e., post-437) must have derived principally from the imperial archives available at Constantinople. Following the issue of the Theodosian Codex, designed to apply to the entire Empire, it had been agreed that laws issued in one half of the Empire would be valid in the other half only if formally sent there and promulgated by the other Emperor.[35] No Emperor in the west appears ever to have sent material east, since the Codex contains no western material for this period. However, some eastern material was sent west,[36] and it is by this route that there survive independently collections of such Novels (i.e., *novellae constitutiones* = "new constitutions"), furnishing intact versions

[32] Corcoran, "The Gregorianus and Hermogenianus" (2013) 297–300, is cautious on the question of editions, in contrast to *Empire of the Tetrarchs* (2000), 37 and 89–90. There are some limited pre-Theodosian texts in the Codex from the late 290s and up to 305, plus the anomalous constitutions of Licinius noted above (n. 23). It is impossible to be sure which of these were original to the Diocletianic codices.

[33] For the formats, see Johnson, "The Ancient Book" (2009), and, as reflected in surviving legal manuscripts, Ammirati, "Per una storia" (2010), and Ammirati, "The Latin Book" (2012).

[34] The closest earlier examples are the *Libri Constitutionum* of Papirius Justus (under Marcus Aurelius: Lenel, *Palingenesia* (1889), I, cols. 947–952; Volterra, "L'ouvrage de Papirius Justus" (1968)) and the *Decreta* of Paul (under Septimius Severus: Lenel, *Palingenesia* (1889), II, cols. 959–965; Honoré, *Emperors and Lawyers* (1994), 20–24).

[35] Thus, the *de facto* division of the Empire since the death of Theodosius I in 395 became legally formalized. The separate line of western emperors finally ended with the deposition of Romulus Augustulus (476) and then the death of Julius Nepos (480).

[36] Thus, Theodosius II sent a batch of Novels to Valentinian III in 447, which the latter officially promulgated (Nov. Theod. 2 and Nov. Val. 26).

of several laws present in edited form in the Codex.[37] Some other texts are also preserved independently in the acts of Church Councils (e.g., Chalcedon, 451) or other ecclesiastical sources.[38] Otherwise, most of the secular legislation of the late fifth and early sixth centuries is only known as preserved in the Codex.

Although sometimes proposed, it does not seem likely that any imperial constitutions were taken directly from the juristic writings into the Codex, and nothing Justinian says in the introductory constitutions indicates this possibility.[39] In fact, the compilation of the jurists' writings into the Digest meant that numerous imperial constitutions, which the jurists commonly cited or less commonly quoted verbatim, appear there quite comfortably.[40] Justinian had ruled in 529 that imperial constitutions embedded in the jurists' writings were valid only if not in conflict with his new Codex (*Const. Summa* 4), but the subsequent publication of the Digest conferred authority on everything in it, including embedded constitutions revised as necessary (*Const. Tanta* 10 = C. 1.17.2.10). Few rescripts are present in both Digest and Codex, coming via different routes, either the jurists or the *Codex Gregorianus*.[41] Justinian ruled that the Digest was to avoid unnecessary repetition of matters dealt with authoritatively in the Codex (*Const. Deo Auctore* 9 = C. 1.17.1.9; *Const. Tanta* 14 = C. 1.17.2.14) and, although he was thinking more of general provisions than exact textual doublets, this surely explains why the direct overlap is so limited. Indeed, not only could texts have been deliberately excluded from the Digest, but others also might have been removed later from the revised Codex. Further, the chronological range for which the jurists and the Gregorian Codex coincided substantially was only about twenty years (the reigns of Septimius Severus and Caracalla), so the chance of duplication was perhaps not great. In any case, the Gregorian Codex, whose own sources are not entirely clear, may itself have taken at least some texts from juristic writings. As it happens, there is only one truly anomalous text. This is C. 9.8.6, which consisted originally of a long, probably Justinianic, constitution in Greek (now lost), containing within it two passages in Latin from jurists (Paul; Marcian), who themselves cite (but

[37] Edition by Meyer as vol. II of the Mommsen and Meyer, *Codex Theodosianus* edition; translated in Pharr's *The Theodosian Code* (1952), 487–572.

[38] See Coleman-Norton, *Roman State* (1966), for useful collected translations of imperial texts on religious affairs from all sources up to 535.

[39] Corcoran, *Empire of the Tetrarchs* (2000), 31–32.

[40] Imperial constitutions cited in the juristic sources are collected together in Gualandi, *Legislazione imperiale* (1963).

[41] E.g. Antoninus Pius: C. 6.37.1 closely matching D. 34.1.13.1 (Scaevola); Severus and Caracalla: C. 9.41.1 quite divergent from D. 48.18.1.16 (Ulpian), C. 10.41.1.1 closely matches D. 50.1.21.6 (Paul), and C. 11.32.1 reported in indirect speech at D. 50.1.21.7 (Paul); Caracalla: C. 7.49.1 paraphrased at D. 3.6.1.3 (Ulpian).

not verbatim) imperial rescripts.[42] Although jurists are sometimes mentioned in imperial constitutions both by earlier emperors and by Justinian himself, nowhere else are they quoted in this fashion. It is easiest to suppose that this unusual constitution was added into the revised Codex after the promulgation of the Digest, since it was only direct imperial legislation that could now bestow authority on uncodified juristic material.

The making of the Codex: types of imperial constitution

The imperial constitutions that ended up edited into the Codex via these various sources are of several types. The majority, deriving principally from the Theodosian Codex and later material, comprises letters addressed to officeholders, most often higher officials such as one of the Praetorian Prefects, or the Urban Prefect of either Rome or Constantinople. These usually form part of general legislative enactments, promulgated across the Empire or a large portion of it. Sometimes, however, these letters are more specific and are individual replies to officials submitting queries to the Emperor for answers. The process of editing, however, means that it is not always clear whether a letter is such a one-off reply or part of a more general enactment, especially as the latter may itself have been prompted by a specific case.[43]

The next most common type of text is the private rescript, typical of the second- and third-century material deriving from the Gregorian and Hermogenian Codices.[44] Indeed, there are no certain private rescripts in the Codex dating after 305, since these had lost general force other than for their individual case after 398 (C.Th. 1.2.11), and so were excluded from the Theodosian Codex.[45] This lack of general validity is restated in Justinian's Codex (C. 1.23). However, the old rescripts taken into the Codex acquired the force of general law from the very fact of their inclusion (*Const. Haec* 2; *Const. Summa* 3). Private rescripts are replies or rulings on points of law issued in answer to petitions from private individuals, and would have been posted up in batches outside the Emperor's residence. They were not generally sent to the

[42] De Marini Avonzo, "Due giuristi" (1974); Bauman, "Leges publicorum iudiciorum" (1980), 229–230; Honoré, *Tribonian* (1978), 236.

[43] See, for instance, Corcoran, *Empire of the Tetrarchs* (2000), ch. 6. The Codex itself includes titles discussing the current status of various types of imperial pronouncement (C. 1.14, 15, 23).

[44] On rescripts, see Honoré, *Emperors and Lawyers* (1994), ch. 2; Corcoran, *Empire of the Tetrarchs* (2000), ch. 3; Connolly, *Lives Behind the Laws* (2010), ch. 2.

[45] Some fourth-century private rescripts do survive in other legal sources. See Corcoran, *Empire of the Tetrarchs* (2000), 42 and 301–302. Note, in particular, some late surviving examples from the 360s (*Consultatio* 9.2, 5, 6).

addressees. In terms of format, private rescripts were formally distinguishable from letters, since they lacked the opening greeting and closing valediction, which the latter originally carried.[46] Since, however, greeting formulae do not often survive the successive editorial processes that the texts have undergone, it is not always clear whether a constitution in the Codex was in origin a letter or a private rescript, although rescripts can be considered the default document type in the second- and third-century material.

Less frequent in the Codex are edicts, which were general declarations without specific addressees, typically in the form "The Emperor says" (*Imperator dicit*), although not all texts in the Codex considered to be edicts conform to this.[47] Further, general legislation was often issued in overlapping edictal and epistolary forms, so that the distinction between the two is blurred from the fourth century onwards.[48] Finally, there are extracts from the *acta* or proceedings of various types of hearing, which are the least common format encountered in the Codex.[49]

One notable feature of the imperial texts in the Codex is the existence of items in Greek, which shows how far law and administration in the Empire had become bilingual by the time of Justinian even at the highest level. Latin was the proper language of Roman law, and communication between the Emperor and officials was always in Latin. However, Greek was the dominant language in the eastern Mediterranean, so that, from the moment Roman power arrived there in the second century BCE, correspondence with local communities was usually in Greek, as was most lower-level administration. With the extension of Roman citizenship to all free inhabitants of the Empire in 212 CE, and then the rise of Christianity, which involved emperors in much business and dispute generally debated in Greek, there was a tendency for Greek to percolate upwards to the higher echelons of the eastern administration.[50] As far as this affects the imperial texts gathered into the codices, the Gregorian, Hermogenian, and Theodosian contained

[46] Some examples of greeting formulae survive in the Codex; e.g., C. 1.3.1, 1.21.2, 2.13.1, 3.28.26, 9.2.11, 9.1.21, 10.72.7, 12.33.1. Valedictions, which would have been written personally by the emperor in the original document (Corcoran, "State Correspondence" (2014), 194–195), are not attested in the Codex except in the anomalous text C. 1.1.8.24, 39.

[47] For edicts and issues of edictal format, see Corcoran, *Empire of the Tetrarchs* (2000), 170–171. For some Codex examples, note C. 3.3.2, 3.11.1, 7.51.4, 7.62.6, 10.61.1. Texts addressed "ad populum" or "ad provinciales" are usually taken as edictal.

[48] See Corcoran, *Empire of the Tetrarchs* (2000), 198–203; Matthews, *Laying Down the Law* (2000), ch. 9. Note in particular that the epigraphically attested Edict on Accusations appears in the Theodosian and Justinian Codices as deriving from a letter to the Urban Prefect (C.Th. 9.5.1; C. 9.8.3; Corcoran, "Galerius's Jigsaw Puzzle" (2007), 242–243).

[49] C. 1.3.7, 7.26.6, 7.62.1, 9.1.17, 9.41.3, 9.47.12, 9.51.1, 10.48.2, 12.46.1. On records of hearings, see Corcoran, *Empire of the Tetrarchs* (2000), 254–260; Connolly, "Constantine Answers the Veterans" (2010).

[50] For the language situation in the fifth century, see especially Millar, *A Greek Roman Empire* (2006).

very little Greek, and this is reflected also in the material taken from them into Justinian's Codex.[51] However, from the later fifth century, Greek texts become more common, especially for matters concerning the Church.[52] And yet, despite the fact that the Empire became linguistically weighted towards Greek, since the territories lost in the fifth century were Latin-speaking, the issue of laws in Greek was not yet the norm and Justinian had to justify promulgating one law in Greek on the grounds of making it more accessible.[53] After the end of the "codification" process in 534, however, the Novels issued from 535 onwards tended to be in Greek, unless dealing with the limited Latin-speaking portions of the Empire.[54] Indeed, it may be surmised that the legal work of Justinian and Tribonian was carried out only just in time, before Roman law in Latin was overwhelmed by the realities of a largely Greek-speaking polity.

Given the press of business upon them, emperors seldom composed the documents sent out in their names.[55] Instead, during the early Empire, different types of text came to be dealt with by freedmen in the Emperor's household, and then, by the early second century CE, by salaried officials of equestrian rank.[56] Letters were the responsibility of the Master of Letters (*magister epistularum*), although Greek correspondence was dealt with by a separate Master of Greek Letters (*magister epistularum Graecarum*). Rescripts in answer to petitions were the province of the Master of Petitions (*magister libellorum*). The Master of Memory (*magister memoriae*) may have dealt with edicts (which were relatively rare) and *adnotationes* (special grants), but perhaps mainly managed the imperial records. The Master of Hearings (*magister cognitionum*) arranged imperial audiences and trials, although it is not clear if he wrote any documents generated by them.[57] From the mid-fourth century, however,

[51] From the *Gregorianus*: C. 4.24.1 and probably 1.9.2, 4.20.1, 9.6.1 (Corcoran, *Empire of the Tetrarchs* (2000), 38); cf. C. 10.48.2 (advocate speaks in Greek: Corcoran, *Empire of the Tetrarchs* (2000), 255). For the Theodosianus, note C.Th. 9.45.4–5 (C. 1.12.3); C.Th. 11.39.5; C.Th. 15.1.9 (C. 11.8.3); cf. C.Th. 8.15.1 (litigant speaks in Greek). C. 9.36.1 (perhaps of Julian) presumably came from the Theodosianus. See Stolte, "The Use of Greek" (2009).

[52] Especially the first five titles of Codex 1.

[53] Justinian, Inst. 3.7.3, relating to C. 6.4.4. Cf. C. 8.10.12 (law of Zeno in Greek, on private buildings)

[54] Kaiser, "Zweisprachigkeit" (2012). Even with the Novels, however, it is not always clear when, or if, now lost original Latin versions might have existed. It was only in the 530s that the Praetorian Prefect, John the Cappadocian, ordered all official material in the eastern prefecture to be in Greek (Kelly, *Ruling the Later Roman Empire* (2004), 34–35).

[55] Unsurprisingly, Justinian appears particularly proactive in this area (Honoré, "Some Constitutions" (1975)), earning predictable criticism from Procopius (*Secret History* 14.3–4).

[56] Millar, *Emperor in the Roman World* (1992), 69–110; Corcoran, "State Correspondence" (2014) 187–190.

[57] Before the mid-third century, the official title was of the form "procurator ab epistulis/a libellis," more often shortened simply to "ab epistulis," "a libellis," etc.

these "palatine secretaries" (as they are often called in English) were joined by a more senior official, called the Quaestor, who was in charge of drafting laws.[58] It should be noted that the men given the responsibility of dealing with laws and correspondence were not necessarily experts in law or administration, although those with suitable legal or literary skill could be chosen to hold these posts. Given the uneven presence of different types of imperial text in the Codex, most of the third-century material deriving from the Gregorian and Hermogenian Codices comprises private rescripts, which would have been written by the Master of Petitions. Most of the material from the mid-fourth century onwards, representing general legislation, will have been composed by the Quaestor.

This background is the starting point for the work of Tony Honoré, who has examined the imperial constitutions in the codices as texts with authors whose style and legal approach can be analyzed.[59] Even allowing for the fact that the texts have been redacted and recycled, often more than once, Honoré has argued that, by reading the texts in chronological order (rather than Codex order), it is possible to discern stylistic changes over time. He has used his results to construct sequences of composers of imperial constitutions, and has even been able to propose identifications with known historical figures, especially when they are the authors of other surviving texts, so allowing comparison. Thus, on the basis of reading the third-century rescripts mostly from the Codex, he has proposed a list for the holders of the office of *a libellis/magister libellorum* from 193–305, including among their number Papinian, Ulpian, Modestinus, and Hermogenian.[60] He has suggested similar sequences of authors for the office of Quaestor at various points in the fourth, fifth and sixth centuries.[61] The results of Honoré's work have not been universally accepted, there being scepticism especially in North America with regard to both his methods and his vision of how the palatine bureaus operated, underestimating the role of the office staff and its procedures.[62] Nonetheless, his work is a useful reminder that imperial texts are not straightforward creations of emperors, but can be analyzed otherwise than simply by the reign of an emperor, and that officials and advisors provided key input into the production of imperial pronouncements.

58 Harries, "The Roman Imperial Quaestor" (1988); Honoré, *Crisis of Empire* (1998), 11–23. The process for drafting laws in the fifth and sixth centuries is described at C. 1.14.8.

59 See especially Honoré, *Emperors and Lawyers* (1994); Honoré, *Crisis of Empire* (1998).

60 Honoré, *Emperors and Lawyers* (1994), 190–191.

61 Honoré, *Crisis of Empire* (1998), 275–277; Honoré, *Tribonian* (1978), ch. 8.

62 For example, criticisms of the first edition of *Emperors and Lawyers* by Watson, "Review" (1982). More supportive have been Millar ("A New Approach" (1986)), Liebs (e.g., in his recent *Hofjuristen* (2010)), and the author of this chapter (Corcoran, *Empire of the Tetrarchs* (2000), ch. 4; Corcoran, "State Correspondence" (2014), 188–189).

One key feature common to all imperial pronouncements needs to be highlighted. The imperial office in the Roman Empire could be collegial, and, indeed, for some two-thirds of the total period covered by the Codex (130s–530s) there were two, three, or even more Emperors reigning jointly.[63] Pronouncements, therefore, were promulgated in the names of all co-emperors, irrespective of which individual ruler actually issued them and where they were to be applied. In the headings to these texts the Emperors appeared in order of seniority according to their *dies imperii*, that is, from the day when they first entered the imperial college. However, where a college included junior rulers with the rank of Caesar (who lacked the titles Imperator and Augustus), the Augusti took precedence. In headings to constitutions, therefore, the Emperor named first was not necessarily the actual issuer. This system was made more complex by the fact that emperors frequently disagreed or changed their minds about whom they regarded as legitimate colleagues or what their relative seniority was. The headings in the Codex reflect the collegial nature of the emperorship. However, they have been through various processes of redaction or recreation. Headings can be affected by outright error, inadvertence, or confusion caused by problematic dates or the numerous rulers with the same or similar names. Even in the absence of such factors, headings do not preserve fully or accurately the original formats. Imperial names and titles are abbreviated,[64] while the Emperors listed may be more retrospective choice than faithful snapshot of the past. For instance, Constantine is most often shown alone, despite having always had at least one colleague throughout his long reign (306–337).[65] The preserved headings, therefore, are not necessarily authentic and can mislead.

The making of the Codex: editorial practice

Even as Justinian was explicit in the sources to be used for the Codex, so he gave clear instructions with regard to how they were to be treated (*Const. Haec* 2). In pursuit of a harmonious whole not only was the material to be distributed across appropriate thematic titles, but, more significantly, the commissioners were given powers to manipulate the individual imperial texts to a remarkable extent. Thus, they could cut up constitutions, discard the irrelevant portions and divide the remainder between different titles as needed. Further, although obsolete law was to be excluded, this meant not

[63] On the imperial colleges and imperial titulature, see Barnes, *New Empire* (1982), chs. 1–3; Kienast, *Römische Kaisertabelle* (2011); Corcoran, "The Augusti and Caesars Say" (2015).

[64] In the Codex, extensive imperial titles seldom appear outside the introductory constitutions (*Const. Haec*; *Const. Summa*; *Const. Cordi*; C. 1.27.1, 8.10.12).

[65] Corcoran, *Empire of the Tetrarchs* (2000), 279–281.

only leaving out some constitutions that contained it, but also emending others by deletion, addition, or alteration of passages to make them congruent with current law.

Overall, sufficient "control" texts from the Theodosian Codex and elsewhere survive to give a good idea of the range of editorial interventions made by Justinian's commissioners. In previous times, especially during the later nineteenth and earlier twentieth centuries, scholars engaged in a frenetic "hunt for interpolations," seeing the hand of Justinian's commissioners anywhere and everywhere in the texts of both Codex and Digest. This mania has now subsided and there is a more measured approach. It is recognized that changes are most likely to be found where we know Justinian reformed the law, and that, even so, the form and style of the originals were not casually erased.[66] Nonetheless, the source texts have indeed been manipulated and this remains a difficulty for anyone using the Codex as a historical sourcebook to gaze back at earlier periods. While numerous texts were taken over with little or no change, some were drastically abbreviated, or cut up and redistributed. More significantly, others were edited to bring them into line with current law, even if this meant altering or inverting the original meaning.[67] Some texts were actually amalgamated,[68] or a phrase from one interpolated into another.

A couple of examples should suffice to illustrate some of the issues. First, C. 5.4.17 comprises a list of the forbidden degrees for marriage. This is all that was chosen from a lengthy and elaborately rhetorical edict of Diocletian about incest from 295, whose full *Codex Gregorianus* version survives independently (quoted verbatim at *Collatio* 6.4). However, unlike Justinian's version, the original list omits a brother's daughter (and her daughter). This is no error, but reflects the fact that this had been permitted since Claudius married Agrippina in 49 CE (Tacitus, *Ann.* 12.6–7; Gaius 1.62). It is then first attested as having been forbidden once again in a constitution of Constantius II (C.Th. 3.12.1; 342), which was not itself taken into Justinian's Codex. Instead, the Diocletianic text was augmented and adapted to reflect the re-introduced prohibition and thus to provide a single comprehensive list.[69]

[66] Lokin, "End of an Epoch" (1995); Johnston, *Roman Law* (1999), 17–24; Watson, *Law Out of Context* (2000), ch. 1. An added problem is that texts might have been altered already before Justinian's time. A list of interpolations suspected up to 1936 was published by Broggini (1969).

[67] For example, temporary donations were ruled invalid by Diocletian at *Frag. Vat.* 283, while the Codex version of this same rescript makes them valid (C. 8.54.2). C.Th. 2.1.10 loses a "*non*" at C. 1.9.8, although the exact consequences are complex to interpret (Linder, *The Jews* (1987), 204–211; Rabello, "Civil Jewish Jurisdiction" (1999)).

[68] For example, *Frag. Vat.* 42 (Diocletian in 293) incorporated into C. 3.33.3 (Caracalla in 213) and *Frag. Vat.* 315 (Maximian in 291) into C. 3.32.15 (Diocletian in 293).

[69] Corcoran, "Sins of the Fathers" (2000), 13–14; Corcoran, *Empire of the Tetrarchs* (2000), 174.

For our second example, we start with Sirmondian Constitution 4, which preserves an almost intact version of a letter of Constantine to the Praetorian Prefect Felix dating to 335.[70] This bans Jews from acquiring and circumcising Christian or other non-Jewish slaves, who in such circumstances will be granted their freedom. It also threatens punishment against Jews who harass any former co-religionists who convert to Christianity. The Constantinian letter was in due course divided up by the Theodosian commissioners. The two measures contained in the original are reflected separately in the Theodosian Codex. One edited extract deals with the harassment of converts (C.Th. 16.8.5), while a second, placed under a different title, deals with the matter of the slaves (C.Th. 16.9.1). Neither passage was taken over directly into Justinian's Codex. Instead, a law of similar content attributed to Constantius II, forbidding Jewish ownership and circumcising of Christian slaves or any non-Jewish slaves (C.Th. 16.9.2) was edited into the equivalent title as C. 1.10.1. However, this text was modified also from the content of two other source texts, C.Th. 16.9.1 and 4.[71] As a result, the key point present in C.Th. 16.9.1, but absent from C.Th. 16.9.2, that the wrongly circumcised slaves are to be granted their freedom, is interpolated into C. 1.10.1. Thus, we can see how the full original text, which we know from Sirmondian 4, was abbreviated and divided in the Theodosian Codex, but then discarded, with only a single, if key, point from one of its Theodosian extracts incorporated into a different law in Justinian's Codex. As a result, a long and varied Constantinian law ended up only obliquely reflected in the Codex. Indeed, without the source texts, we would be unaware of the true history behind this measure.

Our final example illustrates the editing undertaken for the revised edition of 534. In November 533, Justinian issued a law to Hermogenes, the Master of Offices, on *raptus* or abduction marriage. This law superseded a Constantinian law present in the Theodosian Codex (C.Th. 9.24.1), which must have been incorporated into Book 9 of the *Novus Codex* of 529 and was now discarded. Justinian's provisions differed in various ways from those of Constantine, but a key feature was that his interest extended to encompass women dedicated to the religious life. In editing this law into the revised Codex of 534, Justinian's commissioners cut up, but also repeated, much of the law in at least three places, possibly more.[72] The major part of the law was put at a place equivalent to that of the Constantinian law that it had superseded among the criminal

[70] Linder, *The Jews* (1987) 138–143; Matthews, *Laying Down the Law* (2000) 145–147. The set of Sirmondian Constitutions, an independent ecclesiastical assemblage, is edited by Mommsen in his *Codex Theodosianus*, vol. I.i, 907–921 (trans. Pharr, *Theodosian Code* (1952), 477–486).

[71] Linder, *The Jews* (1987), 144–151. There is much debate over the correct dates and emperors for these laws, but this does not affect the key issue of how their contents were edited.

[72] Two further passages may be from this law (C. 7.24.1, 11.48.24), suggesting that it perhaps dealt with wider marriage issues than just *raptus*. On *raptus*, see Evans-Grubbs, *Law and Family* (1995), 183–193.

law material of Book 9 (C. 9.13.1). But a section was also placed in Book 5 (C. 5.17.11), where it was relevant for matters of divorce and dowry. Finally, a near-doublet of C. 9.13.1 was repeated in Book 1, at C. 1.3.53 under the title on clerics, adapted to reflect its focus on the female religious. This repetition of the text in Book 1 is a good example of how in the revised edition, the commissioners, perhaps reflecting Justinian's own wishes, greatly expanded and emphasized the religious material in the opening portion of the Codex.

A further point to note is that Constantine's *raptus* law had offered a reward to those denouncing the crime, so that slaves were to be granted freedom with Latin status, while Latins were to be upgraded to become full Roman citizens (C.Th. 9.24.1.4). This short passage on rewards is the only portion of Constantine's law to survive in the revised Codex at C. 7.13.3, except that it has been significantly adapted. Whether it had been placed here already in the first edition, when the full law still stood in Book 9, is unclear. However, Justinian had remodeled the law regarding manumission and freed status very significantly since 529, and this had a knock-on effect upon the shape and content of the first part of Book 7, where such topics were treated. In particular, in 531 Justinian had abolished the status of Junian Latin (C. 7.6.1). It is no surprise, therefore, that the Constantinian extract at C. 7.13.3 has been adapted to provide only one level of reward, namely, the grant of freedom (with full citizenship) to a slave; for there no longer existed Latins to be rewarded, nor Latin status to be given in reward. This is a good example, therefore, where we can clearly see the effect of a known Justinianic legal reform leading to textual emendation.[73]

The making of the Codex: shape and organization

The overall shape of the Codex is easy to explain, having been derived with adaptation from the earlier codices.[74] Book 1 is by far the longest, although this imbalance does not seem to have existed in the 529 Codex. Rather it was mostly the result of very long new constitutions being added into the revised edition, including numerous, often lengthy, texts on ecclesiastical matters in Greek (especially in titles 1–5), two additional titles, C. 1.12–13, relocated from elsewhere in the *Novus Codex*, and, most of all, the introductory constitutions to the Digest (C. 1.17) and the detailed administrative provisions for Africa

[73] See Corcoran, "Justinian and His Two Codes" (2008), 78 and 92–93, and Corcoran, "*Softly and Suddenly*" (2011), 142. We can also see Latins edited out of C. 5.5.7 (from Nov. Marc. 4.3) and C. 5.27.1 (from C.Th. 4.6.3). The law of abolition, C. 7.6.1, contains the only references to Latins present in the Codex.

[74] For a good analysis of the shape of the Codex and how this relates to its source-texts, see Giomaro, *Il Codex repetitae praelectionis* (2001).

after its recovery from the Vandals (C. 1.27). Book 1 covers three themes. First, come ecclesiastical affairs (C. 1.1–13), including orthodox belief, the powers of bishops, and the privileges of the clergy and Christian institutions, and also issues concerning the non-Orthodox, that is, all heretics, whether deviant Christians, Jews, Samaritans, Manichees, or pagans. Next, there are the sources of law and constitutional matters, especially the position of the Emperor and his pronouncements (C. 1.14–25). Finally, come the higher administrative offices of the Empire, both central and regional, starting with the Praetorian Prefects (C. 1.26–57). The constitutional and administrative sections largely follow the pattern of the first book of the Theodosian Codex. The first section, however, takes its shape from the Theodosian Codex's sixteenth and final book. This merging of the two books, with the relocation of material from the end of one Codex to the beginning of the other, is the most significant innovation in structure introduced by Justinian, and was present already in the *Novus Codex* of 529.[75] He thus established from the outset that this was a law book for a right-believing Christian empire. This type of religious material was largely alien to the core of previous Roman legal works, with their focus on civil law. Of course, we would expect pagan religious matters to have been removed from the Roman legal tradition in the course of the Christianizing centuries (fourth–sixth centuries), and no doubt religious issues would appear more prominent if we had the earlier texts unmediated. But much of such material had always been largely separable and had generally been treated in quite different works from other matters of law, even if sometimes written by the same specialists.[76] Thus, excluding religious issues from the juristic material reused for the Digest and the Institutes may not have involved great effort. Similarly, this may explain why Theodosius added Christian and other religious affairs at the end of his Codex, as they otherwise had no natural place within earlier legal formats. Justinian, with typical boldness, turned this on its head.

Books 2–8 of the Codex deal with matters of private law, the major areas for litigation between citizens. These, therefore, cover such topics as the grounds for going to court, judicial procedures, contract, delict, marriage, dowry, tutorship, freedmen, succession testate and intestate, manumission, pledges, court orders, and appeals. To a great extent they seem to have followed the order of

[75] As attested by *P. Oxy.* XV 1814. See Corcoran, "Justinian and His Two Codes" (2008), and Corcoran, "Anastasius, Justinian" (2009).

[76] Rives, "Control of the Sacred" (2012). Some distinctions in the status of land were taken over into Christian Roman law (e.g., Inst. 2.1.7–10; D. 1.8.1, 6, 8, 9). For the survival of pontifical law in the city of Rome in the fourth and fifth centuries, see Lizzi Testa "*Augures et Pontifices*" (2009).

the Gregorian Codex, which itself had followed previous legal compilations in shadowing the Praetor's Edict (the most important single influence over structure), plus aspects of the core Civil Law (deriving ultimately from the Twelve Tables) and various statutes (*leges* or senatorial decrees). The Gregorian pattern is difficult to prove definitively. Since that Codex does not survive directly, the Justinian Codex is itself a major source for understanding it and there is a risk of arguments becoming circular. Further, the private law books (mainly Books 2–5) of the possible rival structural source, the Theodosianus, are very incompletely attested, making their shape also uncertain. However, the sheer size and detail of the *Gregorianus* with its clear civil law focus (criminal or public law may have been limited to one or two concluding books only) do make it the more plausible candidate.[77]

Book 9 deals with criminal law (the *iudicia publica*) and shadows Theodosian Codex Book 9, although the last two Theodosian titles (C.Th. 9.44–45), which seem to have been kept in Book 9 of the *Novus Codex*, were relocated to Book 1 of the revised edition (at C. 1.12 and 1.25).[78] The final three books, 10–12, deal with various administrative affairs, including Treasury law, taxes, state industries and provisioning, local government and its offices and duties, and the army. Much of this also follows the pattern of the Theodosian Codex. In all books, however, the earlier codices were not a straitjacket that constrained Justinian's commissioners, especially where the law had changed significantly since the time of Diocletian or Theodosius II.

Within titles the constitutions were ordered by date (*Const. Haec* 2), following the practice of the earlier codices. Every constitution had to carry a subscript, those lacking dates being assigned the formula "without day and consul" (*sine die et consule*) and given the closest suitable position within the correct reign. However, the sequence did not affect an individual constitution's authority, with the result that in cases of conflict the later did not override the earlier. This is in contrast to the policy of the Theodosianus (C.Th. 1.1.5–6), which had even sometimes included repealed and repealing laws next to one another.[79] Justinian's intention was quite clear, that there would be nothing

[77] Corcoran, "The Gregorianus and Hermogenianus" (2013), 289–291. Note that material present early in Codex Book 2 was by contrast present early in Book 1 of the *Gregorianus*: *Cod. Greg.* 1.10 (*de pactis*; *Consultatio* 9.17; Krüger *et al.*, *Collectio III*, 236) matches C. 2.3 (*de pactis*); cf. C.Th. 2.9 (*de pactis et transactionibus*).

[78] Corcoran, "Justinian and His Two Codes" (2008), 94–95.

[79] For example, C.Th. 4.12 on the *Senatusconsultum Claudianum*, dealing with women co-habiting with slaves, in which the constitutions confusingly change the rules one way and then the other. See Evans Grubbs, *Law and Family* (1995), 263–272. Although it is not clear which of these texts were taken into the *Novus Codex*, Justinian finally repealed the *Senatusconsultum* entirely in 533 (C. 7.24.1; probably part of the same law as C. 9.13.1).

inconsistent in the Codex. Where conflicts were later identified, the chronological sequence of constitutions was irrelevant and it was the Emperor who had to rule to resolve such matters.[80]

Nonetheless, the clear chronological order under titles makes it easy to see the pattern of the sources. For titles do not draw consistently upon all the earlier codices and novels, but rather reflect the thematic balances and biases of the source material. Thus, in the private law books (2–8), the third-century rescripts from the Gregorian and Hermogenian Codices often dominate, appearing in lengthy sequences either by themselves or with only limited later texts appended. Indeed, this dominance is precisely why the *Gregorianus* seems such a likely origin for the structure of these books. By contrast, Book 1 in general contains very little from the two earliest codices and, not surprisingly, almost nothing in the opening titles on religion.[81] In the books on criminal and public law, both the Theodosianus and post-Theodosian legislation are more prominent sources, although there are exceptions with a topic such as local government and its burdens in Book 10, where the concerns of third-century petitioners continued to resonate. Finally, the legislation of Justinian himself is fairly ubiquitous across the Codex. Not only is it common for a title to be rounded off or even dominated by often lengthy Justinianic measures, but sometimes his reform is so radical as to supersede everything else entirely and stand by itself (e.g., C. 1.17.1–2, 7.6.1, 7.13.1, 7.24.1). This feature was undoubtedly more pronounced in the revised edition, given the Fifty Decisions and numerous other significant constitutions issued after 529.

It is perhaps also useful to note here that the treatment of private law in the Codex is quite different to the far more coherent "institutional" scheme used in introductory works for students, originally developed by Gaius in the second century and best known from Justinian's own reworking in his Institutes.[82] Under this scheme, the law was divided into three major topics: persons, things (subdivided into property, succession, and obligations), and actions.[83] This systematic classification of the law, with its divisions and subdivisions, has proved not only a help to students, but an important intellectual

[80] Thus, Just. *Nov.* 158 on C. 6.30.18–19. See further in the next section.

[81] The exception is two items concerning the Jews (C. 1.9.1–2, with Corcoran, *Empire of the Tetrarchs* (2000), 38 n. 87).

[82] See Stein, "The Development of the Institutional System" (1983). Apart from the surviving Institutes of Gaius and Justinian, some fragments of others are known, mostly via the Digest (Florentinus, Marcian, Paul, Ulpian; Lenel, *Palingenesia* (1889), I, cols. 171–178, 652–675, 1114, and II, cols. 926–930). A good current guide to Justinian's Institutes is Metzger's *Companion* (1998).

[83] Constitutional law is touched on briefly at the beginning of both Gaius (1.1–7) and Justinian (Inst. 1.1–2), and criminal law at the end of Justinian only (Inst. 4.18).

basis for the structure of Civil Law systems down to this day. In the Codex, however, Justinian was consciously imitating the earlier codex-makers, even if with the intent to supersede them. Indeed, the speed with which the 529 edition was produced is best explained by the commissioners taking over exisiting paradigms, rather than trying out radically new structures (religion excepted). Further, the Codex was not intended as an introductory work, but as a resource for advanced students and professionals, who would already have learned their Institutes, whether those of Gaius (up to 533) or Justinian, and so had a strong grounding in the basics. However, the sometimes opaque structure of the Codex does also explain why annotations with cross-references and small thematic treatises came to be created to help navigate the material (see the next section).

The life of the Codex in the Empire

When he published the Institutes and Digest in November 533, Justinian also issued a law which reformed legal education (*C. Omnem*). All law schools except for Constantinople and Beirut (and theoretically Rome) were suppressed and the existing law syllabus was revised. The full law course was lengthy and, after furnishing first-year students with a basic legal outline through the Institutes, it concentrated on the Digest. Study of the imperial constitutions in the Codex was left for the fifth year and was supposed to be largely a matter of self-study.[84] A key feature of law-school teaching was that the codified legal texts, which existed overwhelmingly in Latin, had to be taught to a student body whose primary language, at least of learning and literacy, was Greek. This meant that the law professors (*antecessores*) had to provide materials in Greek to mediate the highly technical Latin content. Justinian had restricted translations and commentaries and even legal abbreviations in an attempt to prevent his codification being swamped and obscured by an uncontrollable mass of contradictory interpretation (*Const. Deo Auctore* 12 = C. 1.17.1.12; *Const. Tanta* 21 = C. 1.17.2.21). Permitted supplementary writings included summary indexes (brief précis); *paratitla* (marginalia and cross-references to help navigate around the material); and *kata podas* ("in the footsteps") translations (interlinear literal word-for-word cribs).[85]

[84] For the law schools and their syllabus, see Scheltema, *L'enseignement de droit* (1970); Scheltema, "Byzantine Law" (1967), 56–60; Liebs, "Roman Law" (2000), 252–258. Zacharias of Mytilene in his life of Severus of Antioch depicts the latter, while at law school in Beirut *c.* 490, conscientiously attending lectures, but also studying the imperial constitutions on his own (Brock and Fitzgerald, *Two Early Lives of Severos* (2013), 57–58, 61, and 84).

[85] Such cribs were most often used for elementary teaching of Latin or Greek, and are well attested in the papyri and in some early medieval manuscripts (see Dickey, *Colloquia* (2012–2015)).

In practice, however, the professors had to write detailed expository lecture courses, as well as translations that often went beyond the literal. Very swiftly a vast corpus of teaching texts was produced. Of such works in Greek, only one has surivived intact, that of Theophilus for the Institutes.[86] But substantial portions of similar teaching aids produced for the Codex are also known. The principal authors of these were Thalelaeus (*PLRE* III Thalelaeus), Isidorus (*PLRE* III Isidorus 3), and Anatolius (*PLRE* III Anatolius 3),[87] all active in the 530s, and, somewhat later in time than the rest, Theodore of Hermopolis in the 570s (*PLRE* III Theodorus 64).[88] It was inevitable that the works of these men would in due course, for most practical purposes, supersede the original Latin texts in the majority Greek-speaking parts of the Empire. In fact, the full panoply of legal education did not long survive. The law school of Beirut seems never to have recovered after the city was destroyed by a tsunami in 551.[89] In Constantinople, teaching remained vibrant, with new materials created for giving instruction in Justinian's more recent legislation, the Novels (i.e., the new laws issued since 535, mostly in Greek), such as the Epitome of Julian (a basic lecture course) and the *Authenticum* (a *kata podas* translation from Greek), both in Latin, which, therefore, became important in the medieval west.[90] But even at Constantinople the system of instruction seems to have faded away not long after Justinian's death (565). Despite the ending of the formal syllabus, however, much teaching still survived, tied rather more to practice. Even in the 570s further materials were created to help navigate and learn the Novels.[91] There were also small thematic guides for practitioners to help them locate relevant material within the vast corpus of texts they were supposed to have mastered.[92]

86 See the new edition by Lokin *et al.*, *Theophili Antecessoris Paraphrasis Institutionum* (2010) (with an English translation by A. F. Murison).

87 Scheltema, *L'enseignement de droit* (1970), 32–43; Lokin and Meijering, *Anatolius* (1999).

88 Scheltema, "Fragmenta Breviarii Codicis" (1972); Lug, "Ein Bruchstück" (1976).

89 Hall, *Berytus* (2008), 70–76. Agathias, *Hist.* 2.15.1–4 (trans. Frendo (1975), 47–48) talks of relocation of the school to Sidon, with the intention to return, and there appears to have been some teaching later in Antioch (Liebs, "Roman Law" (2000), 253), but the glory days were over.

90 For the Epitome, see the edition of Hänel, *Iuliani Epitome* (1873), with a detailed study by Kaiser, *Die Epitome Iuliani* (2004). For the *Authenticum*, see the edition of Heimbach (1846–1851). Its nature as a *kata podas* was for long unrecognized (Scheltema, *Opera Minora* (2004), 133–137; Lokin, "Ad Novellam 159" (1990)). The Novels being overwhelmingly in Greek, it was Latin speakers who required particular help, although Greek materials were also produced. Some scholars place the creation, or at least some editing, of the *Authenticum* rather in Rome (Liebs, "Roman Law" (2000), 252; more cautious, Loschiavo, "Codex graecus" (2010), 148–149).

91 Thus, the summaries of Theodore of Hermopolis and Athanasius of Emesa, both from the 570s (Liebs, "Roman Law" (2000), 252), each based on a different permutation of Novels.

92 Thus, two short Latin tracts associated with the writings of the *antecessor* Julian (active at Constantinople in the 550s) on procedure and tutorship, respectively. See Humfress, "Law and Legal Practice" (2005), 172. Liebs, "Roman Law" (2000), 157, regards them as texts for students near the end of study.

While we know much of how the Codex was taught and studied in the Empire, we know much less of how it was used in real court cases. Justinian had made it clear that, although his codification was supposed to be internally consistent, any future problems that might arise should be referred to him for settlement (*Const. Tanta* 18 = C. 1.17.2.18; cf. C. 1.14.12). Procopius cynically suggests that Justinian was ever ready to interfere with cases and, for a price, to change the law in a litigant's favour, and even to change it back again (*Secret History* 14.9–10). Certainly, some of his Novels were designed to resolve legal ambiguities or conflicts raised by real cases. Indeed, we are fortunate that the Novels, existing in unabbreviated forms (unlike materials edited into the Codex), contain much explanatory background. Thus, we know that Justinian intervened twice in specific inheritance disputes that turned upon the interpretation of imperial constitutions from the Codex, and that he issued rulings designed to solve not only the apparent contradictions of the cases in question, but to apply in future similar cases.[93] The Codex, therefore, was a resource that was actively used in real situations that reached the courts.

Following the catastrophes of the seventh century, which left the Empire fighting for its life, detailed knowledge of legal texts became largely confined to the capital.[94] Such works as were produced in the seventh and eighth centuries were rather brief, even provincial, although tending to draw on the Justinianic material.[95] It was in the late ninth century that serious and extended attention was again paid by emperors to law and codification. In a process begun by Basil I (r. 867–886), but finally completed by his son, Leo VI "the Wise" (r. 886–912), the Justinianic corpus (Institutes, Digest, Codex, plus the Novels) was recompiled into a single authoritative collection in sixty books, the Basilika.[96] This work was entirely in Greek and so consisted principally of selections from the sixth-century law-school teaching materials and similar works. For the Codex, the version of Thalelaeus with an associated *kata podas* was the default one used, except for Book 8 supplied from the work of Anatolius.[97] The Basilika effectively superseded Justinian's original work,

[93] Novel 2 (535; conflict of C. 5.9.3 and 5 with 6.56.7; Humfress, "Law and Legal Practice" (2005), 173–174) and Novel 158 (544; conflict between C. 6.30.18 and 19; Humfress, *Orthodoxy and the Courts* (2007), 54).

[94] For this complaint, see the preface to the *Ecloga* of 741 (Burgmann, *Ecloga* (1983), 162–163; Humphreys, *The Laws* (forthcoming). For a brief history of Byzantine law up to the eleventh century, see Scheltema, "Byzantine Law" (1967).

[95] Brubaker and Haldon, *Byzantium in the Iconoclast Era* (2001), ch. 17.

[96] Lokin, "The Significance of Law" (1994); Scheltema, "Byzantine Law" (1967), 65–6; van Bochove, *To Date and Not To Date* (1996). The now standard modern edition was published at Groningen in seventeen volumes between 1953 and 1988 (Scheltema and van der Wal, *Basilicorum libri LX*).

[97] Lokin, *Analecta Groningana* (2010), 81. Earlier views, predating the completion of the new Basilika edition, saw Isidorus as the key source for versions from Book 8 (e.g., Scheltema, *L'enseignement de droit* (1970), 40–41).

although it appears that only in 1169 was there a formal ruling that the original Justinianic versions were no longer valid in court.[98] And so the story of the Codex in the Empire, except as vicariously reused through the Basilika and certain other legal works, comes to an end.

The life of the Codex in the early medieval West

The reconquest of Italy began in 536, not long after the promulgation of the revised edition of the Codex. However, in contrast to the easy recovery of Africa from the Vandals, this proved to be far more difficult than Justinian had anticipated and victory was only definitively achieved after the defeat of the Goths at the battle of Busta Gallorum in 552 (and there was mopping up even after that). Thus, only in 554, at the request of Pope Vigilius, then in Constantinople, did Justinian properly organize the civil government of Italy and formally introduce there his new codified materials, including the Codex.[99] He seems to have envisaged also the re-establishment of a law school in Rome, with paid professors, although it is not clear that this ever happened.[100] Nonetheless, from this time onwards, use was certainly made of the Codex. Its text was borrowed for the *Tripartite Ecclesiastical History* sponsored by Cassiodorus at Vivarium in southern Italy,[101] while Pope Gregory the Great made detailed reference to it and other parts of Justinian's legislation in an often-cited letter of 603.[102] However, in the confused situation in Italy following the Lombard invasion (which began in 568), routine and detailed engagement with Justinian's material seems to have become relatively rare, as indeed did the sort of legal professional who could most easily have utilized it.

Imperial territory in Italy shrank quite rapidly, and in due course, after the final fall of Ravenna in 751, was for the most part confined to the far south, where imperial control was only finally extinguished in 1071.[103] This had two consequences. First, even where the Empire no longer ruled, the law that

[98] Scheltema "Byzantine Law" (1967), 65–66. This probably meant the sixth-century Greek versions rather than any original Latin!

[99] Justinian, *Novels Appendix* 7.11 (Schoell and Kroll, *Corpus Iuris Civilis* III (1912), 800).

[100] Justinian, *Novels Appendix* 7.22 (Schoell and Kroll, *Corpus Iuris Civilis* III (1912), 802). Liebs, "Roman Law" (2000), 253 and 256–257, is keen to see a continuing or revived law school, *contra* the skeptical Radding and Ciaralli, *Corpus Iuris* (2007), 38 and 113–114. See now Loschiavo, "Legal Culture" (2015).

[101] Cassiodorus and Epiphanius, *Historia Tripartita* (Corpus Scriptorum Ecclesiasticorum Latinorum 71, 1952) 9.7 and 9.40 (= C. 1.1.1 and 9.47.20).

[102] Gregory, *Reg.* XIII.49[50] (Martyn, *The Letters of Gregory the Great* (2004), III, 863–866). The citations are of C. 1.3.10, 1.12.2. 1.12.6, 7.44.3, 7.48.4, 9.1.20: also D. 48.4.7.3 and Novels 90 and 123.

[103] For imperial Italy after Justinian, see Brown, "Byzantine Italy" (2008); Loud, "Byzantium and Southern Italy" (2008).

applied to the existing inhabitants remained Roman. Law was more often considered to be "personal" than "territorial," so that those living under Lombard rule, for instance, did not suddenly start using Lombard law, unless defined as Lombards.[104] As a result, in Italy, as in most other former imperial territories except Britain, Roman law in some form remained relevant. But there was a second consequence. There was no longer a central authority to create new Roman legislation or review the validity of the old. Even the most proactive successor kings tended at most to produce compendia of existing Roman materials, and not all even did as much as that. Thus, pre-existing Roman legal texts would remain current, as they had been at the moment when Roman rule ceased, and, although they might be repeatedly recycled and even thereby often changed, this was in a rather haphazard manner.

Therefore, outside Italy in territories where Justinian's writ had never run, his legislation had limited impact, although Julian's Epitome of the Novels, which dealt extensively with ecclesiastical matters, was quite widely cited by churchmen. Thus, to Hincmar of Rheims (archbishop 845–882), *lex Iustiniana* (Justinianic law) was in essence the Epitome.[105] The Roman law used in the Frankish kingdoms tended to be that deriving from the earlier Theodosian Codex (437), principally as mediated through selections taken into the Breviary of Alaric (issued by the Visigothic king, Alaric II, in 506) and its epitomes.[106] Within Italy, however, Justinian's material had greater purchase.

"The Church lives according to Roman law."[107] This was a standard catchphrase and Roman legal texts on ecclesiastical matters were often taken into Canon Law collections. It is no surprise, therefore, that the next detailed engagement with the Codex was in an ecclesiastical compilation, probably made in northern Italy in the mid- to late ninth century, but only known from a single late ninth-/early tenth-century manuscript now in Paris (BN Par. Lat. 12448), the so-called *Lex Romana canonice compta*. This, as its title suggests, was an arrangement of Roman law extracts suited for ecclesiastical needs. The collection draws on more than 120 Codex constitutions, taken from the

[104] Charles-Edwards, "Law in the Western Kingdoms" (2000), 62–63 and 282–284.

[105] For example, Hincmar, *De Presbiteris Criminosis* 10 and 13 (ed. Schmitz (2004), 75 and 107); *Letter* 30.32 (Patrologia Latina 126.207); and BN Par. Lat. 12445 ff. 236–237. See Corcoran, "Hincmar" (2015), 138 and 139–140.

[106] Jolowicz and Nicholas, *Historical Introduction* (1972), 466–467; Gaudemet, *Le Bréviaire* (1965). The standard, if now rather dated, edition of the Breviary is Hänel, *Lex Romana Visigothorum* (1849). The Visigothic kings were the most energetic of the successor-state legislators, and their direct legacy through their heavily Romanized Visigothic law code, the *Lex Visigothorum* or *Forum Iudicum* (654), had a long-lasting effect upon Spain in particular (their Gallic territory was mostly lost in 507). For Roman law in Gaul/Francia, see Liebs, *Jurisprudenz in Gallien* (2002), 109–120 and 157–267.

[107] For example, *Lex Ribuaria* 61[58].1 (Monumenta Germaniae Historica: *Leges nationum Germanarum* 3.2, 109).

"private law" books (2–8), and is otherwise principally made up of extracts from the Institutes and the Epitome of Julian.[108] It was also the source in its turn for most of the Roman law material in a near-contemporary ecclesiastical work, the *Collectio Anselmo Dedicata* (associated with Archbishop Anselm of Milan, 882–896).[109]

In the tenth century, our evidence for extensive interest in the Codex moves south, to the area around Rome and below. First, there is the *Collectio Gaudenziana*, a legal compilation known only in a single manuscript written in Beneventan script and now in the British Library (Ms Add. 47676), of which the first part is an imaginative rearrangement of mostly Roman law materials from the Institutes, the Epitome of Julian, and a mere ten constitutions taken from just four titles of the Codex (1.2, 1.3, 8.4, 11.48).[110] At about the same time there came into existence another even more interesting work, the so-called *Summa Perusina*, known only from a single early eleventh-century manuscript now in Perugia (Bibl. Cap. 32).[111] This is a curious work, which appears to have been created by taking a manuscript of the Codex rich in annotations and glosses (probably of the seventh century), and then copying out the original headings to the constitutions (naming emperors and recipients), but accompanied only by the associated annotations, while retaining the overall Codex structure of books and titles (although the surviving text breaks off before the end of Book 8). This produced a highly abbreviated, if more manageable, Codex, with summaries that are sometimes garbled and inaccurate, but more often baffling to someone without the full Codex text to make things clear. Its weaknesses, however, would not necessarily have been obvious to someone with only the *Summa* before him, and indeed this reduced version of the Codex was regarded as authoritative for a time in the late tenth and early eleventh centuries. It was even cited successfully in a hearing before that most Roman of medieval emperors, Otto III, in December 999.[112] It is often presumed that it was in fact the *Summa*, not the full Codex, that Otto had in mind when he supposedly instructed his judges to swear to follow

[108] The standard (rather rare) edition is Mor, *Lex Romana* (1927). The Projet Volterra at University College London is preparing an online digital edition.

[109] See Radding and Ciaralli, *Corpus Iuris* (2007), 55–60.

[110] Fullest account is by Kaiser, *Die Epitome Iuliani* (2004), 655–846 (he is also preparing a full edition); briefly in English, Radding and Ciaralli, *Corpus Iuris* (2007), 70–72.

[111] Facsimile published as part of the 700th anniversary celebrations of the University of Perugia (see Crifò and Campolunghi, *Adnotationes Codicum* (2008)). The standard edition is by Patetta, *Adnotationes Codicum* (1900). Brief discussion in English at Radding and Ciaralli, *Corpus Iuris* (2007), 42–43 and 68–70.

[112] *Monumenta Germaniae Historica: Diplomata Regum et Imperatorum Germaniae*, vol. II, No. 339 = Giorgi and Balzani, *Il Regesto di Farfa* (1879–1914), vol. III, doc. 437 (quoting *Summa* 7.43.8–9). On Otto, see Althoff, *Otto III* (2003).

Justinian's law and said to them "According to this book judge Rome, the Leonine city, and the whole world."[113]

The revivification of the Codex in the eleventh century

During the course of the eleventh century, there was an explosion of interest in the Codex, as indeed in the other parts of the Justinianic corpus. Not only are manuscripts of the Codex itself now attested as being directly copied for the first time in over 400 years, but citation and quotation of the Codex in other legal texts and commentaries and in documents becomes common, even unremarkable. For instance, where documents of the Abbey of Farfa (victor in the case before Otto III) cite the *Summa Perusina* early in the century, by the second half they are quoting the Codex directly.[114] How the fortunes of the Codex and the other Justinianic works were so dramatically altered during the century represents a significant step in European legal history. At one time scholars believed that the full Codex was effectively "lost" in the early medieval period, with only mutilated epitomes available (minus the Greek, the last three books, and much of the rest), and that the story of the eleventh century was the "recovery" of the lost Codex. This is no longer an adequate account of what happened. The Codex was never lost, even if it was not necessarily easily accessible at all times and in all places, and engagement with it was often limited (as seen above). Key to the change in scholarly interpretation is the redating of the Pistoia manuscript (AC 106), previously thought to be tenth-century and so to represent the early medieval epitomized Codex as it started its halting progress to recovering its lost content. However, this manuscript is now dated to the mid-eleventh century and bears witness to a rather different story.[115] As we have seen, the Codex was mined for texts in the early medieval period, mainly by clerics. In the eleventh century, however, it seems to have

[113] *Graphia aureae urbis Romae*, ch. 52 (quoted at Schramm, *Kaiser, Könige und Päpste III* (1969) 353).

[114] Thus, *Summa* 7.43.8–9 are quoted in Giorgi and Balzani, *Il Regesto di Farfa*, 1879–1914, vol. III, doc. 492 (1014), while C. 7.65.1 and 7.52.6 are quoted in vol. IV, doc. 906 (1060), and C. 7.52.6 alone in vol. V, doc. 1006 (1072). Note also several Veronese documents from 1085 onwards which quote verbatim C. 2.27.1 (Radding and Ciaralli, *Corpus Iuris* (2007), 107). The Codex is quoted at Ravenna already by the late tenth century (Radding and Ciaralli (2007), 74; e.g., Benericetti, *Le Carte del Decimo Secolo* (2002), Nos. 236 and 272 (C. 2.3.20) and No. 265 (2.4.16)). Many such quotations are likely to be tralatician between documents, but some direct contact with the Codex and certainly its high status are clearly demonstrated. Note similarly that some of the Roman law material present in the Canon Law *Collectio Caesaraugustana* (*c.*1115; southern France) must reflect direct use of Justinianic sources, including the Codex, even if much else is tralatician (Blumenthal, "*Collectio canonum*" (2012)).

[115] Ciaralli, "Ancora sul manoscritto pistoiese" (2000); Radding and Ciaralli, *Corpus Iuris* (2007), 87–89; Radding, "Reviving Justinian's Corpus" (2007).

been principally lawyers, including those working in the Lombard as well as the Roman traditions, who started to see that Roman legal texts were useful also to them.[116] Therefore they epitomized the Codex, making their own selections of suitable material. However, they continually chose further material to supplement their selections, as the Pistoia manuscript bears witness, with its numerous constitutions added into the margins or pasted-in on slips. The handwriting of some two dozen individual scribes can be identified in the manuscript. Eventually, it was decided that the Codex was simply too useful just to pick and choose texts, but that the whole should be employed. In the light of this, it might be thought that the complete Codex text would have been copied from intact manuscripts.

This is not what generally happened. In central and southern Italy, it does appear that full Codices were being copied at this time in a tradition that became a dead-end.[117] But in the north, where use of the Codex appears most lively, people preferred to add missing constitutions into their existing epitomized manuscripts, usually as marginal scholia (as classically in the Pistoia manuscript), and then make further copies from these, incorporating the additions, perhaps because they were written in more familiar and comfortable contemporary scripts and were more readily available.[118] Indeed, some manuscripts show evidence of all the missing texts being gathered into a supplementary appendix, as with the Pesaro manuscript.[119]

This whole process lasted about 100 years, starting perhaps in the second quarter of the eleventh century and finishing in the early twelfth century, when a reintegrated Codex came into existence. The Codex that emerged from this was not quite Justinian's original. The Greek was abandoned, and even Latin translations or paraphrases of Greek constitutions seldom ended up in Codex manuscripts.[120] The subscripts with their dates were also quickly dropped, while the headings generally became attenuated (e.g., often reduced to "Imp." (for "Imperator") without any emperor's name). Some limited non-Codex material was also added probably by inadvertence, being thought genuinely part of the

[116] The importance of Lombard lawyers is a key feature of the interpretation of Radding, *The Origins* (1988); now also Radding and Ciaralli, *Corpus Iuris* (2007), 73–84, 90–99; Witt, *Two Latin Cultures* (2012), 169–172.

[117] Thus, the Vallicelliana and Würzburg fragments. See Radding and Ciaralli, *Corpus Iuris* (2007), 86–87; Corcoran, "New Subscripts" (2009); Corcoran, "After Krüger" (2009); Corcoran, "Würzburg fragment" (2016).

[118] Radding and Ciaralli, *Corpus Iuris* (2007), 163.

[119] Radding and Ciaralli, *Corpus Iuris* (2007), 152–153; Tort-Martorell, "En torno a Pesaro 26" (2008).

[120] Thus, the texts reproduced by Krüger to supply C. 3.43.1–2 (see Hallebeek, "*Alearum lusus*" (2013)). Krüger also gives in his footnotes Latin versions for C. 3.2.2, 3.10.2, and 6.4.4.

Codex.[121] In the twelfth century there came also to be added deliberate supplements, called *authenticae*, as they mostly derive from the *Authenticum* of the Novels of Justinian, which itself only came into use at that time.[122]

The last three books of the Codex seem to have been taken up more slowly than the rest.[123] Evidence for them and their use in the early medieval period is very thin,[124] and they are virtually absent from the manuscripts that represent the eleventh-century epitomizing and re-expansion. However, that they were "lost" any more than the other books and only found later need not be the explanation.[125] Rather, the fact that they mostly related to a defunct system of imperial finance, administration, and local government meant that their relevance was not immediately apparent to potential users. The grammarian Alexander Neckam (1157–1217) reflected the view that they were of both great difficulty and little utility.[126] Thus, revival of interest in them was delayed until later in the twelfth century. As a result, they always remained somewhat apart, being copied in separate manuscripts, and did not, for instance, acquire any *authenticae*.

The medieval Vulgate and the Bologna School

In view of what has just been said, it will occasion no surprise that the standard version of the Codex used in the later medieval period was not the same as

[121] See nn. 204–207 below. Note that the the uneven evidence of the early manuscripts has enabled one scholar to argue recently that the first thirteen titles of the Codex were only assembled and added in at this time of "re-creation" (Waelkens, "L'hérésie" (2011)). However, it has been definitively demonstrated from sixth-century evidence that this thesis is wrong and that the titles are original to the Codex. See Stolte, "A Heretical Hypothesis" (2013), arguing in particular on the basis of *P. Oxy.* XV 1814 and the *Collection of 25 Chapters* (Heimbach, *ANEKDOTA* II (1840)); cf. Gregory's letter cited above n.102).

[122] Wallinga, "*Authenticum* and *authenticae*" (2009); Wallinga, "*Authenticae* of Irnerius" (2011). These additions became standardized during the twelfth century. Parts of constitutions of the emperors Frederick I (d. 1190) and Frederick II (d. 1250) were also added in due course. The *authenticae* are listed in an appendix to Krüger's *editio minor*. They are most recently printed as appendices to the Dutch Codex translation (Spruit *et al.*, *Corpus Iuris Civilis* VII (2005–2010), pp. xlvi–xlvii, 617–642, VIII, pp. 1005–1042, IX, pp. 565–569). They are also included in Scott's Codex translation in his *Civil Law*. For the ways to cite the *authenticae*, see Dondorp and Schrage, "Sources" (2010), 19.

[123] Conte, *Tres Libri* (1990), gives a detailed account the "recovery" of the books.

[124] Two tenth-century sources quote from the same title (C. 11.48, on *coloni*), which may have circulated on its own, as suggested by Conte, *Tres Libri* (1990), 27, but rejected by Bellettini *et al.*, *Biografia di un manoscritto* (2009), 45–46. These are the *Collectio Gaudenziana* (Kaiser, *Die Epitome Iuliani* (2004), 672) and some scholia to Cesena Bibl. Malatestiana S.XXI.5 (Bellettini *et al.*, *Biografia* (2009), 35–38). There is also an allusion in a scholion to *LRCC* 173 (Conte, *Servi Medievali* (1996), 38 n. 5).

[125] Conte, *Tres Libri* (1990), 17–28; Radding and Ciaralli, *Corpus Iuris* (2007), 154–155, 166.

[126] *Sacerdos ad Altare* XVII.6–8 and 88–90 (ed. McDonough (2010), 204 and 207). See Kantorowicz, *Rechtshistorische Schriften* (1970), 93–110; Conte, *Tres Libri* (1990), 13–14; English translation of relevant passages at Copeland and Sluiter, *Medieval Grammar* (2009), 540.

Justinian's original nor the one encountered by the reader of these volumes. The Vulgate (as it is called) of the medieval *Corpus Iuris Civilis* covered all the Justinianic legal materials, which had returned to regular use in the eleventh and twelfth centuries, and it came to consist of five volumes.[127] The first three comprised the Digest, divided between the *Digestum Vetus* (D. 1–24.2), the *Infortiatum* (D. 24.3–38), and the *Digestum Novum* (D. 39–50). The fourth volume was the Codex, but this contained only Books 1–9. The final volume, often referred to simply as the *Volumen* or *Volumen Parvum* ("Little volume"), was a miscellany containing the Institutes, the *Authenticum* (a Latin version of the Novels of Justinian),[128] Books 10–12 of the Codex (the "*Tres Libri*"),[129] and later the *Liber Feudorum*.[130] It should be noted here that there is no modern edition of the medieval *Corpus Iuris*, whether with or without the gloss (explained below), beyond some trial publications. However, some of the early modern printed editions, which reflect it, have been reprinted in facsimile, or can now be read online courtesy of Googlebooks and other scanning enterprises.[131]

Following almost a century of increasingly active engagement with Justinian's corpus in northern Italy, it was at Bologna that Roman law teaching took off in the early twelfth century. The exact chronology is not secure, and Irnerius, the key founding father, remains a shadowy figure. Further, current scholarly dispute over the development (also at Bologna) of Canon Law teaching and the editions of its foundational text, the *Decretum* of Gratian, means that the extent to which the teaching of Roman ("Civil") law and Canon Law were catalysts for one another is not entirely clear. Certainly, the *Decretum* seems to have had less Roman law in its original version, only much expanded in its second recension.[132] Nonetheless, formal teaching of Roman law developed rapidly in the twelfth century, and a series of commentators at Bologna called

[127] Dondorp and Schrage, "Sources" (2010), 12–18.

[128] The *Authenticum* came into use in the twelfth century (Loschiavo, "Codex graecus" (2010); Loschiavo, "La Riscoperta dell'*Authenticum*" (2011)), although only 97 of the more than 130 Novels it originally contained were finally adopted for the *Volumen Parvum*. It superseded the most common early medieval version of the Novels, the Epitome of Julian. Apart from some texts, which were originally issued in Latin, the *Authenticum* mostly consists of literal *kata podas* translations from Greek to Latin, made as a teaching aid in the 550s. This was not, however, apparent to medieval jurists, who in due course came to regard it as the "authentic" Justinianic version. As with so many other works, the standard modern edition is to a large extent a reconstruction (Heimbach, *Authenticum* (1846–1851)).

[129] The *Tres Libri* generally follow on from the Novels, as these latter were in nine groupings (*Collationes*), so that Books 10–12 of the Codex would appear to be in sequence.

[130] For the incorporation of feudal law in the Corpus, see Dondorp and Schrage, "Sources" (2010), 49–52.

[131] Note Torelli's experimental edition (1943) of Book 1 only of the Institutes with the Accursian Gloss. For the older *Corpus Iuris* editions and their reprints, see Dondorp and Schrage, "Sources" (2010), 14–15.

[132] Winroth, *Making of Gratian's Decretum* (2000); Dondorp and Schrage, "Sources" (2010), 35.

glossators gained pre-eminence, the most notable being the "Four Doctors" (Bulgarus, Martinus, Jacobus, Hugo).[133]

The twelfth and thirteenth centuries saw the creation of a large body of material generated by the teaching activities at Bologna, even as it developed into a formal university.[134] There was vigorous legal writing and teaching elsewhere, not only in other Italian cities, but also in France[135] and even England.[136] The influence of the Justinianic material percolated across much of Latin Europe, even where previously little known and, consequently, important pre-Justinian texts such as the Breviary of Alaric largely fell into desuetude. However, it was Bologna that came to provide the authoritative and standard texts, and to define what the "Vulgate" of the *Corpus Iuris* was, even if there was never a monopoly of interpretation.[137] The range of works was varied.[138] Among the most notable for the Codex were summaries or *summae*, usually based upon lectures, of which several exist for the twelfth century,[139] and which culminated in the early thirteenth century with the "Golden Summary" of Azo (d. *c.* 1225).[140] As with the text itself, such summaries were generally of Books 1–9, with separate

[133] Stein, *Roman Law in European History* (1999), 45–54; Winroth, "Teaching of Law" (2006); Winroth, "The Legal Revolution" (2012); Brundage, *Medieval Origins* (2008), 80–89; Witt, *Two Latin Cultures* (2012), 235–252.

[134] For the development of the formal university system, see Brundage, *Medieval Origins* (2008), 219–282.

[135] Stein, *Roman Law* (1999), 54–56. Perhaps the most notable text relating to the Codex north of the Alps in this period was "lo Codi," a vernacular summary of Codex Books 1–9, composed in Provençal in the mid-twelfth century, and later turned into other Romance versions plus Latin (Brundage, *Medieval Origins* (2008), 91–92; Fitting, *Lo Codi* (1906), the Latin text; Kabatek, "Lo Codi" (2000); Kabatek, *Lo Codi* (n.d., website with Provençal, Castilian, and Latin versions)). The *Summa Trecensis* is now also generally regarded as of southern French origin. See Dondorp and Schrage, "Sources" (2010), 25; cf. Kantorowicz and Buckland, *Glossators* (1938), 146–180; text: Fitting, *Summa Codicis* (1894).

[136] The *Liber Pauperum* of Vacarius is best known, which made heavy use of both Codex and Digest and was organized according to the structure of the Code Books 1–9: edition by de Zulueta (1927); cf. Taliadoros, *Law and Theology* (2006), ch. 1. There is also a slightly later lecture course on the Institutes, not necessarily by Vacarius (de Zulueta and Stein, *The Teaching of Roman Law* (1990)). See also Stein, *Roman Law* (1999), 56–57; Brundage, *Medieval Origins* (2008), 92–94.

[137] For instance, in the thirteenth century there developed a signficant law school at Orleans (Feenstra, "Law" (1992), 407; Stein, *Roman Law* (1999), 67–68). Note, in particular, the lectures of de Belleperche (d. 1308) on the Codex, a key influence upon fourteenth-century Italian jurists (Bezemer, *Pierre de Belleperche* (2005)).

[138] For a detailed description, see Dondorp and Schrage, "Sources" (2010), 21–29.

[139] Thus, the *Casus Codicis* of William of Cabriano, a summary of Bulgarus' lectures on the Codex from the academic year 1156/7 (Wallinga, *Casus Codicis* (2005); Kantorowicz and Buckland, *Glossators* (1938), 206–212); also from the twelfth century the *Summa Codicis Berolinensis* (ed. Loschiavo 1996). The *Summa Trecensis* is no longer attributed to Irnerius (see n. 135, above).

[140] The 1506 Pavia edition was reprinted as *Azonis Summa super Codicem* (Corpus Glossatorum Juris Civilis 11; Turin, 1966).

summaries being created for the *Tres Libri*.[141] Other self-standing works included those discussing disputed and differing interpretations.[142] However, most typical are the glosses of various character, generated by teaching but added to manuscripts of the Codex, that explained terms, gave cross-references to parallel passages, discussed both similar and discordant texts, resolved contradictions, and so forth. These grew in volume, so that the glosses of particular teachers, sometimes taken and layered within those of their successors, came to form large and coherent apparatuses.

The climax of this process, which essentially defines the era of the "Glossators," was the production of a fixed and stable commentary by Accursius (*c.* 1185–*c.* 1263), whose set of glosses on the Codex (as on the rest of the *Corpus Iuris*), the *Glossa Magna*, became the standard one added to its manuscripts, thus generally referred to as the Glossa Ordinaria (the term also used for the matching gloss added to manuscripts of Gratian's *Decretum*, the Canon Law equivalent to the *Corpus Iuris*[143]). The Gloss thus acquired authoritative textual status alongside the Codex itself, and indeed largely defined and circumscribed how the Codex could be used and interpreted, encapsulated in the maxim "What the Gloss does not recognize, the court does not recognize." The typical Codex manuscript of the later Middle Ages was usually laid out with two, often quite short, columns of text in the center of each page, surrounded and indeed dwarfed by the gloss written to cover every margin, top and bottom, left and right (see Figure 4; cf. Figure 6). The text became particularly stable, because the university in Bologna controlled publishing through licensed stationers. One notable feature of this was the "pecia" system, whereby those students too poor to buy outright the complete texts needed for their Civil and Canon Law courses could borrow short portions of the *Corpus Iuris* to copy during their studies and so gradually assemble a full text at a rate they could afford.[144] Commentary and intepretation continued after the period of the glossators, but essentially the form of the text was fixed.

The use of a common corpus of Civil Law accompanied by standard glosses and commentaries, together with a predominant law school at Bologna, helped to create a common legal culture across much of Europe, by combining with

[141] Apart from the title on *coloni* (C. 11.48; Conte, *Servi Medievali* (1996), 259–278), Azo did not create a *summa* for the *Tres Libri*, while Placentinus only covered part of Book 10, his work apparently finished by Pillius. There is a recent edition of a complete *summa* of the *Tres Libri* by Rolando of Lucca (1153–1221), in a version revised after his death (Conte and Menzinger, *Summa Trium Librorum* (2012)).

[142] Thus, Hänel, *Dissensiones Dominorum* (1834).

[143] For details of canon law texts and materials (the *Decretum* and various later supplements), see Dondorp and Schrage, "Sources" (2010), 31–46.

[144] Brundage, *Medieval Origins* (2008), 272–273.

the parallel structures in the teaching and practice of Canon Law based upon the *Decretum* of Gratian and its supplements.[145] Known together as *utrumque ius*, "the two laws," this has come to be referred to as the *ius commune* (the term is kept in Latin in modern languages to avoid confusion with the English "Common Law" and its tradition).[146] It is important to emphasize, however, that this did not mean that Roman law provided *the* secular law of Europe. While civilians (lawyers trained in the Civil Law) and indeed canonists shared both texts and many modes of thinking and arguing about the law, the numerous jurisdictions of cities and principalities each had their own customary law and statutes. While Roman law was sometimes regarded as the proper law in Italy, especially in territories theoretically part of the Holy Roman Empire, it was more usually employed as the default resource, when existing local law and custom were silent or failed to provide solutions.[147] Further, Canon Law tended to predominate, as is reflected in the relatively high number of surviving manuscripts of Canon Law texts and commentaries compared with the equivalent Roman law materials. Since Canon Law was significant wherever the Church was, it was often only by holding onto the coat-tails of Canon Law that Roman law exerted influence, especially as some Roman law texts were directly present in Gratian's *Decretum*. Thus, in England, where Roman law was ultimately not "received," its influence was generally felt only in ecclesiastical courts (whose competence included both marriage and wills), or in some courts where transnational legal issues favored following the procedure and substance of the Civil Law.[148] Despite these reservations, it is nonetheless true that medieval Roman law did provide for a powerful and congruent legal influence across a wide area.

Humanism and the beginnings of textual criticism

With the spread of humanism and its interest in classical texts and manuscripts during the Renaissance, there also developed an interest in the Roman legal texts not only as current law, but in their historical and philological perspectives. The medieval lawyers had been interested in the *Corpus Iuris* as a

[145] For canon law teaching, see Brundage, *Medieval Origins* (2008), 107–117 and ch. 6.

[146] On the *ius commune*, see Bellomo, *Common Legal Past of Europe* (1995); Stein, *Roman Law* (1999), chs. 3–4. For a good and recent series of essays examining the nature of medieval civil law culture, see Cairns and du Plessis, *The Creation of the "Ius Commune"* (2010).

[147] For the relationship of Roman law to local statute and custom, see Stein, *Character and Influence* (1988), ch. 6; Stein, *Roman Law* (1999), 61–67; Conte, "Roman Law vs Custom" (2009).

[148] Barton, *Roman Law in England* (1971); Stein, *Character and Influence* (1988), ch. 11; Helmholz, *The "Ius Commune"* (2001); Helmholz, *Oxford History, vol. 1 : The Canon Law* (2004).

fixed and authoritative text (which would no doubt have pleased Justinian), the bedrock from which their further legal argument and exploration could progress.[149] They were little interested in thinking of the *Corpus* in the light of its sixth-century historical context or worrying about how far their received text faithfully represented Justinian's original. Even less were they interested in excavating behind Justinian's codification to reveal the shape of Roman law in earlier periods. This attitude and practice came to be known as the *mos Italicus* (the Italian way) and remained very influential throughout the early modern period.

However, contrasting historical and philological approaches were now taken up. Perhaps most famously Lorenzo Valla (1407–1457) used arguments of language and history to demonstrate that the so-called Donation of Constantine, which purported to be an imperial constitution of Constantine the Great granting temporal power over the Western Empire to the Pope, was a later forgery (it even had a fictive subscript like a genuine imperial constitution).[150] But Valla also criticized the inelegant Latin of the medieval civilian commentators, while praising that of the classical jurists.[151]

Other scholars attacked the legal tradition of the whole *Corpus Iuris*, characterizing it as suffering from "Tribonianism" and representing a law that was both debased and irrelevant. This was an especially important development in France, where there was the desire to establish a broader national French law, deriving from French customs. However, it also meant an attempt to recover pure classical Roman law from the accretions of the glossators and commentators. This approach became known as the *mos Gallicus* (the French way) and began with the work of Guillaume Budé (1467–1540), and then Andrea Alciato (1492–1550) and his pupils.[152] Its iconic text was François Hotman's *Anti-Tribonian* (1567).[153] These shifts in attitude meant that the texts of the *Corpus Iuris* no longer needed to be approached in such a reverential manner, but could be considered in their historical context, and used to peer back into earlier Roman history. Scholars also began to engage seriously with pre-Justinian texts, trying to recover or reconstruct the legal monuments that had

[149] Gordley, *"Ius Quaerens Intellectum"* (2010).

[150] Bowersock, *On the Donation of Constantine* (2007).

[151] Nauta, *In Defense of Common Sense* (2007), 159–161. The passage praising the classical jurists is *De Linguae Latinae Elegantia* III.*proem.* (Mantovani, *Studi Nicosia*, v (2007)); cf. Valla's *Letter to Giovanni Serra* 13 and 16 (Copenhaver and Nauta, *Dialectical Disputations* (2012), vol. 2, 440–441).

[152] Kelley, *Foundations of Modern Historical Scholarship* (1970), 53–85 (Budé; but see also Osler, "Budaeus and Roman Law" (1985)), and 87–148 (Alciato and pupils).

[153] Kelley, *Foundations* (1970), 106–112.

been lost, such as the Twelve Tables, or those eclipsed by the *Corpus Iuris*, such as the Theodosian Codex[154] or the Epitome of Julian.

As a consequence of such new approaches, legal scholars quickly began to examine how the text of Justinian's Corpus itself should be reconstructed. For instance, the fact that reading Greek was now a routine accomplishment of the educated meant that Justinianic law in Greek, whether recovered from later Byzantine works[155] or from the Florentine manuscript of the Digest,[156] became more widely known, and indeed lawyers could dispute as to whether it was proper to cite these Greek passages in legal argument.[157]

What was the effect of all this upon the text of the Codex? First, with the advent of printing, the *Corpus Iuris* Vulgate with its Gloss was published repeatedly from the later fifteenth to the earlier seventeenth centuries, retaining its medieval divisions, with the three volumes for the Digest, one for the Codex Books 1–9, and the concluding Volumen Parvum containing Books 10–12, with the remainder of the Justinianic material.[158] However, scholars started to try to recreate something closer to Justinian's original.[159] For the Codex, the classic edition for this process is that by Gregor Haloander (1501–1531), published at Nuremberg in 1530.[160] Using a now lost manuscript, he attempted to remedy the deficiencies of the previous tradition, bringing together all twelve books into a single volume, printing all the headings and subscripts that he could find (legally unimportant, but historically interesting),[161] and excluding the *authenticae* (relegated to an appendix). However, he made little progress on restoring the Greek, beyond an occasional notice of a missing "Graeca constitutio." The edition of Miraeus (Paris, 1550) was the

[154] For the Theodosian Codex, the two most significant scholars were the pioneering Jacques Cujas (Jacobus Cuiacius, 1520–1590; Kelley, *Foundations* (1970), 112–115) and the magisterial Jacques Godefroy (Jacobus Gothofredus, 1587–1652), whose famous edition appeared posthumously in 1665.

[155] Note in particular Agustín's letter of 1544 to Diego Hurtado de Mendoza, mainly concerned with the Novels, which lays out very clearly the issues surrounding attempts to recover the lost Greek material. See Barker, "Antonio Agustín" (1993), with a translation of the Mendoza letter at pp. 271–277.

[156] On the restoration of the Greek of Modestinus to the Digest (the most substantial absence from the medieval tradition), see Troje, *"Crisis digestorum"* (2011), 95–135.

[157] See, as an example, contrasting views of the Greek and Latin texts of Novel 159 (= *Authenticum* 126) in a case from the 1540s (Lokin, *Analecta Groningana* (2010), 261–272).

[158] Dondorp and Schrage, "Sources" (2010), 14–15.

[159] What follows relies heavily on the details in Troje, *"Graeca leguntur"* (1971), 51–55; cf. Troje, *Crisis digestorum* (2011), 156–158.

[160] Recently reprinted by Vico Verlag: *Codicis Iustiniani ex repetita praelectione libri XII* (Ius Commune: Rechtstradition der europäischen Länder 99 = Rechtsquellen 19; Frankfurt, 2011).

[161] Also important for recovering subscripts were the twelve-book unglossed editions of Russardus (Lyon, 1561) and Contius (Paris, 1562, 1571).

first to include the lengthy lists of staff and salaries for Africa (not present in the Vulgate).[162] The edition printed by Hugo à Porta (Lyon, 1551) contained some Greek constitutions drawn from the Council of Ephesus in Latin translations made by François Hotman (1524–1590). Contius (Antoine Leconte, 1517–1586), having already included some Greek with Latin translations in his unglossed twelve-book edition of 1562 (Fig. 5 below), gathered together most missing items into his "Libri praetermissorum,"[163] and later printed them as an appendix to his revised Codex edition (Paris, 1571). In 1575 these were finally incorporated into the Codex edition of Charondas (Louis Le Caron, *c.* 1538–*c.* 1617) printed in Antwerp. Also notable was the work of Cujas on the last three books of the Code, [164] and of Antonio Agustín (1516–1586; a pupil of Alciato), who published a separate volume of the Greek constitutions alone (Lerida, 1569).[165] Finally, Denis Godefroy (Dionysius Gothofredus; 1549–1622; father of Jacques Godefroy of the famed *Codex Theodosianus* edition) produced an influential edition of the whole *Corpus Iuris* (Geneva, 1583), which enjoyed a long life and contained a twelve-book Codex with the Greek constitutions represented in the main text in as complete a manner as then possible, even if primarily through Latin translations and summaries (Fig. 6 below). Nonetheless, Godefroy still included an adapted version of the Accursian Gloss, and his version of the Novels remained the Latin Authenticum in its nine collations.[166]

Once we reach the seventeenth century, however, the medieval Codex was soon left behind. The Accursian Gloss was abandoned, the last major edition to use it being that of Johann Fehe in 1627 based on Gothofredus.[167] The Codex itself now appeared routinely as a single twelve-book entity,[168] and its missing constitutions, headings and subscripts were substantially restored in some fashion. However, no single standard Codex text emerged that was as authoritative as the Bolognese Vulgate had been, although most editions proclaimed their dependence upon the sixteenth-century restorers and editors named

[162] C. 1.27.1.21–42 and 1.27.2.19–34; Corcoran, "Würzburg Fragment" (forthcoming).

[163] *Praetermissorum in XII libris Codicis Iustinianei classes II*, 2 vols. (Paris, 1566). This first part dealt with Books 1–9, the second, Books 10–12.

[164] *Ad tres postumos libros codicis Justiniani commentarii* (Lyon, 1562).

[165] Antonio Agustín, *Constitutionum Graecarum Codicis Iustinianei collectio et interpretatio* (Lerida, 1567); cf. his letter of 1544 to Hurtado noted above (Barker, "Antonio Agustín" (1993)).

[166] Not all the Gothofredus editions included the Gloss. For something of their complex history, see the bibliographic notes in Spangenberg, *Einleitung in das Römisch-Justinianeische Rechtsbuch* (1817), 838–845.

[167] *Corpus Iuris Civilis Iustinianei cum commentariis Accursii, scholiis Contii, et D. Gothofredi lucubrationibus ad Accursium* ... Lyon, 1627; Spangenberg, *Einleitung* (1817), 882–883; Dondorp and Schrage, "Sources" (2010), 15. This edition is available in a facsimile printed at Osnabrück in 1965–1966.

[168] The last edition to separate out Books 1–9 from Books 10–12 seems to have been printed in Venice in 1621 (so Spangenberg, *Einleitung* (1817), 946 and 948).

above, especially Contius and Gothofredus. Variant approaches to Roman law and its use were reflected in differing editorial and publication practices for Roman legal texts across Europe, broadly divisible into three groups: the Counter-Reformation South, including Italy; the Protestant North, including Germany; and France.[169] In many ways, therefore, the Codex text was still conservative, with much of the shape of the Vulgate retained, often including the *authenticae*. The wider implications of the Greek sources in particular were not fully worked out or incorporated. This was inevitable, since the Codex and the whole *Corpus Iuris* were still part of living law and contemporary legal practice and learning, rather than serving as a source for purely historical scholarship.

Towards the modern Codex edition

In fact, despite the rise of philological and historical approaches to law in the Renaissance, the reach of Roman law as a current system had rather expanded in the sixteenth century. Of great significance in the longer term for the future of the text of the *Corpus Iuris*, this was the period of the extensive reception of Roman law in Germany, the iconic moment being the establishment of the Imperial Court (*Reichskammergericht*) in 1495 as the supreme court for the Holy Roman Empire, whose territory by this point was largely German-speaking. This high court was to use Roman law as being the common law of the whole Empire, irrespective of the patchwork of legal traditions and customs prevailing at the regional or local level.[170] There even developed a legend that, on the advice of the Bolognese jurist Irnerius, Emperor Lothar III (d. 1137) had formally adopted Roman law as the imperial law.[171] The status of the law professors was also enhanced, as there was a strong tradition of *Aktenversendung*, whereby important cases were referred to university faculties for rulings on points of law, a practice which mirrored the earlier prestige of the medieval glossators and the classical jurists as authoritative interpreters.[172] While the status of Roman law was not unchallenged or unchanging in the Empire during this period, it always mattered.

[169] Thus, Osler, *Jurisprudence of the Baroque* (2009) (vol. 1) A–G, ix–xxi. There was much censorship in the Catholic south of legal works from the Protestant north.

[170] Whitman, *Legacy of Roman Law* (1990), 13–17; Feenstra, "Law" (1992), 411–412; Stein, *Roman Law* (1999), 88–92.

[171] Whitman, *Legacy of Roman Law* (1990) 32–33 and 41. The legend was not discredited until 1643.

[172] Whitman, *Legacy of Roman Law* (1990), 34–35. Even today Civilian jurisdictions give considerable weight to academic opinions in a manner quite alien to the Common Law tradition, in which judges tend to play this role. Lokin gives a lively account of his consultation in 1990 on a point of law arising from Justinian's Novel 159, although this did relate to the terms of a will of someone who had died in 1792! (Lokin, "Ad Novellam 159" (1990)).

There was still a strong tendency, as with the *mos Italicus*, to see the *Corpus Iuris* as a seamless whole, a complete self-contained system. This was a characteristic especially of those who by the early nineteenth century came to be called Pandectists (after the Pandects, an alternative name for the Digest), and were often considered to place system above practicality and social need.[173] As a result, as long as the *Corpus Iuris* retained such legal weight, editions of its text remained fairly conservative. Two processes led to a change. First, was the trend towards national codifications of law, which, starting in the later eighteenth century, reached a seminal moment with the publication of the *Code Napoléon* in France (1804). This quickly spread to territories under French control or influence, and throughout the nineteenth century codification proceeded apace across much of Europe. Although most such codes tended to be squarely in the Civil Law tradition, the result of their promulgation was that they directly superseded the laws and texts that went before.[174] This meant that the *Corpus Iuris* gradually ceased to be part of living law. Germany was almost the last major Civilian jurisdiction to produce its own code, which appeared as the *Bürgerliches Gesetzbuch* (BGB) in 1900.[175] This is not to say that Justinianic texts could not (and cannot) be used in legal argument, and Roman texts have even been cited before the English courts, which are, of course, outside the Civil Law orbit.[176] However, they could no longer be truly authoritative or binding. This slow eclipse of Justinian's law in legal practice has meant that editions have become solely matters of philology and history.

This process coincided with the second major trend, the adoption of systematic textual criticism developed especially by German scholarship in the later eighteenth and nineteenth centuries, the full weight of which was now turned upon the Justinianic legal sources. Indeed, the Pandectists themselves, as their name indicates, privileged the Digest and went in search of a supposedly pure (if rather ahistorical) classical Roman law of the jurists that lay behind the medieval or even Justinianic encrustations that distorted it. Serious attempts were also made to engage with how the law evolved from Justinian through the Middle Ages, as in Savigny's great history of medieval Roman law (*Geschichte des römischen Rechts im Mittelalter*), whose first edition appeared between 1815 and 1831.[177] Further, the early nineteenth century also saw a

[173] Stein, *Roman Law* (1999), 119–123.

[174] Stein, *Roman Law* (1999), ch. 5; Watkin, *Historical Introduction* (1999), ch. 7.

[175] Crosby, *The Making of a German Constitution* (2008), ch. 6. Switzerland followed in 1907 (Watkin, *Historical Introduction* (1999), 145–146). It is important to note for the spreading influence of the Civil Law tradition that Japan adopted the German BGB even before Germany in 1898, while the new Turkish Republic adopted the Swiss Civil Code in 1926 (Watkin, *Historical Introduction* (1999), 146).

[176] For example, Lewis, "What Marcellus Says" (1994); Stein, *Roman Law* (1999) 128; Lee, "*Confusio*" (2009).

[177] An English translation of the first part only, taking the story up to Irnerius, appeared in Edinburgh in 1829.

transformation in the resources available for the study of the texts of Roman law, as numerous important manuscripts were discovered and utilized. One key event was the identification by Niebuhr in 1816 of a palimpsested[178] manuscript at Verona as containing the only surviving intact work of pre-Justinian classical jurisprudence, the Institutes of Gaius (which had themselves served as a model for Justinian's Institutes).[179] But it was also at Verona that the only substantial portions of Justinian's Codex in its original form were identified, again in palimpsest (1817).[180] Manuscripts of the "Epitome Codicis" were discovered and began to be studied systematically, such as the important early Pistoia manuscript, whose significance was first properly appreciated by Friedrich Bluhme in 1822 during his travels investigating Italian libraries.[181] The *Summa Perusina* was identified and first published in 1840.[182] Further, the close relationship between the contents of the Justinian and Theodosian Codices meant that discoveries relating to the latter were significant also for the former, such as the palimpsested Theodosian Codex discovered at Turin in 1820, which provided substantial portions of its incomplete first five books.[183] There was as well major engagement with the Byzantine legal sources with, for instance, a new and authoritative edition of the Basilika appearing between 1833 and 1870.[184] It became clear that Justinian's Codex needed significant revision, and academic studies of what was needed, as well as new editions themselves, began to appear.[185]

In retrospect, all this activity seems to be simply the *Vorarbeit* to the work of Paul Krüger (1840–1926), since his edition superseded all others and is yet to be superseded in its turn. Indeed, not only the Codex, but the whole of the

[178] A palimpsest is a manuscript where the original text is erased and a new text written over it. The older text often remains at least partly visible, especially with some technological help. Regrettably, in the nineteenth century this often involved the use of chemicals, which furnished temporary visibility, but caused long-term damage. The most famous palimpsest studied in recent times (outside Roman law circles) is probably the Archimedes palimpsest, on which see Netz and Noel, *The Archimedes Codex* (2007).

[179] The story of the manuscript is brillianty retold by Briguglio, *Il Codice Veronese* (2012).

[180] Krüger, *Fragmenta Veronensia* (1874).

[181] Bluhme, *Iter Italicum*, vol. 2 (1827), 113–120; Radding and Ciaralli, *Corpus Iuris* (2007), 135. Bluhme had gone to Pistoia on behalf of Heinrich von Schrader, who published the landmark *Prodromus* in the following year (1823), notable for its systematic examination of the manuscript evidence.

[182] Heimbach, *ANEKDOTA* II (1840), 1–144.

[183] Most accessible as Krüger, *Fragmenta Taurinensia* (1880), which was the version upon which Mommsen relied for its readings in his Theodosian Codex edition (Croke, "Mommsen's Encounter" (2010), 225, 227). The palimpsest was later destroyed in a great fire at the Turin library in 1904.

[184] Published at Leipzig in six volumes by Gustav Heimbach. Note also the three volumes of Heimbach's *ANEKDOTA* (1838–1843).

[185] Note, in particular, Witte, *Die Leges Restitutae* (1830); Biener and Heimbach, *Beiträge zur Revision* (1833).

Justinianic corpus ended up edited into a new *Corpus Iuris Civilis*, which has proved as fixed and influential as its medieval predecessor, being the resource to which most modern users of this material tend to turn, which they are most likely to encounter in libraries, which is still readily available in print, and which provides the base text for most derivative editions and translations (as in the current work).[186]

This new *Corpus* consists of three volumes, originally published by Weidmanns in Berlin between 1868 and 1895.[187] The first volume (completed 1872) contained the Institutes, edited by Krüger (based on his stand-alone edition of 1867), and the Digest, edited by Theodor Mommsen, who also produced a separate but parallel larger Digest edition (*editio maior*) in two volumes (1868, 1870). Krüger was editor of the second volume (completed 1877), which contained the full twelve-book Codex, although, as with the Digest, a separate but parallel *editio maior* appeared (completed also 1877).[188] The third volume (1895) contained the Novels, edited by Rudolf Schoell and completed after his death by Wilhelm Kroll. This consists of the Greek collection of 168 Novels, with parallel Latin texts from the *Authenticum*, where these exist, and two supplementary sets of material (the Thirteen Edicts and an Appendix of nine items).

The nature of Krüger's editions

It is important for any user of these volumes to be aware of the nature of Krüger's editions of the Codex.[189] The original editions of the *editio maior* and *editio minor* were completed together in 1877. Although the basic text of the two editions is the same, the formats differ. The *maior* is laid out with full-page text, the *minor* in two columns per page as for the other volumes of the *Corpus Iuris Civilis*.[190] The *maior* also contains a forty-page introduction discussing the manuscripts, earlier editions, and Krüger's editorial policy,[191] as compared to little more than a single page introduction in the *minor*. The

[186] But strangely not used by Scott for his translation in his *Civil Law* (Kearley, "Enigma" (2014), 30).

[187] All the volumes originally appeared piecemeal in fascicles, as did the *editiones maiores* of Digest and Codex.

[188] The fascicles of the two Codex editions (*maior* and *minor*) appeared between 1873 and 1877. There was also a preliminary study (Krüger, *Kritik des Justinianischen Codex* (1867)). For a bibliography of Krüger's scholarship, see Schulz, "Paul Krüger" (1927), xxxiii–xxxix.

[189] See also Corcoran, "Anastasius, Justinian" (2009), 189–193. As explained elsewhere, the text printed and translated in these volumes is that of the 11th edition of the *editio minor*, essentially that of the 9th edition (1914), the last that Krüger was able to emend.

[190] Krüger's stand-alone Institutes edition (1867) and Mommsen's *editio maior* of the Digest were also full-page, in contrast to the *Corpus Iuris Civilis* editions.

[191] *Editio maior*, pp. v–xxxxiiii and lx–lxii. This introduction has recently been published in a German translation (Hillner, "Praefatio" (2010)).

apparatus criticus (textual footnotes) is much fuller in the *maior*, which also lists on each and every page, which the *minor* does not, the most significant manuscript witnesses upon which the text of that page relies. For passages in Greek, the *minor*, but not the *maior*, includes at the foot of the page a modern Latin translation.[192] Other differences need not detain us, but it is clear that for those interested in the relationship between the manuscripts and Krüger's text, the *maior* remains an essential resource. It is certainly a pity that it was not reprinted until 1998 and is relatively rare in academic libraries, certainly in English-speaking countries, although now available on-line.

In contrast to the *maior*, the *minor* was reprinted in numerous later editions, and indeed remains in print. Although these editions were largely the same, they were not identical, and Krüger continued to tamper with them up until the 9th edition of 1914, the last before his death. This is the point at which the text became fixed and it was used for most later editions, including the 11th edition of 1954, upon which this translation is based.[193] It is certainly clear that Krüger was constantly revisiting the text of the Codex, not least because of the work for his incomplete edition of the Theodosian Codex, into which he restored directly from the Justinian Codex numerous constitutions excluded by Mommsen from the now standard Theodosianus edition of 1905.[194] Yet in practice these constitutions were taken over from Krüger's latest Codex edition unchanged.[195] No doubt the notes and annotated editions in the Krüger archive in Washington DC will reveal more of his thoughts than ever made it into his revised *editiones minores* or the Theodosian Codex edition.[196] However, in case the reader is now alarmed at the shifting and changeable nature of the editions,

[192] This is a feature also of the other volumes in the *Corpus Iuris Civilis* series. Until the twentieth century it was not uncommon for editions of Greek texts to be furnished with Latin translations to make them more widely accessible, some competence in Latin being almost universal amongst the educated.

[193] The 1954 edition removed most of Krüger's speculative notes about interpolations, but the text is otherwise that of 1914. For reasons I cannot fathom, the 13th edition of 1963 went back to the 8th edition of 1906, but other reprints, including the most recent (2008), follow the 1954 edition.

[194] Only two fascicles of Krüger's edition (Books 1–6, 1923, and Books 7–8, 1926) made it into print, the unpublished remainder being destroyed during the Second World War. However, since the greatest deficiencies of content and structure affect Books 1–5, Krüger's final choices of what to restore and where to restore it are almost fully known. On Mommsen, Krüger, and the Theodosianus, see Croke, "Mommsen's Encounter" (2010); Matthews, *Laying Down the Law* (2000), 97–118; Crogiez-Pétrequin *et al.*, *Codex Theodosianus* (2009), 54–60.

[195] Krüger did on occasion emend in order to restore pre-Justinian rules and so get closer to the presumed Theodosian original: thus, the "quadriennium" appearing correctly (for Justinian's Codex) at C. 7.37.1 was changed to "quinquennium" when it was relocated to C.Th. 4.16.1a (Krüger, *Codex Theodosianus*, fasc. 1 (1923), 147).

[196] For discussion of the archive, see Hessler, "Editing Justinian's *Corpus*" (2011).

it should be stated that the alterations introduced by Krüger were few, and that overall the differences between editions are limited. Even then they are generally only introduced to reflect new manuscript witnesses. Among the most significant changes are: (1) some minor additions to the apparatus, plus a single textual alteration under title C. 3.32 taken from the Cologne manuscript published in 1890;[197] (2) a newly discovered subscript added to C. 7.38.1;[198] (3) and the substitution of one Greek version for another at C. 8.11.3.[199] Sometimes, however, Krüger did alter his text to reflect his own change in judgment, as with the list of the seven provinces of Africa at C. 1.27.1.12.[200]

These aspects of the later editions, however, are less important than the basic nature of Krüger's 1877 text, and his approach to the manuscripts and tradition of the Codex. As will be clear from the brief history of the work in the medieval period given earlier, the full text of the Codex does not survive, so that Krüger's editions, as with those of his predecessors going back to Haloander, remain to a considerable extent reconstructions.[201] Initially Krüger engaged with the problems of the text of the Codex through earlier editions and the descriptions or facsmiles of manuscripts made by others, and indeed when he published his first thoughts on the text of the Codex (his *Kritik* of 1867), he had yet to engage significantly with the manuscripts. However, he soon immersed himself in them, not only taking advantage of four important ones easily available in Berlin, but making visits to see the other key early manuscripts between 1868 and 1876.[202]

Since, with the exception of the fragments in the Verona palimpsest, no manuscript of any substance preserved the Codex in its full original form, Krüger realized that the "Epitome" lay between the ancient Codex and the medieval Vulgate, and that for much of the text the Epitome manuscripts or those of the first generation of the "restored" Codex were the earliest witnesses (except for the final three books, for which somewhat later manuscripts had to be used). This situation generated two separate issues. One was the basic one of the Latin text of the individual constitutions. Although of the highest importance, this was relatively straightforward, since Krüger tended to follow the readings of

[197] Gundermann, "Das Kölner Fragment" (1890); Corcoran, "After Krüger" (2009), 431. The Cologne fragment was first reflected in the 9th edition (1914).

[198] First published by Patetta, "Contributi alla storia del diritto romano", in 1891, and already present in the 6th Codex edition (1895).

[199] Stolte, "The Use of Greek" (2009), 151. The change was made in the 7th edition (1900).

[200] Zeugi replacing Tingi in the 4th edition of 1888 (Corcoran, "Würzburg Fragment" (2016)).

[201] Aside from Krüger's own introduction to the *editio maior*, discussions in English of his engagement with the Codex can be found in Radding and Ciaralli, *Corpus Iuris* (2007), 14–17 and 135–137; Hessler, "Editing Justinian's *Corpus*" (2011).

[202] See *editio maior*, v–x for when and where he encountered the manuscripts. Note that these were sometimes sent to him in Berlin. A listing of the Codex manuscripts is given below in the Appendix.

the earliest witnesses where available (especially **P**, **L**, and **D**), without wild conjecture, except where the text was very corrupt, and even then his proposals were cautious. His judgments were bolstered by his belief that **P** and **L** derived from a common tradition and so provided independent confirmation of one another's readings (whereas now it appears that **L** was copied directly from **P**). However, Krüger also drew upon the Byzantine sources, since the Greek texts, especially the "word-for-word" versions of the Latin that were often preserved in the Basilika and their scholia, were frequently decisive in deciding between rival readings, confirming the Latin word order or the probable number, tense, or meaning of particular words, or for supplying words deemed missing from the surviving Latin versions. Finally, there were the source-works of the Codex, such as the Theodosian Codex, which could also illuminate the text, although it might be hard to distinguish manuscript variants from deliberate Justinianic editing, especially as so much of the Theodosian text itself rested upon single manuscript witnesses.

The second, and often more complex, issue was the structure of titles and constitutions, since the Epitome manuscripts were so disordered that it could be questioned how far the medieval reconstruction that led to the Vulgate had been correctly performed. Three things were key to confirming or revising the structure of the Codex. First, since the constitutions were supposed to be in date order under each title, details of emperors and dates, if preserved and attached to the correct constitutions, would fix the order. Second, the *Summa Perusina* appeared to preserve a Codex structure independent of the Epitome tradition, and so could act as a control upon it. Finally, not only did the Basilika present many texts from the Codex in their probable original sequence, but in the scholia and in several other Byzantine sources there were frequent numerical references to Codex texts. Despite the ease of numerals being miscopied or corrupted (possibly less easy with Greek than with Roman numerals), these provided plenty of evidence not only for the placement of the missing Greek texts, but also for whether the Latin texts were complete and in order.

How, therefore, did the shape of Krüger's Codex differ from what went before? First, the medieval Vulgate had essentially contained the main Latin text of the constitutions in full and in the correct order. However, there were occasions when the numeration of titles and constitutions, which in any case was not the principal means the medieval jurists employed for citing the Codex,[203] was divergent, because of titles either missing or incorrectly subdivided (e.g., at C. 2.7.20, where the Vulgate started a new title 2.8). Second,

[203] For details of how to cite the Codex in the medieval manner, see Dondorp and Schrage, "Sources" (2010), 18–20.

there were some dozen texts ascribed to the Codex in various manuscripts from the time of the eleventh-century epitomising and restoration onwards, some of which had even made it into the Vulgate, and which appear unevenly in later printed editions. These Krüger relegated to the notes,[204] either as genuine ancient texts, but not pertaining to the Codex, or else as "suppositious." Their sources are seldom clear, but some, at least, were adapted from the "barbarian" law codes,[205] others probably from genuine but non-Justinian Roman law sources,[206] while the remainder were possibly forged or otherwise confected, although context and date remain opaque.[207] The bracketed numbers in Krüger's edition help to identify divergences between Krüger and the standard still Vulgate-influenced numeration of earlier editions (principally that of Herrmann as reprinted in the Kriegels' editions, but deriving ultimately from Gothofredus, which is also the numeration of Scott's *Civil Law* translation). It was quite common in the past (less so now) for the Codex to be cited with the inclusion of these bracketed figures (e.g., C. 2.7(8).20(1)), especially in the early years after the publication of Krüger's edition, in order to aid clarity by providing the alternative numerations. Finally, the *authenticae* were also permanently removed by Krüger, although listed in an appendix to the *editio minor*.[208]

The headings to the Latin constitutions (naming emperors and recipients), although generally absent or attenuated in most later manuscripts, were sufficiently attested in the earlier manuscripts, including also the *Summa Perusina*, so as to be known more or less complete, although the forms in which names are transmitted can be quite bizarre.

[204] See Krüger *editio maior*, xxii; cf. Conrat, *Geschichte der Quellen und Literatur* (1891), 355 n. 4.

[205] Thus, the Aegidian epitome of the *Lex Romana Visigothorum* 2.8.1–3 (Hänel, *Lex Romana Visigothorum* (1849), 43–44) at C. 3.12 (Kr. *maior*, 248, cf. *minor*, 127 n. 9; present in the Vulgate); the Lombard Laws (Liutprand 105.II/Lombarda 2.8.6 (Monumenta Germaniae Historica Leges in folio 4, 150–151 and 615)) at C. 6.58 (Kr. *maior*, 610. n. 1, *minor*, 285 n. 16); and the *Edict of Theoderic* 15 at C. 9.16.(3) (Kr. *maior*, 835, *minor*, 379 n. 13; present in the Vulgate). It seems clear that this last was regarded as being Justinianic law from at the least the ninth century, when it was included along with other Roman law sources in the *Lex Romana canonice compta* (*LRCC* 204.1; Mor, *Lex Romana* (1927), 147).

[206] Thus, possibly deriving via some intermediate source from the *Codex Gregorianus*: C. 4.35 (Kr, *editio maior*, 359 n. 3 (ignored in the *minor*); Corcoran, "The Sins of the Fathers" (2000); but see Moreau, "The Invisible Children" (2010), 327–328); C. 5.4 (Kr. *editio maior*, 409, *editio minor*, 195 n. 18); C. 5.5 (Kr. *maior*, 415 n. 1, *minor*, 198 n. 8); C. 8.39.(1) (Kr. *maior*, 766 n. 1, *minor*, 351 n. 11); C. 8.58/9.1 (Kr. *maior*, 807 n. 2, *minor*, 368 n. 2); C. 9.9.(23) (Kr. *maior*, 825 n. 1, *minor*, 375 n. 10). All except the first were added by Krüger into his 1890 reconstruction of the *Gregorianus* (Krüger *et al.*, *Collectio III* (1890), 236–245).

[207] C. 2.58 (Kr. *maior*, 232, *minor*, 119 n. 10); C. 4.21.(18) (Kr. *maior*, 328, *minor*, 162 n. 1); C. 11.54 (Kr. *maior*, 991 n. 6, *minor*, 444 n. 8; present in Vulgate).

[208] The *authenticae* are printed and translated as appendices in the volumes of the Dutch Codex translation (see n. 122, above).

The problems were greater with the subscripts (the dating clauses), which had been more swiftly abandoned by medieval copyists. Consequently, these are attested, if at all, only in the earlier manuscripts (up to the first part of the twelfth century), or sometimes in printed editions, which used such now lost manuscripts (e.g., Haloander 1530). The loss is especially acute in the *Tres Libri* (Books 10–12), since the latter are poorly attested until the later twelfth century, and, by the time they appear in the tradition, the subscripts had already been abandoned. A further problem is that, with so many similar names among the Consuls present in the dating formulae and the difficulties of correctly copying Roman numerals, the reliability of the text for those subscripts that do survive may not always inspire confidence. And this is aside from the question of what Justinian's commissioners had done to the subscripts by accident or design.

The problems were greatest, however, with the Greek constitutions. These are absent from all Codex manuscripts except the fragmentary Veronensis, although their previous existence is often, albeit irregularly, noted by phrases such as "Graeca constitutio."[209] Very occasionally manuscripts attempt to copy Greek, but the garbled results have defied interpretation.[210] The Greek, therefore, could not (and cannot) be restored from the Latin manuscript tradition, and had to be sought elsewhere. As noted earlier, the Codex does not itself directly survive, even in Greek, in the Byzantine tradition. However, the extensive excerpting and recycling of the sixth-century teaching materials, which, unlike the western medieval tradition, generally use numerical references, together with the sequences in which these were reused in the Basilika, mean that the structure of the original Codex can be recreated, as stated above. Unfortunately, the Greek texts themselves are seldom preserved in their original forms, and it is even rarer for information to survive regarding their headings or subscripts.

These features of the manuscript transmission mean that, while the Latin text proper of the Codex is reasonably well attested, the subscripts and the Greek text are not, with the headings better attested but not without problem. Krüger dealt with these three issues as follows:

(1) *The subscripts*

It must first be stated clearly that where a subscript is missing this always represents a deficiency in the tradition, even though this is not explicitly indicated

[209] This is attested already in the *Summa Perusina* manuscript; e.g., *SP* 1.29, 3.2.2, 4.59.1.

[210] Thus, C. 9.36.1 (Mor, "Avranches" (1977), 72 n. 31; Fig. 3 below); C. 10.48.2, 11.41.7, 12.63.2 (Krüger, *editio maior*, 929, 976, 1101).

in the printed text.[211] Justinian himself said (*Const. Haec* 2) that an undated constitution should have this fact indicated by a subscript in the form "sine die et consule" ("without day and consul [i.e., consular year]"), so that, at the least, this style of subscript should have been present. Second, in the *editio maior*, although sadly not in the *minor*, Krüger always includes a specific entry in the *apparatus criticus* (the textual footnotes) entitled "s.a." (*subscriptionis auctor/auctores*), which describes the manuscript or other authority for each and every subscript that he does print. This is especially important, not just because the manuscript witnesses for subscripts are so few, but because he sometimes relies on witnesses that are not, strictly speaking, those to the Codex itself directly. Thus, the Theodosian Codex and other late antique legal sources are cited in support of the printed text, not simply as additional witnesses, but even if they are the only evidence.[212] In such cases, therefore, and especially if using the *editio minor*, the unwary might think that the Codex was providing independent attestation of a subscript date. This is precisely the case with C. 5.4.17, where the date in fact derives only from the Gregorian Codex version of the text quoted at *Collatio* 6.4, and is not attested in any Justinian Codex manuscript.[213] Similar problems can also be encountered in Krüger's treatment of headings as well (see next section). Given the thinness of subscript attestation and yet the importance often attached to matters of dating for analysing both the reigns of emperors and the development of law, these textual issues must be kept in mind.

It should be noted, however, that the few more recent manuscript discoveries relating to the Codex, although limited in extent, have generally been most significant in supplying previously missing subscripts.[214]

Another important point needs to be made. Many users of the Codex and of this translation will no doubt be most interested in treating them as source books to be mined for the legislation of particular emperors and to read individual constitutions as isolated fragments of law from a particular period or year. It was not Krüger's aim, however, to get the emperor or date historically correct, but rather to print what the Codex originally read.[215] Although this might

[211] Rare exceptions are some records of hearings (*acta*), where such details may already be in the protocol (e.g., C. 9.1.17). Mistaken understanding of the nature of the subscripts and their presence or absence can lead scholars into error; for example, as discussed at Corcoran, "Anastasius, Justinian" (2009), 190, in relation to C. 1.11.9–10.

[212] Thus, for example, the subscripts printed under title C. 10.1 all derive solely from the Theodosian Codex (a quite common phenomenon in the last three books).

[213] Barnes, "Damascus or Demessus?" (2005).

[214] In particular, the Vallicelliana fragments (Corcoran, "New Subscripts" (2009)). See also vol. 3, p. 3176 below.

[215] By contrast, Mommsen's study of Diocletian's rescripts primarily from the Codex (*Gesammelte Schriften II* (1905), 195–291; originally published 1860) was focused on identifying as far as possible the actual dates of rescripts, irrespective of what the Codex might have recorded. Most of Mommsen's judgments have been accepted by later scholars including Krüger and Barnes (*New Empire* (1982), 50–60).

often have amounted to the same thing, it was not always so. Two examples taken from the same title (C. 4.19) should illustrate the point. Krüger prints C. 4.19.18 as being issued from Byzantium in April 294 (in the consulship of the Caesars). It is in the correct chronological order for the Codex, sandwiched between rescripts of February and November 294. Mommsen, however, noted that Diocletian issued numerous rescripts from Byzantium in April 293 (in the consulship of the Augusti), while in April 294 he was at Sirmium. Thus, he proposed to emend the date to 293.[216] Krüger records the "true" year in the textual footnotes, but leaves the "wrong" year in his text, since that is the correct Codex text. In the second case, Krüger prints C. 4.19.21 as issued from Singidunum in December 294 (again the consulship of the Caesars). The year transmitted by the sole source for the subscript (Haloander) was 293 (the consulship of the Augusti). However, Krüger has emended it to 294, since it is sandwiched between two other rescripts of December 294 and that must have been the Codex date. However, Krüger also included the information, again in his footnotes, that the "true" month, according to Mommsen's reconstruction of Diocletian's movements, must have been September of the same year.[217] In both cases, Krüger printed the subscripts as he believed they would have originally stood in the Codex. However, when he drew up a chronological list of constitutions precisely for scholars interested in using the Codex as a sourcebook for emperors' legislation, he placed the items in their true historical order, at least as far as he judged it could be recovered.[218]

(2) *The headings*

Although much better attested than the subscripts, there are still difficulties with the headings. The limited and divergent early witnesses mean that the exact form of recipients' names may not have been correctly preserved, and Krüger often prints the closest convincing classical name, especially for the recipients of private rescripts who are otherwise unknown.[219] A further problem is that similar names can have the same dative (the most common case ending for names in headings), and it may not even be apparent whether a name is male or female. The transmitted text may also be inconsistent. For instance, two rescripts generally believed to be to same addressee give a male name for

[216] Mommsen, *Gesammelte Schriften II* (1905), 218 and 274.

[217] Mommsen, *Gesammelte Schriften II* (1905), 218 and 282.

[218] Krüger, *Codex editio maior*, *14 and *17, *minor*, 495–496 (vol. 3, pp. 3124, 3132 below).

[219] But the apparently obvious is not necessarily correct. Thus, "Abydonius" at C. 7.72.5 should probably be "Abidimus" (Corcoran, "New Subscripts" (2009), 420–422); "Leontogonus" at C. 6.6.2, should probably be "Leontogenes". The existence of current resources such as the *Lexicon of Greek Personal Names* (LGPN) (www.lgpn.ox.ac.uk) means that we are now in a better position to judge which names are at least the more plausible.

one, and the equivalent female name in the other (C. 1.19.1: Firmina; 7.13.1: Firminus).[220] Generally, Codex manuscripts preserve only a single name for an addressee, but where further names are known from pre-Justinian sources (commonly "Aurelius"), which often seem to be much fuller, Krüger usually includes these additional names (or offices). In his *editio maior*, such additions are indicated by appearing in italics, but unfortunately this typographical feature is not used in the *minor* (nor in these volumes).[221] In fact, it is not entirely clear whether the curtailing of addressees' nomenclature was a policy of the Codex compilers or later copyists, and therefore whether Krüger is justified in restoring "lost" names. However, there are two curious features of the manuscript transmission of names. First, the private recipients in the last titles of Book 4 (mostly as recorded in the *Summa Perusina*) are generally addressed by at least two names, in contrast to the rest of the Codex. Second, there are some odd cases where all that is left is a word apparently indicating someone's status, with the proper name excised, suggesting poor editing.[222] Some newer evidence for the Codex, such as the index list for the first edition (*P. Oxy.* XV 1814), provides some additional names, but not consistently.[223] Therefore, clarity is not currently possible and perhaps the Codex compilers were themselves inconsistent in how they treated nomenclature. Nonetheless, the private rescripts in Justinian's Codex are a rich, generally under-utilized, source for nomenclature in the Empire, provided their textual history is appreciated.[224]

As was explained earlier, several emperors are often named in headings, reflecting the collegial nature of the imperial office, and ordered by seniority, so that the ruler named first is not necessarily the actual issuer of the text. As with subscripts, however, Krüger's headings are designed to show how the Codex represented them, not to create historically accurate colleges.[225] With so much repetition and so many similar imperial names, however, it can be hard to know what represents editorial choice against later error or confusion. Overall, therefore, the forms in which the names and offices of emperors and recipients appear in Krüger's edition require careful scrutiny.

[220] Corcoran, *Empire of the Tetrarchs* (2000). 108; Evans Grubbs, "The Slave Who Avenged" (2000).
[221] E.g., names: C. 3.29.4, 7; 3.31.8; 4.21.5; 4.28.5; 7.62.13. Offices: 7.62.15, 18, 21.
[222] Thus, "augustali" (C. 11.35.1); "emerito" (C. 5.34.4); "evocato" (C. 2.4.5; 3.33.5; 8.16.4); "heredi" (C. 8.56.3). Some of these could conceivably be names.
[223] For example, for C. 1.18.1–2. See comments by Corcoran, "Justinian and His Two Codes" (2008), 89; Corcoran, "After Krüger" (2009), 429–430.
[224] See Connolly, *Lives Behind the Laws* (2010), 80–83.
[225] For example, Krüger prints "Idem A." at C. 1.18.2 (confirmed later also by *P. Oxy.* XV 1814), even though from both the transmitted subscript and the parallel Breviary text the correct emperor was Gordian III (C. Greg. Visig. 3.6.1; Corcoran, "After Krüger" (2009), 430–431).

(3) The Greek texts

Krüger indicates the Greek texts in three different ways (not reflected in the layout of these volumes). Where he believes that a Greek text was present, but that there is no evidence as to its content, he will indicate only the position of the constitution by a number followed with an ellipsis.[226] Where he finds a Greek text which conveys the sense of the missing constitution, he will print that text, but inset, so as to indicate that it is not the original text.[227] Finally, if he believes the text is indeed that of the original Codex, the text will appear within normal margins.[228] Sometimes the same constitution contains both styles. Thus, C. 6.4.4 is mostly inset, as representing a Basilika summary (a partial Latin summary is also printed in the *apparatus criticus*), but this changes toward its end where the Verona palimpsest preserves part of the original, including the Latin subscript.[229] Occasionally, only the opening word ("incipit") of a constitution is preserved, which Krüger will still print on its own, but then add a summary from elsewhere.[230] Finally, there are also doublets, where the text of the duplicate is supplied solely from its twin.[231] The headings of Greek constitutions are especially poorly attested.[232] As a result, Krüger sometimes restores headings on the basis of inference from other sources or information, but prints them within square brackets.[233]

It must be recognized, therefore, that the Greek of the Codex remains very incompletely attested and care should be taken in using the restored portions. Although Krüger's judgments are generally sound, there is always room for revision of his choices. Thus, it has been suggested that, although Greek constitutions were clearly present at both C. 1.26.6 and C. 10.16.1, the summary

[226] Thus, C. 1.16.2, 1.26.6, 1.51.15, 2.7.28, 3.3.6, 4.20.21, 4.33.1, 5.9.11–18, 6.23.32, 6.46.8, 6.61.9–11, 8.11.23, 10.9.2, 10.31, 10.32.65, 10.32.68, 10.34.4–5, 10.35.4–5, 12.8.3. Note also Krüger's comments under C. 11.18.

[227] In only one title is this a Latin summary, there being only a few words of the Greek surviving (C. 3.43.1–2; Hallebeek, "*Alearum lusus*" (2013)).

[228] For example, C. 1.11.9–10. Numerous substantially intact texts are preserved in the "Collection of 25 Chapters" (Heimbach, *ANEKDOTA* II (1840), 145–201).

[229] Cf. C. 9.4.6.

[230] Typically as quoted in cross-references in the *Collectio Tripartita* (see the edition by van der Wal and Stolte (1994)); for example, C. 1.4.18, 1.5.17, 10.27.4.

[231] For example, C 1.4.17 from 10.27.3; 1.4.32 = 4.66.4; 3.2.4.3–5 from 1.4.26.11–13; 9.5.2 partly from 1.4.23; 12.63.2.pr from 1.4.26.6–7. Latin examples: C. 1.55.11 from 1.4.19; 5.61.1 from 2.12.11.

[232] See note 235 below. The subscripts to Greek constitutions are also poorly attested, but, as they were nearly always in Latin, they sometimes survive in western sources, even if attached to incorrect constitutions.

[233] For example, C. 1.2.17, 1.34.1–2, 6.4.4. Note that the heading inferred at C. 1.14.10 was later confirmed from *P. Oxy.* XV 1814 (Corcoran, "After Krüger" (2009), 429; Corcoran, "Justinian and His Two Codes" (2008), 109).

text restored by Krüger in the second should in fact be assigned to the first.[234] It should also be borne in mind that there have been new editions of some key Byzantine texts, most notably the Basilika (new edition, 1953–1988), and even fresh manuscript discoveries, so that there may be alternative or even superior Greek texts available.[235]

The foregoing account is intended to aid the interested reader in how to approach the edition of the Codex upon which this translation is based, and to highlight the sorts of difficulties facing Krüger and other editors of the text. I hope this is of help to those who wish to use it with their eyes open. It must be stressed, however, that we do indeed possess the Codex very substantially and that its shape and content are well known, even if some text and detail remain lacking or uncertain. There have, of course, been discoveries relating directly or indirectly to the text of the Codex in the century since Krüger last revised his *editio minor*, which are noted where relevant throughout these volumes (cf. vol. 3, p. 3176). But none has yet been so extensive as to solve or remedy the outstanding issues or deficiencies of the Latin or the Greek in a dramatic, let alone definitive, manner. In detail, however, both new discoveries and the recent reassessment of the manuscript tradition of the Codex during the early medieval period might cause numerous minor adjustments to the text. For instance, one item appears to remain incongruously in the Codex, while possibly not having been original to it: the anomalous letter of Pope John II encapsulating a declaration of faith by Justinian (C. 1.1.8).[236] But were a new Codex edition to be attempted today, revisiting all the old and new textual witnesses, it would probably not look startlingly different to that of Krüger.

Appendix: the manuscripts

It will be clear to any reader of the preceding chapter that the pattern of manuscript survival has been crucial to the state of the text of the Codex as we know it today. It therefore seems pertinent to describe summarily here, for those who

[234] Stolte, "The Use of Greek" (2009), 158–159.

[235] The new Basilika edition was edited by H. J. Scheltema and others in seventeen volumes, published at Groningen. Some palimpsest Basilika fragments have recently been identified in Vienna. See Stolte, "Zwei neue Basiliken-Handschriften" (2010). For a new view of how Leo VI's Basilika related to its ill-understood precursors created under his father, Basil I, see now van Bochove, "Preluding the Basilica" (2014), 277–280. He suggests that these earlier versions may have preserved some elements of Codex constitutions such as their headings, which were only edited out later (citing the examples of C. 10.3.7, 10.16.13, 10.19.9, 12.40.12).

[236] Thus, argued by Stolte, "Not in the Code" (2010/11), suggesting it was added later in the sixth century. This is otherwise the only Codex text that overlaps with material otherwise known from a mid-sixth-century ecclesiastical compilation called the *Collectio Avellana* (*Coll. Avell.* 84 and 91; Coleman-Norton, *Roman State* (1966) vol. 3, No. 645).

may want to know more about this complex history, the key early manuscripts of the Codex and other witnesses to the text (complete as far as possible up to 1100), especially but not only those upon which Krüger relied. A list of the manuscripts he used appears at the beginning of every edition of the *editio minor*, while a more detailed list and discussion was included in the introduction to the *editio maior*.[237] A fuller listing and description of Codex manuscripts up to *c.* 1300 was published by Dolezalek in 1985, and further extensive and detailed analysis was undertaken by Tort-Martorell for her study of Book 2 published in 1989.[238] Neither work is concerned much with Books 10–12, which have a largely separate transmission history as the *Tres Libri* in the *Volumen Parvum*, and for which the discussion in Conte's 1990 book is invaluable.[239] Revised datings for many early manuscripts were proposed by Radding and Ciaralli in their article in the *Zeitschrift der Savigny Stiftung* in 2000, with further discussion in their book of 2007, and I generally follow these dates where they differ from Dolezalek or other sources.[240] However, manuscript dates are seldom explicit and usually rest upon subtle palaeographical analysis and comparison, and so are far from invulnerable to challenge and dispute.

Rather than a bare listing, I have divided the manuscripts by date and type, including significant witnesses that are not themselves actual manuscripts of the Codex. This is intended to reflect the story of the Codex as told in this chapter. Where Krüger assigned a *siglum* (abbreviation sign) for the manuscript, this appears first in **bold**, in accordance with his usage in the *editio maior*.[241]

First edition of 529: the **Novus Codex**

The first edition does not survive, and much about its nature and content has to be inferred from the revised edition of 534. However, there are two direct, if fragmentary, witnesses on papyrus from Egypt, which necessarily must date to the period 529–534.

[237] Krüger, *editio maior*, v–x (discussion) and LX–LXII (list) (German translation in Hillner, "Praefatio" (2010)).

[238] Dolezalek, *Repertorium Manuscriptorum Veterum Codicis Iustiniani* (1985), vol. 1; Tort-Martorell, *Tradición textual del Codex Iustinianus* (1989). Dolezalek has now produced a more wide-ranging and easily consultable online database of legal manuscripts, not just those of the Codex, "Manuscripta Juridica", available at: http://manuscripts.rg.mpg.de. However, much of this is more the digitization of his existing materials than substantial new research.

[239] Conte, *Tres Libri* (1990), 17–38, deals with the earliest witnesses, 123–149 with later but pre-Accursian manuscripts. His main interest focuses on the developing tradition of glosses.

[240] Radding and Ciaralli, "Corpus Iuris Civilis" (2000); Radding and Ciaralli, *Corpus Iuris* (2007).

[241] Abbreviations: CPL = R. Cavenaile, *Corpus Papyrorum Latinarum* (Wiesbaden, 1958); CLA = E. Lowe, *Codices Latini Antiquiores*, 11 vols. and supplement (Oxford, 1934–1971).

P. Oxy. **XV 1814 (Fig. 1 below)** (Amelotti and Migliardi Zingale, *Costituzioni Giustinianee* (1985), 17–23; CPL No. 101; CLA suppl. 1713). This lacunose papyrus contains an index of titles/constitutions for titles C. 1.11–16 = 2nd edn. 1.11 and 14–18. Krüger was aware of this text (published 1922), but died before he could emend any further Codex editions.[242] This fragment provides the fullest direct evidence for the shape of the first edition and how material was added, removed, replaced, or relocated between the two editions.[243]

P. Reinach Inv. **2219** (Amelotti and Migliardi Zingale, *Costituzioni Giustinianee* (1985), 24–26; CPL No. 100; CLA V 700). This highly fragmentary papyrus text contains part of C. 12.59.10–12.62.4. It seems likely to be from the first edition since it contains abbreviations banned under *Const. Cordi* 5.[244]

Second edition of 534: the Codex repetitae praelectionis

(a) The sixth-century witnesses

Colon. = Cologne, Best. 7050B (Fragmente B) 130 (Gundermann, "Das Kölner Fragment" (1890); Dolezalek, *Repertorium* (1985), I, 229; CLA VIII 1167). This is a parchment palimpsest fragment of C. 3.32.4–12, probably overwritten in the late seventh century in Italy. Although published in 1890, readings from it were not added by Krüger to his Codex edition until 1914. The fragment survived the collapse of the Cologne *Historisches Archiv* building in March 2009 with only slight damage, although it has not yet been repaired.[245]

PSI **XIII 1347** (Amelotti and Migliardi Zingale, *Costituzioni Giustinianee* (1985), 27–31; CPL No. 99; CLA III 293). This fragmentary Egyptian papyrus of C. 7.16.41–7.17.1 was first published in 1953.

V = Verona Bibl. Cap. LXII(60) (Dolezalek, *Repertorium* (1985), I, 443; CLA IV 513). This is the famous palimpsest, containing extensive parts of Books 4–8 and 11–12 in their full original form, including the Greek constitutions, and fortified by contemporary scholia in Greek. Although written and then probably used in the east, it must have soon come west and was palimpsested in the eighth century in northern Italy. First identified in 1817, it was later published by Krüger in a fine apograph edition in 1874 (**Fig. 2**).[246] The contemporary Greek scholia were published separately by Zachariä von Lingenthal in 1850.[247]

[242] Krüger, "Neue juristische Funde" (1922). Krüger was able to make reference to *P. Oxy.* XV 1813 (parchment fragment of C.Th. 7.8; CPL No. 98; CLA II 211) in his *Codex Theodosianus*, fasc. 2 (1926), 250–251.

[243] See the recent discussions in Corcoran, "Justinian and His Two Codes" (2008); Corcoran, "Anastasius, Justinian" (2009).

[244] Corcoran, "After Krüger" (2009), 432.

[245] Information by e-mail from the *Historisches Archiv*, October 2013.

[246] Krüger, *Fragmenta Veronensia* (1874).

[247] Zachariä, "Die griechischen Scholien" (1850).

For the Codex the *Veronensis* has a paleographic primacy roughly comparable to the famous sixth-century Florentine manuscript of the Digest, but it is only fragmentary.

(b) Witnesses between the seventh and early eleventh centuries

No fragments of complete Codex manuscripts survive for this period. Such witnesses as exist are given here in approximate chronological order.

Greg. = Gregory the Great, *Register* XIII.49[50].[248] This item reflects not a sole manuscript, but a whole independent manuscript tradition of the Register of correspondence of Pope Gregory I (r. 590–604), which contains this letter from 603 quoting C 1.3.10, 1.12.2. 1.12.6, 7.44.3, 7.48.4, and 9.1.20. Not only was the pope's Register itself copied extensively (although no single manuscript of the whole survives and modern editions are reconstructions), but during the medieval period its contents were repeatedly recycled through canonical collections in a complex manner.[249] It is only vicariously from this papal letter that Hincmar of Rheims in the ninth century quotes the Codex verbatim, perhaps unwittingly.[250]

F = Munich, Bayerische Staatsbibl. Clm 6375 (originally from Fulda; Dolezalek, *Repertorium* (1985), I, 307; Glauche, *Katalog* (2011), 142–144). This fragment of the ninth or possibly the tenth century was apparently copied by mistake at the beginning of a manuscript of the Ecclesiastical History of Eusebius/Rufinus.[251] The extract contains C. 3.12.2–3.17.1, with headings and subscripts intact and the constitutions numbered in Greek. It is the only witness from the period 600–1000 that can be considered a proper Codex manuscript.

U = Leipzig, Universitätsbibl. 3493–4 (= Hänel 8–9) (previously at Udine = Utinensis for Krüger, *editio maior*, viiii; Kaiser, *Die Epitome Iuliani* (2004), 106–118; Kaiser, *Authentizität und Geltung* (2007), 7–13; Macino, *Sulle tracce delle Istituzioni* (2008), No. 3). This ninth-century manuscript contains mostly material relating to the Epitome of Julian, but also several constitutions from Book 7 of the Codex.[252]

[248] Editions: Hartmann, *Registrum* (1899), II, 414–418; Norberg, *Registrum* (1982), 1058–1064. Translation: Martyn, *The Letters of Gregory the Great* (2004), III, 863–866. Note that Krüger also uses "Greg." for the *Codex Gregorianus*.

[249] Something of this complexity can be seen in Kaiser, "Nachvergleichungen von Novellen- und Codexzitaten" (2008).

[250] For example, C. 7.44.3 in the *Opusculum LV capitulorum* at *Patrologia Latina* 126.429 = Schieffer, *Die Streitschriften* (2003), 295 (cf. Corcoran, "Hincmar" (2015), 138–139). Justinian's codified works do not seem to have been easily available in Francia at this time.

[251] Radding and Ciaralli, *Corpus Iuris* (2007), 51.

[252] Kaiser, *Die Epitome Iuliani* (2004), 111–112 and 373–374. Kaiser suggests this was a thematic collection of Codex texts on manumission already assembled in late antiquity.

Modena, Bibl. Cap. O I.4 (Patetta, "Contributi" (1891), 253–254; Russo, *Tradizione manoscritta* (1980), 73–74; Kaiser, *Die Epitome Iuliani* (2004), 606). This is a ninth-century canon law manuscript which quotes C. 9.16.1 and 4, with headings, but no subscripts. Note that Book 9 was not one of those excerpted for the next two collections below.

A = *Lex Romana Canonice Compta* in Paris, Bibl. Nat. Lat. 12448 (Mor, *Lex Romana* (1927); Kaiser, *Die Epitome Iuliani* (2004), 493–508, called by him *Capitula legis Romanae*). This work, preserved only in a manuscript dating from *c.* 900, is not of the Codex itself, but rather a miscellany of Roman law material arranged for ecclesiastical use in northern Italy in the mid-ninth century. Nonetheless, in a selection dominated by extensive material from the Institutes and the Epitome of Julian, it contains over 120 Codex texts taken from Books 2–8 only; that is, the private law books. It is an important early witness, especially as it cites book, title, and constitution numbers, and gives headings and subscripts. The standard edition was published by Mor in 1927. The Roman law material in the slightly later *Collectio Anselmo Dedicata* (*CAD*), known from several manuscripts,[253] derives almost entirely from the *Lex Romana*.[254]

Ambr. = *Excerpta Bobiensia* **(Milan, Bibl. Ambrosiana G58 sup.)** (Mor, "Bobbio, Pavia" (1925); Kaiser, *Die Epitome Iuliani* (2004), 523–533). This ecclesiastical miscellany (dubbed *Regulae Ecclesiasticae* by Kaiser) contains eighteen constitutions from Codex Books 1 and 3. It does not cite book or title derivations, but it does preserve both headings and subscripts to constitutions. It was only known to Krüger from a single ninth-century manuscript in Milan, upon which Mor's edition of 1925 was also based. A second manuscript is now known (**Livorno, Bibl. Com. Labronica 40**).[255] This work is unrelated to the *Lex Romana Canonice Compta* and the *Collectio Anselmo Dedicata*.[256]

***Collectio Gaudenziana* = London, British Museum (now British Library) Add. Ms. 47676, previously at Holkham Hall, Norfolk** (Gaudenzi, "Un' Antica Compilazione" (1886); Kaiser, *Die Epitome Iuliani* (2004), 655–846).[257] This is not a Codex manuscript, but a tenth-century miscellany of Roman and

[253] Krüger only cites one manuscript of the *CAD*, Vercelli Bibl. Cap. 15 (=A[u]). No modern edition of the full *Collectio* exists, but the Roman law extracts were published by Russo, *Tradizione manoscritta* (1980).

[254] On the relationship of the *Lex Romana* to the *CAD*, see Kaiser, *Die Epitome Iuliani* (2004), 556–559; Radding and Ciaralli, *Corpus Iuris* (2007), 55–57; and the helpful tables in Russo, *Tradizione manoscritta* (1980), 251–265. Some Justinian texts are cited at *CAD* 3.21 only via Gregory the Great's letter (Russo, *Tradizione* (1980), 68–70 and 245–248).

[255] Kaiser, *Die Epitome Iuliani* (2004), 533–536.

[256] Kaiser, *Die Epitome Iuliani* (2004), 562–581; Radding and Ciaralli, *Corpus Iuris* (2007), 57–60.

[257] Note also Macino, *Sulle tracce* (2008), No. 5.

Visigothic legal material from southern Italy containing a handful of Codex constitutions from Books 1, 8, and 11, generally without headings or subscripts.[258]

Cesena, Bibl. Malatestiana S.XXI.5 (Bellettini *et al.*, *Biografia di un Manoscritto* (2009)). This is a ninth-century manuscript of Isidore's *Etymologies*, containing later tenth- and eleventh-century scholia, including quotations from C. 11.48. Together with quotations from the same title in the *Collectio Gaudenziana* (above), these are unusual and early witnesses to texts from the last three books.[259]

S = *Summa Perusina* (Perugia, Bibl. Cap. 32) (facsimile: Crifò and Campolunghi, *Adnotationes Codicum* (2008); text: Patetta, *Adnotationes Codicum* (1900); Ciaralli and Longo, "Due contributi" (2001); Radding and Ciaralli, *Corpus Iuris* (2007), 69–70; Ciaralli, "Per le *Adnotationes Codicum*" (2010)). This is not a manuscript of the Codex itself, although closely reflecting one. It is a composite work marrying constitution headings to summaries, deriving from a probably antique copy of the Codex fortified with seventh-century Latin annotations and glosses. It is a key witness to the shape and content of the original Codex and to the headings of the constitutions. On occasion it does quote the Codex verbatim (e.g., 1.1.1 and 1.57.1). The manuscript contains several short gaps and it runs out in the middle of 8.53.8. The work was probably put together in its current form in the later tenth century, although this sole surviving manuscript is early eleventh century.[260] The *Summa* is quoted in documents and elsewhere in the late tenth and eleventh centuries, the latest known citation being in the short secular legal miscellany known as the *Lectio legum* preserved at the end of a Canon Law manuscript dating to 1059/1070 (**Rome, Bibl. Vallicelliana B.32**).[261] It is also quoted in another mid-eleventh-century manuscript, which also includes other Codex summaries and glosses (**Vercelli, Bibl. Cap. 122**).[262]

258 Gaudenzi, "Un' Antica Compilazione" (1886), 202 and 205–208; Kaiser, *Die Epitome Iuliani* (2004), 670–672 and 703–706; Kaiser, "Collectio Gaudenziana" (2015).

259 Bellettini *et al.*, *Biografia* (2009), 45–46, argue against the idea of Conte, *Tres Libri* (1990), 27, that, because of the interest of its topic (*coloni*, i.e., tied tenants), title C. 11.48 came to be copied as a separate text.

260 Patetta, *Adnotationes Codicum* (1900); Ciaralli and Longo, "Due contributi" (2001); Radding and Ciaralli, *Corpus Iuris* (2007), 69–70.

261 Patetta, *Adnotationes Codicum* (1900), 294–296; Radding and Ciaralli, *Corpus Iuris* (2007), 72–73. *Lectio legum* 2 = *Summa* 8.4.7.

262 Patetta, *Adnotationes Codicum* (1900) 292–294; Dolezalek, *Repertorium* (1985), I, 441–442; Kaiser, *Die Epitome Iuliani* (2004), 122–132; Radding and Ciaralli, *Corpus Iuris* (2007), 69; Macino, *Sulle tracce* (2008), No. 6. The *Summa* passages are 5.71.1 and 4. Further Codex summaries are found among some Justinianic texts in another ecclesiastical collection of the later eleventh century (Rome, Bibl. Casanatense 2010 (B.V.17); Patetta, *Adnotationes Codicum* (1900), 291–292; Kaiser, *Die Epitome Iuliani* (2004), 621), but perhaps deriving from an earlier now incomplete manuscript also in Rome (Bibl. Vallicelliana T. XVIII; Kaiser, *Die Epitome Iuliani* (2004), 615–619).

(c) Fragments of eleventh-century complete Codex texts

These two sets of surviving folios of perhaps the third quarter of the eleventh century from Rome or southern Italy present complete sequences of constitutions with full headings and subscripts. This tradition was soon overwhelmed by the epitomizing trend of northern Italy and was never resurrected. These fragments were unknown to Krüger, only having been identified towards the end of the last century.

Rome, Biblioteca Vallicelliana Carte Vallicelliane XII.3. These two folios contain C. 7.64.2–9 and 7.71.8–7.72.6, respectively (published in Corcoran, "New Subscripts" (2009)). The constitutions are numbered with Roman numerals.

Würzburg, Universitätsbibl. M.p.j.f.m.2. These two folios contain C. 1.27.1–2 (published in Corcoran, "Würzburg Fragment" (2016)) and 2.43.3–2.51.2 (partially published in Corcoran, "After Krüger" (2009), 432–438). The constitutions are numbered with Greek numerals.

(d) Eleventh-/early twelfth-century "Epitome Codicis" manuscripts

There are five manuscripts usually considered as true Epitome manuscripts, of which only the first three were known to and used by Krüger.

P = Pistoia, Arch. Cap. 106 (Dolezalek, *Repertorium* (1985), I, 379; Ciaralli, "Ancora sul Manoscritto Pistoiese" (2000); Radding and Ciaralli, *Corpus Iuris* (2007), 87–90 and 143–147). This epitome manuscript, now dated to the mid-eleventh century, currently ends in the middle of Book 8, title 46. Many constitutions are added in the margins or pasted in on slips, attesting to its active use and expansion in the later eleventh century. Both headings and subscripts are extensively present. This is the key manuscript, and the earliest, for understanding the process of epitomizing and re-expansion of the Codex. Previously it was often dated to the tenth century.

L = Paris, Bibl. Nat. Lat. 4516 (Dolezalek, *Repertorium* (1985), I, 343; Radding and Ciaralli, *Corpus Iuris* (2007), 148–150). This manuscript was almost certainly copied from a still intact **P** (whereas Krüger thought it derived from a source in common with **P**), incorporating marginal/additional texts from the latter, and keeping full headings and subscripts. It ends with the opening title heading from Book 10, but does not actually contain any text from the final three books.

D = Darmstadt, Hessische Landes- und Hochschulbibl. 2000 (Dolezalek, *Repertorium* (1985), I, 185; Radding and Ciaralli, *Corpus Iuris* (2007), 150–151). This is slightly later in date than **P**, finishing in the middle of Book 9. The crossing-out of subscripts and their absence after Book 3 show the lack

of interest in maintaining these features intact in the developing manuscript tradition.

Avranches, Bibliothèque municipale Ms 141 (Fig. 3) (plus a fragment in Ms 6) (Mor, "Il Manoscritto del Codice Giustinianeo" (1977); Dolezalek, *Repertorium* (1985), I, 121–123; Tort-Martorell, *Tradición Textual* (1989), 49–51). This early twelfth-century manuscript of Books 1–9, which also contains the Institutes, differs from most others of this period by being probably French rather than Italian. The headings are present, but almost no subscripts.

Pesaro, Bibl. Com. Oliveriana 26 (Dolezalek, *Repertorium* (1985), I, 379; Tort-Martorell, "En torno a Pesaro 26" (2008)). This early twelfth-century epitomized manuscript of Books 1–9 has most of the missing texts from the main sequence gathered into a supplementary appendix, although several folios of both main text and appendix are lost. Headings are present, but subscripts almost entirely absent.

The following are more fragmentary manuscripts representing Epitome-style texts, of which none was known to Krüger.

Bologna, Collegio di Spagna 73 (Dolezalek, *Repertorium* (1985), I, 171). This folio fragment from *c.* 1100 contains C. 7.40.1–7.43.2, with headings but no subscripts.

Rouen, Bibl. Mun. A.137 (Dolezalek, *Repertorium* (1985), I, 381–382; Conte, *Tres Libri* (1990), 25–26; Roumy, "Excerpta Rotomagensia" (2009)). This early twelfth-century manuscript appears to represent excerpts from an epitomized manuscript, although it generally ignores headings and subscripts. It is most notable for containing some limited material from the last three books, suggesting that these were not entirely ignored in the epitomizing process.

Stuttgart, Württembergische Landesbibl. Cod. fr. 62 (Dolezalek, *Repertorium* (1985), I, 392; Corcoran, "After Krüger" (2009), 438–439). This later eleventh-century folio fragment contains C. 4.20.12–4.21.11, with full headings but no subscripts.

Yale, Beinecke Ms 974 (Dolezalek and Ciaralli, "Epitome Beinecke" (2010)). This recently published eleventh-century folio, probably written in Rome or central Italy, contains parts of C. 1.14.5–1.18.3, with full headings, but few subscripts.

(e) Late eleventh-/early twelfth-century substantially restored Codex manuscripts

These manuscripts are generally full Latin versions of Books 1–9, but many still have missing and disordered constitutions bearing witness to the complex process of reintegration. Although I list these separately from those in the previous

section, the distinction between Epitome and restored manuscripts should not be too sharply drawn.

The Berlin manuscripts: T, R, Q = Berlin, Staatsbibliothek Preußischer Kulturbesitz lat. fol. 272, 273, 275 (Dolezalek, *Repertorium* (1985), I, 148–166; Radding and Ciaralli, *Corpus Iuris* (2007), 158–166). These manuscripts conveniently in Berlin were extremely important for Krüger's work.[263] Each is of Books 1–9 and of the late eleventh or earlier twelfth century (perhaps in chronological order **R**, **T**, then **Q**), although differing somewhat in their degree of restoration, and showing the difficulties scribes must have faced trying to copy full Codex texts from complex source manuscripts.

C = Montecassino, Archivio dell'Abbazia 49 (Dolezalek, *Repertorium* (1985), I, 276–280). This is an early twelfth-century manuscript of Books 1–9, probably copied near Rome (Radding and Ciaralli, *Corpus Iuris* (2007), 165–166). It was used by Krüger also as an early witness for the introductory constitutions.

M = Montpellier, Bibliothèque universitaire, Ms H.82 (Dolezalek, *Repertorium* (1985), I, 281–291; Radding and Ciaralli, *Corpus Iuris* (2007), 163–165). This is an early twelfth-century manuscript of Books 1–9. It also contains a palimpsest fragment from Book 11.[264]

Vienna, Österreichische Nationalbibl. 2065 (Dolezalek, *Repertorium* (1985), I, 446–447). This is a fourteenth-century legal manuscript containing two folios of an early twelfth-century Codex with part of C. 5.8.1–5.9.6.

W = Vatican, Bibl. Vat. lat. 1427 (Dolezalek, *Repertorium* (1985), I, 431–434; Conte, *Tres Libri* (1990), 18–24). This is an early twelfth-century manuscript of Books 1–9 that unusually contains material from the beginning of Book 10. It is an early witness for the introductory constitutions and was so utilized by Krüger.

(f) Manuscripts of the Tres Libri

Aside from **V** (the Veronensis), as the only surviving manuscript of the full twelve-book Codex containing anything substantial from the last three books, four manuscripts were the chief early witnesses used by Krüger for Books 10–12. These are rather later in date than those used for the first nine books, since the *Tres Libri* became separated from the rest of the Codex and were copied instead with other Justinianic materials (Institutes, *Authenticum*). The two principal ones used were:

[263] A fourth Berlin manuscript, **lat. fol. 274**, was less significant, used only for C. 11.48, where it is U. See Conte, *Tres Libri* (1990), 26–28.

[264] Conte, *Tres Libri* (1990), 24–25.

K = Paris, Bibl. Nat. Lat. 4537 (late twelfth century; Conte, *Tres Libri* (1990), 137–138). As it survives, this manuscript contains the *Tres Libri* only, but probably originally included the *Authenticum.*

O = Oxford, Bodleian 3361 = Selden Arch. B 15 (later thirteenth century). This manuscript contains also the Institutes and the *Authenticum.* Although of all Codex manuscripts used by Krüger this is probably the latest in date, he chose it because its constitution headings were particularly complete.

In the second rank Krüger used two other manuscripts:

I = Vienna, Österreichische Nationalbibl. 2130 (*c.* 1200; Conte, *Tres Libri* (1990), 143–146). This manuscript contains also the Institutes and *Authenticum.* For the latter it is an important early witness, as it contains a larger selection of the Novels than became standard in the Vulgate tradition.[265]

X = Oxford, Oriel College 22 (previously A.2.7) (thirteenth century; Conte, *Tres Libri* (1990), 132–133; Loschiavo, "Verso la costruzione" (2014)). The *Tres Libri* seem to have been copied into this manuscript about half a century after the rest of its contents (the Institutes, the *Authenticum*, the Epitome of Julian). Krüger used **X** where **O** was deficient, but it is cited only in the *editio maior.*

(g) Other miscellaneous Codex manuscripts

The uneven evidence for the Codex means that numerous manuscripts were used by Krüger sometimes only for limited portions of his text, for which they were particularly early or rare witnesses, especially where other key manuscripts were lacunose. Examples are:

E = Leipzig, Universitätsbibl. 883 (Dolezalek, *Repertorium* (1985), 1, 232–240). This mid-twelfth-century manuscript (Radding and Ciaralli, "Corpus Iuris Civilis" (2000), 303) was used by Krüger to supplement a lacuna in **M** in title C. 4.63. This manuscript also carries on beyond Book 9 to give a few constitutions from early titles of Book 10.[266]

N = Paris, BN Par. Lat. 16910 (Dolezalek, *Repertorium* (1985), 1, 375–376). This manuscript of the first half of the twelfth century was used by Krüger to supplement the lacunose **R** for the first titles of Book 5 (1–17).

[265] Loschiavo "La Riscoperta dell'*Authenticum*" (2011), 137–139, lists the key manuscripts for the *Authenticum*, where he dates this Vienna manuscript to the mid-twelfth century.

[266] Conte, *Tres Libri* (1990), 26–28.

U = **Vercelli, Bibl. Cap. 127** (Dolezalek, *Repertorium* (1985), I, 442–443; twelfth century). This was used for the introductory constitutions, *Const. Haec*, *Summa*, and *Cordi*.

Y = **Bamberg, Staatsbibl. Jur. 22** (previously D I 5) (Dolezalek, *Repertorium* (1985), I, 138–139; thirteenth century). This was used for the *notitiae* to C. 1.27.1–2.

(h) Some eleventh-century quotations

By the later eleventh century, citations and quotations from the Codex in other works of Roman, Lombard, or Canon law, or in documents become very common.[267] Most of these are not important for the text of the Codex, and may indeed be at several removes from contact with an actual copy of it. However, a few are significant enough to deserve mention:

Montecassino, Archivio dell'Abbazia Comp. XI Jur. 1 (Dolezalek, *Repertorium* (1985), I, 280; Radding and Ciaralli, *Corpus Iuris* (2007), 86; Macino, *Sulle tracce* (2008), No. 9). These are mid-eleventh-century (or possibly earlier) fragments of the Institutes, containing also C. 2.4.21 and 23–24 written in the margins, with headings, but no subscripts.

Rome, Bibl. Vallicelliana F. 54 (Patetta, "Contributi" (1891), 249–253). This is a canon law collection which contains four constitutions (C. 1.2.23, 7.38.1–3), with headings and subscripts, including the otherwise unknown subscript for C. 7.38.1, first added by Krüger to the 6th edition of the *editio minor* of 1895.

Bamberg, Staatsbibliothek Jur. 2 (Dolezalek, *Repertorium* (1985), I, 123; Radding and Ciaralli, *Corpus Iuris* (2007), 86; Macino, *Sulle trace* (2008), No. 12). This manuscript from *c.* 1100 is of the Institutes, which are followed by a single Codex constitution, C. 9.13.1. This constitution seems to have traveled with some Institutes texts, as it is similarly attested in half-a-dozen other manuscripts up to at least the thirteenth century,[268] including
I = **Paris Bibl. Nat. Lat. 4421** (twelfth century; Macino, *Sulle tracce* (2008), No. 13; Radding and Ciaralli, *Corpus Iuris* (2007), 22), which Krüger cited as a witness for the text of that constitution.

[267] See n. 114, above.

[268] Dolezalek, *Repertorium* (1985), I, 81. Further details: Bamberg, SB Jur. 4 (Dolezalek, *Repertorium* (1985), I, 123); Brussels, Bibl. Royale de Belgique IV.384 (Macino, *Sulle tracce* (2008), No. 15); Florence. Bibl. Laur. Ashburnam 1560 (Dolezalek, *Repertorium* (1985), I, 191; Macino, *Sulle tracce* (2008), No. 21); Warsaw, Bibl. Uniw. 2 (earlier 223) (Macino, *Sulle tracce* (2008), No. 18). Oxford, Bodleian D'Orville 94 is the latest of the manuscripts. Paris and Brussels each contains a small selection of further Codex constitutions (Macino, *Sulle tracce* (2008) Nos. 89 and 116).

(i) Greek texts

For the Greek texts there are no direct Codex manuscripts aside from V, so that use has to be made of more indirect Byzantine sources. Although the amount and variety of useful Byzantine materials are very great, among these there are four key works which Krüger used:[269]

B and BΣ = The Basilika and their Scholia: these are a recompilation of all the Justinianic materials in their Greek versions, started under Basil I[270] and completed by Leo VI in sixty books, *c.* 900. Krüger had recourse to the edition of Heimbach (1833–1870), which includes also the numerous scholia. Few verbatim Codex texts are transmitted by this route, the Basilika being rather a rich source of the summaries printed by Krüger. However, one manuscript is significant in containing much intact material taken from Codex Book 1 (**Paris, Bibl. Nat. Coislinianus 151**).

Coll. = The Collection of 25 Chapters (*Collectio* XXV *Capitulorum*): this sixth-century collection consists mostly of intact versions of twenty-one constitutions taken from the first four titles of the first book of the Codex.[271] Krüger did consult manuscripts of this work himself.

Const. (and Parat.) = *Constitutionum ecclesiasticarum collectio* **(and its Paratitla)**: this late sixth-century work, generally referred to today as the *Collectio Tripartita*, consists of summaries of Justinianic legal material relating to religious matters.[272] Part 2 covers items from the Institutes and Digest, and Part 3 the Novels. Part 1 comprises a précis of the first thirteen titles of Book 1 of the Codex, giving summaries of the constitutions in their original sequence. Numerous *paratitla* (marginalia with cross-references) provide much additional information, and often quote the exact opening word of a constitution, even when it is in Latin. Krüger consulted manuscripts of this work himself.

Nomoc. = the Nomocanon in 14 Titles (*Nomocanon* XIV *Titulorum*). Nomocanons are Byzantine legal works which combine secular and ecclesiastical legislation, of which the Nomocanon in 14 Titles was perhaps the most important, and much Justinianic legislation was recycled through it. It went through several editions, and its transmission history remains complex and difficult to unpick.[273] Krüger consulted several relevant manuscripts himself.

[269] Krüger, *editio maior*, x.

[270] For a recent attempt to unpick how Basil's precursor version(s) differed from that of his son, Leo, see now van Bochove, "Preluding the Basilica" (2014).

[271] Troianos, "Byzantine Canon Law" (2012), 132–133. The standard edition is still that of 1840 by Heimbach in *ANEKDOTA* II (1840), 145–201.

[272] Troianos, "Byzantine Canon Law" (2012), 135–136. There is an excellent edition published by van der Wal and Stolte, *Collectio Tripartita* (1994).

[273] Troianos, "Byzantine Canon Law" (2012), 138–141. The standard edition, not entirely easy to use, is still that of 1868 by Pitra, *Juris Ecclesiastici II* (1868), 433–640.

(j) Printed editions

Finally, some of the early printed editions contain readings otherwise unattested and deriving from now lost manuscript witnesses. Apart from the classic edition by Haloander (Nuremberg, 1530), other key editions used by Krüger were those of Miraeus (Paris, 1550), Russardus (Lyon, 1561), and Contius (Paris, 1562 [Fig. 5] and later editions).[274]

Addendum. A strip from a leaf of an eleventh-century Codex manuscript in late Caroline minuscule was sold at auction by Dreweatts and Bloomsbury in London in July 2015, and is now in a private collection also in London. The owner has kindly supplied me with images. The strip comprises two adjoining fragments, containing C. 8.35.5-7 (recto) and 8.36.3-5 (verso), with subsequent twelfth-century additions, notably the *authentica* deriving from Nov. 112 in the margin adjacent to 8.36.3, but also typical interlinear and marginal legal glosses, including citations of the Digest. The text contains complete sequences of constitutions with subscripts, except for the lost Greek of 8.36.4, but is not written in a typical southern script. Therefore it would seem to represent a rather early restored form of the Codex from northern Italy or France, assignable to the late eleventh century. It provides the sole manuscript witness for Viminacium as the place of posting for C. 8.35.6, otherwise known only from Haloander's edition, and possibly a more correct diurnal date for C. 8.36.4 (xvi k. Ian = 17 Dec. 501).

[274] Krüger, *Kritik* (1867), 18–32; *editio maior*, XI–XIII. See also pages cxxxi–cxxxii above.

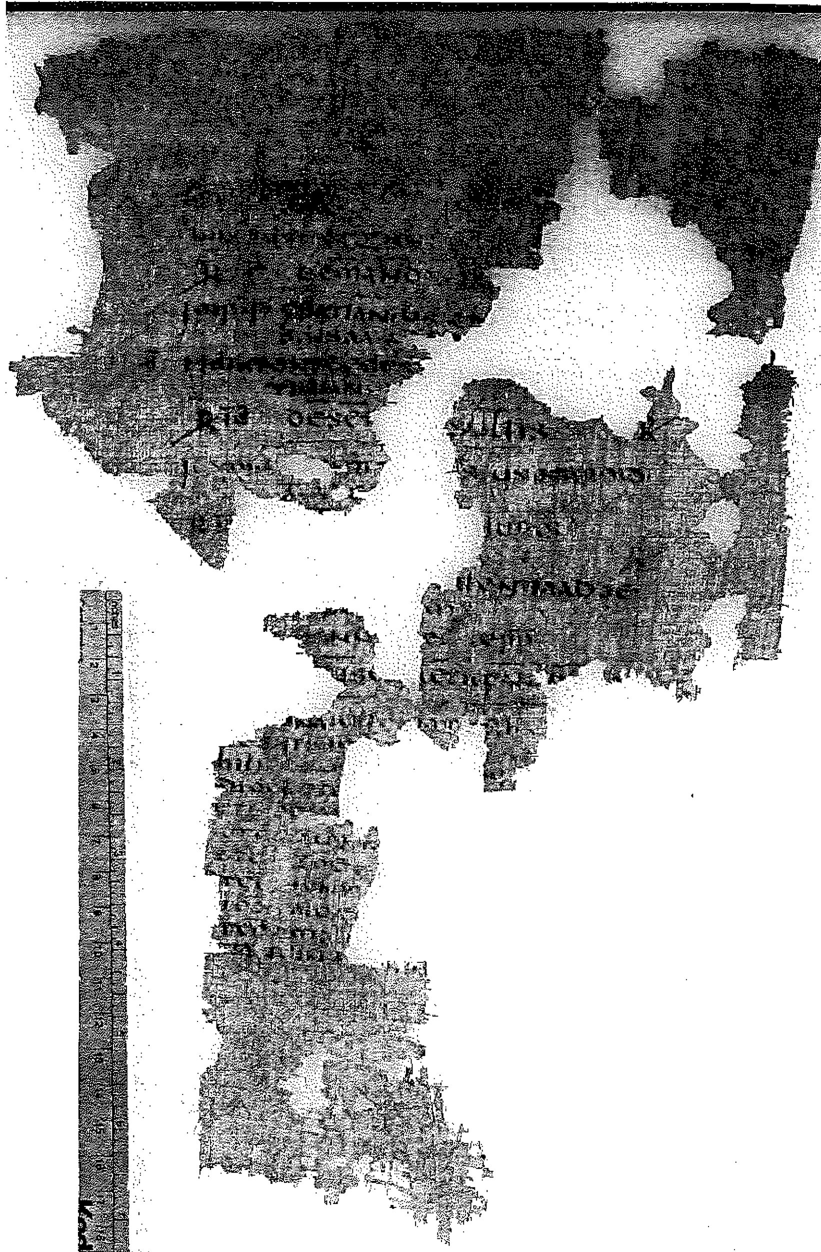


Figure 1. The first edition. *P. Oxy.* XV 1814, verso (c.530). Fragmentary papyrus with title rubrics and constitution headings from Book One of the first edition of the Codex (C¹. 1.12.10-1.16.11).

χωρις,συγγενειας,απασης,τελευτω̄
των,μονους,τον,πατρωνα,και,την,πα
τρωνισσαν,τους,τε,αυτων,υιους,και
θυγατερας,καλεισθαι,και,μεχρι,τουτου
ταυτην,ιστασθαι,την,διαθηκην,ουκ,α
πελευθερικης,της,κλησεως,αυτοις
αλλ,εκ,της,παρουσης,ημων,διαταξε
ως,διδομενης,κακεινο,δε,τω,νομω
προσθειναι,καλον,τε,και,αναγκαιον
ωηθημεν,ωσει ... φαιη,τους,ελευθε
ρωτας,αποκληρονομων,ποιησασθαι
τους,εαυτων,παιδας,και,μηδεν,αυ
τοις,της,εαυτων,περιουσιας,καταλι
πειν,μη,δυνηθηναι,τε,εαυτους,μα
την,υβρισμενους,αποδειξαι,μητε
τουτους,εξειν,κατα,των,διαθηκω̄
των,απελευθερων,πατρωνικα,δι
καια,αδιαθετων,μεντοι,και,απαιδω̄
τελευτωντων,των,απελευθερων
κακεινους,ισως,μεν,ουκ,αξιως,δια
φιλανθρωπιαν,δε,ομως,καλουμε̄
και,μαλιστα,επει,παρα,παντα,τον,ημε
τερον,νομον,προς,την,φυσιν,ηρμο
σαμεν,σωζεσθαι,γε,μην,και,τουτω̄
υπεξουσιων,η,την,υπεξουσιαν,εχο̄
τι,και,τουτον,η,ταυτην,ελευθερωκο
τι,το,πατρωνικον,δικαιον,οπερ,και
προσθεν,ειχεν,θεσπιζομεν,οπως
ει,αδιαθετος,και,απαις,ο,ελευθερω
θεις,τελευτησειεν,η,γραψας,εξωτι
κους,κληρονομους,η,εις,το,παν,εξα
διαθετου,η,προς,το,τετραουγκιον,κα
τα,της,διαθηκης,ο,ελευθερωσας,κλη
θειη,ως,αν,ει,δοκουσης,contracta
fiducia,της,emancipationis,γε
γενησθαι,ταυτα,μεν,τοι,κρατειν,επι
των,την,ελευθεριαν,επιθεντων
θεσπιζομεν,ους,δη,και,μονους,χρη
σθαι,τη,του,πατρωνος,προσηγορια
συγχωρουμεν,τους,γαρ,δη,κατα,τι
να,περινοιαν,νομισθεντας,εν,τοις
παλαιοις,βιβλιοις,πατρωνας,ειναι,κ,
τοι,γε,ουκ,ελευθερωσαντας,οποιο̄
δητον,ελεγξαντα,την,συμπαιγνιᾱ
του,απελευθερου,τον,ουκ,οντα,με
τα,γε,αληθειας,πατρωνα,εξωνδε,ωμο
σεν,ψευδως,πειρωμενον,εαυτω
πατρωνικα,περιτιθεναι,δικαια
ει,και,τις,ολως,ετερος,τοιουτος,εν
τοις,βιβλιοις,εστιν,τουτον,παντε

XXXII
ΛΒ'

λως,παντος,κερδους,εκ,πατρωνικου
δικαιου,χωριζομεν,ην,αυτω,την,ρε
βερεντιαν,φυλαττεσθαι,παρα,των
τοιουτων,δηθεν,απελευθερων,συγ
χωρουντες,εκεινους,ειναι,μονους
πατρωνας,ταις,αληθειαις,κρινοντες
οσοι,ταις,αληθειαις,την,ελευθεριαν
επιτιθεασιν,τα,αυτα,δε,δικαια,διδο
μεν,και,τοις,κατιουσιν,και,τη,λοιπη
φαμιλια,των,εν,διαθηκαις,η,τελευ
ταιαις,ολως,βουλησεσιν,ελευθερω
σαντων,τινας,κατα,των,καλουμε
νων,ορκινων,απελευθερων,ως,
αν,ει,παρ,αυτων,τουτων,ηλευθερω
μενων pp · k · dec · cp · p · post · ss · lamp ·
et · or · uu · cc ·

℟ SIINFRAVDEPATRONI ALIENATIOFACTASIT ℟

α Impp · dioclet · et max · aa · et cc · claudio ;
Si,in,fraudem,patroni,libertus,ali
quid,alienauerit,quatenus,legiti
ma,pars,deminuta,est,reuocandi,
tributam,conuenit,esse,potesta
tem ; s · xv · kal · noembr · sirmi · cc ·
css ·

β Id · aa · et cc · iuliae ; defuncto,quidem
liberto,patronus,intestato,succe
dens,per,actionem,caluisianam,in,ei
us,fraudem,alienata,reuocare
potest,uerum,cum,patronum,post
liberti,sui,mortem,ab,eo,fundo,col
latam,donationem,habuisse,ra
tam,adseueras,manumissoris
factum,infirmare,successores
eius,minime,possunt ; s · uiii · k · ian ·
sirmi cc · css ·

℟ DEOBSEQVVMPATRONIS PRAESTAND.S

α Imp · alex · a · zωtico ; contra pa
tronum,tuum,famosam,actio
nem,instituere,non,potes ; pp · prid ·
id · mai · max · iiet · ael · css ·

β Id · a · leontogono ; libertae,quae,uo
luntate,patroni,aut,iure,nuptae
sunt,non,coguntur,officium,pa
tronis,suis,praestare ; pp · xiiii k ·

Figure 2. The second edition. Page from the printed version (1874) of Krüger's apograph of the sixth-century Verona palimpsest, containing C. 6.4.4.23-6.6.2, showing text in Greek and Latin with full constitution headings and subscripts.

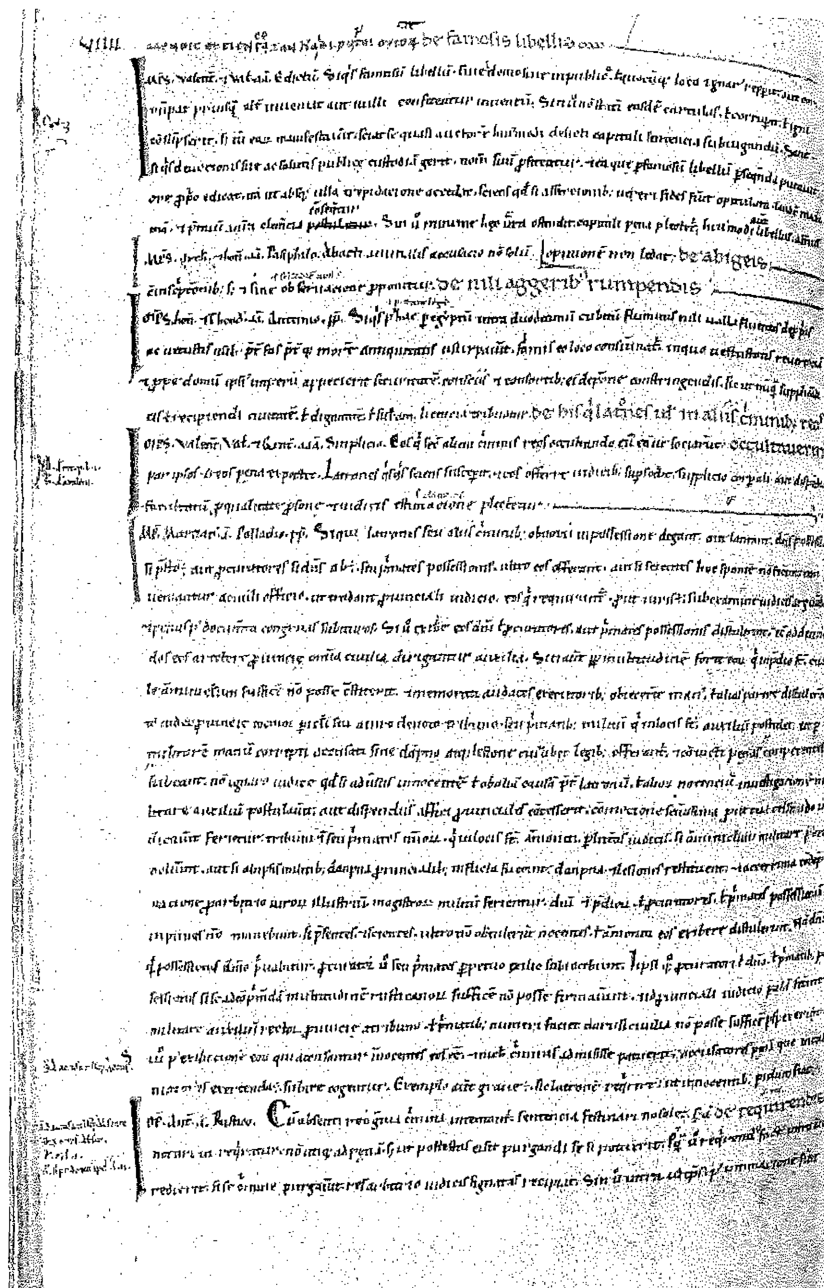


Figure 3. The 'Epitome'. Avranches Ms 141, f. 186ᵛ (early twelfth century). Page from a Codex 'epitome'-style manuscript, containing C. 9.36.1–9.40.1, with rubricated titles, headings to constitutions but no subscripts, and with some marginal and interlinear glosses. There is a strange attempt to copy Greek at the top left.

Figure 4. The Vulgate. Miami University, Ohio, KJA1192.22.D47 1300z (c.1300). A page from a medieval Vulgate of the Codex, containing C. 7.7.2.7b–7.8.5, illuminated with rubricated titles, attentuated headings, and no subscripts, surrounded on all sides by the gloss.

Codicis lib.I. Tit. II.

τοῦ αὐτοῦ ὀνόματος ἐν ἐκείνῃ τῇ πόλει ἢ τῇ περιοικίδι εὑρεθείη πολλὰ καθεστῶτα, εἰ μὲν ἔν τινι τούτων συχνῶς ὁ τελευτήσας ἐφοίτα καί τινα πρὸς αὐτὸ μείζονα εἶχε προσπάθειαν, ἐκεῖνο δοκεῖν καταλελεῖφθαι τὸ πρεσβεῖον. εἰ δὲ οὐδὲν τοιοῦτον εὑρεθείη, μᾶλλον ἐκ τῶν τοῦ αὐτοῦ ὀνόματος ἐνδεεστέρῳ οἴκῳ καὶ δεομένῳ βοηθείας τυχεῖν δοκεῖ τὸ τοιοῦτον καταλελεῖφθαι πρεσβεῖον, ἤτοι τὴν κληρονομίαν. Dat. XIII. Kal. Nouemb. C.P. Lāpa. & Orest. v v. c c. Cons.

Eadem constitutio latinè reddita per Anto. Contium.

QVoniam in plerisque nuper testamentis inuenimus eiusmodi *institutiones quibus ex asse quis scripserat* Dominū nostrū Iesum Christū heredē nō adiiciens oratorium aut templum vllum, aut ipsum Dominum Iesum Christum ex semisse vel aliis inæqualibus partibus, alium vero quempiam ex dimidia vel alia portione, Iam enim in complura huiusmodi testamenta incidimus, cum videremus multam exinde incertitudinem secundum veteres leges exoriri, Nos hoc etiam emendantes sancimus, si quidem dominum nostrum Iesum Christum scripsit quis heredem vel ex asse vel pro parte, manifeste videri ipsius ciuitatis vel castelli vel agri in quo constitutus erat defunctus, ecclesiam sanctissimam institutam esse heredem, & hereditatem peti debere per Deo amātissimos ei⁹ œconomos ex asse vel pro parte ex qua heres institutus est, eodem obtinente & si legatum vel fideicommissum relictum sit, vt ipsa competant sanctissimis ecclesiis ad hoc quidem vt ad pauperum alimoniam conferant. Si vero vnius ex archāgelis meminerit, vel venerandorum martyrum, nulla facta ædis mētione (quod quidē etiam nouimus à quodam factum qui ex illustribus erat, & in omni verborum & legum doctrina spectatissimus) si quidem aliquis sit in illa ciuitate vel vicinia eius venerabilis locus in honorem illius reuerentissimi archangeli, vel martyris constructus, videri ipsum scriptum esse heredem. si vero nullus talis locus est in illa ciuitate viciniave eius, tunc venerabilia loca quæ in metropoli eius sunt videri instituta, & si quidem in ipsa metropoli inuentus fuerit talis aliquis locus, illi proculdubio videri relictam vel hereditatem vel legatum vel fideicommissum. Si vero illic nullus talis locus apparet, denuo ecclesias quæ in illo loco sunt, capere id debere. Sane sanctissimis ecclesiis omnes aliæ domus cedunt, nisi constet defunctum aliud nomen sensisse & voluisse adiicere, & aliud dixisse

De sacrosanctis ecclesiis &c. 16

dixisse. nam tale quid accidisse & nos scimus in cuiusdam Pontici testamento, & tunc etiam constitutum fuisse vt contra scriptum veritas obtineret. Si autem testator certum locum non apposuerit, multa autem templa eiusdem tituli aut nominis in illa ciuitate inuenta fuerunt vel eius vicinia, si quidem in aliquo illorum defunctus frequenter versabatur, & maiorē erga illud habebat affectionem, illi templo videri legatum relictum. Si vero nihil tale inuenietur, maxime ei templo ex multis eiusdem nominis videatur relictum legatum vel hereditas, quod est cæteris indigentius, & magis opis & eleemosynæ egens. Dat. XIII. Kal. Nou. C P. Lampad. & Orest. v v. c c. Conss.

XVII. *Imp.* IVSTINIANVS. A. *Mennæ.* PP.

ILlud, quod ex veteribus legibus, licet obscurè positis, à quibusdam attentabatur, vt donationes super piis caussis factæ, licet minus in actis intimatæ essent, tamen valerent: certo & dilucido iure taxamus, vt in aliis quidem casibus iura vetera super intimādis donationibus intacta maneant. Si quis verò donationes vsque ad quingentos solidos in quibuscunque rebus fecerit, vel in sanctam ecclesiam, vel in xenodochium, vel in nosocomium, vel in orphanotrophium, vel in ptochotrophium, vel in gerontocomiū, [vel in curotrophium, vel in brephotrophium] vel in ipsos pauperes, vel in quamcunque ciuitatem: istæ donationes etiam citra actorum confectionem conualescant. Sin verò amplioris quantitatis donatio sit (excepta scilicet imperiali donatione) nō aliter valeat, nisi actis intimata fuerit: nulli danda licentia, quacunque alia caussa quasi pietatis iure subnixa, præter eas, quas *specialiter exposuimus*, introducenda, veterum scita super intimandis donationibus permutare.*

Inclusa desunt in manuscrip.

** Data videtur Iustiniano A. II. Cons.*

Res mobiles etiam sacræ non possunt alienari vel pignorari, nisi in redemptionem captiuorum, vel si debitum vrget quod aliunde solui non valet, & alteri ecclesiæ tantum: aliàs vindicantur extantes, & consumptarum æstimatio condicitur. Salyc.

XVIII. *Idem* A. *Demostheni.* P.P.

SAncimus, nemini licere sacratissima atque arcana vasa, vel vestem, cæteráque donaria quæ ad diuinam religionem necessaria sunt: quum etiam veteres leges ea quæ iuris *diuini sunt*, humanis nexibus non illigari sanxerint, vel ad venditionem, vel hypothecam, vel pignus trahere: sed ab iis qui hæc suscipere ausi fuerint, modis omnibus vindicari, tam per

Figure 5. Renaissance restoration 1. Two pages from Contius' twelve-book edition (Paris, 1562), including part of a restored Greek constitution with his own translation (showing C.1.2.25, 19, 21).



215 Codicis Lib. III. Tit. XIII. 216

DE IVRISDICTIONE OMNIVM iudicum, & de foro competenti.

TIT. XIII.

Figure 6. Renaissance restoration 2. A posthumous edition of Gothofredus in twelve books (Geneva, 1626), Latin only, still with extensive marginal gloss (showing C. 3.12.5(6)–3.13.2).

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Zachariä von Lingenthal, Carl Eduard (1850). "Die griechischen Scholien der Rescribirten Handschrift des Codex in der Bibliothek des Domcapitels zu Verona," *Zeitschrift für Geschichtliche Rechtswissenschaft* 15: 90–132.

Abbreviations

I. The *Corpus Iuris Civilis* of Justinian

C. — *Codex*, cited from Paul Krüger (ed.), *Corpus Iuris Civilis*, vol. II (9th stereotype edn., 1914; superior to later editions).

C^{1}. — The first Codex of Justinian, promulgated in 529 and almost entirely lost after it was replaced by the final version in 534. In subscripts to constitutions, the initial abbreviations refer to the process whereby they were promulgated, although the terminology is not necessarily stable: *S.* (*scripta or subscriptua*), "written" or "subscribed," the emperor's formal handwritten signature of the constitution; *D.* (*data*), "given," the emperor's official approval or the issuance of a text: *Acc.* (*accepta*), "received," when the recipient takes delivery of the text; *PP.* (*proposita*), "posted," the formal display of the constitution outside the emperor's residence or at some nearby public venue (for private rescripts), or in a prominent location in the receiving city (for letters or edicts); *Lecta*, "read," the public recital of a document, sometimes into a record of a hearing or assembly. *S.D.* signifies either the date of issuance (*sub die* or *scripta die*), or the date on which the constitution was written and given (*scripta et data*). See briefly Matthews, *Laying Down the Law* (2000), 180–187; Connolly, *Lives Behind the Laws* (2010), 44–45.

Const. — *Constitutio*. The Digest, Institutes, and Codex are accompanied by introductory constitutions explaining the nature and purpose of each work. These constitutions have their own titles, but are traditionally referred to by their opening words: for the Digest, the *Const. Deo Auctore*, the *Const. Omnem*, the *Const. Tanta*, and the *Const. Δέδωκεν*;

for the Institutes, the *Const. Imperatoriam Maiestatem*; and for the Codex, the *Const. Haec* and the *Const. Summa* (both issued for C^1 and then reused), and the *Const. Cordi.*

D. *Digesta*, cited from Theodor Mommsen (ed.), *Corpus Iuris Civilis*, vol. I (12th stereotype edn., 1911; substantially identical with later editions).

Inst. *Institutiones*, cited from Paul Krüger (ed.), *Corpus Iuris Civilis*, vol. I (12th stereotype edn., 1911; substantially identical with later editions).

Nov. *Novellae*, cited from Rudolf Schoell and Wilhelm Kroll (eds.), *Corpus Iuris Civilis*, vol. III (4th stereotype edn., 1912; substantially identical with later editions). (Justinian's *Corpus Iuris Civilis* is cited using a traditional numeration: in the case of the Codex, a book number, followed by a title number within the book and a fragment number within the title. Longer fragments (as well as the introductory constitutions and the Inst. titles) are broken into sections, where the opening section is cited as pr. = *principium* ("beginning") and the remaining sections numbered in sequence. Thus, C. 10.16.12.1 equals Codex Book 10, title 16, fragment 12, section 1.)

II. Other sources for Roman law

ARS Johnson *et al.*, *Ancient Roman Statutes* (1961).

B. or Bas. *Basilika*, cited from H. J. Scheltema and N. van der Wal (eds.), *Basilicorum Libri LX. Series A, Textus*, 8 vols. (1953–1988) and *Series B, Scholia*, 9 vols. (1953–1985). The *Basilika* is a ninth-century Byzantine law code based on the Justinianic *Corpus*, which it substantially reworks.

C. Greg. *Codex Gregorianus*, fragments cited from Paul Krüger, *Collectio Librorum Iuris Anteiustiniani: in Usum Scholarum*, vol. III (1890), 221–263, esp. 236–245. *Codex Gregorianus Visigothorum* (= *C. Greg. Visig.*) refers to the fragments contained in the *Breviarium Alarici* (= *Lex Romana Visigothorum*). New fragments are discussed in Simon Corcoran and Benet Salway,

"*Fragmenta Londiniensia Anteiustiniana*: Preliminary Observations," *Roman Legal Tradition* 8 (2012): 63–83 (accessible online). See also Tony Honoré, *Emperors and Lawyers*, 2nd edn. (1994), 139–185.

C.Th. *Codex Theodosianus*, cited from Theodor Mommsen, Paul Krüger, and Paul M. Meyer, *Theodosiani libri XVI cum Constitutionibus Sirmondianis et Leges Novellae ad Theodosianum Pertinentes*, 2 vols. (1905). The standard English translation is Clyde Pharr (ed.), and Theresa Sherrer Davidson and Mary Brown Pharr (collaborators), *The Theodosian Code and Novels, and the Sirmondian Constitutions: A Translation with Commentary, Glossary, and Bibliography* (1952).

Coll. Tripartita *Collectio Tripartita*, cited from N. van der Wal and B. H. Stolte, *Collectio Tripartita: Justinian on Religious and Ecclesiastical Affairs* (1994).

Coll., Collatio *Mosaicarum et Romanarum Legum Collatio*, cited from Robert M. Frakes, *Compiling the Collatio Legum Mosaicarum et Romanarum in Late Antiquity* (2011). Text also in *FIRA*, vol. II, 543–589.

Collectio *Collectio XXV Capitulorum*, cited from G. E. Heimbach, *ANEKDOTA*, vol II (1840) 145–201.[1]

Consultatio *Consultatio Veteris Cuiusdam Iurisconsulti*, cited from Paul Frédéric Girard and Félix Senn, *Textes de Droit Romain*, vol. I (7th ed. 1977) 605–623. Text also in *FIRA*, vol. II, 593–613.

Ed. Theodor. *Edictum Theodorici (Lex Romana Ostrogothorum)*, cited from Friedrich Bluhme, ed., *Monumenta Germaniae Historica: Legum Sectio I, vol. V.1: Leges Nationum Alamannorum* (1888) 145–179. Text also in *FIRA* vol. II, 682–710.

FIRA I–III *Fontes Iuris Romani Anteiustiniani*, vol. I: *Leges*, ed. Salvatore Riccobono (2nd edn. 1941); vol. II: *Auctores*, ed. Giovanni Baviera *et al.* (1940); vol. III: *Negotia*, ed. Vincenzo Arangio-Ruiz (1943; appendix 1968)

[1] A possible confusion here deserves note, at least for Krüger's edition of the Codex. *Coll.* for Krüger refers to both the *Collatio* and the *Collectio XXV Capitulorum*, while *Const.* refers to the *Collectio Tripartita*.

Frag. Vat.	*Fragmenta Quae Dicuntur Vaticana*, cited from Paul Krüger, Theodor Mommsen, and Wilhelm Studemund, eds., *Collectio Librorum Iuris Anteiustiniani: in Usum Scholarum*, vol. III (1890), 20–106. Text also in *FIRA*, vol. II, 460–540.
Gaius	*Gai Institutiones*, cited from M. David, *Gai Institutiones Secundum Codicis Veronensis Apographum Studemundianum et Reliquias in Aegypto Repertas* (ed. minor, 1964). Text also in *FIRA*, vol. II, 5–192.
Lex Rom. Burg.	*Lex Romana Burgundionum*, cited from Friedrich Bluhme, ed., *Monumenta Germaniae Historica: Legum Sectio I, vol. II.1: Leges Nationum Germanicarum* (1892), 123–163. Text also in *FIRA* vol. II, 713–750.
Nomocanon	*Nomocanon XIV Titulorum*, cited from I. B. Pitra, *Iuris Ecclesiastici Graecorum Historia et Monumenta*, vol. II (1868), 433–640.
Not. Dig.	*Notitia Dignitatum*, cited from Otto Seeck, *Notitia Dignitatum* (1876); it is divided into *In Partibus Occidentis* (*c.* 420 CE) and *In Partibus Orientis* (*c.* 395 CE). There are several more recent editions.
Nov. Marc.	*Novellae Marciani*, cited from C.Th. above.
Nov. Theod.	*Novellae Theodosiani*, cited from C.Th. above.
Nov. Val.	*Novellae Valentiniani*, cited from C.Th. above.
Paul, *Sent.*	*Pauli Sententiarum Libri Quinque*, cited from the edition of Emil Seckel and Bernard Kübler, in Philipp Eduard Huschke, Seckel, and Kübler, *Iurisprudentiae Anteiustinianae Reliquiae*, vol. II.1 (6th edn. 1911), 1–161. Text also in *FIRA*, vol. II, 319–417. Detlef Liebs, "Die Pseudopaulinischen Sentenzen II," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 113 (1996), 132–242, has a much superior reconstruction, with the fragments renumbered.
PLRE I	A. H. M. Jones, J. R. Martindale, and J. Morris, eds., *The Prosopography of the Later Roman Empire, vol. I: AD 260–395* (1971)
PLRE II	J. R. Martindale, ed., *The Prosopography of the Later Roman Empire, vol. II: AD 395–527* (1980)

PLRE III	J. R. Martindale, ed. *The Prosopography of the Later Roman Empire, vol. III: AD 527–641* (1992)
Rhopai	Cited from Francesco Sitzia, *Le Rhopai* (1984).
Sch. Sinaitica	*Scholia Sinaitica ad Ulpiani Libros ad Sabinum*, cited from Salvatore Riccobono, *Scholia Sinaitica* (1898). Text also in *FIRA*, vol. II, 637–652.
Sirm.	*Constitutiones Sirmondianae*, cited from C.Th. above.
Theophilus	*Theophili Antecessoris Paraphrasis Institutionum*, cited from Johannes Lokin, Roos Meijering, Bernard Hendrik Stolte, and Nicolaas van der Wal, eds., and Alexander Falconer Murison, trans., *Theophili Antecessoris Paraphrasis Institutionum* (2010).
XII Tab.	*Duodecim Tabulae* (*Twelve Tables*), cited from Paul Frédéric Girard and Félix Senn, *Les Lois des Romains* (1977), 22–73. See also Michael H. Crawford, *Roman Statutes*, vol. II (1996), 555–721, with somewhat different numbering.
Ulp. *Tit.*	*Ulpiani Liber Singularis Regularum* (*Tituli ex Corpore Ulpiani*), cited from Martin Avenarius, *Der Pseudo-Ulpianische Liber Singularis Regularum* (2005), based mainly on Paul Krüger, "Ulpiani Liber Singularis Regularum," in Paul Krüger, Theodor Mommsen, and Wilhelm Studemund, *Collectio Librorum Iuris Anteiustiniani: in Usum Scholarum*, vol. II (1878), 1–38.

On sources for Roman law generally, still incomparable is Leopold Wenger, *Die Quellen des Römischen Rechts* (1953). Most major Latin sources are available online in the *Roman Law Library*: http://webu2.upmf-grenoble.fr/DroitRomain. See also *Roman Law Resources*: http://iuscivile.com. Greek sources are more difficult to locate online; the numerous Greek constitutions of Justinian's Codex, for instance, involve much unusual grammar and vocabulary (see Avotins, (1989)), but they are not included in the *Roman Law Library* nor (astonishingly) in the *Thesaurus Linguae Graecae*.

The Codex of Justinian: Text and Translation

De Novo Codice Componendo

Imperator Iustinianus Augustus ad Senatum. **pr.** Haec, quae necessario corrigenda esse multis retro principibus visa sunt, interea tamen nullus eorum hoc ad effectum ducere ausus est, in praesenti rebus donare communibus auxilio dei omnipotentis censuimus et prolixitatem litium amputare, multitudine quidem constitutionum, quae tribus codicibus Gregoriano et Hermogeniano atque Theodosiano continebantur, illarum etiam, quae post eosdem codices a Theodosio divinae recordationis aliisque post eum retro principibus, a nostra etiam clementia positae sunt, resecanda, uno autem codice sub felici nostri nominis vocabulo componendo, in quem colligi tam memoratorum trium codicum quam novellas post eos positas constitutiones oportet.

1. Ideoque ad hoc maximum et ad ipsius rei publicae sustentationem respiciens opus efficiendum elegimus tanto fastigio laborum tantaeque sollicitudini sufficientes IOHANNEM virum excellentissimum ex quaestore sacri nostri palatii consularem atque patricium, LEONTIUM virum sublimissimum magistrum militum ex praefecto praetorio consularem atque patricium, PHOCAM virum eminentissimum magistrum militum consularem atque patricium, Basilidem virum excellentissimum ex praefecto praetorio Orientis et patricium, THOMAM virum gloriosissimum quaestorem sacri nostri palatii et ex consule, TRIBONIANUM virum magnificum magisteria dignitate inter agentes decoratum, CONSTANTINUM virum illustrem comitem largitionum inter agentes et magistrum scrinii libellorum sacrarumque cognitionum, THEOPHILUM virum clarissimum comitem sacri nostri consistorii et iuris in hac alma urbe doctorem, DIOSCORUM et PRAESENTINUM disertissimos togatos fori amplissimi praetoriani.

2. Quibus specialiter permisimus resecatis tam supervacuis, quantum ad legum soliditatem pertinet, praefationibus quam similibus et contrariis, praeterquam si iuris aliqua divisione adiuventur, illis etiam,

The Introductory Constitutions

edited by John Noël Dillon and Bruce W. Frier

Compilation of the New Codex[1]

Emperor JUSTINIAN *Augustus to the Senate.* **pr.** This material, which many past emperors have considered to be in urgent need of correction, though none of them, in the meantime, ventured to bring such a project to completion, We, with the aid of Almighty God, have now determined to provide for the common good: (namely,) to make lawsuits less long-winded by abridging the host of constitutions contained in the three Codices – the Gregorian, the Hermogenian, and the Theodosian – as well as those (constitutions) that, after these Codices, were issued by Theodosius of blessed memory and by other emperors in the past following him, and further those issued by Our Clemency; and by compiling, under Our auspicious name, a single Codex, in which should be collected both the constitutions of the three aforesaid Codices and the new constitutions issued after them.

1. And in order to accomplish this supreme work, which touches the preservation of the State itself, We have chosen men equal to such towering labors and so great a responsibility, namely, *vir excellentissimus* JOHN, ex-Quaestor of Our Imperial Palace, consular and patrician; *vir sublimissimus* LEONTIUS, Master of the Soldiers, consular and patrician; *vir eminentissimus* PHOCAS, Master of Soldiers, consular and patrician; *vir gloriosissimus* BASILIDES, ex-Praetorian Prefect of the East, and patrician; *vir gloriosissimus* THOMAS, Quaestor of Our Imperial Palace and ex-Consul; TRIBONIAN, *vir magnificus*, decorated with the rank of acting Master (of the Offices); *vir illustris* CONSTANTINE, acting Count of the Imperial Finances and Master of the Bureau of Petitions and Imperial Appeals; *vir clarissimus* THEOPHILUS, Count of Our Imperial Council and Professor of Law in this Generous City; DIOSCORUS and PRAESENTINUS, most learned advocates in the Most Exalted Praetorian Court.

2. We have given them specific permission to cut away prefaces that are superfluous as regards the completeness of the laws, as well as all repetitions and contradictions unless they contain a legal distinction, as well as whatever

[1] This constitution is named, from its first word, the *Constitutio Haec.* It authorizes the so-called First Codex (*Codex Novus*), which in 534 was replaced by the Codex that is today preserved.

quae in desuetudinem abierunt, certas et brevi sermone conscriptas ex isdem tribus codicibus, novellis etiam constitutionibus leges componere et congruis subdere titulis, adicientes quidem et detrahentes, immo et mutantes verba earum, ubi hoc rei commoditas exigebat, colligentes vero in unam sanctionem, quae in variis constitutionibus dispersa sunt, et sensum earum clariorem efficientes, ita tamen, ut ordo temporum earundem constitutionum non solum ex adiectis diebus et consulibus, sed etiam ex ipsa compositione earum clarescat, primis quidem in primo loco, posterioribus vero in secundo ponendis et, si quae earum sine die et consule in veteribus codicibus vel in his, in quibus novellae constitutiones receptae sunt, inveniantur, ita his ponendis nullaque dubietate super generali earum robore ex hoc orienda, sicut et illas vim generalis constitutionis obtinere palam est, quae ad certas personas rescriptae vel per pragmaticam ab initio datae eidem novo codici propter utilitatem sanctionis inditae fuerint.

3. Haec igitur ad vestram notitiam ferre properavimus, ut sciatis, quanta nos diurna super rerum communium utilitate cura sollicitat, studentes certas et indubitatas et in unum codicem collectas esse de cetero constitutiones, ut ex eo tantummodo nostro felici nomine nuncupando codice recitatio constitutionum in omnibus ad citiores litium decisiones fiat iudiciis.

Data id. Febr. Constantinopoli dn. Iustiniano pp. A. II cons.

De Iustiniano Codice Confirmando

Imperator Iustinianus Pius Felix Inclitus Victor ac Triumphator Semper Augustus Menae viro illustri Praefecto Praetorio II Ex Praefecto Huius Almae Urbis ac patricio. **pr.** Summa rei publicae tuitio de stirpe duarum rerum armorum, atque legum veniens vimque suam exinde muniens felix Romanorum genus omnibus anteponi nationibus omnibusque dominari tam praeteritis effecit temporibus quam deo propitio in aeternum efficiet. istorum etenim alterum alterius auxilio semper viguit, et tam militaris res legibus in tuto collocata est, quam ipsae leges armorum praesidio servatae sunt. merito igitur ad prima communium rerum sustentationis semina nostram mentem nostrosque labores referentes militaria quidem agmina multiplicibus et omnem providentiam continentibus modis correximus tam veteribus ad meliorem statum brevi

has fallen out of use; and to arrange unambiguous and concisely worded laws out of the three Codices and the new constitutions, and to put them under appropriate titles; adding and striking out, even changing their words where the suitability of the material has required this; to collect into one ordinance provisions scattered throughout various constitutions, and to clarify their meaning – provided that the chronological order of these constitutions shall appear clearly not only by indication of days and consuls (their dates), but also by the arrangement itself, the older constitutions being put first with the later ones following. And if any constitutions without day or consul are discovered in the ancient Codices or where the new constitutions are collected, they too shall be inserted, and no doubt as to their general force shall arise from this fact, just as it is clear that rescripts which were written to specific persons or were originally issued by pragmatic sanction[2] have the force of a general constitution and have been included in the New Codex on account of the usefulness of the enactment they contain.

3. We have hastened, therefore, to bring these matters to your attention, so that you may know the extent of Our daily solicitude for the common welfare, desiring that constitutions shall hereafter be certain, authoritative, and collected in one Codex. Thus, on the basis of this Codex to be called by Our own auspicious name, the citation of constitutions may expedite the resolution of litigation in all trials.

Given February 13, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, Consul for the second time (528).

Confirmation of the Codex of Justinian[3]

Emperor Justinian, Pious, Fortunate, Renowned, Victor and Triumpher, Ever Augustus, to vir illustris *Menas, Praetorian Prefect for the second time, ex-Prefect of this Generous City, and patrician.* **pr.** The supreme safeguard of the State, stemming from two sources, (namely) arms and laws, and through them reinforcing its vitality, has made the fortunate Roman race preeminent above all peoples in the past, and, God willing, will do so forever. Each of these (arms and laws) has always flourished through the help of the other; as military affairs are safeguarded by the laws, so the laws themselves are maintained by the protection of arms. We have, therefore, fittingly turned Our thought and labor to the basic elements for preservation of the commonwealth and have improved the armed forces

[2] Blume: "An imperial decree or order or constitution addressed to a community, guild, municipality or other body of men concerning their public affairs." The issue here is that a constitution, though narrowly directed to one recipient, may still have, on occasion, the force of a general law.

[3] The *Constitutio Summa* (from its first word) promulgates the First Codex as law.

tempore reductis, quam novis non solum exquisitis, sed etiam recta dispositione nostri numinis sine novis expensis publicis constitutis, legum vero praesidia primo servando positas, deinde novas ponendo firmissima subiectis effecimus.

1. Sed cum sit necessarium multitudinem constitutionum tam in tribus veteribus codicibus relatarum quam post eorum confectionem posterioribus temporibus adiectarum ad brevitatem reducendo caliginem earum rectis iudicum definitionibus insidiantem penitus extirpare, ad hoc commune praestandum beneficium deo praesule prono animo nos dedidimus et electis viris gloriosissimis tam doctrina legum quam experientia rerum studioque pro re publica indefesso et laudabili proposito polientibus sub certis finibus magnum laborem commisimus, per quem tam trium veterum Gregoriani et Hermogeniani atque Theodosiani codicum constitutiones quam plurimas alias post eosdem codices a Theodosio divinae memoriae ceterisque post eum retro principibus, a nostra etiam clementia positas in unum codicem felici nostro vocabulo nuncupandum colligi praecepimus: tollendis quidem tam praefationibus nullum suffragium sanctioni conferentibus quam contrariis constitutionibus, quae posteriore promulgatione vacuatae sunt, similibus etiam praeter eas, quae eadem paene sanciendo divisionem iuris aliquam facere noscuntur, ex qua dividendo vetera novum aliquid nasci videtur, multis insuper aliis ad rectam huiusmodi codicis compositionem pertinentibus isdem prudentissimis viris a nostro numine mandatis.

2. Et nostro studio pro re publica instituto suum praesidium deus omnipotens adnuit ad istum enim laborem et tanti operis consummationem electi vir excellentissimus ex quaestore nostri palatii consularis ac patricius Iohannes et vir sublimissimus ex praefecto praetorio consularis atque patricius Leontius virque eminentissimus magister militum consularis atque patricius Phocas et vir excellentissimus ex praefecto praetorio per Orientem et patricius et nunc praefectus praetorio per Illyricum Basilides et vir gloriosissimus quaestor sacri nostri palatii et ex consule Thomas, immo et vir magnificus magisteria dignitate inter agentes decoratus Tribonianus virque illustris comes largitionum inter agentes et magister scrinii libellorum et sacrarum cognitionum Constantinus et vir illustris ex magistro et iuris doctor in hac alma urbe Theophilus, viri etiam disertissimi togati amplissimi fori tuae sublimitatis Dioscorus atque Praesentinus omnia, quae eis mandavimus, cum sedula et pervigili industria moderataque digestione cum eundem novum Iustinianum codicem nobis obtulerunt ita compositum, ut et rebus profuturus esset communibus et nostro convenisset imperio.

through manifold measures abounding in forethought. We both swiftly restored current troops to a better state, and not only recruited new ones but also established them at no additional public expense, through the right management of Our Divine Majesty. As for the bastions of the laws: first by preserving established laws, then by establishing new laws, We have made them impregnable for Our subjects. 1. But since it is necessary, by abridging the multitude of constitutions recorded in the three ancient Codices and those added in later times after their completion, to eradicate entirely the obscurity that undermines correct decisions by judges, We, by the grace of God, earnestly devoted Ourselves to providing this universal benefit; and, having chosen men of the greatest renown for their knowledge of the laws and experience in affairs and distinguished for their indefatigable patriotism and zeal, We have entrusted to them, within specified restrictions, this great task, whereby We directed that the constitutions of the three ancient Codices – the Gregorian, Hermogenian, and Theodosian – and as many others enacted, after (the compilation of) these Codices, by Theodosius of blessed memory and by other past emperors after him, as well as by Our Clemency, be collected into one Codex that is to be called by Our auspicious name. The prefaces, which contribute nothing to an enactment, are to be removed, as well as contradictory constitutions that have been annulled by a subsequent enactment, and also repetitions except for those that, though enacting nearly the same thing, yet are recognized as making some legal distinction whereby, by refining the old, something new seems to emerge. Many other things pertinent to the proper compilation of this Codex have been entrusted by Our Divine Majesty to these most learned men.

2. And Almighty God has granted his support to Our zealous undertaking on behalf of the State. For there was chosen, for the labor and completion of such great work, *vir excellentissimus* JOHN, ex-Quaestor of Our Palace, consular and patrician; and *vir sublimissimus* LEONTIUS, ex-Praetorian Prefect, consular and patrician; and *vir eminentissimus* PHOCAS, Master of the Soldiers, consular and patrician; and *vir excellentissimus* BASILIDES, ex-Praetorian Prefect of the Orient, patrician and now Praetorian Prefect of Illyria; and *vir gloriosissimus* THOMAS, Quaestor of Our Imperial Palace and ex-consul; and, indeed, *vir magnificus* TRIBONIAN, decorated with the rank of acting Master (of the Offices); and *vir illustris* CONSTANTINE, acting Count of the Imperial Finances and Master of the Bureaus of Petitions and Appeals; and *vir illustris* THEOPHILUS, ex-Master and Professor of Law in this Generous City; and DIOSCORUS and PRAESENTINUS, most learned advocates in the Most Exalted Court of Your Sublimity. They, with diligent and careful labor and judicious reflection, have with God's help brought to a happy conclusion everything that We entrusted to them, and have delivered to Us this new Codex of Justinian, composed in such a way that it should both benefit the common welfare and conform to Our rule.

3. Hunc igitur in aeternum valiturum iudicio tui culminis intimare prospeximus, ut sciant omnes tam litigatores quam disertissimi advocati nullatenus eis licere de cetero constitutiones ex veteribus tribus codicibus, quorum iam mentio facta est, vel ex iis, quae novellae constitutiones ad praesens tempus vocabantur, in cognitionalibus recitare certaminibus, sed solis eidem nostro codici insertis constitutionibus necesse esse uti, falsi crimini subdendis his, qui contra haec facere ausi fuerint, cum sufficiat earundem constitutionum nostri codicis recitatio adiectis etiam veterum iuris interpretatorum laboribus ad omnes dirimendas lites, nullaque dubitatione emergenda vel eo, quod sine die et consule quaedam positae sunt, vel quod ad certas personas rescriptae sunt, cum omnes generalium constitutionum vim obtinere procul dubio est. sed et si quae earundem constitutionum detractis vel additis vel permutatis certis verbis, quod et ipsum praefatis excellentissimis viris specialiter permisimus, compositae sunt, nulli concedimus ex libris veteris iuris interpretatorum aliter eas habentes recitare, sed solam iuris interpretatoris sententiam commendare, ut tunc teneat, cum minime adversetur eiusdem nostri codicis constitutionibus.

4. Si quae vero pragmaticae sanctiones, quae minime in eodem nostro codice receptae sunt, civitatibus forte vel corporibus vel scholis vel scriniis vel officiis vel alicui personae impertitae sunt, eas, si quidem aliquod privilegium speciali beneficio indulgent, omni modo ratas manere, sin vero pro certis capitulis factae sunt, tunc tenere, cum nulli nostri codicis adversantur constitutioni, praecipimus. sed et si qua regesta in tui culminis iudicio vel in aliis iudiciis civilibus vel militaribus vel apud principia numerorum pro publicis expensis vel quibuscumque titulis ad publicum pertinentibus posita sunt, ea etiam, prout communis rei commoditas exigit, firma esse censemus.

5. Illustris igitur et magnifica auctoritas tua pro innato sibi circa rem publicam nostrasque dispositiones explendas studio ad omnium populorum notitiam eundem codicem edictis ex more propositis pervenire faciat, ipso etiam textu codicis in singulas provincias nostro subiectas imperio cum nostra divina subnotatione mittendo ut eo modo ad omnium notitiam eiusdem nostri codicis constitutiones valeant pervenire, ut extantibus festis diebus, id est ex die sexto decimo kalendas Maias praesentis septimae indictionis consulatu Decii viri clarissimi recitationes constitutionum ex eodem nostro codice fiant.

Data VII id. April. Constantinopoli Decio viro clarissimo consule.

3. This Codex, which will endure forever, We have seen fit to communicate to the court of Your Highness, so that all litigants and learned lawyers may know that they will not hereafter be permitted, in court proceedings, to cite the constitutions of the three ancient Codices already mentioned, or the constitutions hitherto called "new" (*novellae*); instead, they are required to use only the constitutions included in Our Codex. Persons who dare to violate these provisions shall be subject to prosecution for forgery (*falsum*), since citation of these same constitutions in Our Codex, together with the works of the ancient interpreters of the law,[4] suffices to settle all lawsuits, and no doubt can arise either because some of the constitutions are without day and consul, or because they are written to specific individuals, since all of them have, without question, the force of general constitutions. And if some of the constitutions were composed by subtracting, adding, or changing certain words, which We have expressly permitted the aforesaid *viri excellentissimi* to do, We allow no one to recite them out of the books of the ancient interpreters of the law, which present different texts (of the constitutions); but one may cite only the opinion of the interpreter of the law, which shall prevail as long as it does not contradict the constitutions of Our Codex.

4. If any pragmatic sanctions, not collected in this Our Codex, have, perchance, been issued to cities, legal persons, groups, bureaus, offices, or any person, they shall remain entirely in force if they grant any privilege by special favor; but if issued on specific points (of law), We order that they shall be valid only if not contrary to any constitution of Our Codex. Also, if any records (*regesta*)[5] are found in the court of Your Highness, or in other civil or military courts or in the headquarters of the army, relating to public expenses or to any other public matters, We ordain that these, too, shall remain in force to the extent that the public advantage requires.

5. Your Illustrious and Magnificent Authority will, therefore, in accord with your inborn zeal for the State and for executing Our commands, bring the said Codex to the attention of all peoples through edicts published in the customary way, and send the text of the Codex, with Our imperial signature, to every province under Our sway, in order that the constitutions of Our Codex may thereby become known to all, (and) that citations of the constitutions in Our Codex may begin from the coming holidays, that is to say, from the April 16 on, of the current seventh indiction in the consulship of Decius, *vir clarissimus*.

Given April 7, at Constantinople, in the consulship of vir clarissimus *Decius (529).*

[4] In 529, Justinian refers to the uncodified writings of the Roman jurists, which were later to be authoritatively recast in the Digest (530–533).

[5] Blume: "These were the records of an official ... The records here mentioned, were doubtless those that were made up from orders directed to the official, relating to expenses and other similar matters, and were more in the nature of orders rather than laws."

De Emendatione Codicis Iustiniani et Secunda Eius Editione

In nomine Domini Nostri Ihesu Christi Imperator Caesar Flavius Iustinianus Alamannicus Gothicus Francicus Germanicus Anticus Alanicus Vandalicus Africanus Pius Felix Inclitus Victor ac Trimphator Semper Augustus Senatui Urbis Constantinopolitanae S. **pr.** Cordi nobis est, patres conscripti, semper nostri animi curas rebus omnibus avidissime impendere, ut nihil a nobis coeptum imperfectum relinquatur. igitur in primordio nostri imperii sacratissimas constitutiones, quae in diversa volumina fuerant dispersae et quam plurima similitudine nec non diversitate vacillabant, in unum corpus colligere omnique vitio purgare proposuimus. et hoc iam per viros excelsos et facundissimos perfectum est et a nobis postea confirmatum: quod geminae constitutiones nostrae quae ante positae sunt ostendunt.

1. Postea vero cum vetus ius considerandum recepimus, tam quinquaginta decisiones fecimus quam alias ad commodum propositi operis pertinentes plurimas constitutiones promulgavimus, quibus maximus antiquarum rerum articulus emendatus et coartatus est omneque ius antiquum supervacua prolixitate liberum atque enucleatum in nostris institutionibus et digestis reddidimus. **2.** Sed cum novellae nostrae tam decisiones quam constitutiones, quae post nostri codicis confectionem latae sunt, extra corpus eiusdem codicis divagabantur et nostram providentiam nostrumque consilium exigere videbantur, quippe cum earum quaedam ex emersis postea factis aliquam meliore consilio permutationem vel emendationem desiderabant, necessarium nobis visum est per TRIBONIANUM virum excelsum magistrum ex quaestore et ex consule, legitimi operis nostri ministrum, nec non virum magnificium quaestorium et Beryti legum doctorem DOROTHEUM, MENAM insuper et CONSTANTINUM et IOHANNEM viros eloquentissimos togatos fori amplissimae sedis easdem constitutiones nostras decerpere et in singula discretas capitula ad perfectarum constitutionum soliditatem competentibus supponere titulis et prioribus constitutionibus eas adgregare.

3. Supra dictis itaque magnificis et prudentissimis viris permisimus haec omnia facere et, si qua emendatione opus fieret, hanc facere non titubante animo, sed nostra auctoritate fretos, constitutiones vero superfluas vel ex posterioribus sanctionibus nostris iam vacuatas, vel si quae similes vel contrariae invenirentur, circumducere et a prioris codicis congregatione separare et tam imperfectas replere quam nocte obscuritatis

Correction of the Codex of Justinian and its second edition[6]

In the name of Our Lord Jesus Christ, the Emperor Caesar Flavius JUSTINIAN, *Alamannicus, Gothicus, Francicus, Germanicus, Anticus, Alanicus, Vandalicus, Africanus, pious, fortunate, famous, victorious, and triumphant, Ever Augustus, to the Senate of the City of Constantinople, greetings.* **pr.** We have it at heart, conscript Senators, to direct the concerns of Our thoughts always most earnestly on all matters, so that nothing We undertake should be left incomplete. Therefore We proposed at the beginning of Our reign to collect into one compendium, and to cleanse of every fault, the imperial constitutions that were scattered through various volumes and that wavered under frequent repetition and even contradiction (i.e., were indecisive as law). This collection has already been completed by eminent and most eloquent men, and thereafter confirmed by Us, as Our two preceding constitutions show.

1. But after We came to consider the ancient law,[7] We made Fifty Decisions and promulgated many other constitutions for the betterment of the proposed work, and thereby a very large portion of the old legal system was corrected and shortened, and We redacted all of the ancient law, freed from verbosity and reduced to its core, in Our Institutes and Digest. **2.** But since Our new legislation (*novellae*), both judicial decisions and constitutions made after the completion of Our Codex, were scattered outside the compendium of this same Codex and appeared to demand Our care and consideration, especially since some of the laws, by reason of facts arising later and after fuller deliberation, required some change or correction, We thought it necessary – through (the agency of) *vir excelsus* TRIBONIAN, Master (of the Offices), ex-Quaestor, ex-Consul, promoter of Our legal work; along with *vir magnificus* DOROTHEUS, Quaestor and Professor of Law at Beirut; and MENAS, CONSTANTINE, and JOHN, most eloquent advocates in the Most Exalted (Praetorian) Court – to gather Our constitutions, to distribute them into individual chapters and insert them under titles relevant to the content of the completed constitutions, and to add them to the former constitutions.

3. We have permitted the aforesaid magnificent and most learned men to do all this, and, if there should be any need for correction, to make it unhesitatingly, bolstered by Our authority: to delete and discard from the collection of the prior Codex superfluous constitutions, or those repealed by Our subsequent decrees, or if any repetitions or contradictions are found; to supplement incomplete constitutions, and to illuminate with the new light of explication those enveloped in dismal obscurity – in order not only that the path of the Institutes and Digest might lie clear and intelligible, but also that the full brilliance of the constitutions of Our Codex may shine forth for all, leaving nothing

[6] The *Constitutio Cordi* of 534, promulgating the (second) Codex as law.

[7] I.e., began to compile the Digest (*vetus ius*).

obductas nova elimationis luce retegere, ut undique non solum institutionum et digestorum via dilucida et aperta pateret, sed etiam constitutionum nostri codicis plenum iubar omnibus clareat, nulla penitus nec simili nec diversa nec inusitata relicta, cum nemini venit in dubium, quod repetita praelectio probavit, hoc satis validum satisque esse formosum. in antiquis etenim libris non solum primas editiones, sed etiam secundas, quas repetitae praelectionis veteres nominabant, subsecutas esse invenimus, quod ex libris Ulpiani viri prudentissimi ad Sabinum scriptis promptum erat quaerentibus reperire.

4. His igitur omnibus ex nostra confectis sententia, cum memoratus Iustinianus codex a praedictis gloriosissimis et facundissimis viris purgatus et candidus factus omnibus ex nostra iussione et circumductis et additis et repletis nec non transformatis, nobis oblatus est, iussimus in secundo eum ex integro conscribi non ex priore compositione, sed ex repetita praelectione, et eum nostri numinis auctoritate nitentem in omnibus iudiciis solum, quantum ad divales constitutiones pertinet, frequentari ex die quarto kalendarum Ianuariarum quarti nostri felicissimi consulatus et Paulini viri clarissimi, nulla alia extra corpus eiusdem codicis constitutione legenda, nisi postea varia rerum natura aliquid novum creaverit, quod nostra sanctione indigeat. hoc etenim nemini dubium est, quod, si quid in posterum melius inveniatur et ad constitutionem necessario sit redigendum, hoc a nobis et constituatur et in aliam congregationem referatur, quae novellarum nomine constitutionum significetur. **5.** Repetita itaque iussione nemini in posterum concedimus vel ex decisionibus nostris vel ex aliis constitutionibus, quas antea fecimus, vel ex prima Iustiniani codicis editione aliquid recitare: sed quod in praesenti purgato et renovato codice nostro scriptum inveniatur, hoc tantummodo in omnibus rebus et iudiciis et obtineat et recitetur. cuius scripturam ad similitudinem nostrarum institutionum et digestorum sine ulla signorum dubietate conscribi iussimus, ut omne, quod a nobis compositum est, hoc et in scriptura et in ipsa sanctione purum atque dilucidum clareat, licet ex hac causa in ampliorem numerum summa huius codicis redacta est.

6. Ut igitur, sanctissimi atque florentissimi patres, nostri labores vobis manifesti fiant et per omne tempus obtineant, hanc praesentem legem ad frequentissimum ordinem vestrum duximus destinandam.

D. XVI k. Dec. Constantinopoli dn. Iustiniano pp. A. IIII et Paulino vc. conss.

repetitive or contradictory or obsolete, since no one may doubt whether what has been approved in a second revision is sufficiently legitimate and normative. For in ancient books we find that not only first, but also second editions ensued – what the ancients called a "subsequent reading" – as inquirers may readily learn from the writings of the most learned Ulpian on Sabinus.

4. When all these things were, therefore, completed according to Our wish, and the aforesaid Codex of Justinian was delivered to Us by the aforementioned most eloquent *viri gloriosissimi* – after it was purged and rendered lucid, with all things, in accord with Our command, having been omitted, added, supplemented, and at times recast – We ordered again that it be copied afresh, not on the basis of the first composition, but from the "subsequent reading"; and, pursuant to the authority of Our Divine Majesty, insofar as imperial constitutions are concerned, it alone shall be consulted in all courts as of December 29 in Our fourth most auspicious consulship and that of Paulinus, *vir clarissimus*; and no constitution outside of the collection in this Codex shall be read, unless the changing nature of things should thereafter create something new demanding Our legislation. For no one may doubt that if anything better is found in the future, which must be put into a constitution, this may both be issued by Us and be recorded in another collection designated by the name of New Constitutions (*Novellae*). **5.** Repeating Our order, We permit no one hereafter to cite (in court) anything either from Our Decisions or from constitutions made by Us previously, or from the first edition of the Codex of Justinian; rather, the contents of Our present purged and revised Code, and they alone, shall be in force and be cited in all matters and in all courts. We have ordered that, as in the case of Our Institutes and Digest, the text shall be free of all ambiguous symbols (i.e., abbreviations), so that everything composed by Us may be pure and plain in the writing just as in the enactment itself, even though the size of this Codex has thereby been increased greatly.

6. Therefore, most holy and excellent Senators, in order that Our labors might become known to you and effective for all time, We have thought it best to address this present law to your plenary assembly.

Given November 16, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, Consul for the fourth time, and the vir clarissimus *Paulinus (534).*

In Nomine Domini Nostri Ihesu Christi
Codicis
Domini Nostri
Sacratissimi Principis
Repetitae Praelectionis

Liber Primus

I De Summa Trinitate et de Fide Catholica et Ut Nemo de Ea Publice Contendere Audeat

[1] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad populum urbis Constantinopolitanae.* **pr.** Cunctos populos, quos clementiae nostrae regit temperamentum, in tali volumus religione versari, quam divinum Petrum apostolum tradidisse Romanis religio usque ad nunc ab ipso insinuata declarat quamque pontificem Damasum sequi claret et Petrum Alexandriae episcopum virum apostolicae sanctitatis, hoc est ut secundum apostolicam disciplinam evangelicamque doctrinam patris et filii et spiritus sancti unam deitatem sub pari maiestate et sub pia trinitate credamus. **1.** Hanc legem sequentes Christianorum catholicorum nomen iubemus amplecti, reliquos vero dementes vesanosque iudicantes haeretici dogmatis infamiam sustinere, divina primum vindicta, post etiam motus nostri, quem ex caelesti arbitrio sumpserimus, ultione plectendos.

D. III k. Mart. Thessalonica Gratiano V et Theodosio AA. conss.

[2] *Idem AAA. Eutropio pp.* **pr.** Nullus haereticis mysteriorum locus, nulla ad exercendam animi obstinatioris dementiam pateat occasio. sciant omnes, etiamsi quid speciali quolibet rescripto per fraudem elicito ab huiusmodi hominum genere impetratum sit, non valere. arceantur

In the Name of Our Lord Jesus Christ,
of the Revised Edition
of the **Codex**
of Our Lord,
the Most Sacred Emperor
JUSTINIAN

First Book

edited by John Noël Dillon

First Title The High Trinity and the Catholic Faith, and That No One Shall Dare to Discuss It Publicly

[1][1] *Emperors GRATIAN, VALENTINIAN, and THEODOSIUS Augusti to the People of Constantinople.* **pr.** We desire that all peoples who are governed by the moderation of Our Clemency shall practice that religion which was handed down by the divine Apostle Peter to the Romans, as shown by the religion introduced by him and transmitted down to this day – the religion which, it is clear, is now followed by the (Roman) Pontiff Damasus, and by Peter, Bishop of Alexandria, a man of apostolic sanctity; that is, according to apostolic learning and the teaching of the evangelists, we shall believe in one deity of the Father and the Son and the Holy Spirit, in equal majesty and in a pious[2] Trinity. **1.** We order all who obey this law to embrace the name of Catholic Christians, and all others, whom We deem mad and insane, to suffer the infamy of heretical doctrine; they shall be stricken, first, by divine vengeance and, second, also by the vengeance of Our wrath, which We shall take in accordance with the judgment of Heaven.

Given February 28, at Thessalonica, in the consulship of Gratian, for the fifth time, and Theodosius, Augusti (380).

[2][3] *The same Augusti to Eutropius, Praetorian Prefect.* **pr.** No place for celebrating the mysteries, no opportunity for indulging the madness of an obstinate mind, shall be open to heretics. Let all know that even if some privilege has been obtained by such men in the form of a surreptitious rescript, it shall not be valid. The throngs of all heretics shall be kept from their unlawful congregations.

[1] = C.Th. 16.1.2; combine with C. 9.29.1.
[2] Beyond religiosity, the adjective *pius* in the Latin suggests the harmonious, quasi-familial relationship of all three members of the Trinity according to Nicene doctrine.
[3] = C.Th. 16.5.6.

cunctorum haereticorum ab illicitis congregationibus turbae: unius et summi dei nomen ubique celebretur: Nicaenae fidei dudum a maioribus traditae et divinae religionis testimonio atque adsertione firmatae observantia semper mansura teneatur. **1.** Is autem Nicaenae adsertor fidei et catholicae religionis verus cultor accipiendus est, qui omnipotentem deum et Christum filium dei uno nomine confitetur, deum de deo, lumen ex lumine, qui spiritum sanctum, quem ex summo rerum parente speramus et accipimus, negando non violat, apud quem intemeratae fidei sensu viget incorruptae trinitatis indivisa substantia, quae Graeco verbo οὐσία recte credentibus dicitur. haec profecto nobis magis probata, haec veneranda sunt. **2.** Qui vero isdem non inserviunt, desinant affectatis dolis alienum verae religionis nomen adsumere et suis apertis criminibus denotentur: ab omnium submoti ecclesiarum limine penitus arceantur, cum omnes haereticos illicitas agere intra oppida congregationes vetemus. ac si quid eruptio factiosa temptaverit, ab ipsis etiam urbium moenibus exterminato furore propelli iubemus, ut cunctis orthodoxis episcopis, qui Nicaenam fidem tenent, catholicae ecclesiae toto orbe reddantur.

D. IIII id. Ian. Constantinopoli Eucherio et Syagrio conss.

[3] *Αὐτοκράτορες Θεοδόσιος καὶ Οὐαλεντινιανός ΑΑ. Ὁρμίσδᾳ ἐπάρχῳ πραιτωρίων.* **1.** Θεσπίζομεν πάντα, ὅσα Πορφύριος ὑπὸ τῆς ἑαυτοῦ μανίας ἐλαυνόμενος ἢ ἕτερός τις κατὰ τῆς εὐσεβοῦς τῶν Χριστιανῶν θρησκείας συνέγραψε, παρ᾽ οἱῳδήποτε εὑρισκόμενα πυρὶ παραδίδοσθαι. πάντα γὰρ τὰ κινοῦντα τὸν θεὸν εἰς ὀργὴν συγγράμματα καὶ τὰς ψυχὰς ἀδικοῦντα οὐδὲ εἰς ἀκοὰς ἀνθρώπων ἐλθεῖν βουλόμεθα. **2.** Ἔτι θεσπίζομεν τοὺς ζηλοῦντας τὴν ἀσεβῆ Νεστορίου πίστιν ἢ τῇ ἀθεμίτῳ αὐτοῦ διδασκαλίᾳ ἀκολουθοῦντας, εἰ μὲν ἐπίσκοποι εἶεν ἢ κληρικοί, τῶν ἁγίων ἐκκλησιῶν ἐκβάλλεσθαι, εἰ δὲ λαϊκοί, ἀναθεματίζεσθαι. ἐξουσίαν ἐχόντων τῶν βουλομένων ὀρθοδόξων τῶν ἑπομένων τῇ εὐσεβεῖ ἡμῶν νομοθεσίᾳ δίχα φόβου καὶ βλαβῆς δημοσιεύειν αὐτοὺς καὶ ἐλέγχειν.

3. Ἐπειδὴ δὲ ἦλθεν εἰς τὰς εὐσεβεῖς ἡμῶν ἀκοάς, ὥς τινες διδασκαλίας τινὰς συνέγραψαν καὶ ἐξέθεντο ἀμφιβόλους καὶ οὐκ ἀκριβῶς συμφωνούσας τῇ ἐκτεθείσῃ ὀρθοδόξῳ πίστει παρὰ τῆς ἁγίας συνόδου τῶν συνελθόντων ἐν Νικαίᾳ καὶ ἐν Ἐφέσῳ ἁγίων πατέρων καὶ Κυρίλλου τοῦ τῆς εὐσεβοῦς μνήμης τοῦ γεγονότος τῆς μεγάλης Ἀλεξανδρέων πόλεως ἐπισκόπου, κελεύομεν τὰ μὲν γεγονότα τοιαῦτα συγγράμματα ἢ πρὸ τούτου ἢ καὶ

The name of the One and Supreme God shall be worshipped everywhere. The Nicene Creed, handed down to us long ago by our elders and strengthened by the testimony and affirmation of divine religion, shall be kept with enduring obedience. **1.** He moreover shall be considered a follower of the Nicene Creed and a true adherent of the Catholic religion, who confesses Almighty God and Christ the Son of God with one name, God from God, light from light; who does not, by denying him, dishonor the Holy Spirit that we hope for and receive from the Supreme Creator of all things; (and) in which, through the perception of untainted faith, thrives the indivisible essence of the uncorrupted Trinity, which those of correct belief call by the Greek word *ousía* ("essence"). This indeed is what We prefer, this is what should be worshipped. **2.** Those who do not conform thereto shall cease to usurp deceitfully the name of the true religion, which is not theirs, and shall be branded for their blatant crimes. They shall be removed and entirely barred from the threshold of all churches, for We forbid all heretics to hold unlawful meetings in towns. If any sectarian uprising should attempt anything, We order that their frenzy be banished and that they be driven from the very walls of the cities, so that the Catholic churches all over the world may be returned to all[4] orthodox bishops who abide by the Nicene Creed.

Given January 10, at Constantinople, in the consulship of Eucherius and Syagrius (381).

[3]*Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Hormisdas, Praetorian Prefect.* **1.** We decree that everything that Porphyrius, driven by his own madness, or anyone else has written against the pious religion of the Christians, regardless in whose possession it should be found, shall be consigned to the fire. For We wish that no writings that provoke God to anger and outrage souls should even come into the knowledge of men. **2.** We also decree that those who accept the impious faith of Nestorius or follow his nefarious doctrine shall, if they are bishops or clergymen, be expelled from the Holy Churches; if they are laypersons, they shall be anathematized. Orthodox Christians who so wish, in obedience to Our pious legislation, shall have the freedom to denounce and accuse them without fear or harm to themselves.

3. Since it has, moreover, come to Our pious ears that some persons have written and published ambiguous doctrines, which are not in exact harmony with the orthodox faith laid down by the holy council of the holy fathers who assembled at Nicaea and Ephesus, and by Cyril of blessed memory, formerly bishop of the great city of Alexandria, We order that such books, whether written before this time or now, and especially those of Nestorius, shall be burned and given over to complete destruction, so that they may not come to be read

[4] It is possible that *cunctis* means that churches will be returned *strictly* to orthodox bishops.

νῦν ἐμπίπρασθαι καὶ διαφερόντως τὰ Νεστορίου, καὶ τελείῳ ἀφανισμῷ παραδίδοσθαι, ὥστε μηδὲ εἰς ἀνάγνωσίν τινος ἐλθεῖν· τῶν τὰ τοιαῦτα συγγράμματα ἤτοι βιβλία ἔχειν καὶ ἀναγινώσκειν ἀνεχομένων τὴν ἐσχάτην τιμωρίαν ὑφορωμένων. τοῦ δὲ λοιποῦ μηδενὶ ἐξεῖναι παρὰ τὴν ἐκτεθεῖσαν πίστιν, καθάπερ εἰρήκαμεν, τὴν ἐν Νικαίᾳ καὶ ἐν Ἐφέσῳ λέγειν τι ἢ διδάσκειν.

D. XIIII k. Mart. Constantinopoli Zenone et Postumiano conss.

[4] *Imp. Marcianus A. Palladio pp.* **pr.** Nemo clericus vel militans vel alterius cuiuslibet condicionis de fide Christiana publice turbis coadunatis et audientibus tractare conetur in posterum, ex hoc tumultus et perfidiae occasionem requirens. **1.** Nam iniuriam facit iudicio reverentissimae synodi, si quis semel iudicata ac recte disposita revolvere et publice disputare contendit, cum ea, quae nunc de Christiana fide a sacerdotibus, qui Chalcedone convenerunt, per nostra praecepta statuta sunt, iuxta apostolicas expositiones et instituta sanctorum patrum trecentorum decem et octo et centum quinquaginta definita esse noscuntur. **2.** Nam in contemptores huius legis poena non deerit, quia non solum contra fidem vere expositam veniunt, sed etiam Iudaeis et paganis ex huiusmodi certamine profanant veneranda mysteria. **3.** Igitur si clericus erit, qui publice tractare de religione ausus fuerit, consortio clericorum removebitur: si vero militia praeditus sit, cingulo spoliabitur: ceteri etiam huiusmodi criminis rei, si quidem liberi sint, de hac sacratissima urbe pellentur, pro vigore iudiciario etiam competentibus suppliciis subiugandi, sin vero servi, severissimis animadversionibus plectentur.

D. VII id. Febr. Constantinopoli Sporacio cons.

[5] *Αὐτοκράτωρ Ἰουστινιανὸς Αὔγουστος.* **pr.** Τῆς ὀρθῆς καὶ ἀμωμήτου πίστεως, ἥνπερ κηρύττει ἡ ἁγία τοῦ θεοῦ καθολικὴ καὶ ἀποστολικὴ ἐκκλησία, κατ' οὐδένα τρόπον καινισμὸν δεξαμένης ἀκολουθοῦντες ἡμεῖς τοῖς τῶν ἁγίων ἀποστόλων καὶ τῶν μετ' ἐκείνους διαπρεψάντων ἐν ταῖς ἁγίαις τοῦ θεοῦ ἐκκλησίαις διδάγμασι δίκαιον ᾠήθημεν ἅπασι ποιῆσαι φανερόν, ὅπως ἔχομεν περὶ τῆς ἐν ἡμῖν ἐλπίδος, ἀκολουθοῦντες τῇ παραδόσει καὶ ὁμολογίᾳ τῆς ἁγίας τοῦ θεοῦ καθολικῆς καὶ ἀποστολικῆς ἐκκλησίας.

1. Πιστεύοντες γὰρ εἰς πατέρα καὶ υἱὸν καὶ ἅγιον πνεῦμα μίαν οὐσίαν ἐν τρισὶν ὑποστάσεσι προσκυνοῦμεν, μίαν θεότητα, μίαν δύναμιν, τριάδα

by anyone. Those who continue to possess and read such writings or books shall suffer supreme punishment (death). No one hereafter shall be permitted to say or teach anything against the faith established, as We have said, in Nicaea and Ephesus.

Given February 16, in Constantinople, in the consulship of Zeno and Postumianus (448).

[4] *Emperor MARCIAN Augustus to Palladius, Praetorian Prefect.* **pr.** No clergyman or member of the imperial service, or any person of any status, shall hereafter attempt to lecture on the Christian faith before crowds assembled to listen, thereby seeking to foment disorder and treachery.[5] **1.** For whoever strives to revisit and publicly discuss questions already decided and correctly settled, insults the judgment of the Most Holy Synod. For it is recognized that the decisions concerning the Christian faith, made at Our behest by the bishops who convened at Chalcedon, are in accord with the teachings of the Apostles and the decrees of the 318 and 150 holy fathers.[6] **2.** Punishment shall not be lacking for those who disregard this law, for they not only act contrary to the rightly expounded faith, but also, by such strife, profane the venerable mysteries before the eyes of Jews and Pagans. **3.** If a clergyman, therefore, dares to discuss religion in public, he shall be expelled from the community of the clergy; if he holds a position in the imperial service, he shall be stripped of his rank (*cingulum*). All others guilty of this crime shall, if they are free men, be banished from this Most Sacred City and shall be subjected to appropriate punishments in accordance with judicial vigor; if they are slaves, however, they shall be stricken with the severest punishments (death).

Given February 7, at Constantinople, in the consulship of Sporacius (452).

[5] *Emperor JUSTINIAN Augustus.* **pr.** As the true and immaculate faith professed by the Holy Catholic and Apostolic Church of God in no way admits of innovation, We, following the precepts of the holy apostles and those who after them were renowned in the Holy Churches of God, believe it proper to make manifest to all where We stand concerning the hope within Us, following the tradition and confession (of faith) of the Holy Catholic and Apostolic Church of God.

1. Believing, therefore, in the Father, the Son, and the Holy Spirit, We worship one substance in three persons,[7] one deity, one power, a consubstantial Trinity. We confess the Only Begotten Son of God, God of God, begotten of the Father before the ages and without time, coeternal with the Father, from

[5] The Latin word *perfidia* also evokes the "bad faith," i.e., wrong belief, of heretics.

[6] The bishops who convened at Nicaea in 325 and at Constantinople in 381, respectively.

[7] Greek ὑπόστασις also means substance (see Latin *substantia*) but, in this context, the prefix *ὑπο-* suggests an underlying essence (οὐσία) of the Trinity, or "sub-substance."

ὁμοούσιον. Ἐπ' ἐσχάτων δὲ τῶν ἡμερῶν ὁμολογοῦμεν τὸν μονογενῆ υἱὸν τοῦ θεοῦ, τὸν ἐκ τοῦ θεοῦ θεόν, τὸν πρὸ αἰώνων καὶ ἀχρόνως ἐκ τοῦ πατρὸς γεννηθέντα, τὸν συναΐδιον τῷ πατρί, τὸν ἐξ οὗ τὰ πάντα καὶ δι' οὗ τὰ πάντα, κατελθόντα ἐκ τῶν οὐρανῶν, σαρκωθῆναι ἐκ πνεύματος ἁγίου καὶ τῆς ἁγίας ἐνδόξου ἀειπαρθένου καὶ θεοτόκου Μαρίας, καὶ ἐνανθρωπῆσαι σταυρόν τε ὑπομεῖναι, ταφῆναί τε καὶ ἀναστῆναι τῇ τρίτῃ ἡμέρᾳ· ἑνὸς καὶ τοῦ αὐτοῦ τά τε θαύματα καὶ τὰ πάθη, ἅπερ ἑκουσίως ὑπέμεινε σαρκί, γινώσκοντες. **2.** Οὐ γὰρ ἄλλον τὸν θεὸν λόγον καὶ ἄλλον τὸν Χριστὸν ἐπιστάμεθα, ἀλλ' ἕνα καὶ τὸν αὐτὸν ὁμοούσιον τῷ πατρὶ κατὰ τὴν θεότητα καὶ ὁμοούσιον ἡμῖν τὸν αὐτὸν κατὰ τὴν ἀνθρωπότητα. ἔμεινε γὰρ τριὰς ἡ τριὰς καὶ σαρκωθέντος τοῦ ἑνὸς τῆς τριάδος θεοῦ λόγου· οὔτε γὰρ τετάρτου προσώπου προσθήκην ἐπιδέχεται ἡ ἁγία τριάς.

3. Τούτων τοίνυν οὕτως ἐχόντων ἀναθεματίζομεν πᾶσαν αἵρεσιν, ἐξαιρέτως δὲ Νεστόριον τὸν ἀνθρωπολάτρην, τὸν διαιροῦντα τὸν ἕνα κύριον ἡμῶν Ἰησοῦν Χριστὸν τὸν υἱὸν τοῦ θεοῦ καὶ θεὸν ἡμῶν, καὶ μὴ ὁμολογοῦντα κυρίως καὶ κατὰ ἀλήθειαν τὴν ἁγίαν ἔνδοξον ἀειπάρθενον Μαρίαν θεοτόκον, ἀλλὰ ἄλλον μὲν τὸν ἐκ τοῦ πατρὸς θεὸν λόγον λέγοντα, ἄλλον δὲ τὸν ἐκ τῆς ἁγίας ἀειπαρθένου Μαρίας, χάριτι δὲ καὶ οἰκειώσει τῇ πρὸς τὸν θεὸν λόγον θεὸν αὐτὸν γεγενῆσθαι· οὐ μὴν ἀλλὰ καὶ Εὐτυχέα τὸν φρενοβλαβῆ, τὸν φαντασίαν εἰσάγοντα ἀρνούμενόν τε τὴν ἐκ τῆς ἁγίας ἀειπαρθένου καὶ θεοτόκου Μαρίας ἀληθινὴν σάρκωσιν, τουτέστι τὴν ἡμετέραν σωτηρίαν, καὶ μὴ ὁμολογοῦντα κατὰ πάντα ὁμοούσιον τῷ πατρὶ κατὰ τὴν θεότητα καὶ ὁμοούσιον ἡμῖν τὸν αὐτὸν κατὰ τὴν ἀνθρωπότητα· τὸν αὐτὸν δὲ τρόπον καὶ Ἀπολλινάριον τὸν ψυχοφθόρον, τὸν ἄνουν λέγοντα τὸν κύριον ἡμῶν Ἰησοῦν Χριστὸν τὸν υἱὸν τοῦ θεοῦ καὶ θεὸν ἡμῶν καὶ σύγχυσιν ἤτοι φυρμὸν εἰσάγοντα τῇ ἐνανθρωπήσει τοῦ μονογενοῦς υἱοῦ τοῦ θεοῦ, καὶ πάντας τοὺς τὰ αὐτῶν φρονήσαντας ἢ φρονοῦντας. **4.** Εἰ γάρ τινες μετὰ ταύτην ἡμῶν τὴν προαγόρευσιν καὶ τὴν τῶν κατὰ τόπον θεοφιλεστάτων ἡμῶν ἐπισκόπων πληροφορίαν εὑρεθῶσι τοῦ λοιποῦ γνώμης ἐναντίας ὄντες, μὴ προσδοκήσωσι συγγνώμης ἀξιωθῆναι· κελεύομεν γὰρ τοὺς τοιούτους ὡς ὁμολογουμένους αἱρετικοὺς τῷ προσήκοντι ὑποβάλλεσθαι σωφρονισμῷ.

Dat. ...

[6] *Ὁ αὐτὸς βασιλεὺς Κωνσταντινουπολίταις.* **pr.** Τὸν σωτῆρα καὶ δεσπότην τῶν ὅλων, Ἰησοῦν Χριστὸν τὸν ἀληθινὸν θεὸν ἡμῶν θεραπεύοντες διὰ πάντων σπουδάζομεν, ὅσον ἐνδέχεται νοῦν καταλαμβάνειν ἀνθρώπινον, μιμεῖσθαι τὴν αὐτοῦ συγκατάβασιν. **1.** Καὶ εὑρόντες τινὰς τῇ νόσῳ καὶ μανίᾳ κρατουμένους τῶν ἀσεβῶν Νεστορίου καὶ Εὐτυχοῦς τῶν ἐχθρῶν τοῦ θεοῦ καὶ τῆς ἁγίας καθολικῆς καὶ ἀποστολικῆς ἐκκλησίας, ἀρνουμένους τὴν ἁγίαν ἔνδοξον ἀειπάρθενον Μαρίαν θεοτόκον εἰπεῖν κυρίως καὶ

whom and through whom all things were made; who in the last days descended from Heaven and was made flesh through the Holy Spirit and Mary, the Holy, Glorious, Ever-Virgin Mother of God; became man and suffered on the cross, was buried and rose again on the third day. We recognize the miracles and sufferings of this one and the same, which He willingly suffered in the flesh. **2.** For We do not understand one as God the Word and another as Christ, but one and the same, consubstantial with the Father according to His divine nature, and consubstantial with us according to His human nature. For the Trinity remained a Trinity even as one member of the Trinity of God the Word became flesh; for the Holy Trinity does not admit of a fourth person.

3. Since these things are so, We anathematize every heresy, and especially Nestorius, the worshipper of man, who divides in two Our One Lord Jesus Christ, the Son of God and Our God, and denies that the Holy, Glorious, Ever-Virgin Mary was really and in truth the Mother of God, but claims that one person is God the Word, begotten of the Father, and another is the one born of the Holy, Ever-Virgin Mary, made God by the grace and affection of God the Word. And We further anathematize Eutyches the deranged, who introduces an apparition and denies the true incarnation, that is our salvation, through Mary the Holy, Ever-Virgin Mother of God; and who does not confess that Christ is consubstantial with the Father in all regards according to His divine nature and consubstantial with us according to his human nature. Likewise, (We anathematize) Apollinarius the destroyer of souls, who claims that Our Lord Jesus Christ, the Son of God and Our God, did not have a mind, and who introduces confusion or rather chaos to the incarnation of the Only Begotten Son of God; and (We anathematize) all who have followed and now follow the doctrines of these men. **4.** No one shall expect to be found worthy of pardon, if, after this Our proclamation and the full assurance (*plerophoria*) of Our most reverend local bishops, they should be found to be of the contrary opinion: for We order such persons to be subjected as confessed heretics to the appropriate punishment.

Given (...) (527).

[6] *The same Augustus to the People of Constantinople.* **pr.** Serving the Savior and Lord of All, Jesus Christ, Our true God in all things, We also wish to imitate His humility, as far as the human mind can comprehend it. **1.** And having found certain persons overcome by the disease and madness of the impious Nestorius and Eutyches, enemies of God and the Holy Catholic and Apostolic Church, who deny that the Holy, Glorious, Ever-Virgin Mary is really and in truth Mother of God, We were eager that they be taught the correct faith of Christians. **2.** These men, however, have proven incurable and, concealing

κατὰ ἀλήθειαν, ἐσπουδάσαμεν τούτους τὴν ὀρθὴν τῶν Χριστιανῶν διδαχθῆναι πίστιν. **2.** Οἱ δὲ ἀνιάτως ἔχοντες, κρύπτοντες τὴν ἑαυτῶν πλάνην περιέρχονται, καθὰ μεμαθήκαμεν, τὰς τῶν ἁπλουστέρων ψυχὰς ἐκταράσσοντές τε καὶ σκανδαλίζοντες καὶ ἐναντία τῆς ἁγίας καθολικῆς καὶ ἀποστολικῆς ἐκκλησίας λέγοντες. **3.** Ἀναγκαῖον τοίνυν ἐνομίσαμεν καταλῦσαι μὲν τὰς τῶν αἱρετικῶν ψευδολογίας, σαφηνίσαι δὲ πᾶσιν, ὅπως δοξάζει ἡ ἁγία τοῦ θεοῦ καθολικὴ καὶ ἀποστολικὴ ἐκκλησία, κηρύττουσι δὲ οἱ ταύτης ὁσιώτατοι ἱερεῖς, οἷς καὶ ἡμεῖς ἑπόμενοι φανερὰ καθιστῶμεν τὰ περὶ τῆς ἐν ἡμῖν ἐλπίδος, οὐ καινίζοντες πίστιν, μὴ γένοιτο, ἀλλ' ἐλέγχοντες τὴν μανίαν τῶν φρονούντων τὰ τῶν ἀσεβῶν αἱρετικῶν. ὅπερ καὶ ἤδη ἐν προοιμίοις τῆς ἡμετέρας βασιλείας πράξαντες πᾶσι κατάδηλον ἐποιήσαμεν.

4. Πιστεύομεν γὰρ εἰς ἕνα θεὸν πατέρα παντοκράτορα καὶ εἰς ἕνα κύριον Ἰησοῦν Χριστὸν τὸν υἱὸν τοῦ θεοῦ καὶ εἰς τὸ ἅγιον πνεῦμα, μίαν οὐσίαν ἐν τρισὶν ὑποστάσεσιν προσκυνοῦντες, μίαν θεότητα, μίαν δύναμιν, τριάδα ὁμοούσιον. **5.** Ἐπ' ἐσχάτων δὲ τῶν ἡμερῶν ὁμολογοῦμεν τὸν κύριον ἡμῶν Ἰησοῦν Χριστὸν τὸν μονογενῆ υἱὸν τοῦ θεοῦ, τὸν ἐκ θεοῦ ἀληθινοῦ θεὸν ἀληθινόν, τὸν πρὸ αἰώνων καὶ ἀχρόνως ἐκ τοῦ πατρὸς γεννηθέντα, τὸν συναΐδιον τῷ πατρί, τὸν ἐξ οὗ τὰ πάντα καὶ δι' οὗ τὰ πάντα, κατελθόντα ἐκ τῶν οὐρανῶν, σαρκωθῆναι ἐκ πνεύματος ἁγίου καὶ τῆς ἁγίας ἐνδόξου ἀειπαρθένου καὶ θεοτόκου Μαρίας καὶ ἐνανθρωπῆσαι σταυρόν τε ὑπομεῖναι ὑπὲρ ἡμῶν ἐπὶ Ποντίου Πιλάτου, ταφῆναί τε καὶ ἀναστῆναι τῇ τρίτῃ ἡμέρᾳ, ἑνὸς καὶ τοῦ αὐτοῦ τά τε θαύματα καὶ τὰ πάθη, ἅπερ ἑκουσίως ὑπέμεινεν σαρκί, γινώσκοντες. **6.** Οὐ γὰρ ἄλλον τὸν θεὸν λόγον καὶ ἄλλον τὸν Χριστὸν ἐπιστάμεθα, ἀλλ' ἕνα καὶ τὸν αὐτὸν ὁμοούσιον τῷ πατρὶ κατὰ τὴν θεότητα καὶ ὁμοούσιον ἡμῖν τὸν αὐτὸν κατὰ τὴν ἀνθρωπότητα. ὡς γὰρ ἔστιν ἐν θεότητι τέλειος, οὕτως ὁ αὐτὸς καὶ ἐν ἀνθρωπότητι τέλειος. τὴν γὰρ καθ' ὑπόστασιν ἕνωσιν δεχόμεθα καὶ ὁμολογοῦμεν. ἔμεινε γὰρ τριὰς ἡ τριὰς καὶ σαρκωθέντος τοῦ ἑνὸς τῆς τριάδος θεοῦ λόγου· οὔτε γὰρ τετάρτου προσώπου προσθήκην ἐπιδέχεται ἡ ἁγία τριάς.

7. Τούτων τοίνυν οὕτως ἐχόντων ἀναθεματίζομεν πᾶσαν αἵρεσιν, ἐξαιρέτως δὲ Νεστόριον τὸν ἀνθρωπολάτρην καὶ τοὺς τὰ αὐτοῦ φρονήσαντας ἢ φρονοῦντας, τοὺς διαιροῦντας τὸν ἕνα κύριον ἡμῶν Ἰησοῦν Χριστὸν τὸν υἱὸν τοῦ θεοῦ καὶ θεὸν ἡμῶν καὶ μὴ ὁμολογοῦντας κυρίως καὶ κατὰ ἀλήθειαν τὴν ἁγίαν ἔνδοξον ἀειπάρθενον Μαρίαν θεοτόκον, τουτέστι μητέρα θεοῦ, ἀλλὰ δύο υἱοὺς λέγοντας, ἄλλον μὲν τὸν ἐκ τοῦ πατρὸς θεὸν λόγον, ἄλλον δὲ τὸν ἐκ τῆς ἁγίας ἀειπαρθένου καὶ θεοτόκου Μαρίας, χάριτι δὲ καὶ σχέσει καὶ οἰκειώσει τῇ πρὸς τὸν θεὸν λόγον θεὸν αὐτὸν γεγενῆσθαι, καὶ ἀρνουμένους καὶ μὴ ὁμολογοῦντας τὸν δεσπότην ἡμῶν Ἰησοῦν Χριστὸν τὸν υἱὸν τοῦ θεοῦ καὶ θεὸν ἡμῶν, τὸν σαρκωθέντα καὶ ἐνανθρωπήσαντα καὶ σταυρωθέντα ἕνα εἶναι τῆς ἁγίας καὶ ὁμοουσίου τριάδος. οὗτος γὰρ μόνος ἐστὶν ὁ συμπροσκυνούμενος καὶ συνδοξαζόμενος τῷ πατρὶ καὶ τῷ ἁγίῳ πνεύματι.

their errors, go about, as We have learned, troubling and shocking the minds of simple folk and asserting doctrine contrary to the Holy Catholic and Apostolic Church. **3.** We have, accordingly, deemed it necessary both to dispel the falsehoods of the heretics and to make clear to all what the Holy Catholic and Apostolic Church believes and what its most holy priests profess. As We too adhere to these (authorities), We shall make manifest the hope within Us, making no innovation in the faith – God forbid! – but refuting the madness of those who follow the doctrines of the impious heretics. This same thing We made manifest to all, already at the beginning of Our reign.[8]

4. We believe, therefore, in one God, the Father Almighty, and in one Lord Jesus Christ, the Son of God, and in the Holy Spirit, worshipping one substance in three persons, one deity, one power, a consubstantial Trinity. **5.** We confess that, in the last days, Our Lord Jesus Christ, the Only Begotten Son of God, True God of True God, begotten of the Father before the ages and without time, coeternal with the Father, from whom and through whom all things were made, descended from Heaven and was made flesh through the Holy Sprit and Mary, the Holy, Glorious, Ever-Virgin Mother of God, and became man, suffered for us on the cross under Pontius Pilate, was buried and rose on the third day; and We confess the miracles and sufferings of this one and the same, which He willingly suffered in the flesh. **6.** We do not understand one as God the Word and another as Christ, but one and the same, consubstantial with the Father according to His divine nature and consubstantial with us according to His human nature. For as He is perfect in His divine nature, so too is He perfect in His human nature. We acknowledge and confess this unity in substance, for the Trinity remained a Trinity, although one member of the Trinity of God the Word became flesh; for the Holy Trinity does not admit of a fourth person.

7. Since this is so, We anathematize every heresy, and especially Nestorius, the worshipper of man, and those who have followed and now follow his doctrine, who divide in two Our One Lord Jesus Christ, the Son of God and Our God, and deny that the Holy, Glorious, Ever-Virgin Mary was really and in truth Mother of God,[9] but claim that there are two sons, one being God the Word, begotten of the Father, the other one born of the Holy, Ever-Virgin Mary, Mother of God, made God by the grace, the nature, and the affection of God the Word, and deny and do not confess that Our Lord Jesus Christ, Son of God and Our God, who was made flesh and became man and was crucified, is one part of the Holy and Consubstantial Trinity. For He alone is worshipped and glorified beside the Father and the Holy Spirit.

[8] See the preceding constitution.

[9] θεοτόκον. The following gloss "that is, the mother of God" (τουτέστι μητέρα θεοῦ) has not been translated to avoid redundancy in English.

8. Ἀναθεματίζομεν δὲ καὶ Εὐτυχέα τὸν φρενοβλαβῆ καὶ τοὺς τὰ αὐτοῦ φρονήσαντας ἢ φρονοῦντας, τοὺς φαντασίαν εἰσάγοντας ἀρνουμένους τε τὴν ἐκ τῆς ἁγίας παρθένου καὶ θεοτόκου Μαρίας ἀληθινὴν σάρκωσιν τοῦ κυρίου καὶ σωτῆρος ἡμῶν Ἰησοῦ Χριστοῦ, τουτέστι τὴν ἡμετέραν σωτηρίαν, καὶ μὴ ὁμολογοῦντας αὐτὸν ὁμοούσιον τῷ πατρὶ κατὰ τὴν θεότητα καὶ ὁμοούσιον ἡμῖν κατὰ τὴν ἀνθρωπότητα. **9.** Τὸν αὐτὸν δὲ τρόπον καὶ Ἀπολλινάριον τὸν ψυχοφθόρον καὶ τοὺς τὰ αὐτοῦ φρονήσαντας ἢ φρονοῦντας, τοὺς ἄνουν λέγοντας τὸν κύριον ἡμῶν Ἰησοῦν Χριστὸν τὸν υἱὸν τοῦ θεοῦ καὶ θεὸν ἡμῶν καὶ σύγχυσιν ἤτοι φυρμὸν εἰσάγοντας τῇ ἐνανθρωπήσει τοῦ μονογενοῦς υἱοῦ τοῦ θεοῦ, καὶ πάντας τοὺς τὰ αὐτῶν φρονήσαντας ἢ φρονοῦντας.

D. id. Mart. dn. Iustiniano pp. A. III cons.

Τὸ αὐτὸ Ἐφεσίοις, τὸ αὐτὸ Καισαρεῦσι, τὸ αὐτὸ Κυζικηνοῖς, τὸ αὐτὸ Ἀμιδηνοῖς Τραπεζουντίοις Ἱεροσολυμίταις Ἀπαμεῦσιν Ἰουστινιανουπολίταις Θεουπολίταις Σεβαστηνοῖς Ταρσεῦσιν Ἀγκυρανοῖς.

[7] *Ὁ αὐτὸς βασιλεύς. Ἐπιφανίῳ τῷ ἁγιωτάτῳ καὶ μακαριωτάτῳ ἀρχιεπισκόπῳ τῆς βασιλίδος ταύτης πόλεως καὶ οἰκουμενικῷ πατριάρχῃ.* **pr.** Γινώσκειν βουλόμενοι τὴν σὴν ἁγιωσύνην πάντα τὰ εἰς ἐκκλησιαστικὴν ὁρῶντα κατάστασιν ἀναγκαῖον ἡγησάμεθα ταύταις πρὸς αὐτὴν χρήσασθαι ταῖς θείαις συλλαβαῖς καὶ δι' αὐτῶν δῆλα αὐτῇ καταστῆσαι τὰ κινηθέντα, ἅπερ καὶ αὐτὴν εἰδέναι πεπείσμεθα.

1. Εὑρόντες γάρ τινας ἀλλοτρίους τῆς ἁγίας καθολικῆς καὶ ἀποστολικῆς ἐκκλησίας, τῇ τῶν ἀσεβῶν Νεστορίου καὶ Εὐτυχέος ἀκολουθοῦντας πλάνῃ καὶ ταῖς τούτων βλασφημίαις κεχρημένους, θεῖον προεθήκαμεν ἤδικτον, ὅπερ καὶ ἡ σὴ γινώσκει ἁγιωσύνη, δι' οὗ τὴν τῶν αἱρετικῶν μανίαν ἠλέγξαμεν, οὐδὲν παντελῶς ἐναλλάξαντες ἢ ἐναλλάττοντες ἢ παρεξελθόντες τῆς μέχρι νῦν σὺν θεῷ κρατούσης ἐκκλησιαστικῆς καταστάσεως, καθὰ καὶ ἡ σὴ γινώσκει μακαριότης, ἀλλὰ διὰ πάντων φυλάττοντες τὴν κατάστασιν τῆς ἑνώσεως τῶν ἁγιωτάτων ἐκκλησιῶν τῆς πρὸς τὸν ἁγιώτατον πάπαν τῆς πρεσβυτέρας Ῥώμης καὶ πατριάρχην, πρὸς ὃν καὶ τὰ ὅμοια τούτοις γεγράφαμεν.

2. Οὔτε γὰρ ἀνεχόμεθά τι τῶν εἰς ἐκκλησιαστικὴν ὁρώντων κατάστασιν μὴ καὶ τῇ αὐτοῦ ἀναφέρεσθαι μακαριότητι, ὡς κεφαλῇ οὔσῃ πάντων τῶν ἁγιωτάτων τοῦ θεοῦ ἱερέων, καὶ ἐπειδή, ὁσάκις ἐν τούτοις τοῖς μέρεσιν αἱρετικοὶ ἀνεφύησαν, τῇ γνώμῃ καὶ ὀρθῇ κρίσει ἐκείνου τοῦ σεβασμίου θρόνου κατηργήθησαν. **3.** Ἐκ γὰρ τῶν παρουσῶν θείων ἡμῶν συλλαβῶν μαθήσεται ἡ σὴ ἁγιωσύνη τὰ παρ' ἡμῶν προτεθειμένα, ἐφ' ᾧ τοὺς ἐπιχειροῦντας πονηρῶς νοεῖν ἢ ἑρμηνεύειν τὰ παρ' ἡμῶν ὀρθῶς ἐν τῷ ἠδίκτῳ λεχθέντα ἐκ τῶν παρουσῶν θείων ἡμῶν ἐλέγχεσθαι συλλαβῶν.

8. And We further anathematize Eutyches the deranged and those who have followed and now follow his doctrine, who introduce an apparition and deny the true incarnation of Our Lord and Savior, that is our salvation, through Mary, the Holy, Ever-Virgin Mother of God, and who do not confess that Christ is consubstantial with the Father according to His divine nature and consubstantial with us according to His human nature. **9.** Likewise, (We anathematize) Apollinarius the destroyer of souls, and all who have followed and now follow his doctrine, who claim that Our Lord Jesus Christ, the Son of God and Our God, did not have a mind, and introduce confusion or rather chaos to the incarnation of the Only Begotten Son of God; and (We anathematize) all who have followed and now follow their doctrines.

Given March 15, in the consulship of Our Lord Justinian, Ever Augustus, for the third time (533).

The same (decree was sent) to the people of Ephesus, Caesarea, Cyzicus, Amida, Trapezus, Jerusalem, Apamea, Justinianopolis, Theopolis (Antioch), Sebaste, Tarsus, Ancyra.

[7] *The same Augustus to Epiphanius, Most Holy and Most Blessed Archbishop of This Imperial City and Ecumenical Patriarch.* **pr.** Desiring Your Holiness to know of everything concerning the state of the Church, We have deemed it necessary to write this divine letter to you and, through it, reveal what actions have been taken, although We are confident you already know of them.

1. Therefore, since We found that some persons had turned away from the Holy Catholic and Apostolic Church, following the error of the impious Nestorius and Eutyches and indeed adopting their blasphemies, We issued a divine edict, also known to Your Holiness, in which We refuted the madness of the heretics; yet We neither have changed nor now change nor have neglected the status of the Church, which has hitherto prevailed with the help of God, as Your Blessedness also knows; but in all things We have protected the unity of the most holy churches with the most holy Pope and Patriarch of ancient Rome, to whom We have written a similar letter.

2. For We suffer nothing concerning the state of the Church to be withheld from His Blessedness, inasmuch as he is the head of the most holy priests of God, and because whenever heretics have arisen in those parts (the West), they have been restrained by the counsel and the correct judgment of his Venerable See. **3.** Your Holiness, therefore, will learn by this present divine letter what has been expounded by Us, so that those who dare to understand or interpret evilly what has been correctly stated in the edict may be refuted by this Our divine letter.

4. Ὀλίγοι τινὲς ἄπιστοι καὶ ἀλλότριοι τῆς ἁγίας τοῦ θεοῦ καθολικῆς καὶ ἀποστολικῆς ἐκκλησίας ἀντειπεῖν Ἰουδαϊκῶς ἐθάρρησαν πρὸς τὰ παρὰ πάντων τῶν ἱερέων ὀρθῶς κρατούμενα καὶ δοξαζόμενα καὶ κηρυττόμενα, ἀρνούμενοι τὸν κύριον ἡμῶν Ἰησοῦν Χριστὸν τὸν μονογενῆ υἱὸν τοῦ θεοῦ καὶ θεὸν ἡμῶν, τὸν σαρκωθέντα ἐκ πνεύματος ἁγίου καὶ τῆς ἁγίας ἐνδόξου ἀειπαρθένου καὶ θεοτόκου Μαρίας καὶ ἐνανθρωπήσαντα καὶ σταυρωθέντα ἕνα εἶναι τῆς ἁγίας καὶ ὁμοουσίου τριάδος, συμπροσκυνούμενον καὶ συνδοξαζόμενον τῷ πατρὶ καὶ τῷ ἁγίῳ πνεύματι, ὁμοούσιον τῷ πατρὶ κατὰ τὴν θεότητα καὶ ὁμοούσιον ἡμῖν τὸν αὐτὸν κατὰ τὴν ἀνθρωπότητα, παθητὸν σαρκί, τὸν αὐτὸν ἀπαθῆ θεότητι. **5.** Παραιτούμενοι δὲ τὸν κύριον ἡμῶν Ἰησοῦν Χριστὸν τὸν μονογενῆ υἱὸν τοῦ θεοῦ καὶ θεὸν ἡμῶν ὁμολογεῖν ἕνα εἶναι τῆς ἁγίας καὶ ὁμοουσίου τριάδος δῆλοί εἰσι καὶ ἐλέγχονται τῇ τοῦ ἀσεβοῦς Νεστορίου ἀκολουθοῦντες πονηρᾷ διδασκαλίᾳ, κατὰ χάριν αὐτὸν λέγοντες υἱὸν τοῦ θεοῦ καὶ ἄλλον τὸν θεὸν λόγον καὶ ἄλλον τὸν Χριστὸν λέγοντες. οὓς ἀναθεματίζομεν καὶ τὰ αὐτῶν δόγματα καὶ τοὺς τὰ αὐτῶν φρονήσαντας ἢ φρονοῦντας ὡς ἀλλοτρίους ὄντας τῆς ἁγίας τοῦ θεοῦ καθολικῆς καὶ ἀποστολικῆς ἐκκλησίας.

6. Πάντες γὰρ οἱ ἱερεῖς τῆς ἁγίας καθολικῆς καὶ ἀποστολικῆς ἐκκλησίας καὶ οἱ εὐλαβέστατοι τῶν εὐαγῶν μοναστηρίων ἀρχιμανδρῖται ἀκολουθοῦντες τῇ τῶν ἁγίων πατέρων παραδόσει καὶ μηδὲν παντελῶς ἐναλλάξαντες ἢ ἐναλλάττοντες τῆς μέχρι νῦν κρατούσης, καθὰ εἴρηται, ἐκκλησιαστικῆς καταστάσεως, συμφώνως ὁμολογοῦσι καὶ δοξάζουσι, κηρύττοντες τὸν δεσπότην ἡμῶν Ἰησοῦν Χριστὸν τὸν μονογενῆ υἱὸν τοῦ θεοῦ καὶ θεὸν ἡμῶν, τὸν πρὸ αἰώνων καὶ ἀχρόνως ἐκ τοῦ πατρὸς γεννηθέντα καὶ ἐπ' ἐσχάτων τῶν ἡμερῶν κατελθόντα ἐκ τῶν οὐρανῶν καὶ σαρκωθέντα ἐκ πνεύματος ἁγίου καὶ τῆς ἁγίας ἐνδόξου ἀειπαρθένου καὶ θεοτόκου Μαρίας καὶ ἐνανθρωπήσαντα καὶ σταυρωθέντα ἕνα εἶναι τῆς ἁγίας καὶ ὁμοουσίου τριάδος.

7. Ὁμοούσιον γὰρ αὐτὸν ἴσμεν τῷ πατρὶ κατὰ τὴν θεότητα καὶ ὁμοούσιον ἡμῖν τὸν αὐτὸν κατὰ τὴν ἀνθρωπότητα, παθητὸν σαρκί, τὸν αὐτὸν ἀπαθῆ θεότητι, συμπροσκυνούμενον τῷ πατρὶ καὶ τῷ ἁγίῳ πνεύματι. οὐ γὰρ ἄλλον τὸν θεὸν λόγον καὶ ἄλλον τὸν Χριστὸν ἐπιστάμεθα, ἀλλ' ἕνα καὶ τὸν αὐτὸν ὁμοούσιον τῷ πατρὶ κατὰ τὴν θεότητα καὶ ὁμοούσιον ἡμῖν τὸν αὐτὸν κατὰ τὴν ἀνθρωπότητα, παθητὸν σαρκί, τὸν αὐτὸν ἀπαθῆ θεότητι. **8.** Ὡς γὰρ ἐστιν ἐν θεότητι τέλειος, οὕτως ὁ αὐτὸς ἐν ἀνθρωπότητι τέλειος· τὴν γὰρ καθ' ὑπόστασιν ἕνωσιν δεχόμεθα καὶ ὁμολογοῦμεν.

4. A certain few persons, unfaithful and alien[10] to the Holy Catholic and Apostolic Church, have dared, in Jewish fashion, to speak out against those tenets that are rightly upheld, glorified, and preached by all priests. They deny that Our Lord Jesus Christ, the Only Begotten Son of God and Our God, who was made flesh through the Holy Sprit and Mary, the Holy, Glorious, Ever-Virgin Mother of God, became man and was crucified, is one of the Holy Consubstantial Trinity, worshipped and glorified beside the Father and the Holy Spirit, consubstantial with the Father according to His divine nature and consubstantial with us according to His human nature, capable of suffering in the flesh, but incapable of suffering as a deity. **5.** And as they refuse to confess Our Lord Jesus Christ, the Only Begotten Son of God and Our God, as one part of the Holy Consubstantial Trinity, they are manifestly proven to be followers of the evil doctrine of the impious Nestorius, and claim that He is the Son of God only by grace, and that God the Word is one person and Christ another. We anathematize them and their teachings and those who have followed or now follow their doctrine, as alien to the Holy Catholic and Apostolic Church of God.

6. For all priests of the Holy Catholic and Apostolic Church and the most pious abbots of the holy monasteries, following the tradition of the holy fathers, who neither have changed nor now change the constitution of the Church that, as has been said, has prevailed to this day, unanimously confess, believe, and preach that Our Lord Jesus Christ, the Only Begotten Son of God and Our God, begotten of the Father, before the ages and without time, who descended from heaven, was made flesh through the Holy Spirit and Mary, the Holy, Glorious, Ever-Virgin Mother of God, became man and was crucified, is one part of the Holy and Consubstantial Trinity.

7. For We know Him to be consubstantial with the Father according to His divine nature and consubstantial with us according to His human nature; capable of suffering in the flesh, but incapable of suffering as a deity; worshipped beside the Father and the Holy Spirit. Nor do We understand God the Word to be one person and Christ another, but one and the same, consubstantial with the Father according to His divine nature, and consubstantial with us according to His human nature, capable of suffering in the flesh, but incapable of suffering as a deity. **8.** For as He is perfect in His divine nature, so, too, is He perfect in His human nature; for We acknowledge and confess His unity of essence.

[10] The Greek ἀλλότριος (Latin *alienus*) captures both sides of the doctrinal strife. The basic meaning is "belonging to another," indicating that the Church no longer claims these persons as its own (they have been excommunicated), hence "alien." But the word also suggests the feelings of the heretics (from Justinian's perspective) as "disaffected" or "alienated" from the Catholic Church.

9. Ἐπειδὴ τοίνυν ὁ μονογενὴς υἱὸς καὶ λόγος τοῦ θεοῦ, ὁ πρὸ αἰώνων καὶ ἀχρόνως ἐκ τοῦ πατρὸς γεννηθείς, ὁ αὐτὸς καὶ ἐπ' ἐσχάτων τῶν ἡμερῶν κατελθὼν ἐκ τῶν οὐρανῶν καὶ σαρκωθεὶς ἐκ πνεύματος ἁγίου καὶ τῆς ἁγίας ἐνδόξου καὶ θεοτόκου Μαρίας καὶ ἐνανθρωπήσας, τουτέστιν ὁ κύριος ἡμῶν Ἰησοῦς Χριστὸς κυρίως καὶ κατὰ ἀλήθειαν θεός ἐστι, διὰ τοῦτο καὶ τὴν ἁγίαν ἔνδοξον ἀειπάρθενον Μαρίαν κυρίως καὶ κατὰ ἀλήθειαν μητέρα θεοῦ λέγομεν, οὐχ ὡς τοῦ θεοῦ λόγου τὴν ἀρχὴν ἐξ αὐτῆς λαβόντος, ἀλλ' ἐπ' ἐσχάτων τῶν ἡμερῶν κατελθόντος ἐκ τῶν οὐρανῶν καὶ ἐξ αὐτῆς σαρκωθέντος καὶ τεχθέντος καὶ ἐνανθρωπήσαντος. **10.** Ὃν ὁμολογοῦμεν, καθὰ εἴρηται, ὁμοούσιον εἶναι τῷ πατρὶ κατὰ τὴν θεότητα καὶ ὁμοούσιον ἡμῖν τὸν αὐτὸν κατὰ τὴν ἀνθρωπότητα, τοῦ αὐτοῦ τά τε θαύματα καὶ τὰ πάθη, ἅπερ ἑκουσίως ὑπέμεινε σαρκί, γινώσκοντες. **11.** Ταῦτα τοίνυν ἐστίν, ἅπερ διὰ τοῦ θείου ἡμῶν εἰρηκότες ἠδίκτου τοὺς αἱρετικοὺς ἠλέγξαμεν, ᾧτινι θείῳ ἠδίκτῳ καὶ πάντες οἱ εὑρεθέντες ἐνταῦθα ὁσιώτατοι ἐπίσκοποι καὶ εὐλαβέστατοι ἀρχιμανδρῖται ἅμα τῇ σῇ ἁγιωσύνῃ καθυπέγραψαν, ἀκολουθοῦντες διὰ πάντων ταῖς ἁγίαις τέτρασι συνόδοις καὶ τοῖς παρ' ἑκάστης αὐτῶν διατυπωθεῖσι, τουτέστι τῆς τε ἐν Νικαίᾳ τῶν τιη' καὶ τῆς ἐν ταύτῃ τῇ βασιλευούσῃ πόλει τῶν ρν', καὶ τῆς ἐν Ἐφέσῳ προτέρας καὶ τῆς ἐν Χαλκηδόνι, δήλου πᾶσι καθεστῶτος, ὅτι τὸν πᾶσι τοῖς ἅμα ἡμῖν πιστοῖς τῆς ἁγίας καθολικῆς καὶ ἀποστολικῆς ἐκκλησίας παραδοθέντα ὅρον τῆς πίστεως, τουτέστι τὸ ἅγιον μάθημα ἤτοι σύμβολον κρατοῦμέν τε καὶ φυλάττομεν, τὸ παρὰ τῶν τιη' ἁγίων πατέρων ἐκτεθέν, ὅπερ καὶ οἱ ἐν ταύτῃ τῇ βασιλευούσῃ πόλει ρν' ἅγιοι πατέρες σαφηνίσαντες ἐτράνωσαν, οὐχ ὡς ἐλλιπῶς ἔχοντος αὐτοῦ, ἀλλ', ἐπειδήπερ οἱ τῆς ἀληθείας ἐχθροὶ οἱ μὲν ἀθετεῖν ἐπεχείρησαν τὴν τοῦ ἁγίου πνεύματος θεότητα, οἱ δὲ τὴν ἐκ τῆς ἁγίας ἀειπαρθένου θεοτόκου Μαρίας ἀληθινὴν σάρκωσιν τοῦ θεοῦ λόγου ἠρνήσαντο, διὰ τοῦτο γραφικαῖς μαρτυρίαις τὸ αὐτὸ ἅγιον μάθημα οἱ εἰρημένοι ρν' ἅγιοι πατέρες σαφηνίσαντες ἐτράνωσαν.

12. Τοῦτο καὶ αἱ λοιπαὶ ἅγιαι σύνοδοι, τουτέστιν ἡ ἐν Ἐφέσῳ προτέρα καὶ ἡ ἐν Χαλκηδόνι, τῇ αὐτῇ πίστει ἀκολουθήσασαι ἐδέξαντο καὶ ἐφύλαξαν καὶ τὴν ἁγίαν ἔνδοξον ἀειπάρθενον Μαρίαν θεοτόκον ἐκήρυξαν καὶ τοὺς μὴ ὁμολογοῦντας αὐτὴν θεοτόκον ἀνεθεμάτισαν. **13.** Ὡμοίως δὲ ἀνεθεμάτισαν καὶ τοὺς ἕτερον σύμβολον ἢ ἅγιον μάθημα παραδιδόντας παρὰ τὸ ὑπὸ μὲν τῶν τιη' ἁγίων πατέρων ἐκτεθέν, σαφηνισθὲν δὲ καὶ τρανωθὲν παρὰ τῶν ἐν ταύτῃ τῇ βασιλευούσῃ πόλει ρν' ἁγίων πατέρων. **14.** Καὶ ἡ μὲν ἐν Ἐφέσῳ προτέρα τόν τε ἀσεβῆ Νεστόριον καὶ τὰ αὐτοῦ δόγματα καθεῖλέ τε καὶ ἀνεθεμάτισε καὶ τοὺς τὰ αὐτοῦ φρονήσαντας ἢ φρονοῦντας καὶ τοὺς συναινέσαντας αὐτῷ ἢ συναινοῦντας ἀνεθεμάτισεν. **15.** Ἡ δὲ ἐν Χαλκηδόνι ἁγία σύνοδος καθεῖλέ τε καὶ ἐξέβαλε τῶν ἁγίων τοῦ θεοῦ ἐκκλησιῶν καὶ ἀνεθεμάτισε καὶ τὸν ἀσεβῆ Εὐτυχέα καὶ τὰ αὐτοῦ δόγματα καὶ τοὺς τὰ αὐτοῦ φρονήσαντας ἢ φρονοῦντας καὶ τοὺς συναινέσαντας αὐτῷ ἢ συναινοῦντας· καὶ πάντας τοὺς αἱρετικοὺς καὶ τὰ αὐτῶν δόγματα καὶ τοὺς τὰ αὐτῶν φρονήσαντας ἢ φρονοῦντας ἀνεθεμάτισεν. **16.** Ὁμοίως

9. Since, therefore, the Only Begotten Son and Word of God, begotten of the Father before the ages and without time, descended from heaven in the last days, was made flesh through the Holy Spirit and Mary, the Holy, Glorious Mother of God, and became man; that is, since Our Lord Jesus Christ is really and in truth God, We therefore say that the Holy, Glorious, Ever-Virgin Mary was really and in truth the Mother of God, not because God the Word took His beginning from her, but because He descended from Heaven in the last days and through her was made flesh, was born, and became man. **10.** Him We confess, as stated, to be consubstantial with the Father according to His divine nature and consubstantial with us according to His human nature, and we acknowledge His miracles and sufferings, which He willingly suffered in the flesh.

11. These, therefore, are the words with which We refuted the heretics in Our divine edict, and all most holy bishops and most pious abbots who could be found here, as well as Your Holiness, signed this divine edict; adhering in all things to the four holy synods and to the resolutions made by each, that is, the synod of Nicaea of the 318, of This Imperial City of the 150, the first synod of Ephesus, and that at Chalcedon. For it is manifest to all that We uphold and protect the definition of the faith handed down to Us and to all the faithful of the Holy Catholic and Apostolic Church, that is, the holy teaching or creed that was established by the 318 holy fathers, which also the 150 holy fathers in This Imperial City clarified and elucidated, not because it was found deficient, but because some enemies of the truth commenced to attack the divinity of the Holy Spirit, while others denied the true incarnation of God the Word through Mary, the Holy, Ever-Virgin Mother of God. For this reason the aforementioned 150 holy fathers clarified and elucidated this holy teaching in written depositions.

12. This teaching the other holy synods, that is, the first at Ephesus and that at Chalcedon, following the same faith, also acknowledged and protected, and proclaimed the Holy, Glorious, Ever-Virgin Mary Mother of God, anathematizing those who do not confess that she is the Mother of God. **13.** They similarly anathematized those who teach a creed or holy teaching other than that established by the 318 holy fathers and clarified and elucidated by the 150 holy fathers assembled in This Imperial City. **14.** And the first synod of Ephesus condemned and anathematized the impious Nestorius and his teachings, and also anathematized those who have followed or now follow his doctrine or who have agreed or now agree with him. **15.** Moreover, the holy synod of Chalcedon condemned and expelled from the Holy Churches of God and anathematized Eutyches and his teachings, and those who have followed or now follow them or who have approved or now approve of them. It also anathematized all heretics and their teachings and those who have followed or do

δὲ ἀνεθεμάτισε καὶ Νεστόριον καὶ τὰ αὐτοῦ δόγματα καὶ τοὺς τὰ αὐτοῦ φρονήσαντας ἢ φρονοῦντας καὶ τοὺς συναινέσαντας αὐτῷ ἢ συναινοῦντας. **17.** Ἡ αὐτὴ δὲ ἐν Χαλκηδόνι ἁγία σύνοδος καὶ τὴν τοῦ μεγάλου Πρόκλου πρὸς Ἀρμενίους γραφεῖσαν ἐπιστολὴν περὶ τοῦ χρῆναι λέγειν τὸν δεσπότην ἡμῶν Ἰησοῦν Χριστὸν τὸν υἱὸν τοῦ θεοῦ καὶ θεὸν ἡμῶν ἕνα τῆς ἁγίας τριάδος διὰ τῆς οἰκείας ἀναφορᾶς ἐδέξατό τε καὶ ἐβεβαίωσεν.

18. Εἰ γὰρ τὰς εἰρημένας τέσσαρας ἁγίας συνόδους παρεξέλθωμεν ἢ τὰ παρ' αὐτῶν διατυπωθέντα, δίδομεν ἄδειαν τοῖς καθαιρεθεῖσιν ὑπ' αὐτῶν αἱρετικοῖς καὶ τοῖς αὐτῶν δόγμασι τὴν ἑαυτῶν λύμην πάλιν εἰς τὰς ἁγίας τοῦ θεοῦ ἐκκλησίας ἐνδείκνυσθαι. **19.** Ὅπερ οὐκ ἐνδέχεται πραχθῆναί ποτε (μὴ γένοιτο), ἐπειδὴ αἱ εἰρημέναι τέσσαρες ἅγιαι σύνοδοι διὰ τῶν οἰκείων δογμάτων τοὺς αἱρετικοὺς καὶ τὰ τούτων δόγματα ἐξέβαλον. **20.** Καὶ εἴ τις πρὸς μίαν τῶν εἰρημένων ἁγίων συνόδων ἀμφιβάλλει, πρόδηλός ἐστιν ἐκεῖνα φρονῶν τὰ δόγματα τὰ παρ' αὐτῆς ἐκβληθέντα τε καὶ ἀναθεματισθέντα. **21.** Μηδεὶς τοίνυν μάτην ἡμᾶς ταραξάτω ἐλπίδι ματαίᾳ κρατούμενος, ὅτι ἡμεῖς ἐναντίον τι τῶν εἰρημένων ἁγίων δ' συνόδων ἐπράξαμεν ἢ πράξομεν ἢ πραχθῆναι παρά τινος συγχωρήσομεν ἢ περιαιρεθῆναι τὴν τῶν αὐτῶν ἁγίων δ' συνόδων ὁσίαν μνήμην ἐκ τῶν ἱερῶν τῆς ἐκκλησίας διπτύχων ἀνεξόμεθα. **22.** Πάντας γὰρ τοὺς παρ' αὐτῶν καθαιρεθέντας καὶ ἀναθεματισθέντας καὶ τὰ τῶν καθαιρεθέντων δόγματα καὶ τοὺς τὰ αὐτῶν φρονήσαντας ἢ φρονοῦντας ἀναθεματίζομεν.

23. Ὅθεν εὐχέσθω ἡμῖν τε καὶ τῇ ἡμετέρᾳ πολιτείᾳ ἡ μακαριότης σου, πάντας περὶ τοῦ ἡμετέρου σκοποῦ καὶ τῆς περὶ τὴν ἀμώμητον πίστιν σπουδῆς διδάσκουσά τε καὶ πληροφοροῦσα.

D. VII k. April. Constantinopoli dn. Iustiniano pp. A. III cons.

[8] *Gloriosissimo et clementissimo filio Iustiniano Augusto Iohannes episcopus urbis Romae.* **pr.** Inter claras sapientiae mansuetudinis vestrae laudes, christianissime principum, puriore luce tamquam aliquod sidus irradiat, quod amore fidei, quod caritatis studio, edocti ecclesiasticis disciplinis, Romanae sedis reverentiam conservatis et ei cuncta subicitis et ad eius deducitis unitatem, ad cuius auctorem, hoc est apostolorum primum, domino loquente praeceptum est: 'pasce oves meas'.

1. Quam esse omnium vere ecclesiarum caput et patrum regulae et principum statuta declarant et pietatis vestrae reverentissimi testantur affatus. patet igitur in vobis impletum fore, quod scripturae loquuntur: 'per me reges regnant et potentes scribunt iustitiam'. **2.** Nihil est enim,

follow their opinions. **16.** Likewise, it anathematized Nestorius and his teachings, and those who have followed or do follow them or who have agreed or do agree with him. **17.** And the same holy synod of Chalcedon adopted and confirmed in its report the letter of the great Proclus written to the Armenians on the necessity of acknowledging Lord Jesus Christ, the Son of God and Our God, as one part of the Holy Trinity.

18. If we disregard the four holy synods mentioned or their resolutions, we give the heretics and heretical doctrines which these synods condemned freedom once again to propagate their poison in the Holy Churches of God. **19.** This can never happen – God forbid! – for by their own resolutions, the four holy synods mentioned expelled these heretics and their doctrines. **20.** If anyone casts doubt on any one of the aforementioned synods, he manifestly holds the doctrines rejected and anathematized by that synod. **21.** Let no one, therefore, vainly disturb Us, swayed by the vain hope that We have done or will do anything contrary to the four holy synods, or will permit such to be done by another or shall suffer the hallowed remembrance of the same four holy synods to be erased from the sacred tablets[11] of the Church. **22.** For We anathematize all those condemned and anathematized by them, as well as their doctrines and those who have followed or now follow them.

23. May Your Blessedness therefore pray for Us and Our State, and teach and guarantee completely Our goal and Our zeal for the immaculate faith.

Given March 26, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, for the third time (533).

[8] *John,*[12] *Bishop of the City of Rome, to his Most Glorious and Most Merciful Son, Emperor Justinian.*

pr. Amid the glowing praise of the wisdom of Your Mildness, Most Christian of Emperors, there shines with an especially pure light, like that of a star, the fact that You, in Your zeal for the faith and Your Christian charity, well instructed in the teachings of the Church, keep (Your) reverence of the See of Rome, submit everything to it, and lead everything to its unity; to whose founder, that is, the First of the Apostles, Our Lord gave this precept: "Feed my sheep."[13]

1. That this See is truly the head of all churches, both the regulations of the fathers and the statutes of emperors declare, as the most reverent utterances of Your Piety also attest. It is clear, therefore, that in You will be fulfilled what the scriptures say: "By me kings reign and the powerful decree justice."[14] **2.** For there is nothing that burns with a brighter light than correct faith in an

[11] δίπτυχα ("diptychs"): Justinian refers to tablets that could be folded together and sealed as a means of record-keeping.
[12] Pope John ii (533–535).
[13] John 21:17.
[14] Proverbs 8:15. Literally: "write justice."

quod lumine clariore praefulgeat, quam recta fides in principe: nihil est, quod ita nequeat occasui subiacere, quam vera religio. nam cum auctorem vitae vel luminis utraque respiciant, recte et tenebras respuunt et nesciunt subiacere defectui.

3. Quam ob rem, gloriosissime principum, votis omnibus exorabitur divina potentia, ut pietatem vestram in hoc ardore fidei, in hac devotione mentis, in hoc integrae religionis studio sine defectu sui in tempora longiora conservet: hoc enim et sanctis credimus ecclesiis expedire. scriptum est enim: 'labiis regit rex', et iterum: 'cor regis in manu dei, et ubi voluerit, inclinabit illud'. **4.** Hoc est enim, quod vestrum firmat imperium, hoc, quod vestra regna conservat. nam pax ecclesiae, religionis unitas, auctorem facti in sublime provectum grata sibi tranquillitate custodit. **5.** Neque enim parva ei vicissitudo a potentia divina tribuitur, per quem nullis rugis ecclesia divisa secernitur, nullis insertis maculis variatur. scriptum est enim: 'quia cum rex iustus sederit supra sedem, non adversabitur sibi quicquam malignum'.

6. Proinde serenitatis vestrae apices per Hypatium atque Demetrium sanctissimos viros fratres et coepiscopos meos reverentia consueta suscepimus: quorum etiam relatione comperimus, quod fidelibus populis proposuissetis edictum amore fidei pro submovenda haereticorum intentione secundum apostolicam doctrinam, fratrum et coepiscoporum nostrorum interveniente consensu. Quod quia apostolicae doctrinae convenit, nostra auctoritate confirmamus.

7. Textus autem epistulae talis est:

> *Victor Iustinianus pius felix inclitus triumphator semper Augustus Iohanni sanctissimo archiepiscopo almae urbis Romae et patriarchae.* **8.** Reddentes honorem apostolicae sedi et vestrae sanctitati, quod semper nobis in voto fuit et est, ut decet, patrem honorantes vestram beatitudinem omnia, quae ad ecclesiarum statum pertinent, festinamus ad notitiam deferre vestrae sanctitatis, quoniam semper magnum nobis fuit studium unitatem vestrae apostolicae sedis et statum sanctarum dei ecclesiarum custodiri, qui hactenus obtinet et incommote permanet nulla intercedente contrarietate.
>
> **9.** Ideoque omnes sacerdotes universi orientalis tractus et subicere et unire sedi vestrae sanctitatis properavimus. **10.** Et in praesenti ergo quae hic commota sunt, quamvis manifesta et indubitata sint et secundum apostolicae vestrae sedis doctrinam ab omnibus semper sacerdotibus firme custodita et praedicata, necessarium duximus, ut ad notitiam vestrae sanctitatis perveniant. **11.** Nec enim patimur quicquam, quod ad ecclesiarum statum

emperor; there is nothing less subject to decline than true religion. For as both behold the author of life or light, they rightly both reject darkness and know not how to succumb to eclipse.

3. Wherefore, Most Glorious of Emperors, divine might will be entreated in all our prayers, so that it may, without fail, long preserve Your Piety in this ardor of faith, in this devotion of mind, in this zeal for untainted religion. We believe this is also for the good of the holy churches. For it is written, "the king rules by his lips," and again: "the king's heart is in the hand of God: He turneth it whithersoever He will."[15] **4.** For it is this that strengthens Your rule; this that preserves Your reign. For the peace of the Church, the unity of religion protect its author with grateful tranquility, when he has been borne up on high (after death). **5.** For no small thanks will be bestowed by divine might on him through whom the Church has been divided and sundered by no cracks; through whom it has been tainted by no blemishes. For it is written: "because when a just king sits upon his throne, no evil will oppose him."[16]

6. We moreover have received with accustomed reverence the letter of Your Serenity from Hypatius and Demetrius, most reverend men, my brothers and co-bishops. We also learned from this report that You, in Your ardor for the faith, in accord with apostolic teaching and with the consent of Our brothers and co-bishops, issued an edict to the peoples of the faithful to destroy the designs of the heretics. Since this edict conforms to apostolic doctrine, We confirm it by Our authority.

7. The text of the letter is as follows:

> *The Conqueror* JUSTINIAN, *Pious, Fortunate, Renowned, Triumphant, Ever Augustus, to the Most Holy John, Archbishop and Patriarch of the Generous City of Rome.* **8.** Rendering honor to the Apostolic See and to Your Holiness, which has always been and remains Our wish, as it ought to be, and honoring Your Blessedness as a father, We hasten to bring to the notice of Your Holiness everything concerning the status of the churches, since We have always greatly desired to preserve the unity of Your Apostolic See and to maintain the status of the Holy Churches of God, as it has heretofore prevailed and continues undisturbed without the interference of anything to the contrary.
>
> **9.** We have therefore hastened to make all priests of the whole Orient subject to the See of Your Holiness and to unite them with it. **10.** And We therefore deemed it necessary to bring to the notice of Your Holiness what action presently has been taken here, although it is clear and unquestioned and has ever been resolutely observed and preached by all priests in accord with the teaching of Your Apostolic See. **11.** For

[15] Proverbs 16:10(?), 21:1.
[16] Proverbs 20:8.

pertinet, quamvis manifestum et indubitatum sit, quod movetur, ut non etiam vestrae innotescat sanctitati, quia caput est omnium sanctarum ecclesiarum. per omnia enim, ut dictum est, properamus honorem et auctoritatem crescere vestrae sedis.

12. Manifestum igitur facimus vestrae sanctitati, quod pauci quidam infideles et alieni sanctae dei catholicae atque apostolicae ecclesiae contradicere Iudaice ausi sunt adversus ea, quae ab omnibus sacerdotibus secundum vestram doctrinam recte tenentur et glorificantur atque praedicantur, denegantes dominum nostrum Ihesum Christum, unigenitum filium dei et deum nostrum, incarnatum ex sancto spiritu et sancta atque gloriosa virgine et dei genetrice Maria hominem factum atque crucifixum, unum esse sanctae et consubstantialis trinitatis, coadorandum et conglorificandum patri et spiritui sancto, consubstantialem patri secundum divinitatem et consubstantialem nobis eundem ipsum secundum humanitatem, passibilem carne, eundem ipsum impassibilem deitate. **13.** Recusantes enim dominum nostrum Ihesum Christum unigenitum filium dei et deum nostrum fateri unum esse sanctae et consubstantialis trinitatis videntur Nestorii malam sequentes doctrinam, secundum gratiam dicentes eum filium dei et alium dicentes deum verbum et alium Christum.

14. Omnes vero sacerdotes sanctae catholicae atque apostolicae ecclesiae et reverentissimi archimandritae sacrorum monasteriorum sequentes sanctitatem vestram et custodientes statum et unitatem sanctarum dei ecclesiarum, quam habent ad apostolicam vestrae sanctitatis sedem, nihil penitus immutantes de ecclesiastico statu, qui hactenus obtinuit atque obtinet, uno consensu confitentur et glorificant, praedicantes dominum nostrum Ihesum Christum, unigenitum filium et verbum dei et deum nostrum, ante saecula et sine tempore de patre natum, in ultimis diebus descendisse de caelis et incarnatum ex spiritu sancto et sancta atque gloriosa virgine et dei genetrice Maria natum et hominem factum et crucifixum unum esse sanctae et consubstantialis trinitatis, coadorandum et conglorificandum patri et sancto spiritui. **15.** Nec enim alium deum verbum et alium Christum cognoscimus, sed unum atque eundem ipsum consubstantialem patri secundum divinitatem et consubstantialem nobis eundem ipsum secundum humanitatem, passibilem carne, eundem ipsum impassibilem deitate. **16.** Ut enim est in divinitate perfectus, ita idem ipse et in humanitate perfectus est: in una enim subsistentia unitatem suscipimus et confitemur,

We permit no action to be taken concerning the status of the churches, however clear and unquestioned it may be, but that it should come to the notice of Your Holiness, because You are the head of all holy churches. For in all ways, as stated, We strive to increase the honor and authority of Your See.

12. We therefore make known to Your Holiness that a few persons, unfaithful and alien to the Holy Catholic and Apostolic Church of God, have dared, in Jewish fashion, to contradict those tenets which, according to Your teaching, are correctly believed, glorified, and preached by all priests. They deny that Our Lord Jesus Christ, Only Begotten Son of God and Our God, who became flesh through the Holy Spirit and the Holy and Glorious Virgin Mary, Mother of God, was made man and was crucified, is one part of the Holy and Consubstantial Trinity, to be worshipped and glorified beside the Father and Holy Spirit; consubstantial with the Father according to His divine nature, and the same One consubstantial with us according to His human nature; capable of suffering in the flesh, but incapable of suffering in his divine nature. **13.** Refusing, therefore, to acknowledge that Our Lord Jesus Christ, the Only Begotten Son of God and Our God, is one part of the Holy and Consubstantial Trinity, they seem to follow the evil doctrine of Nestorius, claiming that He is the Son of God by grace, and that God the Word is one person and Christ another.

14. But all priests of the Holy Catholic and Apostolic Church and the most reverend abbots of the holy monasteries, following Your Holiness and protecting the status and the unity of the Holy Churches of God with the Apostolic See of Your Holiness, in no way changing the status of the Church that has heretofore obtained and now obtains, with universal consensus confess and glorify and preach that Our Lord Jesus Christ, the only begotten Son and Word of God and Our God, begotten of the Father before the ages and without time, (who) descended[17] from heaven in the last days, was made flesh through the Holy Spirit and the Holy and Glorious Virgin Mary, Mother of God, became man and was crucified, is one part of the Holy and Consubstantial Trinity, to be worshipped and glorified beside the Father and the Holy Spirit. **15.** Nor do We acknowledge God the Word as one person and Christ as another, but as one and the same, consubstantial with the Father according to His divine nature, and the same One consubstantial with us according to his human nature; capable of suffering in the flesh, and the same incapable of suffering as a deity. **16.** For as He was perfect in His divine nature, so too was He perfect in His human nature. We acknowledge

[17] The Latin supplies two verbs to this indirect statement, *descendisse* and *esse; descendisse*, however, seems to be in error, perhaps due to difficulty in translating the Greek expression usual in this context, κατελθόντα, since the corresponding *descensus* is used only impersonally by most authors. The controversy revolves not around whether Christ *descended* from Heaven, but whether he *is* part of the Trinity.

quod dicunt Graeci τὴν καθ' ὑπόστασιν ἕνωσιν ὁμολογοῦμεν. **17.** Et quoniam unigenitus filius et verbum dei, ante saecula et sine tempore de patre natus, idem ipse et in ultimis diebus descendens de caelis, incarnatus ex sancto spiritu et sancta atque gloriosa virgine et dei genetrice Maria et homo factus, dominus noster Ihesus Christus proprie et vere deus est, ideo et sanctam et gloriosam virginem Maria proprie et vere dei matrem dicimus: non quia deus verbum principium ex ipsa sumpserit, sed quod in ultimis diebus descendit de caelis et ex ipsa incarnatus et homo factus natus est. **18.** Quem confitemur et credimus, sicut dictum est, consubstantialem esse patri secundum deitatem et consubstantialem nobis eundem ipsum secundum humanitatem, eiusdem miracula et passiones, quas sponte carne sustinuit, cognoscentes.

19. Suscipimus autem sancta quattuor concilia, id est trecentorum decem et octo sanctorum patrum, qui in Nicaea congregati sunt, et centum quinquaginta sanctorum patrum, qui in hac regia urbe convenerunt, et sanctorum patrum, qui in Epheso primo congregati sunt, et sanctorum patrum, qui in Chalcedone convenerunt, sicut vestra apostolica sedes docet atque praedicat. **20.** Omnes ergo sacerdotes sequentes doctrinam apostolicae vestrae sedis ita credunt et confitentur et praedicant. **21.** Unde properavimus haec ad notitiam deferre vestrae sanctitatis per Hypatium et Demetrium, beatissimos episcopos, ut nec vestram sanctitatem lateat, quae a quibusdam paucis monachis male et Iudaice secundum Nestorii perfidiam denegata sunt.

22. Petimus ergo vestrum paternum affectum, ut vestris ad nos destinatis litteris et ad sanctissimum episcopum huius almae urbis et patriarcham vestrum fratrem, quoniam et ipse per eosdem scripsit ad vestram sanctitatem festinans in omnibus sequi sedem apostolicam beatitudinis vestrae, manifestum nobis faciatis, quod omnes, qui praedicta recte confitentur, suscipit vestra sanctitas et eorum, qui Iudaice ausi sunt rectam denegare fidem, condemnat perfidiam. **23.** Plus enim ita et circa vos omnium amor et vestrae sedis crescit auctoritas et quae ad vos est unitas sanctarum ecclesiarum inturbata servabitur, quando per vos didicerint omnes beatissimi episcopi eorum, quae ad vos relata sunt, sinceram vestrae sanctitatis doctrinam. petimus autem vestram beatitudinem orare pro nobis et dei nobis adquirere providentiam.

24. Et alia manu: Divinitas te servet per multos annos, sancte ac religiosissime pater.

D. VIII id. Iun. Constantinopoli dn. Iustiniano perpetuo Augusto III consule.

and confess (His) unity in one substance, as the Greeks say: "We confess His unity in essence." **17.** And since the Only Begotten Son and Word of God, begotten of the Father before the ages and without time, who descended in the last days from heaven, was made flesh through the Holy Spirit and the Holy and Glorious Virgin Mary, Mother of God, and became man, is really and truly God, We therefore also aver that the Holy and Glorious Virgin Mary is really and truly the Mother of God; not because God the Word took His beginning from her, but because in the last days He descended from Heaven and, through her becoming flesh and man, was born of her. **18.** Him We confess and believe, as stated, to be consubstantial with the Father according to His divine nature and consubstantial with us according to His human nature; and We acknowledge His miracles and sufferings, which He willingly endured in the flesh.

19. We accept, moreover, the four holy councils, that is, that of the 318 fathers who assembled in Nicaea, that of the 150 holy fathers who met in This Imperial City, that of the holy fathers who assembled in Ephesus the first time, and that of the holy fathers who met in Chalcedon, as Your Apostolic See teaches and preaches. **20.** All priests, therefore, following the teaching of Your Apostolic See, thus believe and confess and preach. **21.** Hence We have hastened to bring these things to the notice of Your Holiness through Hypatius and Demetrius, most blessed bishops, so that it may not escape Your Holiness what a few monks, evilly and in Jewish fashion, have denied, according to the perfidy of Nestorius.

22. We therefore beseech Your Paternal Love to make known to Us, in a letter addressed to Us and to the Holy Bishop and Patriarch of This Generous City, Your brother – for he too has through the same men sent messages to Your Holiness, hastening to follow, in all things, the Apostolic See of Your Blessedness – that Your Holiness accepts all who rightly confess the foregoing, and condemns the perfidy of those, who in Jewish fashion have dared to deny the true faith. **23.** For the love of all people for You and the authority of Your See will thus increase, and the unity of the holy churches, which is with You, will be kept undisturbed, once all the most blessed bishops have learned from You that what has been reported to you is the genuine doctrine of Your Holiness. We moreover beseech Your Blessedness to pray for Us and to gain for Us the grace of God.

24. *In another hand:*[18] May the Deity preserve You for many years, Holy and Most Pious Father.

Given June 6, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, for the third time (533).

[18] That is, the following line was written by the emperor in his own hand as his signature (*subscriptio*).

25. Liquet igitur, gloriosissime imperator, ut lectionis tenor et legatorum vestrorum relatio patefecit, vos apostolicis eruditionibus studere, cum de religionis catholicae fide ea sapitis, ea scripsistis, ea populis fidelibus publicastis, quae, sicut diximus, et sedes apostolica docet et patrum veneranda decrevit auctoritas et nos confirmavimus in omnibus. **26.** Opportunum est ergo voce clamare prophetica: 'Iucundetur caelum desuper, effundant montes iucunditatem et colles laetitia laetabuntur'. **27.** Haec igitur in tabulis cordis fideles scribere, haec ut pupillas oculorum convenit observare.

28. Neque enim quisquam est, in quo Christi caritas fervet, qui tam rectae, tam verae confessionis vestrae fidei refragator existat, cum impietatem evidenter Nestorii Eutychisque et omnium haereticorum damnantes, unam veram catholicam fidem domini et dei nostri salvatoris Ihesu Christi magisterio institutam et propheticis apostolicisque praedicationibus ubique diffusam et sanctorum per totum orbem confessionibus roboratam, patrum atque doctorum sententiis adunatam et nostrae doctrinae consentaneam inconcusse atque inviolabiliter devota deo et pia mente servatis. **29.** Soli etenim vestris professionibus adversantur, de quibus divina scriptura loquitur dicens: 'posuerunt mendacium spem suam et mendacio operiri speraverunt': et iterum qui secundum prophetam dicunt domino: 'recede a nobis, vias tuas scire nolumus', propter quos Salomon dicit: 'semitas propriae culturae erraverunt, colligunt autem manibus infructuosa'.

30. Haec est igitur vestra vera fides, haec certa religio, hoc beatae recordationis, ut diximus, patres omnes praesulesque Romanae ecclesiae, quos in omnibus sequimur, hoc sedes apostolica praedicavit hactenus et inconvulse custodivit: huic confessioni, huic fidei quisquis contradictor extiterit, alienum a sancta communione, alienum se ipse ab ecclesia iudicavit esse catholica.

31. Nos enim in Romana Cyrum cum sequacibus suis invenimus civitate, qui de Acoemetensi monasterio fuit, quos apostolicis suasionibus ad rectam fidem et velut oves, quae perierant errantes, ad ovile contendimus revocare dominicum, ut agnoscerent secundum prophetam

25. It is clear therefore, Most Glorious Emperor, as the tenor of Your epistle and the report of Your legates demonstrated, that You support the apostolic teachings, since You know, You have written, and You have published for the faithful the tenets of the faith of the Catholic religion which, as We have said, the Apostolic See teaches, the venerable authority of the fathers has decreed, and We in all things confirm. **26.** It is therefore seasonable to proclaim with prophetic voice: "Let the heavens above be gladdened, let the mountains pour forth mirth and the hills abound with happiness."[19] **27.** It behooves the faithful to write these things into the tablets of the heart, to cherish them as the apple of their eyes.[20]

28. Nor is there anyone, in whom burns the love of Christ, who can oppose the confession of Your faith, so correct, and so true. For You, clearly condemning the impiety of Nestorius, of Eutyches, and of all heretics, with a pious mind devoted to God steadfastly and unshakeably preserve the one true Catholic faith, established by the instruction of Our Lord God, Jesus Christ the Savior, diffused everywhere by the preaching of the prophets and Apostles, strengthened by the confessions of the saints across the entire world, one with the views of the fathers and the learned, and in harmony with Our teaching. **29.** They alone oppose Your professions of whom Holy Scripture speaks, saying: "They have placed their hope in lies, and by lies have hoped to be concealed";[21] and again those, who according to the prophet say to the Lord: "Depart from us, for we desire not the knowledge of thy ways";[22] on account of whom Solomon says: "They have traveled the paths of their own cultivation, but have gathered in their hands things unfruitful."[23]

30. This then is Your true faith, this Your unshakeable religion; this all the fathers of blessed memory, as We have said, and the heads of the Roman Church, whom We follow in all things; this the Apostolic See has preached to this day and unshakeably guarded. Every opponent of this confession, of this faith, has declared himself alien to Holy Communion, alien to the Catholic Church.[24]

31. We found Cyrus from the monastery of the Acoemetae[25] along with his lackeys in the City of Rome, and We attempted, by apostolic persuasion, to recall them to the correct faith and, like wandering sheep that had been lost, to the master's fold, so that, according to the prophet, their "stammering tongues

[19] Cf. Isaiah 45:8, 44:23, 55:12; Psalms 96:11, 97:1. 8, 98:8.
[20] Cf., e.g., Deut. 32:10.
[21] Isaiah 28:15.
[22] Job 21:14.
[23] Compare *Sapientia Solomonis* 15:4; the actual source has not been identified.
[24] On "alien" for Latin *alienus*, see n. 10 above.
[25] The Acoemetae ("the sleepless ones") were a sect of monks who held perpetual religious vigils, day and night. John excommunicated them for their support of the Nestorian heresy.

linguae balbutientes loqui quae ad pacem sunt. **32.** Non credentibus autem per nos primus apostolorum Esaiae prophetae verba dicit: 'pergite lumini ignis vestri et flammae, quam accendistis'. sed obduratum est cor eorum, ut scriptum est, ut non intellegerent, et pastoris vocem oves, quae meae non erant, audire minime voluerunt. **33.** In quibus servantes ea, quae ab ipsorum sunt statuta pontifice, eos minime in nostra communione recepimus et ab omni ecclesia catholica esse iussimus alienos, nisi errore damnato doctrinam nostram quantocius sequi habita regulari professione signaverint. **34.** Aequum quippe est, ut, qui nostris minime oboedientiam commodant statutis, ecclesiis habeantur extorres. **35.** Sed quia gremium suum numquam redeuntibus claudit ecclesia, obsecro clementiam vestram, ut, si proprio errore deposito et prava intentione depulsa ad unitatem ecclesiae reverti voluerint, in nostra communione receptis indignationis vestrae removeatis aculeos et nobis intercedentibus benigni animi gratiam condonate.

36. Deum autem et salvatorem nostrum Ihesum Christum exoramus, quatenus longaevis et pacificis vos dignetur custodire temporibus in hac vera religione et unitate et veneratione apostolicae sedis, cuius principatum ut christianissimi et pii conservatis in omnibus. **37.** Praeterea, serenissime principum, laudamus legatorum vestrorum personas, Hypatii et Demetrii fratrum et coepiscoporum nostrorum, quos clementiae vestrae gratos fore ipsa manifestavit electio. **38.** Nam tantae causae pondus non nisi perfectis in Christo potuisset iis iniungi, tantae vero pietatis, tantae reverentiae plenos affatus nisi per amantes minime dignaremini destinare.

39. *Et alia manu*: Gratia domini nostri Ihesu Christi et caritas dei patris et communicatio spiritus sancti sit semper vobiscum, piissime fili. *item subscriptio*: Omnipotens deus regnum et salutem vestram perpetua protectione custodiat, gloriosissime et clementissime fili imperator Auguste.

D. VIII k. April. Roma dn. Iustiniano pp. A. IIII et Paulino iuniore vc. conss.

should learn to speak" the things that lead to peace.[26] **32.** The First of the Apostles moreover speaks to the unbelievers through Us in the words of Isaiah: "Walk in the light of your fire and in the sparks that ye have kindled."[27] But their heart was hardened, as it is written,[28] so they did not understand, and the sheep which were not mine would not hear the voice of the shepherd.[29] **33.** Following the same course with regard to them as decided by their own pontiff, We did not receive them into Our communion and ordered them to be alien to every Catholic church, unless they renounced their error and, having made the prescribed declaration, immediately guaranteed (by signature) their willingness to follow Our teaching. **34.** For it is only just that those who do not show obedience to Our decrees should be banished from the churches. **35.** But because the Church never closes its bosom to those that return to it, I beseech Your Clemency, that if they lay aside their error, abandon their evil course, and wish to return to the unity of the Church, You might call off the stings of Your wrath once they have been received into Our communion and, by Our intercession, bestow on them the grace of Your kind heart.

36. Moreover, We pray to God and Jesus Christ Our Savior that He may deign to protect You through long and peaceful years in this true religion and unity and veneration of this Apostolic See, the preeminence of which You maintain in all things with a most Christian and pious spirit. **37.** Besides this, Most Serene of Emperors, We praise the persons of Your ambassadors, Hypatius and Demetrius, Our brothers and fellow bishops, whose very selection will show them grateful to Your Clemency. **38.** For a matter of such importance could not have been imposed on any but those perfect in Christ, and You scarcely would have deigned to send such utterances so full of piety, so full of reverence, through any but those who possess Your affection.

39. *And in another hand:*[30] The grace of Our Lord Jesus Christ and the love of God the Father and the communion of the Holy Spirit be always with You, Most Pious Son. *Also this subscription:* May Almighty God guard Your kingdom and Your safety with eternal protection, Most Glorious and Most Clement Son, Emperor Augustus.

Given March 25, in Rome, in the consulship of Our Lord Justinian, Ever Augustus, for the fourth time, and of the vir clarissimus *Paulinus the Younger (534).*

[26] Isaiah 32:4.
[27] Isaiah 50:11.
[28] Isaiah 6:10.
[29] John 10:26–27.
[30] Namely, that of Pope John.

II De Sacrosanctis Ecclesiis et de Rebus et Privilegiis Earum

[1] *Imp. Constantinus A. ad populum.* Habeat unusquisque licentiam sanctissimo catholicae venerabilique concilio decedens bonorum quod optavit relinquere. non sint cassa iudicia. nihil est quod magis hominibus debetur, quam ut supremae voluntatis, post quam iam aliud velle non possunt, liber sit stilus et licitum quod iterum non redit arbitrium.
PP. v non. Iul. Romae Crispo II et Constantino II CC. cons.

[2] *Imppp. Gratianus Valentinianus et Theodosius AAA. Pancratio pu.* Nemo apostolorum vel martyrum sedem humandis corporibus existimet esse concessam.
D. III k. Aug. Heracliae Eucherio et Syagrio conss.

[3] *Idem AAA. Cynegio pp.* Nemo martyres distrahat, nemo mercetur.
D. IIII k. Mart. Constantinopoli Honorio np. et Euodio conss.

[4] *Impp. Honorius et Theodosius AA. Aetio pu.* Non plures quam nongenti quinquaginta decani sacrosanctae huius amplissimae urbis deputentur ecclesiae nullique his addendi mutandive vel in defuncti locum substituendi pateat copia: nulli alii corporatorum praeter praedictum numerum per patrocinia immunitate concessa negataque omni novationis facultate similia vindicandi his, quae in honorem vel necessaria obsequia sacrosanctae ecclesiae indulta sunt.
D. XII k. Sept. Eudoxiopoli Honorio VIII et Theodosio III AA. conss.

[5] *Idem AA. Melitio pp.* Placet rationabilis consilii tenore perpenso destricta moderatione praescribere, a quibus specialiter necessitatibus ecclesiae urbium singularum habeantur immunes. prima quippe illius usurpationis contumelia depellenda est, ne praedia usibus caelestium secretorum dedicata sordidorum munerum faece vexentur. nihil extraordinarium ab hac superindicticiumve flagitetur, nulla translationum

Second Title Holy Churches, Their Property and Privileges

[1][31] *Emperor CONSTANTINE Augustus to the People.* Each and everyone, at the time of death, shall have the freedom to leave to the Holy Catholic and venerable Church any property that he chooses. Their decisions shall not be void. There is nothing that men deserve more than to have a free pen with which to express their last will – after which they can wish no more – and the permission to use their judgment, the opportunity for which shall not come again.

Posted July 3, at Rome, in the consulship of the Caesars Crispus, for the second time, and Constantine, for the second time (321).

[2][32] *Emperors GRATIAN, VALENTINIAN, and THEODOSIUS Augusti to Pancratius, Urban Prefect.* No one shall think that the abodes (*sedes*) of apostles or martyrs may be used for the burial of bodies.

Given July 30, at Heraclea, in the consulship of Eucherius and Syagrius (381).

[3][33] *The same Augusti to Cynegius, Praetorian Prefect.* No one shall sell,[34] no one shall trade in (the relics of) martyrs.

Given February 26, at Constantinople, in the consulship of Honorius, Most Noble Boy, and Euodius (386).

[4][35] *Emperors HONORIUS and THEODOSIUS Augusti to Aetius, Urban Prefect.* No more than 950 burial-men (*decani*) shall be assigned to the Holy Church of This Most Exalted City, and no one shall have power to add to or to change this number or to substitute others for those who have died. No other guild member beyond the prescribed number shall be granted exemption from liturgies through patronage, and all power of innovation for claiming privileges similar to those that have been bestowed on the Holy Church, in its honor or for its necessary functions, shall be denied.

Given August 21, at Eudoxiopolis, in the consulship of Honorius, for the eighth time, and Theodosius, for the third time, Augusti (409).

[5][36] *The same Augusti to Melitius, Praetorian Prefect.* Having deliberated what should constitute a reasonable plan, We have resolved to regulate strictly and prescribe specifically from which obligations the churches of individual cities shall be exempt. First of all, that outrageous practice, whereby estates dedicated to the heavenly mysteries are afflicted by the filth of menial liturgies (*munera*

[31] = C.Th. 16.2.4.
[32] = C.Th. 9.17.6.
[33] = C.Th. 9.17.7; combine with C. 3.44.14.
[34] The Latin word used, *distrahat*, also suggests literally the "tearing apart" of their bodies.
[35] Partly duplicated in C. 4.63.5. Seeck gives August 21, 420.
[36] = C.Th. 16.2.40, Sirm. 11. Dated by Seeck to June 24, 411.

sollicitudo gignatur, postremo nihil praeter canonicam illationem, quam[i] adventiciae necessitatis sarcina repentina depoposcerit, eius functionibus adscribatur. si quis contra venerit, post debitae ultionis acrimoniam, quae erga sacrilegos iure promenda est, exilio perpetuae deportationis uratur.

D. VIII k. Iun. Ravenna Honorio VIIII et Theodosio V AA. conss.

[6] *Idem AA. Philippo pp. Illyrici.* Omni innovatione cessante vetustatem et canones pristinos ecclesiasticos, qui nunc usque tenuerunt, et per omnes Illyrici provincias servari praecipimus, ut, si quid dubietatis emerserit, id oporteat non absque scientia viri reverentissimi sacrosanctae legis antistitis urbis Constantinopolitanae, quae Romae veteris praerogativa laetatur, conventui sacerdotali sanctoque iudicio reservari.

D. prid. id. Iul. Eustathio et Agricola conss.

[7] *Idem AA. Asclepiodoto pp.* Ad instructiones itinerum pontiumque etiam divinas domos et venerabiles ecclesias tam laudabili titulo libenter adscribimus, quia non est inter sordida munera numeratum.

D. XV k. Mart. Constantinopoli Asclepiodoto et Mariniano conss.

[8] *Imp. Theodosius A. Isidoro pp. Illyrici.* Sacrosancta Thessalonicensis ecclesia civitatis aperte sciat propriae tantummodo capitationis modum beneficio mei numinis sublevandum nec externorum gravamine tributorum rem publicam ecclesiastici nominis abusione laedendam.

D. VI id. Oct. Constantinopoli Victore cons.

[i] et quam

sordida), shall be abolished.[37] No extraordinary levy or superindiction shall be demanded of it; they shall not be troubled by transportation duties (*translatio*); in summary, nothing shall be added to their obligations beyond their regular tax payment, and what the sudden burden of unforeseen need may require. If anyone violates this law, after he has tasted the bitterness of his due punishment, which is rightly inflicted on the sacrilegious, he shall be branded with the banishment of permanent deportation.

Given May 25, at Ravenna, in the consulship of Honorius, for the ninth time, and Theodosius, for the fifth time, Augusti (412).

[6][38] *The same Augusti to Philippus, Praetorian Prefect of Illyricum.* We order all innovation to cease and the ancient practice and the original ecclesiastical canons, which have been in force to this day, to be observed also throughout all the provinces of Illyricum. If any doubt should emerge, the matter must be brought to the attention of the most reverend bishop of the Holy Law in the City of Constantinople, which is blessed by the prerogative of Ancient Rome, so that the matter may be left to a priestly assembly and its holy judgment.

Given July 14, at the consulship of Eustathius and Agricola (421).

[7][39] *The same Augusti to Asclepiodotus, Praetorian Prefect.* For constructing of roads and bridges, We also gladly assign even the imperial estates and the venerable churches to such a laudable purpose, because such work is not numbered among menial liturgies.

Given February 15, at Constantinople, in the consulship of Asclepiodotus and Marinianus (423).

[8][40] *Emperor* THEODOSIUS *Augustus to Isidorus, Praetorian Prefect of Illyricum.* The Holy Church of the city of Thessalonica shall know clearly that only the amount of its own capitation tax may be relieved by the benefit of My Imperial Majesty, and that the State must not be harmed by the weight of unrelated exemptions through misuse of the name of the Church.

Given October 10, at Constantinople, in the consulship of Victor (424).

[37] *Sirm.* 11 inserts here: *nulla iugationem, quae talium privilegiorum sorte gratulatur, muniendi itineris constringat iniuria* ("The insult of roadwork shall not burden their tax assessment, which rejoices in the fortune of such privileges"). The phrase "of it" in the following sentence refers to these omitted words.

[38] = C.Th. 16.2.45; combine with C. 11.21.1.

[39] = C. 11.75.4, C.Th. 15.3.6.

[40] = C. 10.16.12.1; C.Th. 11.1.33. Seeck dates to 423.

[9] *Impp. Theodosius et Valentinianus AA. Cyro pu.* **pr.** Qui sub praetextu decanorum seu collegiatorum, cum id munus non impleant, aliis se muneribus conantur subtrahere, eorum fraudibus credidimus obviandum, ne quis sub specie muneris, quod minus exequitur, alterius muneris oneribus relevetur, ne argentariorum vel nummulariorum munera declinentur ab his, qui dici tantum collegiati vel decani festinant. **1.** Ideoque si quis eorum sub nudae appellationis velamine collegiatum se seu decanum appellat, sciat pro se alium subrogandum, qui praedicto muneri sufficiens adprobatur, subrogatione videlicet memoratorum vel eorum qui moriuntur primatum eius qui subrogatur admisso iudicio: ab hac dispositione nemine se excusante sacrosanctarum ecclesiarum reverentia.

D. x k. April. Theodosio XVII *et Festo conss.*

[10] *Idem AA. Florentio pp.* **pr.** Iubemus nullam navem ultra duorum millium modiorum capacem ante felicem embolam vel publicarum specierum transvectionem aut privilegio dignitatis aut religionis intuitu aut praerogativa personae publicis utilitatibus excusari posse subtractam: nec si caeleste contra proferatur oraculum, sive adnotatio sit sive divina pragmatica, providentissimae legis regulas expugnare debebit. **1.** Quod etiam in omnibus causis cupimus observari, ut generaliter, si quid eiusmodi contra ius vel utilitatem publicam in quolibet negotio proferatur, non valeat. quidquid enim in fraudem istius legis quolibet modo fuerit attemptatum, id navigii quod excusatur publicatione corrigimus.

D. VIII *id. April. Constantinopoli Theodosio A.* XVII *et Festo conss.*

[11] *Idem AA. ad Taurum pp.* Neminem angariis vel parangariis vel plaustris vel quolibet munere excusari praecipimus, cum ad felicissimam expeditionem numinis nostri omnium provincialium per loca,

[9][41] *Emperors* Theodosius *and* Valentinian *Augusti to Cyrus, Urban Prefect.* **pr.** We have believed that we must oppose the fraud of those who, under the pretext of being corpse bearers (*decani*) or members of the guild (sc. of firemen),[42] when (in fact) they do not fulfill this service, endeavor to withdraw themselves from other compulsory services, lest anyone, under the pretext of one compulsory service that he does not carry out be relieved of the burdens of another, so that the duties of the bankers (*argentarii*) and the money changers (*nummularii*) not be refused by those who hasten to be merely called members of the guild or burial men. **1.** If anyone, therefore, calls himself, under cover of a mere title, fireman or burial-man, he should know that someone else, who is certified as suitable for the aforementioned liturgy, must be enrolled in his place – that is to say, substitution of the aforementioned persons or of those who die shall be made at the discretion of the superiors of the one to be substituted. No one shall excuse himself from this regulation out of reverence for the holy churches.

Given March 23, at Constantinople, in the consulship of Theodosius Augustus, for the seventeenth time, and Festus (439).

[10][43] *The same Augusti to Florentius, Praetorian Prefect.* **pr.** We order that no ship of a capacity greater than 2,000 *modii* may be exempted and withdrawn from public duties before the Felicitous Embarkment[44] or the shipment of public goods (*publicae species*), whether by reason of privilege of rank, by observance of religion, or by personal prerogative. Not even if the divine oracle[45] itself is adduced, whether in the form of an annotation (*adnotatio*) or pragmatic sanction, should it override the rules of this most providential law. **1.** We desire this to be observed in all cases: thus generally, if any such document is produced in any case against the law or public good, it shall be void. For We shall reprove any attempt to circumvent this law, whatever the means, by confiscation of the ship exempted.

Given April 6, at Constantinople, in the consulship of Theodosius Augustus, for the seventeenth time, and Festus (439).

[11][46] *The same Augusti to Taurus, Praetorian Prefect.* We order that no one shall be excused from providing post-wagons or supplementary post-wagons

[41] = C. 11.18.1.

[42] The guild referred to here is that of the firemen of Constantinople; see C. 4.63.5 and note ad loc. Blume identifies the *decani* as people in charge of burials; cf. C. 1.2.4, 9.

[43] = C. 11.4.2, Nov. Theod. 8.1 (April 7, preferred by Seeck).

[44] The "Felicitous Embarkment" (*felix embola*) of the grain fleet that served Constantinople. Two thousand *modii* is about 13.5 metric tons of grain.

[45] That is a document procured from the imperial chancellery.

[46] = C. 10.49.2 (in part).

qua iter arripimus, debeant nobis ministeria exhiberi, licet ad sacrosanctas ecclesias possessiones pertineant.

D. XIII k. Mart. Constantinopoli Valentiniano A. VI et Nomo conss.

[12] *Impp. Valentinianus et Marcianus AA. Palladio pp.* **pr.** Privilegia, quae generalibus constitutionibus universis sacrosanctis ecclesiis orthodoxae religionis retro principes praestiterunt, firma et illibata in perpetuum decernimus custodiri. **1.** Omnes sane pragmaticas sanctiones, quae contra canones ecclesiasticos interventu gratiae et ambitionis elicitae sunt, robore suo et firmitate vacuatas cessare praecipimus. **2.** Et quia humanitatis nostrae est prospicere egenis ac dare operam, ut pauperibus alimenta non desint, salaria etiam, quae sacrosanctis ecclesiis in diversis speciebus de publico hactenus ministrata sunt, iubemus nunc quoque inconcussa et a nullo prorsus imminuta praestari liberalitatique huic promptissimae perpetuam tribuimus firmitatem.

D. pridie id. Nov. Constantinopoli Marciano A. cons.

[13] *Idem AA. Palladio pp.* Generali lege sancimus, sive vidua sive diaconissa vel virgo deo dicata vel sanctimonialis mulier, sive quocumque alio nomine religiosi honoris vel dignitatis femina nuncupatur, testamento vel codicillo suo, quod tamen alia omni iuris ratione munitum sit, ecclesiae vel martyrio vel clerico vel monacho vel pauperibus aliquid vel ex integro vel ex parte in quacumque re vel specie credidit seu crediderit relinquendum, id modis omnibus ratum firmumque consistat, sive hoc institutione sive substitutione seu legato aut fideicommisso per universitatem seu speciali, sive scripta sive non scripta voluntate fuerit derelictum: omni in posterum in huiusmodi negotiis ambiguitate submota.

D. X k. Mai. Constantinopoli Valentiniano VIII et Anthemio conss.

[14] *Impp. Leo et Anthemius AA. Armasio pp.* **pr.** Iubemus nulli posthac archiepiscopo in hac urbe regia sacrosanctae ecclesiae praesidenti, nulli oeconomo, cui res ecclesiastica gubernanda mandatur, esse facultatem fundos vel praedia urbana seu rustica, res postremo immobiles

(*angariae, parangariae*), from providing carts, or from any liturgy whatsoever; for service must be rendered Us for the most blessed progress of Our Godhead through the lands by all provincials through which We journey, even if they belong to the Holy Church.

Given February 17, at Constantinople, in the consulship of Valentinian Augustus, for the sixth time, and Nomus (445).

[12] *Emperors* VALENTINIAN *and* MARCIAN *Augusti to Palladius, Praetorian Prefect.* **pr.** We decree that the privileges, which former emperors granted in general constitutions to all holy churches of the orthodox religion, shall forever be kept valid and undiminished. **1.** We order, however, that all pragmatic sanctions contrary to the ecclesiastical canons which have been obtained by influence and solicitation, shall be bereft of their strength and validity and be void. **2.** And since it behooves Our Compassion to provide for the needy and to ensure that nourishment for the poor is not lacking, We order that the pensions, which have heretofore been paid in sundry goods to the holy churches from the public treasury, shall also now be furnished intact and diminished by no man, and on this most ready generosity We confer permanent validity.

Given November 12, at Constantinople, in the consulship of Marcian Augustus (451).

[13][47] *The same Augusti to Palladius, Praetorian Prefect.* We decree by general law, that if a widow or deaconess, a virgin dedicated to God or a holy woman (*sanctimonialis mulier*), or a woman called by any other title of religious honor or station, has deemed or shall deem it best in her will or in a codicil – which, however, is fortified by every other rule of law – to leave her property in whole or in part, whatever the objects or goods of which it may consist, to a church, martyr's shrine, cleric, monk, or to the poor, her bequest shall in every respect stand valid and firm, whether the property is left by the institution or substitution (of an heir), by legacy or trust, general or special, by written or unwritten wish. Thus all uncertainty in matters of this nature will hereafter be banished.

Given April 22, at Constantinople, in the consulship of Valentinian Augustus, for the eighth time, and Anthemius (455).

[14] *Emperors* LEO *and* ANTHEMIUS *Augusti to Armasius, Praetorian Prefect.* **pr.** We order that no archbishop presiding over a holy church in This Imperial City, no steward to whom the administration of church property has been entrusted, shall hereafter have the power to transfer to any person, by any form

[47] = Nov. Marc. 5.2.

aut in his praediis colonos vel mancipia constituta aut annonas civiles cuiuscumque suprema vel superstitis voluntate ad religiosam ecclesiam devolutas sub cuiuscumque alienationis specie ad quamcumque transferre personam, sed ea praedia dividere quidem, colere augere et ampliare nec ulli isdem praediis audere cedere. 1. Verum sive testamento quocumque iure facto seu codicillo vel sola nuncupatione, legato sive fideicommisso, aut mortis causa aut alio quocumque ultimo arbitrio aut certe inter viventes habita largitate sive contractu venditionis sive donationis aut alio quocumque titulo quisque ad praefatam venerabilem ecclesiam patrimonium suum partemve certam patrimonii in fundis praediis seu domibus vel annonis mancipiis et colonis eorumque peculiis voluerit pertinere, inconcussa ea omnia sine ulla penitus imminutione conservent scientes nulla sibi occasione vel tempore ad vicissitudinem beneficii colorati vel gratiae referendae, donandi vel certe volentibus emere alienandi aliquam facultatem permissam, nec si omnes cum religioso episcopo et oeconomo clerici in earum possessionum alienatione consentiant. 2. Ea enim, quae ad beatissimae ecclesiae iura pertinent vel posthac forte pervenerint, tamquam ipsam sacrosanctam et religiosam ecclesiam intacta convenit venerabiliter custodiri, ut, sicut ipsa religionis et fidei mater perpetua est, ita eius patrimonium iugiter servetur illaesum.

3. Sane, si haec nostrae perennitatis statuta audaci spiritu et mente sacrilega quisquam oeconomorum vel hominum temeranda crediderit, ipse quidem, qui protervo ausu ecclesiastica praedia donationis vel emptionis seu commutationis aut cuiuscumque contractus alterius nomine nisi eo quo nunc statuimus adquirere vel habere temptaverit, omnem huiusmodi fructum propriae temeritatis amittat: et pretia quidem et munera, quae eius rei gratia data fuerint oeconomo seu aliis quibuscumque personis, ecclesiae lucris et commodis adquirantur. 4. Praedia autem et in his omnia constituta ab ipsis clericis et temporalibus oeconomis cum fructibus seu pensionibus et accessionibus totius medii temporis vindicentur, ut tamquam penitus a nullo empta vel vendita teneantur, quia ea, quae contra leges fiunt, pro infectis habenda sunt.

5. Oeconomus autem, qui hoc fecerit, immo fieri passus fuerit vel in quacumque prorsus huiusmodi venditione seu donatione vel commutatione nisi ea quam praesenti lege concedimus, postremo in quacumque alienatione consenserit, commissa sibi oeconomatus administratione privetur deque bonis eius quodcumque exinde incommodum ecclesiae contigerit reformetur heredesque eius et successores ac posteri super

of conveyance, any farms or urban or rural estates, or indeed any immovable property, or the tenants (*coloni*) or slaves upon these lands, or any civic bread rations (*annonae civiles*), which have devolved to the Holy Church by the last will of any man, or by the will of one who survives him. They may, indeed, divide, cultivate, increase, and extend such estates yet not dare to yield them to anyone. **1.** And if anyone by a will, by whatever right it is made, by codicil or merely orally, or by legacy or trust, whether in anticipation of death or by any other last wish, or if one exercises his munificence while among the living, whether by contract of sale, donation, or any other description, has wished that his property or a definite portion thereof in farms, estates or houses, in civic bread rations, in slaves and tenants and their *peculia*, should belong to the aforesaid Venerable Church, they (the archbishop and steward) shall maintain all these things intact, without the slightest diminution, knowing that they shall on no pretext and at no time have the power to give it in return for some specious favor or to pay thanks, or indeed alienate it to parties wanting to buy it; not even if all the clergy, together with the pious bishop and the steward, consent to the alienation of these properties. **2.** For it is proper that what belongs to the Most Blessed Church or is acquired hereafter should reverently be kept intact just like the Sacrosanct and Holy Church itself, so that just as the Church is the eternal mother of religion and faith, so her property should perpetually be kept unscathed.

3. Certainly, if any steward or other person should resolve, in brazen arrogance and sacrilegious conceit, to violate these the decrees of Our Eternity, he who in his rashness attempts to acquire or hold church estates as a gift, purchase, exchange, or by any other contract except in the manner We presently decree, shall lose the fruits of his own audacity; and the payments and gifts, which have been given for that reason to the steward or any other persons, shall accrue to the profit and advantage of the Church. **4.** Such estates, moreover, and all things in them, with their revenues or rents and acquisitions gained over the entire intervening time, shall be claimed by the clergy and the acting stewards, as if they had been held by no man as things bought or sold; because acts made against the laws must be considered void.

5. The steward who does this, moreover, or rather who permits it to be done, or who has at all consented to such a sale, gift, or exchange other than that which We permit by this law, or indeed to any kind of alienation, shall be stripped of the administration of the stewardship entrusted to him, and all loss caused thereby to the Church shall be repaid out of his property; and his heirs, successors, and descendants may be sued with the appropriate claim by the church authorities for this act or consent. **6.** The legal clerks (*tabelliones*) who

hoc facto sive consensu competenti ab ecclesiasticis actione pulsentur: **6.** his tabellionibus, qui huiusmodi contractuum vetitorum ausi fuerint instrumenta conscribere, irrevocabilis exilii animadversione plectendis: **7.** his quoque iudicibus vel ius gestorum habentibus, qui huiusmodi donationum vel contractuum gesta confecerint, dignitatis propriae et bonorum omnium spoliatione damnandis.

8. Sane ne omnis religiosis oeconomis provisionis commodae via et occasio venerandis ecclesiis profutura videatur exclusa, id, quod utile plerumque iudicatur, cautelae observatione necessario procedere concedimus. **9.** Si quando igitur vir religiosus oeconomus huius regiae urbis ecclesiae perspexerit expedire, ut desideranti cuiquam certarum possessionum atque praediorum, urbanorum scilicet sive rusticorum, ad ius ecclesiasticum pertinentium temporaria usus fructus possessio pro ipsius petitione praestetur, tunc eius temporis, quod inter utrosque convenerit, sive in diem vitae suae ab eo qui desiderat postuletur, pacta cum eo qui hoc elegerit ineat oeconomus atque conscribat, per quae et tempus, intra quod hoc praestari placuerit, statuatur et manifestum sit, quid quacumque acceperit ad vicem huius beneficii gratia, praestando quidem ecclesiastici praedii pro tempore usu fructu, post statutum autem tempus et placitum temporum redituum proprietate ad ius et dominium ecclesiasticum recurrente firmiter: ita scilicet, ut sive completo spatio, quod inter eos fuerit constitutum, seu mortis suae tempore, si hoc quoque convenerit, is, qui possessionem ecclesiasticam et certorum redituum usum fructum habendi gratia pacto interveniente susceperit, non minus quam alterius tantae quantitatis, quantae acceperat reditus, cum ipso praediorum dominio et rebus immobilibus eorumque colonis et mancipiis ecclesiae derelinquat. **10.** Nisi enim hac condicione pacta inita fuerint, ea quoque decernimus non valere, sed possessionem ecclesiasticam tamquam nullo iure transcriptam in ipsius iure ac dominio permanere et ab ecclesiasticis sive oeconomis decernimus vindicari.

D. Constantinopoli Iordane et Severo conss.

[15] *[Αὐτοκράτωρ Ζήνων Α.]* **pr. ...** [Θεσπίζομεν] εἴ τις δωρεὰν κινητῶν ἢ ἀκινήτων ἢ αὐτοκινήτων πραγμάτων ἢ οἱουδήποτε δικαίου ποιήσοιτο εἰς πρόσωπον οἱουδήποτε μάρτυρος ἢ ἀποστόλου ἢ προφήτου ἢ τῶν ἁγίων ἀγγέλων, ὡς μέλλων εὐκτήριον οἶκον οἰκοδομεῖν εἰς μνήμην, οὗπερ ὀνόματι τὴν εὐσεβῆ διατυποῖ δωρεάν, τὴν αὐτὴν δωρεάν, εἰ μόνον τὴν πρᾶξιν τῶν ὑπομνημάτων κατὰ τὰς θείας διατάξεις ἐνεφάνισεν, ἐφ᾽ ὧν τοῦτο ἀναγκαῖόν ἐστι μαθεῖν, κρατεῖν καὶ ἐν ἀπαιτήσει ἐκ παντὸς εἶναι

dared to draft the documents of such forbidden contracts shall be stricken with the penalty of irrevocable exile. **7.** The judges or those who have the right to authorize public records, who have made records of such gifts or contracts, shall be condemned to the loss of their rank and of all their property.

8. But, lest every avenue for profitable action and every opportunity beneficial to the venerable churches seem closed to the pious stewards, We permit what is generally considered beneficial to proceed if necessary caution is observed. **9.** If, then, a reverend steward of a church of This Imperial City shall find it advantageous that temporary possession of the usufruct of certain possessions or landed estates belonging to the church – urban or rural estates, namely – should be granted to a petitioner desirous of them at his own request, then for that amount of time, on which both have agreed or for the life of the petitioner, the steward may enter into a contract and draft the terms, by which it is made, and the time, during which he has decided the property should be made available, and it shall be clear what each party has received in turn on account of this award. The usufruct of the church property shall indeed be granted temporarily, but after the fixed and agreed time, ownership of the revenue made during that time shall revert absolutely to the control and ownership of the Church. Thus, namely, on the expiration of the appointed time or on the death of the lessee, if that was the agreed term, he who contracted to receive ecclesiastical property for the purpose of having the usufruct of certain revenue, shall leave to the Church no less than twice the amount of the revenue which he received, together with absolute ownership of the estates themselves, and the immovable property, tenants, and slaves on them. **10.** For if contracts are not made on this condition, We decree that they are void; and We decree that the ecclesiastical property shall remain under the control and ownership of the Church and shall be claimed by the clergy or stewards, as if it had been transferred unlawfully.

Given at Constantinople, in the consulship of Jordanes and Severus (470).

[15] (*Emperor Zeno Augustus* ...).[48] **pr.** (We decree that), if anyone should donate immovable, movable, self-moving, or any category of property to the person of any martyr, apostle, or prophet, or to the holy angels, to build a chapel in the memory of the person in whose name he makes this pious gift; if he (the donor) has only produced the public records completed according to the imperial constitutions, in which it is compulsory to know this, the donation shall be valid and subject to collection, whether construction of the building has commenced or not, but the generous donor has only shown his own

[48] The inscription has been inferred from the following constitution. The subscription is also lost. Lounghis *et al.* date to before December 17, 476.

τρόπου, κἂν ἀρχθέντος ἢ καὶ μὴ ἀρχθέντος, ἀλλὰ προδηλωθέντος μόνον διὰ τῆς δωρεᾶς τοῦ εὐαγοῦς οἰκοδομήματος ὁ φιλοτιμούμενος τὴν οἰκείαν δηλώσῃ γνώμην, ὥστε καὶ αὐτὸν καὶ τοὺς αὐτοῦ κληρονόμους τοῖς εὐσεβῶς ἐπηγγελμένοις ἐνόχους ὄντας καὶ προδηλούμενον, ὡς εἴρηται, ἐκ τῆς δωρεᾶς εὐαγὲς εὐκτήριον οἰκοδομεῖν καὶ οἰκοδομηθέντι ἢ οἰκοδομουμένῳ τὴν ἐκ τῆς αὐτῆς φιλοτιμίας ἀνελλιπῶς παρέχειν ἀπόλαυσιν.

1. Τὰ δὲ αὐτὰ καὶ ἐπὶ ταῖς τῶν καλουμένων ξενοδοχείων ἢ νοσοκομείων ἢ πτωχείων οἰκοδομεῖσθαι καθ' ὃν προείρηται τρόπον ἐπαγγελθέντων δωρεαῖς κατὰ πάντα τρόπον κρατείτω. **2.** Ἀδείας διδομένης τοῖς κατὰ τόπον θεοφιλεστάτοις ἐπισκόποις ἤτοι τοῖς εὐλαβεστάτοις οἰκονόμοις τὴν ἐκ ταύτης ἡμῶν τῆς θείας διατάξεως ἁρμόζουσαν ἀγωγὴν κινεῖν κατ' αὐτῶν ἐφ' οἷς εὐσεβῶς ἐπηγγείλαντο· δικαστικῆς, ὅπερ καὶ λέγειν ἀπρεπές, δεομένων ἀνάγκης. **3.** Ἐπὶ τούτῳ μέντοι τῷ ὅρῳ, ἐφ' ᾧ τε πληρωθέντων τῶν δοκούντων τούτῳ τῷ νόμῳ καὶ τῆς εὐσεβοῦς τῶν δωρησαμένων ἐπαγγελίας ἔργῳ παραδοθείσης συγχωρεῖσθαι κατὰ τὰ δόξαντα τοῖς φιλοτιμησαμένοις καὶ κατὰ τοὺς ἐπιτεθέντας αὐτοῖς ὅρους προβαίνειν τὴν τῶν δωρηθέντων διοίκησιν.

[16] *Idem A. Sebastiano pp.* **pr.** Decernimus, ut antiquatis ac infirmatis funditus, quae contra ipsum orthodoxae religionis deum quodammodo facta sunt, in integrum restituantur universa et ad suum ordinem revocentur, quae ante profectionem nostrae mansuetudinis de orthodoxae religionis fide et sanctissimarum ecclesiarum et martyriorum statu firmiter obtinebant: his, quae contra haec tempore tyrannidis innovata sunt tam contra venerabiles ecclesias, quarum sacerdotium gerit beatissimus ac religiosissimus episcopus patriarcha nostrae pietatis pater Acacius, quam ceteras, quae per diversas provincias collocatae sunt, nec non et reverentissimos earum antistites seu de iure sacerdotalium creationum seu de expulsione cuiusquam episcopi a quolibet illis temporibus facta seu de praerogativa in episcoporum concilio vel extra concilium ante alios residendi vel de privilegio metropolitano vel patriarchico sub isdem impiis temporibus, penitus antiquandis, ut cassatis et rescissis, quae per huiusmodi sceleratas iussiones aut pragmaticas sanctiones aut constitutiones impias sive formas subsecuta sunt, quae a divae recordationis retro principibus ante nostrum imperium et deinceps a nostra mansuetudine indulta vel constituta sunt super sanctis ecclesiis et martyriis et religiosis episcopis clericis aut monachis, inviolata serventur. **1.** Sacrosanctam quoque huius religiosissimae civitatis ecclesiam matrem nostrae pietatis et Christianorum orthodoxae religionis omnium et eiusdem regiae urbis sanctissimam sedem privilegia et honores omnes super episcoporum creationibus et iure ante alios residendi et cetera omnia, quae ante nostrum imperium vel nobis imperantibus

intentions by the gift of the promised chapel. Thus he and his heirs shall be bound to their pious declarations and must build the chapel, promised, as has been said, by gift; and they must unstintingly furnish the proceeds of their ambition, whether the chapel has been or is being built.

1. The same shall apply fully to so-called hospices, infirmaries, and poorhouses, which anyone has in the aforesaid manner promised to build as a gift. **2.** Pursuant to this Our imperial decree, We grant the most reverend bishops and most pious stewards of each place the freedom to bring the corresponding action against those (donors) for what they have piously promised, should they require – which it is unseemly even to say – the compulsion of the court. **3.** On this condition, that everything decreed in this law has been observed and the pious promise of the donors has been realized in deed, the management of the things donated shall be allowed to proceed at the discretion of the donors and according to the terms established by them.

[16] *The same Augustus to Sebastianus, Praetorian Prefect.* **pr.** We repeal and annul utterly everything that has been done by whatever means against the God of the orthodox religion, and We decree that everything pertaining to the faith of the orthodox religion and to the status of the most holy churches and martyrs' shrines shall be fully restored and returned to the condition that prevailed before the departure of Our Clemency.[49] The innovations made during the tyranny both against the venerable churches – of which the Most Blessed and Reverend Acacius, the Father of Our Piety, holds the priestly office of Bishop Patriarch – and against all other churches located in sundry provinces, as well as those innovations against their most reverend bishop, whether on the right of ordaining priests, on the expulsion of any bishops caused by anyone during those times, on the privilege of sitting before others inside or outside of the council of bishops, on any privilege granted to a metropolitan bishop or Patriarch in those impious times, shall be repealed entirely. Thus, the innovations that issued from such wicked decrees or pragmatic sanctions, impious constitutions, or documents shall be annulled and rescinded, and whatever was conceded or established by past emperors of blessed memory prior to Our reign or thereafter by Our Clemency with regard to the holy churches and martyrs' shrines and the pious bishops, clergymen, and monks, shall be preserved inviolate. **1.** And We rule and decree that the Holy Church of This Most Religious City, the Mother of Our Piety and of all Christians of the orthodox faith, and the Most Holy See of This Imperial City shall, in the interest of the Imperial City, forever firmly possess all privileges and honors with regard to

[49] Zeno had been forced to flee Constantinople during the revolt of Basiliscus (475–476), whose brief rule is the "tyranny" in the following sentence.

habuisse dignoscitur, habere in perpetuum firmiter regiae urbis intuitu iudicamus et sancimus.

D. XVI k. Ian. post cons. Armati vc.

[17] *Αὐτοκράτωρ Ἀναστάσιος Α.* **pr.** ... Θεσπίζομεν τὰ ἐπὶ τῇ ἁγιωτάτῃ μεγάλῃ ἐκκλησίᾳ τῇσδε τῆς βασιλίδος πόλεως (ᾗ συνυπάγεσθαι προσήκει καὶ τοὺς ἁγιωτάτους οἴκους, ὧν αὐτὴ τά τε πράγματα καὶ τὴν τῶν καλουμένων διαρίων καὶ λοιπῶν δαπανημάτων εἰς ἑαυτὴν ἀνεδέξατο χορηγίαν) ὁρισθέντα καὶ κρατήσαντα μένειν ἐφ' ἑαυτῶν ἀσάλευτα καὶ ἄτρωτα κατὰ πάντα τρόπον φυλαττόμενα· βέβαια δὲ εἶναι καὶ πάντα τὰ προνόμια τὰ τῇ αὐτῇ μεγάλῃ ἐκκλησίᾳ καὶ τῷ θρόνῳ ταύτης τῆς βασιλίδος πόλεως καθ' οἱονδήποτε χρόνον ἢ τρόπον ὑπάρξαντα καὶ ἐποφειλόμενα.

1. Θεσπίζομεν, ὥστε πᾶσαν ἐκποίησιν πραγμάτων ἀκινήτων ἢ πολιτικῶν σιτηρεσίων τοῖς σεβασμίοις οἴκοις διαφερόντων ἢ διοισόντων καθ' οἱονδήποτε τρόπον γινομένην ἢ μελετωμένην ἢ ἐπινοεῖσθαι δυναμένην σχολάζειν· πλὴν εἰ μήπου χρείας τινὸς ἀναγκαίας καὶ ἐπωφελοῦς τοῖς αὐτοῖς σεβασμίοις οἴκοις ἀνακυπτούσης λυσιτελὴς εἴη τούτοις ἡ πρᾶσις τοῦ τοιούτου πράγματος ἢ ὑποθήκη ἢ ἀνταλλαγὴ ἢ διηνεκὴς ἐμφύτευσις, τουτέστιν ἐπειδὰν τὰ τιμήματα τοῦ πιπρασκομένου πράγματος εἰς διευλύτωσιν χρεῶν, οὐχ ἁπλῶς οὐδ' ὡς ἔτυχε συστάντων, ἀλλ' ἐκ διαδοχῶν τινων ἤτοι κληρονομιῶν ἢ ἐξ αἰτιῶν ἀναγκαίων καὶ χρειωδῶν ἑνὶ τῶν προδηλωθέντων σεβασμίων οἴκων ἐπικειμένων, ἢ καὶ εἰς πράγματος αὐτοῖς ἑτέρου χρειωδεστέρου τε καὶ ἀναγκαιοτέρου κτῆσιν καὶ ἀγορασίαν μέλλοι προχωρεῖν, ἢ καὶ εἰς ἀνανέωσιν ἤτοι ἐπιμέλειαν τοῦ αὐτοῦ οἴκου κατεπείγουσαν καὶ μακρᾶς ἀναβολῆς οὐκ ἀνεχομένην δαπανᾶσθαι· τῶν αὐτῶν αἰτιῶν καὶ ἐπὶ τοῖς δανείσμασι καὶ ταῖς ἐπ' αὐτοῖς ὑποθήκαις τῆς κωλύσεως ἐξῃρημένων. τὰ δὲ τῆς ἀνταλλαγῆς, ὅταν ἐπὶ χρειωδεστέρῳ κατὰ τὸν ἴσον τρόπον καὶ ἀναγκαιοτέρῳ καὶ πρόσοδον ἀξίαν καὶ οὐκ ἐλάττονα τοῦ διδομένου πράγματος ἑνὶ τῶν αὐτῶν σεβασμίων οἴκων περιποιεῖν δυναμένῳ ἐπιζητεῖται· τὰ δὲ τῆς ἐμφυτεύσεως, ἡνίκα ἡ τῆς προσόδου μηδαμῶς ἀπομειοῖτο ποσότης ἢ καὶ ἄπορον εἴη παντελῶς τὸ διδόμενον· ἐπὶ γὰρ τοῖς τοιούτοις πράγμασι τοῖς μηδὲν μὲν κέρδος δι' ἀπορίαν προσφέρουσι, ζημίαν δὲ προστριβομένοις οὐδὲ δωρεὰς τοῖς αὐτοῖς οἴκοις ἢ ἐκχωρήσεις ἀπαγορεύομεν.

2. Τὸ δὲ γινόμενον οὐκ ἄλλως ἰσχύει, εἰ μὴ μία τῶν εἰρημένων αἰτιῶν ἐν ὑπομνήμασι φανερωθῇ, ἐν μὲν Βυζαντίῳ παρὰ τῷ μαγιστροκήνσῳ, ἐν δὲ ταῖς ἐπαρχίαις παρὰ τοῖς ἐκδίκοις, προκειμένων τῶν ἁγίων γραφῶν, καὶ ἐπὶ μὲν τῶν ἐκκλησιῶν παρόντων τῶν οἰκονόμων καὶ τῶν ἐνδημούντων κληρικῶν, ἐπὶ δὲ τῶν μοναστηρίων δεῖ παρεῖναι τοὺς ἡγουμένους καὶ τοὺς ἄλλους μοναχούς, ἐπὶ δὲ τῶν πτωχείων τοῦ διοικητοῦ καὶ τῶν ὑπουργούντων καὶ τῶν πτωχῶν,|| ἐπὶ δὲ τῶν ξενώνων τοῦ διοικητοῦ καὶ τῶν εὑρισκομένων πάντων ὑπουργῶν τῆς διοικήσεως καὶ ὁμοίως ἐπὶ τῶν

the ordination of bishops, the right of sitting before others, and all other privileges, which it is known to have possessed before or during Our reign.

Given December 17, in the post-consulate of vir clarissimus *Armatus (477)*.[50]

[17][51] *Emperor* ANASTASIUS *Augustus*. **pr.** We decree that the provisions established and in force concerning the Great and Most Holy Church of This Imperial City – under which the holy houses should also be comprehended, the business of which and payment of so-called day-wages (*diaria*) and other expenses the Church has taken upon itself – shall remain in their present state unshaken and intact, protected in every way. The privileges that at any time or in any manner belonged or are due to the same Great Church and See of This Imperial City shall stand firm.

1. We decree that any alienation of immovable property or civic bread rations that do or shall belong to the religious houses, regardless of how it should be made, attempted, or devised, is void, unless, if some business should emerge that is indispensable or useful to the aforementioned holy houses, a sale or security arrangement or exchange or *emphyteusis* (long-term lease) of such property should seem advantageous. That is, if the proceeds of the property sold go toward the discharge of debts, not those incurred normally as it may be, but those that occur from successions or inheritances, or for reasons essential or advantageous to one of the aforesaid venerable houses; or if it should go toward the acquisition and purchase of another thing more useful and essential to them, or toward defraying the renovation or maintenance of the same house, provided it is urgent and does not permit long delay. The same reasons are excepted from the prohibition on contracting debts and on security arrangements given for them. As for an exchange: when it is sought for a property that is more useful and essential in the same manner and can produce for one of the venerable houses an appropriate income not less than the property given in exchange. As for *emphyteusis*: when the amount of the income is in no way diminished or the property given is altogether unproductive. For We do not forbid these houses to give or alienate such property that brings no profit on account of its unproductiveness but rather causes loss.

2. The transaction shall not be valid, unless one of the aforesaid reasons is made explicit in the public records: in Byzantium, before the Master of the Census; in the provinces, before the defenders (*ékdikoi*), with the holy scripture set before them; with respect to churches, in the presence of the stewards and resident clergymen; with respect to monasteries, the abbots and other monks must be present; with respect to poorhouses, the superintendent, his ministers, and the attendants of the poor; with respect to hospices, the superintendent and

[50] Lounghis *et al.* date this constitution to December 17, 476.

[51] The Greek text of this constitution has been reassembled from various sources. Lounghis *et al.* date it to between 491 and 518.

ὀρφανοτροφείων, ὥστε κρατεῖν τὸ τοῖς πλείοσιν ἀρέσκον· συναινοῦντος καὶ τοῦ ἐπισκόπου τῶν τόπων, ἐν οἷς τοῦτο σύνηθες ἐπιγίνεσθαι. **2a.** Μὴ δυναμένου τοῦ μαγιστροκήνσου ἢ τοῦ ἐκδίκου παραιτεῖσθαι καταλαμβάνειν τὸν σεβάσμιον οἶκον, ἐν ᾧ ἡ τοιαύτη συνίσταται πρᾶξις, ἀζημίως καὶ ἐκδικούντων αὐτήν. ὑπόκεινται γὰρ ἐκ παραβασίας ποινῇ χρυσίου λιτρῶν κ'. **2b.** Καὶ μετὰ ταῦτα γίνεται συμβόλαια μνημονεύοντα τῶν αἰτιῶν καὶ τῆς τῶν ὑπομνημάτων πράξεως καὶ τῆς προσηγορίας τῶν παραγενομένων καὶ παρ' ᾧ συνέστη. **3.** Εἰ δέ τι τῶν εἰρημένων παροφθείη, ὁ μὲν δανειστὴς καὶ ὁ ἀγοραστὴς ἐκπίπτει τοῦ πράγματος καὶ τοῦ χρέους καὶ τῶν τιμῶν· ὁ δὲ λαβὼν εἰς ἀνταλλαγὴν καὶ οὗπερ ἔδωκε καὶ οὗπερ ἔλαβεν ἐκπίπτει· ὁ δὲ εἰς ἐμφύτευσιν ὑπὲρ τὴν ἰδίαν ζωὴν λαβὼν ἢ δωρεὰν ἢ ἐκχώρησιν ἀπηγορευμένην ἀναδίδωσιν ὅπερ εἴληφε καὶ ποσότητα ἑτέραν, ἧς ἄξιόν ἐστι τὸ δοθέν.

4. Χώραν δὲ ἔχει τὰ εἰρημένα καὶ ἐπὶ τοῖς μέλλουσι γίνεσθαι ἐκκλησιαστικοῖς καὶ τοῖς ἐσομένοις εὐαγέσιν. **5.** Ὑπόντων δὲ κινητῶν ἔξωθεν τῶν ἱερῶν σκευῶν καὶ ἀρκούντων εἰς τὰς εἰρημένας αἰτίας ἀργεῖ τῶν ἀναγκαίων ἀκινήτων καὶ τῶν ἄρτων ἡ ἐκποίησις καὶ ἡ ὑποθήκη.

[18] [*Ὁ αὐτὸς βασιλεύς.*] **pr.** Ἡ διάταξις ἀφορίζει τῇ μεγάλῃ ἐκκλησίᾳ Κωνσταντινουπόλεως ἑβδομήκοντα λίτρας χρυσίου πρόσοδον εἰς τὸ τὰς κηδείας ἀδαπάνους ἐν Κωνσταντινουπόλει γίνεσθαι καὶ μέχρι τῶν νέων τειχῶν καὶ Βλαχέρναις· αἱ γὰρ Συκαῖ μέρος εἰσὶ τῆς πόλεως. **1.** Ὁρίζει κατὰ τῶν παραβαινόντων ποινὴν ἀνὰ πεντήκοντα χρυσίου λιτρῶν.

[19] *Imp. Iustinianus A. Menae pp.* Illud, quod ex veteribus legibus licet obscure positis a quibusdam attemptabatur, ut donationes super piis causis factae, licet minus in actis intimatae sint, tamen valeant, certo et dilucido iure taxamus, ut in aliis quidem casibus vetera iura super intimandis donationibus intacta maneant: si quis vero donationes usque ad quingentos solidos in quibuscumque rebus fecerit vel in sanctam ecclesiam vel in xenodochium vel in nosocomium vel in orphanotrophium vel in ptochotrophium vel in ipsos pauperes vel in quamcumque civitatem, istae donationes etiam citra actorum confectionem convalescant: sin vero amplioris quantitatis donatio sit, excepta scilicet imperiali donatione, non aliter valeat, nisi actis intimata fuerit: nulli danda licentia quacumque alia causa quasi pietatis iure subnixa praeter eas, quas specialiter exposuimus, introducenda veterum scita super intimandis donationibus permutare.

ii πτωχοτρόφων

all available ministers under his supervision, and likewise for orphanages. Thus what the majority decides shall be valid, with the consent of the bishop of the places in which it is customary that this occurs.

2a. The Master of the Census or defender cannot refuse to accommodate the religious house for which such a transaction is made, but must represent it free of charge. For they are liable to a penalty of 20 pounds of gold for a violation. **2b.** Thereafter receipts will be made recording the reasons for the transaction, its registration in the public records, the names of the parties present, and before whom it was made. **3.** If any of the things mentioned are omitted, the creditor and purchaser lose the property, the debt, and the price paid; he who makes an exchange loses both what he gave and what he received; he who received property by a forbidden long-term lease for the term of his life, by gift, or by alienation, shall return what he received and an additional amount equal in value to what was given.

4. The aforesaid applies to all future property of the churches and of the religious houses. If there exists movable property besides the sacred vessels, and it is sufficient for the reasons given, the alienation of or a security arrangement made on indispensable immovable property and civic bread rations is void.

[18][52] (*The same Emperor.*) **pr.** The decree fixes an income of 70 pounds of gold for the Great Church of Constantinople, so that funerals in Constantinople may be free, even as far as the new walls and (the district of) Blachernae; for Sykae is part of the city. **1.** It sets a penalty of 50 pounds of gold for violators.

[19] *Emperor Justinian Augustus to Menas, Praetorian Prefect.* **pr.** What certain persons attempted (to argue) on the authority of ancient but vaguely worded laws, namely, that gifts made for pious purposes, though not registered in the public records, should nonetheless be valid, We define by a sure and clear law. Thus, the ancient laws concerning the registration of gifts shall remain intact in other cases, but if anyone makes a gift worth up to 500 solidi in any form, whether to a holy church, hospice, infirmary, orphanage, poorhouse, to the poor themselves, or to any city, these donations shall be valid even without registration in the public records. If, though, the gift is of a greater amount, naturally with the exception of an imperial donation, it shall not be valid unless registered in the public records. No one shall be permitted to change the decrees of the ancients concerning the registration of gifts for any other reason founded, as it were, on the law of piety, besides those that We have specifically laid out.

[52] The inscription of this constitution is inferred from Nov. 59 pr. Lounghis *et al.* date to between 491 and 518.

D. … *dn. Iustiniano pp. A. (II cons.)*

[20] *Ὁ αὐτὸς βασιλεύς.* Μηδὲ ἀπὸ θείου τύπου ἢ ἀρχικῆς προστάξεως ἢ οἱουδήποτε δικαστηρίου στρατιωτικὴ σίτησις εἰς εὐκτηρίους οἴκους ἢ κληρικοὺς ἢ μοναστήρια μεταγέσθω, ὡς ἐλλειπόντων δῆθεν τοῖς ἀριθμοῖς σωματείων.

[21] *Idem A. Demostheni pp.* **pr.** Sancimus nemini licere sacratissima atque arcana vasa vel vestem ceteraque donaria, quae ad divinam religionem necessaria sunt (cum etiam veteres leges ea, quae iuris divini sunt, humanis nexibus non illigari sanxerunt) vel ad venditionem vel hypothecam vel pignus trahere, sed ab his, qui haec suscipere ausi fuerint, modis omnibus vindicari tam per religiosissimos episcopos quam oeconomos nec non etiam sacrorum vasorum custodes: nullam eis actionem relinquendam vel super recipiendo pretio vel fenore exigendo, pro quo res pignoratae sunt, sed omnibus huiusmodi actionibus respuendis ad restitutionem earum modis omnibus coartari. **1.** Sin autem vel conflata sunt vel fuerint vel alio modo immutata vel dispersa, nihilo minus vel ad ipsa corpora vel ad pretia eorum exactionem competere sive per in rem sive per condictionem sive per in factum actionem, cuius tenor in multis et variis iuris articulis saepe est admissus, excepta videlicet causa captivitatis in locis, in quibus hoc (quod abominamur) contigerit. **2.** Nam si necessitas fuerit in redemptione captivorum, tunc et venditionem praefatarum rerum divinarum et hypothecam et pignorationem fieri concedimus, cum non absurdum est animas hominum quibuscumque causis[iii] vel vestimentis praeferri: hoc obtinente non solum in futuris negotiis, sed etiam in iudiciis pendentibus.

[22] *Idem A. Demostheni pp.* **pr.** Sancimus res ad venerabiles ecclesias vel xenones vel monasteria vel ptochotrophia vel brephotrophia vel orphanotrophia vel gerontocomia vel si quid aliud tale consortium descendentes ex qualicumque curiali liberalitate sive inter vivos sive mortis causa sive in ultimis voluntatibus habita lucrativorum inscriptionibus liberas immunesque esse: lege scilicet, quae super huiusmodi inscriptionibus posita est, in aliis quidem personis suum robur obtinente, in parte autem ecclesiastica vel aliarum domuum, quae piis consortiis deputatae sunt, suum vigorem pietatis intuitu mitigante. cur enim non

[iii] vasis

Given ... in the consulship of Our Lord JUSTINIAN, Ever Augustus, (Consul for the second time) (528).

[20][53] *The same Emperor.* Neither by imperial rescript nor by prefectural order may title to a military grain ration be transferred to chapels, or to clerics, or to monasteries, on the alleged grounds that they are short in numbers.[54]

[21] *The same Augustus to Demosthenes, Praetorian Prefect.* **pr.** We decree that no one shall be permitted to carry off for sale, security arrangement, or pledge, the most sacred and mysterious vessels, vestments, and other offerings required for the divine worship (for even the ancient laws decreed that things under sacred law are not bound by human bonds); but these things shall be recovered by every means by the most reverend bishops and by the stewards, as well as by the guards of the sacred vessels, from those who dare to take them. The latter shall have no claim left them for recovering the price paid or for collecting interest, for which the property was pledged. All such claims will be rejected, and they will be constrained to make restitution of the property by every means. **1.** If, however, the vessels have been melted down, or changed or dispersed in some other way, the claim to recover them is nonetheless valid whether for the objects themselves or for their value, whether by a real action or by claim for restitution or by an *actio in factum*. This principle is permitted in many various articles of law, except by reason of captivity in the places where – God forbid! – this happens. **2.** For if it is necessary to ransom captives, then We permit both sale, security arrangement, and pledge of the aforementioned holy objects, since it is not outrageous that the souls of men should come before any vessels or vestments. This law shall be observed not only in future cases but also in pending trials.

(529). [55]

[22] *The same Augustus to Demosthenes, Praetorian Prefect.* **pr.** We decree that property made over to venerable churches, hospices, monasteries, poorhouses, foundling-hospitals, orphanages, elderly homes, or to any other such establishment, by any act of generosity whatsoever by someone of curial status, whether during his lifetime, by reason of death, or according to his last wishes, shall be free and exempt from charges assessed on bequests (*inscriptiones lucrativorum*). The law established concerning charges of this kind shall retain its force for other persons but, as regards the Church or other houses that are dedicated to pious societies, it shall mitigate its vigor in respect for piety. For why

[53] = Basilika 5.1.9. Lounghis *et al.* date to 528 or 529.
[54] The meaning of this last clause is obscure.
[55] Lounghis *et al.* date to between September 17 and October 30, 529.

faciamus discrimen inter res divinas et humanas, et quare non competens praerogativa caelesti favori conservetur? **1.** Quae oportet non solum in casibus, quos futurum tempus creaverit, sed etiam in adhuc pendentibus et iudiciali termino vel amicali compositione necdum sopitis obtinere.

Recitata septimo miliario huius inclitae civitatis in novo consistorio palatii Iustiniani.

[23] *Idem A. Iuliano pp.* **pr.** Ut inter divinum publicumque ius et privata commoda competens discretio sit, sancimus, si quis aliquam reliquerit hereditatem vel legatum vel fideicommissum vel donationis titulo aliquid dederit vel vendiderit sive sacrosanctis ecclesiis sive venerabilibus xenonibus vel ptochiis vel monasteriis masculorum vel virginum vel orphanotrophiis vel brephotrophiis vel gerontocomiis nec non iuri civitatum, relictorum vel donatorum vel venditorum eis sit longaeva exactio nulla temporis solita praescriptione coartanda. **1.** Sed et si in redemptione captivorum quaedam pecuniae vel res relictae vel legitimo modo donatae sunt, et earum exactionem longissimam esse censemus. **2.** Et nobis quidem cordi erat nullis temporum metis huiusmodi actionem circumcludi. sed ne videamur in infinitum hanc extendere, longissimum vitae hominum tempus eligimus et non aliter eam actionem finiri concedimus, nisi centum annorum curricula excesserint: tunc enim tantummodo huiuscemodi exactionem evanescere sinimus. **3.** Sive itaque memoratis religiosissimis locis vel civitatibus hereditas sive legatum sive fideicommissum fuerit relictum, vel donatio vel venditio processerit in quibuscumque rebus mobilibus vel immobilibus vel se moventibus, sive pro redemptione captivorum quaedam fuerint derelicta vel donata, sit eorum paene perpetua vindicatio et ad annos centum, secundum quod dictum est, extendatur, nulla alia exceptione temporis inhibenda, sive contra primas personas sive contra heredes vel successores earum moveatur. **4.** In his autem omnibus casibus non solum personales actiones damus, sed etiam in rem et hypothecariam secundum nostrae tenorem constitutionis, quae legatariis et hypothecarias donavit, et supra dictis omnibus unum tantummodo terminum vitae suae imponimus, id est centum metas annorum. **5.** Haec autem omnia observari sancimus in iis casibus, qui vel postea fuerint nati vel iam in iudicium deducti sunt.

D. v k. April. Constantinopoli Lampadio et Oreste vv. cc. conss.

[24] [*Ὁ αὐτὸς βασιλεύς ...*] **pr.** Πάντων τῶν ἐκκλησιαστικῶν πραγμάτων καὶ διαφερόντως τῶν προσηκόντων τῇ ἁγιωτάτῃ μεγάλῃ ἐκκλησίᾳ τῆς

should We not make a distinction between divine and human property, and why should not the appropriate prerogative for divine favor be maintained? **1.** This prerogative shall obtain, not only in cases that the future brings about, but also in cases still pending and not yet laid to rest by judicial ruling or amicable settlement.

Read in the New Consistory of the Palace of Justinian at the seventh milestone of This Famous City (529).[56]

[23][57] *The same Augustus to Julian, Praetorian Prefect.* **pr.** In order that proper distinction may be made between divine and public law and private privileges, We decree that if anyone leaves an inheritance or legacy or trust, or gives something as a donation, or sells something, whether to holy churches, venerable hospices, poorhouses, monasteries of men or virgins, orphanages, foundling-hospitals, elderly homes, or even into the ownership of cities, the property left, given, or sold, may be claimed over a long period of time, unconstrained by any customary limitation. **1.** And also if any money or property is left or given in lawful manner for the ransoming of captives, We rule that the action to claim it may be filed over the longest time. **2.** It was indeed Our desire to circumscribe an action of this nature by no time limits at all. But lest We seem to extend it indefinitely, We have chosen the longest span of human life and do not permit this action to be barred unless a period of more than 100 years has elapsed. Only then do We allow an action exclusively of this nature to lapse. **3.** If, then, an inheritance, legacy, or trust has been left, or a gift or sale has been made to the aforementioned most holy places or to cities, whether consisting of movable, immovable, or self-moving property, or if any property has been left or given for the ransom of captives, the action to claim it shall be all but perpetual and be extended to 100 years. No other defense of limitation shall prevent this, whether the action is against the original parties or against their heirs or successors. **4.** In all these cases, We permit not only personal actions but also real actions, and actions on security arrangements, according to the tenor of Our decree,[58] which permitted actions on security arrangements also to legatees; and upon all the above We place a single time limit only, that is, a period of 100 years. **5.** We decree that these provisions shall be observed in cases that arise in the future and in those that have already been brought to trial.

Given March 28, at Constantinople, in the consulship of viri clarissimi *Lampadius and Orestes (530).*

[24] (*The same Emperor ...*). **pr.** With foresight for all ecclesiastical property and especially for that belonging to the Most Holy Great Church[59] of This

[56] Lounghis *et al.* date to October 30, 529.
[57] Combine with C. 7.40.1. Lounghis *et al.* date to March 18, 530.
[58] = C. 6.43.1.
[59] The Hagia Sophia.

εὐδαίμονος ταύτης πόλεως τῇ ἡμετέρᾳ καὶ πάντων μητρί, ἥτις κεφάλαιόν ἐστι τῶν ἄλλων ἁπασῶν, ποιούμενοι πρόνοιαν θεσπίζομεν παροικικῷ μὲν δικαίῳ μηδεμίαν τοῦ λοιποῦ γίνεσθαι ἐκκλησιαστικῶν πραγμάτων ἔκδοσιν, ἀλλ' ἀναιρεῖσθαι τὸ μηδενὶ νόμῳ γνωριζόμενον ὄνομα. **1.** Τὰ μέντοι λοιπὰ συναλλάγματα, ὅσα ἐφεῖται τοῖς θεοφιλεστάτοις ἐπισκόποις τῆς αὐτῆς ἁγιωτάτης μεγάλης ἐκκλησίας ποιεῖν, ἐξεῖναι αὐτοῖς τίθεσθαι, πρὸς οὓς ἂν δοκιμάσωσι, δίχα τῶν ἐνδοξοτάτων ἢ μεγαλοπρεπεστάτων ἐμπράκτων ἀρχόντων ταύτης τῆς βασιλίδος πόλεως· πρὸς γὰρ τούτους κατ' οὐδένα τρόπον ποιεῖσθαι αὐτοὺς οἱανδήποτε ἔκδοσιν ἀκινήτων πραγμάτων, ἀλλὰ μηδὲ ἄλλου παρεντιθεμένου προσώπου ἐπὶ περιγραφῇ τῆς θείας ἡμῶν διατυπώσεως συγχωροῦμεν, εἴτε τινὰ οἰκειότητα οὗτος ἔχει πρὸς τὸν ἄρχοντα τὸν ἐπὶ τῇ ἐξουσίᾳ τελοῦντα, εἴτε δίχα παλαιᾶς οἰκειότητος νεωστὶ παρ' αὐτοῦ πρὸς τοῦτο παρείληπται. **2.** Γινωσκόντων μὲν αὐτῶν τῶν θεοφιλεστάτων οἰκονόμων, ὡς, εἴ τι παρ' αὐτὰ γένοιτο, τὴν τοῦ ἐκδικουμένου πράγματος διατίμησιν οἴκοθεν αὐτοὶ καταθεῖναι συναχθήσονται τῇ ἁγιωτάτῃ μεγάλῃ ἐκκλησίᾳ. τῶν δὲ πρὸς τὴν τοιαύτην ἔκληψιν χωρούντων ἐνδοξοτάτων μεγαλοπρεπεστάτων ἐμπράκτων ἀρχόντων, ὡς, εἰ καὶ πᾶσι περινενοημένοις λαθεῖν σπεύσαιεν τρόποις καὶ πρόσωπα τοιαῦτα παρενθεῖεν, ἅπερ οἴονται λήσειν μέχρι παντός, ὅτιπερ ἑαυτοῖς τὸ πρᾶγμα πράττουσιν, ὅμως μετὰ ταῦτα διαφαινομένης τῆς ἀληθείας ἀκυρωθήσεται μὲν παντελῶς τὸ συνάλλαγμα, ποινῆς δὲ χάριν καὶ αὐτοὶ τὴν τοῦ πράγματος καταθήσουσι τῇ ἁγιωτάτῃ μεγάλῃ ἐκκλησίᾳ διατίμησιν.

3. Εἰ δὲ καὶ καθ' ἕτερον τρόπον πείσει ἢ ἀναγκάσει περιελθεῖν εἰς αὐτὸν ἐκκλησιαστικὸν πρᾶγμα, καὶ τὸ πραχθὲν ἄκυρον καὶ τὸ δοθὲν ὑπὲρ τούτου εἰς πρόσωπον τῆς ἐκκλησίας ἀποδίδοται αὐτῇ καὶ πρὸς τοῖς εἰρημένοις ὑπόκειται ποινῇ κ' χρυσίου λιτρῶν αὐτὸς καὶ ὁ τὸ πρᾶγμα δούς, καὶ ὁ λαβὼν ἐπὶ τὸ παρασκευάσαι γενέσθαι τὸ συνάλλαγμα τὸ δοθὲν αὐτῷ διπλοῦν δίδωσι, καὶ πάντα προσκυροῦνται τῇ ἐκκλησίᾳ.

4. Περαιτέρω τῶν κ' ἐτῶν ἀκίνητον τῇ ἐκκλησίᾳ οὐ μισθοῦται. **5.** Μόνοις εὐπόροις δεῖ τὰ ἐκκλησιαστικὰ ἐμφυτεύειν διὰ τὴν ἀποκατάστασιν τῆς ὄψεως, καὶ μὴ περαιτέρω αὐτοῦ τοῦ ἐμφυτευομένου καὶ δύο ἑξῆς κληρονόμων, καὶ μὴ κουφίζειν πλέον τοῦ ἕκτου μέρους τοῦ σωζομένου κανόνος ἐν τῷ καιρῷ τῆς ἐκδόσεως. **6.** Εἰ δὲ βλάψει τὸ πρᾶγμα, ἐνισταμένου τοῦ χρόνου ἐξεοῦται καὶ τὴν ζημίαν ἀποθεραπεύει. **7.** Εἰ δὲ ῥαθυμήσῃ ὁ οἰκονόμος ἢ ἀπόροις ἐκδῷ, ἐπιγινώσκει τὴν βλάβην.

8. Οἱ χαρτουλάριοι τῆς ἐκκλησίας τῆς μεγάλης οὔτε διὰ μέσου προσώπου δύνανται λαβεῖν ἀκίνητον αὐτῆς κατὰ μίσθωσιν ἢ ἐμφύτευσιν ἢ ἕτερον τρόπον. **9.** Γίνονται οἱ χαρτουλάριοι ἡγουμένου λιβέλλου καὶ

Blessed City, Our mother and mother of all, the head of all other churches, We decree that no lease of ecclesiastical property by the law of tenancy shall hereafter be made, but its very name shall be abolished and recognized by no law. **1.** Other contracts that the most reverend bishops of the same Most Holy Great Church are permitted to make, they may make with whomever they please except the Most Glorious or Magnificent Prefects of This Imperial City currently in office. For We do not permit them to make any alienation of property to the Prefects in any way, nor through another person introduced to circumvent this Our imperial decree, whether he is related in some way to the Prefect in office or has recently been approached by the Prefect for this purpose without a long-standing relationship. **2.** The most reverend stewards shall know that if any transaction is made contrary hereto, they will be compelled to pay the Most Holy Great Church from their own means the assessed value of the property to be recovered. If the Most Glorious Magnificent Prefects currently in office are party to such a letting, even if they strive by every conceivable means to escape detection and introduce third parties as intermediaries, who they believe will never be discovered, as if these intermediaries were conducting their own business; nonetheless, when afterwards the truth is revealed, the contract shall be utterly annulled, and the Prefects shall, as punishment, pay the Most Holy Great Church the assessed value of the property.

3. If in another way he brings church property into his possession by persuasion or force, the transaction shall be invalid, and whatever has been given for this property to the person of the Church shall be surrendered to it; and in addition to the aforesaid, he and the person who gave the property shall each pay a fine of 20 pounds of gold, and he who received payment[60] for having such a contract made shall pay double the amount given to him, and everything shall be made over to the Church.

4. Immovable property shall not be let by the Church for more than 20 years. **5.** Ecclesiastical property must given by *emphyteusis* exclusively to persons of means for the purpose of restoration, for no longer than (the lifetime of) the person to whom it is let and two successive heirs; nor may more than one-sixth of the rent collected during the lease be remitted. **6.** But if the lessee damages the property during the period of the lease, he shall be driven out and shall make good the loss. **7.** If the steward is careless or lets the property to persons without sufficient means, he shall acknowledge the damage.

8. Record-keepers (*chartularii*) of the Great Church may not receive immovable property of the Church through an intermediary by lease, long-term lease, or any other means. **9.** Record-keepers are appointed upon presenting a document bearing the signature of the Patriarch and the steward. **10.** And if one of

[60] Three persons are punished: the prefect (the "recipient" of the property); the clergyman (the "giver"); and the intermediary, who "received" money *vel sim.* from the prefect for a contract with the Church.

φέροντος ὑπογραφὴν τοῦ πατριάρχου καὶ τοῦ οἰκονόμου. **10.** Καὶ ἐάν τις αὐτῶν φανῇ κλέπτων ἢ παραδιδοὺς ἢ ἄλλως ἀνεπιτήδειος, ἔξεστι τῷ πατριάρχῃ καὶ τοῖς οἰκονόμοις ἐκβάλλειν αὐτὸν τοῦ καταλόγου.

11. Γίνονται δὲ εἰς σκρίνιον τῆς Ἀνατολῆς χαρτουλάριοι ιε', εἰς τὸ Ἀσιανῆς ις', εἰς τὸ Πόντου ιε', εἰς τὸ ἐνοίκιον ιε', εἰς τὸ Θρᾴκης η', εἰς τὸ τοῦ Ἀντιόχου ς', εἰς τὸ τοῦ Καλοποδίου ς', εἰς τὸ τοῦ ἀναλώματος ι', εἰς τὸ τῶν ληγάτων θ'. **12.** Καὶ λαμβάνουσι λόγῳ συνηθειῶν ἐπὶ μὲν τοῖς ἐμφυτευτικοῖς συμβολαίοις πεντηκοστάς, ἐπὶ δὲ τοῖς μισθωτικοῖς καὶ λοιποῖς συναλλάγμασιν ἑκατοστήν. **13.** Εἰ δὲ ὑπὲρ τὸν εἰρημένον ἀριθμὸν γένηται χαρτουλάριος, ἐκπίπτει καὶ δίδωσι τῇ ἐκκλησίᾳ ιε' λίτρας, καὶ ὁ ποιήσας αὐτὸν κ'.

14. Μετὰ ζητήσεως ἀκριβοῦς οἱ οἰκονόμοι λογιζέσθωσαν γνώμῃ τοῦ πατριάρχου τὴν γινομένην δαπάνην τοῖς ἐμφυτευταῖς καὶ μισθωταῖς καὶ διοικηταῖς, ἑκάστου μὲν οἰκονόμου ζητοῦντος τὰ τῆς ὑφ' ἑαυτὸν διοικήσεως, τῶν δὲ λοιπῶν κατὰ πρόσταξιν ἔγγραφον τοῦ πατριάρχου τοῖς λογισμοῖς ὑπογραφόντων τὸ 'ἀνέγνων'· καὶ τὸ χωρὶς τοιαύτης παρατηρήσεως λογιζόμενον οἴκοθεν οἱ οἰκονόμοι διδόασιν.

15. Τῆς δὲ λογιζομένης δαπάνης καὶ τῶν εἰσκομιζομένων χρημάτων λαμβάνουσιν οἱ χαρτουλάριοι ἑκατοστάς· ὁ δὲ πλέον λαμβάνων καὶ τῆς ὑπουργίας τοῦ χαρτουλαρίου καὶ τῆς ἱερατικῆς ἀξίας ἐκπίπτει παραχρῆμα. **16.** Κἀκεῖνο δὲ θεσπίζομεν, ὥστε καὶ αὐτοὺς τοὺς θεοφιλεστάτους οἰκονόμους τούς τε νῦν ὄντας καὶ κατὰ καιρὸν ἐσομένους κατὰ μῆνα ἢ τόγε μήκιστον κατὰ δύο μῆνας ποιεῖσθαι τοὺς λογισμοὺς πρὸς τοὺς ἀρκαρίους τῆς ἁγιωτάτης μεγάλης ἐκκλησίας, εἰδότας ὡς, εἰ τοῦτο καταρρᾳθυμήσειαν, κινδύνου πειραθήσονται.

[25] *Ὁ αὐτὸς βασιλεὺς Ἰουλιανῷ ἐπάρχῳ πραιτωρίων.* **pr.** Ἐπειδήπερ ἐν πολλαῖς ἤδη διαθήκαις εὕρομεν τοιαύτας ἐνστάσεις, καθ' ἃς ἢ ἐξ ὁλοκλήρου τις ἔγραψε τὸν δεσπότην ἡμῶν Χριστὸν κληρονόμον, μὴ προσθεὶς εὐκτήριον οἶκον μηδένα, ἢ αὐτὸν τὸν δεσπότην ἡμῶν Ἰησοῦν Χριστὸν ἐξ ἡμισείας ἢ ἐξ ἑτέρων ἀνίσων μερῶν, ἕτερον δέ τινα ἐξ ἡμισείας, ἢ ἄλλης μοίρας (ἤδη γὰρ πλείοσι διαθήκαις κατὰ τοῦτον γενομέναις τὸν τρόπον ἐνετύχομεν) καὶ πολλὴν ἀδηλίαν ἐντεῦθεν οὖσαν κατὰ τοὺς παλαιοὺς ὁρῶμεν νόμους. Καὶ τοῦτο ἐπανορθούμενοι θεσπίζομεν, εἰ μὲν τὸν δεσπότην ἡμῶν Ἰησοῦν Χριστὸν γράψειέ τις κληρονόμον ἢ ἐξ ὁλοκλήρου ἢ ἐκ μέρους, ἄντικρυς δοκεῖν τὴν κατὰ τὴν αὐτὴν πόλιν ἢ τὴν κώμην ἢ τὸ χωρίον, ἐφ' ἧς καθέστηκεν ὁ τελευτήσας, ἁγιωτάτην ἐκκλησίαν ἐνίστασθαι κληρονόμον καὶ εἰς ὁλόκληρον τὴν ἔνστασιν ἀπαιτεῖσθαι παρὰ τῶν θεοφιλεστάτων αὐτῆς οἰκονόμων, ἢ εἰς τὸ μέρος καθ' ὅσον κληρονόμος γραφῇ· αὐτοῦ τούτου κρατοῦντος, εἰ καὶ ληγάτον ἢ fideicommisson καταλειφθείη· καὶ ταῦτα διαφέρειν ταῖς ἁγιωτάταις ἐκκλησίαις, ἐφ' ᾧτε εἰς πτωχῶν ἀποτροφὴν αὐτὰ προχωρεῖν.

them should be discovered stealing or betraying (the interests of the Church?) or found otherwise unsuitable, the Patriarch and stewards may strike his name from the list.

11. There shall be 15 record-keepers in the bureau of the East, 16 in that of Asiana, 15 in that of Pontus, 15 in the domestic bureau, 8 in that of Thrace, 6 in that of Antioch, 6 in that of Calopodium, 10 in the bureau for expenditures, 9 in that for legacies. **12.** And they shall receive, as is customary, 2 percent for the drafting of an *emphyteusis* and 1 percent for rental and other contracts. **13.** If anyone is made a record-keeper above the aforementioned number, he will be expelled and will pay the Church 15 pounds (of gold), and he who appointed him 20 pounds.

14. With close scrutiny, the stewards shall, at the discretion of the Patriarch, calculate the expenditure caused by the holders of long-term leases, by other lessees, and by superintendents, each steward investigating the accounts of the diocese entrusted to him; the rest shall, at the written order of the Patriarch, subscribe the accounts with "I have read";[61] and if this rule is not observed, the stewards shall pay from their own funds the amount thus calculated.

15. The record-keepers shall receive one percent of all expenditures and revenue. He who takes more shall immediately be stripped of his office as record-keeper and of his rank in the Church. **16.** We also decree that present and future most reverend stewards shall, every month or at least every two months, present their accounts to the treasurers (*arcarii*) of the Most Holy, Great Church, knowing that if they neglect this duty, they do so at their peril.

(530)

[25] *The same Augustus to Julian, Praetorian Prefect.* **pr.** Since We find in many wills provisions whereby the testator appoints Our Lord Christ as sole heir, without adding any sacred building, or appoints Our Lord Jesus Christ as heir to one half or another, unequal portion, and someone else as heir to a half or another share – for We have already encountered many wills made in this way – We perceive that much uncertainty derives thence with respect to the old laws. Correcting this, We decree that if anyone appoints Our Lord Jesus Christ as heir, whether to all or to part, the most holy church of the city or village or place, in which the deceased dwelt, shall immediately be instituted heir, and the inheritance of the entire estate shall be claimed by the most reverend stewards of the same church, or the inheritance of the portion to which it is named heir. The same shall be true if a legacy or testamentary trust is left; and this property shall belong to the most holy churches, as long as it is dedicated to the sustenance of

[61] ἀνέγνων in Greek and *recognovi* in Latin. The subscriber thereby authenticates the document.

1. Εἰ δὲ ἑνὸς τῶν ἁγίων ἀρχαγγέλων ἐμνήσθη ἢ τῶν προσκυνητῶν μαρτύρων, μὴ ποιησάμενος οἴκου μνείαν (τοῦτο ὅπερ ἴσμεν παρά τινος διατυπωθὲν καίτοι τῶν ἐπιφανῶν γεγονότος καὶ τῇ περὶ νόμους καὶ λόγους ἐνευδοκιμηκότος παιδείᾳ), εἰ μὲν ἔστι κατὰ τὴν πόλιν ἐκείνην ἢ τὴν ἐνορίαν αὐτῆς εὐκτήριος οἶκος εἰς τιμὴν ἐκείνου τοῦ σεβασμιωτάτου ἀρχαγγέλου ἢ τοῦ ἁγιωτάτου μάρτυρος, αὐτὸν δοκεῖν γεγράφθαι κληρονόμον· εἰ δὲ οὐκ ἔστι κατὰ τὴν αὐτὴν πόλιν ἢ τὴν ἐνορίαν τοιοῦτος οἶκος, τηνικαῦτα τοὺς κατὰ τὴν μητρόπολιν σεβασμίους οἴκους. καὶ εἰ κατ' αὐτὴν γοῦν εὑρεθείη τοιοῦτός τις οἶκος, ἐκείνῳ δοκεῖν τὸν κλῆρον ἢ τὸ πρεσβεῖον ἢ τὸ fideicommisson καταλελεῖφθαι· εἰ δὲ μηδὲ ἐκεῖσε φανείη τοιοῦτός τις οἶκος ὤν, αὖθις τὰς κατὰ τόπον ἁγιωτάτας ἐκκλησίας καὶ τοῦτο λαμβάνειν.

2. Δηλονότι ταῖς ἁγιωτάταις ἐκκλησίαις ἅπαντες οἱ λοιποὶ δικαίως παραχωροῦσιν οἶκοι, πλὴν εἰ μὴ γένοιτο πρόδηλος ὁ τελευτήσας ἕτερον μέντοι ἐνθυμηθεὶς ὄνομα προσθεῖναι, ἕτερον δὲ εἰπών· διὰ τὸ καί τι τοιοῦτον ἡμᾶς γνόντας κατά τινα διαθήκην ἐπὶ τοῦ Πόντου γενέσθαι κἀκεῖσε πάλιν τὸ ἀληθὲς ἀντὶ τοῦ γεγραμμένου παρασκευάσαι κρατῆσαι. **3.** Εἰ μέντοι ὁ μὲν διαθέμενος ῥητὸν μὴ θείη τόπον, εὑρεθείη δὲ τοῦ αὐτοῦ ὀνόματος ἐν ἐκείνῃ τῇ πόλει ἢ τῇ περιοικίδι εὐκτήρια πολλὰ καθεστῶτα, εἰ μὲν ἔν τινι τούτων συχνῶς ὁ τελευτήσας ἐφοίτα καί τινα πρὸς αὐτὸ μείζονα εἶχε προσπάθειαν, ἐκείνῳ δοκεῖν καταλελεῖφθαι τὸ πρεσβεῖον· **4.** Εἰ δὲ οὐδὲν τοιοῦτο εὑρίσκοιτο, τῷ μᾶλλον ἐκ τοῦ αὐτοῦ ὀνόματος ἐνδεεστέρῳ οἴκῳ καὶ δεομένῳ βοηθείας δοκεῖν τὸ τοιοῦτο καταλελεῖφθαι πρεσβεῖον ἤτοι τὴν κληρονομίαν.

D. XIII k. Nov. Constantinopoli Lampadio et Oreste vv. cc. conss.

III De Episcopis et Clericis et Orphanotrophis et Brephotrophis et Xenodochis et Asceteriis et Monachis et Privilegio Eorum et Castrensi Peculio et de Redimendis Captivis et de Nuptiis Clericorum Vetitis seu Permissis

[1] *Imp. Constantius A. clericis salutem dicit.* Iuxta sanctionem, quam dudum meruistis, et vos et mancipia vestra nullus novis collationibus obligabit, sed vacatione gaudebitis. praeterea neque hospites suscipietis.

D. VI k. Sept. Placido et Romulo conss.

[2] *Idem A. Felici episcopo.* **pr.** Omnis a clericis indebitae conventionis iniuria et iniquae exactionis repellatur improbitas nullaque conventio sit circa eos munerum sordidorum. et cum negotiatores ad aliquam

the poor. **1.** But if anyone cites one of the holy archangels or worshipful martyrs without making mention of a religious house – this, as We know, was done by someone despite his illustrious rank and reputation for learning in law and letters – then, if there is in that city or its territory a chapel in honor of that most reverend archangel or holy martyr, it will be regarded as having been named the heir; if there is no such house in the same city or its territory, then the houses in the metropolis. And if such a house should be found in the metropolis, the estate or legacy or testamentary trust will be considered as having been left to it. If, though, it appears that there is no such house there, then the most holy churches of the area shall receive it.

2. It is self-evident that all other (religious) houses rightfully must yield to the most holy churches, unless the deceased manifestly intended to designate one house but named another. For We learned that such a thing occurred in a will in Pontus and ordered in that case that the truth should prevail over what was written. **3.** If, though, the testator has named no specific place, and several chapels of the same name are found in his city or district, then if the deceased frequently attended one of them and harbored greater affection for it, the share of the legacy shall be considered as having been left to it. **4.** But if no such chapel is found, the portion of the legacy or estate shall be considered as having been left to the poorer one called by that name or to the one in greater need of aid.

Given October 18,[62] *at Constantinople, in the consulship of the* viri clarissimi *Lampadius and Orestes (530).*

Third Title Bishops, Clerics, and the Superintendents of Orphanages, Foundling-Hospitals, Hospices, Hermitages, and Monasteries; Their Privileges; Military *Peculium*; the Ransoming of Captives; Marriages Forbidden and Permitted to Clergymen

[1][63] *Emperor Constantius Augustus to the Clergy, greetings.* According to the decree that you obtained long ago, no one shall obligate you and your slaves to new levies, but you shall rejoice in your exemption. Moreover, you shall not quarter guests.[64]

Given August 27, in the consulship of Placidus and Romulus (343).

[2][65] *The same Emperor to Felix, Bishop.* **pr.** Clergymen shall be protected from the injustice of every unwarranted demand and the iniquity of any illegal exaction, nor may they be called upon for menial liturgies (*munera sordida*). And

[62] Emended from October 20; cf. C. 1.3.45.
[63] = C.Th. 16.2.8.
[64] That is, members of the army or imperial administration.
[65] = C.Th. 16.2.14 (where the constitution is ascribed also to Julian). The date is more probably 356 (Seeck).

praestationem competentem vocantur, ab his universis istiusmodi strepitus conquiescat. si quid enim vel parsimonia vel provisione vel mercatura, honestati tamen conscia, congesserint, in usum pauperum atque egentium ministrari oportet aut id, quod ex eorundem ergasteriis vel tabernis conquiri potuerit et colligi, collectum id religionis aestiment lucrum.

1. Verum etiam hominibus eorundem, qui operam in mercimoniis habent, divi principis, id est nostri genitoris, statuta multimoda observatione caverunt, ut idem clerici privilegiis pluribus redundarent. 2. Itaque extraordinariorum a praedictis necessitas atque omnis molestia conquiescat. 3. Ad parangariarum quoque praestationem non vocentur nec eorundem facultates atque substantiae. 4. Omnibus clericis huiusmodi praerogativa succurrat, ut coniugia clericorum ac liberi quoque et ministeria, id est mares pariter ac feminae, eorumque etiam filii immunes semper ab huiusmodi muneribus perseverent.

D. VIII id. Dec. Mediolano, lecta V k. Ian. apud acta Constantio A. VIIII et Iuliano C. II conss.

[3] *Idem A. ad Taurum pp.* De his clericis, qui praedia possident, sublimis auctoritas tua non solum eos aliena iuga nequaquam statuet excusare, sed etiam pro his, quae ab ipsis possidentur, eosdem ad pensitanda fiscalia perurgueri. universos namque clericos possessores dumtaxat provinciales pensitationes fiscalium translationesque faciendas recognoscere iubemus.

Data epistula prid. k. Iul. Mediolano Constantio A. X et Iuliano C. III conss.

[4] *Idem A. ad Taurum pp.* **pr.** Officiales rationales, si exhibitione cursus seu primipili necessitate neglecta, interversa etiam ratione fiscali ad clericatus honorem putaverint transeundum, ad priorem condicionem retrahantur. 1. Si vero obnoxii ratiociniis vel necessitatibus non sint, sub notione iudicum officiis consentientibus, si id probabilis vitae studium postularit, transferantur nec cessionem metuant facultatum. 2. Quod si clandestinis artibus putaverint inrependum, duas concedant liberis aut, si proles defuerit, propinquis e propria substantia portiones tertiam sibimet retenturi: si vero propinquorum necessitudo defuerit,

when merchants are called to make some appropriate payment, such clamor shall be stilled with respect to all clergymen. If they have accumulated anything by thrift, foresight, or trade, as long as it is consistent with virtue, it must be distributed for the benefit of the poor and needy; or they should regard what could be acquired and collected from the workshops and shops of the same men as profit collected for the faith.

1. In sundry measures, the provisions of the divine emperor, that is, Our progenitor, have provided for the interests of the agents of the clergy employed in commerce, so that these clergymen should abound in numerous privileges. **2.** Thus, the necessity of performing extraordinary liturgies, and every annoyance connected to them shall cease with respect to the aforementioned. **3.** They shall not be called upon to provide supplementary post-wagons (*parangariae*), nor may their means and property. **4.** The following privilege shall benefit all clergy: their wives, children, and servants, that is, both male and female, and even their children, shall always remain exempt from such liturgies.

Given December 6, at Milan; read into the public records December 28, in the consulship of Constantius Augustus, for the ninth time, and the Caesar Julian, for the second time (357).

[3][66] *The same Emperor to Taurus, Praetorian Prefect.* Concerning those clerics who possess estates, Your Sublime Authority shall decree not only that they attempt to exempt the lands of others in vain, but also that they shall be compelled to pay the fiscal taxes on the lands that they possess. For We order all clergy residing in the provinces, provided they are landholders, to acknowledge the payment of fiscal taxes and provision of transport duties.

A letter given June 30, at Milan, in the consulship of Constantius Augustus, for the tenth time, and the Caesar Julian, for the third time (360).

[4][67] *The same Augustus to Taurus, Praetorian Prefect.* **pr.** If fiscal officials should resolve to take up clerical office, having neglected the provision of the imperial post or supplies as commissary officer,[68] or having even falsified fiscal accounts, they shall be dragged back to their former status. **1.** But if they are not liable for the accounts or compulsory duties, they may, if their zeal for a commendable life requires it, be transferred with the knowledge of the governors and consent of the official staff; nor need they fear loss of their property. **2.** But if they think they must sneak into the clergy through subterfuge, they shall give two-thirds of their own property to their children or, if they have no offspring, to their relatives, retaining a third to themselves. If, however, they

[66] = C.Th. 16.2.15 (where the constitution is ascribed to Julian). Krüger conjectures that this constitution was actually accepted, not given, on June 30.

[67] = C.Th. 8.4.7; combine with C.Th. 12.1.49.

[68] The *pastus primipili*, a kind of tax related to the transport of the *annona*.

geminae portiones officiis in quibus militant relinquantur, portione tertia tantummodo retenta.

D. IIII k. Sept. Tauro et Florentio conss.

[5] *Imp. Iovianus A. Secundo pp.* Si quis non dicam rapere, sed attemptare tantum matrimonii iungendi causa sacratissimas virgines ausus fuerit, capitali poena ferietur.

D. XI k. Mart. Antiochiae Ioviano A. et Varroniano conss.

[6] *Imppp. Valens Gratianus et Valentinianus AAA. ad Cataphronium.* Presbyteros diaconos subdiaconos atque exorcistas et lectores, ostiarios etiam personalium munerum expertes esse praecipimus.

D. III non. Mart. Gratiano A. IIII et Merobaude conss.

[7] *Pars actorum habitorum in sacro consistorio apud imperatores Gratianum Valentinianum et Theodosium consulatu Syagrii et Eucherii virorum clarissimorum die IIII k. Iul. Constantinopoli. Imp. Theodosius A. dixit:* Nec honore nec legibus episcopus ad testimonium flagitatur. *Item dixit:* episcopum ad testimonium dicendum admitti non decet: nam et persona oneratur et dignitas sacerdotis excepta confunditur.

[8] *Idem AAA. Paulino praef. Augustali.* **pr.** Presbyteri citra iniuriam quaestionis testimonium dicant, ita tamen, ut falsa non simulent. ceteri vero clerici, qui eorum gradum vel ordinem sequuntur, si ad testimonium dicendum petiti fuerint, prout leges praecipiunt, audiantur. **1.** Salva tamen sit litigatoribus falsi actio, si forte presbyteri, qui sub nomine superioris loci testimonium dicere citra aliquam corporalem iniuriam sunt praecepti, hoc ipso, quod nihil metuant, vera suppresserint. multo magis etenim poena sunt digni, quibus cum plurimum honoris per nostram iussionem delatum est, occulto inveniuntur in crimine.

D. VIII k. Aug. Arcadio A. et Bautone conss.

lack familial connections, then two equal portions shall be left to the bureaus in which they serve, with only one-third retained.

Given August 29, in the consulship of Taurus and Florentius (361).

[5][69] *Emperor* JOVIAN *Augustus to Secundus, Praetorian Prefect.* If anyone should dare merely to solicit, let alone ravish, most holy virgins for the purpose of marriage, he shall be put to death.

Given February 20, at Antioch, in the consulship of Jovian Augustus and Varronianus (364).

[6][70] *VALENS, GRATIAN, and VALENTINIAN Augusti to Cataphronius.* We order that presbyters, deacons, sub-deacons, exorcists, readers, and even sextons shall be exempt from personal liturgies.

Given March 5, in the consulship of Gratian Augustus, for the fourth time, and Merobaudes (377).

[7][71] *Excerpt of proceedings held in the imperial consistory before emperors GRATIAN, VALENTINIAN, AND THEODOSIUS, June 28, in Constantinople, in the consulship of* viri clarissimi *Syagrius and Eucherius (381). Emperor THEODOSIUS Augustus said:* Neither by reason of his office nor by law is a bishop required to give testimony. *He said moreover:* It is unbecoming that a bishop should be summoned to give testimony, for (thereby) both his person is burdened and his privileged status as priest flouted.

[8][72] *The same Augusti to Paulinus, Augustal Prefect.* **pr.** Presbyters may give testimony without the injury of torture, as long as they do not tell lies. The rest of the clergy who follow them in rank and order must, if they are summoned to give testimony, be interrogated as the laws stipulate. **1.** An action for falsehood (*actio falsi*) shall, however, remain available to litigants if perchance the presbyters, who have been directed to give testimony without corporal injury on account of their superior position, should suppress the truth for the very reason that they have nothing to fear. For much more deserving of punishment are those on whom great honor has been bestowed by Our command, if they are detected in secret crime.

Given July 25, in the consulship of Arcadius Augustus and Bauto (385).

[69] = C.Th. 9.25.2. The date of this constitution falls three days (364 was a leap year) after Jovian's death; Krüger attributes it to Julian in 363.

[70] = C.Th. 16.2.24.

[71] = C.Th. 11.39.8 (June 29, preferred by Seeck).

[72] = C.Th. 11.39.10.

[9] *Imppp. Valentinianus Theodosius et Arcadius AAA. Tatiano pp.* Nulla nisi emensis sexaginta annis secundum praeceptum apostoli ad diaconissarum consortium transferatur.

D. XI k. Iul. Mediolano Valentiniano A. IIII et Neoterio conss.

[10] *Impp. Arcadius et Honorius AA. Theodoro pp.* **pr.** Si quis in hoc genus sacrilegii proruperit, ut in ecclesias catholicas inruens, sacerdotibus et ministris vel ipso cultu[iv] locoque aliquid importet iniuriae, quod geritur, a provinciae rectoribus animadvertatur. **1.** Atque ita provinciae moderator sacerdotum et catholicae ecclesiae ministrorum, loci quoque ipsius et divini cultus iniuriam capitali in convictos sive confessos reos sententia noverit vindicandam nec expectet, ut episcopus iniuriae propriae ultionem deposcat, cui sanctitas ignoscendi gloriam dereliquit: sitque cunctis laudabile factas atroces sacerdotibus aut ministris iniurias veluti publicum crimen persequi ac de talibus reis ultionem mereri. **2.** Quod si multitudo violenta civilis apparitionis exsecutione et adminiculo ordinum possessorumve non potuerit praesentari, quod se armis aut locorum difficultate tueatur, praesides provinciarum etiam militari auxilio per publicas litteras appetito competentem vindictam tali excessui imponere non morentur.

D. VI k. Mai. Mediolano Honorio A. IIII et Eutychiano conss.

[11] *Idem AA. Eutychiano pp.* Ecclesiis, quae in possessionibus, ut adsolet, diversorum, vicis etiam vel quibuslibet locis sunt constitutae, clerici non ex alia possessione vel vico, sed ex eo, ubi ecclesiam esse constiterit, ordinentur, ut propriae capitationis onus ac sarcinam recognoscant: ita ut pro magnitudine vel celebritate uniuscuiusque vici ecclesiis certus iudicio episcopi clericorum numerus ordinetur.

D. VI k. Aug. Mnizo Honorio A. IIII et Eutychiano conss.

[iv] ipsi cultui?

[9][73] *Emperors* VALENTINIAN, THEODOSIUS, AND ARCADIUS *Augusti to Tatianus, Praetorian Prefect.* According to the precept of the Apostle, no woman shall be transferred to a convent of deaconesses unless she is 60 years old.

Given June 21, at Milan in the consulship of Valentinian Augustus, for the fourth time, and Neoterius (390).

[10][74] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Theodorus, Praetorian Prefect.* **pr.** If anyone should rashly commit this kind of sacrilege, namely, bursting into Catholic churches and inflicting some outrage on the priests and ministers, or on the service itself and the place, what has been done shall be punished by the provincial governors. **1.** And the provincial governor shall know that the outrage to the priests and ministers of the Catholic Church, and to the place itself and the holy service, shall be avenged by capital punishment pronounced on convicted or confessed criminals. Nor should he wait for the bishop, whose sanctity has bequeathed him the glory of forgiveness, to demand retribution for the outrage visited upon him. And it shall be praiseworthy for all to prosecute the aggravated outrages done to priests and their ministers as a public crime and to exact vengeance from such criminals. **2.** But if a violent multitude cannot be produced in court by the executive power of the civil staff with the support of the orders (of curials) or landholders, because it defends itself with arms or the difficulty of the terrain, the provincial governors shall not hesitate to visit proper punishment on such madness even with military aid to be summoned by public letter.

Given April 26, at Milan, in the consulship of Honorius Augustus, for the fourth time, and Eutychianus (398).

[11][75] *The same Augusti to Eutychianus, Praetorian Prefect.* For churches located on the property of various persons, as happens, in villages, or in any other places, the clergy ordained there shall not be taken from another estate or village, but from where it is known that the church is located, so that they may acknowledge the weight and burden of their own capitation tax. Thus, at the discretion of the bishop, a fixed number of clergymen shall be ordained in the churches according to the size and population of each village.

Given July 27, at Mnizum, in the consulship of Honorius Augustus, for the fourth time, and Eutychianus (398).

[73] = C.Th. 16.2.27.pr. The constitution refers to Paul, 1 Timothy 5:9.

[74] = C.Th. 16.2.31, Sirm. 14. Dated by Seeck to January 15, 409.

[75] = C.Th. 16.2.33; combine with C. 1.3.12, 1.4.6–7, 7.62.29, and C.Th. 16.2.32.

[12] *Impp. Arcadius et Honorius AA. Eutychiano pp.* Si quis curialis clericus fuerit ordinatus nec statim conventione praemissa pristinae condicioni reddatur, is vigore et sollertia iudicantium ad pristinam sortem velut manu mox iniecta revocetur. clericis enim ulterius legem prodesse non patimur, quae cessione patrimonii subsecuta decuriones clericos esse non vetabat.

D. VI k. Aug. Mnizo Honorio A. IIII et Eutychiano conss.

[13] *Idem AA. Sapidiano vicario Africae.* Si ecclesiae venerabilis privilegia cuiusquam fuerint vel temeritate violata vel dissimulatione neglecta, commissum quinque librarum auri condemnatione plectetur.

D. VII k. Iul. Brixiae Theodoro cons.

[14] *Idem AA. Hadriano pp.* Quicumque residentibus sacerdotibus fuerit episcopali loco et nomine detrusus, si aliquid vel contra custodiam vel contra quietem publicam moliri fuerit deprehensus rursusque sacerdotium petere, a quo videtur expulsus, procul ab ea urbe, quam conturbavit, centum milibus vitam agat. nec nostra adeat secreta nec impetrare rescripta speret, sed etiam impetratis careat: defensoribus etiam eorum indignationem subituris.

D. prid. non. Febr. Ravenna Stilichone et Aureliano conss.

[15] *Idem AA. Studio pu.* Conventicula illicita extra ecclesiam in privatis aedibus celebrari prohibemus, proscriptionis domus periculo imminente, si dominus eius in ea clericos nova ac tumultuosa conventicula extra ecclesiam celebrantes susceperit.

D. IIII k. Sept. Constantinopoli Honorio A. VI et Aristaeneto conss.

[16] *Impp. Honorius et Theodosius AA. Anthemio pp.* Quisquis censibus fuerit adnotatus, invito agri domino ab omni temperet clericatu, adeo ut etiam, si in eo vico, in quo noscitur mansitare, clericus fuerit, sub hac lege religiosum adsumat sacerdotium, ut et capitationis sarcinam

[12][76] *The same Augusti to Eutychianus, Praetorian Prefect.* If any curial is ordained as a clergyman, and he is not returned to his former status immediately upon the issue of a summons, he shall be recalled to his former lot by the energy and prudence of the governors, as if they were to lay hands upon him (*manus iniectio*). For We no longer permit the clergy to benefit from the law[77] that allowed decurions to become clergymen upon forfeiture of their property.

Given July 27, at Mnizum, in the consulship of Honorius Augustus, for the fourth time, and Eutychianus (398).

[13][78] *The same Augusti to Sapidianus, Vicar of Africa.* If the privileges of the venerable Church are violated by the rashness or neglected by the dissimulation of anyone, the crime shall be punished by a fine of 5 pounds of gold.

Given June 25, at Brescia, in the consulship of Theodorus (399).

[14][79] *The same Augusti to Hadrianus, Praetorian Prefect.* If someone who has been expelled from the position and office of bishop by an assembly of priests is caught plotting against the public security or against the general peace and seeking the clerical office from which he was expelled, he shall live his life at a distance of 100 miles from the city that he put in disorder. He shall neither approach Our audience chamber nor hope to obtain a rescript, but he shall lose even those he already has. His advocates will also incur Our displeasure for these things.

Given February 4, at Ravenna, in the consulship of Stilicho and Aurelianus (400).

[15][80] *The same Augusti to Studius, Urban Prefect.* We forbid unlawful assemblies to be held outside a church[81] in private houses. A house will be in danger of public sale if its owner uses it to host clergymen who hold rebellious and seditious assemblies outside a church.

Given August 29, at Constantinople, in the consulship of Honorius Augustus, for the sixth time, and Aristaenetus (404).

[16] *Emperors Honorius and Theodosius Augusti to Anthemius, Praetorian Prefect.* Whosoever has been registered by the census (as a bound tenant, *colonus*) shall refrain from joining any clerical order without the consent of the owner of the land. Thus, if such a person becomes a clergyman in the village in

[76] = C.Th. 9.45.3; combine with C. 1.3.11 (cf. Krüger, *ad loc.*).
[77] C.Th. 12.1.121.
[78] = C.Th. 16.2.34; Seeck dates to June 7.
[79] = C.Th. 16.2.35; probably issued in 405, in Stilicho's second consulate (Seeck).
[80] = C.Th. 16.2.37; Seeck dates to September 11, 404.
[81] One may also interpret the expression *extra ecclesiam* institutionally, i.e., "outside the Church" as in "unauthorized by the Church."

per ipsum dominum agnoscere compellatur et ruralibus obsequiis quo maluerit subrogato fungatur, ea scilicet immunitate indulta, quae certae capitationis venerandis ecclesiis relaxatur: nullo contra hanc legem valituro rescripto.

D. prid. k. Mart. Honorio A. VIII et Theodosio A. III conss.

[17] *Idem AA. Monaxio pp.* **pr.** Placet nostrae clementiae, ut nihil commune clerici cum publicis actibus vel ad curiam pertinentibus, cuius corpori non sunt adnexi, habeant. 1. Praeterea eis, qui parabalanin vocantur, neque ad quodlibet publicum spectaculum neque ad curiae locum neque ad iudicium accedendi licentiam permittimus, nisi forte singuli ob causas proprias et necessitates iudicem adierint aliquem lite pulsantes vel ab alio ipsi pulsati vel in communi totius corporis causa syndico ordinato: sub ea definitione, ut, si quis eorum haec violaverit et brevibus parabalanin eximatur et competenti supplicio subiugetur nec umquam ad eandem sollicitudinem revertatur.

D. III k. Oct. Constantinopoli Theodosio A. VII et Palladio conss.

[18] *Idem AA. Monaxio pp.* **pr.** Parabalanin, qui ad curanda debilium aegra corpora deputantur, sescentos constitui praecipimus, ita ut pro arbitrio viri reverentissimi antistitis Alexandrinae urbis de his, qui ante fuerant et qui pro consuetudine curandi gerunt experientiam, sescenti parabalanin ad huiusmodi sollicitudinem eligantur, exceptis videlicet honoratis et curialibus. 1. Si quis autem ex his naturali sorte fuerit absumptus, alter in eius locum pro voluntate eiusdem sacerdotis exceptis honoratis et curialibus subrogetur, ita ut hi sescenti viri reverentissimi sacerdotis praeceptis ac dispositionibus obsecundent et sub eius cura consistant: reliquis, quae dudum latae legis forma complectitur, super his parabalanin vel de spectaculis vel de iudiciis ceterisque sicut iam statutum est custodiendis.

which he is known to reside, he shall assume the holy priesthood on this condition: he shall be compelled by the same owner to acknowledge the burden of his capitation tax and to perform his rural liturgies through a substitute of his choosing. He shall enjoy, namely, the exemption from the fixed capitation tax that is granted to the venerable churches. No rescript shall be valid against this law.

Given February 28, at the consulship of Honorius, for the eighth time, and Theodosius, for the third time, Augusti (409).

[17][82] *The same Augusti to Monaxius, Praetorian Prefect.* **pr.** Our Clemency has resolved that the clergy shall have nothing to do with public affairs or matters concerning the municipal curia, to which body they are not bound. **1.** Moreover, We deny those called sick-nurses (*parabalanin*)[83] the freedom to attend any public spectacle, the place of the curia, or a court, unless perchance they go individually before a judge for their own cases and interests, suing someone at law or themselves sued by another, or if appointed representative (*syndicus*) in the common cause of the entire body, with this proviso: if any of them violates these orders, he shall be removed from the register of sick-nurses and subjected to proper punishment, and he shall never again return to his former position.

Given September 29, at Constantinople, in the consulship of Theodosius Augustus, for the seventh time, and Palladius (416).

[18][84] *The same Augusti to Monaxius, Praetorian Prefect.* **pr.** We order 600 sick-nurses to be appointed who shall be assigned to tend to the sick bodies of the weak. Thus, 600 sick-nurses shall be selected at the discretion of the most reverend bishop of the city of Alexandria from among those who were such formerly and have experience on account of their long-standing practice in healing, excepting, of course, men of rank (*honorati*) and of curial status. **1.** If any of these men should succumb to the natural fate of man, another shall be appointed in his place at the wish of the aforementioned priest, excepting men of rank and of curial status. Thus, these 600 men shall obey the orders and decisions of the most reverend bishop and remain under his supervision. All other regulations embraced in the provisions of the previously enacted law[85] concerning these sick-nurses, whether on spectacles or courts etc., shall be observed as has already been established.

[82] = C.Th. 16.2.42; combine with C. 10.65.6; Seeck dates to October 5.
[83] These were religious attendants of the sick who frequently contracted their patients' diseases.
[84] = C.Th. 16.2.43.
[85] C. 1.3.17.

D. III non. Febr. Constantinopoli Honorio XII et Theodosio VIII AA. conss.

[19] *Idem AA. Palladio pp.* **pr.** Eum, qui probabilem saeculo disciplinam agit, decolorari consortio sororiae appellationis non decet. quicumque igitur cuiuscumque gradus sacerdotio fulciuntur vel clericatus honore censentur, extranearum sibi mulierum interdicta consortia cognoscant: hac eis tantum facultate concessa, ut matres filias atque germanas intra domorum suarum saepta contineant: in his enim nihil scaevi criminis aestimari foedus naturale permittit. **1.** Illas etiam non relinqui castitatis hortatur adfectio, quae ante sacerdotium maritorum legitimum meruere coniugium: neque enim clericis incompetenter adiunctae sunt, quae dignos sacerdotio viros sui conversatione fecerunt.

D. VIII id. Mai. Ravenna Theodosio A. VIIII et Constantio III conss.

[20] *Impp. Theodosius et Valentinianus AA. ad Taurum pp.* **pr.** Si quis presbyter aut diaconus aut diaconissa aut subdiaconus vel cuiuslibet alterius loci clericus aut monachus aut mulier, quae solitariae vitae dedita est, nullo condito testamento decesserit nec ei parentes utriusque sexus vel liberi vel si qui agnationis cognationisve iure iunguntur vel uxor extiterit, bona, quae ad eum vel ad eam pertinuerint, sacrosanctae ecclesiae vel monasterio, cui fuerat destinatus aut destinata, omnifariam socientur. **1.** Exceptis his facultatibus, quas forte censibus adscripti vel iuri patronatus subiecti vel curiali condicioni obnoxii clerici vel monachi cuiuscumque sexus relinquunt: nec enim iustum est bona seu peculia, quae aut patrono legibus debentur aut domino possessionis, cui quis eorum fuerat adscriptus, aut ad curias pro tenore dudum latae constitutionis sub certa forma pertinere noscuntur, ab ecclesiis vel monasteriis detineri: actionibus videlicet competenter[v] sacrosanctis ecclesiis vel monasteriis reservatis, si quis forte praedictis condicionibus obnoxius aut ex gestis negotiis aut ex quibuslibet aliis ecclesiasticis actibus obligatus obierit.

D. XVIII k. Ian. Ariobindo et Aspare conss.

[v] competentibus

Given February 3, at Constantinople, in the consulship of Honorius, for the twelfth time, and Theodosius, for the eighth time, Augusti (418).

[19][86] *The same Augusti to Paladius, Praetorian Prefect.* **pr.** It is unseemly that a man who practices the discipline commended by this age should be tainted by cohabitation with a so-called sister (i.e., nun). Whosoever, therefore, are endowed with any rank of priesthood or are distinguished by clerical office shall recognize that the society of outside women is forbidden them. Permission is granted them only for this: they may keep within the confines of their homes their mothers, daughters, and sisters. For the law of nature permits no suspicion of any perverse crime to attach to these women. **1.** The pursuit of chastity further demands that those women who, prior to the ordination of their husbands, were found worthy of lawful wedlock, should not be deserted. For such women, who by their company have made their husbands worthy of the priesthood, shall not unsuitably be joined to members of the clergy.

Given May 8, at Ravenna, in the consulship of Theodosius, for the ninth time, and Constantius, for the third time, Augusti (420).

[20][87] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Taurus, Praetorian Prefect.* **pr.** If any presbyter, deacon, deaconess, subdeacon, or clergyman of any other rank, or monk or woman who is devoted to monastic life, dies without writing a will, and there are no parents of either sex, children, persons connected to them by the right of agnation or consanguinity, or wife, the property that belonged to him or to her shall be made over entirely to the holy church or monastery to which he or she was tied. **1.** The property left behind by clergymen or monks of either sex, who perchance are enrolled on the tax registers, bound by the law of patronage, or subject to curial status, is exempted. For it is not just that churches or monasteries should retain property or *peculia* that belong by law either to a patron or to the owner of the land on which any of these persons is registered, or which are known by a fixed rule to belong to municipal curias, according to the tenor of a constitution enacted long ago.[88] The appropriate actions are reserved to the holy churches or monasteries, if anyone perchance should die who is subject to the abovementioned conditions, or who is obligated to them because of business transacted on their behalf (*gesta negotia*) or because of any other ecclesiastical transactions.

Given December 15, in the consulship of Ariobindus and Aspar (434).

[86] = C.Th. 16.2.44.
[87] = C.Th. 5.3.1.
[88] C.Th. 5.3.1.

[21] *Idem AA. Thomae pp.* Ad similitudinem tam episcoporum orthodoxae fidei quam presbyteri et diaconi ii, qui honorario titulo illustrem dignitatem consecuti sunt, per substitutos periculo suarum facultatum curiae muneribus satisfacere non vetentur.

D. v k. Mart. Constantinopoli Eudoxio et Dioscoro conss.

[22] *Idem AA. Florentio pp.* **pr.** Si qua per calumniam postulatio super criminalibus causis apud competentem iudicem deposita exhibitionis causa fuerit sacrosanctae religionis antistitis, triginta pondo auri condemnatione publicis calculis inferenda ut percellatur, praecipimus. **1.** Quin etiam omnia privilegia, quae sacrosanctis ecclesiis confugarum aut clericorum, decanorum vel aliorum ecclesiasticorum causa legibus sunt praestita, intacta atque illibata servari. **2.** Praeterea iubemus, ut omnes clerici atque monachi, qui de suis civitatibus ad hanc almam urbem ecclesiastici negotii vel religionis causa proficiscuntur, litteris episcopi, cui unusquisque iter faciens obsequitur, muniti adveniant: scituri quod, si citra hanc fiduciam accesserint, sibimet imputabunt, quod non clerici vel monachi esse putabuntur.

D. III id. Febr. Constantinopoli Valentiniano A. VI et Nomo conss.

[23] *Impp. Valentinianus et Marcianus AA. Palladio pp.* Quoniam venerabilis recordationis Flavianus huius almae urbis episcopus cum[vi] venerabili synodo innumerabilium paene sacerdotum, qui Chalcedone convenerunt, tanto ac tali decoratus est testimonio, ut Eutyches, qui contra senserat, cum sceleratis dictis suis ab omnibus uno ore damnaretur, aboleatur quidem Eutychetis damnosa memoria, Flaviani autem laudabilis recordatio reveletur.

D. Constantinopoli pridie nonas Iulias Sporacio cons.

[24] *Idem AA. Palladio pp.* Id, quod pauperibus testamento vel codicillis relinquitur, non ut incertis personis relictum evanescat, sed modis omnibus ratum firmumque consistat.

D. VIII k. Mai. Anthemio cons.

[vi] cum in

[21][89] *The same Augusti to Thomas, Praetorian Prefect.* Just as in the case of bishops of orthodox faith or of a presbyter and deacon, those who have attained the rank "Illustrious" (*vir illustris*) by honorary title are not prohibited, at the peril of their own property, from performing their curial duties through substitutes.

Given February 25, at Constantinople, in the consulship of Eudoxius and Dioscorus (442).

[22] *The same Augusti to Florentius, Praetorian Prefect.* **pr.** If any criminal accusation, maliciously made before a competent judge, should cause a bishop of the Holy Faith to be summoned, We order that it be punished by a fine of 30 pounds of gold, payable to the public accounts. **1.** Indeed, all privileges that have been conferred on the holy churches by law on behalf of refugees, clergymen, deacons, or other persons related to the church, shall remain intact and undiminished. **2.** We moreover order all clergymen and monks who come from their cities to This Generous City on ecclesiastical business or for religious reasons to be equipped with a letter from the bishop to whom each person making the journey is subordinated. They must know that if they come without this certificate, they will have themselves to blame when they are not recognized as clergymen or monks.

Given February 11, in the consulship of Valentinian Augustus, for the sixth time, and Nomus (445).[90]

[23] *Emperors Valentinian and Marcian Augusti to Palladius, Praetorian Prefect.* Since Flavianus of blessed memory, bishop of This Generous City, was honored with so much and such outstanding testimony in the venerable synod of almost innumerable priests who convened at Chalcedon (in 451), that Eutyches, who held a contrary opinion, was condemned along with his wicked words by all unanimously, the accursed memory of Eutyches shall be abolished, the laudable remembrance of Flavianus celebrated.

Given July 6, at Constantinople, in the consulship of Sporacius (462).[91]

[24] *The same Augusti to Palladius, Praetorian Prefect.* What is left by will or codicil to "the poor" shall not be invalidated, as if left to unspecified persons, but shall in every way be valid and binding.

Given April 24, in the consulship of Anthemius (455).

[89] = C. 10.32.60.
[90] Seeck dates this constitution to 430. Krüger suggests the recipient is Taurus, not Florentius.
[91] This constitution, which appears out of order, is placed by Seeck in 452.

[25] *Imp. Marcianus A. Constantino pp.* **pr.** Cum clericis in iudicium vocatis pateat episcopalis audientia, volentibus tamen actoribus, si actor disceptationem sanctissimi archiepiscopi noluerit experiri, eminentissimae tuae sedis examen contra catholicos sub viro reverentissimo archiepiscopo huius urbis clericos constitutos vel contra reverentissimum oeconomum tam de ipsius quam de ecclesiasticis negotiis sibimet noverit expetendum neque in ullo alio foro vel apud quemquam alterum iudicem eosdem clericos litibus irretire et civilibus vel criminalibus negotiis temptet innectere.

1. Memorati autem reverentissimi clerici orthodoxarum ecclesiarum, quae sub viro religioso antistite huius inclitae urbis sunt, in causa, in qua vel ipsi vel procuratores, quos pro se dederint, sententiarum auctoritate pulsantur, exsecutoribus, per quos coeperint conveniri, fideiussorem sacratissimae huius urbis ecclesiae oeconomum vel defensorem praebeant, qui usque ad quinquaginta libras auri fideiussor existat. **1a.** Ipse vero reverentissimus oeconomus almae huius urbis ecclesiae lite pulsatus fideiussorem pro se non praebeat, utpote qui et aliorum clericorum fideiussor futurus est, sed fidei suae committatur. **1b.** Quod si lis diversorum (excepto reverentissimo oeconomo) clericorum, quae agitanda sit, memoratam summam videtur excedere, clericus lite pulsatus det executori pro residua quantitate cautionem suam: cui nullum tamen insertum erit iusiurandum, quia ecclesiasticis regulis et canone a beatissimis episcopis antiquitus instituto clerici iurare prohibentur.

2. Statuimus autem, ut executoribus idem reverentissimus oeconomus vel alii diversi clerici sub beatissimo archiepiscopo huius splendidissimae civitatis sententiarum tuarum auctoritate commoniti solidos duos tantummodo dent pro commonitione sua et pro institutione procuratoris, si per eum voluerint litigare. **3.** Quod circa alios quoque diversos apparitores eminentiae tuae in his, quae ex consuetudine praebentur officio, observari in causis praedictorum clericorum iubemus, ut litis sumptus vel expensae a clericis pauciores humanioresve praestentur.

D. ...

[25][92] *Emperor* MARCIAN *Augustus to Constantinus, Praetorian Prefect.* **pr.** Although episcopal adjudication (*episcopalis audientia*) is open to all clergymen summoned to court, as long as the plaintiffs consent, if the plaintiff does not want to submit to the jurisdiction of the most holy archbishop, he shall know that he must seek the judgment of Your Most Eminent Tribunal against the Catholic clergy under the most reverend archbishop of this city or against the most reverend steward, concerning both his own and ecclesiastical affairs; nor shall he attempt to enmesh the aforementioned clergymen in lawsuits or entangle them in civil or criminal cases in any other venue or before any other judge.

1. If the aforementioned most reverend clergymen of the orthodox churches, who are under the jurisdiction of the pious bishop of This Famous City, or the procurators they have appointed, are accused under the authority of (your) rulings, they shall name as surety to the court clerks (*exsecutores*), by whom they are first summoned, the steward or defender of the Most Sacred Church of This Generous City, who will be surety up to the amount of 50 pounds of gold. **1a.** The most reverend steward of the Church of This Generous City himself, however, shall, if accused at law, not give surety on his own behalf, since it is he who gives surety for others, but shall rely on his own good faith. **1b.** But if the suit of various clergymen (excepting the most reverend steward) appears to exceed the aforementioned sum, the cleric accused at law shall give his guarantee to the court clerk for the remaining amount. However, no oath shall be inserted in it, because clergy are forbidden to swear on account of ecclesiastical regulations and the canon adopted by the most blessed bishops long ago.

2. We decree moreover that when they are admonished by the authority of your rulings, the same most reverend steward or other various clergymen under the jurisdiction of the most blessed archbishop of This Most Splendid City shall give only 2 solidi to the court clerk for the summons or for the appointment of a procurator, if they wish to litigate through him. **3.** We order that this shall be observed also by the other various officials of Your Eminence in cases concerning the aforesaid clergy, with respect to what is customarily given to your staff. Thus, smaller, or rather more reasonable, costs or expenses for litigation shall be paid by the clergy.

Given ... (456?).[93]

[92] Perhaps to be combined with C. 1.4.13 (dated to 456).

[93] Seeck suggests March 25, 456.

[26] *Imp. Leo A. Viviano pp.* Decernimus, ut posthac neque monachi aut quicumque alius cuiuslibet status aut fortunae in aedes publicas vel in quaecumque loca populi voluptatibus fabricata venerabilem crucem et sanctorum martyrum reliquias illicite inferre conentur vel occupare audeant ea, quae vel ad publicas causas vel ad populi oblectamenta constructa sunt. cum enim religiosae aedes non desunt, possunt ibi, consultis prius ut oportet religiosissimis episcopis, reliquias martyrum non quorundam usurpatione, sed arbitrio reverentissimorum antistitum collocare. ideo patientiam et modestiam suam, quam leges nostrae et publica disciplina et ipsorum monachorum nomen exposcit, studiose unusquisque tam monachus quam cuiuslibet alterius professionis retineat et perpetuo observare procuret.

D. xv k. Oct. Patricio cons.

[27] *Idem A. Erythrio pp.* Quisquis emensis militiae suae stipendiis expletisque officiis sive muneribus, quae cuicumque condicioni aut consuetudine vel lege debebat, ad consortium se contulerit clericorum et inter ministros verae orthodoxae fidei maluerit et elegerit numerari, nullius prorsus sententiae acerbitate revocetur nec a dei templis quibus se consecravit inopportunis intentionibus abstrahatur, sed isdem beatissimis ministeriis securus permaneat et quietus, ad quae post longi laboris lassitudinem ob reliquae vitae requiem consilio meliore protractus est: his actionibus, si quae contra eum eiusque patrimonium legitima intentione competunt, pro iuris ordine responsurus: exceptis primipilaribus, quos praeceptis tui culminis et publicis utilitatibus in perpetuum esse subiectos sacratissimae constitutionis statuta sanxerunt.

D. prid. non. Mart. Constantinopoli Leone A. III cons.

[28] *Idem A. Nicostrato pp.* **pr.** Nulli licere decernimus, si testamento heres sit institutus seu ab intestato succedat seu fideicommissarius vel legatarius inveniatur, dispositionem pii testatoris infringere vel improba mente violare, adserendo incertum esse legatum vel fideicommissum, quod redemptioni relinquitur captivorum, sed modis omnibus exactum pro voluntate testatoris piae rei negotio proficere. **1.** Et si quidem testator significaverit, per quem desiderat redemptionem fieri captivorum, is qui specialiter designatus est legati seu fideicommissi habeat exigendi licentiam et pro sua conscientia votum adimpleat testatoris. sin autem persona non designata testator absolute tantummodo

[26] *Emperor Leo Augustus to Vivianus, Praetorian Prefect.* We decree that hereafter neither monks or anyone else of whatever status or lot in life shall attempt to carry the venerable cross or the relics of the holy martyrs into public buildings or into any places erected for the pleasure of the people, or dare to occupy places constructed for public functions or the amusements of the people. For, since religious houses are not wanting, they can upon consulting most pious bishops, as is proper, place the relics of martyrs there, not by the unauthorized actions of certain persons but at the discretion of the most reverend bishops. Therefore, every monk and every person of any other vocation shall maintain and strive perpetually to observe the forbearance and restraint that Our laws, public order, and the very name of "monk" demand.

Given September 17, in the consulship of Patricius (459).

[27][94] *The same Augustus to Eurythrius, Praetorian Prefect.* Whoever has completed his term of military service and has fulfilled the duties or liturgies to which he was obligated by his status, by custom or by law, and betakes himself to the community of the clergy and prefers and chooses to be numbered among the ministers of the true orthodox faith, he shall not be recalled by any harsh ruling whatsoever, nor shall he be dragged by any vexatious accusations from the temples of God to which he has dedicated himself, but he shall abide undisturbed and in peace in the most blessed ministry to which he has been drawn by better counsel, so as to enjoy, after the weariness of long labor, peace in his remaining years. He must, however, in accordance with regular legal procedure, respond to legal claims, if any are brought against him or his property in a legitimate accusation. Excepted herefrom are commissaries (*primipilares*), who the ordinances of the most sacred imperial constitution have decreed shall forever be subject to the orders of Your Eminence and to public service.

Given March 6, at Constantinople, in the consulship of Leo Augustus, for the third time (466).

[28] *The same Augustus to Nicostratus, Praetorian Prefect.* **pr.** We decree that no one, whether he is instituted heir by will, inherits by intestacy, or is found to be the beneficiary of a trust or legacy, shall be permitted to invalidate or wickedly violate the arrangement of a dutiful testator by claiming that a legacy or trust that has been left for the ransom of captives is uncertain. On the contrary, the sum shall be claimed by every means according to the will of the testator and go toward this pious transaction. **1.** And if the testator has indicated by whom he wishes the ransoming of captives to be made, the person specifically indicated shall have the right to claim the legacy or trust and shall fulfill the wish of the testator in good conscience. If, however, the testator has merely

[94] Combine with C. 1.12.6 and 9.30.2.

summam legati vel fideicommissi taxaverit, quae debeat memoratae causae proficere, vir reverentissimus episcopus illius civitatis, ex qua testator oritur, habeat facultatem exigendi, quod huius rei gratia fuerit derelictum, pium defuncti propositum sine ulla cunctatione ut convenit impleturus. **2.** Cum autem vir religiosissimus episcopus huiusmodi pecunias pio relictas arbitrio fuerit consecutus, statim gestis intervenientibus earum quantitatem et tempus quo eas susceperit apud rectorem provinciae publicare debebit. post unius vero anni spatium et numerum captivorum et data pro his pretia eum manifestare praecipimus, ut per omnia impleantur tam piae deficientium voluntates: ita tamen, ut religiosissimi antistites gratis et sine ullo dispendio praedicta gesta conficiant, ne humanitatis obtentu relictae pecuniae iudiciorum dispendiis erogentur. **3.** Quod si testator, qui huiusmodi legatum vel fideicommissum non designata persona reliquit, barbarae sit nationis et de eius patria aliqua emerserit ambiguitas, vir reverentissimus episcopus civitatis eius, in qua idem testator defunctus est, itidem habeat legati seu fideicommissi petitionem defuncti propositum modis omnibus impleturus. **4.** Quod si in vico vel in territorio testator mortem obierit, illius civitatis vir reverentissimus episcopus exactionem habebit, sub qua vicus vel territorium esse dignoscitur. **5.** Et ne pium defunctorum propositum improba fraudatorum calliditate celetur, quidquid pro huiusmodi causa a testatore relictum fuerit, universi, qui id quocumque modo cognoverint, vel in viri clarissimi rectoris provinciae vel in urbis episcopi notitiam deferendi habeant liberam facultatem: nec delatoris nomen suspicionemque formident, cum fides atque industria eorum tam laude quam honestate non careat ac pariter pietate, cum veritatem in publicas aures lucemque deduxerint.

D. XV k. Sept. Constantinopoli Anthemio II cons.

[29] *Αὐτοκράτορες Λέων καὶ Ἀνθέμιος ΑΑ. Ζήνωνι στρατηγῷ.* **pr.** Οἱ ἐν τοῖς μοναστηρίοις διατρίβοντες μὴ ἐχέτωσαν ἐξουσίαν ἐξιέναι τῶν μοναστηρίων ἢ καὶ ἐν τῇ Ἀντιοχέων ἢ καὶ ἐν ἑτέραις πόλεσιν ἀναστρέφεσθαι, ὑπεξαιρουμένων μόνων τῶν καλουμένων ἀποκρισιαρίων, οἷς ἄδειαν παρέχομεν ἐθέλουσι διὰ μόνας ἀναγκαίας ἀποκρίσεις εἰσιέναι. **1.** Καὶ οὗτοι δὲ αὐτοὶ οἱ ποιούμενοι τὰς εἰσόδους φυλαττέσθωσαν περὶ θρησκείας ἢ δόγματος διαλέγεσθαι, ἢ συμβουλαῖς τισι πρὸς στάσιν ἢ ταραχὴν ὁρώσαις τὰς ἁπλουστέρας ψυχὰς τοῦ δήμου παρατρέπειν· γινώσκοντες, ὡς ἀμελοῦντες τῶν προστεταγμένων παρὰ τῆς ἡμετέρας εὐσεβείας τῇ τῶν νόμων ὑποβληθήσονται αὐστηρίᾳ.

fixed the amount of the legacy or trust that should go toward the aforementioned cause without designating a person, the most reverend bishop of the city where the testator was born shall have the power to claim what was left for that purpose, so as to carry out the pious intentions of the deceased without delay, as is proper. **2.** When, moreover, the most holy[95] bishop has obtained this money left for pious intentions, he shall immediately declare the amount of the money and the time when he received it on public record made before the governor of the province. We also order that, after an interval of one year, he shall make known both the number of captives and the prices paid for them, so that the so pious wishes of the deceased may in every way be fulfilled. However, the most holy bishops shall have the aforesaid official records made free of charge and at no expense, so that no money left in the name of compassion should be spent on court expenses. **3.** But if the testator who has left this kind of legacy or trust, without designating any person, derives from a barbarian people and doubt arises as to his homeland, the most reverend bishop of the city in which the testator died shall in the same manner have a right to claim the legacy or trust, so as carry out the intentions of the deceased in every way. **4.** But if the testator has passed away in a village or in a rural district (*territorium*), the most reverend bishop of that city, under the jurisdiction of which the village or district is known to be, will have the right to claim it. **5.** And that the pious intention of the deceased may not be concealed through the dishonest cunning of frauds, whatsoever has been left by the testator for such a purpose, all who know of it by whatever means shall have the freedom to bring it to the attention either of the *vir clarissimus* provincial governor or of the bishop of the city;[96] nor need they fear the name "informer" (*delator*) and the suspicion attached to it, for their good faith and diligence shall not be lacking in praise and honor, as well as in piety, since they bring the truth to the ears of the public and into the light of day.

Given August 18, at Constantinople, in the consulship of Anthemius, for the second time (468).

[29] *Emperors* LEO *and* ANTHEMIUS *Augusti to Zeno, Duke.* **pr.** Those who dwell in monasteries shall not have the freedom to leave their monasteries or to reside either in Antioch or in other cities, with the sole exception of the so-called monastic stewards (*responsales*), to whom, if they wish, We grant permission to enter cities only for necessary business. **1.** And the men who make these visits shall take care not to discuss worship or doctrine or to turn the simpler souls of the people to any counsels tending toward sedition and disorder, knowing that if they neglect the decrees of Our Piety they will be subjected to the severity of the laws.

[95] The epithet *religiosissimus* also suggests "scrupulous" in this context.

[96] The Nomocanon supports the reading "of the *vir reverentissimus* bishop" (Krüger).

D. k. Iun. Constantinopoli Leone A. IIII et Probiano conss.

[30] *Idem AA. Armasio pp.* **pr.** Si quemquem vel in hac urbe regia vel in ceteris provinciis, quae toto orbe diffusae sunt, ad episcopatus gradum provehi deo auctore contigerit, puris hominum mentibus nuda electionis conscientia sincero omnium iudicio proferatur. **1.** Nemo gradum sacerdotii pretii venalitate mercetur: qualiter quisque mereatur, non quantum dare sufficiat aestimetur. **2.** Profecto enim quis locus tutus et quae causa esse poterit excusata, si veneranda dei templa pecuniis expugnantur? quem murum integritati aut vallum fidei providebimus, si auri sacra fames penetralia veneranda proserpit? quid denique cautum esse poterit aut securum, si sanctitas incorrupta corrumpitur? **3.** Cesset altaribus imminere profanus ardor avaritiae et a sacris adytis repellatur piaculare flagitium. ita castus et humilis nostris temporibus eligatur episcopus, ut, locorum quocumque pervenerit, omnia vitae propriae integritate purificet. **4.** Non pretio, sed precibus ordinetur antistes. tantum ab ambitu debet esse sepositus, ut quaeratur cogendus, rogatus recedat, invitatus effugiat. **5.** Sola illi suffragetur necessitas excusandi. profecto enim indignus est sacerdotio, nisi fuerit ordinatus invitus, cum sane quisquis hanc sanctam et venerandam antistitis sedem pecuniae interventu subiisse aut si quis, ut alterum ordinaret vel eligeret, aliquid accepisse detegitur, ad instar publici criminis et laesae maiestatis accusatione proposita a gradu sacerdotii retrahatur. **6.** Nec hoc solum deinceps honore privari, sed perpetuae quoque infamiae damnari decernimus, ut eos, quos facinus par coinquinat et aequat, utrosque similis poena comitetur.

D. VIII id. Mart. Constantinopoli Zenone et Marciano conss.

[31] *Idem AA. Dioscoro pp.* **pr.** Orphanotrophos huius inclitae urbis nulla subtilitate iuris obsistente eorum quidem qui pupilli sunt quasi tutores, adulescentium vero quasi curatores sine ullo fideiussionis gravamine in emergentibus causis tam in iudicio quam extra iudicium, ut opus exegerit, ad similitudinem tutoris et curatoris personas et negotia eorum, si qua possint habere, defendere ac vindicare iubemus: ita videlicet, ut praesentibus publicis personis, id est tabulariis, aut intervenientibus gestis in hac quidem inclita urbe apud virum perfectissimum

Given June 1, at Constantinople, in the consulship of Leo Augustus, for the fourth time, and Probianus (471).

[30] *The same Augusti to Armasius, Praetorian Prefect.* **pr.** If it should happen that anyone in This Imperial City or in the other provinces scattered over the whole world is by the will of God raised to the rank of bishop, he shall be elevated by the unsullied minds of men, by the naked choice of conscience, and by the genuine judgment of all. **1.** Let no man purchase rank in the priesthood at the price of a bribe; each man shall be judged not by what he can pay but by the nature of his merits. **2.** Indeed, what place could be safe, and what cause defended, if the venerable temples of God are conquered by money? What wall shall we raise for integrity, or what rampart for honesty, if the accursed hunger for gold slithers into the innermost sanctuaries? What can be safe or secure, if uncorrupted sanctity itself is corrupted? **3.** The profane ardor of greed shall cease to loom over the altars and sinful wantonness shall be driven from the inner sanctums. An unpolluted and humble man shall be elected bishop in Our age, so that, whatever station he attains, he shall purify everything by the blamelessness of his own conduct. **4.** He shall be ordained not by price but by prayers. He should be so far removed from electoral bribery (*ambitus*) that he must be sought out and prevailed upon; when asked, he retreats; when invited, he flees. **5.** This man's only recommendation should be his urgent requests to excuse himself.[97] For truly he is unworthy of the priesthood – unless he was ordained unwillingly. Whenever indeed someone is discovered to have attained to the Holy and Venerable Episcopal See by means of money, or to have received something for ordaining or electing someone else, he shall be removed from his priestly rank when the accusation is made on the analogy of public crime and high treason (*laesa maiestas*). **6.** And We decree not only that he then be stripped of office, but also that he be condemned to permanent infamy. Thus a similar punishment shall befall both those whom an equal crime equally taints.

Given March 8, at Constantinople, in the consulship of Zeno and Marcianus (469).

[31] *The same Augusti to Dioscorus, Praetorian Prefect.* **pr.** We order the superintendents of orphanages in This Famous City, unimpaired by any legal subtlety, to represent and defend, as quasi-*tutores* of minors, quasi-*curatores* of adolescents, the persons and business affairs, if they may have any, (of their wards) in cases arising both in and out of court as necessary, on the analogy of

[97] That is, the humble candidate for bishop paradoxically supports his candidacy only by his reluctance to run, reminiscent of Plato's philosopher king.

magistrum census, in provinciis vero apud moderatores earum vel defensores locorum res eorum eis tradantur, a quibus sunt custodiendae: ut, si quas earundem rerum propter fenus forsitan vel aliam urguentem causam vel eo quod servari non possunt alienare[vii] perspexerint, prius habita aestimatione licebit eis alienationis inire contractum, ut pretia eorum quae exinde colliguntur, ab isdem personis custodiantur. **1.** Huiusmodi autem pium atque religiosum officium pro tempore orphanotrophos ita peragere convenit, ut minime ratiociniis tutelaribus seu curationibus obnoxii sint. grave enim atque iniquum est callidis quorundam, si ita contigerit, machinationibus eos vexari, qui propter timorem dei a parentibus atque substantiis destitutos minores sustentare ac velut paterna adfectione educare festinant.

D. k. Iun. Constantinopoli Marciano cons.

[32] *Idem AA. Erythrio pp.* **pr.** Omnes, qui ubicumque sunt vel posthac fuerint orthodoxae fidei sacerdotes et clerici, cuiuscumque gradus sunt, monachi quoque in causis civilibus ex nullius penitus maioris minorisve sententia iudicis ad extranea iudicia pertrahantur aut provinciam vel locum aut regionem quam habitant exire cogantur. nullus eorum ecclesias vel monasteria propria, quae religionis intuitu habitant, relinquere miserabili necessitate iubeatur, sed apud suos iudices ordinarios, hoc est provinciarum rectores, locis quibus degunt et ecclesiarum ministeriis obsecundant, omnium contra se agentium suscipiant actiones, ut his saltem horis atque temporibus, quibus religiosos viros a turbulenta observatione praetorii vacare contigerit cumque eos ad tempus petitorum intentio calumniosa laxaverit, ad sua se monasteria et venerabiles ecclesias conferentes sapienti animo, precatione sollicita faciliusque de proximo sacrosanctis altaribus obsecundent in suis laribus et domiciliis constituti.

1. In hac autem regia urbe si quando cuiuscumque rei causa episcopos vel presbyteros ceterosque clericos, qui sacrosanctis ecclesiis obsequuntur, sive monachos ex aliis quibuscumque provinciis contigerit reperiri, quos tamen in litem quisquam vocare voluerit, in nullo alio sit licitum memoratos cuiquam pulsare iudicio, nisi in tuae sublimitatis dumtaxat examine, ubi eis et beatitudinis honor debitus reservetur et oratorum

[vii] possunt debere alienari

tutores and *curatores*, without the burden of giving surety. The property of the wards shall be delivered to those who shall protect it in the presence of public officials, that is, the clerks (*tabularii*), or registered in the public records: in This Famous City, before the *vir perfectissimus* Master of the Census; in the provinces, before the governors or before the local defenders. Thus, if they perceive that some of the property should be alienated, perhaps because of interest or some other pressing reason, or because it cannot be maintained, after an assessment of its value is made they shall be permitted to enter a contract for the alienation thereof, so that the price collected for it may be safeguarded by the same persons. **1.** It is fitting that the acting superintendents of orphanages should perform this pious and religious duty without being liable to give accounts as is required of *tutores* or *curatores*. For it would be onerous and unjust if they, who out of their fear of God support minors deprived of parents and property and eagerly raise them with virtually paternal affection, should be harassed by the cunning machinations of certain persons.

Given June 1,[98] *at Constantinople, in the consulship of Marcianus (472).*

[32][99] *The same Augusti to Erythrius, Praetorian Prefect.* **pr.** All persons everywhere who are or hereafter shall be clergymen of the orthodox faith, whatever their rank, and monks too, shall not be dragged by the ruling of any greater or lesser judge at all to outside courts (*iudicia externa*) in civil cases or be compelled to leave the province, place, or region in which they live. None of them may be ordered under wretched compulsion to abandon the churches or monasteries that they inhabit in the interest of religion, but they shall answer the actions of all complainants against them before their ordinary judges, that is, the provincial governors, in the places where they live and attend to their ecclesiastical duties. Thus at least at those hours and times when it should chance that these holy men are free from the hectic audience at the governor's court, and when the malicious accusation of the plaintiffs grants them a momentary reprieve, they may betake themselves to their own monasteries and venerable churches and, with a wise spirit and in earnest prayer – and more easily from a short distance – attend to the holy altars while residing in their own homes and habitations.

1. In This Imperial City, however, if it should happen that bishops or presbyters or any other clergymen who serve holy churches, or indeed monks, are found from any other provinces, whom someone wishes to summon to trial; no one shall be permitted to accuse the aforementioned in any other court than the tribunal of Your Sublimity, where both the respect due their blessedness

[98] Seeck dates to December 23.
[99] Combine with C. 1.3.33.

adfluens in defensionibus copia large praestetur. **2.** Praeterea cum in provinciis ex eius qui regit provinciam fuerint sententia vel interlocutione conventi sive illi sacerdotes seu cuiuscumque gradus clerici sive monachi habeantur, dummodo approbentur orthodoxi, qui in propriis causis contractibusve pulsantur non alios quam ecclesiae propriae defensores seu quos oeconomos appellant fideiussores praebeant, ne, dum executoris pertinax et avara protervitas extraneos fideiussores flagitat, multiplex innoxiae paupertati adfligatur incommodum. **3.** In hac autem regia urbe inventi ex quacumque provincia venientes, cum in tuae amplitudinis iudicio, quod eis solum delegavimus, lite pulsati fuerint, reverentissimi orthodoxae fidei sacerdotes certe oeconomi aut ecclesiae defensores seu clerici in causis civilibus suis sive ecclesiasticis nulla praebendi fideiussoris molestentur iniuria, sed aut vicariis fideiussionibus contradantur, quas tamen stipulationum sollemnis cautela vallaverit, aut cautionibus et professioni propriae ac facultatum suarum obligationibus committantur.

4. Hoc nihilo minus observando, ut in causis ecclesiasticis nullum alium conveniri fas sit nisi eum, quem dispensatorem pauperum, id est oeconomum ecclesiae, episcopi tractatus elegerit (hunc enim sine dubio a sacerdote convenit ordinari): quem tamen conventum defensoris ecclesiae fidei committi praecipimus.

5. Executoribus in minoribus quidem iudiciis omnibus in ipsa conventione sacerdotum seu clericorum non amplius quam unum semissem aut sperantibus aut etiam audentibus accipere. si vero apparitor tuae magnitudinis ex sententia tuae sedis amplissimae in provincia degentes eos monuerit, iubemus non amplius eum quam duos solidos sportularum nomine percipere. in hac vero urbe magnifica idem apparitor tuae magnitudinis uno aureo sportularum gratia a provincialibus clericis contentus sit, quantaelibet summae qui conventus fuerit exponatur obnoxius. **6.** Praeterea nullus executor vexare contumeliis clericos ullos, nullis impulsionibus molestare, nullis exprobrare conviciis aut corporalibus iniuriis fatigare conetur: his, qui huiusmodi aliquid adgressi fuerint, post amissionem cinguli et patrimonii ultima protinus animadversione plectendis.

shall be maintained and they may generously be provided with an abundant supply of pleaders for their defense. **2.** Moreover, when they are summoned in the provinces by the pronouncement or interlocutory decree of the governor of the province, then, whether they are considered priests or clergy of whatever rank, or monks – as long as they are certifiably orthodox – those who are sued in regard to their own affairs and contracts need furnish no one as surety other than the defenders of their church or those they call stewards. In this way, although the obstinate and covetous impudence of the court clerk demands other sureties, manifold grievance shall not be inflicted on innocent poverty. **3.** If, however, most reverend priests of the orthodox faith, stewards, defenders of the Church, or clergy found in This Imperial City, from whatever province they have come, are sued in the court of Your Magnificence, which We have exclusively assigned them, they shall not be inconvenienced by the affront of giving surety in their own civil or ecclesiastical suits; but they shall either be entrusted to one another as sureties – which, however, the solemn formula of a stipulation shall fortify – or they shall be held accountable by their own guarantees (*cautiones*), declarations, and property liability.

4. This nonetheless must be observed: it shall be law in ecclesiastical cases that no one may be summoned other than he whom the discretion of the bishop has selected to be the giver of alms to the poor, namely, the steward of the church; for there is no doubt that he must be ordained by the priest (i.e., by the bishop). We order, however, that when he is sued, he shall be placed under the protection of the defender of the church.

5.[100] Court clerks in all minor courts shall, when summoning priests or clergymen, neither hope nor indeed dare to receive more than half a solidus. If, pursuant to an order of Your Most Exalted Tribunal, an official of Your Greatness should serve a summons on those living in the provinces, We order that he shall receive no more than 2 solidi as a fee. In This Magnificent City, however, the same official of Your Greatness shall be content with 1 solidus as a fee from provincial clergymen, no matter what sum the person sued is alleged to owe. **6.** Moreover, no court clerk shall attempt to harass with insults, vex with influence, abuse with reproaches, or weary with bodily injuries any clergymen. Those who undertake anything of the sort shall, after loss of their rank (*cingulum*) and property, be stricken with the ultimate punishment.

[100] The Greek manuscripts suggest that a passage approximately to this effect has fallen out of the text: "Non-orthodox court clerks shall not summon a bishop or clergyman. And heretics may not become court clerks to begin with. But if a heretic serves (as court clerk) and summons a bishop or clergyman of any rank whatsoever, he shall be punished by death. Orthodox court clerks," etc.

7. Privilegiis sane singulis quibuscumque sacrosanctis ecclesiis orthodoxae fidei, xenodochiis sive ptochiis tam generaliter quam specialiter attributis perpetuo reservandis, nullis eas earumque sacerdotes aut clericos cuiuslibet gradus aut monachos vel ptochos[viii] aut xenodochos orthodoxae fidei deputatos extraordinariis muneribus praecipimus praegravari. eas enim sarcinas oneris, quas plerisque personis diversa ratione remittimus, imponi beatissimis viris nostro saeculo inconveniens esse iudicamus.

8. Praeterea ne cui temeritas sua lucrativa concedatur et ut impudens calumniantium refrenetur audacia, iubemus, quotiens ii, qui sacerdotes seu clericos seu monachos ceterosque superius designatos vel in tuae magnitudinis examine vel in provinciali iudicio proposita actione convenerint, si causa cognita convicti fuerint sine iusta eos et legitima petitione pulsasse, omnes eis legitimas expensas sumptusque, quos ab exordio coeptae controversiae ipsorum vitio tolerasse eos constiterit, redhibere cogantur, ut hac saltem censurae iustissimae formidine revocati improbis adsidue conflictationibus occupati adquiescant se iam sopitis clamoribus iurgiorum magistra deinceps necessitate retinere.

Datum Constantinopoli pridie nonas April. Marciano cons.

[33] *Idem AA. Erythrio pp.* Sacrosanctae orthodoxae fidei episcopi atque presbyteri, diaconi quoque, qui semel probatis moribus integritate castissima ad hunc gradum meruerint pervenire, ea, quaecumque in eodem clericatus gradu locoque viventes adquirere et habere potuerint, etiamsi in patris avique aut proavi potestate constituti sunt et adhuc superstites habentur, tamquam bona propria vindicent: de his, si quando eis libitum fuerit, testandi vel donandi vel quolibet alio titulo alienandi libera facultate concessa, ut ea bona quoquo tempore numquam fratribus vel sororibus aut ex his genitis conferantur, sed ad eorum filios posteros et quoscumque extraneos heredes perveniant nec a patribus avis aut proavis, sed ab ipsorum liberis tamquam praecipua vindicentur, certe his procedant, quibus ipsi id peculium vel inter vivos alienatione habita vel mortis tempore ultima et vere cognita voluntate concesserint.

D. prid. non. April. Marciano cons.

[viii] ptochotrophos

7. The individual privileges conferred generally and specifically on the various holy churches of the orthodox faith, hospices, or poorhouses shall be maintained permanently. We order that neither they nor their bishops or clerics of whatever rank, monks, or superintendents of poorhouses or hospices, of orthodox faith, should be burdened by assignment to extraordinary liturgies. For We consider it incongruous with Our age to impose the burden of those liturgies, which We remit for many people for various reasons, on the most blessed of men.

8. Furthermore, so that no one shall be permitted to profit from his own brazenness, and so that the impudent audacity of false accusers may be curbed, We order that whenever those who summon priests, clergymen, monks, and the others indicated above, having brought suit against them either before the tribunal of Your Greatness or in a provincial court, are found to have accused the defendants without a just and legitimate claim once the case has been heard, they shall be compelled to pay the defendants all legal costs and expenses that they are found to have suffered at the fault of the plaintiffs from the beginning of the controversy. Thus, deterred at least by this fear of most righteous chastisement, they who are constantly involved in disreputable disputes may, at the urging of necessity itself, submit to restrain themselves from the clamor of their quarrels, now stilled.

Given April 4, at Constantinople, in the consulship of Marcianus (472).

[33][101] *The same Augusti to Erythrius, Praetorian Prefect.* The bishops and presbyters, and deacons too, of the holy orthodox faith who have deservedly attained their rank by proving their good character and immaculate integrity may claim as their own all property that they could acquire and possess in their lifetime in the same clerical rank and station, even if they were under the power of their father and grandfather or great-grandfather and are presently considered their survivors. They shall have free permission to alienate any of this property by will, gift, or on any other premise, whenever they please. Thus, this property will at no time be made over to their brothers or sisters or to the offspring of the latter but shall pass to their own children, descendants, and outside heirs, and may not be claimed by their fathers, grandfathers, or great-grandfathers, but by their own children as if it were their own property. Surely they shall have precedence, to whom these clergymen have given this property as a *peculium* or by legal alienation in their lifetime, or at the time of their death in their last, sincere wish.

Given April 4, in the consulship of Marcianus (472).

[101] Combine with C.1.3.32.

[34] *Idem AA. Dioscoro pp.* **pr.** Omnia privilegia, quae a retro principibus aut a nostra serenitate vel iudiciariis dispositionibus aut liberalitatibus pro singulis quibuscumque temporibus vel consuetudine sive circa ius metatorum sive in aliis quibuslibet rebus praestita sunt orphanotrophio sive asceteriis vel ecclesiis aut ptochiis seu xenodochiis aut monasteriis atque ceteris hominibus etiam ac rebus iuris eorum ad curam Niconis viri religiosissimi presbyteri et orphanotrophi vel ad eos, qui post eum loco eius successerint, pertinentibus ad similitudinem Zotici beatissimae memoriae, qui prius huiusmodi pietatis officium invenisse dicitur, per hanc pragmaticam sanctionem firma illibataque in perpetuum custodiri decernimus. valde etenim hoc videtur esse necessarium, cum exinde sustentatio vel educatio orphanis atque egenis et usibus ecclesiasticis vel ptochiis vel asceteriis comparetur.

1. Domus etiam aliasque res superius nominatas ad curam memorati viri pertinentes vel postmodum quolibet modo ad eius sollicitudinem vel qui post eum ad eiusdem orphanotrophii curam vocati fuerint perventuras ad instar maioris venerabilis ecclesiae huius inclitae urbis omnibus privilegiis, quae eadem sancta ecclesia vel nunc adipiscitur vel postea merebitur, perpetuo potiri pietatis intuitu decernimus.

D. x k. Ian. Constantinopoli Marciano cons.

[35] *[Αὐτοκράτωρ Ζήνων Α. ...]* **pr.** Πᾶσαν πόλιν εἴτε ἀνανεωθεῖσαν κατὰ τοὺς προλαβόντας χρόνους εἴτε οὐκ οὖσαν μὲν πρότερον, διὰ δὲ βασιλικῆς φιλοτιμίας ἀποδειχθεῖσαν πόλιν ἔχειν ἐκ παντὸς τρόπου ἀχώριστον καὶ ἴδιον τὸν ἐπιμελησόμενον τῶν κατ᾽ αὐτὴν ἐκκλησιαστικῶν πραγμάτων ἐπίσκοπον θεσπίζομεν· μηδενὶ παντάπασιν οὔσης ἀδείας δι᾽ οἱουδήποτε τρόπου, μηδὲ μὴν διὰ θείας βασιλικῆς κελεύσεως ἀφαιρεῖσθαι πόλιν οἱανδήποτε τοῦ τῆς ἰδιαζούσης ἐπισκοπῆς ἢ καὶ τῆς ἀφορισθείσης αὐτῇ περιοικίδος ἢ ἄλλου τινὸς δικαίου καὶ κατὰ τοῦτο τὸ μέρος ἢ καὶ ἄλλως ὁπωσδήποτε πόλεσιν ἑτέραις ὑποτελῆ ποιεῖν. **1.** Τοῦ δὲ παρὰ ταῦτα ποιοῦντος καὶ ποιεῖν[ix] πειρωμένου ἢ τῶν ἤδη ἀνανεωθεισῶν πόλεων ἢ καὶ τῶν πολισθέντων τόπων ἢ μετὰ ταῦτα τυχὸν ἀνανεουμένων ἢ πολιζομένων τὸ τῆς ἰδιαζούσης ἐπισκοπῆς ἀφαιρεῖσθαι δίκαιον ἢ ἄλλο τι παραιρεῖσθαι τῶν παρασχεθέντων ἢ καὶ παρασχεθησομένων αὐταῖς προνομίων μὴ μόνον ἡ ἐπιχείρησις ἔστω ματαία, ἀλλὰ καὶ αὐτὸς ὁ τοῖς κοινῶς καὶ ἰδίᾳ λυσιτελοῦσιν ἑκάστῳ μαχόμενος ἀτιμωθεὶς τῶν ὄντων γυμνούσθω· τῶν αὐτῶν κρατούντων ἐπιτιμίων καὶ κατὰ τοῦ καθὼς προείρηται ἐπιχειροῦντος καὶ διὰ βασιλικῆς τοιοῦτόν τι πράττειν ἀντιφωνήσεως.

[ix] [ποιεῖν]

[34] *The same Augusti to Dioscorus, Praetorian Prefect.* **pr.** By this pragmatic sanction, We decree that all privileges are to be kept valid and undiminished forever that have been granted by past emperors or by Our Serenity in judicial rulings or acts of liberality, at various times or customarily, as to the right of quartering (*ius metatorum*) or concerning other matters; to an orphanage, to hermitages or churches, to poorhouses or hospices, to monasteries, or to other men and their property that are under the care of Nico, most pious presbyter and orphanage superintendent; or those who afterwards succeed to his place, in the same manner as Zoticus of most blessed memory, who is said to have invented this kind of service in the name of piety. Indeed, this seems absolutely necessary, since the means of maintaining and raising orphans and the poor, as well as the means necessary to the Church, poorhouses, and hermitages, are derived from that source.

1. In the interest of piety, We also decree that the houses and other things designated above under the supervision of the aforementioned man, or such that hereafter in any manner come under his supervision or that of those who are called to manage the same orphanage after him, shall, on the analogy of the Greater Venerable Church of This Famous City, forever possess all the privileges that the same Church either now acquires or shall afterward merit.

Given December 23, at Constantinople, in the consulship of Marcianus (472).

[35] (*Emperor* Zeno *Augustus.*)[102] **pr.** We decree that every city, whether restored to its former status or not previously a city, but declared a city by imperial benefaction, shall have a bishop, in every way unique and its own, to attend to ecclesiastical affairs therein. No one, by any means whatsoever, not even pursuant to a divine imperial command, may deprive any city whatsoever of its own bishopric or the territory established for it, or of any other right, and, in that respect or indeed in any other way, make it tributary to other cities. **1.** If anyone acts contrary hereto and dares to take from a city its right to its own bishopric, whether from cities already restored or from places raised to the status of cities, or from those hereafter restored or made cities, or dares to deprive a city of any other privileges that have been or will be bestowed on them, not only shall his attempt be in vain, but he himself, who opposes what is publicly and privately beneficial to every man, shall be declared infamous and stripped of his property. The same punishments shall be inflicted on him who attempts to do such a thing in the manner described above even by means of an

[102] The inscription has been restored from the following constitution. Lounghis *et al.* date this constitution to between 474 and 484.

2. Ταῦτα δὲ γενικῶς διατάξαντες καὶ εἰς νοῦν εἰληφότες τὴν κατάστασιν τῶν ἁγιωτάτων ἐκκλησιῶν τῶν διακειμένων ὑπὸ Τόμιν τῆς τῶν Σκυθῶν ἐπαρχίας καὶ ὅτι οὐκ ἐγχωρεῖ τὰς αὐτὰς ἁγιωτάτας ἐκκλησίας συνεχέσι βαρβάρων ἐπιδρομαῖς καταβλαπτομένας ἢ καὶ ἄλλως πως πενίᾳ συζώσας ἑτέρως διασώζεσθαι, εἰ μὴ διὰ τῆς τοῦ θεοφιλοῦς ἐπισκόπου Τόμεως, ἥτις ἐστὶ καὶ τοῦ ἔθνους μητρόπολις, τυγχάνοιεν προμηθείας, θεσπίζομεν ὑπεξαιρεῖσθαι τῆς παρούσης θείας νομοθεσίας καὶ μηδαμῶς αὐτὰς ὑπάγεσθαι τῇ ταύτης ἀνάγκῃ, ἀλλ' ἐπὶ τοῦ οἰκείου σχήματος μένειν. 3. Κατὰ δὲ τὸν αὐτὸν τρόπον ὑπεξαιρεῖσθαι τῶν ἐπὶ τοῦ παρόντος νενομοτεθημένων βουλόμεθα καὶ τὴν ἔναγχος πολισθεῖσαν κατὰ τὸ Ἰσαύρων ἔθνος πρὸς τιμὴν καὶ θεραπείαν τοῦ καλλινίκου μάρτυρος Κόνωνος πόλιν, τουτέστι τὴν Λεοντοπολιτῶν, ὥστε καὶ αὐτήν, ὥσπερ νῦν ἔχει σχήματος, διαμένειν διὰ τὸ (πολλῶν σφόδρα φιλονεικηθέντων, εἴτε αὐτὴν προσήκει ἰδιαζόντως τυχεῖν ἐπισκόπου, εἴτε ὑπὸ τὴν φροντίδα καὶ πρόνοιαν τοῦ θεοφιλεστάτου ἐπισκόπου τῆς Ἰσαυροπόλεως συντελεῖν) δεδόχθαι πόλιν μὲν αὐτὴν εἶναι καὶ τῶν πολιτικῶν ἀνελλιπῶς καὶ εἰς πλῆρες ἀπολαύειν δικαίων, ὑπὸ δὲ τὴν φροντίδα τοῦ μνημονευθέντος ἐπισκόπου διὰ παντὸς διαμένειν.

[36] *Idem A. Sebastiano pp.* **pr.** Iubemus adscripticiorum creationes secundum veterem constitutionem, nisi dominorum possessionum, unde oriundi sunt, evidens concurrerit consensus, nullius penitus esse momenti, sed isdem fundorum dominis, qui faciendae creationi non sicut dictum est evidenter consenserint, ius proprium ad similitudinem ceterorum colonorum in suos adscripticios exercendi, tamquam si nulla creatio intercessisset, tribui facultatem. idemque hoc super illis quoque agricolis decernimus observari, qui cum essent adscripticiae nexibus condicionis conscripti, solitariam vitam videlicet appetentes quibuslibet sese monasteriis contra voluntatem dominorum fundorum duxerint offerendos. **1.** Servos sane sociari clericorum consortiis volentibus quoque et consentientibus dominis modis omnibus prohibemus, cum liceat eorum dominis, data servis prius libertate licitum eis ad suscipiendos honores clericorum iter, si hoc voluerint, aperire. **2.** Omnes praeterea virorum clarissimorum provincias moderantium sententiis absque ulla privilegii differentia (qui tamen praesidali iurisdictioni subiecti sunt, sive episcopi vel quilibet clerici aut monachi aut cuiuslibet sint condicionis) pariter respondere decernimus: nulla in posterum viris clarissimis provinciarum rectoribus ad loca, in quibus incusatae personae consistunt, perveniendi necessitate penitus imponenda, cum non solum legibus, verum etiam naturali quoque iuri conveniat, quos res exegerit, iudicialibus ad iudicium vocari sententiis, non ipsos iudices, quod dici etiam iniustum est, ad subiectos deduci, sed per datos ab his iudices causae examinationem in locis ubi incusati degunt procedere.

imperial rescript. **2.** Although We have decreed these provisions generally, We have also taken note of the state of the most holy churches under the jurisdiction of Tomis in the province of Scythia; and that it is impossible in any other way to save the aforesaid most holy churches, damaged by continuous barbarian incursions or otherwise afflicted by want, but that they should receive the foresight of the reverend bishop of Tomis, which city is also the capital of the province. We thus decree that they are excepted from the present imperial enactment and in no way subject to its compulsoriness, but shall remain in their own special form. **3.** In the same way, We wish to except from the present provisions the city of the Isaurians, which was recently elevated in honor and in veneration of the glorious martyr Conon, that is, Leontopolis. Thus, it too shall remain in the form it now has – for many have hotly debated whether it should receive a bishop of its own or be subject to the supervision and care of the most reverend bishop of Isauropolis; yet, although it has been granted city status and shall enjoy the rights of cities permanently and fully, it shall remain under the supervision of the aforementioned bishop.

[36] *The same Augustus to Sebastianus, Praetorian Prefect.* **pr.** We order, in accordance with an old constitution, that the ordinations of unfree tenants (*adscripticii*) are of no substance unless the manifest consent of the owners of the properties from which they come is obtained. The owners of the estates who have not manifestly consented to the ordination as stated are granted the freedom to exercise their right over their unfree tenants just as in the case of other tenants (*coloni*), as if no ordination had taken place. We decree that the same shall be observed in the case of those farmers who, though registered in the bonds of unfree tenancy, have seen fit to offer themselves to some monastery, as if desirous of monastic life, against the wish of the owners of the estates. **1.** We utterly forbid slaves to join the communities of the clergy, even if their owners willingly consent, since their owners are permitted to open the legitimate path to receiving clerical offices by first giving them their freedom. **2.** We moreover decree that all clergymen shall answer to the rulings of *viri clarissimi* provincial governors without any distinction of privilege (provided that they are subject to gubernatorial jurisdiction, whether bishops, clergy of any sort, or monks, and of any status). The necessity of traveling to the places where the accused persons reside shall no longer be imposed on senatorial provincial governors, for it accords not only with the laws but with the law of nature that those whom the dispute requires should be summoned to court by the judge's orders rather than that the judges themselves – it is unjust even to say so! – should be brought to their subjects. Instead, the examination of the case shall proceed in the place where the accused reside before delegate judges appointed by the governors.

D. v k. April. Constantinopoli Theodorico cons.

[37] *Idem A. Sebastiano pp.* Servis, si dominorum fuerint voluntate muniti, solitariam vitam participandi licentia non denegetur, dum tamen eorum domini non ignorent, quod, si servis suis ad monasteriorum cultum migrandi tribuerint facultatem, eorundem servorum dominio, donec idem servi in eodem monachorum habitu duraverint, spoliandos: alioquin si relicta forte vita solitaria ad aliam se condicionem transtulerint, certum est eos ad servitutis iugum, quam monachicae professionis cultu evaserant, reversuros.

D. id. April. Theodorico cons.

[38] pr. Οἱ τὰ ἴδια μοναστήρια καταλιμπάνοντες οὐ λαμβάνουσιν ἃ προσήγαγον αὐτοῖς κινητὰ ὅσης δήποτε ποσότητος ὄντα, κἂν μὴ συνέστη πρᾶξις ὑπομνημάτων ἐπ' αὐτοῖς. **1.** Ἐπὶ δὲ ταῖς δωρεαῖς τῶν ἀκινήτων δεῖ τὰ νόμιμα φυλάττεσθαι, ἐπεὶ οὐκ ἀναιρεῖται τῷ δωρησαμένῳ ἡ ἐκνίκησις. **2.** Καὶ τοῦτο δὲ θεσπίζομεν, ὥστε μηδένα τῶν θεοφιλεστάτων ἐπισκόπων ἢ χωρεπισκόπων ἢ περιοδευτῶν ἢ κληρικῶν ἄκοντας τοὺς λαϊκοὺς συνελαύνειν πρὸς τὴν τῶν καρποφοριῶν τῶν ἐν τοῖς τόποις καλουμένων ἀπαρχῶν ἤτοι προσφορῶν ἔκτισιν ὥσπερ τι τέλος ταῦτα μεθοδεύοντας, ἢ καὶ γεωργοῖς μέν, ἐν κλήρῳ δὲ καταλεγομένοις, καὶ μάλιστα ἐκείνοις, οἵ μηδ' ὑπὸ δεσποτείαν εἰσὶν αὐτῶν τῶν θεοφιλεστάτων ἐπισκόπων ἢ τῶν κατ' αὐτοὺς ἁγιωτάτων ἐκκλησιῶν, ἢ τὰς καλουμένας ἀγγαρείας ἢ ἑτέρας τοιουτοτρόπους ἐπαχθείας ἢ ὑπηρεσίας ἐπιφέρειν, μηδ' ἀφορισμοὺς τούτων ἕνεκα τῶν αἰτιῶν ἢ ἀναθεματισμοὺς τούτοις ἐπάγειν καὶ τῆς τῶν ἁγίων μυστηρίων μεταλήψεως καὶ αὐτοῦ τοῦ σεβασμίου καὶ σωτηριώδους βαπτίσματος, ὅπερ καὶ λέγειν ἀθέμιτον, ἐντεῦθεν ἀποστερεῖν (τοῦτο γὰρ παρά τινων πεπονθέναι μεμαθήκαμεν καὶ κώμας ὅλας ἤτοι καὶ ἀγροὺς καὶ κληρικοὺς κατὰ ταὐτὸν καὶ τοὺς ἔξω κληρικοὺς καθεστῶτας ὑπὸ τοῖς τοιούτοις ἀφορισμοῖς ἤτοι ἀναθεματισμοῖς γενομένους) τῆς τοιαύτης ἀτοπωτάτης καὶ πάσης δυσσεβείας γεμούσης καὶ εἰς ὕβριν αὐτῆς τῆς ὀρθοδόξου πίστεως ὁρώσης πράξεως κατὰ πάντα τρόπον εἰργομένης καὶ μηδενὸς ἔθους κρατεῖν δυναμένου τὴν οὕτως ἄλογον ἀπαίτησιν εἰσάγοντος. **3.** Καὶ γάρ ἐστι πρόδηλον, ὡς προσήκει μάλιστα ἕκαστον ἐκ τῶν οἰκείων πόνων ἑκόντα τῷ θεῷ καὶ τοῖς ὑπηρετουμένοις αὐτῷ προσφέρειν, ἅπερ ἂν αὐτὸς δοκιμάσοι, οὐ μὴν συνωθεῖσθαι πρὸς τοῦτο καὶ ἀναγκάζεσθαι καὶ ἀποροῦντα ἴσως καὶ οὐδὲ τῶν ἐκ τῆς γεωργίας καρπῶν διά τινας συμβαινούσας οἷα εἰκὸς ἀφορίας ἀπολαύοντα. **4.** Διὰ γὰρ τοῦτο τὴν μὲν ἀνάγκην κωλύομεν, τὴν δ' αὐθαίρετον γνώμην τῶν προσφερόντων οὐ μόνον οὐκ εἴργομεν, ἀλλὰ καὶ ἀποδεχόμεθα. **5.** Διὸ καὶ μεγίστοις ἐπιτιμίοις ὀχυροῦντες τὰ παρ' ἡμῶν ὁρισθέντα παρακελευόμεθα τὸν θαρροῦντά τι

Given March 28, at Constantinople, in the consulship of Theodoricus (484).

[37] *The same Augustus to Sebastianus, Praetorian Prefect.* The freedom to participate in monastic life shall not be refused slaves, if they are supported by the wish of their owners, as long as their owners are aware that, if they grant their slaves the freedom to pursue monastic worship, they shall be stripped of ownership of these slaves while they remain in a monk's habit. However, if the slaves abandon monastic life and affect a different status, they are sure to return to the yoke of servitude that they escaped through cultivation of the monastic life.

Given April 13, in the consulship of Theodoricus (484).

[38] (...) **pr.** Those who leave their monasteries shall not receive the movable property they brought there, whatever the amount, even if no public record was made of it. **1.** The laws must be observed, however, concerning gifts of immovable property, since the donor is not deprived of his right of revocation (*ekníkesis*). **2.** This too We decree: that no most reverend bishop or country-bishop (*chorepískopos*), or itinerant priest (*periodeutēs*), or clergyman should compel unwilling laymen to pay what are called first fruits in the provinces or rather rents, collecting them as if they were a tax. Nor shall they impose on farmers who are numbered among the clergy, and least of all on those who are not under the jurisdiction of the most reverend bishops or their most holy churches, either the so-called duty of furnishing post-wagons (*angaria*) or other such burdens or liturgies. Nor shall they place interdicts or anathemas upon them for these reasons and thereby deprive them of participation in the sacred mysteries and of venerable and saving baptism itself – it is wrong even to speak of such a thing! For We have learned that this has befallen some, and that whole villages or tracts and the clergymen in them, as well as those outside, have been subjected to such interdicts and anathemas. Such a most opprobrious practice, which teems with every impiety and does outrage to the orthodox faith, is to be stopped altogether, and no customary practice that introduces such an unreasonable demand shall be permitted to stand. **3.** For it is self-evident that each person should voluntarily offer God and those who serve Him what he thinks right, and should not be driven to it and forced although he perhaps lacks the means to do so and does not enjoy the fruits of his tilling of the soil because of some misfortune, as it happens. **4.** For this reason We abolish such compulsion; the spontaneous resolution of the contributors We not only permit but even welcome. **5.** Therefore, fortifying the provisions made by Us with the heaviest penalties, We order that he who dares to violate any of the aforementioned provisions shall be expelled from the most holy church that has been entrusted to him and from its property; and everyone

παραβῆναι τῶν προαναφερομένων αὐτῆς τε τῆς ἁγιωτάτης ἐκκλησίας, ἣν ἐγκεχείρισται, καὶ τῶν αὐτῆς πραγμάτων ἐξωθεῖσθαι, καὶ πάντα δὲ τοιοῦτόν τι πράττειν ἐπιχειροῦντα τῶν πραγμάτων ἀποκινεῖσθαι τῶν διαφερόντων τοῖς οἰκείοις,[x] ὧν τὴν φροντίδα ἐμπεπίστευται, καὶ αὐτῆς δὲ τῆς διοικήσεως, ἐπείπερ ἀνάξιον ἑαυτὸν ταύτης καὶ αὐτῆς τῆς ἱερωσύνης δείκνυσι. πρὸς τούτοις δὲ καὶ χρυσίου λιτρῶν δέκα προστίμῳ σωφρονιζέσθω. **6.** Τὰ δὲ παρ' ἡμῶν διὰ τοῦδε τοῦ θείου πραγματικοῦ νόμου τυπωθέντα κρατεῖν καὶ παραφυλάττεσθαι θεσπίζομεν κατὰ ταύτην μέντοι μόνην τὴν βασιλίδα πόλιν καὶ τὴν αὐτῆς ἐνορίαν καὶ τοὺς λοιποὺς τόπους καὶ κλίματα ὑπὸ τὴν χειροτονίαν τοῦ θρόνου τῆσδε τῆς ἐνδόξου πόλεως καὶ τῶν ὑπ' αὐτοῦ χειροτονουμένων θεοφιλεστάτων μητροπολιτῶν ἐπισκόπων, ὥστε καὶ αὐτοὺς τοὺς ὑπὸ τῶν αὐτῶν μητροπολιτῶν ἐπισκόπους τὴν ἐπισκοπὴν ἤτοι ἱερωσύνην καὶ τοὺς τὰς λοιπὰς τὰς μνημονευθείσας ἡγεμονίας τε καὶ φροντίδας παραλαμβάνοντας τοῖς αὐτοῖς ὑπάγεσθαι τύποις καὶ τούτους παραφυλάττειν.

[39] Θεσπίζομεν μηδένα δύο ἡγεῖσθαι μοναστηρίων, ἀλλὰ εἶναι μὲν ταῦτα ὑπὸ τὸν τῆς ἐνορίας, καθ' ἣν διάγουσι, θεοφιλέστατον ἐπίσκοπον, ἕκαστον δὲ ἡγούμενον ἔχειν ἕνα, ἐφ' ᾧ τε τῇ μὲν τοῦ ἡγουμένου καταστάσει καὶ τοῖς παρ' αὐτοῦ γινομένοις ἐγκινδυνεύειν τὸν ἐπίσκοπον, τῇ δὲ τῶν μοναχῶν τὸν ἡγούμενον· καὶ κατὰ τοῦτον τὸν τρόπον πᾶσαν εὐταξίαν φυλάττεσθαι καὶ μηδένα τοῦ λοιποῦ κατὰ σύγχυσιν ἢ ἐπήρειαν μάλιστα παρὰ τῶν τὸ εὐαγὲς τοῦτο σχῆμα περιβεβλημένων γίνεσθαι· ἅπερ χρὴ νῦν τε καὶ εἰς τὸν μετὰ ταῦτα χρόνον διηνεκῶς παραφυλάττεσθαι.

[40] *Imp. Iustinus A. Archelao pp.* Repetita promulgatione non solum iudices quorumlibet tribunalium, verum etiam defensores ecclesiarum huius almae urbis, quos turpissimum insinuandi ultimas deficientium voluntates genus irrepserat, praemonendos censemus, ne rem attingant, quae nemini prorsus omnium secundum constitutionum praecepta quam census magistro competit. absurdum etenim clericis est, immo etiam opprobrium, si peritos se velint disceptationum esse forensium: feriendis temeratoribus huius sanctionis poena quinquaginta librarum auri.

D. XIII k. Dec. Constantinopoli Iustino A. II et Opilione conss.

[41] *Αὐτοκράτωρ Ἰουστινιανὸς Α. Ἀταρβίῳ ἐπάρχῳ πραιτωρίων.* **pr.** Πᾶσαν ἀεὶ ποιούμενοι πρόνοιαν τῶν ἁγιωτάτων ἐκκλησιῶν εἰς τιμήν τε καὶ δόξαν τῆς ἁγίας ἀχράντου καὶ ὁμοουσίου τριάδος, δι' ἧς σώζεσθαι ἡμᾶς τε αὐτοὺς καὶ τὴν κοινὴν πολιτείαν πεπιστεύκαμεν, ἀκολουθοῦντες

[x] οἴκοις

who attempts to do any such thing shall be removed from the property belonging to the (religious) houses, the supervision of which has been placed in his care, and from the management itself, since he has shown himself unworthy of it and unworthy of the priesthood itself. In addition, he shall be chastised by a fine of 10 pounds of gold. **6.** We decree that what We have ordained in this sacred pragmatic sanction shall obtain and be observed in This Imperial City alone and its territory and in the other places and regions subject to appointment by the See of This Famous City[103] and to the most reverend metropolitan bishops appointed by it. Thus, also the bishops, who themselves received their episcopate or priesthood from the same metropolitans, as well as those who received the other aforementioned prefectures and charges from them, shall be subject to and observe the same enactments.

[39] (...) We decree that no one shall preside over two monasteries, but that monasteries shall be subject to the most reverend bishop of the territory in which they (the monasteries) reside; and that each shall have one abbot, whereby the bishop shall be accountable for the appointment and acts of the abbot, the abbot for that of the monks. In this manner, all good order will be preserved and no one shall be appointed in confusion and in contempt by those who have assumed this holy (monk's) habit.[104] These provisions must be observed now and forever after.

[40][105] *Emperor* JUSTIN *Augustus to Archelaus, Praetorian Prefect.* By this second promulgation, We believe we must warn not only judges presiding over any tribunal, but also the defenders of the churches of This Generous City, who have been infiltrated by the vilest manner of recording the last will of the deceased: they shall not meddle in something that according to the provisions of the imperial constitutions belongs to no man but the Master of the Census. For it ill suits clerics – no, it is a disgrace! – if they wish to be knowledgeable in forensic disputes. Violators of this decree shall be struck by a fine of 50 pounds of gold.

Given November 19, at Constantinople, in the consulship of Justin Augustus, for the second time, and of Opilio (524).

[41] *Emperor* JUSTINIAN *Augustus to Atarbius, Praetorian Prefect.* **pr.** Always with every consideration on behalf of the most holy churches for the honor

[103] The patriarchate of Constantinople.
[104] παρὰ τῶν τὸ εὐαγὲς τοῦτο σχῆμα περιβεβλημένων: translated as "monk's habit" because the law seems to prohibit the appointment of abbots irregularly by the monks themselves.
[105] = C. 6.23.23.

δὲ καὶ τῇ διδασκαλίᾳ τῶν ἁγίων ἀποστόλων περὶ τοῦ ἀνεπιλήπτους ὀφείλειν χειροτονεῖσθαι τοὺς ἱερέας, οἵτινες μάλιστα διὰ τῶν οἰκείων εὐχῶν τὴν εὐμένειαν τοῦ φιλανθρώπου θεοῦ τοῖς κοινοῖς περιποιεῖν ἐτάχθησαν πράγμασι, διὰ τοῦ παρόντος νόμου θεσπίζομεν, ὁσάκις ἂν ἐν οἱᾳδήποτε πόλει ἱερατικὸν θρόνον σχολάσαι συμβαίη, ψήφισμα γίνεσθαι παρὰ τῶν οἰκούντων τὴν αὐτὴν πόλιν ἐπὶ τρισὶ τοῖς ἐπὶ ὀρθῇ πίστει καὶ βίου σεμνότητι καὶ τοῖς ἄλλοις ἀγαθοῖς μεμαρτυρημένοις, ὥστε ἐκ τούτων τὸν ἐπιτηδειότερον εἰς τὴν ἐπισκοπὴν προχειρίζεσθαι.

1. Εἰ γὰρ οἱ ἅγιοι καὶ ἔνδοξοι ἀπόστολοι οἱ τὴν ἱερωσύνην παρὰ τοῦ δεσπότου Χριστοῦ τοῦ θεοῦ ἡμῶν δεξάμενοι καὶ πάντων τῶν ἀγαθῶν τὴν γῆν πληρώσαντες καὶ τὴν αὐτοῦ διδασκαλίαν ἅπασι παραδεδωκότες οὐδὲ αὐτῆς τῆς ἐν τῷ κόσμῳ τούτῳ ζωῆς αὐτῶν ὑπὲρ τῆς ἡμετέρας σωτηρίας ἐφείσαντο, πῶς οὐ δίκαιόν ἐστι τοὺς ὑπεισιόντας εἰς τὴν αὐτῶν τάξιν καὶ ἐγκαθισταμένους τῶν ἁγιωτάτων ἐκκλησιῶν ἱερέας καθαρὰν κεκτῆσθαι προαίρεσιν καὶ τῶν μὲν χρημάτων ὑπερφρονεῖν, πᾶσαν δὲ τὴν ἑαυτῶν ζωὴν εἰς τὸν φιλάνθρωπον ἀνατείνειν θεόν; **2.** Ὥστε προσήκει τοιούτους ἐπιλέγεσθαι καὶ χειροτονεῖσθαι ἱερέας, οἷς οὐκ ἔστιν οὔτε τέκνα οὔτε ἔγγονοι, ἐπειδὴ οὐχ οἷόν τέ ἐστι τὸν περὶ τὰς βιωτικὰς ἠσχολημένον φροντίδας, ἃς οἱ παῖδες μάλιστα τοῖς γονεῦσι παρέχουσι, τὴν πᾶσαν σπουδήν τε καὶ εὔνοιαν περὶ τὴν θείαν λειτουργίαν καὶ τὰ ἐκκλησιαστικὰ ἔχειν πράγματα. **3.** Τινῶν γὰρ διὰ τὴν εἰς θεὸν ἐλπίδα καὶ διὰ τὸ τὰς ἑαυτῶν περισῶσαι ψυχὰς προστρεχόντων ταῖς ἁγιωτάταις ἐκκλησίαις καὶ τὰ ὑπάρχοντα αὐτοῖς ταύταις προσφερόντων καὶ καταλιμπανόντων ἐπὶ τῷ εἰς πτωχοὺς καὶ πένητας καὶ ἑτέρας εὐσεβεῖς ταύτας δαπανᾶσθαι χρείας, ἄτοπόν ἐστι τοὺς ἐπισκόπους εἰς οἰκεῖον ταῦτα ἀποφέρεσθαι κέρδος ἢ περὶ ἴδια τέκνα καὶ συγγενεῖς καταναλίσκειν. **4.** Χρὴ γὰρ καὶ τὸν ἐπίσκοπον μὴ ἐμποδιζόμενον προσπαθείᾳ σαρκικῶν τέκνων πάντων τῶν πιστῶν πνευματικὸν εἶναι πατέρα. διὰ ταῦτα τοίνυν ἀπαγορεύομεν τὸν ἔχοντα τέκνα ἢ ἐγγόνους χειροτονεῖσθαι ἐπίσκοπον.

5. Τοὺς δὲ νῦν ὄντας ἐπισκόπους ἢ μέλλοντας γίνεσθαι θεσπίζομεν μηδαμῶς ἔχειν ἐξουσίαν διατίθεσθαι ἢ δωρεῖσθαι ἢ καθ' ἑτέραν οἱανδήποτε περίνοιαν ἐκποιεῖν τι τῆς ἑαυτῶν περιουσίας, ἣν μετὰ τὸ γενέσθαι ἐπίσκοποι ἐκτήσαντο ἢ ἀπὸ διαθηκῶν ἢ ἀπὸ δωρεῶν ἢ καθ' ἕτερον οἱονδήποτε τρόπον, πλὴν εἰ μὴ μόνα, ἃ πρὸ τῆς ἐπισκοπῆς ἐξ οἱασδήποτε αἰτίας ἔσχον ἢ μετὰ τὴν ἐπισκοπὴν ἀπὸ γονέων καὶ θείων καὶ ἀδελφῶν εἰς αὐτοὺς περιῆλθεν ἢ καὶ περιελεύσεται. **6.** Πάντα δὲ, ὅσα μετὰ τὴν χειροτονίαν ἐξ οἱασδήποτε αἰτίας, καθὰ εἴρηται, χωρὶς τῶν εἰρημένων προσώπων εἰς αὐτοὺς περιῆλθε, τῇ παρ' αὐτῶν ἐπισκοπουμένῃ ἁγιωτάτῃ ἐκκλησίᾳ διαφέρειν κελεύομεν καὶ ἐκδικεῖσθαι παρ' αὐτῆς, οὐδενὸς ἑτέρου προσώπου δυναμένου ἐκ τούτου εἰς οἰκεῖον ἀπενεγκεῖν κέρδος. **7.** Τίς γὰρ ἂν ἀμφισβητήσειεν, ὡς οἱ τούτοις τὰς ἰδίας οὐσίας καταλείψαντες ἢ καὶ καταλιμπάνοντες ἢ καὶ καθ' ἕτερον τρόπον παραπέμψαντες ἢ παραπέμποντες οὐκ ἀφεωράκασιν

and glory of the Immaculate and Consubstantial Trinity, through which We believe that We Ourselves and the Commonwealth are saved; and following the teaching of the Holy Apostles that the blameless should be elected priests, whose duty it is to secure by their prayers the benevolence of merciful God toward our common affairs, We decree by the present law that whenever it happens in any city that the episcopal see is vacant, a decree shall be made by the inhabitants of that city concerning three persons of acknowledged right belief, upright life, and other virtues, so that the most suitable of these men may be elected to the episcopate.

1. For if the Holy and Glorious Apostles, who received the priesthood from the Lord, Christ, Our God, and filled the earth with every good and passed on His teachings to all, did not spare even their own life in this world for our salvation, how could it but be right that those who succeed to their office and preside as bishops over the most holy churches should have a pure character, despise wealth, and strive their whole life toward merciful God? **2.** Therefore, such men should be chosen and elected as bishop who have neither children nor grandchildren; for he who is preoccupied by the everyday cares that children give their parents cannot give all his attention and devotion to divine worship and ecclesiastical matters. **3.** For although some men resort to the most holy churches out of their hope in God and to save their own souls, and offer their possessions, leaving them behind to be spent on beggars and the poor and other such pious uses, it would be perverse if the bishops diverted this property to their own profit or spent it on their own children and relations. **4.** The bishop must be the spiritual father of all faithful, unimpeded by affection for children of the flesh. For this reason, We forbid anyone who has children or grandchildren to be elected bishop.

5. We further decree that present or future bishops shall by no means have the right to leave by will, give, or alienate, by any conceit whatsoever, any of their own property, which they acquire after becoming bishops, whether by will, by gift, or in any other manner, excepting only what they had for any reason before they became bishops, or what has or shall come to them thereafter from their parents, uncles, or brothers. **6.** We order that all property that comes to them for any reason after their election, except from the aforementioned persons, as has been said, shall belong to the most holy church of which they are bishops and shall be claimed by it, nor shall any other person hereafter be able to divert it to his own profit. **7.** For who would dispute that those who have left or may leave their own property to bishops, or who in any other way have transferred or may transfer it to them, have not intended the bishopric itself and do this in the belief that the bishops not only would spend what they

εἰς τὴν αὐτὴν ἱερωσύνην καὶ πιστεύσαντες, ὡς οὐ μόνον τὰ παρ' αὐτῶν καταλειφθέντα εὐσεβῶς δαπανήσουσιν, ἀλλὰ καὶ τὰς ἰδίας αὐτῶν οὐσίας τούτοις προσθήσουσι, τοῦτο ποιοῦσι;

8. Τῆς δὲ γενικῆς ἡμῶν ταύτης νομοθεσίας μόνα ἐξαιροῦμεν τὰ περιγινόμενα οἱαδήποτε πράγματα Ἐπιφανίῳ τῷ ἁγιωτάτῳ ἀρχιεπισκόπῳ τῆς εὐδαίμονος ταύτης πόλεως καὶ πατριάρχῃ μέχρι τῆς παρούσης ἡμέρας· ἐπὶ γὰρ τοῖς ἀπὸ τοῦ παρόντος μέλλουσιν αὐτῷ προσγίνεσθαι κρατεῖν τὰ παρ' ἡμῶν διατυπωθέντα καὶ τῇ ἁγιωτάτῃ μεγάλῃ ἐκκλησίᾳ προσήκειν ταῦτα θεσπίζομεν. **9.** Μετὰ δὲ τὴν τῶν θεοφιλεστάτων ἐπισκόπων τελευτὴν τοὺς κατὰ καιρὸν οἰκονόμους λόγους ἀπαιτεῖσθαι τῶν παρ' αὐτῶν καταλελειμμένων πραγμάτων καὶ τῇ ἁγιωτάτῃ ἐκκλησίᾳ προσήκειν ἐκ ταύτης ἡμῶν τῆς νομοθεσίας ὀφειλόντων. **10.** Καὶ αὐτοὺς δὲ τοὺς οἰκονόμους κατὰ κρίσιν καὶ δοκιμασίαν γίνεσθαι κελεύομεν, εἰδότας, ὡς παντὶ τρόπῳ καθ' ἕκαστον ἐνιαυτὸν λόγους ὑφέξουσι τῷ ἁγιωτάτῳ ἐπισκόπῳ τῆς οἰκείας διοικήσεως καὶ πᾶν, ὅπερ ἂν φανεῖεν τὰ ἐκκλησιαστικὰ πράγματα καταβλάψαντες ἢ κέρδος οἰκεῖον ποιησάμενοι, τοῦτο τοῖς ἐκκλησιαστικοῖς ἀποδώσουσι πράγμασιν· ὥστε, εἰ μὲν περιόντες τοὺς τοιούτους ὑπόσχοιεν λόγους, γίνεσθαι τὰ εἰρημένα, εἰ δὲ τελευτήσαιεν πρὶν τοὺς αὐτοὺς λόγους ὑποσχεῖν, τότε τοὺς αὐτῶν κληρονόμους ὑπαχθῆναι τῇ τοιαύτῃ ζητήσει καὶ συνελαθῆναι πρὸς ἀποκατάστασιν πάντων, ὧν ἂν ἐντεῦθεν φανεῖεν ὀφείλοντες.

11. Δεῖν δὲ ᾠήθημεν καὶ τὰ ἐπὶ τοῖς τὴν φροντίδα ἀναδεδεγμένοις ἢ καὶ ἀναδεξομένοις τῶν τε εὐαγῶν ξενώνων καὶ νοσοκομείων καὶ πτωχείων καὶ ὀρφανοτροφείων καὶ βρεφοτροφείων διατυπῶσαι. καὶ γὰρ αὐτοῖς πᾶσαν ἄδειαν ἀναιροῦμεν τοῦ τὰ κτηθέντα αὐτοῖς μετὰ τὸ παραλαβεῖν τὰ εἰρημένα φροντίσματα ἢ κατὰ διαθήκας ἢ καθ' ἕτερον οἱονδήποτε τρόπον ἢ περίνοιαν εἰς ἕτερα μετατιθέναι πρόσωπα, πλὴν εἰ μὴ ὅσα πρώην ἔτυχον ἔχοντες ἢ μετὰ ταῦτα ἀπὸ γονέων ἢ θείων καὶ ἀδελφῶν εἰς αὐτοὺς περιῆλθε. **12.** Πάντα δέ, ὅσα τοῖς εἰρημένοις εὐαγέσιν οἴκοις προσήκει ἢ εἰς τοὺς τούτων προεστῶτας μετὰ τὸ τὴν τοιαύτην ἀναδέξασθαι φροντίδα περιῆλθεν ἢ περιελεύσεται, τοῖς αὐτοῖς εὐαγέσι διαφέρειν οἴκοις καὶ εὐσεβῶς περὶ τοὺς ἐν αὐτοῖς ὄντας ἢ θεραπευομένους διοικεῖσθαι κελεύομεν. **13.** Πρόδηλον γάρ ἐστιν, ὅτι ὁ καταλιμπάνων ἢ δωρούμενος ἐγγράφως ἢ ἀγράφως ξενοδόχῳ ἢ νοσοκόμῳ ἢ πτωχοτρόφῳ ἢ ὀρφανοτρόφῳ ὑπὲρ τούτου δίδωσιν, ἵνα δι' αὐτοῦ εὐσεβῶς διοικηθῇ, ὡς καὶ πολλὴν εὐσεβείας ἀφορμὴν αὐτοῦ ἔχοντος διὰ τοὺς ὑπ' αὐτοῦ φροντιζομένους. **14.** Καὶ οὐ δίκαιόν ἐστι τοῦτον, ἅπερ προφάσει τῶν ὑπ' αὐτοῦ φροντιζομένων λαμβάνει, μὴ περὶ αὐτοὺς ἢ καὶ ὑπὲρ αὐτῶν ἀναλίσκειν, ἀλλ' εἰς ἴδιον αὐτὰ πρόσωπον ἀποφέρεσθαι καὶ οἰκεῖον ποιεῖσθαι κέρδος τοῦ φόβου τοῦ θεοῦ καταφρονήσαντα. **15.** Τίς γὰρ τὸν τὴν τοιαύτην ἔχοντα φροντίδα μὴ νομίσειε διὰ τοῦτο ταύτην ἀναδέξασθαι, ἵνα μὴ μόνον ὅσα αὐτῷ ἔξωθεν περιγίνεται, ἀλλὰ καὶ ὅσα ἔτυχεν ἐσχηκὼς περὶ αὐτὴν δαπανήσῃ; **16.** Ἔτι καὶ τοῦτο κελεύομεν, ὅσα μετὰ τὴν δεόντως παρὰ τῶν τοιούτων

have left behind on pious purposes, but would contribute their own property in addition?

8. From this Our general law, We except any property left to Epiphanius, Most Holy Archbishop and Patriarch of This Blessed City, up to the present day. We decree, however, that Our statutes shall apply to property that is henceforth acquired by him, and that this property shall belong to the Most Holy Great Church. **9.** After the death of the most reverend bishops, the current stewards shall demand an account of the property they have left behind, which by this legislation of Ours shall belong to the Most Holy Church. **10.** And We order that the stewards themselves be appointed upon review and official examination, knowing that they must in every way, every year, render an account of their administration to the most holy bishop and restore to the property of the church all damage they have caused to ecclesiastical property or anything they have diverted to their own profit. Thus, if they render such an account while living, the aforesaid measures shall be carried out; if, though, they die before they render account, then their heirs shall be subjected to such an inquiry and shall be compelled to restore everything that they thereby are found to owe.

11. We have also thought it necessary to issue legislation concerning those who have undertaken or will undertake the management of holy hospices, infirmaries, poorhouses, orphanages, and foundling-hospitals. We accordingly take from them all freedom to transfer to other persons by will or in any other manner, or by any conceit, any property that they acquire after they have assumed the aforementioned positions, except what they may have had beforehand or what has afterwards come to them from their parents or uncles and brothers. **12.** All property that belongs to the aforementioned holy houses, or has or will come into the possession of their superintendents after they have assumed such office, We order shall belong to the selfsame holy houses and be managed piously for those who live or receive care there. **13.** For it is manifest that he who leaves or gives anything, whether or not in writing, to the superintendent of a hospice, infirmary, poorhouse, or orphanage, gives it for this reason: that it may be managed piously by the latter, since he has ample occasion for acts of piety on account of those under his care. **14.** And it is not right that he should not spend on or for those under his care what he receives on their behalf, but rather divert it to his own person and personal gain in contempt of the fear of God. **15.** For who would not think that a person entrusted with such a position had undertaken it for this reason: to expend on it not only what he acquires from outside but even what he himself had? **16.** And this too We order: whatever surplus should happen to remain after the expense incurred by such persons on behalf of those under their care and after their attention

προσώπων γινομένην περὶ τοὺς ὑπ' αὐτῶν φροντιζομένους δαπάνην καὶ ἐπιμέλειαν περί τε τὰ πράγματα καὶ τοὺς οἴκους ἐκπεριττεῦσαι συμβαίη, ταῦτα προχωρεῖν εἰς ἀγορασίαν προσόδων. **17.** Πανταχοῦ γὰρ ἡμῖν σκοπὸς εἰς ἐπίδοσιν ἤτοι αὔξησιν ἄγεσθαι τὰ εἰς εὐσεβεῖς ἀφορισμένα χρείας πράγματα· οὕτως γὰρ ἕκαστος ὑπὲρ τῆς ἑαυτοῦ ψυχῆς τι πρᾶξαι βουλόμενος προθυμότερον ἐπιδώσει, ἐὰν τὰ παρ' αὐτοῦ παρεχόμενα εὐσεβῶς μέλλειν διοικεῖσθαι πιστεύσειεν. **18.** Εἰ δὲ συμβῇ τινὰ τούτων παύσασθαι τῆς φροντίδος, ἧς εἶχε, θεσπίζομεν τοῦτον εἰς τόπον αὐτοῦ καθισταμένου μετὰ τοῦ φόβου τοῦ δεσπότου θεοῦ λόγους ἀπαιτεῖσθαι πάσης τῆς παρ' αὐτοῦ γενομένης διοικήσεως, καθὰ τῇ θείᾳ ἡμῶν ταύτῃ περιέχεται νομοθεσίᾳ, εἰδότος καὶ τοῦ μετ' αὐτὸν καθισταμένου, ὡς τῷ δεσπότῃ θεῷ τὸν ὑπὲρ τούτου λόγον ὑφέξει.

19. Ἔτι θεσπίζομεν, καθὰ τοῖς θείοις διώρισται κανόσι, μήτε ἐπίσκοπον μήτε χωρεπίσκοπον μήτε περιοδευτὴν μήτε πρεσβύτερον μήτε ἄλλον οἱασδήποτε ἀξίας κληρικὸν ἐπὶ δόσει χειροτονεῖσθαι. **20.** Ἀλλὰ μηδὲ οἰκονόμον ἢ ἐκκλησιέκδικον ἢ ξενοδόχον ἢ νοσοκόμον ἢ πτωχοτρόφον ἢ ὀρφανοτρόφον ἢ βρεφοτρόφον ἢ τὸν ἐπὶ τῆς πτωχείας παρασχόντα τι γίνεσθαι, ἀλλὰ κατὰ κρίσιν καὶ δοκιμασίαν τῶν κατὰ τόπον θεοφιλεστάτων ἐπισκόπων τούτους προβάλλεσθαι. **21.** Εἰ δέ τις εὑρεθείη προφάσει τῶν εἰρημένων χειροτονιῶν καὶ φροντισμάτων διδούς τι ἢ λαμβάνων, εἴτε ἐπίσκοπος εἴη εἴτε κληρικός, καὶ τὸν παρέχοντα καὶ τὸν λαμβάνοντα ἔξω τῆς ἱερωσύνης καὶ τοῦ κλήρου γίνεσθαι κελεύομεν, μετὰ τὸ ὑπὸ τὴν κατάκρισιν αὐτοὺς εἶναι τοῦ δεσπότου θεοῦ. **22.** Εἰ δέ τις διὰ προστασίας γένηται καὶ εὑρεθείη διδούς τι, τὸν γινόμενον ἔξω τοῦ κλήρου γίνεσθαι κελεύομεν. **23.** Εἰ δὲ οἰκονόμος ἢ ἐκκλησιέκδικος ἢ χωρεπίσκοπος ἢ περιοδευτὴς ἢ ξενοδόχος ἢ νοσοκόμος ἢ πτωχοτρόφος ἢ ὀρφανοτρόφος ἢ βρεφοτρόφος ἢ ὁ καλούμενος ἐπὶ τῆς πτωχείας παρασχών τι φανείη ἐπὶ τῷ τὴν τοιαύτην ἑαυτῷ περιποιῆσαι φροντίδα, καὶ τοῦτον ἀποκινεῖσθαι τῆς τοιαύτης φροντίδος κελεύομεν.

24. Ἔτι θεσπίζομεν πάντας τοὺς κληρικοὺς τοὺς ἐν ἑκάστῃ ἐκκλησίᾳ δι' ἑαυτῶν ψάλλειν τά τε νυκτερινὰ καὶ τὰ ὀρθρινὰ καὶ τὰ ἑσπερινά, καὶ μὴ μόνον ἐν τῷ δαπανᾶν τὰ ἐκκλησιαστικὰ πράγματα κληρικοὺς φαίνεσθαι, ὄνομα μὲν ἔχοντας κληρικῶν, μὴ ἐπιτελοῦντας δὲ τὸ πρᾶγμα τοῦ κληρικοῦ πρὸς τὴν λειτουργίαν τοῦ δεσπότου θεοῦ. **25.** Ἄτοπον γάρ ἐστιν ἀντ' αὐτῶν γραπτοὺς ἀνάγκης ἐπαγομένης αὐτοῖς ψάλλειν. εἰ γὰρ πολλοὶ τῶν λαϊκῶν διὰ τὸ τὴν οἰκείαν ὠφελῆσαι ψυχὴν ταῖς ἁγιωτάταις ἐκκλησίαις προσεδρεύοντες σπουδαῖοι περὶ τὴν ψαλμῳδίαν δείκνυνται, πῶς οὐκ ἄτοπον τοὺς κληρικοὺς τοὺς ἐπὶ τούτῳ τεταγμένους μὴ πληροῦν τὸ οἰκεῖον ἐπάγγελμα; **26.** Διὸ παντὶ τρόπῳ τοὺς κληρικοὺς ψάλλειν κελεύομεν. καὶ καταζητεῖσθαι αὐτοὺς παρὰ τῶν κατὰ καιρὸν θεοφιλεστάτων ἐπισκόπων καὶ δύο πρωτοπρεσβυτέρων ἑκάστης ἐκκλησίας καὶ τοῦ καλουμένου ἄρχοντος ἤτοι ἐξάρχου καὶ τοῦ ἐκδίκου ἑκάστης ἁγιωτάτης ἐκκλησίας,

to business and the (holy) houses, this amount shall be let out to earn interest. **17.** For it is Our goal to multiply and increase the property destined for pious purposes on every occasion. Thus, everyone who desires to do something for the good of his soul will more readily give, if he is confident that what he offers will be piously administered. **18.** If, though, one of these men should resign the administrative post that he has held, We decree that he who succeeds to his position shall demand of him, in fear of the Lord God, an account of his entire administration, just as it is prescribed by this Our divine law. For he who succeeds him shall know that, concerning this, he will render account to the Lord God.

19. We further decree, just as it has been established in the sacred canons, that no bishop, country-bishop, itinerant priest, presbyter, or other clergyman of any rank shall be appointed through bribery. **20.** Indeed, no one who gives anything shall be made steward, defender of the church, superintendent of a hospice, infirmary, poorhouse, orphanage, or foundling-hospital, or the dispenser of alms, but they shall be promoted upon review and official examination by the most reverend local bishops. **21.** If, though, someone is found to have given or received something on account of the aforementioned appointments and offices, whether he be bishop or clergyman, We order that both the giver and the taker shall be removed from the priesthood and clergy, in addition to being made subject to the condemnation of the Lord God. **22.** If someone is appointed through patronage and is found to have given something, We order that he be removed from the clergy. **23.** If a steward, defender of the church, country-bishop, itinerant priest, superintendent of a hospice, infirmary, poorhouse, orphanage, or foundling-hospital, or a dispenser of alms is revealed to have given something to obtain such an office for himself, We order that he too be removed from that office.

24. We further decree that all clergymen in every church shall personally chant the nocturnal, morning, and vesper prayers, and (thereby) shall not appear to be clergy merely by their use of ecclesiastical property, bearing the title but neglecting the duty of a clergyman to the service of the Lord God. **25.** For it is absurd that hired men (*graptous*) should sing in their place, when the responsibility falls on them. For if many of the laity, for the benefit of their souls, flock to the holy churches and show themselves eager for psalmody, how could it not be absurd if the clergymen assigned this task fail to fulfill their duty? **26.** Therefore We absolutely order the clergy to chant, and they shall be examined by the currently serving bishops and by two senior presbyters, by the so-called leader or precentor, and by the defender of every most holy church; and those who are not found to have blamelessly acquitted themselves

καὶ τοὺς μὴ εὑρισκομένους ἀμέμπτως ταῖς λειτουργίαις προσκαρτεροῦντας ἔξω τοῦ κλήρου καθίστασθαι. **27.** Οἱ γὰρ καταστήσαντες ἤτοι κτίσαντες τὰς ἁγιωτάτας ἐκκλησίας ὑπὲρ τῆς ἑαυτῶν σωτηρίας καὶ τῆς κοινῆς πολιτείας κατέλιπον αὐταῖς οὐσίας, δι' ὧν ὤφειλον αἱ θεῖαι λειτουργίαι γίνεσθαι, ἐφ' ᾧτε διὰ τῶν λειτουργούντων ἐν ταῖς ἁγιωτάταις ἐκκλησίαις εὐλαβεστάτων κληρικῶν θεραπεύεσθαι τὸν δεσπότην θεόν. **28.** Ἄδειαν δὲ παρέχομεν παντὶ προσώπῳ τῷ γινώσκοντι τούτων τι παραβαινόμενον τοῦτο προσαναγγέλλειν καὶ φανεροῦν.

29. Τὰ δὲ παρ' ἡμῶν θεσπισθέντα πέρατι παραδοῦναι καὶ εἰς ἔργον ἀχθῆναι μετὰ τῆς τοῦ θεοῦ εὐμενείας κελεύομεν, ὑφορωμένων τῶν παραβαίνειν ταῦτα τολμώντων πρῶτον μὲν τὸν ἐκ τῆς τοῦ δεσπότου θεοῦ κρίσεως κίνδυνον, ἔπειτα δὲ καὶ τὰς ἐγκειμένας τῇ αὐτῇ νομοθεσίᾳ ποινάς.
D. k. Mart. Constantinopoli dn. Iustiniano pp. A. II cons.

[42] *Ὁ αὐτὸς βασιλεὺς Ἐπιφανίῳ ἀρχιεπισκόπῳ Κωνσταντινουπόλεως καὶ πατριάρχῃ.* **pr.** Πᾶσαν ἀεὶ ποιούμενοι πρόνοιαν τῶν ἁγιωτάτων ἐκκλησιῶν, δι' ὧν καὶ τὴν ἡμετέραν βασιλείαν κρατύνεσθαι καὶ τὰ κοινὰ πράγματα τῇ τοῦ φιλανθρώπου θεοῦ χάριτι τειχίζεσθαι πεπιστεύκαμεν, ἀλλὰ μὴν καὶ τὰς ἡμῶν τε καὶ τῶν ἄλλων ἁπάντων ψυχὰς σπουδάζοντες περισώζεσθαι καὶ τούτου χάριν ἐπιμελούμενοι διὰ παντὸς τοῦ μήτε τὰ συμφέροντα ταῖς ἁγιωτάταις ἐκκλησίαις καθ' οἱανοῦν πόλιν οὔσαις τρόπῳ τινὶ κατολιγωρεῖσθαι μήτε τὰς ἐν αὐταῖς θείας λειτουργίας ἐκ τῆς τῶν θεοφιλεστάτων ἱερέων ἀπουσίας ἐμποδίζεσθαι ἢ μὴ προσηκόντως ἐπιμελεῖσθαι, ἀλλὰ μηδὲ τὰ τῶν ἁγιωτάτων ἐκκλησιῶν ἐκδαπανᾶσθαι πράγματα διά τε τῶν ἐν ταῖς ὁδοῖς καὶ διὰ τῶν ἐνταῦθα περί τε τοὺς ἀνιόντας ἱερέας καὶ τοὺς σὺν αὐτοῖς ὄντας κληρικοὺς ἢ οἰκέτας δαπανωμένων, ὥστε πολλάκις καὶ δανείων γίνεσθαι χρείαν καὶ τὸ ἐντεῦθεν ἔρχεσθαι βάρος ἐπὶ τὰς αὐτὰς ἁγιωτάτας ἐκκλησίας, πρὸς τὸ μηδὲ τὴν τῶν ἐκκλησιαστικῶν πραγμάτων δεόντως προϊέναι διοίκησιν παρὰ τὸν τῆς ἀποδημίας τῶν θεοφιλεστάτων ἱερέων καιρόν, ταύταις πρὸς τὴν σὴν μακαριότητα ταῖς θείαις συλλαβαῖς χρήσασθαι δεῖν ᾠήθημεν.

1. Δι' ὧν αὐτῇ παρακελευόμεθα καταστῆσαι πᾶσι φανερὸν τοῖς κατὰ τὰς μητροπόλεις ἑκάστης ἐπαρχίας ὑπ' αὐτῇ τεταγμένοις ὁσιωτάτοις ἱερεῦσιν, ὡς οὐ προσήκει τινὰ τούτων ἢ τῶν ἐν ταῖς ἄλλαις τῆς ἐπαρχίας πόλεσι ταῖς ὑπὸ τῷ μητροπολίτῃ τεταγμέναις θεοφιλεστάτων ἐπισκόπων κατ' οἰκείαν γνώμην δίχα θείας ἡμῶν ἰδικῆς προστάξεως ἀπολιμπάνειν μὲν τὴν παρ' αὐτοῦ διοικουμένην ἁγιωτάτην ἐκκλησίαν, εἰς δὲ τὴν εὐδαίμονα ταύτην ἀνιέναι πόλιν οἱουδήποτε πράγματος ἀνακύπτοντος, ἀλλὰ πέμπειν ἐνταῦθα ἕνα ἢ δύο τοῦ ὑπ' αὐτὸν εὐαγοῦς κλήρου καὶ ποιεῖν φανερὰ τῇ ἡμετέρᾳ εὐσεβείᾳ, περὶ ὧν δέονται, ἢ δι' αὐτῶν ἐξ εὐθείας προσιόντων ἡμῖν ἢ διὰ μέσης τῆς σῆς μακαριότητος, οὕτω τε τυγχάνειν δικαίας τε καὶ συντόμου τῆς ἡμετέρας βοηθείας. **2.** Εἰ γάρ τι τῶν εἰς ἡμᾶς φερομένων τοιοῦτον ἡμῖν εἶναι φανείη, ὡς δεῖσθαι τῆς αὐτῶν τῶν

of their service shall be removed from the clergy. **27.** For those who established or rather founded the most holy churches for their own salvation and for the public good left them property, by means of which the religious service should be held; so that, through the service rendered in the most holy churches by the most pious clerics, the Lord God might be worshipped. **28.** We grant every person who knows of any violation hereof the freedom to denounce and make it publicly known.

29. By the grace of God, We order that these things which We have decreed be brought to fruition and carried into effect. Those who dare to transgress these provisions shall expect, first, the peril of the judgment of the Lord God and, second, also the punishments included in the law itself.

Given March 1, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, for the second time (528).

[42] *The same Augustus to Epiphanius, Archbishop and Patriarch of Constantinople.* **pr.** Always with every consideration for the most holy churches, through which We believe Our Empire is strengthened and the common welfare is fortified by the grace of Merciful God; and indeed fervently wishing that both Our own and all others' souls should be saved, and on this account continually ensuring that the benefits of the most holy churches in every city are in no way diminished, that the divine services are not impeded by the absence of the most reverend priests or are not properly performed, and also that the property of the most holy churches is not consumed by the expenses incurred both on journeys and for priests traveling hither and the clergymen and servants with them, whereby it often is necessary to contract debts, and the burden incurred falls upon the most holy churches, in addition to the fact that the administration of ecclesiastical property does not proceed as it should during the temporary absence of the most reverend bishops – We have thought it necessary to address this divine letter to Your Blessedness.

1. With this letter, We urge Your Blessedness to make clear to all most holy priests (bishops) throughout the metropolitan cities of each province under your jurisdiction that none of them or the most reverend bishops of the other cities of the province subordinated to the metropolitan may, of their own accord, leave the holy church governed by them and come to This Blessed City without a divine order specifically given by Us, whatever the business that arises, but rather they should send hither one or two of the holy clergy under them and make clear to Our Piety what they need, whether by approaching Us directly or by way of Your Blessedness, and thus obtain Our just and instant aid. **2.** If anything reported to Us should appear to be such as to require the presence of the most reverend priests, We shall then instruct them to come.

θεοφιλεστάτων ἱερέων παρουσίας, τηνικαῦτα παραγενέσθαι προστάξομεν αὐτούς. δίχα δὲ τοιαύτης θείας ἡμῶν κελεύσεως οὐδένα παραγίνεσθαι συγχωροῦμεν· εἰδότος τοῦ ταῦτα ὑπερβαίνοντος καὶ τὴν ὀρθῶς καὶ ὁσίως εἰσενεχθεῖσαν παρ' ἡμῶν ἐπὶ τῇ τῶν ἁγιωτάτων ἐκκλησιῶν τιμῇ παραφυλακὴν παρεξιόντος, ὡς οὐ μικρᾶς ἀγανακτήσεως πειραθήσεται, ἀλλὰ καὶ ὑπὸ ἀφορισμὸν γενήσεται, εἰ μὲν μητροπολίτης εἴη, παρὰ τῆς σῆς μακαριότητος, εἰ δὲ τῶν ὑπὸ τὸν μητροπολίτην πόλεων, δι' αὐτοῦ τοῦ μητροπολίτου. χρηματικὴν γὰρ ποινὴν ὁρίσαι κατὰ τῶν ὑπερβαινόντων τὴν θείαν ἡμῶν ταύτην διατύπωσιν οὐκ ἀναγκαῖον ᾠήθημεν, ὡς ἂν μὴ εἰς τὰς ἁγιωτάτας ἐκκλησίας ἡ ἐντεῦθεν περισταίη βλάβη, ὧν τὰ πράγματα πάσης μειώσεως ἐλεύθερα μένειν σπουδάζομεν.

3. Ταῦτα τοίνυν εἰς τὴν ἑκάστου γνῶσιν τῶν ὑπ' αὐτῇ τεταγμένων θεοφιλεστάτων μητροπολιτῶν ἐπισκόπων ἀγαγεῖν ἡ σὴ ὁσιότης σπουδασάτω, καὶ τὰς παρ' ἑκάστου πεμπομένας ἀποκρίσεις διά τε τῶν μητροπολιτῶν καὶ δι' αὐτῶν τῶν λοιπῶν τῆς ἐπαρχίας πόλεων θεοφιλεστάτων ἐπισκόπων, ἃ περὶ τούτων μεμαθήκασιν, εἰς τὴν ἡμετέραν εὐσέβειαν ἀνενεγκεῖν.

D. k. Mart. Constantinopoli dn. Iustiniano pp. A. II cons.

[43] *Ὁ αὐτὸς βασιλεὺς Μηνᾷ ἐπάρχῳ πραιτωρίων.* **pr.** Τῆς τῶν ἁγιωτάτων ἐκκλησιῶν καὶ τῶν εὐαγῶν μοναστηρίων προνοοῦντες σεμνότητος ἀπαγορεύομεν πᾶσι τοῖς οἰκοῦσι μοναστήρια συνδιαιτᾶσθαι γυναιξὶ μοναστρίαις ἢ πρόφασίν τινα ἐπινοεῖν τοῦ κοινωνίαν τινὰ πρὸς αὐτὰς ἔχειν (τοῦτο γὰρ δικαίαν ὑποψίαν εἰσάγει τοῦ συνεχῶς καὶ ἡνίκα ἂν βούλοιντο συντυγχάνειν αὐταῖς), ἀλλ' οὕτω κεχωρισμένους εἶναι, ὥστε μηδεμίαν μετουσίαν πρὸς ἀλλήλους καθ' οἱανοῦν αἰτίαν ἔχειν αὐτοὺς μηδὲ ἐξευρίσκεσθαί τινα πρόφασιν ἢ τούτοις ἢ ἐκείναις τῆς μετ' ἀλλήλων διαγωγῆς.

1. Ἀλλὰ μόνους μὲν καθ' ἑαυτοὺς ἄνδρας ἐν ἑκάστῳ μοναστηρίῳ διάγειν τῶν καθ' οἱανοῦν αἰτίαν πλησιαζουσῶν αὐτοῖς μοναστριῶν κεχωρισμένους, μόνας δὲ καθ' ἑαυτὰς γυναῖκας οὐκ ἀναμιγνυμένας ἀνδράσιν ὑπὲρ τοῦ πᾶσαν ὑπόνοιαν ἀσέμνου συνδιαγωγῆς παντελῶς ἀναιρεθῆναι. **2.** Ἀλλ' εἰ μὲν ἄνδρες εἶεν οἱ πλείονες, προσήκει προνοίᾳ τῶν ἐν ἑκάστῃ πόλει θεοφιλεστάτων ἐπισκόπων τὰς γυναῖκας εἰς ἕτερον ἐπιτήδειον τόπον μεθίστασθαι καὶ δοθῆναι μοναστήριον αὐταῖς, ἐν ᾧ δεήσει καθ' ἑαυτὰς τοῦ λοιποῦ σεμνῶς διαιτᾶσθαι. **3.** Εἰ δὲ πλείονες εὑρεθεῖεν αἱ γυναῖκες οὖσαι ἢ καὶ ἰσάριθμοι, τοὺς μὲν ἄνδρας μεθίστασθαι, τὰς δὲ γυναῖκας ἐν τῷ μοναστηρίῳ μένειν. **4.** Ὥστε μέντοι τὰ πράγματα τοῦ αὐτοῦ μοναστηρίου κινητὰ καὶ ἀκίνητα καὶ αὐτοκίνητα τοὺς ἐξιόντας πρὸς τοὺς μένοντας κατ' ἀναλογίαν μερίζεσθαι.

5. Ταῖς δὲ ἀναγκαίαις ἀποκρίσεσι τῶν καθ' ἑαυτὰς μοναζουσῶν γυναικῶν ἕνα γέροντα παρὰ τοῦ θεοφιλεστάτου ἐπισκόπου τῆς πόλεως ἀφορίζεσθαι,

We permit none to come without such a divine order from Us. He who transgresses these commands and violates this observance, rightly and piously introduced by Us in honor of the most holy churches, shall know that he will experience no small indignation but will be excommunicated:[106] if he is a metropolitan, by Your Blessedness; if he is from the cities under the jurisdiction of the metropolitan, then by the metropolitan himself. We have deemed it unnecessary to fix a pecuniary penalty for the transgressors of this Our divine decree, lest the loss thereby incurred redound to the most holy churches, the property of which We desire to remain free of any diminution.

3. Your Holiness, therefore, shall hasten to bring these provisions to the attention of every one of the most reverend metropolitan bishops subject to You and to return to Our Piety the answers sent by each of the metropolitans and the rest of the most reverend bishops of the cities of the province, concerning what they have learned of these things.

Given March 1, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, for the second time (528).

[43] *The same Augustus to Menas, Praetorian Prefect.* **pr.** Out of respect for the dignity of the most holy churches and the venerable monasteries, We forbid all inhabitants of monasteries to dwell together with nuns or to devise any pretext for having any association with them – for their meeting with them continually and whenever they wish arouses a just suspicion – but they shall be separated so that they shall enjoy no contact with one another for any reason whatsoever, nor shall any pretext be invented, whether by these men or by those women, for conversing with one another.

1. Men in every monastery shall dwell alone, by themselves, separated from nuns who are in their vicinity for any reason; and women shall dwell alone, by themselves, not mingling with the men, so that every suspicion of indecorous cohabitation may utterly be removed. **2.** If, however, the men should form the majority, it falls to the foresight of the most reverend bishops of each city to see to it that the women are transferred to a different, suitable place and that a monastery is granted them in which they must thereafter dwell honorably by themselves; **3.** but if the women are found to be the majority or equal in number to the men, he shall see to it that the men are transferred and the women remain in the monastery. **4.** Those who leave shall proportionally divide the movable, immovable, and self-moving property of the monastery with those that remain.

5. For the necessary business of the women living by themselves, one old man shall be designated by the most reverend bishop of the city; for the performance

[106] Excommunication rather than simple banishment appears intended.

εἰς δὲ τὸ τὰς θείας ἐκτελεῖσθαι λειτουργίας καὶ τῆς ἁγίας αὐταῖς μεταδίδοσθαι κοινωνίας ἕνα πρεσβύτερον καὶ ἕνα διάκονον σεμνοῦ βίου τυγχάνοντας δίδοσθαι τοὺς μόνα τὰ εἰρημένα πράττειν ὀφείλοντας, οὐ μὴν διαιτᾶσθαι καὶ συνοικεῖν αὐτοῖς. **6.** Τούτων γὰρ δὴ φυλαττομένων καὶ αὐτοῖς εὐδαίμων ὁ βίος ἔσται τοῖς μονάζειν αἱρουμένοις καὶ τὰ τῆς κοινῆς ἡμῶν πολιτείας πράγματα ἑτοιμοτάτης τεύξεται τῆς τοῦ φιλανθρώπου θεοῦ βοηθείας. **7.** Ἃ μὲν οὖν ὑπὲρ τῶν κοινῶν πραγμάτων καὶ νῦν καλῶς ἔχειν ἐδοκιμάσαμεν, ταῦτά ἐστι καὶ πεποίθαμεν, ὡς οὐ μικρὰ κἀνταῦθα διαφανήσεται προστιθεμένη τούτοις ἐκ τῆς θείας ἡμῶν ταύτης διατάξεως ὠφέλεια.

8. Δεῖ δὲ παραφυλακῆς ἀκριβεστάτης εἰς τὸ κατὰ μηδένα τρόπον ὑπερβαίνεσθαι ταῦτα, ἥτις οὐκ ἄλλως ἂν γένοιτο ἢ τῶν θεοφιλεστάτων ἑκάστης πόλεως ἐπισκόπων ἐφορώντων ἐπιμελῶς τὰς τῶν μοναχῶν τῶν διαγόντων ἐν μοναστηρίοις τεταγμένοις ὑπὸ τὴν αὐτῶν φροντίδα διατριβάς, καὶ εἴ τινος αἴσθοιντο τοιούτου πταίσματος, πᾶσι τρόποις εἰργόντων τὸ παρ' αὐτῶν ἐγχειρούμενον καὶ ποιναῖς μὲν ὑπαγόντων τοὺς μετὰ τὴν ἡμετέραν ἀπαγόρευσιν ἔτι τῶν αὐτῶν ἀνεχομένους, ἀναγκαζόντων δὲ τὰς αὐτῶν διατριβὰς καθαρὰς καὶ κεχωρισμένας εἶναι γυναικείας συνδιαγωγῆς. **9.** Καὶ αὐτοῖς γὰρ τοῖς θεοφιλεστάτοις ἐπισκόποις, εἰ μέλλοιεν ὀρθῶς τὰ περὶ τούτου διαλογίζεσθαι, γνώριμόν ἐστιν, ὡς ἐκ τοῦ φυλάττεσθαι τὴν σεμνὴν ταύτην τῶν εὐλαβεστάτων μοναχῶν διαγωγὴν καὶ μηδὲν ἀπρεπὲς ἢ ἄσεμνον αὐτῇ προσγίνεσθαι τὸν φιλάνθρωπον θεὸν εὐμενῆ τὰ κοινὰ πράγματα τῆς ἡμετέρας ἕξει πολιτείας.

10. Ἀλλ' ὡς ἂν μηδὲ αὐτοὶ οἱ θεοφιλέστατοι ἐπίσκοποι πάρεργον ἡγήσωνται τὸ θεῖον ἡμῶν τοῦτο παράγγελμα, γινώσκειν αὐτοὺς βουλόμεθα, ὡς, εἴ τις αὐτῶν φανείη μὴ σὺν ἀκριβείᾳ πάσῃ ταῦτα διερευνώμενος ἢ διαφανὲν τὸ πταῖσμα μὴ κατὰ τοὺς εἰρημένους ἐπανορθῶν τρόπους, ἔνοχος μὲν ἔσται τῷ κρίματι τοῦ δεσπότου θεοῦ καὶ νῦν δὲ ἐπ' αὐτὸν ἥξει τὰ τῆς βασιλικῆς ἡμῶν κινήσεως καὶ περὶ αὐτὴν κινδυνεύσει τὴν ἱερωσύνην, οὐδὲ ἄλλης μείζονος ἐνδεούσης ἀγανακτήσεως.

11. Ἡ τοίνυν σὴ ὑπεροχὴ τὴν θείαν ἡμῶν ταύτην νομοθεσίαν φανερὰν καταστησάτω τοῖς ἐν ἑκάστῃ μητροπόλει θεοφιλεστάτοις ἐπισκόποις καὶ τοῖς λαμπροτάτοις ἄρχουσι τῶν ἐπαρχιῶν, προστιθέμενος τὸ καὶ αὐτούς, εἰ δεήσειε, πᾶσαν διδόναι βοήθειαν τοῖς εὐλαβεστάτοις τῶν πόλεων ἐπισκόποις, ἐφ' ᾧ ταῦτα κωλύειν, ἅπερ ἀναιρεθῆναι προσετάξαμεν, καὶ εἴ τινι ῥᾳθυμίᾳ χρωμένους αὐτοὺς εὕροιεν, φανερὰν ἡμῖν ταύτην δι' οἰκείας ποιεῖν μηνύσεως, ὡς ἂν ἅπαντες εἰδεῖεν τὰ παρ' αὐτῶν ὀφείλοντα διαφυλάττεσθαι καὶ τὴν ἐξ ἀμελείας διωρισμένην ποινήν. **12.** Φροντίσειάν τε οἱ θεοφιλέστατοι μητροπολῖται τοῦ καὶ τοῖς ἄλλοις εὐλαβεστάτοις τῶν πόλεων ἐπισκόποις τῆς αὐτῆς ἐπαρχίας ποιῆσαι φανερὸν τὸν θεῖον ἡμῶν τοῦτον νόμον καὶ παρεγγυῆσαι πᾶσιν ἀγρύπνῳ σπουδῇ ταῦτα φυλάττειν, δεδιόσι τὸ διορισθὲν ἐπιτίμιον.

13. Ὑπὲρ δὲ τοῦ μὴ παρελκυσθῆναι τὴν ἀποπλήρωσιν τῆς θείας ἡμῶν ταύτης νομοθεσίας, ἀλλὰ μηδὲ αὐτοὺς τοὺς εὐλαβεστάτους μοναχοὺς τοὺς ἐπὶ τοῦ παρόντος συνδιαιτωμένους μοναστρίαις ὀλίγον νομίσαι χρόνον

of divine services and the giving of holy communion itself, one presbyter and one deacon of upright character shall be appointed, who may perform only the aforesaid services, not live and cohabit with them (the old man and the women). **6.** If these precepts are kept, blessed will be the life of those who have chosen the monastic life, and the affairs of Our Commonwealth shall meet with the most ready aid of merciful God. **7.** These precepts are what We presently have deemed good for the Commonwealth, and We are confident no small benefit shall be seen to accrue to it from this Our divine decree.

8. That these precepts are in no manner broken requires the utmost care, which is not otherwise to be procured unless the most reverend bishops of each city diligently scrutinize the way of life of the monks living in the monasteries placed under their supervision and, if they learn of some such lapse, stop their attempt by all means, and both subject to punishment those who yet persist in the same conduct after Our prohibition and force their way of life to be chaste and sundered from female society. **9.** And if they are to think rightly about this matter, the most reverend bishops themselves must acknowledge that if the way of life of the most devoted monks is kept honorable, and nothing unseemly or unworthy attaches to it, Merciful God will propitiously keep the common welfare of Our State.

10. And so that the most reverend bishops should not consider this Our divine command to be of trifling importance, We want them to know that if one of them is found investigating these matters with less than the utmost exactitude, or failing to correct a manifest lapse in the manner prescribed, he will be subject to the judgment of the Lord God, and the consequences of Our imperial wrath shall fall upon him, and he shall risk his priesthood. Nor will other, yet greater censure be wanting.

11. Your Excellency will therefore make this Our divine law known to all of the most reverend metropolitan bishops and to the *viri clarissimi* provincial governors, adding that, if necessary, they should do everything to assist the most pious bishops of the cities, in order to stop what We have ordered to be abolished. And if they find the bishops exhibiting negligence, they shall disclose it to Us in a personal report, so that all may know what they must observe and the punishment established for neglect. **12.** The most reverend metropolitans will take pains to apprise the most pious bishops of the cities in the same province of this Our divine law and bid them all to observe it with tireless application, in fear of the established penalty.

13. That the fulfillment of this Our divine law may not be drawn out, and indeed lest the most pious monks presently living in common with nuns think that the time granted them to separate as required is short, We fix a period

αὐτοῖς ἐνδεδόσθαι πρὸς τὸν ὀφείλοντα γενέσθαι χωρισμόν, ἐνιαυσιαῖον τοῦτον ὁρίζομεν, ψηφιζόμενον ἀφ' οὗπερ ἂν ἐμφανὴς ὁ θεῖος ἡμῶν οὗτος νόμος γένηται, ὥστε μετὰ τὴν τοῦ ἔτους παραδρομήν, εἰ φανείη τὰ τῆς κοινῆς διαίτης ἐπὶ τοῦ αὐτοῦ μένοντα σχήματος, ἁρμόσαι παντὶ τρόπῳ τὰς ἐγκειμένας τῷ θείῳ ἡμῶν νόμῳ τούτῳ ποινάς.

D. xv k. Febr. Decio cons.

[44] *Ὁ αὐτὸς βασιλεὺς Ἰουλιανῷ ἐπάρχῳ πραιτωρίων.* **pr.** Τῶν ἱερῶν κανόνων μηδὲ τοῖς θεοφιλεστάτοις πρεσβυτέροις μηδὲ τοῖς εὐλαβεστάτοις διακόνοις ἢ ὑποδιακόνοις γαμεῖν μετὰ τὴν τοιαύτην χειροτονίαν ἐφιέντων, ἀλλὰ μόνοις τοῖς εὐλαβεστάτοις ψάλταις τε καὶ ἀναγνώσταις τοῦτο συγχωρούντων ὁρῶμεν τινὰς περιφρονοῦντας μὲν τῶν ἱερῶν κανόνων, παιδοποιουμένους δὲ ἔκ τινων γυναικῶν, αἷς ἁρμοσθῆναι κατὰ τὸν ἱερατικὸν θεσμὸν οὐ δύνανται. **1.** Ἐπειδὴ τοίνυν ἡ ποινὴ τοῦ πράγματος ἐν μόνῃ τῇ τῆς ἱερωσύνης ἦν ἐκπτώσει, τοὺς δὲ θείους κανόνας οὐκ ἔλαττον τῶν νόμων ἰσχύειν καὶ οἱ ἡμέτεροι βούλονται νόμοι, θεσπίζομεν κρατεῖν μὲν ἐπ' αὐτοῖς τὰ τοῖς ἱεροῖς δοκοῦντα κανόσιν, ὡς ἂν εἰ καὶ τοῖς πολιτικοῖς ἐνεγέγραπτο νόμοις, καὶ πάντας αὐτοὺς τῆς τε ἱερωσύνης τῆς τε θείας λειτουργίας τῆς τε ἀξίας αὐτῆς ἣν ἔχουσι γυμνοῦσθαι. **2.** Καθάπερ γὰρ τοῖς εὐαγέσι κανόσιν ἀπηγόρευται τὰ τοιαῦτα, οὕτω καὶ κατὰ τοὺς ἡμετέρους νόμους τὸ πρᾶγμα κεκωλῦσθαι καὶ πρὸς τῇ εἰρημένῃ τῆς ἐκπτώσεως ποινῇ μηδὲ εἶναι γνησίους τοὺς ἐκ τῆς τοιαύτης ἀτόπου συνδιαφθορᾶς τεχθέντας ἢ τικτομένους, ἀλλὰ τῆς ἐκ τῶν τοιούτων σπερμάτων μετέχειν αἰσχύνης. **3.** Τοιούτους γὰρ αὐτοὺς τίθεμεν, ὁποίους οἱ νόμοι τοὺς ἐξ ἰγκέστων ἢ νεφαρίων τεχθέντας γάμων διορίζουσιν, ὥστε μηδὲ φυσικοὺς ἢ νόθους νοεῖσθαι, ἀλλὰ πανταχόθεν ἀπηγορευμένους καὶ διαδοχῆς γονέων ἀναξίους, οὐδὲ δωρεὰν λαμβάνειν παρ' αὐτῶν δυναμένους οὔτε αὐτοὺς οὔτε τὰς τούτων μητέρας οὔτε διὰ παρενθέτων προσώπων, ἀλλὰ πασῶν τῶν εἰς αὐτοὺς γινομένων παρὰ τῶν πατέρων φιλοτιμιῶν ὑπὸ τὴν ἁγιωτάτην ἐκκλησίαν, ἐξ ἧς εἰσι οἱ τοῦτο ἁμαρτάνοντες, ἐρχομένων. **4.** Ὅπερ γὰρ οἱ ἱεροὶ κανόνες κωλύουσι, τοῦτο καὶ ἡμεῖς διὰ τῶν ἡμετέρων εἴργομεν νόμων. **5.** Εἰ δὲ καὶ ἐσχηματισμένη τις γένοιτο δῆθεν ἐνοχὴ ἐν προσποιήσει δανειακῶν ἢ ἄλλων συμβολαίων ὑπεύθυνον ποιοῦσα δῆθεν τὸν τῆς τοιαύτης φθορᾶς μετασχόντα καὶ ταύτην ἀνίσχυρον εἶναι βουλόμεθα καὶ τὴν τῶν τοιούτων δόσιν οὐκ εἰς τὸ πρόσωπον, εἰς ὅπερ ἐκτέθηται τὰ τῆς συγγραφῆς, ἀλλ' εἰς τὴν ἁγιωτάτην ἐκκλησίαν ἔρχεσθαι.

D. xv k. Nov. Constantinopoli Lampadio et Oreste vv. cc. conss.

[45] *Ὁ αὐτος βασιλεὺς Ἰουλιανῷ ἐπάρχῳ πραιτωρίων.* **pr.** Θεσπίζομεν, εἴ τις τελευτῶν εὐσεβῆ ποιοῖτο διατύπωσιν ἢ κατὰ ἐνστάσεως τρόπον ἢ κατὰ ληγάτον ἢ κατὰ fideicommisson ἢ κατὰ mortis causa δωρεὰν ἢ καθ' ἕτερον οἱονδήποτε νόμιμον, εἴτε ἐπισκήψειε τῷ κατὰ καιρὸν ἐπισκόπῳ πρόνοιαν τίθεσθαι τοῦ πληρωθῆναι τὰ παρ' αὐτοῦ βεβουλευμένα, εἴτε καὶ

of one year, to be calculated from the time that this Our divine law should be made known. Thus, after the lapse of a year, if the circumstances of their communal life are found to remain in the same form, the penalties prescribed in this Our divine law shall apply.

Given January 18, in the consulship of Decius (529).

[44] *The same Augustus to Julian, Praetorian Prefect.* **pr.** Although the sacred canons permit neither the most reverend presbyters nor deacons or subdeacons to marry after their election, but grant only the most pious singers and readers this right, We see certain persons showing contempt for the sacred canons and begetting children by women to whom, according to priestly law, they cannot be joined. **1.** Since, then, the punishment for this offence consisted in mere loss of priestly office, and since Our laws desire that the sacred canons possess no less force than the laws, We decree that the provisions of the sacred canons shall apply to them as if they had been written in the civil laws, and all offenders shall be stripped of the priesthood, of the divine ministry, and of the very office that they hold. **2.** For as such conduct had been prohibited by the holy canons, so too has it been checked by Our laws; and, in addition to the aforementioned punishment of expulsion from the priesthood, the children that have been or will be born of such a foul act of mutual corruption shall not be legitimate, but rather shall partake of the ignominy of their begetting. **3.** We make such children the same as the laws define those begotten of incestuous or nefarious marriages: they shall be considered neither natural nor spurious, but utterly destitute and unworthy to inherit from their parents; nor can they or their mothers receive a gift from the fathers or through third parties, but all munificence made on their behalf by the fathers shall fall to the holy church to which they who commit this sin belong. **4.** What the sacred canons forbid, We too prohibit by Our laws. **5.** If, though, some manner of liability (*enoché*) is feigned on the pretense of a debt or other contract, making him namely who participated in such vice subject to payment, We desire that this too be void and that the payment go not to the person indicated in the contract but to the most Holy Church.

Given October 18, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[45] *The same Augustus to Julian, Praetorian Prefect.* **pr.** We decree that if a dying person makes a pious disposition, whether by the institution of the heir, by legacy, by trust, by gift in anticipation of death, or by another legal means, and whether he provides for the fulfillment of his wishes by placing this charge upon the current bishop or is silent in regard thereto, or on the contrary he

σιγήσειε τοῦτο, εἴτε καὶ τοὐναντίον ἀπαγορεύσειεν, ἀνάγκην ἔχειν τοὺς κληρονόμους τὸ ἐπιταχθὲν ποιεῖν καὶ πληροῦν ἐκ τρόπου παντός. εἰ δὲ τοῦτο ἑκόντες μὴ ποιήσαιεν, τηνικαῦτα τοὺς κατὰ τόπον θεοφιλεστάτους ἐπισκόπους περιεργάζεσθαι ταῦτα καὶ ἀπαιτεῖν αὐτοὺς πάντα πληροῦν κατὰ τὴν βουλὴν τοῦ τελευτήσαντος. **1.** Ἀλλ' εἰ μὲν οἰκοδομὴν ἐκκλησίας ἐπιτάξειεν ὁ διαθέμενος, εἴσω τριετίας πάντως παρασκευάζειν αὐτὴν πληροῦσθαι, εἰ δὲ ξενῶνος ποίησιν, εἴσω ἑνὸς ἐνιαυτοῦ μόνον[xi] τοῦτο ποιεῖν ἀναγκάζεσθαι, ὡς ἱκανοῦ τοῦ χρόνου τούτου καθεστῶτος πληρῶσαι τὰ βεβουλευμένα τοῖς τετελευτηκόσι· δυνατὸν ὂν καὶ οἶκον μισθώσασθαι καὶ τοὺς ἀρρώστους ἐγκατακλῖναι, ἄχρις οὗ τὰ τῆς οἰκοδομίας τοῦ ξενῶνος περαιωθείη. **1a.** Εἰ δέ τινα δοῦναι πρὸς ἅπαξ εἰς εὐσεβεῖς αἰτίας προσταχθεῖεν, παραχρῆμα καταναγκάζειν[xii] αὐτοὺς τοῦτο ποιεῖν, τουτέστι μετὰ τὴν τῆς διαθήκης ἐμφάνισιν καὶ τὸ καταδέξασθαι τὸν κλῆρον ἢ τὸ πρεσβεῖον τοὺς τούτοις τετιμημένους. **1b.** Εἰ δὲ παρέλθοι ὁ εἰρημένος χρόνος καὶ μήτε ἡ ἐκκλησία ἢ ὁ ξενὼν οἰκοδομηθείη μήτε ξενοδοχοίη ὁ τοῦτο ἐπιτεταγμένος, τηνικαῦτα αὐτοὺς τοὺς θεοφιλεστάτους ἐπισκόπους ἀπαιτεῖν τὰ ὑπὲρ τούτου καταλελειμμένα καὶ εἰς τοῦτο προσηκόντως ἐπιζητούμενα, καὶ ποιεῖσθαι καὶ τὰς οἰκοδομίας τῶν ἁγιωτάτων ἐκκλησιῶν καὶ τὴν τῶν ξενώνων ἢ γεροντοκομείων ἢ ὀρφανοτροφείων κατασκευὴν ἢ πτωχοτροφείων ἢ νοσοκομείων ποίησιν ἤτοι τῶν αἰχμαλώτων ἀγορασίαν ἢ ἑτέραν οἱανδήποτε πρᾶξιν εὐσεβῆ τῷ τελευτήσαντι δόξασαν, προβάλλεσθαι δὲ τοὺς ταῦτα διοικήσοντας ξενοδόχους ἢ ὀρφανοτρόφους ἢ βρεφοτρόφους ἢ γεροντοκόμους ἢ ἁπλῶς τῶν εὐσεβῶν πράξεων διοικητάς τε καὶ ἐπιμελητάς, οὐκέτι δυναμένων μετὰ τὴν τοῦ εἰρημένου χρόνου διαδρομὴν καὶ τὴν εἰρημένην ἀγνωμοσύνην τῶν τοῦτο μὴ ποιησάντων ἐμβάλλειν ἑαυτοὺς εἰς τὴν τῶν εἰρημένων πραγμάτων διοίκησιν ἢ τοὺς θεοφιλεστάτους ἐπισκόπους ἀφιστᾶν τῆς αὐτῶν διοικήσεως. **2.** Τῶν λαμπροτάτων ἀρχόντων τῶν ἐπαρχιῶν ἀνάγκην ἐπιτιθέντων τοῖς κληρονόμοις ἐκ τρόπου παντὸς ταῦτα πληροῦν. **2a.** Καὶ γὰρ δὴ καὶ τοῖς παλαιοῖς διηγόρευται νόμοις ἀνάγκην ἐπιτιθέναι πληροῦν τὰς τῶν τελευτώντων βουλὰς τοὺς ἔχειν ἐφιεμένους, ἅπερ ἐκεῖνοι κατέλιπον.

3. Τοὺς δὲ θεοφιλεστάτους ἐπισκόπους, εἰ μέν τινας ῥητῶς οἱ τελευτῶντες ἐπιστήσαιεν τοῖς πράγμασιν, οἷον ξενοδόχους ἢ πτωχοτρόφους ἢ νοσοκόμους ἢ βρεφοτρόφους ἢ ὀρφανοτρόφους ἢ γεροντοκόμους ἢ παραμοναρίους ἢ οἰκονόμους ἢ ἁπλῶς τῶν εὐσεβῶν πράξεων διοικητάς, ἐκείνους μὲν ἐᾶν ἔχεσθαι τῆς διοικήσεως, αὐτοὺς δὲ μὴ διοικεῖν μέν, τὴν δὲ διοίκησιν αὐτῶν ἐποπτεύειν καὶ ὀρθῶς μὲν ἔχουσαν ἐπαινεῖν, κατά τι δὲ παραβαινομένην ἐπανορθοῦν, κακίστης δὲ τῆς διοικήσεως γινομένης καὶ ἀπελαύνειν ἐκείνους καὶ ἑτέρους ἐγκαθιστᾶν ἐννοοῦντας τὸ τοῦ μεγάλου θεοῦ δέος, καὶ τὴν φοβερὰν τῆς μεγάλης καὶ ἀτελευτήτου κρίσεως ἡμέραν, πρὸς ἣν αὐτοὺς ἀποβλέποντας προσήκει πάντα πράττειν μετὰ τῆς πρὸς

xi μόνου
xii καταναγκάζεσθαι

forbids him, it will be incumbent on the heirs to carry out his injunction and fulfill it in every way. If they do not do this willingly, then the most reverend local bishops shall investigate this matter and demand that they perform everything according to the wish of the deceased. **1.** If the testator orders the construction of a church, they shall see to it that it is completed entirely within three years; if the building of a hospice, they shall be compelled to do this within one year alone, for this is a sufficient period of time for carrying out the wishes of the deceased: they can rent a house and lay the infirm up in it until the construction of the hospice is complete. **1a.** If they are commanded to give something one time for pious purposes they shall immediately be compelled to do so, that is, after the will has been made known and those who have been awarded the inheritance or a legacy have received them. **1b.** But if the aforementioned time elapses, and neither the church or hospice has been built, nor he who was charged with the housing of strangers does so, then the most reverend bishops themselves shall claim the funds left behind and accordingly required for this purpose and shall effect the construction of the most holy churches and the erection of the hospices, hospitals for the elderly, or orphanages, the building of poorhouses or infirmaries, the ransom of captives, or whatever other pious purpose chosen by the deceased. And they shall nominate administrators for these projects: superintendents of hospices, orphanages, foundling-hospitals, or hospitals for the elderly, or simply stewards and *curatores* for these pious undertakings. After the lapse of the aforementioned time and because of the aforementioned ingratitude of those who failed to do this, the latter shall no longer be able either to insert themselves into the administration of the aforementioned undertakings or to remove the most reverend bishops from their administration. **2.** The *viri clarissimi* provincial governors shall by every means impose on the heirs the necessity of fulfilling these things. **2a.** And, indeed, it has already been established by the ancient laws that they shall impose the necessity of fulfilling the wishes of the departed on those who wish to have what they have left behind.

3. If the deceased have explicitly placed certain persons over their bequests as superintendents of hospices, poorhouses, infirmaries, foundling-hospitals, orphanages, or hospitals for the elderly, or as watchmen (*paramonarioi*) or stewards (of churches), or in a word as the administrators of pious undertakings, the most reverend bishops shall permit these persons to exercise the administration. The bishops shall not undertake it themselves but shall monitor the administration of the latter, and praise it if it is conducted with integrity, correct it if it should in some way go astray. But if the administration should utterly degenerate, they shall both drive out these persons and install others who shall reflect on the fear of mighty God and on the terrible day of

θεὸν συντεταγμένης γνώμης. **3a.** Εἰ δὲ μὴ ῥητῶς τινας οἱ τελευτῶντες ἐπιστήσαιεν ταῖς διοικήσεσιν, ἀλλ' ἐν τῇ τῶν κληρονόμων ἐξουσίᾳ τὸ πᾶν ἀπόθοιντο, οἱ δὲ ῥᾳθυμήσαιεν, τηνικαῦτα αὐτοὺς τοὺς θεοφιλεστάτους ἐπισκόπους καὶ διοικεῖν καὶ προβάλλεσθαι πτωχοτρόφους ἢ νοσοκόμους ἢ ξενοδόχους ἢ ὀρφανοτρόφους ἢ βρεφοτρόφους ἢ γεροντοκόμους ἢ οἰκονόμους ἢ παραμοναρίους ἢ διοικητάς, κἀνταῦθα τὸ πρὸς τὸν μέγαν θεὸν κατὰ νοῦν ἔχοντας σέβας, ὥστε ἐκ τρόπου παντὸς καὶ ἐκ πάσης ὁδοῦ καὶ ἐκ πάσης μηχανῆς εἰς ἔργον ἄγεσθαι τὰ εὐσεβῶς διατεταγμένα.

4. Ὑπὲρ δὲ τοῦ χρόνου παντός, ὃν ἂν ὑπέρθοιντο πρᾶξαι τὰ διατυπωθέντα οἱ γεγραμμένοι κληρονόμοι, ἀπαιτεῖσθαι αὐτοὺς καὶ καρποὺς καὶ προσόδους καὶ πᾶσαν νόμιμον ἐπαύξησιν ἀπὸ τοῦ καιροῦ τῆς τοῦ διαθεμένου τελευτῆς θεσπίζομεν, οὐ σκοπουμένης τῆς moras ἀπὸ προκατάρξεως ἢ αἰτιάσεως, ἀλλ' αὐτῷ τῷ νόμῳ δοκούσης γίνεσθαι τῆς καλουμένης moras χώραν λαμβανούσης τῆς τῶν καρπῶν καὶ τῶν τοιούτων προσθήκης. **5.** Αὐτοῦ τούτου κρατοῦντος, εἰ καὶ μὴ παρὰ κληρονόμου, ἀλλὰ παρὰ fideicommissariu ἢ ληγαταρίου καταλειφθείη τὸ τοιοῦτο εὐσεβὲς πρεσβεῖον καὶ τοῦτο καταδέξηται ὁ τῷ πρεσβείῳ τετιμημένος· καὶ τηνικαῦτα δὲ ἄδειαν εἶναι τοῖς θεοφιλεστάτοις ἐπισκόποις ἀπαιτεῖν τοὺς τοιούτοις τισὶ τετιμημένους πρᾶξαι τὰ διαταχθέντα.

6. Εἰ δὲ ῥᾳθυμήσαιεν οἱ κατὰ τόπον θεοφιλέστατοι ἐπίσκοποι τοῦτο πρᾶξαι, ἴσως ἐκθεραπευθέντες παρὰ τῶν γεγραμμένων κληρονόμων ἢ legatariων ἢ fideicommissariων, ἄδεια ἔσται καὶ τῷ μητροπολίτῃ τῆς ἐπαρχίας ἢ τῷ ἀρχιεπισκόπῳ τῆς ἐκεῖσε διοικήσεως ταῦτα μανθάνοντι ἀναζητεῖν καὶ καταναγκάζειν τὸ εὐσεβὲς ἔργον ἢ τὴν εὐσεβῆ φιλοτιμίαν ἐκ τρόπου πληροῦσθαι παντὸς καὶ παντὶ τῷ βουλομένῳ τῶν πολιτῶν τοῦτο πράττειν· κοινοῦ γὰρ ὄντος τοῦ τῆς εὐσεβείας λόγου κοινὰς προσήκει καὶ τὰς σπουδὰς τῆς τούτου καθεστάναι πληρώσεως· ἔχοντος παντὸς ἄδειαν ἐκ τοῦδε ἡμῶν τοῦ νόμου κινεῖν τὸν ex lege condicticion καὶ ἀπαιτεῖν τὰ καταλελειμμένα πληροῦσθαι.

6a. Εἰδότος τοῦ ῥᾳθυμοῦντος τούτων θεοφιλεστάτου ἐπισκόπου, ὡς καὶ αὐτὸς πρὸς ταῖς ἐξ οὐρανοῦ ποιναῖς καὶ βασιλικῆς κινήσεως ὑπὲρ τῆς τοιαύτης ἀμελείας πειραθείη. **7.** Ὅπως δ' ἂν ἔτι μείζονι φόβῳ κατασχεθέντες οἱ κληρονόμοι τῶν τελευτώντων ἢ οἱ ταῖς τοιαύταις ὅλως ἀγαθαῖς πράξεσι βεβαρημένοι μὴ τὴν τούτων ποίησιν διαναβάλλοιντο, καὶ τοῦτο θεσπίζομεν, ὥστε, εἰ ἐνοχληθέντες παρὰ τῶν θεοφιλεστάτων ἐπισκόπων οἱ τούτοις τετιμημένοι εἶτα διαναβάλλοιντο, ὡς καὶ τῆς τῶν ἀρχόντων εἰσπράξεως δεηθῆναι, τηνικαῦτα μὴ μόνον αὐτοὺς ἁπλοῦν τὸ καταλελειμμένον εἰσπράττεσθαι, ἀλλὰ πάντως διπλάσιον. **7a.** Εἰ γὰρ ἐν τοῖς παλαιοῖς ἦν τινα θέματα, ἐφ' ὧν ἐξ ἀρνήσεως διπλάσια τὰ τῆς καταδίκης ἠπείγετο, πῶς οὐ κἀνταῦθα τοὺς μηδὲ ἑκόντας ποιήσαντας, ἀλλὰ καὶ χρόνον ἀναμείναντας καὶ ὕστερον ὀχληθέντας παρὰ τῶν θεοφιλεστάτων

the great and final judgment; and with that set before their eyes, they shall do everything with their mind intent on God. **3a.** If the deceased have not explicitly placed certain persons over the administration of their bequests but have placed everything in the power of the heirs, and these should be negligent, then the most reverend bishops themselves shall both undertake the administration and nominate superintendents of poorhouses, infirmaries, hospices, orphanages, foundling-hospitals, or hospitals for the elderly, or stewards or watchmen, or administrators, who shall accordingly bear reverence for great God in their heart, so that in every manner, in every way, and by every means the pious dispositions of the deceased are implemented.

4. For the entire time during which the appointed heirs delay to fulfill the dispositions, We decree that the fruits, revenue, and all lawful increase shall be claimed from them from the time of the death of the testator. Liability for so-called delays (*morae*) shall not be reckoned from the initiation of proceedings or from the registration of a claim; but as if by decree of the law itself, so-called liability for delay shall apply to the accession of fruits and the like.[107] **5.** The same shall apply if such a pious bequest has been left not by way of an heir but by way of a trustee or legatee, and he who has been awarded the bequest has received it. Even then shall the most reverend bishops be entitled to call upon such persons awarded these legacies to carry out the dispositions of the will.

6. If the most reverend local bishops neglect to do this, having perhaps been courted by the appointed heirs, legatees, or trustees, the metropolitan or archbishop of the diocese shall be permitted, upon learning of the matter, to investigate and to ensure by force that the pious work or act of pious munificence is executed in every detail, and every willing citizen is also permitted to do this. For as the scope of piety is universal, so is it fitting that zeal for its fulfillment also be universal. Anyone, therefore, is permitted by this Our law to bring a claim for restitution (*condictio*) and to demand that such bequests be executed.

6a. The most reverend bishop who disregards these stipulations shall know that he too will feel, besides the punishment of Heaven, also imperial chastisement for such inaction. **7.** That the heirs of the deceased or those charged with such goodly undertakings, filled with still greater dread, may not defer their execution, We decree this too: that if, harassed by the most reverend bishops, those awarded such bequests persist in deferring them, so that it becomes necessary that the governors collect them, then they shall be sued not merely for the simple amount of the bequest but indeed for double. **7a.** For if there were cases in the ancient laws in which double damages for denial were exacted

[107] That is, to profits accrued between the death of the testator and the initiation of litigation.

ἐπισκόπων εἶτα μηδὲ τούτοις εὐθὺς εἴξαντας, δεηθέντας δὲ καὶ ἀρχικῆς ὀχλήσεως, τῇ τοῦ διπλασίονος ἀπαιτήσει προσήκει σωφρονίζεσθαι;

8. Εἰ δὲ οἱ τελευτῶντες τοὺς ἑαυτῶν κληρονόμους βουληθεῖεν, ἡνίκα μέλλοιεν τελευτᾶν, πρᾶξίν τινα πληροῦν εὐσεβῆ, ἀλλ' οὐκ ἐν τῇ αὐτῶν ζωῇ, καὶ τοῦτο φυλάττεσθαι καὶ μὴ ἐν μέσῳ τοὺς κληρονόμους ἀναγκάζεσθαι πράττειν τι, ὧν ὁ διαθέμενος μετὰ τὴν αὐτῶν τελευτὴν ἠβουλήθη γενέσθαι, τελευτῶντας δὲ αὐτοὺς ἀνάγκην ἔχειν ἐκ τρόπου παντὸς ταῦτα πληροῦν. ἀναβολῆς δέ τινος παρὰ τῶν ἐκείνου κληρονόμων γενομένης ἀνάγκη ταῦτα γίνεσθαι, ἅπερ ἔμπροσθεν διετυπώσαμεν.

9. Εἰ δέ τινα τῶν καλουμένων ἀνναλίων πρεσβείων καταλειφθείη ἢ δωρηθείη κλήρῳ τυχὸν ἢ μοναστηρίοις ἢ ἀσκητρίαις ἢ διακονίσσαις ἢ πτωχείοις ἢ ξενῶσιν ἢ νοσοκομείοις ἢ βρεφοτροφείοις ἢ τοῖς τῶν ἁγιωτάτων ἐκκλησιῶν πτωχοῖς ἢ ἁπλῶς συστήμασί τισιν εὐαγέσιν ἢ ὅλως οὐκ ἀπηγορευμένοις τῶν ἐκ πλήθους ἠθροισμένων, βουληθεῖεν δὲ κατά τινα καιρὸν οἱ τηνικαῦτα εὑρισκόμενοι χρυσίον ὑπὲρ τῆς τοιαύτης πράξεως λαβόντες διαλύεσθαι, μὴ ἐξέστω τοῦτο ποιεῖν μηδὲ τὸ γινόμενον κύριον εἶναι, ἀλλὰ καὶ ἔκπτωσιν τῶν χρημάτων ὁ ταῦτα ὠνησάμενος ἢ διαλυσάμενος ὑπομενέτω. **10.** Ἐπείτοιγε ἀνάγκη τοῖς μὲν ἔν τινι μέρει τοῦ χρόνου γενομένοις εἶναι χρημάτων ἀφθονίαν, τοῖς δέ γε ἐπιγενομένοις παντελῆ τῶν καταλελειμμένων στέρησιν, οὐ φυλαχθήσεται δὲ οὐδὲ αὐτὸ τὸ τῶν ἀνναλίων ὄνομα οὐδὲ ἡ διηνεκὴς τοῦ τελευτήσαντος μνήμη, δι' ἣν καὶ τὸ ἀννάλιον τοῦτο καταλέλοιπεν, ἀλλ' εὐθὺς ἀποσβεσθήσεται τῇ τῶν καταλελειμμένων συναπολλύμενον ἐκποιήσει. **11.** Μένειν τοίνυν διηνεκῶς αὐτοὺς ἐνεχομένους ταῖς τοιαύταις δόσεσι θεσπίζομεν, ὥστε καὶ εἴ τις γένοιτο ἐκποίησις, καὶ ταύτην ἄκυρον εἶναι καὶ τοὺς ὁτεδήποτε προστησομένους τῶν εὐαγῶν οἴκων ἄδειαν ἔχειν κινεῖν καὶ ἀπαιτεῖν αὐτά, οὐδεμιᾶς χρόνου παραγραφῆς ἀντικειμένης αὐτοῖς διὰ τὸ καθ' ἕκαστον ἔτος τὴν τοιαύτην τίκτεσθαι ἀγωγήν.

12. Ἀλλ' ὑποθήκην εἶναι τὰ τοῦ καταλείψαντος πράγματα τοῖς τοιούτοις πρεσβείοις, ὥστε ἄδειαν ἔχειν ἐξ αὐτῶν τῶν πραγμάτων τὸ ἱκανὸν ταῖς εὐαγέσι πράξεσι περιγίνεσθαι οὐ μόνον ἐπὶ τοῖς καταλελειμμένοις, ἀλλὰ καὶ ἐπὶ καρποῖς αὐτῶν καὶ προσόδοις καὶ πάσῃ νομίμῳ ἐπαυξήσει· χρονίας, καθὰ προείρηται, οὐδὲ τοῖς κατέχουσι παραγραφῆς ἁρμόζειν δυναμένης, ὁπόσον ἂν τις ἀριθμήσειε χρόνον. **13.** Πλὴν εἰ μὴ μεταξὺ τοῦ τε τῷ ἀνναλίῳ πρεσβείῳ βεβαρημένου τοῦ τε κατὰ τοὺς ἱερατικοὺς κανόνας καὶ τοὺς ἡμετέρους νόμους προεστῶτος τῆς τοιαύτης ἀπαιτήσεως γένοιτο σύμφωνον βουλόμενον πρόσοδον ἀντὶ τοῦ ἀνναλίου πρεσβείου δοθῆναι παρὰ τούτου τοῦ βεβαρημένου εὐθαλῆ καὶ δημοσίοις πολλοῖς οὐχ ὑποκειμένην, ἀλλὰ καὶ προσθήκην ἔχουσαν πάντως μὲν οὐκ ἐλάττονα τοῦ τετάρτου μέρους τῆς καθαρᾶς προσόδου, ἐπείτοιγε ὁπόσον ἂν μεταξὺ αὐτῶν ἐπὶ τὸ πλέον δόξειεν. **14.** Εἰ μὲν γάρ τι τοιοῦτο ἔγγραφον γένηται σύμφωνον καὶ δοθείη ἡ τοιαύτη πρόσοδος καὶ ἀναληφθείη ἐγγράφοις

upon conviction, how should these persons not be chastised by the demand for double, who neither acted voluntarily, but instead wasted time, nor, when admonished by the most reverend bishops, immediately yielded to them, but required the intervention of the governor?

8. If the deceased wish their heirs to carry out some pious cause when they themselves should near death, but not while they yet live, this too shall be observed; and the heirs shall not be compelled to do anything in the meanwhile that the testators wished to occur after their death. But once they pass away, it shall be necessary to fulfill these wishes in every way. If any delay arises because of the heirs, then the provisions We have ordained above must be applied.

9. If any so-called annuity (*annalia*) happens to be left or given to the clergy, monasteries, female ascetics, deaconesses, poorhouses, hospices, infirmaries, foundling-hospitals, or to the poor of the most holy churches, or in a word to any holy societies or to any of the popular associations that are not prohibited; and if those who are found in office at that time wish to reach a settlement, receiving money for such an undertaking, they will not be permitted to do so, and if it is done, it will not be valid; but he who has bargained or negotiated for such a payment shall also suffer the loss of the money. **10.** For indeed an abundance of wealth would necessarily result to the recipients, who are there for a brief period of time, but utter deprivation of the bequests to those who come after them; neither would the very word "annuity" nor the eternal memory of the deceased, for which reason he left behind the annuity, be honored, but it would instantly be extinguished, destroyed by the alienation of his bequest. **11.** Therefore, We decree that they shall remain obligated to such payments in perpetuity, so that even if an alienation occurs, it shall be void and the heads of the holy houses at any time may sue for and claim the bequest, without any limit of time imposed to their disadvantage, since this action is renewed every year.

12. The property of the deceased will moreover be subject to a security arrangement (*hypotheca*) on such bequests, so that from that property enough shall remain for holy undertakings, not only with respect to the bequests but also with respect to the fruits and revenues thereof and to any legal increase. Nor, as has been said, can any prescription of time aid those in possession, whatever the amount of time one might calculate, **13.** unless a consensual wish should arise between the person burdened with the annuity and the person who by the most sacred canons and by Our laws should oversee the collection thereof, that instead of the annual legacy an abundant rental should be negotiated between them, not subject to many public liturgies, to be paid by the former, bringing in additional funds not less than one-fourth of the whole rental or whatever still greater amount. **14.** If such a consensual agreement is made in writing, and the rental is indicated and recorded in the written contract

συνθήκαις καὶ διαλύσεσι καὶ τοῦτο ἐμφανὲς ἐπὶ πράξεως ὑπομνημάτων κατασταίη, ἀργεῖν τὴν ἀπαίτησιν τοῦ ἀνναλίου ληγάτου κατὰ τοῦ ταύτῃ βεβαρημένου θεσπίζομεν, αὐτὴν δὲ τὴν πρόσοδον ἀντὶ τοῦ πρεσβείου καθεστάναι διηνεκῶς εἰς τοῦτο ἀφωρισμένην καὶ ἐκποιεῖσθαι παρ' οὐδενὸς καθ' οἱονδήποτε ἐκποιήσεως σχῆμα δυναμένην. **15.** Οὐδενὸς δὲ τοιούτου παρακολουθοῦντος ὑποκεῖσθαι διηνεκῶς κατὰ τὸ ἔμπροσθεν παρ' ἡμῶν εἰρημένον τῇ δόσει τῶν ἀνναλίων πρεσβείων τοῖς τοιούτοις βεβαρημένους θεσπίζομεν, ὥστε τὸ ὄνομα καὶ τὴν μνήμην τοῦ τελευτήσαντος τοῦ τε ἀνναλίου πρεσβείου ἐπ' αὐτῶν τῶν ἔργων διηνεκῶς διασώζεσθαι.

D. xv k. Nov. Constantinopoli Lampadio et Oreste conss.

[**46**] *Ὁ αὐτὸς βασιλεὺς Ἰουλιανῷ ἐπάρχῳ πραιτωρίων.* **pr.** Τοῖς ἱεροῖς ἡμῶν νόμοις οἰόμεθα χρῆναι καὶ τοῦτον προσθεῖναι τὸν ἐξ ἀρετῆς, ἀλλ' οὐκ ἐκ χρόνων τὰς εὐαγεῖς ἡγεμονίας παρέχοντα, ὥστε ἐπὶ τῶν εὐαγῶν μοναστηρίων ἢ ἀσκητηρίων μὴ πάντως τελευτῶντος τοῦ ἡγουμένου ἢ τῆς ἡγουμένης τὸν ἐφεξῆς ἢ τὴν δευτέραν γενέσθαι (σύνισμεν γὰρ τῇ φύσει οὔτε πάντας ὁμοίως ἀγαθοὺς οὔτε πάντας ἐν ἴσῳ ποιούσῃ κακούς), ἀλλ' ὃν ἂν ὅ τε ἀγαθὸς βίος καὶ σεμνὸς τρόπος καὶ ἡ περὶ τὴν ἄσκησιν συντονία καὶ τὸ κοινὸν τῶν λοιπῶν μοναχῶν πλήρωμα ἢ τὸ πλεῖστον αὐτῶν ἐπιτήδειον πρὸς τοῦτο νομίσειε καὶ τῶν ἁγίων εὐαγγελίων προκειμένων ἕλοιτο, ἐπὶ τὴν ἡγεμονίαν καλεῖσθαι. **1.** Ὥστε, εἰ μὲν ὁ πρῶτος μετὰ τὸν τελευτήσαντα χρηστὸς εἴη καὶ μοναχῶν ἄρχειν ἄξιος, ἐκεῖνον τῶν ἄλλων προκρίνεσθαι· εἰ δὲ ὁ μετ' ἐκεῖνον, ὁμοίως ἐπ' αὐτὸν φέρεσθαι τὴν τοῦ ἡγουμένου ψῆφον. **2.** Εἰ δὲ οὐδεὶς τούτων ἄξιος φαίνοιτο, τηνικαῦτα τὸν ἐκ πάντων ἐπιτήδειον, οἱουδήποτε ἂν εἴη βαθμοῦ, προχειρίζεσθαι ἡγούμενον, βίου τε ὄντα σεμνοῦ καὶ πολιτείας σεμνῆς καὶ περισώζειν τοὺς πιστευθέντας αὐτῷ δυνάμενον· προσῆκον ὂν πᾶσαν ἀρχὴν καὶ πᾶσαν ἀνθρώπων ἐπιστασίαν οὐκ ἐκ χρόνων οὐδὲ ἐκ κλήρων οὐδὲ ἐκ τυχηρῶν περιστάσεων, ἀλλ' ἐξ ἐπιλογῆς καὶ ἐκ τοῦ καλλίονος γίνεσθαι καὶ τὴν παρὰ πάντων μαρτυρίαν εἶναι τῷ τάγματι τάξιν.

3. Γνώριμα δὲ ταῦτα γίνεσθαι τῷ κατὰ τόπον θεοφιλεστάτῳ ἐπισκόπῳ, ὥστε αὐτὸν μανθάνοντα τὸν ἐπιλεχθέντα καὶ ὀρθῶς ἔχειν τοῦτο δοκιμάζοντα σύμψηφόν τε γίνεσθαι τοῖς ἐπιλεξαμένοις καὶ προάγειν αὐτὸν ἐπὶ τὴν τοῦ ἡγουμένου τάξιν. **4.** Δοκιμάζειν δὲ δεῖ τὴν αὐτῶν ἐπιλογὴν τὸν κατὰ καιρὸν πατριάρχην καὶ τοὺς κατὰ τόπον θεοφιλεστάτους ἐπισκόπους, ἔχοντας καὶ αὐτοὺς τὸ κρίμα τοῦ δεσπότου θεοῦ καὶ τὴν μέλλουσαν κρίσιν εὐλαβουμένους, εἰ μὴ κατ' ἐπιλογήν, ἀλλὰ πρός τι πάθος ἀποβλέψαντες ἀνθρώπινον τὴν προβολὴν ποιήσονται ἐχόντων αὐτῶν καὶ ἐν τούτῳ τῷ βίῳ καὶ ἐν τῷ μέλλοντι τὴν ἐκ τοῦ θεοῦ ποινήν, οἷα τῆς αὐτῶν ἀμελείας πολλαῖς ψυχαῖς ἁμαρτημάτων αἰτίας παρεχομένης.

and settlement, and this is made known by registry in the public records, We decree that the claim for the collection of the annuity from him burdened with it shall lapse, and the rental shall take the place of the annuity, dedicated to this purpose for all time and insusceptible of alienation by any person through any manner of alienation whatsoever. **15.** But if no such agreement ensues, We decree that they who are burdened therewith will be subject to the payment of the annuity perpetually, according to what has been said by Us above, so that the name and memory of the deceased and of the annuity itself may forever be preserved by these very deeds.

Given October 18, at Constantinople, in the consulship of Lampadius and Orestes (530).

[46] *The same Augustus to Julian, Praetorian Prefect.* **pr.** We believe that it is necessary to add to Our sacred laws this law, which bestows the holy positions of abbot or abbess according to virtue, not time served. Thus, if an abbot or abbess should die, the next man or the second woman shall not necessarily assume the leadership of holy monasteries or hermitages – for We are aware that nature makes neither all similarly good nor evil in equal measure – but that person shall be called to lead whom an honest life and worthy character and dedication to asceticism (distinguishes), and whom the general assembly of the other monks or the majority of them deems fit for this office and, with the holy gospels open before them, elects. **1.** Thus, if the foremost person after the deceased should be upright and worthy to govern the monks, he shall be preferred to the others; if the person after him, then likewise the nomination as abbot shall fall to him. **2.** If neither of them seems worthy, then the one out of all of them who is suitable, whatever his rank, shall be elected abbot, being a person of honorable life and honorable conduct and able to save the persons entrusted to his care. For it is proper that every office and every authority over men should derive not from seniority, lots, or fortuitous circumstances, but from choice and preeminence, and that the testimony of all should guide precedence within their ranks.

3. These proceedings shall be communicated to the most reverend local bishop, who, upon learning of the person selected and deeming that the choice is right, shall give his assent to their choice and promote him to the rank of abbot. **4.** Their choice must also be reviewed by the current Patriarch and the most reverend local bishops, who themselves shall face the condemnation of the Lord God and beware the coming judgment, if they make this promotion not according to election but with regard for some human passion, for they face the punishment of God both in this life and in the next, as their negligence gives many souls causes for sin.

5. Τούτων πάντων καὶ ἐπὶ τῶν εὐλαβεστάτων γυναικῶν ἢ παρθένων τῶν ἡγουμένων εὐαγῶν ἀσκητηρίων ἤτοι μοναστηρίων κρατούντων. **6.** Τῆς λοιπῆς ἱερατικῆς τάξεως ἁπάσης τῆς τοῦ θεοῦ λειτουργίας κατὰ τοὺς ἑαυτῆς βαθμοὺς προϊούσης καὶ οὐδὲν ἐκ τοῦ παρόντος ἡμῶν καινιζομένης νόμου.

D. xv k. Dec. Constantinopoli Lampadio et Oreste conss.

[47] *Ὁ αὐτὸς βασιλεὺς Ἰωάννῃ ἐπάρχῳ πραιτωρίων.* **pr.** Θεσπίζομεν μηδένα εἰς ἐπισκοπὴν προχειρίζεσθαι, πλὴν εἰ μὴ τά τε ἄλλα χρηστὸς καὶ ἀγαθὸς εἴη καὶ μήτε γυναικὶ συνοικοίη μήτε παίδων εἴη πατήρ, ἀλλ' ἀντὶ μὲν γυναικὸς προσκαρτεροίη τῇ ἁγιωτάτῃ ἐκκλησίᾳ, ἀντὶ δὲ παίδων ἅπαντα τὸν Χριστιανικὸν καὶ ὀρθόδοξον ἔχοι λαόν, γινώσκων οὕτως ἐξ ἀρχῆς τὰ περὶ τῆς διαδοχῆς τῶν θεοφιλεστάτων ἐπισκόπων ἡμᾶς διατυπῶσαι καὶ μετὰ ταύτης τῆς ἐννοίας προελθεῖν τὸν νόμον, καὶ τοὺς παρὰ ταῦτά τι πράττοντας ἢ πράξαντας ἁπάσης ἐπισκοπῆς ἀναξίους εἶναι. **1.** Οἱ γὰρ μετὰ ταύτην ἡμῶν τὴν διάταξιν ποιῆσαί τινας ἐπισκόπους παρὰ τὴν ταύτης δύναμιν ἢ γενέσθαι θαρρήσαντες οὔτε ἐν ἐπισκόποις ἔσονται οὔτε μενοῦσιν ἐπὶ τῶν ἱερῶν, ἀλλ' ἐξελαθέντες αὐτῶν ἑτέροις δώσουσι χώραν χειροτονίας ἀκριβοῦς τε καὶ τῷ θεῷ διὰ πάντων ἀρεσκούσης.

D. IIII k. Aug. Constantinopoli post cons. Lampadii et Orestis.

[48] *Idem A. Iohanni pp.* **pr.** Si quis ad declinandam legem Falcidiam, cum desiderat totam suam substantiam pro redemptione captivorum relinquere, eos ipsos captivos scripserit heredes, ne videatur quasi incertis personis heredibus institutis iudicium suum oppugnandum reliquisse, sancimus huius talem institutionem pietatis intuitu valere et non esse respuendam. **1.** Sed et si pauperes quidam scripserit heredes et non inveniatur certum ptochium vel certae ecclesiae pauperes, de quibus testator cogitaverit, sed hic incerto vocabulo pauperes fuerint heredes instituti, simili modo et huiusmodi institutionem valere decernimus. **2.** Et si quidem captivos scripserit heredes, civitatis, in qua testator larem fovere ac degere noscitur, episcopus et oeconomus hereditatem suscipiant et omnimodo in redemptione captivorum procedat hereditas sive per annuos reditus sive per venditionem mobilium seu se moventium rerum: nullo penitus ex hoc lucro vel oeconomo vel episcopo vel sacrosanctae ecclesiae relinquendo. si enim propter hoc a speciali herede recessum est, ut non Falcidiae ratio inducatur, quomodo ferendum est hoc, quod in sacro venit, per Falcidiam vel aliam occasionem minui?

5. All these provisions shall also apply to the most pious women and virgins who preside over hermitages or convents. 6. The rest of the priestly order in the service of God shall be promoted according to their ranks and is not modified by Our present law.

Given November 17, at Constantinople, in the consulship of Lampadius and Orestes (530).

[47] *The same Augustus to John, Praetorian Prefect.* **pr.** We decree that no one shall be appointed bishop unless he is otherwise honest and good and neither shares his house with a wife nor is the father of children; but he shall be faithful to the Most Holy Church instead of a wife and he shall have the entire Christian orthodox laity instead of children, knowing that We regulated[108] the succession of the most reverend bishops in this way from the beginning, that a law went forth with this intention, and that those who have violated or shall violate these measures are altogether unworthy of the episcopate. **1.** Those who after this Our decree dare to create or to become bishops contrary to its spirit shall neither be counted among bishops nor remain in the sacred service, but shall be driven out and make way for a strict appointment in every way pleasing to God.

Given July 29, at Constantinople, in the post-consulate of Lampadius and Orestes (531).

[48] *The same Augustus to John, Praetorian Prefect.* **pr.** If anyone wishes to leave his entire estate for the ransoming of captives and, in order to evade the Falcidian law, designates the captives themselves as his heirs, so that his judgment shall not be subject to objections, as if he had instituted uncertain persons as heirs, We decree that such an appointment shall be valid in the interest of piety and shall not be rejected. **1.** And if anyone should designate the poor as his heirs, and a specific poorhouse or the poor of a specific church are not found indicated by the testator, but rather the poor were appointed his heirs in indefinite terms, a disposition of this sort shall in like manner be valid. **2.** And if he appoints captives as his heirs, the bishop and steward of the city in which the testator is known to have kept his homestead and dwelt, shall receive the inheritance; and the inheritance shall go exclusively toward the ransoming of captives, whether by means of annual revenue or the sale of movable or self-moving property. No profit whatsoever shall remain for either the steward, or bishop, or holy church. For if a specific heir has been omitted so that the Falcidian law is not taken into account, how is it tolerable that what has been sold for a sacred purpose should be diminished by the Falcidian law or for any other reason?

[108] C. 1.3.41.2.

3. Ubi autem indiscrete pauperes scripti sunt heredes, ibi xenonem eius civitatis omnimodo hereditatem nancisci et per xenodochum in aegrotantes fieri patrimonii distributionem, secundum quod in captivis constituimus: vel per redituum annalium erogationem vel per venditionem rerum mobilium vel se moventium, ut ex his res immobiles comparentur et annuus victus aegrotantibus accedat. quis enim pauperior est hominibus, qui et inopia tenti sunt et in xenonem repositi et suis corporibus laborantes necessarium victum sibi non possunt adferre? **4.** Licentia omnimodo danda et in priore et in secunda specie et actionem movere et debita exigere, ut in captivos vel in aegrotantes consumantur. si enim heredum eis et ius et nomen dedimus, sine Falcidiae tamen legis emolumento, necesse est eos et debita exigere et creditoribus respondere.

5. Sin autem ampliores in civitate xenones vel ptochia sint, ne incerta videatur pecuniarum datio, tunc ei xenoni vel ptochio, qui pauperior esse dignoscitur, easdem res vel pecunias adsignari: hoc videlicet discutiendo a viro reverentissimo locorum antistite et sub eo constitutis clericis. **6.** Sin autem nullus xenon in civitate inveniatur, tunc secundum de captivis sanctionem pro tempore oeconomus sacrosanctae ecclesiae vel episcopus hereditatem accipiat et sine Falcidiae ratione pauperibus, qui in civitate sunt vel penitus mendicantes vel alia sustentatione egentes, eaedem pecuniae distribuantur.

7. Haec tamen omnia locum habere sancimus, quando non certi xenonis vel certi ptochii vel certae ecclesiae nominatio a testatore subsecuta est, sed incertus est eius sensus. sin autem in personam certam vel in certam venerabilem domum respexit, ei tantummodo hereditatem vel legatum competere sancimus, nulla Falcidia nec in hac parte intercedente.

8. In omnibus autem huiusmodi casibus caelestes iracundias sacrosanctarum rerum administratores expectent, si qualecumque lucrum ex huiusmodi gubernationibus sibi adquisierint vel si hoc committi ab alio senserint et non gravissima poena et interminatione quod perperam factum est studeant corrigere.

D. x k. Sept. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[49] *Idem A. Iohanni pp.* **pr.** Cum lege Leoniana viris reverentissimis episcopis et presbyteris et diaconis peculium habere quasi castrense

3. If the poor have been appointed heirs indiscriminately, the hospice of the city of the testator shall by all means acquire the inheritance, and a distribution of the testator's property shall be made by the superintendent of the hospice for the benefit of the sick, according to what We have established in the case of captives: either by the spending of annual revenue or by the sale of movable or self-moving property, so that immovable property may be bought and the annual rental may go to the sick. For who is poorer than men who have been trapped by poverty and placed in a hospice, and, sick in body, cannot provide themselves with basic sustenance? **4.** Permission is given both in the former and in the latter case both to bring an action and to collect the amounts owed, so that they may be spent on captives or on the sick. For if We have given them both the right and the name of heirs, though without the benefit of the Falcidian law, they must be able both to collect the amounts owed and to answer to their creditors.

5. If, though, there are several hospices or poorhouses in the city, then the property or money shall be turned over to the hospital or poorhouse that recognized as poorer (than the rest), and this is to be ascertained by the most reverend bishop of the place and the clergy under him. **6.** But if no hospice is found in the city, then, according to the decree concerning captives, the current steward or bishop of the holy church shall receive the inheritance, and, without applying the Falcidian law, the money shall be distributed to the poor of the city, who are either wholly destitute or in need of other sustenance.

7. We have decreed that all these provisions shall apply when a specific hospice, specific poorhouse, or specific church has not been designated by the testator, but his meaning is uncertain. If, however, he has shown regard for a specific person or for a specific venerable house, We decree that the inheritance or legacy shall belong to that (person or house) only, and neither in this case shall the Falcidian law interfere.

8. In all these cases, the administrators of holy property shall expect the wrath of Heaven if they win any profit whatsoever for themselves by such management, or if they learn that this is being done by another and fail to hasten to correct such wrongdoing by the heaviest penalty and threats.

Given August 23, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[49][109] *The same Augustus to John, Praetorian Prefect.* **pr.** Since by the law of Leo,[110] the most reverend bishops and presbyters and deacons were granted the

[109] Combine with C. 1.5.22, 3.28.37, 6.22.12.
[110] C. 1.3.33.

concessum est, eo addito, ut in ipso testari possint, dubitabatur, si huiusmodi testamenta debent de inofficiosi querella expugnari, cum de omnibus personis, quae huiusmodi peculia meruerunt, eadem fuerat quaestio exorta. **1.** Sancimus itaque viris reverentissimis episcopis et presbyteris et diaconis, qui tale peculium (id est quasi castrense) possident, super his tantummodo rebus, quae quasi castrensis peculii sunt, non solum ultima condere secundum leges tamen elogia licere, quod ex Leoniana constitutione descendit, sed etiam eorum ultimas voluntates, super his tantummodo habitas, de inofficiosi querellae minime subiacere.

D. k. Sept. Constantinopoli post cons. Lampadii et Orestae.

[50] *Idem A. Iohanni pp.* **pr.** Si quis in conscribendo instrumento sese confessus fuerit non usurum fori praescriptione propter sacerdotii praerogativam, sancimus non licere ei adversus sua pacta venire et contrahentes decipere, cum regula est iuris antiqui omnes licentiam habere his quae pro se introducta sunt renuntiare. **1.** Quam generalem legem in omnibus casibus obtinere sancimus, qui necdum per iudicialem sententiam vel amicalem conventionem sopiti sunt.

D. k. Sept. Constantinopoli post cons. Lampadii et Orestae vv. cc.

[51] *Idem A. Iohanni pp.* **pr.** Generaliter sancimus omnes viros reverentissimos episcopos nec non presbyteros seu diaconos et subdiaconos et praecipue monachos, licet non sint clerici, immunitatem ipso iure omnes habere tutelae sive testamentariae sive legitimae sive dativae: et non solum tutelae esse eos expertes, sed etiam curae, non solum pupillorum et adultorum, sed et furiosi et muti et surdi et aliarum personarum, quibus tutores vel curatores a veteribus legibus dantur. **1.** Eos tamen clericos et monachos huiusmodi habere beneficium sancimus, qui ad sacrosanctas ecclesias vel monasteria permanent, non devagantes neque circa divina ministeria desides, cum propter hoc ipsum beneficium eis indulgemus, ut aliis omnibus derelictis dei omnipotentis inhaereant ministeriis. **2.** Et hoc non solum in vetere Roma vel in hac regia civitate, sed in omni terra, ubicumque Christianorum nomen colitur, obtinere sancimus.

D. k. Nov. post cons. Lampadii et Orestis vv. cc.

right to have their own special property as a quasi-military *peculium*, with the additional right to make a will disposing thereof, it was uncertain whether such wills could be overturned by complaint of an undutiful will, since the same question had arisen concerning all persons who had been awarded this kind of special property. **1.** We therefore decree that the most reverend bishops, presbyters, and deacons who possess such special property not only may, in due form of law, make a last will, disposing of such things as pertain exclusively to their quasi-military special property, which right derives from the law of Leo; but their last wills, insofar as they concern such property, are altogether exempt from the complaint of an induteous will.

Given September 1, at Constantinople, in the post-consulate of Lampadius and Orestes (531).

[50][111] *The same Augustus to John, Praetorian Prefect.* **pr.** If anyone has declared in a written document that he will not avail himself of a prerogative for venue on account of his priestly privilege, We decree that he shall not be permitted to go back on his agreement and deceive the other contracting parties, since it is a rule of ancient law that all are at liberty to forgo privileges that have been introduced on their behalf. **1.** We decree that this general law shall apply in all cases that have not yet been resolved by judicial decision or amicable settlement.

Given September 1, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[51] *The same Augustus to John, Praetorian Prefect.* **pr.** We decree generally that all most reverend bishops, as well as presbyters or deacons and subdeacons, and especially monks, though they are not clergymen, shall by law be exempt from the duty of *tutores*, whether testamentary, statutory, or appointed by the court. And they shall not only be free of the duty of tutelage, but also of guardianship, not only of minors and adults but also of the insane, the mute, the deaf, and other persons for whom *tutores* or *curatores* are appointed by ancient laws. **1.** We decree that only those clergymen and monks who reside in holy churches and monasteries shall possess this privilege, not those who wander or are indolent in their divine services; for We grant them this privilege for this very reason: that, abandoning all other services, they may apply themselves to those of the omnipotent God. **2.** And We decree that this shall obtain not only in ancient Rome or in This Imperial City but in the whole world, wherever the Christian name is cherished.

Given November 1, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

111 pr. = C. 2.3.29 pr., with a fuller version.

[52] *Ὁ αὐτὸς βασιλεὺς Ἰωάννῃ ἐπάρχῳ πραιτωρίων.* **pr.** Θεσπίζομεν μηδένα παντελῶς μήτε βουλευτὴν μήτε ταξεώτην ἐπίσκοπον ἢ πρεσβύτερον τοῦ λοιποῦ γίνεσθαι, οὐδὲν ἐφαπτομένου τοῦδε τοῦ νόμου τῶν τοιαύτης ἱερωσύνης πρότερον ἠξιωμένων, τοῦ λοιποῦ δὲ μηδένα παντελῶς ἐκ τῆς εἰρημένης ὄντα τύχης εἰς τὰς ῥηθείσας ἱερατείας ἀναβαίνειν, καὶ μάλιστα εἰ καὶ ἤδη λειτουργήσας ἢ τοῖς ταξεωτικοῖς ὑπηρετήσας ἔτυχεν ἐπιτάγμασι. **1.** Τὸν γὰρ ἐντεθραμμένον εἰσπράξεσι σφοδραῖς καὶ τοῖς διὰ τοῦτο ὡς εἰκὸς ἐπισυμβαίνουσιν ἁμαρτήμασιν οὐκ ἂν εἴη δίκαιον ἄρτι μὲν εἶναι ταξεώτην ἢ βουλευτὴν καὶ πράττειν τὰ πάντων πικρότατα, εὐθὺς δὲ ἱερέα χειροτονεῖσθαι περὶ φιλανθρωπίας τε καὶ ἀκτημοσύνης νουθετοῦντα καὶ ὑφηγούμενον δόγματα· πλὴν εἰ μὴ ἐκ νηπίας ἡλικίας καὶ οὔπω τὴν ἔφηβον ἐκβάσης ἔτυχε τοῖς εὐλαβεστάτοις μοναχοῖς ἐγκαταλελεγμένος καὶ διαμείνας ἐπὶ τούτου τοῦ σχήματος· τηνικαῦτα γὰρ ἐφίεμεν αὐτῷ καὶ πρεσβυτέρῳ γενέσθαι καὶ εἰς ἐπισκοπὴν ἐλθεῖν, πρόδηλον ὄν, ὡς, ἡνίκα τοιοῦτόν τι γένηται καὶ ἄξιος τῆς ἱερατείας φανῇ, τηνικαῦτα ἄδειαν ἕξει μένειν ἐπὶ τῆς ἱερωσύνης καὶ τοῦ λειτουργεῖν ἀπηλλάχθαι, τὴν τετάρτην μέντοι μοῖραν τῆς αὐτοῦ περιουσίας ἁπάσης παρέχων τοῖς βουλευταῖς καὶ τῷ δημοσίῳ κατὰ τὸν ἔναγχος ἐπὶ τοῖς τεταρτημορίοις τεθέντα παρ' ἡμῶν νόμον, ἢ μόνῳ τῷ δημοσίῳ, εἴγε ταξεωτικῆς τύχης ἐτύγχανεν ὤν. **2.** Εἰ δὲ καὶ ἐν τοῖς εὐλαβεστάτοις ἀρχιμανδρίταις ταχθείη καὶ διαμείνειεν ἐν αὐτοῖς, καὶ οὕτως αὐτῷ δίδομεν τὴν τῆς τύχης ἀτέλειαν, τὴν τετάρτην κἀνταῦθα μοῖραν τῆς αὐτοῦ περιουσίας, καθάπερ εἰπόντες ἔφθημεν, παρεχομένῳ· ἄλλως δὲ οὔτε ἐκείνῳ χειροτονεῖσθαι συγχωροῦμεν οὔτε τῷ χειροτονοῦντι τοιοῦτόν τι πράττειν ἐφίεμεν. **3.** Γινωσκούσης τῆς σῆς ὑπεροχῆς, ὡς ταῦτα παραφυλακτέον ἅπασι τοῖς θεοφιλεστάτοις ἐπισκόποις ποινὴν ὑφορωμένοις περὶ αὐτὴν τὴν ἱερωσύνην, εἴ τι τοιοῦτο πράξαιεν, πρὸς τὸ μηδὲ τὸν χειροτονούμενον τῆς ἱερωσύνης ἀπολαύειν, κἂν εἰ πρότερον οἱονδήποτε βαθμὸν ἱερατείας ἐπεῖχεν, ἀλλ' ἐν ἰδιώταις τετάχθαι καὶ τὰς λειτουργίας ἐκτελεῖν, αἷς ὑπέκειτο πρότερον.

4. Ἅπερ ἅπαντα κρατεῖν εἰς τὸν ἐφεξῆς βουλόμεθα χρόνον, ἐπειδὴ τοίνυν πρῶτον ὑφ' ἡμῶν ἐξεύρηται, οὐ προσαπτομένου παντελῶς τοῦδε τοῦ νόμου, καθάπερ εἰπόντες ἔφθημεν, τῶν ἅπαξ τοιαύτης ἱερωσύνης ἀξιωθέντων, ἀλλ' ἐξουσίαν ἐχόντων αὐτῶν δι' ὑποκαταστάτων λειτουργεῖν κατὰ τὴν Θεοδοσίου καὶ Οὐαλεντινιανοῦ τῶν τῆς εὐσεβοῦς λήξεως διάταξιν τὴν πρὸς Θωμᾶν ἀντιγεγραμμένην.

5. Πρὸς τούτοις κἀκεῖνο δίκαιον εἶναι καὶ κρατεῖν καὶ πολιτεύεσθαι θεσπίζομεν, ὅπερ τεθὲν ἐξ ἀρχῆς καὶ πολιτευσάμενον οὐκ ἴσμεν ὅπως παρῶπται. μεμνήμεθα γὰρ Ἀρκαδίου καὶ Ὁνωρίου τῶν τῆς εὐσεβοῦς

[52] *The same Augustus to John, Praetorian Prefect.* **pr.** We decree that no curial or provincial staff member (*cohortalis*) may hereafter become bishop or presbyter. This law does not affect those who have already been found worthy of the priesthood, but no one of the aforementioned status shall hereafter ascend to the aforesaid priestly positions, especially if he has already performed liturgies (as curial) or followed orders as provincial staff member. **1.** For it would not be just that one who was brought up amid violent exactions and the sins likely resulting from this position should, at one moment, be staff member or curial and do the bitterest of deeds and, at the next, be appointed priest, preaching love of man and contempt for possessions and teaching the tenets of the faith – unless he happens to have been enrolled among the most pious monks in his childhood, before passing the age of puberty, and continued in this state. Then We permit him to become a presbyter and rise to the episcopate, since it is manifest that when such a thing should occur and he seems worthy of ordination, then he shall be permitted to remain in the priesthood and be released from his liturgies, although he must surrender one fourth of his property to the curials and to the Treasury according to the law recently issued by Us concerning such fourths,[112] or to the Treasury alone, if he should happen to belong to the class of provincial staff members. **2.** If he should be enrolled among the superior abbots and continue among them, We thus also grant him exemption from the public liturgies of his class, as long as he gives a fourth of his property, as We have already said. Otherwise We neither give him the right to be ordained nor do We allow the one who would ordain him to do any such thing. **3.** Your Eminence shall recognize that all most reverend bishops must observe these provisions, anticipating a penalty in the form of the loss of their priesthood itself, if they should do any such thing, in addition to the fact that the one ordained shall not enjoy his priesthood; and even if he previously held any rank whatsoever in the priesthood, he shall be numbered among the laity and will perform the liturgies to which he was previously subject.

4. We desire that all these provisions apply in the future, since they have now been first devised by Us, nor, as We have already said, shall this law affect those who have already been deemed worthy of such a priesthood. They shall have the right to perform their liturgies by proxy, according to the constitution of Theodosius and Valentinian of Blessed Memory, written in response to Thomas.[113]

5. Additionally, We decree that the following also is just and shall apply and be practiced, which, although instituted and practiced initially, has somehow come to be neglected: We remember encountering a constitution

[112] C. 10.35.4?
[113] C. 1.3.21.

λήξεως ἐντυχόντες διατάξει βουλομένη τοὺς κληρικούς, εἴπερ ἀμελήσαντες τύχοιεν τῆς ἑαυτῶν τάξεως καὶ εἰς οἱανδήποτε ἔνοπλον στρατείαν παραγγείλαιεν ἢ καὶ καθῃρημένοι παρὰ τῶν θεοφιλεστάτων ἐπισκόπων στρατεύεσθαι τολμήσαιεν, ἐκβάλλεσθαι μὲν αὐτοὺς τῆς στρατείας ἧς ἔτυχον, παραδίδοσθαι δὲ ταῖς τῶν πόλεων βουλαῖς, ὑπουργήσοντας τὸ λοιπὸν τῷ δημοσίῳ, ἐπειδὴ καὶ τῇ τοῦ δεσπότου θεοῦ λατρείᾳ κατὰ τὸν τῆς στρατείας τρόπον ἔτυχον ἀπειπόντες. **6.** Ἅπερ κρατεῖν ἐκ τοῦδε ἡμῶν θεσπίζομεν τοῦ νόμου, κελεύοντες αὐτοὺς εὐθὺς καὶ παραχρῆμα τῆς πόλεως ἐκείνης, ἐξ ἧς εἰσι, γίνεσθαι βουλευτάς, εἰ μὴ σφόδρα εὐπορίαν ἔχοι βουλευτῶν ἡ πόλις, ἐπείτοιγε τῆς γείτονος ἢ καὶ πορρωτέρω μέχρι μιᾶς ἐπαρχίας ἑτέρας, ἔνθα μάλιστα βουλευτῶν καθέστηκεν ἀπορία. **7.** Εἰ δὲ ἀφανεῖς, ὡς εἰκός, γένοιντο, ἄδειαν δίδομεν τοῖς βουλευταῖς εὐθὺς ἐπιβαίνειν τῶν προσηκόντων αὐτοῖς πραγμάτων καὶ ταῦτα κατέχειν καὶ τὸ ἱκανὸν ἑαυτοῖς κατὰ τὸν νόμον ἐντεῦθεν ποιεῖν. **8.** Ταῦτα μὲν οὖν ἐπὶ τοῖς εὐλαβεστάτοις κληρικοῖς οἱουδήποτε βαθμοῦ κρατεῖν εἰς τὸ διηνεκὲς θεσπίζομεν καὶ ἐπὶ τοῖς ἤδη πεπλημμεληκόσι κρατεῖν τὸν νόμον βουλόμενοι, διότι καὶ πρότερον ἦν.

9. Ἐπειδὴ δὲ καί τινα διάταξιν εὕρομεν περὶ μοναχῶν διαλεγομένην καὶ βουλομένην αὐτοὺς μὴ καταλιμπάνειν τὰ οἰκεῖα μοναστήρια μηδὲ θορυβεῖν τὰς πόλεις, ἣν καὶ πρός τινα νενομοθετῆσθαι καιρόν τινες ὑποπτεύουσι, δεῖν ᾠήθημεν ἀφορμὴν ἐντεῦθεν λαβόντες τελειότερόν τε καὶ εἰς τὸν ἅπαντα χρόνον καὶ τοῦτο ἐπανορθῶσαι· ὥστε μηδενὶ τοῦ λοιποῦ τῶν εὐλαβεστάτων μοναχῶν ἄδειαν εἶναι τοῦ τοιοῦτό τι πράττειν καὶ καταλιμπάνειν μὲν τὸ μοναχικὸν σχῆμα, περιβάλλεσθαι δὲ τὴν οἱανοῦν στρατείαν ἢ ζώνην ἢ ἀξίαν ἢ τὸν ἐν δικαστηρίοις μεταδιώκειν βίον καὶ τῆς τοῦ θεοῦ θεραπείας τὰς ἀνθρωπίνας ἀσχολίας ἀνθαιρεῖσθαι ἢ γινώσκειν. **10.** Ὡς καὶ ὁ τοιοῦτό τι πράττων ἐπιδοθήσεται τῇ βουλῇ τῆς πόλεως ἐκείνης, ἐξ ἧς ἐστιν, ἢ ἑτέρας, καθὰ πρότερον εἰπόντες ἔφθημεν, εἰ μὲν χρημάτων εὐποροίη, καὶ χρηματικὰς ὑποστησόμενος λειτουργίας, ἐπείτοιγε τὰς εἰς σῶμα φερούσας· κἀνταῦθα ἀδείας οὔσης ταῖς βουλαῖς, καθάπερ εἰπόντες ἔφθημεν, εἰ ἀφανεῖς γένοιντο, ἐπιλαμβάνεσθαι τῶν πραγμάτων καὶ τὸ ἱκανὸν ἑαυταῖς κατὰ τὸν νόμον ποιεῖν. **11.** Ἐν ἅπασι δὲ τοῖς θέμασιν, ἐφ᾽ ὧν λαμβάνειν ἀπὸ τῶν τοιούτων αἰτιῶν τὰ βουλευτήριά τι προστάττομεν, βουλόμεθα τὴν μὲν ἡμίσειαν τούτων μοῖραν τοὺς βουλευτὰς κομίζεσθαι μὴ ἐν χρυσίῳ, ἀλλ᾽ ἐν ἀκινήτῳ κτήσει ἢ οὔσῃ ἢ ὠνουμένῃ κατὰ τὸν ἔμπροσθεν φοιτήσαντα παρ᾽ ἡμῶν νόμον, τὴν δὲ ἡμίσειαν τῇ γενικῇ τραπέζῃ τῆς σῆς ὑπεροχῆς εἰσφέρεσθαι, ὥστε καὶ τὸν σὸν θρόνον προνοεῖν ἀγρύπνως μηδὲν τοιοῦτο διαλαθεῖν, ἀλλ᾽ ἅμα τῷ γίνεσθαί τι τὴν προσήκουσαν ὑπὲρ τούτου ποιεῖσθαι θεραπείαν, πλὴν εἰ μὴ νῦν γοῦν ἑκόντες οἱ τοιοῦτοι ἀπόθοιντο μὲν τὴν στρατείαν ἢ ἁπλῶς ὅπερ ἔχουσι σχῆμα, εἰς δὲ τὸν μοναχικὸν αὖθις ἀκριβῶς τε καὶ ἀληθῶς ἐπανέλθοιεν βίον καὶ τοῖς εὐλαβεστάτοις

of Arcadius and Honorius of Blessed Memory that sought that clergymen, if they disregarded their position and applied for armed service of any kind or, deposed by the most reverend bishops, dared to serve in the military, should be expelled from their military position and delivered to the municipal councils of the cities to serve the public welfare, since they renounced the worship of the Lord God for a military appointment. **6.** We decree that these provisions shall obtain by virtue of this Our law, and We order these persons to become curials of the city in which they were born straightaway and immediately, unless the city has a great abundance of curials, in which case they shall become curials of the neighboring city or further afield up to one other province, where there exists the greatest want of curials. **7.** If they go missing, as is likely, We give permission to the curials to seize their property and hold it and to provide themselves with sufficient funds therefrom according to the law. **8.** We decree that these provisions shall apply to the clergy of whatever rank forever, and We desire that the law apply to those who have already offended, since this was also previously so.

9. Since We also have found a constitution concerning monks[114] that forbade them to leave their own monasteries and disturb the cities, yet some suspect that this constitution was issued for a limited period of time, We have thought it necessary to take up this issue and set it aright more perfectly and for all time. Thus, none of the most pious monks shall have leave to do anything of the sort: to abandon the monastic habit and assume any military post, position in the imperial service (*cingulum*), or office, or win their livelihood in the courts and know or prefer the occupations of man to the worship of God. **10.** Therefore, one who does such a thing shall be handed over to the curia of the city in which he was born or of another city, as We have already said above, so that if he is wealthy, he shall perform pecuniary liturgies; otherwise, corporal liturgies. In this case too, the curias shall have permission, as We have already said above, to seize their property and provide themselves with sufficient funds according to the law, if they should go missing. **11.** In all cases, however, in which We order the curias to seize anything for such reasons, We want half thereof to be taken by the curias, not in gold, but in immovable property, whether already at hand or bought, according to the law that was recently issued by Us; the other half shall be collected into the common funds of Your Eminence, so that Your office too shall tirelessly ensure that no such conduct goes undetected and, as soon as it happens, shall apply the appropriate remedy; unless such offenders willingly lay down their military service, or at any rate the position they hold, and return both genuinely and honestly to monastic life and hasten to be enrolled among the most pious clergy. If they should do this within a year after the issue of Our present divine law, We remit their punishment, since We

114 C. 1.3.29.

κληρικοῖς ἐγγραφῆναι σπεύσαιεν. εἰ γὰρ τοῦτο πράξαιεν εἴσω ἐνιαυτοῦ ἑνός, ἀφ' οὗπερ ὁ παρὼν θεῖος ἡμῶν γέγονε νόμος, ἀφίεμεν αὐτοῖς τὴν ποινήν, ἀρκεῖν αὐτοῖς τὸν ἐκ τῆς ἀσκήσεως ἡγούμενοι σωφρονισμόν. **12.** Ταῦτα δὲ κρατεῖν εἰς τὸν ἐφεξῆς βουλόμεθα χρόνον, οὐδὲ ἐκείνους ἔξω τῆς εἰρημένης καταλιμπάνοντες ποινῆς, ὅσοι ἀπὸ τῆς ἡμῶν βασιλείας καίτοι μοναχοὶ καθεστῶτες τοιοῦτό τι πεπράχασι. τὸ γὰρ ἔμπροσθεν ἅμα μὲν διὰ φιλανθρωπίαν, ἅμα δὲ τὸν χρόνον ἐρυθριῶντες ἀφίεμεν, ἐπεὶ μηδὲ σαφῶς νενομοθετημένον ἔμπροσθεν ἦν.

13. Ἔτι τοῦτο θεσπίζομεν, εἴτε πατὴρ εἴτε μήτηρ εἴτε ἕτερός τις ἐξ ἀπαιδίας ἀποκατάστασιν ἢ ὑποκατάστασιν ἐπαγάγοι τισὶν εἴτε ἄρρεσιν εἴτε θηλείαις, οἱ δὲ πρὸς γάμον ἐλθεῖν διὰ τὸν τῆς ἀσκήσεως οὐχ ἕλοιντο τρόπον, περιαιρεῖσθαι τὰς τοιαύτας ἀποκαταστάσεις ἢ ὑποκαταστάσεις καὶ ἔχειν αὐτοὺς ἐξουσίαν εἰς ὃν βούλονται τρόπον, εὐσεβῆ μέντοι, τὰ ἐντεῦθεν ἀφιεροῦν καὶ ἢ δαπανᾶν περιόντας ἢ καταλιμπάνειν τελευτῶντας· ὥσπερ εἰ καὶ ὑπὸ αἵρεσιν παιδοποιίας αὐτοῖς τι καταλειφθείη, δεῖ καὶ τοῦτο αὐτὸ ἔχειν αὐτοὺς παιδοποιεῖν οὐκ ἀναγκαζομένους. **14.** Τὴν αὐτὴν δὲ νομοθεσίαν καὶ ἐπὶ γυναιξὶ παρθενευούσαις καὶ ἐπὶ τοῖς γαμεῖν ὅλως κεκωλυμένοις εὐλαβεστάτοις κληρικοῖς ἐπεκτείνομεν καὶ ἀνατίθεμεν καὶ ταύτην τὴν χάριν θεῷ τῶν ἡμετέρων χρόνων ἀξίαν.

15. Ἔτι θεσπίζομεν, εἴτε ἀνὴρ ἐπὶ μονήρη βίον ἐλθεῖν βουληθείη εἴτε γυνὴ τὸν ἄνδρα καταλιποῦσα πρὸς ἄσκησιν ἔλθοι, μὴ τοῦτο αὐτοῖς ζημίας παρέχειν πρόφασιν, ἀλλὰ τὰ μὲν οἰκεῖα πάντως λαμβάνειν, ὥστε τῇ γυναικὶ τὴν προῖκα εἶναι λαβεῖν τὴν αὐτῆς καὶ τὴν πρὸ γάμου δωρεὰν τῷ συνοικήσαντι, τὸ δὲ ἐκ τούτου κέρδος μὴ κατὰ τὴν ἐκ ῥεπουδίου διάζευξιν ἐκδικεῖν ἢ μένειν παρὰ τῷ μὴ ἀποταξαμένῳ, ἀλλὰ κατὰ τὸ ἐκ θανάτου σύμφωνον, οἷα δοκοῦντος τοῦ ἀφισταμένου τῷ τῆς μετὰ τῶν ἄλλων διαίτης[xiii] ἀναχωρεῖν τόγε ἐπὶ τῷ συνοικεσίῳ τεθνάναι, διὰ τὸ τῷ συνοικήσαντι παντελῶς ἄχρηστον εἶναι· καὶ ὅπερ ἂν ἡ τῶν προικῴων συμβολαίων δείξειεν δύναμις ἐκ τῶν ἀπὸ τελευτῆς συμφώνων ὀφειλόμενον, τοῦτο αὐτὸ τὸν λαβόντα τοῦ λοιποῦ παραχωρεῖν τῷ τὴν ἄσκησιν ἑλομένῳ· ὥστε μέντοι μὴ θαρρεῖν τὴν γυναῖκα πρὶν ἐνιαυτὸν διελθεῖν εἰς ἕτερον ἰδεῖν συνοικέσιον διὰ τὴν τῆς γονῆς ἀδηλίαν· ἀλλ' εἴ τι μέλλοι γίνεσθαι τοιοῦτο, τηνικαῦτα στέλλεσθαι διαίσιον κατὰ τοῦτο δὴ τὸ καλούμενον bona gratia παρὰ τοῦ μὴ τὴν ἄσκησιν ἑλομένου προσώπου, οὕτως τε πράττειν ἃ βούλεται, τῶν κερδῶν κατὰ τὸν ἔμπροσθεν εἰρημένον τρόπον προσγινομένων αὐτῷ· δηλαδὴ τοῦ κερδαινομένου ἐκ τῆς τοιαύτης αἰτίας ἐκ τρόπου παντός, εἰ καὶ ἐπὶ τῶν προτέρων γάμων ἢ ἡ γυνὴ ἢ ὁ ἀνὴρ μείνοιεν, τοῖς κοινοῖς παισὶ τοῖς ἐκ τούτου τοῦ γάμου γενομένοις, εἴ τινα εἴη, φυλαττομένου.

D. v k. Dec. Constantinopoli post cons. Lampadii et Orestis.

[xiii] τῆς μετ' ἀλλήλων διαίτης

deem the chastisement of ascetic life sufficient. **12.** We desire that these provisions apply hereafter, and We do not leave exempt from the aforementioned punishment those who, since the beginning of Our reign, though monks, have done such a thing. As for the preceding time, We grant pardon, partly for the sake of clemency, partly blushing at the times, since nothing clear had been previously enacted.

13. This too We decree: if either a father or a mother or any other person should, by reason of childlessness, impose restitution or the appointment of a substitute heir on men or women, but they decline to marry on account of the ascetic life, such restitutions or substitutions shall be rescinded, and they shall have the power to consecrate the property in any manner they wish, provided it be pious, and either spend it while living or dispose of it upon death. Thus, even if property is left them on the condition of procreating children, they shall have even this without being forced to procreate children. **14.** We extend this law also to women who remain virgins and to the most pious clergymen prohibited from matrimony, and We offer this to God as a token of gratitude worthy of Our times.

15. We moreover decree that if a man should wish to lead a monastic life, or a woman should leave her husband and enter a life of asceticism, this shall not furnish any damaging pretext against them, but they shall receive all their own property. Thus, the woman shall recover her dowry and the husband his prenuptial gift, and no profit may be claimed by reason of separation by divorce or remain with the spouse that has not put away the other; but (it shall be as) according to the agreement in the event of death, since the person withdrawing from life with one another appears dead with respect to marriage, on account of his being utterly useless to his spouse. The one party shall receive whatever the content of the dowry contract should show as owing in the event of death and yield the rest to the one choosing the religious life. The woman shall not dare to consider another marriage until a year has passed, on account of the uncertainty of the offspring; but if anything of the kind should occur, then a bill of divorce according to so-called *bona gratia* (i.e., uncontested) shall be sent by the person who has not chosen the religious life, and he shall thus do what he wishes. The profits shall accrue to him in the manner previously described, but what is gained thereby shall in every way be kept for the common children of their marriage, if there are any, as if either the woman or the man had remained in their former marriage.

Given November 27, at Constantinople, in the post-consulate of Lampadius and Orestes (531).

[53] *Idem A. Hermogeni magistro officiorum.* **pr.** Raptores virginum vel viduarum vel diaconissarum, quae deo fuerint dedicatae, pessima criminum peccantes capitis supplicio plectendos fuisse decernimus, quod non solum ad iniuriam hominum, sed ad ipsius omnipotentis dei irreverentiam committitur.

1. Qui itaque huiusmodi crimen commiserint et qui eis auxilium tempore invasionis praebuerint, ubi inventi fuerint in ipsa rapina et adhuc flagrante crimine comprehensi, a parentibus sanctimonialium virginum vel viduarum vel diaconissarum aut earum consanguineis vel tutoribus seu curatoribus convicti, interficiantur. **2.** Sin autem post commissum tam detestabile crimen aut potentatu raptor se defendere aut fuga evadere potuerit, in hac quidem regia urbe tam viri excelsi praefecti praetorio quam vir gloriosissimus praefectus urbis, in provinciis autem tam viri eminentissimi praefecti praetorio per Illyricum quam magistri militum per diversas nostri orbis regiones nec non viri spectabiles praefectus Aegypti et vicarii et proconsules et nihilo minus viri spectabiles duces et viri clarissimi rectores provinciarum nec non alii cuiuslibet ordinis iudices, qui in locis inventi fuerint, simile studium cum magna sollicitudine adhibeant, ut eos possint comprehendere et comprehensos in tali crimine post legitimas et iuri cognitas probationes sine fori praescriptione durissimis poenis adficiant et mortis condemnent supplicio.

3. Bona autem eorum, si hoc commissum fuerit vel in sanctimonialem virginem, quae in asceterio vel monasterio degit, sive eadem virgo diaconissa constituta sit sive non, eidem monasterio vel asceterio, ubi consecrata est, addicentur, ut ex his rebus et ipsa solacium habeat, dum vivit, sufficiens et res omnes sacrosanctum asceterium seu monasterium pleno habeat dominio. **4.** Sin autem diaconissa cuiuscumque ecclesiae sit, in nullo autem monasterio vel asceterio constituta est, sed per se degit, raptoris eius substantia ecclesiae, cuius diaconissa est, adsignetur, ut ex his facultatibus ipsa quidem usum fructum, dum superest, ab eadem ecclesia consequatur, ecclesia vero omnem proprietatem et plenam possessionem earundem rerum nostro habeat beneficio: nemine vel iudice vel alia quacumque persona hoc audente contemnere.

5. Poenas autem, quas praediximus, id est mortis et bonorum amissionis, constituimus non tantum adversus raptores, sed etiam contra eos, qui hos comitati in ipsa invasione et rapina fuerint. ceteros autem omnes, qui conscii et ministri huiusmodi criminis reperti et convicti fuerint vel eos susceperint vel quamcumque opem eis intulerint, sive

[53][115] *The same Augustus to Hermogenes, Master of Offices.* **pr.** We decree that the ravishers[116] of virgins, widows, or deaconesses, who have been dedicated to God, thereby committing the worst of crimes, shall be punished by death, because their crime is not only an outrage toward mankind but an act of impiety toward Almighty God Himself.

1. Those who commit a crime of this kind and those who assist them at the time of the assault, if they are discovered in the act of ravishing and caught *in flagrante* by the parents of the holy virgins, or widows, or deaconesses, or by their relatives, *tutores*, or *curatores*, may, upon conviction, be executed. **2.** If, however, after committing so detestable a crime, the ravisher proves able either to defend himself through influence or to escape by flight, in This Imperial City both the *viri excelsi* Praetorian Prefects and the *vir gloriosissimus* Urban Prefect; in the provinces, both the *viri eminentissimi* Praetorian Prefects of Illyricum and the Masters of the Soldiers throughout the various areas of Our world, as well as the Prefect of Egypt, the Vicars, the Proconsuls, and the *viri spectabiles* Dukes, the *viri clarissimi* provincial governors, and also other judges of any rank who may be found at the place, shall show like diligence and great care, so that they may arrest and, upon arrest for such a crime, after proper proof recognized by the law, inflict upon them the harshest punishment and condemn them to death, without granting the privilege of venue (*fori praescriptio*).

3. If the crime is committed against a nun living in a hermitage or convent, whether this same virgin has been appointed deaconess or not, the property (of the ravishers) will be awarded to the same convent or hermitage to which she has been consecrated. Thus she may derive sufficient solace from these things while she lives, but the holy hermitage or convent shall hold all this property with full title. **4.** If she is a deaconess of some church and is not located in a convent or hermitage, but lives by herself, the property of her ravisher shall be awarded to the church of which she is deaconess. Thus, she shall receive from the same church a usufruct on this property while she lives, but the church shall have all ownership and full possession of these things by Our beneficence. Neither judge nor any other person shall dare to disregard this.

5. The punishments, moreover, which We have mentioned above, that is, death and loss of property, We have set not only against ravishers but also against those who accompany them in the assault and act of ravishing. All others, whether men or women of whatever status, rank, or title, who are found to have known of and abetted such a crime and are convicted, or who harbor

[115] = C. 9.13.1; combine with 5.17.11, 7.24.1?, 11.48.24?

[116] The crime *raptus* may be rape or "ravishing": the seizure and abduction of a woman, for sexual or marital purposes, potentially even with her consent.

masculi sive feminae sunt, cuiuscumque condicionis vel gradus vel dignitatis, poenae tantummodo capitali subicimus, ut huic poenae omnes subiaceant, sive volentibus sive nolentibus sanctimonialibus virginibus seu aliis supra dictis mulieribus tale facinus fuerit perpetratum.

D. XV k. Dec. Constantinopoli dn. Iustiniano pp. A. III cons.

[54] *Idem A. Iohanni pp.* **pr.** Deo nobis auxilium praebente omnia, quae pro honore sanctae catholicae ecclesiae ad dei placitum fieri properamus, legibus constituere et operibus adimplere desideramus. **1.** Et iam quidem multa cum eius auxilio statuimus, quae ecclesiasticae doctrinae statui conveniunt, in praesenti autem hoc pia deliberatione duximus corrigendum, quod hactenus contra dei timorem fiebat. **2.** Cognitum etenim nobis est, quod, si quis sponsus vel sponsa post datas aut acceptas arras voluisset se divino deputare servitio et a saeculari conversatione recedere ac sanctimonialem vitam vivere atque in dei timore permanere, compellebatur vir quidem ea quae arrarum nomine dederat amittere, sponsa vero duplum id quod acceperat reddere. quod nostrae mansuetudini satis religioni esse contrarium visum est.

3. Unde per praesentem legem in perpetuum valituram iubemus, ut, si quis sponsus vel sponsa desideraverit saeculi istius vitam contemnens in sanctimonialium conversatione vivere, sponsus quidem omnia, quae arrarum nomine futuri causa coniugii dedisset, sine ulla imminutione recipiat, sponsa autem non duplum, sicut hactenus, sed hoc tantum sponso restituat, quod arrarum acceperat nomine, et nihil amplius reddere compellatur, nisi quod probata fuerit accepisse. **4.** Nam et maritis et uxoribus qui saeculo renuntiant iam anteriore lege a nobis provisum est, ut, sive maritus sive uxor religionis causa a coniugio recesserit et solitariam vitam elegerit, unusquisque eorum res suas recipiat, quas vel pro dote vel ante nuptias donatione praestiterat, et hoc tantummodo lucri nomine consequatur ab eo qui solitariam vitam elegerit, quod debuit legitime vel ex pacto per casum mortis exigere.

5. Hoc etiam cognitum nobis correctione nostra dignum esse iudicamus, ut, si quis in parentium potestate constitutus vel constituta vel forsitan huiusmodi iure absolutus vel absoluta elegerit se vel monasterio vel clero sociare et reliquum vitae suae tempus sanctimonialiter degere voluerit, non liceat parentibus vel easdem personas quocumque modo abstrahere vel propter hanc tantummodo causam quasi ingratum a sua hereditate vel successione repellere, sed necesse sit eis omnimodo, cum ultimam voluntatem suam sive per scripturam sive alio legitimo

them (the ravishers) or offer them any help whatsoever, We subject only to capital punishment. Thus all shall be subject to this punishment, whether such a crime is committed against holy virgins or any of the other women mentioned above, with or without their consent.

Given November 17, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, for the third time (533).

[54] *The same Augustus to John, Praetorian Prefect.* **pr.** With God giving Us His aid, We wish to confirm in laws and realize in deeds all that We strive to bring about in honor of the Holy Catholic Church for the pleasure of God. **1.** And indeed, with His aid, We have already established many in harmony with the state of ecclesiastical doctrine; but at present We have, upon pious reflection, decided that the following must be corrected, which heretofore has been done contrary to the fear of God. **2.** For We have learned that if a fiancé or fiancée (*post datas et acceptas arras*) wished to devote himself or herself to the service of God, to withdraw from worldly society and live a holy life and abide in the fear of God, then the man was compelled to forfeit what he gave as earnest-money (*arrarum nomine*), and the woman to return twice the amount that she received. This seemed to Our Mildness quite contrary to religion.

3. Therefore, We order by the present law, which shall remain in force forever, that if a fiancé or fiancée, scorning worldly life, should wish to live in the society of the holy, the bridegroom shall receive back, without any diminution, everything that he gave as earnest-money for his future marriage; the bride shall restore to the bridegroom not double, as heretofore, but only what she received as earnest-money, and she shall not be forced to return more unless she is shown to have received more. **4.** For We have already provided for husbands and wives who renounce the world in a previous law,[117] so that whether the husband or the wife withdraws from marriage and chooses solitary life for religious reasons, each of them receives the belongings that they provided either as a dowry or prenuptial gift, and acquires as gain from the one who has chosen solitary life only what he or she could have claimed by law or pursuant to an agreement in the event of death.

5. We also deem another matter known to Us worthy of correction, namely, that if anyone, male or female, still under his father's power or perhaps released from this legal status, should choose to join either a monastery or the clergy and wishes to pass the rest of his life piously, the parents shall not be allowed either to remove the same persons therefrom in any way or, for this cause alone, to banish them as ungrateful from their inheritance or succession; but when the parents compose their last will, whether in writing or by some other means, they must leave them one-fourth (of their intestate share) according

[117] C. 1.3.52.15.

modo conficiant, quartam quidem portionem secundum leges nostras eis relinquere; sin autem amplius voluerit largiri, hoc eius voluntati concedimus. **6.** Sin vero ultimam voluntatem parentes neque testamento neque alio ultimo elogio declarasse monstrati fuerint, omnem parentium substantiam heredes, quibus ab intestato competit, secundum leges nostras sibi defendant: nullo eis impedimento ex sanctimoniali conversatione generando, sive soli sive cum aliis ad successionem vocantur.

7. Huius perpetuae nostrae legis beneficia eos volumus obtinere, qui in monasterio vel clericatu perseveraverint. nam si qui eorum, de quibus praesentem legem posuimus, sanctimonialem vitam elegerint, ad saecularem autem conversationem remeaverint, iubemus omnes eorum res ad iura eius ecclesiae vel monasterii a quo recesserint pertinere.

8. His ita dispositis repetita lege iubemus, ut nullus Iudaeus vel paganus vel haereticus servos Christianos habeat. quod si inventi in tali reatu fuerint, sancimus servos modis omnibus liberos esse secundum anteriorem nostrarum legum tenorem. **9.** In praesenti autem hoc amplius decernimus, ut, si quis de praedictis Iudaeis vel paganis vel haereticis habuerit servos nondum catholicae fidei sanctissimis mysteriis imbutos, et praedicti servi desideraverint ad orthodoxam fidem venire, postquam catholicae ecclesiae sociati fuerint, in libertatem modis omnibus ex praesenti lege eripiantur: et eos tam iudices provinciarum quam sacrosanctae ecclesiae defensores nec non beatissimi episcopi defendant, nihil pro eorum pretio penitus accipientibus dominis. **10.** Quod si forte posthac etiam ipsi domini eorum ad orthodoxam fidem conversi fuerint, non liceat eis ad servitutem reducere illos, qui eos ad fidem orthodoxam praecesserunt: sed si quis talia usurpaverit, poenis gravissimis subiacebit.

11. Haec igitur omnia, quae pietatis intuitu nostra sanxit aeternitas, omnes iudices et religiosissimi antistites sive Africanae dioeceseos, in qua maxime huiusmodi vitia frequentari cognovimus, sive aliarum provinciarum naviter et studiosissime observare procurent. nam contemptores non solum pecuniaria multa, sed et capitis supplicio ferientur.

[55] *Ὁ αὐτὸς βασιλεὺς Ἰωάννῃ ἐπάρχῳ πραιτωρίων.* **pr.** Ὁ παρὼν νόμος εἰς ἑτέρου νόμου γεγραμμένου παρ᾽ ἡμῶν ἀναφέρεται μνήμην, ὃν δὴ καὶ αὖθις ἐπικυρῶσαι μετά τινος καλλίονος ᾠήθημεν χρῆναι προσθήκης, μείζονα ποινὴν κατὰ τῶν πλημμελούντων ἐκφέροντες, οὐχ ὅτι ταῖς αὐξήσεσι χαίρομεν τῶν ποινῶν (οὐδὲν γὰρ ἡμῖν οὕτως ὡς φιλανθρωπία καταθύμιον), ἀλλ᾽ ἵνα τῷ δέει τῆς τιμωρίας τοὺς ἁμαρτάνειν προῃρημένους

to Our laws. If someone should wish to give more, We leave this to his discretion. **6.** If the parents are shown not to have indicated their last wish either by will or some other form of testament, then the heirs, as appropriate in event of intestacy, may claim the entire property of the parents according to Our laws; their holy association shall not hinder them, whether they are called to the succession alone or with others.

7. We desire that those who remain in a monastery or in clerical office enjoy the benefits of this Our eternal law. If any of those, concerning whom We have established the present law, should choose a holy life but afterwards return to worldly society, We order that all their property shall be under the legal control of the church or monastery that they have left.

8. Having ordained the matters above, We reissue a law and order that no Jew or pagan or heretic may have Christian slaves. But if they are detected in such a crime, We decree that the slaves shall be free in every way, according to the tenor of Our previous laws.[118] **9.** At present, however, We decree this too: that if any of the aforementioned Jews, or pagans, or heretics should have slaves not yet initiated in the most holy mysteries of the Catholic Faith, and the aforementioned slaves wish to enter the orthodox faith, after they have joined the Catholic Church, they shall by the present law be snatched into liberty in every way; and both the governors of the provinces and the defenders of the Holy Church, as well as the most blessed bishops, shall defend them, while their masters shall receive nothing at all for their cost. **10.** And if their masters themselves should afterwards convert to the orthodox faith, they will not be permitted to lead back into servitude those who preceded them toward the orthodox faith. If someone should unlawfully do so, he shall be subject to the heaviest penalties.

11. All governors and most pious bishops, whether of the diocese of Africa, where We know vices of this nature are the most common, or of other provinces, shall see to it that they zealously and most diligently observe all these regulations, which Our Eternity has decreed in the interest of piety. For violators shall be stricken not only with a monetary fine but also with capital punishment.[119]

[55] *The same Augustus to John, Praetorian Prefect.* **pr.** The present law serves to recall another law written by Us,[120] which We have deemed it necessary to confirm yet again with a better amendment, namely, by introducing a greater penalty against violators, not because We take joy in increased penalties (for We

[118] C. 1.5.20.6 and 1.10.2.
[119] The subscription is lost, but Lounghis *et al.* give 533 or 534.
[120] C. 1.3.45.9.

τοῦ πλημμελεῖν εἴρξωμεν. **1.** Ἴσμεν τοίνυν γράψαντες νόμον λέγοντα μηδεμίαν εἶναι παρρησίαν τοῖς τῶν ἁγιωτάτων ἐκκλησιῶν οἰκονόμοις ἢ τοῖς προεστῶσι ξενώνων ἢ νοσοκομείων ἢ πρωχείων ἢ μοναστηρίων εἴτε ἀνδρῶν εἴτε γυναικῶν ἢ τῶν ἄλλων τῶν τοιούτων συστημάτων, ὧν ἡ προλαβοῦσα διάταξις μέμνηται, τὰ διηνεκῶς αὐτοῖς καταλελειμμένα, ἅπερ ἀννάλια καλοῦσιν οἱ νόμοι, κατά τι σύμφωνον ἢ χρυσίου διαπιπράσκειν ῥητοῦ ἢ ἐκποιεῖν ἄλλως καθ' οἱονδήποτε τρόπον καὶ τοῖς ἐφεξῆς ἀναιρεῖν τὴν ἐντεῦθεν παραψυχήν. καὶ τοὺς πρέποντας τῷ νόμῳ προστεθείκαμεν λογισμούς, ὡς οὐκέτι διὰ ταύτην τὴν ἐγχείρησιν οὐδὲ τῆς προσηγορίας τοῦ ἀνναλίου σωζομένης, εἰ μὴ μέλλοι δίδοσθαι κατ' ἔτος, ἀλλὰ πρὸς ἅπαξ καταβληθὲν εἶτα τελείως ἐξαπόλοιτο.

2. Τοῦτον αὖθις μετά τινος προσθήκης ἀνανεούμενοι τὸν νόμον θεσπίζομεν, εἴ τις ἢ τῶν εὐλαβεστάτων οἰκονόμων ἢ ξενοδόχων ἢ νοσοκόμων ἢ πτωχοτρόφων ἢ γεροντοκόμων ἢ βρεφοτρόφων ἢ ὀρφανοτρόφων ἢ ἀρχιμανδριτῶν ἢ τῶν ἄλλων τῶν περιεχομένων τῇ προτέρᾳ ἡμῶν θείᾳ διατάξει προσώπων τὸ διηνεκῶς καταλειφθὲν τοῖς εὐαγέσιν οἴκοις, ὧν προΐστανται, εἴτε ἐν χρυσίῳ εἴτε ἐν ἄλλοις πράγμασι πειραθείη μεθιστᾶν εἰς τὸ μὴ δοκεῖν εἶναι διηνεκές, ἀλλ' ἐπὶ διαλύσεσιν ἢ πράσεσιν ἤ τισιν ἄλλαις μηχαναῖς τοῦ διηνεκὲς αὐτὸ μένειν παῦσαι πειραθείη παρὰ τὴν δύναμιν τοῦ παρ' ἡμῶν ἤδη φοιτήσαντος ἐπὶ τοῖς τοιούτοις θείου νόμου, μηδεμίαν ἔχειν παντελῶς ἄδειαν τοῦτο ποιεῖν, ἀλλά, κἂν εἰ πράξειε, ἄκυρον εἶναι τὸ γενόμενον καὶ ἄδειαν εἶναι τῷ μετ' αὐτὸν τῆς αὐτῆς ἀντιληψομένῳ φροντίδος ἢ καὶ τούτου ῥαθυμήσαντος, ὡς εἰκός, τοὺς ἐφεξῆς ἅπαντας εὐθὺς ἀνακαλεῖσθαι τὸ γενόμενον καὶ οὕτως ἄκυρον ἀποφαίνειν, ὡς ἂν εἰ μηδὲ τὴν ἀρχὴν ἔτυχε προελθόν, ὥστε καὶ τοὺς ἐν μέσῳ καρποὺς καὶ τόκους καὶ πᾶσαν ὠφέλειαν ἐπὶ τὸν εὐαγῆ φέρεσθαι πάντως οἶκον, τῶν ἐν μέσῳ τολμηθέντων κατὰ πάντα τρόπον ἀργούντων.

3. Ἀνδρὶ μὲν γὰρ ἑκάστῳ δρόμος εἷς ἐστι τοῦ βίου παρὰ τοῦ δημιουργοῦ δεδομένος, οὗ τέλος ἐστὶ πάντως ὁ θάνατος· τοῖς δὲ εὐαγέσιν οἴκοις καὶ ταῖς αὐτῶν συστάσεσιν ἀτελευτήτοις ὑπὸ τοῦ θεοῦ φυλαττομένοις οὐκ ἔνεστιν οὐδὲ κατὰ τὰς κτήσεις ἐπάγεσθαί τι πέρας, ἀλλ' ἕως ἂν διαμένωσιν οἱ εὐαγεῖς οἶκοι (μένουσι δὲ ἄχρι παντὸς καὶ μέχρι γε αὐτοῦ τοῦ τῶν αἰώνων τέλους, ἕως οὗ τὸ Χριστιανῶν ὄνομα παρ' ἀνθρώποις ἔστι τε καὶ προσκυνεῖται), δικαίως μένειν καὶ τὰς διηνεκῶς καταλιμπανομένας χορηγίας ἢ προσόδους ἀθανάτους ἀεὶ ταῖς εὐσεβέσι πράξεσι ταῖς μηδεπώποτε παυομέναις ὑπηρετουμένας.

4. Τὸν δὲ τοιοῦτό τι πλημμελήσαντα καὶ ἀποδόσθαι τὸ πρᾶγμα χρυσίου ἢ κατ' ἄλλην τινὰ πρόφασιν θαρρήσαντα βλάβην μὲν μηδεμίαν ἐπάγειν κατὰ τὸ ἔμπροσθεν εἰρημένον τοῖς καθ' ὧν ταῦτα ἔπραξαν[xiv] οἴκοις, ἀλλ' ἐκείνους μὲν καὶ τὸ χρυσίον ἢ τὸ πρᾶγμα κερδαίνειν, ὅπερ εἰλήφασι, καὶ οὐδὲν ἧττον τὸ καταλελειμμένον ἀπαιτεῖν δίχα τῆς οἱασοῦν ἐλαττώσεως,

[xiv] ἔπραξεν

desire nothing so much as clemency), but so that We may stop those who have chosen to do wrong from offending. **1.** For We know that We wrote a law stating that the stewards of the most holy churches or the superintendents of hospices, infirmaries, poorhouses, monasteries of men or convents of women, or any of the other such institutions, of which the previous decree makes mention, may not sell, by contract or for a sum of money, or alienate in any other way – thereby depriving their successors of the solace derived therefrom – property permanently left behind to them, which the laws call an annuity (*annalia*). And We included appropriate reasons in that law, namely, that after such a transaction not even the very name of annuity is preserved, if it is not awarded yearly but paid at once and utterly lost.

2. Renewing, therefore, this law with an amendment, We decree that if any of the most reverend stewards or superintendents of hospices, infirmaries, poorhouses, hospitals for the elderly, foundling-hospitals, orphanages, or abbeys, or any of the other persons included in Our previous divine decree, should attempt to change what has been permanently left behind to the religious houses over which they preside, whether for gold or for other things, so that the bequest no longer appears to be permanent; and if he should attempt by means of contracts or sales or some other devices to stop it from being permanent, in violation of the divine law that has been issued by Us concerning these things, he shall have no freedom whatsoever to do this; and if he should do it, the transaction shall be void; and he who assumes his position after him, or, if he too is negligent, as happens, all successors shall have the power to revoke the transaction and thus render it void, as if it never occurred in the first place. Thus, the fruits and interest and all benefit derived from the property in the meanwhile shall be made over in full to the holy house, and the brazen acts of the intervening time shall be utterly void.

3. For to every man there is one course of life given him by his Maker, the end of which is always death: but it is impossible to set an end to the holy houses and their congregations, unending under the protection of God, even with respect to their possessions. As long as the holy houses endure (and they will endure for all time and till the end of the ages, as long as the name of Christians is among men and adored), then righteously shall also the fortunes or revenues, bequeathed to them forever, remain undying, ever serving unceasing pious undertakings.

4. He who commits such an offense and dares to alienate such a bequest, for money or on some other pretext, shall, according to what We have said above, cause no harm to the houses to which he has done this; but they shall keep as profit the money or property that they have received and nonetheless claim what was left behind to them, without any diminution. He who has done this, however, his heirs and successors, and also his property shall be liable to his partner in the contract and, with his own person and property, shall award an

αὐτὸν δὲ τὸν τοῦτο πράξαντα κληρονόμους τε αὐτοῦ καὶ διαδόχους καὶ τὰ τούτου πράγματα ἐνέχεσθαι τῷ πρὸς αὐτὸν συναλλάξαντι καὶ περιποιεῖν αὐτῷ τόγε ἐπὶ τῷ οἰκείῳ προσώπῳ καὶ τοῖς πράγμασι τοῖς ἑαυτοῦ πρὸς τὸν συμβαλόντα τὸ ἀζήμιον, ὅπως ἂν πρὸς μὲν τὸν εὐαγέστατον οἶκον, ὅνπερ οὐ δέον κατέβλαψε, μηδεμίαν ἐλπίζοι τῶν δεδομένων ἀνάληψιν ἢ τοῦ γεγονότος σύστασιν, ὅσον δὲ πρὸς αὐτὸν τὸν συμβαλόντα πᾶσαν ἔχοι παρὰ τῶν νόμων ἄδειαν χωρεῖν ἐπ' αὐτόν καὶ κληρονόμους αὐτοῦ καὶ τὰ αὐτοῦ πράγματα καὶ τὸ δεδομένον, εἰ ἰσχύσειεν, εἰσπράττειν, ἵνα, εἰ μὴ τῇ πρὸς θεὸν εὐλαβείᾳ, τῷ δέει γοῦν τῆς ἰδίας αὐτῶν περιουσίας καὶ τῶν οἰκείων κληρονόμων ὀκνηρότεροι γίνοιντο πρὸς τὰς τοιαύτας συνθήκας, ἃς ὡμολογημένως ἐπ' οὐδενὶ χρηστῷ πράττουσιν, ἀλλ' ἢ χρήμασι διαφθαρέντες ἢ παθῶν τινων ἐλάττους γεγονότες.

5. Ἅπερ ἅπαντα διὰ τοῦδε τοῦ θείου νόμου κωλύοντες καὶ τοῦτον τοῖς ἱεροῖς ἡμῶν ἐγγραφῆναι νόμοις θεσπίζοντες ἀνατίθεμεν αὐτὸν τῷ δεσπότῃ τῶν ὅλων θεῷ καὶ σωτῆρι ἡμῶν Ἰησοῦ Χριστοῦ, καλήν τινα καὶ πρέπουσαν αὐτῷ θυσίαν καὶ ταύτην προσάγοντες.

D. prid. id. Sept. Constantinopoli dn. Iustiniano pp. A. IIII *et Paulino vc. conss.*

IIII De Episcopali Audientia et de Diversis Capitulis, Quae ad Ius Curamque et Reverentiam Pontificalem Pertinent

[1] *Impp. Valentinianus et Valens AA. ad Iulianum comitem Orientis.* Negotiatores, si qui ad domum nostram pertinent, ne commodum mercandi videantur excedere, Christianos, quibus verus cultus est, adiuvare pauperes et positos in necessitate provideant.

D. XV *k. Mai. Constantinopoli divo Ioviano et Varroniano conss.*

[2] *Idem AA. ad Claudium pu.* Si clericus ante definitivam sententiam frustratoriae dilationis causa ad appellationis auxilium convolaverit, multam quinquaginta librarum argenti, quam contra huiusmodi appellatores sanctio generalis imponit, cogatur expendere. hoc autem non fisco nostro volumus accedere, sed pauperibus fideliter erogari.

D. VIII *id. Iul. Valentiniano np. et Victore conss.*

[3] *Impppp. Gratianus Valentinianus Theodosius et Arcadius AAAA. Neoterio pp.* **pr.** Nemo deinceps tardiores fortassis adfatus nostrae

indemnity to his partner in the contract. Thus, he may expect no restitution for what he gave from the most holy house, which he vainly injured, nor the effect (the benefit) of the transaction. As for his partner in the contract, he shall have full freedom by the laws to proceed against him, his heirs, and his property and to collect what was given, if he is able. Thus, if not from reverence toward God, at least from fear for their property and that of their heirs, they shall become less eager for such contracts, which they patently make to no good end, but rather do so corrupted by money or having succumbed to some fit of passion.

5. Putting an end to all these things by this divine law and decreeing that this law be registered in Our sacred laws, We dedicate it to God, Lord of All, and to Our Savior Jesus Christ, offering this too as a fine sacrifice worthy of Him.

Given September 12, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, for the fourth time, and the vir clarissimus *Paulinus (534).*

Fourth Title Episcopal Adjudication and Various Chapters Relating to the Rights, Responsibilities, and Reverence of Bishops

[1][121] *Emperors VALENTINIAN and VALENS Augusti to Julian, Count of the East.* Lest they seem to profit from commerce excessively, any merchants that belong to Our House shall see to it that they aid the Christians, belonging to the true faith, who are poor and in difficult circumstances.

Given April 17, at Constantinople, in the consulship of the deified Jovian and Varronianus (364).

[2][122] *The same Augusti to Claudius, Urban Prefect.* If a clergyman resorts to appeal for the purpose of delaying proceedings before a final ruling,[123] he shall be compelled to pay a fine of 50 pounds of silver, which the general decree[124] imposes on appellants of this kind. We desire that this sum not go to the Treasury but be faithfully spent on the poor.

Given July 8, in the consulship of Valentinian, Most Noble Boy, and Victor (369).

[3][125] *Emperors GRATIAN, VALENTINIAN, THEODOSIUS, and ARCADIUS Augusti to Neoterius, Praetorian Prefect.* **pr.** No one hereafter shall await the

[121] = C.Th. 13.1.5 (addressed to Secundus, Praetorian Prefect); combine with C. 4.63.1. The abridgement of this constitution by the CJ compilers has considerably altered its meaning.

[122] = C. 7.65.4a, where the constitution is correctly ascribed also to Gratian. Claudius was actually the Proconsul of Africa.

[123] That is, if he makes an *appellatio frustratoria* or *moratoria*.

[124] C.Th. 11.36.15–16.

[125] pr.-3 = C.Th. 9.38.8, §4 = C.Th. 9.38.6.

perennitatis expectet: exequantur iudices, quod indulgere consuevimus. ubi primum dies paschalis extiterit, nullum teneat carcer inclusum, omnium vincula solvantur. **1.** Sed ab his secernimus eos, quibus contaminari potius gaudia laetitiamque communem, si dimittantur, animadvertimus. **2.** Quis enim sacrilego diebus sanctis indulgeat? quis adultero vel stupri vel incesti reo tempore castitatis ignoscat? quis non raptorem virginis in summa quiete et gaudio communi persequatur instantius? **3.** Nullam accipiat requiem vinculorum, qui quiescere sepultos quadam sceleris immanitate non sinit: patiatur tormenta veneficus, maleficus, adulterator violatorque monetae: homicida et parricida quod fecit semper expectet: reus etiam maiestatis de domino, adversus quem talia molitus est, veniam sperare non debet.

4. His ergo tali quoque sub absolutione damnatis indultum nostrae serenitatis eo praecepti fine concludimus, ut remissionem veniae crimina nisi semel commissa non habeant, ne in eos liberalitatis Augustae referatur humanitas, qui impunitatem veteris admissi non emendationi potius quam consuetudini deputarunt.

D. v k. Mart. Mediolano Arcadio A. et Bautone vc. conss.

[4] *Imppp. Theodosius Arcadius et Honorius AAA. Rufino pp.* Mimae et quae ludibrio corporis sui quaestum faciunt publice habitu earum virginum, quae deo dicatae sunt, non utantur.

D. III k. Iul. Heracleae Arcadio A. III et Honorio A. II conss.

[5] *Impp. Arcadius et Honorius AA. Gennadio praefecto Augustali.* Archigerontes et dioecetae ergasiotanorum non nisi Christiani dirigantur. quod officium tuum sollicite observet excubiis.

D. non. Febr. Constantinopoli pp. Alexandriae Eutycheo Arcadio IIII et Honorio III AA. conss.

[6] *Idem AA. Rufino pp.* **pr.** Addictos supplicio et pro criminum immanitate damnatos nulli clericorum vel monachorum, eorum etiam, quos synoditas vocant, per vim atque usurpationem vindicare liceat ac tenere, sed reos ad locum poenae sub prosecutione pergentes nullus

utterances of Our Eternity, which perchance may be late: the governors shall carry out what We are accustomed to grant. As soon as the first day of Easter dawns, the jail shall hold no man shut inside it; the chains of all shall be loosened. **1.** But We separate from these persons those who, We have observed, instead spoil the common joy and happiness, if released. **2.** Who would show clemency to a sacrilegious man on holy days? Who at a time for chastity would pardon an adulterer or one guilty of debauchery or incest? Who would not persecute the ravisher of a virgin more insistently at a time of the greatest peace and general joy? **3.** He who by the grossness of his crime does not permit the dead to rest shall receive no rest from his chains. The poisoner, the sorcerer, and the counterfeiter and violator of coinage shall suffer torments. The homicide and parricide shall always await what they have done (killing); and one guilty of treason shall not hope for pardon from his master, against whom he plotted.

4. Therefore, for those condemned persons who are also eligible for such absolution, We restrict the indulgence of Our Serenity by this limitation of Our law: only crimes committed once shall receive pardon, lest the kindness of the August Generosity be conferred on those who considered forgiveness of their old offence not inspiration for improvement but an excuse for habit.

Given February 25, at Milan, in the consulship of Arcadius Augustus and the vir clarissimus *Bauto (385).*

[4][126] *Emperors* THEODOSIUS, ARCADIUS, *and* HONORIUS *Augusti to Rufinus, Praetorian Prefect.* Pantomime actresses and women who earn their livelihood by disgracing their body shall not publicly wear the dress of virgins dedicated to God.

Given June 29, at Heraclea, in the consulship of Arcadius, for the third time, and Honorius, for the second time, Augusti (394).

[5][127] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Gennadius, Augustal Prefect.* Only Christians shall be appointed elders and superintendents of workmen. Your staff shall observe this with diligent vigilance.

Given February 5, at Constantinople; posted in Alexandria in the Eutychianum, in the consulship of Arcadius, for the fourth time, and Honorius, for the third time, Augusti (396).

[6][128] *The same Augusti to Rufinus, Praetorian Prefect.* **pr.** No clergymen or monks, or yet those called "synodites,"[129] may by force or unlawful seizure

[126] = C.Th. 15.7.12.1; combine with C. 11.41.4. Seeck dates to May 30.
[127] = C.Th. 14.27.1 (with a considerably different text).
[128] = C. 7.62.29 (in part); C.Th. 9.40.16.pr.-1; §3 = C.Th. 11.30.57 (both to Eutychianus, Praetorian Prefect); combine with C. 1.3.11–12, 1.4.7, and C.Th. 16.2.33.
[129] A name for those who followed the Chalcedonian formula.

teneat aut defendat. **1.** Sed sciat se cognitor triginta librarum auri multa, primates officii capitali esse sententia feriendos, nisi usurpatio ista aut protinus vindicetur aut, si tanta clericorum aut monachorum audacia est, ut bellum potius quam iudicium futurum esse existimetur, ad clementiam nostram commissa referantur, ut nostro arbitrio mox severior ultio procedat. **2.** Ad episcoporum sane culpam ut cetera redundabit, si quid forte in ea parte regionis, in qua ipsi populos Christianae religionis doctrinae insinuatione moderantur, ex his, quae fieri hac lege prohibuimus, a monachis perpetratum esse cognoverint nec vindicaverint. **3.** Quibus in causa criminali humanitatis consideratione, si tempora suffragantur, interponendae provocationis copiam non negamus.

D. VI k. Aug. Mnizo Honorio A. IIII et Eutychiano conss.

[7] *Idem AA. Eutychiano pp.* Si qui ex consensu apud sacrae legis antistitem litigare voluerint, non vetabuntur, sed experientur illius (in civili dumtaxat negotio) arbitri more residentis sponte iudicium. quod his obesse non poterit nec debebit, quos ad praedicti cognitoris examen conventos potius afuisse quam sponte venisse constiterit.

D. VI k. Aug. Mediolani Honorio A. IIII et Eutychiano conss.

[8] *Imppp. Arcadius Honorius et Theodosius AAA. Theodoro pp.* Episcopale iudicium sit ratum omnibus, qui se audiri a sacerdotibus elegerint, eamque illorum iudicationi adhibendam esse reverentiam, quam vestris referre necesse est potestatibus, a quibus non licet provocare. per iudicum quoque officia, ne sit cassa episcopalis cognitio, definitioni executio tribuatur.

D. id. Dec. Basso et Philippo conss.

[9] *Impp. Honorius et Theodosius AA. Caeciliano pp.* **pr.** Iudices dominicis diebus productos reos e custodia carcerali videant interrogent, ne his humanitas clausis per corruptos carcerum custodes negetur: victualem substantiam non habentibus faciant ministrare libellis duobus aut tribus diurnis vel quot existimaverint commentarienses decretis, quorum

protect and detain men sentenced to punishment and condemned for the enormity of their crimes; no one shall detain or defend criminals proceeding under escort to the place of punishment. **1.** But the governor shall know that he shall be stricken with a fine of 30 pounds of gold, his chiefs of staff with capital punishment, unless either this usurpation is immediately punished or, if the audacity of the clergy or monks is so great that a war rather than a trial seems imminent, their crimes are reported to Our Clemency, so that at Our discretion still harsher retribution may ensue. **2.** It will indeed be laid to the fault of the bishops, as in other matters, if perchance, in the part of the region where they govern the peoples of Christian faith by instructing them in its teachings, they know that one of the acts that We forbid by this law has been committed by monks, yet do not punish it. **3.** By reason of compassion, We do not deny them the power of making an appeal in a criminal case, if time allows.

Given July 27, at Mnizum, in the consulship of Honorius Augustus, for the fourth time, and Eutychianus (398).

[7][130] *The same Augusti to Eutychianus, Praetorian Prefect.* If any persons agree to litigate before a bishop of the sacred law, they shall not be forbidden to do so, but they may voluntarily go to law in the court of the bishop, presiding as an arbiter, in civil cases only. It neither can nor should be held against anyone that, when summoned to the scrutiny of the aforesaid examiner, they are known to have stayed away rather than willingly come.

Given July 27, at Milan, in the consulship of Honorius Augustus, for the fourth time, and Eutychianus (398).

[8][131] *Emperors* Arcadius, Honorius, *and* Theodosius *Augusti to Theodorus, Praetorian Prefect.* An episcopal trial shall be valid for all who choose to be tried by bishops, and the same reverence must be paid to its adjudication as to your powers, from which it is not permitted to appeal. Also, lest episcopal hearings be in vain, their rulings must be carried out by the official staffs of the governors.

Given December 13, in the consulship of Bassus and Philippus (408).

[9][132] *Emperors* Honorius *and* Theodosius *Augusti to Caecilianus, Praetorian Prefect.* **pr.** Governors shall see to it on Sundays that they question accused persons brought forth from the custody of the prison, so that humane treatment shall not be denied to the incarcerated by corrupt guards. The governors shall have victuals provided to those who have none by decreeing two or three small

[130] Combine with C. 1.4.6, and constitutions mentioned there.
[131] = C.Th. 1.27.2
[132] = C.Th. 9.3.7; combine with C. 1.55.7–9, 4.20.11, C.Th. 9.2.5–6, 9.31.1, 9.36.2, 9.37.4.

sumptibus proficiant alimoniae pauperum: quos ad lavacrum sub fida custodia duci oportet. **1.** Multa iudicibus viginti librarum auri et officiis eorum eiusdem ponderis constituta, ordinibus quoque trium librarum auri multa proposita, si saluberrima statuta contempserint. nec deerit antistitum Christianae religionis cura laudabilis, quae ad observationem constituti iudicis hanc ingerat monitionem.

D. VIII k. Febr. Ravennae Honorio VIII et Theodosio III AA. conss.

[10] *Idem AA. Caeciliano pp.* **pr.** Mathematicos, si non parati sint codicibus erroris proprii sub oculis episcoporum incendio concrematis catholicae religionis cultui fidem tradere numquam ad errorem praeteritum redituri, non solum urbe Roma, sed etiam omnibus civitatibus pelli decernimus. **1.** Qui si hoc non fecerint et contra clementiae nostrae salubre constitutum in civitatibus fuerint comprehensi vel secreta erroris sui et professionis insinuaverint, deportationis poenam excipiant.

D. k. Febr. Ravenna Honorio VIII et Theodosio III AA. conss.

[11] *Idem AA. Theodoro pp.* Christianos proximorum locorum volumus sollicitudinem gerere, ut Romanos captivos qui reversi fuerint nemo teneat, nemo iniuriis aut damnis adficiat.

D. III id. Dec. Ravenna Honorio VIII et Theodosio III AA. conss.

[12] *Impp. Theodosius et Valentinianus AA. Florentio pp.* Si lenones patres vel domini suis filiabus vel ancillis peccandi necessitatem imposuerint, liceat filiabus vel ancillis episcoporum implorato suffragio omni miseriarum necessitate absolvi.

D. XI k. Mai. Felice et Tauro conss.

[13] *Imp. Marcianus A. Constantino pp.* **pr.** Decernimus, ut, quicumque catholicarum ecclesiarum, quae sub viro religiosissimo archiepiscopo

coins (*libellae*) a day, or however many the jailors (*commentarienses*) consider sufficient; the alms for the poor shall go toward their expenses. They shall be brought to a bath under trusty guard. **1.** A fine of 20 pounds of gold has been established for governors, and the same amount for their staffs, and a fine of 3 pounds of gold has been fixed for city councils (*ordines*), if they ignore these most salutary provisions. Nor shall the praiseworthy supervision of Christian bishops be lacking, who shall impose on the current governor a warning to observe this law.

Given January 25, at Ravenna, in the consulship of Honorius, for the eighth time, and Theodosius, for the third time, Augusti (409).

[10][133] *The same Augusti to Caecilianus, Praetorian Prefect.* **pr.** We decree that astrologers (*mathematici*) shall be expelled not only from the city of Rome, but from all cities, unless they are prepared to entrust themselves to the worship of the Catholic faith, never to return to their past error, after the books of their error have been burned before the eyes of the bishops. **1.** If they do not do this and, contrary to the salutary decree of Our Clemency, are caught in the cities or should spread the mysteries of their error and profession, they shall receive the punishment of deportation.

Given February 1, at Ravenna, in the consulship of Honorius, for the eighth time, and Theodosius, for the third time, Augusti (409).

[11][134] *The same Augusti to Theodorus, Praetorian Prefect.* We desire that the Christians in the nearest places (to the Roman frontier) take care that no one detains Roman captives who have returned, that no one inflicts outrages or loss on them.

Given December 11, at Ravenna, in the consulship of Honorius, for the eighth time, and Theodosius, for the third time, Augusti (409).

[12][135] *Emperors* Theodosius *and* Valentinian *Augusti to Florentius, Praetorian Prefect.* If fathers or slave masters acting as pimps impose the necessity of sinning on their daughters or slave girls, the daughters or slave girls may implore the aid of the bishops and be released from all the duress of their miseries.

Given April 21, in the consulship of Felix and Taurus (428).

[13][136] *Emperor* Marcian *Augustus to Constantinus, Praetorian Prefect.* **pr.** We decree that whosoever should wish to sue the most reverend steward of the

133 = C.Th. 9.16.12.
134 = C.Th. 5.7.2, Sirm. 16; combine with C. 8.50.20. Seeck dates to December 3, 408, on the basis of the Sirmondian constitution; Krüger also prefers this.
135 = C. 11.41.6, C.Th. 15.8.2.
136 Combine perhaps with C. 1.3.25.

huius almae urbis sunt, reverentissimum oeconomum sive de ecclesiasticis sive de propriis et ad ipsum solum pertinentibus causis vel quemcumque alterum earundem ecclesiarum clericum aliqua voluerit lite pulsare, apud memoratum beatissimum archiepiscopum causam dicat in negotiis audiendis fidem ac sinceritatem geminam praebiturum et sacerdotis et iudicis. **1.** Volentibus tamen actoribus pateat episcopale iudicium: ac nullus, qui huiuscemodi intendit in sacrosanctas ecclesias vel praedictos clericos actionem, ad religiosissimum antistitem cognitorem ducatur invitus.

D. VIII ... April. Varane et Iohanne conss.

[**14**] *Αὐτοκράτωρ Λέων αὐτῷ δήμῳ.* **pr.** Μήτε δοῦλον μήτε ἐλεύθερον σῶμα τολμάτω τις εἰς πορνείαν προάγειν ἢ προϊστάναι, μηδὲ εἰ θυμελικὸς εἴη ἢ ἄλλως σκηνικός. εἰ δὲ δοῦλον εἴη τὸ προσταχθέν,[xv] ἐκδικείσθω εἰς ἐλευθερίαν παρὰ παντὸς προσιόντος δίχα τινὸς δαπάνης τοῖς κατὰ τόπον ἄρχουσιν ἢ τοῖς θεοφιλεστάτοις ἐπισκόποις. **1.** Οἷς μελήσει τὸ μηδὲ ἄκουσαν γυναῖκα δούλην ἢ ἐλευθέραν συνεῖναι συγχωρεῖν μίμοις ἢ χοροῖς ἢ ἄλλην θέαν ἐν τοῖς θεάτροις ἐκτελεῖν ἀναγκάζεσθαι.

[**15**] *Impp. Leo et Anthemius AA. Nicostrato pp.* Nemo vel in foro magnitudinis tuae vel in provinciali iudicio vel apud quemquam iudicem accedat ad togatorum consortium, nisi sacrosanctis catholicae religionis fuerit imbutus mysteriis. sin autem aliquid quoquo modo vel quadam machinatione factum vel attemptatum fuerit, officium quidem sublimitatis tuae centum librarum auri iacturam pro condemnatione sustineat, idem vero, quicumque ausus fuerit contra providum nostrae serenitatis decretum officium advocationis per subreptionem adripere et prohibitum patrocinium praestiterit, advocationis officio remotus stilum proscriptionis atque perpetui exilii specialiter sustinebit: scituris etiam provinciarum rectoribus, quod is, sub cuius administratione aliquid huiusmodi fuerit attemptatum, partis bonorum dimidiae proscriptionem et poenam exilii per quinquennium sustinebit.

D. pridie k. April. Constantinopoli Anthemio A. II cons.

[**16**] *Idem AA. Erythrio pp.* Si legibus prohibitae non sint speratae nuptiae et post arras sponsalicias sponsa coniugium sponsi propter religionis diversitatem recusaverit, si quidem probatum fuerit ante datas

[xv] προσταθέν

Catholic churches under the jurisdiction of the most pious archbishop of This Generous City or any other clergyman of these churches, whether concerning matters pertaining to the Church or pertaining to the plaintiff alone, he shall plead his case before the aforementioned most blessed archbishop, who in hearing such cases shall show double honesty and integrity, both as a priest and as a judge. **1.** It is to consenting litigants, however, that the episcopal court is open. And no one who brings such an action against the holy churches or the aforesaid clergymen may be brought unwillingly before the most pious (arch) bishop (*antistes*) as judge.

Given (...)[137] *in the consulship of Varanes and John (456).*

[14][138] *Emperor LEO Augustus to the People.* **pr.** No one shall dare to lead into prostitution or prostitute either a slave or free person, not even if he is an actor or some other manner of stage-worker. If the prostituted person is a slave, he may be claimed as free without any payment by anyone who approaches the local magistrates or most reverend bishops. **1.** It shall be their responsibility to ensure that no slave or free woman is forced against her will to associate with pantomime actors or choruses or to exhibit any other spectacle in theaters.

[15][139] *Emperors LEO and ANTHEMIUS Augusti to Nicostratus, Praetorian Prefect.* No one shall be admitted to the Order of Advocates (*togatorum consortium*), either in the court of Your Greatness or in a provincial court or before any judge, unless he has been initiated in the holy mysteries of the Catholic faith. If, however, any such thing is done or attempted by any means or by some contrivance, the staff of Your Sublimity shall suffer the loss of 100 pounds of gold, if found guilty. He, however, who dares to seize the position of Advocate secretly, contrary to the prudent decree of Our Serenity, and provides illicit patronage, shall be removed from his position as Advocate and suffer the sentence of confiscation and permanent exile. The provincial governors, too, must know that anyone under whose administration anything of this sort is attempted shall have half his property confiscated and be sent into exile for five years.

Given March 31, at Constantinople, in the consulship of Anthemius Augustus, for the second time (468).

[16][140] *The same Augusti to Erythrius, Praetorian Prefect.* If a prospective marriage is not forbidden by the statutes, and the bride-to-be, after receiving the earnest money for engagement, refuses to marry her fiancé on account of

[137] *D. viii ... April.:* the date is thus either March 25 (preferred by Seeck) or April 6.
[138] = C. 11.41.7, which is used to reconstruct the inscription. Date 457–468.
[139] = C. 2.6.8.
[140] = C. 5.1.5.3; combine with C. 1.18.13, 5.6.8, 5.30.3.

easdem arras sponsalicias hoc idem mulierem vel parentes eius cognovisse, sibi debeant imputare. si vero horum ignari sponsalicias arras susceperint vel post arras datas talis causa paenitentiae intercesserit, isdem tantummodo redditis super alterius simpli poena liberi custodiantur. quod simili modo etiam de sponsis super recipiendis nec ne arris praestitis custodiri censemus.

D. k. Iul. Constantinopoli Marciano cons.

[17] [*Αὐτοκράτωρ Ἀναστάσιος Α.*], ... Θεσπίζομεν σιτώνην ..., Ὅταν ἔν τινι πόλει σιτώνου γένηται χρεία, κατὰ δοκιμασίαν καὶ ἐπιλογὴν καθ' ἑκάστην πόλιν ἐπισκόπου καὶ τῶν ἐν τοῖς κτήτορσι πρωτευόντων γινέσθω ἡ ἐπὶ αὐτῷ προβολή, οὐ κατὰ τὸ δοκοῦν τοῖς προβαλλομένοις οὐδὲ ἐφ' οἷς ἂν βουληθείησαν προσώποις, ἀλλὰ μόνων τῶν ἐπὶ τῆς χώρας ἐκείνης ταξεωτῶν τῶν στρατευομένων καὶ τῶν ἀποθεμένων τὴν τάξιν, διὰ τῶν εἰρημένων προσώπων πρὸς τὴν σιτωνίαν προβαλλομένων, ἐπειδὴ εὐχερέστερον οὗτοι ταῖς δημοσίαις χρείαις ἐντετριμμένοι ἐκ μακρῶν χρόνων τὸ τῆς σιτωνίας διανύουσι βάρος. ὁ δὲ παραβαίνων ἢ παραβαθῆναι συγχωρῶν τὸν νόμον λ' χρυσίου λίτρας ἐπιτίμιον καταβαλλέτω.

[18] [*Ὁ αὐτὸς βασιλεύς*]. ... Θεσπίζομεν ... Οἱ ὑφεστῶτες καὶ τῇ παραφυλακῇ προσκαρτεροῦντες στρατιῶται ἐν τοῖς σεδέτοις αὐτῶν τὸ προσφερόμενον εἶδος ἐκ τῶν ἐν τῇ πόλει ἢ τῇ ἐνορίᾳ αὐτῆς γεωργουμένων δεχέσθωσαν ὑπὲρ τῶν ἀννόνων αὐτῶν δοκιμασίᾳ τοῦ ἐπισκόπου καὶ τοῦ ἄρχοντος ἢ τοῦ ἐκδίκου ἐξ ἀπολείψεως τοῦ ἄρχοντος, καὶ οὐκ ἀναγκάζεται ὁ συντελεστὴς ἀπαργυρισμὸν διδόναι.

[19] *Idem A. Eustathio pp.* Iubemus eos tantummodo ad defensorum curam peragendam ordinari, qui sacrosanctis orthodoxae religionis imbuti mysteriis hoc imprimis sub gestorum testificatione, praesente quoque religiosissimo fidei orthodoxae antistite, per depositiones cum sacramenti religione celebrandas patefecerint. ita enim eos praecipimus ordinari, ut reverentissimorum episcoporum nec non clericorum et honoratorum ac possessorum et curialium decreto constituantur.

difference of religion, if then it should be shown that the woman or her parents knew of this fact before the aforesaid earnest money for engagement was given, they shall have no one but themselves to blame (for its loss). But if, in fact, they accepted the earnest money for engagement in ignorance of such matters, or some just reason for rescinding the engagement arose thereafter, once they have returned only as much as they received, they shall be freed from the obligation of paying the same amount beyond this as a penalty. We rule that this shall in like manner apply to grooms as to whether they shall receive back the betrothal money given, or not.

Given July 1, at Constantinople, in the consulship of Marcianus (472).

[17][141] (*Emperor ANASTASIUS Augustus*) ... We decree that a purveyor of grain (*sitonēs*) ... Whenever there is need in any city for a purveyor of grain, his appointment shall be made according to the judgment and choice of the bishop of the city and of the foremost landholders, not according to the opinion of those who nominate candidates nor from among the persons that they desire; but only members of the provincial staff (*taxeotai*) of the region, who are serving or have served, shall be elected purveyors by the aforementioned persons, inasmuch as they who are versed in public affairs from long service will more easily bear the burden of the office of purveyor. Whoever violates this law or permits it to be violated shall pay a fine of 30 pounds of gold.

(491–505).

[18][142] (*The same Emperor*) ... We decree ... Soldiers present and performing guard duty in their stations shall receive the appropriate amount in kind for their rations (*annonae*) from the farmers of the city or its territory, according to the estimation of the bishop and the governor or defender (of the city) in default of a governor; and the tax payer shall not be forced to convert his payment into cash.

(491–505)

[19][143] *The same Augustus to Eustathius, Praetorian Prefect.* We order that only those persons shall be appointed to perform the duties of defenders who have been initiated in the holy mysteries of the orthodox faith and have demonstrated this specifically by declaration in the public records and depositions to be made solemnly under oath in the presence of a most pious bishop of the orthodox faith. We order that defenders be appointed in such a way that they are installed by the resolution of the most reverend bishop and clergymen, men of rank, landholders, and curials.

[141] Partly = C. 10.27.3 pr., from which Krüger has restored the inscription.
[142] = C. 12.37.19.
[143] = C. 1.55.11.

D. XIII k. Mai. Sabiniano et Theodoro conss.

[20] [*Αὐτοκράτωρ Ἰουστινιανὸς Α.*] Οὐδεὶς στρατεύεται, εἰ μὴ ἐν ὑπομνήμασι μαρτυρηθῇ ἐπὶ τριῶν ἐπὶ τῶν ἁγίων εὐαγγελίων Χριστιανὸς ὀρθόδοξος, συνισταμένης τῆς πράξεως παρὰ τῷ ἄρχοντι, ἔνθα μέλλει στρατεύεσθαι, δύο νομισμάτων ὑπὲρ αὐτῆς διδομένων. εἰ δὲ τοῦτο παραμεληθῇ, δίδωσιν ὁ ἄρχων πεντήκοντα λίτρας καὶ ἡ τάξις αὐτοῦ κʹ καὶ ὁ στρατευσάμενος ιʹ καὶ ἐκβάλλεται καὶ οἱ ψευδομαρτυρήσαντες σωματικῶς τιμωροῦνται καὶ αἱ ποιναὶ τοῖς πριβάτοις εἰσάγονται κινδύνῳ τοῦ κόμητος.

[21] *Idem A. Menae pp.* **pr.** Si praesens quidem sit, qui pecuniam numerasse vel alias res dedisse scriptus est, aliquam vero administrationem in provinciis gerat, ut difficile esse videatur denuntiationem eidem non numeratae pecuniae mittere, licentiam damus ei, qui memorata exceptione uti velit, alios iudices adire et per eos manifestare, cui exceptionem huiusmodi obicit, factam a se super non numerata pecunia querellam esse. **1.** Quod si non sit alius administrator civilis vel militaris vel per aliquam causam difficile sit ei qui memoratam querellam opponit adire eum et ea quae dicta sunt facere, licentiam damus et per virum reverentissimum episcopum eandem suam exceptionem creditori manifestare et ita tempus statutum interrumpere. **2.** Quod etiam in exceptione non numeratae dotis locum habere receptum est.

D. k. Iul. Constantinopoli dn. Iustiniano A. II cons.

[22] *Ὁ αὐτὸς βασιλεὺς Μηνᾷ ἐπάρχῳ πραιτωρίων.* **pr.** Οὐδένα ἐμβάλλεσθαι ἐν φυλακῇ δίχα προστάξεως τῶν κατὰ τὴν εὐδαίμονα ταύτην πόλιν ἢ ἐν ἐπαρχίᾳ ἐνδόξων ἢ περιβλέπτων ἢ λαμπροτάτων ἀρχόντων ἢ τῶν ἐν ταῖς πόλεσιν ἐκδίκων βουλόμεθα. **1.** Ἐπὶ δὲ τῶν ἐμβληθέντων ἢ ἐμβαλλομένων τοὺς θεοφιλεστάτους τῶν τόπων ἐπισκόπους μίαν ἑκάστης ἑβδομάδος ἡμέραν τὴν τετράδα ἢ τὴν παρασκευὴν τοὺς ἐν ταῖς φυλακαῖς διερευνᾶσθαι καὶ σὺν ἀκριβείᾳ μανθάνειν τὰς τῆς αὐτῶν κατοχῆς αἰτίας καὶ εἴτε οἰκέται τυγχάνοιεν ὄντες εἴτε ἐλεύθεροι, εἴτε ἐπὶ χρήμασιν εἴτε ἐπὶ ἄλλοις ἐγκλήμασιν εἴτε ἐπὶ φόνοις ἐμβεβλημένοι. **2.** Παρασκευάζειν τοὺς ἐνδοξοτάτους καὶ περιβλέπτους καὶ λαμπροτάτους ἄρχοντας ταύτης τε τῆς εὐδαίμονος πόλεως καὶ τῶν ἐπαρχιῶν ἐκεῖνα πράττειν ἐπ᾽ αὐτοῖς,

Given April 19, in the consulship of Sabinianus and Theodorus (505).

[20] (*Emperor Justinian Augustus.*) No one shall serve in the imperial service unless he is confirmed in the official records as an orthodox Christian by the testimony of three witnesses (swearing) upon the holy gospels. The record shall be made before the governor where he shall serve, having paid 2 solidi for it. If this regulation is violated, the governor shall pay 50 pounds of gold, his staff 20 pounds, and the prospective clerk 10 pounds; and he shall be expelled, and those who bore false witness shall receive corporal punishment; the penalties shall be added to the Privy Purse (*res privata*) at the peril of the Count.[144]

[21][145] *The same Augustus to Menas, Praetorian Prefect.* **pr.** If someone who is alleged to have paid money or delivered other things is present but holds some administrative post in the provinces, so that it seems difficult to serve him with an accusation of money not paid (*denuntiatio non numeratae pecuniae*), We grant him who wishes to make use of this defense permission to go before other judges and, through them, to make known to the person against whom he uses this defense that he has made a complaint of money not paid. **1.** But if there is no other civil or military administrator, or it is for some other reason difficult for him who objects with the aforementioned complaint to go before him and do what has been said, We give him permission to make known his defense to his creditor also through the most reverend bishop and thus interrupt the established period of time. **2.** It is accepted that this also applies to the defense of a dowry not paid (*exceptio non numeratae dotis*).

Given June 1, at Constantinople, in the consulship of Our Lord Justinian Augustus, for the second time (528).

[22][146] *The same Augustus to Menas, Praetorian Prefect.* **pr.** We desire that no one be thrown in prison in This Blessed City or in the Provinces unless by order of the *viri illustres, viri spectabiles*, or *viri clarissimi* magistrates or the Defenders of the cities. **1.** Moreover, concerning those who have been or shall be imprisoned, the most reverend bishops of each place shall examine them in prison once a week on the fourth day or on the Day of Preparation[147] and carefully learn the reasons for their imprisonment and whether they are slaves or free men, whether they were imprisoned for debt or for other charges or for murder. **2.** The *viri illustres, spectabiles*, and *clarissimi* magistrates of This Blessed City and the provinces shall ensure that the prisoners are treated as

144 The subscription is lost, but Lounghis *et al.* date to 519/520 (under Justin).

145 = C. 4.30.14.5–6 (with some changes); combine with C. 4.2.17, 4.20.18, 4.21.17, 4.30.15(?), 5.15.3, 10.22.4 (whence the date is emended).

146 §2 = C. 9.4.6; combine with C. 1.4.23, 9.5.2, 9.47.26.

147 Preparation for the Sabbath, i.e., Friday.

ἅπερ ἡ πρὸς τοὺς ἐνδοξοτάτους ἐπάρχους περὶ τούτου καταπεμφθεῖσα θεία ἡμῶν διαγορεύει διάταξις, ἀδείας διδομένης τοῖς κατὰ καιρὸν θεοφιλεστάτοις ἐπισκόποις, εἴ τινα ῥᾳθυμίαν ἴδοιεν γινομένην παρὰ τῶν κατὰ καιρὸν ἐνδοξοτάτων καὶ μεγαλοπρεπεστάτων καὶ λαμπροτάτων ἀρχόντων ἢ παρὰ τῶν πειθομένων αὐτοῖς τάξεων, ταύτην μηνύειν, ὡς ἂν ἡ προσήκουσα κατὰ τῶν ῥᾳθυμούντων ἐνεχθείη κίνησις.

D. XV k. Febr. Constantinopoli Decio cons.

[23] *Ὁ αὐτὸς βασιλεὺς Μηνᾷ ἐπάρχῳ πραιτωρίων.* Ἰδιωτικὰς φυλακὰς πᾶσι τρόποις ἐν πόλεσιν ἢ ἐν κώμαις ἀπαγορεύομεν καθίστασθαι, αὐτῶν δηλαδὴ τῶν κατεχομένων προνοίᾳ τῶν κατὰ τόπον θεοφιλεστάτων ἐπισκόπων τῆς κατοχῆς ἀφιεμένων.

D. XII k. Febr. Constantinopoli Decio cons.

[24] *Idem A. Demostheni pp.* Nemini licere volumus, sive ab ingenuis genitoribus puer parvulus procreatus sive a libertina progenie sive servili condicione maculatus expositus sit, eum puerum in suum dominium vindicare sive nomine dominii sive adscripticiae sive colonariae condicionis: sed neque his, qui eos nutriendos sustulerunt, licentiam concedi penitus (cum quadam distinctione) eos tollere: sed nullo discrimine habito ii, qui ab huiusmodi hominibus educati vel nutriti vel aucti sunt, liberi et ingenui appareant et sibi adquirant et in posteritatem suam vel extraneos heredes omnia quae habuerint, quo modo voluerint, transmittant. haec observantibus non solum praesidibus provinciarum, sed etiam viris religiosissimis episcopis.

D. XV k. Oct. Chalcedone Decio vc. cons.

[25] *Ὁ αὐτὸς βασιλεὺς Δημοσθένει ἐπάρχῳ πραιτορίων.* Ὅσα περὶ τῶν καλουμένων κύβων ἤτοι κόττων καὶ τῆς τούτων κωλύσεως ἡμῖν νενομοθέτηται, ταῦτα ἄδειαν δίδομεν καὶ τοῖς θεοφιλεστάτοις ἐπισκόποις καὶ ἀνερευνᾶν καὶ γινόμενα παύειν καὶ τοὺς ἀκοσμοῦντας διὰ τῶν λαμπροτάτων ἀρχόντων τῶν ἐπαρχιῶν καὶ τῶν πατέρων καὶ τῶν ἐκδίκων τῶν πόλεων ἐπὶ σωφροσύνην ἐπανάγειν.

D. X k. Oct. Constantinopoli Decio cons.

[26] *Ὁ αὐτὸς βασιλεὺς Ἰουλιανῷ ἐπάρχῳ πραιτωρίων.* **pr.** Περὶ τῶν καθ' ἕκαστον ἔτος ταῖς πόλεσι προσιουσῶν πολιτικῶν προσόδων ἢ πόρων ἐκ δημοσίων ἢ ἐξ ἰδιωτικῶν χρημάτων παρά τινων αὐταῖς ἢ καταλιμπανομένων

Our divine decree dispatched to the Most Illustrious Prefects dictates concerning this matter. Permission is granted to the most reverend bishops currently in office to report to Us any negligence that they should observe on the part of the *viri illustres, spectabiles*, and *clarissimi* magistrates or on the part of the official staffs that obey them, so that appropriate punishment may be inflicted upon the negligent.

Given January 18, at Constantinople, in the consulship of Decius (529).

[23][148] *The same Augustus to Menas, Praetorian Prefect.* We entirely forbid the establishment of private jails in cities or villages; those held therein shall be released from imprisonment by the diligence of the most reverend local bishops.

Given January 18, at Constantinople, in the consulship of Decius (529).

[24][149] *The same Augustus to Demosthenes, Praetorian Prefect.* If a small boy has been exposed, whether he was born of free-born parents or is of freedman extraction or is tainted by the status of a slave, We desire that no one be permitted to claim him as his property, whether as slave, as a bound tenant (*adscripticius*), or as a free tenant (*colonus*); nor may those who undertake to rear such children raise them with any distinction whatsoever. Children raised or reared or brought up by such people shall, without any distinction, be considered free and free-born and may acquire property and leave all that they have to their posterity or to outside heirs as they wish. Not only shall the provincial governors observe these provisions, but the most pious bishops as well.

Given September 17, at Chalcedon, in the consulship of the vir clarissimus *Decius (529).*

[25][150] *The same Augustus to Demosthenes, Praetorian Prefect.* Regarding what We have legislated concerning the game called dice or *kottoi* and its prohibition, We grant the most reverend bishops the right to investigate and stop its occurrence and to bring offenders to reason (by punishment) through the *viri clarissimi* provincial governors and the fathers and defenders of the cities.

Given September 22, at Constantinople, in the consulship of Decius (529).

[26][151] *The same Augustus to Julian, Praetorian Prefect.* **pr.** Concerning the income which accrues yearly to the cities, whether from public revenue or private funds left, donated, or otherwise intended or made over to them by

[148] = C. 9.5.2 (in part); combine with C. 1.4.22 (whence the date here is emended), 9.4.6, 9.47.26.
[149] = C. 8.51.3 pr.-1, 3.
[150] = C. 3.43.1.3 (Latin summary).
[151] Combine with C. 3.10.2(?), 12.40.12. Parts of this constitution = C. 10.30.4.

ἢ δωρουμένων ἢ ἄλλως ἐπινοουμένων ἢ περιποιηθησομένων, εἴτε εἰς ἔργα εἴτε εἰς σιτωνίαν εἴτε εἰς δημόσιον ὁλκὸν εἴτε εἰς ἐκκαύσεις βαλανείων εἴτε εἰς λιμένας εἴτε εἰς τειχῶν ἢ πύργων οἰκοδομὰς ἢ γεφυρῶν ἢ ὁδοστρωσιῶν ἐπανόρθωσιν ἢ ἁπλῶς εἰς τὰς τῶν πολιτικῶν χρείας προχωρούντων, εἴτε ἀπὸ δημοσίων εἴτε ἀπὸ ἰδιωτικῶν ὡς εἴρηται προφάσεων, θεσπίζομεν εἰς ταὐτὸν συνιόντας τὸν θεοφιλέστατον ἐπίσκοπον τρεῖς τε τῶν εὐυπολήπτων καὶ ἐν ἅπασι προεχόντων κατὰ τὴν πόλιν ἔτους ἑκάστου ἐποπτεύειν τε τὰ γενόμενα ἔργα καὶ παρασκευάζειν μετρεῖσθαι καὶ λογοθετεῖν τοὺς ταῦτα διοικοῦντας ἢ διοικήσαντας, καὶ ἐπὶ πράξεως ὑπομνημάτων φανερὸν γίνεσθαι τὸ πεπληρῶσθαι τὰ ἔργα, ἢ δεδιοικῆσθαι τά τε σιτωνικὰ χρήματα τά τε λουτρωνικὰ ἢ περὶ ὁδοστρωσίας ἢ περὶ ὁλκοὺς ὑδάτων ἢ ἕτερα τοιαῦτά τινα. **1.** Ἅπερ ἅπαντα ἀμείωτα μένειν εἰς τὸν ἅπαντα βουλόμεθα χρόνον καὶ ἐπὶ τῆς πράξεως τῶν ὑπομνημάτων δηλοῦσθαι, ὡς ἀνεύθυνός ἐστιν ὁ ταῦτα διοικήσας ἢ καὶ ὑπεύθυνος μὲν ὤφθη, τὸ δὲ ὀφειλόμενον ἀπέδωκεν· καὶ οὕτως ἔχειν ἀσφάλειαν τὸν ταύτης τετυχηκότα τῆς πράξεως. στελοῦμεν γὰρ ἡμεῖς, ἡνίκα ἂν βουληθείημεν, τὸν ἡμῖν δοκοῦντα, ὃς ἐποπτεύσει τὰ παρ' αὐτῶν γενόμενα λογοθέσια καί, εἴπερ ὀρθῶς ἔχοντα εὕροι, ψῆφον ποιήσεται τὸ ἀσφαλὲς αὐτοῖς καὶ κληρονόμοις αὐτῶν καὶ διαδόχοις τελείως περιποιοῦσαν, ἐφ' ᾧ μηκέτι δευτέρων λόγων ἢ ζητήσεων ἀφορμὰς ὑπολελεῖφθαι. πάντων ἐπὶ τῶν ἁγίων εὐαγγελίων οὕτως σὺν ἀκριβείᾳ πραττομένων, ὡς τῆς ἡμετέρας αὐτοῖς ἐπιστησομένης, ἡνίκα ἂν βουληθείημεν, ἐξετάσεως.

2. Χρὴ μέντοι σπεύδειν τὸν θεοφιλέστατον ἐπίσκοπον καὶ τοὺς σὺν αὐτῷ ποιουμένους τοὺς λογισμούς, ὅπως, ἂν τὰ ἔργα εἰς ἀπέραντα τῆς δαπάνης ἀφορισθῇ, καθ' ἕκαστον ἔτος ἐπιμελῶς γένοιτο ἐκ τῶν πολιτικῶν ἀνανεούμενα πόρων τε καὶ προσόδων.

3. Εἰ μέντοιγε μὴ βουληθείη λογισμοὺς ὑποσχεῖν ὁ ταῦτα διοικήσας μηδὲ ἀνάσχοιτο τοῦ θεοφιλεστάτου τῶν τόπων ἐπισκόπου καὶ τῶν κτητόρων τῶν πρὸς τοῦτο ἀφωρισμένων εἰς λογισμοὺς αὐτὸν καλούντων, τηνικαῦτα ἀναγκάζεσθαι τοῦτο πράττειν διὰ τοῦ λαμπροτάτου τῆς ἐπαρχίας ἄρχοντος καὶ τῆς πειθομένης αὐτῷ τάξεως, ζημίας πάσης χωρὶς συνωθούμενον, ἐφ' ᾧτε πᾶσι τρόποις λογισμοὺς ὑπέχειν τῷ θεοφιλεστάτῳ τῆς πόλεως ἐπισκόπῳ καὶ τοῖς πρωτεύουσι τῶν πόλεων καὶ τὸ φαινόμενον ἐποφείλεσθαι παρ' αὐτοῦ ἀποδοῦναι τῇ πόλει.

4. Πᾶσαν δὲ ἄδειαν ἀναιροῦμεν τοῖς ἡμετέροις ἄρχουσι πέμπειν ἐν ταῖς χώραις discussoras ἢ λογοθέτας ἢ ἐξισωτὰς ἐπὶ ταῖς τῶν δημοσίων λογισμῶν ἐξετάσεσιν· ἀλλ' εἴ τι τοιοῦτο πράξαιεν παρὰ γνώμην ἡμετέραν, τηνικαῦτα, εἰ μὲν θεῖός τισι τύπος κατὰ συναρπαγὴν πορισθείη, ἄδειαν εἶναι τῷ θεοφιλεστάτῳ τῆς πόλεως ἐπισκόπῳ προσδέχεσθαι μὲν τὸν θεῖον τύπον, μηνύειν δὲ εἰς ἡμᾶς, ὅπως ἂν ἡμεῖς γνοίημεν, εἴτε κατὰ θείαν ἡμῶν πρόσταξιν πρὸς αὐτὴν τὴν ἀρχὴν γεγραμμένην εἴτε κατὰ συναρπαγὴν γέγονεν, ὥστε εἰ κατά τινα γενόμενος φανείη συναρπαγήν, τηνικαῦτα τὸ γενόμενον ἄκυρον εἶναι κίνδυνόν τε ὑποστῆναι τὸν τοῦτο πορισάμενον.

anyone; whether for public works, the grain supply, a public aqueduct, the heating of baths, harbors, the construction of walls or towers, the repair of bridges or paving of roads, or, in short, for any necessary expenses of the cities; whether, as has been said, from private or public sources, We decree that the most reverend bishop and three distinguished and in all respects eminent men of the city shall meet yearly and inspect the works underway, and they shall take care to moderate and call to account those who are or were the administrators; and (take care) that it is made clear in the public records that the works have been completed and that the money for grain or baths or roadworks or aqueducts and any other such things has been administered. **1.** We desire that all these regulations remain undiminished for all time, and that it shall appear by the making of a public record whether he who managed these works is free of liability or, if he is indeed liable, whether he has repaid the amount owed; and in this way whoever shall have supervised this work shall be protected. For We shall dispatch, whenever We please, one whom We deem fit, who shall examine the accounts kept by them; and if he finds them in order, he shall decree to them, their heirs, and their successors abiding immunity, whereby no further grounds for a second account or inquiries shall remain. All this shall be done scrupulously (by oath) upon the Holy Gospels, when Our inquiry is upon them, at the time We wish.

2. The most reverend bishop and those reviewing the accounts with him must ensure that, if any works require indefinite outlay, they are diligently maintained each year from the public income and revenue.

3. If the administrator refuses to render an account and does not submit to the most reverend local bishop and the landholders chosen for this purpose, calling him to account, then he shall be forced to do so by the *vir clarissimus* provincial governor and the staff under him, being compelled, without any penalty, to give a complete account to the most reverend bishop of the city and to the preeminent men of the cities and to pay the city the amount found to be owed by him.

4. We remove from Our governors all power to dispatch auditors (*discussores, logothetai*) or tax-assessors in the cities to examine public accounts; but if they should do such a thing against Our wish, then, if a sacred rescript should be produced by some, the most reverend bishop has permission to receive the sacred rescript but shall inform Us, so that We may decide whether it was written to the aforementioned official by Our order or was obtained surreptitiously; and if it should appear to have been obtained illicitly, then it shall be void and whoever has obtained it shall be in peril.

5. Εἰ δέ τινος τῶν ἡμετέρων ἀρχόντων πεμφθείη ψῆφος ἢ καὶ κομμωνιτώριον ἢ πρόσταγμά τι καὶ λογοθέσιον περὶ τούτων τῶν προειρημένων κεφαλαίων ἐπιτραπείη, παντὶ βουλόμεθα τρόπῳ τὸν θεοφιλέστατον τῆς πόλεως ἐπίσκοπον καὶ τοὺς ἐν τῇ πόλει πρωτεύοντας μὴ προσίεσθαι ταῦτα, ἀλλὰ ἄδειαν εἶναι καὶ τῷ τῆς ἐπαρχίας ἡγουμένῳ καὶ αὐτοῖς γε δὴ τοῖς κτήτορσι καὶ πολίταις διωθεῖσθαι τὰς τοιαύτας προστάξεις καὶ μηδὲ ὀβολὸν ἕνα ταύτης ἕνεκα τῆς αἰτίας παρέχειν. εἰ δὲ τοῦτο ῥᾳθυμήσειεν ὁ θεοφιλέστατος ἐπίσκοπος, ἕξει μὲν δυσμενῆ τὸν δεσπότην θεὸν καὶ βασιλικὴν ἀγανάκτησιν ἀναμενέτω, ὅτι σιγὴν ἐσίγησεν ἀνελευθέραν τε καὶ ἱερατικῆς παρρησίας ἀναξίαν.

6. Ἀλλὰ καὶ εἴ τις ἐμφανίζει κατὰ χώραν ἢ ἀρχόντων οἱωνδήποτε ἢ ὑπάτων προαγωγὰς ἢ γενικοὺς τύπους τῶν ἐνδοξοτάτων ὑπάρχων ἢ καὶ ἑτέρου τινὸς τῶν ἡμετέρων ἀρχόντων, ἢ καὶ διατάξεων ἢ θείων κομμωνιτωρίων ἢ γραμμάτων γενικῶν μέντοι ἐμφανίσεις ποιοῖτο ἢ καὶ ἀνδριάντων βασιλικῶν καθιδρύσεις, μὴ εἶναι τούτῳ παρρησίαν περαιτέρω ἓξ νομισμάτων ἐφ᾽ ἑκάστῃ μηνύσει ἢ ἐφ᾽ ἑκάστῳ τύπῳ ἢ ἑκάστῃ διατάξει ἢ θείῳ κομμωνιτωρίῳ ἢ γράμματι γενικῷ ἢ ἀνδριαντων καθιδρύσει κομίζεσθαι καθ᾽ ἑκάστην ἐπαρχίαν εἰς ἣν ταῦτα παρέλαβεν, ὥστε, ὁπόσας ἂν ἔχοι πόλεις ἡ ἐπαρχία, μηδὲν αὐτῷ διαφέρειν, ἀλλὰ τοὺς ἓξ μόνους κομίζεσθαι χρυσοῦς. **7.** Εἰ δέ τι πλέον κομίσοιτο, τοῦτο τετραπλάσιον ἀποδοῦναι, ἄδειαν ἔχοντος καὶ τοῦ τῆς πόλεως ἐπισκόπου τοῦτο κωλύειν, κἀνταῦθα τῶν ἴσων ἐπικειμένων ποινῶν, τοῦτ᾽ ἔστι τῶν ἀνὰ δέκα τοῦ χρυσίου λιτρῶν τῷ τε τῆς ἐπαρχίας ἡγουμένῳ τῇ τε πειθομένῃ τάξει καὶ τῷ θεοφιλεστάτῳ ἐπισκόπῳ, εἴπερ ἐνδοῖεν αὐτοῖς ὑπεραπαιτεῖν βουλομένοις, ἀλλὰ μὴ πᾶσι τρόποις τοῦτο κωλύωσιν.

8. Οὐδενὶ δὲ παντελῶς ἐφίεμεν τῶν ἡμετέρων ἀρχόντων τοιούτους τινὰς τύπους ἐν ταῖς ἐπαρχίαις ἐκπέμπειν περὶ τῆς τῶν ὑδρορρόων ἤτοι ὑπονόμων ἀνακαθάρσεως ἢ περὶ τῆς τῶν οἰκοδομημάτων πρὸς τοῖς τείχεσι καθαιρέσεως ἢ τῶν ἐν ταῖς στοαῖς γενομένων καταλύσεως ἢ τῶν καλουμένων προδουλειῶν καὶ ἐρειπίων τόπων ἤτοι μεσοστύλων ἀνατροπῆς ἢ περὶ εἰκόνων ἢ τοιουτοτρόπων ὅλως ἐπινοιῶν ἢ πολιτικῶν ἁπλῶς ζητήσεων, ἀλλ᾽ ἐξέστω τῷ θεοφιλεστάτῳ ἐπισκόπῳ τῆς πόλεως καὶ τοῖς ἐν τῇ πόλει πρωτεύουσι καὶ τοῖς τῶν ἐπαρχιῶν ἡγουμένοις καὶ κτήτορσι καὶ πολίταις τοιούτου τινὸς ἐμφανισθέντος τύπου μὴ προσίεσθαι τοῦτον, ἀλλὰ κωλύειν καὶ διωθεῖσθαι πάντα ἐκβιβασμὸν καὶ πᾶσαν εἴσπραξιν ἐντεῦθεν ἐπαγομένην, τῆς αὐτῆς ἐπούσης ποινῆς καὶ κατὰ τῶν θεοφιλεστάτων ἐπισκόπων, εἰ μὴ τοῦτο κωλύσαιεν.

9. Δεῖ δὲ τὸν θεοφιλέστατον ἐπίσκοπον τόν τε πατέρα τούς τε λοιποὺς ἐν ὑπολήψει κτήτορας προνοεῖν τοῦ μηδένα τόπον πολιτικὸν ἢ δημόσιον πρὸς τῷ τείχει ἢ ἐν ταῖς δημοσίαις στοαῖς ἢ πλατείαις ἢ ὁπουδήποτε κείμενον συγχωρεῖν ὑπό τινος ἀλόγως κατέχεσθαι μηδὲ ἐκδιδόναι πολιτικόν τινα τόπον χωρὶς ἡμετέρου θείου τύπου τισί. **10.** Τοὺς δὲ αὐτοὺς καὶ τὰ περὶ τῶν καλουμένων νομῶν τοῦ ὕδατος δηλαδὴ τῶν ἐκ θείου τύπου

5. If a decree or letter of instructions or an order is sent by one of Our Prefects, and a rendering of accounts is commanded concerning any of the aforementioned points, We desire that the most reverend bishop of the city and the preeminent men of the city in no way comply; but the provincial governor and the landholders and citizens are permitted to reject such commands and not pay a penny (*obolos*) on that account. If the most reverend bishop should neglect to do this, he shall incur the displeasure of the Lord God and shall await the wrath of the Emperor for keeping a slavish silence unworthy of the frankness (*parrhesia*) of a priest.

6.[152] And if anyone should announce in a province the promotion of any magistrates or consuls, or the general sanctions of the *viri gloriosissimi* Prefects or of any other of Our officials, or should publish decrees or divine instructions or general letters, or even the erection of statues of the Emperor, he may not collect more than 6 solidi for each proclamation, each sanction, divine instructions or general letter, or erection of statues, in each province to which he brings news of these things. Thus, it shall make no difference how many cities the province should have, but he shall receive 6 solidi only. **7.** If he should take more, he shall pay fourfold, and the bishop of the city shall have the power to prevent his taking more; and the same punishment, that is, 10 pounds of gold, shall apply to the governor of the province and the official staff serving him and to the most reverend bishop, if they should yield to their wish to exact more and fail to prevent this by all means.

8.[153] We permit none of Our officials whatsoever to send any such decrees in the provinces concerning the cleaning of water channels or sewers, or the demolition of buildings next to the city walls, or the destruction of those built in colonnades, or so-called servitudes (*prodouleiai*) and collapsed structures, or the razing of buildings built between columns, or concerning statues or other such concerns, or, in a word, concerning public questions at all; but the most reverend bishop of the city and its most eminent citizens, the governors of the provinces, the landholders, and citizens shall not comply with such an order when it is made known but shall hinder it, and reject any attempt to execute it and any exaction imposed because of it. The same punishment is fixed even against the most reverend bishops, if they do not prevent this.

9. The most reverend bishop and the father (of the city) and the rest of the landholders of good repute shall take care that they allow no civic or public place near the city walls or in public colonnades, streets, or any other place, to be occupied by anyone without cause; and that they lease no public place to anyone without Our divine sanction. **10.** The same men shall also inquire into the

[152] §§6–7 = C. 12.63.2.
[153] §§8–10 = C. 10.30.4.

τισὶν ὑπηργμένων ἀναζητεῖν καὶ μὴ τὸν μὲν πλέον τὸν δὲ ἔλαττον τοῦ προσήκοντος ἔχειν.

11. Ἀλλ' οὐδὲ προφάσει ἐγγυητικῶν ζημίαις τοὺς ἡμετέρους ὑποτελεῖς ὑποβάλλεσθαι συγχωροῦμεν ἢ ὑπὲρ στάσεως ἐντολέως· ἀλλ' εἰ μὲν ἀκίνητον ἔχοιεν οὐσίαν ἀξιόχρεων οἱ ὑπομνησθέντες, ὅρκου γραμματεῖον ἐκτίθεσθαι μόνον· εἰ δὲ οὐκ ἔχοιεν, τηνικαῦτα μὲν ἐγγύην ἄχρι τῆς ἤδη κρατούσης ποσότητος παρέχειν, χωρὶς μέντοι ζημίας ἁπάσης. **12.** Εἰ δὲ ἀμφισβητοῖεν οἱ πράκτορες περὶ τῆς τῶν ἐγγυητῶν ἀξιοπιστίας ἢ τῆς διωμοσίας, κοινῇ συνιόντας εἰς ταὐτὸ τὸν θεοφιλέστατον ἐπίσκοπον τόν τε πατέρα τόν τε ἔκδικον τῆς πόλεως κρίνειν τὸν ἀξιόπιστον φαινόμενον ἐγγυητὴν πρὸς τὴν τῆς ἐναγωγῆς ποσότητα καὶ ἀνάγκην ἔχειν τὸν πράκτορα δέχεσθαι τοῦτον ἐγγυώμενον, μηδὲν κομιζόμενον ὑπὲρ ἐγγυητικοῦ ἢ ἐξωμοσίας. **13.** Πλὴν εἰ μὴ ἐξ ἰδικῆς ἡμῶν ἢ τινος τῶν μεγίστων ἀρχόντων προστάξεως κελευσθείη τὸ πρόσωπον ἀγαγεῖν, ἐγγυητῇ μὴ καταπιστεύσας· τηνικαῦτα γὰρ ἄδεια ἔσται τῷ πράκτορι ἐγγυητὴν μὴ κομίζεσθαι καὶ τοῦτο μέντοι πράττειν χωρὶς ἁπάσης ζημίας. **14.** Κἀνταῦθα τῶν αὐτῶν κρατούντων ἐπιτιμίων κατά τε τοῦ θεοφιλεστάτου ἐπισκόπου καὶ τοῦ λαμπροτάτου τῆς ἐπαρχίας ἄρχοντος, εἴ τι τούτων παραβαθῆναι συγχωρήσαιεν ἢ παραβαινομένου τινὸς μὴ θᾶττον ταῦτα μηνύσαιεν.

15. Δηλαδὴ μὴ συγχωρούντων αὐτῶν μηδὲν πλέον τι τοῦ διωρισμένου μέτρου τῇ ἡμετέρᾳ διατάξει προφάσει σπορτούλων κομίζεσθαι μηδὲ διαγραφὴν ἐξ οἱασδήποτε αἰτίας ἐν ταῖς πόλεσιν ἐξ ἀνάγκης γίνεσθαι, πλὴν ἢ μόνον ἐκείνων τῶν αἰτιῶν, ἃς περὶ τὰς ἐμφανίσεις τῶν προαγωγῶν καὶ τῶν διατάξεων καὶ θείων ἢ γενικῶν κομμωνιτωρίων ἢ τύπων ἢ γραμμάτων καὶ τῶν τοιούτων ἁπάντων, περὶ ὧν ἐν τοῖς ἔμπροσθεν ἐνομοθετήσαμεν καὶ ἅπερ ἂν ὑπὲρ ἰδίας ὠφελείας καὶ σωτηρίας οἱ τῆς πόλεως βουληθεῖεν εἰς ἔργα πολιτικὰ τυχὸν ἢ εἰς σιτωνίαν ἢ εἰς ἑτέραν ἀρέσκουσαν ἅπασιν αἰτίαν κατὰ φιλοτιμίαν ποιήσασθαι, ἐξ ὧν τὸ κοινὸν τῆς πόλεως ὠφεληθήσεται· φυλαττομένων κατὰ τῶν παραβαίνειν ταῦτα ἐπιχειρούντων καὶ μὴ εἰς ἡμᾶς ἀγόντων θεοφιλεστάτων ἐπισκόπων τῶν ἤδη παρ' ἡμῶν ἠπειλημένων.

16. Δεῖ δὲ τὸν θεοφιλέστατον ἐπίσκοπον ἑκάστης πόλεως πάντα γινώσκοντα τὰ παρ' ἡμῶν ἐπὶ τούτοις διατεταγμένα καὶ μὴν καὶ ἀπαργυρισμοῦ μητάτων καὶ κωλύσεως ἀφοπλισμῶν καὶ τούτων, ὅσα περιέχεται τῇ θείᾳ ἡμῶν διατάξει τῇ περὶ τούτων ἐν κοινῷ γεγραμμένῃ, πέρας ἐπιτιθέναι προσῆκον.

D. VIII k. Iul. Chalcedone Lampadio et Oreste vv. cc. conss.

[27] *Idem A. Iuliano pp.* **pr.** De creationibus curatorum, qui furiosis utriusque sexus dantur, necesse nobis visum est constituere, quemadmodum eas celebrari oportet. **1.** Et si quidem pater curatorem furioso

so-called water distribution, which has been made available to some by divine sanction, lest one have more, another have less, than what is appropriate.

11.[154] Moreover, We do not permit Our subjects to be subject to damages by reason of sureties or for the appointment of a procurator; instead, if those summoned have sufficient immovable property, they may furnish only an oath in writing; if however, they do not have sufficient (immovable property), then they must give surety up to the amount already in usage, but without any loss. **12.** If the court clerks (*exsecutores*) doubt the reliability of the sureties or the oath, then the most reverend bishop, the Father, and the Defender of the City should meet jointly and choose a suitable surety for the amount of the suit, and the court clerk must accept this surety without taking anything for the giving of the surety or oath. **13.** But unless he is ordered by a pragmatic sanction from Us or from one of the exalted Prefects to produce the person, having no faith in the surety, then the court clerk is at liberty not to accept the surety, and this too without any penalty. **14.** And here too the same fines hold for the most reverend bishop and for the *vir clarissimus* provincial governor, if they allow any of these regulations to be violated or fail to denounce the violator immediately.

15.[155] They shall not permit more to be collected in the name of judicial fees (*sportulae*) than the amount fixed by Our decree, nor shall they permit any compulsory payment to be made in the cities for any reason except for the proclamation of promotions, of decrees and divine or general instructions, or sanctions or letters and all such things, concerning the which We have established the law in the preceding, and whatever the citizens of the city, in a spirit of generosity, wish to do for their own benefit and welfare, perchance for public works or for the grain supply, or for some other reason approved by all, whereby the city is benefited in common. The penalties threatened above shall be applied to those who attempt to violate these provisions and to the most reverend bishops who fail to bring them to Our attention.

16. Having full knowledge of Our decrees concerning these matters and concerning the monetary conversion for the duty of quartering (*adaeratio metatorum*), the prohibition on disarming, and those things that are contained in Our divine decree written generally about these matters, the most reverend bishop of every city shall carry out all these things to their appointed end.

Given June 24, at Chalcedon, in the consulship of the viri clarissimi Lampadius and Orestes (530).

[27][156] *The same Augustus to Julian, Praetorian Prefect.* **pr.** Regarding appointments of *curatores* who are provided to insane persons of either sex, We have determined it necessary to establish how they should be made. **1.** If a father

[154] §§11–14 = C. 3.2.4.3–5.
[155] §15 = C. 12.63.2.3–4 (altered).
[156] = C. 5.70.7.5–6c.

vel furiosae in ultimo elogio heredibus institutis vel exheredatis dederit (ubi et fideiussionem cessare necesse est paterno testimonio pro satisdatione sufficiente), ipse qui datus est ad curationem perveniat, ita tamen, ut in provinciis apud praesides earum, praesente eis tam viro religiosissimo locorum antistite quam tribus primatibus, actis intervenientibus, tactis sacrosanctis scripturis depromat omnia se recte cum utilitate furiosi gerere neque praetermittere, quae utilia furioso esse putaverit, neque admittere, quae non utilia esse existimaverit: et inventario cum omni subtilitate publice conscripto res suscipiat et eas secundum sui opinionem disponat sub hypotheca rerum ad eum pertinentium, ad similitudinem tutorum et adulti curatorum.

2. Sin autem testamentum quidem parens non confecerit, lex autem curatorem utpote adgnatum vocaverit vel eo cessante aut non idoneo forsitan existente ex iudiciali electione curatorem ei dare necesse fuerit, tunc scilicet et in provinciis apud praesidem cuiuscumque provinciae et virum religiosissimum episcopum civitatis nec non tres primates creatio procedat, ita ut, si quidem curator substantiam idoneam possidet et sufficientem ad fidem gubernationis, et sine aliqua satisdatione nominatio eius procedat. sin autem non talis eius census inveniatur, tunc et fideiussio in quantum possibile est ab eo exploretur.

3. Creatione omnimodo sacrosanctis scripturis propositis in omni causa celebranda, ipso autem curatore, cuiuscumque substantiae vel dignitatis est, praefatum sacramentum pro utiliter rebus gerendis praestante et inventarium publice conscribente et hypotheca rerum curatoris modis omnibus adhibenda, quatenus possint undique res furiosi utiliter gubernari.

D. k. Sept. Constantinopoli Lampadio et Oreste vv. cc. conss.

[28] *Idem A. Iuliano pp.* Tam dementis quam furiosi liberi cuiuscumque sexus possunt legitimas contrahere nuptias, tam dote quam ante nuptias donatione a curatore eorum praestanda: aestimatione tamen in hac quidem regia urbe excellentissimi praefecti urbis, in provinciis autem virorum clarissimorum earum praesidum vel locorum antistitum tam opinione personae quam moderatione dotis et ante nuptias donationis statuenda, praesentibus tam curatoribus dementis quam furiosi nec non his, qui ex genere eorum nobiliores sunt, ita tamen, ut nulla ex hac causa oriatur vel in hac regia urbe vel in provinciis iactura substantiae

appoints a *curator* for an insane person of either sex in his last will, whether they have been appointed heirs or disinherited – in which case the giving of surety is unnecessary, since the father's testimony is security enough – the person appointed shall assume curatorship in the following manner: in the provinces before the governors and in the presence also of the most pious local bishop as well as three leading men, he shall declare on official record while touching the sacred scriptures that he shall conduct all business properly and to the advantage of the insane person and will neither omit anything that he should deem advantageous to the insane person nor permit anything that he should deem detrimental; and once an inventory has been publicly drafted in all detail, he shall receive the property and dispose of it according to his judgment under a security arrangement on his property, on the analogy of *tutores* and *curatores* of an adult.

2. If, however, the male ascendant did not make a will and the law summons an agnate relative to be *curator*, or in default of such one or if one with sufficient property should not be available, and it is necessary that a *curator* be appointed for him by judicial nomination; then, in the provinces, the appointment shall take place before the governor of the province and the most pious bishop of the city as well as the three leading citizens. Thus, if the *curator* possesses suitable means sufficient for faithful management (of the property of the insane person), his appointment may take place even without requiring security. But if his property assessment is not found sufficient, then as much security as possible shall be sought from him.

3. The appointment shall in every case be made solemnly before the holy scriptures; the *curator* himself, whatever his property or rank, shall take the aforementioned oath to conduct the affairs of the insane person advantageously, shall publicly draft an inventory, and shall by all means provide a hypothec of his property, so that the property of the insane person may be managed as advantageously as possible.

Given September 1, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[28][157] *The same Augustus to Julian, Praetorian Prefect.* The children of a demented or insane person of either sex may contract a legitimate marriage; both the dowry and the prenuptial gift shall be provided by their *curator*. An assessment, however, both of the reputation of the person and the amount of the dowry and prenuptial gift shall be made: in This Imperial City, by the *vir excellentissimus* Prefect of the City; in the provinces, by the *viri clarissimi* governors and the bishops of the place. The *curatores* both of the demented and of

[157] = C. 5.4.25.

furiosi vel mente capti, sed gratis omnia procedant, ne tale hominum infortunium etiam expensarum detrimento praegravetur.

D. k. Oct. Constantinopoli Lampadio et Oreste vv. cc. conss.

[29] *Ὁ αὐτὸς βασιλεὺς Ἰουλιανῷ ἐπάρχῳ πραιτωρίων.* **pr.** Θεσπίζομεν μηδένα τῶν εὐλαβεστάτων κληρικῶν εἴτε παρά τινος συγκληρικοῦ εἴτε παρὰ τῶν καλουμένων λαϊκῶν τινος εὐθὺς καὶ ἐκ πρώτης ἐν αἰτιάσει γίνεσθαι παρὰ τοῖς μακαριωτάτοις πατριάρχαις διοικήσεως ἑκάστης, ἀλλὰ πρῶτον κατὰ τοὺς ἱεροὺς θεσμοὺς παρὰ τῷ τῆς πόλεως ἐπισκόπῳ, καθ' ἣν ὁ κληρικὸς διάγει· εἰ δὲ ὑπόπτως ἔχει πρὸς ἐκεῖνον, παρὰ τῷ τῆς μητροπόλεως ἐπισκόπῳ τοῦτο πράττειν· εἰ δὲ ὡς εἰκὸς οὐδὲ τὰ κατ' ἐκεῖνον αὐτὸν ἀρέσκοι, τηνικαῦτα πρὸς τὴν εὐαγῆ σύνοδον τὴν τῆς χώρας ἄγειν αὐτὸν δικασόμενον, τριῶν ἅμα τῷ μητροπολίτῃ συνιόντων θεοφιλεστάτων ἐπισκόπων τῶν κατὰ τὴν τάξιν τῆς χειροτονίας πρωτευόντων καὶ τὴν δίκην ἐν τάξει τῆς ὅλης συνόδου κατεξεταζόντων. **1.** Καὶ εἰ μὲν στερχθείη τὰ κεκριμένα, πραγμάτων ἀπηλλάχθαι.

2. Εἰ δὲ οἰηθείη βεβλάφθαι, τηνικαῦτα ἐπικαλεῖσθαι τὸν μακαριώτατον πατριάρχην τῆς διοικήσεως ἐκείνης, καὶ τοῖς παρ' αὐτοῦ κρινομένοις πάντως ἐμμένειν, ὡσανεὶ ἔτυχεν ἐξ ἀρχῆς αὐτὸς ᾑρημένος δικαστής. **3.** Κατὰ γὰρ δὴ τῶν τοιούτων ἐπισκοπικῶν ἀποφάσεων οὐκ εἶναι χώραν ἐκκλήτῳ τοῖς πρὸ ἡμῶν νενομοθέτηται. **4.** Τοῦ αὐτοῦ τούτου φυλαττομένου καὶ εἴπερ ἐπίσκοπος ὁ μεμφθεὶς εἴη εἴτε παρά τινος τῶν καλουμένων λαϊκῶν εἴτε παρά τινος τῶν θεοφιλεστάτων κληρικῶν εἴτε καὶ παρ' ἑτέρου τινος θεοφιλοῦς ἐπισκόπου. **5.** Τὸ γὰρ εὐθὺς τὰς αἰτιάσεις ἀποτίθεσθαι παρὰ τοῖς ἁγιωτάτοις πατριάρχαις καὶ τοὺς αἰτιωμένους εἰς ἑτέραν ἀπάγεσθαι χώραν παντελῶς ἀπαγορεύομεν, πλὴν εἰ μὴ τὴν αἰτίασίν τις ἐπὶ τούτῳ θείη, ἐφ' ᾧτε παραπεμφθῆναι τὴν ὑπόθεσιν τῷ τῆς χώρας θεοφιλεστάτῳ ἐπισκόπῳ· τηνικαῦτα γὰρ ἄδεια μὲν ἔσται τὴν αἰτίασιν ἀποτίθεσθαι καὶ παρὰ τοῖς θεοφιλστάτοις πατριάρχαις, γράμματα δὲ γίνεσθαι πρός τινα τῶν κατὰ τόπον θεοφιλεστάτων ἐπισκόπων, ὥστε αὐτὸν ἀκροάσασθαι τῆς ὑποθέσεως κατὰ τὸν ἔμπροσθεν ὑφ' ἡμῶν ὑπηγορευμένον τρόπον.

6. Οὐ μὴν τούτῳ ἄδειαν παρέχειν τοῖς εὐλαβεστάτοις κληρικοῖς κατιέναι καὶ ἀμετρίᾳ τῶν καλουμένων σπορτούλων τοὺς ὑπομιμνησκομένους ἐπιτρίβειν, ὁποῖον δή τι μέχρι νῦν ἁμαρτάνεσθαι μεμαθήκαμεν. **7.** Ἐφ' ἑκάστῳ γὰρ προσώπῳ τῶν καλουμένων οὐ περαιτέρω τῆς ἕκτης τοῦ νομίσματος μοίρας κατὰ πρόφασιν σπορτούλων δίδοσθαι συγχωροῦμεν τοῖς παρὰ τῶν θεοφιλεστάτων πατριαρχῶν καὶ μητροπολιτῶν στελλομένοις, ἢ εἴπερ ἐπίσκοπος εἴη ὁ μεμφθείς, ἄχρι νομισμάτων ἓξ ἐφ ὅσῃ δήποτε

the insane are to be present, as well as the more distinguished members of their family, so that no loss for any reason may befall the property of the insane or demented; but everything shall be done gratuitously, so that the misfortune of such persons shall not be further aggravated by loss due expenses.

Given October 1, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[29] *The same Augustus to Julian, Praetorian Prefect.* **pr.** We decree that none of the most blessed clergymen may be accused by any fellow clergyman or by so-called laymen straightaway in the first instance before the most blessed patriarchs of each diocese; on the contrary, according to the sacred canons, a clergyman shall be accused first before the bishop of the city in which the clergyman resides. If the accuser mistrusts the bishop, he shall make his accusation before the metropolitan bishop; if, as may happen, he is not satisfied even with him, then he may bring the accused to be tried before the holy synod of the province. The three most eminent of the most reverend bishops, according to the order of their ordination, shall join the metropolitan and together try the case before the assembly of the whole synod. **1.** And if the decision is found satisfactory, the litigation shall be at an end.

2. If, though, one thinks that he has been wronged, then he may appeal to the most blessed patriarch of each diocese and must altogether abide by the decision reached by him, as if the patriarch had been chosen as judge from the beginning. **3.** It has been laid down by those before Us that there is no room for an appeal from such episcopal rulings. **4.** This very rule shall be observed even if the accused is a bishop, whether accused by a so-called layman, or by one of the most reverend clergymen, or even by another reverend bishop. **5.** For We utterly forbid accusations to be lodged immediately before the most holy Patriarchs and the accused to be brought away to another province, unless someone should make an accusation for the purpose of transferring the case to the most reverend bishop of the province: then it shall be permitted to lodge an accusation even before the most holy patriarchs, and a letter shall be sent to one of the most reverend bishops of the place, so that he may hear the case in the manner described by Us above.

6. He shall not, however, thereby permit the most pious clergy to descend upon and ruin the aforementioned persons with the excessiveness of so-called judicial fees (*sportulae*), which wrong, as We have learned, has been practiced heretofore. **7.** We allow no more than one-sixth of a solidus for each person summoned to be given as judicial fees to those sent by the most reverend Patriarchs and metropolitans; or, if the accused is a bishop, We allow up to 6 solidi only and nothing more to be paid, whatever the amount and whatever the

ποσότητι καὶ οἱᾳδήποτε αἰτίᾳ παρέχεσθαι μόνον καὶ πλέον τούτου μηδέν. **8.** Ταὐτοῦ τούτου κρατοῦντος καὶ ἐπὶ τῶν μητροπολιτῶν, ὅταν παρ' αὐτοῖς ἀποτεθείη τις αἰτίασις κατά τινος τῶν ὑπ' αὐτοὺς ἐπισκόπων ἢ τῶν τῆς ἐπαρχίας ἐκείνης κληρικῶν. εἰ γὰρ ἐπὶ τῶν πολιτικῶν δικῶν συστεῖλαι τὸ τῶν σπορτούλων καὶ δαπανημάτων μέτρον ἐσπεύσαμεν καὶ τοῦτο νομοθεσίᾳ παραδοῦναι συνείδομεν πολλῷ μᾶλλον ἐπὶ τῶν ἐκκλησιαστικῶν μέμψεων τὴν συμμετρίαν φυλάττεσθαι νομοθετοῦμεν. **9.** Εἰ μέντοι παραπεμφθείσης τῆς ὑποθέσεως παρὰ τοῦ θεοφιλεστάτου πατριάρχου ἤ τινι τῶν θεοφιλεστάτων μητροπολιτῶν ἢ ἄλλῳ τῶν θεοφιλεστάτων ἐπισκόπων ἐνεχθείη ψῆφος καὶ μὴ στερχθείη παρὰ θατέρου μέρους ἔκκλητός τε γένηται, τηνικαῦτα ἐπὶ τὸν ἀρχιερατικὸν θρόνον φέρεσθαι τὴν ἔφεσιν κἀκεῖσε κατὰ τὸ μέχρι νῦν κρατοῦν ἐξετάζεσθαι. **10.** Εἰ δέ τις τολμήσειε παρὰ ταῦτά τι πρᾶξαι, ἀναδώσει μὲν πᾶν ὅσον εἴληφε τῷ ὑπερπραχθέντι διπλάσιον, γενήσεται δὲ καὶ ὑπὸ ἐκκλησιαστικὸν ἐπιτίμιον παρὰ τοῦ κατὰ καιρὸν ἁγιωτάτου πατριάρχου ἢ τοῦ θεοφιλεστάτου μητροπολίτου, τῶν ἐκκλησιαστικῶν ἐκβαλλόμενος καταλόγων.

11. Τὰς δὲ αἰτιάσεις, εἰ μὲν εἰς ἐκκλησιαστικὴν ὁρῴη τὸ πρᾶγμα κατάστασιν, ἐξ ἀνάγκης παρὰ μόνοις γίνεσθαι τοῖς θεοφιλεστάτοις ἐπισκόποις ἢ μητροπολίταις ἢ παρὰ ταῖς εὐαγέσι συνόδοις ἢ τοῖς θεοφιλεστάτοις πατριάρχαις κελεύομεν· εἰ δὲ πολιτικὰ τὰ τῶν ἀμφισβητήσεων εἴη, ἑκόντας αὐτοὺς τὰς τοιαύτας ζητήσεις παρὰ τοῖς εἰρημένοις θεοφιλεστάτοις ἐπισκόποις προτιθέναι συγχωροῦμεν, ἄκοντα δὲ οὐκ ἀναγκάζομεν, ὄντων αὐτοῖς τῶν πολιτικῶν δικαστηρίων, εἴπερ ἐκεῖνα μᾶλλον ἂν θέλοιτο, παρ' οἷς ἔξεστι καὶ ὑπὲρ ἐγκλημάτων δικάζεσθαι. **12.** Ἐπειδὴ δέ τινες τῶν θεοφιλεστάτων πατιαρχῶν ἐν ταῖς ἐπαρχίαις, ἐν αἷς εἰσι, καὶ μητροπολιτικὸν ἔχουσι σχῆμα, τινὲς δὲ καθ' ὅλην τὴν διοίκησιν τὰς χειροτονίας ποιοῦνται τῶν ὑπ' αὐτοὺς θεοφιλεστάτων ἐπισκόπων εἴτε μητροπολιτῶν εἴτε τῶν ἄλλων, ἐπ' αὐτοῖς ἐκεῖνα θεσπίζομεν, ἅπερ ἐπὶ τῶν θεοφιλεστάτων μητροπολιτῶν ἤδη διετάξαμεν. αὐτὸς γὰρ ἂν καὶ μητροπολίτης δικαίως καλοῖτο ὁ τὴν ἐξουσίαν τῶν ὑπὸ τὴν μητρόπολιν ἐπισκόπων ἐκ τῶν θείων ἔχων κανόνων.

D. xv k. Nov. Constantinopoli Lampadio et Oreste conss.

[30] *Ὁ αὐτὸς βασιλεὺς Ἰωάννῃ ἐπάρχῳ πραιτωρίων.* **pr.** Θεσπίζομεν ταῖς κηδεμονίαις τῶν νέων, εἴτε τῆς πρώτης εἴτε τῆς δευτέρας εἶεν ἡλικίας, ἢ καὶ ἕτεροί τινες οἷς ὁ νόμος δίδωσι κηδεμόνας, εἴπερ ἄχρι πεντακοσίων χρυσῶν καὶ μόνον τὰ τῆς περιουσίας εἴη τῶν νέων, μὴ τὴν τῶν ἀρχόντων τῶν ἐπαρχιῶν περιμένειν χειροτονίαν μηδὲ δαπάναις μεγάλαις περιβάλλεσθαι, τῶν ἀρχόντων ἴσως οὐδὲ ἐνδημούντων ταῖς πόλεσιν ἐκείναις, ἐν αἷς προϊέναι τὴν κηδεμονίαν συμβαίνει, ἀλλὰ παρὰ τῷ τῆς πόλεως ἐκείνης ἐκδίκῳ ἢ στρατηγῷ, κατὰ τὴν Ἀλεξανδρέων παρὰ τῷ ταύτης iuridico, ἅμα τῷ

charge. **8.** The same rule shall apply for the metropolitans, whenever an accusation is made before them against any of the bishops under their jurisdiction or against any of the clergy of that province. For if We have striven to reduce the amount of judicial fees and expenses in civil cases and have ensured that this was made law,[158] so much the more do We establish that the due amount shall be observed in ecclesiastical suits. **9.** But if a case has been remitted by the most reverend Patriarch, and the ruling is given either by one of the most reverend metropolitans or to another one of the most reverend bishops, but one of the parties is dissatisfied and an appeal is made, then the appeal shall be brought before the archiepiscopal see and shall be tried there according to the rules heretofore in force. **10.** If anyone should dare to do anything contrary to these provisions, he must restore to the person from whom too much has been exacted twice the sum taken, and he shall be subject to ecclesiastical punishment, being stricken from the register of clergymen by the most holy Patriarch then in office or by the most reverend metropolitan.

11. Moreover, We order that accusations, if the case concerns the state of the Church, must necessarily be made only before the most reverend bishops or metropolitans or before the holy synods or most reverend Patriarchs. If, though, the litigants' dispute is a civil case, We permit them, if willing, to present such questions before the aforementioned most reverend bishops; but We compel no one against his will, since there are civil courts, if he should prefer them, before which complaints may also be adjudicated. **12.** Since some of the most reverend Patriarchs also hold the office of metropolitan in their provinces, and others make the appointments of the most reverend bishops, metropolitans, or others under them throughout an entire diocese, We decree for them what We have already sanctioned for the most reverend metropolitans. For he is rightly called a metropolitan who, according to the sacred canons, has authority over the bishops of his metropolis.

Given October 18, at Constantinople, in the consulship of Lampadius and Orestes (530).

[30] *The same Augustus to John, Praetorian Prefect.* **pr.** With regard to the curatorships of minors, whether of the first age or second, or even others to whom the law appoints *curatores*, We decree that if the amount of the property of the minors amounts to 500 solidi or less, they need not await appointment by the provincial governors or be involved in great expense, if perhaps the governors do not reside in the cities in which the curatorship should happen to be created. The appointments of *curatores* shall be made before the defender or magistrate (*strategos*) of the city, in Alexandria before the Justice (*iuridicus*),

[158] C. 3.2.4.

θεοφιλεστάτῳ ταύτης ἐπισκόπῳ ἢ καὶ δημοσίοις προσώποις, εἴγε εὐποροίη τούτων ἡ πόλις, γίνεσθαι τὰς χειροτονίας τῶν κηδεμόνων, ἐγγυητοῦ τε πρὸς τὸ μέτρον τῆς οὐσίας διδομένου κατὰ τὴν τῶν εἰρημένων προσώπων κρίσιν καὶ τῶν ἄλλων ἁπάντων προϊόντων, ὁπόσα ἐπὶ τῶν κηδεμόνων ἐγγυητοῦ τε πρὸς τὸ μέτρον εἴθισται, μόνης τῆς τῶν προσώπων ἐναλλαγῆς, παρ' οἷς ταῦτα πράττεται, διὰ τὸ τῶν νέων χρήσιμον ἀπὸ τῆς παρούσης νομοθεσίας εἰσαγομένης.

1. Πάντων δηλονότι ἐπὶ μόνῃ δύο νομισμάτων δόσει πραττομένων, διόπερ μάλιστα ἡ τοιαύτη τέθειται διάταξις· ποινῆς ἐπικειμένης, εἴ τις πλέον λαβεῖν θαρρήσειεν ἢ ἀναβάλλοιτο καταστῆσαι τὴν κηδεμονίαν ἐλπίδι μείζονος κέρδους, καὶ οὐ μόνον τριπλάσιον ἀναδιδόντος πᾶν ὅπερ ἂν λάβοι, ἀλλὰ καὶ αὐτοῦ τοῦ φροντίσματος ἀποκινουμένου. **2.** Ἡνίκα δὲ ἂν παρὰ ἐκδίκῳ γίνοιντο αἱ τῶν κηδεμόνων προβολαί, παρόντος καὶ τοῦ θεοφιλεστάτου τῆς πόλεως ἐπισκόπου, ἐν αὐτοῖς τοῖς τῆς ἁγιωτάτης ἐκκλησίας ἀρχείοις ἀποτίθεσθαι τὰ πραττόμενα θεσπίζομεν, ὥστε εἶναι διηνεκῆ τοῦ πράγματος μνήμην καὶ μὴ παραπόλλυσθαι τοῖς τυχοῦσι τῆς κηδεμονίας τὴν ἐντεῦθεν ἀσφάλειαν. **3.** Τῶν ἐπὶ τῆς μεγάλης ταύτης πόλεως κηδεμονιῶν παρὰ μόνῳ τῷ λαμπροτάτῳ πραίτωρι πραττομένων, καθάπερ ἤδη νενομοθέτηται.

D. IIII k. Aug. Constantinopoli post cons. Lampadii et Orestis.

[31] *Idem A. Iohanni pp.* **pr.** Sancimus, si quando afuerit is, qui res alienas vel creditori obnoxias detinet, et desiderat dominus rei vel creditor suam intentionem proponere et non ei licentia sit absente suo adversario qui rem detinet vel infantia vel furore laborante et neminem tutorem vel curatorem habente vel in summa potestate constituto, licentia ei detur adire praesidem vel libellum ei porrigere et hoc in querimoniam deducere intra constituta tempora et interruptionem temporis facere. **1.** Sin autem nullo poterit modo praesidem adire, saltem ad episcopum locorum eat et suam manifestare voluntatem scriptis deproperet.

D. Constantinopoli k. Oct. post consulatum Lampadii et Orestis vv. cc.

[32] [*Ὁ αὐτὸς βασιλεύς.*] **pr.** Ἐὰν ἐπὶ τρεῖς ἐνιαυτοὺς ὁ μὲν ἐμφυτευτὴς προσφέρῃ τῷ δεσπότῃ τὸν τῆς ἐμφυτεύσεως κανόνα, ὁ δὲ δεσπότης ἀναβάλληται δέξασθαι αὐτὸν ἢ ἐν τῇ βασιλίδι πόλει διάγων ἢ ἐν ἐπαρχίαις, ἐξεῖναι τῷ ἐμφυτευτῇ προσάγειν αὐτῷ τὸ ἐμφύτευμα καὶ μελλούσης περαιοῦσθαι τῆς τριετίας, εἰ μὴ ἀνάσχοιτο λαβεῖν, σφραγίζειν αὐτὸ καὶ ἐπιμαρτύρεσθαι περὶ τούτου ἢ τὸν ἐνδοξότατον ἔπαρχον τῆς πόλεως ἢ

together with the most reverend bishop of the city and public officials, if the city should have any. Surety shall be given according to the amount of the property at the discretion of the aforementioned persons, and all other things that are customary concerning *curatores* and surety shall be done, excepting the change of persons before whom this is done as introduced by the present law for the benefit of minors.

1. All these things shall be done upon payment of 2 solidi, for which reason above all this decree has been issued. A penalty has been established, if anyone should dare to take more or put off appointing a *curator* in the hope of greater profit; and he will not only restore threefold whatever he took, but he shall be removed from his post. **2.** Whenever nominations of *curatores* should be made before the defender of the city, in the presence also of the most reverend bishop of the city, We decree that record thereof shall be deposited in the archives of the most holy church, so that there may be a permanent memory of the act and the protection derived therefrom for those who receive *curatores* may not be lost. **3.** *Curatores* shall be appointed in This Great City before the *vir clarissimus* Praetor alone, as has already been provided by law.

Given July 29, at Constantinople, in the post-consulate of Lampadius and Orestes (531).

[31][159] *The same Augustus to John, Praetorian Prefect.* **pr.** We ordain that if he who detains property owned by another or under obligation to a creditor should be absent, and the owner or creditor wishes to bring suit but is not permitted because his opponent, who detains the property, is absent or is impeded by inability to speak (*infantia*) or insanity and has no *tutor* or *curator*, or is in a position of great power, permission shall be given to the owner or creditor to go before the governor or to present him with a petition and make this a matter of complaint within the allotted period, and thus interrupt the time.[160] **1.** But if he cannot in any way go before the governor, he shall go at least before the bishop of the place and hasten to make known his desire in writing.

Given October 1, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[32][161] (*The same Emperor*). **pr.** If for three years the emphyteutic leaseholder should offer the owner the payment (*canon*) for the emphyteutic lease (*emphyteusis*), and the owner, residing in the Imperial City or in the provinces, delays in accepting it, the emphyteuticary is permitted to offer him the payment, and,

[159] = C. 7.40.2 pr.-1 (dated correctly to October 18; so also Lounghis *et al.*).
[160] That is, the owner or creditor has a limited time to bring suit; once he has presented the governor or bishop his petition explaining why he cannot initiate litigation, this deadline is removed or extended.
[161] = C. 4.66.4.

τοὺς ἐνδοξοτάτους ἐπάρχους τῶν ἱερῶν πραιτωρίων ἢ τὸν πρόσφορον ἄρχοντα, ᾧτινι ὑπόκειται ὁ τοῦ χωρίου δεσπότης· ἐν δὲ ταῖς ἐπαρχίαις ἢ παρὰ τῷ ἄρχοντι ἢ ἐν ἀπουσίᾳ τοῦ ἄρχοντος παρὰ τῷ ἐκδίκῳ τῶν τόπων ἢ παρὰ τῷ ἐπισκόπῳ τῆς πόλεως, καθ' ἣν ὁ δεσπότης τοῦ κτήματος διάγει, πράττειν περὶ τούτου, ὥστε καὶ τὴν ἐξ ἑνὸς τῶν εἰρημένων προσώπων προστεθῆναι τῷ πράγματι μαρτυρίαν. **1.** Καὶ εἰ μηδὲ οὕτως ἕλοιτο λαβεῖν προσαγόμενον τὸ ἐμφύτευμα ὁ δεσπότης, κερδαινέτω μὲν αὐτὸ ὁ ἐμφυτευτής, μηδεμίαν ἀγωγὴν ἔχοντος εἰς ἀπαίτησιν αὐτοῦ τοῦ δεσπότου.

2. Μήτε δὲ ἡ ἐμφύτευσις λυέσθω παρατρεχούσης τῆς τριετίας μήτε τῶν ἐφεξῆς ἐνιαυτῶν ἀπαιτείτω τὸν εἰωθότα κανόνα ὁ δεσπότης, ἕως ἂν αὐτὸς ἄνωθεν ὀχλήσας τῷ ἐμφυτευτῇ καὶ διαμαρτυρίαν αὐτῷ στείλας ἄρξηται αἰτεῖν τὸν ἐμφυτευτικὸν κανόνα· τότε γὰρ οὐ μὴν τοῦ προλαβόντος χρόνου παντὸς ἀπαιτείτω τὸν κανόνα ὁ δεσπότης, ὡς αὐτὸς αἴτιος τοῦ μὴ λαβεῖν αὐτὸν γεγονώς, τοῦ δὲ τρέχοντος χρόνου μετὰ τὴν διαμαρτυρίαν αὐτοῦ ἀπαιτείτω τὸ ἐμφύτευμα. **3.** Ἐὰν δὲ ἐπὶ τριετίαν μετὰ τὴν διαμαρτυρίαν τοῦ δεσπότου μὴ καταβάλῃ ὁ ἐμφυτευτὴς εὐγνωμόνως τὸν κανόνα, ἀκολούθως ἐξωθείτω αὐτὸν ὁ δεσπότης τῆς ἐμφυτεύσεως κατὰ τὴν δευτέραν τούτου τοῦ τίτλου διάταξιν.

[33] *Ὁ αὐτὸς βασιλεὺς τοῖς πανταχοῦ γῆς θεοφιλεστάτοις ἐπισκόποις.* **pr.** Θείαν ἐποιησάμεθα διάταξιν οὐδενὶ συγχωροῦντες οὐδὲ ἄκουσαν γυναῖκα δούλην ἢ ἐλευθέραν εἰς σκηνὴν ἢ ὀρχήστραν καθέλκειν οὐδὲ ἀπαλλαγῆναι βουλομένην κωλύειν ἢ τοὺς ἐγγυητὰς τοὺς αὐτῆς ὡς ὑπὲρ αὐτοῦ τούτου χρυσίον ῥητὸν ὁμολογήσαντας ἀπαιτεῖν. **1.** Ἀλλ' εἴ τι τοιοῦτο γένοιτο, κωλύεσθαι ταῦτα παρά τε τῶν λαμπροτάτων τῶν ἐπαρχιῶν ἀρχόντων καὶ παρὰ τῶν ἐν ταῖς πόλεσι θεοφιλεστάτων ἐπισκόπων διεταξάμεθα δόντες ἄδειαν τοῖς θεοφιλεστάτοις ἐπισκόποις ἅμα τῷ λαμπροτάτῳ τῆς ἐπαρχίας ἄρχοντι καὶ ἄκοντας ἄγειν πρὸς ἑαυτοὺς τοὺς βιασαμένους ἢ τοὺς ἀπαλλάττεσθαι τῆς ἐργασίας κωλύοντας καὶ δημοσίαν μὲν αὐτῶν ποιεῖν τὴν οὐσίαν, ἐκείνους δὲ τῆς πόλεως ἐξελαύνειν. **2.** Εἰ δὲ ὁ τὴν ἐπαρχίαν ἰθύνων αὐτὸς ὁ βιαζόμενος εἴη ἢ τὴν ἐκ τῆς εἰρημένης ἐργασίας ἀπαλλαγὴν κωλύων, δίδομεν[xvi] ἄδειαν καὶ μόνοις τοῖς θεοφιλεστάτοις ἐπισκόποις προσιέναι τὴν ταῦτα πάσχουσαν ἢ τὸν αὐτῆς ἐγγυητήν, τοὺς δὲ ἐναντιοῦσθαι τῷ τὴν ἀρχὴν ἔχοντι καὶ μὴ συγχωρεῖν

[xvi] ἔδομεν

when the three-year period is about to end, if he should be unwilling to take it, he may seal it and make an attestation concerning it either before the most glorious (*endoxotatos*) City Prefect or the most glorious Praetorian Prefects, or the appropriate magistrate (*archon*) to whom the owner of the farm is subject;[162] in the provinces, he may take action concerning this either before the governor, or, in the absence of the governor before the defender of the place (*ekdikos, defensor*) or before the bishop of the city in which the owner of the property dwells, so that the matter is attested by one of the aforesaid persons. **1.** And if the owner thus should choose not to accept the emphyteutic payment offered, the emphyteutic leaseholder may keep it for himself and the owner shall have no right of action to demand the payment from him.

2. The emphyteutic lease should not be dissolved when the three-year period has elapsed, nor should the owner seek the customary payment for the following years, until he himself, pressing the emphyteutic leaseholder and sending him a written declaration, should begin to seek the emphyteutic payment. Then the owner should not seek the rent payment for all the previous time, since he is responsible for not receiving it, but he should seek the emphyteutic payment for the time elapsed since his declaration. **3.** If for three years after the owner's declaration the emphyteutic leaseholder should not reasonably pay the payment, the owner should accordingly expel him from the emphyteutic lease in accordance with the second constitution of this title. *(531–534).*

[33] *The same Augustus to the Most Reverend Bishops all over the Earth.* **pr.** We have enacted a divine decree, allowing no one to drag any woman, slave or free, onto the stage or into a chorus against her will, or to prevent one desiring to leave from doing so, or to bring claim against her sureties, who for this very reason pledged a fixed amount of money. **1.** But if any such thing should happen, We have decreed that it shall be stopped by the *viri clarissimi* governors of the provinces and by the most reverend bishops in the city; and We give the most reverend bishops together with the *vir clarissimus* provincial governor permission to summon, even against their will, to confiscate the property of, and to expel from the city those who have used force against such women or prevented them from leaving that profession. **2.** If the provincial governor himself is the one who has used force or prevents such women from leaving the aforementioned profession, We have given permission to the woman who has suffered such things, or to her surety, to proceed to the most reverend bishops alone. The bishops shall oppose the provincial governor and not permit him

[162] A version of this constitution in the *constitutionum ecclesiasticarum collectio* indicates that a phrase like "or before the Patriarch, if he is powerful" has fallen out.

ἀδικεῖν ἤ, εἰ μὴ γένοιντο πρὸς τοῦτο ἱκανοί, μηνύειν εἰς τὴν βασιλείαν, ὥστε ἐξ ἡμῶν τὴν προσήκουσαν ἐξενεχθῆναι ποινήν, τῶν ἐγγυῶν καθάπαξ λυομένων καὶ τῶν ἐγγυητῶν ἀζημίων φυλαττομένων· ἄδειαν δίδοντες ταῖς ἀπαλλαττομέναις τοιαύταις γυναιξὶν ἐλευθέραις καὶ εὐγενέσιν οὔσαις πρὸς γάμον χωρεῖν νόμιμον, κἂν εἰ τυγχάνοιεν ταῖς σεμνοτάταις ἀξίαις οἱ ταύτας λαμβάνοντες κεκοσμημένοι, μηκέτι δεομέναις βασιλικῆς ἀντιγραφῆς, ἀλλὰ κατ' ἐξουσίαν τὸν γάμον πραττούσαις, γαμικῶν μέντοι συμβολαίων ἐκ τρόπου παντὸς μεταξὺ αὐτῶν γινομένων· τὰ αὐτὰ καὶ περὶ τῶν θυγατέρων τῶν σκηνικῶν διαταξάμενοι. **3.** Τὴν μὲν οὖν εἰρημένην διάταξιν καὶ ἐν τῷ πέμπτῳ βιβλίῳ τῶν πασῶν διατάξεων τούτου δὴ τοῦ τῆς ἡμετέρας εὐσεβείας ἐπωνύμου βιβλίου πρὸς τὰς πολιτικὰς ἀρχὰς ἀντιγεγραμμένην τεθείκαμεν. **4.** Ἐπειδὴ δὲ ἐχρῆν διὰ τῆς παρούσης νομοθεσίας καὶ ὑμῖν τοῖς πανταχοῦ γῆς θεοφιλεστάτοις ἐπισκόποις ταῦτα ποιῆσαι φανερά, διὰ τοῦτο συνελόντες τὰ κατ' ἐκείνην ἀφηγήσει πλατυτέρᾳ νομοθετηθέντα τήνδε τὴν θείαν διάταξιν ποιούμεθα καὶ πρὸς ὑμᾶς, ὅπως τὴν ἱερατικὴν διασώζοντες σεμνότητα καὶ σωφροσύνης ἀντεχόμενοι ταῦτα φυλάττοιτε, τότε ἐκ τοῦ μεγάλου θεοῦ δέος καὶ βασιλικὴν ἀγανάκτησιν, εἴ τι τούτων παραβαίητε, λογιζόμενοι.

D. k. Nov. Constantinopoli dn. Iustiniano pp. A. IIII et Paulino vc. conss.

[34] *Ὁ αὐτὸς βασιλεὺς Ἐπιφανίῳ τῷ ἁγιωτάτῳ ἀρχιεπισκόπῳ τῆς εὐδαίμονος ταύτης πόλεως καὶ οἰκουμενικῷ πατριάρχῃ.* **pr.** Σφόδρα πιστεύομεν, ὡς ἡ τῶν ἱερέων καθαρότης τε καὶ εὐκοσμία καὶ ἡ πρὸς τὸν δεσπότην θεὸν καὶ σωτῆρα ἡμῶν Ἰησοῦν Χριστὸν συντονία καὶ αἱ παρ' αὐτῶν ἀναπεμπόμεναι διηνεκεῖς εὐχαὶ πολλὴν εὐμένειαν τῇ καθ' ἡμᾶς πολιτείᾳ καὶ αὔξησιν παρέχονται· δι' ὧν ἔστιν ἡμῖν καὶ βαρβάρων κρατεῖν καὶ γίνεσθαι κυρίοις ἐκείνων, ἃ πρόσθεν οὐκ εἴχομεν. καὶ ὅσῳπερ ἂν τὰ τῆς αὐτῶν αὔξηται σεμνότητός τε καὶ κοσμιότητος, τοσούτῳ καὶ τὴν ἡμετέραν πολιτείαν ἐπιδιδόναι πιστεύομεν. εἰ γὰρ οἱ μὲν παρέχοιντο βίον σεμνόν τε καὶ πανταχόθεν ἀνεπίληπτον, τὸν δὲ λοιπὸν ἅπαντα λαὸν νουθετοῖεν, ὥστε πρὸς τὴν αὐτῶν σεμνότητα βλέποντα τῶν πολλῶν ἁμαρτημάτων ἀπέχεσθαι, πρόδηλον, ὡς ἐντεῦθεν αἵ τε ψυχαὶ πᾶσι βελτίους ἔσονται καὶ ῥᾳδίως ἡμῖν ἐνδοθήσεται παρὰ τοῦ μεγάλου θεοῦ καὶ σωτῆρος ἡμῶν Ἰησοῦ Χριστοῦ φιλανθρωπία προσήκουσα.

1. Ταῦτα τοίνυν ἡμῖν ἀνασκοπουμένοις προσήγγελται παραδόξως τινὰς τῶν εὐλαβεστάτων διακόνων, ἔτι γε μὴν καὶ πρεσβυτέρων (τὸ γὰρ ἔτι πορρωτέρω τούτου καὶ εἰπεῖν ἐρυθριῶμεν, φαμὲν δὴ τὸ τῶν θεοφιλῶν ἐπισκόπων), ὡς τούτων τινὲς οὐκ αἰσχύνονται οἱ μὲν αὐτόθεν κύβων ἅπτεσθαι καὶ τὴν οὕτως ἀσχήμονα καὶ αὐτοῖς τοῖς ἰδιώταις παρ' ἡμῶν κατὰ τὸ πλεῖστον ἀπηγορευμένην θέαν μετιέναι, οἱ δὲ τὴν τοιαύτην παιγνίαν οὐκ αὐτουργοῦσιν, ἀλλ' ἢ κοινωνοῦσι τοῖς πράττουσιν ἢ

to wrong her, or, if they are not powerful enough for this, they shall report the matter to the imperial court, so that suitable punishment may be inflicted by Us, while the sureties may at once be released and those who gave surety be kept free from loss. We further give women free and free-born women who leave this profession permission to contract a lawful marriage, and even if those who take them in marriage are decorated with the highest offices, such women no longer require an imperial rescript but may marry at their own discretion, although a marriage contract must by all means be made between them. **3.** This the aforementioned decree, addressed to all public magistrates, We have also placed in the fifth book of all decrees in the book named after Our Piety.[163] **4.** But since it was necessary, through the present law, to make its provisions known to you, the most reverend bishops all over the Earth, We have therefore summarized the measures established in that decree at greater length and have written this divine decree to you. Thus, while maintaining your priestly dignity and cleaving to moderation, you shall observe these provisions, moreover bearing in mind your fear of God and Our imperial displeasure if you should violate any of them.

Given November 1, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, for the fourth time, and of the vir clarissimus *Paulinus (534).*

[34] *The same Augustus to Epiphanius, Most Holy Archbishop of This Blessed City and Ecumenical Patriarch.* **pr.** We vehemently believe that the purity of the priests, their good discipline, and their devotion to the Lord God and to Our Savior Jesus Christ, as well as their prayers, offered up continually, bring much benevolence and increase to the State under Our rule: through them, We are able both to conquer the barbarians and to become the rulers over territory which We did not previously hold. And We believe that to the extent to which their dignity and honor is increased, to that extent Our State also increases. For if they show their own life to be honorable and utterly beyond reproach and guide all the rest of the laity, who observing austerity of the priests abstain from many sins, it is self-evident that the souls of all shall thereby be bettered and corresponding benevolence will more readily be bestowed upon us by Mighty God and Our Savior Jesus Christ.

1. As We were reflecting on these things, it was reported to Us to Our surprise that some of the most pious deacons, and indeed even some of the presbyters – for We blush to name any beyond this rank, namely, reverend bishops – that some of them are not ashamed to play dice of their own accord and partake in this so unseemly spectacle, which We have strictly forbidden to laymen;[164] while others do not play this game themselves but either mingle with those

[163] That is, the Code; the reference is to C. 5.4.29.

[164] C. 3.43.1–2.

κάθηνται θεαταὶ πράξεως ἀτόπου, καὶ θεῶνται μὲν σὺν ἐπιθυμίᾳ πάσῃ τὰ πάντων ἀτοπώτατα, λόγων δὲ ἀκούουσι βλασφήμων, οὓς ἐν τοῖς τοιούτοις ἀνάγκη γίνεσθαι, μολύνουσί τε τὰς ἑαυτῶν χεῖρας τάς τε ὁράσεις τάς τε ἀκοὰς οὕτω κατεγνωσμένοις καὶ ἀπηγορευμένοις παιγνίοις· οἱ δὲ καὶ ἀπαρακαλύπτως ἢ ταῖς τῶν ἵππων ἁμίλλαις ἢ παραβάλλουσιν ἢ καὶ προκαλοῦνταί τινας ὑπὲρ τῆς τῶν ἵππων ἥττης ἢ νίκης, ἢ δι᾿ ἑαυτῶν ἢ διά τινων ἑτέρων οὐκ εὐσχημόνως τὰ τοιαῦτα παίζοντες, ἢ τῶν ἐν σκηνῇ καὶ θυμέλαις θεαταὶ γίνονται παιγνίων, ἢ ταῖς ἐν θεάτροις τῶν μαχομένων πρὸς τὰ θηρία μάχαις παραγίνονται καὶ οὐκ ἐννοοῦσιν, ὡς καὶ τοῖς ἄρτι μυουμένοις καὶ τῶν προσκυνητῶν ἀξιουμένοις μυστηρίων αὐτοὶ προκηρύττουσιν ἀποτάττεσθαι τῇ τοῦ ἀντικειμένου δαίμονος λατρείᾳ τε καὶ πάσῃ πομπῇ, ἧς οὐκ ἐλάχιστον μέρος τὰ τοιαῦτα καθέστηκε.

2. Πολλάκις μὲν αὐτοῖς τὰ τοιαῦτα φυλάττεσθαι προηγορεύσαμεν· ὁρῶντες δὲ συχνὴν τὴν περὶ τούτων γινομένην ἡμῖν προσαγγελίαν εἰς ἀνάγκην ἤλθομεν ἐπὶ τὸν παρόντα νόμον διὰ τὴν ὑπὲρ εὐσεβείας ἀφικέσθαι σπουδὴν καὶ ἅμα μὲν ὑπὲρ τῆς ἱερωσύνης αὐτῆς, ἅμα δὲ ὑπέρ τε τοῦ κοινῇ τῇ πολιτείᾳ συμφέροντος.

3. Καὶ θεσπίζομεν μηδένα μήτε διάκονον μήτε πρεσβύτερον καὶ πολλῷ μᾶλλον ἐπίσκοπον (ὅπερ καὶ ἄπιστον ἴσως ἂν δόξειεν, ὧν ἐν ταῖς χειροτονίαις εὐχαί τε εἰς τὸν δεσπότην ἀναπέμπονται Χριστὸν τὸν θεὸν ἡμῶν καὶ ἐπίκλησις τοῦ ἁγίου καὶ προσκυνητοῦ γίνεται πνεύματος καὶ ταῖς αὐτῶν κεφαλαῖς ἢ ταῖς χερσὶν ἐπιτίθεται ἢ ἐπιδίδοται τὰ ἁγιώτατα τῶν παρ᾿ ἡμῖν μυστηρίων, ὅπως ἂν αὐτοῖς τὰ αἰσθητήρια πάντα καθαρά τε γένοιτο καὶ καθιερωθείη θεῷ) μηδένα τοίνυν τούτων τολμᾶν τοῦ λοιποῦ μετὰ τόνδε τὸν θεῖον ἡμῶν νόμον ἢ κυβεύειν τὴν οἱανοῦν τῶν κύβων παιδιὰν ἢ τοῖς τοῦτο πράττουσι κοινωνεῖν ἢ παρακαθῆσθαι καὶ τέρπεσθαι καὶ συνδιατίθεσθαι τοῖς γινομένοις ἢ παραβάλλειν ταῖς δημώδεσι ταύταις θέαις, ἃς ἔμπροσθεν εἰπόντες ἔφθημεν, καί τι τῶν ἐπ᾿ αὐταῖς ἀπηγορευμένων ποιεῖν, ἀλλὰ πάσης πρὸς ταῦτα μετουσίας τὸ λοιπὸν ἀπέχεσθαι.

4. Τὸ γὰρ ἤδη προειληφός, εἰ καὶ ἀναζητεῖν ἐχρῆν ἢ καὶ μὴ[xvii] μετιέναι προσηκόντως, ὅμως διὰ φιλανθρωπίαν συγχωροῦμεν, τὴν ἐκ τοῦ παρόντος νόμου παρατήρησιν ἅπασιν εἰς τὸν λοιπὸν ἐπιτιθέντες χρόνον. προσῆκον γάρ ἐστιν αὐτοῖς νηστείαις τε καὶ ἁγνείαις καὶ ταῖς ἀσκήσεσι τῶν θείων λογίων καὶ ταῖς ὑπὲρ πάντων σχολάζειν εὐχαῖς, ἀλλὰ μὴ ταῦτα καταλιμπάνοντας τῶν παντάπασι βεβήλων τε καὶ ἀπηγορευμένων ἅπτεσθαι. **5.** Ταὐτὸ δὲ τοῦτο θεσπίζομεν καὶ ἐπὶ τῶν λοιπῶν κληρικῶν, ὑποδιακόνων τε καὶ ἀναγνωστῶν φαμεν, οἵπερ καὶ αὐτοὶ τῆς τε ἱερᾶς τραπέζης και παντὸς τοῦ περὶ τὰς ἁγιωτάτας ἐκκλησίας κόσμου καθεστᾶσιν ὑπουργοί τε καὶ ὑπηρέται καὶ τὰ θεῖα μεταχειριζόμενοι λόγια τὰς ἱερὰς ἡμῖν ἐκ τῶν εὐαγῶν ἡμῶν βιβλίων οἱ μὲν ἀναγινώσκουσι γραφάς, οἱ δὲ ὑμνοῦσιν ᾠδάς.

[xvii] [μή]

who do or sit as spectators of this disgraceful practice and watch with rapt attention the most detestable of all things, hearing blasphemous words, which inevitably are uttered in such circumstances, and sullying their hands, eyes, and ears at such damnable and prohibited games. And still others openly either bet on horse races or even challenge others to bet on the defeat or victory of horses, indecently making such bets in person or through others; or they sit as spectators of shows on the stage or in the orchestra, or attend battles between fighters and beasts in the theaters, and think not thereon that they preach to the recently converted and those found worthy of the worshipful mysteries to abstain from serving the Opponent Demon, and from all such pomp, of which such spectacles make up no small part.

2. We have often bid them to observe these things. But in light of the frequent report of such matters to Us, We have been forced to enact the present law out of Our zeal for piety and for the sake of the priesthood itself, as well as the for the benefit to the commonwealth.

3. And We decree that neither deacon nor presbyter, let alone bishop – which might indeed seem beyond belief, since in their election both prayers are offered up to the Lord Christ Our God, and the worshipful Holy Spirit is invoked, and the holiest mysteries among us are laid or placed on their heads or in their hands, so that all their senses should be made pure and consecrated to God – none of them, then, shall dare after this Our divine law either to play any kind of dice game, mingle or sit with those playing, or enjoy or condone such games, or to bet on the public spectacles that We mentioned above and do anything forbidden at them, but they shall hereafter abstain from all contact with these things.

4. As for the past, although We should investigate and punish accordingly, We nevertheless grant pardon by reason of Our benevolence, but We require full observance of the present law henceforth for all time. For it behooves them to devote themselves to fasts, vigils, study of the divine scriptures, and prayers on behalf of all, and not, forsaking these, to engage in utterly profane and forbidden things. **5.** We decree the same thing with respect to the rest of the clergy, namely subdeacons and readers, who themselves are servants and ministers of the sacred table[165] and of all adornments of the most holy churches; who, practicing the divine sayings – some read to us the divine scriptures of the holy books, others sing songs.

[165] That is, the sacred table (τῆς ἱερᾶς τραπέζης) of communion, in reference to the Last Supper; the expression might also be understood as a reference to the altar.

6. Εἰ δέ τις τοῦ λοιποῦ τοιοῦτό τι πράττων φανείη καὶ προσαγγελθείη τοῦτο ἢ κατὰ ταύτην τὴν εὐδαίμονα πόλιν τῇ σῇ ἁγιωσύνῃ ἢ κατὰ τὰς ἐπαρχίας τοῖς ὑπ' αὐτὴν τεταγμένοις θεοφιλεστάτοις μητροπολίταις καὶ τοῖς λοιποῖς ἐπισκόποις, ὧν τὴν χειροτονίαν ὁ τῆς σῆς μακαριότητος ποιεῖται θρόνος, καὶ τοιαύτη τις ἐπέλθοι μέμψις ἢ διακόνῳ ἢ πρεσβυτέρῳ καὶ πολλῷ μᾶλλόν τινι τῶν θεοφιλεστάτων ἐπισκόπων, τὴν σὴν ἐνταυθοῖ μακαριότητα κἂν ταῖς ἐπαρχίαις τοὺς ὑπὸ σὲ θεοφιλεστάτους μητροπολίτας καὶ τοὺς ὑπ' αὐτοὺς ἐπισκόπους ταῦτα σὺν ἀκριβείᾳ πάσῃ κατὰ τὴν τῆς ἱερωσύνης τάξιν ζητεῖν καὶ ἀνερευνᾶν, μηδὲ πάρεργον ποιεῖσθαι τὴν ἐξέτασιν, ἀλλὰ καὶ μαρτύρων ἀξιοπίστων ἀκούειν καὶ διὰ πάσης ὁδοῦ χωρεῖν, ὥστε τὸ ἀληθὲς λαβεῖν. ὥσπερ γὰρ αὐτοὺς τῶν τοιούτων εἴργομεν, οὕτω καὶ συκοφαντεῖσθαι παρά τινων κωλύομεν.

7. Καὶ εἰ πανταχόθεν τῆς ἐξετάσεως τῶν θείων προκειμένων λογίων γινομένης ἀληθῶς ἔχειν ἡ μέμψις φανείη καὶ ἀποδειχθείη διάκονος ἢ πρεσβύτερος ἢ κυβεύων ἢ κοινωνῶν τοῖς κυβεύουσιν ἢ ταῖς τοιαύταις παρακαθήμενος ματαιότησιν ἢ ταῖς εἰρημέναις παραβάλλων θέαις, ἢ καὶ ἴσως τις τῶν θεοφιλεστάτων ἐπισκόπων (ὅπερ οὐδὲ ἔσεσθαι πιστεύομεν ὅλως) τοιαύτης τινὸς ἀνάσχηται θέας ἢ τοῖς κυβεύουσι προσκαθεσθῆναι καὶ συνδιατίθεσθαι τοῦ λοιποῦ θαρρήσειε, τὸν τοιοῦτον εὐθὺς ὑπὸ τῆς σῆς μακαριότητος ἢ ὑπὸ τοῦ μητροπολίτου ἢ τοῦ γε θεοφιλεστάτου ἐπισκόπου, ὑφ' ὃν τέτακται, εἴπερ τις τῶν εἰρημένων εἴη κληρικῶν, τῆς ἱερᾶς ἀφορίζεσθαι λειτουργίας, ἐπιτίθεσθαί τε αὐτῷ κανονικὸν ἐπιτίμιον καὶ ὁρίζεσθαι χρόνον, οὗπερ ἐντὸς προσῆκόν ἐστιν αὐτὸν νηστείαις τε καὶ ἱκεσίαις χρώμενον τὸν μέγαν ἐξιλάσκεσθαι θεὸν ὑπὲρ τοῦ τοιούτου πλημμελήματος. **8.** Καὶ εἰ μὲν ἐπὶ τὸν ὁρισθέντα χρόνον ὁ τὸ τοιοῦτον ἐπιτίμιον δεχόμενος μείνειε δάκρυσί τε καὶ μετανοίᾳ καὶ νηστείᾳ καὶ τῇ πρὸς τὸν δεσπότην θεὸν εὐχῇ ἄφεσιν τοῦ πλημμελήματος ἐξαιτῶν, τηνικαῦτα τὸν ὑφ' ᾧ τέτακται ταῦτα ἀκριβῶς μανθάνοντα καὶ περιεργαζόμενον κοινὴν μὲν ὑπὲρ αὐτοῦ ποιεῖν εὐχὴν γίνεσθαι, σὺν πάσῃ δὲ ἀκριβείᾳ παρεγγυᾶν αὐτῷ τοῦ λοιποῦ τῆς τοιαύτης ἱερωσύνης ὕβρεως ἀπέχεσθαι· καὶ εἰ νομίσειεν αὐτὸν αὐτάρκως πρὸς μετάνοιαν ἐλθεῖν, τηνικαῦτα τῆς ἱερατικῆς αὐτῷ μεταδιδότω φιλανθρωπίας.

9. Εἰ δὲ καὶ μετὰ τὸν ἀφορισμὸν εὑρεθείη μήτε γνησίως τῇ μετανοίᾳ χρώμενος περιφρονῶν τε τοῦ πράγματος καὶ καθαρῶς ὑπὸ τοῦ ἀντικειμένου κατειλημμένος τὴν ψυχήν, οὗτος μὲν αὐτὸν ὁ ἱερεὺς ὑφ' ᾧ τελεῖ τῶν ἱερατικῶν ἐξωθείτω καταλόγων παντάπασιν αὐτὸν καθαιρῶν. **10.** Ὁ δὲ οὐκέτι παντελῶς ἄδειαν ἕξει πρὸς ἱερατικὴν ἐλθεῖν τάξιν. ἀλλ' εἰ μὲν ἔχοι περιουσίαν, τὸ τῆς πόλεως ἐκείνης βουλευτήριον, καθ' ἣν ἱερᾶτο πρότερον, ἢ εἴπερ οὐκ ἔχοι βουλευτήριον ἡ πόλις, ἕτερον βουλευτήριον τῆς ἐπαρχίας, ὅπερ μάλιστα χρήζει βουλευτοῦ, παραλήψεται τοῦτον τὸ λοιπὸν ἅμα τῇ περιουσίᾳ δουλεύοντα. εἰ δὲ οὐσίαν οὐκ ἔχοι, ταξεώτης τὸ λοιπὸν ἔσται τῆς ἐπιχωρίου τάξεως ἀντὶ τοῦ πρόσθεν ἱερέως καί, ἐπειδὴ τὴν τοῦ θεοῦ

6. If someone hereafter should be caught doing such a thing, and it is reported either in This Blessed City to Your Holiness, or in the provinces to the most reverend metropolitans and other bishops under Your supervision, who are appointed by the See of Your Blessedness, and such an accusation is made against a deacon, presbyter, or indeed even against one of the most reverend bishops, then Your Blessedness here, the most reverend metropolitans under You and the bishops under them in the provinces, shall most carefully investigate and examine these matters according to priestly regulations; and they shall not make a cursory investigation but shall hear credible witnesses and try every means of reaching the truth. For just as We forbid them to do such things, so too do We prohibit them to be slandered by anyone.

7. And if upon exhaustive inquiry, with the divine scriptures before them, the accusation appears to be true, and a deacon or presbyter is convicted of playing dice, of mingling with the players, of attending such frivolities, or of betting on the aforementioned spectacles; or if perchance one of the most reverend bishops – which We trust will not happen – should take part in such a spectacle or dare to sit among those playing dice or to condone them; then such a one, if he is one of the aforementioned clergymen, shall immediately be removed from his sacred office by Your Blessedness, by the metropolitan, or by the most reverend bishop under whom he serves; and the canonical punishment shall be imposed on him and the time fixed during which he must, with fasting and supplications, placate great God for such a sin. **8.** And if the person on whom this penalty is imposed indeed perseveres through the appointed time with tears and repentance and fasting and prayer to the Lord God, begging for the remission of his sin, then his superior shall carefully ascertain this and cause a common prayer to be offered on his behalf, and he shall urgently enjoin him to abstain from such outrage on the priesthood ever after. And if his superior deems him sufficiently penitent, then he may give him a share in priestly mercy (i.e., reinstate him).

9. But if after excommunication he is found not genuinely penitent but contemptuous, his soul entirely possessed by the Opponent, then the bishop under whom he serves shall strike his name from the register of the clergy and utterly depose him. **10.** He shall no longer be permitted to enter the priestly order. If he has property, the curia of the city in which he formerly served as priest, or if it does not have a curia, another curia in the province that is most in need of curials, shall take him as its servant ever after along with his property. If he does not possess wealth, he shall thereafter be a member of the provincial staff, instead of a priest as before; and since he has left the order of God, he shall

τάξιν ἐκλέλοιπεν, ἔσται ταξεώτης ἐπιχώριος, ταύτην ἑαυτῷ τὴν αἰσχύνην ἀντὶ τῆς ἔμπροσθεν τιμῆς ἐπιθείς.

11. Ταῦτα τοίνυν ἅπαντα θεσπίζομεν ἐπὶ μὲν τῆς εὐδαίμονος ταύτης πόλεως τὴν σὴν φυλάττειν ἁγιωσύνην καὶ τοὺς καθ' ἑκάστην ἁγιωτάτην ἐκκλησίαν ἐκδίκους τε καὶ οἰκονόμους, οἷς ἐπιμελὲς ἔσται τὰ τοιαῦτα καὶ ἀναζητεῖν καὶ προσαγγέλλειν καὶ τοὺς ἁλισκομένους ἀφαιρεῖσθαι τῆς διδομένης αὐτοῖς παρὰ τῶν ἁγιωτάτων ἐκκλησιῶν σιτήσεώς τε καὶ χορηγίας· ἐν δὲ ταῖς ἐπαρχίαις οἵ τε ὑπὸ τῇ σῇ μακαριότητι τεταγμένοι θεοφιλέστατοι μητροπολῖται καὶ πρός γε οἱ ὑπ' αὐτοὺς θεοσεβεῖς ἐπίσκοποι καὶ οἱ τούτων ἐκκλησιέκδικοι καὶ οἰκονόμοι καὶ αὐτοὶ τὸν ἴσον τρόπον, καθ' ὅνπερ ἔμπροσθεν εἴπομεν, τῷ πράγματι χρώμενοι καὶ τὸ ἱερατικὸν σέβας πανταχόθεν ἀνεπίληπτόν τε καὶ ἀμώμητον φυλάττοντες.

12. Παραφυλάξουσι δὲ ταῦτα καὶ οἱ ἐνδοξότατοι τῶν ἱερῶν ἡμῶν πραιτωρίων ὕπαρχοι, φαμὲν δὲ τοὺς τῆς Ἑῴας ἐπὶ τοῖς ὑποτεταγμένοις ἔθνεσι τῇ αὐτῶν δικαιοδοσίᾳ οἵ τε τῆς Ἰλλυρίδος οἵ τε τῆς Ἄφρων προεστῶτες διοικήσεως καὶ αἱ πειθόμεναι τάξεις αὐτοῖς καὶ οἱ λαμπρότατοι τῶν ἐπαρχιῶν ἄρχοντες καὶ οἱ τῶν πόλεων ἔκδικοι, αὐτοὶ μὲν οἱ τὰς μεγάλας ἀρχὰς ἄρχοντες ἀγανάκτησιν ἡμετέραν ὑφορώμενοι, αἱ δὲ πειθόμεναι τάξεις αὐτοῖς δέκα χρυσίου λιτρῶν ἀγωνιῶσαι ποινήν, ἄρχοντες δὲ ἐπιχώριοι μείζους τε καὶ ἐλάττους καὶ αἱ πειθόμεναι τάξεις αὐτοῖς καὶ πρός γε οἱ τῶν πόλεων ἔκδικοι ἀνὰ πέντε χρυσίου λιτρῶν ποινὴν εὐλαβούμενοι, εἰ ταῦτα μαθόντες μὴ προσαγγείλαιεν καὶ αὐτοὶ τοῖς ἱερεῦσι, τουτέστιν ἢ τοῖς θεοφιλεστάτοις ἐπισκόποις ἢ τοῖς ὁσιωτάτοις μητροπολίταις ἢ τοῖς ἑκάστης διοικήσεως ἁγιωτάτοις πατριάρχαις, καθ' ἣν ἂν ἕκαστος τελοίη χώραν, ὥστε ἐκείνους ταῦτα μαθόντας κατὰ τὸ ἔμπροσθεν διωρισμένον ἅπασιν ἐπεξελθεῖν, καί, ἐπειδὰν παρ' αὐτῶν ὁ ἐπὶ τοῖς τοιούτοις ἁλοὺς καθαιρεθείη, μὴ[xviii] τῇ βουλῇ τῆς πόλεως ἢ τῇ τάξει τοῦτον παραδοθῆναι παρασκευάσαιεν. **13.** Καὶ ὁ ἐνδοξότατος ὕπαρχος τῆς εὐδαίμονος ταύτης πόλεως ταῦτα παραφυλάξει, εἴπερ ἐπὶ ταύτης ἁμαρτάνοιτο τῆς βασιλίδος ἡμῶν πόλεως, ἅμα τῇ πειθομένῃ αὐτῷ τάξει, αὐτὸς μὲν ἀγανάκτησιν ἡμετέραν ὑφορώμενος, ἡ δὲ αὐτοῦ τάξις δέκα χρυσίου λιτρῶν εὐλαβουμένη ποινήν.

14. Ἀλλ' ἡμεῖς μὲν ταῦτα νομοθετικῶς πεπράχαμεν. ἐκεῖνο δὲ τῶν ἀνωμολογημένων ἐστίν, ὡς ἡμῖν μὲν ἀφωσίωται πρὸς τὸν θεὸν ὑπὲρ τῆς εἰς αὐτὸν τῶν ἱερέων σεμνότητος. **15.** Εἰ δὲ αὐτοί τι παραβαίνοιεν τῶν τεταγμένων καὶ παραπροσποιοῖντο καὶ μὴ ἐπεξίοιεν, ἀλλά τινα δῆθεν φιλανθρωπίαν οὐκ ἐπαινετὴν ἕλοιντο, πρὸς <ταῖς ἐξ ἡμῶν *νόμων*> τὰς ἐξ οὐρανοῦ ποινὰς ἕξουσι καὶ τὴν ἐκεῖθεν κρίσιν, ἥτις αὐτοῖς ἐν αὐτῷ τῷ τοῦ θεοῦ παραστήσεται βήματι τὴν οὐκ εὐπρεπῆ παραπροσποίησιν ἐλέγχουσά τε καὶ μετιοῦσα. **16.** Εἰ δὲ καί τις τῶν πολιτικῶν ἀρχόντων μειζόνων τε καὶ ἐλαττόνων ἢ ταξεωτῶν ἢ ἐκδίκων ἢ μαθὼν ταῦτα μὴ μηνύσειεν ἢ ἐπεξελθεῖν ἐξὸν ῥᾳθυμήσειεν ἢ καὶ τὸ πρᾶγμα μισθοῦ καταπροδοίη, ἴστω,

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belong to the order of the provincial staff, having subjected himself to this disgrace in the place of his former honor.

11. We moreover decree that Your Holiness shall observe all these measures in This Blessed City and likewise the defenders and stewards in each most holy church, whose duty it shall be to investigate and denounce such misconduct and to deprive those caught from the sustenance and support given them by the most holy churches. In the provinces, the most reverend metropolitans under the jurisdiction of Your Blessedness, as well as the reverend bishops under them and their defenders of the church and stewards, shall go about the matter in the same way as We have said above and shall keep the sacerdotal dignity irreproachable and blameless in every respect.

12. Also Our *viri gloriosissimi* Praetorian Prefects shall see that these provisions are observed, namely those of the East in the provinces under their jurisdiction, as will those of the diocese of Illyricum and the diocese of Africa as well as the staffs that answer to them, the *viri clarissimi* provincial governors, and the Defenders of the cities. Those who hold high offices shall dread Our displeasure; the staffs that answer to them shall suffer a fine of 10 pounds of gold; the greater and lesser provincial governors, the staffs that answer to them, and the defenders of the cities shall fear a fine of 5 pounds of gold, if upon learning of such misconduct they do not report it to the priests, that is, either to the most reverend bishops or to the most holy metropolitans or to the most holy patriarchs of the diocese, according to the district in which each serves, so that they, upon learning these things, may proceed as has been established above; and when one convicted of such misconduct has been deposed, they shall see to it that he is handed over either to the curia of the city or to the provincial staff. **13.** The Most Illustrious Prefect of This Blessed City, along with the staff that answers to him, shall also observe these provisions, he dreading Our displeasure; his staff, fearing a fine of 10 pounds of gold.

14. Thus have We made these provisions law. For it is fitting that We should consecrate to God the solemnity due him from his priests. **15.** But if they should transgress one of these provisions and dissemble and not prosecute such transgressions but choose instead a kind of censurable clemency, in addition to the penalties from Our laws they shall face punishment from Heaven and judgment there, which shall be rendered them at the tribunal of God and shall prove and punish their unseemly connivance. **16.** If any of the greater or lesser civilian magistrates or a member of their staffs or a defender, upon learning of such misconduct, either fails to report it or, if able to prosecute it, neglects to do so or even betrays his duty for a bribe, he shall know that,

ὡς πρὸς ταῖς ἠπειλημέναις παρ' ἡμῶν ποιναῖς ἕξει καὶ τὴν παρὰ τοῦ μεγάλου θεοῦ τιμωρίαν ἑπομένην καὶ ἔνοχος ἔσται ταῖς ἀραῖς ἁπάσαις ταῖς τοῖς ἱεροῖς περιεχομέναις βιβλίοις.

17. Ὥσπερ δὲ ταῦτα ἡμῖν δι' οὐδὲν ἕτερον ἢ διὰ τὴν τοῦ δεσπότου νενομοθέτηται θεραπείαν, οὕτω κἀκεῖνο προστίθεμεν, ὥστε τὰς ἐξετάσεις σὺν ἀκριβείᾳ γίνεσθαι καὶ μηδένα συκοφάντην ἐπανίστασθαί τισι καὶ ψευδοκατηγορεῖν ἢ ψευδομαρτυρεῖν ἐν τοῖς τοιούτοις. **18.** Καθάπερ γὰρ τοῖς ἱερεῦσιν, εἴ τι τοιοῦτο πράξαιεν, τηλικαύτας ἐπεθήκαμεν ποινάς, οὕτω καὶ τοῖς συκοφαντεῖν αὐτοὺς πειρωμένοις τὰς ἐξ οὐρανοῦ καὶ τῶν ἡμετέρων νόμων ποινὰς ἐπικεῖσθαι βουλόμεθα, εἰ προσαγγείλαντες εἶτα ἐπεξελθεῖν μὴ βουληθεῖεν ἢ συστῆναι ταῖς τοιαύταις κατηγορίαις οὐκ ἰσχύσαιεν· πανταχόθεν τῆς ἰσότητος καὶ δικαιοσύνης, ἣν διὰ πάσης τιμῶμεν πράξεως καὶ μάλιστα ἐν τῇ θέσει τῶν νόμων, ἀντεχόμενοι.

D. prid. non. Nov. Constantinopoli Iustiniano pp. A. IIII *et Paulino vc. conss.*

V De Haereticis et Manichaeis et Samaritis

[1] *Imp. Constantinus A. ad Dracilianum.* Privilegia, quae contemplatione religionis indulta sunt, catholicae tantum legis observatoribus prodesse oportet. haereticos non solum his privilegiis alienos esse volumus, sed et diversis muneribus constringi et subici.

PP. k. Sept. Gerasti Constantino A. VII *et Constantio conss.*

[2] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad Hesperium pp.* **pr.** Omnes vetitae legibus et divinis et imperialibus constitutionibus haereses perpetuo conquiescant et nemo ulterius conetur quae repperit profana praecepta vel docere vel discere: ne antistites eorundem audeant fidem insinuare, quam non habent, et ministros creare, quod non sunt: ne per coniventiam iudicantium omniumque, quibus per constitutiones paternas super hoc cura mandata est, eiusmodi audacia neglegatur et crescat. **1.** Haereticorum autem vocabulo continentur et latis adversus eos sanctionibus debent succumbere, qui vel levi argumento iudicio catholicae religionis et tramite detecti fuerint deviare.

D. III *non. Aug. Mediolano. acc.* XIII *k. Sept. Ausonio et Olybrio conss.*

in addition to the punishment threatened by Us, he shall face the imminent vengeance of Mighty God and shall be subject to all the execrations contained in the sacred scriptures.

17. As We have enacted these provisions for no other reason than for the worship of the Lord, so We also add this: that the inquiries shall be made with care and no calumniator shall assail anyone, making false accusations or bearing false witness in such matters. **18.** For as We have established such great punishment for priests, if they do such a thing, so too do We desire that punishment from Heaven and from Our laws be visited upon those who attempt to calumniate them, if after denouncing them they refuse to prosecute them or prove unable to substantiate their accusations. For We cleave to equity and justice, which We honor in every deed and most of all in the enactment of laws.

Given November 4, at Constantinople, in the consulship of Justinian, Ever Augustus, for the fourth time, and the vir clarissimus *Paulinus (534).*

Fifth Title Heretics, Manichaeans, and Samaritans

[1][166] *Emperor Constantine Augustus to Dracilianus.* The privileges that have been granted in consideration of religion should benefit only adherents of the Catholic faith. We desire that heretics not only be excluded from these privileges but also be bound and subject to various liturgies.

Given September 1, at Gerastus, in the consulship of Constantine Augustus, for the seventh time, and Constantius (326).

[2][167] *Emperors Gratian, Valentinian, and Theodosius Augusti to Hesperius, Praetorian Prefect.* **pr.** All heresies forbidden by law and by divine and imperial constitutions shall cease forever, and no one shall attempt either to teach or to learn the impious precepts he has found. Their priests shall not dare to preach the faith – which indeed they do not possess – or appoint ministers – which are nothing of the sort. This kind of audacity must not be neglected or permitted to increase through the connivance of provincial governors and all those to whom responsibility in this regard has been entrusted by the constitutions of Our father.[168] **1.** Under the term heretics, who shall be subject to the decrees passed against them, are included those who are found to deviate from the doctrine and path of the Catholic Religion on even slight grounds.

Given August 3, at Milan; received August 20, in the consulship of Ausonius and Olybrius (379).

[166] = C.Th. 16.5.1.
[167] Assembled from C.Th. 16.5.5, 16.5.24, and 16.5.28.
[168] See C.Th. 16.5.12.

[3] *Impp. Arcadius et Honorius AA. Clearcho pu.* **pr.** Cuncti haeretici procul dubio noverint omnia sibi loca adimenda esse, sive sub ecclesiarum nomine teneantur sive diaconica appellantur vel etiam decanica, sive in privatis domibus vel locis huiusmodi coetibus copiam praebere videantur: his aedibus vel locis privatis ecclesiae catholicae vindicandis. **1.** Ad hoc interdicatur his omnibus ad litaniam faciendam noctu vel die profanis coire conventibus: statuta videlicet condemnatione centum librarum auri contra officium sublimitatis tuae vel praesidale quinquaginta, si quid huiusmodi fieri vel in publico vel in privatis aedibus concedatur.

D. v non. Mart. Constantinopoli Arcadio IIII et Honorio III AA. conss.

[4] *Idem AA. et Theodosius A. Senatori pp.* **pr.** Manichaeos seu Manichaeas vel Donatistas meritissima severitate persequimur. huic itaque hominum generi nihil ex moribus, nihil ex legibus sit commune cum ceteris. **1.** Ac primum quidem volumus esse publicum crimen, quia, quod in religione divina comittitur, in omnium fertur iniuriam. quos bonorum etiam publicatione persequimur: quae tamen cedere iubemus proximis quibusque personis, ita ut ascendentium vel descendentium vel venientium ex latere cognatorum usque ad secundum gradum velut in successionibus ordo servetur. quibus ita demum ad capiendas facultates esse ius patimur, si non et ipsi pari conscientia polluuntur. **2.** Ipsos quoque volumus amoveri ab omni liberalitate et successione quolibet titulo veniente. **3.** Praeterea non donandi, non emendi, non vendendi, non postremo contrahendi cuiquam convicto relinquimus facultatem.

4. In mortem quoque inquisitio tendatur. nam si in criminibus maiestatis licet memoriam accusare defuncti, non immerito et hic debet subire iudicium. **5.** Ergo et suprema illius scriptura irrita sit, sive testamento sive codicillo sive epistula sive quolibet genere reliquerit voluntatem qui Manichaeus fuisse convincitur: hoc quoque casu eadem illa circa gradus superius comprehensos condicione servata. **6.** Sed nec filios heredes existere aut adire permittimus, nisi a paterna pravitate discesserint: delicti enim veniam paenitentibus damus. **7.** In eos etiam auctoritatis aculei dirigantur, qui eos domibus suis damnanda

[3][169] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Clearchus, Urban Prefect.* **pr.** All heretics shall know that all places shall be taken from them, whether they are held under the name of churches, or are called vestries (*diaconica*) or dwellings for monks (*decanica*), or are found to provide space for such gatherings in private houses or locations. These buildings or private locations shall be confiscated for the Catholic Church. **1.** In addition, all these profane people shall be forbidden to gather to celebrate the litany, day or night. As punishment a fine of 100 pounds of gold shall be inflicted on the official staff of Your Sublimity or 50 pounds on the staff of a governor, if anything of this nature is permitted, whether in a public or in private building.

Given March 3, at Constantinople, in the consulship of Arcadius, for the fourth time, and Honorius, for the third time, Augusti (396).

[4][170] *The same Augusti and* THEODOSIUS *Augustus to Senator, Praetorian Prefect.* **pr.** We persecute the Manichaeans and Donatists, whether men or women, with perfectly warranted severity. This manner of people shall have nothing whatsoever, whether by custom or by law, in common with the rest of mankind. **1.** And first of all, We want it (adherence to the Manichaeans or Donatists) to be a public crime, because wrongs committed with respect to divine religion are to the detriment of all. We persecute them indeed by the confiscation of their property, but We order that it go to their nearest relatives. Thus, the order of heirs in the ascending, descending, and collateral line of cognates up to the second degree shall be observed as in testamentary succession; and We grant the heirs the right to seize their property only if they themselves are not polluted by equal guilt. **2.** We also desire that they be prohibited from every gift and inheritance, from whatever source it may come. **3.** Furthermore, We leave no one who has been convicted the power to give, buy, sell, or even make a contract.

4. The inquisition shall be extended against death (i.e., against the dead). For if it is permissible to impeach the memory of the deceased with accusations of treason, one shall not undeservedly undergo judgment in this case too. **5.** Therefore, the last writing of one who is proven to have been a Manichaean shall be void, whether he leaves behind his wish by will, codicil, letter, or any other means. Also in this case shall the same condition as to the degrees (of heirs) listed above be observed. **6.** But We do not permit their children to become heirs or to come into the inheritance, unless they have abandoned the depravity of their fathers; for We extend pardon to the penitent. **7.** The stings of authority shall be directed also against those who defend Manichaeans in

[169] = C.Th. 16.5.30; Seeck dates to 402.
[170] = C.Th. 16.5.40; §7 has been taken from C.Th. 16.5.35. Mommsen suggested 402 as the date.

provisione defendent. **8.** Servos insuper extra noxam esse volumus, si dominum sacrilegum evitantes ad ecclesiam catholicam servitio fideliore transierint.

D. VIII k. Mart. Romae Honorio VII et Theodosio II AA. conss.

[5] *Imp. Theodosius A. et Valentinianus C. Florentio pp.* **pr.** Ariani et Macedoniani, Pneumatomachi et Apollinariani et Novatiani sive Sabbatiani, Eunomiani, Tetraditae sive Tessarescaedecatitae, Valentiniani, Papianistae, Montanistae seu Priscillianistae vel Phryges vel Pepuzitae, Marcianistae, Borboriani, Messaliani, Eutychitae sive Enthusiastae, Donatistae, Audiani, Hydroparastatae, Tascodrogitae, Batrachitae, Hermeieciani, Photiniani, Pauliani, Marcelliani, Ophitae, Encratitae, Apotactitae, Saccophori et, qui ad imam usque scelerum nequitiam pervenerant, Manichaei nusquam in Romano solo conveniendi orandique habeant facultatem.

1. Manichaeis etiam de civitatibus expellendis et ultimo supplicio tradendis, quoniam nihil his relinquendum loci est, in quo ipsis etiam elementis fiat iniuria, cunctisque legibus, quae contra eos ceterosque qui nostrae fidei refragantur olim latae sunt diversisque prolatae temporibus, semper viridi observantia valituris sive de donationibus in haereticorum conventicula, quae ipsi audacter ecclesias nuncupare conantur, factis sive ex ultima voluntate rebus qualitercumque relictis sive de privatis aedificiis, in quae domino permittente vel conivente convenerint, venerandae nobis catholicae vindicandis ecclesiae sive de procuratore, qui hoc nesciente domino fecerit, decem librarum auri multam vel exilium, si sit ingenuus, subituro, metallum vero post verbera, si servilis condicionis sit.

2. Ita ut nec in publico convenire loco nec aedificare sibi quasi ecclesias nec ad circumscriptionem legum quicquam meditari valeant, omni civili et militari, curiarum etiam et defensorum et iudicum sub viginti librarum auri interminatione prohibendi auxilio. **3.** Illis etiam in sua omnibus manentibus firmitate, quae de militia poenisque variis de diversis sunt haereticis promulgata, ut nec speciale quidem beneficium adversus leges valeat impetratum.

D. III k. Iun. Constantinopoli Felice et Tauro conss.

their homes with condemnable assistance. **8.** We moreover wish their slaves to be without blame, if fleeing their sacrilegious master they pass over to the Catholic Church in more faithful service.

Given February 22, at Rome, in the consulship of Honorius, for the seventh time, and Theodosius, for the second time, Augusti (407).

[5][171] *Emperor Theodosius Augustus and Valentinian Caesar to Florentius, Praetorian Prefect.* **pr.** The Arians and Macedonians, Pneumatomachians and Apollinarians and Novatians or Sabbatians, Eunomians, Tetradites or Tessarescaedecatites, Valentinians, Papianists, Montanists or Priscillianists or Phrygians or Pepuzites, Marcianists, Borborians, Messallians, Eutychites or Enthusiasts, Donatists, Audians, Hydroparastates, Tascodrogites, Batrachites, Hermeiecians, Photinians, Paulians, Marcellians, Ophites, Encratites, Apotactites, Saccorphors, and those who have descended to the basest criminal iniquity, the Manichaeans, shall have no right to gather and pray anywhere on Roman soil.

1. The Manichaeans shall be expelled from the cities and delivered up to capital punishment,[172] for there must be no place left them in which they might do insult to the very elements. All laws which were enacted formerly and issued at various times against them and all others who oppose our Faith shall remain in force with ever-new observation, whether concerning gifts made to the meeting places of heretics – which they brazenly try to call churches – or property left by last will or in any way whatsoever; or concerning private buildings, where they meet by the permission or connivance of the owner, which shall be confiscated for the venerable Catholic Church; or concerning a procurator who does this without the knowledge of the owner, which procurator shall suffer a fine of 10 pounds of gold or exile if he is free-born or, after flogging, condemnation to the mines if he is of servile status.

2. So that they neither meet in public nor build themselves pseudo-churches nor devise any means of circumventing the laws, they must be checked by all civil and military means, with the aid of the curias, defenders, and governors, under threat of a fine of 20 pounds of gold. **3.** The laws, too, which have been promulgated concerning the imperial service, various punishments, and sundry heretics, shall remain in full force so that not even a special indulgence obtained against the laws shall be valid.

Given May 30, at Constantinople, in the consulship of Felix and Taurus (428).

[171] = C.Th. 16.5.65; combine with C. 1.6.3.

[172] "delivered up to capital punishment" is omitted by C.Th. and Nomocanon 6.3, 12.2; it may have been added because of laws 11–12 below (Krüger).

[6] *Idem AA. Leontio pu.* **pr.** Damnato portentuosae superstitionis auctore Nestorio nota congrui nominis eius inuratur gregalibus, ne Christianorum appellatione abutantur: sed quemadmodum Ariani lege divae memoriae Constantini ob similitudinem impietatis Porphyriani a Porphyrio nuncupantur, sic ubique participes nefariae sectae Nestorii Simoniani vocentur, ut, cuius scelus sunt in deserendo deo imitati, eius vocabulum iure videantur esse sortiti.

1. Nec vero impios libros nefandi et sacrilegi Nestorii adversus venerabilem orthodoxorum sectam decretaque sanctissimi coetus antistitum Ephesi habiti scriptos habere aut legere aut describere quisquam audeat: quos diligenti studio requiri ac publice comburi decernimus. **2.** Ita ut nemo in religionis disputatione aliquam supra dicti nominis faciat mentionem aut quibusdam eorum habendi concilii gratia in aedibus aut villa aut suburbano suo aut alio quolibet loco conventiculum clam aut aperte praebeat: quos omni conventus celebrandi licentia privari statuimus: scientibus universis violatorem huius legis publicatione bonorum esse coercendum.

D. III non. Aug. Constantinopoli Theodosio XV et Valentiniano IIII AA. conss.

[7] *Idem AA. Florentio pp.* Curiales omnium civitatum, onerosis quin etiam militiae seu diversis officiis facultatum et personalium munerum obligatos suis ordinibus, cuiuscumque sectae sint, inhaerere censemus, ne videamur hominibus execrandis contumelioso ambitu immunitatis beneficium praestitisse, quos volumus huius constitutionis auctoritate damnari.

D. prid. k. Febr. Constantinopoli Theodosio A. XVI et Fausto conss.

[8] *Impp. Valentinianus et Marcianus AA. Palladio pp.* **pr.** Quicumque in hac sacra urbe vel in Alexandrina civitate vel in omni Aegyptiaca dioecesi diversisque aliis provinciis Eutychetis profanam perversitatem sequuntur et ita non credunt, ut trecenti decem et octo sancti patres tradiderunt catholicam fidem in Nicaena civitate fundantes,

[6][173] *The same Augusti to Leontius, Urban Prefect.* **pr.** Since Nestorius, the founder of a monstrous superstition, has been condemned, the infamy of an appropriate name shall be branded on his followers, lest they abuse the name of Christians. For just as the Arians are, by a law of Constantine of divine memory,[174] called Porphyrians from Porphyrius on account of the similarity of their impiety, so shall the adherents of the nefarious sect of Nestorius be called Simonians.[175] Thus, they shall everywhere rightly seem to have obtained their name from him whose crime they have imitated by deserting God.

1. Nor shall anyone dare to possess or read or copy the impious books that the wicked and sacrilegious Nestorius has written against the venerable following of the orthodox and against the decrees of the most holy synod of bishops held at Ephesus (in 431). These books, We decree, shall diligently be sought out and publicly burned. **2.** So that no one makes any mention of the aforesaid name in a religious discussion or secretly or openly furnishes any of them a meeting place for the purpose of holding a council in a house, villa, suburban property, or any other place, We have ruled to deprive them entirely of the freedom to hold a meeting. All shall know that he who violates this law will be punished by the confiscation of his property.

Given August 3, at Constantinople, in the consulship of Theodosius, for the fifteenth time, and Valentinian, for the fourth time, Augusti (435).

[7][176] *The same Augusti to Florentius, Praetorian Prefect.* We deem that curials of all cities, who are bound to burdensome patrimonial and personal liturgies, and even those connected with the imperial service, shall remain in their curias no matter which sect they follow, lest through their insolent pandering (*contumeliosus ambitus*) We seem to have extended the privilege of immunity to execrable men, whom, by the authority of this constitution, We wish to be condemned.

Given January 31, at Constantinople, in the consulship of Theodosius Augustus, for the sixteenth time, and Faustus (438).

[8][177] *Emperors* VALENTINIAN *and* MARCIAN *Augusti to Palladius, Praetorian Prefect.* **pr.** Whoever in This Sacred City or in the city of Alexandria, or in the entire Egyptian diocese and in the various other provinces, follow the profane perversity of Eutyches and thus do not believe the Catholic Faith as transmitted

[173] = C.Th. 16.5.66.
[174] Cf. Socr. *HE* 1.9.
[175] The manuscripts read *Nestoriani*, "Nestorians," while the C.Th. and Greek versions preserve *Simoniani*.
[176] = Nov. Theod. 3.6; combine with C. 1.7.5, 1.9.18.
[177] Combine with C. 1.7.6. Valentinian was in fact already dead when this constitution was issued.

centum quoque et quinquaginta alii venerabiles episcopi, qui in alma urbe Constantinopolitana postea convenerunt, et sicut Athanasius et Theophilus et Cyrillus sanctae recordationis episcopi Alexandrinae civitatis credebant, quos etiam Ephesina synodus (cui beatae memoriae Cyrillus praefuit, in qua Nestorii error expulsus est) in universis secuta est, quos et nuper venerabilis Chalcedonensis synodus est secuta, prioribus conciliis sacerdotum ex omni prorsus parte consentiens nihilque adimens sacrosancto symbolo neque adiciens, sed Eutychetis dogmata funesta condemnans: sciant se esse haereticos Apollinaristas: Apollinaris enim facinorosissimam sectam Eutyches et Dioscorus mente sacrilega sunt secuti.

1. Ideoque hi omnes, qui Apollinaris vel Eutychetis perversitatem sequuntur, illis poenis, quae divorum retro principum constitutionibus contra Apollinaristas vel serenitatis nostrae postmodum sanctione contra Eutychianistas vel hac ipsa augustissima lege contra eosdem decretae sunt, noverint se esse plectendos. **2.** Idcirco Apollinaristae, hoc est Eutychianistae (quibus etsi est in appellatione diversitas, tamen in haeresis pravitate coniunctio, et dispar quidem nomen, sed idem sacrilegium) sive in hac alma urbe diversisque provinciis sive in Alexandrina civitate sive intra Aegyptiacam dioecesim sunt neque ita credunt, ut praedicti venerabiles patres credebant, neque viro reverentissimo Alexandrinae urbis antistiti Proterio fidem orthodoxam tenenti communicant, episcopos vel presbyteros aliosque clericos creare et habere prohibemus: scientibus tam his Eutychianistis vel Apollinaristis, qui ausi fuerint cuiquam episcopi vel presbyteri vel clerici nomen imponere, quam his, qui passi fuerint impositum sibi nomen sacerdotale retinere, poenam exilii cum facultatum suarum amissione se subituros.

3. Universi praeterea Apollinaristae vel Eutychianistae non ecclesias non monasteria sibi construant, parasynaxes et conventicula tam diurna quam nocturna non contrahant neque ad domum neque ad possessionem cuiusquam neque ad monasterium vel quemcumque alterum locum operaturi sectae funestissimae congregentur. **4.** Quod si fecerint et hoc factum fuisse domino volente constiterit, post rem in examine iudicis adprobatam domus vel possessio, in qua convenerint, fisco sine dilatione societur, monasterium vero eius civitatis orthodoxae ecclesiae, in cuius territorio est, iubemus addici. **5.** Si vero ignorante domino, sciente vero qui pensiones domus exigit vel conductore vel procuratore vel actore praedii parasynaxes et conventicula interdicta

by the 318 holy fathers, who established it in the city of Nicaea (in 325), as the 150 other venerable bishops, who afterward met in the Generous City of Constantinople (in 381), and as Athanasius and Theophilus and Cyril of holy memory, bishops of Alexandria, believed; whom also the Synod of Ephesus (in 431) followed in all things, over which Cyril of blessed memory presided, and at which the error of Nestorius was expelled; whom likewise the venerable Synod of Chalcedon (in 451) recently followed, assenting to the former councils in every respect, neither detracting from nor adding to their sacrosanct creed, but condemning the destructive dogma of Eutyches: they shall know that they are Apollinarian heretics; for Eutyches and Dioscorus sacrilegiously pursued the most criminal sect of Apollinaris.

1. Therefore, all those who follow the perversity of Apollinaris or Eutyches shall know that they shall be stricken with the penalties that have been decreed by the constitutions of divine emperors of the past against the Apollinarians, or by the recent decree of Our Serenity against the Eutychians, or by this most august law against the same heretics. **2.** Therefore, if the Apollinarians, that is, the Eutychians – though different in name, they are yet joined in the wickedness of heresy; the name is dissimilar, but the sacrilege the same – whether in This Generous City and in various provinces or in the city of Alexandria or in the diocese of Egypt, if they do not believe as the aforesaid venerable fathers believed and are not communicants of the most reverend bishop of the city of Alexandria Proterius, who is of orthodox faith, We forbid them to ordain and have bishops, presbyters, and other clergymen. And both the Eutychians and Apollinarians, who have dared impose the name of bishop or presbyter or clergyman on anyone, as well as those who have permitted themselves to retain the priestly title so imposed, shall know that they shall suffer the punishment of exile and the confiscation of their property.

3. No Apollinarians or Eutychians shall hereafter build churches or monasteries for themselves, convoke sectarian assemblies and meetings by day or by night, or gather at the house or property of any person or at a monastery or any other place to perform the most deadly rites of their sect. **4.** If they should do this, and it appears that it was done with the consent of the owner, then, once this has been proven by the examination of a judge, the house or property in which they met shall be made over to the Treasury without delay. We order a monastery, however, to be annexed by the orthodox church of the city in the territory in which it lies. **5.** If, however, they hold their sectarian assemblies and forbidden meetings without the knowledge of the owner but with that of him who collects rents, or of the lessee, procurator, or manager of the estate,

collegerint, conductor vel procurator sive actor vel quicumque eos in domum vel in possessionem vel in monasterium receperint ac passi fuerint illicitas parasynaxes conventusque celebrari, si vilis et abiectae condicionis sunt, fustibus publice et in poenam suam et in aliorum coerceantur exemplum, si honestae vero personae sunt, decem libras auri multae nomine fisco nostro cogantur inferre.

6. Nullum praeterea Apollinaristam vel Eutychianistam ad aliquam iubemus adspirare militiam. si qui vero in quacumque militia inventi fuerint militare, soluti cingulo honestorum hominum et palatii communione priventur nec in aliqua nec in qua nati sunt civitate vel vico aut regione versentur. **7.** Si qui vero in hac alma urbe nati sunt, tam sacratissimo comitatu quam omni per provincias metropolitana civitate pellantur.

8. Nulli insuper Eutychianistae vel Apollinaristae publice vel privatim advocandi coetus et circulos contrahendi et de errore haeretico disputandi ac perversitatem facinorosi dogmatis adserendi tribuatur facultas. **9.** Nulli etiam contra venerabilem Chalcedonensem synodum liceat aliquid vel dictare vel scribere vel edere atque emittere aut aliorum scripta super eadem re proferre. **10.** Nemo huiusmodi habere libros et sacrilega scriptorum audeat monimenta servare. quod si qui in his criminibus fuerint deprehensi, perpetua deportatione damnentur. **11.** Eos vero qui discendi studio audierint de infausta haeresi disputantes, decem librarum auri, quae fisco nostro inferendae sunt, iubemus subire dispendium. ultimo etiam supplicio coerceantur, qui illicita docere temptaverint. **12.** Omnes vero huiuscemodi chartae ac libri, qui funestum Eutychetis, hoc est Apollinaris, fuerint dogma complexi, incendio concrementur, ut facinorosae perversitatis vestigia ipsa flammis ambusta depereant. aequum namque est, ut immanissima sacrilegia par poenae magnitudo percellat. **13.** Scientibus moderatoribus provinciarum eorumque apparitionibus, defensoribus etiam civitatum, quod, si ea, quae legis huius religiosissima sanctione custodienda decrevimus, aut neglexerint aut aliqua permiserint temeritate violari, denarum librarum auri multam fisco cogantur inferre: insuper etiam existimationis suae periculum sustinebunt.

D. k. Aug. Constantinopoli Valentiniano A. VIII *et Anthemio conss.*

[9] [*Αὐτοκράτωρ Λέων Α. ...*] Ἀνθρώπινον καὶ ὅσιον εἶναι λογισάμενοι τοὺς αἱρετικοὺς ἐπιτρέπομεν θάπτεσθαι ταῖς νενομισμέναις ταφαῖς.

then, the lessee, procurator, or manager, or whoever received them onto the property or into the monastery and permitted their assemblies and meetings to transpire, shall, if of mean and base status, be flogged publicly both for their own punishment and as an example to others; if they are respectable persons (*honestae personae*), they shall be forced to pay a fine of 10 pounds of gold to Our Treasury.

6. We furthermore command that no Apollinarian or Eutychian shall aspire to any post in the imperial service. If any are found serving in any post of the service, they shall be deprived of their rank (*cingulum*) and stripped of their association with respectable men and with the Palace, nor shall they dwell in any city, even in that in which they were born, or in any village or district. **7.** If any were born in This Generous City, they shall be banished both from the Most Sacred Court (*comitatus*) and from every metropolitan city in the provinces.

8. Moreover, no Eutychian or Apollinarian shall be given the power of calling meetings or gathering crowds, publicly or privately, and discussing their heretical error and professing the wickedness of their criminal doctrine. **9.** Nor is anyone allowed to state, write, publish, or promulgate anything against the venerable Synod of Chalcedon or to produce the writings of others on the same subject. **10.** No one shall dare to possess books of this kind and preserve the sacrilegious works of their authors. If any are caught in these crimes, they shall be condemned to perpetual exile. **11.** Those, moreover, who in their zeal for learning listen to those discussing their unholy heresy, We order to suffer the loss of 10 pounds of gold, which shall be paid to Our Treasury. Those who attempt to teach prohibited doctrines shall be punished with the ultimate punishment. **12.** All papers and books, moreover, that contain the accursed teachings of Eutyches, that is, Apollinaris, shall be burned by fire, so that the very traces of this criminal wickedness may perish, consumed in the flames. For it is fitting that punishment of equal magnitude strike the most monstrous sacrileges. **13.** The governors of the provinces and their staff members, as well as the defenders of the cities, shall know that if they neglect what We, by the most pious sanction of this law, have decreed shall be observed; or, if by some act of brazenness they permit it to be violated, they shall be forced to pay a fine of 10 pounds of gold to the Treasury. They moreover shall jeopardize their good name.

Given August 1, at Constantinople, in the consulship of Valentinian Augustus, for the seventh time, and Anthemius (455).

[9][178] (*Emperor Leo Augustus ...*) Deeming it humane and pious, We permit heretics to be buried in ordinary graves.

[178] Restored from Bas. 1.1.28; it is uncertain whether the passage reproduces the wording of the original.

D. Constantinopoli id. Aug. Constantino et Rufo conss.

[10] *Idem A. Erythrio pp.* **pr.** Si qui orthodoxae religionis emptione vera vel ficticia aut quocumque alio iure vel titulo praedia et possessiones resque immobiles, in quibus orthodoxae fidei ecclesiae vel oratoria constituta sunt, in haereticae sectae et contraria orthodoxae fidei sentientem quamcumque personam transferre voluerint, nullam huiusmodi vel inter vivos habitam vel secreto iudicio compositam valere volumus voluntatem, etiamsi ab orthodoxae fidei venditore vel quocumque modo alienatore commenticio sub qualibet occasione fuerit adsignata: sed irrita omnia huiusmodi documenta et tamquam penitus nec scripta esse censemus. **1.** Haec enim praedia et possessiones, quae in haereticas personas quocumque modo translatae fuerint vel collatae, fisci nostri viribus decernimus vindicari. **2.** Sive enim apud dominos possessoresve orthodoxos ea praedia maneant seu ad fisci nostri iura pervenerint, necesse est in his ecclesias et oratoria constituta diligentius et sollicitius instaurari. nostrae enim serenitatis undique ad hunc exitum providentia ducit, ut omnipotentis dei templa, in quibus nostrae fidei instituta perdurant, cultu adsiduo per omnia saecula rediviva serventur. **3.** Nec enim dubitari potest, quod si in haereticos veniant possessiones, in quibus verae fidei ecclesiae vel oratoria constituta sunt et integritas colitur, omnimodo ab his deseri atque destitui, omni cultu vacare, omnibus sacris et solitis viduari mysteriis, omni splendore privari, nullis populorum conventionibus, nullis clericorum observationibus celebrari et ex hoc sine dubio easdem ecclesias perire ruere complanari. nec enim de earum instauratione haeretici poterunt aliquando cogitare, quas penitus esse nolebant. quae omnia resecantes ad praesentem legem pervenimus.

[11] Θεσπίζομεν τοὺς τὴν ὀλεθρίαν τῶν Μανιχαίων αἱρουμένους πλάνην μηδεμίαν ἔχειν παρρησίαν ἢ ἄδειαν καθ' οἱονδήποτε τῆς καθ' ἡμᾶς πολιτείας διάγειν τόπον· εἰ δέ ποτε φανεῖεν ἤτοι εὑρεθεῖεν, ὑπάγεσθαι κεφαλικῇ τιμωρίᾳ.

D. v id. Aug. Boethio vc. cons.

Given August 13, at Constantinople, in the consulship of Constantine and Rufus (457).

[10] *The same Augustus to Eurythrius, Praetorian Prefect.* **pr.** If anyone of orthodox faith, by a genuine or fictitious sale or by any other legal means or pretense, wishes to transfer estates, properties, and immovable property, where churches or chapels of the orthodox faith are located, to any person belonging to a heretical sect, who holds opinions contrary to the orthodox faith, We desire that no such wish be valid, whether expressed among the living or arranged by secret determination, even if it has been signed by a seller of orthodox faith or through the interposition of a fictitious seller for any reason. We rule that all such documents shall be void and as if they had never been written at all. **1.** We decree that estates and properties that have been transferred and conveyed shall be confiscated by Our Treasury. **2.** For whether these estates remain in the hands of orthodox owners or possessors or become property of Our Treasury, it is imperative that the churches and chapels located on them be diligently and carefully restored. For the foresight of Our Serenity leads Us by many ways to this one end: that the temples of Almighty God, in which the tenets of our religion abide, shall by continual attention be kept in youthful vigor through all the ages. **3.** Nor can it be doubted that, if these properties, where churches and chapels of the true faith are located and righteousness is cultivated, should fall into the hands of heretics, they shall utterly be abandoned and forsaken by them, devoid of all veneration, bereft of all sacred and customary rites, robbed of all splendor, the site neither of the gatherings of the peoples nor of the solemnities of the clergy; and for this reason, doubtless, these same churches would cease, collapse, and be leveled. For heretics will never think of restoring churches that they have vehemently wished did not exist. Putting an end to all these things, We have resorted to the present law.

(466–472?)[179]

[11][180] (...). We decree that those who have embraced the pernicious error of the Manichaeans shall have no freedom or permission to reside anywhere in Our Empire. If any appear (to do so) or are discovered, they shall by subjected to capital punishment.

Given August 9, in the consulship of the vir clarissimus *Boethius (487 or 510).*

[179] Seeck dates to April 4, 472.

[180] = Bas. 1.1.29; it is uncertain whether the passage reproduces the wording of the original.

[12] *Αὐτοκράτορες Ἰουστῖνος καὶ Ἰουστινιανὸς ΑΑ.* ... **pr.** Τοὺς αἱρετικοὺς ἡμεῖς μὲν διὰ τοῦτο καὶ συνιέναι καὶ προσηγορίαν ἔχειν ἰδίαν συνεχωρήσαμεν, ἵνα τὴν καρτερίαν ἡμῶν αἰσχυνθέντες σωφρονήσωσιν ἑκόντες καὶ πρὸς τὰ καλλίω μεταβάλωσιν. **1.** Τοὺς δὲ εἰσῆλθέ τις οὐκ ἀνεκτὴ τόλμα, καὶ τῆς τῶν νόμων ἀμελήσαντας παραγγελίας στρατείαις, ὧν οὐκ ἐᾷ[xix] μετεῖναι τοῖς τοιούτοις αὐτὰ τὰ τῶν βασιλικῶν συμβόλων δηλοῖ γράμματα, παρενέβαλον αὑτούς. **2.** Αἱρετικοὺς δὲ καλοῦμεν τοὺς ἄλλους, ὡς τούς γε καταράτους Μανιχαίους καὶ τοὺς τούτοις παραπλησίους, οὐδὲ ὀνομάζεσθαι γοῦν ταύτῃ δέον οὐδὲ φαίνεσθαί που παντελῶς οὐδὲ χραίνειν ὧν ἂν ἐφάψωνται. **3.** Ἀλλὰ τοὺς μὲν Μανιχαίους, ὥσπερ εἰρήκαμεν, οὕτω καὶ ἀπελαύνεσθαι δεῖ καὶ μηδὲ τὴν προσηγορίαν αὐτῶν ὑπομένειν μηδένα μηδὲ περιορᾶν, εἴπερ ἐν τῷ αὐτῷ διάγοι τοῖς ἄλλοις ὁ τὴν ἀθεῖαν ταύτην νοσήσας ἄνθρωπος, ἀλλὰ καὶ ταῖς εἰς ἔσχατον τιμωρίαις ὑπάγεσθαι τὸν ὁπουδὴ γῆς φαινόμενον Μανιχαῖον. **4.** Ἐπὶ δὲ τοῖς ἄλλοις αἱρετικοῖς, ὁποίας ἂν ὦσί ποτε πλάνης ἢ προσηγορίας (αἱρετικὸν γὰρ πάντα καλοῦμεν, ὅστις μὴ τῆς καθολικῆς ἐκκλησίας καὶ τῆς ὀρθοδόξου καὶ ἁγίας ἡμῶν ὑπάρχει πίστεως), ἀλλὰ μὴν καὶ τοῖς τὴν πολυθεΐαν πειρωμένοις εἰσάγειν Ἕλλησι καὶ ἔτι τοῖς Ἰουδαίοις καὶ τοῖς Σαμαρείταις οὐκ ἀνακτήσασθαι μόνον τὰ τῶν ἤδη κειμένων νόμων συνείδομεν καὶ ποιῆσαι τῷ νῦν τούτῳ νόμῳ βεβαιότερα, ἀλλὰ διορίσασθαι καὶ πλείω, δι᾽ ὧν ἀσφάλεια μὲν περιέσται μείζων καὶ κόσμος καὶ τιμὴ τοῖς τῆς εὐαγοῦς ἡμῶν μετέχουσι πίστεως. **5.** Αἰσθέσθαι δὲ ὑπάρξει πᾶσιν, ἔφαμεν, ὅτι τοῖς μὴ τὸν θεὸν ὀρθῶς προσκυνοῦσι καὶ τὰ τῶν ἀνθρωπίνων ἀγαθῶν ἐπέχεται.

6. Οὐδένα τοίνυν τῶν ἤδη ῥηθέντων οὔτε μετέχειν ἀξιώματος καθάπαξ οὐδενὸς οὔτε ζώνην περιβάλλεσθαι οὔτε πολιτικὴν οὔτε στρατιωτικὴν οὔτε εἰς τάξιν τελεῖν οὐδεμίαν, πλὴν τῆς τῶν καλουμένων κοορταλίνων (ταύτῃ γὰρ ἐκ γένους ὑποκειμένους αὐτοὺς ἐνέχεσθαι βουλόμεθα, ὥστε μένοντας αὐτοὺς ἐπ᾽ αὐτῆς καὶ πάντα πληροῦντας ἐξ ἀνάγκης καὶ πᾶν βάρος ὑπομένοντας, ὅπερ ἔστι τῆς αὐτῆς στρατείας, εἴργεσθαι τοῦτο μὲν προκοπῆς, τοῦτο δὲ τοῦ κατὰ τῶν ὀρθοδόξων Χριστιανῶν ἐκβιβασμοῦ δημοσίων καὶ ἰδιωτικῶν ἕνεκεν χρεῶν) προστάττομεν. τῆς ἐξ αὐτῶν γονῆς ὑποκειμένης δηλονότι τῇ τοιαύτῃ τύχῃ, καὶ αὐτῶν μέντοι, εἰ μεταξὺ διαλαθεῖν ἠδυνήθησαν, εἰς ταύτην ἀγομένων. ἐκ τῆς κακῆς αὐτῶν δόξης ἔχειν τινὰ παραίτησιν.

7. Τοὺς δὲ αὐτοὺς αἱρετικοὺς οὔτε ἐκδίκου οὔτε πόλεως πατρὸς μετιέναι φροντίδα συγχωροῦμεν, ὥστε μὴ προφάσει τῆς ἐντεῦθεν ἀδείας ἐπηρεάζειν τοῖς τε ἄλλοις Χριστιανοῖς καὶ διαφερόντως τοῖς θεοφιλεστάτοις ἐπισκόποις, καὶ τοῦ δικάζειν ἑαυτοῖς ἢ ψηφίζεσθαί τινα περιποιεῖν ἐξουσίαν, καθὰ καὶ τοῖς πρὸ ἡμῶν νενομοθέτηται. **8.** Οὐ μὴν οὐδὲ τοῖς σοφωτάτοις συντετάχθαι τῶν δικῶν ῥήτορσιν αὐτοὺς ἐῶμεν, οἷς οἰκειότερόν ἐστιν ἢ κατὰ τοὺς πολλοὺς τὸ τῶν θείων δογμάτων ὀρθῶς αἰσθάνεσθαι, ὅσῳπερ

[xix] ὧν οὐκέτι

[12][181] (*Emperors* JUSTIN *and* JUSTINIAN *Augusti* ...) **pr.** ... We permitted the heretics to assemble and have their own name for this reason: that, ashamed by Our forbearance, they may come to their senses and turn to the better of their own accord. **1.** But an unbearable audacity has possessed them, and, disregarding the sanction of the law, they have insinuated themselves into clerical posts which, as the very words of the imperial decrees manifestly declare, they may no longer hold. **2.** We call heretics others, such as the execrable Manichaeans and their ilk, who ought not to be named here nor indeed anywhere and defile whatever they touch. **3.** The Manichaeans, then, as We have said, shall accordingly be driven out, nor shall anyone suffer even their name (to remain) or do nothing if someone infected with this godlessness should live in the same place as the others; but any Manichaean found anywhere in the world shall be subjected to extreme punishments. **4.** As for the other heretics, whatever their error or name (for We call everyone who does not adhere to the Catholic Church and our Orthodox and Holy Faith a heretic), and also as regards the pagans (*Hellenes*), who attempt to introduce the worship of many gods, and the Jews and Samaritans: We strive not only to revive the statutes of existing laws and to strengthen them by this law, but also to enact more, whereby the security, honor, and prestige of the adherents of the Holy Faith may be increased. **5.** All can observe, We have said, how those who do not rightly worship God shall also be deprived of their earthly goods.

6. We therefore command that none of the aforesaid persons may obtain any office, acquire any rank (*cingulum*), civil or military, or belong to any order except that of the so-called provincial staff members (*cohortalini*). For We desire that they be bound to this order from birth: thus, they shall remain in it, compulsorily fulfill all duties required of it, undergo every burden that is incumbent on their position; and they shall be barred on the one hand from promotion and on the other from executing sentences against orthodox Christians on account of public and private debts. Their offspring shall be bound to the same status and, if in the meanwhile they successfully escape notice, shall be restored to it. (And We desire that) they have (no) excuse by reason of their bad repute.[182]

7. According to the enactments promulgated by those (emperors) before Us, We permit heretics to hold neither the office of defender nor of father of the city, lest by virtue of the immunity derived therefrom they abuse other Christians and particularly bishops, and obtain the power to judge and to condemn. **8.** Nor do We allow them to be enrolled among the most prudent advocates, who above all others ought to have a proper understanding of the

[181] = Bas. 1.1.30; the inscription is restored from C. 1.5.18.4. Lounghis *et al.* date to between April 4 and August 1, 527.

[182] The transmitted text is heavily supplemented.

καὶ τὸν βίον ἐν λόγοις ἔχουσιν. **9.** Ἀλλὰ καὶ τοὺς ὄντας μὲν αἱρετικοὺς καὶ ἔτι πρὸ τούτων Ἕλληνας ἢ Ἰουδαίους ἢ Σαμαρείτας καὶ τοὺς τούτοις ὁμοίους, μετασχόντας δέ τινος ἤδη τούτων ὧνπερ ἐμνήσθημεν καὶ τυχόντας ἀξιώματος ἢ τοῦ καταλόγου τῶν τὰς δίκας ἀγορευόντων ἢ στρατείαν περιβεβλημένους ἢ ζώνην ὁποιανοῦν ἐκβληθῆναι τῆς πρὸς ταῦτα μετουσίας παραχρῆμα παρακελευόμεθα. **10.** Καθαρεύειν γὰρ τὰ ῥηθέντα πάντα τῆς τῶν τοιούτων νῦν τε καὶ διὰ παντὸς βουλόμεθα κοινωνίας, οὐκ ἐπὶ μόνης ταύτης τῆς ἐνδόξου πόλεως, ἀλλ' ἐπὶ πάσης ὅλως ἐπαρχίας καὶ τόπου παντός. **11.** Ὅπερ ἐστὶν οὐ καθάπαξ καινόν· τὰ γοῦν ταῖς πλείσταις τῶν στρατειῶν θεῖα διδόμενα τῆς ζώνης σύμβολα προσκείμενον ἔχει τὸ δεῖν ὀρθόδοξον εἶναι τὸν ταύτης μεταλαμβάνοντα. **12.** Πλὴν ἀλλ' ἡμέτερον ἂν εἶναι καὶ τοῦτο δοκοίη τῶν ἀνακτησαμένων αὐτὸ καὶ μὴ περιιδόντων, καθάπερ ἔμπροσθεν, ἀμελούμενόν τε παρ' ἐνίων καὶ μέχρι μόνων γραμμάτων κείμενον· τὰ πράγματα γὰρ οὐχ οὕτως νομίζοιτο ἂν ἴδια τῶν τὴν ἀρχὴν εὑρόντων, ὡς τῶν τοῖς εὑρεθεῖσι χρωμένων ἄριστα.

13. Εἰ δὲ παρὰ τὸ προστεταγμένον ὑφ' ἡμῶν ἁμαρτηθείη τι, τὸν μὲν τῶν κεκωλυμένων ἐφαψάμενον οὐκ ἀνόνητον μόνον τῆς ἐγχειρήσεως ἀποδείκνυμεν καὶ παντελῶς μετέχειν αὐτὸν κωλύομεν, ἀλλὰ καὶ λ' χρυσίου λιτρῶν ποινῇ ζημιοῦμεν. **14.** Οἷς δὲ διαφέρει τὸ τοὺς τοιούτους ἐγγράφειν τῷ δημοσίῳ καὶ ἀπογράφεσθαι, τούτοις, εἰ μαθόντες τὸ πεπλανημένον αὐτοῦ τῆς δόξης ὅμως προσήκαντο καὶ οὐκ ἀντεῖπον οὐδὲ ἀπήλασαν, ποινὴν ἐπιτίθεμεν χρυσίου λιτρῶν η'. **15.** Οὐ μὴν οὐδὲ τὰς ἀρχὰς ἀθώους ἀφίεμεν, εἴπερ, οὓς ἐκ τῶν κεκωλυμένων ὑφ' ἡμῶν ὄντας γινώσκουσι, τούτους ἀνάσχοιντο ταῖς οἰκείαις ἐναριθμεῖσθαι τάξεσιν (ὑπεξῃρημένης δηλονότι τῆς τῶν κοορταλίνων στρατείας), ἀλλὰ ποινὴν καὶ παρ' αὐτῶν ν' χρυσίου λιτρῶν εἰσπράττομεν. **16.** Ἐφ' ὁπόσοις δὲ ἂν τῶν εἰρημένων κεφαλαίων ἁρμόσαι συμβαίη τὴν ποινήν, ὁ μεγαλοπρεπέστατος κόμης τοῦ ἱερωτάτου ταμείου τὴν ἀπαίτησιν αὐτῆς ποιήσεται καὶ τοῖς θείοις εἰσοίσει πριβάτοις.

17. Ἔννοιαν μέντοι λαμβάνοντες, ὅτι Γότθους πολλάκις τοῖς καθωσιωμένοις ἐγγράφομεν φοιδεράτοις, οἷς οὔτε ἡ φύσις οὔτε ὁ φθάσας βίος τοὺς τοιούτους ἐνέθηκε λόγους, συγχωρῆσαί τι τῆς ἀκριβείας αὐτοῖς συνείδομεν καὶ γινομένων ἀνέχεσθαι φοιδεράτων καὶ τιμωμένων, ὃν ἂν ἡμῖν παρασταίη τρόπον.

18. Εἰδότες δέ, ὡς διάφοροι πολλάκις τοῖς οὐκ ὀρθοδόξοις γονεῦσιν αἱ γνῶμαι γίνονται, τοῦ μὲν πατρὸς ἢ τῆς γε μητρὸς τῇ τῶν ὀρθοδόξων πίστει προσενεγκεῖν τοὺς κοινοὺς παῖδας βουλομένου, θατέρου δὲ ἀντιτείνοντος, ἰσχυροτέραν εἶναι καὶ τοῖς ὅλοις ἐπικρατεστέραν τὴν γνώμην προστάττομεν τοῦ πρὸς τὴν ὀρθόδοξον πίστιν τοὺς παῖδας ἄγοντος· μεθέξει τε γὰρ ἐν μέρει τὸ γινόμενον τῆς τῶν τεκόντων γνώμης καὶ προσέσται τὸ τὰ βελτίω νενικηκέναι.

19. Βοηθοῦντες δὲ κἀκείνοις τοῖς παισίν, οὓς οἱ μὴ μετέχοντες τῆς εὐαγοῦς ἡμῶν πίστεως μισοῦσι πατέρες, ἁμάρτημα μὲν οὐδὲν ἔχοντες ἐγκαλέσαι τῶν ἐν τοῖς νόμοις κεκωλυμένων, διότι δὲ τῆς τῶν γονέων

divine decrees, insofar as their livelihood is in words. **9.** And We further command that those who are now heretics, and before them the pagans, Jews, or Samaritans, and those like them, if they should already hold any of the offices that We have mentioned or are on the roster of pleaders, or have obtained any clerical position or any rank in the imperial service, they shall be immediately expelled from their membership in these cadres. **10.** For We desire that the said positions be unsullied by the society of such men now and forever, not only in This Glorious City, but in every province everywhere. **11.** And this is by no means new: the divine certificates provided for most offices of the imperial service have as a prerequisite that the recipient must be orthodox. **12.** Yet, indeed, this too may seem to be Our doing, since We revive this measure and do not overlook it as before, when it was disregarded by some and held merely as so many words; for things are not so much thought to belong to those who devise them as they are to those who use best what has already been devised.

13. If what We have commanded is in any way violated, We not only declare the attempt of one who usurps such forbidden (positions) void and utterly forbid him to hold them, but We also punish him by a fine of 30 pounds of gold. **14.** As for those whose duty it is to enroll such persons in the public register: if they knew of the error of belief of such a person and admitted him and do not oppose and drive him away, We impose on them a fine of 8 pounds of gold. **15.** Nor indeed do We let the administrators go unpunished, if they allow those, whom they know to be among those prohibited by Us, to be registered on their own official staffs – with the exception, of course, of the position of provincial staff member – but We demand of them too a fine of 50 pounds of gold. **16.** When a fine should be due for any of the foregoing sections, the *vir magnificentissimus* Count of the Most Sacred Treasury shall collect it and add it to the divine Privy Purse.

17. In consideration of the fact that We often enroll Goths among our most devoted confederates (*foederati*), whom neither nature nor their past life has endowed with such reason (i.e., orthodoxy), We have resolved for their sake to relax Our severity somewhat and to permit them to become confederates and receive honors in whatever way We please.

18. Knowing, moreover, that the opinions of non-orthodox parents are often at variance, the father or the mother wishing to introduce their common children to the orthodox faith, while the other opposes it, We order that the opinion of the parent who leads the children to the orthodox faith shall be stronger and altogether superior: for the outcome shall thereby correspond in part to the wish of the parents and, additionally, the better cause shall prevail.

19. In order to help children hated by fathers who do not share Our Holy Faith, although they cannot accuse their fathers of a crime forbidden by the laws, because, recognizing the error of their parents, they adhere to Our Holy

αἰσθανόμενοι πλάνης, τῆς εὐαγοῦς ἡμῶν μετέχοντες πίστεως, διὰ τοῦδε τοῦ θείου πραγματικοῦ νόμου θεσπίζομεν καὶ τροφῆς τὸν πατέρα τοῖς τοιούτοις μεταδιδόναι πρὸς τὸ τῆς οὐσίας τῆς ἑαυτοῦ μέτρον καὶ τῶν ἀναγκαίων εἰς τὴν ἄλλην δίαιταν, ἀλλὰ μὴ καθάπερ τιμωρίαν ἀπαιτοῦντα, διότι τὴν ψυχὴν ἐπηνωρθώθησαν, λιμώττοντας περιορᾶν καὶ τῶν εἰς τὸν βίον ἀποροῦντας, καί που δι᾽ ἔνδειαν ἐπανελθεῖν ἐπὶ τὴν ἔμπροσθε πλάνην, ὃ μηδὲ λέγειν καλόν, ἀναγκαζομένους. **20.** Ἀλλὰ προῖκα ταῖς διὰ τοῦτο λελυπηκυίαις θυγατράσι καὶ τὰς πρὸ τῶν γάμων δωρεὰς τοῖς ἄρρεσιν, οἷς οὐδὲν ἕτερον ἐγκαλεῖν δύνανται τῶν ἐν τοῖς νόμοις ἀπηγορευμένων, ἐκ παντὸς ἐπιδιδότωσαν τρόπου, καθάπερ ὁ τῆς οὐσίας αὐτῶν λόγος ἐφίησι, καὶ συνοικίζειν τὰς μὲν ἀνδράσι, τοὺς δὲ γυναιξὶ κατὰ τὸν νόμον, ὀρθοδόξοις μέντοι προσώποις καὶ τοῦ πράγματος ἀξίοις. δεινὸν γὰρ καὶ παντελῶς ἀνόσιον τοὺς ἐν τοῖς ἄλλοις ἅπασιν ὑπὸ τῶν παίδων θεραπευομένους ἐκ τοιαύτης χαλεπαίνειν αὐτοῖς προφάσεως, ἣν ἀμείνους ἦσαν ζηλοῦντες, οὐκ ἀμυνόμενοι.

21. Προνοήσουσι δὲ τῶν προστεταγμένων τούτων ὑφ᾽ ἡμῶν ἐπὶ μὲν τῆς μεγίστης ταύτης πόλεως οἱ τὰς ἐνδόξους ἔχοντες ἀρχάς, καθάπερ ἑκάστῳ διαφέρει, κατὰ δὲ τὰς ἐπαρχίας οἱ τούτων ἡγούμενοι εἴτε μείζους εἴτε ἐλάττους, καθάπερ ἑκάστῳ πρόσφορον. **22.** Ἐπιμελὲς δὲ καὶ τῷ μακαριωτάτῳ ἀρχιεπισκόπῳ καὶ πατριάρχῃ τῆς μεγίστης ταύτης πόλεως καὶ τοῖς ὁσιωτάτοις ἐπισκόποις ἔσται τῶν ἄλλων πόλεων τοῖς τε τοὺς πατριαρχικοὺς καὶ τοῖς τοὺς μητροπολιτικοὺς ἔχουσι θρόνους καὶ τοῖς ἐλάττοσι τὸ συμπαρατηρεῖν καὶ συνεπισκοπεῖν, εἰ βεβαίως ταῦτα διασώζεται, καὶ μηνύειν ἐφ᾽ ἡμᾶς, ὅπως καὶ μετὰ πλείονος, εἰ δέοι, σφοδρότητος τοῖς ῥᾳθυμοῦσι τῶν περὶ τῆς ὀρθοδόξου πίστεως διορισθέντων ἐπεξερχώμεθα.

[13] pr. Οἱ ὀρθόδοξοι παῖδες τῶν αἱρετικῶν μὴ ἁμαρτήσαντες κατ᾽ αὐτῶν ἀμείωτον λαμβάνουσι τὸ ἐξ ἀδιαθέτου αὐτοῖς ἁρμόζον· καὶ ἡ παρὰ ταῦτα γενομένη τελευταία βούλησις ἀκυροῦται, φυλαττομένων τῶν ἐλευθεριῶν, εἰ μὴ κατά τινα νόμον κωλύονται. **1.** Εἰ δέ τι πλημμελήσουσιν εἰς τοὺς γονεῖς, κατηγοροῦνται καὶ τιμωροῦνται. **2.** Ἔχουσι δὲ καὶ ἡμαρτηκότες τὸ τέταρτον τῆς οὐσίας αὐτῶν κατὰ διαθήκας. **3.** Τὰ αὐτὰ καὶ περὶ Ἰουδαίων καὶ Σαμαρειτῶν.

[14] Οἱ αἱρετικοὶ συνακτήρια ποιεῖν οὐ δύνανται ἢ παρασυνάξεις ἢ συνόδους ἢ χειροτονίας ἢ βαπτίσματα ἢ ἐξάρχους ἔχειν ἢ πατριὰς ἢ ἐκδικίας ἐγχειρίζεσθαι ἢ φροντίζειν ἢ διοικεῖν χωρία δι᾽ ἑαυτῶν ἢ διὰ παρενθέτων προσώπων ἤ τι τῶν ἀπηγορευμένων ποιεῖν. ὁ δὲ παραβαίνων ἐσχάτως κινδυνεύει.

Faith, We decree by this divine pragmatic sanction that the father shall furnish such children both food according to his means and what is necessary for sustenance in other respects; and he shall not, as if exacting punishment because their souls have been saved, let them starve and want the necessities of life, thereby perhaps – which is horrible to say – forcing them to return to their former error because of poverty. **20.** They (such fathers) shall provide their daughters, who are aggrieved for this reason, with a dowry, and their sons, whom they can accuse of nothing else forbidden by the laws, with prenuptial gifts, as far as their means permit; and they shall wed their daughters to husbands and their sons to wives according to the law, as long as the latter are orthodox persons and worthy of marriage. For it would be abominable and impious if parents, who are loved in other respects by their children, should become enraged at them for a cause they would be better persons in imitating, not punishing.

21. Those who hold offices of Illustrious rank (*viri illustres*) shall enforce these Our provisions in This Great City, as it befits each of them; in the provinces, the governors, greater and lesser, as appropriate to each of them. **22.** It shall also be incumbent on the most blessed Archbishop and Patriarch of This Great City, the most holy bishops of other cities, those who hold patriarchal and metropolitan sees, and lesser (bishops) to monitor closely and observe whether these provisions are strictly kept and to inform Us, so that with even greater severity, if necessary, We may pursue those who neglect these provisions concerning the orthodox faith.

(527).

[13] (...). **pr.** Orthodox children of heretics, who have committed no offence against the latter, shall receive in full the portion due them by intestacy, and a last will to the contrary shall be invalid, though manumissions shall be observed unless prohibited by some law. **1.** If, however, they have wronged their parents, they will be accused and punished. **2.** But even if they have committed an offence, they shall receive one-fourth of their property contrary to the will. **3.** The same also applies to Jews and Samaritans.[183]

[14] (...). Heretics cannot hold assemblies, sectarian gatherings, or synods; celebrate ordinations or baptisms; have precentors; appoint fathers or defenders (of a church); manage or administer lands by themselves or by means of fictitious persons; or do anything that has been forbidden. Whoever violates this does so at his extreme peril.[184]

[183] Lounghis *et al.* date this constitution to between April 4 and August 1, 527.
[184] Lounghis *et al.* date to between April 4 and August 1, 527.

[15] ... Τῶν ἀτυχησάντων τὴν τῶν Μανιχαίων ἀσεβῆ πλάνην οὐ μόνον ἐφ᾽ ὅσον περίεισι ποινῆς ἀξίων ὄντων, ἀλλὰ καὶ τοῦ μετὰ τὴν αὐτῶν τελευτὴν μὴ οἷς ἐκεῖνοι βούλονται μηδὲ οἷς ἐξ ἀδιαθέτου δίδωσιν ὁ νόμος τὴν οὐσίαν αὐτῶν δίδοσθαι, τῷ παρόντι θείῳ πραγματικῷ νόμῳ χρώμεθα πρὸς τὴν σὴν μεγαλοπρέπειαν, δι᾽ οὗ προστάττομεν διερευνᾶσθαι τὰς οὐσίας τῶν ταύτῃ κατασχεθέντων τῇ νόσῳ· καὶ εἰ μὲν παῖδες αὐτῶν εἶεν ἢ τινες τῶν κατιόντων ἐλεύθεροι τῆς τοιουτοτρόπου μανίας ὑπάρχοντες, ἐᾶσαι τούτους τῆς ἐκ τοῦ νόμου δεδομένης αὐτοῖς οὐσίας μετέχειν· εἰ δὲ ἕτεροί τινες συγγενεῖς τῶν τελευτησάντων ἢ κατὰ τελευταίαν ἐκείνων (ὅπερ ἀπηγόρευται) βούλησιν εἰς τὸν κλῆρον αὐτῶν καλοῖντο ἢ δωρεὰν παρὰ τοιούτου προσώπου περιόντος ἔτυχον κομισάμενοι ἢ καὶ ληγάτῳ δῆθεν παρ᾽ αὐτοῦ τιμηθέντες, πάντως αὐτῶν ἀφελέσθαι τὴν οὐσίαν ἢ τὰ δεδωρημένα ἢ τὰ ληγατευθέντα πράγματα καὶ τῷ δημοσίῳ προσκυρῶσαι λόγῳ.

[16] ... **pr.** Εἴ τις ἐκ τῆς ἀσεβοῦς τῶν Μανιχαίων θρησκείας εἰς τὴν ὀρθὴν καὶ ἀληθινὴν πίστιν μετέλθοι καὶ μετὰ τὴν τοσαύτην ἡμῶν φιλανθρωπίαν καὶ τὰς πολλὰς προαγορεύσεις καὶ τοὺς ἐνδεδομένους ἐπὶ τῇ μεταμελείᾳ καιροὺς εὑρεθείη τοῦ λοιποῦ τὰ τῆς προτέρας πλάνης διαπραττόμενος ἢ συνδιάγων καὶ τὴν τυχοῦσαν ὁμιλίαν πρός τινα τῶν τῆς αὐτῶν ὀλεθρίας πλάνης ποιούμενος καὶ μὴ παραχρῆμα τοῦτον ἢ συσχὼν παραδῷ τοῖς μεγαλοπρεπεστάτοις ἢ περιβλέπτοις ἢ λαμπροτάτοις ἄρχουσιν ἢ μηνύσῃ, ταῖς ἐσχάταις ἔσται τιμωρίαις ὑπεύθυνος, οὐκ ἀναχωρῶν εἴς τινα σκῆψιν οὐδὲ περινοίαις τισὶν ἀναβάλλεσθαι τὰς ἐπικειμένας αὐτῷ ποινὰς δυνάμενος.

1. Πάσῃ δὲ σπουδῇ χρησάσθωσαν οἱ ἐν ἀξίαις ἢ στρατείαις ἢ συστήμασί τισι καταλεγόμενοι διερευνήσασθαι, μή τις ἐν αὐτοῖς τῆς ἀπηγορευμένης ταύτης μανίας ἐστί, καὶ τὸν εὑρισκόμενον φανεροῦν, εἰδότες ὡς, εἴποτε τοιοῦτός τις ἐν αὐτοῖς εὑρεθείη καὶ πονοῖς ὑποβαλλόμενος κατάθοιτο, ὡς ἐγινώσκετο τοιοῦτος ὢν ἐκείνοις, οὐδὲ αὐτοὶ τὴν ἁρμοδίαν τιμωρίαν ἐκφεύξονται, εἰ καὶ μὴ τῆς αὐτῆς ἐκείνῳ πλάνης ἐτύγχανον ὄντες. τὰ αὐτὰ γὰρ ἁμαρτάνειν δοκοῦσιν οἱ γινώσκοντες μὲν τὸν ἁμαρτάνοντα, μὴ ποιοῦντες δὲ τοῦτον κατάδηλον. **2.** Γινωσκέτωσαν τοίνυν ἅπαντες, ὡς οὐδεμιᾶς τεύξονται φιλανθρωπίας οἱ μετὰ τὴν μετάνοιαν καθ᾽ οἱονδήποτε τρόπον γινομένην πάλιν ἐν ταῖς τῶν Μανιχαίων μυσαραῖς βλασφημίαις ἁλισκόμενοι, καὶ σπουδαζέτωσαν καθαρᾷ καὶ ἀμεταβλήτῳ γνώμῃ τήν τε τοῦ θεοῦ φιλανθρωπίαν ἐκ τῆς τῶν κρειττόνων ἐπιλογῆς καὶ τὴν ἡμετέραν εὐμένειαν ἐφελκύσασθαι.

3. Κἀκεῖνο δὲ θεσπίζομεν, εἴ τις ἔχων βιβλία τῇ πανταχόθεν ἀσεβεῖ τῶν Μανιχαίων πλάνῃ προσήκοντα μὴ ταῦτα δῆλα ποιήσειεν, ἐφ᾽ ᾧ καταφλεχθῆναι καὶ παντελῶς ἐξ ἀνθρώπων ἀφανῆ γενέσθαι, ἢ καὶ καθ᾽ οἱανοῦν πρόφασιν εὑρεθείη παρ᾽ αὐτῷ τὰ τοιαῦτα βιβλία, ὁμοίως καὶ αὐτὸν ποινὴν ὑποστῆναι τὴν προσήκουσαν. **4.** Ἐκείνους δὲ μάλιστα τῶν ἐσχάτων τιμωριῶν ἀξίους εἶναι κρίνομεν, ὅσοι προσποιησάμενοι

[15][185] (...). Those who have fallen into the impious error of the Manichaeans not only deserve punishment while they live, but We address the present divine pragmatic sanction to Your Magnificence so that also their property may not be given to those whom they wish, or to those to whom the law gives it by intestacy. By this law, We order that the property of those infected by this disease shall be thoroughly investigated, and if there are children of the deceased free from this sort of madness, (You) shall permit them to receive the portion of the property given to them by the law. But if other relatives or heirs instituted by will (which is forbidden) are called to the inheritance, or received a gift from such a person while alive, or indeed have been honored by a legacy, such property, gifts, or legacies shall be taken from them and confiscated by the Treasury.

[16][186] (...). **pr.** If anyone converts from the Manichaean cult to the right and true faith, and, after such great clemency of Ours, many admonitions, and the time spent in penance, is later discovered practicing his former error or associating and making casual conversation with an adherent of their pernicious error and does not immediately seize him and bring him before the *viri magnificissimi, spectabiles*, or *clarissimi* administrators or denounce him, he shall be subject to the ultimate punishment and may not resort to any pretext or delay the punishment imposed upon him by any conceits.

1. All persons in office, enrolled in imperial service, or registered in guilds (*corpora*) shall spare no effort to ascertain whether one of their number is an adherent of this prohibited madness and to denounce such a one if found, knowing that if such a person subject to punishment is discovered among them and it is agreed that he was known to them as such, they will not escape appropriate punishment, though not adherents of the same error as him. For those who know of an offender yet fail to denounce him seem themselves to commit the same offense. **2.** All shall know that those who are again caught in the vile blasphemy of the Manichaeans after penance of any sort shall receive no clemency, and shall strive with a pure and resolute mind to win the clemency of God, as well as Our favor, by choosing the better course.

3. This too We decree: if anyone has books in any way relating to the impious error of the Manichaeans and fails to disclose them to be burned and completely removed from the sight of men, or if such books are found in his possession on any pretext whatsoever, he shall likewise suffer the appropriate punishment. **4.** But We deem those most worthy of the ultimate punishment who pretend to forsake impious error and convert to the saving doctrine of orthodox Christians yet are afterward seen enjoying the company of profligate men, cherishing what is theirs, and in every way helping them to hide their acts

185 = Bas. 1.1.31. Lounghis *et al.* suggest 529 as the date.
186 = Bas. 1.1.32. Lounghis *et al.* suggest 529 as the date.

τὸ ἀπολιμπάνειν τὴν ἀσεβῆ ταύτην πλάνην καὶ εἰς τὸ σωτηριῶδες τῶν ὀρθοδόξων Χριστιανῶν μετιέναι δόγμα μετὰ ταῦτα χαίροντες φαίνονται τῇ τῶν ὀλεθρίων ἀνθρώπων συνδιαγωγῇ καὶ τὰ ἐκείνων θάλποντες καὶ πάντα τρόπον αὐτοῖς τὰ ἀσεβήματα συγκρύπτοντες. **5.** Οἱ γὰρ πάλαι μὲν ἐν τοῖς ἀσεβέσι κατατριβέντες συλλόγοις, μετὰ δὲ ταῦτα τοῦ σεπτοῦ τῶν Χριστιανῶν ἀξιωθέντες δόγματος οὕτως ἂν ἐν ἀσφαλεῖ μένοιεν, εἰ μηδενὶ τῶν ἀσεβῶν ἀνθρώπων ἐκείνων φανεῖεν κεκοινωνηκότες τῆς γοῦν τυχούσης ὁμιλίας, ἤ, εἴ τισιν[xx] αὐτῶν ὡμίλησαν, τοῦτον εὐθὺς ἐκφαίνοντες καὶ παραδιδόντες νομίμῳ δικαστῇ (διὰ τούτου γὰρ μόνου δείξουσιν ἅπασιν, ὡς οὐ κατά τινα δυσσεβῆ προσποίησιν, ἀλλ' ὀρθῇ διανοίᾳ τῷ ἁγίῳ καὶ προσκυνητῷ δόγματι προσκεχωρήκασιν)· ὡς, εἴγε τούτων ἀμελήσαντες ἐντυγχάνοντες μὲν τοιούτοις ἀσεβέσιν ἀνθρώποις ἁλοῖεν, σπουδάζοντες δὲ λανθάνειν αὐτοὺς καὶ μὴ παραδίδοσθαι τοῖς νόμοις, ἀναξίους ἑαυτοὺς πάσης συγγνώμης ἐντεῦθεν ἀποφαίνοντες τὰς προσηκούσας καὶ τοῖς πρωτοτύπως ἠσεβηκόσι δικαίως ἐπενεχθείσας ποινὰς ὑφέξουσιν.

[17] ... pr. Τῆς ἁγίας ... Αἱ τῶν Σαμαρειτῶν συναγωγαὶ καθαιροῦνται καί, ἐὰν ἄλλας ἐπιχειρήσωσι ποιῆσαι, τιμωροῦνται. **1.** Οὐ δύνανται δὲ διαδόχους ἔχειν ἐκ διαθήκης ἢ ἐξ ἀδιαθέτου, πλὴν ὀρθοδόξων, οὐδὲ δωροῦνται ἢ ἄλλως ἐκποιοῦσι τοῖς μὴ οὖσιν ὀρθοδόξοις· ἀλλὰ ὁ φίσκος αὐτὰ ἐκδικεῖ προνοίᾳ τῶν ἐπισκόπων καὶ τῶν ἀρχόντων.

[18] *Ὁ αὐτὸς βασιλεύς.* **pr.** ... Πάντων ποιούντων[xxi] πρόνοιαν τῶν συμφερόντων τοῖς ἡμετέροις ὑπηκόοις ἐκείνου μάλιστα πάντων ὡς πρώτου καὶ τῶν ἄλλων ἀναγκαιοτάτου πεφροντίκαμεν τοῦ τὰς αὐτῶν σώζειν ψυχὰς διὰ τοῦ τὴν ὀρθόδοξον πίστιν ἅπαντας καθαρᾷ διανοίᾳ πρεσβεύειν, καὶ τοῦτο μὲν τὴν ἁγίαν καὶ ὁμοιούσιον τριάδα προσκυνεῖν τε καὶ δοξάζειν, τοῦτο δὲ τὴν ἁγίαν ἔνδοξον καὶ ἀειπάρθενον θεοτόκον Μαρίαν ὁμολογεῖν τε καὶ σέβειν. **1.** Καὶ δὴ πλείστους εὑρόντες ἐν διαφόροις πλανωμένους αἱρέσεσι διὰ σπουδῆς ἐποιησάμεθα παραινέσεσί τε ταῖς τὸν θεὸν θεραπευούσαις ἐπὶ τὴν ἀμείνω μεταστῆσαι γνώμην αὐτοὺς καὶ θείοις ἐδίκτοις, ἔτι δὲ καὶ νόμοις ἐπανορθῶσαι τὴν οὐκ ὀρθῶς ἐμπεσοῦσαν ταῖς αὐτῶν διανοίαις προαίρεσιν, παρασκευάσαι τε τὴν ἀληθῆ καὶ μόνην σωτηριώδη τῶν Χριστιανῶν πίστιν ἐπιγνῶναί τε καὶ πρεσβεύειν. **2.** Καὶ ταῦτα γέγονεν ἐπί τε ταῖς ἄλλαις αἱρέσεσι καὶ διαφερόντως ἐπὶ τοῖς ἀνοσίοις Μανιχαίοις, ὧν εἰσι μέρος οἱ Βορβορῖται, περὶ ὧν παρ' ἡμῶν ῥητὰ διατέτακται. **3.** Ἃ δὲ περὶ τῶν Σαμαρειτῶν ἐτύχομεν ἤδη νομοθετήσαντες, κρατεῖν καὶ ἐπὶ τοῖς Μοντανισταῖς καὶ Τασκοδρούγοις καὶ Ὀφίταις θεσπίζομεν, τουτέστιν ὥστε μήτε συναγωγήν τινα τολμᾶν αὐτοὺς ἔχειν ἢ λόγων ἢ πράξεων ἀσεβῶν τε καὶ καταγελάστων οἱ συνιόντες μεθέξουσι, μήτε τὴν αὐτῶν οὐσίαν δύνασθαί τινι παραπέμπειν ἢ κατὰ κληρονομίας ἢ

[xx] τινι

[xxi] ποιούμενοι

of impiety. **5.** For those who formerly frequented impious assemblies, but afterward were deemed worthy of the venerable Christian doctrine, shall be secure only if they are found to have no casual dealings with any impious persons; or, if they associate with one of them, immediately denounce him and turn him over to a legitimate judge; for only by this means will they show to all that they have embraced the holy and worshipful doctrine, not out of some irreverent pretense but with the right purpose. Therefore, if they should neglect these provisions and be caught associating with such impious persons, striving to remain hidden and avoid being delivered over to the laws, they thereby prove themselves unworthy of forgiveness and shall suffer the same penalties justly imposed on those who originally committed such impiety.

[17] (*Emperor* JUSTINIAN *Augustus* ...).[187] **pr.** ... of the holy (orthodox faith?) ...[188] The synagogues of the Samaritans shall be torn down; and if they attempt to build others, they shall be punished. **1.** They cannot have heirs by will or intestacy unless they are orthodox, nor may they make gifts or otherwise alienate property to non-orthodox persons. The Treasury shall claim their property under the supervision of the bishops and governors.

[18] (*The same Emperor.*)[189] **pr.** Reflecting on all things beneficial to Our subjects, We consider saving their souls the foremost and most urgent above all the rest, whereby all sincerely observe the orthodox faith, on the one hand worshipping and glorifying the Holy Consubstantial Trinity and, on the other, confessing and adoring Mary, the Holy, Glorious, Ever-Virgin Mother of God. **1.** And since We found that many had gone astray in various heresies, We earnestly sought to bring them to the better opinion with God-serving exhortations, to correct the false belief that has seized their minds with divine edicts and laws, and to induce them to accept and observe the true and only saving belief of Christians. **2.** This was also undertaken against other heresies but particularly against the impious Manichaeans, of whom the Borborites are part, concerning whom We have enacted specific laws.[190] **3.** We decree that whatsoever We have already enacted concerning the Samaritans shall also apply to the Montanists, Tascodrogi, and Ophites: namely, they shall not dare to have any synagogue or come together to share their impious and ridiculous words and deeds or be able to convey their property to anyone, whether a cognate relative

[187] That this constitution is Justinian's is attested by Nov. 129 pr. and 144 pr. Lounghis *et al.* suggest 529 as its date.
[188] The beginning of this Greek constitution is fragmentary, and the supplement uncertain.
[189] The inscription has been restored from 1.5.17 and 19.
[190] See C. 1.5.15–16.

κατὰ φιδικομμίσσου δίκαιον ἐν διαθήκαις ἢ ἐξ ἀδιαθέτου, κἂν εἰ συγγενής, κἂν εἴ τις ἐξωτικὸς ἐκεῖνος εἴη· πλὴν εἰ μὴ τὴν ὀρθόδοξον ἀσπάζοιτο πίστιν ὁ πρὸς τὴν αὐτῶν καλούμενος διαδοχὴν ἢ παρ᾽ αὐτῶν γραφόμενος κληρονόμος ἤ τινι φιδικομμίσσῳ τιμηθείς.

4. Ἐπὶ δὲ ταῖς ἄλλαις ἁπάσαις αἱρέσεσιν (αἱρέσεις δὲ καλοῦμεν τὰς παρὰ τὴν καθολικὴν καὶ ἀποστολικὴν ἐκκλησίαν καὶ τὴν ὀρθόδοξον πίστιν φρονούσας τε καὶ θρησκευούσας) τὸν ἤδη τεθέντα νόμον παρά τε ἡμῶν καὶ τοῦ τῆς θείας λήξεως πατρὸς ἡμῶν κρατεῖν βουλόμεθα, ἐν ᾧ οὐ μόνον περὶ αὐτῶν, ἀλλὰ καὶ Σαμαρειτῶν καὶ Ἑλλήνων τὰ προσήκοντα διατέτακται· ὥστε τοὺς τὰ τοιαῦτα νοσοῦντας μήτε στρατεύεσθαι μήτε τινὸς ἀξιώματος ἀπολαύειν, ἀλλὰ μηδὲ ἐν σχήματι διδασκάλου παιδείας δῆθέν τινος τὰς τῶν ἁπλουστέρων ψυχὰς εἰς τὴν ἑαυτῶν ἀνθέλκειν πλάνην καὶ κατὰ τοῦτο ποιεῖν αὐτοὺς ἀργοτέρους περὶ τὴν ἀληθῆ καὶ καθαρὰν τῶν ὀρθοδόξων πίστιν, μόνοις δὲ ἐκείνοις διδάσκειν καὶ σιτήσεως δημοσίας τυγχάνειν ἐφίεμεν τοῖς τῆς ὀρθοδόξου πίστεως οὖσιν.

5. Εἰ δέ τις ὑπὲρ τοῦ στρατείαν ἢ συνηγορίαν ἢ ἀξίωμα ἢ δημόσιον φρόντισμα ἔχειν προσποιησάμενος τὴν ἀληθινὴν καὶ ὀρθόδοξον πίστιν ἀσπάζοιτο καὶ ὑποκρίσει ταύτῃ προσελθὼν φανείη γαμετὴν ἢ παῖδας ἔχων τῆς κατεγνωσμένης ἀντιποιουμένους αἱρέσεως καὶ μὴ προσαγάγοι τούτους εἰς ἐπίγνωσιν τῶν ἀληθῶν, κελεύομεν αὐτὸν πάντως μὲν ἐκβάλλεσθαι τῆς συνηγορίας ἢ στρατείας ἢ ἀξιώματος ἢ δημοσίου φροντίσματος· εἰ δὲ λανθάνων διαμείνοι, μὴ δύνασθαί τι τῶν αὐτῷ προσηκόντων κατὰ[xxii] δωρεὰν ἢ ἕτερον οἱονοῦν συνάλλαγμα ἐκποιεῖν εἰς αἱρετικὸν πρόσωπον ἢ τελευταίαν βούλησιν· τὰ δὲ καταλιμπανόμενα προσώποις αἱρετικοῖς καὶ τὴν αἱρετικῷ καταφερομένην ἐξ αὐτοῦ κληρονομίαν ἐκδικεῖσθαι παρὰ τοῦ δημοσίου, τῶν ὄντων ταῖς ἀληθείαις ὀρθοδόξων Χριστιανῶν δυναμένων ἢ παρὰ ζῶντος αὐτοῦ τι λαβεῖν ἢ τελευτῶντος κληρονομεῖν. **6.** Καθόλου γὰρ τοὺς ἐν ἀξίαις ἢ στρατείαις ἢ συνηγορίαις γινομένους ἢ καὶ πληροῦντας καὶ πάντας τοὺς ὅλως μετασχόντας οἱασδήποτε δημοσίας φιλοτιμίας ἢ συγκροτήσεως κελεύομεν παρὰ μόνων ὀρθοδόξων Χριστιανῶν κληρονομεῖσθαι ἢ παίδων ἢ συγγενῶν ἢ ἐξωτικῶν παρ᾽ αὐτῶν καλουμένων. **7.** Καὶ γὰρ κωλύομεν παντελῶς τούτων μετέχειν, φαμὲν δὴ τῶν παρὰ κληρονομίας ἢ δωρεᾶς ἢ ἑτέρας αἰτίας καταφερομένων εἰς αἱρετικὸν πρόσωπον. εἰ δὲ φανείη τις τοιοῦτόν τι πράττων, τὰ κατὰ τοῦτον διδόμενα ἢ καταλιμπανόμενα τὸν τρόπον ἐκδικεῖσθαι τῷ δημοσίῳ.

8. Εἰ δέ τις ἀνὴρ αἱρετικὸς ὀρθοδόξῳ γυναικὶ συνοικοίη ἢ τοὐναντίον αἱρετικὴ γυνὴ ὀρθόδοξον ἄνδρα ἔχοι, τὰ τούτων τέκνα πᾶσι τρόποις ὀρθόδοξα γίνεσθαι προστάττομεν· καὶ εἰ συμβαίη τινὰς μὲν τῶν αὐτῶν παίδων ὀρθοδόξους γενέσθαι, τινὰς δὲ καθ᾽ οἱανοῦν πρόφασιν ἐπὶ τῆς αὐτῆς ἢ καὶ ἑτέρας αἱρέσεως μεῖναι, μόνους τοὺς ὀρθοδόξους κληρονόμους εἶναι τοῦ πατρός τε καὶ τῆς μητρός, τῶν μεινάντων ἑτεροδόξων οὐδεμίαν πάροδον

[xxii] ἢ κατὰ

or an outside heir, by inheritance, by testamentary trust, or by intestacy, unless the person called to the succession, instituted as heir, or honored by a trust should embrace the orthodox faith.

4. With respect to all other heresies – by heresies, We mean those that think and worship contrary to the Catholic and Apostolic Church and orthodox faith – We desire that the law already enacted by Us and by Our father of divine memory should apply,[191] which established appropriate measures not only against them but also against the Samaritans and pagans (*Hellenes*): thus, those who are afflicted with this disease may neither serve in the imperial service nor enjoy any office, nor indeed as teachers of some subject draw the minds of the simple to their own error and thereby render them less zealous toward the true and pure faith of the orthodox. We permit only those who are of the orthodox faith to teach and receive a public salary.

5. If anyone, in order to obtain a position in the imperial service or a position as advocate, administrator, or public official, pretends to embrace the true and orthodox faith; and, having been promoted through this deceit, is found to have a wife and children who adhere to a condemned heresy, and not to lead them to recognize the truth; We order him to be utterly cast out of his position as advocate, clerk, administrator, or public official; and if he secretly remains, he shall not be able to convey any of his belongings by gift or by any other contract whatsoever into the possession of a heretic – nor by last will: property bequeathed to heretics and the inheritance left by him to a heretic shall be claimed by the Treasury. <**7.** For We utterly forbid heretics to receive these things, namely what has been left to a heretical person by inheritance, as a gift, or for any other reason. If someone is discovered doing such a thing, what has been given or bequeathed in this manner shall be claimed by the Treasury;>[192] truly orthodox Christians shall be able to receive something from such a person in his lifetime or inherit from him after his death. **6.** For We generally order that persons who were or who still serve as administrators, clerks, or advocates, and all who have held any kind of public office or favor shall have only orthodox Christians as heirs, whether they are their children, relatives, or outsiders appointed as heirs.

8. If a heretical man should cohabit with an orthodox wife, or, vice versa, a heretical woman should have an orthodox husband, We order that their children shall by all means be brought up orthodox, and if it should happen that some of the children should be brought up orthodox, but others, on whatever grounds, should remain adherents of the same or of some other heresy,

[191] C. 1.5.12.

[192] Section 7 is transposed here.

πρὸς τὴν μητρῴαν καὶ πατρῴαν κληρονομίαν ἐχόντων. **9.** Εἰ δὲ καὶ πάντες οἱ τῶν οὕτω συνοικούντων ἀλλήλοις παῖδες ἐπὶ τῆς αὐτῆς μείνοιεν πλάνης, τότε τούτους μὲν καὶ ἐκβάλλεσθαι τῆς ἀμφοτέρων γονέων κληρονομίας· εἰ δέ τις φανείη συγγενὴς καθ' οἱονδήποτε βαθμὸν τῶν οὕτω συνοικούντων τῆς ὀρθοδόξου πίστεως, τοῦτον εἰς τὸν ἀμφοτέρων κλῆρον καλεῖσθαι· μηδενὸς δὲ ὀρθοδόξου Χριστιανοῦ συγγενοῦς φαινομένου τὸ ἱερώτατον ἡμῶν ταμεῖον τὰς ἐκείνων λαβεῖν οὐσίας· τοῦ κατὰ καιρὸν μεγαλοπρεπεστάτου κόμητος τῶν θείων ἡμῶν πριβάτων καὶ τῆς ὑπηρετουμένης αὐτῷ σχολῆς διὰ πάσης ἐπιμελείας τὰ παρ' ἡμῶν διατυπωθέντα διερευνωμένων καὶ τὰς ἐκ τοῦ παραβαθῆναί τι τῶν προειρημένων ἁρμόττειν μελλούσας τούτων οὐσίας ἐκδικούντων.

10. Εἰ δέ τις τῶν παρ' ἡμῶν κεκωλυμένων, τουτέστιν Ἑλλήνων ἢ Μανιχαίων ἢ Σαμαρειτῶν ἢ τῶν τούτοις παραπλησίον αἱρετικῶν, ὅλως ἢ στρατείᾳ τυχὸν ἢ ἀξίᾳ ἢ συνηγορίᾳ ἢ οἱῳδήποτε δημοσίῳ φροντίσματι παραγγείλειεν ἢ παιδεύειν θαρρήσειεν ἢ δημοσίαν κομίζεσθαι σίτησιν ἤ τι πράττειν ὅλως τῶν ἀπηγορευμένων, μὴ γένοιτο δὲ κατάδηλος παρὰ πάσης τάξεως ἐνταῦθα τε καὶ κατὰ χώραν στρατιωτικῆς τε καὶ πολιτικῆς, ᾗ ταῦτα διαφέρει, αὐτὸς μὲν ὁ πλημμελήσας, ἐπειδὰν φωραθῇ, ταῖς ἔμπροσθεν ἡμῖν εἰρημέναις ὑποπεσεῖται ποιναῖς· οἱ δὲ ταῦτα μὴ προσαγγείλαντες, εἴτε ἐν τάξεσιν εἶεν εἴτε ἐν ἄλλαις ὑπηρετοῖντο ἀρχαῖς, εἰς ἃς ταῦτα ἀναφέρεται, εἴκοσι χρυσίου λιτρῶν καταθήσουσι ποινὴν ἐφ' ἑκάστῳ προσώπῳ, καὶ πάσῃ δὲ ὁμοίως ἀρχῇ στρατιωτικῇ τε καὶ πολιτικῇ ἐνταῦθά τε καὶ κατὰ χώραν τριάκοντα λιτρῶν χρυσίου ἕπεσθαι πρόστιμον.

11. Εἰ δὲ καὶ ὑπεξέλθοι καὶ εἰσπράξειε τὴν ποινὴν καὶ δείξειεν ἑαυτὴν οὐκ ἀμελοῦσαν τῶν νομοθετηθέντων, ποινῆς δὲ ἐφ' οἱουδήποτε προσώπου ἢ θέματος ἁρμοττούσης, θεσπίζομεν ταύτην τὸν μεγαλοπρεπέστατον κόμητα τοῦ ἱερωτάτου ταμείου εἰσπράττειν τε καὶ ὑποδέχεσθαι καὶ τοῖς θείοις εἰσκομίζειν πριβάτοις γινώσκοντα ὡς, εἰ μὴ καὶ αὐτὸς διὰ τῆς ὑπηρετουμένης αὐτῷ τῶν καθοσιωμένων παλατίνων σχολῆς καὶ αὐτὴ δὲ ἡ σχολὴ κατὰ πάντα τρόπον τὰ τοιαῦτα ἀνιχνεύσειε καὶ τοὺς ὑπευθύνους εἰσπράξειεν, αὐτὸς μὲν πεντήκοντα χρυσίου λιτρῶν ποινὴν καταθήσει, ἡ δὲ πειθομένη αὐτῷ σχολὴ τὸ ἐπενηνεγμένον πρόστιμον πρὸς τῷ κατὰ τῆς σχολῆς καὶ τὴν εἰς σῶμα ποινὴν ἁρμόττειν, εἰ μὴ τῶν παρ' ἡμῶν νενομοθετημένων ἀντιλάβοιτο, πρὸς τὸν ἑαυτῆς ἀποβλέπουσα κίνδυνον.

12. Τὴν δὲ αὐτὴν ἐπιμέλειαν ἔχειν καὶ τοὺς ἑκάστης πόλεως θεοφιλεστάτους ἐπισκόπους διερευνωμένους ἀεὶ τὰ καθ' ἑκάστην πόλιν ὑπεναντίον τῆς θείας ἡμῶν ταύτης νομοθεσίας παρ' οὑτινοσοῦν ἐγχειρούμενα καὶ ταῦτα φανερὰ τῷ λαμπροτάτῳ τῆς ἐπαρχίας ἄρχοντι καθιστᾶν, ὡς ἂν ἐκεῖνος ἔργῳ παραδοίη τὰ παρ' ἡμῶν εὐσεβῶς προστεταγμένα· ὡς εἴγε θεάσοιντο οἱ θεοφιλέστατοι ἐπίσκοποι τὸν τῆς ἐπαρχίας ἡγούμενον ῥαθύμως τῷ πράγματι χρώμενον, προσήκει τοῦτο φανερὸν ἡμῖν αὐτοῖς ποιεῖν, ἵνα τοὺς ῥαθυμήσαντας τοῖς αὐτοῖς ἐπιτιμίοις ὑποβάλλωμεν, οἷς ὑπαχθῆναι τοὺς

then only the orthodox children shall be heirs of the father and mother, while those who remain heterodox shall have no title to the maternal and paternal inheritance. **9.** But if all the children of those thus cohabiting with one another should remain adherents of the same error, then they shall be excluded from the inheritance of both parents; and if there is a cognate relative of those thus cohabiting, of whatever degree, who is of orthodox faith, he shall be called to the inheritance of both. If no such relative who is an orthodox Christian should be found, then Our Most Sacred Treasury shall seize their property. The *vir magnificentissimus* Count of Our Privy Purse and the official staff that serves him will monitor with all due diligence what We have enacted and will confiscate property that should belong to the Treasury on account of a violation of the foregoing provisions.

10. If one of the persons prohibited by Us, that is, pagans, Manichaeans, Samaritans, or heretics similar to them, should perchance seek a position in the imperial service, a position as an administrator or as an advocate, or any public charge, or should dare to teach or receive a public salary, or do anything that has been forbidden, and is not denounced by the entire official staff concerned, civil or military, here or in the provinces: the offender, once he has been caught, shall be liable to the penalties stated by Us above; those who failed to report this violation, whether they are on official staffs or serve in other offices to which this refers, shall pay 20 pounds of gold for each person; and a penalty of 30 pounds of gold shall similarly be imposed upon every magistrate, military and civil, here and in the provinces.

11. But if (the official staff) has pursued the heretic and collected the penalty and shown itself diligent in what has been enacted, the penalty pertaining to whatever person or case, We decree that the *vir magnificentissimus* Count of the Most Sacred Privy Purse shall collect and receive this penalty and add it to the Divine Privy Purse, knowing that if he, with his staff of dedicated Palatine officials, and the staff itself should fail to investigate such matters and fine those liable, he shall pay a fine of 50 pounds of gold; and the staff that obeys him, shall pay the fine incurred in addition to the penalty applicable to the entire body, unless, considering its own risk, it heeds Our enactments.

12. The most reverend bishops of each city shall have the same responsibility to investigate all attempts made against this Our divine law in every city and to report them to the *vir clarissimus* provincial governor, so that he may execute in deed Our pious commands. If the most reverend bishops observe that the provincial governor is lax in performing this duty, they must report this to Us, so that We may subject the negligent to the same penalties to which We

ἁμαρτάνοντάς τι τῶν προειρημένων ἐθεσπίσαμεν. **13.** Εἰδότων καὶ τῶν κατὰ τόπον θεοφιλεστάτων ἐπισκόπων, ὡς εἴ τινος τούτων ἀμελήσειαν, ἥξουσι μὲν πρὸς τὸν δεσπότην θεὸν καὶ τὴν αἰώνιον αὐτοῦ κρίσιν, διελεγχομένης δὲ τῆς αὐτῶν ῥᾳθυμίας καὶ περὶ αὐτῆς κινδυνεύσουσι τῆς ἱερωσύνης.

[19] *Idem A. Demostheni pp.* **pr.** Cognovimus multos esse orthodoxos liberos, quibus nec pater nec mater orthodoxae sunt religionis. et ideo sancimus, non tantum in casu, ubi alter orthodoxae religionis est, sed etiam in his casibus, in quibus uterque parens alienae sectae sit, id est pater et mater, ii tantummodo liberi ad eorum successionem sive ex testamento sive ab intestato vocentur et donationes seu alias liberalitates ab his accipere possint, qui orthodoxorum venerabili nomine sunt decorati: ceteris liberis eorum, qui non dei omnipotentis amorem, sed paternam vel maternam impiam adfectionem secuti sunt, ab omni beneficio repellendis. **1.** Liberis autem orthodoxis non existentibus ad agnationem vel cognationem eorum, orthodoxas tamen, easdem res vel successiones pervenire. **2.** Quod si nec agnatio nec cognatio recta inveniatur, tunc easdem res fisci nostri viribus vindicari.

3. Sed ne videamur morientibus quidem genitoribus liberis providere, viventibus autem nullam inferre providentiam, quod etiam ex facto nobis cognitum est, necessitatem imponimus talibus genitoribus orthodoxos liberos secundum sui patrimonii quantitatem alere et omnia eis praestare, quae ad quotidianam vitae conversationem sufficiant: sed et dotes pro filiabus vel neptibus dare et ante nuptias donationes pro filiis vel nepotibus perscribere, in omni casu secundum vires patrimonii huiusmodi liberalitatibus aestimandis, ne propter divini amoris electionem paterna vel materna fuerint liberi provisione defraudati.

4. Omnibus videlicet, quae nostrae constitutiones de poenis paganorum et Manichaeorum et Borboritarum et Samaritarum et Montanistarum et Tascodrogorum et Ophitarum ceterorumque haereticorum causa constituerunt, ex hac nostra lege confirmandis et in perpetuum valituris.

[20] *Ὁ αὐτὸς βασιλεὺς ... κόμητι τῶν πριβάτων.* **pr.** Ἔγνωμεν τοὺς ἀνοσίους αἱρετικοὺς καὶ μετὰ τοὺς ἡμετέρους νόμους καὶ τὴν γενομένην ἐπ' αὐτοῖς κίνησιν ἔτι τολμᾶν καὶ ἀθροίζεσθαι καὶ προβάλλεσθαί τινας τῆς ἑαυτῶν μανίας ἡγουμένους τε τούτους καὶ ἐξάρχους καλεῖν καὶ βαπτίσματα ποιεῖν καὶ βούλεσθαι χρῆσθαι προνομίοις τισίν, ἡνίκα τῶν ἁγίων περιβόλων καθέστηκεν αὐτῶν τὰ ἐργαστήρια, οἷς μόνους τοὺς τὴν ὀρθὴν τιμῶντας πίστιν χρήσασθαι προσήκει. **1.** Διὰ τοῦτο τοίνυν θεσπίζομεν τὴν σὴν ὑπεροχὴν καὶ νῦν αὐτοῖς ἀπειπεῖν, μάλιστα μὲν μηδὲ ἐν ἄλλῳ τινὶ τόπῳ,

decreed that violators of the aforementioned provisions were subject. **13.** The most reverend local bishops shall also know that if they disregard any of these provisions, they shall face the Lord God and his eternal condemnation and, if they are convicted of negligence, shall hazard their priesthood itself.[193]

[19] *The same Augustus to Demosthenes, Praetorian Prefect.* We have learned that there are many orthodox children who have neither father nor mother of the orthodox faith; and We therefore decree that, not only in the case in which one is of orthodox faith, but also in cases in which both parents, that is, mother and father, belong to an alien sect (*aliena secta*), only the children who are distinguished by the reverend name of orthodox may be called to the succession, whether by will or intestacy, and can receive gifts or other acts of generosity from them. The rest of their children, who have followed not the love of Almighty God but the impious inclination of mother or father, shall be excluded from every benefit. **1.** If there are no orthodox children, the property or estates of the parents shall fall to agnate or cognate relatives. **2.** But if neither a direct agnate nor cognate relative is found, then the property shall be claimed by Our Treasury.

3. But lest We appear to provide only for the children of dying parents and take no measures while they yet live, We impose (having learned of such deeds being done) on such parents the obligation of nourishing orthodox children according to the extent of their property and of providing them with everything that suffices for the daily exigencies of life, and also of giving dowries for their daughters or granddaughters and of assigning pre-nuptial gifts for their sons and grandsons. In each case, the amount of such acts of generosity shall be fixed in accordance with their means, lest their children be cheated of paternal or maternal support for choosing the love of God.

4. All provisions, moreover, that Our constitutions have established concerning the punishments of pagans, Manichaeans, Borborites, Samaritans, Montanists, Tascodrogi, Ophites, and other heretics are by this Our law confirmed and shall remain in force forever.

(529).[194]

[20][195] (*The same Emperor ... to the Count of the Privy Purse.*[196]) **pr.** We have learned that the unholy heretics still dare, even after Our laws[197] and actions against them, to congregate, promote adherents of their madness, call these persons leaders and precentors, perform baptisms, and want to enjoy certain privileges when their workshops stand within holy precincts, which only those who respect the orthodox faith may enjoy. **1.** Therefore, We decree that Your

[193] Lounghis *et al.* give 529 as the date of this constitution

[194] Lounghis *et al.* date to between September 17 and October 30, 529.

[195] = Bas. 1.1.33.

[196] The recipient may be Florus; see C. 7.37.3.

[197] C. 1.5.14, 1.5.18.

διαφερόντως δὲ ἐπὶ τῆς εὐδαίμονος ταύτης πόλεως, μηδέ τινας συνάξεις μηδὲ βαπτίσματα ποιεῖν μηδὲ τολμᾶν τοῦ τῆς προσκυνητῆς κοινωνίας ὀνόματος ἢ πράγματος ἅπτεσθαι, ἅπερ μόνων καθέστηκεν ἴδια τῶν τὴν ὀρθὴν πρεσβευόντων δόξαν καὶ τὸ προσκυνητὸν τῶν Χριστιανῶν ὄνομα προσηκόντως θεραπευόντων.

2. Ἀλλ' οὐδὲ τοὺς ἔχοντας ἐργαστήρια ἔσω τῶν ἁγίων περιβόλων χρῆσθαί τισι προνομίοις προφάσει τῶν ἐργαστηρίων συγχωροῦμεν, γινώσκοντας, ὡς, εἰ καὶ μετὰ τοῦτο τὸ θεῖον ἡμῶν κήρυγμα φανεῖεν οἱουδήποτε τῶν ἀπηγορευμένων ἁπτόμενοι, ἢ ἐν τῇ βασιλίδι ταύτῃ πόλει ἢ ἐν ἑτέραις χώραις ἢ παρασυνάξεις ἢ βαπτίσματα τολμῶντες ποιεῖν ἢ τὴν ἄρρητον αὐτοῖς διδόναι κοινωνίαν ἤ τι τῶν κεκωλυμένων ποιοῦντες, ὑπαχθήσονται ποιναῖς προσηκούσαις καὶ ἃς ὑπομένειν ἀνάγκη τοὺς ἐναντιουμένους τοῖς νόμοις καὶ τὴν αὐτῶν μὴ φυλάττοντας δύναμιν· εἰδότων τῶν τοὺς ἑαυτῶν οἴκους εἰς τὸ παρασυνάξεις ποιεῖν παρεχόντων αὐτοῖς, ὡς ταύτην ὑφέξουσι τὴν ποινήν, ἣν αἱ προλαβοῦσαι θεῖαι λέγουσι διατάξεις.

3. Καὶ ταῦτα μὲν κοινῇ περὶ πάντων τῶν αἱρετικῶν. Ἰδικῶς δὲ ἐπὶ τοῖς ἀνοσίοις Μοντανισταῖς θεσπίζομεν, ὥστε μηδένα συγχωρεῖσθαι τῶν καλουμένων αὐτῶν πατριαρχῶν καὶ κοινωνῶν ἢ ἐπισκόπων ἢ πρεσβυτέρων ἢ διακόνων ἢ ἄλλων κληρικῶν, εἴπερ ὅλως αὐτοὺς τοῖς ὀνόμασι τούτοις καλεῖν προσήκει, κατὰ ταύτην διατρίβειν τὴν εὐδαίμονα πόλιν, ἀλλὰ πάντας ἐξελαύνεσθαι, ὅπως ἂν μὴ τῶν ἀτόπων αὐτῶν μύθων τινὲς τῶν ἁπλουστέρων κατακούσαντες καὶ ἀκολουθοῦντες ταῖς ἀσεβέσιν αὐτῶν διδασκαλίαις τὰς ἑαυτῶν διαφθείροιεν ψυχάς. **4.** Ἀλλ' οὐδὲ εἴσω τῶν εὐαγῶν ὅρων πραγματεύεσθαι ὅλως συγχωροῦμεν, ὥστε μὴ τὰ εὐαγῆ τῆς ὀρθοδόξου πίστεως μυστήρια γίνεσθαι αὐτοῖς ἔκπυστα βεβήλοις τε οὖσι καὶ καθαρᾶς πάσης εὐαγοῦς ἀκοῆς ἀναξίοις.

5. Κωλύεσθαι δὲ θεσπίζομεν αὐτῶν καὶ τὰ ἀσελγῆ συσσίτια καὶ τὰ ἀσεβῆ καὶ κατεγνωσμένα συμπόσια, ἐν οἷς συνιόντες τὰς τῶν ἁπλουστέρων θηρεύειν πειρῶνται ψυχάς. δεῖ γὰρ καθάπαξ κεκωλῦσθαι τούτους τοὺς ἐξ αὐτῶν εἰς τὴν ὀρθὴν μεταστάντας πίστιν αὖθις ἀσεβῶς διαιτᾶσθαι τοῖς τὰ αὐτὰ νοσοῦσιν καὶ ἴσως ἐκ τῆς συνδιαγωγῆς καὶ διαίτης πάλιν ἐπὶ τὴν προτέραν ἐπανιέναι κακοδαιμονίαν. **6.** Κωλύομεν δὲ αὐτοὺς καὶ ἀνδράποδα ἐμπορεύεσθαι, μήποτε ταῦτα τοῖς συνθρησκευταῖς ἀποδόμενοι παρασκευάσαιεν αὐτὰ τῆς ἑαυτῶν κακοδοξίας γενέσθαι. **7.** Ὁμοίως δὲ κωλύομεν τοῖς ἐκ τῆς τῶν αὐτῶν Μοντανιστῶν οὖσι θρησκείας δίδοσθαί τινα παραψυχὴν κατὰ πρόφασιν τῶν καλουμένων ἀξιωματικῶν, οἷς ἐκ τῶν μεγίστων δικαστηρίων καὶ τῆς ἁγιωτάτης μεγάλης ἐκκλησίας εἴωθέ τι χορηγεῖσθαι προφάσει τῆς συνεχούσης αὐτοὺς πενίας, ἣν οὐκ ἂν εἴη προσῆκον τοῖς ἐκ τῆς εἰρημένης χορηγεῖσθαι θρησκείας, ὑγιὲς μὲν ἢ μέτριον οὐδ' ὁτιοῦν ἐχούσης, παρὰ πάντων δὲ δικαίως μισουμένης τε καὶ κατεγνωσμένης· ὥστε καὶ εἴ τις αὐτοῖς ἄλογον νέμει προστασίαν, καὶ τοῦτον σωφρονίζεσθαι δέκα χρυσίου λιτρῶν ποινῇ θεσπίζομεν.

Magnificence shall even now forbid them, in any other place but especially in This Blessed City, to hold any gatherings or perform baptisms or dare to usurp the name or practice of venerable communion, which belong solely to those who observe the correct faith and duly cherish the worshipful name of Christian.

2. Neither do We permit those who have their workshops within holy precincts to enjoy any privileges on account of their workshops; they shall know that if after this Our divine proclamation they are found, whether in This Imperial City or in other places, usurping anything that has been forbidden them, or daring to hold gatherings or perform baptisms or to give communion, the very name of which they are forbidden to speak, or doing anything that is prohibited, they shall be subject to the appropriate penalties, which those who defy the laws and disregard their force must suffer. Those who provide their own houses to them for the purpose of holding gatherings shall know that they will suffer the penalty prescribed by previous divine decrees.

3. Thus far generally concerning all heretics; concerning the unholy Montanists in particular, We decree that none of their so-called patriarchs, companions (*koinonoi*), bishops, presbyters, deacons, or other clergymen – if indeed they at all deserve to be called by these names – may reside in This Blessed City, but are all to be driven out, lest some of the simple folk hear their absurd stories and, following their impious teachings, lose their own souls. **4.** We furthermore do not permit them to conduct any business within the holy precincts, lest the holy mysteries of the orthodox faith be divulged to them, uninitiated and unworthy of hearing anything pure and holy.

5. We decree that their licentious common meals and impious and damnable banquets, in which they gather to attempt to entrap the souls of the simple folk, shall be prohibited. For those among them who have converted to the correct faith, it should be forbidden once and for all to associate impiously with those affected by this sickness and, perhaps through this familiarity and association, again return to their former delusion. **6.** We also forbid them to trade in slaves, lest by giving them over to their fellow sectarians they should make them join their own delusion. **7.** We likewise forbid any relief to be given to followers of the Montanist sect by reason of so-called subventions (*honoraria*), to whom something is customarily supplied by the highest courts and the Most Holy Great Church on account of the poverty that constrains them; but it would not be appropriate to provide such relief to those who belong to the aforementioned sect, which believes nothing sane or moderate and is justly hated and condemned by all. Wherefore, if anyone gives them such unwarranted patronage, We decree that he too shall be chastised by a penalty of 10 pounds of gold.

8. Ταῦτα τοίνυν ἅπαντα παραφυλάττεσθαι βουλόμεθα παρά τε τῆς σῆς ὑπεροχῆς καὶ τῶν τὰς ἀρχὰς τῶν ἐθνῶν ἐχόντων, τὴν αὐτὴν ποινὴν ὑφορωμένης καὶ τῆς πειθομένης σοι τάξεως καὶ τῶν ἐπιχωρίων τάξεων, εἰ μὴ ταῦτα φυλάξαιεν· ἐπικειμένης οὐδὲν ἧττον ἀγανακτήσεως καὶ τοῖς ἀεὶ τὴν ἀρχὴν ἕξουσιν, ἧς νῦν ἡ σὴ προέστηκεν ὑπεροχή, εἴ τι τῶν θεσπισθέντων ἢ αὐτοὶ παραβαῖεν ἢ παραβαθῆναι συγχωρήσαιεν, καὶ τῶν ἀρχόντων τῶν ἐθνῶν, εἰ τούτου ῥᾳθυμήσαιεν, ὁμοίως δέκα χρυσίου λιτρῶν σωφρονιζομένων ποινῇ.

D. Constantinopoli x k. Dec. Lampadio et Oreste vv. cc. conss.

[21] *Idem A. Iohanni pp.* **pr.** Quoniam multi iudices in dirimendis litigiis nos interpellaverunt, indigentes nostro oraculo, ut eis reseretur, quid de testibus haereticis statuendum sit, utrumne accipiantur eorum testimonia an respuantur, sancimus contra orthodoxos quidem litigantes nemini haeretico vel etiam his qui Iudaicam superstitionem colunt esse in testimonia communionem, sive utraque pars orthodoxa sit sive altera. **1.** Inter se autem haereticis vel Iudaeis, ubi litigandum existimaverint, concedimus foedus permixtum et dignos litigatoribus etiam testes introduci, exceptis scilicet his, quos vel Manichaeus furor (cuius partem et Borboritas esse manifestissimum est) vel pagana superstitio detinet, Samaritis nihilo minus et qui illis non absimiles sunt, id est Montanistis et Tascodrogis et Ophitis, quibus pro reatus similitudine omnis legitimus actus interdictus est. **2.** Sed et his quidem, id est Manichaeis et Borboritis et paganis nec non Samaritis et Montanistis et Tascodrogis et Ophitis, omne testimonium sicut et alias legitimas conversationes sancimus esse interdictum: aliis vero haereticis tantummodo iudicialia testimonia contra orthodoxos, secundum quod constitutum est, volumus esse inhibita. **3.** Ceterum testamentaria testimonia eorum et quae in ultimis elogiis vel in contractibus consistunt, propter utilitatem necessarii usus sine ulla distinctione permittimus, ne probationum facultas angustetur.

D. v k. Aug. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[22] *Idem A. Iohanni pp.* Divinam nostram sanctionem, per quam iussimus neminem errore constrictum haereticorum hereditatem vel legatum sive fideicommissum accipere, etiam in ultimis militum voluntatibus locum habere praecipimus, sive communi iure sive militari testentur.

D. k. Sept. post consulatum Lampadii et Orestis vv. cc.

8. We desire that all these provisions be observed by Your Magnificence and by the holders of provincial governorships; both the official staff that obeys you and those in the provinces may expect the same penalty if they do not observe them. No less will Our wrath fall on those who hereafter hold the office that Your Magnificence now administers, if they themselves violate or permit to be violated anything decreed; and the provincial governors will likewise be chastised by a fine of 10 pounds of gold, if they neglect this.

Given November 22, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[21] *The same Augustus to John, Praetorian Prefect.* **pr.** Since many judges, in resolving cases, have consulted Us, requiring that Our oracle be opened unto them as to how they should proceed concerning heretical witnesses, whether they and their testimony should be admitted or rejected, We decree that no heretic or even those who follow the Jewish superstition may have any part in the testimony against orthodox litigants, whether both parties are orthodox or just one. **1.** If heretics or Jews decide to litigate among themselves, We permit them a compromise and even to introduce witnesses worthy of the litigants, excepting however those whom the Manichaean madness has possessed – and it is self-evident that the Borborites are part of them – or the pagan superstition, and also the Samaritans and those not unlike them, that is, the Montanists, Tascodrogi, and Ophites, to whom every legal act is forbidden on account of the similarity (of their religion) to a crime. **2.** And indeed for these, that is, the Manichaeans, Borborites, and pagans, as well as the Samaritans, Montanists, Tascodrogi, and Ophites, We decree that the giving of testimony, as with other legal acts, is forbidden. For other heretics, We desire that merely the giving of judicial testimony against the orthodox be prohibited, according to what has been established; **3.** but, to facilitate necessary practices, We allow without distinction their testimony concerning wills and the dispositions in last testaments or in contracts, so that the giving of proof is not impeded.

Given June 28, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*[198]

[22][199] *The same Augustus to John, Praetorian Prefect.* Our divine decree, whereby We ordered that no one fettered by the error of heretics may receive an inheritance or legacy or trust, We order to apply even to the last wills of soldiers, whether they make them by ordinary or by military law.

Given September 1, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[198] Lounghis *et al.* date to July 29, 531.
[199] Combine with C. 1.3.49, 3.28.37, 6.22.12.

VI Ne Sanctum Baptisma Iteretur

[1] *Imppp. Valens Gratianus et Valentinianus AAA. ad Florianum vicarium Asiae.* Antistitem, qui sanctitatem baptismatis illicita usurpatione geminaverit, sacerdotio indignum esse censemus. eorum enim condemnamus errorem, qui apostolorum praecepta calcantes Christiani nominis sacramenta sortitos alio rursus baptismate non purificant, sed incestant, lavacri nomine polluentes.

D. XVI k. Nov. Constantinopoli Gratiano A. IIII et Merobaude conss.

[2] *Impp. Honorius et Theodosius AA. Anthemio pp.* Si quis rebaptizare quempiam de mysteriis catholicae sectae fuerit detectus, una cum eo qui piaculare crimen commisit (si tamen criminis per aetatem capax sit, cui persuasum sit) ultimo supplicio percellatur.

D. XII k. April. Constantinopoli Lucio cons.

[3] *Impp. Theodosius et Valentinianus AA. Florentio pp.* **pr.** Nulli haereticorum danda est licentia vel ingenuos vel servos proprios, qui orthodoxorum sunt initiati mysteriis, ad suum rursus baptisma deducendi, nec vero illos, quos emerint vel qualitercumque habuerint necdum suae superstitioni coniunctos, prohibendi catholicae sequi religionem ecclesiae. **1.** Quod qui fecerit vel, cum sit ingenuus, in se fieri passus sit vel factum non detulerit, exilio ac decem librarum auri multa damnabitur: testamenti et donationis faciendae utrique deneganda licentia. **2.** Quae omnia ita custodiri decernimus, ut nulli iudicum liceat delatum ad se crimen minori aut nulli coercitioni mandare, nisi ipse id pati velit, quod aliis dissimulando concesserit.

D. III k. Iun. Constantinopoli Felice et Tauro conss.

VII De Apostatis

[1] *Imp. Constantius A. ad Thalassium pp.* Si quis lege venerabili constitutus ex Christiano Iudaeus effectus sacrilegis coetibus adgregetur, cum

Sixth Title Holy Baptism Shall Not Be Repeated

[1][200] *Emperors* VALENS, GRATIAN, *and* VALENTINIAN *Augusti to Florianus, Vicar of Asia.* We deem the priest who unlawfully repeats the holy rite of baptism to be unworthy of the priesthood. For We condemn the error of those who, trampling on the precepts of the apostles, do not purify those who have received the Christian sacraments by another baptism but rather defile and pollute them in the name of the baptismal font.

Given October 17, at Constantinople, in the consulship of Gratian Augustus, for the fourth time, and Merobaudes (377).

[2][201] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Anthemius, Praetorian Prefect.* If anyone is caught rebaptizing anyone initiated in the mysteries of the Catholic faith, he along with him who permitted this sacrilegious crime – provided the one persuaded is capable of the crime according to his age – shall be stricken with the ultimate punishment.

Given March 21, at Constantinople, in the consulship of Lucius (413).

[3][202] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Florentius, Praetorian Prefect.* **pr.** No heretic shall be permitted to seduce to their second baptism either free-born persons or their own slaves who have been initiated into the mysteries of the orthodox; or to prevent those whom they have bought or possess in whatever manner, who have not yet joined their superstition, from following the religion of the Catholic Church. **1.** If anyone does so or, though free-born, permits this to be done to him or does not denounce the deed, he shall be condemned to exile and a fine of 10 pounds of gold. The power of making a will and a gift shall be denied to both. **2.** We decree that all these provisions shall be upheld in such a way that no judge may subject a crime denounced to him to lesser or no punishment, unless he himself wishes to suffer the penalty from which he releases others by his dissembling.

Given May 30, at Constantinople, in the consulship of Felix and Taurus (428).

Seventh Title Apostates

[1][203] *Emperor* CONSTANTIUS *Augustus to Thalassius, Praetorian Prefect.* If anyone made a Christian by the venerable law (of the Church) becomes a Jew and

[200] = C.Th. 16.6.1, but the addressee comes from C.Th. 16.6.2 (the text of which is lost).
[201] = C.Th. 16.6.6, with a slightly different text.
[202] = C.Th. 16.5.65.4–5; combine with C. 1.5.5.
[203] = C.Th. 16.8.7, ascribing the constitution also to "the Caesar Julian." The text is uncertain; *lege venerabili destituta* ("having abandoned the venerable law," proposed by Gothofredus) is possibly to be preferred. The law was probably issued in 353 (Seeck).

accusatio fuerit comprobata, facultates eiusdem dominio fisci iubemus vindicari.

D. v non. Iul. Mediolano Constantio A. VIIII et Iuliano C. II conss.

[2] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad Hypatium pp.* Si quis defunctum violatae atque desertae Christianae religionis accusat eumque in sacrilegia templorum vel in ritus Iudaicos transisse contendit eaque gratia testari minime potuisse confirmat, intra quinquennium iuge, quod inofficiosis actionibus constitutum est, proprias exserat actiones futurique iudicii huiuscemodi sortiatur exordium.

D. XV k. Iun. Patavi Merobaude II et Saturnino conss.

[3] *Imppp. Valentinianus Theodosius et Arcadius AAA. Flaviano pp.* **pr.** Ii, qui sanctam fidem prodiderint et sanctum baptisma haeretica superstitione profanaverint, a consortio omnium segregati sint, a testimoniis alieni, testamenti, ut ante iam sanximus, non habeant factionem, nulli in hereditate succedant, a nemine scribantur heredes. **1.** Quos etiam praecepissemus procul abici ac longius amandari, nisi poenae visum fuisset esse maioris versari inter homines et hominum carere suffragiis. **2.** Sed nec umquam in statum pristinum revertentur, non flagitium morum oblitterabitur paenitentia neque umbra aliqua exquisitae defensionis aut muniminis obducetur, quoniam quidem eos, qui fidem quam deo dicaverant polluerunt et prodentes divinum mysterium in profana migraverunt, tueri ea quae sunt commenticia et concinnata non possunt. **3.** Lapsis etenim et errantibus subvenitur, perditis vero, hoc est sanctum baptisma profanantibus, nullo remedio paenitentiae, quae solet aliis criminibus adesse, succurritur.

D. v id. Mai. Concordiae Tatiano et Symmacho conss.

[4] *Impp. Theodosius et Valentinianus AA. Basso pp.* **pr.** Apostatarum sacrilegum nomen singulorum vox continuae accusationis incesset et nullis finita temporibus huiuscemodi criminis arceatur indago. **1.** Quibus quamvis praeterita interdicta sufficiant, tamen etiam illud

joins their sacrilegious assemblies, when the accusation (against him) has been proven, We order that his property be claimed as property of the Treasury.

Given July 3, at Milan, in the consulship of Constantius Augustus, for the ninth time, and the Caesar Julian, for the second time (357).

[2][204] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Hypatius, Praetorian Prefect.* If anyone accuses a deceased person of having broken with and deserted the Christian religion and claims that he had gone over to the sacrileges of temples or to Jewish rites, and for that reason avers that he could not have made a (legal) will, he must lay out the grounds of his claims and obtain a date for the beginning of such a trial within five continuous years, which is the period fixed for actions against undutiful wills (*actiones inofficiosae*).

Given May 18, at Padua, in the consulship of Merobaudes, for the second time, and Saturninus (383).

[3][205] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Flavianus, Praetorian Prefect.* **pr.** Those who have betrayed the Holy Faith and profaned the holy rite of baptism with heretical superstition shall be sundered from the fellowship of all men, shall be banned from giving testimony, and, as We have decreed before, shall not be able to make a will, shall succeed to no one's estate, shall be named heir by no one. **1.** We would have ordered long ago that they be cast forth and removed far away, had it not seemed to Us to be a greater punishment to live among men and lack their approval. **2.** But they will never return to their former condition, the blot on their morals will never be erased by penitence or obscured in the shadow cast by some farfetched apology or defense, because lies and pretexts cannot protect those who have defiled the faith that they dedicated to God and, betraying the divine mystery, turned to the profane. **3.** Help is extended to the fallen and to the erring, but those who are lost, that is, who have profaned holy baptism, cannot be aided by any remedy of penitence, which is generally available for other crimes.

Given May 11, at Concordia, in the consulship of Tatianus and Symmachus (391).

[4][206] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Bassus, Praetorian Prefect.* **pr.** The voice of every single person, a voice of continuous accusation, shall assail the sacrilegious name of apostates, and the investigation of this kind of crime shall be barred by no lapse of time. **1.** Although past bans should suffice for them, still We repeat that they shall have no power to make a will or

[204] = C.Th. 16.7.3.1 (May 21); cf. C.Th. 2.19.5.
[205] = C.Th. 16.7.4. Seeck prefers June 11.
[206] = C.Th. 16.7.7; combine with C.Th. 16.8.28.

iteramus, ne, postquam a fide deviaverint, testandi aut donandi quippiam habeant facultatem. sed nec venditionis specie facere legi fraudem sinantur, totumque ab intestato Christianitatem sectantibus propinquis potissimum deferatur. **2.** In tantum autem contra huiuscemodi sacrilegia perpetuari volumus actionem, ut universis ab intestato venientibus etiam post mortem peccantis absolutam vocem insimulationis congruae non negemus: nec illud patiemur obstare, si nihil in contestatione profano dicatur vivente perductum. **3.** Sed ne huius interpretatio criminis latius incerto vagetur errore, eos praesentibus insectamur oraculis, qui nomine Christianitatis induti sacrificia vel fecerint vel facienda mandaverint: quorum etiam post mortem comprobata perfidia hac ratione plectenda est, ut donationibus testamentisque rescissis ii, quibus hoc defert legitima successio, huiusmodi personarum hereditate potiantur.

D. VII id. April. Ravennae Theodosio A. XII et Valentiniano C. II conss.

[5] *Impp. Theodosius et Valentinianus AA. Florentio pp.* Eum, quicumque servum seu ingenuum, invitum vel suasione plectenda, ex cultu Christianae religionis in nefandam sectam ritumve traduxerit, cum dispendio fortunarum capite puniendum censemus.

D. prid. k. Febr. Constantinopoli Theodosio A. XVI et Fausto conss.

[6] *Impp. Valentinianus et Marcianus AA. Palladio pp.* Eos, qui catholicarum ecclesiarum clerici vel orthodoxae fidei monachi relicto vero orthodoxae religionis cultu Apollinaris vel Eutychetis haeresin et dogmata abominanda sectati sunt, omnibus poenis, quae prioribus legibus adversus haereticos constitutae sunt, iubemus teneri et extra ipsum quoque Romani imperii solum repelli, sicut de Manichaeis praecedentium legum statuta sanxerunt.

D. k. Aug. Constantinopoli Valentiniano A. VIII et Anthemio conss.

VIII Nemini Licere Signum Salvatoris Christi vel in Silice vel in Marmore aut Sculpere aut Pingere

[1] *Impp. Theodosius et Valentinianus AA. Eudoxio pp.* Cum sit nobis cura diligens per omnia superni numinis religionem tueri, signum

gift after they have turned from the path of faith. Nor shall they be permitted to cheat the law by a pretended sale, but their whole property shall pass by intestacy to their relatives who follow the Christian faith before all others. **2.** We moreover wish the legal action against such sacrileges to be extended so far that We do not deny any intestate heirs an unlimited voice for the appropriate accusation, even after the death of the sinner; nor will We permit it to stand in their way if no action was brought against the unholy one in his lifetime. **3.** But lest the interpretation of this crime stray in uncertain confusion too far, We persecute in Our instant oracular pronouncements those who endowed with the name of Christians have made sacrifices or had others make them. Their perfidy, even if proven after death, shall be punished in this manner: their gifts and wills shall be rescinded, and those on whom the law of (intestate) succession confers it shall possess the estate of such persons.

Given April 7, at Ravenna, in the consulship of Theodosius Augustus, for the twelfth time, and the Caesar Valentinian, for the second time (426).

[5][207] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Florentius, Praetorian Prefect.* We deem that whosoever has brought a slave or free-born person, by force or by punishable persuasion, from worship of the Christian religion to a nefarious sect or cult, shall be punished by the loss of his property and death.

Given January 31, at Constantinople, in the consulship of Theodosius Augustus, for the sixteenth time, and Faustus (438).

[6][208] *Emperors* VALENTINIAN *and* MARCIAN *Augusti to Palladius, Praetorian Prefect.* We order that clergymen of Catholic churches or monks of the orthodox faith, who have abandoned the true worship of the orthodox religion to follow the heresy and execrable teachings of Apollinaris or Eutyches, shall be liable to all punishments that have been introduced by past laws against heretics and shall be driven beyond the very soil of the Roman Empire, just as the provisions of foregoing laws have decreed concerning the Manichaeans.

Given August 1, at Constantinople, in the consulship of Valentinian Augustus, for the eighth time, and Anthemius (455).

Eighth Title No One May Carve or Paint a Statue of the Savior Christ in Stone or Marble

[1] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Eudoxius, Praetorian Prefect.* Since We take great care to protect the religion of the godhead above

[207] = Nov. Theod. 3.1.4; combine with C. 1.5.7, 1.9.19.
[208] Combine with C. 1.5.8.

salvatoris Christi nemini licere vel in solo vel in silice vel in marmoribus humi positis insculpere vel pingere, sed quodcumque reperitur tolli: gravissima poena multando eo, si quis contrarium statutis nostris temptaverit, specialiter imperamus.

D. XII k. Iun. Hierio et Ardaburio conss.

VIIII De Iudaeis et Caelicolis

[1] *Imp. Antoninus A. Claudio Tryphonino.* Quod Cornelia Salvia universitati Iudaeorum, qui in Antiochensium civitate constituti sunt, legavit, peti non potest.

D. prid. k. Iul. Antonino A. IIII et Balbino conss.

[2] … Ὁ κράτιστος τοῦ ἔθνους ἡγούμενος ταῖς σωματικαῖς ὑπηρεσίαις τῇ τῆς θρησκείας ἡμέρᾳ, καθ' ἣν ἀργεῖν εἰώθατε, μὴ ἐνοχλεῖσθαι ὑμᾶς προνοήσει.

[3] *Imp. Constantinus A. ad Euagrium pp.* Iudaeis et maioribus eorum et patriarchis volumus intimari, quod, si quis post hanc legem aliquem, qui eorum feralem fugerit sectam et ad dei cultum respexerit, saxis aut alio furoris genere, quod nunc fieri cognovimus, ausus fuerit attemptare, mox flammis dedendus est et cum omnibus suis participibus concremandus.

D. XV k. Nov. Murgillo Constantino A. IIII et Licinio IIII conss.

[4] *Impp. Valentinianus et Valens AA. Remigio magistro officiorum.* In synagoga Iudaicae legis velut hospitii merito irruentes iubeas emigrare: quos privatorum domus, non religionum loca habitationum merito convenit attingere.

D. prid. non. Mai. Treviris Valentiniano et Valente AA. conss.

in all things, (We order) that no one may carve or paint a statue of the Savior Christ in earth, in stone, or in marble placed on the ground; but whatsoever is found shall be destroyed. We specifically command that if anyone attempts anything contrary to Our laws, he shall be punished by the severest penalty.

Given May 21,[209] *in the consulship of Hierius and Ardaburius (427).*

Ninth Title Jews and Worshippers of the Heavens (*Caelicolae*)

[1] *Emperor* ANTONINUS *Augustus to Claudius Tryphoninus.* No suit can be brought to recover what Cornelia Salvia bequeathed to all Jews situated in the city of Antioch.

Given June 30, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[2] (...). The *vir egregrius* provincial governor[210] shall see to it that you are not disturbed by corporal liturgies on the day of worship, on which you are accustomed to rest.

[3][211] *Emperor* CONSTANTINE *Augustus to Euagrius, Praetorian Prefect.* We desire that the Jews and their elders and patriarchs be informed that, if anyone after this law should dare to assail anyone with stones or some other manner of fury (which We have learned is now being done) who has fled their deadly sect and turned to the worship of God, the assailant shall be consigned to the flames and burned with all his accomplices.

Given October 18, at Murgillum, in the consulship of Constantine Augustus, for the fourth time, and Licinius, for the fourth time (315).

[4][212] *Emperors* VALENTINIAN *and* VALENS *Augusti to Remigius, Master of Offices.* You shall order those who invade Jewish synagogues, as if by right of quartering, to leave; they ought not lay hand upon places of worship for their dwellings, but rather the houses of private citizens.

Given May 6, at Trier, in the consulship of Valentinian and Valens Augusti (368, 370, or 373).

[209] Seeck dates December 21 (D. xii k. Ian.).

[210] The title is given in the Greek as κράτιστος, which was equivalent to the equestrian rank *vir egregius* under the High Empire, but obsolete by the time of Justinian.

[211] = C.Th. 16.8.1. The likeliest date is October 18, 329 (Barnes); Seeck gives August 13, 339.

[212] = C.Th. 7.8.2. Seeck dates to 368.

[5] *Imppp. Gratianus Valentinianus et Theodosius AAA. Hypatio pp.* Iussio, qua sibi Iudaeae legis homines blandiuntur, per quam eis curialium munerum dabatur immunitas, rescindatur.

D. XIIII k. Mai. Mediolani Merobaude II et Saturnino conss.

[6] *Imppp. Valentinianus Theodosius et Arcadius AAA. Cynegio pp.* Ne quis Christianam mulierem in matrimonium Iudaeus accipiat neque Iudaeae Christianus coniugium sortiatur. nam si quis aliquid huiusmodi admiserit, adulterii vicem commissi huius crimen obtinebit, libertate in accusandum publicis quoque vocibus relaxata.

D. prid. id. Mart. Thessalonica Theodosio A. II et Cynegio conss.

[7] *Idem AAA. Infantio comiti Orientis.* Nemo Iudaeorum morem suum in coniunctionibus retinebit nec iuxta legem suam nuptias sortiatur nec in diversa sub uno tempore coniugia conveniat.

D. III k. Ian. Constantinopoli Theodosio A. III et Abundantio conss.

[8] *Imppp. Gratianus Valentinianus et Theodosius AAA. Eutychiano pp.* **pr.** Iudaei Romano communi iure viventes in his causis, quae tam ad superstitionem eorum quam ad forum et leges ac iura pertinent, adeant sollemni more iudicia omnesque Romanis legibus conferant et excipiant actiones. **1.** Si qui vero ex his communi pactione ad similitudinem arbitrorum apud Iudaeos in civili dumtaxat negotio putaverint litigandum, sortiri eorum iudicium iure publico non vetentur. **2.** Eorum etiam sententias iudices exequantur, tamquam ex sententia cognitoris arbitri fuerint attributi.

D. VI non. Febr. Constantinopoli Honorio A. IIII et Eutychiano conss.

[9] *Impp. Arcadius et Honorius AA. ad Iudaeos.* Nemo exterus religionis Iudaeorum Iudaeis pretia statuet, cum venalia proponentur. iustum est enim sua cuique committere. itaque rectores provinciarum vobis

[5][213] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Hypatius, Praetorian Prefect.* The order with which men of Jewish status flatter themselves, whereby immunity from curial liturgies was given to them, shall be rescinded.

Given April 18, at Milan, in the consulship of Merobaudes, for the second time, and Saturninus (383).

[6][214] *Emperors* GRATIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Cynegius, Praetorian Prefect.* No Jew shall receive a Christian woman in matrimony, nor shall a Christian man enter wedlock with a Jewess. If anyone does anything of the kind, this criminal act shall be treated as adultery, and freedom of accusation is opened to the voices of the public.

Given March 14, at Thessalonica, in the consulship of Theodosius Augustus, for the second time, and Cynegius (388).

[7] *The same Augusti to Infantius, Count of the East.* No Jew shall observe his custom in contracting marriage, nor any Jewess be given in marriage according to their law, nor may one enter into different marriages at the same time.

Given December 30, at Constantinople, in the consulship of Theodosius Augustus, for the third time, and Abundantius (393).

[8][215] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Eutychianus, Praetorian Prefect.* **pr.** Jews living under the general law of Rome shall, in cases pertaining both to their superstition and to questions of venue, laws, and rights, appear in court in the customary manner and shall commence and defend all actions according to the laws of the Romans. **1.** If any of them decides to litigate before Jews, after the fashion of arbiters in civil cases only, they are not forbidden to obtain a decision from them by public law. **2.** Provincial governors shall also carry out their rulings, as if the arbiters had been appointed by decision of a (Roman) judge (i.e., a governor).

Given February 3, at Constantinople, in the consulship of Honorius Augustus, for the fourth time, and Eutychianus (398).

[9][216] *Emperors* ARCADIUS *and* HONORIUS *Augusti to the Jews.* No one who does not belong to the Jewish religion shall set prices for Jews when their goods are put out for sale. For it is just to commend each to his own. Therefore, the provincial governors shall permit no one to be your auditor or regulator. If someone other than you and your elders should dare to arrogate this office to himself, they shall hasten to punish him as if he were usurping the possessions of others.

[213] = C.Th. 12.1.99; combine with C.Th. 12.1.190.
[214] = C.Th. 3.7.2 + 9.7.5.
[215] = C.Th. 2.1.10, with a somewhat different text.
[216] = C.Th. 16.8.10.

nullum discussorem aut moderatorem esse concedent. quod si quis sumere sibi curam praeter vos proceresque vestros audeat, eum velut aliena appetentem supplicio coercere festinent.

D. III k. Mart. Constantinopoli Arcadio IIII et Honorio III AA. conss.

[**10**] *Idem AA. Eutychiano pp.* Quicumque ex Iudaeis obnoxii curiae comprobantur, curiae mancipentur.

D. III k. Ian. Theodoro cons.

[**11**] *Impp. Honorius et Theodosius AA. Anthemio pp.* Iudaeos quodam festivitatis suae sollemni Aman ad poenae quondam recordationem incendere et sanctae crucis adsimulatam speciem in contemptu Christianae fidei sacrilega mente exurere provinciarium rectores prohibeant, ne locis suis fidei nostrae signum immisceant, sed ritus suos citra contemptum Christianae legis retineant, amissuri sine dubio permissa hactenus, nisi ab illicitis temperaverint.

D. IIII k. Iun. Constantinopoli Basso et Philippo conss.

[**12**] *Idem AA. Iovio pp.* **pr.** Caelicolarum nomen inauditum quodammodo novum crimen superstitionis vindicavit. ii, nisi ad dei cultum venerationemque Christianam conversi fuerint, his legibus, quibus praecipimus haereticos adstringi, se quoque noverint attinendos. **1.** Aedificia autem eorum, quae nesciocuius dogmatis novi conventus habent, ecclesiis vindicentur. certum est enim, quidquid a fide Christianorum discrepat, legi Christianae esse contrarium.

D. k. April. Ravenna Honorio VIII et Theodosio III AA. conss.

[**13**] *Idem AA. Iohanni pp.* Die sabbato ac reliquis sub tempore, quo Iudaei cultus sui reverentiam servant, neminem aut facere aliquid aut ulla ex parte conveniri debere praecipimus (ita tamen, ut nec illis detur licentia eodem die Christianos orthodoxos convenire, ne Christiani forte ex interpellatione Iudaeorum ab officialibus praefatis diebus aliquam sustineant molestiam), cum fiscalibus commodis et litigiis privatorum constat reliquos dies posse sufficere.

D. VII k. Aug. Ravennae Honorio VIIII et Theodosio V AA. conss.

Given February 28, at Constantinople, in the consulship of Arcadius, for the fourth time, and Honorius, for the third time, Augusti (396).

[10][217] *The same Augusti to Eutychianus, Praetorian Prefect.* Whosoever of the Jews is proven to belong to a curia shall be delivered up to it.

Given December 30, in the consulship of Theodorus (399).

[11][218] *Emperors* Honorius *and* Theodosius *Augusti to Anthemius, Praetorian Prefect.* Provincial governors shall prohibit the Jews, in a certain ceremony of their festival of Haman,[219] from igniting and sacrilegiously burning in contempt of the Christian faith a shape resembling the holy cross in commemoration of a past punishment, so they may not introduce the symbol of our faith to their places. They may keep their rituals without insult to Christianity, but shall unquestionably lose what has been permitted heretofore, unless they refrain from unlawful acts.

Given May 29, at Constantinople, in the consulship of Bassus and Philippus (408).

[12][220] *The same Augusti to Jovius, Praetorian Prefect.* **pr.** A new crime of superstition has taken the previously unknown name of the Worshippers of the Heavens.[221] They shall know that, unless they convert to the worship of God and the Christian religion, they shall be liable to the laws to which We ordered heretics to be bound. **1.** Their buildings, which host gatherings of some strange doctrine, shall be confiscated for the churches. For it is certain that whatever differs from Christian faith is contrary to Christian law.

Given April 1, at Ravenna, in the consulship of Honorius, for the eighth time, and Theodosius, for the third time, Augusti (409).

[13][222] *The same Augusti to John, Praetorian Prefect.* We order that no one shall do anything or be summoned by any party on the Sabbath or on other days when the Jews observe their religion – but on the condition that neither the Jews shall have the freedom to summon orthodox Christians on the same day, lest Christians suffer annoyance at the hands of the provincial staff on the aforementioned days because of a complaint made by Jews – since it is clear that the remaining days suffice for fiscal needs and private lawsuits.

Given July 26, at Ravenna, in the consulship of Honorius, for the ninth time, and Theodosius, for the fifth time, Augusti (412).

217 = C.Th. 12.1.165. Seeck dates to December 28, 399.
218 = C.Th. 16.8.18.
219 The Jewish festival of Purim, at which an effigy of Haman was burned (see the Book of Esther).
220 pr. and §1 fin. = C.Th. 16.8.19; §1 in. = C.Th. 16.5.43; combine with C. 1.12.2, C.Th. 2.8.25.
221 Blume: "a Jewish sect who worshipped the sun and moon."
222 = C.Th. 2.8.26 and 8.8.8 (dating to 409); combine with C.Th. 16.8.20.

[14] *Idem AA. Philippo pp.* **pr.** Nullus tamquam Iudaeus, cum sit innocens, obteratur nec expositum eum ad contumeliam religio qualiscumque perficiat: non passim eorum synagogae vel habitacula concrementur vel perperam sine ulla ratione laedantur, cum alioquin, etiam si sit aliquis sceleribus implicitus, idcirco tamen iudiciorum vigor iurisque publici tutela videtur in medio constituta, ne quisquam sibi ipse permittere valeat ultionem. **1.** Sed ut hoc Iudaeorum personis volumus esse provisum, ita illud quoque monendum esse censemus, ne Iudaei forsitan insolescant elatique sui securitate quicquam praeceps in Christianae reverentiam cultionis admittant.

D. VIII id. Aug. Constantinopoli Honorio VIIII et Theodosio V AA. conss.

[15] *Idem AA. Aureliano pp.* Si qua inter Christianos et Iudaeos sit contentio, non a senioribus Iudaeorum, sed ab ordinariis iudicibus dirimatur.

D. XIII k. Nov. Constantinopoli Honorio X et Theodosio VI AA. conss.

[16] *Idem AA. Asclepiodoto pp.* Iudaei et bonorum proscriptione et perpetuo exilio damnabuntur, si nostrae fidei hominem circumcidisse eos vel circumcidendum mandasse constiterit.

D. V id. April. Constantinopoli Asclepiodoto et Mariniano conss.

[17] *Impp. Theodosius et Valentinianus AA. Iohanni comiti sacrarum largitionum.* Iudaeorum primates, qui in utriusque Palaestinae synedriis nominantur vel in aliis provinciis degunt, periculo suo anniversarium canonem de synagogis omnibus palatinis compellentibus exigant ad eam formam, quam patriarchae quondam coronarii auri nomine postulabant: et hoc, quod de occidentalibus partibus patriarchis conferri consueverat, nostris largitionibus inferatur.

D. III k. Iun. Constantinopoli Florentio et Dionysio conss.

[14][223] *The same Augusti to Philippus, Praetorian Prefect.* **pr.** No person, although a Jew, shall be destroyed if he is innocent; and his religion, whatever its nature, shall not expose him to injustice. Their synagogues or dwellings shall not be burned indiscriminately or damaged wrongly for no reason, since by other means, even if a Jew is involved in crimes, the force of the courts and protection of public law is established in our midst so that no one may permit himself to seek revenge. **1.** But, just as We desire to protect the persons of the Jews, so We deem this warning also appropriate: the Jews shall not become insolent and, emboldened by their own safety, commit any rash act against the worship of the Christian religion.

Given August 6, at Constantinople, in the consulship of Honorius, for the ninth time, and Theodosius, for the fifth time, Augusti (412).

[15][224] *The same Augusti to Aurelianus, Praetorian Prefect.* If there is any dispute between Christians and Jews, it shall not be settled by the elders of the Jews but by the ordinary judges.

Given October 20, at Constantinople, in the consulship of Honorius, for the tenth time, and Theodosius, for the sixth time, Augusti (415).

[16][225] *The same Augusti to Asclepiodotus, Praetorian Prefect.* Jews will be condemned both to the confiscation of their property and to permanent exile, if it is shown that they have circumcised a man of our faith or had others circumcise him.

Given April 9, at Constantinople, in the consulship of Asclepiodotus and Marinianus (423).

[17][226] *Emperors Theodosius and Valentinian Augusti to John, Count of the Imperial Finances.* The leading men of the Jews who are elected in the councils of both provinces of Palestine, or who live in other provinces, must at their own risk, at the insistence of Palatine officials, collect the annual tax from all synagogues in the same way that the patriarchs once collected it in the name of crown gold (*aurum coronarium*); that is, whatever was once collected in the western provinces and paid to the patriarchs shall now be paid to Our Finances.

Given May 30, at Constantinople, in the consulship of Florentius and Dionysius (429).

[223] = C.Th. 16.8.21 (where Philippus is Praetorian Prefect in Illyria); perhaps to be dated to 418 or 420. Seeck prefers 420.
[224] = C.Th. 16.8.22.
[225] = C.Th. 16.8.26.
[226] = C.Th. 16.8.29.

[18] *Idem AA. Florentio pp.* **pr.** Hac victura in omne aevum lege sancimus neminem Iudaeum, quibus omnes administrationes et dignitates interdictae sunt, nec defensoris civitatis fungi saltem officio nec patris honorem adripere concedimus, ne adquisiti sibi officii auctoritate muniti adversus Christianos et ipsos plerumque sacrae religionis antistites velut insultantes fidei nostrae iudicandi vel pronuntiandi quamlibet habeant potestatem. **1.** Illud etiam pari consideratione rationis arguentes praecipimus, ne qua Iudaica synagoga in novam fabricam surgat, fulciendi veteres permissa licentia, quae ruinam minantur. **2.** Quisquis igitur vel infulas ceperit, quaesitis dignitatibus non potiatur, vel si ad officia vetita subrepserit, his penitus repelletur, vel si synagogam extruxerit, compendio catholicae ecclesiae noverit se laborasse: et qui ad honores et dignitates inrepserit, habeatur, ut antea, condicionis extremae, etsi honorariam illicite promeruerit dignitatem: et qui synagogae fabricam coeperit non studio reparandi, cum damno auri quinquaginta librarum fraudetur ausibus suis. **3.** Cernat praeterea bona sua proscripta, mox poenae sanguinis destinandus, qui fidem alterius expugnavit perversa doctrina.

D. prid. k. Febr. Constantinopoli Theodosio A. XVII et Festo conss.

X Ne Christianum Mancipium Haereticus vel Paganus vel Iudaeus Habeat vel Possideat vel Circumcidat

[1] *Imp. Constantius A. ad Euagrium.* Iudaeus servum Christianum nec comparare debebit nec largitatis vel alio quocumque titulo consequatur. Quod si aliquis Iudaeorum mancipium vel Christianum habuerit vel sectae alterius seu nationis crediderit ex quacumque causa possidendum et id circumciderit, non solum mancipii damno multetur, verum etiam capitali sententia puniatur, ipso servo pro praemio libertate donando.

D. id. Aug. Constantinopoli Constantio II et Constante conss.

[2] [*Αὐτοκράτωρ Ἰουστινιανὸς Α.*] Ἕλλην καὶ Ἰουδαῖος καὶ Σαμαρείτης καὶ πᾶς μὴ ὢν ὀρθόδοξος οὐ δύναται Χριστιανὸν ἀνδράποδον ἔχειν, ἐπεὶ καὶ αὐτὸ ἐλευθεροῦται καὶ ὁ κτησάμενος δίδωσι τοῖς πριβάτοις λ' λίτρας.

D. IIII k. Iul. Constantinopoli.

[18][227] *The same Augusti to Florentius, Praetorian Prefect.* By this law, which shall endure for all time, We decree that no Jew, to whom all offices and ranks are forbidden, shall hold the office of defender of the city, nor do We permit them to seize the office of father (of the city), lest fortified by the authority of the office that they have acquired, they should have any power of judging or pronouncing against Christians and even the bishops of the sacred religion themselves, as if insulting our faith. **1.** Censuring this, too, with equal consideration of reason, We command that no Jewish synagogue may rise up in a new construction, but permission is granted for propping up those in danger of collapse. **2.** Therefore whoever either receives the insignia (of office), shall not obtain the positions sought; or if he sneaks into offices forbidden him, he shall be utterly expelled from them; or if he constructs a synagogue, he shall know that he has labored to the benefit of the Catholic Church. And he who infiltrates honors and rank shall, as before, be considered of the lowest status, even if he illicitly was granted an honorary rank; and he who undertakes the construction of a synagogue not in the interest of repairing it shall be cheated of the effect of his daring with the loss of 50 pounds of gold. **3.** He who overwhelms the faith of another by his perverse teaching shall see his property confiscated and himself then destined for a penalty exacted in blood.

Given January 31, at Constantinople, in the consulship of Theodosius Augustus, for the seventeenth time, and Festus (439).

Tenth Title No Heretic or Pagan or Jew May Have, Possess, or Circumcise a Christian Slave

[1][228] *Emperor CONSTANTIUS Augustus to Euagrius.* A Jew may not purchase a Christian slave or acquire one by gift or any other title. But if a Jew should either have a Christian or think of possessing a slave of any other sect or people for any reason, and circumcises him, he shall not only be penalized by loss of the slave but he shall also be punished by a capital sentence; the slave himself shall be given his freedom as a reward.

Given August 13, at Constantinople, in the consulship of Constantius, for the second time, and Constans (339).

[2] (*Emperor JUSTINIAN Augustus.*)[229] A pagan, Jew, Samaritan, and everyone who is not orthodox cannot have a Christian slave, for both the slave shall be freed and the owner shall pay 30 pounds of gold to the Privy Purse.

Given June 28, at Constantinople.

[227] = Nov. Theod. 3.2–5; combine with C. 1.5.7, 1.7.5. Seeck dates to January 31, 438.
[228] = a combination of C.Th. 16.9.1–2 and 4; combine with C.Th. 16.8.6.
[229] The inscription has been restored from C. 1.3.54.8. Lounghis *et al.* date to from 528 to 533.

XI De Paganis Sacrificiis et Templis

[1] *Imp. Constantius A. ad Taurum pp.* **pr.** Placuit omnibus locis atque urbibus universis claudi protinus templa et accessu vetito omnibus licentiam delinquendi perditis abnegari. **1.** Volumus etiam cunctos sacrificiis abstinere. **2.** Quod si quis aliquid forte huiusmodi perpetraverit, gladio ultore sternatur. facultates etiam perempti fisco decernimus vindicari et similiter puniri rectores provinciarum, si facinora vindicare neglexerint.

D. k. Dec. Constantio A. VII et Constante III conss.

[2] *Imppp. Gratianus Valentinianus et Theodosius AAA. Cynegio pp.* Ne quis mortalium ita faciendi sacrificii sumat audaciam, ut inspectione iecoris extorumque praesagio vanae spem promissionis accipiat vel, quod est deterius, futura sub execrabili consultatione cognoscat. acerbioris etenim imminebit supplicii cruciatus eis, qui contra vetitum praesentium vel futurarum rerum explorare temptaverint veritatem.

D. VIII k. Iun. Constantinopoli Arcadio A. et Bautone conss.

[3] *Impp. Arcadius et Honorius AA. Macrobio et Procliano vicario.* Sicut sacrificia prohibemus, ita volumus publicorum operum ornamenta servari. ac ne sibi aliqua auctoritate blandiantur, qui ea conantur evertere, si quod rescriptum, si qua lex forte praetenditur: abreptae huiusmodi chartae ex eorum manibus ad nostram scientiam referantur.

D. IIII k. Febr. Ravennae Theodoro cons.

[4] *Idem AA. Apollodoro proconsuli Africae.* Ut profanos ritus iam salubri lege submovimus, ita festos conventus civium et communem omnium laetitiam non patimur submoveri. unde absque ullo sacrificio atque ulla superstitione damnabili exhiberi populo voluptates secundum veterem consuetudinem, iniri etiam festa convivia, si quando exigunt publica vota, decernimus.

D. XIII k. Sept. Patavi Theodoro cons.

Eleventh Title Pagan Sacrifices and Temples

[1][230] *Emperor Constantius Augustus to Taurus, Praetorian Prefect.* **pr.** We have resolved to close temples in all places and in every city immediately and, with access forbidden to all, to deny the incorrigible the possibility of doing wrong. **1.** We also desire all to abstain from sacrifices. **2.** If anyone does anything of the kind, he shall be laid low by the avenging sword, and We decree that the property of the person executed shall be claimed by the Treasury, and provincial governors shall be punished similarly, if they fail to avenge such crimes.

Given December 1, in the consulship of Constantius Augustus, for the seventh time, and Constans, for the third time (354).

[2][231] *Emperors Gratian, Valentinian, and Theodosius Augusti to Cynegius, Praetorian Prefect.* No mortal shall have the audacity to make a sacrifice, so that through inspection of the liver and the prediction of the entrails he may take hope in an empty promise or, what is worse, try to learn the future through execrable inquiry. The torments of harsher punishment will be visited on those who attempt to divine the truth of the present or future in violation of this ban.

Given May 25, at Constantinople, in the consulship of Arcadius Augustus and Bauto (385).

[3][232] *Emperors Arcadius and Honorius Augusti to Macrobius and Proclianus, Vicar.* Just as We prohibit sacrifices, so too We desire that the ornaments of public buildings be preserved; and lest those who attempt to destroy them flatter themselves with some authority: if any rescript, if any law is perchance produced (by them), such documents shall be torn from their hands and brought to Our knowledge.

Given January 29, at Ravenna, in the consulship of Theodorus (399).

[4][233] *The same Augusti to Apollodorus, Proconsul of Africa.* Although We have already abolished profane rites by a salutary law, yet We do not allow the festivals of the citizens and the communal joy of all to be suppressed. Wherefore, We decree that games shall be held for the people according to ancient custom, but without any sacrifice and any damnable superstition; and celebratory banquets shall also be had, if the wishes of the people request them.

Given August 20, at Padua, in the consulship of Theodorus (399).

[230] = C.Th. 16.10.4. Seeck's dating of December 1, 356 is probably correct.

[231] = C.Th. 16.10.9.

[232] = C.Th. 16.10.15, where Macrobius is described as was "Praetorian Prefect of the Spains" and Proclianus as "Vicar of the Five Provinces"; see also C. 1.11.4. Seeck dates to August 29, 399.

[233] = C.Th. 16.10.17; combine with C.Th. 16.10.18, 16.11.1.

[5] *Impp. Honorius et Theodosius AA. populo Carthaginiensi.* Omnia loca, quae sacris error veterum deputavit, nostrae rei iubemus sociari. Quod autem ex eo iure ubicumque ad singulas quasque personas vel praecedentium principum largitas vel nostra maiestas voluit pervenire, id in eorum patrimoniis aeterna firmitate perduret. ea vero, quae multiplicibus constitutis ad venerabilem ecclesiam voluimus pertinere, Christiana sibi merito religio vindicabit.

D. III k. Sept. Ravennae Honorio X et Theodosio VI AA. conss.

[6] *Idem AA. Asclepiodoto pp.* **pr.** Christianis, qui vel vere sunt vel esse dicuntur, specialiter demandamus, ut Iudaeis ac paganis in quiete degentibus nihilque temptantibus turbulentum legibusque contrarium non audeant manus inferre religionis auctoritate abusi. nam si contra securos fuerint violenti vel eorum bona diripuerint, non ea sola quae abstulerint, sed convicti in duplum quae rapuerint restituere compellantur. **1.** Rectores etiam provinciarum et officia et principales cognoscant se, si non ipsi talia vindicent, sed fieri a popularibus hoc permiserint, ut eos qui fecerint puniendos.

D. VI id. Iun. Constantinopoli Asclepiodoto et Mariniano conss.

[7] *Impp. Valentinianus et Marcianus AA. Palladio pp.* **pr.** Nemo venerantis adorantisque animo delubra, quae olim iam clausa sunt, reseret: absit a saeculo nostro infandis execrandisque simulacris honorem pristinum reddi, redimiri sertis templorum impios postes, profanis aris accendi ignes, adoleri in isdem thura, victimas caedi, pateris vina libari et religionis loco existimari sacrilegium. **1.** Quisquis autem contra hanc serenitatis nostrae sanctionem et contra interdicta sacratissimarum veterum constitutionum sacrificia exercere temptaverit, apud publicum iudicem reus tanti facinoris legitime accusetur et convictus proscriptionem omnium bonorum suorum et ultimum supplicium subeat. **2.** Conscii etiam ac ministri sacrificiorum eandem poenam, quae in illum fuerit inrogata, sustineant, ut hac legis nostrae severitate perterriti metu poenae desinant sacrificia interdicta celebrare. **3.** Quod si vir clarissimus rector provinciae post accusationem legitimam et post crimen

[5][234] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to the people of Carthage.* We order that all places that the error of the ancients assigned to sacred purposes be joined to Our Privy Purse. However, the property that either the generosity of past emperors or Our Majesty has desired to pass to any individuals shall remain in their property with unending validity. The property that We, in manifold constitutions, wished to belong to the venerable Church, the Christian religion shall justly claim as its own.

Given August 30, at Ravenna, in the consulship of Honorius, for the tenth time, and Theodosius, for the sixth time, Augusti (415).

[6][235] *The same Augusti to Asclepiodotus, Praetorian Prefect.* **pr.** We specially command Christians, who either truly are or are said to be, that they must not dare to abuse the authority of their religion and lay hands on Jews or pagans who live quietly and attempt nothing disorderly or against the law. For if they (Christians) use violence against the unsuspecting or plunder their property, they shall be forced to restore not only what they carry off, but, if convicted, double the amount that they have stolen. **1.** The governors of the provinces, too, and their staff and chiefs of staff (*principales*) shall know that, if they do not punish such deeds but allow this to be done by the people, they shall be punished like those who committed the crime.

Given June 8, at Constantinople, in the consulship of Asclepiodotus and Marinianus (423).

[7] *Emperors* VALENTINIAN *and* MARCIAN *Augusti to Palladius, Praetorian Prefect.* **pr.** No one shall unlock the temples, which were shut long ago, with the intention of doing reverence and worshipping. Far be it from Our age that the abominable, execrable statues are restored to their former honor; that the impious doorjambs of the temples be clad in wreaths; that fires be lit on the profane altars and incense burnt on them; sacrificial victims slaughtered, libations of wine poured from bowls, and sacrilege be thought to be religion. **1.** Whoever, contrary to this decree of Our Serenity and contrary to the bans of the most sanctified ancient constitutions, attempts to offer sacrifices shall lawfully be accused of this grave crime before a public judge and, if convicted, shall suffer the confiscation of all his belongings and undergo the ultimate punishment. **2.** Those with knowledge of the sacrifices and those who assist at them shall suffer the same punishment imposed on the former. Thus, terrified by the severity of this Our law, they shall cease to offer forbidden sacrifices for fear of the penalty. **3.** But if the *vir clarissimus* provincial governor fails to punish this

[234] = C.Th. 16.10.20.
[235] = C.Th. 16.10.24.

in cognitione convictum tantum scelus dissimulaverit vindicare, quinquaginta libras auri ipse iudex, quinquaginta etiam officium eius confestim fisco nostro inferre cogatur.

D. prid. id. Nov. Marciano A. cons.

[8] *Impp. Leo et Anthemius AA. Dioscoro pp.* **pr.** Nemo ea, quae saepius paganae superstitionis hominibus interdicta sunt, audeat pertemptare, sciens, quod crimen publicum committit qui haec ausus fuerit perpetrare. **1.** In tantum autem huiusmodi facinora volumus esse resecanda, ut, etiamsi in alieno praedio vel domo aliquid tale perpetretur, scientibus videlicet dominis, praedium quidem vel domus sacratissimi viribus aerarii addicetur, domini vero pro hoc solo, quod scientes consenserint sua loca talibus contaminari sceleribus, si quidem dignitate vel militia quadam decorantur, amissione militiae vel dignitatis nec non rerum suarum proscriptione plectentur, privatae vero condicionis vel plebeii constituti post cruciatus corporis operibus metallorum perpetuo deputabuntur exilio.

[9] ... **pr.** Προστάττομεν τοὺς ἡμετέρους ἄρχοντας τούς τε κατὰ τὴν βασιλίδα πόλιν ταύτην καὶ κατὰ τὰς ἐπαρχίας διὰ πάσης χωρεῖν προθυμίας οἴκοθέν τε καὶ παρὰ τῶν θεοφιλεστάτων ἐπισκόπων τὰ τοιαῦτα διδασκομένους πάντα τὰ τῆς Ἑλληνικῆς θρησκείας ἀσεβήματα νομίμως ἀναζητεῖν, ὡς ἂν μήτε γένοιτο καὶ γενόμενα τιμωροῖτο· εἰ δὲ ὑπερβαίνει τὰς ἐπιχωρίους ἀρχὰς ἡ τούτων ἐπανόρθωσις, εἰς ἡμᾶς ταῦτα φέρεσθαι, ὥστε μὴ ἐπ᾽ αὐτοὺς τὴν τῶν ἁμαρτημάτων αἰτίαν καὶ κίνησιν ἐλθεῖν. **1.** Μηδενὶ δὲ ἐξέστω μήτε ἐν διαθήκῃ μήτε κατὰ δωρεὰν καταλιμπάνειν ἢ διδόναι τι προσώποις ἢ τόποις ἐπὶ συστάσει τῆς τοῦ Ἑλληνισμοῦ δυσσεβείας, εἰ καὶ μὴ τοῦτο ἰδικῶς τοῖς τῆς βουλήσεως ἢ διαθήκης ἢ δωρεᾶς περιέχοιτο ῥήμασιν, ἄλλως δὲ σὺν ἀληθείᾳ καταληφθῆναι παρὰ τῶν δικαζόντων δύναται. **2.** Τὰ δὲ οὕτω καταλιμπανόμενα ἢ δωρούμενα ἀφαιρείσθω μὲν ἐκείνων τῶν προσώπων ἢ τόπων, οἷς δέδοται ἢ καταλέλειπται, προσκυρούσθω δὲ ταῖς πόλεσιν, ἐν αἷς τὰ τοιαῦτα πρόσωπα οἰκεῖ ἢ καὶ ὑφ᾽ ἃς οἱ τοιοῦτοι διάκεινται τόποι, ὥστε καθ᾽ ὁμοιότητα τῶν πολιτικῶν δαπανᾶσθαι προσόδων. **3.** Πάντων τῶν ἐπιτιμίων, ὅσα παρὰ τῶν προβεβασιλευκότων κατὰ τῆς Ἑλληνικῆς ἠπείληται πλάνης ἢ ὑπὲρ τῆς ὀρθοδόξου πίστεως εἰσενήνεκται, κυρίων καὶ βεβαίων διηνεκῶς ὄντων τε καὶ διὰ τῆς παρούσης εὐσεβοῦς νομοθεσίας φυλαττομένων.

grave crime after lawful accusation and proof of the crime at trial, the judge himself shall be forced to pay 50 pounds of gold, his staff another 50 pounds, immediately to Our Treasury.

Given November 12, in the consulship of Marcian, Augustus (451).

[8] *Emperors Leo and Anthemius Augusti to Dioscorus, Praetorian Prefect.* **pr.** No one shall dare to attempt what has repeatedly been forbidden to followers of pagan superstition, knowing that he who dares to do these things commits a public crime. **1.** We wish crimes of this nature to be curbed to such an extent that, even if such a crime is perpetrated on the estate or in the house of another with the knowledge of the owners, the estate or house will be confiscated by the most sacred Treasury. As for the owners, however, because they knowingly consented to defile their property by such crimes, for this reason alone, if they are adorned with rank or some post in the imperial service, they will be stricken with the loss of their post or rank as well as the confiscation of their property; persons of private or humble status, after physical torments, will be sent into permanent exile in the imperial mines.

(472?)

[9][236] *(Emperor Anastasius Augustus ... to the Praetorian Prefect ...).* **pr.** We order Our magistrates in This Imperial City and in the provinces to proceed zealously and investigate by law all impious acts of the pagan cult, (when) informed of such things either through autopsy or by the most reverent bishops, so that such acts may not be committed or, if committed, punished. If correcting these acts exceeds the power of the provincial governors, the matter shall be reported to Us, so no blame and anger on account of these wrongs may come upon them. **1.** No one shall be able to bequeath, by will or gift, or give anything to persons or places for the maintenance of pagan impiety, even if this is not expressly contained in the words of the will or testament or gift but can be verified by the judges through other means. **2.** Such bequests or gifts shall be taken away from those persons or places to which they were bequeathed or given, and shall by adjudicated to the cities where such persons live or in which such places are located, so that they may be expended like public revenue. **3.** All punishments that were threatened against pagan error by past emperors or introduced on behalf of the orthodox faith shall perpetually stand valid and firm and are retained by this present pious enactment.

[236] = Bas. 1.1.19. The inscription has been partly restored from a fragment of the first Code, C[1] 1.11.10: Corcoran ("After Krüger" 2009). Lounghis *et al.* date to between 491 and 518.

[10] ... pr. Ἐπειδή τινες εὕρηνται τῇ τῶν ἀνοσίων καὶ μυσαρῶν Ἑλλήνων κατεχόμενοι πλάνῃ κἀκεῖνα πράττοντες, ἅπερ εἰς δικαίαν ὀργὴν κινεῖ τὸν φιλάνθρωπον θεόν, οὐδὲ τὰ περὶ τούτων ἀδιόρθωτα καταλιπεῖν ὑπέστημεν, ἀλλὰ γνόντες, ὡς τὴν τοῦ ἀληθινοῦ καὶ μόνου θεοῦ καταλιμπάνοντες προσκύνησιν εἰδώλοις ἀλογίστῳ πλάνῃ θυσίας προσέφερον καὶ πάσης ἀνοσιότητος μεστὰς ἑορτὰς ἐπετέλουν, τοὺς μὲν ἤδη ταῦτα ἡμαρτηκότας μετὰ τὸ ἀξιωθῆναι τοῦ ἁγίου βαπτίσματος πρὸς τὰ ἐλεγχθέντα αὐτῶν ἁμαρτήματα ἐκδικήσει τῇ προσηκούσῃ, καὶ ταῦτα φιλανθρωπότερον, ὑπεβάλομεν. τοῦ δὲ λοιποῦ διὰ τοῦ παρόντος νόμου προαγορεύομεν ἅπασιν, ὡς οἱ μὲν γενόμενοι Χριστιανοὶ καὶ τοῦ ἁγίου καὶ σωτηριώδους ἀξιούμενοι καθ' οἱονδήποτε χρόνον βαπτίσματος εἰ φανεῖεν ἔτι τῇ τῶν Ἑλλήνων ἐμμένοντες πλάνῃ, τιμωρίαις ἐσχάταις ὑποβληθήσονται.

1. Ὅσοι δὲ μήπω τοῦ προσκυνητοῦ βαπτίσματος ἠξιώθησαν, τούτους προσήκει καταδήλους ἑαυτοὺς ποιεῖν, ἢ κατὰ τὴν βασιλεύουσαν ταύτην πόλιν ἢ ἐν ἐπαρχίαις διάγοντας, καὶ προσιέναι ταῖς ἁγιωτάταις ἐκκλησίαις ἅμα γαμεταῖς καὶ παισὶ καὶ παντὶ τῷ κατ' αὐτοὺς οἴκῳ καὶ διδάσκεσθαι τὴν ἀληθινὴν τῶν Χριστιανῶν πίστιν, οὕτω δὲ ἐκδιδαχθέντας καὶ καθαρῶς ἀποβαλόντας τὴν προτέραν πλάνην ἀξιοῦσθαι τοῦ σωτηριώδους βαπτίσματος, ἢ τούτων ὀλιγωροῦντας εἰδέναι, ὡς οὔτε μεθέξουσί τινος τῶν τῆς ἡμετέρας πολιτείας οὔτε οὐσίας κινητῆς ἢ ἀκινήτου κύριοι εἶναι συγχωρηθήσονται, ἀλλὰ παντὸς ἀφαιρεθέντες πράγματος ἐν ἐνδείᾳ καταλειφθήσονται πρὸς τῷ καὶ ταῖς ἁρμοδίαις ὑποβληθῆναι ποιναῖς.

2. Πᾶν δὲ μάθημα παρὰ τῶν νοσούντων τὴν τῶν ἀνοσίων Ἑλλήνων μανίαν διδάσκεσθαι κωλύομεν, ὥστε μὴ κατὰ τοῦτο προσποιεῖσθαι αὐτοὺς παιδεύειν τοὺς εἰς αὐτοὺς ἀθλίως φοιτῶντας, ταῖς δὲ ἀληθείαις τὰς τῶν δῆθεν παιδευομένων διαφθείρειν ψυχάς· ἀλλὰ μηδὲ ἐκ τοῦ δημοσίου σιτήσεως ἀπολαύειν αὐτούς, οὐκ ἔχοντας παρρησίαν οὐδὲ ἐκ θείων γραμμάτων ἢ πραγματικῶν τύπων τοιούτου τινὸς ἄδειαν αὐτοῖς ἐκδικεῖν. **3.** Εἴτε γὰρ ἐνταῦθά τις εἴτε κατὰ χώραν φανείη τοιοῦτος ὢν καὶ μὴ προσδραμὼν ταῖς ἁγιωτάταις ἡμῶν ἐκκλησίαις μετὰ τῶν οἰκείων, ὡς εἴρηται, παίδων καὶ γαμετῶν, ταῖς προδηλουμέναις ὑποπεσεῖται ποιναῖς καὶ τὰς μὲν αὐτῶν οὐσίας ἐκδικήσει τὸ δημόσιον, αὐτοὶ δὲ ἐξορίᾳ παραδοθήσονται. **4.** Εἰ δέ τις ἐμφωλεύων τῇ ἡμετέρᾳ πολιτείᾳ θυσίας ἢ καὶ εἰδωλολατρίας ἁμαρτάνων ἁλῷ, οὗτος ταῖς ἐσχάταις ὑπαχθήσεται τιμωρίαις, ἃς οἱ Μανιχαῖοι, ταὐτὸν δὲ εἰπεῖν ἐστι, καὶ Βορβορῖται δικαίως ὑφίστανται· καὶ γὰρ καὶ τούτους ὁμοίους ἐκείνοις εἶναι κρίνομεν.

5. Κἀκεῖνο δὲ νομοθετοῦμεν, ὥστε τὰ τούτων τέκνα μικρᾶς ἡλικίας ὄντα παραχρῆμα καὶ δίχα τινὸς ἀναβολῆς τυγχάνειν τοῦ σωτηριώδους βαπτίσματος, ὡς τῶν ἤδη τὴν ἡλικίαν προβεβηκότων δεομένων τοῦ

[10][237] (*Emperor* Justinian *Augustus* ...). **pr.** Since some have been found who, possessed by the error of the unholy and vile pagans, practice what moves merciful God to just wrath, We did not intend to leave their wrongs unrighted; but, knowing that they abandoned the worship of the true and only God and, in their insane error, offered sacrifices to idols and celebrated feasts replete with every iniquity, We subjected those who had committed these sins after being deemed worthy of holy baptism – rather mercifully – to appropriate punishment according to the crimes proved against them; but henceforth, by the present law, We declare before all that those who have become Christians and deemed worthy of holy and saving baptism, for whatever length of time, if they are found still to adhere to the error of the pagans, shall be subjected to the ultimate punishments.

1. Those who have not yet been deemed worthy of worshipful baptism must make themselves known, whether they live in This Imperial City or in the provinces, and go with their wives and children and their whole household to the most holy churches to be taught the true Christian faith, so that thus instructed and having cast off their former error, they may be found worthy of saving baptism; or if they despise these things, they shall know that they shall have no part in Our Empire, nor shall they be permitted to be owners of movable or immovable property, but they shall be deprived of everything and left in poverty, in addition to being subject to the appropriate penalties.

2. We moreover prohibit the teaching of any subject by those who suffer from the insanity of the unholy pagans, lest thereby they pretend to teach those who wretchedly attend their classes, while in truth they destroy the souls of their pupils. Nor shall they enjoy a public salary, since they shall have no freedom either through imperial rescripts or pragmatic sanctions to claim such a right. **3.** For if such a person should be found here or in the provinces, and he does not hasten to Our most holy churches with his wives (*sic*) and children, as has been said, he shall undergo the penalties indicated above; the Treasury shall claim their property and they themselves shall be sent into exile. **4.** If anyone hiding in Our Empire should be caught performing sinful sacrifices or idolatry, he shall be subjected to the ultimate punishments to which the Manichaeans – which is as much as to say the Borborites – are deservedly subject; for We judge the latter to be like the former.

5. This too We enact: that their children of tender age shall immediately and without any delay receive saving baptism, while those already past that age must attend the most holy churches according to the divine canons and be

[237] = Bas. 1.1.20. The attribution to Justinian is certain, since this constitution does not appear in the first Code (Corcoran). Lounghis *et al.* date it to 529.

προσεδρεύειν ταῖς ἁγιωτάταις ἐκκλησίαις κατὰ τοὺς θείους κανόνας καὶ τὰς θείας ἐκδιδάσκεσθαι γραφάς, οὕτω τε γνησίας ἀντιλαμβάνεσθαι μετανοίας καὶ τὴν παλαιὰν ἀποσεισαμένους πλάνην τοῦ προσκυνητοῦ τυγχάνειν βαπτίσματος· τοῦτον γὰρ τὸν τρόπον βεβαίως ἂν δέξαιντο καὶ διαφυλάξαιεν τὴν ἀληθινὴν τῶν ὀρθοδόξων πίστιν καὶ οὐ πάλιν ἐπὶ τὴν παλαιὰν μεταβάλοιεν πλάνην.

6. Ὅσοι δὲ ἂν προφάσει τοῦ στρατείαν ἢ ἀξίωμα ἢ οὐσίαν ἔχειν αὐτοὶ μὲν ἐσχηματισμένως προσῆλθον ἢ προσέλθοιεν τῷ σωτηριώδει βαπτίσματι, τὰς δὲ αὐτῶν γαμετὰς ἢ τοὺς παῖδας ἢ τοὺς ἄλλους τοὺς κατὰ τὸν αὐτῶν ὄντας οἶκον ἐπὶ τῆς Ἑλληνικῆς καταλείψαιεν πλάνης, τούτους προστάττομεν δημεύεσθαί τε καὶ καθάπαξ μὴ μετέχειν τῆς ἡμετέρας πολιτείας, ἀλλὰ καὶ τιμωρίαις ὑποβάλλεσθαι ταῖς αὐτῶν ἀξίαις, ὡς αὐτόθεν ὄντας φανεροὺς μὴ καθαρᾷ πίστει τοῦ ἁγίου τυχεῖν βαπτίσματος.

7. Ταῦτα τοίνυν ἐπὶ τοῖς ἀλιτηρίοις Ἕλλησί τε καὶ Μανιχαίοις, ὧν Μανιχαίων μέρος εἶναι καὶ Βορβορίτας δεδήλωται, νομοθετοῦμεν.

XII De His Qui ad Ecclesias Confugiunt vel Ibi Exclamant

[1] *Impp. Arcadius et Honorius AA. Archelao praefecto Augustali.* Iudaei, qui reatu aliquo vel debitis fatigati simulant se Christianae legi velle coniungi, ut ad ecclesias confugientes evitare possint crimina vel pondera debitorum, arceantur nec ante suscipiantur, quam debita universa reddiderint vel fuerint innocentia demonstrata purgati.

D. XV k. Iul. Constantinopoli Caesario et Attico conss.

[2] *Impp. Honorius et Theodosius AA. Iovio pp.* Fideli ac devota praeceptione sancimus nemini licere ad sacrosanctas ecclesias confugientes abducere: sub hac videlicet definitione, ut, si quisquam contra hanc legem venire temptaverit, sciat se ad maiestatis crimen esse retinendum.

D. k. April. Ravennae Honorio VIII et Theodosio III AA. conss.

[3] *Αὐτοκράτορες Θεοδόσιος καὶ Οὐαλεντινιανὸς AA. Ἀντιόχῳ μεγαλοπρεπεστάτῳ ἐπάρχῳ καὶ ὑπάτῳ.* **pr.** Ἀνεῴχθωσαν τοῖς δεδιόσιν οἱ ναοὶ τοῦ μεγάλου θεοῦ· οὐ γὰρ μόνα τὰ θεῖα θυσιαστήρια καὶ τὸ εὐκτήριον τοῦ ναοῦ τὸ τετραγώνων τοίχων περιβολῇ τειχιζόμενον εἰς ἀσφάλειαν

instructed in the divine scriptures; and, thus partaking of genuine penitence and shaking off their former error, they shall receive worshipful baptism. In this way, they shall firmly embrace and protect the true orthodox faith and not lapse into their former error.

6. Those, however, who for the sake of keeping their position in the imperial service, their rank, or property, have deceitfully received or shall receive saving baptism, while they leave their wives, children, and others in their household in the error of paganism: We command that these persons be proscribed and have absolutely no part in Our Empire; but they shall also be subjected to punishment worthy of them, for it is thereby manifest that they did not receive holy baptism with pure faith.

7. We enact these provisions against the accursed pagans and Manichaeans, of which Manichaeans the Borborites are obviously part.

(529–531)

Twelfth Title Those Who Flee to Churches and There Raise an Outcry[238]

[1][239] *Emperors* Arcadius *and* Honorius *Augusti to Archelaus, Augustal Prefect.* Jews who, wearied by some charge or by debts, pretend that they wish to join the Christian religion so that they might escape their crimes or the burdens of their debts by taking refuge in churches, shall be shut out and not admitted until they have repaid all their debts or have been acquitted by proving their innocence.

Given June 17, at Constantinople, in the consulship of Caesarius and Atticus (397).

[2][240] *Emperors* Honorius *and* Theodosius *Augusti to Jovius, Praetorian Prefect.* With a faithful and devout command, We decree that no one may drag away those who flee to sacrosanct churches, with this corollary: if anyone attempts anything contrary to this law, he shall know that he shall be held on charges of high treason.

Given April 1, at Ravenna, in the consulship of Honorius, for the eighth time, and Theodosius, for the third time, Augusti (409).

[3][241] *Emperors* Theodosius *and* Valentinian Augusti to Antiochus, vir magnificentissimus *Praetorian Prefect and Consul.* **pr.** The temples of Mighty

[238] This and the following title did not appear in the first Code (Corcoran).

[239] = C.Th. 9.45.2.

[240] = C.Th. 16.8.19; combine with C. 1.9.12 and C.Th. 2.8.25.

[241] = C.Th. 9.45.4, the Latin version, which still appeared in the first Code (Corcoran).

συντελεῖν τῶν προσφευγόντων θεσπίζομεν, ἀλλ᾽ εἴ τι καὶ περαιτέρω τούτου τυγχάνει ἄχρι τῶν τελευταίων θυρῶν τῆς ἐκκλησίας, ἐλέου βωμὸν τοῖς προσφυγοῦσιν εἶναι προστάττομεν, ὥστε μεταξὺ τοῦ ναοῦ, ὃν τῷ προειρημένῳ τρόπῳ περιπεφράχθαι διεγράψαμεν, καὶ τῶν πρώτων μετὰ τοὺς δημοσίους τόπους τῆς ἐκκλησίας θυρῶν τὰ παρεγκείμενα, εἴτε ἐν οἰκίαις ἢ κήποις ἢ αὐλαῖς ἢ λουτροῖς ἢ ἐν στοαῖς τυγχάνει, τοὺς εἰσδύντας πρόσφυγας καθ᾽ ὁμοιότητα τοῦ ναοῦ φυλάττειν· καὶ μηδένα τούτοις ἱεροσύλους ἐπιβάλλειν χεῖρας, ἵνα μὴ ὁ τοῦτο τολμῶν ἐν συμφοραῖς ἑαυτὸν ἰδὼν καὶ αὐτὸς ἐξαιτῶν βοήθειαν καταφύγῃ.

1. Τοῦτο δὲ τῶν διαστημάτων πλάτος διὰ τοῦτο συνεχωρήσαμεν, ἵνα μή τινι τῶν προσφευγόντων ἐν τῷ τοῦ θεοῦ ναῷ ἢ ἐν τοῖς ἁγίοις θυσιαστηρίοις μένειν ἢ ἐσθίειν ἢ καθεύδειν ἢ παννυχίζειν ἐξῇ, τῶν μὲν κληρικῶν τῆς θρησκείας χάριν τοῦτο κωλυόντων, τῶν προσφύγων δὲ τῆς εὐσεβείας ἕνεκα φυλαττόντων. **1a.** Ὅπλα δὲ ἢ ἐν σιδήρῳ ἢ ἐν ἑτέρῳ εἴδει ἀμυντηρίου τοὺς προσφεύγοντας οὐδαμῶς ἔχειν ἢ ἐπιφέρεσθαι ἐντὸς τῆς ἐκκλησίας προστάττομεν, οὐ μόνον ἐκ τῶν θείων ναῶν καὶ θυσιαστηρίων, ὡς τὰ λοιπά, ταῦτα κωλύοντες, ἀλλὰ καὶ τῶν οἰκημάτων καὶ διαιτῶν καὶ κήπων καὶ λουτρῶν καὶ αὐλῶν καὶ στοῶν. **2.** Τοὺς τοίνυν δίχα ὅπλων τῷ ἁγίῳ οἴκῳ τοῦ θεοῦ καὶ εἰς τὸ ἅγιον θυσιαστήριον ἐν οἱῳδήποτε ἔθνει ἢ κατὰ ταύτην τὴν πόλιν προσφεύγοντας ὑπνοῦν ἐν τῷ ναῷ ἤτοι τῷ θυσιαστηρίῳ καὶ τροφῆς μεταλαμβάνειν παρὰ τῶν κληρικῶν προσήκει κωλύεσθαι ἐκτός τινος ὕβρεως, δεικνύντων τὰ διαστήματα ἐν τοῖς ἐκκλησιαστικοῖς περιβόλοις διὰ τὴν τῶν προσφύγων ἀσφάλειαν καὶ ἡσυχίαν ἀφορισθέντα καὶ διδασκόντων τιμωρίαν κεφαλικὴν κατὰ τῶν προπετῶς ἐπιόντων αὐτοῖς ὡρίσθαι. οἷς ὁ πρόσφυξ εἰ μὴ πείθει, τότε προτιμάσθω τῆς φιλανθρωπίας ἡ θρησκεία καὶ ἐκ τῶν θείων εἰς τοὺς προλεχθέντας τόπους χωριζέσθω ἡ θρασύτης.

3. Τοὺς δὲ μετὰ ὅπλων τὰς ἁγίας ἐκκλησίας καταλαμβάνοντας προηγουμένως μὲν μὴ ποιεῖν τοῦτο ὑπομιμνήσκομεν· ἐὰν δὲ ἐν οἱῳδήποτε τόπῳ τῆς ἐκκλησίας ἢ ἐντὸς τοῦ ναοῦ ἢ περὶ τὸν ναὸν ἢ καὶ ἐκτὸς τούτου τυγχάνωσιν, παραχρῆμα τὰ ὅπλα αὐθεντίᾳ τοῦ ἐπισκόπου παρὰ μόνων τῶν κληρικῶν αὐστηρότερον ἀναγκαζομένους ἀποτίθεσθαι προστάττομεν, διδομένης αὐτοῖς ἐλπίδος καὶ ὅρκου, ὡς τῇ θρησκείᾳ μᾶλλον ἢ τῇ τῶν ὅπλων ἐπικουρίᾳ ὀχυρωθήσονται. **4.** Ἐὰν δὲ τῇ ἐκκλησιαστικῇ φωνῇ ὑπομνησθέντες μετὰ τοσαύτας καὶ τηλικαύτας παραγγελίας τὰ ὅπλα μὴ ἀποθῶνται, ἐξευμενισθείσης τῆς θρησκείας παρά τε τῆς ἡμετέρας γαληνότητος καὶ τῶν ἐπισκόπων τῷ θεῷ τῆς ἀπολογίας δοθείσης, ἐνόπλων εἰσπεμφθέντων ἀποσπασθήσονται καὶ πάσαις ταῖς συμφοραῖς ὑποβληθήσονται. **5.** Οὐ μὴν δίχα γνώμης ἢ κελεύσεως τοῦ ἐπισκόπου καὶ ἡμῶν τῶν τε δικαστῶν τῶν κατὰ τὴν δεῖνα πόλιν καὶ ὁπουδήποτε τυγχανόντων τὸν ὡπλισμένον ἐκ τῶν ἐκκλησιῶν χρὴ παραδίδοσθαι, ἵνα μή, πολλοῖς κατὰ τῶν ἀθλίων τοιαύτης ἀδιαφόρως ἐξουσίας δοθείσης σύγχυσίς τις ἐκ τούτου γίνεσθαι μέλλῃ καὶ ταραχή.

God shall be opened to those who fear: for We decree that not only the divine altars and oratory of the temple, enclosed by a square circuit of four walls, shall serve to protect those who flee to them; but We also command that if something should lie just past this point, up to the outermost doors of the church, it too shall be an altar of mercy to those who flee to it. Thus, the space lying between the temple, which is enclosed in the manner that We have described above, and the first doors of the church beyond the public grounds, whether these consist of houses, gardens, courtyards, baths, or porticos, shall protect refugees that enter them just as the temple itself; and no one shall lay sacrilegious hands on them, lest he who dares to do so, when he sees himself in danger, also take refuge there seeking help.

1. It is for this reason that We grant this extent of space: that no refugee may be able to remain in the temple of God or at the holy altars, or eat, sleep, or pass the night there. The clergy shall prevent this for the sake of worship, and the refugees shall observe (this rule) for the sake of piety. **1a.** We command that the refugees may have no arms whatsoever, whether a sword or some other kind of weapon, inside the church; nor may weapons be brought into the church, and We prohibit them not only in the divine temples and at the altars but also in the houses, rooms, gardens, baths, courtyards, and porticos. **2.** Hence, those who flee unarmed to the holy house of God and to the holy altar in any province or in this city shall, without any insult to them, be stopped by the clergymen from sleeping or taking food in the temple or at the altar; rather, the clergymen shall show them the areas in the church precincts reserved for the protection and safety of fugitives and shall inform them that capital punishment has been decreed against those who rashly invade such places. If the fugitive does not obey them, then religion shall take precedence over compassion, and brazenness must be removed from the divine to the aforementioned places.

3. We warn in advance those who occupy the sacred churches while armed not to do this: if armed men happen to be anywhere in the church, whether within the temple, about it, or outside it, We order that they sternly be compelled by the clergymen alone, on the authority of the bishop, to lay down their arms immediately; they shall receive assurance and an oath that they are better fortified by religion than with the help of arms. **4.** But if after they have been admonished by the voice of the church and after so many urgent warnings, they do not lay down their arms: then, since religious scruple has been satisfied and justification has been given to God by Our Serenity and the bishops, armed men shall be sent in and the refugees shall be dragged away and delivered unto every misfortune. **5.** But an armed refugee must not be removed from churches without the ruling or order of the bishop and Ourselves, as well as the judges of whatever city or place, lest if such power over the wretched be indiscriminately conferred on many people, confusion and chaos should arise because of it.

D. x k. April. Constantinopoli Basso et Antiocho conss.

[4] *Idem AA. Hierio pp.* **pr.** Si servus cuiusquam ecclesiam altariave armatus nullis hoc suspicantibus inopinatus inruerit, exinde protinus abstrahatur vel certe continuo domino vel ei, unde eum tam furiosa formido proripuit, indicetur eique mox abstrahendi copia non negetur. **1.** Sed si armorum fiducia resistendi animos insania impellente conceperit, abripiendi extrahendique eum domino, quibus potest id efficere viribus, concedatur. Quod si illum etiam confici in concertatione pugnaque contigerit, nulla erit eius noxa nec conflandae criminationis relinquetur occasio, si is, qui ex statu servili in hostilis et homicidae condicionem transiliit, occisus sit.

D. v. k. April. Constantinopoli Valerio et Aetio conss.

[5] *Imp. Marcianus A. ad populum.* Denuntiamus vobis omnibus, ut in sacrosanctis ecclesiis et in aliis quidem venerabilibus locis, in quibus cum pace et quiete vota competit celebrari, abstineatis omni seditione. nemo conclamationibus utatur, nemo moveat tumultum aut impetum committat vel conventicula collecta multitudine in qualibet parte civitatis vel vici vel cuiuscumque loci colligere aut celebrare conetur. nam si quis aliquid contra leges a quibusdam sibi existimet perpetrari, liceat ei adire iudicem et legitimum postulare praesidium. sciant sane omnes, quod, si quis contra huius edicti normam aut agere aliquid aut seditionem movere temptaverit, ultimo supplicio subiacebit.

D. III id. Iul. Constantinopoli Marciano A. cons.

[6] *Imp. Leo A. Erythrio pp.* **pr.** Praesenti lege decernimus per omnia loca valitura (excepta hac urbe regia, in qua nos divinitate propitia degentes, quotiens usus exegerit, invocati singulis causis atque personis praesentanea constituta praestamus) nullos penitus cuiuscumque condicionis de sacrosanctis ecclesiis orthodoxae fidei expelli aut tradi vel protrahi confugas nec pro his venerabiles episcopos aut religiosos oeconomos exigi, quae debeantur ab eis: qui hoc moliri aut facere aut nuda saltim cogitatione atque tractatu ausi fuerint temptare, capitali et ultima supplicii animadversione plectendi sunt. ex his ergo

Given March 23, at Constantinople, in the consulship of Bassus and Antiochus (431).

[4][242] *The same Augusti to Hierius, Praetorian Prefect.* **pr.** If a slave of any person should without warning, without anyone suspecting, rush into a church or to an altar while armed, he shall immediately be dragged away; or at least notice shall be given at once to his owner or to the person from whom such frenzied fear drove him, and the power to drag him away shall not be denied them. **1.** But if through trust in arms, driven by madness, he takes courage to resist, his owner is permitted to drag him away and remove him with whatever force is necessary to accomplish this. And if it should happen that the slave is killed in the conflict and fight, the owner shall incur no liability; and there will be no grounds for bringing a criminal accusation, if a person who exchanges servile status for that of a public enemy and murderer is killed.

Given March 28, at Constantinople, in the consulship of Valerius and Aetius (432).

[5] *Emperor MARCIAN Augustus to the people.* We declare to all of you that you shall refrain from all sedition in sacrosanct churches and in other venerable places where prayers should be offered in peace and quiet. No one shall make an outcry, no one shall cause a riot or make an attack or attempt to gather or hold meetings by assembling a crowd in any part of a city, village, or any other place. For if anyone believes that something against the laws is being done to him by certain persons, he may approach the judge and demand lawful protection. Indeed, all shall know that if anyone attempts to do anything contrary to the provisions of this edict or to stir up sedition, he shall be subject to the ultimate punishment.

Given July 13, at Constantinople, in the consulship of Marcian, Augustus (451).

[6][243] *Emperor LEO Augustus to Erythrius, Praetorian Prefect.* **pr.** We decree by the present law, which shall be in force in all places – except in This Imperial City, in which We, dwelling by the grace of the deity, shall furnish immediate rulings when summoned for individual cases and persons, as the occasion requires – that no refugees of whatever status may be expelled, surrendered, or dragged out of the sacrosanct churches of the orthodox faith; nor shall debts owed by them be collected from the reverend bishops or pious stewards. Those who dare to plot or do or even merely contemplate it in mere thought and deliberation shall be stricken by capital and ultimate punishment. Therefore, from these places and their confines, which the provisions

[242] = C.Th. 9.45.5.
[243] Combine with C. 1.3.27 and 9.30.2.

locis eorumque finibus, quos anteriorum legum praescripta sanxerunt, nullos expelli aut eici aliquando patimur nec in ipsis ecclesiis reverendis ita quemquam detineri atque constringi, ut ei aliquid aut victualium rerum aut vestis negetur aut requies. **1.** Sed si quidem ipsi refugae apparent publice et se in sacris locis offerunt quaerentibus conveniendos, ipsi, servata locis reverentia, iudicum quibus subiacent sententiis moneantur, responsum daturi, quale sibi quisque perspexerit convenire. **2.** Quod si in finibus ecclesiasticis latitant, religiosus oeconomus seu defensor ecclesiae vel certe, quem his negotiis commodiorem auctoritas episcopalis elegerit, reconditam latentemque personam decenter sine ullo incommodo monitus, intra fines ecclesiae si invenitur, praesentet.

3. Cum autem monitus fuerit in publico privatove contractu actione civili, in eius sit arbitrio sive per se seu, si magis elegerit, instructo sollemniter procuratore directo in eius iudicis, cuius pulsatur sententiis, examine respondere. **4.** Sed si hoc facere detractat aut differt, iudiciorum legumque solitus ordo servetur. itaque si res immobiles possidet, post edictorum sollemnia sententia iudicantis usque ad modum debiti bonorum eius sive praediorum traditio seu venditio celebretur. **5.** Quod si res mobiles habet easque extra terminos occultat ecclesiae, sententia iudicantis et executoris sollicitudine perquisitae, quocumque occultantur, erutae pro aequitatis tramite modoque debiti publicis rationibus privatisque proficiant. **6.** Sane si intra fines habentur ecclesiae vel apud quemlibet ex clericis absconditae sive depositae fuisse firmantur, studio et providentia viri reverentissimi oeconomi sive defensoris ecclesiae diligentia inquisitae quolibet modo ad sacrosanctam ecclesiam pervenientes proferantur, ut pari aequitatis ordine ex isdem bonis fisco vel rei publicae sive creditoribus et quibuscumque iustis petitoribus ad modum debiti consulatur. **7.** Sicubi depositae vel commendatae dicuntur, inquirendi tantam volumus esse cautelam, ut, si sola suspicatione apud aliquem adserantur absconditae, de sua etiam conscientia satisfacere auctoritate venerabilis antistitis iubeatur.

8. Adicientes, quod ea, quae de principalibus personis decrevimus, etiam in fideiussorum sive mandatorum seu rerum ad eos pertinentium vel familiarium et sociorum vel participum et omnino in isdem causis obnoxiorum personis praecipimus observari, scilicet si ipsos

of former laws determined, We allow no one ever to be expelled or ejected, or to be detained or confined in the venerable churches themselves, so that either food or clothing or rest is denied him. **1.** If the fugitives themselves appear in public and present themselves in sacred places to answer the summons of those who seek them, then, with due reverence for the places, they may be advised of the rulings of the judges who have jurisdiction over them and give such answer as each considers advantageous. **2.** But if they remain hidden on church grounds, the pious steward or defender of the church, or whatever person the authority of the bishop has chosen as more suitable for this business, shall, when respectfully summoned, without suffering any inconvenience, present the person concealed and hidden, if he is found within the boundaries of the church.

3. Once the refugee has been cited in a civil action concerning a public or private contract, it shall be left to his discretion whether he responds personally before the tribunal of the judge, by whose order he is cited, or through a formally appointed procurator. **4.** But if he declines or delays to do this, the customary procedure of the courts and laws shall be observed. Therefore, if he possesses immovable property, after the formalities of the edicts, the delivery or sale of his property or lands shall be executed in the amount of the debt by order of the judge. **5.** But if he has movable property and hides it beyond the boundaries of the church, it shall be sought out, wherever it is hidden, by order of the judge and by the diligence of the court clerk (*exsecutor*); and when discovered, according to the course of equity and the amount of the debt, it shall go toward his public and private accounts. **6.** If, however, this property is kept within the bounds of the church, or it is alleged to have been hidden or laid aside with a member of the clergy, it shall be sought by the zeal and foresight of the most reverent steward or by the diligence of the defender of the church; and, however it came to the sacrosanct church, it shall be brought forth, so that by fair observation of equity, from the same property the claims of the Treasury or State, or of creditors and just claimants of whatever kind, may be satisfied to the extent of the debt. **7.** Whenever such property is said to have been laid aside or entrusted to someone, We desire that there be such caution in the search for it that, if it is asserted that it has been hidden with some clergyman, he shall be ordered by the authority of the reverend bishop to declare the extent of his knowledge to the satisfaction (of the latter).

8. Additionally, We order that what We have decreed concerning the principals shall also apply to their sureties, mandators, and their belongings, or servants and partners or associates, and, in a word, all persons liable in the same cases. Thus, namely, if the fugitives wish to have these persons with them within the boundaries of the church, public and private debts shall be paid

quoque secum confugae intra ecclesiarum terminos habere voluerint, ut ex eorum quoque bonis publica debita privataque solvantur et per eos rerum ubicumque depositae sunt procedat inquisitio. et haec quidem de ingenuis liberisque personis. **9.** Sane si servus aut colonus vel adscripticius, familiaris sive libertus et huiusmodi aliqua persona domestica vel condicioni subdita conquassatis rebus certis atque subtractis aut se ipsum furatus ad sacrosancta se contulerit loca, statim a religiosis oeconomis sive defensoribus, ubi primum hoc scire potuerint, <nuntientur, ut> per eos videlicet ad quos pertinent, ipsis praesentibus pro ecclesiastica disciplina et qualitate commissi aut ultione competenti aut intercessione humanissima procedente, remissione veniae et sacramenti interveniente securi ad locum statumque proprium revertantur, rebus, quas secum habuerint, reformandis. diutius enim eos intra ecclesiam non convenit commorari, ne patronis seu dominis per ipsorum absentiam obsequia iusta denegentur et ipsi per incommodum ecclesiae egentium et pauperum alantur expensis.

10. Inter haec autem, quae sedulo ad religiosi oeconomi sive defensoris ecclesiae sollicitudinem curamque respiciunt, erit etiam illud observandum, ut singulorum intra ecclesias confugientium personas causasque incessanter conquirant, denique iudices vel eos, ad quos causae et personae pertinent, instantius instruant, ut aequitatis convenientiam diligentius exequantur.

D. prid. k. Mart. Constantinopoli Leone A. III cons.

[7] Ὁ ἔχων ἀγωγὴν ἢ πρᾶγμα πρός τινα μὴ θορυβείτω τὰς ἐκκλησίας δι᾽ ἑαυτοῦ ἢ δι᾽ ἑτέρου, ἀλλὰ προσίτω τοῖς ἄρχουσιν. εἰ δὲ τοῦ βασιλέως ἐπὶ ἁμαρτήμασι χρῄζει, διὰ τοῦ ἀρχιεπισκόπου αὐτὸν διδασκέτω. ὁ δὲ παρὰ ταῦτα ποιῶν σωφρονίζεται.

[8] pr. Ὁσάκις ἐξ ἔθους κατὰ τὰς μεγάλας ἑορτὰς ἐν τῇ ἁγιωτάτῃ μεγάλῃ ἐκκλησίᾳ ἢ καὶ ἐν ἄλλαις ἐκκλησίαις προΐεμεν, ἐπιτρέπομεν τῷ ἐνδοξοτάτῳ ἡμῶν κοιαίστωρι τὰς αἰτήσεις τῶν δεομένων δέχεσθαί τε καὶ εἰς ἡμᾶς φέρειν. **1.** Ὁ δὲ ταραχαῖς ἢ ἐκβοήσεσι χρώμενος κατὰ τὸν τῶν ἑορτῶν καιρὸν ἐν τῇ μεγάλῃ ἐκκλησίᾳ ἢ καὶ ἐν ἄλλαις ἐκκλησίαις ἐκπεσεῖται μὲν εὐθέως

from their property too, and the investigation into the refugees' property, wherever it has been deposited, shall also affect them. These measures pertain to freeborn and free persons.

9. If, however, a slave, free or unfree tenant (*colonus vel adscripticius*), servant or freedman, and any household member of this sort or bound to this status goes to sacrosanct places after breaking and pilfering certain things or having stolen himself, then they shall immediately (be reported)[244] by the pious stewards or defenders, as soon as they are aware of the situation, (so that) the fugitives may safely return to their proper place and condition, namely through those to whom they belong, after, in the presence of the stewards or defenders, according to ecclesiastical discipline and the nature of the crime, either appropriate punishment has been meted out by those to whom they belong, or most compassionate intercession has been made, and forgiveness has been granted by pardon and on oath. The property that they had with them will be restored. For they should not linger within the church too long, or else legitimate duties shall be denied their patrons or masters by their absence, and they themselves must be fed from expenses for the poor and needy, to the detriment of the church.

10. Besides these matters that unremittingly pertain to the responsibility and duty of the pious steward or defender of the church, this too must be observed: that they tirelessly investigate the persons and cases of each person who takes refuge in churches and then urgently inform the governors or the persons to whom these cases and persons pertain, so that they may diligently carry out what justice requires.

Given February 28, at Constantinople, in the consulship of Leo Augustus, for the third time (466).[245]

[7][246] (...). Whoever has an action or suit against someone shall not disturb the churches in person or through another, but he shall approach the governors. If he needs the Emperor on account of the crimes, he shall inform him through the archbishop. Whoever acts contrary to these provisions will be punished.

[8][247] (...). **pr.** Whenever We go forth to the great feasts in the Most Holy Great Church or even in other churches, We entrust the petitions of those who seek to be admitted and brought before Us to Our *vir illustrissimus* Quaestor. **1.** He who causes disorder or raises an outcry during the time of the feasts in the Great Church or even in other churches shall immediately lose his case, even if

[244] There appears to be a lacuna in the text here after *potuerint*: e.g., *<nuntientur ut>* or *<indicentur>* (cf. C. 1.12.4).

[245] Seeck dates to March 6, 466.

[246] = Bas. 5.1.15 (worded differently).

[247] = Bas. 5.1.16.

τοῦ πράγματος, κἂν εὔλογον ἔχειν τι δόξειεν, ἐκβληθήσεται δὲ παρὰ τοῦ ἐπάρχου καὶ τιμωρίαις ὑποβληθήσεται. **2.** Δυνατὸν δὲ πρόσωπον δεδιὼς διὰ τοῦ ἀρχιεπισκόπου ἡμῖν προσίτω ἢ τῶν ἐκκλησιεκδίκων.

XIII De His Qui in Ecclesiis Manumittuntur

[1] *Imp. Constantinus A. ad Protogenem episcopum.* Iam dudum placuit, ut in ecclesia catholica libertatem domini suis famulis praestare possint, si sub adspectu plebis adsistentibus Christianorum antistitibus id faciant, ut propter facti memoriam vice actorum interponatur qualiscumque scriptura, in qua ipsi vice testium signent. unde a vobis quoque ipsis non immerito dandae et relinquendae sunt libertates, quo quis vestrum pacto voluerit, dummodo vestrae voluntatis evidens appareat testimonium.

D. VI id. Iun. Sabino et Rufino conss.

[2] *Idem A. Osio.* Qui religiosa mente in ecclesiae gremio servulis suis meritam concesserint libertatem, eandem eodem iure donasse videantur, quo civitas Romana sollemnitatibus decursis dari consuevit. sed hoc dumtaxat his, qui sub adspectu antistitum dederint, placuit relaxari. clericis autem amplius concedimus, ut, cum suis famulis tribuunt libertatem, non solum in conspectu ecclesiae ac religiosi populi plenum fructum libertatis concessisse dicantur, verum etiam cum postremo iudicio dederint libertates seu quibuscumque verbis dari praeceperint, ita ut ex die publicatae voluntatis sine aliquo iuris teste vel interprete competat directa libertas.

D. XIIII k. Mai. Crispo II et Constantino II conss.

XIIII De Legibus Et Constitutionibus Principum et Edictis

[1] *Imp. Constantinus A.* Septimio *Basso pu.* Inter aequitatem iusque interpositam interpretationem nobis solis et oportet et licet inspicere.

D. III non. Dec. Sabino et Rufino conss.

it appears to have some substance; and he will be expelled by the Prefect (*éparchos*) and subjected to punishment. 2. One who fears a powerful person may approach Us through the archbishop or the defenders of the church.

Thirteenth Title Those Who Are Manumitted in Churches

[1] *Emperor* CONSTANTINE *Augustus to Protogenes, Bishop.* We decreed long ago that masters could give their servants freedom in a Catholic church, if they did so in the sight of the people and in the presence of Christian bishops, so that, in place of a public record so as to attest the deed, some sort of writing should be provided on which they put their seals in the place of witnesses. Hence freedom may be given or bequeathed by you, too, in whatever manner any of you desire, as long as there appears clear evidence of your assent.

Given June 8, in the consulship of Sabinus and Rufinus (316).[248]

[2][249] *The same Augustus to Hosius.* Those who piously give their slaves their deserved freedom in the bosom of the church shall appear to have given it by the same law whereby Roman citizenship is customarily awarded after the formal requirements have been observed. But We have resolved to relax this rule only for those who grant freedom in the presence of bishops. We grant more to clergymen, namely, that, when they give their servants their freedom, they shall be said to have granted the full fruits of liberty not only before the church and congregation, but also when they give freedom in a last will or order composed in whatever words, so that absolute liberty will be conferred from the day that their last wish is made public, without any legal witness or interpreter.

Given April 18, in the consulship of Crispus, for the second time, and of Constantine, for the second time (321).

Fourteenth Title Laws, Constitutions of the Emperors, and Edicts[250]

[1][251] *Emperor* CONSTANTINE *Augustus to Bassus, Urban Prefect.* We alone should be and are permitted to consider a legal formulation (*interpretatio*) that decides between the law and equity.

Given December 3, in the consulship of Sabinus and Rufinus (316).

[248] Seeck gives June 8, 323; Barnes argues for December 8, 316.
[249] = C.Th. 4.7.1.
[250] See D. 1.3–4.
[251] = C.Th. 1.2.3. Bassus' *nomen* Septimius appears in the Theodosian Code, but not in the first Code, and it has been omitted here (Corcoran, 429). Bassus was actually Urban Prefect in 317–319; Seeck dates to December 3, 317.

[2] *Impp. Theodosius et Valentinianus AA. ad senatum.* Quae ex relationibus vel suggestionibus iudicantium per consultationem in commune florentissimorum sacri nostri palatii procerum auditorium introducto negotio statuimus vel quibuslibet corporibus aut legatis aut provinciae vel civitati vel curiae donavimus, nec generalia iura sint, sed leges fiant his dumtaxat negotiis atque personis, pro quibus fuerint promulgata, nec ab aliquo retractentur: notam infamiae subituro eo, qui vel astute ea interpretari voluerit vel impetrato impugnare rescripto, nec habituro fructum per subreptionem eliciti: et iudices, si dissimulaverint vel ulterius litigantem audierint vel aliquid allegandum admiserint vel sub quodam ambiguitatis colore ad nos rettulerint, triginta librarum auri condemnatione plectendi sunt.

D. VIII id. Nov. Ravennae Theodosio XII et Valentiniano II AA. conss.

[3] *Idem AA. ad senatum.* **pr.** Leges ut generales ab omnibus aequabiliter in posterum observentur, quae vel missa ad venerabilem coetum oratione conduntur vel inserto edicti vocabulo nuncupantur, sive eas nobis spontaneus motus ingesserit sive precatio vel relatio vel lis mota legis occasionem postulaverit. nam satis est edicti eas nuncupatione censeri vel per omnes populos iudicum programmate divulgari vel expressius contineri, quod principes censuerunt ea, quae in certis negotiis statuta sunt similium quoque causarum fata componere. **1.** Sed et si generalis lex vocata est vel ad omnes iussa est pertinere, vim obtineat edicti; interlocutionibus, quas in uno negotio iudicantes protulimus vel postea proferemus, non in commune praeiudicantibus, nec his, quae specialiter quibusdam concessa sunt civitatibus vel provinciis vel corporibus, ad generalitatis observantiam pertinentibus.

D. VIII id. Nov. Ravennae Theodosio XII et Valentiniano II AA. conss.

[4] *Idem AA. ad Volusianum pp.* Digna vox maiestate regnantis legibus alligatum se principem profiteri: adeo de auctoritate iuris nostra pendet auctoritas. et re vera maius imperio est submittere legibus

[2][252] *Emperors THEODOSIUS and VALENTINIAN Augusti to the Senate.* What We have decided with regard to a case brought before the common court of the most eminent noblemen of Our Sacred Palace, pursuant to reports and inquiries sent to consult (Our opinion); or what We have granted to any manner of corporation, or to ambassadors, or to a province, city, or curia, are not general law but are laws only for those cases and persons for whom they have been promulgated, and they shall not be reconsidered by anyone. Whoever seeks to interpret them cunningly or to overturn them by obtaining a rescript will suffer the mark of infamy (*infamia*), and the rescript that he has elicited through deception shall bear no fruit. And judges, if they feign ignorance or listen further to such a litigant or refer the case to Us on the pretext of doubt, shall be stricken by a fine of 30 pounds of gold.

Given November 6, at Ravenna, in the consulship of Theodosius, for the twelfth time, and Valentinian, for the second time, Augusti (426).

[3][253] *The same Augusti to the Senate.* **pr.** Laws that are contained in a legislative proposal (*oratio*) sent to your venerable assembly or that are called "edicts" with that term inserted, (no matter) whether a spontaneous impulse has suggested them to Us or a petition or report or pending lawsuit gives occasion for them, shall in the future be obeyed as general laws (*leges generales*) equally by all. For it is sufficient that the laws be distinguished by the designation "edict" or published for all peoples in the edict of the provincial governors, or that it be stated in them explicitly that what the Emperors have decided in specific lawsuits should decide the fate of similar cases. 1. And also if a law is called "general" or is ordered to apply to all people, it shall have the force of an edict. Interlocutory decisions, which We have issued or shall afterwards issue while trying a single case, shall not have the force of precedential rulings, and special grants to specific cities, provinces, or legal persons (*corpora*) shall not be considered general.

Given November 6, at Ravenna, in the consulship of Theodosius, for the twelfth time, and Valentinian, for the second time, Augusti (426).

[4][254] *The same Augusti to Volusianus, Praetorian Prefect.* It is a statement worthy of the majesty of a ruler to proclaim himself bound by the laws: so much does Our authority depend on the authority of the law. And in truth, to subject the sovereign power to the laws is something greater than imperial rule. And

[252] Combine with C. 1.14.3, 1.19.7, 1.22.5, C.Th. 1.4.3; and cf. C. 6.55.11; Seeck dates to November 7, 426.
[253] See note on C. 1.14.2; Seeck dates to November 7, 426.
[254] = C. 11.71.5, possibly.

principatum. et oraculo praesentis edicti quod nobis licere non patimur indicamus.

D. III id. Iun. Ravennae Florentio et Dionysio conss.

[5] *Idem AA. Florentio pp.* **pr.** Non dubium est in legem committere eum, qui verba legis amplexus contra legis nititur voluntatem: nec poenas insertas legibus evitabit, qui se contra iuris sententiam scaeva praerogativa verborum fraudulenter excusat. nullum enim pactum, nullam conventionem, nullum contractum inter eos videri volumus subsecutum, qui contrahunt lege contrahere prohibente.

1. Quod ad omnes etiam legum interpretationes tam veteres quam novellas trahi generaliter imperamus, ut legis latori, quod fieri non vult, tantum prohibuisse sufficiat, cetera quasi expressa ex legis liceat voluntate colligere: hoc est ut ea quae lege fieri prohibentur, si fuerint facta, non solum inutilia, sed pro infectis etiam habeantur, licet legis lator fieri prohibuerit tantum nec specialiter dixerit inutile esse debere quod factum est. sed et si quid fuerit subsecutum ex eo vel ob id, quod interdicente lege factum est, illud quoque cassum atque inutile esse praecipimus.

2. Secundum praedictam itaque regulam, quam ubique servari factum lege prohibente censuimus, certum est nec stipulationem eiusmodi tenere nec mandatum ullius esse momenti nec sacramentum admitti.

D. VII id. April. Constantinopoli Theodosio A. XVII et Festo conss.

[6] *Idem AA. Florentio pp.* Quod favore quorundam constitutum est, quibusdam casibus ad laesionem eorum nolumus inventum videri.

D. k. Aug. Theodosio A. XVII et Festo conss.

[7] *Idem AA. Cyro pp. et consuli designato.* Leges et constitutiones futuris certum est dare formam negotiis, non ad facta praeterita revocari, nisi nominatim etiam de praeterito tempore adhuc pendentibus negotiis cautum sit.

D. non. April. Constantinopoli Valentiniano A. V et Anatolio conss.

by the oracular pronouncement of the present edict, We show what We do not allow Ourselves.

Given June 11, at Ravenna, in the consulship of Florentius and Dionysius (429).

[5][255] *The same Augusti to Florentius, Praetorian Prefect.* **pr.** There is no doubt that he who seizes upon the words of a law but strives against its spirit does it wrong; and he who deceitfully refutes the intention of a law by perversely giving preference to its wording will not escape the penalties contained in the laws. For We desire that no pact, no agreement, no contract shall appear to have been made between those who make a contract that the law prohibits them from making.

1. We order generally that this principle should also be applied to the interpretation of laws, both old and new: it shall suffice the legislator to have prohibited what he does not want to be done, while one may gather everything else (implied therein) from the intention of the law as if actually expressed; that is, if what is prohibited by a law is done, it is not only void but shall be considered as if it had never been done at all, even if the legislator only prohibits it from being done and does not specifically state that what has been done ought to be void. And if something comes about from or because of something done contrary to the law, We order that that too shall be null and void.

2. According to the aforementioned rule, therefore, which We have determined must be observed wherever the law forbids something to be done, it is clear that no stipulation of this kind is binding, no mandate has any force, and no oath is admissible.

Given April 7, at Constantinople, in the consulship of Theodosius Augustus, for the seventeenth time, and Festus (439).

[6][256] *The same Augusti to Florentius, Praetorian Prefect.* We do not wish what has been established for the benefit of certain persons to appear to have been devised to harm them in certain circumstances.

Given August 1, in the consulship of Theodosius Augustus, for the seventeenth time, and Festus (439).

[7] *The same Augusti to Cyrus, Praetorian Prefect and Consul Designate.* It is clear that laws and constitutions create a rule for future cases and cannot be applied retroactively to past acts, unless provision has expressly been made concerning the past for cases that are still pending.

Given April 5, at Constantinople, in the consulship of Valentinian Augustus and Anatolius (440).

[255] = Nov. Theod. 9; combine with C. 4.65.30.
[256] = Nov. Theod. 14.1.6 (September 7; Praetorian Prefect of the East and ex-Consul), C. 5.9.5.6.

[8] *Idem AA. ad senatum.* **pr.** Humanum esse probamus, si quid de cetero in publica vel in privata causa emerserit necessarium, quod formam generalem et antiquis legibus non insertam exposcat, id ab omnibus antea tam proceribus nostri palatii quam gloriosissimo coetu vestro, patres conscripti, tractari et, si universis tam iudicibus quam vobis placuerit, tunc allegata dictari et sic ea denuo collectis omnibus recenseri et, cum omnes consenserint, tunc demum in sacro nostri numinis consistorio recitari, ut universorum consensus nostrae serenitatis auctoritate firmetur. **1.** Scitote igitur, patres conscripti, non aliter in posterum legem a nostra clementia promulgandam, nisi supra dicta forma fuerit observata. bene enim cognoscimus, quod cum vestro consilio fuerit ordinatum, id ad beatitudinem nostri imperii et ad nostram gloriam redundare.

D. XVI k. Nov. Aetio III et Symmacho conss.

[9] *Impp. Valentinianus et Marcianus AA. ad Palladium pp.* Leges sacratissimae, quae constringunt omnium vitas, intellegi ab omnibus debent, ut universi praescripto earum manifestius cognito vel inhibita declinent vel permissa sectentur. si quid vero in isdem legibus latum fortassis obscurius fuerit, oportet id imperatoria interpretatione patefieri duritiamque legum nostrae humanitati incongruam emendari.

D. prid. non. April. Constantinopoli Aetio et Studio vv. cc. conss.

[10] *Αὐτοκράτορες Λέων καὶ Ἀνθέμιος AA.* Πάντες κατὰ τοὺς νόμους πολιτευέσθωσαν, κἂν εἰ τῷ θείῳ διαφέροιεν οἴκῳ.

D. VI id. Febr. Anthemio A. II cons.

[11] *Impp. Leo et Zeno AA.* Cum de novo iure, quod inveterato usu non adhuc stabilitum est, dubitatio emergat, necessaria est tam suggestio iudicantis quam sententiae principalis auctoritas.

D. X k. Mai. Leone iuniore A. cons.

[8] *The same Augusti to the Senate.* **pr.** We approve it as sensible that, if hereafter something pressing emerges in a public or private case that demands a general provision not contained in former laws, it should first be considered both by all the nobles of Our Palace and by your most glorious assembly, conscript fathers; and, if both all the judges and you approve, then the materials gathered will be read and thus reviewed anew in full assembly; and when all agree, then at last they will be read aloud in the sacred consistory of Our Godhead, so that the consensus of all may be confirmed by the authority of Our Serenity. **1.** Let you therefore know, conscript fathers, that no law at all shall be promulgated by Our Clemency unless the aforementioned rule is followed. For We know well that what has been ordained with your council redounds to the blessedness of Our Empire and to Our glory.

Given September 16,[257] *in the consulship of Aetius, for the third time, and Symmachus (446).*

[9][258] *Emperors* VALENTINIAN *and* MARCIAN *Augusti to Palladius, Praetorian Prefect.* The most sacred laws that bind the lives of all must be understood by all, so that by more clearly recognizing their precepts everyone may either avoid what is prohibited or follow what is permitted. If, though, something prescribed in these laws is perhaps obscure, it should be clarified by the interpretation of the Emperor, and any harshness of the laws inconsistent with Our Compassion should be corrected.

Given April 4, at Constantinople, in the consulship of the viri clarissimi *Aetius and Studius (454).*

[10][259] *Emperors* LEO *and* ANTHEMIUS *Augusti ... to the Praetorian Prefect.* Let all live in accordance with the laws, even if they belong to the Divine House.

Given February 8, in the consulship of Anthemius Augustus, for the second time (468).

[11] *Emperors* LEO *and* ZENO *Augusti.* If doubt should arise concerning a new law that has not yet been established by long usage, both a referral by the judge (to the Emperor) and the authority of an imperial decision is necessary.

Given April 22, in the consulship of LEO *the Younger, Augustus (474).*

257 Seeck dates to October 17.

258 = Nov. Marc. 4; combine with C. 5.5.7.

259 = Bas. 2.6.15. The inscription, restored from the subscription, now has been confirmed by a fragment of the first Code, C[1] 1.12.10 (Corcoran, 429).

[12] *Imp. Iustinianus A. Demostheni pp.* **pr.** Si imperialis maiestas causam cognitionaliter examinaverit et partibus cominus constitutis sententiam dixerit, omnes omnino iudices, qui sub nostro imperio sunt, sciant hoc esse legem non solum illi causae, pro qua producta est, sed omnibus similibus. **1.** Quid enim maius, quid sanctius imperiali est maiestate? Vel quis tantae superbiae fastidio tumidus est, ut regalem sensum contemnat, cum et veteris iuris conditores constitutiones, quae ex imperiali decreto processerunt, legis vicem obtinere aperte dilucideque definiunt? **2.** Cum igitur et hoc in veteribus legibus invenimus dubitatum, si imperialis sensus legem interpretatus est, an oporteat huiusmodi regiam interpretationem obtinere, eorum quidem vanam scrupulositatem tam risimus quam corrigendam esse censuimus.

3. Definimus autem omnem imperatoris legum interpretationem sive in precibus sive in iudiciis sive alio quocumque modo factam ratam et indubitatam haberi. si enim in praesenti leges condere soli imperatori concessum est, et leges interpretari solum dignum imperio esse oportet. **4.** Cur autem ex suggestionibus procerum, si dubitatio in litibus oriatur et sese non esse idoneos vel sufficientes ad decisionem litis illi existiment, ad nos decurritur et quare ambiguitates iudicum, quas ex legibus oriri evenit, aures accipiunt nostrae, si non a nobis interpretatio mera procedit? Vel quis legum aenigmata solvere et omnibus aperire idoneus esse videbitur nisi is, cui soli legis latorem esse concessum est? **5.** Explosis itaque huiusmodi ridiculosis ambiguitatibus tam conditor quam interpres legum solus imperator iuste existimabitur: nihil hac lege derogante veteris iuris conditoribus, quia et eis hoc maiestas imperialis permisit.

Recitata septimo milliario urbis Constantinopolitanae in novo consistorio palatii Iustiniani. D. III k. Nov. Decio vc. cons.

XV De Mandatis Principum

[1] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad Eusignium pp.* Si quis adserat cum mandatis nostris se venisse secretis, omnes sciant nemini quicquam, nisi quod scriptis probaverit, esse credendum nec ullius dignitate terreri, sive ille tribuni sive notarii sive comitis praeferat dignitatem, sed sacras nostras litteras esse quaerendas.

D. XVI k. Iul. Veronae. accepta prid. k. Aug. Merobaude II et Saturnino conss.

[12] *Emperor* JUSTINIAN *Augustus to Demosthenes, Praetorian Prefect.* **pr.** If the Imperial Majesty has examined a case judicially and has given a decision with the parties at hand, then all judges who are under Our rule shall know that this is a law not only for the case for which it was given, but for all similar cases. **1.** For what is greater, what is holier than imperial majesty? Or who is swollen with such arrogance of pride that he scorns royal opinion, when the founders of ancient law openly and clearly declare that constitutions proceeding from imperial decree have the force of law? **2.** When We also found this doubted in the ancient laws, namely whether, if imperial opinion has interpreted a law, such an imperial interpretation should be valid, We both laughed at their empty subtlety and deemed it proper to correct it.

3. We therefore establish that every interpretation of the laws by the Emperor, whether with respect to petitions or trials, or made in any other manner, shall be considered valid and unquestionable. For, if at present it is permitted to the Emperor alone to make laws, it is also worthy of the imperial power alone to interpret laws. **4.** For why do the nobles resort to Us through their official letters (*suggestiones*) if doubt arises in lawsuits and not consider themselves suitable or able to decide the case, and why do Our ears receive the uncertainties of the judges, which are bound to arise in the laws, if true interpretation does not proceed from Us? Or who will seem fit to resolve the riddles of the laws and make them plain to all, if not he who alone is permitted to legislate? **5.** Having rejected these absurd doubts, the Emperor alone will rightly be considered the founder and interpreter of the laws; this law in no way detracts from the founders of old law, because imperial majesty granted them this authority too.

Read aloud at the seventh milestone of the City of Constantinople, in the New Consistory of the Palace of Justinian. Given October 30, in the consulship of the vir clarissimus *Decius (529).*

Fifteenth Title Mandates of the Emperors[260]

[1][261] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Eusignius, Praetorian Prefect.* If anyone claims that he has come with secret mandates of Ours, all shall know that they should trust no one in anything except what he proves in writing, nor should they be intimidated by anyone's rank, whether he boasts the rank of Tribune, Notary, or Count; but Our sacred letters must be demanded.

Given June 16, at Verona; received July 31, in the consulship of Merobaudes, for the second time, and of Saturninus (383).

[260] See D. 1.4. Imperial mandates (*mandata*) are instructions sent by the emperor to magistrates.
[261] = C.Th. 1.3.1 (where Eusignius is Proconsul of Africa, correctly).

[2] *Αὐτοκράτορες Ἰουστῖνος καὶ Ἰουστινιανὸς AA.* **pr.** Θεσπίζομεν μηδένα τῶν ἐνδοξοτάτων ἡμῶν ἀρχόντων μεγίστων ἢ μέσων ταῖς οἰκείαις ἐγγράφειν ψήφοις, ὡς θείῳ ῥήματι προσετάξαμεν ἀγώγιμον γενέσθαι τινὰ ἢ διάξιμον ἢ ἄλλο τι ψηφισθῆναι τῶν ὅσα πράττεται παρ' αὐτοῖς, πλὴν ὅσον ἐν ταῖς τῶν δικαστῶν ἢ συνδικαστῶν δόσεσιν ὀρθῶς φέρεσθαι τὰς ψήφους τὰς μνημονευούσας ἄγραφον ἡμετέραν γεγενῆσθαι θείαν κέλευσιν τὸν δικαστὴν διδοῦσαν ἢ συνδικαστήν· **1.** Ὡσαύτως καὶ τὸν ἐνδοξότατον κοιαίστωρα τοῦ θείου ἡμῶν παλατίου καὶ τοὺς περιβλέπτους ῥεφερενδαρίους τῆς ἡμετέρας εὐσεβείας ὀρθῶς τὴν ἄγραφον ἡμῶν θείαν κέλευσιν τὴν γενομένην ἐπὶ τοῖς προσιοῦσιν καὶ δικαστὴν ἤτοι συνδικαστὴν αἰτοῦσιν ἢ ἄλλο τι τῶν εἰς τὰς δίκας τεινόντων διὰ καταθέσεως παρασκευάζειν γίνεσθαι φανεράν· ἐπὶ τούτῳ γὰρ δὴ καὶ μόνῳ τὴν τῆς ἀγράφου κελεύσεως μνήμην γίνεσθαι συγχωροῦμεν.

XVI De Senatus Consultis

[1] *Imppp. Valentinianus Theodosius et Arcadius AAA. ad senatum.* Quamvis consultum senatus perpetuam per se obtineat firmitatem, tamen etiam nostris legibus idem prosequimur adicientes, ut, si quisquam speciali supplicatione eliciendum aliquod rescriptum temptaverit, ut transire ei formam liceat statutorum, tertia patrimonii parte multatus et damnatus ambitus crimine maneat infamis.

D. VII k. Aug. Heracleae Ricomere et Clearcho conss.

[2] ...

XVII De Veteri Iure Enucleando et Auctoritate Iuris Prudentium Qui in Digestis Referuntur

[1] *Imp. Iustinianus A. Triboniano viro eminentissimo quaestori sacri palatii.* **pr.** Deo auctore nostrum gubernantes imperium, quod nobis a caelesti maiestate traditum est, et bella feliciter peragimus et pacem decoramus et statum rei publicae sustentamus: et ita nostros animos

[2][262] (*Emperors* JUSTIN *and* JUSTINIAN *Augusti.*) **pr.** We decree that none of Our *viri gloriosissimi* administrators of the highest or middle rank shall write in their own decisions that We have ordered by divine speech that someone should be summoned to court or transferred (to another court), or that anything else among the matters in question before them was decided (by Us), except that, in connection with the appointment of judges or advisors (*syndikastai*), those decisions are rightly made which record that Our unwritten divine order appointed the judge or advisor. **1.** Similarly, also the Most Illustrious Quaestor of Our Divine Palace and the *viri spectabiles* referendaries of Our Piety should make known by their deposition (*katathesis*) Our unwritten divine order concerning those approaching Us and requesting a judge or advisor or something else pertaining to their cases. In this case, and in this alone, do We permit record to be made of an unwritten order.

(527)

Sixteenth Title Decrees of the Senate[263]

[1] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to the Senate.* Although a decree of the Senate has permanent validity in itself, still We pursue the same purpose with Our laws by adding that if anyone attempts to solicit any rescript by special request so that he might transgress the statutes, he shall be fined one-third of his property, condemned for the crime of corrupt solicitation (*ambitus*), and remain infamous (*infamis*).

Given July 26, at Heraclea, in the consulship of Richomer and Clearchus (384).[264]

[2] (*Emperor* JUSTINIAN *Augustus* ...).[265]

Seventeenth Title The Clarification of Ancient Law and the Authority of the Jurists Who Are Cited in the Digest

[1][266] *Emperor* JUSTINIAN AUGUSTUS *to Tribonian,* vir eminentissimus, *Quaestor of the Sacred Palace.* **pr.** By the grace of God governing Our empire, which was entrusted to Us by heavenly majesty, We both felicitously conclude

262 = Bas. 2.6.19 = C¹ 1.13.2. The inscription is restored from Nov. 124.4. The fragment of the first Code makes no mention of Justin, but this must be an error (Corcoran). Lounghis *et al.* date this constitution to between April 4 and August 1, 527.

263 See D. 1.3.

264 Seeck gives July 25, 384.

265 A Greek constitution has been lost. It must have dated after 529, since it was not present in the first Code (Corcoran).

266 = D. praef. 1. This constitution of 530, known by its opening words as *Deo auctore*, authorizes the compilation of Justinian's Digest.

ad dei omnipotentis erigimus adiutorium, ut neque armis confidamus neque nostris militibus neque bellorum ducibus vel nostro ingenio, sed omnem spem ad solam referamus summae providentiam trinitatis: unde et mundi totius elementa processerunt et eorum dispositio in orbem terrarum producta est. **1.** Cum itaque nihil tam studiosum in omnibus rebus invenitur quam legum auctoritas, quae et divinas et humanas res bene disponit et omnem iniquitatem expellit, repperimus autem omnem legum tramitem, qui ab urbe condita et Romuleis descendit temporibus, ita esse confusum, ut in infinitum extendatur et nullius humanae naturae capacitate concludatur: primum nobis fuit studium a sacratissimis retro principibus initium sumere et eorum constitutiones emendare et viae dilucidae tradere, quatenus in unum codicem congregatae et omni supervacua similitudine et iniquissima discordia absolutae universis hominibus promptum suae sinceritatis praebeant praesidium.

2. Hocque opere consummato et in uno volumine nostro nomine praefulgente coadunato, cum ex paucis et tenuioribus relevati ad summam et plenissimam iuris emendationem pervenire properaremus et omnem Romanam sanctionem et colligere et emendare et tot auctorum dispersa volumina uno codice indita ostendere, quod nemo alius neque sperare neque optare ausus est, res quidem nobis difficillima, immo magis impossibilis videbatur. sed manibus ad caelum erectis et aeterno auxilio invocato eam quoque curam nostris reposuimus animis, deo freti, qui et res penitus desperatas donare et consummare suae virtutis magnitudine potest. **3.** Et ad tuae sinceritatis optimum respeximus ministerium tibique primo et hoc opus commisimus, ingenii tui documentis ex nostri codicis ordinatione acceptis, et iussimus quos probaveris tam ex facundissimis antecessoribus quam ex viris disertissimis togatis fori amplissimae sedis ad sociandum laborem eligere. his itaque collectis et in nostrum palatium introductis nobisque tuo testimonio placitis totam rem faciendam permisimus, ita tamen, ut tui vigilantissimi animi gubernatione res omnis celebretur.

4. Iubemus igitur vobis antiquorum prudentium, quibus auctoritatem conscribendarum interpretandarumque legum sacratissimi principes praebuerunt, libros ad ius Romanum pertinentes et legere et elimare, ut ex his omnis materia colligatur, nulla secundum quod possibile est neque similitudine neque discordia derelicta, sed ex his hoc

wars, adorn peace, and uphold the condition of the State; and We so lift up Our thoughts to the aid of Almighty God that We trust neither in arms, nor in Our soldiers, nor in leaders of war or in Our own intellect, but We place all Our hope in the providence of the Supreme Trinity alone, whence both the elements of the whole universe derived and their arrangement was brought forth into the world. **1.** And although nothing so desirable is found in anything as in the authority of the laws, which well orders affairs both human and divine and banishes all injustice, We discovered that the whole course of the laws, which descends from the foundation of the City and the time of Romulus, had become so confused that it stretched on interminably and could not be compassed by the faculties of any human nature. Our first desire was to begin with the most sacred emperors of the past and amend and set their constitutions on the clear path, so that, collected in a single book (*codex*) and purged of all superfluous repetition and most unjust contradiction, they might afford all mankind the protection of their purity.

2. Once this work had been completed and united in one volume with Our name shining before it, We hastened to rise from trifles few in number to achieve the most ambitious, most extensive emendation of the law: both to collect and amend all Roman legislation (*sanctio*)[267] and to present in one volume the scattered works of so many authors, a project for which no other has dared either to hope or to wish and which appeared to Us most difficult, indeed even impossible. But lifting up Our hands to Heaven and imploring the aid of the Eternal, We preserved even this ambition in Our mind, trusting in God, who in the greatness of His power can both grant and bring to fruition utterly desperate undertakings. **3.** And We considered the excellent service of Your Sincerity and entrusted you foremost also with this work, having received proof of your genius in the compilation of Our Code; and We commanded you to select from among the most articulate of your professors (*antecessores*) as well as the most eloquent of the pleaders of the Most Exalted Court (of the Praetorian Prefect) those whom you approved to share in your labor. Once these men had been assembled and brought into Our Palace, and We were satisfied on the strength of your testimony, We entrusted the entire undertaking to them; on the condition, though, that it should be carried out entirely under the direction of your most attentive mind.

4. We therefore order you to read and refine the books on Roman law by the ancient jurists to whom the most sacred emperors granted the authority to draft and interpret laws, so that the whole substance may be gleaned from them and all repetition and contradiction omitted; only what alone will stand for all shall be collected. As for other authors who have written books on the

[267] It appears that Tribonian is using *sanctio* like νομοθεσία, to mean "lawmaking" in general.

colligi, quod unum pro omnibus sufficiat. quia autem et alii libros ad ius pertinentes scripserunt, quorum scripturae a nullis auctoribus receptae nec usitatae sunt, neque nos eorum volumina nostram inquietare dignamur sanctionem.

5. Cumque haec materia summa numinis liberalitate collecta fuerit, oportet eam pulcherrimo opere extruere et quasi proprium et sanctissimum templum iustitiae consecrare et in libros quinquaginta et certos titulos totum ius digerere tam secundum nostri constitutionum codicis quam edicti perpetui imitationem, prout hoc vobis commodius esse patuerit, ut nihil extra memoratam consummationem possit esse derelictum, sed his quinquaginta libris totum ius antiquum, per millesimum et quadringentesimum paene annum confusum et a nobis purgatum, quasi quodam muro vallatum nihil extra se habeat: omnibus auctoribus iuris aequa dignitate pollentibus et nemini quadam praerogativa servanda, quia non omnes in omnia, sed certi per certa vel meliores vel deteriores inveniuntur.

6. Sed neque ex multitudine auctorum quod melius et aequius est iudicatote, cum possit unius forsitan et deterioris sententia et multos et maiores in aliqua parte superare. et ideo ea, quae antea in notis Aemilii Papiniani ex Ulpiano et Paulo nec non Marciano adscripta sunt, quae antea nullam vim obtinebant partim propter honorem splendidissimi Papiniani, non statim respuere, sed, si quid ex his ad repletionem summi ingenii Papiniani laborum vel interpretationem necessarium esse perspexeritis, et hoc ponere legis vicem obtinens non moremini: ut omnes qui relati fuerint in hunc codicem prudentissimi viri habeant auctoritatem tam, quasi et eorum studia ex principalibus constitutionibus profecta et a nostro divino fuerint ore profusa. omnia enim merito nostra facimus, quia ex nobis omnis eis impertietur auctoritas. nam qui non subtiliter factum emendat, laudabilior est eo qui primus invenit.

7. Sed et hoc studiosum vobis esse volumus, ut, si quid in veteribus non bene positum libris inveniatis vel aliquod superfluum vel minus perfectum, supervacua similitudine semota et quod imperfectum est repleatis et omne opus moderatum et quam pulcherrimum ostendatis. hoc etiam nihilo minus observando, ut, si aliquid in veteribus legibus vel constitutionibus, quas antiqui in suis libris posuerunt, non recte scriptum inveniatis, et hoc reformetis et ordini moderato tradatis: ut hoc videatur esse verum et optimum et quasi ab initio scriptum, quod a vobis electum et ibi positum fuerit, et nemo ex comparatione veteris voluminis quasi vitiosam scripturam arguere audeat. cum enim

law but whose writings have not been received or used by any authors, We will not suffer their works to disturb Our legislation.

5. And once this material has, by the supreme generosity of the Godhead, been collected, you shall set it forth in a work of the greatest beauty and thus dedicate it, as it were, as a proper and most holy temple to justice; and you shall arrange the entire law in fifty books and specific titles, in imitation both of Our Code of Constitutions[268] and of the Perpetual Edict, as far as this should be convenient to you to do, so that nothing should be left out of the aforementioned compilation; but all the ancient law, in a state of confusion for some 1,400 years and now distilled by Us, should in these fifty books, as if fortified by a wall, have nothing outside itself. All authors of the law shall enjoy equal rank, and no special authority shall be attributed to any one of them, because not every author in every respect, but rather certain authors in certain respects are either better or worse.

6. But let you not judge what is better and more just in the multitude of authors, since the opinion of a single lesser writer might in some respect be superior to many greater authors. Hence, you should not forthwith reject the comments of Ulpian, Paul, and Marcian in their notes on Aemilius Papinian, which previously had no validity partly on account of the honor due the most eminent Papinian; but if you discern something in them required to supplement or interpret the works of the highest genius of Papinian, you shall not hesitate to include it as having the force of law. Thus, all the most learned jurists included in this codex shall have such authority as if their efforts had derived from imperial constitutions and had been uttered by Our divine mouth. Indeed, We rightly make all their works Our own, since all authority imparted them derives from Us; for he who improves something made without refinement deserves higher praise than he who first created it.

7. But We desire that you give heed to this too: if you find something poorly argued in the old books, or something superfluous or somewhat incomplete, you shall remove superfluous repetition, supplement what is incomplete, and present the entire work as balanced and as attractive as possible. You must nonetheless observe the following: if you find anything incorrectly written in the ancient laws or constitutions that the ancients cite in their books, you shall amend it and put it in judicious order, so that what you have excerpted and placed there will seem to be genuine and the best version, and as if it had originally been written so; and no one may dare impugn the text as faulty through comparison with an old book. For since by the ancient law called the Royal law (*lex regia*) all law and all power of the Roman people were transferred to the power of the Emperor, and since We do not divide all the legislation into

[268] This is the first Code, promulgated in 529.

lege antiqua, quae regia nuncupabatur, omne ius omnisque potestas populi Romani in imperatoriam translata sunt potestatem, nos vero sanctionem omnem non dividimus in alias et alias conditorum partes, sed totam nostram esse volumus, quid possit antiquitas nostris legibus abrogare? et in tantum volumus eadem omnia, cum reposita sunt, obtinere, ut si aliter fuerant apud veteres conscripta, in contrarium autem in compositione inveniantur, nullum crimen scripturae imputetur, sed nostrae electioni hoc adscribatur.

8. Nulla itaque in omnibus praedicti codicis membris antinomia (sic enim a vetustate Graeco vocabulo nuncupatur) aliquem sibi vindicet locum, sed sit una concordia, una consequentia, adversario nemine constituto. **9.** Sed et similitudinem (secundum quod dictum est) ab huiusmodi consummatione volumus exulare: et ea, quae sacratissimis constitutionibus quas in codicem nostrum redegimus cauta sunt, iterum poni ex veteri iure non concedimus, cum divalium constitutionum sanctio sufficit ad eorum auctoritatem: nisi forte vel propter divisionem vel propter repletionem vel propter pleniorem indaginem hoc contigerit: et hoc tamen perraro, ne ex continuatione huiusmodi lapsus oriatur aliquid in tali prato spinosum.

10. Sed et si quae leges in veteribus libris positae iam in desuetudinem abierunt, nullo modo vobis easdem ponere permittimus, cum haec tantummodo obtinere volumus, quae vel iudiciorum frequentissimus ordo exercuit vel longa consuetudo huius almae urbis comprobavit, secundum Salvii Iuliani scripturam, quae indicat debere omnes civitates consuetudinem Romae sequi, quae caput est orbis terrarum, non ipsam alias civitates. Romam autem intellegendum est non solum veterem, sed etiam regiam nostram, quae deo propitio cum melioribus condita est auguriis.

11. Ideoque iubemus duobus istis codicibus omnia gubernari, uno constitutionum, altero iuris enucleati et in futuro codice componendi: vel si quid aliud a nobis fuerit promulgatum institutionum vicem obtinens, ut rudis animus studiosi simplicibus enutritus facilius ad altioris prudentiae redigatur scientiam.

12. Nostram autem consummationem, quae a vobis deo adnuente componetur, digestorum vel pandectarum nomen habere sancimus, nullis iuris peritis in posterum audentibus commentarios illi adplicare et verbositate sua supra dicti codicis compendium confundere: quemadmodum et in antiquioribus temporibus factum est, cum per contrarias interpretantium sententias totum ius paene conturbatum est: sed sufficiat per indices tantummodo et titulorum subtilitatem quae

this and that part according to its authors, but want the whole to be Ours, how could antiquity repeal any of Our laws? In fact, We desire that all this material, once it has been compiled, be valid to the extent that if it was written differently by the ancients but is found to state the opposite in Our compilation, no fault should be found with the text, but rather the discrepancy should be attributed to Our decision.

8. Thus no contradictory law – for so it is named by antiquity with this Greek word (*antinomía*) – shall stand in any part of the aforementioned codex, but there shall be one harmony, one logic, with no one to oppose it. **9.** And We also want repetition, as has been said, to be banished from this compilation; and We do not permit the provisions established in the most sacred constitutions that We have brought together in Our Code to be included again in the old law, for the sanction of the divine constitutions suffices for their authority, unless this should occur perchance to provide distinctions, supplements, or fuller context, and even then very sparingly, lest any thorns grow in this (legal) garden because of repetition of this oversight.

10. And if any laws included in the old books have already fallen into disuse, We by no means permit you to include them, since We wish only such rules to be in force as either the overwhelming number of courts has followed or longstanding practice of This Generous City has approved, in accordance with the writing of Salvius Julian that states that all cities ought to follow the practice of Rome, the head of the world, and not Rome follow other cities. Not only old Rome, though, should be understood, but also Our Royal City, which by the grace of God was founded under better auspices.

11. We therefore order that all things shall be governed by these two books (*codices*), the one of imperial constitutions (the Code), the other of the clarified law to be compiled in a future book (the Digest); or if any other work having the force of Institutes is promulgated by Us, so that the untutored mind of the student, nourished on simple principles, may more readily be brought to learn higher jurisprudence.

12. We decree that Our compilation, which, with the help of God, shall be assembled by you, shall bear the name of Digest or Pandects (*digesta vel pandectae*). No jurists shall hereafter dare to insert any commentary in it or to confuse the concision of the above-mentioned book (the Digest) by their own verbosity, as was done in earlier times, when the entire law was virtually thrown into chaos by the contradictory opinions of its interpreters; but it shall suffice to give some instructions only through indices and plain headings, called

paratitla nuncupantur quaedam admonitoria eius facere, nullo ex interpretatione eorum vitio oriundo. **13.** Ne autem per scripturam aliqua fiat in posterum dubitatio, iubemus non per siglorum captiones et compendiosa aenigmata, quae multas per se et per suum vitium antinomias induxerunt, eiusdem codicis textum conscribi: etiam si numerus librorum significatur aut aliud quicquam: nec haec etenim per specialia sigla numerorum manifestari, sed per litterarum consequentiam explanari concedimus.

14. Haec omnia igitur deo placido facere tua prudentia una cum aliis facundissimis viris studeat et tam subtili quam celerrimo fini tradere, ut codex consummatus et in quinquaginta libros digestus nobis offeratur in maximam et aeternam rei memoriam deique omnipotentis providentiae argumentum nostrique imperii vestrique ministerii gloriam.

Data octavo decimo kalendas Ianuarias Constantinopoli Lampadio et Oreste viris clarissimis consulibus.

[2] *Imp. Caesar Flavius Iustinianus A. ad senatum et omnes populos.* **pr.** Tanta circa nos divinae humanitatis est providentia, ut semper aeternis liberalitatibus nos sustentare dignetur. post bella enim Parthica aeterna pace sopita postque Vandalicam gentem ereptam et Carthaginem, immo magis omnem Libyam Romano imperio iterum sociatam et leges antiquas iam senio praegravatas per nostram vigilantiam praebuit in novam pulchritudinem et moderatum pervenire compendium: quod nemo ante nostrum imperium umquam speravit neque humano ingenio possibile esse penitus existimavit. erat enim mirabile Romanam sanctionem ab urbe condita usque ad nostri imperii tempora, quae paene in mille et quadringentos annos concurrunt, intestinis proeliis vacillantem hocque et in imperiales constitutiones extendentem in unam reducere consonantiam, ut nihil neque contrarium neque idem neque simile in ea inveniatur et ne geminae leges pro rebus singulis positae usquam appareant. namque hoc caelestis quidem providentiae peculiare fuit, humanae vero imbecillitati nullo modo possibile. nos itaque more solito ad immortalitatis respeximus praesidium et summo numine invocato deum auctorem et totius operis praesulem fieri optavimus et omne studium Triboniano viro excelso magistro officiorum et ex quaestore sacri nostri palatii et ex consule credidimus eique omne ministerium huiuscemodi ordinationis imposuimus, ut ipse una cum aliis illustribus et prudentissimis viris nostrum desiderium adimpleret.

paratitla, whereby no defect can arise from their interpretation. **13.** Moreover, so there shall be no doubts as to the text, We order that the text of this codex shall not be written with deceptive symbols and puzzling abbreviations, which in themselves and through their defects have created numerous cases of contradictory law, even if the number of books is indicated or some other such thing: We do not allow even these to be indicated by special numerical symbols (of abbreviation), but they must be made intelligible by the ordinary sequence of letters.

14. Your Prudence, therefore, together with other most eloquent men, shall strive, God willing, to accomplish all these things and bring them to a concise and most rapid conclusion, so that the work, compiled and arranged in fifty books, may be presented to Us as the greatest, eternal monument of the undertaking, as proof of the providence of Almighty God, and to the glory of Our rule and your service.

Given on December 15, in Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[2][269] *Emperor Caesar Flavius JUSTINIAN Augustus to the Senate and to all peoples.* **pr.** So great is the providence of divine compassion toward Us that it ever deigns to sustain Us with acts of eternal generosity: for after the Parthian wars had been stilled in eternal peace, and after the Vandal race had been destroyed and Carthage – indeed all Libya – rejoined to the Roman Empire, it granted that the ancient laws, already bowed down with age, should by Our care win new beauty and moderate brevity, a feat which no one before Our reign ever expected or thought attainable by human ingenuity. It was indeed astounding to bring into uniform harmony Roman legislation from the founding of the city to the time of Our reign, a period of almost 1,400 years, shaken by internal battles[270] that extended also to the imperial constitutions, so that no contradiction, repetition, or restatement should be found in it, and no two laws ever appear included concerning a single question. This indeed was the work of heavenly providence, by no means possible for human frailty. We, therefore, in Our accustomed manner, looked to the aid of Immortality, and calling on the Supreme Deity, prayed that God be the author and patron of the whole work, and We entrusted the entire effort to Tribonian, *vir excelsus*, Master of Offices, Ex-Quaestor of the Sacred Palace and Ex-Consul, and We laid upon him the entire task of this compilation,[271] so that he, together with other illustrious and most learned men, might fulfill Our desire. Our Majesty too, supported by the

[269] = D. praef. 3, called the *Constitutio Tanta* from first word; compare the Greek version, *C. Δέδωκεν* = D. praef. 4. It promulgates the Digest as law.
[270] Justinian means unresolved legal controversies.
[271] The word *ordinatio* suggests both the compilation of the Digest and Justinian's decree (cf. "ordinance") to compile the Digest, which Tribonian thereby fulfilled.

nostra quoque maiestas semper investigando et perscrutando ea quae ab his componebantur, quidquid dubium et incertum inveniebatur, hoc numine caelesti erecta emendabat et in competentem formam redigebat. omnia igitur confecta sunt domino et deo nostro Ihesu Christo possibilitatem tam nobis quam nostris in hoc satellitibus praestante.

1. Et principales quidem constitutiones duodecim libris digestas iam ante in codicem nostro nomine praefulgentem contulimus. postea vero maximum opus adgredientes ipsa vetustatis studiosissima opera iam paene confusa et dissoluta eidem viro excelso permisimus tam colligere quam certo moderamini tradere. sed cum omnia percontabamur, a praefato viro excelso suggestum est duo paene milia librorum esse conscripta et plus quam tricies centena milia versuum a veteribus effusa, quae necesse esset omnia et legere et perscrutari et ex his si quid optimum fuisset eligere. Quod caelesti fulgore et summae trinitatis favore confectum est secundum nostra mandata, quae ab initio ad memoratum virum excelsum fecimus, et in quinquaginta libros omne quod utilissimum erat collectum est et omnes ambiguitates decisae nullo seditioso relicto. nomenque libris imposuimus digestorum seu pandectarum, quia omnes disputationes et decisiones in se habent legitimas et quod undique fuit collectum, hoc in sinus suos receperunt, in centum quinquaginta paene milia versuum totum opus consummantes. et in septem partes eos digessimus, non perperam neque sine ratione, sed in numerorum naturam et artem respicientes et consentaneam eis divisionem partium conficientes.

2. Igitur prima quidem pars totius contextus, quae Graeco vocabulo πρῶτα nuncupatur, in quattuor libros seposita est. 3. Secundus autem articulus septem libros habet, qui de iudiciis appellantur. 4. In tertia vero congregatione omnia quae de rebus nominantur contulimus, octo libris eis deputatis.

5. Quartus autem locus, qui et totius compositionis quasi quidam invenitur umbilicus, octo libros suscepit. in quibus omnia quae ad hypothecam pertinent reposita sunt, ut non a pigneraticia actione in libris de rebus posita multum distarent: alio libro eodem inserto volumine, quae aedilicium edictum et redhibitoriam actionem et duplae stipulationem, quae de evictionibus proposita est, continet, quia haec omnia titulis emptionum et venditionum consentanea sunt et praedictae actiones quasi pedisequae illarum ab initio processerunt, in vetustioris quidem edicti ordinatione in loca devia et multo distantia devagantes, per nostram autem providentiam his congregatae, cum oportuerat ea

Heavenly Godhead, by always following and examining what was compiled by these men, amended and put in the appropriate form whatever was found to be doubtful and uncertain. Everything has been done, therefore, Our Lord and God Jesus Christ giving both Us and Our attendants in this enterprise the ability to complete it.

1. And indeed We have already placed the constitutions of the Emperors, arranged in twelve books, in the Code illuminated by Our name. As We afterward undertook the greatest work, We permitted the same man, *vir excelsus*, to collect and reduce in size the most learned works of antiquity, already nearly confused and destroyed. But as We investigated all the particulars, it was intimated to Us by the aforementioned *vir excelsus* that nearly two thousand books had been written and more than three million lines poured forth by the ancients, all of which it was necessary to read and examine and to excerpt from them whatever was best. This was accomplished by the heavenly radiance and grace of the Supreme Trinity according to Our instructions, which We gave the aforesaid man, *vir excelsus*, at the outset; and everything that was most useful was collected in fifty books, and all ambiguities were resolved and no discordant passage left behind. We gave these books the name Digest or Pandects, because they contain all legal questions and decisions, and they take into their fold what was compiled from every source, bringing the entire work to almost one hundred and fifty thousand lines. And We have arranged the books into seven parts, not wrongly nor without reason, but with respect for the nature and art of numbers,[272] and to make the division into parts correspond to them.

2. The first part of the whole compilation, which in Greek is called *prota* ("first things"), has been placed in four books (books 1–4). **3.** The second section has seven books, which are called "On Trials" (*de iudiciis*, books 5–11). **4.** In the third group, We have placed everything that is called "On Things" (*de rebus*), with eight books assigned to it (books 12–19).

5. The fourth place, which appears, as it were, as the center (*umbilicus*) of the whole compilation, contains eight books (books 20–27). In these are placed (first) everything that relates to real security arrangements (*hypothecae*), so that it might not stand too far apart from the action on a pledge (*actio pigneraticia*), which has been put in the books "On Things." Another book, which contains the Edict of the Aediles, the action for cancellation of a sale (*actio redhibitoria*), and the stipulation to return double the price received (*stipulatio duplae*) that is given in the event of eviction, has been inserted in the same section, because all of these subjects are related to the titles on purchases and sales, and the aforementioned actions have proceeded from the beginning virtually as their attendants. In the arrangement of the old

[272] Presumably because of the significance of the number 7 in Christian scripture.

quae de eodem paene loquuntur in confinio ponere. alius itaque liber post duo primos nobis excogitatus est de usuris et traiecticiis pecuniis et de instrumentis et testibus et probationibus nec non praesumptionibus. et memorati tres singulares libri iuxta compositionem de rebus positi sunt. post hos si qua de sponsalibus vel nuptiis vel dotibus legibus dicta sunt reposuimus, tribus librorum voluminibus ea concludentes. de tutelis autem et curationibus geminos libros conscripsimus. et memoratam ordinationem octo librorum mediam totius operis reposuimus, omnia undique tam utilissima quam pulcherrima iura continentem.

6. Quintus autem exoritur nobis digestorum articulus, in quo de testamentis et codicillis tam privatorum quam militum omne, quidquid antiquis dictum est, inveniat quis depositum: qui de testamentis appellatur. de legatis autem et fideicommissis quinque librorum numerus adgregatus est. **6a.** Cumque nihil tam peculiare fuerat, quam ut legatis quidem legis Falcidiae narratio, fideicommissis autem senatus consulti Trebelliani, singulis libris utrique eorum applicatis tota pars quinta in novem libros coadunata est. solum autem senatus consultum Trebellianum ponendum esse existimavimus: captiosas etenim et ipsis veteribus odiosas Pegasiani senatus consulti ambages et utriusque senatus consulti ad se tam supervacuas quam scrupulosas diversitates respuentes totum ius super his positum Trebelliano senatus consulto adiudicavimus. **6b.** Sed in his nihil de caducis a nobis memoratum est, ne causa, quae in rebus non prospere gestis et tristibus temporibus Romanis increbuit calamitatibus, bello coalescens civili, nostris remaneant temporibus, quae favor caelestis et pacis vigore firmavit et super omnes gentes in bellicis victoriis posuit, ne luctuosum monumentum laeta saecula inumbrare concedatur.

7. Sexta deinde pars digestorum exoritur, in quibus omnes bonorum possessiones positae sunt, quae ad ingenuos, quae ad libertinos respiciunt: ut et ius omne, quod de gradibus et adfinitatibus descendit, legitimaeque hereditates et omnis ab intestato successio et Tertullianum et Orfitianum senatus consultum, ex quibus matres et filii invicem sibi heredes existunt, in geminos libros contulimus, bonorum possessionis multitudinem in compendiosum et manifestissimum ordinem concludentes. **7a.** Post haec ea, quae de operis novi nuntiationibus damnique infecti et pro aedificiis dirutis et eorum insidiis et quae de aqua pluvia arcenda veteribus auctoribus placita sunt, nec non de publicanis et donationibus tam inter vivos quam mortis causa conficiendis

(Praetor's) Edict, indeed, they had wandered to places remote and very distant, but by Our providence they have been put into the same group, as it was only right that discussions of almost identical subjects should be placed next to one another. Another book has been devised by Us after the first two, concerning interest, maritime loans (*pecuniae maritimae*), documents, witnesses, proofs, and presumptions. And the three aforementioned books are placed next to the section "On Things." We placed after these anything that discussed laws of betrothal, marriage, and dowries, confining these subjects to the space of three books. We have compiled two books on tutelage and guardianship. And We placed the aforementioned series of eight books at the middle of the whole work, containing within it both the most advantageous and finest laws gathered from all quarters.

6. Next comes the fifth section of Our compilation (books 28–36), in which one may find everything said by the ancients concerning wills and codicils, both of private citizens and of soldiers; which section is called "On Wills." Five books in number "On Legacies and Trusts" are included in these. **6a.** Since there was nothing so closely related as an account of the Lex Falcidia on legacies, or the *SC Trebellianum* on trusts, the fifth part concludes with single books dedicated to both these subjects, which bring the sum to nine books. We have decided to cite only the *SC Trebellianum.* We reject the insidious obscurities of the *SC Pegasianum*, loathed by the ancients themselves, and the differences, as unnecessary as they are involved, between both decrees of the Senate, and We have assigned all the law concerning them to the *SC Trebellianum.* **6b.** But in all this, We have made no mention of escheats (*caduca*), lest a subject of law that proliferated during the disasters and dark times of Rome and drew strength from civil war remain in Our age, which heavenly favor has both fortified with flourishing peace and set above all nations in victory in war, so that no melancholy memorial is permitted to overshadow a joyful age.

7. Next begins the sixth part of the Digest (books 37–44), in which (first) are placed all forms of the possession of an estate (*bonorum possessio*) that concern free-born persons and freedmen. And all the law that derives from degrees of relationship and kinship by marriage, as well as statutory inheritance and every kind of intestate succession, and the *SC Tertullianum* and *SC Orfitianum*, whereby mothers and sons become heirs to one another, (all this) We have put in two books, thus confining the numerous forms of the possession of property to an abridged and eminently clear exposition. **7a.** After this, We have brought into a single book the resolutions of the ancient authors concerning protestations of new structures (*operis novi nuntiationes*) and threatened damage (*damnum infectum*), concerning collapsed buildings and their dangers, and

cauta legibus invenimus, in librum singularem deduximus. **7b.** De manumissionibus autem et de liberali causa alius liber respondit: **7c.** Quemadmodum et de adquisitione tam dominii quam possessionis et titulis qui eam inducunt multae et variae lectiones uni sunt insertae volumini: **7d.** Alio libro deputato his, qui iudicati vel in iure confessi sunt, et de bonorum detentionibus et venditionibus et ut ne quid in fraudem creditorum fiat. **7e.** Postque haec omnia interdicta glomerata sunt: et deinceps exceptiones et de temporum prolixitatibus et de obligationibus et actionibus liber iterum singularis extenditur: ut praefata sexta pars totius digestorum voluminis octo libris definiatur.

8. Septimus autem et novissimus articulus digestorum sex libris formatus est. quo de stipulationibus seu verborum obligationibus et fideiussoribus et mandatoribus, nec non novationibus et solutionibus et acceptilationibus et de praetoriis stipulationibus omne quod ius invenitur gemino volumine inscriptum est, quod in libris antiquis nec numerari possibile fuit. **8a.** Et post hoc duo terribiles libri positi sunt pro delictis privatis et extraordinariis nec non publicis criminibus, qui omnem continent severitatem poenarumque atrocitatem. quibus permixta sunt et ea quae de audacibus hominibus cauta sunt, qui se celare conantur et contumaces existunt: et de poenis, quae condemnatis infliguntur vel conceduntur, nec non de eorum substantiis. **8b.** Liber autem singularis pro appellationibus nobis excogitatus est contra sententias tam civiles quam criminales causas finientes. **8c.** Cetera autem omnia, quae ad municipales vel de decurionibus et muneribus vel publicis operibus vel nundinis et pollicitationibus ac diversis cognitionibus et censibus vel significatione verborum veteribus inventa sunt quaeque regulariter definita, in se recepit quinquagesimus, totius consummationis perfectus.

9. Quae omnia confecta sunt per virum excelsum nec non prudentissimum magistrum ex quaestore et ex consule TRIBONIANUM, qui similiter eloquentiae et legitimae scientiae artibus decoratus et in ipsis rerum experimentis emicuit nihilque maius nec carius nostris umquam iussionibus duxit: nec non per alios viros magnificos et studiosissimos perfecta sunt, id est CONSTANTINUM virum illustrem comitem sacrarum largitionum et magistrum scrinii libellorum sacrarumque cognitionum, qui semper nobis ex bona opinione et gloria sese commendavit: nec non THEOPHILUM virum illustrem magistrum iurisque peritum in hac splendidissima civitate laudabiliter optimam legum gubernationem extendentem: et DOROTHEUM virum illustrem et facundissimum quaestorium, quem in Berytiensium splendidissima

concerning the course of rainwater, as well as the provisions of the laws that We found concerning publicans and gifts both among the living and in anticipation of death. **7b.** Manumissions and disputes concerning free status (*liberalis causa*) are the subjects of another book. **7c.** In the same manner, also the many various passages on the acquisition of ownership and possession and the grounds that bring these about have been placed in a single book. **7d.** Another book has been dedicated to those against whom judgment has been rendered or who have confessed at law, as well as on the subject of the detention and sale of the property (of insolvents) and to prevent fraud against creditors. **7e.** After this, all interdicts are lumped together; then come defenses, and again a single book encompasses lapses of time, obligations and actions. Thus the aforementioned sixth part of the whole Digest is limited to eight books.

8. The seventh and last section of the Digest consists of six books (books 45–50). All the law that is found concerning stipulations or verbal obligations, sureties and mandators, as well as novations, payments of debt, formal releases, and Praetorian stipulations, has been set down in two books, which in the ancient books it was impossible even to count. **8a.** And two terrifying books are placed after this, concerning private and extraordinary delicts and public crimes, which contain all the severity and harshness of the punishments. Mixed in with these are the provisions concerning reckless men who attempt to hide themselves and are found in contempt, and concerning the punishment inflicted on condemned persons or remitted, and concerning their property. **8b.** We have devised a single book on appeals against rulings made both in civil and in criminal cases. **8c.** Everything else that has been devised and regulated by the ancients on municipal authorities or about decurions and liturgies or public works or markets and promises made to municipalities (*pollicitationes*) and various trials, property assessments, and the meaning of words has been included in the fiftieth book, which thus completes the entire compilation.

9. All this has been completed by the outstanding (*excelsus*) and most learned Master (of Offices), Ex-Quaestor, and Ex-Consul, Tribonian, who is adorned alike by the arts of eloquence and of legal science, who has attained eminence in the trials of affairs, and who has never considered anything more important or dearer to himself than Our commands; and this task has been executed also by other magnificent and most scholarly men, that is to say: Constantine, *vir illustris*, Count of the Imperial Finances and Master of the Bureau of Petitions and of the Sacred Courts, whose good repute and distinction has always commended him to Us; and Theophilus, *vir illustris*,

civitate leges discipulis tradentem propter eius optimam opinionem et gloriam ad nos deduximus participemque huius operis fecimus: sed et ANATOLIUM virum illustrem magistrum, qui et ipse apud Berytienses iuris interpres constitutus ad hoc opus adlectus est, vir ab antiqua stirpe legitima procedens, cum et pater eius Leontius et avus Eudoxius post Patricium inclutae recordationis quaestorium et antecessorem et Leontium virum gloriosissimum praefectorium et consularem atque patricium filium eius optimam sui memoriam in legibus reliquerunt: nec non CRATINUM virum illustrem et comitem sacrarum largitionum et optimum antecessorem huius almae urbis constitutum: qui omnes ad praedictum opus electi sunt una cum STEPHANO, MENA, PROSDOCIO, EUTOLMIO, TIMOTHEO, LEONIDE, LEONTIO, PLATONE, IACOBO, CONSTANTINO, IOHANNE, viris prudentissimis, qui patroni quidem sunt causarum apud maximam sedem praefecturae, quae orientalibus praetoriis praesidet, omne[xxiii] autem suae virtutis testimonium undique accipientes et a nobis ad tanti operis consummationem electi sunt. et cum omnes in unum convenerunt gubernatione TRIBONIANI viri excelsi, ut tantum opus nobis auctoribus possint conficere, deo propitio in quinquaginta libros opus consummatum est.

10. Tanta autem nobis antiquitati habita est reverentia, ut nomina prudentium taciturnitati tradere nullo patiamur modo: sed unusquisque eorum, qui auctor legis fuit, nostris digestis inscriptus est: hoc tantummodo a nobis effecto, ut, si quid in legibus eorum vel supervacuum vel imperfectum aut minus idoneum visum est, vel adiectionem vel deminutionem necessariam accipiat et rectissimis tradatur regulis. et ex multis similibus vel contrariis quod rectius habere apparebat, hoc pro aliis omnibus positum est unaque omnibus auctoritate indulta, ut quidquid ibi scriptum est, hoc nostrum appareat et ex nostra voluntate compositum: nemine audente comparare ea quae antiquitas habebat his quae nostra auctoritas introduxit, quia multa et maxima sunt, quae propter utilitatem rerum transformata sunt. adeo ut et si principalis constitutio fuerat in veteribus libris relata, neque ei pepercimus, sed et hanc corrigendam esse putavimus et in melius restaurandam. nominibus etenim veteribus relictis, quidquid legum veritati decorum et necessarium fuerat,[xxiv] hoc nostris emendationibus servavimus. et propter hanc causam et si quid inter eos dubitabatur, hoc iam in tutissimam pervenit quietem, nullo titubante relicto.

[xxiii] omnes
[xxiv] fuerit

teacher and jurist, who commendably propagates the excellent governance of the laws in This Most Splendid City; and DOROTHEUS, *vir illustris* and most eloquent quaestorian (senator), whom, when he was engaged in teaching the laws to his students in the most splendid city of Berytus, We brought to Us and made to share in this work on account of his outstanding reputation and fame; and also ANATOLIUS, *vir illustris*, teacher, who also being an interpreter of the law in Berytus was summoned for this task, a man of ancient stock, for both his father Leontius and his grandfather Eudoxius, after Patricius of illustrious memory, of quaestorian rank and a professor and Leontius his son, *vir gloriosissimus*, of prefectural and consular rank and a patrician, left behind an excellent monument to themselves in the laws; and CRATINUS, *vir illustris*, Count of the Imperial Finances and outstanding professor of This Generous City. All these were chosen for the above-mentioned work together with STEPHANUS, MENAS, PROSDOCIUS, EUTOLMIUS, TIMOTHEUS, LEONIDES, LEONTIUS, PLATO, JACOBUS, CONSTANTINE, JOHN, most learned men, who are advocates at the supreme tribunal of the prefecture that presides over the governors of the East; but all have gathered testimony of their excellence from all quarters and were chosen by Us to carry out this work so great. And when all had come together under the direction of TRIBONIAN, *vir excelsus*, to execute this great work at Our initiative, the work was, by the grace of God, completed in fifty books.

10. So great is Our reverence for antiquity, moreover, that We by no means suffer the names of the jurists to be consigned to oblivion, but each one of those who authored a law has been recorded in Our Digest. We ensured only that if something in their laws seemed either superfluous, imperfect, or unsuitable, it should be supplemented or abridged as necessary and brought into harmony with the most correct rules. And of many redundant or contradictory passages, whatever appeared most correct was included in preference to all the others; and the same authority has been granted all passages, so that whatever is written there should be considered Ours and composed at Our desire. No one shall dare to compare what former times had with what Our authority has introduced, because many things of the greatest importance have been altered by reason of practical utility. Indeed, even if an imperial constitution had been cited in the old books, We did not spare it but deemed this too in need of correction and updating for the better. Leaving intact the old names, We exempted from Our emendations whatsoever was appropriate and indispensable for the authenticity of the laws. And for this reason, whatever was uncertain among the ancients has now attained the most assured calm, and no source of indecision has been left.

11. Sed cum prospeximus, quod ad portandam tantae sapientiae molem non sunt idonei homines rudes et qui in primis legum vestibulis stantes intrare ad arcana eorum properant, et aliam mediocrem eruditionem praeparandam esse censuimus, ut sub ea colorati et quasi primitiis omnium imbuti possint ad penetralia eorum intrare et formam legum pulcherrimam non coniventibus oculis accipere. et ideo TRIBONIANO viro excelso, qui ad totius operis gubernationem electus est, nec non THEOPHILO et DOROTHEO viris illustribus et facundissimis antecessoribus accersitis mandavimus, quatenus libris, quos veteres composuerunt, qui prima legum argumenta continebant et institutiones vocabantur, separatim collectis, quidquid ex his utile et aptissimum et undique sit elimatum et rebus, quae in praesenti aevo in usu vertuntur, consentaneum invenitur, hoc et capere studeant et quattuor libris reponere et totius eruditionis prima fundamenta atque elementa ponere, quibus iuvenes suffulti possint graviora et perfectiora legum scita sustentare. admonuimus autem eos, ut memores etiam nostrarum fiant constitutionum, quas pro emendatione iuris promulgavimus, et in confectione institutionum etiam eadem emendatione ponere non morentur: ut sit manifestum et quid antea vacillabat et quid postea in stabilitatem redactum est. quod opus ab his perfectum ut nobis oblatum et relectum est, et prono suscepimus animo et nostris sensibus non indignum esse iudicavimus et praedictos libros constitutionum vicem habere iussimus: quod in oratione nostra, quam eisdem libris praeposuimus, apertius declaratur.

12. Omni igitur Romani iuris dispositione composita et in tribus voluminibus, id est institutionum et digestorum seu pandectarum nec non constitutionum, perfecta et in tribus annis consummata, quae ut primum separari coepit, neque in totum decennium compleri sperabatur: omnipotenti deo et hanc operam ad hominum sustentationem piis obtulimus animis uberesque gratias maximae deitati reddidimus, quae nobis praestitit et bella feliciter agere et honesta pace perpotiri et non tantum nostro, sed etiam omni aevo tam instanti quam posteriori leges optimas ponere.

Omnibus itaque hominibus eandem sanctionem manifestam facere necessarium esse perspeximus, ut sit eis cognitum, quanta confusione et infinitate absoluti in quantam moderationem et legitimam veritatem pervenerunt: legesque in posterum habeant tam directas quam compendiosas omnibusque in promptu positas et ad possidendi libros earum facilitatem idoneas: ut non mole divitiarum expensa possint homines supervacuae legum multitudinis adipisci volumina, sed

11. But when We observed that the uneducated and those standing at the vestibule of the laws, hastening to enter its inner chambers (*arcana*), are unable to sustain the mass of such great wisdom, We deemed that a different, intermediate source of instruction should be prepared, so that instilled and imbued by it, as it were, with the first fruits of all the law, they might be able to enter its innermost recesses and behold the exquisite beauty of the law with eyes wide open. Therefore, We summoned TRIBONIAN, *vir excelsus*, who was chosen to direct the entire work, and THEOPHILUS and DOROTHEUS, *viri illustres* and most eloquent professors, and charged them to gather singly the books composed by the ancients that contained the first principles of the laws and were called Institutes, and to take whatever in them was useful, most apt, and thoroughly polished, and what corresponded to the principles that are in use in the present age; to put that in four books, and to lay the first foundations and elements of all instruction, so that the young, supported thereby, might endure the weightier and more refined rules of the law. We instructed them to bear in mind also Our constitutions, which We have promulgated to amend the law, and in compiling the Institutes not to hesitate to cite passages using the same method of emendation, so that it will be obvious what previously wavered and what afterward has been made stable. This, the work completed by these men, as it was delivered to Us and reviewed, We received readily and judged it to be not unworthy of Our intentions, and We ordered that the aforementioned books have the force of constitutions. This is expressed more plainly in Our address, which We placed at the head of those books.

12. Thus the entire assemblage of Roman law has been compiled, completed in three volumes, that is, the Institutes, Digest or Pandects, and Constitutions (the first Code), and finished in three years, a work which, when the materials first began to be divided, was not expected to be finished in ten years. We have piously offered this work to Almighty God for the preservation of mankind, and We have given ample thanks to the Supreme Deity, who has enabled us to wage wars successfully, to win an honorable peace, and to lay down the best laws not only for Our own but for every age, both present and future.

We thus perceived that it was necessary to make the same legislation known to all men, so that they might know from what state of confusion and inexhaustible material they have been released and at what state of judiciousness and legal accuracy they have arrived. They shall hereafter have both direct and concise laws ready at hand for everyone and easily acquired in books. Thus men need not acquire volumes containing a multitude of superfluous laws at an enormous expense of riches, but the purchase of the laws shall be a simple

vilissima pecunia facilis eorum comparatio pateat tam ditioribus quam tenuioribus, minimo pretio magna prudentia reparanda.

13. Si quid autem in tanta legum compositione, quae ab immenso librorum numero collecta est, simile forsitan raro inveniatur, nemo hoc vituperandum existimet, sed primum quidem imbecillitati humanae, quae naturaliter inest, hoc inscribat, quia omnium habere memoriam et penitus in nullo peccare divinitatis magis quam mortalitatis est: quod et a maioribus dictum est. deinde sciat, quod similitudo in quibusdam et his brevissimis adsumpta non inutilis est, et nec citra nostrum propositum hoc subsecutum: aut enim ita lex necessaria erat, ut diversis titulis propter rerum cognationem applicari eam oporteat, aut, cum fuerat aliis diversis permixta, impossibile erat eam per partes detrahi, ne totum confundatur. et in his partibus, in quibus perfectissimae visiones expositae veterum fuerant, quod particulatim in eas fuerat sparsum, hoc dividere ac separare penitus erat incivile, ne tam sensus quam aures legentium ex hoc perturbentur. **14.** Similique modo si quid principalibus constitutionibus cautum est, hoc in digestorum volumine poni nullo concessimus modo, quasi constitutionum recitatione sufficiente: nisi et hoc raro ex isdem causis, quibus similitudo adsumpta est.

15. Contrarium autem aliquid in hoc codice positum nullum sibi locum vindicabit nec invenitur, si quis subtili animo diversitatis rationes excutiet: sed est aliquid novum inventum vel occulte positum, quod dissonantiae querellam dissolvit et aliam naturam inducit discordiae fines effugientem. **16.** Sed et si quid forsitan praetermissum est, quod in tantis milibus quasi in profundo positum latitabat, et, cum idoneum fuerat poni, obscuritate involutum necessario derelictum est: quis hoc apprehendere[xxv] recto animo possit? primo quidem propter ingenii mortalis exiguitatem: deinde propter ipsius rei vitium, quod multis inutilibus permixtum nullam sui ad eruendum praebuit copiam: deinde quod multo utilius est pauca idonea effugere, quam multis inutilibus homines praegravari.

17. Mirabile autem aliquid ex his libris emersit, quod multitudo antiqua praesente brevitate paucior invenitur. homines etenim, qui antea lites agebant, licet multae leges fuerant positae, tamen ex paucis lites perferebant vel propter inopiam librorum, quos comparare eis impossibile

[xxv] reprehendere

affair for the smallest amount of money, for both rich and poor, and great legal expertise shall had at a trifling price.

13. If, though, some repetition is perhaps occasionally found in so great a compilation of laws, which has been collected from an immense number of books, no one should think this deserving of criticism, but should rather ascribe it to human frailty, which is part of our nature, because only a divine rather than a mortal nature could remember everything and err in nothing, as indeed our ancestors also said. Next, one should know that the repetition included in some of these very brief excerpts is not without advantage, but has occurred according to Our design: either a law was so important that it had to be inserted in different titles, because the subjects were related; or, although it had already been introduced in other, different titles, it was impossible to remove it from some passages without confounding everything. And in those passages in which the most perfect views of the ancients were expressed, it would have been altogether uncivil to cut out and remove what had been scattered progressively throughout, disturbing thereby both the understanding and the ears of the readers. **14.** In like manner, where any provision was made by imperial constitutions, We have by no means allowed it to be included in the Digest, since a reading of the constitutions (i.e., the Code) suffices, with exception made – and that seldom – for the same reasons for which repetition is admitted.

15. Anything contradictory included in this book will claim no place in it or even be found, if one carefully examines the reasons for the discrepancy: something new has been devised or tacitly inserted that refutes the complaint of contradiction and introduces a new aspect that goes beyond the limits of the discrepancy. **16.** But even if something has been overlooked, which lurks in the depths among so many thousands (of books) and, although it was suitable to include, was inevitably left covered in darkness – who in his right mind could fault this? First of all, on account of the weakness of the mortal mind; second, on account of the difficulty of the thing itself: inserted among many unusable passages, it presented no means of extracting it. Moreover, it is much better that a few suitable passages escape than that men be encumbered with many unusable ones.

17. Something remarkable has emerged from these books: the multitude of ancient books seems smaller than the present brevity (of the Digest). Although many laws had been laid down, men who litigated in the past conducted their suits on the basis of few, whether because of the scarcity of books, which it was

erat, vel propter ipsam inscientiam, et voluntate iudicum magis quam legitima auctoritate lites dirimebantur. in praesenti autem consummatione nostrorum digestorum e tantis leges collectae sunt voluminibus, quorum et nomina antiquiores homines non dicimus nesciebant, sed nec umquam audiebant. quae omnia collecta sunt substantia amplissima congregata, ut egena quidem antiqua multitudo inveniatur, opulentissima autem brevitas nostra efficiatur. antiquae autem sapientiae librorum copiam maxime Tribonianus vir excellentissimus praebuit, in quibus multi fuerant et ipsis eruditissimis hominibus incogniti, quibus omnibus perlectis, quidquid ex his pulcherrimum erat, hoc semotum in optimam nostram compositionem pervenit. sed huius operis conditores non solum ea volumina perlegerunt, ex quibus leges positae sunt, sed etiam alia multa, quae, nihil vel utile vel novum in eis invenientes, quod exceptum nostris digestis applicarent, optimo animo respuerunt.

18. Sed quia divinae quidem res perfectissimae sunt, humani vero iuris condicio semper in infinitum decurrit et nihil est in ea, quod stare perpetuo possit (multas etenim formas edere natura novas deproperat), non desperamus quaedam postea emergi negotia, quae adhuc legum laqueis non sunt innodata. si quid igitur tale contigerit, Augustum imploretur remedium, quia ideo imperialem fortunam rebus humanis deus praeposuit, ut possit omnia quae noviter contingunt et emendare et componere et modis et regulis competentibus tradere. et hoc non primum a nobis dictum est, sed ab antiqua descendit prosapia: cum et ipse Iulianus legum et edicti perpetui subtilissimus conditor in suis libris hoc rettulit, ut, si quid imperfectum inveniatur, ab imperiali sanctione hoc repleatur. et non ipse solus, sed et divus Hadrianus in compositione edicti et senatus consulto, quod eam secutum est, hoc apertissime definivit, ut, si quid in edicto positum non inveniatur, hoc ad eius regulas eiusque coniecturas et imitationes possit nova instruere auctoritas.

19. Haec igitur omnia scientes, patres conscripti et omnes orbis terrarum homines, gratias quidem amplissimas agite summae divinitati, quae vestris temporibus tam saluberrimum opus servavit: quo enim antiquitas digna divino non est visa iudicio, hoc vestris temporibus indultum est. hasce itaque leges et adorate et observate omnibus antiquioribus quiescentibus: nemoque vestrum audeat vel comparare eas prioribus vel, si quid dissonans in utroque est, requirere, quia omne quod hic positum est hoc unicum et solum observari censemus. nec in iudicio nec in alio certamine, ubi leges necessariae sunt, ex aliis libris, nisi ab isdem institutionibus nostrisque digestis et constitutionibus a

impossible for them to buy, or because of their own ignorance; and trials were resolved rather at the discretion of the judges than by the authority of the law. In the present compilation of Our Digest, however, the laws have been collected from so many volumes that the ancients – We will not say they did not know their names, but had never even heard of them. By collecting all these volumes, such extensive material has been assembled that the former abundance appears poor indeed, but Our compendium has been made most rich. Especially Tribonian, *vir excellentissimus*, provided access to books of ancient wisdom, in which were many authors unknown to the most erudite men themselves. After reading all these, the finest passages in them were excerpted and entered Our excellent compilation. But the authors of this work read not only the volumes in which the laws were recorded but also many others in which they found nothing useful or new that they might excerpt and insert in Our Digest, and most reasonably rejected.

18. Because things divine are most perfect but the condition of human law is to run on indefinitely, and there is nothing in it that can last forever – for nature hastens to produce many new forms – We have no doubt that cases shall emerge that are not enmeshed in the bonds of the present laws. If, then, some such thing should occur, let the august aid (of the Emperor) be sought, because God set the fortune of the Emperor over human affairs so that he might both remedy, resolve, and regulate by appropriate measures and rules all new controversies that arise. We are not the first to state this, but it descends from ancient stock: Julian himself, that most acute author of laws and of the Perpetual Edict, also relates in his books that, if anything should be found defective, it should be supplemented by imperial decree. Indeed not only he, but also the divine Hadrian, in the compilation of the Edict and in the decree of the senate that followed, most manifestly laid down that if anything was not found included in the edict, new authority (of later emperors) could establish it according to its rules and inferences and analogies based thereon.

19. Knowing all these things, therefore, conscript fathers and all people all over the world, give fullest thanks to the Supreme Deity, who reserved so beneficial a work for your times: whereas antiquity was not deemed worthy of it by divine judgment, it has been bestowed on your times. Therefore, both revere and keep these laws, and let all older laws lapse. Let no one among you dare either to compare them to earlier laws or to investigate whether there is any discrepancy between them, because We deem that all that has been included here should be observed alone and exclusively. And let no one, in a trial or in another dispute where laws are required, attempt either to recite or produce anything from any books other than the aforementioned Institutes and Our Digest and the Constitutions compiled or promulgated by Us, unless the

nobis compositis vel promulgatis aliquid vel recitare vel ostendere conetur, nisi temerator velit falsitatis crimini subiectus una cum iudice, qui ei audientiam accommodabit, poenis gravissimis laborare.

20. Ne autem incognitum vobis fiat, ex quibus veterum libris haec consummatio ordinata est, iussimus et hoc in primordiis digestorum nostrorum inscribi, ut manifestissimum sit, ex quibus legis latoribus quibusque libris eorum et quot milibus hoc iustitiae Romanae templum aedificatum est. **20a.** Legis latores autem vel commentatores eos elegimus, qui digni tanto opere fuerant et quos et anteriores piissimi principes admittere non sunt indignati, omnibus uno dignitatis apice impertito nec sibi quodam aliquam praerogativam vindicante. cum enim constitutionum vicem et has leges obtinere censuimus quasi ex nobis promulgatas, quid amplius aut minus in quibusdam esse intellegatur, cum una dignitas, una potestas omnibus est indulta?

21. Hoc autem, quod et ab initio nobis visum est, cum hoc opus fieri deo adnuente mandabamus, tempestivum nobis videtur et in praesenti sancire, ut nemo neque eorum, qui in praesenti iuris peritiam habent, nec qui postea fuerint audeat commentarios isdem legibus adnectere: nisi tantum si velit eas in Graecam vocem transformare sub eodem ordine eaque consequentia, sub qua voces Romanae positae sunt (hoc quod Graeci κατὰ πόδα dicunt), et si qui forsitan per titulorum subtilitatem adnotare maluerint et ea quae παράτιτλα nuncupantur componere. alias autem legum interpretationes, immo magis perversiones eos iactare non concedimus, ne verbositas eorum aliquid legibus nostris adferat ex confusione dedecus. quod et in antiquis edicti perpetui commentatoribus factum est, qui opus moderate confectum huc atque illuc in diversas sententias producentes in infinitum detraxerunt, ut paene omnem Romanam sanctionem esse confusam. quos si passi non sumus, quemadmodum posteritatis admittatur vana discordia? si quid autem tale facere ausi fuerint, ipsi quidem falsitatis rei constituantur, volumina autem eorum omnimodo corrumpentur. si quid vero, ut supra dictum est, ambiguum fuerit visum, hoc ad imperiale culmen per iudices referatur et ex auctoritate Augusta manifestetur, cui soli concessum est leges et condere et interpretari.

22. Eandem autem poenam falsitatis constituimus et adversus eos, qui in posterum leges nostras per siglorum obscuritates ausi fuerint conscribere. omnia enim, id est et nomina prudentium et titulos et librorum numeros, per consequentias litterarum volumus, non per sigla manifestari, ita ut, qui talem librum sibi paraverit, in quo sigla posita sunt in qualemcumque locum libri vel voluminis, sciat inutilis

violator, charged with the crime of forgery (*falsitas*) together with the judge who lets him be heard, wishes to suffer the harshest punishment.

20. That it not be unknown to you from which books this compilation has been prepared, We have ordered that this too be listed at the beginning of Our Digest, so that it may be absolutely clear from which authors of the laws and from which of their books, and from how many thousands, this temple to Roman justice has been built. **20a.** We chose those authors of the law or commentators who were worthy of so great a work, and those whom also the most pious earlier emperors did not disdain to admit. One and the same degree of rank has been conferred on all of them, and none of them claims any precedence for himself. For since We have ruled that these laws should have the force of constitutions, as if promulgated by Us, how might anything more or less be thought to reside in some of them, when the same rank, the same force has been conferred on all?

21. This too, upon which We were resolved even from the beginning, when with blessing of God We commissioned the execution of this work, seems to Us timely to decree now: no one, neither those who at present have knowledge of the law nor those who come afterward, shall dare to attach any commentary to the aforesaid laws, unless he wishes to translate them into the Greek tongue in the same order and sequence in which the Roman words stand – which the Greeks call *kata poda* ("following on the heels") – or if some prefer to make annotations to clarify the titles and compose what are called *paratitla* (introductory notes). We forbid them to add other interpretations, or rather perversions, of the laws, lest their prolixity introduce disgraceful confusion to Our laws. Such happened with the ancient commentators on the Perpetual Edict, who pulled a work of moderate size this way and that with different opinions and extended it to an interminable length, so that almost all Roman legislation was thrown into confusion. If We refuse to suffer them, how then should the vain controversies of posterity be allowed? But if they dare to do such a thing, they shall be charged with forgery and their works will be utterly destroyed. If, however, as stated above, something should appear ambiguous, this shall be reported to the Imperial Majesty by the judges and clarified by the august authority (of the Emperor), to whom alone it is permitted to establish and interpret laws.

22. We fix the same penalty of forgery for those who hereafter should dare to write Our laws in obscure symbols. For We desire that everything, that is, the names of the jurists, the titles, and the book numbers, be indicated by series of letters, not symbols. Thus, he who buys such a book in which symbols appear in any passage of the book or volume shall know that he is the owner of an unusable book, for We do not grant permission to read in court anything from such a book that is infected with symbols in any part. As for the scribe who

se esse codicis dominum: neque enim licentiam aperimus ex tali codice in iudicium aliquid recitare, qui in quacumque sua parte siglorum habet malitiam. ipse autem librarius, qui eas inscribere ausus fuerit, non solum criminali poena secundum quod dictum est plectetur, sed etiam libri aestimationem in duplum domino reddat, si et ipse dominus ignorans talem librum vel comparaverit vel confici curaverit. quod et antea a nobis dispositum est in constitutione, quam ad legum professores dimisimus.

23. Leges autem nostras, quae in his codicibus, id est institutionum seu elementorum et digestorum vel pandectarum posuimus, suum obtinere robur ex tertio nostro felicissimo sancimus consulatu, praesentis duodecimae indictionis tertio kalendas Ianuarias, in omne aevum valituras et una cum nostris constitutionibus pollentes et suum vigorem in iudiciis ostendentes in omnibus causis, sive quae postea emerserint sive in iudiciis adhuc pendent nec eas iudicialis vel amicalis forma compescuit. quae enim iam vel iudiciali sententia finita sunt vel amicali pacto sopita, haec resuscitari nullo volumus modo.

Bene autem properavimus in tertium nostrum consulatum et has leges edere, quia maximi dei et domini nostri Ihesu Christi auxilium felicissimum eum nostrae rei publicae donavit, cum in hunc et bella Parthica abolita sunt et quieti perpetuae tradita, et tertia pars mundi nobis adcrevit (post Europam enim et Asiam et tota Libya nostro imperio adiuncta est) et tanto operi legum caput impositum est, omnia caelestia dona nostro tertio consulatui indulta.

24. Itaque omnes iudices nostri pro sua iurisdictione easdem leges suscipiant et tam in suis iudiciis quam in hac regia urbe habeant et proponant, et praecipue vir excelsus huius almae urbis praefectus. curae autem erit tribus excelsis praefectis praetoriis tam orientalibus quam Illyricis nec non Libycis per suas auctoritates omnibus, qui suae iurisdictioni suppositi sunt, eas manifestare.

Data septimo decimo kalendas Ianuarias Constantinopoli dn. Iustiniano pp. A. III consule.

XVIII De Iuris et Facti Ignorantia

[1] *Imp. Antoninus A. Maximo militi.* Quamvis, cum causam tuam ageres, ignorantia iuris propter simplicitatem armatae militiae

dares to write such symbols, he shall not only be stricken with the penalty already stated but he must restore twice the value of the book to the owner, if the owner unwittingly either bought or had such a book made. This has already been established by Us in the constitution that We sent to the professors of the laws.

23. We decree that Our laws, which We have set down in these books, namely the Institutes or Elements and the Digest or Pandects, shall be in force from Our third most fortunate consulship, on the thirtieth day of December in the present twelfth indiction,[273] shall remain valid for all time, and shall stand together with Our constitutions (the Code) and show their might in the courts in all cases, whether any later arise or are still pending and neither a judicial nor amicable[274] ruling has quelled them. We by no means desire that cases that have either already been terminated by judicial ruling or laid to rest by an amicable settlement be revived.

Rightly have We hastened to promulgate these laws for Our third consulship, for the aid of Almighty God and of Our Lord Jesus Christ has made it most fortunate for Our State: during it, both the Parthian wars have been terminated and consigned to eternal peace, one-third of the word has come under Our sway – for after Europe and Asia, all Libya has been annexed to Our Empire – and so great a work of laws has been crowned with success: all the gifts of Heaven have been granted to Our third consulship.

24. Therefore, all Our judges shall receive these laws in their respective jurisdictions and keep and apply them both in their courts and in This Imperial City, especially the Prefect, *vir excelsus*, of This Generous City. It shall be the duty of the three Praetorian Prefects, *viri excelsi*, both of the East, of Illyricum, and of Libya, by their authority, to make them known to all who are subject to their jurisdiction.

Given December 16, at Constantinople, in the consulship of Lord Justinian, Ever Augustus, for the third time (533).

Eighteenth Title Ignorance of Law and of Fact[275]

[1][276] *Emperor* Antoninus *Augustus to Maximus, a soldier.* Although, when you pled your case, you neglected to produce pertinent excuses on account of

[273] December 30, 533; the indiction was a tax cycle of 15 years used, as here, in official dates.
[274] That is, a settlement by arbitration or mediation.
[275] See D. 22.6.
[276] = C'. 1.16.1. The fragment of the first Code gives Maximus the additional name Julius (Corcoran).

adlegationes competentes omiseris, tamen si nondum satisfecisti, permitto tibi, si coeperis ex sententia conveniri, defensionibus tuis uti.

D. VII k. Mai. duobus Aspris conss.

[2] *Idem A. Sextio Iuvenali.* Cum ignorantia iuris excusari facile non possis, si maior annis hereditati matris tuae renuntiasti, sera prece subveniri tibi desideras.

PP. XV k. Nov. Arriano et Papo conss.

[3] *Imp. Philippus A. Marcellae.* Si emancipata a patre intra annum bonorum possessionem petere cessasti, praetendere iuris ignorantiam nullis rationibus potes.

PP. XVI k. Iul. Peregrino et Aemiliano conss.

[4] *Impp. Diocletianus et Maximianus AA. Iulianae.* Si post divisionem factam testamenti vitium in lucem emerserit, ex his, quae per ignorantiam confecta sunt, praeiudicium tibi non comparabitur. ostende igitur apud correctorem virum clarissimum amicum nostrum testamentum vel fide veri deficere vel iuris ratione stare non posse, ut infirmata scriptura, quae testamenti vice prolata est, solidam successionem obtineas.

D. VIII id. Iul. Diocletiano IIII et Maximiano III AA. conss.

[5] *Idem AA. et Constantius et Maximianus nobilissimi CC. Martiali.* Cum falsa demonstratione mutari substantia veritatis minime possit, respondendo id quod paternum erat ex maternis esse bonis nihil egisti.

D. prid. k. Ian. Diocletiano V et Maximiano IIII AA. conss.

[6] *Idem AA. et CC. Tauro et Pollioni.* Si non transactionis causa, sed indebitam errore facti olei materiam vos Archantico stipulanti dare spopondisse rector animadverterit provinciae, reddito quod debetis residui liberationem condicentes audiet.

D. V k. Mai. CC. conss.

the artlessness of armed service, nevertheless, as long as you have not yet satisfied (the judgment), I permit you to make use of your defenses if you should be sued upon the judgment.

Given April 25, in the consulship of the two Aspri (212).

[2][277] *The same Augustus to Sextius Juvenalis.* Since you cannot readily be excused by reason of ignorance of law, if when of age you renounced the inheritance of your mother, your petition for aid comes too late.

Posted October 18, in the consulship of Arrianus and Papus (243).

[3][278] *Emperor PHILIP Augustus to Marcella.* If you had been emancipated by your father yet failed to seek possession of the property (of the deceased) within a year, you can in no way allege ignorance of law.

Posted June 16, in the consulship of Peregrinus and Aemilianus (244).

[4] *Emperors DIOCLETIAN and MAXIMIAN Augusti to Juliana.* If a defect in the will comes to light after the property has been divided, you will not incur prejudice by what has been done in ignorance (of this fact). Therefore, demonstrate before the *vir clarissimus* governor (*corrector*), Our friend, that the testament either departs from the truth or cannot stand on legal grounds; once the document produced in place of a will has been invalidated, you may obtain the entire inheritance.

Given July 8, in the consulship of Diocletian, for the fourth time, and Maximian, for the third time, Augusti (290).

[5][279] *The same Augusti and the Most Noble Caesars CONSTANTIUS and MAXIMIAN to Martialis.* Since the substance of truth cannot be changed by a false allegation, you have achieved nothing by replying that the property, which was (in fact) property of your father, was from your mother.

Given December 31, in the consulship of Diocletian, for the fifth time, and Maximian, for the fourth time, Augusti (293).

[6] *The same Augusti and Caesars to Taurus and Pollio.* If the provincial governor determines that you promised Archanticus by stipulation an amount of oil not due him, (and you did this) not by reason of an agreement but through error of fact, then once you have restored what you owe, he will hear your claim for release from the remainder.

Given April 27, in the consulship of the Caesars (294).

[277] = C¹. 1.16.2. The issuer was actually Gordian, as is clear from the date. The fragment of the first Code confirms the name Sextius Juvenalis; the misattribution to Caracalla (*idem Augustus*) is already present (Corcoran).

[278] Perhaps to be combined with 3.44.8.

[279] Combine with C. 2.3.20 (which bears the subscription "Posted January 1"). This constitution in the first Code (C¹. 1.16.5) presents the usual, short inscription *Idem AA. et CC Martiali* (Corcoran).

[7] *Idem AA. et CC. Zoe.* Error facti necdum negotio finito nemini nocet: nam causa decisa velamento tali non instauratur.

D. VI non. Iul. CC. conss.

[8] *Idem AA. et CC. Dionysiae.* Cum testamentum nullo iure constiterit, ex eius, quae ab intestato successit, professione sola velut ex testamento liberos per errorem profitentis orcini vel proprii liberti, si non ipsius accessit iudicium, cum errantis voluntas nulla sit, effici non potuerint.

D. V k. Sept. CC. conss.

[9] *Idem AA. et CC. Gaio et Anthemio.* Non idcirco minus, quod a vobis velut a liberis debitam accepisse pecuniam Samus dicitur, cum nullus sit errantis consensus, movere status quaestionem prohibentur eius heredes.

D. VI id. Dec. CC. conss.

[10] *Idem AA. et CC. Amphiae.* Cum quis ius ignorans indebitam pecuniam persolverit, cessat repetitio. per ignorantiam enim facti tantum repetitionem indebiti soluti competere tibi notum est.

D. V k. Ian. CC. conss.

[11] *Imp. Constantinus A. Valeriano vicario.* Quamvis in lucro nec feminis ius ignorantibus subveniri soleat, tamen contra aetatem adhuc imperfectam locum hoc non habere retro principum statuta declarant.

D. IIII k. Mai. Gallicano et Symmacho conss.

[12] *Impp. Valentinianus et Theodosius AA. Flaviano pp. Illyrici et Italiae.* Constitutiones principum nec ignorare quemquam nec dissimulare permittimus.

D. VI k. Iun. Vincentiae Tatiano et Symmacho conss.

[13] *Impp. Leo et Anthemius AA. Erythrio pp.* Ne passim liceat mulieribus omnes suos contractus retractare in his, quae praetermiserint vel ignoraverint, statuimus, si per ignorantiam iuris damnum aliquod circa

[7] *The same Augusti and Caesars to Zoe.* If a trial has not been concluded, error of fact harms no one; for only a case already decided may not be reopened on such a pretense.

Given July 2, in the consulship of the Caesars (294).

[8] *The same Augusti and Caesars to Dionysia.* Since the (testator's) will was invalid by law, then by the mere declaration of the woman who succeeded by intestacy, declaring (the slaves) free as if by the will, they cannot have been made freedmen of the deceased or her own,[280] unless by her own informed decision, since the intentions of one in error are void.

Given August 28, in the consulship of the Caesars (294).

[9] *The same Augusti and Caesars to Gaius and Anthemius.* Although Samus is said to have received money owing from you as if you were free, his heirs are nonetheless permitted to raise the question of your status, because the consent of one in error is void.

Given December 8, in the consulship of the Caesars (294).

[10] *The same Augusti and Caesars to Amphia.* Whenever someone ignorant of the law pays money not owing, restitution cannot be claimed. For you are aware that only on account of ignorance of fact may restitution be claimed of money paid but not owing.

Given December 28, in the consulship of the Caesars (294).

[11][281] *Emperor CONSTANTINE Augustus to Valerius, Vicar.* Although relief is not usually given to women ignorant of the law, yet the resolutions of past emperors manifestly show that this does not apply to those still under age.

Given April 29, in the consulship of Gallicanus and Symmachus (330).

[12][282] *Emperors VALENTINIAN and THEODOSIUS Augusti to Flavianus, Praetorian Prefect of Illyricum and Italy.* We permit no one to be ignorant or to feign ignorance of the constitutions of the Emperors.

Given May 27, at Vincentia, in the consulship of Tatianus and Symmachus (391).

[13][283] *Emperors LEO and ANTHEMIUS Augusti to Erythrius, Praetorian Prefect.* Lest women be permitted to renege on all their contracts indiscriminately in

[280] That is, freedmen of the deceased, by virtue of the will, or her own, by virtue of her declaration.
[281] = C.Th. 3.5.3.
[282] = C.Th. 1.1.2; combine with C. 4.38.14.
[283] Combine with C. 1.4.16, 5.1.5, 5.6.8, 5.30.3.

ius vel substantiam suam patiantur, in his tantum casibus, in quibus praeteritarum legum auctoritas eis suffragatur, subveniri.

D. k. Iul. Marciano cons.

XVIIII De Precibus Imperatori Offerendis et de Quibus Rebus Supplicare Liceat vel Non

[1] *Impp. Diocletianus et Maximianus AA. Firminae.* Licet servilis condicio deferendae precis facile capax non sit, tamen admissi sceleris atrocitas et laudabilis fidei exemplum super vindicanda caede domini tui hortamento fuit, ut praefecto praetorio iuxta adnotationis nostrae decretum demandaremus (quem adire cura), ut auditis his, quae in libello contulisti, et reos investigare et severissimam vindictam iuxta legum censuram exigere curet.

D. VIII id. Oct. Diocletiano IIII et Maximiano III AA. conss.

[2] *Imp. Constantinus A. Severo pu.* Quotiens rescripto nostro moratoria praescriptio remittitur, aditus supplicandi pandatur. Quod autem totius negotii cognitionem tollit et vires principalis negotii exhaurit, sine gravi partis alterius dispendio convelli non potest. nec praescriptionis igitur peremptoriae relaxatio petatur.

D. X k. Iun. Nicaeae Paulino et Iuliano conss.

[3] *Idem A. ad populum.* Nec damnosa fisco nec iuri contraria postulari oportet.

PP. VIII k. Oct. Romae Constantino A. VIII et Constantio C. IIII conss.

[4] *Imppp. Gratianus Valentinianus et Theodosius AAA. Floro pp.* Universa rescripta, quae in debitorum causis super praestandis dilationibus promulgantur, non aliter valeant, nisi fideiussio idonea super solutione debiti praebeatur.

matters they have overlooked or of which they were unaware, We have decided that, if by reason of ignorance of law they should suffer some loss with respect to their rights or property, they shall be relieved only in those cases in which the authority of past laws supports them.

Given July 1, in the consulship of Marcianus (472).

Nineteenth Title Petitions Submitted to the Emperor, and Concerning Which Things It Is or Is Not Permitted to Supplicate

[1][284] *Emperors Diocletian and Maximian Augusti to Firmina.* Although (one of) servile status is not readily capable of submitting a petition (to Us), still the atrocity of the crime committed and your example of praiseworthy loyalty in avenging the murder of your master has induced Us to entrust (your case) to the Praetorian Prefect according to the decree contained in Our annotation (*adnotatio*). Make sure that you go before him, so that upon hearing what you have described in your petition, he may take care to track down the accused and exact the severest punishment prescribed by the rigor of the laws.

Given October 8, in the consulship of Diocletian, for the fourth time, and Maximian, for the third time, Augusti (290).

[2][285] *Emperor Constantine Augustus to Severus, Urban Prefect.* Whenever a dilatory defense (*praescriptio moratoria*) is dismissed by Our rescript, the door to supplication stands open. What cancels the inquiry into the entire case and exhausts the strength of the principal dispute, however, cannot be overturned without heavy loss to the other party. The dismissal of a peremptory defense (*praescriptio peremptoria*) may not, therefore, be requested.

Given May 23, at Nicaea, in the consulship of Paulinus and Julian (325).

[3] *The same Augustus to the people.* Neither anything detrimental to the Treasury nor anything contrary to the law may be requested.

Posted September 24, at Rome, in the consulship of Constantine Augustus, for the eighth time, and the Caesar Constantius, for the fourth time (329).

[4][286] *Emperors Gratian, Valentinian, and Theodosius Augusti to Florus, Praetorian Prefect.* All rescripts issued to grant delays in the cases of debtors shall not be valid unless adequate surety for the payment of the debt is provided.

[284] Combine with C. 7.13.1 (posted December 7).
[285] = C.Th. 1.2.5.
[286] = C.Th. 1.2.8.

D. VIII k. Mart. Constantinopoli Antonio et Syagrio conss.

[5] *Impp. Valentinianus et Valens AA. ad Volusianum pp.* Si quis adversus praefectorum praetorio sententias duxerit supplicandum victusque fuerit denuo, nullam habebit licentiam iterum super eadem causa supplicandi.

D. XV k. Oct. Romae Valentiniano et Valente AA. conss.

[6] *Impp. Honorius et Theodosius AA. Isidoro pu.* Universis simul hanc observantiam remittimus, ut, a quocumque liberae condicionis constituto vel servo supplicante impetratum fuerit rescriptum, minime requiratur, per quem preces oblatae sunt.

D. II non. Sept. Constantinopoli Varane cons.

[7] *Impp. Theodosius et Valentinianus AA. ad senatum.* Rescripta contra ius elicita ab omnibus iudicibus praecipimus refutari, nisi forte aliquid est, quod non laedat alium et prosit petenti vel crimen supplicanti indulgeat.

D. VIII id. Nov. Ravennae Theodosio XII et Valentiniano II AA. conss.

[8] *Idem AA. Florentio pp.* Instrumentorum exempla non prosit precibus adiunxisse, sed necesse sit eorum in supplicatione vim exprimi, ut responsuro principi vera precatio rem aperiat cognoscendam, solis, cum necessitas exegerit, verbis precibus inserendis, quorum de sensu inter partes ita dubitari contigerit, ut etiam merito nostrum expectetur iudicium.

D. VI k. April. Constantinopoli Florentio et Dionysio conss.

XX Quando Libellus Principi Datus Litis Contestationem Facit

[1] *Impp. Arcadius et Honorius AA. Remigio praefecto Augustali.* Dubium non est contestationem intellegi etiam, si nostrae fuerint

Given February 22, at Constantinople, in the consulship of Antonius and Syagrius (382).

[5] *Emperors* VALENTINIAN *and* VALENS *Augusti to Volusianus, Praetorian Prefect.*[287] If anyone should deem it advisable to address a supplication (to Us) against the rulings of the Praetorian Prefects and again loses his case, he shall have no right to supplicate again concerning the same case.

Given September 17, (received ...) at Rome, in the consulship of Valentinian and Valens Augusti (365).

[6][288] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Isidorus, Urban Prefect.* We remove the following requirement for all persons at once: whenever a rescript has been obtained by any supplicant of free status or a slave, no inquiry shall be made as to the person by whom the petition was presented (to Us).

Given September 4, in Constantinople, in the consulship of Varanes (410).

[7][289] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to the Senate.* We order that any rescripts that have been obtained contrary to the law must be rejected by all judges, unless perchance it is something that does not injure another and benefits the petitioner or grants a supplicant pardon for a crime.

Given November 6, at Ravenna, in the consulship of Theodosius, for the twelfth time, and Valentinian, for the second time, Augusti (426).

[8] *The same Augusti to Florentius, Praetorian Prefect.* It shall do no good to append copies of documents to a petition (of supplication), but it shall rather be necessary to express their substance in the supplication, so that the truthful supplication may make plain the matter to be reviewed before the Emperor responds. Only those words, the meaning of which happens to be disputed by the parties, shall be inserted, when necessity requires it, in the supplication, whereby Our ruling is deservedly awaited.

Given March 27, at Constantinople, in the consulship of Florentius and Dionysius (429).

Twentieth Title When a Petition Given to the Emperor Constitutes Joinder of Issue (*Litis Contestatio*)

[1][290] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Remigius, Augustal Prefect.* There is no doubt that a joinder of issue is implied if a petition is

[287] Actually, Urban Prefect. The constitution is restored to indicate it was "received" at Rome.
[288] Combine with C. 8.57.2, 8.58.1.
[289] Combine with C. 1.14.2–3, 1.22.5, and C.Th. 1.4.3 (adding "of the City of Rome" to the inscription); and cf. C. 6.55.11 (= C.Th. 5.1.8); potentially dated to November 7 (Seeck).
[290] = C.Th. 1.2.10 (but dated March 20, which Seeck prefers).

tranquillitati preces oblatae, easque adversus heredem quoque eius in quem porrectae sunt vel ab herede eius qui meruerit exerceri.

D. xii k. April. Constantinopoli Arcadio iiii et Honorio iii AA. conss.

[2] *Imp. Iustinianus A. Menae pp.* Temporales actiones, quae per oblationem precum et ad eas rescriptiones perpetuantur, definire necessarium esse duximus, ne quis putet ad alias etiam, quae certis taxantur temporibus, hoc pertinere. sciant igitur omnes eas tantummodo per oblationes precum et ad eas rescripta perpetuari, quae a praetore constitutae annali tempore coartatae sunt.

D. k. April. Constantinopoli Decio vc. cons.

XXI Ut Lite Pendente vel Post Provocationem aut Definitivam Sententiam Nulli Liceat Imperatori Supplicare

[1] *Imp. Alexander A. Caperio.* Licet, postquam supplicasti, priusquam rescriptum impetrares, praeses provinciae vir clarissimus pronuntiaverit, cum tamen a sententia non provocaveris, rescriptum, quod postea secutum esse suggeris, ad retrahenda quae decreto terminata sunt non patrocinatur.

D. k. Mart. Lupo et Maximo conss.

[2] *Imp. Constantinus A.* Petronio *Probiano suo salutem.* Supplicare causa pendente non licet, nisi vel actorum vel pronuntiationis editio denegetur. Qui autem terminatam rescripto vel consultatione quaestionem exquisito suffragio refricare conabitur, in omnem litis aestimationem adversario suo protinus condemnetur: omni venia deneganda, si quis contra haec supplicare temptaverit.

D. id. Aug. Arelato. pp. id. Oct. Theveste Sabino et Rufino conss.

submitted to Our Tranquility, and that it[291] is to be executed also against the heir of the person against whom it was delivered or by the heir of the person who obtained it.

Given March 21, at Constantinople, in the consulship of Arcadius, for the fourth time, and Honorius, for the third time, Augusti (396).

[2] *Emperor JUSTINIAN Augustus to Menas, Praetorian Prefect.* We have deemed it necessary to limit time-restricted actions (*actiones temporales*), which are extended by the submission of petitions and the rescripts issued thereon, lest anyone think that this applies to other actions that are restricted to certain periods. All, therefore, shall know that only the actions that are confined by the Praetor to a period of one year are extended by the submission of petitions and by the rescripts issued thereon.

Given April 1, at Constantinople, in the consulship of the vir clarissimus *Decius (529).*

Twenty-First Title While a Case Is Pending or after Appeal or a Final Ruling, No One Is Permitted to Supplicate the Emperor

[1] *Emperor ALEXANDER Augustus to Caperius.* Although the *vir clarissimus* provincial governor pronounced (a ruling) after you had supplicated but before you obtained a rescript, since you did not appeal his ruling, the rescript, which you write came later, does not support you in annulling what has been settled by decree (of the judge).

Given March 1, in the consulship of Lupus and Maximus (232).

[2][292] *Emperor CONSTANTINE to his friend Petronius Probus, greetings.* It is not permitted to supplicate while a case is pending, unless a copy of the proceedings or the ruling has been denied. Whoever should attempt, through influence, to reopen a question settled by rescript or consultation[293] shall be immediately condemned to pay the amount at dispute to his opponent. All pardon will be denied anyone who attempts to supplicate contrary to these provisions.

Given August 13, at Arles; posted October 15, at Theveste, in the consulship of Sabinus and Rufinus (316).

[291] The Latin text continues to speak of the petition (*preces … easque* etc.), but, properly speaking, the rescript of the emperor is meant here.

[292] = C.Th. 11.30.6; combine with C. 7.62.13.

[293] That is, by a rescript sent by the emperor in response to a *consultatio* (a request for a ruling on a legal matter) submitted by an official.

[3] *Idem A. ad universos provinciales.* Qui licitam provocationem omiserit, perpetuo silere debebit nec a nobis impudens petere per supplicationem auxilium. Quod si fecerit, desiderio suo carebit et ignominiae poena notabitur.

D. k. Aug. pp. k. Sept. Constantinopoli Basso et Ablabio conss.

XXII Si Contra Ius Utilitatemve Publicam vel Per Mendacium Fuerit Aliquid Postulatum vel Impetratum

[1] *Impp. Diocletianus et Maximianus AA. et CC. Gregorio.* Non idcirco minus is, cui a nostro rescripto cognitio delata est, iudicare potest, quod ex gestis quaedam in precibus omissa proponis.

D. v non. Mai. Diocletiano v et Maximiano IIII AA. conss.

[2] *Idem AA. et Constantius et Maximianus CC. Statiae.* Praescriptione mendaciorum opposita, sive in iuris narratione mendacium reperiatur sive in facti sive in tacendi fraude, pro tenore veritatis, non deprecantis adfirmatione, datum iudicem cognoscere debere et secundum hoc de causa convenit ferre sententiam.

D. k. Dec. Sirmi CC. conss.

[3] *Imp. Constantinus A. ad Bassum.* Puniri iubemus decem librarum auri multa iudices, qui vetuerunt precum argui falsitatem.

D. k. Oct. Constantino A. III et Licinio C. III conss.

[4] *Idem. A. ad* Barbarum *Pompeianum consularem Campaniae.* Etsi non cognitio, sed exsecutio mandatur, de veritate precúm inquiri oportet, ut, si fraus intervenit, de omni negotio cognoscatur.

D. III id. Nov. Aquis Dalmatio et Zenophilo conss.

[3][294] *The same Augustus to all provincials.* He who neglects to make a lawful appeal must keep silent forever and not impudently seek aid from Us through supplication; but if he does, he will not obtain his wish and will be branded by the penalty of infamy.

Given August 1; posted September 1, at Constantinople, in the consulship of Bassus and Ablabius (331).

Twenty-Second Title If Anything Has Been Requested or Obtained Through Deception Contrary to the Law or Public Good

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Gregorius.* He to whom a trial has been delegated by Our rescript is no less competent to judge because you allege that some things from the (procedural) records were omitted in your petition.

Given May 3, in the consulship of Diocletian, for the fifth time, and Maximian, for the fourth time, Augusti (293).

[2] *The same Augusti and the Caesars* CONSTANTIUS *and* MAXIMIAN *to Statia.* When a defense of false statements (*praescriptio mendaciorum*) has been made, whether the falsehood is discovered in the exposition of the law or in a fraudulent act or in silence, the delegated judge must try the case according to the substance of truth, not the assertion of the petitioner, and accordingly deliver a ruling.

Given December 1, at Sirmium, in the consulship of the Caesars (294).[295]

[3] *Emperor* CONSTANTINE *Augustus to Bassus.* We order that judges who have forbidden the falsity of a petition to be proven shall be punished by a fine of 10 pounds of gold.

Given October 1, in the consulship of Constantine Augustus, for the third time, and the Caesar[296] *Licinius, for the third time (313).*

[4][297] *The same Augustus to Barbarus Pompeianus, Consular of Campania.* Even if execution, not a trial, has been ordered, it is necessary to inquire into the veracity of a petition, so that, if fraud has occurred, the entire case may be tried.

Given November 11, at Aquae, in the consulship of Dalmatius and Zenophilus (333).

[294] = C.Th. 11.30.17; combine with C. 1.40.3, 3.13.4(?), 3.19.2, 7.62.19, 8.36.2, and C.Th. 2.26.3, 3.30.4, 11.34.1.

[295] Mommsen proposes December 1, 293.

[296] Actually, an Augustus since 308. The constitution probably dates to 319 (Mommsen, Seeck).

[297] = C.Th. 1.2.6.

[5] *Impp. Theodosius et Valentinianus AA. ad senatum.* Etsi legibus consentaneum sacrum oraculum mendax precator attulerit, careat penitus impetratis et, si nimia mentientis invenitur improbitas, etiam severitati subiaceat iudicantis.

D. VIII id. Nov. Ravennae Theodosio XII et Valentiniano II AA. conss.

[6] *Imp. Anastasius A. Matroniano pp.* Omnes cuiuscumque maioris vel minoris administrationis universae nostrae rei publicae iudices monemus, ut nullum rescriptum, nullam pragmaticam sanctionem, nullam sacram adnotationem, quae generali iuri vel utilitati publicae adversa esse videatur, in disceptatione cuiuslibet litigii patiantur proferri, sed generales sacras constitutiones modis omnibus non dubitent observandas.

D. k. Iul. Constantinopoli.

XXIII De Diversis Rescriptis et Pragmaticis Sanctionibus

[1] *Imp. Alexander A. Supero.* Si libellum de communi causa tu fraterque tuus dedistis, quamvis rescriptum ad unius personam directum sit, utrique tamen prospectum est.

D. id. Iul. Alexandro A. cons.

[2] *Idem A. Epagatho.* Falso adseveratur auctoritatem rescriptorum devoluto spatio anni obtinere firmitatem suam non oportere, cum ea, quae ad ius rescribuntur, perennia esse debent, si modo tempus, intra quod adlegari vel audiri debeat, non sit comprehensum.

D. VII k. Nov. Antiochiano et Orfito conss.

[3] *Impp. Diocletiuanus et Maximianus AA. Crispino praesidi provinciae Phoenice.* Sancimus, ut authentica ipsa atque originalia rescripta et nostra manu subscripta, non exempla eorum, insinuentur.

D. prid. k. April. Hannibaliano et Asclepiodoto conss.

[5][298] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to the Senate.* Even if a deceitful petitioner produces a sacred oracle (an imperial rescript) consistent with the law, he shall forfeit what he has obtained and, if the wickedness of the liar is found to be excessive, he shall also be subjected to the severity of the judge.

Given November 6, at Ravenna, in the consulship of Theodosius, for the twelfth time, and Valentinian, for the second time, Augusti (426).

[6] *Emperor* ANASTASIUS *Augustus to Matronianus, Praetorian Prefect.* We advise all judges, whether in a greater or lesser office, throughout Our entire State, to allow no rescript, no pragmatic sanction, no sacred annotation that appears to be at variance with general law or the public interest to be produced in the hearing of any dispute whatsoever; but they shall have no doubt that sacred general constitutions must by all means be obeyed.

Given July 1, at Constantinople (491?).

Twenty-Third Title Various Rescripts and Pragmatic Sanctions[299]

[1] *Emperor* ALEXANDER *Augustus to Superus.* If you and your brother presented a petition concerning a matter of common interest to you, although the rescript was addressed to one person, it was provided for both of you.

Given July 15, in the consulship of Alexander Augustus (222).

[2] *The same Augustus*[300] *to Epagathus.* It is wrongly claimed that the authority of rescripts should not retain its force after the lapse of a year, since rescripts concerning the law ought to be eternal, as long as the time within which they should be produced or heard is not stipulated therein.

Given October 26, in the consulship of Antiochianus and Orfitus (270).

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Crispinus, Governor of the Province Phoenice.* We decree that the authentic and original rescripts themselves, signed by Our hand, not copies of them, shall be filed for record.

Given March 31, in the consulship of Hannibalianus and Asclepiodotus (292).

[298] Combine with C. 1.14.2–3, 1.19.7, and C.Th. 1.4.3; cf. C. 6.55.11 (= C.Th. 5.1.8); potentially dated November 7 (Seeck).

[299] A *pragmatica sanctio* is: "An imperial decree or order or constitution addressed to a community, guild, municipality or other body of men concerning their public affairs" (Blume); the term is late imperial. Often at issue is whether such a decree can also have, on occasion, the force of a general law.

[300] Actually, Claudius Gothicus.

[4] *Imp. Constantinus A. ad Lusitanos.* Si qua beneficia personalia sine die et consule fuerint deprehensa, auctoritate careant.

D. VII k. Aug. Savariae Probiano et Iuliano conss.

[5] *Imppp. Valentinianus Theodosius et Arcadius AAA. ad Nicetium praefectum annonae.* Sacrilegii instar est divinis super quibuscumque administrationibus vel dignitatibus promulgandis obviare beneficiis.

D. k. Febr. Mediolani Arcadio A. et Bautone conss.

[6] *Imp. Leo A. Hilariano magistro officiorum et patricio.* **pr.** Sacri affatus, quoscumque nostrae mansuetudinis in quacumque parte paginarum scripserit auctoritas, non alio vultu penitus aut colore, nisi purpurea tantummodo scriptione illustrentur, scilicet ut cocti muricis et triti conchylii ardore signentur: eaque tantummodo fas sit proferri et dici rescripta in quibuscumque iudiciis, quae in chartis sive membranis subnotatio nostrae subscriptionis impresserit. **1.** Hanc autem sacri encausti confectionem nulli sit licitum aut concessum habere aut quaerere aut a quoquam sperare: eo videlicet, qui hoc adgressus fuerit tyrannico spiritu, post proscriptionem bonorum omnium capitali non immerito poena plectendo.

D. VI k. April. Iordane et Severo conss.

[7] *Imp. Zeno A. Sebastiano pp.* **pr.** Universa rescripta, sive in personam precantium sive ad quemlibet iudicem manaverint, quae vel adnotatio vel quaevis[xxvi] pragmatica sanctio nominetur, sub ea condicione proferri praecipimus, si preces veritate nituntur, nec aliquem fructum precator oraculi percipiat impetrati, licet in iudicio adserat veritatem, nisi quaestio fidei precum imperiali beneficio monstretur inserta. **1.** Nam et vir magnificus quaestor et viri spectabiles magistri scriniorum, qui sine praefata adiectione qualecumque divinum responsum dictaverint, et iudices, qui susceperint, reprehensionem subibunt et, qui illicite dictata scribere ausi fuerint cuiuscumque scrinii memoriales seu pragmaticarii vel adiutores primicerii, amissione cinguli ferientur. **2.** Pragmaticas praeterea sanctiones non ad singulorum preces super privatis negotiis proferri, sed si quando corpus aut schola vel officium vel curia vel

[xxvi] quae vel adnotatio vel pragmatica

[4][301] *Emperor* CONSTANTINE *Augustus to the Lusitanians.* If any personal privileges (*beneficia*)[302] are found without date and consular year, they shall be void.

Given July 26, at Savaria, in the consulship of Probianus and Julian (322).

[5] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Nicetius, Prefect of the Grain Supply.* It is tantamount to sacrilege to oppose divine privileges that shall be issued concerning any offices or ranks whatsoever.

Given February 1, at Milan, in the consulship of Arcadius Augustus and Bauto (385).

[6][303] *Emperor* LEO *Augustus to Hilarianus, Master of Offices and Patrician.* **pr.** Sacred utterances, whatsoever the authority of Our Mildness writes on any part of a leaf of paper, shall be illuminated by no other appearance or color but by purple script; they shall namely be distinguished by the vibrancy of the boiled murex and crushed conch; and it shall be lawful to present and regard as rescripts, in any courts whatsoever, those that bear the subscription of Our signature on paper or parchment. **1.** No one is allowed or permitted to have, seek, or hope from anyone the making of this sacred ink; he who, with the arrogance of a usurper,[304] attempts to do so shall, after the sale of all his property, not undeservedly be stricken by capital punishment.

Given March 27, in the consulship of Jordanes and Severus (470).

[7] *Emperor* ZENO *Augustus to Sebastianus, Praetorian Prefect.* **pr.** We order that all rescripts, whether they are issued to petitioners or to some judge, whether named either an annotation (*adnotatio*) or a pragmatic sanction, shall be produced on this condition, that the petition is grounded in truth; nor shall a petitioner reap any benefit from the oracle obtained, though he alleges the truth in court, unless an inquiry into the veracity of the petition is shown inserted in the imperial indulgence (i.e., the rescript). **1.** For both the *vir magnificus* Quaestor and the *viri spectabiles* Masters of the Bureaus who dictate a divine rescript without the aforesaid addition, as well as the judges who admit it, will undergo censure; and the those who dare to write illicitly dictated rescripts, whether clerks of the Bureau of Memory or drafters of pragmatic sanctions (*pragmaticarii*) or assistants to the chief (*adiutores primicerii*), shall be punished by loss of rank (*cingulum*). **2.** Moreover, We decree that pragmatic sanctions shall not be issued in response to the petitions of individuals

[301] = C.Th. 1.1.1.
[302] Latin *beneficia* indicates privileges conferred by rescript.
[303] Perhaps to be combined with C. 12.19.10, 12.59.9.
[304] Literally, "of a tyrant" (*tyrannus*), a word regularly applied to usurpers after Constantine.

civitas vel provincia vel quaedam universitas hominum ob causam publicam fuderit preces, manare decernimus, ut hic etiam veritatis quaestio reservetur.

D. x k. Ian. Constantinopoli post consulatum Armati.

XXIIII De Statuis et Imaginibus

[1] *Impp. Arcadius et Honorius AA. Theodoro pp.* Si quis iudicum accepisse aeneas vel argenteas vel marmoreas statuas extra imperiale beneficium in administratione positus detegetur, emolumenta, quae acceperit in ea positus dignitate, quam polluit, cum extortis titulis vel praesumptis in quadruplum fisco nostro inferat simulque noverit existimationis suae poenam se subiturum. nec eos sane a periculo pudoris haberi volumus immunes, qui adulandi studio aut metu inconstanti ignavia transire quae sunt interdicta temptaverint.

D. XII k. Ian. Mediolani Honorio A. IIII et Eutychiano conss.

[2] *Imp. Theodosius A. et Valentinianus C. Aetio pp.* Si quando nostrae statuae vel imagines eriguntur seu diebus, ut adsolet, festis sive communibus, adsit iudex sine adorationis ambitioso fastigio, ut ornamentum diei vel loco et nostrae recordationi sui probet accessisse praesentiam.

D. III non. Mai. Theodosio A. XI et Valentiniano C. conss.

[3] *Impp. Theodosius et Valentinianus AA. Florentio pp.* In nostrae serenitatis imaginibus ac statuis erigendis privatae collationis iniuriam propulsari praecipimus, ne quid in eo suum collator agnoscat.

D. III non. April. Theodosio A. XVII et Festo conss.

[4] *Idem AA. ad Nomum comitem et magistrum officiorum.* Et virtutum praemia tribui merentibus convenit et aliorum honores aliis damnorum occasionem fieri non oportet. idcirco quotiens vel iudicibus nostris vel cuilibet alii statua fuerit a quocumque collegio seu officio vel in

concerning private suits, but if a guild, corps (*schola*), office, curia, city, province, or some group of persons should pour forth a petition concerning a public matter, yet even in these cases inquiry into the accuracy (of the petition) shall remain available.

Given December 23, at Constantinople, in the post-consulate of Armatus (477).

Twenty-Fourth Title Statues and Likenesses

[1][305] *Emperors ARCADIUS and HONORIUS Augusti to Theodorus, Praetorian Prefect.* If any governor serving in office is found to have accepted bronze, silver, or marble statues (in his honor) without an imperial grant, he shall render unto the Treasury quadruple the profits that he received while in the office that he has polluted, he shall be stripped of the titles of rank that he has seized or arrogated to himself, and he shall know that he must also suffer the loss of his good name. Nor do We wish those to be free from the danger of disgrace who in their zeal for flattery, or in fear and wavering cowardice,[306] attempt to transgress what has been forbidden.

Given December 21, at Milan, in the consulship of Honorius Augustus, for the fourth time, and of Eutychianus (398).

[2][307] *Emperor THEODOSIUS Augustus and VALENTINIAN Caesar to Aetius, Praetorian Prefect.* If at any time, whether on holidays, as is customary, or on ordinary days, statues or images of Us are erected, the governor shall attend without an arrogant desire for adoration; thus he shall prove that his presence has served to grace the day or place and Our memorial.

Given May 5, in the consulship of Theodosius Augustus, for the eleventh time, and the Caesar Valentinian (425).

[3] *Emperors THEODOSIUS and VALENTINIAN Augusti to Florentius, Praetorian Prefect.* On the occasion of the erection of images and statues of Our Serenity, We order that the insult of private contributions be banished, lest a contributor consider any part of it his own.

Given April 3, in the consulship of Theodosius Augustus and Festus (439).

[4] *The same Augusti to Nomus, Count and Master of Offices.* It is both fitting that rewards for excellence be granted to the deserving and necessary that honors for some persons not be the cause of loss to others. Therefore, whenever a statue for a governor or any other person is requested by some corporation or

305 Combine with C. 8.11.13.
306 Apparently the official might be too passive to reject the honor of a statue.
307 = C.Th. 15.4.1.

hac sacratissima civitate vel in provinciis postulata, nequaquam ex discriptione sumptus colligi patimur, sed eius, cuius ad honorem petitur, expensis propriis statuam collocari praecipimus.

D. v k. April. Theodosio A. xviii cons.

XXV De His Qui ad Statuas Confugiunt

[1] *Imppp. Valentinianus Theodosius et Arcadius AAA. Cynegio pp.* Qui ad statuas vel vitandi metus vel creandae invidiae causa confugerint, si certas habuerint causas, quibus confugere ad imperatoria simulacra debuerint, iure ac legibus vindicentur. si vero probati fuerint artibus suis invidiam inimicis creare voluisse, ultrix in eos sententia proferatur.

D. prid. non. Iul. Constantinopoli Honorio np. et Euodio conss.

XXVI De Officio Praefectorum Praetorio Orientis et Illyrici

[1] *Imp. Alexander A. Theodoto.* Libellus praefecto praetorio datus pro contestatione haberi non potest.

D. prid. k. Oct. Agricola et Clemente conss.

[2] *Idem A. Restituto.* Formam a praefecto praetorio datam, et si[xxvii] generalis sit, minime legibus vel constitutionibus contrariam, si nihil postea ex auctoritate mea innovatum est, servari aequum est.

D. id. Aug. Severo et Quintiano conss.

[3] *Imppp. Valentinianus Theodosius et Arcadius AAA. Tatiano pp.* Si quos iudices vel propter adversam et longinquam corporis valetudinem vel propter neglegentiam aut furtum vel simile aliquod vitium sublimitas tua inutiles esse reppererit, his ab administratione remotis et vice eorum aliis subrogatis furibusque poenis legitimis subactis ad nostrae mansuetudinis scientiam non crimina, sed vindicta referatur.

D. vi non. Mai. Mediolani Timasio et Promoto conss.

xxvii [et] si

official staff, whether in This Most Sacred City or in the provinces, We in no way permit the expenses to be covered by tax assessment (*discriptio*), but We order that the statue be erected at the expense of the person in whose honor it has been requested.

Given March 28, in the consulship of Theodosius Augustus, for the eighteenth time (444).

Twenty-Fifth Title Those Who Take Refuge at Statues

[1][308] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Cynegius, Praetorian Prefect.* Those who take refuge at statues to escape fear or create ill-will, if they have definite reasons why they ought to have taken refuge at the likenesses of the Emperors, shall be vindicated by the law and statutes. If, however, they are shown to have sought to create ill-will against their enemies by their wiles, an avenging ruling shall be rendered against them.

Given July 6, at Constantinople, in the consulship of Honorius, Most Noble Boy, and Euodius (386).

Twenty-Sixth Title The Office of the Praetorian Prefects of the East and of Illyricum

[1] *Emperor* ALEXANDER *Augustus to Theodotus.* A petition delivered to the Praetorian Prefect cannot be considered joinder of issue (*litis contestatio*).

Given September 30, in the consulship of Agricola and Clemens (230).

[2] *The same Augustus to Restitutus.* It is reasonable that a ruling (*forma*) given by the Praetorian Prefect, if it is general, not at variance with the laws or constitutions, should be observed if no innovation has been made subsequently by My authority.

Given August 13, in the consulship of Severus and Quintianus (235).

[3][309] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Tatianus, Praetorian Prefect.* If Your Sublimity should find some governors unfit, whether on account of poor health and long sickness or on account of theft or some similar vice, once you have removed them from office and substituted others in their place, and subjected the thieves to proper punishment, not their crimes but their punishment shall be brought to the attention of Our Mildness.

Given May 2, at Milan, in the consulship of Timasius and Promotus (389).

308 = C.Th. 9.44.1.
309 = C.Th. 1.5.9 (but dated March 2, which Seeck prefers).

[4] *Idem AAA. Addeo comiti et magistro utriusque militiae.* De ordinario iudice semper illustris est cognitio praefecturae, licet militari viro ab eo facta fuerit iniuria.

D. prid. id. Ian. Constantinopoli Theodosio A. III et Abundantio conss.

[5] *Imppp. Arcadius Honorius et Theodosius AAA. Anthemio pp.* Si qui posthac velut indebitis oneribus gravati ad preces crediderint convolandum sive de naviculariis rationibus sive transvectionibus, rescripta, quae de omnibus his atque huiusmodi ordinationibus emitti contigerit, ad sedem sublimitatis tuae rescribantur.

D. VII id. Dec. Constantinopoli Stilichone II et Anthemio conss.

[6] ... [xxviii]

XXVII De Officio Praefecti Praetorio Africae et de Omni Eiusdem Dioeceseos Statu

[1] *In nomine domini nostri Ihesu Christi imperator Caesar Flavius Iustinianus Alamannicus Gotthicus Francicus Germanicus Anticus Alanicus Vvandalicus Africanus pius felix inclitus victor ac triumphator semper Augustus Archelao praefecto praetorio Africae.* **pr.** Quas gratias aut quas laudes domino deo nostro Ihesu Christo exhibere debeamus, nec mens nostra potest concipere nec lingua proferre. **1.** Multas quidem et antea a deo meruimus largitates et innumerabilia circa nos eius beneficia confitemur, pro quibus nihil dignum nos egisse cognoscimus: prae omnibus tamen hoc, quod nunc deus omnipotens per nos pro sua laude et pro suo nomine demonstrare dignatus est, excedit omnia mirabilia opera, quae in saeculo contigerunt, ut Africa per nos tam brevi tempore reciperet libertatem, ante centum et quinque annos a Vvandalis captivata, qui animarum fuerant simul hostes et corporum. **2.** Nam animas quidem diversa tormenta atque supplicia non ferentes rebaptizando ad suam perfidiam transferebant: corpora vero liberis natalibus clara iugo barbarico durissime subiugabant. **3.** Ipsas quoque dei sacrosanctas ecclesias suis perfidiis maculabant: aliquas vero ex eis stabula fecerunt. **4.** Vidimus venerabiles viros, qui abscissis radicitus linguis poenas suas

[xxviii] Stolte (2009) argues that the text restored in 10.16.1 should instead be restored here.

[4][310] *The same Augusti to Addeus, Count and Master of Both Military Forces.* The trial of an ordinary judge (a provincial governor) is always under the jurisdiction of the Illustrious (Praetorian) Prefecture, even though a wrong has been committed by him against a military man.

Given January 12, at Constantinople, in the consulship of Theodosius Augustus, for the third time, and of Abundantius (393).

[5][311] *Emperors ARCADIUS, HONORIUS, and THEODOSIUS Augusti to Anthemius, Praetorian Prefect.* If any persons, aggrieved by undue burdens, hereafter feel compelled to resort to a petition, whether in connection with transportation by sea or by land, the rescripts that shall be issued concerning all these and similar arrangements shall be addressed to the tribunal of Your Sublimity.

Given December 7, at Constantinople, in the consulship of Stilicho, for the second time, and of Anthemius (405).

[6] ...[312]

Twenty-Seventh Title The Office of the Praetorian Prefect of Africa and the Organization of the Same Diocese[313]

[1] *In the name of our Lord Jesus Christ, Emperor Caesar Flavius JUSTINIAN Alamannicus, Gothicus, Francicus, Germanicus, Anticus, Alanicus, Vandalicus, Africanus, pious, fortunate, famous, victorious, and triumphant, Ever Augustus, to Archelaus, Praetorian Prefect of Africa.* **pr.** What thanks or what praises We should offer Our Lord Jesus Christ, neither Our mind can conceive nor Our tongue express. **1.** We had indeed already received many bounties from God, and We confess his innumerable benefactions on Our behalf, for which We recognize that We have done nothing worthy. But this above all, which Almighty God has deigned to reveal through Us for His praise and for His name, exceeds all wonderful works that have occurred in this age: that, through Us, Africa should in such short time recover its freedom, captured 105 years ago by the Vandals, who were enemies of both souls and bodies. **2.** For they converted souls unable to bear various tortures and punishments to their treachery by re-baptizing them; and they put bodies distinguished by free birth most cruelly under a barbarian yoke. **3.** They besmirched even the holy churches of God with their treachery (*perfidia*); some of them they made into stables. **4.** We have seen reverend men miraculously tell of their punishments, though their tongues had

[310] = C.Th. 1.5.10; combine with C.Th. 1.7.2; more likely dated June 12 (Seeck).
[311] = C.Th. 1.5.14.
[312] A Greek constitution has been lost. Bas. 56.8 indicates that it concerned grain supplies to prefects.
[313] See D. 1.11. Justinian had reconquered the Roman province of Africa in 533–534.

mirabiliter loquebantur: alii vero post diversa tormenta per diversas dispersi provincias vitam in exilio peregerunt.

5. Quo ergo sermone aut quibus operibus dignas deo gratias agere valeamus, quod per me, ultimum servum suum, ecclesiae suae iniurias vindicare dignatus est et tantarum provinciarum populos a iugo servitutis eripere? 6. Quod beneficium dei antecessores nostri non meruerunt, quibus non solum Africam liberare non licuit, sed et ipsam Romam viderunt ab eisdem Vvandalis captam et omnia imperialia ornamenta in Africam exinde translata. 7. Nunc vero deus per suam misericordiam non solum Africam et omnes eius provincias nobis tradidit, sed et ipsa imperialia ornamenta, quae capta Roma fuerant ablata, nobis restituit. 8. Ergo post tanta beneficia, quae nobis divinitas contulit, hoc de domini dei nostri misericordia postulamus, ut provincias, quas nobis restituere dignatus est, firmas et illaesas custodiat et faciat nos eas secundum suam voluntatem ac placitum gubernare, et universa Africa sentiat omnipotentis dei misericordiam et cognoscant eius habitatores, quam a durissima captivitate et iugo barbarico liberati in quanta libertate sub felicissimo nostro imperio degere meruerunt. 9. Hoc etiam deprecantes exoramus precibus sanctae et gloriosae semper virginis et dei genetricis Mariae, ut, quidquid minus est rei publicae nostrae, per nos, ultimos servos suos, restituat in suo nomine deus et dignos nos faciat servitium eius adimplere.

10. Deo itaque auxiliante pro felicitate rei publicae nostrae per hanc divinam legem sancimus, ut omnis Africa, quam deus nobis praestitit, per ipsius misericordiam optimum suscipiat ordinem et propriam habeat praefecturam, ut sicut Oriens atque Illyricum, ita et Africa praetoriana maxima potestate specialiter a nostra clementia decoretur. 11. Cuius sedem iubemus esse Carthaginem et in praefatione publicarum chartarum praefecturis aliis eius nomen adiungi, quam nunc tuam excellentiam gubernare decernimus.

12. Et ab ea auxiliante deo septem provinciae cum suis iudicibus disponantur, quarum Zeugi quae proconsularis antea vocabatur, Carthago et Byzacium ac Tripolis rectores habeant consulares: reliquae vero, id est Numidia et Mauritaniae et Sardinia, a praesidibus cum dei auxilio gubernentur. 13. Et in officio quidem tuae magnitudinis nec non pro tempore viri magnifici praefecti Africae trecentos nonaginta sex viros per diversa scrinia et officia militare decernimus. in officiis vero consularium ac praesidum quinquaginta homines per singula officia esse sancimus. 14. Quae vero emolumenta sive magnificentia tua sive

been cut out at the root; and others, after sundry tortures, passed their lives in exile scattered throughout sundry provinces.

5. With what words, or with what works, might We rise to give worthy thanks to God, because through Me, the least of his servants, He has deigned to avenge the wrongs done to his Church and to tear the peoples of so many provinces[314] from under the yoke of slavery? **6.** Our predecessors did not merit this gift of God; they not only were not permitted to liberate Africa, but they also saw Rome herself captured by the same Vandals and all the insignia of the Emperors (*imperialia ornamenta*) brought thence to Africa. **7.** But now God in his mercy has not only placed Africa and all its provinces in Our hands but has also restored to Us the insignia of the Emperors themselves, which had been taken when Rome was captured. **8.** Therefore, after the great favors which the Deity has showered on Us, We ask this of the mercy of Our Lord God: that He keep the provinces which He has deigned to restore to Us strong and unharmed and cause Us to govern them at His will and pleasure; and that all Africa feel the mercy of Almighty God, and its inhabitants recognize from what most cruel captivity and barbarian yoke they have been freed and in what great liberty, under Our most felicitous reign, they have been found worthy to live. **9.** Asking also this, We beseech (God) through the prayers of the Holy and Glorious Ever-Virgin Mary, Mother of God, that He may, in His name, restore whatever is lacking in Our State and make Us, the least of His servants, worthy to do His service.

10. With the help of God, accordingly, We decree by this divine law for the happiness of Our empire that all Africa, which God has granted Us, shall receive, through His mercy, the best organization and shall have its own prefecture, so that, just as Oriens and Illyricum, so too shall Africa through Our Clemency be adorned specially by the supreme Praetorian Magistracy. **11.** We order Carthage to be its seat and its name to be added to the other prefectures in the preface of public documents; which prefecture We now decree Your Excellency shall govern.

12. And, with the help of God, seven provinces with their governors shall be created in this prefecture; of which, Zeugi, which was formerly called "Proconsular," Carthage, Byzacium, and Tripolis shall have consular governors; the rest, that is, Numidia, the Mauretanias, and Sardinia, shall, with the help of God, be governed by ordinary governors (*praesides*). **13.** And We decree that 396 men shall serve in the various bureaus and offices in the staff of Your Greatness and of (every) acting Prefect of Africa, *vir magnificus*. As to the staffs of the consular and ordinary governors, however, We decree that there shall be fifty men in the staff of each. **14.** A schedule appended below shows the perquisites that Your Magnificence or the consulars and ordinary

[314] *tantarum*, properly "such great (provinces)," for "so many" (*tot*).

consulares et praesides et quid unusquisque ex officio eorum de publico consequi debet, notitia subter adnexa declarat.

15. Optamus ergo, ut omnes iudices nostri secundum voluntatem et timorem dei et nostram electionem atque ordinationem sic suas administrationes gubernare studeant, ut nullus eorum aut cupiditati sit deditus aut violentias aliquas vel ipse inferat vel iudicibus aut officiis eorum aut quibuscumque aliis collatoribus inferre permittat. licet enim per omnes provincias nostras deo iuvante festinemus, ut illaesos habeant collatores, maxime tamen tributariis dioeceseos Africanae consulimus, qui post tantorum temporum captivitatem meruerunt deo iuvante per nos lumen libertatis adspicere. **16.** Ergo iubemus omnes violentias et omnem avaritiam cessare et iustitiam atque veritatem circa omnes nostros tributarios reservari. sic enim et deus placatur et ipsi possunt celerius, sicut collatores alii nostrae rei publicae, relevari atque florere. **17.** Sportulas etiam ab officio tam viri magnifici praefecti Africani quam reliquorum iudicum sic exigi iubemus, quomodo in nostris legibus est dispositum et ab omni re publica nostra custoditur, ut nullus audeat quocumque tempore vel quocumque modo earum excedere quantitatem. **18.** Hoc etiam praesenti sanctione credimus ordinandum, ut non multa dispendia pro completione chartarum vel codicillorum vel in nostro laterculo vel in scriniis praefecti praetoriorum per Africam iudices sustinere videantur, quia, si ipsi dispendiis laesi non fuerint, nullam habeant necessitatem eiusdem nostrae Africae tributarios praegravandi. **19.** Iubemus ergo, ut iudices dioeceseos Africanae tam civiles quam militares in nostro laterculo pro codicillorum atque chartularum promotionis suae consuetudinibus nihil ultra quam sex solidos praebeant, at vero in scrinio praefectorum non ultra duodecim solidos cogantur inferre. **20.** Quem modum si quis excesserit, ipse quidem iudex triginta librarum auri dispendio subiacebit, officium vero eius non solum simile dispendium, sed et capitale periculum sustinebit. nam si aliquis ex quacumque parte ausus fuerit iussiones nostras excedere et non festinaverit cum dei timore eas servare, non solum dignitatis aut substantiae periculum sustinebit, sed etiam ultimo supplicio subiacebit.

21. Et est notitia deo auxiliante:

Pro annonis et capitu pro tempore praefecti praetorio per totam Africam auri libras centum.

governors, and what each member of their staffs should receive from the public funds.

15. We desire, therefore, that all our governors thus strive to administer their offices according to the will and fear of God and as befits Our selection and appointment, so that none of them should be given to greed and either himself inflict acts of violence on the taxpayers or permit governors or their official staff or any others to do so. For although We hasten through all Our provinces so that, with the help of God, they may keep their taxpayers unharmed, yet We take the greatest care for the taxpayers in the diocese of Africa, who after so long a captivity have, by the aid of God, been permitted, through Us to behold the light of liberty. **16.** Therefore, We order all violence and all greed to cease, and justice and truth to be safeguarded for all Our taxpayers; for thus both God is pleased and the taxpayers themselves, just as others in Our State, can more quickly be relieved and flourish. **17.** We order judicial fees to be collected by the staff both of the *vir magnificus* Prefect of Africa and of the other governors as established in Our laws and observed in all Our State, so that no one should dare, at any time or by any means, to exceed that amount. **18.** We believe that this too should be fixed by the present decree: that the governors not appear to bear many expenses for the making of records (*chartulae*) or codicils of appointment, whether in Our Register (*in nostro laterculo*) or in the bureaus of the Praetorian Prefect of Africa; because, if they themselves are not aggrieved by these expenses, they shall have no need to burden the taxpayers of Our Africa. **19.** We therefore order that the governors of the African diocese, both civil and military, shall give no more than 6 solidi for the customary codicils and records of their appointment in Our Register, and in the bureau of the Prefects they shall be compelled to pay no more than 12 solidi. **20.** If anyone exceeds this amount, the governor himself shall be liable to a loss of 30 pounds of gold; his official staff shall suffer not only a similar loss but also capital punishment. For if anyone in any place should dare to transgress Our commands and not strive, in fear of God, to keep them, not only shall he undergo risk to his good name and property, but he will also be subjected to capital punishment.

21. With the help of God, the schedule is as follows:

For the rations (*annona*) and fodder (*capitus*)[315] of the acting Praetorian Prefect of all Africa: 100 pounds of gold.

For the rations of the counselors (*consiliarii*): 20 pounds of gold.

For the rations of the public secretaries (*cancellarii*): 7 pounds of gold.

[315] Late antique government salaries were originally paid in kind; *annona* was an allowance of grain and *capitus* (or *capitum*) an allowance of fodder (for horses). By Justinian's day, these salaries were commuted to cash, but the terms *annona* and *capitus* were retained as accounting units.

Pro annonis consiliariorum auri libras viginti.

Pro annonis cancellariorum auri libras septem.

22. Item officiis eius ita:

In scrinio primo hominibus decem pro annonis XVIIIIS, pro capitu XIIS, fiunt solidi CXLVIIS. ita: numerario pro annonis VI annona solidorum V et pro capitu IIII capitus solidorum IIII, fiunt solidi XLVI. secundo pro annonis III annona solidorum V et pro capitu II capitus solidorum IIII, fiunt solidi XXIII. tertio pro annonis II annona solidorum V et pro capitu IS capitus solidorum IIII, fiunt solidi XVI. quarto quinto et sexto ad annonas IS annona solidorum V et ad capitum I capitus solidorum IIII, fiunt solidi XXXIIIIS. reliquis quattuor ad annonas I annona solidorum V et ad capitum S capitus solidorum IIII, fiunt solidi XXVIII.

23. In scrinio secundo ut supra scriptum est. in scrinio tertio ut supra scriptum est. in scrinio quarto ut supra scriptum est.

24. In scrinio primiscrinii, quod est subadiuvae, hominibus decem annonae XIIII capita XIS, fiunt solidi CXVI. ita: primiscrinio pro annonis III annona solidorum V et pro capitu II capitus solidorum IIII, fiunt solidi XXIII. secundo pro annonis II, annona solidorum ut supra scriptum est, et pro capitu IS, capitus solidorum ut supra scriptum est, fiunt solidi XVI. tertio et quarto pro annonis IS, annona solidorum ut supra scriptum est, et pro capitu I, capitus solidorum ut supra scriptum est, fiunt solidi XXIII. reliquis hominibus sex ad annonam I annona solidorum V et pro capitu I capitus solidorum IIII, fiunt solidi LIIII.

25. In scrinio commentariensis hominibus duodecim annonae XVII capita XIIIIS, fiunt solidi CXLIII. ita: primo commentariensi annonae III annona solidorum V, pro capitu II capitus solidorum IIII, fiunt solidi XXIII. sequentes homines tres ad annonas II annona solidorum V, pro capitu IS capitus solidorum IIII, fiunt solidi XLVIII. reliqui homines octo ad annonam I annona solidorum V et ad capitum I capitus solidorum IIII, fiunt solidi LXXII.

26. In scrinio ab actis hominibus decem annonae XIIII capita XII, fiunt solidi CXVIII. ita: primo annonae III pro annona I solidi V, capita II capitus solidorum IIII, fiunt solidi XXIII. secundo et tertio ad annonas II pro annona I solidi V et ad capitum IS capitus solidorum IIII, fiunt solidi XXXXII. reliquis septem ad annonam I annona solidorum V et ad capitum I capitus solidorum IIII, fiunt solidi LXIII.

27. In scrinio libellorum hominibus sex annonae VIIS capita VIS, fiunt solidi LXIIIS. ita: primo annonae II pro annona solidi V, pro capitu IS capitus solidorum IIII, fiunt solidi XVI. secundo annona IS pro annona

22. Likewise for the members of his official staff, as follows:

In the first bureau: ten men, 19½ in rations, 12½ in fodder, totaling 147½ solidi. As follows: to the chief accountant (*numerarius*), 6 rations of 5 solidi and 4 fodder of 4 solidi, totaling 46 solidi. To the second official, 3 rations of 5 solidi and 2 fodder of 4 solidi, totaling 23 solidi. To the third official, 2 rations of 5 solidi and 1½ fodder of 4 solidi, totaling 16 solidi. To the fourth, fifth, and sixth officials, 1½ rations of 5 solidi and 1 fodder of 4 solidi, totaling 34½ solidi. To the four remaining officials, 1 ration of 5 solidi and ½ fodder of 4 solidi, totaling 28 solidi.

23. In the second bureau, as written above. In the third bureau, as written above. In the fourth bureau, as written above.

24. In the bureau of the chief aide (*primiscrinius*), that is, the assistant (*subadiuva*): ten men, 14 rations, 11½ fodder, totaling 116 solidi. As follows: to the *primiscrinius*, 3 rations of 5 solidi and 2 fodder of 4 solidi, totaling 23 solidi. To the second in rank, 2 rations of the value in solidi as written above and 1½ fodder of the value in solidi as written above, totaling 16 solidi. To the third and fourth, 1½ rations of the value in solidi as written above and 1 fodder of the value in solidi as written above, totaling 23 solidi. To the six remaining men, 1 ration of 5 solidi and 1 fodder of 4 solidi, totaling 54 solidi.

25. In the bureau of the chief jailor (*commentariensis*): twelve men, 17 rations and 14½ fodder, totaling 143 solidi. As follows: to the first jailor, 3 rations of 5 solidi, 2 fodder of 4 solidi, totaling 23 solidi. The following three men: 2 rations of 5 solidi, 1½ fodder of 4 solidi, totaling 48 solidi. The remaining eight men: 1 ration of 5 solidi and 1 fodder of 4 solidi, totaling 72 solidi.

26. In the bureau of the chief record-keeper (*ab actis*): ten men,.14 rations, 12 fodder, totaling 118 solidi. As follows: to the first, 3 rations of 5 solidi per ration, 2 fodder of 4 solidi, totaling 23 solidi. To the second and third: 2 rations of 5 solidi per ration and 1½ fodder of 4 solidi, totaling 32 solidi. To the remaining seven: 1 ration of 5 solidi and 1 fodder of 4 solidi, totaling 63 solidi.

27. In the bureau of petitions (*scrinium libellorum*): six men, 7½ rations, 6½ fodder, totaling 63½ solidi. As follows: to the first, 2 rations at 5 solidi per ration, 1½ fodder of 4 solidi, totaling 16 solidi. To the second, 1½ rations of 5

solidi v, pro capitu i capitus solidorum iiii, fiunt solidi xis. reliquis hominibus quattuor ad annonas i annona solidorum v et ad capitum i capitus solidorum iiii, fiunt solidi xxxvi.

28. In schola exceptorum hominibus sexaginta annonae lxxiiii capita lxii solidi dcxviii. ita: primo et secundo ad annonas iii pro annona solidi v et ad capita ii capitus solidorum iiii, fiunt solidi xlvi. aliis hominibus quinque ad annonas ii annona solidorum v et ad capitum i capitus solidorum iiii, fiunt solidi lxx. reliquis hominibus decem ad annonas is annona solidorum v et ad capitum i capitus solidorum iiii, fiunt solidi cxv. reliquis hominibus quadraginta tribus ad annonas i annona solidorum v et ad capitum i capitus solidorum iiii, fiunt solidi ccclxxxvii.

29. In schola singulariorum hominibus quinquaginta annonae liis capita l solidi cccclxiis. ita: primo annonae ii annona solidorum v, capitus i capitus solidorum iiii, fiunt solidi xiiii. secundo tertio et quarto ad annonas is annona solidorum v et ad capitum i capitus solidorum iiii, fiunt solidi xxxiiiis. reliquis hominibus quadraginta sex ad annonam i annona solidorum v et ad capitum i capitus solidorum iiii, fiunt solidi ccccxiiii.

30. In schola mittendariorum hominibus quinquaginta annonae liis capita l solidi cccclxiis. ita: primo annonae ii annona solidorum v, capitus i capitus solidorum iiii, fiunt solidi xiiii. secundo tertio et quarto ad annonam is annona solidorum v et ad capitum i capitus solidorum iiii, fiunt solidi xxxiiiis. reliquis hominibus quadraginta sex ad annonam i annona solidorum v et ad capitum i capitus solidorum iiii, fiunt solidi ccccxiiii.

31. In schola cursorum hominibus triginta annonae xxxiis capita xxx solidi cclxxxiis. ita: primo annonae ii annona solidorum v, capitus i capitus solidorum iiii, fiunt solidi xiiii. secundo et tertio et quarto ad annonam is annona solidorum v et ad capitum i capitus solidorum iiii, fiunt solidi xxxiiiis. reliquis hominibus viginti sex ad annonam i annona solidorum v et ad capitum i capitus solidorum iiii, fiunt solidi ccxxxiiii.

32. In schola nomenculatorum hominibus duodecim annonae xiii capita xiis solidi cxv. ita: primo annonae ii annona solidorum v, capitus is capitus solidorum iiii, fiunt solidi xvi. reliquis hominibus undecim ad annonam i annona solidorum v et ad capitum i capitus solidorum iiii, fiunt solidi xcviiii.

solidi, 1 fodder of 4 solidi, totaling 11½ solidi. To the remaining 4 men: 1 ration of 5 solidi and 1 fodder of 4 solidi, totaling 36 solidi.

28. In the corps (*schola*) of shorthand writers (*exceptores*): sixty men, 74 rations, 62 fodder, 618 solidi. As follows: to the first and second clerk, 3 rations at 5 solidi per ration and 2 fodder of 4 solidi, totaling 46 solidi. To the next five men, 2 rations of 5 solidi and 1 fodder of 4 solidi, totaling 70 solidi. To the remaining ten men, 1½ rations of 5 solidi and 1 fodder of 4 solidi, totaling 115 solidi. To the remaining forty-three men, 1 ration of 5 solidi and 1 fodder of 4 solidi, totaling 387 solidi.

29. In the corps of the horsemen (*singularii*): fifty men, 52½ rations, 50 fodder, 462½ solidi. As follows: to the first, 2 rations of 5 solidi, 1 fodder of 4 solidi, totaling 14 solidi. To the second, third, and fourth, 1½ rations of 5 solidi and 1 fodder of 4 solidi, totaling 34½ solidi. To the remaining forty-six men, 1 ration of 5 solidi and 1 fodder of 4 solidi, totaling 414 solidi.

30. In the corps of the messengers (*mittendarii*): fifty men, 52½ rations, 50 fodder, 462½ solidi. As follows: to the first, 2 rations of 5 solidi, 1 fodder of 4 solidi, totaling 14 solidi. To the second, third, and fourth, 1½ rations of 5 solidi and 1 fodder of 4 solidi, totaling 34½ solidi. To the remaining forty-six men, 1 ration of 5 solidi and 1 fodder of 4 solidi, totaling 414 solidi.

31. In the corps of the couriers (*cursores*): thirty men, 32½ rations, 30 fodder, 282 ½ solidi. As follows: to the first, 2 rations of 5 solidi, 1 fodder of 4 solidi, totaling 14 solidi. To the second, third, and fourth, 1½ rations of 5 solidi and 1 fodder of 4 solidi, totaling 34½ solidi. To the remaining twenty-six men, 1 ration of 5 solidi and 1 fodder of 4 solidi, totaling 234 solidi.

32. In the corps of the nomenclators: twelve men, 13 rations, 12½ fodder, 115 solidi. As follows: to the first, 2 rations of 5 solidi, 1½ fodder of 4 solidi, totaling 16 solidi. To the remaining eleven men, 1 ration of 5 solidi and 1 fodder of 4 solidi, totaling 99 solidi.

33. In schola stratorum hominibus sex annonae VII capita VI solidi LVIIII. ita: primo annonae II annona solidorum V, capitus I capitus solidorum IIII, fiunt solidi XIIII. reliquis hominibus quinque ad annonas I pro annona solidos V et ad capitum I pro capitu solidos IIII, fiunt solidi XLV.

34. In schola praeconum hominibus decem annonae XI capita XS solidi XCVII. ita: primo annonae II pro annona solidos V, capitus IS pro capitu solidos IIII, fiunt solidi XVI. reliquis hominibus novem ad annonam I pro annona solidos V et ad capitum I pro capitu solidos IIII, fiunt solidi LXXXI.

35. In schola draconariorum hominibus decem annonae XI capita XS solidi XCVII. ita: primo annonae II pro annona solidos V, capitus IS pro capitu solidos IIII, fiunt solidi XVI. reliquis hominibus novem ad annonam I pro annona solidos V et ad capitum I pro capitu solidos IIII, fiunt solidi LXXXI.

36. In scrinio operum hominibus viginti annonae XXVIII capita XXI solidi CCXXIIII. ita: primo annonae III pro annona solidi V, capita II pro capitu solidi IIII, fiunt solidi XXIII. reliquis hominibus tribus ad annonas II pro annona solidi V et ad capitum I pro capitu solidi IIII, fiunt solidi XLII. reliquis aliis hominibus sex ad annonam IS pro annona solidi V et ad capitum I pro capitu solidi IIII, fiunt solidi LXVIIII. reliquis aliis hominibus decem ad annonam I pro annona solidi V et ad capitum I pro capitu solidi IIII, fiunt solidi XC.

37. In scrinio arcae hominibus viginti annonae XXVIII capita XXI solidi CCXXIIII. ita: primo annonae III pro annona solidi V, capita II pro capitu solidi IIII, fiunt solidi XXIII. reliquis hominibus tribus ad annonas II pro annona solidi V et ad capitum I pro capitu solidi IIII, fiunt solidi XLII. reliquis aliis hominibus sex ad annonam IS pro annona solidi V et ad capitum I pro capitu solidi IIII, fiunt solidi LXVIIII. reliquis aliis hominibus decem ad annonam I pro annona solidi V et ad capitum I pro capitu solidi IIII, fiunt solidi XC.

38. In schola chartulariorum hominibus quinquaginta annonae LVIII capita LIIS solidi D. ita: primo annonae III pro annona solidi V, capita II pro capitu solidi IIII, fiunt solidi XXIII. reliquis hominibus tribus ad annonas II pro annona solidi V et ad capitum IS pro capitu solidi IIII, fiunt solidi XLVIII. reliquis aliis hominibus sex ad annonam IS pro annona solidi V et ad capitum I pro capitu solidi IIII, fiunt solidi LXVIIII. reliquis aliis hominibus quadraginta ad annonam I pro annona solidi V et ad capitum I pro capitu solidi IIII, fiunt solidi CCCLX.

33. In the corps of the jailors (*stratores*): six men, 7 rations, 6 fodder, 59 solidi. As follows: to the first, 2 rations of 5 solidi, 1 fodder of 4 solidi, totaling 14 solidi. To the remaining five men, 5 solidi for 1 ration and 4 solidi for 1 fodder, totaling 45 solidi.

34. In the corps of the heralds (*praecones*): ten men, 11 rations, 10½ fodder, 97 solidi. As follows: to the first, 2 rations at 5 solidi per ration, 1½ fodder at 4 solidi per fodder, totaling 16 solidi. To the remaining nine men, 5 solidi for 1 ration, 4 solidi for 1 fodder, totaling 81 solidi.

35. In the corps of the standard-bearers (*draconarii*): ten men, 11 rations, 10½ fodder, 97 solidi. As follows: to the first, 2 rations at 5 solidi per ration, 1½ fodder at 4 solidi per fodder, totaling 16 solidi. To the remaining nine men, 1 ration of 5 solidi and 1 fodder of 4 solidi, totaling 81 solidi.

36. In the bureau of public works: twenty men, 28 rations, 21 fodder, 224 solidi. As follows: to the first, 3 rations at 5 solidi per ration, 2 fodder at 4 solidi per fodder, totaling 23 solidi. To the next three men, 2 rations at 5 solidi per ration and 1 fodder of 4 solidi, totaling 42 solidi. To the next six, 1½ rations of 5 solidi and 1 fodder of 4 solidi, totaling 69 solidi. To the next ten, 1 ration of 5 solidi and 1 fodder of 4 solidi, totaling 90 solidi.

37. In the bureau of the treasury (*arca*): twenty men, 28 rations, 21 fodder, 224 solidi. As follows: to the first, 3 rations at 5 solidi per ration, 2 fodder at 4 solidi per fodder, totaling 23 solidi. To the next three men, 2 rations at 5 solidi per ration and 1 fodder at 4 solidi per fodder, totaling 42 solidi. To the next 6 men, 1½ rations at 5 solidi per ration and 1 fodder at 4 solidi per fodder, totaling 69 solidi. To the remaining ten men, 1 ration at 5 solidi per ration and 1 fodder at 4 solidi per fodder, totaling 90 solidi.

38. In the corps of the record-keepers (*chartularii*): fifty men, 58 rations, 52½ fodder, 500 solidi. As follows: to the first, 3 rations of 5 solidi per ration, 2 fodder of 4 solidi per ration, totaling 23 solidi. For the next three men, 2 rations at 5 solidi per ration and 1½ fodder at 4 solidi per ration, totaling 48 solidi. To the next six men, 1½ rations at 5 solidi per ration and 1 fodder at 4 solidi per ration, totaling 69 solidi. To the remaining forty men, 1 ration at 5 solidi per ration and 1 fodder at 4 solidi per ration, totaling 360 solidi.

39. Fiunt homines CCCXCVI, annonae CCCCXCVIII solidorum ĪĪCCCCXC, capita CCCCXXS solidorum MDCLXXXII, fiunt solidi ĪĪĪĪCLXXII.

40. Item pro annonis et capitu consularis solidi CCCCXLVIII. officiorum eius solidi CLX.

41. Pro tempore medicis hominibus quinque annonae XLVIIII capita XVIIIS solidi CCCXVIIII. ita: primo pro annonis XV capitibus VI solidi IC. secundo pro annonis X capitibus V solidi LXX. reliquis hominibus tribus ad annonas VIII et ad capita IIS solidi CL.

42. Grammaticis hominibus duobus ad annonas X et ad capita V, ad solidos LXX. sophistis oratoribus hominibus duobus ad annonas X, ad capita V, ad solidos LXX.

43. Haec igitur, quae pro disponendis civilibus iudicibus Africae eorumque officiis, id est tam scriniariis amplissimae eius praefecturae quam cohortalibus, per hanc divinam constitutionem statuimus, tua magnitudo cognoscens ex kalendis Septembribus futurae tertiae decimae indictionis effectui mancipari observarique procuret atque edictis publicis omnibus innotescant: his scilicet, qui ordinati fuerint a tua sublimitate secundum praesentem divinam constitutionem, firmitatem sui status in perpetuo habituris. nam deo iuvante de militaribus iudicibus et de officiis eorum et de alio nostro exercitu per aliam sanctionem statuimus.

Emissa lex <k. Apr.> Constantinopoli d.n. Iustiniano pp. A. IIII et Paulino vc. conss.

[2] *Imp. Iustinianus A. Belisario magistro militum per Orientem.* **pr.** In nomine domini nostri Ihesu Christi ad omnia consilia omnesque actus semper progredimur. per ipsum enim imperii iura suscepimus, per ipsum pacem cum Persis in aeternum confirmavimus, per ipsum acerbissimos hostes et fortissimos tyrannos deiecimus, per ipsum multas difficultates superavimus, per ipsum et Africam defendere et sub nostrum imperium redigere nobis concessum est, per ipsum quoque, ut nostro moderamine recte gubernetur et firme custodiatur, confidimus. **1.** Unde iam per eius gratiam civilium administrationum iudices et officia singulis Africanis provinciis constituimus, attribuentes, quid emolumentorum unusquisque percipere debeat. ad eius igitur providentiam etiam nunc animum nostrum referentes et armatas militias et duces limitum[xxix] ordinare disponimus.

[xxix] S. Corcoran, "The Würzburg Fragment" (2016).

39. In total there are 396 men, 498 rations of 2,490 solidi, 420½ fodder of 1,682 solidi, totaling 4,172 solidi.

40. Likewise for the rations and fodder of the consular, 448 solidi. For his official staff, 160 solidi.[316]

41. For the acting physicians: five men, 49 rations, 18½ fodder, totaling 319 solidi. As follows: to the first, 90 solidi for 15 rations, 6 fodder. To the second, 70 solidi for 10 rations, 5 fodder. To the remaining three, 150 solidi for 8 rations and 2½ fodder.

42. For the grammarians: two men, 10 rations and 5 fodder, 70 solidi. For the orators (*sophistae oratores*): two men, 10 rations, 5 fodder, 70 solidi.

43. Your Greatness, therefore, shall take note of what We have ordained by this divine constitution regarding the placement of the civil governors of Africa and their staffs, that is, both the officials of the bureaus of the Most Exalted Prefecture and the officials of the provincial governors, and you shall see to it that these things are put it into effect from September 1 of the coming thirteenth indiction,[317] and that they become known to all by public edicts. Of course, the men who shall be appointed by Your Sublimity according to the present divine constitution shall continue to keep firm possession of their present status. We have, with the aid of God, made provision for the military governors and their staffs and for Our other army in another decree.

Law issued April 1, from Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, for the fourth time, and the vir clarissimus *Paulinus (534).*[318]

[2] *The same Augustus to Belisarius, Master of Soldiers in the Orient.*[319] **pr.** In the name of Our Lord Jesus Christ We always enter into every counsel and all deeds. Through Him We have received the rights of empire; through Him We have established peace with the Persians for ever; through Him We have cast down the bitterest enemies and mightiest tyrants; through Him We have overcome many difficulties; through Him it has been permitted to Us both to defend Africa and to bring it under Our power; and through Him We trust that it shall be rightly governed and securely guarded under Our rule. **1.** Hence, We have already, through His grace, established governors and their staffs in the civil administration of each African province, assigning to them the perquisites that each one should receive. And now again taking forethought for it, We have resolved to establish both its armed forces and Dukes of the Frontiers.

[316] At this point, it appears that the official staff of the province Zeugitana and the other six provinces have been lost; cf. §12.

[317] On the indiction, see note above on C. 1.17.2.23.

[318] The subscription has been restored in full on the basis of the Würzburg fragments (Corcoran, "Würzburg Fragment," 2016); see also Dillon (2015). Lounghis *et al.* had dated to April 13, 534.

[319] The inscription in the Würzburg fragments corresponds: [*Id. A. Belisario*] *mag. mil. perorient(m).* (Corcoran).

1a. Sancimus itaque, ut dux limitis Tripolitanae provinciae in Leptimagnensi civitate sedes interim habeat, dux vero Byzacenae provinciae in Capsa et Thelepte civitatibus interim sedeat, dux autem Numidiae provinciae in Constantinensi civitate sedes interim habeat, dux autem Mauritaniae provinciae in Caesariensi civitate interim sedeat. **2.** Iubemus etiam, ut in traiectu, qui est contra Hispaniam, quod Septem dicitur, quantos providerit tua magnitudo, de militibus una cum tribuno suo, homine prudente et devotionem servante rei publicae nostrae per omnia, constituas, qui possit et ipsum traiectum semper servare et omnia, quaecumque in partibus Hispaniae vel Galliae seu Francorum aguntur, viro spectabili duci nuntiare, ut ipse tuae magnitudini referat. in quo traiectu etiam dromones, quantos provideris, ordinari facias.

3. In Sardinia autem iubemus ducem ordinari et eum iuxta montes, ubi Barbaricini videntur, sedere habentem milites pro custodia locorum, quantos et ubi tua magnitudo providerit. **4.** Et omnes diligenter pro commissis suae custodiae provinciis invigilent et ab omni hostium incursione subiectos nostros tueantur illaesos et festinent, die noctuque dei invocando auxilium et diligenter laborando, usque ad illos fines provincias Africanas extendere, ubi ante invasionem Vvandalorum et Maurorum res publica Romana fines habuerat et ubi custodes antiqui servabant, sicut ex clusuris et burgis ostenditur. **4a.** Maxime autem civitates, quae prope clusuras et fines antea tenebantur, cum essent sub Romano imperio constitutae, auxiliante divina misericordia, cum hostes per partes expelluntur, festinantes comprehendere atque manere et in illis locis duces et milites per partes accedant, ubi antea fines et clusurae provinciarum erant, quando integrae Africanae servabantur sub Romano imperio provinciae:

4b. Quod deo adnuente, cuius auxilio nobis restitutae sunt, speramus cito nostris provenire temporibus, et ut in securitate et pace provinciae cum antiquis finibus integrae serventur et vigiliis ac laboribus devotissimorum militum et cura spectabilium pro tempore ducum custodiantur illaesae, quoniam ita convenit, ut semper custodes fines provinciae servent, ne detur hostibus licentia incurrendi aut devastandi loca, quae nostri subiecti possident. **5.** Quantos autem milites sive pedestres sive equites per unumquemque limitem qui debent[xxx] ad custodiendas provincias et civitates, tua magnitudo, prout consideraverit, ordinet et nobis referat, ut, si perviderimus sufficientem esse ordinationem, confirmemus eam, sin autem perspexerimus et aliquid amplius fieri,

[xxx] qui praesunt habere debent (Mommsen)

1a. We therefore decree that the Duke of the Frontier of the province of Tripolitana shall have his seat presently in the city of Leptis Magna; the Duke of the province of Byzacena, presently in Capsa and Thelepte; the Duke of the province of Numidia shall have his seat presently in the city of Constantina; the Duke of the province of Mauritania shall reside presently in the city of Caesarea. **2.** We also order that Your Greatness shall place as many soldiers as you see fit at the strait opposite Spain, which is called Septem,[320] together with their Tribune, a man of prudence and in all things devoted to Our State, who can both always guard the strait itself and report to the *vir spectabilis* Duke everything that occurs in Spain and Gaul or rather among the Franks, so that the latter may then report it to Your Greatness. You shall also have cutters (*dromones*) stationed at this strait, as many as you see fit.

3. In Sardinia, though, We order a Duke to be appointed and to have his seat beside the mountains where the Barbaricini can be seen, with as many soldiers to guard the area and stationed as Your Greatness shall see fit. **4.** And all shall diligently watch over the provinces entrusted to their care and keep Our subjects unharmed from every enemy attack and shall strive, invoking the help of God day and night and toiling diligently, to extend the African provinces to where the Roman State maintained its frontier and where the ancients kept watch before the invasions of the Vandals and Moors, as is shown by the forts and castles. **4a.** And above all, when, with the help of divine mercy, the enemy is driven out of these regions, they shall strive to seize and hold the cities that were held near the castles and frontier when they were under Roman rule; and the Dukes and soldiers in these regions shall advance to where the borders and forts of the African provinces once were, when they were kept intact under Roman rule.

4b. With the assent of God, by whose help the provinces were restored to Us, We hope that this will swiftly come to pass in Our time, and that the provinces may be preserved intact in safety and peace within their ancient borders and may be kept unharmed by the vigilance and labors of the most devoted soldiers and by the attention of the acting *viri spectabiles* Dukes; for it is fitting that the guards always protect the boundaries of the province so that the enemy are given no opportunity to invade or devastate the places that Our subjects possess. **5.** Your Greatness shall, at your discretion, station for each frontier region as many soldiers, whether infantry or cavalry, as those who command them should have to guard the provinces and cities; and you shall report this to Us, so that We may confirm this deployment, if We perceive that it is sufficient, or, if We perceive that something more could be done, increase it. **6.** The appended schedule shows what the Duke, as well as his official staff, should receive for himself and his men as payment. **7.** As has been said above,

[320] Modern Ceuta.

ut eam augmentemus. **6.** Quid autem dux stipendiorum nomine pro se suisque hominibus et quid eius officium consequatur, hoc subdita declaratur notitia. **7.** Sicut ergo praedictum est, interim nunc duces ac milites secundum nostram dispositionem in locis seu civitatibus quibus iussimus sedeant, donec deo auxiliante nobis ac rei publicae nostrae per labores nostros in illis locis constitui possint, in quibus uniuscuiusque provinciae antiquus limes constitutus erat, quando florente Romana re publica memoratae provinciae integrae tenebantur.

8. Pro limitaneis vero ordinandis (quia necessarium nobis esse videtur, ut extra comitatenses milites per castra milites limitanei constituantur, qui possint et castra et civitates limitis defendere et terras colere, ut alii provinciales videntes eos per partes ad illa loca se conferant) exemplum fecimus unius numeri limitaneorum, ut secundum exemplum, quod nos misimus, per castra et loca, quae providerit tua magnitudo, eos ad similitudinem nostri exempli ordinet, sic tamen ut, si inveneris de provinciis idonea corpora, aut de illis, quos antea milites habebant, limitaneorum constituas numero in unoquoque limite, ut, si forsitan commotio aliqua fuerit, possint ipsi limitanei sine comitatensibus militibus una cum ducibus suis adiuvare loca, ubi dispositi fuerint, non longe limitem exeuntes nec ipsi limitanei nec duces eorum, ut nullum etiam dispendium a ducibus vel ducianis praedicti limitanei sustineant, nec aliquas sibi consuetudines de eorum stipendiis per fraudes ad suum lucrum convertant. haec autem non solum in limitaneos volumus observari, sed etiam in comitatenses milites.

9. Et unumquemque ducem et tribunos eorundem militum iubemus, ut semper milites ad exercitationem armorum teneant et non concedant eos divagari, ut, si quando necessitas contigerit, possint inimicis resistere: et nullum audeant duces aut tribuni commeatalem de ipsis dimittere, ne, dum sibi lucrum studeant conficere, incustoditas nostras relinquant provincias. **9a.** Nam si usurpaverint memorati duces vel officia eorum seu tribuni commeatalem de militibus relinquere aut aliquod lucrum de eorum emolumentis subripere, hoc non solum in quadruplum iubemus publico dependere, sed etiam dignitate eos privari. **9b.** Magis enim debent duces et tribuni supra deputata sibi emolumenta secundum labores suos de nostra largitate remunerationem sperare et non de commeatis militum aut de eorum stipendiis lucrum sibi adquirere, quoniam ideo ordinati sunt milites, ut per ipsos provinciae

therefore, the Dukes and soldiers shall in the meanwhile reside in the places or cities in which, according to Our disposition, We have ordered them to do so, until, with God aiding Us and Our State, they can, by Our labors, be stationed in those places where the ancient frontier of each province was located, when the aforementioned provinces were held intact under the flourishing Roman State.

8. For the deployment of frontier troops (*limitanei*) – because it seems necessary to Us that in addition to field troops (*comitatenses*) frontier soldiers be stationed in camps, who could defend the camps and cities on the frontier and work the land, so that other provincials, upon seeing them in areas, shall also move to those places – We have drawn up an example of one unit of frontier soldiers, so that by following the example We have sent, Your Greatness may station them in camps and places as you shall see fit in a similar way to Our example; but in such a way that if you should find suitable men in the provinces or from among those they previously had as soldiers, you shall station them as frontier troops in each frontier region; thus, if some disturbance should arise, the frontier troops themselves, without the field troops, together with their Dukes, may help the places where they are stationed, and neither the frontier troops nor their Dukes need go far beyond the frontier, so that the aforementioned frontier troops shall suffer no loss at the hands of the Dukes or their officers, nor shall the latter fraudulently divert payments from the troops' wages to their own profit. We want these provisions to apply not only to the frontier troops but to the field troops as well.

9. And We order each Duke and their military Tribunes always to keep the soldiers training at arms and not to permit them to straggle, so that if an emergency should occur, they can resist the enemy; and the Dukes or Tribunes shall not dare of their own accord to send away any soldier on furlough (*commeatalem dimittere*), lest, while they pursue their own profit, they leave Our provinces unguarded. **9a.** For if the aforementioned Dukes or their official staffs or the Tribunes should practice leaving soldiers on furlough and pilfer for themselves some profit from their perquisites, We order them not only to pay fourfold to the public treasury but also to be stripped of their rank. **9b.** For the Dukes and Tribunes should hope from Our Generosity for remuneration in addition to their perquisites, according to their labor, and should not take profit for themselves from the furloughs of soldiers or from their wages, because the soldiers have been stationed precisely so that the provinces may be defended by them; especially since We have provided sufficient perquisites

vindicentur: praecipue cum sufficienter et ipsis ducibus et officiis eorum emolumenta praestitimus et semper providimus unumquemque secundum labores suos ad meliores gradus et maiores dignitates perducere.

10. Postquam vero deo placuerit et per tuam magnitudinem limes omnis in antiquum statum pervenerit et bene ordinatus fuerit, tunc, ubicumque necessitas emerserit, viri spectabiles duces invicem sibi, quando usus exegerit, auxilium praebeant, ut provinciae seu limites eorum vigiliis et laboribus deo iuvante illaesi custodiantur. **11.** Sicut autem iubemus audaces et feroces contra inimicos iudices ac milites nostros esse, sic volumus eos mites et benevolos circa collatores nostros existere et nullum damnum nullamque laesionem in eos efficere. si autem quisquam de militibus ausus fuerit quamcumque laesionem tributariis nostris inferre, periculo viri spectabilis ducis seu tribuni et principis digna vindicta afficiatur et indemnes tributarii nostri custodiantur. **12.** Si vero pro quibusdam causis interpellatio apud nostros iudices facta fuerit, iubemus non amplius sportularum nomine, quam nostris legibus definitum est, executores accipere, poenam eisdem legibus insertam ex transgressione formidantes.

13. Cum autem deo adiuvante Africanae nostrae provinciae per tuam magnitudinem secundum nostram dispositionem ordinatae et limites in antiquum statum reducti et omnis Africa sic detenta fuerit, sicut erat, cum ergo haec omnia deo iuvante, praesente tua magnitudine, disposita et perfecta fuerint et per labores tuos antiquos fines omnis Africa receperit, et docuerit nos de omni ordinatione totius Africanae dioeceseos, id est quanti et qui milites in quibus locis vel civitatibus constituti sunt et quanti limitanei in quibus locis vel limitibus constituti sunt, tunc iubemus tuam magnitudinem ad nostram clementiam remeare.

14. Interea vero si aliquas civitates seu castella per limitem constituta perviderit tua magnitudo nimiae esse magnitudinis et propter hoc non posse bene custodiri, ad talem modum eas construi disponat, ut possint per paucos bene servari. **15.** Cum autem magnitudo tua omnibus dispositis ad nos remeare iussa fuerit, tunc duces uniuscuiusque limitis, quotiens pro componendis civitatibus aut castris et pro stipendiis suis ac pro annonis aliquid opus habuerint, celerius ad virum magnificum praefectum per Africam significent, ut ipse quae necessaria fuerint festinet facere, ne aliqua protractio provinciis noceat. **16.** Ea vero, quae ipse fecerit vel quae adhuc necessarie procuranda sunt, postea et memoratus vir magnificus praefectus Africae et viri spectabiles duces et de

both to the Dukes themselves and to their staffs and have always taken care to promote every one of them to a better rank and higher status according to his labor.

10. Once it has pleased God, however, and the entire frontier has returned to its ancient state and is well ordered, then, whenever the necessity arises, the *viri spectabiles* Dukes shall, as need requires, provide aid to one another in turn, so that the provinces or frontiers may, with the help of God, be guarded unharmed by their vigilance and labors. **11.** Just as We order Our governors and soldiers to be bold and fierce against the enemy, so We desire that they be mild and benevolent toward Our taxpayers and cause them no loss or injury. But if one of the soldiers should dare to inflict any injury on Our taxpayers, he shall, at the peril of the *vir spectabilis* Duke or Tribune, be stricken by a punishment worthy of the Emperor, and Our taxpayers shall be kept free from loss. **12.** If, though, in certain cases, someone should formally go before Our governors, We order that the court clerks receive no more in fees than has been fixed by Our laws, and they shall fear the penalty included in those laws in the case of transgression.

13. When, moreover, with the help of God, Our African provinces shall have been organized by Your Greatness according to Our disposition, and the frontiers restored to their ancient state, and all Africa held just as it once was – when, therefore, with the help of God, all these things have been set in order and completed in the presence of Your Greatness, and by your labors all Africa has recovered its ancient borders, and you have informed Us of the entire organization of the whole African diocese, that is, how many and which soldiers have been stationed in which places or cities, and how many frontier troops have been stationed in which places or frontier regions zones, then We order Your Greatness to return to Our Clemency.

14. In the meanwhile, if Your Greatness should perceive that some cities or castles located along the frontier are too large and on that account cannot be guarded well, you will see to it that they are constructed in such a manner as to be easily kept by few men. **15.** When, however, Your Greatness is ordered to return to Us, with everything set in order, then the Dukes of each frontier, whenever they have some need for setting the cities or camps in order or for wages and rations, shall promptly advise the *vir magnificus* Prefect of Africa, so that he himself may hasten to do what is required, lest any delay harm the provinces. **16.** Whatever he does or whatever still requires attention, both the aforementioned *vir magnificus* Prefect of Africa and the *viri spectabiles* Dukes shall regularly inform Us, and of everything else done there, so that We may

aliis omnibus quae ibi aguntur frequenter ad nos referant, ut bene facta confirmemus et, quae opportunius debent fieri, ex nostra dispositione peragantur.

17. Hoc etiam decernimus, ut duces, qui ordinandi sunt per Africanos limites, nihil amplius in sacratissimo palatio cuilibet personae aut dignitati vel in praetorio per Africam praefecturae vel magisteriae potestati praebeant, nisi quantum subter adnexa declarat notitia. **17a.** Nam si quis amplius, quam in subdita notitia taxatum est, usurpaverit seu acceperit, triginta libras auri multae dependat nomine, cum et periculo indignationis nostrae serenitatis subiacebit: nulla alia qualibet persona aut dignitate aut officio accipiente aliquid ab eis praeter illos, quorum nomina in subiecta notitia continentur. **18.** Ad haec iubemus, ut deo iuvante unusquisque dux seu eorum officia, secundum quod notitia subter adnexa detinet,[xxxi] emolumenta sua ex tributis Africanae provinciae ex kalendis Septembribus instantis felicissimae tertiae decimae indictionis percipiant.

19. Et est notitia: deo volente debent delegari ducibus et eorum officiis in Africa constitutis pro annonis et capitu per singulos annos praebendis ita:

20. Viro clarissimo duci tripolitanae provinciae et hominibus eius annonae CXC, singulis annonis solidi V, capita CLVIII, singulis capitibus solidi IIII, simul fiunt pro annonis et capitu solidi MDLXXXII.

21. Adsessori ducis et officio eius hominibus quadraginta annonae XCVIS, singulis annonis solidi V, capita XLVIII, singulis capitibus solidi IIII, simul fiunt pro annonis et capitu solidi DCLXXIIIIS dividuntur sic:

22. Adsessori uno annonae VIII capita IIII.

primicerio uno annonae V capita II.

numerario uno annonae IIII capita II.

ducenariis quattuor ad annonas IIIS, fiunt annonae XIIII, et ad capitum IS, fiunt capita VI.

centenariis sex ad annonas IIS, fiunt annonae XV, et ad capitum I, fiunt capita VI.

biarchis octo ad annonas II, fiunt annonae XVI, et ad capitum I, fiunt capita VIII.

[xxxi] destinet

confirm what has been done well, and that what should be done more suitably may be completed pursuant to Our directions.

17. This too We decree: that the Dukes who shall be appointed to the African frontier shall not give anything more to any person or ranking official in the Most Sacred Palace or to the Praetorian Prefecture in Africa or to the office of Master except the amount indicated in the schedule appended below. **17a.** For if anyone takes or receives more than has been defined in the appended schedule, he shall forfeit 30 pounds of gold as a fine, while he shall also face the danger of the wrath of Our Serenity. No other person or official or official staff shall receive anything whatsoever from them except those whose names are listed in the appended schedule. **18.** In addition, We order that, with the help of God, each Duke or their staffs shall, according to the amount defined in the schedule attached below, receive their perquisites from the tribute of the province of Africa from September 1 of the coming most prosperous thirteenth indiction.

19. And this is the schedule: God willing, there should be assigned to the Dukes and their staffs stationed in Africa as rations and fodder to be provided each year:

20. To the *vir clarissimus* Duke of the province of Tripolitana and to his men: 190 rations, 5 solidi to each ration (*annona*), 158 fodder (*capitus*),[321] 4 solidi to each fodder, which together for rations and fodder make 1,582 solidi.

21. To the judicial advisor (*adsessor*) of the Duke and his staff: forty men, 96½ rations, 5 solidi to each ration, 48 fodder, 4 solidi to each fodder, which together for rations and fodder make 674½ solidi, divided as follows:

22. To one judicial advisor: 8 rations, 4 fodder.

To one chief clerk (*primicerius*): 5 rations, 2 fodder.

To one chief accountant (*numerarius*): 4 rations, 2 fodder.

To four *ducenarii*: 3½ rations, totaling 14 rations; and 1½ fodder, totaling 6 fodder.

To six *centenarii*: 2½ rations, totaling 15 rations; and 1 fodder, totaling 6 fodder.

To eight *biarchae*: 2 rations, totaling 16 rations; and 1 fodder, totaling 8 fodder.

[321] On *annona* and *capitus*, see note on C. 1.27.1 above.

circitoribus novem ad annonas II, fiunt annonae XVIII, et ad capitum I, fiunt capita VIIII.

semissalibus undecim ad annonam IS, fiunt annonae XVIS, et ad capitum I, fiunt capita XI.

23. Item viro clarissimo duci byzacenae provinciae et hominibus eius annonae CXC, singulis annonis solidi V, capita CLVIII, singulis capitibus solidi IIII, simul fiunt pro annonis et capitu solidi MDLXXXII.

24. Adsessori ducis et officio eius hominibus quadraginta annonae XCVIS, singulis annonis solidi V, capita XLVIII, singulis capitibus solidi IIII, simul fiunt pro annonis et capitu solidi DCLXXIIIIS. dividuntur sic:

25. Adsessori uno annonae VIII capita IIII.

primicerio uno annonae V capita II.

numerario uno annonae IIII capita II.

ducenariis quattuor ad annonas IIIS, fiunt annonae XIIII, et ad capitum IS, fiunt capita VI.

centenariis sex ad annonas IIS, fiunt annonae XV, et ad capitum I, fiunt capita VI.

biarchis octo ad annonas II, fiunt annonae XVI, et ad capitum I, fiunt capita VIII.

circitoribus novem ad annonas II, fiunt annonae XVIII, et ad capitum I, fiunt capita VIIII.

semissalibus undecim ad annonam IS, fiunt annonae XVIS, et ad capitum I, fiunt capita XI.

26. Item viro clarissimo duci Numidiae provinciae et hominibus eius annonae CXC, singulis annonis solidi V, capita CLVIII, singulis capitibus solidi IIII, simul fiunt pro annonis et capitu solidi MDLXXXII.

27. Adsessori ducis et officio eius hominibus quadraginta annonae XCVIS, singulis annonis solidi V, capita XLVIII, singulis capitibus solidi IIII, simul fiunt pro annonis et capitu solidi DCLXXIIIIS. dividuntur sic:

28. Adsessori uno annonae VIII capita IIII.

primicerio uno annonae V capita II.

numerario uno annonae IIII capita II.

ducenariis quattuor ad annonas IIIS, fiunt annonae XIIII, et ad capitum IS, fiunt capita VI.

centenariis sex ad annonas IIS, fiunt annonae XV, et ad capitum I, fiunt capita VI.

biarchis octo ad annonas II, fiunt annonae XVI, et ad capitum I, fiunt capita VIII.

circitoribus novem ad annonas II, fiunt annonae XVIII, et ad capitum I, fiunt capita VIIII.

To nine *circitores*: 2 rations, totaling 18 rations; and 1 fodder, totaling 9 fodder.

To eleven *semissales*: 1½ rations, totaling 16½ rations; and 1 fodder, totaling 11 fodder.

23. Likewise to the *vir clarissimus* Duke of the province of Byzacena and his men: 190 rations, 5 solidi to each ration, 158 fodder, 4 solidi to each fodder, which together for rations and fodder make 1,582 solidi.

24. To the judicial advisor of the Duke and his staff: forty men, 96½ rations, 5 solidi to each ration, 48 fodder, 4 solidi to each fodder, which together for rations and fodder make 674½ solidi, divided as follows:

25. To one judicial advisor: 8 rations, 4 fodder.

To one chief clerk: 5 rations, 2 fodder.

To one chief accountant: 4 rations, 2 fodder.

To four *ducenarii*: 3½ rations, totaling 14 rations; and 1½ fodder, totaling 6 fodder.

To six *centenarii*: 2½ rations, totaling 15 rations; and 1 fodder, totaling 6 fodder.

To eight *biarchae*: 2 rations, totaling 16 rations; and 1 fodder, totaling 8 fodder.

To nine *circitores*: 2 rations, totaling 18 rations; and 1 fodder, totaling 9 fodder.

To eleven *semissales*: 1½ rations, totaling 16 ½ rations; and 1 fodder, totaling 11 fodder.

26. Likewise to the *vir clarissimus* Duke of the province of Numidia and his men: 190 rations, 5 solidi to each ration, 158 fodder, 4 solidi to each fodder, which together for rations and fodder make 1,582 solidi.

27. To the judicial advisor of the Duke and his staff: forty men, 96½ rations, 5 solidi to each ration, 48 fodder, 4 solidi to each fodder, which together for rations and fodder make 674½ solidi, divided as follows:

28. To one judicial advisor: 8 rations, 4 fodder.

To one chief clerk: 5 rations, 2 fodder.

To one chief accountant: 4 rations, 2 fodder.

To four *ducenarii*: 3½ rations, totaling 14 rations; and 1½ fodder, totaling 6 fodder.

To six *centenarii*: 2½ rations, totaling 15 rations; and 1 fodder, totaling 6 fodder.

To eight *biarchae*: 2 rations, totaling 16 rations; and 1 fodder, totaling 8 fodder.

semissalibus undecim ad annonas IS, fiunt annonae XVIS, et ad capitum I, fiunt capita XI.

29. Item viro clarissimo duci Mauritaniae provinciae et hominibus eius annonae CXC, singulis annonis solidi V, capita CLVIII, singulis capitibus solidi IIII, simul fiunt pro annonis et capitu solidi MDLXXXII.

30. Adsessori ducis et officio eius hominibus quadraginta annonae XCVIS, singulis annonis solidi V, capita XLVIII, singulis capitibus solidi IIII, simul fiunt pro annonis et capitu solidi DCLXXIIIIS. dividuntur sic:

31. Adsessori uno annonae VIII capita IIII.

primicerio uno annonae V capita II.

numerario uno annonae IIII capita II.

ducenariis quattuor ad annonas IIIS, fiunt annonae XIIII, et ad capitum IS, fiunt capita VI.

centenariis sex ad annonas IIS, fiunt annonae XV, et ad capitum I, fiunt capita VI.

biarchis octo ad annonas II, fiunt annonae XVI, et ad capitum I, fiunt capita VIII.

circitoribus novem ad annonas II, fiunt annonae XVIII, et ad capitum I, fiunt capita VIIII.

semissalibus undecim ad annonas IS, fiunt annonae XVIS, et ad capitum I, fiunt capita XI.

32. Item viro clarissimo duci Sardiniae insulae et hominibus eius annonae CXC, singulis annonis solidi V, capita CLVIII, singulis capitibus solidi IIII, simul fiunt pro annonis et capitu solidi MDLXXXII.

33. Adsessori ducis et officio eius hominibus quadraginta annonae XCVIS, singulis annonis solidi V, capita XLVIII, singulis capitibus solidi IIII, simul fiunt pro annonis et capitu solidi DCLXXIIIIS. dividuntur sic:

34. Adsessori uno annonae VIII capita IIII.

primicerio uno annonae V capita II.

numerario uno annonae IIII capita II.

ducenariis quattuor ad annonas IIIS, fiunt annonae XIIII, et ad capitum IS, fiunt capita VI.

centenariis sex ad annonas IIS, fiunt annonae XV, et ad capitum I, fiunt capita VI.

biarchis octo ad annonas II, fiunt annonae XVI, et ad capitum I, fiunt capita VIII.

circitoribus novem ad annonas II, fiunt annonae XVIII, et ad capitum I, fiunt capita VIIII.

semissalibus undecim ad annonas IS, fiunt annonae XVIS, et ad capitum I, fiunt capita XI.

To nine *circitores*: 2 rations, totaling 18 rations; and 1 fodder, totaling 9 fodder.

To eleven *semissales*: 1½ rations, totaling 16½ rations; and 1 fodder, totaling 11 fodder.

29. Likewise to the *vir clarissimus* Duke of the province of Mauritania and his men: 190 rations, 5 solidi to each ration, 158 fodder, 4 solidi to each fodder, which together for rations and fodder make 1,582 solidi.

30. To the judicial advisor of the Duke and his staff: forty men, 96½ rations, 5 solidi to each ration, 48 fodder, 4 solidi to each fodder, which together for rations and fodder make 674½ solidi, divided as follows:

31. To one judicial advisor: 8 rations, 4 fodder.

To one chief clerk: 5 rations, 2 fodder.

To one chief accountant: 4 rations, 2 fodder.

To four *ducenarii*: 3½ rations, totaling 14 rations; and 1½ fodder, totaling 6 fodder.

To six *centenarii*: 2½ rations, totaling 15 rations; and 1 fodder, totaling 6 fodder.

To eight *biarchae*: 2 rations, totaling 16 rations; and 1 fodder, totaling 8 fodder.

To nine *circitores*: 2 rations, totaling 18 rations; and 1 fodder, totaling 9 fodder.

To eleven *semissales*: 1½ rations, totaling 16½ rations; and 1 fodder, totaling 11 fodder.

32. Likewise to the *vir clarissimus* Duke of the Island of Sardinia and his men: 190 rations, 5 solidi to each ration, 158 fodder, 4 solidi to each fodder, which together for rations and fodder make 1,582 solidi.

33. To the judicial advisor of the Duke and his staff: forty men, 96½ rations, 5 solidi to each ration, 48 fodder, 4 solidi to each fodder, which together for rations and fodder make 674½ solidi, divided as follows:

34. To one judicial advisor: 8 rations, 4 fodder.

To one chief clerk: 5 rations, 2 fodder.

To one chief accountant: 4 rations, 2 fodder.

To four *ducenarii*: 3½ rations, totaling 14 rations; and 1½ fodder, totaling 6 fodder.

To six *centenarii*: 2½ rations, totaling 15 rations; and 1 fodder, totaling 6 fodder.

To eight *biarchae*: 2 rations, totaling 16 rations; and 1 fodder, totaling 8 fodder.

To nine *circitores*: 2 rations, totaling 18 rations; and 1 fodder, totaling 9 fodder.

To eleven *semissales*: 1½ rations, totaling 16½ rations; and 1 fodder, totaling 11 fodder.

35. Item notitia consuetudinum, quas in sacro laterculo et in praetorio amplissimae praefecturae per Africam, iam in officio magistri militum pro tempore dux praebere oportet uniuscuiusque limitis sic: in sacro laterculo solidi VI: in officio magisteriae militum potestatis pro insinuandis administrationis suae divinis nostrae serenitatis affatibus solidi XII: in officio amplissimae praefecturae per Africam pro insinuandis eiusdem chartis solidi XII.

36. Gloria itaque tua, quae per hanc pragmaticam sanctionem nostra statuit aeternitas, effectui mancipari observarique praecipiat.

Emissa lex idibus Aprilibus Constantinopoli dn. Iustiniano pp. A. IIII et Paulino vc. conss.

XXVIII De Officio Praefecti Urbis

[1] *Impp. Valentinianus et Valens AA. ad Volusianum pu.* Studentibus nobis statum urbis et annonariam rationem aliquando firmare in animo subiit eiusdem annonae curam non omnibus deferre potestatibus. ac ne praefectura urbis abrogatum sibi aliquid putaret, si totum ad officium annonarium redundasset eidem praefecturae sollicitudinis ac diligentiae necessitatem mandamus, sed non ita, ut lateat officium annonariae praefecturae, sed ut ambae potestates, in quantum sibi negotii est, tueantur civilem annonam sitque societas muneris ita, ut inferior gradus meritum superioris agnoscat atque ita superior potestas se exserat, ut sciat ex ipso nomine, quid praefecto debeatur annonae.

D. II non. April. Mediolani Valentiniano et Valente AA. II conss.

[2] *Idem AA. ad Ampelium pu.* Quod promulgatis sanctionibus tua sinceritas perscriptum[xxxii] esse non nescit, etiam ex praecepto nostro competenter observet nec quasdam personas de provincia existimet avocandas nisi tantummodo suos officiales et homines populares huius almae urbis seditioni obnoxios.

[xxxii] praescriptum?

35. Likewise the schedule of the payments, which the acting Duke of each frontier must pay in the Sacred Register, in the Most Exalted Praetorian Prefecture of Africa, and in the office of the Master of Soldiers, is as follows: in the Sacred Register, 6 solidi; in the office of the Master of Soldiers for registering the divine utterances of Our Serenity as to his post, 12 solidi; in the office of the Most Exalted Praetorian Prefecture of Africa for registering the documents of the same Duke, 12 solidi.

36. Thus Your Glory will order that what Our Eternity has ordained by this pragmatic sanction shall be put into effect and observed.

Law issued April 13, from Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, for the fourth time, and the vir clarissimus *Paulinus (534).*

Twenty-Eighth Title The Office of the Urban Prefect[322]

[1][323] *Emperors VALENTINIAN and VALENS Augusti to Volusianus, Urban Prefect.* As We are eager to strengthen the condition of the City and the organization of the grain supply, it has occurred to Us not to confer the superintendence of the grain supply on all officials. And lest the Urban Prefect should think that something has been taken from him if this duty should fall entirely to the office of the Prefect of the Food Supply (*praefectus annonae*), We entrust this essential responsibility and duty to the Urban Prefect, but not so that the office of the Prefecture of the Food Supply should be obscured, but so that both offices, insofar as their duties require, should oversee the civic grain supply and share the labor; whereby the lesser rank shall recognize the merit of the greater and the greater rank show itself aware what deference is due the Prefect of the Food Supply by virtue of his very title.

Given April 4, at Milan, in the consulship of Valentinian and Valens, for the second time, Augusti (368).

[2] *The same Augusti to Ampelius, Urban Prefect.* As Your Sincerity is not unaware of what has been written out[324] in published decrees, you shall also accordingly observe this pursuant to Our command, and (namely) hold that no persons should be summoned from the province except your own officials and members of the populace of This Generous City liable for sedition.

(371–372).[325]

[322] See D. 1.12.
[323] = C.Th. 1.6.5; combine with C.Th. 16.26.1. Seeck gives April 4, 365.
[324] "ordered" if one adopts the reading *praescriptum.*
[325] Seeck dates to December 6, 371; Schmidt-Hofner gives 371/372.

[3] *Imppp. Valens Gratianus et Valentinianus AAA. ad Rufinum pp.* Praefectura urbis cunctis quae intra urbem sunt antecellat potestatibus, tantum ex omnium parte delibans, quantum sine iniuria ac detrimento alieni honoris usurpet.

D. III id. Iul. Valente A. v et Valentiniano iun. conss.

[4] *Imppp. Valentinianus Theodosius et Arcadius AAA. Severino comiti sacrarum largitionum.* Omnia corporatorum genera, quae in Constantinopolitana civitate versantur, universos quoque cives atque populares praefecturae urbanae regi moderamine recognoscas.

D. XVII k. Mai. Mediolani Tatiano et Symmacho conss.

[5] *Imp. Theodosius AA. Constantio pu.* Primicerius adiutorum tuae sedis officii per biennium, quod in eodem gradu ex consuetudine priscae ordinationis emeruit,[xxxiii] curam insuper personarum usurpatione omni atque ambitione cessante suscipiat: hoc etiam adiecto, ut, si quis ex memorato ordine vel condicionis humanae fine praeventus vel alia quacumque ratione militiae gradum propriae amisisse monstrabitur, solitae ambitionis iniuria vacante locum is, qui iuxta matriculae veritatem sequitur, obtineat.

D. XIII k. Ian. Constantinopoli Victore cons.

XXVIIII De Officio Magistri Militum

[1] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad Eusignium pp.* Viri illustres comites et magistri peditum et equitum in provinciales nullam penitus habeant potestatem, nec amplissima praefectura in militares viros.

[xxxiii] emeruerit

[3][326] *Emperors VALENS, GRATIAN, and VALENTINIAN Augusti to Rufinus, Praetorian Prefect.* The Urban Prefecture takes precedence over all officials in the City, taking what little from the others that he may without insulting or diminishing the dignity of another official.

Given July 13, in the consulship of Valens Augustus, for the fifth time, and of Valentinian Junior (376).

[4][327] *Emperors VALENTINIAN, THEODOSIUS, and ARCADIUS Augusti to Severinus, Count of the Imperial Finances.* You must recognize that all kinds of guilds that reside in the city of Constantinople, as well as all its citizens and members of the populace, are governed under the direction of the Urban Prefecture.

Given April 15, at Milan, in the consulship of Tatianus and Symmachus (391).

[5][328] *Emperor THEODOSIUS Augustus to Constantius, Urban Prefect.* The chief (*primicerius*) of the assistants (*adiutores*) of your staff shall have oversight of your personnel for the two years that he serves in the aforementioned position, according to the customary original order; all usurpation and solicitation by other persons shall cease. This too is to be added: if any member of the aforementioned staff should be cut off by the fate of the human condition (i.e., by his death) or is shown to have lost his position in the service by any other reason whatsoever, he who follows him shall obtain his post according to the true indication of the register, without the injuriousness of the usual solicitation.

Given December 20, at Constantinople, in the consulship of Victor (424).

Twenty-Ninth Title The Office of the Master of Soldiers

[1] *Emperors GRATIAN, VALENTINIAN, and THEODOSIUS[329] Augusti to Eusignius, Praetorian Prefect.* The *viri illustres* Counts and Masters of the Infantry and Cavalry shall have no jurisdiction whatsoever over provincials, nor the Most Exalted (Praetorian) Prefecture over soldiers.

(386–387?).[330]

[326] = C.Th. 1.6.7; combine with C. 12.58.1.
[327] = C.Th. 1.10.4.
[328] = C.Th. 1.6.12.
[329] Actually, Valentinian, Theodosius, and Arcadius.
[330] Seeck dates to June 16, 383.

[2] *Impp. Honorius et Theodosius AA. ad Hypatium magistrum militum per Orientem.* Apparitores statutos officii tui ad aliud iudicium trahi minime oportebit. sciat igitur illustris magnificentia tua sub te, sive civiliter sive criminaliter appetantur, eos litigare debere.

D. id. Dec. Constantinopoli Constantio et Constante conss.

[3] *Imp. Zeno A. Sebastiano pp.* Eos, qui ultra statutos in officio magisteriae per Orientem potestatis militant, civilium quoque iudicum sententiis super quolibet negotio subiacere: ipsis quin etiam statutis in tributariis collationibus civilium quoque iudicum dispositionibus procul dubio parituris.

[4] *Imp. Anastasius A. Iohanni magistrum militum per Illyricum.* Milites de locis, in quibus consistunt, ad alia loca sine speciali nostrae serenitatis auctoritate nullatenus transferri praecipimus, nec eorum expensae in locis, in quibus consistunt, minuantur. sed si forte quaedam urguens et necessaria causa emerserit, utilitati ac securitati publicae tam amplissimam praetorianam praefecturam quam tuam sedem sine ulla procrastinatione prospicere protinus oportet et suggestiones ad nostras aures destinare, indicantes tam loca, de quibus milites transferendi sunt, quam ea, ad quae pervenire eos oportet, nominaque fortissimorum numerorum, in quibus idem milites referuntur, nec non quantitatem annonarum et ante omnia causam, ob quam idem milites transferendi sunt, ut post talem suggestionem a nostra auctoritate competentia procedant.

[5] *Imp. Iustinianus A. Zetae*[xxxiv] *viro illustri magistro militum per Armeniam et Pontum Polemoniacum et gentes.* Cum propitia divinitate Romanum nobis sit delatum imperium, sollicita cura cauta diligentia pertractantes perspeximus oportere etiam partibus Armeniae et Ponto Polemoniaco et gentibus proprium magistrum militum per hanc legem constituere, tuamque magnitudinem, quae nobis ex ante gestis optime commendata est, idoneam ad talem fore dignitatem confidentes elegimus certasque provincias, id est magnam Armeniam, quae interior dicebatur, et gentes (Anzetenam videlicet, Ingilenam, Asthianenam,

[xxxiv] *Zittae*, see Nov. 22 epilogue.

[2][331] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Hypatius, Master of Soldiers in the Orient.* The regular (*statuti*) clerks of your staff should not be brought before another tribunal. Your Illustrious Magnificence shall know, therefore, that they must litigate before you, whether they are sued in a civil or criminal case.

Given December 13, at Constantinople, in the consulship of Constantius and Constans (414).

[3] *Emperor* ZENO *Augustus to Sebastianus, Praetorian Prefect.* Those who serve in the official staff of the Master (of Soldiers) in the Orient, in addition to the regular clerks, are also subject to the rulings of civil judges in any case; there is no doubt that even the regular clerks will heed the directions also of civil judges in matters of taxes.

(476–485).[332]

[4] *Emperor* ANASTASIUS *Augustus to John, Master of Soldiers in Illyricum.* We order that soldiers may not be transferred from the places where they are stationed to other places without the special authorization of Our Serenity, nor shall their pay be reduced in the places where they are stationed. But if perchance some urgent and compelling reason arises, the Most Exalted Praetorian Prefecture as well as your office shall immediately provide for the public interest and safety and address your reports to Our ears, indicating both the places from which the soldiers should be transferred and those to which they must go, the names of the most courageous units in which the aforementioned soldiers are enrolled, as well as the amount of rations and above all the reason on account of which the aforementioned soldiers should be transferred, so that after receiving such information appropriate action may be taken on Our authority.[333]

[5] *Emperor* JUSTINIAN *Augustus to Zetas,*[334] vir illustris, *Master of Soldiers in Armenia, in Pontus Polemoniacus, and among the Nations.* Since Roman rule has been conferred on Us by divine favor, We have, after considering the matter with careful scrutiny and cautious diligence, observed that We must by this law appoint a Master of Soldiers also for the regions of Armenia and Pontus Polemoniacus and the Nations; and in the confidence that Your Greatness,

[331] = C.Th. 1.7.4.
[332] Lounghis *et al.* date to between 476 and 480 or 484.
[333] Lounghis *et al.* date to between 491 and 518.
[334] Sittas, who in 528 married Comito the Empress Theodora's sister, was the first to hold the new office of Master of Soldiers in Armenia, one of several adjustments to the eastern frontier early in Justinian's reign; they led to the Persian War of 530–532. His name is variously spelled in our sources.

Sophenam, Sophanenam, in qua est Martyropolis, Balabitenam) et primam et secundam Armeniam et Pontum Polemoniacum tuae curae cum suis ducibus commisimus, comite Armeniae penitus sublato, certosque subdidimus numeros, non modo quos in praesenti novos constituimus, sed etiam de praesentalibus et Orientalibus et aliis agminibus segregatos, non tamen quantitatem eorum agminum minuentes: sed quia plures eis addidimus sine rei publicae gravamine et sine augmento sumptuum, aliquantos subtraximus, ita tamen, ut et post hanc subtractionem ampliores remanserint, quam usque ad nostra felicia fuerant tempora.

[6] ...

XXX De Officio Quaestoris

[1] *Imp. Theodosius A. Sallustio quaestori.* Totius minoris laterculi curam scias ad tuae sublimitatis sollicitudinem pertinere, ita ut tuo arbitratu ex scrinio memoriae totius minoris laterculi dignitates, hoc est praepositurae omnes, tribunatus et praefecturae castrorum iuxta consuetudinem priscam clementiae meae auctoritate deinceps mittantur.

D. VI k. Mai. Constantinopoli Victore cons.

[2] *Idem A. Helioni comiti et magistro officiorum.* Omnes minoris laterculi dignitates, quae sub cura quidem ac sollicitudine viri illustris quaestoris esse antea videbantur, postea vero vel universae vel mediae ad magistrorum militum potestatem dispositionemque transierant, placuit nunc clementiae meae vetusti temporis more renovato ad prisca deinceps iura revocare.

D. III k. Mai. supra scripto cons.

which has been excellently recommended to Us by your past deeds, would be suitable for such a position, We have chosen you and have entrusted to your care certain provinces, that is, Greater Armenia, which was formerly called Inner Armenia, and the Nations – namely, Anzetana, Ingilena, Asthianena, Sophena, Sophanena, in which Martyropolis is located, and Balabitena – First and Second Armenia, and Pontus Polemoniacus, together with their Dukes. The (office of) Count of Armenia has been abolished, and We have placed under your command certain units, not only new units that We have just formed but also some taken from the soldiers at court (*praesentales*), from those serving in the Orient, and from other troops, without, however, diminishing their number; for while We added many soldiers to them without burdening the State or increasing expenses, We removed some, but in such a way that after this reduction the soldiers should remain more numerous than they had been before Our happy times.

(528).

[6] <A Greek constitution has been lost.>

Thirtieth Title The Office of the Quaestor

[1][335] *Emperor* THEODOSIUS *Augustus to Sallustius, Quaestor.* You shall know that responsibility for the whole Lesser Register (*laterculum minus*)[336] resides in the care of Your Sublimity, whereby the offices in the whole Lesser Register, that is, all positions of oversight, tribunates, and prefectures of the camps, shall be issued from the Bureau of Memory (*scrinium memoriae*) at your discretion, according to ancient custom and by the authority of My Clemency.

Given April 26, at Constantinople, in the consulship of Victor (424).

[2][337] *The same Augustus to Helio, Count and Master of Offices.* My Clemency has resolved to revive the custom of ancient times and to restore all offices in the Lesser Register, which formerly were the responsibility and charge of the *vir illustris* Quaestor and later either entirely or in part passed under the control of the Masters of Soldiers, to their former authority.

Given April 29, in the consulship written above (424).

[335] = C.Th. 1.8.2.

[336] The *latercula* were registries of officials in the late Empire; the *laterculum minus* registered military commands.

[337] = C.Th. 1.8.3.

[3] *Imp. Anastasius A. Eusebio magistro officiorum.* Officia et condiciones, quae pertinent ad viros devotos in sacro scrinio memoriae militantes, nemini liceat sub quacumque occasione sine ulla divinae subscriptionis liberalitate peragere: eo, quicumque in hoc fuerit postea facinore convictus, publicatione bonorum suorum multando, officio quoque rectoris provinciae, in qua non allegato super gerenda sollicitudine sacro rescripto aliquis ausus fuerit eandem curam sibimet usurpare, trium librarum auri dispendio feriendo.

D. k. Mart. Constantinopoli Anastasio A. et Rufo conss.

XXXI De Officio Magistri Officiorum

[1] *Imp. Constantius A. ad agentes in rebus.* **pr.** Privilegiis dudum scholae vestrae indultis integris reservatis, ad ducenam etiam et centenam et biarchiam nemo suffragio, nisi labore unusquisque perveniat, principatum vero adipiscatur matricula decurrente, ita ut ad curas agendas et cursum illi exeant, quos ordo militiae vocat et laborum. **1.** Adiutor praeterea, in quo totius scholae status et magistri securitas constituta est, idoneus probitate morum ac bonis artibus praeditus nostris per magistrum obtutibus offeratur, ut nostro ordinetur arbitrio.

D. et pp. Romae in foro Traiani k. Nov. Eusebio et Hypatio conss.

[2] *Impppp. Valentinianus Theodosius et Arcadius AAA. ad Principium magistrum officiorum.* Nemo agentum in rebus ordinem militiae atque stipendia praevertat, etiamsi nostri numinis per obreptionem detulerit indultum: ac si quis formam istiusmodi docebitur obtulisse, in locum, ex quo indecenter emerserat, revertatur, ut is gradu ceteros antecedat, quem stipendia longiora vel labor prolixior fecerit anteire.

PP. Hadrumeti VII id. Mart. post cons. Arcadii A. et Bautonis.

[3] *Emperor* Anastasius *Augustus to Eusebius, Master of Offices.* No one shall be permitted under any condition to administer the offices and positions that belong to the devoted men serving in the Sacred Bureau of Memory without the generosity of Our divine signature. Whosoever shall hereafter be convicted of this crime shall be punished by the confiscation of his property; the official staff of the governor of the province, in which anyone dares to usurp the aforementioned position without producing a sacred rescript for holding such an office, shall be struck with a loss of 3 pounds of gold.

Given March 1, at Constantinople, in the consulship of Anastasius Augustus and Rufus (492).

Thirty-First Title The Office of the Master of Offices

[1][338] *Emperor* Constantius *Augustus to the imperial couriers (*agentes in rebus*).* **pr.** Whereas the privileges conferred long ago on your corps (*schola*) shall be kept intact, no one shall reach the position of *ducenarius, centenarius,* and *biarcha* by patronage, but each and every one shall (achieve this) by labor; and no one shall obtain the position of chief (*princeps*) but by rising through the ranks. Thus, those men whom the order of service and labor calls thereto shall go forth to carry out missions and to the imperial post (*cursus*). **1.** The aide (*adiutor*), furthermore, on whom the standing of the entire corps and the safety of the Master depend, must be presented before Our eyes by the Master as suitable by the uprightness of his character and recommended by praiseworthy accomplishments, so that he may be appointed at Our discretion.

Given and posted at Rome, in the Forum of Trajan, November 1, in the consulship of Eusebius and Hypatius (359).

[2][339] *Emperors* Valentinian, Theodosius, *and* Arcadius *Augusti to Principius, Master of Offices.* No imperial courier shall break the order of service or time served, even if he produces an indulgence (rescript) surreptitiously obtained from Our Godhead. And if anyone is shown to have produced such a document, he shall return to the position from which he undeservedly rose. Thus he whom longer service or ampler labor has placed ahead shall outrank the rest.

Posted at Hadrumetum, March 9, in the post-consulate of Arcadius Augustus and Bauto (386).

338 = C.Th. 1.9.1; combine with C. 12.22.3 and C.Th. 6.29.4–5; Seeck dates to October 31, 359. Justinian has suppressed the name of Julian the Apostate, who was Caesar at the time.

339 = C.Th. 1.9.2. On the date, see *PLRE* i p. 726 Principius 2: "possibly it was issued in the summer of 385, and a copy sent to Africa did not arrive until spring 386."

[3] *Impp. Theodosius et Valentinianus AA. Phlegetio comiti et magistro officiorum.* Scholarium nostrorum devotio, probata nostris parentibus, circa nostrae maxime serenitatis affectionem enituit. inde quidquid ad fovenda servandaque eorum privilegia postulatur, statim credidimus admittendum. ideoque suggestionem tui culminis approbantes viris spectabilibus comitibus scholarum verberandi regradandive senatores ac ducenarios licentiam denegamus. ea namque, quae tali commotione digna sunt, ad tuae sublimitatis volumus referri notitiam.

D. xv k. Mai. Constantinopoli Cyro vc. cons.

[4] *Idem AA. Nomo magistro officiorum.* Curae perpetuae tui culminis credimus iniungendum, ut super omni limite sub tua iurisdictione constituto, quemadmodum se militum numerus habeat castrorumque ac clusurarum cura procedat, quotannis significare nobis propria suggestione procuret.

D. prid. id. Sept. Constantinopoli Maximo II et Paterio conss.

[5] *Impp. Iustinus et Iustinianus AA. Tatiano magistro officiorum.* **pr.** Iubemus eum ad militiam devotissimorum scholarium de cetero pervenire, qui nostrum meruit iudicium, nec licere pro tempore tui culminis administrationem habenti sine huiusmodi probatoria aliquem inter eosdem viros devotos scholares suis referre praeceptionibus: sed sciat is, qui sine sacro rescripto ad eandem pervenire militiam ausus fuerit, non solum ea se privari, verum etiam poenae viginti librarum auri subici. **1.** Illud etiam observari de cetero volumus, ut, si quis locus statutorum scholarium in quacumque schola vacaverit, ille subrogetur, quem nostra pietas per sacrum rescriptum vacantem subire locum praeceperit. **2.** Ad haec quadrimenstruos breves eorundem scholarium cura tuae sublimitatis et pro tempore viri excellentissimi magistri officiorum conscribi volumus et eos sacro scrinio laterculi praestari ibi deponendos, ut semper notitia eorundem scholarium certa sit neque publico damnum aliquod infligatur.

D. x k. Mai. Constantinopoli Mavortio vc. cons.

[3][340] *Emperors THEODOSIUS and VALENTINIAN Augusti to Phlegetius, Count and Master of Offices.* The devotion of Our Imperial Guards (*scholares*), already proven to Our parents, has shown forth most in their loyalty to Our Serenity. Hence, We have concluded that whatever is requested for the cultivation and preservation of their privileges should be granted immediately. Approving, therefore, the proposal of Your Eminence, We deny to the *viri spectabiles* Counts of the imperial guard (*scholae*) the right to punish corporally or reduce in rank *senatores* (those of Senatorial status) and *ducenarii* (i.e., senior sub-officers). For We want matters deserving such punishment to be referred to the notice of Your Sublimity.

Given April 17, at Constantinople, in the consulship of the vir clarissimus *Cyrus (441).*

[4][341] *The same Augusti to Nomus, Master of Offices.* We believe it shall be incumbent on the unstinting duty of Your Eminence that you shall take care to describe in a personal report to Us annually the status of the number of soldiers and how the camps and fortresses fare on every frontier under your jurisdiction.

Given September 12, at Constantinople, in the consulship of Maximus, for the second time, and Paterius (443).

[5] *Emperors JUSTIN and JUSTINIAN Augusti to Tatianus, Master of Offices.* **pr.** We order that hereafter (only) he who has deserved Our approval shall enter the service of the most devout Imperial Guards (*scholares*); and it shall not be permitted to anyone holding the office of Your Eminence to enroll, on his own orders, anyone in the aforementioned devout men of the Imperial Guard without an imperial certificate (*probatoria*); but he who dares enter the aforementioned service without a sacred rescript shall know that he shall not only be deprived of his position but shall also be liable to a penalty of 20 pounds of gold. **1.** We also wish this to be observed hereafter: if any position among the regular (*statuti*) Imperial Guards is vacant, he whom Our Piety commands, by sacred rescript, to assume the vacant position shall succeed to it. **2.** In addition, We desire that quarterly lists of the aforesaid Imperial Guards be compiled at the direction of Your Sublimity and of every acting *vir excellentissimus* Master of Offices, and that they be presented to the Sacred Bureau of the Register for archiving, so that the record of the aforesaid Imperial Guards shall always be accurate and no loss shall be inflicted on the State.

Given April 22, in Constantinople, at the consulship of the vir clarissimus *Mavortius (527).*

[340] = Nov. Theod. 21; the end is repeated in 12.29.1.
[341] = Nov. Theod. 24.1.5 (slightly different wording); combine with C. 1.46.4, 11.60.3.

XXXII De Officio Comitis Sacrarum Largitionum

[1] *Impp. Arcadius et Honorius AA. Limenio comiti sacrarum largitionum.* **pr.** Palatinis haec cura debet esse praecipua, ut, periculo proprio notariis destinatis, super neglegentia iudicum, si ita res exegerit, conquerantur, ne eorum sit impunita desidia. **1.** Iudices quoque de eorum nominibus referre convenit, quos commodis propriis magis quam utilitatibus publicis studere praeviderint. **2.** Breves etiam quadrimenstruos ad officium palatinum noverint dirigendos aurumque exactum ad sacras largitiones sine ulla dilatione esse mittendum.

D. III k. Mart. Mediolani Vincentio et Fravito conss.

XXXIII De Officio Comitis Rerum Privatarum

[1] *Impp. Valentinianus et Valens AA. ad Honoratum consularem Byzacii.* Si quid negotiorum fuerit actitatum, in quibus aliquid commodi fiscalis appareat, ad officium rei privatae tua gravitas acta transmittat, ut instructione percepta, quid sibimet iuris auxilio debeatur, agnoscat.

D. VI k. Ian. Valentiniano et Valente AA. II conss.

[2] *Impp. Arcadius et Honorius AA. Minervio comiti rerum privatarum.* Ad palatinorum curam et rationalium officia omnium rerum nostrarum et totius perpetuarii, hoc est emphyteuticarii, iuris exactio revertatur.

D. X k. Ian. Mediolani Caesario et Attico conss.

[3] *Impp. Honorius et Theodosius AA. Ursacio comiti rerum privatarum.* Si quis iudicum vir illustris vel praefectus urbi cognitionem comitivae privatarum examini debitam sibimet vindicandam censuerit vel tuitionem contra eiusdem sedis statuta praestiterit, ad quinquaginta librarum

Thirty-Second Title The Office of the Count of the Imperial Finances

[1][342] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Limenius, Count of the Imperial Finances.* **pr.** This should be the particular duty of the Palatine officials: that having dispatched notaries at their own peril, they should lodge complaints, if the facts warrant it, about the negligence of the governors, so that their sloth may not go unpunished. **1.** It behooves governors, too, to report the names of those (Palatine officials) whom they observe pursuing their own profit rather than the public good. **2.** They shall know that quarterly reports must be addressed to the Palatine Office and that the gold collected must be sent without delay to the Imperial Finances.

Given February 27, at Milan, in the consulship of Vincentius and Fravitus (401).[343]

Thirty-Third Title The Office of the Count of the Privy Purse

[1] *Emperors* VALENTINIAN *and* VALENS *Augusti to Honoratus, Consular of Byzacium.* If any controversy should be tried in which some advantage to the Treasury emerges, Your Eminence shall convey the records of proceedings to the official staff of the Privy Purse, so that upon receipt of these documents it may apprehend what is owed it by virtue of the law.

Given December 27, at the second consulship of Valentinian and Valens, Augusti (368).

[2][344] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Minervius, Count of the Privy Purse.* The collection of rents from all Our Privy Purse and from lands under perpetual, that is, emphyteutic, lease, shall revert to the responsibility of the Palatine officials and offices of comptrollers (*rationales*).

Given December 23, at Milan, in the consulship of Caesarius and Atticus (397).

[3] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Ursacius, Count of the Privy Purse.* If any *vir illustris* judge or the Urban Prefect should decide to claim a case under the jurisdiction of the Count of the Privy Purse or should

[342] = C.Th. 1.10.7.
[343] The date follows the C.Th.; see Krüger, *ad loc.*
[344] = C.Th. 1.11.1.

auri illationem poenae nomine eius officium teneatur, quam decet in articulo exigi mansuetudinis nostrae aerario sociandam.

D. VI id. Aug. Ravennae Constantio et Constante conss.

[4] Μὴ διαγέτω τινὰ τῶν ἐπαρχεωτῶν προφάσει δημοσίων πραγμάτων ὁ κόμης τῆς ἰδικῆς περιουσίας δίχα θείας ἐπιτροπῆς μηδὲ τῷ μηνύοντι τὴν κρίσιν καταπιστευέτω τοῦ πράγματος.

[5] Μήτε ὁ κόμης τῆς ἰδικῆς περιουσίας μήτε τις ἕτερος τῶν ἐν Κωνσταντινουπόλει ἢ ἐν ταῖς ἐπαρχίαις ἀρχόντων τὸν περὶ θησαυροῦ καταμηνύοντα προσδεχέσθω. εἰ δὲ περί τινος ἑτέρου προσαγγέλλει, ὑπὸ ἐγγύην εὐθὺς οὐχ ἧττον πέντε λιτρῶν γινέσθω· καὶ μηδέ τις σφραγὶς ἢ ἀναγραφὴ καὶ καινισμὸς ὁ τυχὼν ἐπὶ τοῖς προσαγγελθεῖσι προσερχέσθω πράγμασι πρὸ διακρίσεως ἐγγράφου. καὶ εἰ μὲν ὁ κατηγορούμενος πάρεστι, κρινέσθω παρὰ τῷ κόμητι τῆς ἰδικῆς περιουσίας τὸ πρᾶγμα, εἰ δὲ ἐν ἐπαρχίᾳ διάγει, παρὰ τῷ ἄρχοντι ἢ τῷ ἀφοριζομένῳ δικαστῇ, τῶν φισκοσυνηγόρων ἤ, ἐν ἀπορίᾳ τούτων, ἑτέρων ὑπὲρ τοῦ κατηγόρου προῖκα λεγόντων. γινέσθω δὲ τῶν συνηγόρων ἐξίσωσις καὶ ἀναιρείσθω τὸ καὶ τὰ ὑπὲρ τοῦ κατηγόρου δαπανήματα τὸν ἐναγόμενον ποιεῖν· τούτου φυλαττομένου καὶ ἐπὶ τοῦ δίκας τινὰς τῷ φίσκῳ κινοῦντος. καὶ μηδεὶς αὐτῶν πρὸ τελείας ἐκκαλείσθω τοῦ πράγματος κρίσεως.

XXXIIII De Officio Comitis Sacri Patrimonii

[1] *Αὐτοκράτωρ Ἀναστάσιος Α.* Τῆς ἰδικῆς ἐφευρεθείσης οὐσίας τῷ δημοσίῳ ἢ ἐφευρεθησομένης προβεβλήσθω ἢ καλείσθω κόμης τῆς ἰδικῆς κτήσεως, κατὰ μίμησιν τοῦ κόμητος τῆς ἰδικῆς περιουσίας αὐτὴν διοικῶν· πᾶσι τοῖς ὑπ᾽ αὐτὸν οὖσι γεωργοῖς ἢ παροίκοις ἢ ἐμφυτευταῖς τῶν αὐτῶν ὄντων προνομίων, ὧν οἱ ὑπὸ τὸν πραιπόσιτον καὶ τὸν κόμητα τῶν οἰκείων ἀπολαύουσι, καὶ παρὰ μόνῳ κόμητι τοῦ τῆς ἰδικῆς κτήσεως κινείτωσαν καὶ ἐναγέσθωσαν. οἱ δὲ τοῦ τῆς ἰδικῆς κτήσεως ταξεῶται τοῦ κόμητος τῆς ἁπανταχοῦ ἰδικῆς περιουσίας ἐχέτωσαν προνόμια.

furnish protection against the rulings of the latter official, his official staff shall be liable to pay 50 pounds of gold as a fine, which should be claimed instantly and paid into the treasury of Our Clemency.

Given August 8, at Ravenna, in the consulship of Constantius and Constans (414).

[4][345] The Count of the Privy Purse shall not apprehend any provincial under the pretext of public business without divine permission, nor may he delegate the hearing of the case to an informer.

[5][346] Neither the Count of the Privy Purse nor any other magistrates in Constantinople or in the provinces shall receive an informer concerning a treasure trove. If the latter gives information concerning some other matter, he shall immediately give security of no less than 5 pounds (of gold); and no seal, registration, or any innovation shall be made concerning the reported property before written adjudication. And if the accuser is present, the case shall be tried before the Count of the Privy Purse; but if he resides in a province, before the governor or the appointed judge. The advocates of the Treasury or, in their absence, others shall speak on behalf of the accuser free of charge. There shall be equalization of advocates, and the practice whereby the defendant pays the expenses of the accuser shall be abolished. This shall be observed also when someone initiates any litigation against the Treasury. And no one shall appeal before the final decision of the case.

Thirty-Fourth Title The Office of the Count of the Imperial Patrimony[347]

[1][348] (*Emperor Anastasius Augustus.*) If any private property has fallen or should fall to the Treasury, the Count of the Imperial Patrimony shall be appointed over it or summoned, managing it on the analogy of the Count of the Privy Purse. All farmers, tenants (*coloni*), and long-term lessees (holders by *emphyteusis*) shall enjoy the same privileges that they enjoy under the branch chief (*praepositus*) and the Count of the Privy Purse, and they may not sue or be sued except before the Count of the Imperial Patrimony. The official staff of the Count of the Imperial Patrimony shall moreover enjoy the same privileges as that of the Count of the Privy Purse.

[345] = Bas. 6.1.108. Lounghis *et al.* date to between 491 and 518.

[346] = Bas. 6.1.109; perhaps to be combined with C. 1.34.3. Lounghis *et al.* suggest a date between 491 and 518.

[347] This office was created by Anastasius. The three constitutions in this title have been restored from the Bas.

[348] = Bas. 6.1.102. Lounghis *et al.* date to between 491 and 498.

[2] *Ὁ αὐτὸς βασιλεύς.* Φροντιζέτωσαν οἱ τῶν ἐπαρχιῶν ἄρχοντες καὶ αἱ τούτων τάξεις οἰκείῳ κινδύνῳ μηδεμίαν τὰ τῆς ἰδικῆς κτήσεως κτήματα βλάβην ὑφίστασθαι ἢ τὴν ἐξ αὐτῶν μειοῦσθαι πρόσοδον ἢ ἐμπαίζεσθαι. ἐξέστω δὲ τῷ κόμητι τῆς ἰδικῆς κτήσεως καὶ προστιμᾶν αὐτοῖς καὶ <ἀναγκάζειν> μετὰ τὴν ἀρχὴν τὴν γενομένην ἀνασῶσαι βλάβην, ἀλλὰ μηδεμίαν δεχέσθωσαν ἀπόρων ἢ ὁμοκήνσων ἐπιβολήν.

[3] Μηδὲ παρὰ τοῦ κόμητος τῶν θησαυρῶν ἡμῶν τις ἢ σφραγὶς ἢ ἀναγραφὴ προσερχέσθω πρὸ τῆς τοῦ πράγματος διακρίσεως ἐπὶ τοῖς προσαγγελθεῖσι πράγμασι· καὶ ἐνταῦθα τὰ ὑπὲρ ἑαυτοῦ μόνου ποιοῦντος δαπανήματα, καὶ μὴ δυναμένου πρὸ τελείας ἐκκαλέσασθαι ψήφου.

XXXV De Officio Proconsulis et Legati

[1] *Imp. Constantinus A. Aeliano proconsuli Africae.* Legati non solum civiles, sed etiam criminales causas audiant, ita ut, si sententiam in reos ferendam perviderint, ad proconsules eos transmittere non morentur.

D. k. Oct. Constantino A. VI et Constantino C. conss.

[2] *Impp. Arcadius et Honorius AA. Simplicio proconsuli Asiae.* Officium Hellesponti consularis aeternae recordationis patrem serenitatis nostrae adiit et expositis suis incommodis, quibus a vicarianis apparitoribus urguebatur, oravit sub tuae sublimitatis agere potestate. cuius allegationes humanae proclivius pium principem commoverunt: quod et nos obtinere censemus.

D. VIII k. April. Constantinopoli Arcadio IIII et Honorio III AA. conss.

XXXVI De Officio Comitis Orientis

[1] *Imp. Leo A. Pusaeo pp.* Titulos, qui Alytarchiae et Syriarchiae muneribus in prima Syria deputati sunt, per officia tam viri spectabilis comitis Orientis quam viri clarissimi rectoris provinciae flagitari praecipimus.

[2][349] (*The same Emperor.*) The provincial governors and their official staffs shall, at their own peril, see to it that the property of the Imperial Patrimony suffers no loss, diminution of its revenue, or fraud. The Count of the Imperial Patrimony shall have the power to fine them and after (their) term of office force them to make good the loss, and they shall not accept any addition of unproductive or collectively assessed land.[350]

[3][351] No seal or registration shall be made by the Count of Our Treasuries on reported property before the adjudication of the case; in this instance, too, the defendant shall bear only his own expenses and may not appeal until a final ruling has been delivered.

Thirty-Fifth Title The Office of Proconsul and Legate[352]

[1][353] *Emperor* C*ONSTANTINE* *Augustus to Aelianus, Proconsul of Africa.* Legates shall hear not only civil but also criminal cases, so that if they perceive that a ruling should be delivered against the defendants, they shall not hesitate to remand them to the Proconsuls.

Given October 1, in the consulship of Constantine Augustus, for the sixth time, and the Caesar Constantine (320).

[2][354] *Emperors* A*RCADIUS and* H*ONORIUS* *Augusti to Simplicius, Proconsul of Asia.* The official staff of the Consular of the Hellespont went before the father of Our Serenity (Theodosius), of blessed memory, and, laying bare the grievances with which they were harassed by the officials of the Vicar, begged to work under the jurisdiction of Your Sublimity. Their sensible testimony quite easily won over the pious Emperor, and so We, too, have decided that this arrangement shall obtain.

Given March 25, at Constantinople, in the consulship of Arcadius, for the fourth time, and Honorius, for the third time, Augusti (396).

Thirty-Sixth Title The Office of the Count of the East

[1][355] *Emperor* L*EO* *Augustus to Pusaeus, Praetorian Prefect.* **pr.** We command that the taxes that have been designated for the Games of the Alytarchia and

[349] = Bas. 6.1.103. Lounghis *et al.* date to between 491 and 518.
[350] The Greek text seems defective, and the translation here given is conjectural.
[351] = Bas. 6.1.104; perhaps to be combined with C. 1.33.5.
[352] See D. 1.16.
[353] = C.Th. 1.12.3; the likeliest date is November 8, 314 (Projet Volterra), but Seeck and Barnes date to 313.
[354] = C.Th. 1.12.5.
[355] Perhaps to be combined with 10.44.3.

1. Alytarchiae quidem ludi cura viri spectabilis comitis Orientis et eius officii, Syriarchiae vero sollicitudine viri clarissimi moderantis provinciam eiusque apparitionis exerceantur, nullique penitus curialium, nec si voluerint, idem munus vel honorem subeundi licentia permittatur.

D. v id. Nov. Constantinopoli Basilisco et Herminerico conss.

XXXVII De Officio Praefecti Augustalis

[1] *Imppp. Valentinianus Theodosius et Arcadius AAA. Florentio praefecto Augustali.* Omnia tributa per Aegyptiacam dioecesin cura et providentia claritatis tuae a moderatoribus provinciarum exigi iubemus. si qui tamen ex possessoribus sive militaribus sive non militaribus ad inferenda quae debent audaces extiterint, eos per militare etiam auxilium, si opus exegerit, ad solutionem compelli censemus.

D. xiii k. Mart. Constantinopoli Honorio np. et Euodio conss.

[2] *Imppp. Theodosius Arcadius et Honorius AAA. Rufino pp.* Praefectus Augustalis ordinariorum sub se iudicum examinandi flagitia et super his referendi, non amovendi vel puniendi habeat potestatem.

D. prid. non. Dec. Constantinopoli Olybrio et Probino conss.

XXXVIII De Officio Vicarii

[1] *Imppp.* Valens Gratianus et Valentinianus *AAA. Antonio pp.* In civilibus causis vicarios comitibus militum convenit anteferri, in militaribus negotiis comites vicariis anteponi, quotiensque societas in iudicando contigerit, priore loco vicarius ponderetur, comes adiunctus accedat: si

Syriarchia in Syria I shall be collected by the official staffs of both the *vir spectabilis* Count of the East and the *vir clarissimus* provincial governor. **1.** The Games of the Alytarchia shall be held under the supervision of the *vir spectabilis* Count of the East and his official staff; the Syriarchia, though, shall be held under the oversight of the *vir clarissimus* provincial governor and his clerical staff; and no curials, not even if they wish, shall be granted permission to perform this duty or honor.

Given November 9, at Constantinople, in the consulship of Basiliscus and Herminericus (465).

Thirty-Seventh Title The Office of the Augustal Prefect[356]

[1][357] *Emperors VALENTINIAN, THEODOSIUS, and ARCADIUS Augusti to Florentius, Augustal Prefect.* We order that all taxes in the Diocese of Egypt shall be collected by the provincial governors under the responsibility and supervision of Your Renown. If, however, any landholders, whether soldiers or civilians, prove contumacious in paying what they owe, We deem that they should be forced to pay even by means of military assistance, if the task requires it.

Given February 17, at Constantinople, in the consulship of Honorius, Most Noble Boy, and Euodius (386).

[2][358] *Emperors THEODOSIUS, ARCADIUS, and HONORIUS Augusti to Rufinus, Praetorian Prefect.* The Augustal Prefect shall have the power to investigate and report the crimes of the ordinary governors under him, not to remove or punish them.

Given December 4, at Constantinople, in the consulship of Olybrius and Probinus (395).

Thirty-Eighth Title The Office of Vicar (*Vicarius*)

[1][359] *Emperors VALENS, GRATIAN, and VALENTINIAN Augusti to Antonius, Praetorian Prefect.* It is proper that Vicars have precedence over Counts of the Soldiers in civil cases, but that Counts be preferred over Vicars in military

[356] See D. 1.17.
[357] = C.Th. 1.14.1.
[358] = C.Th. 1.14.2; Seeck dates to December 4, 394.
[359] = C.Th. 1.15.7.

quidem cum praefecturae meritum ceteris dignitatibus antestet, vicaria dignitas ipso nomine eius se trahere indicet portionem et sacrae cognitionis habeat potestatem et iudicationis nostrae soleat repraesentare reverentiam.

D. VIII id. Ian. Gratiano A. IIII et Merobaude conss.

[2] *Idem AAA. ad Hesperium pp.* Relationes vicariorum, si quando usus attulerit, ad nostram mansuetudinem referantur. relationes enim iudicum libenter audimus, ne administratorum decrescere videatur auctoritas, si eorum consulta veluti profanorum preces a nostris adytis repellamus.

D. XII k. Febr. Gratiano A. IIII et Merobaude conss.

XXXVIIII De Officio Praetorum

[1] *Imp. Constantius A. ad senatum.* Praetori defertur haec iurisdictio sancientibus nobis, ut liberale negotium ipse disceptator examinet. sane interponi ab eo decreta conveniet, ut, sive in integrum restitutio deferenda est, probatis dumtaxat causis ab eodem etiam interponatur decretum, seu tutoris dandi seu ordinandi curatoris, impleatur ab eo interpositio decretorum: quippe cum apud eum quoque adipisci debeat patronorum iudicio sedula servitus libertatem. nec sane debita filiorum votis patrum vota cessabunt, ut patente copia liberos suos exuant potestate, magis propriis obsequiis mancipatos, cum sese intellegant his obsequii plus debere, a quibus sese meminerunt vinculis sacris exutos.

D. III k. Ian. Eusebio et Hypatio conss.

trials; and whenever it should happen that they jointly adjudicate, the Vicar should be held in the first place and the Count should join him as associate; for since the prefecture deservedly surpasses all other offices, the office of Vicar shows by its very name (*vicarius*) that it partakes thereof and has the power of the Sacred Tribunal and often represents the venerability of Our jurisdiction.[360]

Given January 6, in the consulship of Gratian Augustus, for the fourth time, and Merobaudes (377).

[2][361] *The same Augusti to Hesperius, Praetorian Prefect.* Whenever the need presents itself, the reports of Vicars shall be referred to Our Clemency. For We hear the reports of Our judges gladly, so that the authority of Our administrators should not seem to decrease should We reject their inquiries from Our sanctum like prayers from the profane.

Given January 21, in the consulship of Gratian Augustus, for the fourth time, and Merobaudes (377).

Thirty-Ninth Title The Office of the Praetors[362]

[1][363] *Emperor* CONSTANTIUS *Augustus to the Senate.* This jurisdiction is conferred on the Praetor by Our decree: he shall examine as trial judge cases concerning questions of free status. It naturally will be appropriate that he issue judicial decisions (*decreta*). Thus, if restitution to a former condition should be granted, his decree may be issued once adequate grounds have been proven; or if *tutores* should be provided or *curatores* appointed, he may exercise his power to issue decrees; and when diligent slaves should, in the opinion of their patrons, receive their liberty. Nor indeed shall the wishes of fathers fail to reciprocate the wishes of their children, so that when provided the opportunity they (the fathers) shall release their children from their (paternal) power, binding their children (thereby) to greater devotion to themselves; for they (the children) shall realize that they owe their fathers even greater devotion, when they recall that they have been released by them from their sacred bonds.

Given December 30, in the consulship of Eusebius and Hypatius (359).

[360] That is, Vicars judged *vice sacra*, notionally with the same authority as the imperial court itself.
[361] = C.Th. 1.15.8; Seeck dates the constitution to January 21, 378.
[362] See D. 1.14.
[363] = C.Th. 6.4.16; Seeck dates to December 27, 359.

[2] *Impp. Valentinianus et Marcianus AA. Tatiano pu.* Tres tantummodo praetores electae opinionis in hac urbe per singulos annos iudicio senatus praecipimus ordinari, qui competentes causas et debitos actus integre disceptare atque tractare debebunt, ut hi tamen tres ex his, qui proprium larem in hac alma urbe habeant, non ex provinciis eligantur. nec si qui forte propter aliquas causas ad hanc urbem de provinciis venerit, ad praeturae munus vocetur, sed hi tantummodo, ut dictum est, qui hic domicilium fovent, ita ut nec ipsi sumptus quosdam inferre cogantur inviti, sed habeant spontaneae liberalitatis arbitrium.

D. XV k. Ian. Constantinopoli Valentiniano A. VII et Avieno conss.

XXXX De Officio Rectoris Provinciae

[1] *Imp. Alexander A. Iulianae.* Potest de falso causam cognoscens praeses provinciae incidentem proprietatis quaestionem dirimere.

D. VI k. April. Maximo II et Urbano conss.

[2] *Imp. Constantinus A. ad Maximum.* Praesides provinciarum oportet, si quis potentiorum extiterit insolentior et ipsi vindicare non possunt aut examinare aut pronuntiare nequeunt, de eius nomine ad nos aut certe ad praetorianae praefecturae scientiam referre: quo provideatur, qualiter publicae disciplinae et laesis tenuioribus consulatur.

D. IIII k. Ian. Treviris Ianuarino et Iusto conss.

[3] *Idem A. ad provinciales.* Iustissimos et vigilantissimos iudices publicis adclamationibus collaudandi damus omnibus potestatem, ut honoris eis auctiores proferamus processus, et e contrario iniustos et maleficos querellarum vocibus accusandi, ut censurae nostrae vigor eos absumat. nam si verae voces sunt nec ad libidinem per clientelas effusae, diligenter investigabimus: praefectis praetorio et comitibus, qui per provincias constituti sunt, provincialium nostrorum voces ad nostram scientiam referentibus.

[2][364] *Emperors* VALENTINIAN *and* MARCIAN *Augusti to Tatianus, Urban Prefect.* We order that only three Praetors of outstanding reputation shall, upon the recommendation of the Senate, be appointed each year in This City, who shall be obliged to decide and handle the cases and transactions in their jurisdiction honestly. These three, however, shall be chosen from among the men who have their home in This Generous City, not from the provinces. And if someone should come to This City from the provinces for some reason, he shall not be summoned to perform the duty of Praetor, but only those, as stated, who keep their domicile here; but not even they shall be forced against their will to pay any expenses, but voluntary liberality shall be at their discretion.

Given December 18, at Constantinople, in the consulship of Valentinian Augustus, for the eighth time, and Avienus (450).

Fortieth Title The Office of Provincial Governor[365]

[1] *Emperor* ALEXANDER *Augustus to Juliana.* A provincial governor trying a case of forgery (*falsum*) may decide an incidental question of ownership.

Given March 27, in the consulship of Maximus, for the second time, and Urbanus (234).

[2][366] *Emperor* CONSTANTINE *Augustus to Maximus.* If some powerful person should prove intractable, and the provincial governors themselves cannot punish, investigate, or deliver a ruling against him, they must report his name to Us or surely to the knowledge of the Praetorian prefecture, so that it may be determined in what way public discipline and the less powerful who have been injured may be protected.

Given December 29, at Trier, in the consulship of Januarinus and Justus (328).

[3][367] *The same Augustus to the Provincials.* We grant all people the power to praise the most just and vigilant judges (i.e., governors) by public acclamations, so that We may bring them ampler advancements in honor; and on the contrary, the unjust and wicked are to be accused with cries of complaint, so that the force of Our chastisement may annihilate them; for We will carefully investigate whether those words are true and have not been wantonly uttered by clients, as the Praetorian Prefects and the Counts stationed throughout the provinces shall bring Our provincials' words to Our knowledge.

[364] Combine with C. 12.2.1.

[365] See D. 1.18.

[366] = C.Th. 1.16.4; combine with C. 12.46.2, C.Th. 7.20.5.

[367] = C. 1.16.6; combine with C. 1.21.3, 3.13.4?, 3.19.2, 7.62.19, 8.36.2, C.Th. 2.26.3, C.Th. 3.30.4, C.Th. 11.30.17, C.Th. 11.34.1.

PP. k. Nov. Constantinopoli Basso et Ablabio conss.

[4] *Idem A. ad Periclem praesidem.* In officiales praefectorum cursum publicum laniantes vel prava contra utilitatem publicam molientes vindicandi tibi dedimus potestatem, ita ut praefectos de eorum culpa facias certiores.

D. x k. Nov. Nicopoli Constantio et Albino conss.

[5] *Impp. Valentinianus et Valens AA. ad Apronianum pu.* Potioris gradus iudicibus ab inferioribus competens reverentia tribuatur. sed ubi publica tractatur utilitas, etsi minor iudex veritatem investigaverit, nulla maiori irrogatur iniuria. sane qui insignia dignitatis ad hoc exercet, ut indignis iniuriis existimet adficiendos eos, qui officia cum potestate moderantur, non declinabit nostrae indignationis aculeos.

D. v. k. Iun. Ancyro divo Ioviano et Varroniano conss.

[6] *Imppp. Gratianus Valentinianus et Theodosius AAA. Cynegio pp.* Civitas Rhodiorum iniuriam suam non tam decenter quam sero conquesta est. unde inviolabili observatione sancimus, ut, quoniam tempore hiemis navigatio saepe periculosa est semper incerta, in illis quinque urbibus, quae potiores esse ceteris adseruntur, vicissim hiemandum sibi iudices recognoscant. Quod si cuiquam tale existat ingenium, ut praecepta nostra contemnat, quinquaginta ab eo argenti librae, centum ab eius officio, si aliter factum fuerit, fisci viribus inferantur.

D. v id. Dec. Constantinopoli Arcadio et Bautone conss.

[7] *Imppp. Valentinianus Theodosius et Arcadius AAA. Cynegio pp.* Qui ordinariam gesserit dignitatem, quidquid ex venturae delegationis titulis profligaverit, cum dispendio pudoris atque fortunae de propriis facultatibus intra provinciam positus inferre debebit.

D. VII k. Iun. Constantinopoli Honorio np. et Euodio conss.

Posted November 1, at Constantinople, in the consulship of Bassus and Ablabius (331).

[4] *The same Augustus to Pericles, Governor.* We have given you the power to punish officials of the (Praetorian) Prefects who ruin the public post or plot wicked deeds against the public interest, but you must inform the Prefects of their wrongdoing.

Given[368] October 23, at Nicopolis, in the consulship of Constantius and Albinus (335).

[5] *Emperors VALENTINIAN and VALENS Augusti to Apronianus, Urban Prefect.* Proper deference must be paid by governors of lower rank to those of higher rank. But when the public interest is at stake, even if a lesser governor has investigated the truth, no wrong is done to the greater official. He, however, who uses his insignia of office for the purpose of inflicting unwarranted insults on those who hold office with power (conferred on them), shall not evade the stings of Our displeasure.

Given May 28, at Ancyrus, in the consulship of the Divine Jovian and Varronianus (364).[369]

[6] *Emperors GRATIAN, VALENTINIAN, and THEODOSIUS Augusti to Cynegius, Praetorian Prefect.* The city of Rhodes has complained not so much appropriately as tardily of the wrong done it. Hence We decree with inviolable force that because navigation is often dangerous in winter and always uncertain, the governors shall, by turns, pass the winter in the five cities that are held preeminent over the others. If any of them should be so disposed as to scorn Our orders, 50 pounds of silver shall be paid by him, 100 pounds by his official staff, into the Treasury, if anything to the contrary is done.

Given December 9, at Constantinople, in the consulship of Arcadius and Bauto (385).

[7] *Emperors VALENTINIAN, THEODOSIUS, and ARCADIUS Augusti to Cynegius, Praetorian Prefect.* Whoever holds the rank of an ordinary governor shall, while still in his province, repay whatever loss he has inflicted on the revenue of the next levy (*delegatio*), in addition to the loss of his good name and standing (*fortuna*).

Given May 26, at Constantinople, in the consulship of Honorius, Most Noble Boy, and Euodius (386).

[368] This should read "Accepted" (*Acc.*) or "Posted" (*PP.*), since Constantine was in Constantinople the next day according to C.Th. 16.8.5 and C.Th. 16.9.1

[369] Seeck dates to December 28, 363, but the transmitted date is preferable.

[8] *Idem AAA. Cynegio pp.* Ne quis iudicum in provincia sua praefectianum vel palatinum vel militem vel ex his etiam omnibus, qui antea in huiusmodi officiis fuerunt commorati, intercessorem (id est exsecutorem) cuiusquam litigatoris petitione in quolibet seu privato seu publico negotio putet esse tribuendum. nam peccantem circa consulta caelestia cum suo officio non solum detrimentum famae, sed etiam patrimoniorum damna comitentur.

D. non. Aug. Constantinopoli Honorio np. et Euodio conss.

[9] *Idem AAA. Polemio pp. Illyrici.* Nullus provinciae moderator augustissimam urbem sine iussione adire audeat. nam si quem patuerit contra decreti nostri praecepta venisse, is congrua condemnatione plectetur.

D. x k. Ian. Mediolani post consulatum Timasii et Promoti.

[10] *Impp. Arcadius et Honorius AA. Limenio comiti sacrarum largitionum.* Nullum palatinis tibi obsecundantibus cum provincialibus volumus esse commercium: sed iudices scire debebunt hoc sibi praecipue esse commissum, ut ipsi a provincialibus exigant et consueta deposcant, palatinum vero possessor non horreat, qui non sibi, sed iudicibus atque officiis praeceptus est imminere.

D. VI k. April.

[11] *Impp. Honorius et Theodosius AA. Theodoro pp.* Moderatores provinciarum curam gerere iubemus, ne quid potentium procuratores perperam inliciteque committant.

D. VI k. Dec. Ravennae Basso et Philippo conss.

[12] *Idem AA. Monaxio pp.* Omnes per provincias apparitores pro inveterata auctoritate iuxta motum iudicis nudatos verberibus, si ita res tulerit, subiacere praecipimus, ut et facilis exsecutio rerum publicarum sit et officiorum insolentia comprimatur et iudicum severitati competens reddatur auctoritas.

[8] *The same Augusti to Cynegius, Praetorian Prefect.* No governor shall assign any official of the Praetorian Prefects, Palatine official, soldier, or any of those who have formerly served in such bureaus, as an enforcement officer (*intercessor, exsecutor*) in his province at the request of any litigant in any private or public affair. For not only damage to his good name but also loss of property shall accompany him, together with his official staff, who violates (Our) heavenly provisions.

Given August 5, at Constantinople, in the consulship of Honorius, Most Noble Boy, and Euodius (386).

[9] *The same Augusti to Polemius, Praetorian Prefect of Illyricum.* No provincial governor may come to the Most August City unless ordered. For if it appears that anyone shall have come in violation of the provisions of Our decree, he shall be stricken with appropriate condemnation.

Given December 23, at Milan, in the post-consulate of Timasius and Promotus (390).[370]

[10] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Limenius, Count of the Imperial Finances.* We wish there to be no dealing between the Palatine officials, who serve you, and the provincials. The governors ought to know hereafter that it has been specially entrusted to them to claim and collect the customary tribute from the provincials; but the landholder shall not fear the Palatine official, who has been instructed to attend not to his own interest but to the governors and their staff.

Given March 27 (401?).[371]

[11][372] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Theodorus, Praetorian Prefect.* We order provincial governors to take care that the procurators of powerful persons do no wrong or illegal act.

Given November 25, at Ravenna, in the consulship of Bassus and Philippus (408).

[12] *The same Augusti to Monaxius, Praetorian Prefect.* We order that all official staff members in the provinces shall, when the occasion requires it, be stripped and subjected to flogging at the discretion of the governor, in order that public business may be expedited, the insolence of gubernatorial staffs may be checked, and due authority may be restored to the strictness of the governors.

370 Seeck dates to June 22, 390.
371 Seeck dates to March 27, 401.
372 = C.Th. 1.16.14.

D. VI k. Ian. Honorio VIIII et Theodosio V AA. conss.

[13] Μὴ γινέσθωσαν κεχαρισμένα περὶ τοὺς ἄρχοντας ψηφίσματα, ἀλλὰ κωλυέσθωσαν παρ᾽ αὐτῶν, καὶ πρὸς μιᾶς καὶ μόνης ἡμέρας ἐν τῷ μέλλειν ἐπιβαίνειν τῆς ἐπαρχίας τὸ μηνῦον αὐτὸν πεμπέσθω διάταγμα. ἐπὶ κλοπῇ δὲ ἁλοὺς ἢ ἐγκλήματί τινι οὐ μόνον περὶ αὐτὴν τὴν σωτηρίαν, ἀλλὰ γὰρ καὶ τὴν οὐσίαν κινδυνεύσει.

[14] *Imp. Leo A. Constantino pp.* Si quis cohortalibus adhuc obsequiis obligatus regimen provinciae vel cingulum cuiuslibet militiae dignitatisve quoquo modo meruit, contra licitum usurpatis impetratisve careat, etiamsi ultronea nostra liberalitate ius gerendae provinciae vel militiae seu dignitatis cuiuspiam sibi iactaverit fuisse delatum.

D. VII id. Aug. Constantinopoli Leone A. IIII et Probiano conss.

[15] *Idem A. Constantino pp.* **pr.** Nulli iudicum, qui provincias regunt, in civitatibus, in quibus sacra palatia vel praetoria sunt, liceat relictis his privatorum sibi domus ad habitandum veluti praetoria vindicare, sed sacratissima modis omnibus inhabitare palatia seu praetoria, ut hac necessitate compellantur eorum reparationi providere. **1.** Ubi autem et palatium est et praetorium, palatium quidem habitationi praesidis, praetorium autem suscipiendis conservandisque speciebus publicis horreorum vice vel aliae necessariae rei deputetur. **2.** Quod si quis aliquando dissimulare temptaverit, protinus eum atque officium quinquaginta librarum auri multam ad reparandum sacrum quod neglexerit palatium solvere sancimus.

[16] Μὴ περιοράτω ἢ αὐτὸς ζημιούτω ἢ ἄλλως βλαπτέτω τὸν συντελεστὴν ὁ ἄρχων, κίνησιν βασιλικὴν ἀγωνιῶν καὶ τὴν γενομένην ἐπιγνῶναι ζημίαν.

Given December 27, in the consulship of Honorius, for the ninth time, and Theodosius, for the fifth time, Augusti (412).[373]

[13][374] No decrees of thanks shall be made for governors but shall be suppressed by them, and the edict announcing the governor shall be issued only one day before his imminent arrival in the province. If he is caught in any theft or other crime, he shall risk not only his safety but also his property.

[14][375] *Emperor* L*EO* *Augustus to Constantinus, Praetorian Prefect.* Should anyone as yet obliged to perform the duties of the provincial administration (*cohortalia obsequia*) obtain the governorship (*regimen*) of a province, or the belt (*cingulum*) of any branch of the imperial service, or an official position of rank (*dignitas*) in any way, he shall be deprived of what has been unlawfully usurped and obtained, even if he boasts that his entitlement to the governorship, the imperial service, or some position of rank has been voluntarily conferred through Our generosity

Given August 7, at Constantinople, in the consulship of Leo Augustus, for the fourth time, and Probianus (471).

[15] *The same Augustus to Constantinus, Praetorian Prefect.* **pr.** None of the governors who administer provinces may, in cities in which there are sacred palaces or governors' official residences (*praetoria*), abandon these and claim the houses of private citizens for their dwellings as official residences. They must rather inhabit the most sacred palaces or official residences, so that they necessarily shall thereby be compelled to see to their repair. **1.** Where there is both a palace and an official residence, the palace shall be reserved for the dwelling of the governor, the official residence for storing and keeping public supplies (*species*) or any other necessary things, in place of a warehouse. **2.** If anyone should at some time attempt to feign ignorance of this, We decree that he and his official staff shall pay a fine of 50 pounds of gold for repairing the sacred palace that he has neglected.

(471?).

[16][376] (...). The governor shall neither neglect nor himself harm or otherwise injure the taxpayer but shall fear the displeasure of the Emperor and the necessity of making good the harm done.

[373] Seeck dates to May 27, 420.
[374] = Bas. 6.1.85.
[375] = C. 12.57.14 (but dated December 27).
[376] = Bas. 6.1.88.

[17] Τοὺς ληστεύοντας ἢ παραπλήσια πταίοντας συλλαμβανέτωσαν καὶ ἁρμοδίως οἱ ἄρχοντες τιμωρείτωσαν· τοὺς ἐν στρατείᾳ δὲ ὄντας οἱ πρωτεύοντες αὐτῶν παραδιδότωσαν, δέκα τοῦ παραβαίνοντος καταβάλλοντος λίτρας.

XXXXI Ut Nulli Patriae Suae Administratio sine Speciali Permissu Principis Permittatur

[1] Μηδεὶς Αὐγουστάλιος ἢ ἀνθύπατος ἢ βικάριος ἢ κόμης Ἀνατολῆς εἰς τὴν οἰκείαν ἐπαρχίαν γινέσθω, ἰδικῆς ἐπὶ τούτῳ χηρεύων κελεύσεως.

XXXXII De Quadrimenstruis Tam Civilibus Quam Militaribus Brevibus

[1] Οἱ ἄρχοντες καὶ αἱ τούτων τάξεις ἀνυπερθέτως μετὰ τῆς ἀληθείας καὶ ἀκριβείας ἐκπεμπέτωσαν τὰ τετραμηνιαῖα βρέβια, πεντήκοντα λίτρας χρυσίου καὶ τῆς ζώνης καὶ τῆς ἀξίας ἀφαίρεσιν ὑφορώμενοι, εἴ τις γένοιτο μέμψις κατὰ τοῦτο τὸ μέρος. τὸ δὲ αὐτὸ ἔστω καὶ κατὰ τοῦ τρακτευτοῦ πρόστιμον μὴ ἀναφέροντος ἐγγράφως ἐπὶ τὸν ἔπαρχον τὴν γενομένην ῥᾳθυμίαν.

[2] Μόνος ὁ τριβοῦνος ἢ ὁ τὴν τάξιν αὐτοῦ πληρῶν βικάριος μετὰ τοῦ δομεστίκου καὶ τοῦ ἀκτουαρίου καὶ τῶν ὀπτιώνων καὶ τοῦ νουμεραρίου ἤτοι τοῦ βοηθοῦ τὰ τετραμηνιαῖα βρέβια ὑπογράφων καὶ ὅρκον ἔγγραφον ὑποτελῶν, ὡς ἀληθῆ ἐμήνυσαν, ἐκπεμπέτω.

XXXXIII De Officio Praefecti Vigilum

[1] *Imppp. Valentinianus Theodosius et Arcadius AAA. Nebridio pu.* Praefecti vigilum huius urbis nihil de capitalibus causis sua auctoritate statuere debent, sed si quid huiusmodi evenerit, culmini tuae potestatis referre, ut de memoratis causis celsiore sententia iudicetur.

[17][377] (...). The governors shall arrest brigands and similar delinquents and punish them accordingly. Those in the military shall be surrendered by their superiors. Whoever violates this shall pay 10 pounds of gold.

Forty-First Title No One Is Permitted to Govern His Homeland Without Special Permission from the Emperor

[1][378] (...). No one shall be made Augustal Prefect, Proconsul, Vicar, or Count of the East over his native province without special orders to that effect.

Forty-Second Title Quarterly Reports Both Civil and Military

[1][379] (...). The governors and their staffs shall, without delay, truthfully and accurately dispatch quarterly reports, facing a penalty of 50 pounds of gold and loss of their rank (*cingulum*) and status, if any grounds for reproach should occur in this respect. The same penalty shall be inflicted on the chief collector (*tractator*) who fails to report in writing to the Prefect any negligence that has occurred.

[2] (...). Only the Tribune or one acting in his stead (*vicarius*) shall, together with his secretary (*domesticus*), the bookkeeper (*actuarius*), paymasters (*optiones*), accountant (*numerarius*), or assistant (*adiuva/adiutor*), sign the quarterly reports, give the oath in writing that they have given truthful information, and send them.

Forty-Third Title The Office of Prefect of the Watch[380]

[1] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Nebridius, Urban Prefect.* The Prefects of the Watch of This City should not give a decision in any capital cases on their own authority, but, if any such case arises, must report it to Your Eminence, so that a decision in the aforementioned cases may be given by higher authority.

(c. 385–389).

[377] = Bas. 6.1.89.
[378] = Bas. 6.1.90.
[379] This and the following constitution have been ascribed to Anastasius; Lounghis *et al.* date both to 512.
[380] See D. 1.15.

XXXXIIII De Officio Praefecti Annonae

[1] Ἡ διάταξις φανερὸν προστεθεῖσα μέτρον τῇ χορηγίᾳ τῶν ἐν Κωνσταντινουπόλει πολιτικῶν ἀννόνων διορίζει καὶ πῶς τὰς μεταθέσεις δεῖ τῶν σιτηρεσίων προβαίνειν, πρόστιμον τοῖς μὴ πειθομένοις ποιοῦσα.

[2] Ἀναιρεῖ τὴν ἐκ παλαιοῦ γενομένην ἐπὶ τοῖς πολιτικοῖς ἄρτοις μείωσιν ἡ διάταξις καὶ κυροῖ τοὺς μὴ ὑπόντας μέν, πρὸ τούτου πραθέντας δὲ κατὰ τὴν ἀπάτην τῶν ἀννονεπάρχων καὶ τῶν λογογράφων τῶν ῥεγεώνων.

D. VIII id. Mart. Constantinopoli post consulatum Lampadii et Orestae vv. cc. anno secundo.

XXXXV De Officio Civilium Iudicum

[1] *Imppp. Arcadius Honorius et Theodosius AAA. Curtio pp.* Honorati, qui lites habere noscuntur, his horis, quibus causarum merita vel fata penduntur, residendi cum iudice non habeant facultatem.

D. III non. Febr. Romae Basso et Philippo conss.

[2] *Impp. Honorius et Theodosius AA. Anthemio pp.* Si quis pro publicis functionibus, quae flagitantur, aliquo se defendere temptet munimine, adeat iudicem et promat, quae duxerit adserenda: quem si iudex, quod non arbitramur, minus audire maluerit, ipse quidem administrator triginta librarum auri, apparitio vero eius quinquaginta feriatur dispendio.

D. XIIII k. Aug. Constantinopoli Honorio VIII et Theodosio III AA. conss.

Forty-Fourth Title The Office of Prefect of the Food Supply

[1][381] (...). The published constitution defines the amount for the distribution of the grain supply in Constantinople and how transferences of grain allowances should proceed, establishing a penalty for the disobedient.

[2][382] (...). The constitution abolishes the reduction of the public bread rations and ratifies those rations that were not extant, yet were formerly sold to defraud the Prefects of the Grain Supply and the accountants (*logógraphi*) of the regions.

Given March 8, at Constantinople, in the second post-consulate of the viri clarissimi *Lampadius and Orestes (532).*

Forty-Fifth Title The Office of Civil Judges[383]

[1][384] *Emperors ARCADIUS, HONORIUS, and THEODOSIUS Augusti to Curtius, Praetorian Prefect.* Persons of rank (*honorati*) who are known to have pending lawsuits shall not have the right to sit with the governor during the hours in which the merits and outcome of their own cases are weighed.

Given February 3, at Rome, in the consulship of Bassus and Philippus (408).

[2][385] *Emperors HONORIUS and THEODOSIUS Augusti to Monaxius, Praetorian Prefect.* If anyone seeks by any form of defense to excuse himself from public duties demanded of him, he shall go before the governor and offer what grounds he considers appropriate. If the governor, which We think unlikely, should decline to hear him, a loss of 30 pounds of gold shall be inflicted on the administrator himself (i.e., the governor), a loss of 50 pounds of gold on his official staff.

Given July 19, at Constantinople, in the consulship of Honorius, for the eighth time, and Theodosius, for the third time, Augusti (409).

[381] = Bas. 6.1.99. This and the following text from the Bas. summarize the original constitutions. Lounghis *et al.* suggest that this constitution was also issued by Justinian on March 7, 532.

[382] = Bas. 6.1.100.

[383] Generally, these judges will have been provincial governors; so also in succeeding titles.

[384] = C.Th. 1.20.1.

[385] Combine with C. 10.74.1, 11.2.5.

XXXXVI De Officio Iudicum Militarium

[1] *Imppp. Valentinianus Theodosius et Arcadius AAA. comitibus et magistratis utriusque militiae.* Numquam omnino in negotiis privatorum vel tuitio militaris vel exsecutio tribuatur.

D. prid. id. Febr. Constantinopoli Theodosio A. III et Abundantio conss.

[2] *Impp. Honorius et Theodosius AA. Monaxio pp.* Praecipimus, ne quando curiales vel privatae condicionis homines ad militare exhibeantur iudicium vel contra se agentum actiones excipiant vel litigare in eo cogantur. interminationem autem quinquaginta librarum auri adversus comitianum officium proponi decernimus, si quid contra haec aliquando temptaverit.

D. VI k. Sept. Eudoxiopoli Theodosio A. VII et Palladio conss.

[3] *Impp. Theodosius et Valentinianus AA. Anatolio magistro militum.* Nemo de his, qui in virorum spectabilium ducum officiis militaverint, scholae agentum in rebus quacumque subreptione post completam militiam societur, ne agendi vices viri clarissimi principis accipiat facultatem. si quis autem adversus haec nostrae perennitatis decreta venire conetur, militia spoliatus proscriptionis poena pro parte bonorum tertia constringatur.

D. V k. Febr. Constantinopoli Maximo II et Paterio conss.

[4] *Idem AA. Nomo magistro officiorum.* **pr.** Duces limitum et praecipue, quibus gentes quae maxime cavendae sunt appropinquant, in ipsis limitibus commorari et milites ad proprium redigere numerum imminentibus magisteriis potestatibus diuturnisque eorum exercitationibus inhaerere praecipimus. **1.** Castrorum quin etiam refectionis clusuriarumque curam habeant. **2.** Quibus cum principe castrorumque praepositis pro laborum vicissitudine limitaneorum militum duodecimam annonarum partem, distribuendam videlicet inter eos magisteriae potestatis arbitrio, deputamus.

Forty-Sixth Title The Office of Military Judges[386]

[1][387] *Emperors VALENTINIAN, THEODOSIUS, and ARCADIUS Augusti to the Counts and Masters of Both Military Forces.* Custody or enforcement in the suits of private citizens may never be delegated to soldiers.

Given February 12, at Constantinople, in the consulship of Theodosius Augustus, for the third time, and Abundantius (393).

[2] *Emperors HONORIUS and THEODOSIUS Augusti to Monaxius, Praetorian Prefect.* We order that curials or persons in private station may not be produced before a military court or be forced to answer the accusations of their adversaries or litigate there. We decree that the threat of a fine of 50 pounds of gold shall be set against the staff of the Count, if it should at any time attempt anything to the contrary.

Given August 27, at Eudoxiopolis, in the consulship of Theodosius Augustus, for the seventh time, and Palladius (416).

[3] *Emperors THEODOSIUS and VALENTINIAN Augusti to Anatolius, Master of the Soldiers.* No one from among those who have served in the staffs of the *viri spectabiles* Dukes shall, upon completing his service, be enrolled in the corps of the imperial couriers (*agentes in rebus*) by any surreptitious act, lest he obtain the power to act as *vir clarissimus* chief of staff (*princeps*). If, though, someone should try to contravene these decrees of Our Eternity, he shall be stripped of his office and punished by confiscation of one-third of his property.

Given January 28, at Constantinople, in the consulship of Maximus, for the second time, and Paterius (443).

[4][388] *The same Augusti to Nomus, Master of Offices.* **pr.** We order that the Dukes of the Frontiers, and particularly those neighboring the peoples that must be watched the most, shall remain on the frontiers themselves, recruit their troops to full strength under the eyes of the Masters of the Soldiers, and keep intent on the soldiers' daily drills. **1.** They shall also have the responsibility of repairing the camps and fortresses. **2.** In light of the variety of their labors, We assign to them, together with their chief of staff (*princeps*) and the commanders of the camps, one-twelfth of the frontier troops' pay allowance (*annonae*), to be distributed among them at the discretion of the Master of the Soldiers.

386 As with their civilian counterparts, the judges here are generally provincial or diocesan military officials (e.g., Counts, Dukes).

387 = C.Th. 1.21.1 (ascribed, correctly, to Theodosius, Arcadius, and Honorius).

388 = Nov. Theod. 24; combine with C. 1.31.4, 11.60.3.

D. prid. id. Sept. Constantinopoli Maximo II et Paterio conss.

[5] Ἀρκείσθω τοῖς ἐξ ἔθους σιτηρεσίοις ὁ δοὺξ καὶ τοῖς ἐκ τῆς δωδεκάτης τῶν ἐκ τῶν πολεμίων ληφθέντων μοίρας ἐν χρυσῷ διδομένης παρὰ τῶν ἐνδόξων ἐπάρχων καὶ μηδὲν ἕτερον ἢ κατὰ ἀπαίτησιν ἢ κατὰ ἑκουσίαν τοῦ διδόντος προαίρεσιν κομιζέσθω.

XXXXVII Ne Comitibus Rei Militaris vel Tribunis Lavacra Praestentur

[1] *Imppp. Arcadius Honorius et Theodosius AAA. Anthemio pp.* Omnem inquietudinem a curiis et civitatibus praecipimus prohiberi nec ulla privata ab his succendi balnea ad tribunorum vel ducum aliorumve militarium comitum usus nec adaerationem aliquam pro hac causa profligari. illustribus enim tantum viris comitibus ac magistris militum (si tamen id voluerint) hoc ministerium indulgemus: dupli poena violatoribus huius sanctionis imminente.

D. V k. Dec. Constantinopoli Arcadio A. VI et Probo conss.

XXXXVIII De Officio Diversorum Iudicum

[1] *Imp. Constantinus A. ad Domitium Celsum vicarium.* Nemo iudex officialem ad eam domum, in qua mater familias agit, cum aliquo praecepto existimet esse mittendum, ut eandem in publicum protrahat, cum certum sit debita eius, quae intra domum considerato sexu semet contineat, domus eius vel cuiuscumque rei habita distractione, publicis necessitatibus posse servari. quod si quis in publicum matrem familias posthac crediderit protrahendam, inter maximos reos citra ullam indulgentiam capitali poena plectetur.

D. III id. Ian. Treviris Sabino et Rufino conss.

Given September 12, at Constantinople, in the consulship of Maximus, for the second time, and Paterius (443).

[5][389] The Duke shall be content with the usual allowances and those derived from the twelfth part of the spoils taken from the enemy, to be paid in gold by the *viri illustres* Prefects, and shall receive nothing else, whether upon his request or with the willing assent of the giver.

Forty-Seventh Title No Baths Shall Be Provided for the Military Counts or Tribunes

[1][390] *Emperors* Arcadius, Honorius, *and* Theodosius *Augusti to Anthemius, Praetorian Prefect.* We order all disturbance to be kept from the curias and cities, nor should any private baths be heated by the aforesaid for the use of Tribunes or Dukes or any other military retainers, nor should any payment in cash be demanded for this reason. For We grant this privilege only to the *viri illustres* Counts and Masters of the Soldiers, if they so desire. A penalty of twice the sum concerned looms over violators of this decree.

Given November 27, at Constantinople, in the consulship of Arcadius Augustus, for the sixth time, and Probus (406).

Forty-Eighth Title The Office of Various Judges[391]

[1][392] *Emperor* Constantine *Augustus to Domitius Celsus, Vicar.* Let no governor deem it necessary to send a staff member to the home of a matron (*materfamilias*) on some order, so that he drags her into public, since it is certain that the debts of a woman who, out of consideration of her sex, keeps herself inside the house can be preserved for the needs of the State, should her house or any other thing be subject to (confiscation and) distraint. If anyone hereafter should think that a matron should be dragged into public, he shall suffer capital punishment as one of the gravest offenders, without hope of pardon.

Given January 11, at Trier, in the consulship of Sabinus and Rufinus (316).

[389] = Bas. 6.1.97.
[390] = C.Th. 7.11.1, with the end adapted from C.Th. 7.11.2.
[391] The judges intended are above all provincial governors.
[392] = C.Th. 1.22.1.

[2] *Imppp. Valentinianus Theodosius et Arcadius AAA. ad Principium pu.* Singuli quique iudices sciant celsioribus viris et his, quorum nonnumquam iudicio provehuntur, honorificentiam esse debitam praestandam, nec in subscriptionibus suis fratres audeant nominare, apparitione multanda, cuius haec cura est.

D. id. Febr. Ricomere et Clearcho conss.

[3] *Idem AAA. Constantio*[xxxv] *pp. Galliarum.* Sciant principes et cornicularii et primates officiorum, iudices etiam, ternas libras auri a suis facultatibus eruendas, si honoratis viris, quibus etiam consistorium nostrum ingrediendi facultas praebetur, secretarii iudicum non patuerit ingressus aut reverentia non fuerit in salutatione delata aut sedendi cum iudice societas denegata.

D. VI id. Nov. Treviris Timasio et Promoto conss.

XXXXVIIII Ut Omnes Tam Civiles Quam Militares Iudices post Administrationem Depositam per Quinquaginta Dies in Civitatibus vel Certis Locis Permaneant

[1] *Imp. Zeno A. Sebastiano pp.* **pr.** Nemo ex viris clarissimis praesidibus provinciarum vel consularibus aut correctoribus neve qui administrationis maioris infulas meruerint, id est viri spectabiles proconsules vel praefectus Augustalis aut comes Orientis aut cuiuslibet tractus vicarius aut quicumque dux vel comes cuiuslibet limitis vel divinarum comes domorum, postquam sibi successum fuerit, audeat excedere de locis, quae rexisse noscitur, antequam quinquaginta dierum constitutus numerus finiatur. **1.** Sed per id tempus praesides quidem et consulares nec non correctores in metropoli, spectabiles vero iudices tam civiles quam militares in civitatibus administratae dioeceseos illustrioribus publice, nec domi vel intra sancrosanctos terminos vel regiones aut potentes domos latitantes, sed in celeberrimis locis ante omnium quos nuper gubernaverant ora versentur, ut pateat omnibus facultas libera super furtis aut criminibus querimoniam commovendi, ita ut ab omni

[xxxv] Constantiano

[2] *Emperors VALENTINIAN, THEODOSIUS, and ARCADIUS Augusti to Principius, Urban Prefect.* Each and every judge shall know that they must show due respect to men of higher rank and those at whose discretion they sometimes are promoted; nor shall they dare to address such men as "brothers" in their signatures, but their staff, whose duty this is, shall be punished.[393]

Given February 13, in the consulship of Richomer and Clearchus (384).[394]

[3][395] *The same Augusti to Constantianus, Praetorian Prefect of the Gauls.* The Chiefs of Staff (*principes*), their Department Heads (*cornicularii*), and the heads of the bureaus, and also the governors, shall know that 3 pounds of gold will be taken from their property if ingress to the goveror's council chamber (*secretarium*) does not stand open to men of rank (*honorati*), to whom the right of entering even Our Council (*consistorium*) is given, or if reverence should not be paid them in the morning reception or the courtesy (*societas*) of sitting in court with the governor should be denied.

Given November 8; (received ...) at Trier, in the consulship of Timasius and Promotus (389).

Forty-Ninth Title All Civil and Military Judges[396] Shall Remain for Fifty Days in Cities or Certain Places after Laying Down Their Office

[1] *Emperor ZENO Augustus to Sebastianus, Praetorian Prefect.* **pr.** No one from among the provincial governors, or consulars, or *viri clarissimi* correctors; nor those who have received the insignia (*infulae*) of a higher office, that is, the *viri spectabiles* Proconsuls or the Augustal Prefect or Count of the East, or the Vicar of any territory; or any Duke or Count of any Frontier, or a Count of the Divine House, shall, after he has received a successor, dare to depart the place that he is known to have governed until the fixed number of fifty days shall have passed. **1.** During that time, the governors, consulars, and correctors in their metropolises; and the *viri spectabiles* civil and military governors in the more illustrious cities of the diocese they governed, shall abide in the most populous places before the eyes of all whom they recently governed, and not hide at home or within holy precincts or areas or in the

[393] The signatures of officials consisted generally of a farewell written by hand, e.g., *vale, mi frater*, whereas the body of the document would have been drafted by a clerk. Cf. the signatures "in another hand" preserved in the letters at C. 1.1.8.24 and 39.

[394] Seeck dates to February 13, 385.

[395] = C. 12.19.2, C.Th. 6.26.5. The constitution was apparently received, not given, in Trier.

[396] The judges intended are above all provincial governors and military commanders.

defensus iniuria provisione post eum administrantis ac periculo officii nec minus curialium et defensoris civitatis, iuratoriae tantum cautioni commissus, postquam fuerit in querimoniam devocatus, pulsare volentibus (ut dictum est) pro legum ratione respondeat: **2.** Nec ullam ante praefinitum tempus de provincia discedendi excusationem ei tribuat vel divina revocatoria vel codicilli alterius administrationis oblati vel praeceptum amplissimae tuae sedis, ut alterius provinciae moderatoris vices obtineat, aut praeceptum praefatae vel alterius civilis seu militaris cuiuscumque potestatis, ut quamcumque sollicitudinem publicam gerat aut exhibeatur vel deducatur, aut postremum cuiuslibet artis astutia. Cuiuscumque occasionis excogitata calliditas excludatur, ut modis omnibus, quae pro universarum provinciarum salute sancimus, sortiantur effectum.

3. Quod si quis temeritate punienda saluberrimam legem circumscribendam vel violandam crediderit, licet et maiestatis reus non immerito iudicetur, attamen quinquaginta librarum auri multam publicis calculis inferre cogetur: simili poena plectendo, qui post eum administratione suscepta minime eum curaverit honeste retinendum aut super eius fuga protinus referendum.

4. Administrationem autem deponere non volumus decessorem, antequam successor ad provinciae fines pervenerit, licet litteris ad eum seu programmate vel edicto ad officium et provinciales usus fuerit.

5. Ipse autem, qui praesentem fugiens non observaverit legem, ubicumque repertus fuerit, licet in hac florentissima civitate, ad provinciam sine ullo penitus obstaculo praeceptione tui culminis, cura etiam viri clarissimi rectoris provinciae, in qua repertus fuerit, deducetur, per sex mensuum curricula ibidem moraturus, quatenus interea minime crimina possint vel furta celari. **6.** Officium etiam, quod eum (debito tamen honore servato) non prohibuerit contra legis tenorem discedere, triginta librarum auri dispendio ferietur. **7.** Quod si intra quinquaginta dierum numerum fuerit forte pulsatus et praefato elapso tempore necdum finita lis fuerit, civiliter quidem super furtorum sceleribus pulsatus dato procuratore instructo post quinquaginta dies protinus habeat licentiam discedendi: accusatione vero super criminibus facta per inscriptionum laqueos inretitus usque ad terminum causae ibidem necessario perdurabit.

8. Sciant autem universi iudices, apud quos vel administrationis iure vel ex praecepto amplissimae tuae sedis huiusmodi controversiae civiliter vel criminaliter ventilantur, intra viginti dierum spatium debere se praefata litigia, postquam orta fuerint, terminare. nam si supersederint,

homes of powerful personages. Thus all shall enjoy the free power to lodge a complaint concerning thefts and crimes; but he (the former administrator) shall be afforded protection from all insult by his successor, at the peril of his official staff as well as of the curials and the defender of the city (*defensor civitatis*). He shall be obliged to give a guaranty on oath (for his appearance), once he has been summoned to answer a complaint, and he shall respond according to the law to those who – as has been said – wish to accuse him. **2.** Nor may any divine letter of recall or codicils conferred on him for another office or an order from your Most Exalted Prefecture grant him any excuse for leaving the province before the appointed time, so that he might take the place of the governor of another province; nor an order of the aforesaid prefecture or another civil or military official, that he undertake some public charge or be summoned or brought elsewhere; nor, lastly, any clever scheme. All cunning devised to provide any reason whatsoever shall be eliminated, so that what We decree on behalf of the safety of all provincials shall in every way be carried into full effect.

3. But if anyone, out of punishable rashness, thinks he shall evade or break this most beneficial law, though he might not undeservedly be judged guilty of high treason, yet he shall be forced to pay a fine of 50 pounds of gold to the public accounts. A similar punishment will be inflicted on his successor in office, if he makes no sincere effort to detain him or immediately report his flight.

4. We do not wish the departing administrator to lay down his office before his successor reaches the borders of the province, even if the latter has sent him a letter, or a proclamation or edict to his official staff and the provincials.

5. He, however, who disobeys the present law by fleeing, shall, wherever he may be found, even in This Most Prosperous City, be returned to his province, with no obstruction, at the order of Your Eminence, and under the responsibility of the *vir clarissimus* governor of the province in which he is found. He shall remain there for a period of six months, during which time his crimes or thefts cannot be kept hidden. **6.** His official staff, which – though paying him due respect – did not prevent him from departing in violation of the law, shall be struck by a loss of 30 pounds of gold. **7.** If within a total of fifty days he should be prosecuted and litigation is not yet finished when the aforesaid time has expired, then, if he has been accused of civil crimes of theft, a procurator may be appointed, and he shall forthwith have the freedom to depart after fifty days; but if a criminal accusation is made against him, once enmeshed in the snares of the charges, he must remain till the conclusion of the case.

8. All judges, before whom such civil or criminal cases are tried, whether by right of office or at the order of your Most Exalted Prefecture, shall know that they must finish the aforesaid litigation within twenty days after they shall have

ipsos quidem decem librarum auri condemnationem subire censemus, accusationem vero seu civilem intentionem semel in iudicium deductam praefato modo legitime terminari.

D. v id. Oct. Constantinopoli Zenone A. II cons.

L De Officio Eius Qui Vicem Alicuius Iudicis Obtinet

[1] *Imp. Gordianus A. Domitio pp.* In causa quae spectat ad utilitatem rei publicae eum qui vice praesidis provinciae administrat potuisse cognoscere in dubium non venit. sane si in aliquo captum est ius rei publicae, iuxta scita divorum principum defensores rei publicae (si modo adesse fiduciam negotio putant) restitutionis auxilium possunt flagitare.

D. III non. Nov. Sabino II et Venusto conss.

[2] *Mandata impp. Theodosii et Valentiniani AA. missa ad Antiochum pp. per referendarium, quae sic habent:* Suggerente magnificentia vestra docta imperialis aeternitas debere eos, qui praeceptione principali seu vestrae sedis amplissimae tueri locum rectorum provinciarum noscuntur, auctoritatem habere tutores seu curatores petentibus dare, decretum etiam interponere ad alienandas minorum similiumque eis personarum seu curialium facultates, emancipationes quoque legibus celebrare et omnia quae ad iurisdictionem rectoris provinciae pertinent actitare, praecipere dignata est pro dispositione vestrae celsitudinis praefatas huiusmodi sollicitudines peragendi habere licentiam.

D. prid. id. Oct. Constantinopoli Hierio et Ardabure conss.

LI De Adsessoribus et Domesticis et Cancellariis Iudicum

[1] *Impp. Diocletianus et Maximianus AA. Paulino.* Studiorum labor meretur, ut hi, qui in publicis administrationibus constituti sociari sibi

begun. For if they omit to do this, We have determined that they shall be condemned to the amount of 10 pounds of gold; the criminal accusation or civil claim, however, once brought before the court, must lawfully be concluded in the aforesaid fashion.

Given October 11, at Constantinople, in the consulship of Zeno Augustus, for the second time (479).

Fiftieth Title The Office of One Officiating in Place of a Judge[397]

[1] *Emperor Gordian Augustus to Domitius, Praetorian Prefect.* There is no doubt whether he who administers a province in place of a governor could try a case bearing on the welfare of a municipality. Indeed, if the right of a municipality is disadvantaged in some matter, the Defenders of the municipality – provided they think the case has merit – can, pursuant to the decrees of the divine emperors, demand the remedy of restitution.

Given November 3, in the consulship of Sabinus, for the second time, and Venusius (240).

[2] *The Mandates (*mandata*) of the Emperors Theodosius and Valentinian Augusti, sent to Antiochius, Praetorian Prefect, by messenger, which are as follows:* Instructed by the suggestion of Your Magnificence that those who govern a province by imperial command or by that of Your Most Exalted Office should have the authority to appoint *tutores* and *curatores* for those petitioning for them, to issue a decree for the sale of the property of minors and similar persons or curials, to preside over emancipations according to the laws, and to perform all duties that pertain to the jurisdiction of the provincial governor: Our Imperial Eternity has deigned to order, in accordance with the determination of Your Highness, that they shall have the power to perform the aforementioned tasks.

Given October 14, at Constantinople, in the consulship of Hierius and Ardabur (427).

Fifty-First Title Judicial Advisors (*Adsessores*), Private Secretaries (*Domestici*), and Public Secretaries (*Cancellarii*) of Judges[398]

[1] *Emperors Diocletian and Maximian Augusti to Paulinus.* The labor of scholarship warrants that those in public office, who desire to join to

[397] See D. 1.21. Intended is a delegate judge appointed by a provincial governor (here called a judge).

[398] See D. 1.22. The judges intended are above all provincial governors.

consiliorum participes cupiunt, spe praemiorum atque honorificentia sua provocent eos, quorum prudentiam sibi putant esse necessariam, non metu terribili et necessitate incongrua libertati.

*D. prid. id. Iul. Tiberia*de *Maximo II et Aquilino conss.*

[2] *Imp. Constantinus A. ad Bassum pp.* Praesides non per adsessores, sed per se subscribant libellis. Quod si quis adsessori subscriptionem inconsultis nobis permiserit, mox adsessor qui subscripsit exilio puniatur: praesidis vero nomen ad nos referri iubemus, ut in eum severius vindicetur.

D. XV k. Sept. Constantino A. VI et Constantino C. conss.

[3] *Impp. Arcadius et Honorius AA. Messalae pp.* **pr.** Consiliarios iudicum et cancellarios et eos, qui domesticorum funguntur officio, post depositam administrationem quinquaginta dies in provincia residere praecipimus. **1.** Pro confesso autem tenebitur, qui accusatus huiusmodi personam subtraxerit: eaque in quadruplum restitui iubemus, quae desiderantur ablata, ut duplum spoliatus accipiat, duplum noster fiscus adquirat.

D. VI k. Ian. Mediolani Theodoro cons.

[4] *Idem AAA. et Theodosius A. ad Caecilianum vicarium.* Domesticus iudicis a publicis actibus arceatur. Quod si necessitatibus publicis sese convictus fuerit miscuisse, statim eum ad maioris potestatis examen deduci oportet, ut competens in eo vindicta promatur.

D. VI id. April. Honorio A. VI et Aristaeneto conss.

[5] *Impp. Honorius et Theodosius AA. Seleuco pp.* Nemo in provinciis, qui semel domestici vel cancellarii ministerium gesserit, ad eandem observationem aliqua ambitione iterum remeare concedatur.

D. III id. Dec. Ravennae AA. X et VI conss.

themselves men to participate in their deliberations, must induce those whose expertise they consider indispensable with the hope of rewards and their own commendation, not by horrible fear and compulsion, which ill suits free men.

Given July 14, at Tiberias, in the consulship of Maximus, for the second time, and Aquilinus (286).

[2] *Emperor* CONSTANTINE *Augustus to Bassus, Praetorian Prefect.*[399] Governors shall sign petitions (*libelli*) personally, not through their judicial advisors (*assessores*). But if someone, without Our consent, should permit an advisor to sign them, the advisor who signed shall be punished by exile, while We order that the name of the governor be reported to Us, so that severer punishment may be visited upon him.

Given August 18, in the consulship of Constantine Augustus, for the sixth time, and the Caesar Constantine (320).[400]

[3] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Messala, Praetorian Prefect.* **pr.** We order that the counselors and public secretaries of the governors, as well as those who serve as private secretaries, shall remain within the province for fifty days after they have laid down their office. **1.** The subject of an accusation who removes such a person will be regarded as having confessed his guilt; and We order that which has been taken and is missing to be restored fourfold, so that the person despoiled receives twofold and Our Treasury acquires twofold.

Given December 27, at Milan, in the consulship of Theodorus (399).

[4] *The same Augusti and* THEODOSIUS *Augustus to Caecilianus, Vicar.* The private secretary of a governor shall be kept away from public records (*publica acta*). But if he is proven to have interfered in public business, he must immediately be brought before the tribunal of a higher official, so that due punishment may be rendered him.

Given April 8, in the consulship of Honorius Augustus, for the sixth time, and Aristaenetus (404).

[5] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Seleucus, Praetorian Prefect.* No one in the provinces who has once performed the duty of private or public secretary shall, by means of corrupt solicitation (*ambitio*), be permitted to return to the same position.

Given December 11, at Ravenna, in the tenth and sixth consulship of the Augusti (415).

[399] Krüger's 9th edition prefers the reading *pu* (Urban Prefect), incorrectly.
[400] Seeck gives August 18, 329.

[6] *Idem AA. Vitaliano duci Libyae.* Nemo de domesticis ducum vel comitum militarium, officiis eorum connumeratus, post completum sui temporis actum ad eandem rursus sollicitudinem audeat adspirare: decem auri librarum condemnatione proposita, si quis hanc violare voluerit sanctionem: eadem poena officio quoque coercendo,[xxxvi] si per ambitionem vel avaritiam ex his aliquid temerari concesserit.

D. VIIII k. Nov. Constantinopoli Honorio A. XI et Constantio II conss.

[7] *Idem AA. Eustathio pp.* Velut castrense peculium filii familias adsessores etiam post patris obitum vindicent, qui consiliis propriis administratores iuvare consueverunt, si quid licitis honestisque lucris coadunare potuerunt.

D. X k. April. Constantinopoli Honorio XIII et Theodosio X AA. conss.

[8] *Idem AA. Asclepiodoto pp.* Nullus iudicum ad provinciam sibi commissam quemquam secum ducere audeat, cui domestici vel cancellarii nomen imponat, nec profectum ad se undecumque suscipiat, ne famae nota cum bonorum publicatione plectatur. periculo enim primatum officii cancellarios, sub fide gestorum ex eodem officio electos iudicibus adplicari iubemus, ita ut post depositam administrationem nec militiam deserant et provincialibus praesentiam sui exhibeant, quo volentibus sit accusandi eos facultas, si enim idonea causa exegerit, ad detegenda iudicis flagitia et quaestioni eos subdi oportet.

D. prid. k. Iun. Constantinopoli Asclepiodoto et Mariniano conss.

[9] *Impp. Theodosius et Valentinianus AA. ad Taurum pp.* Si post depositam administrationem iudicum praesentiam vel exhibitionem domesticorum querimonia provincialium aut curialium vel aliqua

[xxxvi] coercendo proposita (C.Th.)

[6][401] *The same Augusti to Vitalianus, Duke of Libya.* No one from among the private secretaries of the Dukes or Military Counts, who is enrolled on their staff, shall dare to aspire to the same position again after he has completed his term of duty. A penalty of 10 pounds of gold has been established if anyone wishes to violate this decree; the same penalty has also been established to reprimand the official staff, if it, through corrupt solicitation or greed, should allow any of these provisions to be violated.

Given October 24, in Constantinople, in the consulship of Honorius, for the eleventh time, and Constantius, for the second time, Augusti (417).

[7][402] *The same Augusti to Eustathius, Praetorian Prefect.* Just as sons under paternal power may claim their special military property (*peculium castrense*) after the death of their father, so too may judicial advisors, who customarily aid governors with their counsel, if they have been able to accumulate anything from lawful and honorable profits.

Given March 23, at Constantinople, in the consulship of Honorius, for the thirteenth time, and Theodosius, for the tenth time, Augusti (422).

[8][403] *The same Augusti to Asclepiodotus, Praetorian Prefect.* No governor shall dare to bring anyone, on whom he imposes the name of private or public secretary, with him to the province entrusted him, nor may he engage anyone who has come to him from whatever place, lest he be stricken with the mark of infamy and the confiscation of his property. For We order that, at the peril of the chiefs of the official staff (*primates*), public secretaries shall be chosen from the same staff to attend to the governors and attested on official record, so that after they have laid down their office they shall not abandon the service but shall make themselves available to the provincials, so that anyone who wishes shall have the power to accuse them; for if reasonable grounds require it, they must even be subjected to torture in order to disclose the crimes of the governor.

Given May 31, at Constantinople, in the consulship of Asclepiodotus and Marinianus (423).

[9][404] *Emperors* Theodosius *and* Valentinian *Augusti to Taurus, Praetorian Prefect.* If the remonstration of the provincials or curials or some other public necessity requires the presence or summons of private secretaries after their

[401] = C.Th. 8.1.16.
[402] = C.Th. 1.34.2; combine with C. 2.7.4.
[403] = C.Th. 1.34.3.
[404] Combine with C.Th. 8.1.17.

publica necessitas postulaverit, per eosdem administratores, quorum domestici fuerint, iudicio legibusque tradantur.

D. v non. Iul. Constantinopoli Theodosio A. xiiii et Maximo conss.

[**10**] *Idem AA. Florentio pp.* In consiliariis observari censemus, ut in eum, qui in sua provincia ultra quattuor menses moderatoribus adsederit adversus leges antiquas et divorum retro principum scita, proscriptio bonorum et accusatio publici criminis immineat, nisi per caeleste oraculum vel amplissimae tuae sedis praeceptionem sese defendat.

D. xiii k. Febr. Theodosio xvii et Festo conss.

[**11**] *Idem AA. Zoilo pp. Orientis.* Non parum adsessoribus magistratuum maiorum quam ipsis iudicibus nostrae benivolentiae liberalitas tribuenda est. ideoque consiliarios virorum illustrium praefectorum tam praetorio quam huius inclitae urbis eminentissimorumque magistrorum militum nec non etiam viri illustris magistri officiorum, sive praedicto officio iam functi sunt seu fungentur in posterum, post depositum etiam officium ab omni indictionis onere seu civilium seu militarium iudicum prorsus immunes esse praecipimus, ut nec ab amplissima quidem sede tui culminis eis ulla molestia super suscipiendo quolibet gravamine penitus iniungatur: quinquaginta librarum auri officio tui culminis damnatione multando, si quid adversus statuta clementiae nostrae innovari concesserit.

D. v k. Mart. Theodosio A. xviii et Albino conss.

[**12**] *Impp. Valentinianus et Marcianus AA. Palladio pp.* Liceat omnibus iudicibus illustri praeditis potestate consiliarios sibi eosdem secundo ac tertio et saepius iniungere, quia qui semel recte cognitus est, ob hoc solum non debet, quod iam probatus est, improbari.

D ... Valentiniano A ...

[**13**] *Αὐτοκράτωρ Ζήνων Α. Μηδέποτε χωρὶς τῶν ἀρχόντων οἱ συμπόνοι αὐτῶν δικαζέτωσαν τὰ ἐκείνων τιθέντες ὀνόματα.*

governors have laid down their office, they shall be delivered by the same administrators, whose secretaries they were, to the court and the laws.

Given July 3, at Constantinople, in the consulship of Theodosius Augustus, for the fourteenth time, and Maximus (433).

[10] *The same Augusti to Florentius, Praetorian Prefect.* Concerning counselors (*consiliarii*), We deem it should be observed that he, who contrary to the ancient laws and decrees of past divine emperors[405] sits with governors longer than four months, shall face the confiscation of his property and accusation of a public crime, unless he defends himself by a heavenly oracle (an imperial rescript) or a command from Your Most Exalted Prefecture.

Given January 20, in the consulship of Theodosius, for the seventeenth time, and Festus (439).

[11][406] *The same Augusti to Zoilus, Praetorian Prefect of the East.* Our benevolence should be extended no less to the judicial advisors of the higher magistrates than to the governors themselves. We therefore order that the counselors of both the *viri illustres* Praetorian Prefects and Prefects of This Renowned City, of the *viri eminentissimi* Masters of the Soldiers, and of the *vir illustris* Master of Offices, whether they have already held this office or shall hold it hereafter, shall, after laying down their office, be exempt from the burden of every superindiction, whether imposed by civil or by military officials; not even by the Most Exalted Prefecture of Your Highness may the trouble of undertaking any liturgy be imposed on them. The official staff of Your Highness will be punished by a fine of 50 pounds of gold, if they permit any innovation contrary to the statutes of Our Clemency.

Given February 26, in the consulship of Theodosius Augustus, for the eighteenth time, and Albinus (444).

[12] *Emperors VALENTINIAN and MARCIAN Augusti to Palladius, Praetorian Prefect.* All judges of illustrious rank (i.e., *viri illustres*) shall be permitted to appoint the same men as their counselors a second and third time and oftener; because he who has been approved once should not be found wanting for the sole reason that he has been found unimpeachable.

Given ... in the consulship of Valentinian Augustus (450 or 455).

[13][407] (*Emperor ZENO Augustus*). Judicial advisors may not adjudicate a matter without the governors while only adding the name of the latter.

[405] That is, C.Th. 1.34.1.
[406] = C. 12.9.1.1 and 3 (with some changes).
[407] = Bas. 6.1.71, 7.1.1.

D. VI k. Iul. post consulatum Longini.

[14] *Imp. Iustinianus A. Demostheni pp.* **pr.** Nemo ex his, qui advocati causarum constituti sunt vel fuerint et in hac regia urbe in quocumque iudicio deputati et in aliis omnibus provinciis nostro subiectis imperio, audeat in uno eodemque tempore tam advocatione uti quam consiliarii cuiuscumque magistratus, quibus res publica gerenda committitur, curam adripere, cum sat abundeque sufficit vel per advocationem causis perfectissime patrocinari vel adsessoris officio fungi, ne, cum in utrumque festinet, neutrum bene peragat: sed sive advocatus esse maluerit, hoc cum debita sollertia implere possit, vel si adsessionem elegerit, in ea videlicet permaneat, ita tamen, ut post consiliarii sollicitudinem depositam liceat ei ad munus advocationis reverti.

1. Nec sit concessum cuidam duobus magistratibus adsidere et utriusque iudicii curam peragere (neque enim facile credendum est duabus etiam necessariis rebus unum sufficere: nam cum uni iudicio adfuerit, altero abstrahi necesse est sicque nulli eorum idoneum in totum inveniri), sed altera adsessione penitus semota unius magistratus esse contentum iudicio.

2. Nec callidis machinationibus huiusmodi legem putet quis esse circumscribendam et, si non consilarii signum quod solitum est chartis imponat, sed alias quasdam litteras excogitatas adsimulaverit, existimari ei licere fungi quidem memorato officio, sub huiusmodi tamen umbra latere, cum in legem committunt hi, qui vigorem eius scrupulosis et excogitatis artibus eludere festinant. **3.** Neque sibi blandiri quemquam oportet, quod et praesentis legis aculeos possit evadere, quemadmodum et anteriores leges super hac re positas deludebat. si quis etenim in tali commisso fuerit inventus, sciat se de matriculis advocatorum penitus esse delendum et decem librarum auri multam nostris privatis largitionibus illaturum, per virum illustrem comitem rerum privatarum exigendam, et aliam maiorem regalis culminis subiturum offensam, cum nec ipse iudex, qui hoc fieri passus est et sciens prudensque hoc commiserit, sine imperiali commotione remanebit: **4.** Eadem poena subiciendo etiam eo vel eis, qui in his causis, quarum patrocinium adepti sunt quibusque advocationem suam praestiterint, adsessionis cuiuscumque magistratus colore audeat vel audeant iudicare, ne adfectionis suae advocationis memor incorrupti iudicis non possit nomen perferre.

D. V k. Oct. Chalcedone Decio vc. cons.

[15] ...

Given June 26, in the post-consulate of Longinus (487).

[14] *Emperor* JUSTINIAN *Augustus to Demosthenes, Praetorian Prefect.* **pr.** No one from among those who have been or shall be appointed advocates of cases, both in This Imperial City in any court, and in all the other provinces subject to Our rule, shall dare at one and the same time both to serve as advocate and to seize the post of counselor to any magistrate to whom a public office has been entrusted; for it more than suffices either to handle cases excellently as advocate or to serve as a judicial advisor, lest, while he hastens to do both, he does neither well. But if, however, he prefers to serve as advocate, he can fill this position with the necessary skill; or, if he has chosen to be a judicial advisor, he may remain so, so that once he has laid down his position as counselor, he may return to his position as advocate.

1. Nor shall one person be allowed to serve as judicial advisor to two magistrates and attend both courts – for it defies belief that one man alone can fill two essential tasks; for since he will be present in one court, he necessarily must be drawn away from the other and thus is found completely sufficient for neither – but with the second position as advisor canceled, he must be content with the court of one magistrate.

2. Nor should anyone think that he might evade this law by cunning schemes and that, if he does not place on his papers the customary mark of a counselor but affects some fanciful letters, he will be considered permitted to serve in the aforementioned position, while he hides in the shadow (of his deception). For they break this law who try to elude its force by their cunning and far-fetched tricks. **3.** And no one may flatter himself that he can also evade the stings of the present law just as he cheated past laws issued on this subject. For if someone is caught in such a crime, he shall know that he shall be struck utterly from the registers of advocates and must pay a fine of 10 pounds of gold to Our Privy Purse, to be collected by the Count of the Privy Purse; and he further will face the greater displeasure of Our Imperial Highness, while the judge himself who permitted this and knowingly and deliberately committed this crime will not remain free from Our imperial indignation. **4.** The person or persons who dares or dare to adjudicate, as the judicial advisors of any magistrate, cases in which they have undertaken the representation (of one of the parties) or provide their service as advocates, shall be subject to the same punishment, lest influenced by the interest of his advocates he be unable to bear the name of an incorruptible judge.

Given September 27, in Chalcedon, in the consulship of vir clarissimus *Decius (529).*

[15] ...[408]

LII De Annonis et Capitu Administrantium vel Adsessorum Aliorumve Publicas Sollicitudines Gerentium vel Eorum, Qui Aliquas Consecuti Sunt Dignitates

[1] *Impp. Theodosius et Valentinianus AA. Florentio pp.* Omnibus tam viris spectabilibus quam viris clarissimis iudicibus, qui per provincias sive militarem sive civilem administrationem gerunt, nec non comiti commerciorum, magistro aeris sive privatae rei, rationali per Ponticam atque Asianam dioecesin et adsessoribus iudicum singulorum in praebendis solaciis annonarum hic fixus ac stabilis servabitur modus, ut ea pro annonis et capitu dignitati suae debitis pretia consequantur, quae particularibus delegationibus soleant contineri.

D. III k. Iun. Constantinopoli Theodosio XVII et Festo conss.

LIII De Contractibus Iudicum vel Eorum Qui Sunt Circa Eos et Inhibendis Donationibus in Eos Faciendis et Ne Administrationis Tempore Proprias Aedes Aedificent sine Sanctione Pragmatica

[1] *Imp. Iustinianus A. Menae pp.* **pr.** Quicumque administrationem in hac florentissima urbe gerunt, emere quidem mobiles vel immobiles res vel domus extruere non aliter possint, nisi specialem nostri numinis hoc eis permittentem divinam rescriptionem meruerint. **1.** Donationes vero omnimodo recusent, scientes non esse validas eas in quibuscumque rebus et quacumque aestimatione, nisi post administrationem depositam vel specialiter in scriptis donator eandem donationem ratam habuerit vel tempus quinquennale praeterierit, in quo nulla querella super isdem donationibus vel ab ipso donatore vel ab successoribus eius facta sit. **2.** Provincias vero moderantibus non solum donationes, sed etiam emptiones quarumcumque mobilium vel immobilium rerum praeter eas, quae ad alimonias vel vestem pertinent, et aedificationes, licet sacri apices aliquid eorum permiserint, penitus interdicimus. nec ratum sit, quod his donatione vel venditione datum est, licet quinquennale tempus post depositam administrationem excesserit vel consensus donatoris vel venditoris post eandem administrationem

Fifty-Second Title The Rations and Fodder (*Annonae et Capitus*)[409] of Governors, Judicial Advisors, and Others Who Hold Public Office, and of Those Who Have Obtained Other Ranks

[1] *Emperors* Theodosius *and* Valentinian *Augusti to Florentius, Praetorian Prefect.* For all governors, both *viri spectabiles* and *viri clarissimi,* who hold office in the provinces, whether military or civil; and also for the Count of External Trade, the Master of Bronze (*magister aeris*) or of the Privy Purse, the Comptroller (*rationalis*) of the diocese of Pontica and Asiana; and for the advisors of the individual governors, the following fixed and inalterable method shall be followed in furnishing them with their remuneration in rations: they shall receive the price of rations and fodder owing to their rank as these are customarily contained in special requisition schedules (*delegationes*).

Given May 30, at Constantinople, in the consulship of Theodosius, for the seventeenth time, and Festus (439).

Fifty-Third Title Contracts of Judges[410] or Those Who Serve Them; Prohibited Gifts to Them; and That They May Not Build Houses for Themselves During Their Time in Office Without a Pragmatic Sanction

[1] *Emperor* Justinian *Augustus to Menas, Praetorian Prefect.* **pr.** Those who hold public office in This Most Flourishing City cannot by any means buy movable or immovable property or build houses, unless they obtain a special divine rescript permitting them to do so. **1.** They shall altogether refuse gifts, knowing that they are void regardless of the things given and their value, until they have laid down their office, or the giver specifically confirms the gift in writing, or a period of five years has passed, during which no complaint concerning the aforesaid gifts is made by the donor or his heirs. **2.** But We utterly prohibit not only gifts to provincial governors but also purchases of any movable or immovable property, excepting what goes toward food and clothing, and buildings, even if a sacred writing (an imperial rescript) permits one of these things. Nor shall a gift or sale made to them be valid, even if a period of five years has passed after they have laid down their office, or the consent of the giver or seller has been added subsequent to their term

[408] Nov. 60.2 shows that a Greek constitution of the same import as 1.51.13 has been lost.

[409] On these terms, see note on C. 1.27.1.

[410] Here, Justinian has in mind a wide range of officials, encompassing both urban magistrates and provincial governors.

adiectus sit. **3**. Haec autem etiam ad domesticos et consiliarios eorum trahi necessarium duximus, illud etiam adicientes, ut nec per interpositam personam aliquid eorum sine periculo possit perpetrari. **4**. Quae etiam ad praeterita negotia referri sancimus, nisi transactionibus vel iudicationibus sopita sint.

D. v id. Dec. Constantinopoli dn. Iustiniano A. II cons.

LIIII De Modo Multarum, Quae ab Iudicibus Infliguntur

[1] *Impp. Severus et Antoninus AA. Firmo.* Multa damnum famae non irrogat.

D. v id. April. Antonino A. et Geta utrisque II conss.

[2] *Imp. Alexander A. Decimo.* Procuratores meos, id est rationales, indicendae multae ius non habere saepe rescriptum est.

D. XIII k. Sept. Modesto et Probo conss.

[3] *Imp. Gordianus A. Celeri.* Curator rei publicae, qui Graeco vocabulo logista nuncupatur, multandi ius non habet.

D. id. Sept. Gordiano A. et Aviola conss.

[4] *Imppp. Gratianus Valentinianus et Theodosius AAA. Eutropio pp.* Illustres viros praefectos praetorio usque ad quinquaginta librarum auri multas, cum peccatum gravissimum erit, sinimus pervenire.

D. VIII id. Ian. Gratiano V et Theodosio AA. conss.

[5] *Imppp. Valentinianus Theodosius et Arcadius AAA. ad Praetextatum pp.* Multarum severa compendia aerario nostro protinus esse quaerenda nullus ignoret, nisi ipse iudex id, quod ad poenam admissi facinoris exculpitur, vel publicis operibus vel cursui publico vel aliis necessariis causis specialiter deputaverit.

D. V id. Sept. Aquileiae Ricomere et Clearcho conss.

of office. **3.** We have, moreover, deemed it necessary to apply these provisions to their private secretaries and counselors, adding, furthermore, that none of these things can be acquired through a third party without peril. **4.** Also, We decree that these provisions shall apply retroactively to past transactions, unless they have been resolved by settlements or adjudication.

Given December 9,[411] *at Constantinople, in the consulship of Our Lord Justinian Augustus, for the second time (528).*

Fifty-Fourth Title The Amount of Fines That Are Imposed by Judges

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Firmus.* A fine does not cause loss of reputation (*infamia*).

Given April 9, in the consulship of Antoninus Augustus and Geta, both Consuls for the second time (205).

[2] *Emperor* ALEXANDER *Augustus to Decimus.* It has often been stated in rescripts that my procurators, that is, my comptrollers (*rationales*), have no right to impose fines.

Given August 20, in the consulship of Modestus and Probus (228).

[3] *Emperor* GORDIAN *Augustus to Celer.* The *curator* of a city, who is denoted by the Greek term *logista*, does not have the right to impose fines.

Given September 13, in the consulship of Gordian Augustus and Aviola (239).

[4] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Eutropius, Praetorian Prefect.* We allow the *viri illustres* Praetorian Prefects to impose fines of up to 50 pounds of gold, when the offense is of the most serious nature.

Given January 6, in the consulship of Gratian, for the fifth time, and Theodosius, Augusti (380).

[5] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Praetextatus, Praetorian Prefect.* No one is unaware that the harsh proceeds of fines must immediately be collected for Our treasury, unless the judge himself specifically dedicates the money seized as punishment for a crime either to public works or to the public post or to other necessary functions.

[411] More probably December 11; so also Lounghis *et al.*

[6] *Impp. Arcadius et Honorius AA. Messalae pp.* **pr.** Eos, qui ordinario provincias iure moderantur, erga eorum personas, quos culpa reddit obnoxios, ultra duarum unciarum auri multam condemnare non patimur. **1.** Proconsularem vero potestatem, si multandi necessitas imminebit, senarum unciarum auri summa cohibebit: in qua forma etiam comes Orientis atque praefectus Augustalis erit. **2.** Ceteri vero spectabiles iudices et qui vice vestra administrationis gubernacula susceperunt, ultra tres auri uncias sibi intellegant licentiam denegandam. **3.** Id quoque observandum a moderatore esse censemus, ut in unius correptione personae, si ad id continuatio peccati impulerit, trinae tantum in annum condemnationis sub praestituta summa severitas exseratur. **4.** Quod si quis praedictum modum excesserit, huius auctor admissi condemnato ad dupli restitutionem, fisco vero nostro ad inferendam eam quantitatem, quam multae nomine inflixerit, retinebitur.

5. Nec tamen ad huiusmodi legis moderationem pertinere se credant, qui in peculatibus aut manubiis, id est depraedationibus concussionibus furtis atque aliis flagitiis, quae coerceri severius convenit, fuerint deprehensi, scilicet ut scripta per iudices memoratos, in cuiuslibet fuerit dirigenda dispendium, sententia proferatur. **6.** Nec putent factu facile esse, ut aut praecipiti persuasione condemnent quem culpa non ingravat, aut erubescenda varietate iudicii pro arbitrio proprio immutandum esse quod lex iusserit, nisi paupertas condemnati hoc persuaserit.

D. XII k. Sept. Theodoro cons.

LV De Defensoribus Civitatum

[1] *Impp. Valentinianus et Valens AA. Senecae defensori.* Si quis de tenuioribus ac minusculariis rebus interpellandum te esse crediderit, in minoribus causis, id est usque ad quinquaginta solidorum summam, acta iudicialia conficias, scilicet ut, si quando quis vel debitum iustum vel servum, qui per fugam fuerit elapsus, vel quod ultra delegationem

Given September 9, at Aquileia, in the consulship of Richomer and Clearchus (384).

[6][412] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Messala, Praetorian Prefect.* **pr.** We do not permit those who govern provinces as ordinary governors to impose a fine greater than 2 ounces of gold on those whose wrongdoing has made them liable. **1.** The office of Proconsul, if the necessity to impose a fine arises, shall be restricted to a sum of 6 ounces of gold. The Count of the East and the Augustal Prefect shall adhere to the same amount. **2.** The remaining judges of *spectabilis* rank and those who undertake the administration in your stead (as Vicars), shall recognize that the power to impose a fine greater than 3 ounces of gold will be denied them. **3.** We also believe that this should be observed by the governor: for the punishment of a single person, if persistent wrongdoing requires it, the stern punishment of a fine in the prescribed amount may be exacted only three times in a year. **4.** But if anyone exceeds the aforesaid limit, the person responsible for this crime shall be liable to restore twofold to the person fined and to pay Our Treasury the amount he imposed as a fine.

5. And those who are caught engaged in embezzlement and plunder – that is, in depredations, extortion, thefts, and other crimes, which must be punished more severely – shall not think that the moderation of this law applies to them. A written ruling will be rendered by the aforementioned judges, no matter to whose disadvantage it may be. **6.** Nor need they (the judges) think it a simple matter to condemn a person free of blame on the basis of rash speculation, or to change at their own discretion with shameless caprice what the law commands, unless the poverty of the person convicted calls for this.

Given August 21, in the consulship of Theodorus (399).

Fifty-Fifth Title Defenders of the Cities

[1][413] *Emperors* VALENTINIAN *and* VALENS *Augusti to Seneca, Defender.* If anyone believes that he should approach you concerning modest and trifling matters, you shall make the records of the judicial proceedings thereof for minor cases, that is, up to the amount of 50 solidi. Thus, if anyone demands either a just debt or a slave that has escaped by flight, or repayment of an amount greater than that authorized by the schedule of requisitions (*delegatio*), or any

[412] Combine with C. 4.44.17, 9.41.17, 10.32.51.
[413] = C.Th. 1.29.2; combine with C.Th. 8.15.4. Schmidt-Hofner gives June 27, 368.

dederit postulaverit vel quodlibet huiusmodi, tua disceptatione restituas. ceteras vero, quae dignae forensi magnitudine videbuntur, ordinario insinuato rectori.

D. v k. Iul. Tyrici Valentiniano et Valente AA. conss.

[2] *Idem AA. ad Probum pp.* Defensores civitatum non ex decurionum seu cohortalium corpore, sed ex aliis idoneis personis huic officio deputentur.

D. III non. Nov. isdem conss.

[3] *Idem AA. et Gratianus A. ad senatum.* Utili ratione prospectum est, ut innocens et quieta rusticitas peculiaris patrocinii, id est defensoris locorum, beneficio fruatur, ut apud eum in pecuniariis causis litigandi habeat facultatem.

D. IIII id. Aug. Hierapoli Valentiniano et Valente AA. utrisque IIII conss.

[4] *Imppp. Gratianus Valentinianus et Theodosius AAA. Theodoro defensori civitatis.* In defensoribus universarum provinciarum erit administrationis haec forma et tempus quinquennii spatii metiendum: scilicet ut imprimis parentis vicem plebi exhibeas, descriptionibus rusticos urbanosque non patiaris adfligi, officialium insolentiae, iudicum procacitati salva reverentia pudoris occurras, ingrediendi, cum voles, ad iudicem liberam habeas facultatem, superexigendi damna vel spolia plus petentium ab his, quos liberorum loco tueri debes, excludas, nec patiaris quicquam ultra delegationem solitam ab his exigi, quos certum est nisi tali remedio non posse reparari.

D. XI non. Ian. Constantinopoli Arcadio et Bautone conss.

[5] *Imppp. Valentinianus Theodosius et Arcadius AAA. Potamio praefecto Augustali.* Defensores nihil sibi insolenter, nihil indebitum vindicantes nominis sui tantum fungantur officio: nullas infligant multas, severiores non exerceant quaestiones, plebem vel decuriones ab omni

such thing, you may restore it by your decision. Other cases, however, which appear to warrant a high court, you shall refer to the ordinary governor.

Given June 27, at Tyricus, in the consulship of Valentinian and Valens, Augusti (365).

[2][414] *The same Augusti to Probus, Praetorian Prefect.* Defenders of the cities shall be appointed to this office, not from among decurions or officials of the governor (*cohortalini*), but from among other suitable persons.

Given November 3, in the consulate of the aforesaid (368, 370, or 373?).

[3][415] *The same Augusti and GRATIAN Augustus to the Senate.* It has been determined for the public good that the guileless and peaceful country folk should enjoy the benefit of special protection, that is, of the defender of the area, so that they shall have the ability to litigate before him in civil suits (*causae pecuniariae*).

Given August 10, at Hierapolis, in the consulship of Valentinian and Valens, both Consul for the fourth time, Augusti (373).

[4] *Emperors GRATIAN, VALENTINIAN, and THEODOSIUS Augusti to Theodorus, Defender of the City.* The following are the guidelines for the defenders in all provinces, and a period of five years shall be their term in office: first of all, you shall act as parent to the common people; you shall not permit the country and urban folk to be crushed by tax levies; you shall oppose the insolence of the gubernatorial staff and, while maintaining due respect, the impudence of the governors; you shall have the freedom to approach the governor when you wish; you shall prevent losses caused by superindictions or rather spoliation at the hands of officials making excessive demands on those whom you should protect as your own children; and you will not permit anything beyond the regular tax requisition (*delegatio*) to be collected from them. For it is certain that they cannot be revived but by such a remedy.

Given January ...,[416] *at Constantinople, in the consulship of Arcadius and Bauto (385).*

[5][417] *Emperors VALENTINIAN, THEODOSIUS, and ARCADIUS Augusti to Potamius, Augustal Prefect.* The defenders shall not insolently arrogate anything to themselves, or anything unwarranted, but shall perform the duty for which they are named. They shall inflict no fines, shall not conduct harsh

[414] = C.Th. 1.29.3; Seeck dates to November 6, 368.
[415] = C.Th. 1.29.5; Seeck dates the constitution to their third joint consulate in 370.
[416] The day of the month is corrupt.
[417] = C.Th. 1.29.7; Seeck dates to May 5, 392.

improborum insolentia et temeritate tueantur, ut id tantum, quod esse dicuntur, esse non desinant.

D. III non. Mart. Constantinopoli Arcadio A. II et Rufino conss.

[6] *Idem AAA. Tatiano pp.* Per omnes regiones, in quibus fera et periculi sui nescia latronum fervet insania, probatissimi quique et districtissimi defensores adsint disciplinae et quotidianis actibus praesint, qui non sinant crimina impunita coalescere: removeantur patrocinia, quae fervorem reis et auxilium scelerosis impertiendo maturari scelera fecerunt.

D. V id. April. Constantinopoli Arcadio A. II et Rufino conss.

[7] *Impp. Arcadius et Honorius AA. Caeciliano pp.* Defensores civitatum oblatos sibi reos in ipso latrocinio vel congressu violentiae aut perpetrato homicidio stupro vel raptu vel adulterio deprehensos et actis publicis sibi traditos expresso crimine cum his, a quibus fuerint accusati, mox sub idonea prosecutione ad iudicium dirigant.

D. prid. k. Ian. Mediolani Stilichone II et Anthemio conss.

[8] *Impp. Honorius et Theodosius AA. Caeciliano pp.* **pr.** Defensores ita praecipimus ordinari, ut sacris orthodoxae religionis imbuti mysteriis reverentissimorum episcoporum nec non clericorum et honoratorum ac possessorum et curialium decreto constituantur: de quorum ordinatione referendum est ad illustrissimam praetorianam potestatem, ut litteris eiusdem magnificae sedis eorum solidetur auctoritas. **1.** Quod si quid a qualibet persona contra publicam disciplinam in laesionem possessorum fieri cognoverint defensores, referendi habeant potestatem ad illustres et magnificos viros praefectos praetorio et illustres viros

investigations (by torture), and shall protect the common people and decurions from every act of impudence and brazenness by the wicked, so that they shall not cease to be only that which they are said to be (defenders).

Given March 5, at Constantinople, in the consulship of Arcadius Augustus, for the second time, and Rufinus (392).

[6][418] *The same Augusti to Tatianus, Praetorian Prefect.* In every district where the wild madness of brigands, ignorant of their own peril, rages, the most upright and sternest defenders shall keep discipline and oversee daily business. They shall not permit unpunished crimes to proliferate. Patronage shall be abolished, which by giving inspiration to the guilty and aid to the criminal, has produced a bounty of crime.

Given April 9, at Constantinople, in the consulship of Arcadius Augustus, for the second time, and Rufinus (392).

[7][419] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Caecilianus, Praetorian Prefect.* When persons apprehended in the act of brigandage or violent assault, or having committed homicide, debauchery, rape, or adultery, are brought before the defenders of the cities, the defenders shall send those delivered to them on to the court (of the provincial governor?) under proper escort, along with the persons by whom they are accused, the accusation being spelled out in the records of proceedings.

Given December 31, at Milan, in the consulship of Stilicho, for the second time, and Anthemius (405).

[8][420] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Caecilianus, Praetorian Prefect.* **pr.** We order that defenders of the cities shall be appointed as follows: they shall be installed by the decree of the most reverend bishops, the clergy, men of rank (*honorati*) and landholders, and the curials, from among those initiated in the sacred mysteries of the orthodox religion. Their appointment must be reported to the office of the Praetorian Prefect, so that their authority may be confirmed by a letter from the aforesaid Magnificent Prefecture. **1.** If the defenders should learn of anything done by any person contrary to public order to the detriment of the landholders, they shall have the power to report the crime to the *viri illustres et magnifici* Praetorian Prefects, the *viri*

[418] = C.Th. 1.29.8, with a slightly different text.

[419] = C.Th. 9.2.5 (but dated to January 18, 409, with Honorius and Theodosius as authors); combine with C. 1.4.9, 1.55.8–9, 4.20.11, C.Th. 9.2.6, 9.31.1, 9.36.2, 9.37.4. Seeck dates to January 21, 409.

[420] Combine with C. 1.4.9, 1.55.7, 1.55.9, 4.20.11, C.Th. 9.2.5–6, 9.3.7, 9.31.1, 9.36.2, 9.37.4.

magistros equitum et peditum, magistros etiam officiorum et comites tam sacrarum largitionum quam rerum privatarum.

D. XII k. Febr. Ravennae Honorio VIII et Theodosio III AA. conss.

[9] *Idem AA. Caeciliano pp.* **pr.** Iubemus cura ac sollertia defensorum minime possessores maioribus mensuris et ponderibus a susceptoribus praegravari, sed eos deprehensos ad iudicium dirigi cum ipso commissae fraudis indicio. **1.** Illud etiam fieri permittimus, ut, si provincialibus nostris contestari iniurias seu laesiones suas cupientibus actorum confectio a defensoribus denegetur, licentia eis tribuatur querellae propriae libellum conscriptum eo tenore, quo fuerat contestandum, in frequentioribus civitatum locis proponendi conveniendique scribas, tabularios et cetera officia publica commonenda, per quae libellum colligi oportebit atque invitis supra memoratis personis sub actorum confectione ingerendi, quorum quaestione fides possit inquiri: qua probata in eos, quos gestorum petitam confectionem negasse constiterit, vigor iudiciarius exseratur.

D. XII k. Febr. Ravennae Honorio VIII et Theodosio III AA. conss.

[10] *Impp. Theodosius et Valentinianus AA. Cyro pp.* Nulli defensorum licere decernimus, si de publica sollicitudine voluerit se liberare, nisi divinos adfatus intimaverit tuae sublimitatis iudicio, triginta librarum auri poenam tam moderatoribus provinciarum quam ceteris iudicibus vel temeratoribus sacri nostri oraculi subituris, si neglecta fuerit auctoritas principalis.

D. XV k. Sept. Constantinopoli Cyro vc. cons.

[11] *Imp. Anastasius A. Eustathio pp.* Iubemus eos tantummodo ad defensorum curam peragendam ordinari, qui sacrosanctis orthodoxae religionis imbuti mysteriis hoc imprimis sub gestorum testificatione, praesente quoque religiosissimo fidei orthodoxae antistite, per depositiones cum sacramenti religione celebrandas patefecerint. ita enim

illustres Masters of Cavalry and Infantry, as well as the Masters of Offices and the Counts of the Imperial Finances and the Privy Purse.

Given January 21, at Ravenna, in the consulship of Honorius, for the eighth time, and Theodosius, for the third time, Augusti (409).

[9][421] *The same Augusti to Caecilianus, Praetorian Prefect.* **pr.** We order that through the attention and vigilance of the defenders, landholders shall not be aggrieved by the tax-assessors with excessive measures and weights, but, when caught, the latter shall be sent to the court with the evidence of the fraud perpetrated. **1.** We also permit this to be done: if Our provincials wish to attest their injuries and wrongs but are denied public record thereof by the defenders, they shall receive the liberty to post their complaint in writing, to the same effect as their deposition would have been, in the busier parts of the cities and to summon the scribes, tax officials (*tabularii*), and the other public officials who should be apprised of the matter, by whom their written complaint must be received and, even against the wish of the persons aforesaid, entered in the public records, the veracity of which may then be investigated. And once it has been confirmed, judicial force shall be unleashed upon those who are shown to have refused to complete the public records.

Given January 21, at Ravenna, in the consulship of Honorius, for the eighth time, and Theodosius, for the third time, Augusti (409).

[10] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Cyrus, Praetorian Prefect.* We decree that it shall be permitted to no defender, if he wishes to free himself from his public function, to do so unless he submits divine utterances (an imperial rescript) to the court of Your Sublimity. Both the provincial governors and other judges, or rather the violators of Our sacred oracle, shall suffer a fine of 30 pounds of gold, if imperial authority is neglected.

Given August 18, at Constantinople, in the consulship of the vir clarissimus *Cyrus (441).*

[11][422] *Emperor* ANASTASIUS *Augustus to Eustathius, Praetorian Prefect.* We order that only those persons shall be appointed to perform the duties of defenders who have been initiated in the holy mysteries of the orthodox faith and have demonstrated this specifically by declaration in the public records

[421] = C.Th. 11.8.3; combine with C. 1.4.9, 1.55.7, 1.55.8, 4.20.11, C.Th. 9.2.5–6, 9.3.7, 9.31.1, 9.36.2, 9.37.4.

[422] This constitution, which is lacking in the manuscripts, has been restored from the duplicate C. 1.4.19.

eos praecipimus ordinari, ut reverentissimorum episcoporum nec non clericorum et honoratorum ac possessorum et curialium decreto constituantur.

D. XIII k. Mai. Sabiniano et Theodoro conss.

LVI De Magistratibus Municipalibus

[1] *Imp. Constantinus A. ad Florentium pp.* Decuriones ad magistratum vel exactionem annonarum ante tres menses vel amplius nominari debent, ut, si querimonia eorum iusta videatur, sine impedimento in absolvendi locum alius subrogetur.

D. id. April. Constantinopoli Severo et Rufino conss.

[2] *Impp. Valentinianus et Valens AA. ad Germanianum.* Magistratus conficiendorum actorum habeant potestatem.

D. XIII k. Ian. Gratiano np. et Dagalaifo conss.

LVII De Officio Iuridici Alexandriae

[1] *Impp. Leo et Anthemius AA. Alexandro duci et praefecto Augustali.* Iubemus apud Alexandrinae dumtaxat clarissimae civitatis iuridicum licitum et concessum esse singulis quibusque volentibus donationis conscriptae sollemniter instrumenta reserare, eisdemque robur adiciet gestorum series apud eundem virum confecta, tamquam si apud virum clarissimum moderatorem provinciae vel magistratus vel defensorem plebis habita fuisse diceretur.

D. k. Sept. Constantinopoli Zenone et Marciano conss.

and depositions to be made solemnly under oath, in the presence of a most pious bishop of the orthodox faith. We order that defenders be appointed in such a way that they are installed by the resolution of the most reverend bishop and clergymen, men of rank, landholders, and curials.

Given April 19, in the consulship of Sabinianus and Theodorus (505).

Fifty-Sixth Title Municipal Magistrates

[1][423] *Emperor* CONSTANTINE *Augustus to Florentius, Praetorian Prefect.* Decurions should be nominated to a magistracy or for the collection of payments in kind (*annonae*) three months or more in advance, so that if their excuse appears just, another may be substituted without difficulty in the place of the person released.

Given April 13, at Constantinople,[424] *in the consulship of Severus and Rufinus (323).*

[2] *Emperors* VALENTINIAN *and* VALENS *Augusti to Germanianus.* Magistrates shall have the power to make public records (*acta*).

Given December 20, in the consulship of Gratian, Most Noble Boy, and Dagalaif (366).

Fifty-Seventh Title The Office of the Justice (*Juridicus*) of Alexandria[425]

[1][426] *Emperors* LEO *and* ANTHEMIUS *Augusti to Alexander, Duke and Augustal Prefect.* We order that every single person who wishes shall be allowed and permitted to register the documents for a gift in writing formally before the Justice of the Most Renowned City of Alexandria only; and the records made before the aforementioned magistrate shall confer the same validity on the documents as if they had been made before the *vir clarissimus* provincial governor, or the (municipal) magistrates, or the defender of the people.

Given September 1, at Constantinople, in the consulship of Zeno and Marcian (469).

[423] = C.Th. 12.1.8; combine with C.Th. 11.30.12.

[424] Constantinople did not yet exist at this date; it is possible that the compilers of the Theodosian Code substituted it for Byzantium (in which case this constitution could potentially have been issued by Licinius), or (perhaps more likely) that Constantine's name became corrupted in the subscription.

[425] See D. 1.20.

[426] Perhaps to be combined with C. 8.52.3 (but dated September 7).

Liber Secundus

I De Edendo

[1] *Imp. Pius Antoninus A. Manilio.* Ipse dispice, quemadmodum pecuniam, quam deposuisse te dicis, deberi tibi probes. nam quod desideras, ut rationes suas adversaria tua exhibeat, id ex causa ad iudicis officium pertinere solet.
PP. IIII k. Oct. Sabiniano II et Severo conss.

[2] *Impp. Severus et Antoninus AA. Fausto.* Is, apud quem res agitur, acta publica tam criminalia quam civilia exhiberi inspicienda ad investigandam veritatis fidem iubebit.
PP. non. Iul. Severo A. et Albino conss.

[3] *Idem AA. Valenti.* Edita actio speciem futurae litis demonstrat, quam emendari vel mutari licet, prout edicti perpetui monet auctoritas vel ius reddentis decernit aequitas.
D. III k. Sept. Severo III et Antonino AA. conss.

[4] *Imp. Antoninus A. Epaphrodito.* Qui accusare volunt, probationes habere debent, cum neque iuris neque aequitatis ratio permittat, ut alienorum instrumentorum inspiciendorum potestas fieri debeat. actore enim non probante qui convenitur, etsi nihil ipse praestarit, obtineat.

Second Book

edited by Bruce W. Frier

First Title Notice (of an Impending Action)[1]

[1] *Emperor* ANTONINUS PIUS *Augustus to Manilius.* It is your responsibility to find proof that money, which you say you deposited (with the defendant), is (now) owed to you. But as for what you request, namely that your adversary produce (*exhibere*) her accounts for you, this matter is normally part of the judge's function, (but only) for cause.[2]

Posted September 28, in the consulship of Sabinianus, for the second time, and Severus (155).

[2] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Faustus.* The person before whom a lawsuit is tried will order production of public records, criminal as well as civil, in order to discover the likely truth.

Posted July 7, in the consulship of Severus Augustus and Albinus (194).

[3][3] *The same Augusti to Valens.* A notice of action (to the defendant; *editio actionis*), setting out the form of a future lawsuit, may be amended or changed, accordingly as the authority of the Perpetual Edict directs or the judge's sense of fairness decrees.

Given August 30, in the consulship of Severus, for the third time, and Antoninus, Augusti (202).

[4] *Emperor* ANTONINUS *Augustus to Epaphroditus.* Those wishing to bring suit (*accusare*) should have proof (of their case), since neither the logic of law (*ratio iuris*) nor that of fairness permits that they be granted power to inspect the documents of others. For if the plaintiff fails to prove his case, the defendant, though he shows nothing, will prevail.

[1] The constitutions in this title discuss notice of an impending action to the defendant (*editio actionis*; cf. D. 2.13), but also production of evidence in court before and during the trial. The Second Book's titles on civil procedure largely follow the Urban Praetor's Edict, but the procedure described in the constitutions is usually (and, after 342, exclusively; cf. C. 2.57.1) extraordinary cognition.

[2] That is, the plaintiff must initially offer *prima facie* proof of the claim; no process of pre-trial discovery allows using an opponent's records for this purpose. But a judge can order production of a defendant's records if doubt persists.

[3] Combine with C. 3.9.1.

PP. v id. Mart. duobus Aspris conss.

[5] *Imp. Alexander A. Valentinianae.* Non est novum eum a quo petitur pecunia implorare rationes creditoris, ut fides constare possit.

PP. VII id. Mart. Maximo II et Aeliano conss.

[6] *Idem A. Uranio.* Iustum est desiderium eius a quo petitur, licet nomine publico, ut rationibus publicis exhibitis constet, quantum sub nomine suo solutum sit.

PP. XVI k. Dec. Maximo II et Aeliano conss.

[7] *Idem A. Valenti.* Procurator privatae rationis instrumentorum, quae communia tibi esse dicis cum fisco, describendorum facultatem secundum morem fieri iubebit: et si quando res exegerit ad fidem petitionis tuae apud alium iudicem praebendam aliquid eorum proferri, desiderante eo qui convenitur, ut id fiat, praecipiet.

PP. x k. Mart. Fusco et Dextro conss.

[8] *Idem A. Floro.* Et quae a divo Antonino patre et quae a me rescripta sunt, cum iuris et aequitatis rationibus congruunt. nec enim diversa sunt vel discrepantia, quod multum intersit, ex parte eius, qui aliquid petit quique doli exceptione submoveri ab intentione petitionis suae potest, rationes promi reus desideret, quibus se posse instruere contendit (quod utique ipsa rei aequitas suadet), an vero ab eo a quo aliquid petitur actor desideret rationes exhiberi, quando hoc casu non oportet originem petitionis ex instrumentis eius qui convenitur fundari.

PP. k. Oct. Fusco et Dextro conss.

Posted March 11, in the consulship of the two Aspri (212).

[5] *Emperor* ALEXANDER *Augustus to Valentiniana.* When money is claimed from someone, it is not unusual that he may demand (to inspect) the accounts of his creditor, so that the truth can prevail.

Posted March 9, in the consulship of Maximus, for the second time, and Aelianus (223).

[6] *The same Augustus to Uranius.* A person who is sued, even on a public debt, properly requests that it be shown, through production of public account books, how much was paid on his account.[4]

Posted November 16, in the consulship of Maximus, for the second time, and Aelianus (223).

[7] *The same Augustus to Valens.* The Procurator of the Privy Purse (*res privata*) will order, in accord with custom, that opportunity be given (to you) to copy the documents that you say are common to you and the imperial Treasury (i.e., that relate to joint business); and if it should be required at any time that some portion of these documents be produced in order to show the validity of your claim before another judge, he will, upon demand from the defendant, direct this to be done.[5]

Posted February 20, in the consulship of Fuscus and Dexter (225).

[8] *The same Augustus to Florus.* What was said both in the rescripts of the deified Antoninus, my ancestor, and in my own rescript[6] accords with the precepts of law and of fairness. Nor are these (rescripts) at variance or inconsistent, for it makes a great deal of difference whether it is the defendant who is seeking production of accounts, by means of which he contends he can prepare his defense, from a person who sues for something or who in the premise of his claim can be defeated through the defense of fraud (*exceptio doli*), where the very fairness of the situation in any event favors (granting the request); or whether (on the other hand) it is the plaintiff who wants accounts produced by the person from whom something is demanded, since in this case the starting point of a claim ought not to be based on the documents of the person sued.

Posted October 1, in the consulship of Fuscus and Dexter (225).

[4] See C. 4.21.4.
[5] See Nov. 119 c. 3.
[6] See rescripts 1 and 5 above.

II De in Ius Vocando

[1] *Imp. Alexander A. Tryphoni.* Sicut bonis moribus convenit reverentiam manumissoris uxori praeberi, ita re exigente in ius eam sine permissu praetoris vocari prohibitum est.

PP. IIII k. April. Agricola et Clemente conss.

[2] *Imp. Gordianus A. Nocturno.* Venia edicti non petita patronum seu patronam eorumque parentes et liberos, heredes insuper, etsi extranei sint, a libertis seu liberis eorum non debere in ius vocari ius certissimum est: nec in ea re rusticitati venia praebeatur, cum naturali ratione honor eiusmodi personis debeatur. cum igitur confitearis patroni tui filium sine permissu praesidis in ius vocasse, poenam edicto perpetuo praestitutam rescripto tibi concedi temere desideras.

PP. VIII id. Nov. Gordiano A. et Aviola conss.

[3] *Impp. Diocletianus et Maximianus AA. Roxanae.* Qui in potestate patris agunt, adversus eos experiri non possunt. si igitur emancipata es, venia edicti petita hoc facere non prohiberis. quod et in matris persona observandum est.

PP. VIII id. Nov. Diocletiano III et Maximiano AA. conss.

[4] **pr.** Ὁ ἅπαξ αἰτιασάμενός τινα ἐν τῇ βασιλίδι πόλει ἢ ἐν ἐπαρχίαις μετὰ ὑπόμνησιν προσενεχθεῖσαν αὐτῷ μηκέτι τὸν αὐτὸν ὑπεύθυνον μηδὲ ἐγγράφως μηδὲ ἀγράφως αἰτιάσθω, τουτέστι μὴ ποιείτω κατ᾽ αὐτοῦ προσελεύσεις ἀγράφως, ἀλλὰ τῷ πρώτῳ δικαστῇ παραμενέτω. **1.** Ὁ δὲ τὴν ὑπόμνησιν δεξάμενος εἰ καὶ εἰς ἑτέραν μετασταίη τάξιν, στρατευσάμενος τυχὸν ἢ κληρικὸς γενόμενος, ἀποκρινέσθω πάντως ἐν τῷ πρώτῳ δικαστηρίῳ τῷ κατὰ τὴν προτέραν αὐτοῦ τάξιν νομισθέντι προσφόρῳ, μηδεμίαν ἔχων φόρου παραγραφήν. **2.** Ὁ δὲ ἅπαξ αἰτιασάμενος, ἐὰν μετὰ τὸ προσενεχθῆναι τὴν ὑπόμνησιν τῷ αἰτιαθέντι εἰς ἕτερον αὐτὸν καλέσῃ

Second Title Summoning to Court[7]

[1] *Emperor* ALEXANDER *Augustus to Tryphon.* It accords with good morals that deference is due (from a freedman) to the wife of his manumitter; so it is also forbidden that she be summoned (by the freedman) into court (*vocatio in ius*) unless the Praetor permits this when circumstances warrant.

Posted March 29, in the consulship of Agricola and Clemens (230).

[2] *Emperor* GORDIAN *Augustus to Nocturnus.* It is absolutely settled law that, if permission is not asked for under the Edict, a male or female patron or their parents and children, and also their heirs even if not family members, may not be summoned into court by freedmen or freedmen's children. Nor is boorish ignorance (*rusticitas*) in this matter to be excused, inasmuch as natural reason (*naturalis ratio*) requires respect for such persons. Since, therefore, you admit that without the governor's permission you summoned the son of your patron into court, you are rash to seek through a rescript remission of the punishment fixed by the Perpetual Edict.[8]

Posted November 6, in the consulship of Gordianus Augustus and Aviola (239).

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Roxana.* Children under a father's power cannot sue them (their fathers). It follows that if you are emancipated and have asked permission under the Edict, you are not forbidden to do so. This (rule) must also be observed with respect to a mother.

Posted November 6, in the consulship of Diocletian, for the third time, and Maximian, Augusti (287).

[4][9] **pr.** Anyone who, in this Imperial City or in the provinces, has once brought suit against another, shall not, after the complaint (*libellus*) has been delivered to him (the defendant), sue the same defendant again, either in writing or without writing; that is, he shall not orally bring a claim against him (before another judge), but shall remain before the prior judge. **1.** If a defendant has received a complaint, then although he (thereafter) assumes a different (civil) status by having, for instance, assumed an office (*militia*) or entered the clergy, he shall, nevertheless, still answer before the prior court (i.e., the one before which he was summoned), which evidently had jurisdiction over him respecting his former status, and he shall not raise any objection to the jurisdiction of this court (over him). **2.** If, however, a person has once brought

[7] *In ius vocatio.* See D. 2.4.

[8] Fifty gold pieces (Justinianic currency). See D. 2.4.23–25; Just. *Inst.* 4.16.3.

[9] This constitution, of uncertain date and authorship, is inserted here by the Basilika (7.8.29). See also C. 3.1.12.

δικαστήριον ἐπὶ ταῖς αὐταῖς αἰτίαις, καὶ τὸ ἀζήμιον ποιείτω τῷ αἰτιαθέντι καὶ τῆς δίκης ἐκπιπτέτω, εἰ καὶ δικαίαν εἶχεν ἀγωγήν.

III De Pactis

[1] *Imp. Severus A. Philino.* Condicionis incertum inter fratres non iniquis rationibus conventione finitum est. cum igitur verbis fideicommissi petitum a patre tuo profitearis, ut, si vita sine liberis decederet, hereditatem Licinio Frontoni restitueret, pactum eo tempore de sextante Frontoni dando, cum liberos Philinus non sustulerat, interpositum non idcirco potest iniquum videri, quod facta, sicut placuit, divisione diem suum, te filio eius superstite, functus est.
PP. VII k. Dec. Severo A. II et Victorino conss.

[2] *Impp. Severus et Antoninus AA. Claudio.* Post venditionem hereditatis a te factam, si creditores contra emptores actiones suas movisse probare potueris eosque eas spontanea suscepisse voluntate, exceptione taciti pacti non inutiliter defenderis.
PP. prid. id. Febr. Severo III et Antonino AA. conss.

[3] *Idem AA. Restituto.* Servus creditoris meliorem causam domini facere potest: in deterius autem reformare novo pacto non potest obligationem recte constitutam.
PP. VIII k. April. Severo III et Antonino AA. conss.

suit, and, after the defendant has received the complaint, he summons him into another court on the same matter, he shall indemnify the defendant, and his case, even if just, shall fail.

Third Title Informal Pacts[10]

[1] *Emperor* SEVERUS *Augustus to Philinus.* For not inequitable reasons, the uncertainties stemming from a (testamentary) condition have been settled through an agreement (*conventio*) between brothers.[11] You acknowledge that your father was requested, by the wording of a trust (*fideicommissum*; in a third party's will), that, if he should die childless, he restore the inheritance to Licinius Fronto (his brother). The pact (*pactum*), concluded at a time when (your father) Philinus had no children and to the effect that Licinius Fronto should receive a sixth (of the inheritance), cannot be considered unjust simply because, after the division was made as agreed, your father died leaving you as his survivor.

Posted November 25, in the consulship of Severus Augustus, for the second time,[12] *and Victorinus (200).*

[2] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Claudius.* If you are able to prove that, after you sold an inheritance (that you had received), the creditors (of the estate) brought their actions against the purchasers who then voluntarily undertook them (i.e., defended these actions), you will effectually be protected (in actions then brought against you for the same debt) through the defense of an implied pact.[13]

Posted February 12, in the consulship of Severus, for the third time, and Antoninus, Augusti (202).

[3] *The same Augusti to Restitutus.* The slave of a creditor can better the cause of his master, but he cannot, through a new (unauthorized) pact, alter for the worse a well-founded obligation (owed to his master).

Posted March 25, in the consulship of Severus, for the third time, and Antoninus, Augusti (202).

[10] *Pacta.* See D. 2.14.

[11] As it appears, the petitioner's father Philinus and his uncle Licinius Fronto agreed that Fronto would receive, as a sort of advance payment, 1/6 of an estate they jointly inherited, since at that time Philinus was thought likely to die childless. The petitioner, also named Philinus, is unhappy because, as a result of the execution of this pact, he has received only 5/6 of the inheritance.

[12] Actually, this Consul was not the Emperor Severus, but the Senator Ti. Claudius Severus Proculus.

[13] See C. 4.39.2; D. 46.3.23.

[4] *Idem AA. Valeriae.* Postquam liti de praedio motae renuntiasti, causam finitam instaurari posse nulla ratio permittit.

PP. IIII id. Febr. Albino et Aemiliano conss.

[5] *Imp. Antoninus A. Demagorae.* Creditori tuo si partem pecuniae exsolvisti, de parte vero non petenda inter te et eum convenit ob causas negotiaque eius, tuo patrocinio fideque defensa, ea obligatione partim iure civili partim honorario liberatus es. nam exceptio perpetua pacti conventi vel doli residui petitionem repellit, cum et solutum per ignorantiam repeti potuisset.

PP. VIII k. Aug. Romae Antonino A. IIII et Balbino conss.

[6] *Idem A. Iuliae Basiliae.* Pacta, quae contra leges constitutionesque vel contra bonos mores fiunt, nullam vim habere indubitati iuris est.

PP. V k. Aug. Antonino A. IIII et Balbino conss.

[7] *Idem A. Iulio Maximo.* Debitori tuo si heres extitisti, actio, quam contra eum habuisti, adita hereditate confusa est. sed si eam hereditatem, posteaquam in iudicio obtinuisti, ei tradidisti, quem sententia superaveras, ea condicione pactoque, ut tam ceteris creditoribus quam tibi in eo, quod tibi deberetur, si eam hereditatem non adisses, satisfaceret, pacti conventionisque fides servanda est. quae si non servatur, ex stipulatu, si modo pacto subiecta est, actio dabitur.

PP. III k. Aug. Antonino A. IIII et Balbino conss.

[8] *Imp. Alexander A. Aurelio Dionysio.* Cum, posteaquam adversarius matris tuae victus esset, matrem tuam circumvenerit, ut ei caveret nullam se controversiam de servis moturam, id pactum mala fide factum irritum est, et cum ex ea conventione cum matre tua agi coeperit, iudex eam liberabit.

[4] *The same Augusti to Valeria.* After you (as part of a pact) renounced a suit (that you had) commenced concerning real estate, no logic permits a case once closed to be revived.

Posted February 10, in the consulship of Albinus and Aemilianus (206).

[5] *Emperor* ANTONINUS *Augustus to Demagoras.* If you have paid your creditor part of the money, but it was agreed between you and him that a part should not be claimed because you had defended his lawsuits and legal business by representing and supporting him, you are released from this obligation in part by the civil law and in part by the Praetorian. For the permanent defense that a pact had been made, or of deceit (*dolus*), defeats the claim for the remainder, since, even if paid by mistake, it could have been recovered.

Posted at Rome, July 25, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[6][14] *The same Augustus to Julia Basilia.* It is undoubted law that pacts made contrary to the statutes and constitutions, or contrary to good morals, have no force.

Posted July 28, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[7][15] *The same Augustus to Julius Maximus.* If you became heir to your debtor, the right of action that you had against him was merged (into the estate) after you entered on the inheritance. But if you obtained this inheritance in a trial, and you then transferred it to the person whom by the (court's) decision you had defeated, upon condition and under a pact that he should pay other creditors (of the estate) as well as yourself to the extent of the amount which would have been due to you had you not entered on the inheritance, the force (*fides*) of the pact and agreement must be observed. If it is not observed, an action will lie on the stipulation (for damages), provided it was added to the pact.

Posted July 30, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[8][16] *Emperor* ALEXANDER *Augustus to Aurelius Dionysius.* Since, after your mother's adversary was defeated (in a trial), he (allegedly) tricked her into providing by stipulation (*cavere*) that she would raise no question about the slaves (involved in the litigation), this pact, entered into in bad faith, is void; and when an action on that agreement is commenced against your mother, the judge will release her.

[14] = *Consultatio* 1.7, which inserts "by unwilling persons" after "made" and omits "or contrary to good morals."

[15] = *C. Greg.* 1.1.1.

[16] = *Consultatio.* 9.11 and 1.8, which omit "by stipulation" and add at the end: "because no one can make a pact concerning an adjudicated matter." Combine with C. 7.4.5. See also C. 2.4.32.

PP. prid. id. Sept. Alexandro A. cons.

[9] *Idem A. Mucatrauli.* Si pascenda pecora partiaria (id est ut fetus eorum portionibus, quibus placuit, inter dominum et pastorem dividantur) Apollinarem suscepisse probabitur, fidem pacto praestare per iudicem compelletur.

PP. IIII k. Oct. Alexandro A. cons.

[10] *Idem A. Nicae.* Legem, quam dixisti, cum dotem pro alumna dares, servari oportet. nec obesse tibi potuit, quod dici solet ex pacto actionem non nasci: tunc enim hoc iure utimur, cum pactum nudum est: alioquin cum pecunia datur et aliquid de reddenda ea convenit, utilis est condictio.

PP. III k. Mart. Albino et Maximo conss.

[11] *Idem A. Capitoni.* Ex conventione quidem, qua pactam novercam tuam cum patre tuo dicis, cum fundum in dotem daret, ut et tributa ipsa agnosceret et creditoribus, quibus fuerant praedia obligata, usuras solveret, actio tibi adversus eam competere non potest, et si pactum in stipulationem deductum probetur. sed si fundus aestimatus ita, ut pars instrumenti significat, in dotem datus est, ex vendito actio, ut placitis stetur, competit.

PP. non. Dec. ipso A. III et Dione II conss.

[12] *Idem A. Flaccillae.* Pacta novissima servari oportere tam iuris quam ipsius rei aequitas postulat. quapropter si conventione quae praecessit diversa pars usuram se non esse consensit, et maxime si, ut proponis, id etiam apud acta praesidis adseveravit, actionem, quae super prima conventione fuerat, exercere non prohiberis.

PP. III k. Mart. Agricola et Clemente conss.

Posted September 12, in the consulship of Alexander Augustus (222).

[9] *The same Augustus to Mucatraules.* If it will be proven that Apollinaris undertook to pasture herd animals for sharing – that is, that their offspring be divided between the owner and the herder in agreed-upon fractions – he will be compelled by the judge to observe the pact faithfully.[17]

Posted September 28, in the consulship of Alexander Augustus (222).

[10][18] *The same Augustus to Nica.* The terms that you provided in giving a dowry for your foster daughter must be observed. Nor can the objection be raised against you that, as is customarily said, no action arises from a pact; for we apply this rule (only) when there is a naked pact (*pactum nudum*). But when money is given with some agreement on its return, there is available a claim for restitution (*utilis condictio*).

Posted February 27, in the consulship of Albinus and Maximus (227).

[11][19] *The same Augustus to Capito.* You say that when your stepmother gave a farm as her dowry, it was agreed between her and your father that she would herself pay the taxes and the interest due to the creditors to whom the properties were obligated (as security for debt). You cannot have an action against her even if you prove the pact was reduced to a stipulation. But if the farm that was given as dowry was appraised in the manner indicated by a portion of the document, an action on sale lies to force compliance with the agreement.

Posted December 5, in the consulship of the Emperor, for the third time, and Dio, for the second time (229).

[12][20] *The same Augustus to Flaccilla.* Fairness – as much that of the law as of the matter at hand – requires that the last pacts to be made must be observed. Hence if the other side (in a lawsuit) agreed not to make use of a former agreement, and especially if, as you allege, he also so stated in the (provincial) governor's records (*apud acta*; i.e., in court), you are not prevented from bringing the action that lay on the first agreement.

Posted February 27, in the consulship of Agricola and Clemens (230).

[17] Compare D. 17.2.52.2–3.

[18] = C. 5.14.1 (but from Septimius Severus and Caracalla, 206). At this date the pact itself still could not be directly enforced, without a supporting stipulation.

[19] = C. 4.47.1 (but with the final ruling reversed), from which the reference to the land tax (*tributa*) was restored here by Krüger; see also C. 4.47.2.

[20] Combine with C. 3.42.4. The "first agreement" created a debt owed to Flacilla; by the second, she waived her right to sue on this debt; by the third, her debtor agreed in court not to raise the waiver. Contrast D. 2.14.17.1–2, 27.2; C. 4.45.2.

[13] *Imp. Maximinus A. Marino.* In bonae fidei contractibus ita demum ex pacto actio competit, si ex continenti fiat: nam quod postea placuit, id non petitionem, sed exceptionem parit.
PP. v id. Ian. Maximino A. et Africano conss.

[14] *Imp. Gordianus A. Caecilio militi.* Si pacto, quo poenam adversarium tuum promisisse proponis, si placito non stetisset, stipulatio subiecta est, ex stipulatu agens vel id, quod in conventionem devenerat, ut fiat, consequeris vel poenam stipulatione comprehensam more iudiciorum exiges. nam bona adversarii tui in te transferri citra sollemnem ordinem frustra deprecaris.
PP. k. April. Gordiano A. II et Pompeiano conss.

[15] *Impp. Valerianus et Gallienus AA. et Valerianus nobilissimus C. Pactumeio.* Pactum, quod dotali instrumento comprehensum est, ut, si pater vita fungeretur, ex aequa portione ea quae nubebat cum fratre heres patri suo esset, neque ullam obligationem contrahere nec libertatem testamenti faciendi mulieris patri potuit auferre.
PP. x k. Mart. Aemiliano et Basso conss.

[16] *Impp. Diocletianus et Maximianus AA. Diaphanto.* Cum proponas filios testamento scriptos heredes rogatos esse, ut qui primus rebus humanis eximeretur, alteri portionem hereditatis restitueret, quoniam precariam substitutionem fratrum consensu remissam adseris, fideicommissi persecutio cessat.
PP. IIII id. Febr. Maximo II et Aquilino conss.

[17] *Idem AA. Deximacho.* Pactum, quod bona fide interpositum docebitur, et si scriptura non existente aliis probationibus rei gestae veritas comprobari potest, praeses provinciae secundum ius custodiri efficiet.
PP. VIIII k. Iul. Maximo II et Aquilino conss.

[13] *Emperor* MAXIMINUS *Augustus to Marinus.* In the case of contracts based on good faith (*bona fides*), an action arises on a pact (made in connection with it) only if it occurs at the time of the transaction (*ex continenti*). For what is agreed on thereafter gives rise not to a claim but (only) to a defense.

Posted January 9, in the consulship of Maximinus Augustus and Africanus (236).

[14] *Emperor* GORDIAN *Augustus to Caecilius, a soldier.* If a pact was backed up by a stipulation in which, as you allege, your opponent promised a penalty if he did not abide by the agreement, in a lawsuit on this stipulation either you will obtain that which was included in the agreement or, in accord with judicial usage, you will collect the penalty incorporated in the stipulation. For you will have sought in vain that your opponent's property be transferred to you, (a demand that is) contrary to established procedure.[21]

Posted April 1, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

[15] *Emperors* VALERIAN *and* GALLIENUS *Augusti, and* VALERIAN, *the Most Noble Caesar, to Pactumeius.* In a dowry document there was a pact to the effect that when her father died, the woman who was marrying (i.e., his daughter) should share her father's estate equally with her brother. This (pact) could neither create an obligation nor deprive the woman's father of his freedom to make his will (as he wished).

Posted February 20, in the consulship of Aemilianus and Bassus (259).

[16] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Diaphantus.* You state that (two) sons, named heirs in a will, were asked (by the testator) that the one who first departed from human life (i.e., died) leave his share of the inheritance to the other. Since you further assert that the requested substitution (*precatoria substitutio*) was (later) remitted by agreement of the brothers, an action on the trust (*fideicommissum*) fails.

Posted February 10, in the consulship of Maximus, for the second time, and Aquilinus (286).

[17] *The same Augusti to Deximachus.* In accordance with law, the provincial governor will cause to be granted legal protection a pact that is shown to have been entered into in good faith, provided that, despite there being no written document, the truth of the transaction can be proven by other evidence.

Posted June 23, in the consulship of Maximus, for the second time, and Aquilinus (286).

[21] See C. 8.13.3. The soldier apparently wanted to seize the penalty without going to court first.

[18] *Idem AA. Iulio et Aemilio.* Si creditores vestros ex parte debiti admisisse quemquam vestrum pro sua persona persolventem probaveritis, aditus rector provinciae pro sua gravitate, ne alter pro altero exigatur, providebit.
PP. VII id. Ian. Diocletiano III et Maximiano AA. conss.

[19] *Idem AA. Victoriano militi.* Licet inter privatos huiusmodi scriptum, quo comprehenditur, ut is qui supervixerit alterius rebus potiatur, nec donationis quidem mortis causa gestae efficaciter speciem ostendat, tamen cum voluntas militum, quae super ultimo vitae spiritu deque familiaris rei decreto quoquo modo contemplatione mortis in scripturam deducitur, vim postremi iudicii obtineat proponasque te ac fratrem tuum ad discrimen proelii pergentes ob communem mortis fortunam invicem pactos esse, ut ad eum, qui superstes fuisset, res eius, cui casus finem vitae attulisset, pertinerent, existente condicione intellegitur ex fratris tui iudicio, quod principalium constitutionum prompto favore firmatur, etiam rerum eius compendium ad te delatum esse.
PP. XIII k. Dec. Sirmi ipsis IIII et III AA. conss.

[20] *Idem AA. et CC. Martiali.* Traditionibus et usucapionibus dominia rerum, non nudis pactis transferuntur.
PP. k. Ian. AA. conss.

[21] *Idem AA. et CC. Eusebio.* Cum proponas inter vos sine scriptura placuisse fratrum tuorum successiones aequis ex partibus dividi, et transactionis causa probari possit hanc intercessisse conventionem, exceptione te tueri potes, si possides: quod si adversarius tuus teneat, ex hoc placito nullam actionem esse natam, si tibi stipulatione non prospexisti, debes intellegere: nec adversario tuo transactione uti concedendum, nisi ea quae placita sunt paratus est adimplere.
PP. k. Mai. Thirallo AA. conss.

[18] *The same Augusti to Julius and Aemilius.* If you prove that, with respect to a portion of a debt, your creditors permitted either of you to pay it off on his own behalf,[22] the provincial governor, upon application, will, in accord with the dignity of his office, take care that neither is called upon to pay for the other.

Posted January 7, in the consulship of Diocletian, for the third time, and Maximianus, Augusti (287).

[19] *The same Augusti to Victorianus, a soldier.* Among private persons, a writing which provides that the survivor shall acquire the other's property does not effectively take even the form of a gift in contemplation of death (*donatio mortis causa*). Nonetheless, the wishes of a soldier with respect to his last breath of life and concerning the disposition (*decretum*) of his own property, if these are in any manner reduced to writing in contemplation of death, have the force of a final judgment (i.e., a will). You state that, as you proceeded into the hazard of battle, because of the shared risk of death you and your brother made a mutual pact with each other to the effect that should the life of one of you be ended by misfortune, his property would belong to the survivor. If that condition has (now) occurred, it is understood that, in accord with your brother's judgment as confirmed by the enthusiastic indulgence that imperial constitutions show (on this issue), you receive the benefit of his property.[23]

Posted November 19, at Sirmium, in the consulship of these Augusti, Consul for the fourth and third times, respectively (290).

[20][24] *The same Augusti and the Caesars to Martial.* The ownership of property is transferred by physical delivery (*traditio*) and by usucapion (prescription), but not by naked pacts (*nuda pacta*).

Posted January 1, in the consulship of the Augusti (293).

[21][25] *The same Augusti and Caesars to Eusebius.* You state that it was agreed among you, without a writing, to divide equally among you the inheritances received by your brothers, and it can be shown that this agreement was made as a settlement (*transactio*). You can, if you are in possession, protect yourself by this defense (of a pact). But if your adversary (now) holds (the property), you should know that no cause of action arose from this agreement if you did not protect yourself through a stipulation; (however,) your adversary is not allowed to take advantage of the settlement unless he is ready to fulfill the terms of the agreement.

Posted May 1, at Thirallum (Tzouroulon), in the consulship of the Augusti (293).

[22] That is, the creditors agreed to accept proportional payment although the debtors were originally liable jointly and severally.

[23] Although the general sense is clear, the wording of this rescript is very difficult; indeed, the Latin is a single sentence.

[24] Combine with C. 1.18.5, which dates the rescript to the previous day. Mancipation is omitted.

[25] Combine with C. 6.30.7 and 6.53.6.

[22] *Idem AA. et CC. Archelao.* Pactum curatoris recipere minorem quantitatem paciscentis adultae aetatis suffragium, ne noceat, efficiet. tutores enim et curatores exigentes pupillis et adultis debitum, non etiam remittentes praestant obligationis liberationem.

PP. XVIII k. Dec. Sirmi AA. conss.

[23] *Idem AA. et CC. Honorato.* Filius paciscendo vel debitum accipiendo nihil detrahit patris obligationi.

PP. XVII k. Dec. Sirmi AA. conss.

[24] *Idem AA. et CC. Domnae.* Si actionem legati vel fideicommissi, quam adversus heredes mariti quondam tui habuisti, te adfectione heredum aliis remisisse probetur, exceptionem pacti contra debitores instituenti actiones nocere tibi minime posse intellegis.

PP. XVII k. Ian. Sirmi AA. conss.

[25] *Idem AA. et CC. Euhemero.* Debitorum pactionibus creditorum petitio nec tolli nec mutari potest.

S. IIII k. Mai. Sirmi CC. conss.

[26] *Idem AA. et CC. Corneliae.* Pactum successorum debitoris ex lege duodecim tabularum aes alienum hereditarium pro portionibus quaesitis singulis ipso iure divisum in solidum unum obligare creditori non potest: quod et in honorario succedentibus iure locum habebit. de chirographis itaque communibus exhibendis cum coherede vel non perfectis in divisione placitis convenire quanti tua interest potes.

[22] *The same Augusti and Caesars to Archelaus.* The (legal) support given to those of adult age (who are under the charge of a *curator*) will result in (their incurring) no harm from the pact of a *curator* who agrees to accept a lesser amount (than was owed by his ward's debtor). For *tutores* and *curatores* provide release from an obligation when they collect what is owed to their minor and adult wards, but not when they grant remissions.

Posted November 14, at Sirmium, in the consulship of the Augusti (293).

[23] *The same Augusti and Caesars to Honoratus.* A son (in his father's power), by making a pact or by accepting payment for a debt, does not thereby (automatically) diminish an obligation due to his father.

Posted November 15, at Sirmium, in the consulship of the Augusti (293).

[24] *The same Augusti and Caesars to Domna.* If it is proven that, out of kindliness to the heirs, you released to some a right of action that accrued to you from a legacy or a trust against the heirs of your former husband, you do realize that a defense based on a pact (*exceptio pacti*) can hardly prejudice you in bringing actions against (the other) debtors (under the will).[26]

Posted December 16, at Sirmium, in the consulship of the Augusti (293).

[25] *The same Augusti and Caesars to Euhemerus.* The claim of creditors can neither be abolished nor modified by pacts among the debtors.

Written April 28, at Sirmium, in the consulship of the Caesars (294).

[26] *The same Augusti and Caesars to Cornelia.* A pact among the successors to a (deceased) debtor, to the effect that, in accord with the law of the Twelve Tables, the inherited debt be divided (among the heirs) by operation of law in proportion to the amount (of the estate) received by each, cannot obligate one (particular successor) to a creditor for the full amount (*in solidum*). The same rule applies also to successors under Praetorian law. Hence you can sue for production of promissory notes (*chirographa*) owned in common with your co-heir, or, if the agreements on the division (of the estate) were not executed, for your interest in the matter (i.e., damages).[27]

[26] The situation is obscure. This translation assumes that *aliis* refers to some of the heirs; the remaining heirs can still be sued on the testator's bequest to his former wife. Other translations are possible.

[27] The text is unclear, probably confused. Blume explains it this way: "The heirs could not, of course, make an agreement among themselves to the prejudice of creditors. In this case the heirs divided the property, and one of them agreed that he would pay all the estate's debts, and to that end got the bills due to the estate. He failed to pay. The other heirs thereupon had the right to bring an action for the return of their portion of the due bills, or an action for damages." Cornelia's co-heir had undertaken to pay all the estate's debts, and so held the promissory notes. For XII *Tab.* 5.9, see also C. 3.36.6.

PP. III id. Oct. Variani CC. conss.

[27] *Idem AA. et CC. Aurelio Chresimo.* Petens ex stipulatione, quae placiti servandi causa secuta est, seu antecessit pactum seu post statim interpositum sit, recte secundum se ferri sententiam postulat.
S. VI id. Nov. Heracleae CC. conss.

[28] *Idem AA. et CC. Leontio.* Si certis annis quod nudo pacto convenerat datum fuit, ad praestandum in posterum indebitum solutum obligare non potuit eum qui pactum fecit, nisi placitis stipulatio intercessit.
S. III non. Dec. Burtudizi CC. conss.

[29] *Imp. Iustinianus A. Iohanni pp.* **pr.** Si quis in conscribendo instrumento sese confessus fuerit non usurum fori proscriptione propter cingulum militiae suae vel dignitatis vel etiam sacerdotii praerogativam, licet ante dubitabatur, sive oportet eandem scripturam tenere et eum qui hoc pactus est non debere adversus suam conventionem venire, vel licentiam ei praestari decedere quidem a scriptura, suo autem iure uti: sancimus nemini licere adversus pacta sua venire et contrahentes decipere. **1.** Si enim ipso edicto praetoris pacta conventa, quae neque contra leges nec dolo malo inita sunt, omnimodo observanda sunt, quare et in hac causa pacta non valent, cum alia regula est iuris antiqui omnes licentiam habere his quae pro se introducta sunt renuntiare? **2.** Omnes itaque iudices nostri hoc in litibus observent, et huiusmodi observatio et ad pedaneos iudices et ad compromissarios et arbitros electos perveniat scituros, quod, si neglexerint, etiam litem suam facere intellegantur.
D. k. Sept. Constantinopoli post consulatum Lampadii et Orestae vv. cc.

[30] *Idem A. Iohanni pp.* **pr.** De quaestione tali a Caesariensi advocatione interrogati sumus: si[1] duabus vel pluribus personis spes alienae fuerat hereditatis ex cognatione forte ad eos devolvendae, pactaque inter eos inita sunt pro adventura hereditate, quibus specialiter declarabatur, si ille mortuus fuerit et hereditas ad eos perveniat, certos modos

[1] [si]

Posted October 13, at Variana, in the consulship of the Caesars (294).

[27] *The same Augusti and Caesars to Aurelius Chresimus.* A plaintiff suing on a stipulation that was added for the purpose of making a pact enforceable, whether this pact was made before or immediately after (the stipulation), rightly requests that the decision (*sententia*) (of the judge) be given in his favor.

Written November 8, at Heraclea, in the consulship of the Caesars (294).

[28] *The same Augusti and Caesars to Leontius.* If what was agreed upon in a naked pact (*nudum pactum*) was paid (till now) in the years prescribed, the person who made the pact cannot be obligated by this (fact) to pay in the future an unowed amount, unless a stipulation was added to the agreement.

Written December 3, at Burtudizum, in the consulship of the Caesars (294).[28]

[29] *Emperor* JUSTINIAN *Augustus to John, Praetorian Prefect.* **pr.**[29] If anyone has declared in a written document that he will not avail himself of a privilege of venue resulting from the rank (*cingulum*) of his office or of his standing, or even a clerical prerogative – although it was hitherto uncertain whether such a writing was binding and (so) the one who made the pact should not act against his own agreement, or whether he was accorded the freedom to depart from the writing and exercise his right – We decree that he shall not be permitted to go back on his agreement and deceive the other contracting parties. **1.** For if, according to the Praetor's Edict itself, agreed-upon pacts, when neither contrary to statutes nor entered into deceitfully (*dolo malo*), must always be observed, why should pacts not be valid in this matter as well, since there is another rule of venerable law that all have the freedom to waive (privileges) that were introduced on their behalf? **2.** So all Our judges shall observe this (rule) in lawsuits, and similar observance shall apply both to delegated judges (*iudices pedanei*) and to settlement arbitrators (*compromissarii*) and to those chosen as arbitrators, who should be aware that, if they fail to do so, they are also deemed to make the suit their own (*litem suam facere*).

Given September 1, at Constantinople, in the post-consulate of the viri clarissimi *Lampidius and Orestes (531).*

[30] *The same Augustus to John, Praetorian Prefect.* **pr.** We have been asked by the Society of Advocates (*advocatio*) in Caesarea about the following question: On the basis of kinship, two or more persons hoped that a third party's estate would perhaps come to them. As to the hoped-for inheritance, they joined in

[28] Mommsen dates to November 3, 294.

[29] = C. 1.3.50 pr.

in eadem hereditate observari, vel si forte ad quosdam ex his hereditatis commodum pervenerit, certas pactiones evenire. et dubitabatur, si huiusmodi pacta servari oportet. **1.** Faciebat autem eis quaestionem, quia adhuc superstite eo, de cuius hereditate sperabatur, huiusmodi pactio processit et quia non sunt ita confecta, quasi omnimodo hereditate ad eos perventura, sed sub duabus condicionibus composita sunt, si ille fuerit mortuus et si ad hereditatem vocentur hi qui pactionem fecerunt.

2. Sed nobis omnes huiusmodi pactiones odiosae videntur et plenae tristissimi et periculosi eventus. quare enim quodam vivente et ignorante de rebus eius quidam paciscentes convenerunt? **3.** Secundum veteres itaque regulas sancimus omnimodo huiusmodi pacta, quae contra bonos mores inita sunt, repelli et nihil ex his pactionibus observari, nisi ipse forte, de cuius hereditate pactum est, voluntatem suam eis accommodaverit et in ea usque ad extremum vitae spatium perseveraverit: tunc etenim sublata acerbissima spe licebit eis illo sciente et iubente huiusmodi pactiones servare. **4.** Quod etiam anterioribus legibus et constitutionibus non est incognitum, licet a nobis clarius est introductum. iubemus etenim neque donationes talium rerum neque hypothecas penitus esse admittendas neque alium quendam contractum, cum in alienis rebus contra domini voluntatem aliquid fieri vel pacisci secta temporum meorum non patitur.

D. k. Nov. Constantinopoli post consulatum Lampadii et Orestae vv. cc.

IIII De Transactionibus

[1] *Imp. Antoninus A. Celerio.* Neque pactio neque transactio cum quibusdam ex curatoribus sive tutoribus facta auxilio ceteris est in his, quae separatim communiterve gesserunt vel gerere debuerunt. cum igitur tres curatores habueris et cum duobus ex his transegeris, tertium convenire non prohiberis.

D. k. Mai. Gentiano et Basso conss.

[2] *Idem A. Lutatiae.* Cum te proponas cum sorore tua de hereditate transegisse et idpropter certam pecuniam te ei debere cavisse, etsi nulla fuisset quaestio hereditatis, tamen propter timorem litis transactione

pacts whereby it was expressly declared that if he (the relative) died and the inheritance came to them, certain provisions obtained as to such inheritance; or if the benefit of the inheritance perhaps came (only) to some of them, certain (other) agreements arose. There was doubt whether pacts of this kind are held valid. **1.** This raised a question in their minds because such an agreement occurred during the life of the person whose inheritance they hoped for, and because they (the pacts) were not made as though the inheritance would come to them in any case, but were adopted under two conditions: if he would die, and if those who made the pact were summoned as heirs.

2. But We consider all such agreements odious and charged with a most unhappy and perilous outcome. For why did some men agree on pacts concerning the property of a living person without his knowledge? **3.** In accord with long-standing rules, therefore, We ordain that such pacts, entered into contrary to good morals, be always rejected, and that no aspect of these agreements be executed, unless, perhaps, the person about whose inheritance the pact was made bent his mind to them (i.e., accepted them) and remained of this view to the end of his life; for then this most malicious hope is not present, and they are permitted to observe such agreements with his knowledge and consent. **4.** This (rule), though not unknown in previous statutes and constitutions, is more clearly enacted by Us. We order, accordingly, that neither gifts of such things nor their use as real security (*hypothecae*) be allowed in any form, nor any other contract, since the ethical code of my era does not tolerate that anything be done or agreed upon concerning another person's property against the owner's will.

Given November 1, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

Fourth Title Settlements[30]

[1] *Emperor* Antoninus *Augustus to Celerius.* An agreement or a settlement (*transactio*) made with a portion of the *curatores* or *tutores* is of no help to the others in connection with business that they managed or should have managed separately or jointly. Since, therefore, you had three *curatores* and settled with two of them, you are not prevented from suing the third.

Given May 1, in the consulship of Gentianus and Bassus (211).

[2] *The same Augustus to Lutatia.* You state that you had entered into a settlement with your sister concerning an inheritance, and that on this account you promised to owe her a certain sum of money. Although no contention would (in fact) have arisen over the inheritance, still, because the settlement was made

[30] *Transactiones*, voluntary settlements among the parties out of court. See D. 2.15.

interposita pecunia recte cauta intellegitur. ex qua causa si fisco solvisses, repetere non posses: si non solvisses, iure convenireris.

PP. III id. Aug. Antonino A. IIII et Balbino conss.

[3] *Imp. Alexander A. Tulliae.* Age cum Geminiano, quod pater eius curator tibi datus negotia tua gesserit, et si apud iudicem negabit se actione teneri, quoniam transactio et Aquiliana stipulatio interposita est, iudex contemplatione iudicii quod est bonae fidei quaeret, de quanta pecunia nominatim transactum sit: et si apparuerit de minore transactum, quantam pecuniam reliquam ex administratione curae deberi probatum fuerit, solvere eum iubebit, quod non in stipulationem Aquilianam obligationis curae tantum deductum est, quanti erat quantitas pecuniae quae debebatur.

D. prid. id. Aug. Maximo II et Aeliano conss.

[4] *Idem A. Numidio.* Actione administratae curae ab eo, qui legitimae aetatis annos complevit, in Aquilianam stipulationem deducta et per acceptilationem extincta nullam aliam superesse nisi de dolo intra concessa tempora non ambigitur, nisi specialiter etiam de dolo transactum est.

PP. II non. Mart. Alexandro A. II et Marcello conss.

[5] *Idem A. ... evocato.* Cum te transegisse cum herede quondam tutoris tui profitearis, si id post legitimam aetatem fecisti, frustra desideras, ut a placitis recedatur. licet enim, ut proponis, nullum instrumentum intercesserit, tamen si de fide contractus confessione tua constet, scriptura, quae probationem rei gestae solet continere, necessaria non est.

PP. k. Mart. Albino et Aemiliano conss.

in fear of litigation, the money is understood as properly promised. If on this account you had paid this to the Treasury (*fiscus*), you could not recover it; if you had not paid it, you could be sued at law.

Posted August 11, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[3] *Emperor* ALEXANDER *Augustus to Tullia.* Proceed to litigate with Geminianus because his father, appointed as your *curator*, managed your affairs. If he denies before the judge that he is liable in an action because a settlement and an Aquilian stipulation were entered into, the judge, in view of this being a good faith trial (*iudicium bonae fidei*), will investigate concerning how much money the settlement was expressly for; and if it appears the settlement was for less, he will order him to pay as much of the remaining money as is shown to be owing from administration of the curatorship, since the Aquilian stipulation did not include as much of the obligation from the curatorship as the amount of money that was owed.[31]

Given August 12, in the consulship of Maximus, Consul for the second time, and Aelianus (223).

[4] *The same Augustus to Numidius.* When an action on the administration of a curatorship has been reduced to an Aquilian stipulation by a person (a former ward) who has reached the statutory age of full majority (*legitima aetas*), and it has then been extinguished through a formal release (*acceptilatio*), there is no doubt that no other (cause of action) remains except that for deceit (*dolus*) within the permitted time – unless there was a special settlement also about deceit.

Posted March 6, in the consulship of Alexander Augustus, for the second time, and Marcellus (226).

[5] *The same Augustus to a veteran.* Since you admit that you settled with the heir of your former *tutor*, assuming you did so after reaching the statutory age, you request in vain to withdraw from the agreement. For although, as you state, no document was drawn up, still, if the integrity of the contract is revealed by your own admission, a writing, which customarily contains proof of what was done, is not necessary.

Posted March 1, in the consulship of Albinus and Aemilianus (227).

[31] An Aquilian stipulation was a stipulatory novation of a debt or debts, followed by a formal release (*acceptilatio*) of the debt or debts so novated. The meaning of the last clause is obscure, but evidently this settlement (unlike that in the next rescript) did not include the entire of the curator's obligation.

[6] *Idem A. Pomponiis.* **pr.** Cum mota inofficiosi querella matrem vestram cum diversa parte transegisse ita, ut partem bonorum susciperet et a lite discederet, proponatis, instaurari quidem semel omissam querellam per vos, qui matri heredes extitistis, iuris ratio non sinit. **1.** Verum si fides placitis praestita non est, in id quod interest diversam partem recte convenietis: aut enim, si stipulatio conventioni subdita est, ex stipulatu actio competit, aut, si omissa verborum obligatio est, utilis actio, quae praescriptis verbis rem gestam demonstrat, danda est.

PP. VIII id. Ian. Agricola et Clemente conss.

[7] *Imp. Gordianus A. Licinio Timotheo evocato.* Transactionis placitum ab eo interpositum, cui causae actionem, non decisionem litis mandasti, nihil petitioni tuae derogavit.

PP. X k. Ian. Pio et Pontiano conss.

[8] *Idem A. Iunio militi.* De alimentis praeteritis si quaestio defertur, transigi potest, de futuris autem sine praetore seu praeside interposita transactio nulla auctoritate iuris censetur.

PP. XIIII k. Ian. Gordiano A. et Aviola conss.

[9] *Idem A. Agrippino.* Si super possessione, quae tibi quaesita est, cum quaestionem patereris a fratre uxoris tuae, pactum conventum et stipulatio inter vos, ut adlegas, interposita est, ut, si intra diem certum idem adversarius tuus decem aureos tibi numerasset, possessione ei cederes, vel, si eam inferre quantitatem non curasset, ulterius quaestionem non patereris, et is qui ita spopondit promisso satis non fecit, consequens est te ad quem res pertinet vim ab eo pati non debere: cuius rei gratia vir clarissimus praeses provinciae interpellatus vim prohibebit, praecipue cum, etiamsi in rem diversae parti actio competeret, huiusmodi pactione propter utilem exceptionem posset submoveri.

[6] *The same Augustus to the Pomponii.* **pr.** You state that after the complaint of an undutiful (will; *querela inofficiosi testamenti*) had been raised, your mother settled with the opposing party on terms that she receive part of the property (in the estate) and abandon the litigation. The logic of the law (*ratio iuris*) does not allow that the complaint, once abandoned, be renewed by you, your mother's heirs. **1.** But if the agreement has not been honored, you may rightly sue the opposing party for your interest (*id quod interest*). For if a stipulation was added to the agreement, an action lies on the stipulation; but if the oral obligation (*obligatio verborum*; a stipulation) was omitted, then an analogous action (*actio utilis*), setting forth the transaction in special terms (*praescriptis verbis*), is to be granted.

Posted January 6, in the consulship of Agricola and Clemens (230).

[7][32] *Emperor* GORDIAN *Augustus to Licinius Timotheus, a veteran.* A settlement agreement made by a person to whom you mandated (*mandare*) the bringing of a lawsuit, (but) not its settlement, does not prejudice your own claim.

Posted December 23, in the consulship of Pius and Pontianus (238).

[8] *The same Augustus to Junius, a soldier.* If a dispute arises about past support payments (*alimenta*), it can be settled; but for future (payments) no settlement is sanctioned by legal authority without (the consent of) a Praetor or governor.[33]

Posted December 19, in the consulship of Gordianus Augustus and Aviola (239).

[9] *The same Augustus to Agrippinus.* Concerning a possession that was sought for you,[34] a dispute (*quaestio*) arose between you and your wife's brother. Thereafter, the two of you entered into an agreed-upon pact and (also), as you allege, a stipulation, to the effect that if your adversary paid you 10 gold pieces by a specified date, you would yield possession to him; or, if he did not provide for tendering this amount, you would not undergo further challenge (and so would win the dispute). If the person who made this formal promise (*spondere*) did not fulfill his promise, the outcome is that you, to whom the property belongs, should not suffer any violence from him. On this account the *vir clarissimus* governor of the province, when called upon, will prohibit violence, particularly since, although an action for property (*actio in rem*) is available to the opposing party, it can be defeated through the analogous defense (*exceptio utilis*) that arises from this sort of agreement.

[32] = C. *Greg. Visig.* 2.1. See C. 2.3.3 and 23.

[33] See D. 2.15.8 pr.

[34] Krüger, following Bas. 11.2.26 and its scholia, plausibly suggests: "Concerning a possession that was sought for you through your son from the estate of his mother" (*Si super possessione quae tibi per filium tuum ex matris eius hereditate quaesita est*).

PP. VI id. April. Gordiano A. II et Pompeiano conss.

[10] *Imp. Philippus A. Apollophaniae.* Fratris tui filiis de paterna successione ac statu etiam nunc contra fidem sanguinis itemque placitorum quaestionem inferre parum probe postulas. nullus etenim erit litium finis, si a transactionibus bona fide interpositis coeperit facile discedi.

PP. prid. k. April. Peregrino et Aemiliano conss.

[11] *Impp. Valerianus et Gallienus AA. et Valerianus nobilis*simus *C. Gaiano militi.* De fideicommisso a patre inter te et fratrem vicissim dato, si alter vestrum sine liberis excesserit vita, interposita transactio rata est, cum fratrum concordia remoto captandae mortis alterius voto improbabili retinetur. et non potest eo casu rescindi, tamquam circumventus sis, cum pacto tali consenseris, cum neque eam cui subveniri solet aetatem agere te proponas nec, si ageres, isdem illis de causis in integrum restitutionis auxilium impetrare deberes.

PP. XV k. Dec. Valeriano et Gallieno AA. utrisque II conss.

[12] *Idem AA. Primo.* Praeses provinciae aestimabit, utrum de dubia lite transactio inter te et civitatis tuae administratores facta sit, an ambitiose id, quod indubitate deberi posset, remissum sit. nam priore casu ratam manere transactionem iubebit, posteriore nocere civitati gratiam non sinet.

PP. XVI k. Mart. Aemiliano et Basso conss.

[13] *Impp. Diocletianus et Maximianus AA. Proclae.* **pr.** Interpositas metus causa transactiones ratas non haberi edicto perpetuo continetur. nec tamen quilibet metus ad rescindenda ea, quae consensu terminata sunt, sufficit, sed talem metum probari oportet, qui salutis periculum vel corporis cruciatum contineat. **1.** Ad vim tamen vel dolum arguendum qualitas causae principalis non sufficit: unde si nihil tale probari

Posted April 8, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

[10] *Emperor PHILIP Augustus to Apollophania.* Even now you disgracefully seek to raise a controversy with your brother's children concerning their inheritance from their father and their status – contrary not only to the loyalty owed to blood, but to the agreement. For there will be no end to litigation if it becomes easy to depart from settlements entered into in good faith.

Posted March 31, in the consulship of Peregrinus and Aemilianus (244).

[11] *Emperors VALERIAN and GALLIENUS Augusti, and VALERIAN, the Most Noble Caesar, to Gaianus, a soldier.* Concerning the trust (*fideicommissum*) imposed by your father between you and your brother reciprocally in the event that one of you departs from life childless, an interposed settlement is valid, since brotherly harmony is maintained by eliminating any immoral wish for the other's death.[35] Nor can it be rescinded here on the theory that you were tricked, since you agreed to this pact, and (also) because you were not of that (young) age that is customarily assisted (through restoration of rights); nor, (even) if you were (that young), should you obtain the aid of restoration of rights (*restitutio in integrum*), for these same reasons (of avoiding discord).

Posted November 17, in the consulship of Valerian and Gallienus, the Augusti, both for the second time (255).

[12][36] *The same Augusti to Primus.* The provincial governor will judge whether there was a (real) settlement between you and your city administrators concerning a doubtful lawsuit, or whether through favoritism (*ambitiose*) you were released from what could be an unquestionable debt (to the city). For in the former case he will order that the settlement remain valid; in the latter, he will not allow influence to harm the city.

Posted February 14, in the consulship of Aemilianus and Bassus (259).

[13] *Emperors DIOCLETIAN and MAXIMIAN Augusti to Procla.* **pr.** The Perpetual Edict provides that settlements made through fear (*metus*) are not held valid. However, not every sort of fear suffices to rescind what was concluded by agreement; the fear must be proven to be such as is based on risk to health or bodily pain. **1.** The nature of the principal cause of action is insufficient (by itself) to show duress or deceit (*vis vel dolus*); so, if nothing of that sort

[35] The *fideicommissum* requested each heir, if childless at death, to transfer the inheritance to the other. The brothers presumably divided the estate in order to avoid strife between them.

[36] Compare *Consultatio* 9.14.

potest, consensu quaestiones terminatas minime instaurari oportet. 2. Sed quoniam eum, cum quo te transegisse commemoras, ex ancilla tua natum servum esse adseveras, si vera sunt, quae precibus complexa es, alia ratio pactum reformat: nec enim dubii iuris est dominos cum servis suis paciscentes ex placitis teneri atque obligari non posse.

S. IIII non. April. Byzantii ipsis IIII et III AA. conss.

[14] *Idem AA. Sopatrae.* Si diversa pars contra placitum agere nititur, aequitatis ratio suadet refusa pecunia, cum et tu hoc desideras, causam ex integro agi.

PP. IIII non. Iul. ipsis IIII et III AA. conss.

[15] *Idem AA. Pontio.* Ut responsum congruum accipere possis, insere pacti exemplum: ita enim intellegemus, utrum sola conventio fuit, an etiam Aquiliana stipulatio nec non et acceptilatio secuta fuerit: quae si subdita esse illuxerit, nullam adversariae tuae petitionem hereditatis vel in rem specialem competere palam fiet.

PP. XV k. Aug. ipsis IIII et III AA. conss.

[16] *Idem AA. et CC. Caecilio.* Causas vel lites transactionibus legitimis finitas imperiali rescripto resuscitari non oportet.

S. V id. Mart. AA. conss.

[17] *Idem AA. et CC. Marcello.* Cum proponas ab ea, contra quam supplicas, litem quam tecum habuit transactione decisam eamque acceptis quae negotii dirimendi causa placuerat dari nunc de conventione resiluisse, ac petas vel pacto stari vel restitui data, perspicis, si quidem de his reddendis manente transactionis placito statim stipulatione, si contra fecerit, prospexisti et quinque et viginti annis maior fuit, quod exceptionem pacti et actionem datorum habeas: quod si nihil tale convenit, exceptio tibi, non etiam eorum quae dedisti repetitio competit securitate parta.

PP. V id. Iun. ipsis AA. V et IIII conss.

can be proven, it is scarcely right to renew controversies ended by agreement. **2.** Since you allege, however, that the person with whom you say you settled was a slave born of your female slave, if these (allegations) contained in your petition are true, a second principle alters (legal consideration of) the pact; for the undoubted rule is that masters who form an agreement with their slaves cannot be held and obliged on the basis of the agreement.

Written April 2, at Byzantium, in the consulship of these Augusti, for the fourth and third time, respectively (290).

[14] *The same Augusti to Sopatra.* If your adversary attempts to sue contrary to an agreement, the logic of fairness impels that after you return the money payment (obtained in the settlement), the (principal) cause of action be litigated anew, if you also desire this.

Posted July 4, in the consulship of these Augusti, for the fourth and third time, respectively (290).

[15] *The same Augusti to Pontius.* To receive an appropriate response, enclose a copy of the pact. For in this way we will know whether there was just an agreement, or whether it was also accompanied by an Aquilian stipulation and a formal release (*acceptilatio*). If it becomes obvious that it was so accompanied, plainly your adversary's suit for the inheritance or for particular property does not lie.

Posted July 18, in the consulship of these Augusti, for the fourth and third time, respectively (290).

[16] *The same Augusti and the Caesars to Caecilius.* Cases or suits, (when) ended by lawful settlements, must not be revived through an imperial rescript.

Written March 11, in the consulship of the Augusti (293).

[17] *The same Augusti and Caesars to Marcellus.* You allege that the woman against whom you (now) plead ended by settlement a lawsuit she had with you, and that after accepting what was agreed be given her to end the matter, she has now strayed from the agreement. You seek either that the pact be upheld or that what was given be restored. You are aware that if indeed you provided by stipulation that the property be returned if she violated the agreement, while simultaneously leaving the settlement in force, (then) if she was over the age of 25, you have a defense on the pact (*exceptio pacti*) and an action for the property given. But if there was no such agreement, you have the defense, but, since you are protected, not also the right to reclaim what you gave.

Posted June 9, in the consulship of these Augusti (293).

[18] *Idem AA. et CC. Valentiniano.* Transigere vel pacisci de crimine capitali excepto adulterio non prohibitum est. in aliis autem publicis criminibus, quae sanguinis poenam non ingerunt, transigere non licet citra falsi accusationem.

S. III k. Sept. AA. conss.

[19] *Idem AA. et CC. Irenaeo.* Sub praetextu instrumenti post reperti transactionem bona fide finitam rescindi iura non patiuntur. sane si eam per se vel per alium subtractis, quibus veritas argui potuit, decisionem litis extorsisse probetur, si quidem actio superest, replicationis auxilio doli mali pacti exceptio removetur, si vero iam perempta est, infra constitutum tempus tantum actionem de dolo potes exercere.

S. XIIII k. Oct. Sirmi AA. conss.

[20] *Idem AA. et CC. Antistiae.* Non minorem auctoritatem transactionum quam rerum iudicatarum esse recta ratione placuit, si quidem nihil ita fidei congruit humanae, quam ea quae placuerant custodiri. nec enim ad rescindendum pactum sufficit, quod hoc secunda hora noctis intercessisse proponas, cum nullum tempus sanae mentis maioris quinque et viginti annis consensum repudiet.

S. IIII k. Oct. AA. conss.

[21] *Idem AA. et CC. Geminiano.* Cum ea, quae transactionis causa dari aut retineri convenit, velut emptorem eum quem accipere placuerat obtinere praescribitur, his quae simulate geruntur pro infectis habitis frustra ficti pretii postulatur numeratio.

S. V non. Oct. ipsis AA. conss.

[22] *Idem AA. et CC. Alexandro.* Si maior transegisti, ad rescindendam transactionem de dolo contestatio non sufficit.

S. k. Dec. AA. conss.

[23] *Idem AA. et CC. Tatiano.* Nec intentio creditorum Archimedori, cui alios successisse profiteris, si obligatus pro eo non fuisti, tenere potest. sed haec integro negotio tractari convenerat: nam cum iam

[18] *The same Augusti and Caesars to Valentinianus.* It is not forbidden to settle or make a pact concerning a criminal charge in a capital case, except for adultery. But it is not permitted to settle in other cases of public charges not carrying the death penalty, save for an accusation of falsification (*falsum*).[37]

Written August 30, in the consulship of the Augusti (293).

[19] *The same Augusti and Caesars to Irenaeus.* Law does not permit that a settlement made in good faith be rescinded under the pretext that some document was found thereafter. But if it is proved she (your adversary) wrested a settlement of the suit by pilfering, either herself or through a third party, (documents) through which the truth could be shown, then if an action still remains, the defense of a pact is blocked by the counterdefense of deceit (*replicatio doli mali*); but if it (the action) has now been consumed, you can use only an action for deceit (*actio de dolo*) within the time fixed (by law).

Written September 18, at Sirmium, in the consulship of the Augusti (293).

[20] *The same Augusti and Caesars to Antistia.* With good reason it has been accepted that settlements have the same force as adjudications, seeing that nothing so much harmonizes with good faith among men as that their agreements be upheld. Nor does it suffice for rescinding a pact that, as you say, it was made at the second hour of the night, since there is no time that invalidates the consent of a sane mind over 25 years old.

Written September 28, in the consulship of the Augusti (293).

[21] *The same Augusti and Caesars to Geminianus.* It was agreed that (specified) things be given or retained on account of a settlement. When it is expressly declared (in the settlement document) that the person who was to receive them under the settlement took them as if (he were) a buyer, then, since fictitious transactions are regarded as void, (actual) payment of the sham price is sought (from a judge) in vain.

Written October 3, in the consulship of these Augusti (293).

[22] *The same Augusti and Caesars to Alexander.* If you were an adult (*maior*) when you settled, a declaration before witnesses (*contestatio*) that deceit (*dolus*) occurred is insufficient to rescind the settlement.

Signed December 1, in the consulship of the Augusti (293).

[23] *The same Augusti and Caesars to Tatianus.* The claim of the creditors of Archimedorus, whose heirs, you say, were third parties (i.e., not you), cannot succeed (against you) if you were not obligated on his behalf. But it was proper

[37] This final clause has also been translated "without (*citra*) fear of prosecution for falsification."

quaestionem transactione decisam et a te dari placitam numeratam pecuniam proponas, huius indebiti soluti praetextu improbe tibi petitionem decerni postulas, cum, etsi tantum in stipulationem fuisset deducta, indebiti promissi velamento defendi non posses.

D. VIII id. Mart. CC. conss.

[24] *Idem AA. et CC. Victorino.* Si quidem ex causa transactionis acceptis his quae instrumento continentur nihil amplius peti convenit, adversariam tuam exceptionis auxilio defendi perspicis. sin vero certam quantitatem quasi solam ab ea debitam reddere se debere sine litis decisione confessa est, tam eam quam residuam debiti partem petere minime prohiberis.

S. V non. April. Sirmi CC. conss.

[25] *Idem AA. et CC. Marcellae et Cyrillae.* Si maiores quinque et viginti annis cum patruo sive avunculo vestro transegistis vel ei debita donationis causa sine aliqua condicione remisistis, non idcirco, quod hoc huius hereditatis captandae causa, id est spe futurae successionis, vos fecisse proponatis, aliis ei succedentibus instaurari finita debent.

S. II id. April. CC. conss.

[26] *Idem AA. et CC. Dionysiadae.* Transactione matris filios eius non posse servos fieri notissimi iuris est.

S. id. April. CC. conss.

[27] *Idem AA. et CC. Catoni.* Sanam mente, licet aegram corpore recte transigere manifestum est, nec postulare debueras improbo desiderio placita rescindi valitudinis corporis adversae velamento.

S. VII id. Mai. CC. conss.

[28] *Idem AA. et CC. Sapparutae.* **pr.** Sive apud acta rectoris provinciae sive sine actis, scriptura intercedente vel non, transactio interposita est, hanc servari convenit. **1.** Sed quoniam, ut certum quid accipias, convenisse te, licet sine scriptura, proponis nec huius rei causa

that this be investigated when the business was (still) fresh. For at present, when, as you say, the dispute has been decided by a settlement and you made the agreed-upon money payment, you improperly request that you be given a claim (for restitution) on the pretense of a payment not owed (*indebitum solutum*), since, even if it (this agreement) had been reduced to a stipulation (rather than you paying the money), you could not be defended by the excuse that you promised money not owed.

Given March 8, in the consulship of the Caesars (294).

[24] *The same Augusti and Caesars to Victorinus.* If it was indeed agreed that, after receiving property as prescribed in a document arising from a settlement, nothing more was to be sought, you see that your opponent is protected by means of the defense (of a pact). But if, without a determination of the suit, she acknowledged that she ought to pay you a certain amount as (so she asserted) all that was due from her, you are scarcely forbidden to claim, not only that amount, but also the remainder due.

Written April 1,[38] *at Sirmium, in the consulship of the Caesars (294).*

[25] *The same Augusti and Caesars to Marcella and Cyrilla.* If, when more than 25 years old, you settled with your paternal or maternal uncle, or you released him from what he owed you, gratuitously and without any condition, matters that are closed should not be reopened for the reason you state, that you did this in order to win his inheritance, i.e., in hope of a future succession, when others (in fact then) succeeded him.

Written April 12, in the consulship of the Caesars (294).

[26] *The same Augusti and Caesars to Dionysiadas.* It is a very well known rule of law that through a mother's settlement her sons cannot become slaves.[39]

Written April 13, in the consulship of the Caesars (294).

[27] *The same Augusti and Caesars to Cato.* It is clear that a woman of sound mind, although sick in body, rightfully makes a settlement; nor should you have dishonestly requested to have the agreement rescinded on the excuse of bodily ill-health.

Written May 9, in the consulship of the Caesars (294).

[28] *The same Augusti and Caesars to Sapparuta.* **pr.** It is agreed that a settlement, once made, is observed, whether (it occurs) in the provincial governor's records (in court) or not, whether in writing or not. **1.** But since you say that

[38] Noting the oddity of the date, Mommsen suggests *III non. Apr.* = April 3, 294.

[39] See C. 4.43.

stipulationem secutam esse, quamvis ex pacto non potuit nasci actio, tamen rerum vindicatione pendente, si exceptio pacti opposita fuerit, doli mali vel in factum replicatione usa poteris ad obsequium placitorum adversarium urguere.

D. III non. Iul. CC. conss.

[29] *Idem AA. et CC. Marciae.* Sub praetextu specierum post repertarum generali transactione finita rescindi prohibent iura. error autem circa proprietatem rei apud alium extra personas transigentium tempore transactionis constitutae nihil potest nocere.

S. IIII k. Oct. CC. conss.

[30] *Idem AA. et CC. Antonino.* Transactione finita, cum ex partibus tuis magis dolum intercessisse quam eorum, contra quos preces fundis, confitearis, instaurare grave nec non criminosum tibi est.

S. V id. Oct. Crevi CC. conss.

[31] *Idem AA. et CC. Proculo.* Si de certa re pacto transactionis interposito hoc comprehensum erat 'nihil amplius peti', etsi non additum fuerat 'eo nomine', de ceteris quaestionibus integra permaneat actio.

PP. IIII id. Oct. Byzantii CC. conss.

[32] *Idem AA. et CC. Cyrillo.* Si causa cognita prolata sententia, sicut iure traditum est, appellationis vel in integrum restitutionis sollemnitate suspensa non est, super iudicato frustra transigi non est opinionis incertae. proinde si non Aquiliana stipulatione et acceptilatione subsecuta competentem tibi actionem peremisti, praeses provinciae usitato more legum rebus pridem iudicatis effectum adhibere curabit.

S. VIII k. Nov. CC. conss.

you agreed, though not in writing, to receive something definite, and that no stipulation was added for this matter, (then,) although no action could arise from a pact, still, if in the pending action to reclaim property the defense of a pact is interposed, by using a counterdefense of deceit or on the facts you can compel your adversary to carry out his agreement.[40]

Given July 5, in the consulship of the Caesars (294).

[29] *The same Augusti and Caesars to Marcia.* Law forbids that matters closed by a general settlement be reopened on the pretext of specific things later found. But no harm can come from a mistake as to ownership of property that was, at the time of the settlement, held by a person other than the compromising parties.

Written September 28, in the consulship of the Caesars (294).

[30] *The same Augusti and Caesars to Antoninus.* It is a serious matter, virtually criminal, for you to reopen matters closed by a settlement, granted that you admit that the deception (*dolus*) came more from your side than from that of those against whom you direct your petition.

Written October 11, at Crevum, in the consulship of the Caesars (294).

[31] *The same Augusti and Caesars to Proculus.* If, in a settlement pact made concerning specific property, it was included that "nothing more be sought" even without adding "on this account," a cause of action concerning other disputed matters remains unaffected.

Posted October 12, at Byzantium, in the consulship of the Caesars (294).[41]

[32] *The same Augusti and Caesars to Cyrillus.* It is not a matter of disputed (legal) opinion that if a case has been heard (*causa cognita*) and a verdict rendered (*sententia prolata*) according to law, or if it was suspended by the formal process of appeal or of restoration of rights, a settlement concerning an adjudicated matter is ineffective. Hence, if you have not eliminated your cause of action through an Aquilian stipulation and a formal release, the provincial governor will take care, in the usual manner of the law, to give effect to prior judgments.[42]

Written October 25, in the consulship of the Caesars (294).

[40] Blume: "In this case, a suit was compromised. The action was not lost in the same way as in law 6 h.t. Nor was the compromise carried out by one of the parties as in law 33 h.t. Hence the old suit could be pressed, or if it had not been brought could be commenced, and the defendant was condemned, unless he was willing to comply with the compromise. If willing, that ended the suit. In other words, the compromise could be enforced indirectly, though not directly."

[41] Mommsen gives November 10, 294.

[42] See D. 12.6.23.1; *Greg.* 2.11.4; *Consultatio* 9.15; but also D. 2.15.7 pr, 2.15.11.

[33] *Idem AA. et CC. Euchrysio.* **pr.** Si pro fundo quem petebas praedium certis finibus liberum dari transactionis causa placuit, nec eo tempore minor annis viginti quinque fuisti, licet hoc praedium obligatum post vel alienum pro parte fuerit probatum, instaurari decisam litem prohibent iura. **1.** Ex stipulatione sane, si placita servari secuta est, vel, si non intercessit, praescriptis verbis actione civili subdita[ii] apud rectorem provinciae agere potes. **2.** Si tamen ipsas res apud te constitutas, ob quarum quaestionem litis intercessit decisio, fiscus vel alius a te vindicavit, nihil petere potes.

S. v id. Nov. Melantiade CC. conss.

[34] *Idem AA. et CC. Ptolemaidi.* Cum donationis seu transactionis causa administratae tutelae debiti scientes vos obligationem fratri vestro remisisse proponatis nec umquam volenti dolus inferatur, frustra de dolo querimini, nec ad implendum promissum hereditatis propriae pollicitatione quisquam adstringitur.

PP. vi id. Nov. CC. conss.

[35] *Idem AA. et CC. Ammonio.* Transactionem, quae dominii translatione vel actione parata seu perempta finem accepit, cum eam amicis etiam intervenientibus re vera ostenditur processisse, metus velamento rescindi postulantis professio detegit improbitatem.

S. viiii k. Dec. Nicomediae CC. conss.

[36] *Idem AA. et CC. Achilleo.* Si cum liberis maior annis viginti quinque transegisti, quamvis dari tibi placita repraesentata necdum probentur nec offerant haec qui conveniuntur, ne quid amplius ab ipsis exigi possit, exceptionis proficit aequitas.

S. vi id. Dec. CC. conss.

[ii] [subdita]

[33] *The same Augusti and Caesars to Euchrysius.* **pr.** If, in place of a farm that you claimed, it was agreed as a settlement that you receive real property with set boundaries and free (from charges), and you were not then under 25 years old, then, although it is proved that the property was encumbered or partially a third party's, the laws forbid reopening a lawsuit that has been decided. **1.** Of course, you can sue before the provincial governor on the stipulation if one was added that the agreement be observed, or, if no stipulation intervened, by a civil action with special terms (*praescriptis verbis*). **2.** But if the Treasury or a third party (then) successfully claimed ownership (*vindicavit*) from you of property ascribed to you, the status of which the lawsuit's outcome had resolved, you cannot claim anything.

Written November 9, at Melantias, in the consulship of the Caesars (294).

[34] *The same Augusti and Caesars to Ptolemais.* Since you state that, either as a gift or a settlement, you knowingly remitted to your brother the obligation of a debt stemming from his management as a *tutor*, and (since) no deceit (*dolus*) is perpetrated on a willing victim, your complaint of deceit is futile. Nor does his donative promise (*pollicitatio*) of an inheritance from himself bind anyone to fulfill his promise.[43]

Posted November 8, in the consulship of the Caesars (294).

[35] *The same Augusti and Caesars to Ammonius.* The plaintiff's statement reveals its dishonesty (by asking) that a settlement, which resulted in transfer of ownership or in the grant or destruction of a cause of action, be rescinded on pretense of fear (*metus*), when it is shown that, in fact, it was even concluded with friends present.

Written November 23, at Nicomedia, in the consulship of the Caesars (294).

[36][44] *The same Augusti and Caesars to Achilleus.* If, when over 25 years old, you settled with free men, then, although the things agreed to be given to you are shown not yet to have been delivered, nor do the defendants tender them, (still) the fairness of a defense (stemming from the settlement) is available to prevent anything more being demanded (from you) by them.

Written December 8, in the consulship of the Caesars (294).

[43] On this second point, see C. 2.3.15, 30. This rescript more likely dates to November 9 (*v id. Nov.*).

[44] Combine with C. 6.23.14 and 6.42.29. The controversy was over an estate. Evidently Achilleus settled without obtaining a stipulation. See C. 2.3.21, 2.4.28. *Cum liberis* is supplied from the Basilika scholia (11.2.53).

[37] *Idem AA. et CC. Basilissae.* Promissis transactionis causa non impletis poenam in stipulationem deductam, si contra factum fuerit, exigi posse constitit.
S. XII k. Ian. Nicomediae CC. conss.

[38] *Idem AA. et CC. Theodotiano.* Transactio nullo dato vel retento seu promisso minime procedit.
S. VIII k. Ian. Nicomediae CC. conss.

[39] *Idem AA. et CC. Marcianae.* Quamvis eum qui pactus est statim paeniteat, transactio rescindi et lis instaurari non potest: et qui tibi suasit intra certum tempus licere a transactione recedi, falsum adseveravit.
S. d. V k. Ian. Sirmi CC. conss.

[40] *Imppp. Gratianus Valentinianus et Theodosius AAA. Eutropio pp.* Ubi pactum vel transactio scripta est atque Aquilianae stipulationis et acceptilationis vinculis firmitas iuris innexa est, aut subsecutis secundum leges accommodandus est consensus aut poena una cum his quae data probantur ante cognitionem causae, si et adversarius hoc maluerit, inferenda est.
D. III non. Iun. Constantinopoli Eucherio et Syagrio conss.

[41] *Impp. Arcadius et Honorius AA. Rufino pp.* **pr.** Si quis maior annis[iii] adversus pacta vel transactiones nullo cogentis imperio libero arbitrio et voluntate confecta putaverit esse veniendum vel interpellando iudicem vel supplicando principibus vel non implendo promissa, eas autem invocato dei omnipotentis nomine eo auctore solidaverit, non solum inuratur infamia, verum etiam actione privatus restituta poena, quae pactis probatur inserta, et rerum proprietate careat et emolumento, quod

[iii] annis <xxv>

[37] *The same Augusti and Caesars to Basilissa.* When promises made by virtue of a settlement are not carried out, it has been established that the penalty for violating the agreement, since it was reduced to a stipulation, can be claimed.

Written December 21, at Nicomedia, in the consulship of the Caesars (294).

[38][45] *The same Augusti and Caesars to Theodotianus.* A settlement has no validity at all when nothing has been given, kept back, or promised (by both parties).

Written December 25, at Nicomedia, in the consulship of the Caesars (294).

[39] *The same Augusti and Caesars to Marciana.* Even though a person who made a pact immediately regretted it, the settlement cannot be rescinded and the lawsuit restored. You were misled by whoever persuaded you that a settlement could be avoided within some set time period.

Written and given December 28, at Sirmium, in the consulship of the Caesars (294).[46]

[40][47] *Emperors* GRATIAN, VALENTINIAN *and* THEODOSIUS *Augusti to Eutropius, Praetorian Prefect.* When a pact or a settlement is in writing and it also has legal strength through the binding effect of an Aquilian stipulation and a formal release, either the agreement (of the parties) must be adapted to execution in accordance with its provisions, or, if the adversary also prefers this, a penalty must be paid along with (return of) what was shown to have been given (in reliance) before the case was considered.

Given June 3, at Constantinople, in the consulship of Eucherius and Syagrius (381).

[41][48] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Rufinus, Praetorian Prefect.* **pr.** If a person entered into pacts or settlements when he was over 25 years old and under no duress, through his own free judgment and will, and he (now) thinks of acting against them either by appealing to a judge or by beseeching the Emperors or (simply) by not fulfilling his promises – (when) he

[45] = C. 6.31.3 (end); combine with C. 2.6.4, 6.19.1. A surrender that lacked consideration still could be the promise of a gift, see 25 above; D. 2.15.1; C. 6.31.3.

[46] More likely 293 (Connolly).

[47] = C.Th. 2.9.2, which omits "and a formal release" and "if the adversary also prefers this," along with other variations. The sense is that both parties could agree to abandon the settlement, but only with restitution on both sides to the *status quo ante*; and any penalty under the settlement was then due.

[48] = C.Th. 2.9.3, with a different and somewhat better text.

ex pacto vel transactione illa fuerit consecutus: itaque omnia eorum mox commodo deputabuntur, qui intemerata pacti iura servaverint. **1.** Eos etiam huius legis vel iactura dignos iubemus esse vel munere, qui nomina nostra placitis inserentes salutem principum confirmationem initarum esse iuraverint pactionum.

D. v id. Oct. Constantinopoli Olybrio et Probino conss.

[42] *Impp. Leo et Anthemius AA. Erythrio pp.* Si ex falsis instrumentis transactiones vel pactiones initae fuerint, quamvis iusiurandum his interpositum sit, etiam civiliter falso revelato eas retractari praecipimus: ita demum ut, si de plurimis causis vel capitulis eaedem pactiones initae fuerint, illa tantummodo causa vel pars retractetur, quae ex falso instrumento composita convicta fuerit, aliis capitulis firmis manentibus: nisi forte etiam de eo, quod falsum dicitur, controversia orta decisa sopiatur.

D. k. Iul. Constantinopoli Marciano cons.

[43] *Imp. Anastasius A. Thomae pp. Illyrici.* Iubemus in omnibus litigiis iam motis et pendentibus seu postea super servili vel adscripticia condicione movendis transactiones celebrandas vel iam celebratas, si non alio iuri cognito modo eas vacillare contigerit, vires suas obtinere nec ob hoc videri tenorem earum titubare, quod pro condicione servili vel adscripticia confectae sint.

D. xv k. Dec. Patricio et Hypatio conss.

V De Calculi Errore

[1] *Impp. Diocletianus et Maximianus AA. et CC. Aurelio Quarto.* Errorem calculi, sive ex uno contractu sive ex pluribus emerserit, veritati non adferre praeiudicium saepe constitutum est: unde rationes etiam

confirmed them by invoking the name of God Almighty as a guarantor (*auctor*) – not only let him be branded with infamy (*infamia*), but also let him be stripped of his cause of action, pay any penalty shown to have been inserted in the pact, and lose both ownership of the property and the profit he obtained by the pact or settlement. So all these things are immediately counted as gain to those who preserved inviolate the pact's provisions. **1.** We likewise order that those who use Our name in their agreements and swear that the safety of the Emperors is a guaranty of the pacts entered into, be deemed worthy of the loss or gain, respectively, under this law.[49]

Given October 11, at Constantinople, in the consulship of Olybrius and Probinus (395).

[42][50] *Emperors* LEO *and* ANTHEMIUS *Augusti to Erythrius, Praetorian Prefect.* If settlements or pacts were entered into because of forged documents, even though an oath was added to them, when the forgery is (subsequently) revealed even in a civil proceeding, We order them to be reopened, but with this limitation: if these same pacts were entered concerning numerous causes or subjects, only that cause or part is reopened which is demonstrated to have been agreed upon because of a forged document, and the other subjects remain intact; unless perhaps a controversy that has arisen concerning what is said to be forged is also settled and put to rest (through a pact or settlement).

Given July 1, at Constantinople, in the consulship of Marcianus (472).

[43][51] *Emperor* ANASTASIUS *Augustus to Thomas, Praetorian Prefect of Illyricum.* We order that, in all litigation already commenced and pending or hereafter commenced concerning the status of slaves or enrolled tenants (*adscripticii*), settlements that are undertaken hereafter or already undertaken have a strength of their own unless it happens they fail for some other reason recognized by law; nor does their substance totter because they were made concerning the status of slaves or those bound to the soil.

Given November 17, in the consulship of Patricius and Hypatius (500).

Fifth Title Mistake in Computation

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Aurelius Quartus.* It has often been decided (by imperial legislation) that a mistake in

[49] See also C. 2.27.1 and C. 2.43.3.4. The following constitution modifies this one.
[50] Combine with C. 8.17.11.
[51] Combine with C. 2.7.21 (dated November 20), 7.39.5. This constitution modifies the rule in 13 and 26 above.

saepe computatas denuo retractari posse, si res iudicatae non sunt vel transactio non intervenit, explorati iuris est. sed et si per errorem calculi velut debitam quantitatem, cum esset indebita, promisisti, condictio liberationis tibi competit.

D. VI k. Mart. AA. conss.

[2] ...

VI De Postulando

[1] *Imp. Antoninus A. Artemidoro.* Cum a praefecto Aegypti perpetuo causas agere prohibitus non appellaveris, placitis obtempera.

PP. III k. Aug. Sabino II et Anullino conss.

[2] *Imp. Alexander A. Polydoro.* Nec ceterorum liberti, nedum mei quidem, si[iv] ita sunt litteris eruditi, ut patrocinia desiderantibus praestare possint, prohibentur hoc facere.

PP. non. Mart. Iuliano et Crispino conss.

[3] *Imp. Gordianus A. Flaviano.* Si sub specie honorarii, quod advocato usque ad certum modum deberi potuisset, eam quantitatem, quam desiderio complecteris, te daturum cavisti et, quasi mutuam pecuniam accepisses, eam te redditurum promisisti nec temporis spatio gesto negotio consensum ac fidem accommodasti, competenti exceptione non numeratae pecuniae tutus es et ex hac causa cautionem interpositam usitato more potes condicere.

PP. V id. Iun. Sabino II et Venusto conss.

[iv] [quidem], si <quidem>

computation, whether it arises from one contract or from many, does not prejudice the truth; and so it is a matter of settled law that accounts, even those repeatedly calculated, can be reopened anew if the matters are not (yet) adjudicated or there is no intervening settlement (*transactio*). But also if, through a mistake in computation, you promised a sum as owed when it was not owed, you have a claim for release (*condictio liberationis*).[52]

Given February 24, in the consulship of the Augusti (293).

Sixth Title Pleading in Court[53]

[1] *Emperor* ANTONINUS *Augustus to Artemidorus.* Since you did not appeal after the Prefect of Egypt permanently prohibited you from conducting cases, obey his orders.

Posted July 30, in the consulship of Sabinus, for the second time, and Anullinus (216).

[2] *Emperor* ALEXANDER *Augustus to Polydorus.* Neither the freedmen of other people nor my own, as long, of course, as they are sufficiently well educated that they can extend legal representation to those wanting it, are forbidden from doing so.

Posted March 7, in the consulship of Julian and Crispinus (224).

[3] *Emperor* GORDIAN *Augustus to Flavianus.* As a form of the honorarium that, up to a certain amount, could properly have been payable to an advocate, you provided (by stipulation) to pay the sum that you mention in your petition; and you (further) promised to "repay" this money with the fiction that you had (previously) received a loan. Within the time limit, you did not give your consent and acquiescence on the completed business. You are now protected by an appropriate defense that the money was not paid (*exceptio non numeratae pecuniae*), and for the same reason you can, in the usual manner, claim restitution of the (written) promise (*cautio*) that you gave.[54]

Posted June 9, in the consulship of Sabinus, for the second time, and Venustus (240).

[52] The terminology here is not classical. A second constitution on the subject is lost.

[53] *Postulatio*, a body of rules governing who may make a claim (for self or others) especially in a civil trial. See also D. 3.1.

[54] The petitioner's situation is a bit obscure; however, as Blume notes, "It seems clear that the due bill here [i.e., the *cautio*] was held to be voidable on the ground of services not rendered." A client's pre-trial promise to pay his advocate's honorarium was of doubtful validity (see, e.g., Pliny, *Ep.* 5.9.4), so the parties framed their promise as repayment of a fictitious loan.

[4] *Impp. Diocletianus et Maximianus AA. et CC. Theodotiano.* Velamento absentiae patroni causae rursum ad finitas quaestiones redire quis frustra conatur.

S. IIII k. Ian. Nicomediae CC. conss.

[5] *Imp. Constantinus A. Helladio.* Si qui advocatorum existimationi suae immensa atque illicita compendia praetulisse sub nomine honorariorum ex ipsis negotiis quae tuenda susceperint emolumentum sibi certae partis cum gravi damno litigatoris et depraedatione poscentes fuerint inventi, placuit, ut omnes, qui in huiusmodi scaevitate permanserint, ab hac professione penitus arceantur.

D. III k. April. Paulino et Iuliano conss.

[6] *Impp. Valentinianus et Valens AA. ad Olybrium pu.* **pr.** Quisquis vult esse causidicus, non idem in eodem negotio sit advocatus et iudex, quoniam aliquem inter arbitros et patronos oportet esse delectum. **1.** Ante omnia autem universi advocati ita praebeant patrocinia iurgantibus, ut non ultra, quam litium poscit utilitas, in licentiam conviciandi et maledicendi temeritate*m* prorumpant: agant, quod causa desiderat: temperent ab iniuria. nam si quis adeo procax fuerit, ut non ratione, sed probris putet esse certandum, opinionis suae imminutione quatietur. nec enim conviventia commodanda est, ut quisquam negotio derelicto in adversarii sui contumeliam aut palam pergat aut subdole. **2.** Praeterea nullum cum eo litigatore contractum, quem in propria recepit fide, ineat advocatus, nullam conferat pactionem. **3.** Nemo ex his, quos licebit accipere vel decebit, aspernanter habeat, quod sibi semel officii gratia libero arbitrio obtulerit litigator. **4.** Nemo ex industria protrahat iurgium.

5. Apud urbem autem Romam etiam honoratis, qui hoc putaverint eligendum, eo usque liceat orare, quousque maluerint, videlicet ut non ad turpe compendium stipemque deformem haec adripiatur occasio, sed laudis per eam augmenta quaerantur. nam si lucro pecuniaque capiantur, veluti abiecti atque degeneres inter vilissimos numerabuntur. **6.** Quisquis igitur ex his, quos agere permisimus, vult esse causidicus, eam solam, quam sumit tempore agendi, sibi sciat esse personam, quousque causidicus est, nec putet quisquam honori suo aliquid esse detractum, cum ipse necessitatem elegerit standi et ipse contempserit ius sedendi.

[4][55] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Theodotianus.* In vain does anyone attempt to use the absence of his legal representative (*patronus*) for a case as a basis to return again to (reopen) settled questions.

Given December 29, at Nicomedia, in the consulship of the Caesars (294).

[5][56] *Emperor* CONSTANTINE *Augustus to Helladius.* If any advocates are discovered to have preferred great and unlawful profit over their own good reputation, by demanding for themselves, as honoraria, the gain of a specified share from the very matter they undertook to protect – to the litigant's great loss and despoilment – it is decreed that all who persist in such knavishness shall be wholly banned from this profession.

Given March 30, in the consulship of Paulinus and Julian (325).

[6] *Emperors* VALENTINIAN *and* VALENS *Augusti to Olybrius, Urban Prefect.* **pr.**[57] Anyone who wishes to plead cases shall not act as advocate and judge in the same matter, since there must be some distinction between judge arbitrators and trial lawyers (*patroni*). **1.** Before all, advocates as a group should furnish disputants with legal representation in a manner going no further than is demanded by the needs of their cases, (and) not breaking out into to licentious abuse and thoughtless slander. Let them do what the case requires, but abstain from insults. For if anyone is so shameless as to think that a lawsuit should be contested by reproaches and not by reason, he shall suffer loss of his good name. Nor is indulgence to be extended to anyone who abandons the case in hand and proceeds (instead) to blatant or covert invective against his adversary. **2.** Further, an advocate should make no contract, nor enter any pact, with a person whom he accepts (as a client) in good faith. **3.** Of those for whom it is permitted or proper to accept (an honorarium), none shall treat with disdain whatever a litigant has once freely offered him for his services. **4.** Let no one purposefully protract a dispute.

5. In the city of Rome, those of the official class (*honorati*) who choose to do so are allowed to plead cases as much as they wish, provided they do not seize on this as a pretext for dishonorable gain or a shameful fee, but seek (only) to enhance their reputation thereby. For if they are motivated by thoughts of gain and money, they shall be counted among the lowest, as persons contemptible and unworthy. **6.** But if any of those whom We have permitted to conduct cases wishes to plead one, he should know that this role he has assumed remains his only for as long as he pleads; nor should he consider his honor diminished,

[55] = C. 6.19.1; combine with 2.4.38 and 6.31.3. Mommsen dates to December 25, 294.

[56] = C.Th. 2.10.3. Advocates may not pre-arrange to divide a trial award with their clients (champerty).

[57] Pr. = C.Th. 2.10.5 (posted August 21, probably correct). Combine constitution with C. 7.65.4.

PP. x k. Sept. Valentiniano et Valente AA. II conss.

[7] *Idem AA. et Gratianus A. ad Olybrium pu.* **pr.** Providendum est, ne hi, quos in foro aut meritum nobilissimos fecerit aut vetustas, in una parte consistant, aliam a rudibus atque tironibus necesse sit sustineri. **1.** Atque ideo si in uno auditorio duo tantum prae ceteris fuerint vel plures, quorum fama sit hilarior, in iudicantis officio sit, ut par causidicorum distributio fiat et exaequetur partibus auxilium singulorum et aequa divisio procedat. **2.** Si quis vero monitus a iudice ea excusatione, quae nequeat comprobari, cuicumque parti patrocinium denegaverit, careat foro, sciat etiam numquam sibi ad agendum copiam posse restitui. **3.** Si quis autem ex litigatoribus detectus fuerit separatim tractasse cum pluribus et adversario suo tali fraude subtraxisse paris defensionis copiam, ostendet procul dubio iniquam a se litem foveri et auctoritatem iudicis a se lusam experietur.

D. k. Mart. Treviris Valentiniano et Valente III AA. conss.

[8] *Impp. Leo et Anthemius AA. Nicostrato pp.* Nemo vel in foro magnitudinis tuae vel in provinciali iudicio vel apud quemquam iudicem accedat ad togatorum consortium, nisi sacrosanctis catholicae religionis fuerit imbutus mysteriis. sin autem aliquid quoquo modo vel quadam machinatione factum vel attemptatum fuerit, officium quidem sublimitatis tuae centum librarum auri iacturam pro condemnatione sustineat, idem vero, quicumque ausus fuerit contra providum nostrae serenitatis decretum officium advocationis per subreptionem adripere et prohibitum patrocinium praestiterit, advocationis officio remotus stilum proscriptionis atque perpetui exilii specialiter sustinebit: scituris etiam provinciarum rectoribus, quod is, sub cuius administratione aliquid huiusmodi fuerit attemptatum, partis bonorum dimidiae proscriptionem et poenam exilii per quinquennium sustinebit.

D. prid. k. April. Constantinopoli Anthemio A. II cons.

since he has voluntarily chosen the necessity of rising (as an advocate) and has spurned the right to sit (as an *adsessor* with the judge).[58]

Posted August 23, in the consulship of Valentinian and Valens Augusti, (both) for the second time (368).[59]

[7] *The same Augusti and* GRATIAN *Augustus to Olybrius, Urban Prefect.* **pr.** Care must be taken that those (advocates) whom either merit or age has made famous in court are not all engaged on one side (of a lawsuit), making it necessary that the young and inexperienced defend the other side. **1.** If, therefore, in a single courtroom there are, in comparison with the others, two or more (advocates) whose repute is more unclouded, the presiding judge's duty is to fairly distribute the pleaders so that the aid of the individual advocates is made equal for the parties and a fair division goes forward. **2.** If anyone, after being appointed by a judge, denies representation to any party for a reason he cannot substantiate, he shall be deprived of (his right to appear in) court, and he should also know that the opportunity to conduct a case can never be restored to him. **3.** If any litigant is found to have dealt separately with several (advocates), and by such fraud to have deprived his adversary of the opportunity for an equal defense, he indisputably shows that he furthers an unjust lawsuit; and he shall (therefore) experience the judge's authority, of which he made sport.

Given March 1, at Trier, in the consulship of Valentinian and Valens Augusti, for the third time (370).

[8][60] *Emperors* LEO *and* ANTHEMIUS *Augusti to Nicostratus, Praetorian Prefect.* No one shall be admitted to the Order of Advocates (*togatorum consortium*), either in the court of Your Greatness or in a provincial court or before any judge, unless he has been initiated in the holy mysteries of the Catholic faith. If, however, any such thing is done or attempted by any means or by some contrivance, the staff of Your Sublimity shall suffer the loss of 100 pounds of gold, if found guilty. He, though, who dares to seize the position of Advocate secretly, contrary to the prudent decree of Our Serenity, and provides forbidden patronage, shall be removed from his position as Advocate and suffer the sentence of confiscation and permanent exile. The provincial governors, too, must know that anyone under whose administration anything of this sort is attempted shall have half his property confiscated and be sent into exile for five years.

Given March 31, at Constantinople, in the consulship of Anthemius Augustus, for the second time (468).

[58] Compare C. 3.24.3.2–3. Blume: "Counselors of the judges, called assessors, sat with the regular judges. C. 1.51. And the referees appointed by the regular judges were frequently taken from among the advocates ... If they acted in either of these capacities, they could not at the same time act as counselor."

[59] Seeck dates to August 21, 370.

[60] = C. 1.4.15.

VII De Advocatis Diversorum Iudiciorum

[1] *Imp. Antoninus A. Doloni.* Si patronum causae praevaricatum putas et impleveris accusationem, non deerit adversus eum pro temeritate commissi sententia, atque ita de principali causa denuo quaeretur. quod si non docueris praevaricatum, et calumnia notaberis et rebus iudicatis, a quibus non est provocatum, stabitur.

PP. III k. Oct. Antonino A. IIII et Balbino conss.

[2] *Imppp. Valens Gratianus et Valentinianus AAA. ad Antonium pp.* Qui necessario patriae suae debent municipio functiones, eos decurionibus adgregatos nolumus evagari, permittentes tamen, ut in negotiis causidicorum fungantur officiis et in civitatibus propriis subeant munia curiarum, ita tamen, ut non contra rem publicam civitatis, in qua honorem hunc consecuti sunt, eis adesse permittatur.

D. XV k. Sept. Ravennae Valente VI et Valentiniano II AA. conss.

[3] *Impp. Arcadius et Honorius AA. ad Africanum pu.* Ne quis ex corpore togatorum, minime curialibus nexibus illigatus, provinciales suscipiat functiones, scilicet ut et ambientibus claudatur ingressus et invitis necessitas auferatur.

D. III non. Aug. Constantinopoli Arcadio IIII et Honorio III AA. conss.

[4] *Impp. Honorius et Theodosius AA. Eustathio pp.* Fori tui culminis et universorum iudiciorum advocati quidquid ex huiuscemodi professione vel ipsius occasione quaesierint vel quaesierunt, id post patris obitum praecipuum veluti peculium castrense ad exemplum militum proprio dominio valeant vindicare.

Seventh Title The Advocates of the Various Courts[61]

[1] *Emperor* ANTONINUS *Augustus to Dolon.* If you think that the advocate for your case has colluded (with the other side), and you prove the accusation, there will not be lacking a judgment against him in proportion to the rashness of his offense, and so the principal case will be heard anew. But if you do not show such collusion, you will be branded for vexatious litigation (*calumnia*), and the (principal) issue, unless appealed, will stand as adjudicated.

Posted September 29, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[2] *Emperors* VALENS, GRATIAN, *and* VALENTINIAN *Augusti to Antonius, Praetorian Prefect (of Italy).* As to those who necessarily owe public service to their home municipality, We do not want the ones included among the decurions to leave (their position). We permit them, however, to perform the duties of an advocate in legal matters while (simultaneously) undertaking the duties of decurions in their own cities, but with the proviso that they are not allowed to appear against the government of the city in which they obtained this honor.

Given August 18, at Ravenna, in the consulship of Valens, for the sixth time, and Valentinian, for the second time, Augusti (378).

[3][62] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Africanus, Urban Prefect.* No one belonging to the Order of Advocates (*corpus togatorum*), least of all one bound by curial obligations, shall undertake provincial services, obviously in order that both the politically corrupt lack entrée and the unwilling not face compulsion.

Given August 3, at Constantinople, in the consulship of Arcadius, for the fourth time, and Honorius, for the third time, Augusti (396).

[4][63] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Eustathius, Praetorian Prefect.* Whatever (recompense) the advocates at the court of Your Highness, and of courts generally, have acquired or may acquire on the basis of their profession or in connection with it, this they shall be able to claim personal ownership of, particularly after their father's death, as a camp *peculium* (*peculium castrense*) modeled on that of soldiers.

[61] This title deals chiefly with the upper tier of trial lawyers, the Order of Advocates, a guild-like group (somewhat like barristers) formally attached to the main courts in several large Eastern cities; they became highly organized in the later Empire.

[62] = C.Th. 12.1.152, which omits "least of all one bound by curial obligations" – a phrase in any case awkward and difficult to translate.

[63] = C.Th. 2.10.6 (with a fuller text); combine with C. 1.51.7.

D. x k. April. Constantinopoli Honorio XIII et Theodosio x AA. conss.

[5] *Impp. Theodosius et Valentinianus AA. Cyro pu.* Quidquid animi largitate et munificentia praestitimus principali togatis per Orientem eminentissimae praefecturae reverentia studiorum, id sibi praesenti sanctione praestitum esse cognoscant patroni causarum illustris urbicariae praefecturae.

D. VII k. Ian. Constantinopoli Theodosio XII et Valentiniano II AA. conss.

[6] *Idem AA. ad Florentium pp.* Sancimus, ut advocatis, qui apud tuam magnificentiam causas acturi sunt, a nullo iudice, nec ab ipsa eminentissima praefectura, sollicitudo ulla penitus iniungatur: sed nec advocatis provinciarum vel spectabilium iudicum quisquis existimet aliquid iniungendum. nulla igitur togatis inspectio, nulla ingeratur peraequatio, nulla operis instructio, nulla discussio, nullum ratiocinium imponatur, nullum denique aliud eis mandetur praeter arbitrium in eodem dumtaxat loco ubi advocationis exercetur officium: quinquaginta librarum auri poena officio feriendo, quod legis istius regulas temerare temptaverit.

D. XIII k. Mai. Constantinopoli Theodosio A. XVII et Festo conss.

[7] *Idem AA. Thalassio pp. per Illyricum.* Isdem privilegiis isdemque immunitatibus potiri togam illustrissimae per Illyricum praefecturae, quibus fruitur toga per Orientem praetorianae sedis excelsae, decernimus.

D. VII id. Sept. Constantinopoli Theodosio A. XVII et Festo conss.

[8] *Idem AA. Cyro pp. consuli designato.* Cum advocatio praetoriana centum quinquaginta numero togatis minime vel imminuendo vel augendo concludatur, iubemus eos, qui ex his ad fisci patronatum pervenerint, a cohortis vel alterius vilioris condicionis nexibus cum liberis quandocumque genitis liberos custodiri postque tale officium depositum annumque completum advocatorum consortio abscedere cum comitiva consistoriana: omneque, quod togatis fori celsitudinis tuae

Given March 23, at Constantinople, in the consulship of Honorius, for the thirteenth time, and Theodosius, for the tenth time, Augusti (422).

[5] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Cyrus, Urban Prefect.* The trial advocates of the illustrious Urban Prefecture shall know (hereby) that whatever We, through esteem for their learning, have with liberality and princely munificence granted to the advocates of the Most Eminent Prefecture of the East, this by present ordinance is granted also to them.

Given December 26, at Constantinople, in the consulship of Theodosius, for the twelfth time, and Valentinian, for the second time, Augusti (426).

[6][64] *The same Augusti to Florentius, Praetorian Prefect.* Upon the advocates who will conduct cases before Your Magnificence, We ordain that no vexation whatsoever be imposed by any judge, nor (even) by the eminent Prefecture itself; nor shall anyone consider imposing anything on the advocates in (the courts of) the provinces or of the *spectabiles* judges. On advocates (*togati*) no duty may be imposed to inspect (property for taxation) or to equalize (taxes); there shall be required from them no construction of a public work, no audit of records (*discussio*), no rendering of accounts. In a word, nothing else shall be demanded of them except acting as a judge arbitrator (*arbitrium*), and this only in the same place where they exercise their office as advocates. Any official staff attempting to violate this law's rules shall be punished by a fine of 50 pounds of gold.

Given April 19, at Constantinople, in the consulship of Theodosius Augustus, for the seventeenth time, and Festus (439).

[7] *The same Augusti to Thalassius, Praetorian Prefect of Illyricum.* We decree that the advocate rank (*toga*) of the illustrious Prefecture of Illyricum shall obtain the same privileges and immunities as are enjoyed by the advocate rank of the exalted Praetorian seat (the Prefecture) of the East.

Given September 7, at Constantinople, in the consulship of Theodosius Augustus, for the seventeenth time, and Festus (439).

[8] *The same Augusti to Cyrus, Praetorian Prefect and Consul Designate.* Since the Order of Advocates of the Praetorian Prefecture is limited to 150, a number that is to be neither increased nor diminished, We order that that those of them who reach (the rank of) Advocate for the Treasury (*fisci patronatus*), together with their children whenever born, be protected from serving on the staff (of magistrates; *cohors*) or in any other low public position; and after relinquishment of the office and completion of a year, they shall leave the Order of

[64] = Nov. Theod. 10.1.4. The services mentioned below are uncompensated public duties.

quolibet casu quolibet adquiritur titulo, ut castrense sibimet vindicare nec patribus vel avis paternis earum rerum commodum adquirere legis istius auctoritate decernimus: his omnibus etiam ad urbicariae praefecturae advocationem trahendis.

D. III k. Ian. Valentiniano A. V et Anatolio conss.

[9] *Idem AA. Apollonio pp.* Si quis de togatis fori celsitudinis tuae vel Illyricianae seu urbicariae praefecturae sive de his, qui in provincialibus iudiciis causarum patrocinium profitentur, electione tuae sedis regendae provinciae munus potestatemque susceperit, post peractam integre ac sine ulla opinionis labe administrationem ad illud officium, unde abstractus est et unde sibi vitae subsidia comparabat, remeandi habeat facultatem nec causas orare denuo quadam prohibeatur invidia.

D. XII k. Sept. Constantinopoli Eudoxio et Dioscoro conss.

[10] *Impp. Valentinianus et Marcianus AA. Palladio pp.* Binos, qui priores fori tuae sedis inveniuntur, ad patronatum fisci singulis quibusque annis accedere paribus dignitatis et privilegiorum insignibus ambiendos praecipimus, quibus antehac utebatur is, qui solus creabatur fisci patronus.

D. XIIII k. Iul. Constantinopoli Sporacio cons.

[11] *Imp. Leo A. Viviano pp.* **pr.** Nemini licere sancimus aliquem sub adsidendi colore statutis centum quinquaginta advocatis, quos sibi eminentissima praefectura in consilium adsumpserit, adgregare. **1.** Non aliter vero consortio advocatorum tuae sedis aliquis societur, nisi prius in examine viri clarissimi rectoris provinciae, ex qua oriundus est, praesentibus cohortalibus gesta conficiat, quibus aperte pateat cohortali statui ac fortunae eundem minime subiacere, si praesens vir clarissimus rector provinciae fuerit in eius examine: si vero afuerit, apud defensorem

Advocates (*consortium advocatorum*) with the title of Count of the Imperial Council (*comitiva consistoriana*).[65] And We decree that by the authority of this statute all property which is acquired in any manner and on any legal basis by the advocates of the court of Your Highness, they (the advocates) claim ownership of for themselves as a camp (*peculium*), and do not acquire this property for the benefit of their fathers or paternal grandfathers. All these provisions shall extend also to the bar (*advocatio*) of the Urban Prefecture.

Given December 30, in the consulship of Valentinian Augustus, for the fifth time, and Anatolius (440).

[9] *The same Augusti to Apollonius, Praetorian Prefect.* If any of the advocates at the court of Your Highness or of the Illyrican or Urban Prefecture, or of those who take up representing cases in provincial courts, was selected by your office and undertook the duty and power of governing a province, he shall, after finishing his administration honestly and without any spot upon his reputation, have the opportunity to return to that position from which he was taken and from which he made his living, nor shall he, through any resentment, be prevented from once again pleading cases.

Given August 21, at Constantinople, in the consulship of Eudoxius and Dioscorus (442).

[10] *Emperors VALENTINIAN and MARCIAN Augusti to Palladius, Praetorian Prefect.* We direct that each year the two (advocates) found to be preeminent in the court of your office shall rise to become Advocates of the Treasury (*patronatus fisci*), each to be invested with equal insignia of the rank and privileges enjoyed by the advocate who previously was alone selected Treasury Advocate.

Given June 18, at Constantinople, in the consulship of Sporacius (452).

[11] *Emperor LEO Augustus to Vivianus, Praetorian Prefect.* **pr.** We ordain that no one be permitted to include anyone, on pretext of his being an *adsessor*, among the statutory number of 150 Advocates whom Your Eminent Prefecture chooses for its council. **1.** Indeed, no one shall be admitted to the Order of Advocates of your office otherwise than if, in an examination by the *vir clarissimus* governor of the province of his birth, and in the presence of his subordinate officials (*cohortales*), he creates an official record making it clear that he (the candidate) is not in any way subject to the status and condition of a subordinate official; (this applies) if the *vir clarissimus* governor of the province is present at his examination, but if he is absent, he shall create the record before

[65] See C. 12.10. Scholiasts on Bas. add that they were "made Senators" (*senatores factos*), correctly.

sui oppidi gesta conficiat. **2.** Iuris peritos etiam doctores eorum iubemus iuratos sub gestorum testificatione depromere, esse eum, qui posthac subrogari voluerit, peritia iuris instructum: filios autem togatorum excellentiae tuae, qui vel nunc causas agunt vel futuris temporibus actitaverint, ceteris supernumerariis anteferri. **3.** Illud insuper decernimus, ut etiam his, qui ultra centum quinquaginta advocatos eminentissimae tuae sedis reperiuntur, liceat et apud virum spectabilem proconsulem vel praefectum Augustalem vel comitem Orientis, viros etiam spectabiles vicarios et apud rectores provinciarum negotia perorare.

D. k. Febr. Constantinopoli Magno et Apollonio conss.

[12] *Idem A. Eusebio pp. Illyrici.* Sancimus patronum fisci iudicio celsitudinis tuae iam non quotannis, sed biennio pro vetere consuetudine finem officii sui sortiri: salvis eidem consortio privilegiis omnibus, quae a retro principibus meruit, manentibus.

D. x k. Mart. Constantinopoli Basilio et Viviano conss.

[13] *Impp. Leo et Anthemius AA. Alexandro duci Aegyptiaci limitis et praef. Augustali.* **pr.** Petitionem virorum disertissimorum advocatorum Alexandrinae splendidissimae civitatis, quam de fori sui matricula et fisci patrono obtulerunt, merito admittentes hac sanctione decernimus quinquaginta statutos haberi eorumque nomina pro tempore matriculae conficiendae inscribi et eos advocationis officium in iudicio tam viri spectabilis praefecti Augustalis quam viri spectabilis ducis Aegyptiaci limitis petentibus adhibere, ceteros vero ultra memoratum numerum constitutos apud alios iudices eiusdem Alexandrinae civitatis perorare, filiis scilicet statutorum in loco deficientium supernumerariis anteponendis: egredientem autem post biennium fisci patronum contemplatione laborum exconsulari moderatoris provinciae dignitate decorari: licentia facultateque ei non deneganda, cum usus exegerit, tam pro se quam pro filiis parentibus et uxoribus nec non etiam personis ex transverso latere usque ad quartum gradum constitutis patrocinium suum adhibere. **1.** Quando autem fisci patronum mori contigerit, gradu eum sequentem sine ulla dilatione in loco eius subrogari, heredibus defuncti nihil exinde sibi commodi adquiri posse speraturis: cunctis privilegiis,

the Defender of his city. **2.** Likewise we order his teachers, as legal experts, to certify under oath, below the record's declaration, that the person who wishes thereafter to be chosen (as an Advocate) has been trained in legal expertise. But the sons of Your Excellency's Advocates, both those who now or shall in the future conduct cases, shall be preferred over other supernumeraries. **3.** We further direct that the Advocates of your eminent office, above the number of 150, shall also be permitted to plead cases before the *vir spectabilis* Proconsul or the Augustal Prefect (in Egypt) or the Count of the East, and also the *viri spectabiles* (imperial) Vicars, and to plead legal business before provincial governors.

Given February 1, at Constantinople, in the consulship of Magnus and Apollonius (460).

[12] *The same Augustus to Eusebius, Praetorian Prefect of Illyricum.* We ordain that a Treasury Advocate in the court of Your Highness shall now no longer leave office at the end of a year, but (rather) after two years, in accord with long-standing custom. All the privileges of the same Order (of Advocates), which he earned from prior emperors, shall (otherwise) remain intact.

Given February 20, at Constantinople, in the consulship of Basilius and Vivianus (463).

[13] *Emperors Leo and Anthemius Augusti to Alexander, Duke of the Egyptian Frontier and Augustal Prefect.* **pr.** Deservedly granting the petition from the learned Advocates of the splendid city of Alexandria concerning their court's register (*matricula*) and the Treasury Advocate (*fisci patronus*), by this ordinance We decree that their number be fixed at fifty, and that their names be inscribed in a periodically updated register, and that to those who seek it they provide advocacy in the court both of the *vir spectabilis* Augustal Prefect (in Egypt) and of the *vir spectabilis* Duke of the Egyptian Frontier. But the others, appointed beyond this number, shall plead before the other judges of this same city of Alexandria, with the sons of the regular (Advocates) having preference over supernumeraries in replacing vacancies (among the fifty). The Treasury Advocate, on retiring from office after two years, shall be rewarded, in consideration for his services, with the rank of ex-consular provincial governor; nor shall he lose the freedom and ability, when occasion demands, to provide legal representation not just for himself, but for his children, parents, wives, and collateral relatives up to the fourth degree. **1.** But when a Treasury Advocate happens to die (in office), the next in rank shall without delay be substituted in his place, and the deceased's heirs should have no expectation of

quae hactenus habuisse noscuntur, nec non his, quae suggestio tuae magnitudinis continet, etiam in posterum intactis inviolatisque servandis, quatenus huiusmodi delato eis liberalitate nostrae serenitatis honore possint in otio et tranquillitate reliquum tempus vitae suae peragere, nulla eis invitis sollicitudine ingerenda.

D. XIII k. Sept. Anthemio cons.

[14] *Idem AA. Callicrati pp. Illyrici.* Advocati, qui dirimunt ambigua fata causarum suaeque defensionis viribus in rebus saepe publicis ac privatis lapsa erigunt, fatigata reparant, non minus provident humano generi, quam si proeliis atque vulneribus patriam parentesque salvarent. nec enim solos nostro imperio militare credimus illos, qui gladiis clupeis et thoracibus nituntur, sed etiam advocatos: militant namque causarum patroni, qui gloriosae vocis confisi munimine laborantium spem vitam et posteros defendunt.

D. V k. April. Constantinopoli Zenone et Marciano conss.

[15] *Imp. Leo A. Dioscoro pp.* **pr.** Post duos fisci patronos, qui ex anterioribus constitutionibus isdem beneficiis muniuntur, sexaginta quattuor togatos, qui in praesenti sunt, a primo usque ad sexagesimum quartum imperialibus beneficiis perfrui censemus, quibus fisci patroni liberique eorum honorati sunt. **1.** His quoque illud adiciendum esse statuimus, ut, si quis patronatus fisci adeptus gradum fatalem diem obierit, universa totius anni solacia, ex quo hoc idem officium peragere coeperit, ad heredes seu successores suos, sive liberi sive extranei fuerint, transmittendi tam ex testamento quam ab intestato liberam habeat facultatem.

D. XVII k. Iun. Constantinopoli Marciano cons.

[16] *Impp. Leo iunior et Zeno AA. Iustiniano pu.* Ad similitudinem sexaginta quattuor advocatorum fori amplissimae praetorianae praefecturae quindecim tantum ex foro tuae magnitudinis, qui in praesenti

deriving any benefit therefrom (in the replacement process). All the privileges which they (the Treasury Advocates) are known to have had previously, as well as those mentioned in the report of Your Greatness, shall be preserved intact and inviolate thereafter, such that when such an honor (as being a Treasury Advocate) has been conferred on them by the generosity of Our Serenity, they can pass the rest of their days in leisure and peace, without any anxiety (of a public duty) being imposed on them against their wish.[66]

Given August 20, in the consulship of Anthemius (468).

[14] *The same Augusti to Callicrates, Praetorian Prefect of Illyricum.* Advocates untangle the doubtful outcomes of cases and, by the strength of their arguments in matters private and often public (as well), raise up the fallen (causes) and restore the weakened ones; they serve humanity no less than if they saved their country and kin by battles and wounds. We consider Our empire to be defended not only by those who depend upon their swords and shields and cuirasses, but by advocates as well. For trial lawyers also fight, and, relying upon the strength of their illustrious eloquence, they defend the hopes, the life, and the posterity of those in distress.

Given March 28, at Constantinople, in the consulship of Zeno and Marcian (469).

[15] *Emperor* Leo *Augustus to Dioscorus, Praetorian Prefect.* **pr.** We hold that the sixty-four lawyers currently next in rank below the two Treasury Advocates – who, according to earlier constitutions,[67] are endowed with equal rights – shall, from the first to the sixty-fourth, enjoy the (same) imperial benefits as those that honor the Treasury Advocates and their children. **1.** We have decided that this (benefit) as well should be added for them, that anyone who reaches the rank of Treasury Advocate and dies (in office), shall have the unrestricted right to transmit to his heirs or successors, whether they be offspring or external heirs, and both by will as well as upon intestacy, the whole compensation of the entire year in which he began to fill this office.

Given May 16,[68] at Constantinople, in the consulship of Marcianus (472).

[16] *Emperors* Leo II *and* Zeno *Augusti to Justinian, Urban Prefect.* Like the sixty-four Advocates of the court of the splendid Praetorian Prefecture, fifteen advocates only from the court of Your Greatness, those who at present are first in rank after the Treasury Advocate, shall, through the favor of Our Clemency,

[66] Blume: "It is apparent from this [ordinance] that the membership of the guild of advocates ordinarily advanced from the lowest to the highest rank therein in regular order, doubtless according to the time of entrance in the guild ... It would seem from this and other laws in this title, that when an advocate had filled the position of advocate of the imperial exchequer, he ceased to have the right to practice law, except for certain relatives and close connections."

[67] See C. 2.7.10.

[68] More likely December 16 (Seeck).

gradus primos obtinent, post fisci videlicet patronum, isdem privilegiis nostrae mansuetudinis beneficio perfruantur, quibus fisci patroni liberique eorum muniuntur.

D. XVII *k. April. Constantinopoli Leone iuniore A. cons.*

[17] *Idem AA. Paulo pp. per Illyricum.* **pr.** Iubemus advocationem fori tui culminis in centum quinquaginta, sicut antea constitutum fuerat, advocatos concludi eundemque numerum, quotiens vel professionis fine vel morte vel quocumque casu fuerit imminutus, electione magnificae tuae sedis impleri, ita ut in praesenti quidem et hinc usque ad biennium ad plenitudinem supra definiti numeri subrogandi sine ulla cohortalis aut cuiuslibet deterioris condicionis quaestione succedant: salva videlicet adversus eos apparitionibus si qua competit actione, quam certum est, postquam fisci patronatus officio impleto exierint, evanescere: post lapsum vero biennium foro tuae magnificae potestatis inseri postulantes non aliter, nisi sub gestorum confectione minime eos cohortali condicioni subiacere patefactum fuerit, admittantur. **1.** Cuncta sane privilegia, quae magnificae per Orientem praefecturae advocatis ex divinis retro principum seu inclitae recordationis Leonis vel nostris sanctionibus indulta sunt, tuae quoque gloriosissimae sedis causidicis absque ulla discretione competere per hanc in aeternum valituram legem sancimus.

[18] Οὐδεὶς ἐπιτιμᾷ τοῖς ἐν τάξει οὖσι δικολόγοις, εἰ μὴ μόνον ὁ τῶν πραιτωρίων ἔπαρχος.

[19] Μήτε παρά τινι τῶν ἀρχόντων μήτε παρὰ διαιτηταῖς δύο συνήγοροι διδαχθέντες ἀναβαλλέσθωσαν τὴν τοῦ πράγματος κρίσιν προφάσει τρίτου δικολόγου, ἀλλ' ἀνυπερθέτως τὴν δίκην δικολογείτωσαν οἱ δύο παρόντες.

D. VI *k. Ian. Constantinopoli Longino cons.*

enjoy the same privileges as are provided to the Treasury Advocates and their children,

Given March 16, at Constantinople, in the consulship of the Emperor Leo II Augustus (474).

[17] *The same Augusti to Paulus, Praetorian Prefect of Illyricum.* **pr.** We order that the bar (*advocatio*) of the court of Your Highness shall consist of 150 advocates, as was settled previously.[69] Whenever this number is reduced through the ending of a career or by death or by any other cause, it shall be filled out by the selection of your magnificent office, as follows. Now and for the next two years, successors shall be appointed to keep this number filled, without inquiring as to whether they are subordinate officials (*cohortales*) or of some lower status; however, their (former) offices (*apparationes*) obviously retain a cause of action against them, if any exists, (a right) which, it is clear, terminates after they fill the post of Treasury Advocate and retire. But after the passage of two years (from now), those requesting to be placed (as Advocates) in the court of Your Magnificent Power shall not otherwise be admitted unless it is made clear from the public record that they in no way have the status of subordinate officials. **1.** We ordain that the range of privileges granted to Advocates of the magnificent Prefecture of the East through the holy ordinances of former emperors and especially of Leo of blessed memory, or through our own ordinances, shall, pursuant to this eternally valid law, apply also to the pleaders at your glorious seat without distinction.

(474).

[18][70] No one except for the Praetorian Prefect shall impose a fine on the advocates belonging to the Order (of Advocates in his court?).

[19][71] Neither before any of the governors nor before judge arbitrators shall two advocates who are arrayed (on one side of a case) delay decision of the case on the excuse of a third advocate (being absent); rather, the two who are present shall plead the case without a continuance.

Given December 27, at Constantinople, in the consulship of Longinus (486).

[69] See C. 2.7.10; the present constitution also refers to 12, 13, and 8. Seeck assigns it to March 16, 474.

[70] The original texts of this and the following constitutions are lost; the translation is of paraphrases in the Basilika and its scholia (8.1.29–30). Compare 8 and 11 pr. above. Lounghis *et al.* date this constitution between 474 and 486.

[71] Possibly to be combined with the previous constitution and C. 1.51.13, 2.12.27, 3.3.6, 3.10.1, and 7.51.5; C. 1.51.13 and 7.51.5 have different dates, however.

[20] *Imp. Anastasius A. Eusebio magistro officiorum.* **pr.** Suggestionem viri illustris comitis privatarum et proconsulis Asiae duximus admittendam, per quam nostrae serenitatis auribus intimavit fori sui advocatos communi petitione magnopere postulasse, ut, postquam advocationis deposuerint officium, dignitate quadam nostra liberalitate potiantur. **1.** Iubemus itaque post depositum, ut dictum est, praefatum officium unumquemque eorum, qui in praesenti sunt vel postea matriculis eorum pro tempore fuerint inserti, clarissimi primi ordinis comitis perfrui dignitate, quatenus et tempore quietis fructum praeteritorum laborum consequantur proque fide atque industria erga clientes suos comprobata privatae condicionis hominum multitudine segregati clarissimis merito connumerentur.

D. II k. Ian. Constantinopoli Anastasio A. II cons.

[21] *Idem A. Thomae pp. per Illyricum.* Advocatos amplissimae tuae sedis, qui pro tempore ad fisci patroni gradum et officium provehuntur, una cum liberis iam natis vel postea procreandis ab omni cohortalis seu cuiuslibet deterioris condicionis vinculo immunes ac liberos cum patrimonio suo conservari praecipimus, cum constet hoc iam pridem tam advocatis amplissimae praetorianae per Orientem quam magnificae urbicariae praefecturae sacris constitutionibus esse indultum, et non dubium sit non tantum eas, sed etiam sublimissimae tuae sedis germanas esse potestates.

D. XII k. Dec. Patricio et Hypatio conss.

[22] *Idem A. Constantino pp.* **pr.** Iubemus pro tempore primatem advocatorum fori viri illustris comitis Orientis per biennium fisci patroni fungi officio et solacia sibi communi consensu deputata per idem biennium consequi, hoc quoque transacto professionem advocationis deponere: consortio videlicet eorundem advocatorum ad quadraginta tantummodo viros redigendo, ita ut, si qui superflui sunt iam eidem consortio sociati, de advocationis officio minime reiciantur, nemine alio eis adiciendo, donec quadraginta virorum numerum advocatorum consortium excedere contingat.

1. Ad haec eos, qui, prout statutum est, fisci patroni deposuerint officium, postea quoque non prohiberi singulos tam pro se quam pro

[20] *Emperor Anastasius Augustus to Eusebius, Master of Offices.* **pr.** We hold that We should comply with the report of the *vir illustris* Count of the Privy Purse and the Proconsul of Asia, through which he has communicated to the ears of Our Serenity the earnest request of the Advocates of his court, by general petition, that through Our generosity they acquire some title after retiring from the position of Advocate. **1.** We therefore order that after their retirement, as has been said, from the aforementioned position, each one of them who currently are or will in the future be enrolled from time to time in their register, shall enjoy the rank of *clarissimus* Count of the first class, so that they may both reap in retirement the fruit of their past labors and, in return for their proven fidelity and hard work for their clients, may be distinguished from the crowd of men of private station and justly numbered among the *clarissimi.*

Given December 31, at Constantinople, in the consulship of Anastasius Augustus, for the second time (497).

[21][72] *The same Augustus to Thomas, Praetorian Prefect of Illyricum.* We direct that the Advocates of your high office who from time to time are promoted to the rank and office of Treasury Advocate, together with their children already born or conceived hereafter, shall be kept immune and free, along with their property, from any bond (linking them to the rank) of a subordinate official (*cohortalis*) or anyone of lesser status. For it is clear that this (privilege) had long since been granted by imperial constitutions to the advocates of the glorious Prefecture of the Orient as well as those of the magnificent Urban Prefecture,[73] and there is no doubt that not only their powers but (also) those of your high seat derive from the same source (*germanas*).

Given November 20, in the consulship of Patricius and Hypatius (500).

[22] *The same Augustus to Constantinus, Praetorian Prefect.* **pr.** We order that the current leader (*primas*) of the Advocates of the court of the *vir illustris* Count of the East shall fill the office of Treasury Advocate for two years, and shall receive for (those) two years the salary assigned to it by general assent, and, after this term is finished, retire from his profession of advocacy. However, the Order (*consortium*) of these same Advocates shall be reduced to just forty men, as follows: if there are now associates of this Order in excess (of that number), they are not at all to be ejected from the function of advocacy; but no one shall be added to them as long as the number of Advocates happens to exceed forty.

1. In addition, those who, as has been ordained, retire from the office of Treasury Advocate, are not forbidden afterwards each to act as an advocate not

[72] Combine with C. 2.4.43 (dated November 17), 7.39.5.

[73] See laws 8 and 17.1 above.

iugali sua et socero et socru nec non genero et nuru liberisque propriis, colonis et servis ad se pertinentibus advocationis fungi officio. **2.** Nec aediculas eorum metatorum onere molestari, si tamen in una tantummodo suaque domo singuli talem praerogativam sibi vindicare maluerint. **3.** Pro sportulis praeterea modum, quem notitia nobis porrecta declarat, tam pro his quam pro colonis et servis eorum custodiri, neminique praeberi licentiam eundem modum circa sportularum exactionem contra eos excedendi.

4. Nec de cetero quemquam, antequam per statuta tempora legum eruditioni noscatur inhaesisse, supra dicto consortio sociari. **5.** Et filios advocatorum vel adhuc in tali constitutorum officio vel eorum, qui fisci patronatum deposuerunt, superstitum vel mortuorum, extraneis ad idem officium accedentibus anteponi eique gratis et sine sumptibus sociari, si et ipsi, prout dispositum est, solito tempore legum doctrinam meruerint.

6. Ut autem his, qui fisci patroni officium adepti sunt vel fuerint, non tantum superstitibus, sed etiam morte praeventis prospiciatur, tam ad heredes fisci patroni, qui semel ad talem gradum vocatus sit, solacia eius transire hisque servari, quam ipsos, qui fisci patronatum iam deposuerunt vel postea deposuerint, minime cuiuslibet actus publici sollicitudinem nolentes subire compelli nec exhibitionis seu deductionis onere nisi speciali auctoritate nostra molestari et in provincia incusandos per sententiam viri spectabilis comitis Orientis utpote competentis iudicis conveniri atque litigare decernimus.

D. k. Iul. Constantinopoli Sabiniano et Theodoro conss.

[23] *Idem A. Eustathio pp.* **pr.** Laudabile vitaeque hominum necessarium advocationis officium maxime principalibus praemiis oportet remunerari. **1.** Ideoque iubemus viros clarissimos fisci pro tempore patronos fori tuae celsitudinis sollemni die festivitatis kalendarum Ianuariarum ipsius tantummodo anni, per quem tale peragunt officium, inter spectabiles sacri nostri consistorii comites divina nostrae serenitatis manu puncti consequi solacium. **2.** Et postquam tale deposuerint officium, si quidem filios ingenuos habeant, eos clarissimorum notariorum inseri consortio tribunorum, sacras solitas epistulas sine quadam suffragii solutione percepturos.

only for himself but for his wife, father- and mother-in-law, son- and daughter-in-law, and their children, and the bound tenants (*coloni*) and slaves belonging to him. **2.** Their homes shall not be burdened with quartering soldiers (*metata*), provided they each wish to claim this privilege for only one house of their own. **3.** Further, as to judicial fees (*sportulae*), the amount mentioned in the schedule that was presented to Us shall be observed in their case as well as in that of their bound tenants and slaves, and no one shall be given permission to exceed that quantity in exacting fees from them.[74]

4. Nor in the future shall anyone become a member of the above-mentioned Order before he is known to have applied himself to the study of law for the prescribed time. **5.** The sons of Advocates – both of those still in this office and those who have retired as Treasury Advocates, whether surviving or dead – shall have preference over outsiders seeking entrance to this same office, and they shall become members free and without expense, provided that they too, as has been directed, gain instruction in the law in the customary time.

6. In order to provide for those who have attained or will attain the office of Treasury Advocate – not only the living, but also those cut off by death – We direct that not only shall the (unpaid) salary of a Treasury Advocate, once he has been called to that position, go to and be preserved for his heirs, but also that those who have already retired or who will retire from the office of Treasury Advocate shall in no way be compelled unwillingly to undertake the vexation of any public duty, nor, except by Our special authorization, be troubled with the burden of appearing in or being summoned before (any other court), but must be accused in (their own) province, and be sued and litigate, according to the verdict of the *vir spectabilis* Count of the East as the (only) appropriate judge.

Given July 1, at Constantinople, in the consulship of Sabinianus and Theodorus (505).

[23] *The same Augustus to Eustathius, Praetorian Prefect.* **pr.** The office of Advocate is a praiseworthy one, necessary to human life, and it should be highly recompensed with imperial rewards. **1.** We therefore order that the *viri clarissimi* acting Treasury Advocates at the court of Your Highness shall receive, on the solemn New Year's Day celebration only in that year when they perform this office, and in the presence of the *spectabiles* Counts of Our Imperial Council, gifts[75] from the blessed hand of Our Serenity. **2.** And after they lay down this office, their free-born sons, if they have any, shall be enrolled in the Order of Tribunes of the *clarissimi* Notaries, and shall receive the customary imperial letters patent without paying a recommendation fee (*suffragium*).

[74] On quartering, see C. 12.40; on *sportulae*, C. 3.2.

[75] *Puncti solacia*. The meaning is uncertain and the reading has been questioned.

3. Et si quis per sententiam sublimitatis tuae monitus super agnito debito vel agnita causa, quae ingeritur ei, confessionem exponere paratus sit, eam non arbitro delegato, sed tunc temporis fisci patronis vel alterutri eorum, si alter adesse non possit, pro more tamen solito sub actorum testificatione intimari. 4. Quotiensque de nuptiis quis sine dotalibus instrumentis mutuo contrahendi matrimonium animo celebratis super adfectu suo, liberis ex huiusmodi coniugio iam extantibus vel necdum procreatis, legitimis adlegationibus uti maluerit, eas apud eosdem pro tempore fisci patronos vel alterutrum, ut dictum est, eorum gestis intervenientibus commendari, ita videlicet, ut iuri cognitae adlegationes absentibus personis, si quae competunt, serventur intactae. 5. His insuper, quicumque apud viros gloriosos pro tempore consules mancipia sua libertate donare voluerint, antelatos fisci patronos ad easdem libertates peragendas propriam advocationis vocem accommodare: **6.** Aliis nihilo minus privilegiis, quae iam pridem memoratis vel fisci patronis vel adhuc advocationis pro tempore peragentibus officium togatis diversis modis indulta sunt, ex hac etiam sanctione nostra in sua stabilitate duraturis.

D. XII k. Dec. Constantinopoli Areobindo et Messala conss.

[24] *Idem A. Sergio pp.* **pr.** Petitiones virorum disertissimorum fori praesidalis secundae Syriae provinciae advocatorum cum competenti moderatione censuimus admittendas et iubemus pro tempore primatem eorum per biennium fisci patroni fungi officio et solacia sibi communi consensu deputata per idem biennium consequi hocque transacto professionem advocationis deponere: consortio videlicet eorundem advocatorum ad triginta tantummodo viros redigendo, ita ut, si qui superflui sunt iam eidem consortio sociati, de advocationis officio minime reiciantur, nemine alio eis adiciendo, donec triginta virorum numerum advocatorum excedere consortium contingat.

1. Ad haec eos, qui, prout statutum est, fisci patroni deposuerint officium, postea quoque non prohiberi singulos tam pro se quam pro iugali sua et socero et socru nec non genero et nuru liberisque propriis, colonis et servis ad se pertinentibus advocationis fungi officio. 2. Nec aediculas eorum metatorum nomine molestari, si tamen in una tantummodo

3. If anyone is cited by verdict of Your Sublimity concerning an acknowledged debt or lawsuit brought against him, and he is ready to enter a confession,[76] this matter shall not be referred to a delegated judge arbitrator (*arbiter delegatus*), but (instead) to the acting Treasury Advocates, or to one of them if the other cannot attend, with a record made of what passes, in accord with usual custom. **4.** With regard to a marriage entered into without dowry documents but with a mutual intent to contract marriage on the basis of their affection (*super adfectu suo*), whether there are now living children from this union or they are not yet conceived, whenever he (the husband) wishes to make legal declarations (of marriage), these (declarations) shall be executed before the acting Treasury Advocates, or one of them as has been said, by making this a matter of judicial record; but the legally recognized claims of absent persons, if there are any eligible, remain in full force, obviously. **5.** Furthermore, to whoever wishes to grant freedom to his slaves before the then serving glorious Consuls, the esteemed Treasury Advocates are to be approached first in order to lend the voice of their advocacy for executing such manumissions. **6.** Nevertheless, all other privileges which in various ways are now long since granted to the aforementioned Treasury Advocates or to Advocates still acting in this role, shall also, by virtue of this Our ordinance as well, remain in full force.

Given November 20, at Constantinople, in the consulship of Areobindus and Messala (506).

[24] *The same Augustus to Sergius, Praetorian Prefect.* **pr.** We have decided that the petitions from the learned Advocates of the governor's court of the second Syrian province should be granted, with due limitation.[77] We order that their acting leader (*primas*) shall fill the office of Treasury Advocate for two years, and shall receive for (those) two years the salary assigned to it by general assent, and, after this term is finished, retire from his profession of advocacy. However, the Order of these same Advocates shall be reduced to just thirty men, as follows: if there are now associates of this Order in excess (of that number), they are not at all to be ejected from the function of advocacy; but no one shall be added to them as long as the number of Advocates happens to exceed thirty.

1. In addition, those who, as has been ordained, retire from the office of Treasury Advocate, afterwards are not forbidden each to act as an advocate not only for himself but for his wife, father- and mother-in-law, son- and daughter-in-law, and their children, and the bound tenants (*coloni*) and slaves belonging to him. **2.** Their homes shall not be burdened with quartering soldiers (*metata*), provided they each wish to claim this privilege only for one house of their own.

[76] See C. 7.39.7.5a. Blume: "Note that the fiscal advocates could make public records."
[77] The following provisions are adopted almost verbatim from C. 2.7.22 above.

suaque domo singuli talem praerogativam sibi vindicare maluerint. **3.** Pro sportulis praeterea modum, quem notitia nobis porrecta declarat, tam pro his quam pro colonis et servis eorum custodiri, neminique praeberi licentiam eundem modum circa sportularum exactionem contra eos excedendi.

4. Nec de cetero quemquam, antequam per statuta tempora legum eruditioni noscatur inhaesisse, supra dicto consortio sociari. **5.** Et filios advocatorum vel adhuc in tali constitutorum officio vel eorum, qui fisci patronatum deposuerunt, superstitum vel mortuorum, extraneis ad idem officium accedentibus anteponi eique gratis et sine sumptibus sociari, si et ipsi, prout dispositum est, solito tempore legum doctrinam meruerint.

6. Ut autem his, qui fisci patroni officium adepti sunt vel fuerint, non tantum superstitibus, sed etiam morte praeventis prospiciatur, tam ad heredes fisci patroni, qui semel ad talem gradum vocatus sit, solacia eius transire hisque servari, quam ipsos, qui fisci patronatum iam deposuerunt vel postea deposuerint, minime cuiuslibet actus publici sollicitudinem nolentes subire compelli nec exhibitionis seu deductionis onere, nisi speciali auctoritate nostra molestari et in provincia incusandos per sententias viri clarissimi provinciam in qua degunt moderantis, utpote competentis iudicis, conveniri atque litigare decernimus.

D. k. Dec. Anastasio et Agapito conss.

[25] *Imp. Iustinus A. Marino pp.* **pr.** Restituendae sunt clarissimis eloquentiae luminibus sexaginta auri librae, quas sub imperio Zenonis divae memoriae pedaneis deputatas arbitris nec non fideiussorum vires aestimantibus, tamen auferendas credidit parca posterioris subtilitas principis, ut iam liberalitate nostri numinis viri clarissimi fisci patroni praefatam auri summam sine fraude annis singulis consequantur, ab amplissima tua sede pari lance in utrumque dividendam. nam universis redditur, quod pro voto omnium primatibus indulgetur.

1. Sacras insuper epistulas, quibus adprobantur viri clarissimi tribuni praetoriani et notarii, non unius[v] tantum nomine, sed alterius quoque unius praestandas perspicimus, sive suos filios sive quos alios duxerint illustrandos. **2.** Ad haec altiore beneficio codicillos, quibus illustris honoratur dignitas, consequantur, quos unius solum nomine eisdem viris facundissimis daturos nos pollicemur profuturos scilicet alteri eorum

[v] [unius]

3. Further, as to judicial fees (*sportulae*), the amount mentioned in the schedule that was presented to Us shall be observed in their case as well as in that of their bound tenants and slaves, and no one shall be given permission to exceed that quantity in exacting fees from them.

4. Nor in the future shall anyone become a member of the above-mentioned Order before he is known to have applied himself to the study of law for the prescribed time. **5.** The sons of Advocates – both of those still in this office and those who have retired as Treasury Advocates, whether surviving or dead – shall have preference over outsiders seeking entrance to this same office, and they shall become members free and without expense, provided that they too, as has been directed, gain instruction in the law.

6. In order to provide for those who have attained or will attain the office of Treasury Advocate – not only the living, but also those cut off by death – We direct that not only shall the (unpaid) salary of a Treasury Advocate, once he has been called to that position, go to and be preserved for his heirs, but also that those who have already retired or who will retire from the office of Treasury Advocate shall in no way be compelled unwillingly to undertake the nuisance of any public duty, nor, except by Our special authorization, be troubled with the burden of appearing in or being summoned before (any other court), but must be accused in (their own) province, and be sued and litigate, according to the verdict of the *vir clarissimus* governor of the province in which they live, as the (only) appropriate judge.

Given December 1, in the consulship of Anastasius and Agapitus (517).

[25] *Emperor* JUSTIN *Augustus to Marinus, Praetorian Prefect.* **pr.** To the *clarissimi* luminaries of eloquence (the Treasury Advocates), there shall be restored the 60 pounds of gold that, in the reign of Zeno of blessed memory, were assigned to delegated judge advocates (*arbitri pedanei*) and to those examining the resources of sureties,[78] but from which the obsessive stinginess of a subsequent emperor deemed it best to deprive them. Now, through the generosity of Our Divine Majesty, the *viri clarissimi* Treasury Advocates shall, without evasion, receive each year the aforesaid sum, which is to be divided equally between the two by your high office. For whatever is bestowed on their leaders by the wishes of all, is (then) returned to all.

1. In addition, we provide that they be given imperial letters patent by which the *viri clarissimi* Praetorian Tribune and Notaries are confirmed (in their office), not just in the name of one (Treasury Advocate), but also in that of the other, whether they decide to honor their own sons or some others. **2.** In addition, by a still greater favor, let them receive the diplomas (*codicilli*) honoring their illustrious rank – which we promise to grant to these eloquent men (the

[78] See C. 3.3.6 (where Zeno's constitution is lost). Anastasius had removed this benefit.

altero concedente, seu qui[vi] ex provinciis suis vel ex amicis voluerint, in provinciis tamen degentibus.

3. Licentiam eis praeterea facimus binos homines annis singulis itidem offerendi nostram adoraturos purpuram, statutis inserendos praesentalibus domesticis, unum equitum, alterum scholae peditum, in vacantem eorum locum, qui defuncti sunt, nullo, dum supererant, de militia venumdanda pacto cum eis interposito, quorum eiusmodi conventiones intersunt, ita tamen, ut idem viri facundissimi, cum offerendos eosdem crediderint homines, bina solidorum pro singulis millia nihilque amplius noverint dependenda viris magnificis comitibus dicatissimorum domesticorum, id est equitum quidem pro eo, qui inter equites merit*urus* est, peditum autem pro eo, qui inter pedites inserendus est: solitis videlicet statim stipendiis nec non ceteris solaciis isdem tironibus deputandis sine quolibet alio dispendio.

4. Aliis etiam privilegiis potiantur, quae diversis temporibus consecuti sunt sive per augustos apices seu dispositiones et sententias amplissimae tuae sedis. nam qui novis digni iudicati sunt, ii multo magis in anterioribus quoque sunt adiuvandi.

D. k. Dec. Constantinopoli ipso A. et Eutherico conss.

[26] *Idem A. Theodoro pu.* **pr.** Per hanc legem decernimus, ne, antequam in octuaginta tantum virorum numerum fori tui culminis togatorum collegium deductum fuerit, adspirare quis qualibet arte concedatur aut possit, nisi vel eorum filii, qui triginta priorum obtinent numerum, facundiae studiis eruditi, gratis videlicet et sine ullo suffragio, aut fortasse exteri non ultra duos per annos singulos, facundia et ipsi conspicui taxati fuerint: nullo deinceps, postquam in octuaginta virorum numerum redacti fuerint, superare qualibet rursus ambitione vel astutia quantitatem ausuro.

1. Interdicenda quoque cunctis licentia praevertendi progressus seriem, quam ipsius temporis ordo suppeditat, et ut in mercatorum contractibus loca permutandi et adhuc tirones iam interesse veteribus.

2. Hoc etiam pronuntiandum censemus, ne quis ex his in aliis degat regionibus relicta observatione glorificae tuae sedis. noverint etenim,

[vi] [qui] <cui>

Treasury Advocates) in the name of one only, but to be of use to either with the other's consent, or to anyone from their provinces or from among their friends if residing in the provinces.

3. Further, we give them the power to present each year two men apiece, to do obeisance to Our Purple and to be enrolled in the established number of the palace guards (*praesentales domestici*),[79] one in the corps (*schola*) of cavalry and the other in that of infantry, in the vacant place of those who died – provided that, while they (the dead guards) lived, they made no agreement for sale of their place to those interested in such agreements, and provided that these same eloquent men know that, when they see fit to present the men, 2,000 solidi, and no more, must be paid for each to the *viri magnifici* Counts of the Devoted Household, i.e., (to the Count) of the cavalry for the one who will serve in the cavalry, as well as (to the Count) of the infantry for the one who will be enrolled among the infantry. The customary stipend and other compensations are to be assigned to these recruits without any further expense.

4. They (the Treasury Advocates) shall also have the other privileges they have obtained at various times, either by imperial letters (*apices augusti*) or by the orders and direction of your high office. For those deemed worthy of new (honors) are all the more to be aided in (retaining) earlier ones.

Given December 1, at Constantinople, in the consulship of the Augustus and Euthericus (519).

[26] *The same Augustus to Theodorus, Urban Prefect.* **pr.** By this statute we decree that until the College of Advocates (*collegium togatorum*) of the court of Your Highness has been reduced to eighty men in number, no one by any contrivance shall be allowed or be able to aspire (to join it), except the sons of the first thirty in rank (if they are) trained in the study of advocacy, (and they are to be admitted) free and without paying a recommendation fee (*suffragium*); or, perhaps, not more than two outsiders per year, they too being found outstanding in advocacy. After they have reduced the number to 80, no one shall again dare to increase the total by some collusion or contrivance.

1. Permission is removed from them as a group to invert the order of precedence from that given by the sequence of time itself (i.e., by seniority), and (thereby), as in merchants' contracts, to trade places, so as to place novices among the veterans.

2. We also deem it proper to make known that none of them shall abstain from appearance at your glorious court and live in other areas. Let them know that if anyone, after being named a trial advocate, sees fit to live away from this

[79] See C. 12.17.

qui post nomen impetratum patroni litium ultra trium annorum spatium ex sacratissima hac urbe morandum duxerit, nec nuncupationem togati nec privilegia virorum eiusmodi concedenda sibi, ut nec repetitis ex industria praedictae sedis auctoritatibus protrahatur aut multiplicetur peregrinationis excursus.

3. Quorum omnium si quid vel minimum quocumque tempore fuerit violatum, viginti primates eiusdem ordinis et qui pro tempore sollicitudinem ab actis in amplitudinis tuae gerent officio, adiutores etiam eorum denis singuli libris auri ferientur, quod adversus imperialia consulta serenitatis nostrae tendentibus non statim obiecerint intercessionem legis praesentis aut non restiterint et omni nisu prohibuerint, ne quid temptetur contrarium: cum nec in administratores sublimissimae tuae sedis, si non intente custodierint disposita salutaria et, ut non temerentur, prospexerint, poena deerit decem auri librarum.

4. Sescenti autem aurei, quibus pro tempore fisci patronus fori tuae celsitudinis ad exemplum priorum temporum ex arca tui iudicii consolatur, ne post decursum celerem advocationis et labores gloriosos egenus exeat, non, ut saepe contigit, incerto die praestentur, sed cum[vii] medium iter pervenerint patrocinii rerum fiscalium, id est kalendis Octobribus, per annos singulos sine cunctatione solventur.

5. Quidquid insuper privilegiorum retro principum sacris adfatibus vel auctoritate tribunalis cuius interest huic eidem ordini datum ostenditur, inviolatum servari.

6. Cumque lite quisquam eorum pulsatus fuerit seu civilis causae[viii] certaminis aut criminalis quaestionis obtentu, hic vel in provinciis, cum per concessum tempus eorum adesse quemquam evenit, nullos exsecutores sportulas adsequi nec, qui controversiis movendis inserviunt aut excipiendo seu praeparando vel officio quolibet alio, quocumque nomine sumptum exigendum censere.

D. id. Febr. Constantinopoli Iustino A. II et Opilione conss.

[27] *Idem A. Archelao pp.* Nemo excepta Menandri fisci patroni persona speret de cetero permutationum saltibus superiore gradu captato fruiturum se beneficiis, quae patronis aerarii seu dum officium exhibent causis fiscalibus aut post expletum agmen impertita monstrantur.

D. XII k. Sept. Iustino A. II et Opilione conss.

[vii] cum <ad>
[viii] causa

Imperial City for more than three years, he shall be allowed neither the title of Advocate nor the privileges of these men, in order that trips abroad not be prolonged or multiplied through incessantly renewed leaves of absence (*auctoritates*) from the aforesaid court.

3. If at any time any of these provisions are violated even slightly, the twenty leaders (*primates*) of this Order (of Advocates), as well as those in the office of Your Magnificence who for the present exercise care for official records (*ab actis*) along with their assistants, shall each be penalized by (a fine of) 10 pounds of gold because they did not immediately interpose this law against those acting contrary to the imperial decrees of Our Serenity, or they did not resist and use every effort to prevent an attempted violation. Also if the administrators (the Urban Prefects) of Your Sublime Seat do not zealously guard these wholesome provisions and see to it that they are not violated, a fine of 10 pounds of gold will not be lacking against them.

4. The 600 aurei which, on the pattern of former times, the acting Treasury Advocate in the court of Your Highness receives as salary from the coffers of your tribunal in order that he not depart penniless after the swift completion of his advocacy and his glorious labors, shall not be paid, as often happens, on some indefinite date; rather, when they complete half their term as Treasury Advocate, i.e., on October 1, the money shall be paid each year without delay.

5. Whatever additional privileges are shown to have been given to this Order by the sacred rescripts of prior emperors or by the authority of the relevant tribunal (of the Urban Prefect) shall be preserved inviolate.

6. And when one of them is sued either because of a private dispute or on the pretext of a criminal investigation, whether here or in the provinces when any of them happens to be there during the permitted time, no process servers (*exsecutores*) shall receive fees (*sportulae*). Nor shall those who assist in setting litigation in motion, either by drafting or by preparing or in any other duty, consider demanding fees on any account.

Given February 13, at Constantinople, in the consulship of Justin Augustus, for the second time, and Opilio (524).

[27] *The same Augustus to Archelaus, Praetorian Prefect.* With the exception of the Treasury Advocate Menander, let no one (in the future) hope that if he has reached a higher grade (in the Order of Advocates) by cunning leaps and changes of place, he will enjoy the benefits ordained as accorded to Treasury Advocates, either while they are lending their services to Treasury cases or after completing their career.

Given August 21, in the consulship of Justin Augustus, for the second time, and Opilio (524).

[28] Ὁ αὐτὸς βασιλεύς. ...

[29] *Imp. Iustinianus A. Iohanni pp.* **pr.** De constitutione divinae recordationis Iustini patris nostri super togatis amplissimae tuae sedis prolata Illyriciani advocati postulaverunt a nobis eis clarum fieri, si locum etiam circa eos possit habere, sive cum commeatu sive sine commeatu iudicio eiusdem sublimitatis afuerint. **1.** Sancimus itaque talem legem generaliter in persona eorum tenere, ut, si quis sine commeatu ultra continuum biennium afuerit vel cum commeatu ultra quinquennium, de matricula penitus aboleatur: nulla licentia ei danda gradum suum vindicare nec iterum viris disertissimis togatis eiusdem sedis adsistere. perfruantur igitur advocati eiusdem sublimitatis hac nostra generali sanctione.

VIII De Advocatis Fisci

[1] *Imp. Antoninus A. Claudio.* Cum te fisci causam agitasse proponas, quamvis te salarium percepisse neges, tamen placitis adquiesce. eos enim, qui causam fisci egissent, prohibitum est adversus fiscum patrocinium praestare.

PP. XIII k. Ian. Antonino A. IIII et Balbino conss.

[2] *Impp. Valerianus et Gallienus AA. Frequenti.* Potes auctoribus nobis adversus fiscum quoque patrocinium exhibere privatis, dum eam scilicet causam, quam tu, cum fisci advocatus fueras, forte tractasti, suscipere declines.

PP. VI k. Mart. Valeriano II et Gallieno AA. conss.

[3] *Imp. Constantinus A. Aeliano proconsuli Africae.* Fisci advocatus poenam metuens caveat, ne fiscalia commoda occultet neve nullo negotio existente fisci nomine privatis audeat calumnias commovere.

[28][80] <*The same Augustus ...*>

[29] *Emperor Justinian Augustus to John, Praetorian Prefect.* **pr.** With regard to the constitution of Our father Justin of blessed memory, enacted concerning the Advocates of Your High Court, the Society of Advocates (*advocatio*) of Illyricum have requested Us to clarify for them whether it can also apply to them if they are absent with or without authorized leave (*commeatus*) from the court of Your Sublimity. **1.** Accordingly, We ordain that this law applies generally in their case (to the Advocates), such that if anyone is absent without leave for more than two straight years, or with leave for more than five, he shall be wholly stricken from the register (*matricula*). He shall not be given permission to claim his position, or again to assist the learned advocates of that court. Therefore let the advocates of Your Sublimity fully enjoy this Our general ordinance.

(531–534).

Eighth Title The Treasury Advocates[81]

[1] *Emperor Antoninus Augustus to Claudius.* Because you state that you pursued a case on behalf of the Treasury (*fiscus*), even though you deny receiving a stipend (for this service), still you must obey the rules: those who plead a Treasury case are forbidden to offer representation against the Treasury.

Posted December 20, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus[82] *(213).*

[2] *Emperors Valerian and Gallienus Augusti to Frequens.* With our permission you can provide legal representation to private persons (who bring cases) against the Treasury as well, as long as you decline to take a case that you happen to have conducted while you were a Treasury Advocate.

Posted February 24, in the consulship of Valerian, for the second time, and Gallienus, Augusti (254).

[3][83] *Emperor Constantine Augustus to Aelianus, Procounsul of Africa.* Under pain of punishment, the Treasury Advocate must avoid covering up financial advantages to the Treasury and (on the other hand) daring to raise vexatious litigation (*calumnia*) in the Treasury's name against private individuals when there is no actual (legal) basis.

[80] A Greek constitution of Justin concerning the Advocates of the Eastern Prefecture is lost here, but it is referred to in the next one. The two laws had similar content. Lounghis *et al.* date this constitution to April 6, 529.

[81] *Advocati fisci*, a main subject of the previous title as well.

[82] Actually for the second time.

[83] = C.Th. 10.15.1; combine with C. 10.19.1, 12.61.1 (where the constitution adds that it was accepted at Carthage on February 15, 315), and C.Th. 1.12.1, 9.34.3 (AD 320), 11.1.2.

D. VI id. Nov. Treviris Constantino A. III et Licinio C. III conss.

[4] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad Ammianum comitem rerum privatarum.* Rationales privatae rei causis vel sacri aerarii praesidentes examen praesente fisci advocato suscipiant.

PP. XVII k. Ian. Merobaude II et Saturnino conss.

VIIII De Errore Advocatorum vel Libellos seu Preces Concipientium

[1] *Imp. Alexander A. Aureliae.* Ea, quae advocati praesentibus his quorum causae aguntur adlegant, perinde habenda sunt, ac si ab ipsis dominis litium proferantur.

PP. k. Mart. Albino et Maximo conss.

[2] *Imp. Gordianus A. Rogato militi.* Errores eorum, qui desideria (id est preces) scribunt, veritati praeiudicium adferre non posse manifestum est. et ideo si condemnationem, cuius mentionem libello insertam esse proponis, manifeste probare potes non intercessisse, adlegationes tuas laedi non oportere is, qui super negotio disceptaturus est, non ignorat.

PP. X k. Iul. Pio et Pontiano conss.

[3] *Impp. Diocletianus et Maximianus AA. et CC. Ulpiae.* Sententiis finita negotia rescriptis revocari non oportet. nec enim quae constituta sunt, ut advocatorum error litigatoribus non noceat, tibi etiam opitulari possunt, cum te praesentem neque causae palam ex continenti, id est triduo proximo, contradixisse neque post sententiam appellationis remedio, si tibi haec displicebat, usam proponas.

D. VI k. Sept. Viminacii CC. conss.

Given November 8, at Trier, in the consulship of Constantine Augustus, for the third time, and the Caesar Licinius, for the third time (313).[84]

[4][85]*Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Ammianus, Count of the Privy Purse.* The Comptrollers (*rationales*) who preside in cases involving the Privy Purse (*res privata*) or the Imperial Treasury (*aerarium sacrum*) shall inquire into a case in the presence of the Treasury Advocate.

Posted December 16, in the consulship of Merobaudes, for the second time, and Saturninus (383).

Ninth Title A Mistake by Advocates or by Those Drawing Up Complaints and Supplications

[1] *Emperor* ALEXANDER *Augustus to Aurelia.* Whatever advocates allege in the presence of those whose cases they are conducting is to be considered the same as if stated by the litigants themselves.

Posted March 1, in the consulship of Albinus and Maximus (227).

[2] *Emperor* GORDIAN *Augustus to Rogatus, a soldier.* The mistakes of those drawing up requests, i.e., prayers (to the Emperor), obviously cannot prejudice the truth. So if you can clearly prove that the judicial condemnation, which you say was mentioned in your petition (*libellus*), never took place, the person who will determine the matter is not unaware that your allegations should not be harmed (i.e., undermined by the mistake).

Posted June 22, in the consulship of Pius and Pontianus (238).

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Ulpia.* Litigation that is ended by verdicts (i.e., final decisions) should not be reopened through rescripts. For the recognized rule that the mistake of their advocates does not injure litigants cannot help you, since you state that you were present (when the mistake was made), did not object at the time (*ex continenti*), i.e., within the next three days, and after the decision, if it displeased you, did not resort to the remedy of appeal.

Given August 27, at Viminacium, in the consulship of the Caesars (294).

84 Licinius was actually co-Emperor.
85 = C.Th. 11.30.41.

X Ut Quae Desunt Advocationi Partium Iudex Suppleat

[1] *Impp. Diocletianus et Maximianus AA. ad Honoratum.* Non dubitandum est iudici, si quid a litigatoribus vel ab his qui negotiis adsistunt minus fuerit dictum, id supplere et proferre, quod sciat legibus et iuri publico convenire.

S. XVI k. Mart. Diocletiano IIII et Maximiano III AA. conss.

XI De Causis, ex Quibus Infamia Alicui Inrogatur

[1] *Impp. Severus et Antoninus AA. Manilio.* Infamiae detrimentum minime tibi adfertur ob id solum, quod in carcerem coniectus es vel vincula tibi iussu legitimi iudicis iniecta sunt.

PP. sine die et consule.

[2] *Idem AA. Verennio.* Neque furti neque vi bonorum raptorum neque peculatus damnatus intellegi potest, qui, cum plus debiti nomine tributorum exegisset, in duplum a praeside condemnatus est.

PP. V id. Ian. Laterano et Rufino conss.

[3] *Idem AA. Metrodoro.* Etsi severior sententia dici debuit, tamen, cum proconsul vir clarissimus certis rationibus motus mitiorem sententiam dixerit et ordine decurionum te biennio abstinere iussit, transacto tempore non esse te in numero infamium palam est eo, quod ἐξ ἀντιδιαστολῆς post biennium remisisse tibi prohibitionem decurionatus iudex videtur.

PP. X k. Ian. Laterano et Rufino conss.

[4] *Impp. Severus et Antoninus AA. Venustiano.* Si Posidonium in tempus anni relegatum secundum sententiam non excessisse proconsulis

Tenth Title A Judge Shall Supply What the Advocates for Parties Omit

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Honoratus.* It should not be doubted that if anything is left unsaid by the litigants or by those assisting in (the conduct of) a trial (*adsessores*), the judge is to supply and bring forward what he knows to be in conformity with statutes and public law.

Given February 14, in the consulship of Diocletian, for the fourth time, and Maximian, for the third time, Augusti (290).

Eleventh Title For What Reason Infamy Will Be Visited on a Person[86]

[1][87] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Manilius.* You will certainly not be visited with the burden of infamy (*infamia*) solely because you were thrown into prison or placed into chains by order of a lawful judge.

Posted without date or consul.

[2] *The same Augusti to Verennius.* A man cannot be understood as condemned for theft or robbery or embezzlement of public funds when he collected in taxes more than was owed and was condemned by a governor to pay double (the excess).[88]

Posted January 9, in the consulship of Lateranus and Rufinus (197).

[3] *The same Augusti to Metrodorus.* Although a harsher verdict should have been rendered, nonetheless the *vir clarissimus* Proconsul, influenced by definite reasons, imposed a milder verdict and ordered your exclusion from the order of decurions for two years. When this time has elapsed it is clear that you are not counted as one of the infamous. *Au contraire,* the judge seems to have released you from being excluded from the decurionate after the expiration of two years.[89]

Posted December 23, in the consulship of Lateranus and Rufinus (197).

[4] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Venustianus.* If you prove that Posidonius, who was relegated for a year, did not (in fact) leave in accord

[86] *Infamia*, legal infamy, resulted in various legal disabilities that were especially threatening to members of the upper classes. See D. 3.2.

[87] = *C. Greg.* 1.3.1, attributing the rescript to Severus alone.

[88] See C. 10.20.1.

[89] Blume: "The infamy attached to the sentence in the instant case lasted only as long as the party sentenced was debarred from [his] position. In some cases a sentence carried perpetual, in other, temporary, infamy."

probaveris, quinque annis exilio temporario damnandum inter infames haberi non oportet, quando sententiae severitas cum ceteris damnis transigere videatur.

PP. VI k. Mart. Saturnino et Gallo conss.

[5] *Idem AA. Ambrosio.* Decuriones quidem, item filios decurionum fustibus castigari prohibitum est: verum si iniuriam te fecisse proconsul vir clarissimus pronuntiavit, ignominia notatus es.

PP. k. Iul. Saturnino et Gallo conss.

[6] *Idem AA. Iusto.* Ad tempus in opus publicum dati pristinum quidem statum retinent, sed damno infamiae et post impletum tempus subiciuntur.

PP. VII id. Dec. Geta et Plautiano conss.

[7] *Imp. Antoninus A. Demetrio.* Nemo ob id, quod bonis paternis se abstinuit, infamis est.

PP. V id. Ian. Antonino A. et Geta utrisque II conss.

[8] *Idem A. Ulpiae.* Furti si condemnata es, citra verbera quoque fustium famae damnum subiisti. quod si res furtiva, quam alter subripuit apud te ignorantem comperta est, non laesit existimationem tuam sententia durior.

PP. X k. Mart. Antonino A. et Geta utrisque II conss.

[9] *Idem A. Laeto.* Neminem sequitur infamia ob defensa negotia publica patriae suae.

PP. XII k. Mart. Antonino A. et Geta utrisque III conss.

[10] *Idem A. Severo.* Iniuriarum ex persona quoque servi damnatus infamia notatur.

PP. IIII k. Aug. isdem conss.

with the Proconsul's decision, (although) he is to be condemned to a temporary exile for five years, he should not be numbered among the infamous since the harshness of the sentence, with the other losses, seems to effect a "settlement" (*transigere*).[90]

Posted February 24, in the consulship of Saturninus and Gallus (198).

[5] *The same Augusti to Ambrosius.* It is indeed forbidden to punish decurions and their sons with rods. But if the *vir clarissimus* Proconsul has adjudged you guilty of a (the deliberate delict of) outrage (*iniuria*), you are branded with infamy.

Posted July 1, in the consulship of Saturninus and Gallus (198).

[6] *The same Augusti to Justus.* Persons who are sentenced for a time to (performance of) public works retain their former (legal) status, to be sure, but are subjected to the disability of infamy even after the time expires.

Posted December 7, in the consulship of Geta and Plautianus (203).

[7] *Emperor* ANTONINUS *Augustus to Demetrius.* No one is infamous (simply) because he refrains from (accepting as an heir) his father's estate.

Posted January 9, in the consulship of Antoninus Augustus and Geta, each for the second time[91] *(205).*

[8] *The same Augustus to Ulpia.* If you were condemned for theft (although) without (being subjected to) a beating with rods, you underwent loss of reputation (i.e., became infamous). But if the stolen property was stolen by a third party and found on your property, and you were unaware of it, the rather severe sentence did no harm to your reputation.[92]

Posted February 20, in the consulship of the Emperor Antoninus and Geta, both for the second time (205).

[9] *The same Augustus to Laetus.* No one becomes infamous for having defended public lawsuits of his native city.

Posted February 18, in the consulship of Antoninus Augustus and Geta, both for the third time (208).

[10] *The same Augustus to Severus.* A person condemned for outrage (*iniuria*) inflicted also on a slave (belonging to another) is branded with infamy.[93]

Posted July 29, in the same consulship (208).

[90] Compare D. 3.2.13.7.

[91] Geta was actually for the first time. So also in 8 below.

[92] Under older Roman law, anyone on whose real property a stolen object was found was liable to its owner for three times the value of the stolen property: Gaius, 3.186, 191.

[93] See Gaius, 3.222; Ulpian, D. 47.10.1.3, 15.34.

[11] *Imp. Alexander A. Irenaeo.* Debitores qui bonis cesserint, licet ex ea causa bona eorum venierint, infames non fiunt.

PP. x k. Maias Maximo II et Aeliano conss.

[12] *Idem A. Donato.* Si te expilasse hereditatem sententia praesidis constitit, non ex eo, quod non et alia tibi poena inrogata est, furti improbioris infamiam evitasti.

PP. k. Iul. Iuliano II et Crispino conss.

[13] *Idem A. Iuventio.* Ea, quae pater testamento suo filios increpans scripsit, infames quidem filios iure non faciunt, sed apud bonos et graves opinionem eius, qui patri displicuit, onerant.

XIII k. Nov. ipso A. III et Dione conss.

[14] *Imp. Gordianus A. Iovino.* Nullam existimationis infamiam avunculus tuus pertimescat, ictibus fustium subiectus ob crimen habita quaestione, si sententia non praecessit ignominiae maculam inrogans.

PP. VI k. Sept. Pio et Pontiano conss.

[15] *Idem A. Sulpiciae.* Decreto amplissimi ordinis luctu feminarum deminuto tristior habitus ceteraque hoc genus insignia mulieribus remittuntur, non etiam intra tempus, quo lugere maritum moris est, matrimonium contrahere permittitur, cum etiam, si nuptias alias intra hoc tempus secuta est, tam ea quam is, qui sciens eam duxit uxorem, etiam si miles sit, perpetuo edicto labem pudoris contrahit.

PP. XVII k. Iul. Gordiano A. et Aviola conss.

[16] *Idem A. Domitiano.* Fustibus caesum, cui per praeconem ita dictum est: 'κατηγορίαν ἄνευ τινὸς δικαίας ὑποστάσεως οὕτως ἀγενὴς ὑπάρχων μὴ ἐνίστασο' ut calumniatorem videri notatum ideoque esse famosum manifestum est.

PP. III k. Aug. Sabino et Venusto conss.

[11] *Emperor* ALEXANDER *Augustus to Irenaeus.* Debtors who surrender their property (to their creditors, through *cessio bonorum*) do not become infamous even though their property is sold for this reason.[94]

Posted April 22, in the consulship of Maximus, for the second time, and Aelianus (223).

[12] *The same Augustus to Donatus.* If a governor's verdict established that you despoiled an inheritance, you did not escape infamy for this disgraceful theft just because no other punishment was imposed on you.

Posted July 1, in the consulship of Julian, for the second time, and Crispinus (224).

[13] *The same Augustus to Juventius.* A father's vituperations in his will against his sons do not, to be sure, make them legally infamous, but among good and respectable people they do burden the reputation of the person who displeased his father.

October 20, in the consulship of the Augustus, for the third time, and Dion (229).

[14][95] *Emperor* GORDIAN *Augustus to Jovinus.* Your maternal uncle, who following a criminal trial was subjected to a beating with rods, need not fear any infamy of his reputation if no verdict imposing the stain of infamy preceded (the beating).

Posted August 27, in the consulship of Pius and Pontianus (238).

[15] *The same Augustus to Sulpicia.* By decree of the noble order (the Senate), the mourning period for women has been diminished and they have been excused from (wearing) mourning clothes and other such symbols. But it is not also permitted (for a widow) to contract a (new) marriage during the customary period of mourning for her husband, since if she did contract another marriage within that time, she, as well as the man who knowingly married her even if he is a soldier, acquired the stain of infamy under the Perpetual Edict (*edictum perpetuum*).

Posted June 15, in the consulship of Gordian Augustus and Aviola (239).

[16] *The same Augustus to Domitianus.* Clearly, a person who was beaten with rods and to whom a herald said (in Greek): "Do not so impudently bring an accusation without just cause," is branded as a vexatious litigator and is therefore infamous.[96]

Posted July 30, in the consulship of Sabinus and Venustus (240).

[94] On *cessio bonorum*, see C. 7.71, D. 42.3. Undergoing *cessio* rendered one infamous.

[95] = *C. Greg.* 1.3.2, which omits "following a criminal trial." On the substance, see D. 3.2.22.

[96] See C. 9.46.8.1.

[17] *Idem A. Magno.* Verbum precibus insertum potius verecundiam onerare quam ullam existimationis maculam videtur adspergere. etenim cum non causa cognita dictum est 'συκοφαντεῖς', sed ad postulatum patroni interlocutione iudicis responsum sit, nequaquam hoc infamiam inrogat.

PP. VIII k. Oct. Attico et Praetextato conss.

[18] *Idem A. Antiocho.* Non damnatos quidem dumtaxat iniuriae, sed pactos quoque perpetuum infamat edictum. verum pactos eos demum, qui ullos adversariis nummos pro mala conscientia ex transactione numerassent, in hac causa placuit intellegi. ceterum simplex eius rei gratia integram existimationem illibatamque conservat. quod si iureiurando decisa contentio est, nemo dubitaverit, quin religionem absolutio iudicantis sequatur.

PP. XIIII k. Ian. Saeculare II et Donato conss.

[19] *Impp. Carinus et Numerianus AA. Aristocrati.* Interlocutio praesidis, quae indicta est, infamem eum de quo quaeris fecisse non videtur, cum non specialiter ob iniuriam vel admissam vim condemnatus, sed ita praesidis verbis gravatus est et admonitus, ut ad melioris vitae frugem se reformet.

PP. XVII k. Febr. Carino II et Numeriano AA. conss.

[20] *Impp. Diocletianus et Maximianus AA. Fortunato.* Improbum fenus exercentibus et usuras usurarum illicite exigentibus infamiae macula inroganda est.

PP. XVI k. Mart. ipsis IIII et III AA. conss.

[21] *Idem AA. Statio.* Si fratres tui minores dumtaxat aetate in ludicrae artis ostentatione spectaculum sui populo praebuerunt, inviolatum existimationem obtinent.

D. V k. Sept. ipsis AA. conss.

[22] *Idem AA. et CC. Domitiano.* Fidem rumpens societatis cum infamiae periculo suo nomine pro socio conventus ad faciendum satis urguetur.

D. VI id. Dec. Nicodemiae CC. conss.

[17] *The same Augustus to Magnus.* The phrase included in your supplication seems rather to lessen your self-respect than to besmirch your reputation. For when it was stated (in Greek): "You accuse vexatiously," without a trial being held, but this was the judge's interim response (*interlocutio*) to an advocate's request, it in no way leads to infamy.

Posted September 24, in the consulship of Atticus and Praetextus (242).

[18] *The same Augustus to Antiochus.*[97] The Perpetual Edict makes infamous not only those condemned for outrage (*iniuria*), but also those who made a pact (concerning it). Still, it is agreed that in this matter the only persons deemed to have entered a pact are those who, out of a bad conscience, had paid money to their adversaries pursuant to a settlement. But simple forgiveness (by the victim) of this act leaves (the offender's) reputation whole and unimpaired. So if the dispute is settled by an oath, no one would doubt that the oath results in a judge's acquittal (of the defendant).

Posted December 19, in the consulship of Saecularis and Donatus (260).

[19] *Emperors* CARINUS *and* NUMERIAN *Augusti to Aristocrates.* The interim decision given by the governor is not held to make the person whom you put on trial infamous, since he was not specifically condemned for outrage (*iniuria*) or admitted use of force, but (rather) was upbraided by the governor's words and admonished to turn to a better way of life.

Posted January 16, in the consulship of Carinus, for the second time, and Numerian, Augusti (284).

[20] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Fortunatus.* The stain of infamy should brand those claiming a reprehensible rate of interest and those unlawfully demanding compound interest.

Posted February 14, in the consulship of the Augusti, for the fourth and third times, respectively (290).

[21] *The same Augusti to Statius.* If your brothers, while still minors in age, showed themselves off to the people in a stage performance, they keep their good name unscathed.

Given August 28, in the consulship of the Augusti themselves (290).

[22] *The same Augusti and the Caesars to Domitianus.* Someone who, at risk of infamy, breaks the trust due under a partnership, if (he is then) sued in his own name as a partner, is impelled to make satisfaction (to his partner).

Given December 8, at Nicodemia, in the consulship of the Caesars (294).

[97] To judge from the consular date, this rescript was in fact issued by the Emperors Valerian and Gallienus and the Caesar Valerian.

XII De Procuratoribus

[1] *Divus Pius Severo.* Cautio ratihabitionis tunc exigitur a procuratore, quotiens incertum est, an ei negotium mandatum est.
PP. IIII id. Oct. Gallicano et Vetere conss.

[2] *Divi fratres Sextiliae.* Cum rem pecuniariam esse dicas, potes per maritum tuum sollemnibus impletis appellationi adversariae respondere, cum appellationes pecuniariae etiam per procuratores exerceri ab utraque parte litigantium possunt.
Accepta VIII k. Aug. ipsis III et II conss.

[3] *Impp. Severus et Antoninus AA. Pomponio.* **pr.** Eum, qui res agit heredum, a quibus tibi deberi fideicommissum dicis, evoca ad praetorem virum clarissimum, qui aut respondere tibi cogetur aut administratione negotiorum secundum formam iurisdictionis prohibebitur. **1.** Deliberabit autem praetor, si non defendat heredes, debeatne te mittere in possessionem, secutus iurisdictionem, quae exerceri adversus indefensos solet.
PP. X k. Sept. Cilone et Libone conss.

[4] *Idem AA. Saturnino.* Quia absente te iudicatum dicis, aequum est restitui tibi causae defensionem: nec oberit tibi, quod uxor tua interfuit iudicio aut etiam adquievit sententiae, cum aliena negotia per mulieres non aliter agi possunt, nisi in rem suam et proprium lucrum mandatae sunt eis actiones.
PP. prid. non. Ian. Apro et Maximo conss.

[5] *Imp. Antoninus A. Pancratiae.* Actionem ei, qui absentis nomine agere vult, si non eum defendat, denegari oportere iam edicto perpetuo expressum est.
PP. III k. Mart. duobus Aspris conss.

Twelfth Title Procurators[98]

[1] *The deified* Pius *to Severus.* A procurator must furnish a bond promising ratification (by his principal; *cautio ratihabitionis*) whenever it is uncertain whether the lawsuit was entrusted to him (by the principal).

Posted October 12, in the consulship of Gallicanus and Vetus (150).

[2] *The deified brothers (*Marcus Aurelius *and* Verus*) to Sextilia.* Since you say the matter is one of money (in a civil suit), you can, by observing the formalities, respond through your husband to the appeal by your adversary, since appeals involving money payments can also be brought to court through the procurators of litigants on either side.

Received July 25, in their consulship, for the third and second time, respectively (161).

[3] *Emperors* Severus *and* Antoninus *Augusti to Pomponius.* **pr.** Proceed to summon before the *vir clarissimus* Praetor the person managing the affairs of the heirs who, you allege, owe you a trust (*fideicommissum*). He (the procurator) is either compelled to answer you or is barred from managing (their) affairs, in accord with the jurisdictional norm (the Praetor's Edict). **1.** Further, if he does not defend the heirs, the Praetor will consider whether he should put you into possession (of the trust property), observing the jurisdiction commonly exercised against persons who are not defended.

Posted August 23, in the consulship of Cilo and Libo (204).

[4] *The same Augusti to Saturninus.* Since you say that you were adjudged in your absence, the fair course is that the defense of the case be restored to you (through a retrial). Nor is it an impediment for you that your wife was present at the trial or even accepted the decision, since women cannot manage the affairs of others except when the rights of actions are mandated to them for their own interests or their own gain.

Posted January 4, in the consulship of Aper and Maximus (207).

[5] *Emperor* Antoninus *Augustus to Pancratia.* It was already stated in the Perpetual Edict that an action should be denied to a person wishing to sue in the name of another, if he does not (simultaneously) defend him (against any counterclaim).

Posted February 28, in the consulship of the two Aspri (212).

[98] The *procuratores* in this title are, almost exclusively, persons who, with or without a mandate, undertake to represent the interests of a litigant (in earlier law, usually an absent litigant) in a trial. See also D. 3.3. While the litigant is loosely designated a "principal," their relationship is not full modern agency.

[6] *Idem A. Marciano.* Reum criminis constitutum defensionem causae suscipere non posse, antequam purgarit innocentiam suam, incognitum non est.

D. VI k. Mart. Maximo II et Aeliano conss.

[7] *Idem A. Macrino militi.* Militem nec pro patre vel matre vel uxore nec ex sacro rescripto procuratorio nomine experiri oportet, cum neque defensionem alienam suscipere vel redimere negotia vel quasi suffragatorem accedere utilitate publica permittatur.

PP. VIII id. Mart. Maximo II et Aeliano conss.

[8] *Idem A. Mansueto.* Quod quis sibi debitum exigere tibi mandavit, ante litis contestationem tu alii petendum mandare non potes.

PP. VIII k. Sept. Maximo II et Aeliano conss.

[9] *Idem A. Aufidio.* Qui stipendia merent, suis negotiis superesse inoffensa disciplina possunt: nec potest dici eum, qui honesta et verecunda praecedente causa mandatas sibi actiones exercuerit, alieno negotio fungi, cum, licet *i*ntentio ex persona alterius bona fide sumatur, hunc tamen rem suam gerere non ambigitur. quod militibus meis interdici non modo absurdum, verum etiam iniquum est.

Sine die et consule.

[10] *Idem A. Castriciae.* Si procurator ad unam speciem constitutus officium mandati egressus est, id quod gessit nullum domino praeiudicium facere potuit. quod si plenam potestatem agendi habuit, rem iudicatam rescindi non oportet, cum, si quid fraude vel dolo egit, convenire eum more iudiciorum non prohiberis.

PP. III k. Mart. Albino et Maximo conss.

[6][99] *The same Augustus to Marcianus.* It is a not unfamiliar rule that a defendant accused of a crime cannot undertake the defense of (another's) case until he justifies his innocence (of the crime).

Given February 24, in the consulship of Maximus, for the second time, and Aelianus (223).

[7] *The same Augustus to Macrinus, a soldier.* A soldier must not act as a procurator (in a lawsuit) either for his father or mother or wife, even on the basis of an imperial rescript. In the public interest he is forbidden from taking up another's defense, purchasing (another's) legal business, or appearing as a supporter (in court).

Posted March 8, in the consulship of Maximus, for the second time, and Aelianus (223).

[8] *The same Augustus to Mansuetus.* If anyone has given you a mandate to collect a debt for him, before joinder of issue (*litis contestatio*) you cannot mandate conduct of the (resulting) lawsuit to a third party.

Posted August 25, in the consulship of Maximus, for the second time, and Aelianus (223).

[9] *The same Augustus to Aufidius.* Consistent with military discipline, soldiers on active service can attend to their own affairs. Nor can it be said that a person conducts another's business if, for proper and honest reasons, he prosecutes actions that were mandated to him, since, although the premise of the claim (*intentio*) is undertaken in good faith in another's name, there is no doubt that he is managing his own affairs. To forbid this to my soldiers would be not just bizarre but unfair.

Without date and consul.

[10] *The same Augustus to Castricia.* If a procurator was appointed for one specific purpose but then exceeded the bounds of his mandate, what he did could not prejudice the owner (who appointed him). But if he had complete power to act (for his principal), the adjudication should not be rescinded, since if he acted fraudulently or deceitfully, you are not prevented from suing him by the regular legal process.[100]

Posted February 27, in the consulship of Albinus and Maximus (227).

[99] = C. 10.60.1 in part. Their consular dates indicate that Alexander Severus was the author of this and the next six constitutions.

[100] This rescript deals with an ordinary procurator who is appointed to manage a principal's affairs (either one aspect or completely), and who, in the course of this management, enters into litigation on the principal's behalf. The central issue is authorization.

[11] *Idem A. Sebastiano.* **pr.** Neque tutores neque curatores ex sua persona in re pupilli vel adulescentis procuratorem facere possunt, sed actorem constituere debent. **1.** Pupillus autem vel pupilla vel adultus vel adulta tam ad agendum quam ad defendendum tutore seu curatore interveniente procuratorem ordinare possunt. **2.** Ipsi autem tutores et curatores post litis contestationem a se factam ad exemplum procuratorum, qui litem contestati sunt, dare procuratores non prohibentur.

PP. prid. id. Mai. Alexandro A. III et Dione conss.

[12] *Idem A. Frontino militi.* **pr.** Exigendi a filio tuo mandati, qui se defensioni tuae offerebat, duplici ratione necessitas non fuit, aut quod defendere quis sive libertus sive extraneus sine mandato potest (satisdatione tamen pro defensione praestita et alia procul dubio observatione subiecta), aut quod filius, etiamsi ultro actionem patris nomine dirigat, mandatum probare non cogitur. **1.** Sane quod necdum legitimam aetatem idem filius tuus compleverat, ob hoc quidem depellere procuratione eum iudex non iniuste potuit. sed multo iustius fuit vel huiusmodi defensorem audire, quam absentem quasi contumacem et indefensum gravi condemnatione adficere.

V k. Oct. Agricola et Clementino conss.

[13] *Imp. Gordianus A. Viciano militi.* Ita demum super lite persequenda, quam tibi mater mandavit, actionem intendere potes, si, cum primo litem contestareris, non est tibi eo nomine opposita praescriptio militiae: quod nec, cum appellatio agitur, tibi obici poterit. nam si integra res est, ratio perpetui edicti acceptam tibi non permittit alieno nomine actionem intendere.

III id. Ian. Gordiano A. et Aviola conss.

[14] *Idem A. Sabiniano.* Non hoc minus sententia adversus te lata iuris ratione substitit, quod adversaria tua minor viginti quinque annis constituta causam suam marito sine curatore agendam mandavit. minoribus etenim aetas in damnis subvenire, non in rebus prospere gestis obesse consuevit.

PP. III non. Oct. Gordiano A. II et Pompeiano conss.

[11][101] *The same Augustus to Sebastianus.* **pr.** Neither *tutores* nor *curatores* can, by virtue of their roles (*ex sua persona*), appoint a procurator for the affairs of their minor or adult ward; instead, they ought to appoint a manager (*actor*). **1.** A minor or adult ward of either sex can, however, with the consent of a *tutor* or *curator*, appoint a procurator both for bringing and for defending an action. **2.** Even the *tutores* and *curatores* themselves, after they effect a joinder of issue (*litis contestatio*), are not prevented from appointing a procurator (to complete the trial), on the analogy of procurators who have joined issue.

Posted May 14, in the consulship of Alexander Augustus, for the third time, and Dio (229).

[12] *The same Augustus to Frontinus, a soldier.* **pr.** There was no need to require your son, who volunteered to defend you, to produce a mandate (from you, authorizing the defense), for two reasons. First, anyone – (even) a freedman or a third party – can defend (someone else) without a mandate, although obviously (only) after providing a security for the defense and observing other formalities. Second, a son, even if he voluntarily conducts an action in his father's name, is not compelled to prove a mandate. **1.** Of course, because your son had not yet reached legal age, the judge could not unjustly reject his procuratorship on this basis. But it is much more just at least to hear such a defender, rather than to afflict an absent (defendant) with a burdensome condemnation on the ground that he is contumacious and undefended.

September 27, in the consulship of Agricola and Clementinus (230).

[13] *Emperor* Gordian *Augustus to Vicianus, a soldier.* In pursuing the lawsuit that your mother mandated to you, you can bring an action only if, on this account, an objection stemming from your military service is not specially raised against you when you first join issue (*litis contestatio*). It cannot be raised against you when an appeal is underway. For if the matter is (still) fresh, the logic of the Perpetual Edict does not allow you, in another's name, to bring an action that was accepted for you yourself.

January 11, in the consulship of the Emperor Gordian and Aviola (239).

[14] *The same Augustus to Sabinianus.* By legal reasoning, the decision rendered against you is not any the less valid because your adversary, a woman less than 25, mandated conduct of her case to her husband without (consulting) her *curator*. For their age normally helps those under 25 when they are harmed, but it doesn't hinder them when their affairs are managed well.

Posted October 5, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

[101] = C. 5.61.1. The *actor* is a stand-in appointed for the trial with the court's consent: D. 26.9.6. *Actores* were frequently slaves; see C. 5.61.

[15] *Impp. Diocletianus et Maximianus AA. et CC. Cornificio.* Litem te redemisse contra bonos mores precibus manifeste professus es, cum procurationem quidem suscipere (quod officium gratuitum esse debet) non sit res illicita, huiusmodi autem officia non sine reprehensione suscipiantur.

PP. III non. April. AA. conss.

[16] *Idem AA. et CC. Paconiae.* Procuratorem vel actorem praedii, si non specialiter distrahendi mandatum accepit, ius rerum dominii vendendi non habere certum ac manifestum est. unde si non ex voluntate domini vendentibus his fundum comparasti, pervides improbum tuum desiderium esse dominium ex huiusmodi emptione tibi concedi desiderantis.

S. non. April. Byzantii AA. conss.

[17] *Idem AA. et CC. Mardonio.* Invitus procurationem suscipere nemo cogitur nec eandem ultra, nisi provocationis causa, extendere. sed nec defensionem absentis subire compellitur, cum fidem susceptam implere sufficiat.

PP. non. Iun. Philippopoli Diocletiano V et Maximiano IIII AA. conss.

[18] *Idem AA. et CC. Dionysiae.* Alienam suscipere defensionem virile officium est et ultra sexum muliebrem esse constat. filio itaque tuo, si pupillus est, tutorem pete.

S. XII k. Febr. Sirmi CC. conss.

[19] *Idem AA. et CC. Firmo.* Si pretium, quod[ix] actoribus alienis fundum vel servum citra mandatum tibi distrahentibus dedisti et neque praecessisse neque secuta contractum domini declaretur voluntas, in rem autem eius id pretium cessisse provinciae praeses causa cognita perspexerit, hoc tibi restitui iubebit.

S. prid. id. Mart. CC. conss.

[ix] [quod]

[15] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Cornificius.* You openly admit in your petition that you purchased (a litigant's interest in) a lawsuit, contrary to good morals, since, to be sure, it is not illicit to act as procurator – an office that ought to be gratuitous – but duties of this sort are not undertaken without reproach.

Posted April 3, in the consulship of the Augusti (293).

[16] *The same Augusti and Caesars to Paconia.* It is settled law and obvious that a procurator or a manager (*actor*) of real property, unless he has received a special mandate to sell it, has no right to sell ownership of the property. So if you purchased a farm from these sellers without the owner's consent, you will clearly appreciate that your request seeking transfer to you of the ownership from such a sale is dishonest.[102]

Written April 5, at Byzantium, in the consulship of the Augusti (293).

[17] *The same Augusti and Caesars to Mardonius.* No one can be compelled to undertake a procuratorship against his will, nor to extend it further (than he agreed), unless because of an appeal.[103] Nor is anyone (charged with some particular business) compelled to undertake (in addition) the defense of an absent (principal), since it suffices that he faithfully execute the responsibility he undertook.

Posted June 5, at Philippopolis, in the consulship of Diocletian, for the fifth time, and Maximian, for the fourth time, Augusti (293).

[18] *The same Augusti and Caesars to Dionysia.* Undertaking the defense of others is a male function, and (so) it is agreed that this lies beyond the female sex. If your son is a minor ward (*pupillus*), ask his *tutor* (to arrange for a procurator).

Written January 21, at Sirmium, in the consulship of the Caesars (294).

[19] *The same Augusti and Caesars to Firmus.* If you paid the price to another person's managers (*actores*) who sold you a farm or a slave without a mandate (from the owner to do so), and the owner's consent is not shown to have preceded or followed the contract, the provincial governor, after hearing the case, will order the price restored to you if he finds that it accrued to his (the owner's) benefit.

Written March 14, in the consulship of the Caesars (294).

[102] See C. 4.35.12, 8.15.1.

[103] The scholia to the Basilika 8.2.91 state that the compilers added: "unless on account of an appeal." See C. 4.35.10.

[20] *Idem AA. et CC. ad Verinum praesidem Syriae.* Nihil arbitramur interesse, utrum ab initio an coepta iam lite negotium ad personam procuratoris transitum fecerit.

D. x k. Oct. Demesso CC. conss.

[21] *Imp. Constantinus A. ad concilium provinciae Africae.* **pr.** Maritus citra mandatum in rebus uxoris cum sollemni satisdatione et alia observatione intercedendi habeat liberam facultatem, ne feminae persequendae litis obtentu in contumeliam matronalis pudoris inreverenter inruant nec conventibus virorum vel iudiciis interesse cogantur. **1.** Sin autem mandatum susceperit, licet maritus sit, id solum exsequi debet, quod procuratio emissa praescripserit.

PP. IIII id. Mart. Hadrumeto Constantino A. IIII et Licinio IIII conss.

[22] *Idem A. ad Bassum pu.* Procuratoribus institutis et post contestatam litem dominis effectis ii qui mandaverant non habeant facultatem negotia persequendi, nisi capitales inimicitiae vel morbus vel alia necessaria causa intercesserit: tunc enim etiam invitis his transferri lis potest.

D. XIII k. Iul. Constantino A. V et Licinio C. conss.

[23] *Imp. Iulianus A. Secundo pp.* Nulla dubitatio est post causam in iudicio agitatam utpote dominum litis procuratorem effectum etiam post excessum eius, qui agendam vel defendendam litem mandaverat, posse inchoatam causam iurgiumque finire, quippe cum et procuratorem posse eum instituere veteres iuris voluerunt conditores.

Lecta apud acta prid. non. Febr. Iuliano A. IIII et Sallustio conss.

[24] *Imppp. Gratianus Valentinianus et Theodosius AAA. Pancratio pu.* Licet in principio quaestionis persona debet inquiri procuratoris,

[20] *The same Augusti and Caesars to Verinus, Governor of Syria.* We do not think it matters whether a matter was turned over to a procurator from the beginning of a lawsuit or once it has begun.

Given September 22, at Demessus, in the consulship of the Caesars (294).[104]

[21] *Emperor* CONSTANTINE *Augustus to the Council of the Province of Africa.* **pr.** A husband, (even) without a mandate, should have full power of representation in his wife's (judicial) affairs, (albeit) with the customary security bond and other formalities, so that women, under pretense of pursuing a lawsuit and in defiance of matronly modesty, do not boldly intrude, nor are compelled to attend assemblies of men or trials. **1.**[105] But if anyone takes up a mandate, even if he is her husband, he ought to do only that which the given procuratorship requires.

Posted March 12, at Hadrumetum, in the consulship of Constantine Augustus, for the fourth time, and Licinius, for the fourth time (315).

[22] *The same Augustus to Bassus, Urban Prefect.* When procurators have been appointed (for a lawsuit) and then, after (and as a result of) joinder of issue, have become the owners (of the claims, in place of the original litigants), those who gave them the mandate lack the ability to prosecute the action (themselves), unless mortal disagreements or sickness or some other compelling reason has arisen. In such a case, the suit can be transferred (back to them) even against their (the procurators') will.

Given June 19, in the consulship of Constantine Augustus, for the fifth time, and the Caesar Licinius (319).

[23][106] *Emperor* JULIAN *Augustus to Secundus, Praetorian Prefect.* There is no doubt that after a case has been set in motion in a court (i.e., after joinder of issue), a procurator, inasmuch as he has become owner of the suit, can carry to conclusion the initiated case and the dispute even after the death of the person who gave him the mandate to bring or defend it, since, indeed, the ancient founders of the law wished that he could even appoint a procurator (in his own stead).

Read in the records on February 4, in the consulship of Julian Augustus, for the fourth time, and Sallust (363).

[24][107] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Pancratius, Urban Prefect.* Although, at the outset of a trial, a procurator

[104] *PLRE* 1 Verinus 1 gives September 22, 305.
[105] = C.Th. 2.12.4, which reads "a procurator" for "anyone."
[106] = C.Th. 2.12.1, with some significant differences of wording; at the end, it adds: "and transfer the initiated matter to his heirs."
[107] = C.Th. 2.12.3; combine with C. 8.4.6. The Theodosian constitution is differently worded; the rule here is substantially a late imperial or Justinianic innovation. It applies only to procurators for plaintiffs.

an ad agendum negotium mandatum a domino litis habeat, tamen si falsus procurator inveniatur, nec dici controversiae solent nec potest esse iudicium.

D. prid. non. April. Constantinopoli Antonio et Syagrio conss.

[25] *Imppp. Valentinianus Theodosius et Arcadius AAA. Tatiano pp.* Quicumque praetorianae vel urbanae praefecturae sublimissimae fastigium vel magisterium militare vel consistorianae comitivae insignia meruerit dignitatis vel proconsulare ius dixerit aut vicarii fuerit administratione subfultus, si quid ab eo vel infertur iurgium vel refertur, procuratoris personam in negotii sui iura substituat. quod si quis sanctionis huius statuta transgressus iudiciis sese iurgaturus ingesserit, careat eius litis sorte, cuius non per procuratorem expectavit eventum. iudex nihilo minus, qui contra fecerit, noverit a se viginti libras auri, ab officio quoque suo tantundem ponderis exigendum.

D. XVIII k. Oct. Arcadio A. II et Rufino conss.

[26] *Imppp. Arcadius Honorius et Theodosius AAA. Anthemio pp.* In pecuniariis controversiis, etsi specialiter hoc praecepti vel sententiae minime designat auctoritas, passim unicuique, si tamen ita maluerit, per procuratorem respondendi tribuimus facultatem: nisi forte quosdam, iustiores nonnumquam ob causas, vehementior maximi iudicis vocabit auctoritas.

D. prid. id. Oct. Constantinopoli Arcadio A. et Probo conss.

[27] **pr.** Ἐπειδὴ συνέβαινε τοὺς αὐτοὺς ἐντολέας καὶ τῶν ἐνδοξοτάτων ἀρχόντων ὄντας καὶ τῶν λογιωτάτων διαιτητῶν εἶναι καὶ ἐντεῦθεν εἰκότως ὑπερθέσεις ἐγίνοντο ταῖς δίκαις, μὴ σχολαζόντων τῶν ἐντολέων καὶ τοῖς ἐνδοξοτάτοις ἄρχουσιν παραμένειν καὶ τοῖς διαιτηταῖς, ἐνομοθέτησεν ἐν

should be asked whether he has a mandate for prosecuting the case from the owner of the suit, still, if he is (even later) discovered to be a false procurator, the controversy is customarily not pleaded, nor can the trial proceed.

Given April 4, at Constantinople, in the consulship of Antonius and Syagrius (382).

[25] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Tatianus, Praetorian Prefect.* Those who have reached the heights of the sublime Praetorian or Urban Prefecture, or have become a Master of Soldiers (*magister militum*), or have earned the insignia of the rank of Count of the Imperial Council (*comitiva consistoriana*), or have declared the law as Proconsuls, or have occupied the office of a deputed governor (*vicarius*), shall, if they institute or defend a dispute, appoint a procurator to represent their rights in the matter. If anyone transgresses the rules of this ordinance and enters court to litigate, he shall lose the suit because he did not await its outcome through a procurator. Nonetheless, a judge who acts contrary hereto shall (also) know that 20 pounds of gold will be exacted from him and an equal amount also from his staff.[108]

Given September 14, in the consulship of Arcadius Augustus, for the second time, and Rufinus (392).[109]

[26] *Emperors* ARCADIUS, HONORIUS, *and* THEODOSIUS *Augusti to Anthemius, Praetorian Prefect.* In monetary disputes (i.e., private cases), although the specific authority of a rule or decision is lacking for this, We grant to everyone who wishes the ability to answer through a procurator, unless, perhaps, for unusually just reasons some individuals are (personally) summoned by the mighty authority of the highest judge (the Praetorian Prefect).

Given October 14, at Constantinople, in the consulship of Arcadius Augustus and Probus (406).

[27][110] **pr.** Since it has happened that the same persons serve as procurators both before the *clarissimi* governors and the learned (lower-level) judge arbitrators, and for this reason lawsuits are predictably delayed because the procurators cannot appear (simultaneously) before both the *clarissimi* governors and the

[108] See also C. 9.35.11.

[109] Seeck dates to September 14, 391.

[110] This constitution, preserved only in a Greek synopsis from the Basilika (8.2.100) and its scholia, is of unknown date and origin, although it may have been originally combined with C. 2.7.19 and 3.3.6 of 486 or 487 (Zeno). Nonetheless, as Blume observed, the constitution is important because it "speaks of attorneys [*advocati*] and considers them the same as procurators [*procuratores*, ἐντολεῖς]. In the later times private individuals did not, ordinarily, act as procurators in a suit, but full power and authority was given attorneys to do and perform all duties that had formerly been performed by procurators, in addition to their ordinary duties as attorneys. In other words, the term procurator, when acting in a suit, was at this time the equivalent of the term attorney."

προοιμίοις ἡ διάταξις ἄλλους μὲν εἶναι ἐν τοῖς μεγίστοις δικαστηρίοις τῶν ἐνδοξοτάτων ἀρχόντων τοὺς ἐντολέας, ἄλλους δὲ τοὺς τοῖς αὐτῶν λογιωτάτοις διαιτηταῖς ὑπηρετουμένους ταῖς δίκαις. **1.** Πάλιν δὲ ἵνα μὴ πολλάκις ὁ αὐτὸς ἐντολεὺς καὶ παρὰ τοῖς ἐνδοξοτάτοις ἐπάρχοις καὶ παρὰ τῷ ἐνδοξοτάτῳ ἄρχοντι δοθῇ καὶ ἐμποδίζηται πάλιν τὰ δικαστήρια, νομοθετεῖ μηδέποτε τὸν αὐτὸν ἐντολέα δύο ἐνδοξοτάτοις ἄρχουσι παραμένειν ἤτοι προσεδρεύειν.

2. Ἐπειδὴ καὶ συνέβαινεν ἢ τέμνοντος τὴν δίκην τοῦ διαιτητοῦ ἐκκλήτῳ χρήσασθαι τὸν καταδικασθέντα ἢ ἀποροῦντος τοῦ διαιτητοῦ πρὸς τὴν τομὴν τῆς ὑποθέσεως ἀναφορᾷ χρήσασθαι τὸν διαιτητὴν πρὸς τὸν ἐνδοξότατον ἄρχοντα, οὗτινός ἐστιν διαιτητής, καὶ ἐντεῦθεν ἡ δίκη ἡ ἀρχθεῖσα παρὰ διαιτητῇ λέγεται μεταφέρεσθαι παρὰ τῷ ἐνδοξοτάτῳ αὐτοῦ ἄρχοντι, νομοθετεῖ ἡ διάταξις μὴ τὸν ἀρξάμενον τῆς δίκης ἐντολέα παρὰ τῷ διαιτητῇ αὐτὸν περαιοῦν τὴν δίκην παρὰ τῷ ἐνδοξοτάτῳ ἄρχοντι, ἀλλὰ μετένταλμα γίνεσθαι παρ' αὐτοῦ πρὸς τὸν ἐντολέα τὸν τῷ ἐνδοξοτάτῳ ἄρχοντι παρεδρεύοντα, μηδεμιᾶς δαπάνης ὡς ἐπὶ προβολῇ ἐντολέως γινομένης ἐπὶ τούτῳ τῷ μετεντάλματι, μηδὲ καινῆς ἱκανοδοσίας διὰ τοῦτο τὸ μετένταλμα ἀπαιτουμένης· ἀλλὰ καὶ τὴν iudicatum solvi καὶ τὴν ratam rem οὕτως ἐξ ἀρχῆς ὑπαγορεύεσθαι, ὡς περιέχεσθαι αὐταῖς καὶ τὰ δαπανήματα τοῦ τοιούτου μετεντάλματος, ἵνα ὁ ἐγγυώμενος τὴν μίαν τούτων τῶν ἱκανοδοσιῶν ἐπερωτᾶται ὅτι "Ὁμολογῶ καὶ τοῦτον τὸν παρὰ τῷ διαιτητῇ ἐντολέα ἐπὶ τῇ iudicatum solvi (ἢ τῇ *ratam rem*) ἐγγεγυῆσθαι, καὶ εἰ συμβῇ ἐξ ἀναφορᾶς τοῦ διαιτητοῦ ἢ ἀπὸ ἐκκλήτου διδομένης κατὰ τῆς αὐτοῦ ψήφου μετενεχθῆναι τὴν δίκην εἰς τὸ μέγιστον δικαστήριον, οὗτινός ἐστιν ὁ διαιτητής, καὶ τὸν ἐκ μετεντάλματος μέλλοντα εἶναι ἐντολέα ἐν τῷ μεγίστῳ δικαστηρίῳ κατὰ τὸν ὅμοιον τρόπον ἐγγεγύημαι."

3. Ἐὰν γὰρ μὴ ταῦτα πάντα παραφυλαχθῇ, εἰ μὲν ἐνὶ τῶν μεγίστων δικαστηρίων ἡ νομοθεσία παραβαθείη τῷ προσφόρῳ σκρινίῳ, πέντε λιτρῶν χρυσίου καταθήσει ποινήν· εἰ δὲ παρὰ διαιτηταῖς ἡ νομοθεσία παραβαθείη, ὁ τῆς δίκης πληρωτὴς ὁ προσεδρεύων τῷ λογιωτάτῳ διαιτητῇ μιᾶς χρυσίου λίτρας ἀπαιτηθήσεται ποινήν, οἱ δὲ ἄλλοι δύο οἱ ἐκ τῶν τάξεων ἀφωρισμένοι τῷ διαιτητῇ ἤτοι ἐκ τῶν σχολῶν δύο χρυσίου λιτρῶν ἀπαιτηθήσονται πρόστιμον· αὐτὸς δὲ ἐντολεύς, ἀφ' οὗ τι παραβαθείη, πληγαῖς σωφρονιζέσθω παρὰ τοῦ ἄρχοντος ἢ τοῦ διαιτητοῦ, κεκωλυμένος τοῦ λοιποῦ ἐντολεὺς ἐν δικαστηρίῳ δίδοσθαι.

[28] pr. Ἐὰν ὁ ἐγγυητὴς τοῦ ἐντολέως μὴ ὁρίσῃ χρόνον καὶ εἴπῃ τυχὸν ὅτι 'ἐγγυῶμαι αὐτόν, κἂν τελευτήσῃ ἢ ἀφανὴς γένηται', καὶ συμβῇ τοῦτο

judge arbitrators, this constitution ordained at its outset that some procurators serve in the high courts of the *clarissimi* governors, while other (different) ones provide judicial services to the learned judge arbitrators. **1.** Next, to prevent the same procurator from frequently being appointed both before the *clarissimi* Prefects and before the *clarissimus* governor, thus again impeding the courts, it ordains that the same procurator never serve as a procurator or a judicial advisor (*adsessor*) with two *clarissimi* magistrates (simultaneously).

2. It has also happened that a condemned person has appealed after a judge arbitrator decided a case, or that the judge arbitrator, uncertain how to decide the case, has referred it to the *clarissimus* governor to whom he was subordinate; and so the suit, begun before the judge arbitrator, is transferred, as it were, to his *clarissimus* governor. The constitution therefore ordains that no procurator who begins a case before a judge arbitrator shall conclude it before the *clarissimus* governor. Rather, a transfer shall take place from him to a procurator serving the *clarissimus* governor, with no fee being charged for this transfer as though for the (original) appointment of a procurator, and with no new security bond being required on account of this transfer. Rather, let provision be made from the outset both for payment of any judgment and for ratification (by the principal), in such a way that the fees for such a transfer are also contained therein. The person who provides one of these bonds makes this guarantee (as follows): "On behalf of him (the procurator) prosecuting the suit before the judge arbitrator, I promise to fulfill my bond that the judgment be paid – or, that ratification be made (by my principal); and if, as a result of a judge arbitrator referring the case or an appeal made from his decision, it happens that the case devolves to the highest court above the judge arbitrator, I give bond in the same manner for him who by reason of the transfer will be the procurator in the highest court."

3. If all these provisions are not observed and if, in any of the highest courts, this law is violated by the relevant official staff, it shall pay a penalty of 5 pounds of gold. But if the law is violated before judge arbitrators, a penalty of one pound of gold shall be exacted from the most learned judge's advisor (*adsessor*) who prepared the trial; while from the other two who were assigned to the judge from his office ranks or from the schools, a fine of 2 pounds of gold shall be exacted. The procurator himself, by whom anything is neglected, shall be chastised with lashes by the governor or by the judge arbitrator, and (then) forbidden for the future from being a procurator in a court.

[28][111] **pr.** If the surety for a procurator does not define the term (of the suretyship), saying, for instance: "I am a surety for him even if he dies or fails

[111] The two sections of this constitution, which lacks date and authorship, derive from the Byzantine legal compendium called the *Rhopai*, 10.5 and 19.16.

γενέσθαι, ἐντος κ' ἡμερῶν ὀφείλει ἕτερον προβάλλεσθαι. **1.** Ἐὰν τελευτήσῃ ἢ ἀφανὴς γένηται ὁ ἐπὶ δίκῃ παρά τινος δοθεὶς ἐντολεύς, μετὰ τὴν κ' ἡμέραν τοῦ προτιθεμένου παρὰ τοῦ ἄρχοντος διατάγματος περὶ τοῦ προβληθῆναι ἄλλον ἓξ μηνῶν ἔχει προθεσμίαν ὁ πρωτότυπος ἐν ἀπουσίᾳ ὢν πόρρω διακειμένης ἐπαρχίας εἰς τὸ ἕτερον προβάλλεσθαι ἢ αὐτὸς παραγενέσθαι. εἰ γὰρ μὴ ἔστι μακράν, ἐκ τοῦ ἄρχοντος ὁρίζεται προθεσμία.

XIII Ne Liceat Potentioribus Patrocinium Litigantibus Praestare vel Actiones in Se Transferre

[1] *Impp. Diocletianus et Maximianus AA. et CC. Aristobulo salutem.* **pr.** Divine admodum constituit divus Claudius consultissimus princeps parens noster, ut iactura causae adficerentur ii, qui sibi potentiorum patrocinium advocassent, ut hoc proposito metu iudiciariae lites potius suo marte discurrerent, quam potentiorem domorum opibus niterentur. **1.** Quem palam est in tantum provincialium quaestionibus[x] esse commotum, ut huius sanctionis rectores provinciarum custodes et contemptae rei vindices fecerit, scilicet ut in actores seu procuratores in subsidia negotiorum vel usurpatos gratia vel redemptos severa sententia vindicarent. **2.** Quare cum intersit et universe omnium et praecipue tenuiorum, qui saepe importunis potentium intercessionibus opprimuntur, inter litigatores audientiam tuam impertire debebis: nec metuas, ne praeiudices clarissimis viris, cum divus Claudius huius rei rectorem provinciae et disceptatorem et, si res postularet, ultorem specialiter fecerit.

D. IIII id. Sept. AA. conss.

[2] *Impp. Honorius et Theodosius AA. Iohanni pp.* Si cuiuscumque modi cautiones ad potentium fuerint delatae personas, debiti creditores iactura multentur. aperta enim credentium videtur esse voracitas, qui alios actionum suarum redimunt exactores.

D. V id. Iul. Ravenna Honorio XIII et Theodosio X AA. conss.

[x] questibus

to appear," and this (condition) occurs, then another (procurator) must be appointed within twenty days. **1.** If someone appoints a procurator who dies or fails to appear, and the twentieth day has passed after the governor's decree to substitute a second (procurator), a principal who lives abroad in a distant province has a continuance of six months for either substituting another or appearing himself. If he is not far away, the continuance is determined by the governor.

Thirteenth Title Powerful Persons Shall Not Lend Legal Aid to Litigants or Transfer Actions to Themselves

[1] *Emperors Diocletian and Maximian Augusti and the Caesars to Aristobulus, greetings.* The deified Claudius, Our ancestor and an emperor most skilled in law, was quite inspired in providing that those who had sought for themselves the judicial support (*patrocinium*) of the powerful (*potentiores*) should be punished with loss of their case, so that, with this fear on their minds, trials would proceed on the basis of their own (internal) conflict, rather than being decided by the (relative) wealth of powerful families. **1.** Obviously he was so deeply moved by the complaints from provincials that he made provincial governors the guardians of that ordinance and the avengers of its violation, namely, (ordering) that they should inflict severe punishment on managers (*actores*) or procurators who were used to bolster lawsuits whether for non-material consideration or for pay. **2.** Therefore, since it is important generally to everyone, but especially to the disadvantaged (*tenuiores*) who are often oppressed by the cruel intervention of powerful persons, you should hold a hearing among the litigators. Do not fear harming notables (*viri clarissimi*), since the deified Claudius specially made the governor of a province both the judge of this matter and, if it requires, the avenger.

Given September 10, in the consulship of the Augusti (293).

[2][112] *Emperors Honorius and Theodosius Augusti to John, Praetorian Prefect.* If written promises of any kind are assigned to powerful persons, the creditors shall be punished by loss of their debt. For it looks like plain avarice on the part of creditors when they pay for others to collect on their own rights of action.

Given July 11, at Ravenna, in the consulship of Honorius, for the thirteenth time, and Theodosius, for the tenth time, Augusti (422).

[112] = C.Th. 2.13.1; combine with C. 4.4.1, 4.26.13, 8.15.8, 11.48.17, 12.60.4. Creditors assigned debt to more powerful persons in order to overbear their debtors.

XIIII De His, Qui Potentiorum Nomine Titulos Praediis Adfigunt vel Eorum Nomina in Lite Praetendunt

[1] *Impp. Arcadius et Honorius AA. Messalae pp.* **pr.** Animadvertimus plurimos iniustarum desperatione causarum potentium titulos et clarissimae privilegia dignitatis his, a quibus in ius vocantur, opponere. **1.** Ac ne in fraudem legum adversariorumque terrorem his nominibus abutantur et titulis, qui huiusmodi dolo scientes conivent, adficiendi sunt publicae sententiae nota. **2.** Quod si nullum in hac parte consensum praebuerint, ut libelli aut tituli eorum nominibus aedibus adfigantur alienis, eatenus in eos qui fecerint vindicetur, ut adfecti plumbo perpetuis metallorum suppliciis deputentur. **3.** Quisquis igitur lite pulsatus, cum ipse et rei sit possessor et iuris et titulum illatae sollemniter pulsationis exceperit, contradictoriis libellis aut titulis alterius nomen crediderit ingerendum, eius possessionis aut causae, quam sub hac fraude aut retinere aut evitare temptaverit, amissione multetur nec repetendae actionis, etiam si ei probabilis negotii merita suffragantur, habeat facultatem. **4.** Eos sane, qui se sponte alienis litibus inseri patiuntur, cum his neque proprietas neque possessio competat, veluti famae suae prodigos et calumniarum redemptores notari oportebit.

D. XV k. Dec. Mediolani Stilichone cons.

XV Ut Nemo Privatus Titulos Praediis Suis vel Alienis Imponat vel Vela Regalia Suspendat

[1] *Impp. Honorius et Theodosius AA. Flaviano pp.* Regiae maiestatis est, ut nostrae tantum domus et patrimonia titulorum inscriptione legantur. omnes igitur intellegant publico iuri esse deputandum id, cui nomen dominicum praescribitur.

D. III k. Dec. Ravennae Basso et Philippo conss.

Fourteenth Title Those Who Affix Real Estate Placards with the Names of the Powerful or Who Fraudulently Use Their Names in a Lawsuit

[1][113] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Messala, Praetorian Prefect.* **pr.** We observe that many (defendants), losing hope of (winning) their unjust cases, confront plaintiffs with the placards (*tituli*) of powerful men and the privileges of *clarissimus* rank. **1.** In order to prevent these names and placards being abused to evade the law and terrorize adversaries, those (influential men) who knowingly connive in such deceit are to be punished with the disgrace of a public verdict. **2.** But if they did not consent to notices or placards in their names being affixed to the buildings of others, those who did this shall be punished to the extent of being flogged with lead and sent to permanent punishment in the mines. **3.** Therefore if suit is brought against anyone, and he thinks that the name of a third party should be forced into the reply documents (*libelli contradictorii*) or notices despite the fact that he is the possessor both of the property and of the right to it and has received notice of the suit duly brought against him, he shall be punished by loss of the possession or claim which he tried to retain or avoid through this fraud, nor shall he have the ability to reopen the action even if the merits of the matter would support him. **4.** Those, indeed, who voluntarily let themselves become involved in the lawsuits of others when they are entitled neither to ownership nor to possession, shall be branded as careless of their reputations and as the purchasers of vexatious litigation.

Given November 17, at Milan, in the consulship of Stilicho (400).

Fifteenth Title No Private Person Shall Fasten Placards to His or Another's Property nor Hang Up Royal Curtains

[1] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Flavianus, Praetorian Prefect.* It is a part of Imperial Majesty that only Our homes and property be designated with an inscription on placards (*tituli*, bearing Our name). All persons, therefore, shall know that any property on which the Imperial Name is inscribed must be regarded as under public law.[114]

Given November 29, at Ravenna, in the consulship of Bassus and Philippus (408).

[113] = C.Th. 2.14.1 (November 27, probably correct and preferred by Seeck); combine with C. 10.30.2, 11.74.2, 12.50.18, and possibly C.Th. 8.5.59 and 10.3.5. The fraud evidently consisted of getting influential men to post placards claiming title to real estate, in the expectation of frightening off rival claimants.

[114] So, if such placards are fraudulently placed on non-imperial property, it will be confiscated.

[2] *Impp. Theodosius et Valentinianus AA. ad Florentium pp.* **pr.** Ne quis vela regia suspendere vel titulum audeat sine praeceptione iudicis competentis rebus alienis imponere, quas quocumque modo qualiscumque persona possideat, licet non dominus, licet iniustus possessor ac temerarius invasor qui possidet doceatur. **1.** Eum autem, qui hoc facere ausus fuerit, si plebeius est, ultimo subdi supplicio, si clarissimus vel curialis vel miles vel clericus, proscribendum deportandumque non solum civitate Romana, sed etiam libertate privari censemus, exsecutoresque huius legis omnes iudices esse oportere. **2.** Deponendi autem vel frangendi titulos vel etiam conscindendi vela non solum eis, ad quorum praeiudicium tale aliquid contra fas contraque leges committitur, sed omnibus tam liberis quam servis sine metu calumniae vel accusatione criminis licentiam ministramus, decernentes iudices eorumque officia tricenis libris auri multari, si talem accusationem vel admittant vel depositam scribi concedant.

D. XV k. Iul. Constantinopoli Theodosio A. XVII et Festo conss.

XVI Ut Nemini Liceat Sine Iudicis Auctoritate Signa Imprimere Rebus, Quas Alius Tenet

[1] *Imp. Probus A. Octaviano.* Saepe rescriptum est ante sententiam signa rebus, quas aliquis tenebat, imprimi non oportere. et ideo ea rebus aut fructibus apud te constitutis illicite imposita poteris ipse licite detrahere, ut amotis his causa, quae ex officio tibi infertur, terminetur.

D. IIII k. Iul. Probo A. II et Lupo conss.

[2] *Impp. Diocletianus et Maximianus AA. Craugasio.* Rebus, quas alius detinet, imprimere signa nemini licet, etiam si suas vel obligatas sibi eas esse aliquis adfirmet.

[2] *Emperors* Theodosius *and* Valentinian *Augusti to Florentius, Praetorian Prefect.* **pr.** Without order from the appropriate judge, no one shall dare to hang up Royal curtains or a placard (claiming ownership in the Emperor's name) on another's property that anyone possesses in any manner, even if the person in possession is not an owner but a wrongful possessor or a willful intruder. **1.** We decree, further, that if anyone dares to do this, he shall, if he is a plebeian, be subject to capital punishment; if he is of *clarissimus* or curial rank or a soldier or a cleric, he shall be stripped of property and deported, deprived not only of Roman citizenship but also of freedom; and all judges must act as the avengers of this law. **2.** We also grant permission to take down or break the placards or even to cut down the curtains, and not just to those prejudiced when such a thing occurs contrary to religious law (*fas*) and statutes, but to all both free and slave, without fear of (a lawsuit over) vexatious litigation (*calumnia*) or a criminal accusation. We decree that judges and their staffs each be punished by (a penalty of) 30 pounds of gold if they either allow such an accusation or permit it to be written down after it is declared (orally).

Given June 17, at Constantinople, in the consulship of Theodosius Augustus, for the seventeenth time, and Festus (439).

Sixteenth Title No One Is Allowed, Without a Judge's Authority, to Place Seals on Property Held by Another

[1] *Emperor* Probus *Augustus to Octavianus.* Rescripts have often held that prior to the verdict (in a trial), seals (*signa*) are not to be placed on property that someone (else) was holding. And so if they were unlawfully placed on property or fruits (*fructus*) in your possession, you will be able to remove them lawfully, so that when they are removed, the case that was properly brought against you may be ended.[115]

Given June 28, in the consulship of Probus Augustus, for the second time, and Lupus (278).

[2] *Emperors* Diocletian *and* Maximian *Augustus to Craugasius.* No one is allowed to put seals on things that another is holding, even if he alleges they are his or obligated to him (as security for a debt).

[115] Seals were used to claim possession: e.g., D. 18.6.15.1. The issue here is self-help. The meaning of *ex officio* (here translated "properly") is uncertain, perhaps because details on the actual dispute are lacking.

XVII Ne Fiscus vel Res Publica Procurationem Alicui Patrocinii Causa in Lite Praestet

[1] *Imp. Gordianus A. Legitimo et aliis.* Rei publicae viribus adiuvari te sub obtentu quantitatis, quam eidem rei publicae debes, contra iuris rationem desideras.

PP. VIII id. Ian. Gordiano A. II et Pompeiano conss.

[2] *Idem A. Tertullo.* Cum adlegas partem rerum vel actionum dimidiam fisco, quo magis viribus eius protegaris, velle te donare, huiusmodi litium donationem admitti temporum meorum disciplina non patitur. unde ius tuum, si quod tibi competit, citra invidiam fisci mei tueri sollemniter cura.

S. VI non. Aug. Gordiano A. II et Pompeiano conss.

[3] *Impp. Diocletianus et Maximianus AA. et CC. Amphioni.* Abhorret saeculo nostro sub praetextu debiti procurationem contra privatos fiscum praestare.

D. VIII k. Ian. Philippopoli AA. conss.

[4] *Idem AA. et CC. Achilli.* Ad fraudem creditoribus faciendam invidiam fiscalem contra saeculi nostri tranquillitatem implorari non decet. redde itaque fisco nostro quod debes, ac si conventus velut a creditore fueris, quem tibi numerasse pecuniam negas, exceptione non numeratae pecuniae secundum leges uti potes.

D. XVI k. Ian. Sirmi CC. conss.

XVIII De Negotiis Gestis

[1] *Impp. Severus et Antoninus AA. Sopatrae.* Cum tutores filiorum tuorum suspectos faceres eisdemque tutores seu curatores peteres, munere

Seventeenth Title Neither the Treasury nor a Municipality Shall Provide Legal Representation by Acting as a Procurator in a Lawsuit

[1] *Emperor GORDIAN Augustus to Legitimus and others.* You seek (legal) support from the resources of a municipality (*res publica*),[116] using the excuse that you owe this amount to the same government. This is contrary to the logic of the law.

Posted January 6, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

[2] *The same Augustus to Tertullus.* You allege that you wish to donate to the Treasury half of the property or of the rights of action so that you are better protected by its strength, but the policies of my age do not allow receiving such lawsuits as a gift. Arrange, therefore, to protect whatever right you have in the normal manner, without (causing) animosity toward my Treasury.

Given July 31 (?), in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

[3] *Emperors DIOCLETIAN and MAXIMIAN Augusti and the Caesars to Amphion.* It does not accord with Our era that the Treasury, under pretext of a debt (owed to it), act as a procurator against private persons.

Given December 25, at Philippopolis, in the consulship of the Augusti (293).[117]

[4] *The same Augusti and Caesars to Achilles.* It is improper and contrary to the serenity of Our era to beg, in defraud of creditors, that the Treasury incur animosity (by acting as your procurator). So pay to Our Treasury what you owe. If you are sued by someone claiming to be a creditor, and you deny he paid you the money (in the first place), according to the law you can use the defense that no money was paid you (*exceptio non numeratae pecuniae*).

Given December 17, at Sirmium, in the consulship of the Caesars (294).[118]

Eighteenth Title Management of Affairs[119]

[1] *Emperors SEVERUS and ANTONINUS Augusti to Sopatra.* When you raised suspicion against the *tutores* of your sons and sought (new) *tutores* or *curatores*

[116] *Res publica* probably refers to a municipality, but might mean the Roman government. Blume: "In this case, the city was asked to interfere evidently on the theory that payment to it would be made easier for the debtor if another creditor were defeated."

[117] Mommsen gives May 25, 293.

[118] Mommsen gives December 17, 293.

[119] *Negotiorum gestio.* This title is particularly concerned with "unauthorized agency," in which a volunteer transacts business on behalf of another person. See D. 3.5. The action permitted both a claim of expenses by the "agent" and a claim for losses suffered by the "principal" as a result of the management.

pietatis fungebaris: quae causa non admittit negotiorum gestorum actionem, ut sumptus, quos in ea lite fecisti, repetere possis, cum etiam, si quis pro adfectione domestica aliquos sumptus fecerit, nulla ratione eos petere potest.

PP. III non. Oct. Dextro et Prisco conss.

[2] *Idem AA. Rufinae.* Contra impuberes quoque, si negotia eorum urguentibus necessitatis rationibus utiliter gerantur, in quantum locupletiores facti sunt, dandam actionem ex utilitate ipsorum receptum est. quae tibi quoque iure decernetur, quod sumptus in pupillum, quem Romae tutorum petendorum gratia duxisti, fecisse te adlegas, si non matertera eiusdem[xi] se facere paratam propriis impendiis ostenderit.

PP. XV k. Febr. Laterano et Rufino conss.

[3] *Idem AA. Hadriano.* Sive pro fratre coherede pecuniam solvisti, negotiorum gestorum actione experiri potes, sive pignoris liberandi gratia debitum universum solvere coactus es, actionem eandem habebis vel iudicio familiae herciscundae, si non est inter vos redditum, eam quantitatem adsequeris.

PP. VIII k. Febr. Anullino et Frontone conss.

[4] *Idem AA. Claudio.* Qui pupillae negotia tutoris mandato suscepit, pro tutore negotia non videtur gessisse, sed negotiorum gestorum actione pupillae tenebitur.

PP. III non. Dec. Fabiano et Muciano conss.

[5] *Idem AA. Trophimo.* Officio nec minus obsequio liberti functus negotiorum gestorum actionem contra patroni filias pupillas habere non potes.

PP. XIII k. Iul. Geta et Plautiano conss.

[xi] eius idem

for them,[120] you were performing a duty of familial loyalty (*munus pietatis*). This reason bars (you from bringing) an action on management of affairs (*negotiorum gestio*) to gain recovery of the expenses you paid in this litigation, since likewise if someone has some expenses on the basis of family affection, by no logic can he claim them.

Posted October 5, in the consulship of Dexter and Priscus (196).

[2] *The same Augusti to Rufina.* Against minors (*impuberes*) as well, if their affairs are advantageously managed when urgent circumstances require, it is the accepted rule, on the basis of their interests, that an action be given to the extent they have been enriched. This was rightly decreed for you as well because you allege that you had expenses on a ward (*pupillus*) whom you took to obtain *tutores* at Rome, unless his maternal aunt shows that she was ready to do the same at her own expense.

Posted January 18, in the consulship of Lateranus and Rufinus (197).

[3] *The same Augusti to Hadrianus.* If you paid money on behalf of your brother and co-heir, you can bring an action on management of affairs. If you were compelled to pay the entire debt in order to release a pledge, you will have the same action, or, if there is no reimbursement between you, you will recover this amount in an action to divide the inheritance (*actio familiae herciscundae*).

Posted January 25, in the consulship of Anullinus and Fronto (199).

[4] *The same Augusti to Claudius.* Someone who undertakes the affairs of a ward (*pupilla*) on a mandate from her *tutor* is not held to have managed her affairs as a *tutor* (*pro tutore*), but will be liable to the ward in an action on management of affairs.

Posted December 3, in the consulship of Fabianus and Mucianus (201).

[5] *The same Augusti to Trophimus.* Since you are performing the duty (*officium*), not to mention the submission (*obsequium*), that is due from a freedman, you cannot have an action on management of affairs against the wards who are your patron's daughters (for paying expenses on their behalf).

Posted June 19, in the consulship of Geta and Plautianus (203).

[120] The Basilika scholia (17.2.1) indicate that Justinian added "*tutores* or."

[6] *Idem AA. Gallo.* Curatorem tibi quidem patris testamento datum dicis: quod non potest videri iure factum. quod si, ut proponis, administrationi se miscuit, negotiorum gestorum actio tam adversus eum quam contra heredes eius tibi competit.
PP. Apro et Maximo conss.

[7] *Imp. Antoninus A. Euphratae.* Si ab eo, qui negotia tua gessit, heres ex duabus unciis institutus es, etiamsi adeas hereditatem, in reliquis decem unciis adversus coheredem competit tibi petitio, si quam adversus defunctum habuisti actionem.
PP. VI id. Mart. Romae Sabino II et Anullino conss.

[8] *Idem A. Severo.* Adversus eos, qui negotia tua gesserunt, negotiorum gestorum iudicio civiliter consiste: nec tibi oberit, si propter occupationes militares eam litem tardius fuisses exsecutus, cum hoc genus actionis longi temporis praescriptione excludi non possit.
PP. VI k. Aug. Antonino A. et Advento conss.

[9] *Idem A. Sallustio.* Si pecuniam a debitore tuo Iulianus exegit eamque solutionem ratam habuisti, habes adversus eum negotiorum gestorum actionem.
PP. VIII k. Mart. Praesente et Extricato conss.

[10] *Imp. Alexander A. Secundo et aliis.* Si servum alienum non inutilem domino constitutum aegrum curastis *et* negotium utiliter gessistis, competenti vobis actione sumptus recuperare potestis.
PP. XII k. Dec. Alexandro A. cons.

[11] *Idem A. Herenniae.* Alimenta quidem, quae filiis tuis praestitisti, reddi tibi non iusta ratione postulas, cum id exigente materna pietate feceris. si quid autem in rebus eorum utiliter et probabili more impendisti, si non et hoc materna liberalitate, sed recipiendi animo fecisse ostenderis, id negotiorum gestorum actione consequi potes.

[6] *The same Augusti to Gallus.* You say that a *curator* was appointed for you in your father's will. This cannot be regarded as legally done. Still, if, as you allege, he (the *curator*) involved himself in the administration (of your affairs), you have an action on management of affairs against him as well as his heirs (if he has died).

Posted in the consulship of Aper and Maximus (207).

[7] *Emperor* ANTONINUS *Augustus to Euphrata.* If someone who managed your affairs instituted you as heir to two-twelfths of his estate, then although you enter on the inheritance, for the remaining ten-twelfths you have an action against your co-heir if you had any action against the deceased.

Posted March 10, at Rome, in the consulship of Sabinus, for the second time, and Anullinus (216).

[8] *The same Augustus to Severus.* Bring a civil action on management of affairs against those who managed your affairs. Nor will it prejudice you if, because of your military service, you raised the suit rather late, since this type of action cannot be barred by long-time prescription (*praescriptio longi temporis*).[121]

Posted July 27, in the consulship of Antoninus Augustus and Adventus (218).

[9][122] *The same Augustus to Sallustius.* If Julian collected money from your debtor and you ratified this payment, you have an action on management of affairs (*negotiorum gestio*) against him.

Posted February 22, in the consulship of Praesens and Extricatus (217).

[10] *Emperor* ALEXANDER *Augustus to Secundus and others.* If you cared for another person's sick slave who was (still) of some use to his master, and you managed the affair beneficially (to the master), you can recover your expenses by the appropriate action.

Posted November 20, in the consulship of Alexander Augustus (222).

[11] *The same Augustus to Herennia.* You have no legal basis to demand compensation for support payments (*alimenta*) to your sons, since you were required to do this by motherly devotion to them (*materna pietas*). But if you paid out anything on their affairs beneficially and in an acceptable manner, and you show you did this not out of maternal generosity but with the intent to be compensated, you can obtain this (expenditure) by suing on management of affairs.

[121] See C. 7.39.3. This constitution is probably from Elagabulus.

[122] = C. 8.37.3.1 (from Caracalla, addressed to Hadrian). Blume: "An action on mandate also was available where the principal ratified the acts."

PP. XII k. Febr. Albino et Maximo conss.

[12] *Idem A. Theophilo.* Si filius pro patre suo debitum solvit, nullam actionem ob eam solutionem habet, sive in potestate patris, cum solveret, fuit, sive sui iuris constitutus donandi animo pecuniam dedit. si igitur pater tuus sui iuris constitutus pro patre suo negotium gerens non praecedente mandato debitum eius solvit, negotiorum gestorum agere cum patruis tuis potes.

PP. k. Aug. Agricola et Clemente conss.

[13] *Idem A. Aquilae.* Quod in uxorem tuam aegram erogasti, non a socero repetere, sed adfectioni tuae debes expendere. in funus sane eius si quid eo nomine quasi recepturus erogasti, patrem, ad quem dos rediit, iure convenis.

PP. VIII k. Nov. Agricola et Clemente conss.

[14] *Idem A. Rufo.* Si mandatum solius mariti secutus tam ipsius quam uxoris eius negotia gessisti, tam tibi quam mulieri invicem negotiorum gestorum competit actio. ipsi sane qui mandavit adversus te mandati actio est: sed et tibi adversus eum contraria, si quid forte supererogasti.

PP. X k. Mart. Maximo II et Urbano conss.

[15] *Imp. Gordianus A. Muciano.* Si paterno adfectu privignas tuas aluisti seu mercedes pro his aliquas magistris expendisti, eius erogationis tibi nulla repetitio est. quod si ut repetiturus ea, quae in sumptum misisti, aliquid erogasti, negotiorum tibi gestorum intendenda actio est.

PP. VI id. Iul. Gordiano A. et Aviola conss.

[16] *Impp. Gallus et Volusianus AA. Eutychiano.* Si negotium sororis tuae gerens pro ea tributa solvisti, vel mandante ea vel rogante id fecisti, negotiorum gestorum actione vel mandati id, quod solvisse te constiterit, recipere poteris.

PP. XI k. Mai. Gallo et Volusiano conss.

Posted January 21, in the consulship of Albinus and Maximus (227).

[12] *The same Augustus to Theophilus.* If a son pays a debt for his father, he has no action concerning this payment, whether he was in his father's power when he paid, or when made *sui iuris* (i.e., after emancipation) he paid money as an intentional gift. If, therefore, your father, having become *sui iuris*, while managing his father's business paid his debt without a previous mandate (from your grandfather), you (as your father's successor) can sue your paternal uncles on management of affairs.[123]

Posted August 1, in the consulship of Agricola and Clemens (230).

[13] *The same Augustus to Aquila.* What you spent on your sick wife, you may not recover from your father-in-law, but should charge it to your affection. As to her funeral, however, if you spent anything on this account with the intent to recover, you rightly sue her father to whom her dowry returned.

Posted October 25, in the consulship of Agricola and Clemens (230).

[14] *The same Augustus to Rufus.* If, in carrying out a mandate only from a husband, you managed both his affairs and those of his wife, both you and she have reciprocal actions on management of affairs. The action on mandate against you goes, of course, to the giver of the mandate (the husband); but you (have) the counteraction against him if, say, you had additional expenses.

Posted February 20, in the consulship of Maximus, for the second time, and Urbanus (234).

[15] *The same Augustus to Mucianus.* If, out of paternal affection (*paternus adfectus*), you supported your stepdaughters or paid some fees to teachers on their behalf, you have no claim for return of this outlay. But if you paid something with the apparent intent to recover what you expended, you should bring an action on management of affairs.

Posted July 10, in the consulship of Gordian Augustus and Aviola (239).

[16] *Emperors* GALLUS *and* VOLUSIANUS *Augusti to Eutychianus.* If, in managing your sister's business, you paid taxes on her behalf, or you did this on her mandate or request, through an action on administration of affairs or on mandate you can recover what it is shown you paid.

Posted April 21, in the consulship of Gallus and Volusianus (252).

[123] As Blume observes, the constitution appears to contradict itself; the second sentence may have been altered to reverse the outcome. The uncles are evidently sued as heirs to their father, for shares.

[17] *Impp. Diocletianus et Maximianus AA. et CC. Claudiae.* Curatoris etiam successores negotiorum gestorum utili conventos actione tam dolum quam latam culpam praestare debere nec ad eos officium administrationis transire ideoque nullam alienandi eos res adultae potestatem habere convenit.

D. XIII k. Ian. Sirmi AA. conss.

[18] *Idem AA. et CC. Pomponio.* Ob negotium alienum gestum sumptuum factorum usuras praestari fides bona suasit: quo iure contra eos etiam, quorum te necessitate compulsum negotium gessisse proponis, per iudicium negotiorum gestorum uteris.

D. VIIII k. Ian. AA. conss.

[19] *Idem AA. et CC. Alexandro.* Ab uno herede pro solido re veluti communi venumdata de pretio coheres venditoris negotiorum gestorum ratam faciens venditionem agere potest.

D. id. Febr. Sirmi CC. conss.

[20] *Idem AA. et CC. Octaviae.* **pr.** Tutori vel curatori similis non habetur, qui citra mandatum negotium alienum sponte gerit, quippe superioribus quidem muneris necessitas administrationis finem, huic autem propria voluntas facit ac satis abunde sufficit, si cui vel in paucis amici labore consulatur. **1.** Secundum quae super his quidem, quae nec tutor nec curator constitutus ultro quis administravit, cum non tantum dolum et latam culpam, sed et levem praestare necesse habeat, a te conveniri potest et ea, quae tibi ab eo deberi patuerit, cum usuris compelletur reddere. **2.** De ceteris vero, quae ab aliis tui constituta iuris detenta exacta non sunt, ab hoc, qui nec agendi quidem propter exceptionis obstaculum facultatem habere potuit, exigi non potest: et idcirco adversus eos, quos res tuas tenere dicis, detorquere tuas petitiones debes.

D. VIII k. Mai. Sirmi CC. conss.

[17] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Claudia.* It is agreed that the heirs of a *curator*, (if) sued in an analogous action on administration of affairs, should be liable for both deliberate misconduct (*dolus*) and serious fault (*culpa lata*), and that the duty of administration does not pass to them, and that, therefore, they had no power to alienate the property of an adult woman.[124]

Given December 20, at Sirmium, in the consulship of the Augusti (293).

[18] *The same Augusti and Caesars to Pomponius.* Good faith (*bona fides*) demands that interest be paid on your expenses in managing another's business. You will use this rule also in an action on management of affairs against those whose business you say you managed through necessity.

Given December 24, in the consulship of the Augusti (293).

[19][125] *The same Augusti and Caesars to Alexander.* When one heir sells as commonly owned a full interest in (inherited) property, the seller's co-heir, if he ratifies the sale, can sue on management of affairs for (his share of) the price.

Given February 13, at Sirmium, in the consulship of the Caesars (294).

[20] *The same Augusti and Caesars to Octavia.* **pr.** A *tutor* or *curator* is not held to resemble a person who without a mandate voluntarily manages another's affairs, in that for the former the duty of their office determines the bounds of their administration, while it is his own desire (that leads to this) for the latter, and it fully suffices if through a friend's efforts one's interests are considered even in a few matters (rather than generally). **1.** Accordingly, if a person who is neither a *tutor* nor a *curator* voluntarily administers (your affairs), since he is necessarily responsible not just for deliberate misconduct and serious fault but also slight (fault; *culpa levis*),[126] he can be sued by you on these matters, and he will be compelled to return with interest what he is shown to owe you. **2.** But as for other property that belonged to you but was detained by others and not recovered (by him), it cannot be demanded from a person who did not even have a right to sue because of the obstacle of a defense; and so you should turn your claims against those who, as you say, hold your property.

Given April 24, at Sirmium, in the consulship of the Caesars (294).

[124] Blume: "Here the heirs continued the business of the curator. They had no right to dispose of property. They were responsible, apparently, only for fraud or gross neglect, not ordinary negligence, as other agents without mandate." *Culpa lata* somewhat resembles gross negligence.

[125] = C. 3.36.20, possibly.

[126] See Paul, *Sent.* 1.4.1; D. 3.5.3.9.

[21] *Idem AA. et CC. Mitrae.* Si cognati tui servos suos manumiserunt, hoc, quod eos administrasse res vestras contendis, eorum impedimentum libertati fieri non potuit. quin autem ex actu praecedenti post manumissionem, si utriusque temporis administratio non conexa, sed separata sit, conveniri non posse procul dubio sit.

D. VI k. Oct. Viminacii CC. conss.

[22] *Idem AA. et CC. Eulogio.* Negotium gerentes alienum non interveniente speciali pacto casum fortuitum praestare non compelluntur.

D. XI k. Dec. CC. conss.

[23] *Idem AA. et CC. Theodoro.* Negotiis gestis non in rem, sed in personam est actio.

D. XII k. Dec. Nicomediae CC. conss.

[24] *Imp. Iustinianus A. Iuliano pp.* **pr.** Si quis nolente et specialiter prohibente domino rerum administrationi earum sese immiscuit, apud magnos auctores dubitabatur, si pro expensis, quae circa res factae sunt, talis negotiorum gestor habeat aliquam adversus dominum actionem. **1.** Quam quibusdam pollicentibus directam vel utilem, aliis negantibus, in quibus et Salvius Iulianus fuit, haec decidentes sancimus, si contradixerit dominus et eum res suas administrare prohibuerit, secundum Iuliani sententiam nullam esse adversus eum contrariam actionem, scilicet post denuntiationem, quam ei dominus transmiserit nec concedens ei res eius attingere, licet res bene ab eo gestae sint. **2.** Quid enim, si dominus adspexerit ab administratore multas expensas utiliter factas et tunc dolosa adsimulatione habita eum prohibuerit, ut neque anteriores expensas praestet? quod nullo patimur modo: sed ex quo die attestatio ad eum facta est vel in scriptis vel sine scriptis, sub testificatione tamen aliarum personarum, ex eo die pro faciendis meliorationibus nullam ei actionem competere, super anterioribus autem, si utiliter factae sunt, habere eum actionem contra dominum concedimus sua natura currentem.

D. XV k. Dec. Constantinopoli Lampadio et Oreste conss.

[21] *The same Augusti and Caesars to Mitra.* If your blood relatives manumitted their slaves, your contention that they (the slaves) administered your property could not become an obstacle to their freedom. What is more, it is beyond doubt that after their manumission they cannot be sued for an act preceding it if the administration is not continuous over both periods but divided.

Given September 26, at Viminacium, in the consulship of the Caesars (294).

[22] *The same Augusti and Caesars to Eulogius.* Those who manage another's business are not responsible, except by special agreement, for (loss caused by) unavoidable accident (*casus fortuitus*).

Given November 21, in the consulship of the Caesars (294).

[23][127] *The same Augusti and Caesars to Theodorus.* The action on management of affairs is *in personam*, not *in rem*.

Given November 20, at Nicomedia, in the consulship of the Caesars (294).

[24] *Emperor* JUSTINIAN *Augustus to Julian, Praetorian Prefect.* **pr.** If anyone intermeddled in administering property when its unwilling owner specifically forbade this, there was doubt among the most important (juristic) authorities whether such a manager of affairs would have any action against the owner for expenditures on the property. **1.** Some promise him a direct or analogous action, and some deny one (altogether), among whom was Salvius Julianus. To decide these questions, We ordain that if the owner objects and prohibits him from administering his property, then in accord with Julian's opinion no counteraction lies against him – that is to say, after the owner transmits a notice to him and does not permit him to lay hands on his property even if he manages the matter well. **2.** But what if the owner has watched the administrator making much beneficial expenditure, and then with deceitful pretense forbids him in order to avoid owing the previous expenditures? In no respect do We allow this. But from the day on which notice (of prohibition) was given to him – either in writing or without writing but with other persons as witnesses – from that day on, no action shall lie for making improvements. But as for prior ones, if they were beneficial, We allow him to have an action against the owner, (but) one limited in time by its nature.

Given November 17, at Constantinople, in the consulship of Lampadius and Orestes (530).

[127] Combine with C. 6.19.2.

XVIIII De His, Quae Vi Metusve Causa Gesta Sunt

[1] *Imp. Alexander A. Felici.* Persecutionem eorum, quae vi vel furto ablata sunt, etiam si postea interciderunt, integram esse iure responsum est.

PP. x k. Dec. Maximo II et Aeliano conss.

[2] *Idem A. Alexandro.* Cum te non solum cavisse, verum etiam solvisse pecuniam confitearis, qua ratione ut vim passus restitui quod illatum est postules, perspici non potest, quando verisimile non sit ad solutionem te properasse omissa querella de chirographo utpote per vim extorto, nisi et in solvendo vim te passum dicis.

PP. VI k. Iul. Alexandro A. II et Marcello conss.

[3] *Imp. Gordianus A. Gaio.* Si vi vel metu fundum avus tuus distrahere coactus est, etiamsi maxime emptor eum alii vendidit, si tamen tu avo tuo heres extitisti, ut tibi reddito a te pretio restituatur, postquam placuit in rem quoque dari actionem, secundum formam perpetui edicti adito praeside provinciae poteris postulare, si modo qui secundo loco comparavit longae possessionis praescriptione non fuerit munitus.

PP. VI id. Aug. Pio et Pontiano conss.

[4] *Idem A. Primo et Eutycheti.* Si per vim vel metum mortis aut cruciatus corporis venditio vobis extorta est et non postea eam consensu roborastis, iuxta perpetui formam edicti intra annum quidem agentes, quo experiundi potestas est, si res non restituatur, quadrupli referetis condemnationem, scilicet reddito a vobis pretio: post annum vero causa cognita eadem actio in simplum permittitur: quae causae cognitio eo pertinet, ut ita demum decernatur, si alia actio non sit.

PP. III non. Aug. Gordiano A. et Aviola conss.

Nineteenth Title Acts Done Through Force or Fear[128]

[1] *Emperor* ALEXANDER *Augustus to Felix.* It was rightfully responded (by jurists) that the (judicial) pursuit of property that was taken away by force or theft remains unimpaired even if it subsequently perished.[129]

Posted November 22, in the consulship of Maximus, for the second time, and Aelianus (223).

[2] *The same Augustus to Alexander.* Since you acknowledge that you not only formally promised the money, but also paid it, it is impossible to understand by what reasoning you demand that what was paid be restored to you as a victim of force. For it is improbable that you rushed to pay while failing to raise a complaint about the promissory note (*chirographum*) being extorted through force, unless (perhaps) you say that you were also forced to make the payment.

Posted June 26, in the consulship of Alexander Augustus, for the second time, and Marcellus (226).

[3] *Emperor* GORDIAN *Augustus to Gaius.* If through force or fear your grandfather was compelled to sell a farm, and even if, in particular, the buyer (then) sold it to a third party, nevertheless, if you became your grandfather's heir, you can – after it became settled that an action for property (*actio in rem*) be also given (to victims of force or fear) – approach the provincial governor and, in accord with the provision of the Perpetual Edict, demand its restoration after you repay the price, as long as the second purchaser is not protected by long-term prescription.

Posted August 8, in the consulship of Pius and Pontianus (238).

[4] *The same Augustus to Primus and Eutyches.* If a sale was extorted from you through force or fear of death or bodily torture, and thereafter you did not confirm it by agreement, if you bring suit, in accord with the provision of the Perpetual Edict, within a year from when the opportunity to sue arises, you will receive a condemnation for quadruple damages, so long, of course, as you return the price. But after a year the same action is permitted following an examination of the case, for simple damages; this examination has as its object that this action will be given only if no other lies.

Posted August 3, in the consulship of Gordian Augustus and Aviola (239).

[128] See D. 4.2.
[129] Blume: "i.e., the value [of the items] could be recovered if they perished."

[5] *Idem A. Rufo militi.* Non interest, a quo vis adhibita sit patri et patruo tuo, utrum ab emptore an vero sciente emptore ab alio, ut vi metuve possessionem vendere cogerentur. nam si adhibita vi compulsi sunt possessiones suas quae maiore valebant minimo distrahere, iurisdictionis tenore, ut id quod improbe factum est in priorem statum revolvatur, impetrabunt.

PP. VI k. Ian. Gordiano A. et Aviola conss.

[6] *Impp. Diocletianus et Maximianus AA. et CC. Pollae.* Ad invidiam alicui nocere nullam dignitatem oportet. unde intellegis, quod ad metum arguendum, per quem dicis initum esse contractum, senatoria dignitas adversarii tui sola non est idonea.

PP. III k. Mai. Heracliae CC. conss.

[7] *Idem AA. et CC. Cotui.* Si donationis vel transactionis vel stipulationis vel cuiuscumque alterius contractus obligationis confectum instrumentum metu mortis vel cruciatus corporis extortum vel capitales minas pertimescendo adito praeside provinciae probare poteris, hoc ratum haberi secundum edicti formam non patietur.

D. II non. Ian. AA. conss.

[8] *Idem AA. et CC. Trophimo.* Cum te domus et horti venditionem fecisse sub spe recipiendi, quod de frumento feceras, instrumentum vel timore, ne ad civilia munera nominareris, proponas et rescindi venditionem veluti metus causa factam desideres, intellegis ad ratum non habendum contractum metum huiusmodi prodesse non posse.

D. XI k. Sept. Viminacii AA. conss.

[9] *Idem AA. et CC. Hymnodae.* Metum non iactationibus tantum vel contestationibus, sed atrocitate facti probari convenit.

D. k. Dec. AA. conss.

[10] *Idem AA. et CC. Faustinae.* Accusationis institutae vel futurae metu alienationem seu promissionem factam rescindi postulantis improbum desiderium est.

D. VI k. Febr. CC. conss.

[5] *The same Augustus to Rufus, a soldier.* It makes no difference who used force on your father and your paternal uncle, whether the buyer or a third party with the buyer's knowledge, so as to compel them to sell a possession by force or fear. For if force was applied and they were compelled to sell their possessions for less than their value, they will, in conformity with the Praetor's Edict (*tenore iurisdictionis*), succeed in rolling back what was dishonestly done against their former situation.

Posted December 27, in the consulship of Gordian Augustus and Aviola (239).

[6] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Polla.* No exalted rank should be a source of harm to the holder, by causing him to incur odium. So you understand that the senatorial rank of your adversary is not sufficient in itself to establish the fear that you say resulted in the contract.

Posted April 29, at Heraclea, in the consulship of the Caesars (294).[130]

[7] *The same Augusti and Caesars to Cotus.* If you can prove, after applying to the provincial governor, that a written instrument of gift or settlement or a stipulation or any other contractual obligation was extorted through fear of death or bodily torture or from fear of mortal threats, in accord with the Edict he will not allow this to be valid.

Given January 4, in the consulship of the Augusti (293).[131]

[8] *The same Augusti and Caesars to Trophimus.* You state that you sold your house and garden (either) in the hope of recovering a document you executed concerning grain or from fear of being selected for municipal duties, and you now seek that the sale be rescinded as made through fear. You understand that fear of this kind cannot be of significance for holding the contract void.

Given August 22, at Viminacium, in the consulship of the Augusti (293).

[9][132] *The same Augusti and Caesars to Hymnoda.* It is agreed that fear is proven not by (mere threatening) boasts or declarations, but by atrocious acts.

Given December 1, in the consulship of the Augusti (293).

[10] *The same Augusti and Caesars to Faustina.* It is a dishonest request to seek that a conveyance or promise be rescinded (because it was) made from fear of an accusation that has been instituted or will be.

Given January 27, in the consulship of the Caesars (294).

[130] Mommsen gives April 29, 293.
[131] Mommsen gives June 4, 293.
[132] Combine with C. 2.20.6, 2.31.2, 4.44.8 (addressee: Aurelia Euodia).

[11] *Imp. Constantinus A. ad Euagrium pp.* Si per impressionem quis aliquem metuens saltem in mediocri officio constitutum rei suae in eadem provincia vel loco, ubi tale officium peragit, sub venditionis titulo fecerit cessionem, et quod emptum fuerit reddatur et nihilo minus etiam pecunia retineatur: simili poena servanda, si qui vel coniugis vel amici nominibus abutentes praedam tamen sibi adquirunt.

D. x k. Oct. Aquileiae Constantino A. vii et Constantio conss.

[12] *Impp. Honorius et Theodosius AA. ad populum.* Venditiones donationes transactiones, quae per potentiam extortae sunt, praecipimus infirmari.

D. xiii k. Mart. Constantinopoli Honorio x et Theodosio vi AA. conss.

XX De Dolo Malo

[1] *Impp. Severus et Antoninus AA. Clementinae.* Si fideiussor a creditore pignora emit, oblata quantitat sortis et usurarum tibi dominium cum fructibus, quos bona fide percepit, consultius restituet, ne fidei ruptae gratia de dolo possit actio exerceri.

Accepta D. iii id. Mai. Plautiano et Geta conss.

[2] *Imp. Antoninus A. Agrippae.* De dolo actio, cum alia nulla competit, causa cognita permittitur.

D. non. Nov. Gentiano et Basso conss.

[3] *Imp. Gordianus A. Aquilino.* Non possunt obesse tibi tempora, quae in actione de dolo solent computari, quibus rei publicae causa, ut adlegas, occuparis: sed exinde tibi incipiet tempus cedere, ex quo muneribus liberatus facultatem agendi intra praestituta tempora coeperis obtinere.

PP. id. Aug. Sabino ii et Venusto conss.

[11] *Emperor* CONSTANTINE *Augustus to Euagrius, Praetorian Prefect.* If, from fear because of some oppression, a person cedes title of his property, ostensibly as a sale, to someone in even a low-level office, (if the property is located) in the same province or place where this official holds office, what is purchased shall be returned but nonetheless the money (i.e., the purchase price) shall be retained (by the seller). A similar penalty shall be inflicted if anyone, by improperly using the names of a wife or a friend, nevertheless acquires plunder for himself.[133]

Given September 22, at Aquileia, in the consulship of Constantine Augustus, for the seventh time, and Constantius (326).

[12][134] *Emperors* HONORIUS *and* THEODOSIUS *Augustus to the people.* We direct that sales, gifts, and settlements extorted by the powerful shall be deemed void.

Given February 17, at Constantinople, in the consulship of Honorius, for the tenth time, and Theodosius, for the sixth time, Augusti (415).

Twentieth Title Deceit[135]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Clementina.* If your surety (*fideiussor*) purchased pledged property from your creditor, and you tendered to him (the surety) the amount of the principal with interest, he will advisedly restore to you ownership (of the pledges), along with the fruits (*fructus*) he took in good faith, in order to prevent an action on deceit (*actio de dolo*) being brought because of broken faith (*fidei ruptae gratia*).

Received and given May 13, in the consulship of Plautianus and Geta (203).

[2] *Emperor* ANTONINUS *Augustus to Agrippa.* The action on deceit is granted after examination of the case, if no other (action) lies.

Given November 5, in the consulship of Gentianus and Bassus (211).

[3] *Emperor* GORDIAN *Augustus to Aquilinus.* The time limits normally calculated in the action on deceit cannot be a problem for you if, as you allege, you were at the time occupied with public business.[136] Rather, the time will commence to run against you from the moment when you are freed from your duties and start to have the opportunity to sue within the time that is fixed.

Posted August 13, in the consulship of Sabinus, for the second time, and Venustus (240).

[133] See C. 1.53.1; also C. 5.2.1, 5.4.6, and 5.7.1. Because of the date, *Constantinus* is emended from *Constantius*; but Seeck dates to September 22, 340, while Barnes has November 22, 326(?).
[134] = C.Th. 3.1.9.
[135] *Dolus malus*, which the jurists closely associate also with fraud. See D. 4.3.
[136] The text here is apparently corrupt, but this is the sense. The man, doubtless, was away from home; at this date (see law 8 below), the action had to be brought within one year.

[4] *Impp. Diocletianus et Maximianus AA. et CC. Menandrae.* Cum proponas inter te et eum, quem in contubernio ancillam tuam sibi coniunxisse memorasti, placuisse, ut tibi pro eadem daret mancipium, intellegis, quod, si manumisisti vel ei tradidisti et ille manumisit, revocandae libertatis potestatem non habes, sed solum, si necdum statutum tempus excessit et fidem placiti rumpat, desiderare debes de dolo tibi decerni actionem. quod si penes te dominium eius remansit, adito praeside provinciae cum natis hanc potes recuperare, si nulla moveatur status quaestio.

D. III k. Mai. Heracliae CC. conss.

[5] *Idem AA. et CC. Aphrodisiae.* **pr.** Si superstite patre per emancipationem tui iuris effecta matri successisti rebusque tuis per legitimum tutorem patrem eundemque manumissorem administratis postea transegisti cum eo bona fide, perspicis, quod, si pactum tantum factum sit, petitio tua per exceptionem submovetur, si vero novatio legitimo modo intercessit et acceptilatio subsecuta est, nullam tibi iam superesse actionem. **1.** Sane si laesa es immodice liberatione sollemniter per novationem atque acceptilationem tributa, non de dolo propter paternam verecundiam, sed in factum actio tibi tribuenda est.

D. id. Iun. AA. conss.

[6] *Idem AA. et CC. Hymnodae.* Dolum ex insidiis perspicuis probari convenit.

D. k. Dec. AA. conss.

[7] *Idem AA. et CC. Sebastiano.* Si maior quinque et viginti annis hereditatem fratris tui repudiasti, nulla tibi facultas eius adeundae relinquitur. sane si eius uxoris tibi substitutae dolo factum est, actionem de dolo contra eam exercere potes.

D. XVI k. Mai. CC. conss.

[4] *Emperors* D*IOCLETIAN and* M*AXIMUS Augusti and the Caesars to Menandra.* You state that, between you and the man who, so you recount, united your slave woman to himself in a domestic partnership (*contubernium*), it was agreed that he give a slave to you (as compensation) for her. You understand that if you manumitted her, or you handed her over to him and he manumitted her, you have no power to revoke her freedom; but if the prescribed time has not yet passed and he breaks his promise, you may only seek that the action on deceit be accorded you. If, however, you retained ownership of her, you can approach the provincial governor and recover her along with her children, provided no question as to her status (i.e., her freedom) is raised.

Given April 29, at Heraclea, in the consulship of the Caesars (294).[137]

[5] *The same Augusti and Caesars to Aphrodisia.* **pr.** During your father's lifetime, you were emancipated (by him) and became *sui iuris*, and you then succeeded your mother (as her heir); your property was administered through your father as your statutory *tutor* and emancipator, but thereafter you settled with him in good faith. You see that if just a pact (*pactum*, of settlement) was made, your claim is defeated through a defense (setting up the pact). But if a novation occurred in the prescribed manner and a formal release (*acceptilatio*) followed, no cause of action remains for you now. **1.** Of course, if you were seriously damaged by a discharge granted in proper form through novation and formal release, you should be granted, not the action on deceit because of the respect due your father, but an action on the facts (*actio in factum*).[138]

Given June 13, in the consulship of the Augusti (293).

[6][139] *The same Augusti and Caesars to Hymnoda.* It is agreed that deceit must be proven by showing blatant trickery.

Given December 1, in the consulship of the Augusti (293).

[7] *The same Augusti and Caesars to Sebastianus.* If you rejected an inheritance from your brother when you were over 25 years old, you have left no opportunity (now) to accept it. Of course, if this occurred through the deceit of his wife who was the substitute (heir) for you, you can use the action on deceit against her.

Given April 16, in the consulship of the Caesars (294).

[137] Mommsen has April 29, 293.

[138] Blume: "Condemnation in an action for fraud involved infamy. That result was not deemed desirable in certain cases, and hence, instead of an action for fraud, an action on the facts (*in factum*) only, in which all mention of fraud was avoided, could be brought. That was true in actions by children against parents; by a freedman against his patron; by a plebeian against one of high rank." C. 5.12.1 and 2; C. 5.21.2; D. 4.3.11.

[139] Combine with C. 2.19.9, 2.31.2, 4.14.8 (addressee: Aurelia Euodia).

[8] *Imp. Constantinus A. ad Symmachum vicarium.* Optimum duximus non ex eo die, quo se quisque admissum dolum didicisse memoraverit, neque intra anni utilis tempus, sed potius ex eo die, quo adseritur commissus dolus, intra continuum biennium de dolo actionem moveri, sive afuerit sive praesto est is, qui dolum se passum esse conqueratur. omnes igitur sciant neque incipiendae post biennium neque ante completum biennium coeptae, post biennium finiendae doli actionis concessam licentiam.

D. VIII k. Aug. Naisso Constantino A. V et Licinio C. conss.

XXI De in Integrum Restitutione Minorum Viginti Quinque Annis

[1] *Imp. Alexander A. Plotianae.* Illud inspiciendum est, num inofficiosi querellae vel palam vel tacita dissimulatione sit renuntiatum. nec hoc autem in personam tuam cadere posse auxilium, quod aetati impertitur, ostendit.

D. V id. Iul. Maximo II et Aeliano conss.

[2] *Idem A. Alexandro.* Eo tempore, quo soror tua auxilio iuvabatur aetatis, si patris intestati bonorum possessionem accipere debuit, licet quinque filios superstites habuerit, non tamen ideo minus ad edicti praerogativam pertinet, scilicet si nunc per aetatem beneficium restitutionis largitur.

PP. VIII id. Aug. Pio et Pontiano conss.

[3] *Impp. Diocletianus et Maximianus AA. et CC. Attiano.* Si curatorem habens minor quinque et viginti annis post pupillarem aetatem res venum dedisti, hunc contractum servari non oportet, cum non absimilis ei habeatur minor curatorem habens, cui a praetore curatore dato bonis interdictum est. si vero sine curatore constitutus contractum fecisti,

[8][140] *Emperor* CONSTANTINE *Augustus to Symmachus, His Vicar.* We hold it best that an action on deceit be raised not starting from the day when someone states he learned of the occurrence of deceit, nor within the space of an effective year (*annus utilis*), but rather within two continuous years starting from the day on which the deceit was allegedly committed, whether the person alleging the deceit is absent or at hand. So let all be on notice that no permission is given either to begin an action on deceit after two years, nor, if it is begun before two years, to finish it after two years.

Given July 25, at Naissus, in the consulship of Constantine Augustus, for the fifth time, and the Caesar Licinius (319).

Twenty-First Title Restoration of Rights to Those Less Than 25 Years Old[141]

[1] *Emperor* ALEXANDER *Augustus to Plotiana.* It must be examined (in many cases) whether a complaint about an undutiful (will; *querella inofficiosi testamenti*) was waived either expressly or implicitly through deliberate inattention. But the relief extended to (those below) the age (of 25) demonstrates that this rule cannot apply to you.

Given July 11, in the consulship of Maximus, for the second time, and Aelianus (223).

[2] *The same Augustus to Alexander.* If your sister, at the time when she was given relief because of her age, should have accepted possession of her intestate father's estate (but didn't) although she has five living sons, still she falls under the privilege of the Edict if the benefit of restoration because of age is now (still) available.[142]

Posted August 6, in the consulship of Pius and Pontianus (238).

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Attianus.* If you are under 25 years old and have a *curator*, and after reaching the age of adulthood (*post pupillarem aetatem*) you sold property (without his consent), this contract should not be upheld, since a person under 25 with a *curator* is

[140] = C.Th. 2.15.1.

[141] *Restitutio in integrum*, a praetorian remedy allowing restoration to a *status quo ante.* See D. 4.4. *Restitutio in integrum* is the subject of Titles 21 to 54.

[142] Blume: "The daughter here was doubtless emancipated. So she was required to ask for the right of possession of the inheritance, in order to receive any part of it ... The time for that was limited, and she failed to do so during that time. Nevertheless, if she was still a minor, she could still do so upon being restored to her rights. She evidently thought that she was prevented from doing so by reason of her children, who, next to her, were interested in the inheritance, and whose interests were, therefore, antagonistic." The consular date indicates that this rescript is actually from Gordian.

implorare in integrum restitutionem, si necdum tempora praefinita excesserint, causa cognita non prohiberis.

D. XIIII k. Mai. Heracliae AA. conss.

[4] *Idem AA. et CC. Isidoro.* Si minorem te quinque et viginti annis fuisse, cum contraheres, ostenderis, et tempora restitutionis praestituta excessisse ab adversario tuo comprobatum non fuerit, praeses provinciae in integrum restitutionis dare tibi auxilium debeat.

D. V k. Mai. Heracliae AA. conss.

[5] *Idem AA. et CC. Rufo.* **pr.** Minoribus in integrum restitutio, in quibus se captos probare possunt, etsi dolus adversarii non probetur, competit. **1.** Ante impletum etiam quintum et vicesimum annum de his, in quibus se minores captos existimant, posse in integrum restitutionem implorare certissimi iuris est.

D. V k. Mai. Heracliae AA. conss.

[6] *Idem AA. et CC. Sententiae.* Si intra aetatem, cui succurri solet, in integrum restitutionis lis inchoata est nec ei a te renuntiatum est, mors eius, contra quem haec fuerat implorata, fraudi tibi esse non potest.

D. V k. Mai. Sirmi CC. conss.

[7] *Idem AA. et CC. Severae.* De tutela avunculi eiusdemque tutoris, cui falso aetate probata praestitisti liberationem, quem ignarum aetatis tuae non fuisse tam officium tutelae quam sanguinis proximitas arguit, si necdum statutum tempus excessit, ex causa in integrum restitutionis heredes eius convenire potes.

D. XI k. Aug. CC. conss.

[8] *Impp. Honorius et Theodosius AA. Iuliano proconsuli Africae.* Minoribus in his, quae vel praetermiserint vel ignoraverint, innumeris auctoritatibus constat esse consultum.

considered not unlike a person whom the Praetor gives a *curator* and prevents from (managing) his property. But if you made the contract without having a *curator*, you are not forbidden from seeking, after examination, restoration of your rights, provided the time for doing so has not elapsed.[143]

Given April 18, at Heraclea, in the consulship of the Augusti (293).

[4][144] *The same Augusti and Caesars to Isidorus.* If you show that you were under 25 years old when you made the contract, and your adversary does not prove that the time fixed for restoration of rights has elapsed, the provincial governor should give you the benefit of restoration of rights.

Given April 27, at Heraclea, in the consulship of the Augusti (293).

[5][145] *The same Augusti and Caesars to Rufus.* **pr.** Restoration of rights is available to those under 25 when they can prove they were overreached, even if the adversary's deceit is not proved. **1.** It is also quite settled law that as to transactions in which they believe themselves overreached, they can seek restoration of rights before they complete their twenty-fifth year.

Given April 27, at Heraclea, in the consulship of the Augusti (293).

[6] *The same Augusti and Caesars to Sententia.* If you initiated a suit for restoration of rights while at the age to which help is usually extended, and you have not renounced it, the death of the person against whom you brought it cannot prejudice you.

Given April 27, at Sirmium, in the consulship of the Caesars (294).

[7] *The same Augusti and Caesars to Severa.* If the legal time has not yet elapsed, you can sue for restoration of rights against the heirs of your maternal uncle who was also your *tutor*, to whom, when your age was incorrectly certified, you gave a release concerning his guardianship; for his position as *tutor* as well as the closeness of his relationship makes clear he was not unaware of your (true) age.

Given July 22, in the consulship of the Caesars (294).

[8][146] *Emperors* Honorius *and* Theodosius *Augusti to Julian, Proconsul of Africa.* It is agreed by numerous authorities that concern is shown for those under 25 in matters that they overlook or are unaware of.

143 Blume: "The rescript established a new rule [under which] a transaction without consent of curator, if [the] minor had one, was absolutely void, needing no restitution."

144 Combine with C. 2.24.4.

145 Perhaps to be combined with C. 5.11.12 ("Written April 5") and C. 5.14.6 ("Given May 3").

146 = C.Th. 2.16.3 (which speaks of "women and minors"); combine with C. 3.6.3.

D. prid. non. Mart. Ravennae Constantio vc. cons.

[9] *Imp. Zeno A. Aeliano pp.* Non videtur circumscriptus esse minor, qui iure sit usus communi.

D. k. Ian. Basilio cons.

XXII De Filio Familias Minore

[1] *Imp. Gordianus A. Candiano militi.* Si frater tuus, cum mutuam pecuniam acciperet, in patris fuit potestate nec iussu eius nec contra senatus consultum contractum est, propter lubricum aetatis adversus eam cautionem in integrum restitutionem potuit postulare.

PP. III non. Oct. Pio et Pontiano conss.

[2] *Idem A. Tryphoni militi.* Filius familias, si minor viginti quinque annis pro extraneo fideiussit, in integrum restitutionem postulare non prohibetur. sed et si pro patre suo fideiussor extitit eique diem suum functo non successit, in integrum restitutionem postulare potest.

D. k. Iul. Gordiano A. II et Pompeiano conss.

XXIII De Fideiussoribus Minorum

[1] *Impp. Severus et Antoninus AA. Myroni.* Postquam in integrum aetatis beneficio restitutus es, periculum evictionis emptori, cui praedium ex bonis paternis vendidisti, praestare non cogeris. sed ea res fideiussores, qui pro te intervenerint, excusare non potest. quare mandati iudicio, si pecuniam solverint aut condemnati fuerint, convenieris, modo si eo quoque nomine restitutionis auxilio non iuvaris.

PP. VI k. Oct. Severo A. et Albino conss.

Given March 6, at Ravenna, in the consulship of the vir clarissimus *Constantius (414).*

[9][147] *Emperor* ZENO *to Aelianus, Praetorian Prefect.* A person under 25 is not held to have been defrauded when ordinary law was applied to him.

Given January 1, in the consulship of Basilius (480).

Twenty-Second Title A Son under 25 Who Is in His Father's Power

[1][148] *Emperor* GORDIAN *Augustus to Candianus, a soldier.* If your brother was in his father's power when he accepted a loan of money, and the contract was made neither by his (the father's) order nor contrary to the decree of the Senate,[149] because of his youthful lack of caution he could seek restoration of rights against the formal written promise (*cautio*).

Posted October 5, in the consulship of Pius and Pontianus (238).

[2] *The same Augustus to Trypho, a soldier.* If a son who was in his father's power and under 25 years old went surety for a non-family member, he is not forbidden from seeking restoration of rights. And even if he was surety for his own father, but did not inherit from him upon his death, he can seek restoration of rights.

Given July 1, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

Twenty-Third Title The Sureties of Those Under 25

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Myro.* After you have been restored to your rights by benefit of age, you are not compelled to be responsible to the purchaser, to whom you sold real property from your father's estate, for the risk of eviction (by the true owner). But this fact cannot excuse the sureties who assumed liability for you. So if they pay money or are condemned, you may be sued by the action on mandate, provided you are not helped by the benefit of restoration of rights on this account as well.

Posted September 26, in the consulship of Severus Augustus and Albinus (194).

[147] Combine with C. 5.12.28, 5.75.6.

[148] Combine with C. 4.13.1 (addressee: Candidus).

[149] The *SC Macedonianum* forbade loans of money to sons under paternal power. See D. 14.6, C. 4.28.

[2] *Impp. Diocletianus et Maximianus AA. Curioni.* Si ea, quae tibi vendidit possessiones, interposito decreto praesidis aetatis tantummodo auxilio adiuvatur, non est dubium fideiussorem ex persona sua obnoxium esse contractui. verum si dolo malo apparuerit contractum interpositum esse, manifesti iuris est utique personae tam venditricis quam fideiussores consulendum esse.

S. VI k. Mai. Diocletiano III et Maximiano AA. Cons

XXIIII Si Tutor vel Curator Intervenerit

[1] *Imp. Antoninus A. Marcianae.* Si iam puberes utriusque sexus parentium hereditatem adistis, sed etiam nunc in ea aetate estis, ut eo, quod paternae hereditati vos obligastis, in integrum restitutionis auxilium accipere debeatis, adite per procuratores vestros praesidem provinciae. quod si legitimam aetatem implestis idque tempus, quo in integrum restitui possitis, excessit, curatores vestros, si adversus eos nondum experti estis, iudicio secundum formam iuris convenite.

PP. II non. April. Laeto et Cereale conss.

[2] *Imp. Alexander A. Marcianae.* Minoribus annis viginti quinque etiam in his, quae praesentibus tutoribus vel curatoribus in iudicio vel extra iudicium gesta fuerint, in integrum restitutionis auxilium superesse, si circumventi sunt, placuit.

[3] *Impp. Diocletianus et Maximianus AA. Nicomedi.* Etiam in his, quae minorum tutores vel curatores male gessisse probari possunt, licet personali actione a tutore vel curatore suum consequi possint, in integrum restitutionis auxilium eisdem minoribus dari iam pridem placuit.

D. IIII non. Mai. Maximo II et Aquilino conss.

[4] *Idem AA. et CC. Isidoro.* Si creditor non vestram personam, sed curatorum secutus cum ipsis contractum habuit et ab ipsis stipulatus est, nullam ei prorsus adversus vos actionem competere manifestum est.

V k. Mai. Heracliae AA. conss.

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Curio.* If the woman sold you her possessions and, by intervention of a governor's decree, she is aided only through the benefit given to her age (i.e., she was under 25), there is (nonetheless) no doubt that her surety is bound to the contract in his own right. But if it (also) appears that the contract was deceitfully made, it is evident law that the interests both of seller and surety must be considered.

Written April 26, in the consulship of Diocletian, for the third time, and Maximian, Augusti (287).

Twenty-Fourth Title If a *Tutor* or *Curator* Participates[150]

[1] *Emperor* ANTONINUS *Augustus to Marciana.* If you (the petitioner and her siblings) have entered on the inheritance from both your parents as adults, but are still young enough to receive the benefit of restoration of rights against obligating yourselves for the inheritance from your father, approach the provincial governor through your procurators. But if you are of legal age and the time has elapsed when you could be restored to your rights, sue your *curatores* by an action in accord with the legal rule, assuming you have not already sued them.

Posted April 4, in the consulship of Laetus and Cerealis (215).

[2] *Emperor* ALEXANDER *Augustus to Marciana.* It is accepted that the benefit of restoration of rights is available to persons under 25 years old even in those matters conducted in the presence of their *tutores* or *curatores*, whether in or out of court, if they were (in fact) taken advantage of.

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Nicomedes.* It has long been the accepted rule that the benefit of restoration of rights is accorded also as to matters which the *tutores* or *curatores* of those under 25 are proven to have badly managed, even though they (those under 25) can also recover their own (damages) from a *tutor* or *curator* through a personal action (*actio personalis*).

Given May 4, in the consulship of Maximus, for the second time, and Aquilinus (286).

[4][151] *The same Augusti and the Caesars to Isidorus.* If your creditor, looking not to you but to your *curatores*, made a contract with them and took a stipulation from them, obviously he has no right of action whatsoever against you.

April 27, at Heraclea, in the consulship of the Augusti (293).

[150] The issue in this title is the effect of a guardian's consent on *restitutio in integrum*.

[151] Combine with C. 2.21.4.

[5] *Idem AA. et CC. Valentino.* Etiam tutoribus vel curatoribus distrahentibus vel alias contrahentibus minores tam restitui rebus propriis quam tutorum vel curatorum damna sequi, nullo eis praeiudicio per electionem generando, placuit.

VI id. Dec. CC. conss.

XXV Si in Communi Eademque Causa in Integrum Restitutio Postuletur

[1] *Impp. Diocletianus et Maximianus AA. et CC. Domitio Aphobio.* Nec si maior quinque et viginti annis soror vestra fuit, vobis non mandantibus nec ratam transactionem habentibus de iure vestro quicquam minuere potuit. nam si cognitis quae gesserit his consensum post viginti et quinque annos aetatis commodastis, quamvis illa minor pro portione propria restitutionis auxilium implorare possit, vobis tamen ad communicandum edicti perpetui beneficium eius aetas patrocinari non potest.

S. III id. Aug. CC. conss.

XXVI Si Adversus Rem Iudicatam

[1] *Imp. Alexander A. Iuliis.* Minus ex tutelae iudicio consecuti de superfluo habere actionem ita potestis, si tempore iudicii minores annis fuistis et nunc beneficium aetatis vobis largitur. ceterum si post legitimam aetatem sententia prolata est, iterato eandem actionem de isdem speciebus inferre non potestis.

PP. V k. Febr. Pompeiano et Peligniano conss.

[2] *Imp. Gordianus A. Serenae.* Si, cum pater tuus te in sua potestate esse minimeque emancipationem a se factam valere diceret, pro consule super causa cognoscens te eius potestati subiectam pronuntiaverit, cum adversus eam sententiam in integrum restitui postules, is qui provinciam regit in impertienda cognitione suas partes secundum leges exhibebit.

PP. XV k. Dec. Pio et Pontiano conss.

[5] *The same Augusti and Caesars to Valentinus.* The accepted rule is that even when *tutores* or *curatores* make a sale or other contract (for their wards), those under 25 are restored to their own property and also claim damages (not otherwise satisfied) that are caused by their *tutores* or *curatores*, and no prejudice arises for them through choice of remedy.

December 8, in the consulship of the Caesars (294).

Twenty-Fifth Title If Restoration of Rights Is Sought in the Same Shared Case

[1][152] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Domitius Aphobius.* Your sister, even if over 25 years old, could not in any way diminish your rights if you did not give her a mandate or ratify a settlement. For if you, knowing what she did, conferred your agreement concerning it after you reached 25, then although she, as a person below that age, could ask for restoration of rights as to her own portion, her age is of no legal help to you in participating in the benefit given by the Perpetual Edict.

Written August 11, in the consulship of the Caesars (294).

Twenty-Sixth Title If (Restoration of Rights Is Sought) Against an Adjudged Matter

[1] *Emperor* ALEXANDER *Augustus to the Julii.* If you received less (than was due) in a trial on tutelage, you can sue for the remainder (through restoration of right) only if you were not of age at the time of the trial and the benefit of age is at present bestowed on you. But if the verdict (in the trial on tutelage) was rendered after you reached legal age, you cannot again bring the same action concerning the same sort of things.[153]

Posted January 28, in the consulship of Pompeianus and Pelignianus (231).

[2] *Emperor* GORDIAN *Augustus to Serena.* When your father claimed that you were in his power and that his emancipation of you was in no way effective, the Proconsul who investigated the case pronounced you subject to his power. Since you now ask restoration of your rights against that decision, the provincial governor, in granting an investigation, will play his role in accord with the laws.[154]

Posted November 17, in the consulship of Pius and Pontianus (238).

[152] Combine with C. 4.51.4 (addressee: Domitius Aphobius), 8.42.18 (Domitius), both dated to February. Mommsen dates this constitution to February 11, 294.

[153] See C. 3.1.2.

[154] Compare C. 2.41.2.

[3] *Imp. Philippus A. et Philippus C. Aelianae.* Adversus sententiam eius, qui tunc vice principis iudicavit, in integrum restitutionis auxilium apud praetorem seu praesidem provinciae clarissimum virum flagitare nequaquam potes: nam adversus eius sententiam, qui vice principis cognovit, solus princeps restituet.

PP. XVIII k. Nov. Philippo A. et Titiano conss.

[4] *Impp. Diocletianus et Maximianus AA. Urbano.* Cum et minores vos esse adfirmetis et indefensos, nullum vobis praeiudicium fieri praeses provinciae pro sua gravitate curabit. nam si iusta defensione tutorum vel curatorum vobis adsistente aliquid statutum est, intellegitis in integrum restitutionis auxilium vobis esse necessarium: eodem obtinente etiam, si per procuratorem vestrum legitime ordinatum lis agitata est.

D. XVI k. Mai. Maximo et Aquilino conss.

[5] *Idem AA. et CC. Marciano.* In rem pupilli vel adulti contra tutores seu curatores a praeside lata sententia restitutionis auxilium non minus, quam si quid adversus eos fuisset statutum, implorare minores posse constat.

D. k. Nov. Nicomediae CC. conss.

XXVII Si Adversus Venditionem

[1] *Imp. Alexander A. Florentino militi.* Si minor annis viginti quinque emptori praedii cavisti nullam de cetero te esse controversiam facturum, idque etiam iureiurando corporaliter praestito servare confirmasti, neque perfidiae neque periurii me auctorem futurum sperare tibi debuisti.

D. VI k. Sept.

[2] *Imp. Constantinus A. ad populum.* In integrum restitutione minoribus adversus commenticias venditiones et adversus tutorum seu curatorum insidias sanctionum praesidio cautum esse non dubium est.

[3] *Emperor Philip Augustus and the Caesar Philip to Aeliana.* Before the Praetor or the *vir clarissimus* governor of the province you can in no wise claim the benefit of restoration of rights against the verdict of the person then judging as the Emperor's representative (*vicarius*). For against the verdict of a person trying a case as the Emperor's representative, only the Emperor will grant restoration.[155]

Posted October 15, in the consulship of Philip Augustus and Titianus (245).

[4] *Emperors Diocletian and Maximian Augusti to Urbanus.* Since you affirm that you are both under 25 and undefended, the provincial governor, in accord with his authority, will see to it that no disadvantage befalls you. For if any matter is determined when you are assisted by the legally proper defense of your *tutores* or *curatores*, you understand that you need the benefit of restoration of rights. The same is also true if the lawsuit was carried on through your legally appointed procurator.[156]

Given April 16, in the consulship of Maximus and Aquilinus (286).

[5] *The same Augusti and Caesars to Marcianus.* It is agreed that, when a governor's verdict against *tutores* or *curatores* negatively affects the property of a minor (*pupillus*) or an adult ward, those under 25 can seek the benefit of restoration no less than if something was decreed against them (personally).

Given November 1, at Nicomedia, in the consulship of the Caesars (294).

Twenty-Seventh Title If Against a Sale

[1] *Emperor Alexander Augustus to Florentinus, a soldier.* If, while under 25 years old, you gave the purchaser of real estate a formal promise that you would raise no controversy in the future, and you also confirmed your observance of this through an oath given corporally, you should not have hoped that I would assist your duplicity and false oath.[157]

Given August 27 (222–235).

[2][158] *Emperor Constantine Augustus to the people.* There is no doubt that by restoration of rights the protection of sanctions is accorded to those under 25 against fictitious sales, as also against the trickery of *tutores* or *curatores.*

[155] See C. 3.4.1.
[156] Blume: "If the minors were undefended, the decision was void, and no restitution of rights was needed. C. 7.43.6. If they were defended, restitution of rights might be had, the decision being only voidable."
[157] See C. 2.42.3.3–4. Similarly, of an oath given in the Emperor's name: C. 2.4.41–42.
[158] = C.Th. 2.16.1; combine with C. 5.37.22, 5.72.4, and perhaps 4.32.25. Actually issued in 329 (Seeck).

D. id. Mart. Sirmi ipso A. VII et C. conss.

XXVIII Si Adversus Venditionem Pignoris

[1] *Impp. Diocletianus et Maximianus AA. Sabinae et aliis.* Etiam adversus venditiones pignorum, quae a creditoribus fiunt, minoribus subveniri, si tamen magno detrimento adficiantur, iam pridem placuit. si igitur pignori captis praediis ac distractis enorme damnum ex huiusmodi venditione passos vos ostenderitis, praesertim cum hodieque vos minores esse adfirmetis, auxilium restitutionis vobis impertietur.

D. X k. Dec. Sirmi ipsis IIII et III AA. conss.

[2] *Idem AA. et CC. Severae et Clementianae.* **pr.** Rem, quam a patre vestro quondam creditor eius obligatam sibi distraxit, per aetatem vestram postulantium revocari desiderium non habet rationem. **1.** Quod iuris est et si extraneo successistis: nam si creditor non bona fide versatus est, ipsum magis vel tutores sive curatores vestros, qui hanc venumdari passi sunt, convenite.

D. XIII k. Mai. Sirmi CC. conss.

XXVIIII Si Adversus Donationem

[1] *Impp. Diocletianus et Maximianus AA. Theodotae.* Si quae res ante nuptias congruenti moderatione a minore annis marito sponsaliorum tempore, etiam curatore praesente, tibi donatae sunt, obtentu aetatis non revocabuntur.

S. III non. Nov. Diocletiano A. et Aristobulo conss.

[2] *Idem AA. et CC. Midae.* **pr.** Si in te ac fratrem tuum emancipatos pater vester fecit donationem, in alium postea transferendo portionem eius nihil vobis abstulit: nec, si frater tuus sibi quaesiti praedii rustici partem donanti patri consensit, dominium ab eo discedere potuit propter senatus consulti auctoritatem, nec auxilium in integrum restitutionis in hac re necessarium est. **1.** In aliis vero rebus, quae etiam sine decreti recitatione alienari possunt, si, postquam sibi donatae fuerint,

Given March 15, at Sirmium, in the consulship of the Augustus himself, for the seventh time, and the Caesar <Constantius> (326).

Twenty-Eighth Title If Against the Sale of a Pledge

[1] *Emperors Diocletian and Maximianus Augusti to Sabina and others.* The long-standing rule is that help is given those under 25 even against the sales of pledges made by creditors, provided they (those under 25) are greatly harmed. So if you show that real estate was placed under a pledge and sold, and that you suffered great loss from such a sale, especially since you affirm that you are still under 25, the benefit of restoration will be granted to you.[159]

Given November 22, at Sirmium, in the consulship of the Augusti, for the fourth and third times, respectively (290).

[2] *The same Augusti and Caesars to Severa and Clementiana.* **pr.** Property once obligated (as a pledge) by your father was sold (after his death) by his creditor. The desire that underlies your request for a restoration on the basis of your age makes no sense. **1.** This too is the law if you become heir to someone outside the family. For if the creditor did not act in good faith, sue him instead, or (else) your *tutores* or *curatores* who permitted sale of the property.

Given April 19, at Sirmium, in the consulship of the Caesars (294).

Twenty-Ninth Title If Against a Gift

[1][160] *Emperors Diocletian and Maximian Augusti to Theodota.* If at the time of your engagement (*sponsalia*) your husband was under 25 and in the presence of his *curator* he gave you property of appropriate amount, it cannot be reclaimed on the pretext of age.

Written November 3, in the consulship of the Emperor Diocletian and Aristobulus (285).

[2] *The same Augusti and the Caesars to Midas.* **pr.** If your father made a gift to you and your brother – both emancipated – he deprived you of nothing by later transferring a portion of it to a third party (the transfer being ineffective). Nor, if your brother consented to your father giving away part of the rural land that was acquired for himself (the brother), because of the authority of the decree of the Senate[161] he cannot lose ownership of it. The benefit of restoration of rights is not even needed in this case. **1.** But as to other property that can be

[159] See D. 20.5.7.1; also D. 4.4.9 pr. and C. 2.50.6.

[160] Combine with C. 5.71.8.

[161] The *oratio Severi* in D. 27.9.1, fixing conditions under which landed estates of minors could be sold. See also C. 8.53.24.

postea alii donanti eandem patri voluntatem in minore aetate accommodavit nec praestituta tempora restitutionis excessit, hoc auxilium implorare potest.

D. VIII k. Ian. AA. conss.

XXX Si Adversus Libertatem

[1] *Impp. Severus et Antoninus AA. Anniae.* Si post decretum praetoris viri clarissimi, qui fideicommissariam libertatem deberi pronuntiavit, Secundus, quem condicioni non paruisse conquereris, manumissus non est, aetas tua litis instaurationem admittit. quod si libertatem quamvis indebitam dedisti, non posse eam revocari intellegis, sed damnum, quod ob eam causam illatum est, iudicio negotiorum gestorum a curatoribus tuis esse sarciendum.

PP. II k. Iul. Laterano et Rufino conss.

[2] *Imp. Gordianus A. Solanae.* Etsi minor annis, ut adlegas, constituta servum tuum ab eo circumscripta in consilio manumisisti, tamen vindictae impositio, qua libertas iusta munitur, nec obtentu quidem aetatis rescindi potest. indemnitati vero tuae, a manumisso scilicet sarciendae, ab eo cuius iurisdictio est, quatenus iuris ratio permittit, consuli debet.

PP. VI id. Mart. Gordiano A. II et Pompeiano conss.

[3] *Impp. Valerianus et Gallienus AA. Marthonae et Sabinillae.* **pr.** Quos retrahi in servitutem postulatis, si non in consilio causa cognita, cum minores annis viginti fuissetis, manumisistis, non per in integrum restitutionem, sed ipso iure persequi potestis. quod si probata causa libertas praestita est, restitutio in integrum contra libertatem locum habere non potest. **1.** Si tamen in ea re culpa seu fraude liberti eiusdemque curatoris ratio vestra laesa sit, sarciri damnum ab eo qui hoc intulit praeses provinciae curabit, non dubitaturus etiam graviorem exsecutionem adhibere, si quid tam aperta fraude commissum est, ut puniendum in liberto crimen deprehendatur.

PP. VIII k. Oct. Saeculare II et Donato conss.

transferred without invoking the decree, he can seek the benefit (of restoration) if, after the property was given to him, he thereafter, while (still) under 25, gave the same consent to his father to give it to a third party, provided the time fixed for restoration has not elapsed.

Given December 25, in the consulship of the Augusti (293).

Thirtieth Title If Against a Manumission

[1] *Emperors Severus and Antoninus Augusti to Annia.* Through a judicial decision (*decretum*), the *vir clarissimus* Praetor pronounced that freedom was owed (to a slave) on the basis of a trust (*fideicommissum*). If (your slave) Secundus, as you complain, did not fulfill a condition (imposed by the trust), and he has not (yet) been manumitted, then your age permits renewal of the litigation. But if you gave him freedom despite its not being owed, you understand that it cannot be revoked; the loss you suffered on that account you must recover through an action on management of affairs against your *curatores.*

Posted June 30, in the consulship of Lateranus and Rufinus (197).

[2] *Emperor Gordian Augustus to Solana.* Although, as you allege, you were under 25 when you were deceived by your slave and manumitted him in a family council (*in consilio*), nevertheless the application of the rod by which legal freedom is secured cannot be rescinded even on the pretext of age. But a court with jurisdiction should, insofar as the logic of the law permits, take care that you are indemnified, namely, by the person manumitted.

Posted March 10, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

[3] *Emperors Valerian and Gallienus Augusti to Marthona and Sabinilla.* **pr.** Concerning those whom you ask be dragged back into slavery, if, when you were less than 20 years old, you manumitted them but not in a family council after an examination of the case, you can pursue them without resorting to restoration of rights, by (automatic) operation of law. **1.** If, however, your interest in this matter was harmed by the fault or fraud of the freedman who is also your *curator,* the provincial governor will see to it that this loss is recompensed by the person who inflicted it, and he will not hesitate also to mete out an even harsher punishment if anything occurred with such open fraud that in the case of the freedman a crime deserving of punishment is detected.

Posted September 24, in the consulship of Saecularis, for the second time, and Donatus (260).

[4] *Impp. Diocletianus et Maximianus AA. et CC. Tatiano.* In iudicio de liberali causa sententiam pro libertate latam ne quidem praerogativa minoris aetatis sine appellatione posse rescindi ambigi non potest.

PP. VIII id. Ian. Nicomediae Diocletiano VIII et Maximiano VII conss.

XXXI Si Adversus Transactionem vel Divisionem Minor Restitui Velit

[1] *Impp. Severus et Antoninus AA. Honorato.* Cum in integrum pupilla restituta rescindi transactionem vel divisionem placuit, tu quoque actionibus, quas pridem habuisti, utaris.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Hymnodae.* Si ex persona minorum in integrum restitutio adversus transactum propter aetatis auxilium imploretur, tibi quoque agenti ex integro vel replicatione contra exceptionem pacti vel, si peremptam constet pristinam obligationem, ex instauratione negotii tributa actione consulendum est.

D. k. Dec. CC. conss.

XXXII Si Adversus Solutionem a Debitore vel a Se Factam

[1] *Impp. Diocletianus et Maximianus AA. et CC. Soteri.* Exemplo ceterorum debitorum tutores etiam quae ex administratione tutelae debent curatoribus solventes liberantur, sed ante tempus in integrum restitutioni praestitutum edicto perpetuo permissum beneficium implorari et, an sit tribuendum, per causae cognitionem aestimari potest.

D. VI id. Febr. CC. conss.

[4] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Tatianus.* It cannot be questioned that a verdict rendered in favor of freedom in a trial concerning liberty cannot be rescinded without an appeal, even because of the privilege given to those under 25.[162]

Posted January 6, at Nicomedia, in the consulship of Diocletian, for the eighth time, and Maximian, for the seventh time (303).

Thirty-First Title If Someone Under 25 Wants Restoration Against a Settlement or Partition

[1] *Emperors* Severus *and* Antoninus *Augusti to Honoratus.* Since the prevailing view is that a settlement or a partition (of property) is rescinded when a minor ward (*pupilla*) is restored to her rights, you too may use the rights of action you formerly had.

[2][163] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Hymnoda.* If a restoration of rights against a settlement is requested on the part of those under 25 because of the aid extended to their age, your interests also, if you sue again, must be considered either through a counterdefense (*replicatio*) to the defense of a pact, or, if it is clear that the original obligation is extinguished, by giving you an action stemming from the transaction's reinstatement.

Given December 1, in the consulship of the Caesars (294).

Thirty-Second Title If Against a Payment Made by a Debtor Or by Himself

[1][164] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Soter.* As with other debtors, *tutores*, too, are released when they pay to *curatores* what they owe on the administration of a tutorship, but, before the time granted for restoration of rights, the benefit allowed by the Perpetual Edict can be requested, and whether it should be granted can be evaluated through investigation of the case.

Given February 8, in the consulship of the Caesars (294).

[162] Blume: "The instant rescript seems at first blush to be inconsistent with C. 1 h.t. But there the judge merely declared that freedom was owing to the slave pursuant to what the testator had provided. This might be called quibbling with a principle of law, but there is, in fact, a distinction."

[163] Combine with C. 2.19.9, 2.20.6, 4.44.8 (addressee: Aurelia Euodia). Mommsen dates to December 1, 293.

[164] Combine with C. 2.45.2 (dated February 13). Blume: "Here a guardian settled with the curator; but that was not final. Restitution of rights might be obtained by the minors to set the release aside."

[2] *Idem AA. et CC. Laurinae.* Indebito legato, licet per errorem iuris a minore soluto, repetitionem ei decerni, si necdum tempus, quo restitutionis tribuitur auxilium, excesserit, rationis est.

D. XV k. April. Sirmi CC. conss.

XXXIII Si Adversus Dotem

[1] *Imp. Alexander A. Valenti.* Quoniam circumventam dicis sororem tuam omnia bona in dotem dedisse, an veritas adlegationi adsistat, si ad te hereditas sororis tuae vel bonorum possessio pertinuit et tempora nondum praeterierint, intra quae legibus conceditur ex persona defuncti postulare in integrum restitutionem, praeses provinciae praesente diversa parte examinabit.

D. VI id. Iul. Maximo et Paterno conss.

XXXIIII Si Adversus Delictum Suum

[1] *Impp. Severus et Antoninus AA. Longino.* In criminibus quidem aetatis suffragio minores non iuvantur: etenim malorum mores infirmitas animi non excusat. sed cum delictum non ex animo, sed ex contractu venit, noxa non committitur, etiamsi poenae causa pecuniae damnum inrogatur: et ideo minoribus et in hac causa in integrum restitutionis auxilium competit.

D. id. Oct. Severo II et Victorino conss.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Proculae.* Licet in delictis aetate neminem excusari constet, matri tamen, quae filiis tutorem aetatis lubrico lapsa non petiit, eorum minime denegari successionem convenit, cum hoc in maioribus matribus tantum obtineat.

V non. Mart. CC. conss.

[2][165] *The same Augusti and Caesars to Laurina.* It is reasonable that the right to reclaim an unowed legacy, although through a mistake of law it was paid by someone under 25, is granted to him (the latter), provided that the time during which the benefit of restoration is given has not yet elapsed.

Given March 18, at Sirmium, in the consulship of the Caesars (294).

Thirty-Third Title If Against a Dowry

[1] *Emperor ALEXANDER Augustus to Valens.* You say that your sister, in giving all her property as a dowry, was overreached. If your sister's estate or the right to possess it (*bonorum possessio*) came to you, and the time has not yet elapsed during which the laws allow restoration of rights to be requested based on the legal position of the deceased, the provincial governor, in the presence of the other party, will examine whether this allegation conforms to the truth.

Given July 10, in the consulship of Maximus and Paternus (233).

Thirty-Fourth Title If Against His Own Delict

[1][166] *Emperors SEVERUS and ANTONINUS Augusti to Longinus.* In the case of crimes, indeed, those under 25 are not helped by the support given to (young) age. For infirmity of mind does not excuse the behavior of the wicked. But when a delict arises not from intent but on the basis of a contract, no offense is committed even if money damages are assessed as a penalty, and the benefit of restoration of rights is therefore also available to those under 25 in this case.

Given October 15, in the consulship of Severus, for the second time, and Victorinus (200).

[2] *Emperors DIOCLETIAN and MAXIMIAN Augusti and the Caesars to Procula.* Although it is clear that no one's delicts are excused by reason of age, still if through the carelessness of youth a mother (under 25) fails to seek a *tutor* for her sons, it is agreed that she is in no way denied succession to them; for that is true only for mothers who are of age.[167]

March 3, in the consulship of the Caesars (294).

[165] Combine with C. 7.2.11 (dated March 17, 293; the year is clearly an error).
[166] Combine with C. 2.36.1.
[167] See C. 6.56.3; Inst. 3.3.6.

XXXV Si Adversus Usucapionem

[1] *Impp. Diocletianus et Maximianus AA. et CC. Isidorae.* Contra eos, qui res minor*um* tenent, si usucapione dominium adquisierunt, restitutionis auxilium eis decerni debet.
D. k. Mai. Sirmi CC. conss.

XXXVI Si Adversus Fiscum

[1] *Impp. Severus et Antoninus AA. Longino.* Si Probus in minore aetate constitutus circumventus a Rufino dispensatore nostro venditionem rei praecipiti animo pretio longe minore contrahere festinavit, iuris publici fiscus noster in iure restitutionis sequetur auctoritatem.
D. id. Oct. Severo et Victorino conss.

[2] *Imp. Alexander A. Antiocho et aliis.* Si adversus privatos in integrum restitutionem tam tu quam fratres tui desideratis, praesidis provinciae viri clarissimi notio est isque causa cognita aestimabit, an auxilium quod imploratis conferri in vos debeat. quod si adversus fiscum id postulatis, intellegitis procuratorem meum una cum praeside, praesente fisci patrono, adire vos debere.
D. k. Aug. Alexandro A. II et Marcello conns.

[3] *Impp. Diocletianus et Maximianus AA. et CC. Laurentio.* **pr.** Edicto quidem divi Marci parentis nostri res minorum exceptae nihil tuum adiuvant desiderium, si quidem debiti causa patris minoris vel etiam ipsius praedia venumdata quinquennii praescriptionis nullam admittunt quaestionem. **1.** Sed quoniam per collusionem sive fraudem tunc temporis procuratoris nostri nimis exiguo pretio fundum tuum cum mancipiis venumdatum adseveras, si aditus rationalis noster tuis adlegationibus adesse fidem nec servatam sollemnitatem hastarum animadverterit, fisco te satisfaciente revocata venditione fundum tibi restitui iubebit.
D. id. Febr. Sirmi CC. conss.

Thirty-Fifth Title If Against Usucapion

[1] *Emperor* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Isidora.* The benefit of restoration should be accorded to them against persons who hold the property of those under 25 (even) if they acquired ownership through usucapion.

Given May 1, at Sirmium, in the consulship of the Caesars (294).

Thirty-Sixth Title If Against the Treasury

[1][168] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Longinus.* If Probus, who is under 25, was overreached by Our Paymaster Rufinus, and he rashly hastened to sell his property for far too low a price, Our Treasury (*fiscus*) will follow the authority of (ordinary) public law as to the law of restoration of rights.

Given October 15, in the consulship of Severus and Victorinus (200).

[2] *Emperor* ALEXANDER *Augustus to Antiochus and others.* If you as well as your brothers request restoration of rights against private persons, the *vir clarissimus* governor of the province has jurisdiction, and after examining the case he will determine whether the help you seek should be given to you. But if you ask this against the Treasury, understand that you should apply to my Procurator along with the governor, in the presence of the Treasury Advocate.

Given August 1, in the consulship of Alexander Augustus, for the second time, and Marcellus (226).

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Laurentius.* **pr.** Although property of those under 25 was excepted in the Edict of the deified Marcus our parent,[169] this does not help your request at all, since, when real properties are sold for the debt of the young person's father or the young person himself, they allow no attack on the five-year prescription. **1.** But since you assert that your farm, together with its slaves, was sold for an unduly low price through the collusion or fraud of Our then-serving Procurator, Our Comptroller (*rationalis*), if he is applied to and finds that your allegations are true and that the legal form of forced sales (*hastae*) was not observed, will order revocation of the sale and return of the farm to you after you satisfy the Treasury (as to the debt).

Given February 13, at Sirmium, in the consulship of the Caesars (294).

[168] Combine with C. 2.34.1.

[169] See Inst. 2.6.14. The Edict provided that, after five years, purchasers of property from the Treasury could repel a true owner through a defense. In the late Empire this defense was substantially strengthened.

XXXVII Si Adversus Creditorem

[1] *Imp. Antoninus A. Prunico.* Cum et ipse confitearis cum Zenodora minore viginti quinque annis contraxisse nec docere potuisse praetori viro clarissimo ex eo contractu locupletiorem factam, intellegis eam merito in integrum restitutam.

D. VI non. Mai. Messala et Sabino conss.

[2] *Imp. Gordianus A. Gaiano.* Si, ut adlegas, minor annis pecuniam fenori accepisti nec ea in rem tuam versa est, adversus cautionem, per quam eo nomine te obligasti, in integrum restitutionis auxilium potes sollemniter postulare.

PP. III non. Oct. Pio et Pontiano conss.

XXXVIII Si Ut Se Hereditate Abstineat

[1] *Impp. Severus et Antoninus AA. Florentio et aliis.* Si vos paternae hereditati non miscuistis, ob eam rem testificatio necessaria non fuit, cum fides veritatis verborum adminicula non desideret. quod si pro herede gessistis vel bonorum possessionem accepistis, propter aetatem, cui subveniri solet, in integrum restitutionis auxilium accipere debetis.

PP. V non. Mart. Saturnino et Gallo conss.

[2] *Imp. Gordianus A. Herodotae.* Si, cum avi tui testamento te heredem reliquissent, hereditates eorum non adisti, liberum tibi est repudiata paterna successione per in integrum restitutionis auxilium, quo te aetatis iure dicis esse munitam, hereditatem parentum tuorum, licet antea non adisti, nunc obtinere.

PP. III non. Febr. Gordiano A. II et Pompeiano conss.

Thirty-Seventh Title If Against a Creditor

[1] *Emperor* Antoninus *Augustus to Prunicus.* Since you yourself acknowledge that you made a contract with Zenodora who was under 25 years old, and that you could not show to the *vir clarissimus* Praetor that she was enriched by the contract, you understand that she was deservedly restored to her rights.

Given May 2, in the consulship of Messala and Sabinus (214).

[2] *Emperor* Gordian *Augustus to Gaianus.* If, as you allege, you were under 25 when you accepted money loaned at interest, and this (money) was not turned to your benefit (*in rem tuam versa*), you can duly seek the assistance of restoration of rights against the written promise (*cautio*) by which you obligated yourself on that account.

Posted October 5, in the consulship of Pius and Pontianus (238).

Thirty-Eighth Title If That He Abstain From an Inheritance[170]

[1][171] *Emperors* Severus *and* Antoninus *Augusti to Florentius and others.* If you refrained from involving yourself with your father's estate, on this matter a declaration before witnesses (that you were not accepting it) was unnecessary, since the evidence that truth provides requires no support from words. But if you acted as heir or accepted possession of the estate, you should receive the benefit of restoration of rights by virtue of your age, which is routinely assisted.

Posted March 3, in the consulship of Saturninus and Gallus (198).

[2] *Emperor* Gordian *Augustus to Herodota.* Your grandfathers appointed you heir by testament, but you did not accept the inheritance from them. Through the benefit of restoration of rights, by which you say you are protected by virtue of your age, you are now free, after refusing to succeed your father as heir, to obtain the inheritance of your forebears, although previously you did not accept it.

Posted February 3, in the consulship of the Emperor Gordian, for the second time, and Pompeianus (241).

[170] This Title confirms the (undated) change to the praetorian law of succession mentioned by Gaius, 2.157–158.

[171] = *C. Greg.* 2.4.1 (addressee Frontinus), which omits "or accepted possession of the estate."

XXXVIIII Si Ut Omissam Hereditatem vel Bonorum Possessionem vel Quid Aliud Adquirat

[1] *Imp. Gordianus A. Protae.* Minores viginti quinque annis non tantum in his, quae ex bonis propriis amiserunt, verum etiam si hereditatem sibi delatam non adierint, posse in integrum restitutionem postulare iam dudum placuit.
PP. id. Oct. Pio et Pontiano conss.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Sarapiadi.* Ad bonorum possessionem in paternis rebus omissam minores in integrum restitutionis admitti beneficio iam pridem placuit. restituti autem decreto bona quae habuerunt mortis tempore patris debent conferre.
D. XVI k. Nov. Sirmi CC. conss.

XXXX In Quibus Causis in Integrum Restitutio Necessaria Non Est

[1] *Imp. Alexander A. Mutato.* Minoribus quinque et viginti annis, praesertim qui per tutores vel curatores non defenduntur, non obesse, si mortem defuncti non ulciscantur, innumeris divorum parentum meorum ac meis rescriptis continetur.
V id. Mai. Alexandro A. III et Dione conss.

[2] *Impp. Valerianus et Gallienus AA. et Valerianus C. Theodotae.* Adulescentiae tempus non imputari in id quinquennium liberis, cuius praescriptio seram inofficiosi moventibus quaestionem opponi solet, manifeste ante rescripsimus. impleta igitur aetate legitima non est in integrum restitutio necessaria, quia non integratio amissae causae his datur, sed integra ipsa causa servatur.

Thirty-Ninth Title If That He Acquire an Inheritance or Possession of an Estate Or Anything Else That He Has Failed to Accept

[1] *Emperor* GORDIAN *Augustus to Prota.* The long-accepted rule is that persons under 25 years old can seek restoration of rights not only if they suffer losses from their own property, but also if they do not enter on an inheritance left to them.

Posted October 15, in the consulship of Pius and Pontianus (238).

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Sarapias.* The long-accepted rule is that, through the benefit of restoration of rights, those under 25 are admitted to the possession of their father's estate that they (previously) failed to accept. But those who are restored by judicial decision should contribute the property they had when their father died.[172]

Given October 17, at Sirmium, in the consulship of the Caesars (294).

Fortieth Title Cases in Which Restoration of Rights Is Unnecessary

[1] *Emperors* ALEXANDER *Augustus to Mutatus.* Persons under 25 years old, especially those not defended through *tutores* or *curatores*, are not prejudiced if they do not avenge the decedent's death; this rule is found in countless rescripts of my deified parents as well as my own.[173]

Given May 11, in the consulship of Alexander Augustus, for the third time, and Dio (229).

[2][174] *Emperors* VALERIAN *and* GALLIENUS *Augusti and Caesar* VALERIAN *to Theodota.* We have held plainly by earlier rescript that the period when they were under 25 is not counted against children in determining the five-year period that is the usual basis of a defense (*praescriptio*) set up against those who raise too late the issue of an undutiful will. When legal age is reached, therefore, restoration of rights is unnecessary because no renewal of a lost claim is given them; rather, the claim itself is preserved intact.

[172] That is, the child cannot obtain a share of the father's estate without first contributing to the estate his or her independently acquired property (*collatio bonorum*). See D. 37.6; C. 6.20. In common law, hotchpot. Mommsen dates this constitution to October 17, 293.

[173] Blume: "Where a man was murdered, his heirs could not enter upon the inheritance till the murder was avenged. [See C. 6.35.] Minors, however, were excused. C. 6.35.6."

[174] Combine with C. 3.28.16. See D. 5.2.8.17, 5.3.7.1.

PP. II id. Aug. Tusco et Basso conss.

[3] *Impp. Diocletianus et Maximianus AA. Decimo Caplusio.* In minorum persona re ipsa et ex solo tempore tardae pretii solutionis recepto iure moram fieri creditum est, in his videlicet, quae moram desiderant, id est in bonae fidei contractibus et fideicommissis et in legato.

PP. XII k. Oct. ipsis IIII et III AA. conss.

[4] *Idem AA. et CC. Stratonicae.* Si tutor tuus, qui pro tutelari officio non caverat, iudicio expertus est, contra eum lata sententia iuri tuo officere non potuit, nec ea quae ab eo gesta sunt ullam firmitatem obtinent. frustra igitur in integrum restitutionis auxilium desideras, quando ea, quae ab eo gesta sunt, qui legitimae administrationis personam sustinere non potuit, ipso iure irrita sunt.

S. XVIII k. Ian. Nicomediae CC. conss.

[5] *Imp. Iustinianus A. Iohanni pp.* **pr.** Sancimus favore imperfectae aetatis exceptionem non numeratae pecuniae ab initio minoribus non currere, ne, dum in integrum restitutionem expectamus, aliquod emergat obstaculum, per quod huiusmodi beneficio minor uti non potest, ne substantia eius subvertatur. **1.** Sed humanius et latius eandem legis interpretationem extendere, in omnibus casibus, in quibus vetera iura currere quidem temporales praescriptiones adversus minores concesserunt, per in integrum autem restitutionem eis subveniebant, eas ipso iure non currere. melius etenim est intacta iura eorum servari, quam post causam vulneratam remedium quaerere. videlicet exceptionibus triginta et quadraginta annorum in suo statu remanentibus.

D. k. Nov. Constantinopoli post cons. Lampadii et Orestis vv. cc.

XXXXI Qui et Adversus Quos in Integrum Restitui Non Possunt

[1] *Imp. Alexander A. Cononidi.* **pr.** In consilio quidem cognoscentis de restitutione in integrum esse oportet, num is, qui se minorem annis

Posted August 12, in the consulship of Tuscus and Bassus (258).

[3][175] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Decimus Caplusius.* In the case of those under 25, it is believed under accepted law that a delay (*mora*) arises from the fact itself and only from the time when the payment of price is late, obviously in those (legal arrangements) that consider delay, i.e., good faith contracts and trusts and for legacy.

Posted September 20, in the consulship of the Augusti, for the fourth and third times, respectively (290).

[4][176] *The same Augusti and the Caesars to Stratonica.* If your *tutor*, who gave no security for his tutelage, was involved in a lawsuit, a verdict against him cannot prejudice your rights, nor do his transactions have any validity. Hence you needlessly seek the benefit of restoration of rights, since the acts of a person who was unable to act as legal administrator are void by operation of law.

Written December 15, at Nicomedia, in the consulship of the Caesars (294).

[5] *Emperor* JUSTINIAN *Augustus to John, Praetorian Prefect.* **pr.** Out of goodwill for immature age, We ordain that the defense of money not having been paid (*exceptio non numeratae pecuniae*) does not begin running immediately for those under 25, lest, during the time when we await restoration of rights, some obstacle arise impeding the young person's ability to use such a benefit, resulting in their loss of property. **1.** The more humane and generous course is to broaden this interpretation of the law in all cases where the ancient laws allowed time-restricted prescriptions to run against minors while assisting those under 25 through restoration of rights, (and instead to provide) that by operation of law such prescriptions not run (at all). For it is better that their rights be preserved intact, rather than seeking a remedy after their legal position is harmed. The defenses of thirty and forty years remain as formerly, however.[177]

Given November 1, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

Forty-First Title To Whom and Against Whom There Can Be No Restoration of Rights

[1] *Emperor* ALEXANDER *Augustus to Cononides.* **pr.** In the council (*consilium*) of a person trying a case of restoration of rights, it should, of course, (be

[175] Combine with C. 4.49.5 (whence Caplusius is restored). For minors, no notice or warning of default is required.

[176] = C. 5.42.3.1–2 (omitting "who was unable to act as legal administrator," and dated one day later); perhaps combine with C. 4.6.11. The constitution may actually have been issued in 294.

[177] On this, see C. 7.39.

laesum esse dicat, diligens pater familias fuerit actibusque publicis industrium se docuerit, ut lapsum eum per aetatem verisimile non sit. **1.** Verum si causa cognita circumventus deprehendatur, propter hoc solum velut praescriptione a solito auxilio removeri non debet, quod urguentibus patriae necessitatibus decurio minor annis creatus sit vel propagandae suboli liberorum educatione prospexerit.

PP. x k. Oct. Lupo et Maximo conss.

[2] *Imp. Iustinianus A. Iohanni pp.* Cum apud veteres dubitabatur, an liberi parentes suos vel liberti patronos in querimoniam deducere possint quasi non rite in eos versatos, et quidam existimabant nullam esse contra huiusmodi personas in integrum restitutionem, pondere naturali vel patronali reverentia huiusmodi petulantiae refragante, nisi vel ex magna causa vel adversus turpem eorum personam, alii autem personarum quidem vel causae distinctionem respuendam esse censuerunt, tunc autem tantummodo dandam esse restitutionem putaverunt, cum minor ex sua simplicitate se deceptum, non ex dolo patris vel patroni circumscriptum esse dicat: quod, ut maneat in omnibus honor parentibus *et* patrono vel patronae illibatus atque intactus, sancimus nullo modo neque adversus parentes utriusque sexus neque adversus patronum vel patronam dari restitutionem. nam personarum reverentia omnem eis excludit restitutionem, cum procul dubio est etiam ipsas personas cavere, ne quid suae opinioni contrarium existat.

D. k. Sept. Constantinopoli post consulatum Lampadii et Orestae vv. cc.

XXXXII Si Minor Se Maiorem Dixerit vel Probatus Fuerit

[1] *Imp. Alexander A. Maximianae.* Si, cum minor annis viginti quinque esses, tabulis quae sunt[xii] tuarum professionum oblatis tibi aetatem quae sunt maior annis viginti quinque decepta probasti, in integrum restitutionem intra statutum legibus tempus etiam post impletam aetatem de

[xii] [quae sunt]<quasi>

considered) whether the person alleging that he suffered harm when under 25 has been a careful *paterfamilias* and has shown himself conscientious in public dealings, making it unlikely he slipped by reason of his age. **1.** Still, if after examination of the case he is found to have been taken advantage of, he should not be barred from the usual benefit – as it were by a defense (*praescriptio*) – for the sole reason that because of his native city's urgent needs he was named a decurion while (still) under 25, or because he provided for continuation of his line by raising children.[178]

Posted September 22, in the consulship of Lupus and Maximus (232).

[2] *Emperor JUSTINIAN Augustus to John, Praetorian Prefect.* Among our forefathers it was doubted whether children could bring a complaint against their parents, or freedmen against their patrons, because this was unbecoming treatment of them. Some thought there was no restoration of rights against such persons, since natural (parental) authority and the deference due to patrons militated against such impudence except either for a significant reason or against a reprehensible person. Others felt that a distinction based on persons or a case should be rejected, and they thought, moreover, that restoration should be given only when a someone under 25 alleges that he was deceived because of his own naiveté, but not (on an allegation) that he was taken advantage of by his father's or patron's deceit (*dolus*). In order, therefore, that the honor (due) to parents and patrons of either sex remain in all things undiminished and unimpaired, We ordain that under no circumstances shall restoration be granted either against parents of either sex or against patrons of either sex. For the respect that these persons owe excludes them from (obtaining) any restoration at all, since it is beyond doubt that these persons themselves (parents and patrons) will take care that nothing arise that negatively affects their good name.

Given September 1, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

Forty-Second Title If a Person Under 25 Says He Is, or Is Shown to Be, of Age

[1] *Emperor ALEXANDER Augustus to Maximiana.* When you were under 25 years old, you were misled by documents delivered to you as your declarations (of birth) and gave proof (in court) that you were over 25. Even after you come of age, you can, within the time fixed by law, go before the official

[178] Both these might suggest that the minor was able to look out for himself.

omnibus intra aetatem adversus te gestis postulare apud eum, cuius de ea re iurisdictio est, potes.

PP. XII k. April. Maximo II et Aeliano conss.

[2] *Impp. Diocletianus et Maximianus AA. Vitalio.* Si is, qui nunc minorem se adseverat, fallaci maioris aetatis mendacio te decepit, iuxta statuta iuris, cum errantibus, non etiam fallentibus minoribus publica iura subvenerunt, in integrum restitui non debet.

D. II k. Dec. Diocletiano III et Maximiano AA. conss.

[3] *Idem AA. et CC. Theodotae.* **pr.** Si alterius circumveniendi causa minor aetate maiorem te probare adspectu laboraveris, cum malitia suppleat aetatem, restitutionis auxilium tam sacris constitutionibus quam rescriptorum auctoritae denegari statutum est. **1.** Quod si per iniuriam vel circumventionem adversarii hoc fuerit factum, durat beneficium, quo minoribus causa cognita subveniri solet. **2.** Aditus itaque praeses provinciae probationis aetatis examinata causa, si tuum dolum non reppererit intercessisse, ac te minorem tunc fuisse probaveris, causa cognita in integrum restitui providebit.

3. Si tamen in instrumento per sacramenti religionem maiorem te esse adseverasti, non ignorare debes exclusum tibi esse in integrum restitutionis beneficium, nisi palam et evidenter ex instrumentorum prolatione, non per testium depositiones te fuisse minorem ostenderis. **4.** Huiusmodi autem sacramento corporaliter praestito nullum tibi superesse auxilium perspicui iuris est.

D. XIII k. Oct. Sirmi AA. conss.

[4] *Idem AA. et CC. Livio.* Cum circa probandum annorum numerum apud rectorem provinciae erratum esse proponas et in huiusmodi causis etiam filiis familias minoribus subveniri admissum sit, ea quae in prece contulisti praesidem provinciae examinare convenit: qui se aestimata aetate tua maiorem annis falsa opinione te praesumpsisse ex probationum luce cognoverit, erga minoris personam fidem veri sequetur.

D. VI id. Dec. AA. conss.

with jurisdiction and ask for restoration of rights concerning everything done against you while you were (actually) under age.

Posted March 21, in the consulship of Maximus, for the second time, and Aelianus (223).

[2] *Emperors* Diocletian *and* Maximian *Augusti to Vitalius.* If the person who now asserts he is under 25 deceived you with a crafty lie as to his majority, in accord with legal precepts he is not to be restored to his rights, since public law has aided mistaken young persons, but not also deceitful ones.

Given November 30, in the consulship of Diocletian, for the third time, and Maximian, Augusti (287).

[3] *The same Augusti and Caesars to Theodota.* **pr.** If, to deceive someone, you were under 25 but strove to prove yourself of age by your appearance, then, since your roguery exaggerated your age, it has been determined, both by imperial constitutions as by the authority of rescripts, that the benefit of restoration is denied. **1.** But if this occurred through the illicit conduct or trickery of your (trial) adversary, there remains the benefit by which those under 25 are customarily helped after the case is examined. **2.** So when you go before the provincial governor and he examines the matter of the proof of your age, if he finds no evidence of your deceit (*dolus*) and you prove you were then under 25, he will see to it, after examining the case, that your rights are restored.

3. If, however, you asserted in a document, with the sanctity of an oath, that you were of age, you should not be unaware that you are barred from the benefit of reformation of rights unless you show clearly and convincingly through the production of documents, not by depositions of witnesses, that you were under 25. **4.** Moreover if such an oath was given corporally, the law is unambiguous that no benefit survives for you.[179]

Given September 19, at Sirmium, in the consulship of the Caesars (293).

[4] *The same Augusti and Caesars to Livius.* Since you allege you were in error in proving your age before the provincial governor, and in such cases it is allowed to assist even children under 25 in a father's power, it is proper that the provincial governor examine the contents of your petition. If, after determining your age, he learns from the light shed by the proofs that you falsely believed yourself to be of age, he will follow evidence as to the truth regarding your status under 25 (and grant recovery).

Given December 8, in the consulship of the Augusti (293).

[179] As to an oath given personally, see C. 2.27.1. Blume: "An oath was taken corporally, after the adoption of Christianity, by laying hand on the Bible."

XXXXIII Si Saepius in Integrum Restitutio Postuletur

[1] *Impp. Severus et Antoninus AA. Romano et aliis.* Si post sententiam proconsulis contra vos latam desiderastis in integrum restitui nec obtinuistis, frustra, ut rursum ea quaestio in integrum restitutionis agitetur, desideratis: appellare enim debuistis, si vobis sententia displicebat. sed si adhuc in ea aetate estis, cui subveniri solet, appellandi ius vobis restituimus.

PP. v k. Aug. Cilone et Libone conss.

[2] *Imp. Alexander A. Iusto militi.* Quamquam curatores pupillae victi sunt, cum in integrum restitui pupillam desiderabant, cum tamen novis defensionibus causam instrui posse dicas, adeant curatores uxoris tuae et petant, ut causas in integrum restitutionis agant.

PP. v k. Aug. Alexandro A. II et Marcello conss.

[3] *Imp. Philippus A. et Philippus C. Aniciae.* In una eademque causa iteratum in integrum restitutionis auxilium non iure, nisi novae defensiones praetendantur, posci saepe rescriptum est.

PP. II k. Iul. Peregrino et Aemiliano conss.

XXXXIIII De His Qui Veniam Aetatis Impetraverunt

[1] *Imp. Aurelianus A. Agathocleti.* Eos, qui veniam aetatis impetraverunt, etiamsi minus idonee rem suam administrare videantur, in integrum restitutionis auxilium impetrare non posse manifestissimum est, ne qui cum eis contraheret principali auctoritate circumscriptus esse videatur.

PP. k. Iul. Aureliano A. et Capitolino conss.

Forty-Third Title If Restoration of Rights Is Requested Repeatedly

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Romanus and others.* After the Proconsul's verdict against you, if you sought and failed to obtain restoration of rights, you ask in vain that the question of restoration of rights be reopened; for you should have appealed if the verdict was unsatisfactory to you. But if you are still of an age that is customarily helped, We have restored to you the right of appeal.

Posted July 28, in the consulship of Cilo and Libo (204).

[2] *Emperor* ALEXANDER *Augustus to Justus, a soldier.* Although the *curatores* of a minor female ward (*pupilla*) were defeated when they sought restoration of her rights as someone under 25, still, since you say the case can be proven by new evidence, let the *curatores* of your wife approach (a judge) and seek to plead the case for restoration of rights.

Posted July 28, in the consulship of Alexander Augustus, for the second time, and Marcellus (226).

[3] *Emperor* PHILIP *Augustus and Caesar* PHILIP *to Annicia.* It has often been stated in rescripts that the benefit of restoration of rights cannot be legally sought again in one and the same case, except if new proofs are produced.

Posted June 30, in the consulship of Peregrinus and Aemilianus (244).

Forty-Fourth Title Those Who Have Received the Privilege of Full Majority[180]

[1] *Emperor* AURELIAN *Augustus to Agathocles.* It is very clear that those who have received the privilege of full majority, even if they are held to manage their property but poorly, cannot receive the benefit of restoration of rights, so that a person contracting with them not seem to be cheated by imperial authority.

Posted July 1,[181] *in the consulship of the Emperor Aurelian and Capitolinus (274).*

[180] *Venia aetatis*, a right giving *sui iuris* persons under age 25 the ability to transact business as adults, with some limitations. The salutations and subscriptions of the following constitutions have been much improved (as indicated) by Simon Corcoran (2016) on the basis of the Würzburg fragment.

[181] More likely June 24. The Würzburg fragment supports iteration for Aurelian (Corcoran).

[2] *Imp. Constantinus A. ad Verinum pu.* **pr.** Omnes adulescentes, qui honestate morum praediti paternam frugem vel avorum patrimonia gubernare cupiunt et super hoc imperiali auxilio indigere coeperint, ita demum aetatis veniam impetrare audeant, cum vicesimi anni metas impleverint, ita ut post impetratam aetatis veniam idem ipsi per se principale beneficium adlegantes non solum praescriptorum annorum numerum probent, sed etiam testibus idoneis advocatis morum suorum instituta probitatemque animi et testimonium vitae honestioris edoceant.

1. Feminas quoque, quas morum honestas mentisque sollertia commendat, cum octavum et decimum annum egressae fuerint, veniam aetatis impetrare sancimus. sed eas propter pudorem ac verecundiam feminarum in coetu publico demonstrari testibus non cogimus, sed percepta aetatis venia annos tantum probare testibus vel instrumentis, misso procuratore, concedimus, ut etiam ipsae in omnibus negotiis tale ius habeant, quale mares habere praescripsimus, ita tamen, ut praedia sine decreto non alienent.

2. Sed senatores quidem clarissimi viri in hac regia urbe commorantes apud sublimitatem tuam, ceteri vero apud praetorem, in provinciis autem omnes apud earum rectores de suis moribus et honestae perdoceant. **3.** Hi vero, qui contra memoratam dispositionem veniam aetatis impetraverint, sciant eam nullas vires obtinere.

PP. III k. Iun. Romae Crispo II et Constantino II CC. conss.

[3] *Imp. Iustinianus A. Menae pp.* Eos, qui veniam aetatis principali clementia impetraverunt vel impetraverint, non solum alienationem, sed etiam hypothecam minime posse sine decreti interpositione rerum suarum immobilium facere iubemus, in quarum alienatione vel hypotheca decretum illis necessarium est, qui necdum veniam aetatis meruerunt, ut similis sit in ea parte condicio minorum omnium, sive petita sive non sit aetatis venia.

D. VIII id. April. Decio vc. cons.

[2][182] *Emperor* CONSTANTINE *Augustus to Verinus, Urban Prefect.* **pr.** All young adult males of honorable character who wish to manage their fathers' savings or their grandfathers' estates (that they inherited), and who begin to need imperial help in this connection, should venture to seek the privilege of full majority only when they have completed their twentieth year – provided that after the privilege of full majority is obtained, those alleging the imperial benefit not only appear in person to prove the prescribed number of years, but also show, by calling suitable witnesses, their honorable conduct, uprightness, and evidence of a creditable life.

1. As for women, if they are commended by their respectable morals and mental acuity, We ordain that they as well seek the privilege of full majority when they reach 18. But because of the modesty and shyness of women, We do not force these qualities to be proven by witnesses in a public gathering; rather, when the privilege of full majority is received, We allow them to prove only their age through witnesses or documents, and by using a procurator, so that they too have in all business the same rights as We have ordered men to have, provided that they not alienate land without a court decree.

2. But the *viri clarissimi* Senators who live in this Imperial City, appearing before Your Sublimity, shall provide proof as to their morals and integrity. Others (shall do so) before the Praetor;[183] and those in the provinces, before their governors. **3.** But those who seek the privilege of full majority contrary to the aforesaid arrangement should know that it has no validity.

Posted May 30, at Rome, in the consulship of the Caesars Crispus, for the second time, and Constantine, for the second time (321).[184]

[3][185] *Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect.* We order that those who have obtained or shall obtain the privilege of full majority through imperial benevolence shall have no right at all to effect not only an alienation but also a hypothec (*hypotheca*) of their immovable property, except through interposition of a court decree. In the alienation or hypothec of these things, a judicial decree (*decretum*) is required for those who have not yet earned the privilege of full majority, so that in this area the situation of all those under 25 is similar whether or not the privilege of full majority has been sought.

Given April 6, in the consulship of the vir clarissimus *Decius (529).*

[182] pr.-2 = C.Th. 2.17.1.
[183] The Plebeian Praetor (*praetor plebis*), see Nov. 13.
[184] Actually, 324, when Verinus was Urban Prefect and these Caesars were both Consuls for the third time. So Seeck.
[185] Combine with C. 5.74.3.

[4] *Idem A. ad senatum.* Si quis aliquid dari vel fieri voluerit et legitimae aetatis fecerit mentionem vel sic absolute dixerit 'perfectae aetatis', illam tantummodo aetatem intellectam esse videri volumus, quae ex viginti quinque annorum curriculis completur, non ab imperiali beneficio suppletur. et praecipue quidem in substitutionibus vel restitutionibus hoc intellegi sancimus: nihilo minus autem et in aliis, nisi specialiter quisquam addiderit ex venia aetatis velle aliquid procedere.

D. XI k. Aug. Constantinopoli Lampadio et Oreste vv. cc. conss.

XXXXV Si Maior Factus Ratum Habuerit

[1] *Impp. Diocletianus et Maximianus AA. et CC. Eutychiano.* Si inter minores quinque et viginti annis vel scriptura interposita vel sine scriptura facta sine dolo divisio est eamque post legitimam aetatem ratam fecerunt, manere integram debere convenit.

S. VIII k. Mai. AA. conss.

[2] *Idem AA. et CC. Soteri.* Qui post vicesimum quintum annum aetatis ea quae in minora aetate gesta sunt rata habuerunt, frustra rescissionem eorum postulant.

D. id. Febr. CC. conss.

XXXXVI Ubi Et Apud Quem Cognitio Restitutionis Agitanda Sit

[1] *Imp. Antoninus A. Severo.* Si quid a procuratore meo iudicatum est, id per in integrum restitutionem praesidis sententia non potest rescindi. princeps enim solus contra sententiam procuratorum suorum in integrum restituere solet.

PP. VI k. Dec. Laeto II et Cereale conss.

[2] *Impp. Diocletianus et Maximianus AA. <et CC.> Aquilinae.* Quoniam ea, quae in transactione dari placuerat, te tradidisse proponas, consequens est, si de his repetendis per in integrum restitutionem vel

[4][186] *The same Augustus to the Senate.* If anyone who wants something given or done mentions (he is) "of legal age" or just simply says (he is) "of full age," We wish this to be deemed to be understood only of the age completed by passage of 25 years, not of that supplied by imperial grant. And We ordain that this be especially understood in the case of substitutions (of heirs) and restorations (of rights); but not any the less in other matters as well, unless someone adds specifically that he wishes something to take place on the basis of the privilege of full majority.

Given July 22, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

Forty-Fifth Title If He Ratifies After Reaching Full Majority

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Eutychianus.* Between those under 25 years old, if a division (of property) occurs without deceit (*dolus*), whether in writing or not, and they ratify it after (reaching) full majority, it is agreed that it should remain undisturbed.

Written April 24, in the consulship of the Augusti (293).

[2][187] *The same Augusti and Caesars to Sotere.* Those who after age 25 ratify things done (by them) beforehand, seek rescission of them in vain.

Given February 13, in the consulship of the Caesars (294).

Forty-Sixth Title Where and Before Whom a Review of Restoration Should Be Conducted

[1] *Emperor* ANTONINUS *Augustus to Severus.* If anything is adjudicated by my Procurator, it cannot be rescinded, through restoration of rights, by a governor's decision. For only the Emperor customarily restores rights contrary to (i.e., overruling) a decision of his Procurators.

Posted November 26,[188] in the consulship of Laetus, for the second time, and Cerealis (215).

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti <and the Caesars> to Aquilina.* Since you say that you handed over the property that it was agreed be given pursuant to a settlement, it follows that if you are thinking of suing for their return

[186] Combine with C. 3.38.12, 5.4.24, 5.20.2, 6.25.3, 8.41.8.

[187] Combine with C. 2.32.1 (dated February 8; this date is also preferable for this constitution).

[188] The manuscripts, however, have March 17, 215.

quamcumque aliam causam putaveris agendum, eius adire te provinciae praesidem, in qua domicilium habent quos convenis.

<S. XIII k. Oct. AA. Conss.>

[3] *Imp. Iustinianus A. Iohanni pp.* **pr.** Cum scimus esse dubitatum de restitutionibus, quae in integrum postulantur, sive tantummodo apud iudicem, cui aliqua iurisdictio est, examinari eas oportet, sive et apud pedaneos iudices, sive eas minores viginti quinque annis petierint sive maiores, secundum quod anterioribus sanctionibus vel veteris iuris vel nostris declaratum est: sancimus non solum apud iudices pro tribunali huiusmodi causae cognitiones proponi, sed etiam apud eos iudices, quos augusta dederit maiestas aut nostrae rei publicae administratores vel in hac regia civitate vel in provinciis, ut videatur ipse, qui iudicem destinaverit, utpote pro tribunali cognoscens et in integrum dare restitutionem et causas eius examinare: sic etenim non difficilis erit causarum examinatio.

1. Sed ne quis ita effuse intellectum nostrae constitutionis audeat esse trahendum, ut etiam apud compromissarios iudices vel arbitros ex communi sententia electos vel apud eos, qui dantur a iudicibus, qui propriam iurisdictionem non habent, sed tantummodo iudicandi facultatem, putet huiusmodi extendi sanctionem, cum hos generaliter volumus tales causas dirimere, qui vel certae administrationi, cui et iurisdictio adhaeret, praepositi sunt vel ab his fuerint dati, et multo magis si a nostra maiestate delegata eis causarum sit audientia. **2.** Sed ne quid penitus dubitandum relinquatur, et hoc addendum esse censemus, ut eis tantum quos supra enumeravimus liceat de in integrum restitutione disceptare, sive hoc specialiter eis fuerit mandatum, quod et veteribus non fuerat incognitum, vel si generaliter iudices dati sunt, vel in aliis speciebus, inciderit autem quaedam quaestio restitutionis.

D. III k. Sept. Constantinopoli post consulatum Lampadii et Orestae vv. cc.

XXXXVII De Reputationibus, Quae Fiunt in Iudicio in Integrum Restitutionis

[1] *Imp. Severus A. Tatiano.* **pr.** Qui restituitur in integrum, sicut in damno morari non debet, ita nec in lucro: et ideo quidquid ad eum

through restoration of rights or by some other remedy, you go before the governor of the province in which the defendants have their domicile.

Written September 19, in the consulship of the Augusti (293).[189]

[3] *Emperor* J*USTINIAN* *Augustus to John, Praetorian Prefect.* **pr.** We know that there is doubt concerning demands for restorations of rights, as to whether they should be examined only before a judge who has some (general) jurisdiction, or also before delegated (lower level) judges, whether those younger or older than 25 claim them, according to what was declared in previous ordinances either of old law or by us. We therefore ordain that hearings of such cases be held not only before judges in front of a tribunal (*pro tribunali*; in a court), but also before those judges whom Our August Majesty or the administrators of Our state appoint either in this Imperial City or in the provinces, so that the person appointing the judge, as if (he were himself) examining (the case) in front of his tribunal, may seem both to grant restoration of rights and to examine the reasons for it. In this way the examination of cases will not be difficult.

1. But let no one dare to broaden the meaning of our constitution so widely as to suppose that such an ordinance embraces also proceedings before private arbitration judges, or before arbitrators chosen by common agreement, or before those given by judges who do not have their own jurisdiction but only the power to decide cases. In general, we wish such cases to be determined only by those who either have a definite administrative position to which jurisdiction is attached, or are put in charge by them, and especially if their hearing of cases was delegated by Our Majesty. **2.** But lest anything at all be left in doubt, We think this also should be added, that only those We listed above shall be permitted to decide on restoration of rights, whether this was specifically delegated to them – something not unknown even to the ancients – or if they were appointed as judges generally (for all types of cases), or in other types (of courts) where some question of restoration arises.[190]

Given August 30, at Constantinople, in the post-consulate of Lampadius and Orestes viri clarissimi *(531).*

Forty-Seventh Title Counterclaims Made in a Trial for Restoration of Rights

[1] *Emperor* S*EVERUS* *Augustus to Tatianus.* **pr.** Just as a person who receives restoration of rights should not delay in (recovering) loss, so, too, in (disgorging)

[189] Inscription and subscription are restored from the Würzburg fragment (Corcoran).

[190] Blume: "The term 'jurisdiction' expressed the unlimited power of administering the civil (as opposed to the criminal) law in the ordinary course of procedure … Municipal judges or magistrates could not give restitution of rights. D. 50.1.26.1. So, according to the foregoing law, arbitrators, as we commonly understand the term, could not do so." See also C. 3.1.5, 3.4.1.2.

pervenit vel ex emptione vel ex venditione vel ex alio contractu, hoc debet restituere. **1.** Sed et si intercessor minor viginti quinque annis intervenit, in veterem debitorem debet restitui actio. **2.** Sed et cum adiit minor hereditatem et restituitur, mox quidquid ad eum ex hereditate pervenit, debet praestare. **3.** Verum et si quid dolo eius factum est, hoc eum praestare convenit.

Sine die et consule.

XXXXVIII Etiam per Procuratorem Causam in Integrum Restitutionis Agi Posse

[1] *Imp. Alexander A. Liciniano.* Causam in integrum restitutionis, si qua competit, etiam per procuratorem agi posse placet.

D. XIII k. Oct. Pompeiano et Peligno conss.

XXXXVIIII In Integrum Restitutione Postulata Ne Quid Novi Fiat

[1] *Imp. Gordianus A. Secundino militi.* Postulata in integrum restitutione omnia in suo statu esse debere, donec res finiatur, perspicui iuris est, idque curabit is, ad cuius partes ea res pertinet.

PP. XII k. Iul. Gordiano A. et Aviola conss.

L De Restitutione Militum et Eorum Qui Rei Publicae Causa Afuerunt

[1] *Impp. Severus et Antoninus AA. Chiloni.* Si Valerianus centurio cohortis duodecimae Alpinorum ante vita decessit, quam possessionem acciperet, heres eius ex persona defuncti restitutionis auxilium intra annum utilem ita recte implorabit, si Valerianus post exactos dies, quibus bonorum possessio defertur, in militia defunctus est.

PP. k. Nov. Laterano et Rufino conss.

profit. And so he should restore whatever came to him either from a purchase or sale or from another contract. **1.** And if someone under 25 years old became a delegate (responsible for a third party's debt), the action against the former debtor should (also) be restored. **2.** But also when someone under 25 enters on an inheritance and is restored (thus losing the inheritance), he should thereupon tender whatever he received from the inheritance. **3.** But even if something occurred through his deceit (*dolus*), it is settled that he tenders this (as well).

Without date or consul.

Forty-Eighth Title A Case for Restoration of Rights Can Also Be Brought Through a Procurator

[1] *Emperor* ALEXANDER *Augustus to Licinianus.* It is settled law that a case of restoration of rights, if one lies, can also be brought through a procurator.

Given September 19,[191] *in the consulship of Pompeianus and Pelignus (231).*

Forty-Ninth Title After Restoration of Rights Is Requested, Nothing New Shall Be Done

[1] *Emperor* GORDIAN *Augustus to Secundinus, a soldier.* It is clear law that once restoration of rights has been requested, everything should remain in the status quo until the matter is concluded, and the person under whose care this matter belongs (i.e., the judge) shall see to this.

Posted June 20, in the consulship of Gordian Augustus and Aviola (239).

Fiftieth Title Restoration (of Rights) of Soldiers and of Those Absent on Public Business

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Chilo.* If Valerianus, a centurion of the Twelfth Alpine Cohort, died before he accepted possession (of an inheritance), his heir, acting as the deceased (centurion), will properly ask for the benefit of restoration within an effective (i.e., judicial) year (*annus utilis*), provided Valerianus died in service after the time at which (the right to) possession of the estate is conveyed (to him).

Posted November 1, in the consulship of Lateranus and Rufinus (197).

[191] Or September 16.

[2] *Imp. Alexander A. Petronio centurioni.* Si quid de bonis eorum, qui rei publicae causa absentes sunt, deminutum est actioneve qua competente eis aliquis liberatus fuit, in integrum restitutio perpetua iurisdictione intra annum utilem permittitur.

PP. XIII k. Nov. Alexandro A. cons.

[3] *Idem A. Flavio Aristodemo militi.* Quod tempore militiae de bonis alicuius possessum ab aliquo est, posteaquam is rei publicae causa abesse desiit, intra annum utilem amota praescriptione temporis medii possessionem vindicare permissum est: ultra autem ius possessoris laedere contra eum institutum non oportet.

PP. non. Ian. Maximo II et Aeliano conss.

[4] *Imp. Gordianus A. Mestriano.* Ignorare non debes eorum, qui rei publicae causa sine dolo malo absunt, si absentes boni viri arbitratu non defenduntur, bona tantum possideri, venditionem autem in id tempus differri, quo rei publicae causa abesse desierint.

D. XII k. Ian. Gordiano A. et Aviola conss.

[5] *Idem A. Secundino militi.* Neque rei publicae causa absentibus nec aliis maioribus ad titulum in integrum restitutionis pertinentibus praescriptionem quadriennii post factam a fisco venditionem obesse posse manifestum est.

PP. VI id. Mai. Sabino et Venusto conss.

[6] *Impp. Valerianus et Gallienus AA. Germano centurioni.* Si, cum militaribus laboribus operam dares, creditoris tui heredes possessiones sibi obligatas distraxerunt, poteris adito praeside provinciae in integrum restitutionem impetrare retractataque venditione recipies possessiones, oblato ante debito vel pretio, si minus debito fuisset.

PP. III non. April. Valeriano et Gallieno AA. conss.

[2] *Emperor* ALEXANDER *Augustus to Petronius, a centurion.* If there was any loss to the property of those absent on public business, or if someone was released from a relevant action (to the detriment of the absentee), by the Perpetual Edict restoration of rights is permitted to them within an effective year.

Posted October 20, in the consulship of Alexander Augustus (222).

[3] *The same Augustus to Flavius Aristodemus, a soldier.* When someone takes possession of the property of another (a soldier) during his military service, he (the soldier) is allowed to recover possession within a judicial year after he ends his absence on public business, the bar of the intervening time being removed.[192] But he must not otherwise harm a possessor's right that was established against him.

Posted January 5, in the consulship of Maximus, Consul for the second time, and Aelianus (223).

[4] *Emperor* GORDIAN *Augustus to Mestrianus.* You should not be unaware that property of those who, without deceit (*sine dolo malo*), are absent on public business, if the absentees are not defended up to the standards of an upright man (*boni viri arbitratu*), is only possessed, but its sale is deferred to the time when they cease to be absent on public business.

Given December 21, in the consulship of Gordian Augustus and Aviola (239).

[5] *The same Augustus to Secundinus, a soldier.* It is manifest that after a sale is made by the Treasury, the four[193] years' limitation (on bringing ownership claims) can prejudice neither those absent on public business, nor others, of age, who have a claim to restoration of rights.

Posted May 10, in the consulship of Sabinus and Venustus (240).

[6] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Germanus, a centurion.* If, while you were engaged in military service, the heirs of your creditor sold your possessions that were obligated to them (as security for your debt), you can obtain restoration of your rights by going before the provincial governor. The sale will be cancelled and you will recover your possessions if you first pay either the debt or, if it is smaller than the debt, the price (for which the property sold).

Posted April 3, in the consulship of Valerian, for the second time, and Gallienus, Augusti (254).[194]

[192] See C. 7.35.2.
[193] Blume: "Substituted for 'five' by compilers on account of C. 7.37.2 and 3 … See C. 2.36.3."
[194] Subscription restored partially on the basis of the Würzburg fragment (Corcoran).

[7] *Impp. Diocletianus et Maximianus AA. et CC. Marinae.* Quae a patre geruntur, non decet pro disciplina militari a filiis ad irritum devocari, praesertim cum nec patrem tuum in rebus humanis agentem adfirmes conquestum fuisse super huiusmodi contractu.

PP. non. Feb. AA. conss.

[8] *Imp. Iustinianus A. Menae pp.* Sancimus his solis, qui in expeditionibus occupati sunt, ea tantummodo tempora, quae in eadem expeditione percurrunt, tam in exceptionibus declinandis quam in petendis in integrum restitutionibus eis opitulari: illis temporibus, per quae citra expeditionis necessitatem in aliis locis vel in suis aedibus degunt, minime eos ad vindicanda memorata privilegia adiuvantibus.

D. IIII id. April. Constantinopoli Decio vc. cons.

LI De Uxoribus Militum vel Eorum Qui Rei Publicae Causa Absunt

[1] *Imp. Alexander A. Secundinae.* Temporalibus actionibus exclusis mulieribus, quae cum maritis rei publicae causa absentibus peregrinatae sunt, ad exemplum militum subveniri solere non est ignotum.

PP. III non. Dec. Alexandro A. II et Marcello conss.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Quintiliano.* Ei, quae diutissime fuit cum marito qui militiae operam daret, non officit praescriptio longi temporis: sed quia huiusmodi diutinae absentiae commenta callide adhibita atque composita obesse omnino non debent, decernimus, ut, si talis mulier domum ad se pertinere monstraverit, quae in absentia eius vendita est, refuso pretio, quod re vera solutum est, eandem recipiat.

D. VIII k. Dec. ipsis AA. conss.

[7] *Emperors* Diocletian *and* Maximian *and the Caesars to Marina.* It does not accord with military discipline that your father's transactions be rendered void by his sons, especially since you allege that your father, while still living, did not complain of such a contract.

Posted February 5, in the consulship of the Augusti (293).

[8][195] *Emperor* Justinian *Augustus to Menas, Praetorian Prefect.* We ordain that only those (soldiers) engaged in expeditions may be aided by the time occupied in the expedition, and by that time alone, both as to avoiding defenses (of prescription and limitation of actions) and as to claiming restorations of rights for themselves. The time during which they are not on expedition and while they live in other places or in their own houses, without being constrained by an expedition, will not avail them in claiming that privilege.

Given April 10, at Constantinople, in the consulship of the vir clarissimus *Decius (529).*

Fifty-First Title The Wives of Soldiers or of Those Absent on Public Business

[1] *Emperor* Alexander *Augustus to Secundina.* It is not unknown that, as to actions from which women are (normally) barred through time limitations (*actiones temporales*), relief is customarily extended, on the analogy of soldiers, to women who went abroad with their husbands while they were absent on public business.

Posted December 3, in the consulship of Alexander Augustus, for the second time, and Marcellus (226).

[2] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Quintilianus.* Long-time prescription (*praescriptio longi temporis*) does not prejudice a woman who was long absent with her husband while he was performing military service. But since the fabrication of such long absences, cunningly contrived and elaborated, should be no cause of loss (to others), We decree that if such a woman proves that a house, sold in her absence, belongs to her, she may recover it by refunding the price that was actually paid.

Given November 24, in the consulship of the Augusti themselves (293).

[195] = C. 7.35.8 (April 1); combine with C. 6.21.17 (April 10). Lounghis *et al.* give April 6, 529. This constitution may post-date the Const. Summa (April 6).

LII De Temporibus in Integrum Restitutionis Tam Minorum Aliarumque Personarum, Quae Restitui Possunt, Quam Heredum Eorum

[1] *Imp. Gordianus A. Pudenti militi.* In his, in quibus laesus es, cum minor annis viginti quinque esses, toto militaris expeditionis tempore auxilium restitutionis postulare potes: tempus etenim post impletam minorem aetatem praestitutum ex die missionis iuxta rationem iuris computari debet.

PP. III non. Oct. Pio et Pontiano conss.

[2] *Idem A. Secundino militi.* Si intra legitimam aetatem vel, ea impleta, nondum exacto tempore praestituto pater tuus in fata concessit tuque ei heres extitisti et intra viginti quinque annos vel post eam aetatem intra id tempus, quod ad in integrum restitutionem defuncto supererat, nomen militiae dedisti, praeses provinciae causa cognita per in integrum restitutionem ex persona defuncti subveniri tibi providebit.

D. XI k. Nov. Pio et Pontiano conss.

[3] *Idem A. Muciano militi.* Si intra annos, quibus in integrum restitutionis auxilium indulgetur, constitutus es vel eo tempore nomen militiae dedisti et expeditione occupatus es, continuatum beneficium restitutionis per usucapionem, licet ante militiam suppleta sit, non patitur te dispendio rei familiaris adfligi.

D. VIIII k. Nov. Pio et Pontiano conss.

[4] *Impp. Diocletianus et Maximianus AA. et CC. Dionysio.* Ex persona fratrum, si tibi eorum quaesita successio est, potes contra quem supplicas agere, non ignorans, quod, si minores quinque et viginti annis militaverunt fratres tui atque in militia diem functi sunt, in integrum restitutionis eis tempus non cesserit, sed omne ad successorem transmiserint.

S. VIII k. Ian. Philippopoli CC. conss.

Fifty-Second Title The Time Within Which Those under 25, Other Persons Who Can Be Restored, and Their Heirs May Receive Restoration of Rights[196]

[1] *Emperor* GORDIAN *to Pudens, a soldier.* In connection with matters where you were harmed while under 25 years old, you can seek the benefit of restoration during the entire period of a military expedition. The time set (for bringing an action) after reaching full majority must be computed from the day of your dismissal, in accord with the logic of the law.[197]

Posted October 5, in the consulship of Pius and Pontianus (238).

[2] *The same Augustus to Secundinus, a soldier.* If your father died before reaching legal age, or thereafter but within the time set (for restoration of rights), and if you became his heir and enrolled in the military while under 25 years old, or after that age but within the time that remained to the deceased for claiming restoration of rights, the provincial governor will see to it, after examining the case, that you are assisted by restoration of rights, based on the legal position of the deceased.

Given October 22, in the consulship of Pius and Pontianus (238).

[3][198] *The same Augustus to Mucianus, a soldier.* If you are less than the age for which the benefit of reformation of rights is afforded, or if you enlisted as a soldier within that time and were engaged in an expedition, the uninterrupted benefit of restoration of rights does not allow you to be adversely affected by loss of your property through usucapion, even if it (the period of usucapion) was completed before your military service (ended).

Given October 24, in the consulship of Pius and Pontianus (238).

[4] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Dionysius.* If you sued to inherit from your brothers, the action you bring against the defendant can be based on their legal position. Do not forget that if your brothers were under 25 years old, and they were enlisted in military service and died therein, the time for restoration of rights did not lapse for them, but they transmitted it in its entirety to their successor.

Written December 25, at Philippopolis, in the consulship of the Caesars (294).[199]

[196] The statute of limitations for restoration of rights was substantially altered by Justinian in law 7 below; earlier sources were then modified to reflect this change.

[197] See C. 2.50.3 and 8, 7.35.2. A grace period was evidently permitted for soldiers to make a claim after reaching age 25.

[198] Combine with C. 3.32.4 (addressee: Munianus; dated three days earlier).

[199] Mommsen dates to May 25, 293.

[5] *Imp. Constantinus A. ad Bassum.* **pr.** Ea, quae de temporibus in integrum restitutionum legibus cauta sunt, custodiri convenit, et si forte quis beneficio nostro aetatis veniam fuerit consecutus, ex eo die, quo indulgentia nostra in iudicio competenti fuerit intimata eique administratio rei propriae permissa, ut ad persequendas in integrum restitutionum finiendasque causas iure tempus habeat praestitutum, ita tamen, ut numquam minoribus viginti quinque annis constitutis de his, quae ante impetratam veniam aetatis gesserunt, auxilium in integrum restitutionis denegetur.

1. Si quando sane in minoris iura successerit minor, minime prohibeatur, cum quintum et vicesimum aetatis suae annum transierit, in integrum restitutionis beneficio uti tempore illibato. **2.** Quod si maioris fuerit minor iura nactus, quantum ad eas pertinet causas, quas ex persona maioris fuerit consecutus, tantum temporis ad exponendas in integrum restitutionis decidendasque causas accipere debebit, quantum defuncto, cuius heres aut bonorum possessor docebitur extitisse, reliquum fuerat. **3.** Cum vero maior successionem fuerit adeptus minoris, si quidem civili iure ab intestato vel ex testamento successerit, mox cum fuerit adita hereditas, si vero honorario iure, ex quo bonorum possessio fuerit accepta, examinando in integrum restitutionis negotio solida sine ulla diminutione tempora supputentur.

D. non. Oct. Romae Constantino A. et Licinio utrisque II conss.

[6] *Idem A. ad Iulianum pu.* **pr.** Petendae in integrum restitutionis temporibus observatis, si dilatio ab actore petatur, quae intra metas restitutionis valet artari, eandem quocumque flagitante causis cognitis tribui oportebit. sin vero eiusmodi postulantur curricula, quae intra spatium receptum angustari non queunt (quippe si in confinio legitimi temporis petantur, et eius terminos prorogabunt), dilationem petitori denegari conveniet: in eius enim arbitrio fuerat tunc inferre litigium, cum petitae dilationis mora spatio superstite posset includi.

1. Quod si defensio rei dilationis suffragium postulaverit, eandem adserta causa citra obstaculum temporis deferri sancimus, quia nequaquam in ipsius steterat potestate, quando litigio pulsaretur. dari igitur

[5][200] *Emperor* Constantine *Augustus to Bassus<, Urban Prefect>.* **pr.** It is settled that provisions made in the laws concerning the time for restoration of rights are preserved. And if through Our favor someone has perhaps received the privilege of full majority (*venia aetatis*), he shall have the legally set time for bringing and completing a case for restoration of rights, starting from the day on which Our benevolence was communicated to him in the proper court and he received the right to administer his own property – provided, however, that the benefit of restoration of rights shall never be denied to those under 25 years old as to things they transacted before receiving the privilege of full majority.

1. If at any time someone under 25 succeeds (as heir) to the rights of another person under 25, he shall not at all be prohibited, after he passes age 25, from enjoying the full time (granted) for the benefit of restoration of rights. **2.** But if someone under 25 acquired the rights of full majority, then, so far as concerns the rights of action he acquired based on the legal position of full adulthood, the time he shall have for bringing and finishing cases of restoration of right is only such as remained to the decedent of whom he will be shown to be the heir or the possessor of the estate. **3.** If, however, a person of full age (*maior*) acquires the inheritance of someone under 25, in examining the matter of restoration of rights the whole time period that the person under 25 had, without diminution, shall be counted, starting from when he (the heir) enters upon the inheritance if he succeeds by civil law (*ius civile*) either through intestacy or by a will, or from when he receives possession of the estate if he inherits under Praetorian law (*ius honorarium*).

Given October 7, at Rome, in the consulship of Constantine Augustus and Licinius, both for the second time (312).

[6][201] *The same Augustus to Julian, Urban Prefect.* **pr.** When the time limits set for asking a restoration of rights are observed, if the plaintiff seeks a continuance (*dilatio*) that can be squeezed within the (time) limits for restoration, after examination of the case it will be appropriately granted no matter who may ask for it. But if the time period requested is such that it cannot be confined within the established space of time – for instance, if it is sought near the end of the legal time and would extend its limits – then it will be appropriate to deny the plaintiff a continuance, since it was in his power to bring the litigation when the delay caused by the continuance he sought could be confined within the remaining space of time.

1. But if the defense of the case asks for the favor of a continuance, we ordain that if (good) cause is alleged, this delay shall be granted without reference to

[200] = C.Th. 2.16.2, substantially altered by the compilers. The constitution's date is disputed; it is usually (e.g., by Seeck) assigned to July 25, 319, in the consulship of the Emperor Constantine, for the fifth time, and the Caesar Licinius. Bassus was Urban Prefect 317–319.

[201] = C.Th. 2.7.2.

debet, etsi impetrata dimensio sese ultra temporis definitionem proferat. qua dilatione, si a reo impetretur, etiam actor in requirendis probationibus uti minime prohibetur.

D. XIIII k. Aug. pp. Romae ad senatum Constantio et Maximo conss.

[7] *Imp. Iustinianus A. Iohanni pp.* **pr.** Supervacuam differentiam utilis anni in integrum restitutionis a nostra re publica separantes sancimus et in antiqua Roma et in hac alma urbe et in Italia et in aliis provinciis quadriennium continuum tantummodo numerari ex die, ex quo annus utilis currebat, et id tempus totius loci esse commune: ex differentia enim locorum aliquod induci discrimen satis nobis absurdum esse visum est.

1. Quod non solum in minorum restitutionibus, quibus utilis annus incipit currere, ex quo vicesimi sexti anni dies illuxerit, sed etiam in maiorum hoc idem adhiberi sancimus, ut et hic pro utili anno memorata continuatio temporis observetur ad interponendam contestationem finiendamque litem. **2.** Et quemadmodum omnis minor aetas excipitur in minorum restitutionibus, ita et in maiorum tempus, in quo rei publicae causa afuerint vel aliis legitimis causis, quae veteribus legibus enumeratae sunt, fuerint occupati, omne praecipiatur, et sit non absimilis in hac parte minorum et maiorum restitutio.

D. k. Sept. Constantinopoli post consulatum Lampadii et Orestae vv. cc.

LIII Quibus ex Causis Maiores in Integrum Restituuntur

[1] *Imp. Antoninus A. Aemiliano.* Si propter officium legationis ad me bona fide factae absens et indefensus condemnatus es, instaurationem iudicii iure desideras, ut ex integro defensionibus tuis utaris. nam eos quoque qui legationis officio funguntur in eo privilegio esse, quo sunt qui rei publicae causa absunt, receptum est.

PP. V non. Mart. duobus Aspris conss.

the time limit, since it was by no means within his power when the litigation started. It should be given, therefore, even if the granted time runs beyond the set time. If the defendant obtains this continuance, the plaintiff is hardly forbidden to use it in gathering evidence.

Given July 19, posted at Rome to the Senate, in the consulship of Constantius and Maximus (327).

[7] *Emperor* JUSTINIAN *Augustus to John, Praetorian Prefect.* **pr.** Abolishing from our state the needless distinction of the effective year (*annus utilis*) for restoration of rights,[202] We ordain that both in old Rome and in this bountiful city (Constantinople) and in Italy and in the other provinces, only a continuous period of four years shall be counted from the day on which the judicial year began running, and this time shall be common everywhere. For it appeared absurd to us that some distinction be introduced because of difference of location.

1. We ordain that this be observed not only for restoration of the rights of those under 25, for whom the effective year begins to run from dawn of their twenty-sixth year, but also for those who are of age, so that here also, in place of the judicial year, the continuous period of time that is fixed above shall be observed for bringing and concluding a lawsuit. **2.** And just as the entire period before they reach 25 is excepted in restoration for young persons, so too, in the case of those who are of age, the time shall all be taken into account during which they were absent on public business or were occupied in other legally recognized matters enumerated in the old statutes. In this respect, restoration for those under 25 and for persons who are of age shall not be dissimilar.

Given September 1, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

Fifty-Third Title For What Reasons Rights Are Restored to Those Who Are of Age

[1] *Emperor* ANTONINUS *Augustus to Aemilianus.* If you were condemned (in a civil case) while absent on account of an embassy sent to me in good faith, and (therefore) undefended, you rightly seek renewal of the action so that you may employ your defenses afresh. For it is accepted law that those who conduct an embassy enjoy the privilege of those absent on public business.

Posted March 3, in the consulship of the two Aspri (212).

[202] Reference is to C.Th. 2.16.2 in its original form, prior to the modification made in C. 2.52.5.

[2] *Idem A. Dionysio.* Si idcirco apud arbitrum praesentiam tui facere non potuisti, quod sub custodia militari iussu praesidis detinebaris, idque in veritate esse praesidi provinciae probaveris, accipies causae instaurationem.

PP. XIII k. Oct. Laeto et Cereale conss.

[3] *Impp. Diocletianus et Maximianus AA. Proculo decurioni.* In contractibus, qui bonae fidei sunt, etiam maioribus officio iudicis causa cognita publica iura subveniunt.

D. non. Aug. Diocletiano A. II et Aristobulo conss.

[4] *Idem AA. Prisciano.* Res publica minorum iure uti solet ideoque auxilium restitutionis implorare potest.

D. II id. Nov. Diocletiano A. II et Aristobulo conss.

[5] *Idem AA. et CC. Liciniano.* Si ab hostibus cum patre ac matre captus, post his ibi defunctis legis Corneliae beneficio reversus successiones eorum quaesisti, exemplo utilis actionis quae in integrum restitutis datur cum exceptionis annuae quae huic obici solet obiectu res vindicare non prohiberis.

D. XVI k. Mai. CC. conss.

LIIII De Alienatione Iudicii Mutandi Causa Facta

[1] *Impp. Diocletianus et Maximianus AA. et CC. Catulo.* Cum in rem actioni possessio pariat adversarium, alienatione etiam iudicii mutandi causa celebrata in integrum restitutio edicto perpetuo permittatur,

[2] *The same Augustus to Dionysius.* If you were unable to make an appearance before a judge arbitrator because you were detained under military custody on a governor's order, and you prove to the province's governor that this is grounded on truth, you will receive reinstatement of your case.

Posted September 19, in the consulship of Laetus and Cerealis (215).

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Proculus, a decurion.* In good faith contracts, public law assists those of age as well, through the judge's discretion (*officio iudicis*) after examination of the case.

Given August 5, in the consulship of Diocletian Augustus, for the second time, and Aristobulus (285).

[4] *The same Augusti to Priscianus.* A city (*res publica*) customarily enjoys the right given those under 25 and so can ask for the benefit of restoration (of rights).

Given November 12, in the consulship of Diocletian Augustus, for the second time, and Aristobulus (285).

[5] *The same Augusti and the Caesars to Licinianus.* If you, along with your father and mother, were captured by the enemy, and after they died (in captivity) you returned and acquired their inheritance through the benefit of the Cornelian law,[203] you are not forbidden from claiming property on the model of the analogous action given to those restored to their rights, (but) subject to the obstacle of the one-year (statute of limitations) defense that is customarily interposed.[204]

Given April 16, in the consulship of the Caesars (294).

Fifty-Fourth Title Alienation for the Purpose of Changing a Lawsuit[205]

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Catulus.* Since the fact of possession creates the adversary for a property claim (*actio in rem*), and restoration of rights is permitted by the Perpetual Edict also when

[203] The *Lex Cornelia de captivis*, a law of Sulla (82–80 BC) enforcing the wills of captives as if they were free at the time of their deaths.

[204] See also C. 8.50.9 and 18; C. 3.32.24. The parents would have been entitled to recover the property upon their return from captivity; the same right was given to their heir. The "year" was a judicial year. See also Ulpian, D. 28.3.6.12.

[205] See D. 4.7. Blume: "Not only did the law forbid transfer of property in litigation (C. 8.36), but also, with the exception of a few allowable cases, when parties were threatened with litigation, in order that the position of the other side might not be made worse. Transfers to the nobility were common in later imperial times and a constant danger. C. 2.13–14."

intellegis, quod si rem, ne secum agatur, qui possidebat venumdedit et emptori tradidit, quem elegeris conveniendi tibi tributam esse iure facultatem.

D. VI k. Dec. Viminacio CC. conss.

LV De Receptis

[1] *Imp. Antoninus A. Nepotianae.* Ex sententia arbitri ex compromisso iure perfecto aditi appellar*i* non posse saepe rescriptum est, quia nec iudicati actio inde praestari potest et ob hoc invicem poena promittitur, ut metu eius a placitis non recedatur. sed si ultra diem compromisso comprehensum iudicatum est, sententia nulla est, nec ullam poenam committit qui ei non paruerit.

PP. VIIII k. Aug. Romae Antonino A. IIII et Balbino conss.

[2] *Imppp. Carus Carinus et Numerianus AAA. Clementi.* Si contra compromissum adversarius tuus apud electum arbitrum praesentiam sui facere detrectavit, placitae poenae videtur obnoxius.

PP. VIII k. Ian. Caro et Carino conss.

[3] *Impp. Diocletianus et Maximianus AA. et CC. Petroniae.* Arbitrorum ex compromisso sententiae non obtemperans, si sordes vel evidens gratia eorum qui arbitrati sunt intercessit, adversus filiam tuam agentem ex stipulatu exceptione doli mali uti poteris. sed et ex doli clausula, quae compromissi stipulationi subici solet, filiam tuam convenire non vetaberis.

PP. III id. Ian. ipsis AA. conss.

[4] *Imp. Iustinianus A. Demostheni pp.* **pr.** Ne in arbitris cum sacramenti religione eligendis periurium committatur et detur licentia

an alienation has been made to change a lawsuit, you understand that if the possessors sold property and delivered it to the buyer so that litigation (over it) not be with them, you have received the legal right to sue whom you wish (the seller or the buyer).

Given November 26, at Viminacium, in the consulship of the Caesars (294).[206]

Fifty-Fifth Title Private Arbitration[207]

[1] *Emperor ANTONINUS Augustus to Nepotiana.* It has often been stated in rescripts that no appeal lies from the verdict of an arbitrator (appointed) on the basis of a legally executed arbitration agreement (*compromissum*), because no action on the judgment (*actio iudicati*) can arise from it. A reciprocal penalty is (usually) promised on this account, so that through fear of it the agreement is not broken. But if the (arbitrator's) decision is rendered after the date included in the agreement, the verdict is void and the party disobeying it incurs no penalty.

Posted July 24, at Rome, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[2] *Emperors CARUS, CARINUS, and NUMERIANUS Augusti to Clemens.* If, contrary to the arbitration agreement, your adversary declines to make an appearance before the chosen arbitrator, he is held liable to the penalty agreed upon (for non-appearance).

Posted December 25, in the consulship of Carus and Carinus (283).

[3] *Emperors DIOCLETIAN and MAXIMIAN Augusti and the Caesars to Petronia.* If you disobey the verdict of arbitrators under an arbitration agreement, you will be able to use the defense of deceit (*exceptio doli mali*) against your daughter, who is suing on the (penalty) stipulation, if the arbitrators were guilty of corruption or obvious bias. But you will also not be forbidden from suing your daughter on the clause concerning deceit that is usually attached to the stipulation of an arbitration agreement.

Posted January 11, in the consulship of the Augusti themselves (290 or 293).

[4] *Emperor JUSTINIAN Augustus to Demosthenes, Praetorian Prefect.* **pr.** To prevent perjury being committed in selecting arbitrators under the sanction

[206] Mommsen dates to September 26, 294.

[207] *Recepta arbitri*; see D. 4.8. This is a private agreement to arbitrate a dispute, without official intervention. Blume: "The award of such arbitrator was, except as [provided below], of itself of no binding force and was no bar to a subsequent trial and legal decision of the case."

perfidis hominibus passim definitiones iudicum eludere, sanctissimo arbitrio et huiusmodi rem censemus esse componendam.

1. Si igitur inter actorem et reum nec non et ipsum iudicem fuerit consensum, ut cum sacramenti religione lis procedat, et ipsi quidem litigatores scriptis hoc suis manibus vel per publicas personas scripserint vel apud ipsum arbitrum in actis propria voce deposuerint, quod sacramentis praestitis arbiter electus est, hoc etiam addito, quod et ipse arbiter iuramentum praestitit super lite cum omni veritate dirimenda, eius definitionem validam omnimodo custodiri et neque reum neque actorem posse discedere, sed tenere omnifariam, quatenus oboedire ei compellantur.

2. Sin autem de arbitro quidem nihil tale fuerit vel compositum vel scriptum, ipsae autem partes litteris hoc manifestaverint, quod iuramenti nexibus se illigaverint, ut arbitri sententia stetur, et in praesenti casu omnimodo definitionem arbitri immutatam servari, litteris videlicet eorum similem vim obtinentibus, sive ab initio hoc fuerit ab his scriptum vel praefato modo depositum, dum arbiter eligebatur, sive post definitivam sententiam hoc scriptum inveniatur, quod cum sacramenti religione eius audientiam amplexi sunt vel quod ea quae statuta sunt adimplere iuraverunt.

3. Sed et si ipse solus arbiter hoc litigatoribus poscentibus et vel scriptis vel depositionibus, ut dictum est, manifestum facientibus praestiterit iuramentum, quod cum omni veritate liti libramenta imponat, similem esse etiam in praesenti casu prioribus eius definitionem et eam omnimodo legibus esse vallatam.

4. Et in his omnibus casibus liceat vel in factum vel condictionem ex lege vel in rem utilem instituere, secundum quod facti qualitas postulaverit.

5. Sin autem in scriptura quidem aut depositione nihil tale appareat, una autem pars edicat iuramentum esse praestitum, quatenus arbitrali stetur sententia, huiusmodi litigatorum vel solius arbitri sermones minime esse credendos, cum et, si quis iusiurandum datum esse non iudice supposito nec hoc scriptura partium testante concesserit, incerti certaminis compositio, quae inter homines imperitos saepe accidit, non

of an oath, and license being (thereby) given to dishonest men everywhere to make sport of the decisions of judges, We deem that We should settle such a matter by a most authoritative pronouncement.

1. If, therefore, it is agreed between the plaintiff, the defendant, and the arbitrator himself that a suit shall proceed under the sanction of an oath, and the litigants themselves write this in their own hand or through public persons (i.e., notaries), or they state this in their own voices on the record (*in actis*) before the arbitrator, (namely) that the arbitrator was chosen under oaths administered (previously), and with this addition, that the arbitrator himself swears to decide the case with complete fidelity to the truth, (We deem) that this determination shall be valid and upheld in every way, and that neither the defendant nor the plaintiff can disregard it, but it shall constrain them in every way, to the extent that they are compelled to obey it.

2. If nothing of this sort was either formulated or written concerning the arbitrator, but the parties themselves make it known in writing that they bind themselves by the obligation of an oath to abide by the arbitrator's decision, also in this case the arbitrator's determination shall be enforced without change, since their writings evidently have a similar effect whether it was so written at the outset or orally stated in the aforesaid manner when the arbitrator was chosen, or (instead) after a definitive decision a writing is found that they have accepted his hearings under sanction of an oath or that they swear to carry out what is decided.

3. And if the arbitrator alone, upon demand of the litigants, and either by writing or, as aforesaid, by depositions making it manifest, swears that he will impose the scales (of justice) on the lawsuit with total fidelity to the truth, his determination in the present case is also similar to the earlier ones and shall be fortified by the laws in every way.

4. In all these cases it shall be permitted to bring either an action on the facts (*in factum*) or a claim for restitution under a statute (*condictio ex lege*), or an action analogous to one for property (*in rem*), according as the nature of the facts require.

5. If, however, nothing of this sort appears in writing or by oral deposition, but one party asserts that an oath was taken to the effect that the arbitrator's decision would be obeyed, such assertions by the litigators or by just the arbitrator should scarcely be credited, since also, if anyone admit that an oath was taken not in the judge's presence nor attested by the writing of the parties, the settlement of a debatable dispute – as often happens among inexperienced people – has no little strength for the matters determined, but in such a case

aliquid robur iudicatis inferat, sed in huiusmodi casu haec obtineant, quae veteres super arbitris eligendis sanxerunt.

6. Si quis autem post arbitri definitionem subscripserit ἐμμένειν vel στοιχεῖν vel πληροῦν vel πάντα ποιεῖν vel διδόναι (Graecis enim vocabulis haec enarrare propter consuetudinem utilius visum est), etsi non adiecerit ὁμολογῶ, et sic omnimodo per actionem in factum eum compelli ea facere quibus consensit. qualis enim differentia est, si huiusmodi verbis etiam ὁμολογῶ adiciatur vel huiusmodi vocabulum transmittatur?

7. Si enim verba consueta stipulationum et subtilis, immo magis supervacua observatio ab aula[xiii] concessa est, nos, qui nuper legibus a nobis scriptis multa vitia stipulationum multasque ambages scrupulososque circuitus correximus, cur non et in huiusmodi scriptura totam formidinem veteris iuris amputamus, ut, si quis haec scripserit vel unum ex his, adquiescere eis compellatur et ea ad effectum omnimodo perducere? cum non est verisimile haec propter hoc scripsisse, ut tantum non contradicat, sed ut etiam ea impleat, adversus quae obviam ire non potest.

Recitata septimo miliario in novo consistorio palatii Iustiniani. D. III k. Nov. Decio vc. cons.

[5] *Idem A. Iuliano pp.* **pr.** Cum antea sancitum fuerat in arbitris eligendis, quos neque poena compromissi vallabat neque iudex dederat, sed nulla praecedente sententia communis electio, ut in illorum sententia stetur, procreabat, si quidem pro parte pulsata forma arbitralis procederet, exceptionem ei veluti pacti generari, sin autem pro actore calculus poneretur, nihil ex eo procedere ei praesidii: sancimus in eos arbitros, quos praediximus et quos talis consensus elegerit sub eo pacto in scriptis vel non in scriptis habito, ut eorum definitioni stetur, si quidem subscripserint, postquam definitio procedit, quod non displicet ambabus partibus eorum sententia, non solum reo exceptionem veluti pacti generari, sed etiam actori ex nostro numine in factum actionem, quatenus possit sententia eius exsecutioni mandari, sed in hac quidem

[xiii] [ab aula]<aboliri>

the provisions govern which the ancients ordained in regard to choosing arbitrators.[208]

6. But if underneath the arbitrator's decision anyone writes (in Greek) to "abide by," or "submit to," or "fulfill," or to "do" or "give all" – for it seems more helpful, on account of custom, to state these things in Greek words – then, although he does not add (in Greek) "I solemnly promise," he shall also be compelled in every way through an action on the facts (*actio in factum*) to do the things to which he consented. For what is the difference whether the word "I solemnly promise" is added to such words, or such a word is omitted?

7. For if abolition has been allowed for the routine words of stipulations, and the refined, or rather superfluous, observance (of the old rules), and We, in laws recently enacted by us,[209] have corrected the many faults of stipulations and their many circumlocutions and captious verbosity, why not also curtail the general fear of the ancient law in connection with such writing, so that a man who writes these (words) or one of them is compelled to abide by them and to carry them into effect in every way? For it is likely he wrote these things not just not to contradict them, but rather to carry out things to which he has no objection to offer.

Recited at the seventh milestone in the New Consistory of Justinian's Palace; given Octobèr 30, in the consulship of the vir clarissimus *Decius (529).*

[5][210] *The same Augustus to Julian, Praetorian Prefect.* **pr.** In choosing arbitrators who were neither supported by a penalty clause in the arbitration agreement nor appointed by a judge, but were, without a preceding (judge's) order, picked through a mutual consent to abide by their decision, it was formerly ordained that if the arbitrator's decision went in favor of the defendant, a defense like that on a pact arose for him; but if the reckoning favored the plaintiff, he received no protection from it. As to these arbitrators who are mentioned above and who were chosen through an agreement, under a pact either in writing or not, to stand by their decision, We (now) ordain that if, after the determination is made, they both subscribe that their verdict does

[208] Sections 1–5 of this constitution were repealed by Nov. 82.11, of 539, which provides, in substance (Blume): "many, ignorant of the usages of courts, readily swear that they will abide by the decision of an arbitrator who does not know what is just, and then, forgetting their oath, and afflicted with damage, ask that the matter be re-examined. In order that such perjury may not be committed hereafter, no arbitrators shall hereafter be chosen under the sanction of an oath, but parties must stipulate for a penalty. If that is done, and a party does not want to abide by the decision, he must first pay the penalty agreed on, and he may then have the matter re-examined in (a regular) court. If no penalty has been agreed on, but the parties are satisfied with an oath, they will not be bound by the decision. All other laws on this subject aside from that relating to the oath, shall remain in effect."

[209] C. 6.23.25, 8.37.11.

[210] Combine with C. 4.20.20.

regia civitate ab officio eminentissimae praefecturae vel eius, cuius forum pars sequitur fugientis, in provinciis autem tam per moderatores quam apparitiones eorum, vel per iudices, quorum regimen pars pertimescat pulsata.

1. Sin autem minime quidem post sententiam subscripserint arbitri formam amplecti, sed silentio eam roboraverint et non intra decem dies proximos attestatio missa fuerit vel iudici vel adversariis ab alterutra parte, per quam manifestum fiat definitionem non esse amplectendam, tunc silentio partium sententiam roboratam esse et fugienti exceptionem et agenti memoratam actionem competere. 2. Altera autem parte recusante secundum praefatum modum et implere statuta minime cupiente nihil fieri praeiudicium neque pari vel exceptionem reo vel actori actionem, exceptis videlicet arbitris, qui cum sacramenti religione electi sunt secundum novellam nostri numinis constitutionem: tunc etenim ea omnia servari, quae lege nostra super huiusmodi audientia definita sunt.

3. Licet non ignoramus Iulii Pauli opinionem et aliorum prudentium certorum, qui tetigerunt quidem huiusmodi quaestionem, quam in praesenti adgredimur, non autem perfectissime peregerunt, sed usque ad quasdam temporales actiones standum esse existimaverunt, plenius tamen et generaliter definimus conventum in scriptis apud compromissum iudicem factum ita temporis interruptionem inducere, quasi in ordinario iudicio lis fuisset inchoata. 4. Ad haec generaliter sancimus in his, quae apud compromissarios acta sunt, si aliquod in factum respiciens vel professum est vel attestatum, posse eo et in ordinariis uti iudiciis.

D. VI k. April. Constantinopoli Lampadio et Oreste vv.cc. conss.

[6] *Idem A. Iohanni pp.* Sancimus mulieres suae pudicitiae memores et operum, quae eis natura permisit et a quibus eas iussit abstinere, licet summae atque optimae opinionis constitutae arbitrium in se susceperint vel, si fuerint patronae, inter libertos suam interposuerint audientiam,

not displease them, then not only does a defense like that of a pact arise for the defendant, but also, pursuant to Our Divine Majesty, the plaintiff shall also have a right of action on the facts (*in factum*), to the end that this decision can be carried into effect – but in this Imperial City through the office staff of the eminent Prefecture or of the official with jurisdiction over the defendant, but in the provinces through the governors as well as their subordinates or through the judges to whose competence the defendant is subject.

1. Even if, moreover, the parties, after the decision, in no way subscribe to accepting the arbitrator's written plan, but (nevertheless) they confirm it by their silence, and within the next ten days neither party sends notification either to the arbitrator or to his adversaries whereby he makes it known that the decision ought not to be accepted, then by the silence of the parties the decision is corroborated, and the defendant shall have the defense and the plaintiff the aforementioned action. 2. But if either objects in the aforesaid manner and in no way desires to execute the decision, no prejudice shall result, nor shall a defense arise for the defendant or an action for the plaintiff, except indeed for arbitrators who were chosen under the sanction of an oath according to the new constitution of Our Divine Majesty,[211] for then all those things shall be determined by Our law concerning such a hearing.

3. Although We are not unaware of the opinion of Julius Paulus and of certain other jurists who touched upon the subject to which we pass at present, but who did not treat it very fully and thought that it should be limited to certain time-restricted actions (*actiones temporales*),[212] We, however, more fully and generally determine that the written summoning (of a defendant) before a settlement judge shall interrupt the time (for usucapion), just as if a suit had been commenced in an ordinary court. 4. In addition we ordain generally, concerning matters tried before settlement arbitrators, that if something respecting the facts is either admitted or attested, it can also be used in ordinary courts.[213]

Given March 27, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[6] *The same Augustus to John, Praetorian Prefect.* We ordain that women, mindful of their modesty, as well as of the work that nature has permitted them and of that from which it ordered them to abstain, be kept out of every judicial battle, even if they are of the most eminent and best repute and have undertaken an arbitration, or if they as patrons (of freedmen) provide their

[211] Law 4.1–5 above, repealed by Nov. 82.11.

[212] Blume: "Refers to the rule, prevailing in classical law, that not the mere institution of a suit, but only joinder of issues, interrupted … the statute of limitations. In later law, [it] was interrupted when defendant was summoned."

[213] See C. 4.20.20.

ab omni iudiciali agmine separari, ut ex earum electione nulla poena, nulla pacti exceptio adversus iustos eorum conventores[xiv] habeatur.

D. k. Sept. Constantinopoli post consulatum Lampadii et Orestae.

LVI De Satisdando

[1] *Impp. Diocletianus et Maximianus AA. et CC.* **pr.** Non est iuris incerti eum, qui apud acta factus est agentis procurator, non compelli ratam rem dominum habiturum satisdare: hoc enim casu veluti praesentis procuratorem intervenire intellegendum est. **1.** Itaque etsi postea mutata voluntate procuratorem esse noluerit, tamen iudicium, quo quasi procurator expertus est, iudex ratum habere debebit.

2. Sin autem ei ab adversario opposita fuerit in ipso litis exordio defensionis adlegatio, etiam ipse quasi absentis in hac parte procurator satisdationem super excipienda lite praestare cogitur, qua non praecedente lis quae ei mandata est ulterius procedere a iudice non conceditur.

3. Rei autem procurator vel defensor, etiam sub gestorum testificatione factus, in ipso litis limine iudicatum solvi satisdationem in omnibus causis praestare cogitur.

D. VIIII k. Nov. CC. conss.

LVII De Formulis et Impetratione Actionum Sublatis

[1] *Impp. Constantius et Constans AA. Marcellino praesidi Phoenice.* Iuris formulae aucupatione syllabarum insidiantes cunctorum actibus radicitus amputentur.

D. X k. Febr. Constantio III et Constante II AA. conss.

[xiv] [eorum conventores]<earum contemptores>

own hearing among their freedmen. Therefore on the basis of their selection no penalty and no defense from a pact shall be had against those who rightly ignore them.

Given September 1, at Constantinople, in the post-consulate of Lampadius and Orestes (531).

Fifty-Sixth Title Giving a Surety[214]

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars.* **pr.** It is not unsettled law that a man who is appointed as the plaintiff's procurator in the judicial records (*apud acta*) is not compelled to give a surety that the owner will ratify the outcome, for in this case the procurator is understood as appearing as if for one present (in court). **1.** Thus, although he (the plaintiff) later changes his mind and does not want him to be procurator, the judge should nonetheless uphold the judicial proceeding in which he acted as a procurator.

2. But if at the very outset of the case a claim (the basis for a counteraction) is interposed by the adversary (the defendant), then he, as though in this matter he were the procurator of an absent (principal), is forced to give a surety to undertake the suit (in connection with the defendant's claim), and unless this is done, the judge will not allow him to proceed with the suit mandated to him.

3. The procurator or defender (*defensor*) of the defendant, however, even one appointed with the proof of a record, is forced at the very threshold of the lawsuit to give a surety in all cases that a judgment will be paid.

Given October 24, in the consulship of the Caesars (294).

Fifty-Seventh Title The Abolition of Formulas and of the Obtaining of Actions

[1] *Emperors* CONSTANTIUS *and* CONSTANS *Augusti to Marcellinus, Governor of Phoenicia.* The legal formulas (*iuris formulae*), which entangle the affairs of everyone in their quibbling verses, shall be extirpated root and all.[215]

Given January 23, in the consulship of Constantius, for the third time, and Constans, for the second time, Augusti (342).

[214] See D. 2.8.

[215] The *formulae* are associated with the procedure of classical Roman law, replaced, at this date, by extraordinary cognition. Blume: "A general law, directing magistrates to try cases themselves, was enacted in 294 A.D. C. 3.3.2. That was the deathblow to the formula. The instant rescript shows, however, that notwithstanding that law, formulas continued to be issued."

[2] *Impp. Theodosius et Valentinianus AA. Hierio pp.* Nulli prorsus non impetratae actionis in maiore vel minore iudicio agenti opponatur exceptio, si aptam rei et proposito negotio competentem eam esse constiterit.

D. x k. Mart. Constantinopoli Tauro et Felice conss.

LVIII De Iureiurando Propter Calumniam Dando

[1] *Imp. Iustinianus A. Demostheni pp.* **pr.** In omnibus causis, sive propter litteras fuerit certatum sive propter instrumenta sive propter quicquam aliud, in quo necessitas probationis incumbit, sancimus non aliter easdem probationes praestare compelli, nisi prius qui eas exposcit iuramentum de calumnia praestaverit, quod non causa differendi huiusmodi proposuit adlegationes: nam sacramenti timore contentiosa litigantium instantia compescitur.

1. Ne autem perperam in quaestionem servorum quidam venientes sui animi crudelitatem exerceant, non aliter concedi eis qui quaestionem servorum exposcunt ad hoc venire vel a iudicibus audiri, nisi prius tactis sacrosanctis scripturis deponant, quod non odio servorum vel propter offensas coheredum ad hoc venerunt, sed quia aliter rerum hereditariarum veritatem exquirere vel ostendere non possunt.

D. xii k. Oct. Constantinopoli Decio vc. cons.

[2] *Idem A. Iuliano pp.* **pr.** Cum et iudices non aliter causas dirimere concessimus nisi sacrosanctis evangeliis propositis et patronos causarum in omni orbe terrarum, qui Romano imperio suppositus est, prius iurare et ita perferre causas disposuimus: necessarium duximus et praesentem legem ponere, per quam sancimus in omnibus litibus, quae fuerint post praesentem legem inchoatae, non aliter neque actorem neque fugientem in primordio litis exercere certamina, nisi post narrationem et responsionem, antequam utriusque partis advocati sacramentum legitimum praestent, ipsae principales personae subeant iusiurandum. et actor quidem iuret non calumniandi animo litem movisse, sed existimando bonam causam habere: reus autem non aliter suis adlegationibus utatur, nisi prius et ipse iuraverit, quod putans se bona instantia uti ad reluctandum pervenerit: et postea

[2][216] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Hierius, Praetorian Prefect.* The defense that no action (i.e., no *formula*) was formally obtained shall not be raised against anyone at all suing in any court, high or low, if it appears that it (the action actually granted them) is suited to the subject and proper to the matter at hand.

Given February 20, at Constantinople, in the consulship of Taurus and Felix (428).

Fifty-Eighth Title The Oath to Be Taken over Vexatious Litigation

[1][217] *Emperor* JUSTINIAN *Augustus to Demosthenes, Praetorian Prefect.* **pr.** In all cases, whether there is dispute over writings or documents or anything else for which there lies a requirement of proof, We ordain that these proofs need not otherwise be produced unless the party demanding them first takes an oath concerning vexatious litigation (*calumnia*), that he does not make such allegations to cause delay. For fear of an oath restrains the quarrelsome perseverance of litigants.

1. To prevent some persons who wrongfully resort to examining slaves (under torture) from giving vent to their mental cruelty, those who demand the examination of slaves shall not be permitted to resort to it or be heard by judges unless they first touch the Holy Scriptures and state that they do not resort to this through hatred for the slaves or because of the enmities of co-heirs, but because they cannot otherwise discover or show the truth concerning inherited property.

Given September 20, at Constantinople, in the consulship of the vir clarissimus *Decius (529).*

[2][218] *The same Augustus to Julian, Praetorian Prefect.* **pr.** Inasmuch as We have not allowed judges to dispose of cases unless with the Holy Gospels before them, and We also have provided that, throughout the world subject to Roman rule, trial advocates first take an oath before presenting their cases,[219] (so) We have also deemed it necessary to enact the present statute, through which We ordain that in all cases commenced after the enactment of this law, not otherwise shall the plaintiff or defendant engage in contest at the outset of the suit unless, after the complaint and the response (are made),[220] and before the advocates on either side take the statutory oath, the principals themselves

[216] = C.Th. 2.3.1; combine with C. 5.3.17, 5.4.22, 5.11.6, 6.18.1, 6.24.11, and 6.61.2.
[217] Combine with C. 9.41.18 (dated September 17, at Chalcedon).
[218] Combine with C. 3.1.15–16 (which have the constitution "given" on this date).
[219] For both provisions, C. 3.1.14.
[220] C. 3.9.1.

utriusque partis viros disertissimos advocatos, quod iam dispositum est a nobis, iusiurandum praestare, sacrosanctis videlicet evangeliis ante iudicem positis.

1. Sin autem vel dignitas vel sexus personae non concesserit eam ad iudicem pervenire, in domo litigantis sacramentum procedere, altera videlicet parte vel procuratore eius praesente. **2.** Quod observari oportet et si tutores vel curatores vel aliae quaedam sint personae, quae administrationem alienarum rerum auctoritate legitima gerunt. convenit enim et ipsos iureiurando adfici, quia ipsi causam scientes ita ad eam perveniunt. neque enim pupillus neque adultus vel aliae huiusmodi personae, sed ipsi, qui pro eis tutelam vel curam vel aliam legitimam gerunt administrationem, scire possunt causam et ita ad iudicium pervenire eo, quod ex animi sui sententia iurent. **2a.** Et licet vera causae natura alia forsitan est, tamen quod quisque credit et existimat, hoc esse iurandum: omnibus aliis iuramentis, quae vel ex praeteritis descendunt legibus vel a nobis disposita sunt, in sua firmitate duraturis.

3. Sin autem afuerit alterutra pars et per procuratorem causa agitur, non ante licentiam habeat actor litem exercendam suo procuratori mandare, nisi prius actis intervenientibus in provincia qua degit sacramentum calumniae subeat. **3a.** Similique modo si reus afuerit et forsitan vel per iudicatum solvi stipulationem procuratorem ordinaverit vel defensor pro eo intervenerit, et ipse vel praesente actore per se vel per instructum procuratorem vel etiam absente eo, si hoc iudex perspexerit, inter acta iuramentum praestiterit, quod reum dare antea dispositum est.

4. Sed quia veremur, ne forsitan quidam collusione aliqua utentes remittere videantur sibi huiusmodi sacramentum et ex praedicta dissimulatione nostram sanctionem deludant, sancimus omnes iudices, licet ex compromisso cognoscant, vigorem suum exercentes, quia non pro commodo privatorum, sed pro communi utilitate praesentem legem posuimus, minime pati tale sacramentum remitti, sed omnimodo hoc et ab actore et a fugiente exigi, ne paulatim videatur huiusmodi res defraudari et sacramentum vel principalium personarum vel advocatorum ex quacumque parte mutilari.

5. Hoc etiam huic legi addendum esse sancimus, ut, si quis pro alio litem movere voluerit nullo mandato prolato, sed per fideiussionem ratam rem dominum habiturum suam personam firmaverit, ne vel ex hac machinatione lex circumscribi videatur, sancimus si quid tale in

submit to an oath. The plaintiff, indeed, shall swear that he did not set the suit in motion vexatiously, but with the belief that he had a good case. The defendant shall not otherwise employ his own claims unless he also first swears that he came to resist while judging he has a good position. Afterwards the learned advocates of either side take the oath as now arranged by Us, the Holy Gospels having, of course, been placed before the judge.

1. If the rank or sex of a person does not permit going before a judge, the oath shall occur in the litigant's home, obviously in the presence of the other side or his procurator. **2.** This shall also be observed if *tutores* or *curatores* or other persons are administering another's property with legal authority. It is proper that they too submit to an oath, since they enter the case knowing its character. For it is not a minor ward *(pupillus)* nor an adult one, or other such persons, but they themselves, (the ones who) conduct for them tutelage or curatorship or another lawful administration, who can know a case and enter a trial such that they swear in accord with their inner belief. **2a.** And although the true nature of the case is perhaps different, nevertheless what each person believes and thinks must be sworn. All other oaths required either in past laws or by Us shall remain in force.

3. But if one of the parties is absent and the case is conducted through a procurator, the plaintiff shall not have permission to mandate conduct of the suit to his procurator unless he first submits to an oath on vexatious litigation as a matter of judicial record (*actis interveniestibus*) in the province where he lives. **3a.** And in like manner if the defendant is absent and, say, either he appoints a procurator through a stipulation that a judgment will be paid or a defender (*defensor*) intercedes for him, he (the representative) as well, either in the presence of the plaintiff himself or through his (the plaintiff's) chosen procurator or even in his absence if the judge deems this best, shall on the record (*inter acta*) take the oath that was previously arranged for the defendant to take.

4. But because we fear that some persons, by use of some collusion, may seem to waive such an oath and by the aforesaid trickery evade our ordinance, We ordain that all judges, even if examining on the basis of an arbitration agreement (*compromissum*), shall through the exercise of their power – since We have enacted the instant law not for the advantage of private persons, but for the common benefit (*pro communi utilitate*) – in no way permit waiver of such an oath, but by every means demand it from the plaintiff and the defendant, lest such a thing as this (law) seem gradually to be cheated, and the oath of the principals or their advocates be maimed in any respect.

5. We ordain that this also be added to this statute, that if any person wishes to set in motion a suit for another without producing a mandate, but he confirms his role through a suretyship that the owner (of the claim) will ratify his

posterum emerserit, sive pro una persona quis litem movere voluerit sive pro aliquo corpore vel vico vel alia universitate, fideiussionem quidem solitam praestare, litem autem ulterius minime procedere, nisi intra a iudice statuendum tempus faciat personas principales sacramentum subire, vel praesente adversario, si hoc maluerit, vel alio pro eo agente, vel penitus altera parte cessante inter acta apud defensorem locorum huiusmodi sacramentum vel ab ipso pro quo agitur vel plurima parte vel idonea universitatis procedat.

6. Quod si actor noluerit subire sacramentum calumniae et hoc legitime fuerit approbatum, non liceat ei penitus ad litem pervenire, sed cadat ab instituta actione quasi improbus litigator, et tristitia iudicum ei cum sancta interminatione occurrat et ab iudicio eum quam longissime expellat. **7.** Sin autem reus hoc sacramentum subire recusaverit, in his capitulis, quae narratione comprehensa sunt, pro confesso habeatur et liceat iudici sententiam proferre, quemadmodum et ipsa rei qualitas suggesserit.

8. Sic enim non lites solum, sed etiam calumniatores minuentur, sic pro iudiciis putabunt sese omnes in sacrariis sisti. si enim et ipsae principales litigantium partes per iuramentum lites exerceant et causarum patroni praebeant sacramentum et ipsi iudices propositis sanctis scripturis tam causae totius faciant examinationem quam suum proferant arbitrium, quid aliud, nisi pro hominibus deum in omnibus causis iudicem esse credendum est? **8a.** Antiqua itaque calumnia quiescente et eius ambagibus constitutio nostra dilucida et compendiosa in terris clareat omnibus et sit maximum dirimendarum causarum remedium.

9. Sed praedictum sacramentum in litibus quidem quae necdum sunt inchoatae praestari volumus in ipso litis primordio. **10.** Sin autem causae adhuc pendentes inveniantur vel post litem contestatam et post solitas iudiciales cautelas iam praestitas, si quidem praesto fuerit utraque persona et in eadem civitate vel in territorio eius moratur, et in his litibus sacramentum locum habere et in primo post hanc legem ingressu compelli iusiurandum praestare. **11.** Sin autem una pars afuerit, ne videatur propter absentiam personae lis differri et aliquid contrarium eveniat nostro proposito et, quod pro compendio litium introductum est, in adversariam figuram transformetur, iubemus praesentem quidem personam omnimodo dare sacramentum, absenti autem in pendentibus dumtaxat litibus secundum quod praedictum est hoc concedi. **12.** Sin

act, then in order that this law not seem to be circumvented even by such a scheme, We further ordain that if any such thing happens hereafter, whether someone wishes to institute an action for one person or for some corporate body or settlement (*vicus*) or other legal person (*universitas*), he shall indeed provide the customary suretyship, but the suit shall not otherwise proceed further unless, within the time prescribed by the judge, he (the judge) causes the principals to submit to an oath either in the adversary's presence if he prefers this or in that of another acting for him, or, if the other party is entirely missing, then such an oath shall be taken on the record (*inter acta*) before the Defender of the locality[221] either by the person for whom suit is brought or by the greater or (at least) an adequate portion of the legal person.

6. But if the plaintiff declines to submit to an oath on vexatious litigation and this (refusal) is legally proven, he shall in no wise be permitted to continue the suit; he shall drop from the instituted lawsuit as a dishonest litigant, and judicial harshness shall both visit upon him a godly warning and banish him as far as possible from the court. **7.** If the defendant refuses to submit to this oath, he shall be considered as having confessed regarding the points contained in the (plaintiff's) complaint, and the judge may pronounce his verdict, according as the character of the matter suggests.

8. In this way not only lawsuits, but vexatious litigants will decline in number, and all persons will think they stand before, not courts, but religious shrines. For if the principal litigants carry on their suits under oath, and the trial advocates swear one, and the judges themselves both conduct their investigation of the entire case and render their judgment with the Holy Scriptures placed before them, what else is to be thought than that God, not men, is the judge in all cases? **8a.** So, with the vexatious litigation of old and its subterfuges removed, let Our clear and succinct constitution shine throughout the earth, as the foremost remedy in the disposition of cases.

9. We wish the aforementioned oath to be taken in all lawsuits that have not already commenced, at the very beginning of the lawsuit. **10.** If, moreover, cases still pending are discovered, even after joinder of issue (*litis contestatio*) and the giving of the usual judicial securities, then if each person is present and they live in the same city or territory, this (rule) is relevant in these lawsuits as well, and they shall be compelled to submit to the oath at the first appearance after this law. **11.** But if one party is absent, to prevent the lawsuit being apparently delayed through the person's absence, and something (thus) occurring contrary to Our purpose, (so that) what was introduced to shorten lawsuits[222] is turned to the opposite result, We order that the party present indeed take the oath, but that it be waived for the absent one only in pending lawsuits, as

[221] See C. 1.55 (*defensores civitatium*).
[222] See C. 3.1.13.

autem utraque principalis persona afuerit, ne diutius lites protelentur, etiam sine datione sacramenti lites pendentes suo decurrant tramite.

PP. x k. Mart. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

aforementioned. **12.** But if both principals are absent, then to avoid suits being delayed, the pending cases shall run on their (usual) course without the giving of an oath.[223]

Posted February 20, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[223] This constitution was subsequently modified by Nov. 49 (of 537) and Nov. 124.1 (of 544).

Liber Tertius

I De Iudiciis

[1] *Impp. Severus et Antoninus AA. Clementi.* Iudicio coepto usurarum stipulatio non est perempta. superest, ut debitorem eius temporis, quod non est in iudicium deductum, convenire possis.
PP. k. April. Antonino A. II et Geta II conss.

[2] *Idem AA. Valerio.* Licet iudice accepto cum tutore tuo egisti, ipso iure actio tutelae sublata non est: et ideo si rursus eundem iudicem petieris, contra utilem exceptionem rei iudicatae, si de specie de qua agis in iudicio priore tractatum non esse adlegas, non inutiliter replicatione doli mali uteris.
PP. VI k. Ian. Faustino et Rufo conss.

[3] *Imp. Alexander A. Faustinae.* Quotiens quaestio status bonorum disceptationi concurrit, nihil prohibet, quo magis apud eum quoque, qui alioquin super causa status cognoscere non possit, disceptatio terminetur.
PP. VI id. Febr. Iuliano II et Crispino conss.

Third Book

edited by Serena Connolly

First Title Trials[1]

[1][2] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Clemens.* A stipulation for interest is not invalidated by the commencement of a trial. It remains the case, then, that you can sue a debtor for the interest for such time as was not included in the trial.

Posted April 1, in the consulship of Antoninus Augustus, for the second time, and Geta, for the second time (205).

[2] *The same Augusti to Valerius.* Although you went to law against your *tutor* and accepted a judge (after the joinder of issue), the (particular) action on tutelage was not taken away by the operation of the law itself; and, therefore, if you ask again for the same judge and if you allege that the specific issue concerning which you sued was not embraced in the former action, you can in your own interest pursue a counter-exception based on deceit (*replicatio doli mali*) against the analogous exception (raised by the defendant) of a double claim against him (*utilis exceptio rei iudicatae*).

Posted December 27, in the consulship of Faustinus and Rufus (210).

[3] *Emperor* ALEXANDER *Augustus to Faustina.* Whenever an investigation as to personal status is bound together with a dispute concerning property, nothing prevents determination of the dispute by a judge who otherwise cannot (independently) try a case involving the question of personal status.

Posted February 8, in the consulship of Julian, for the second time, and Crispinus (224).

[1] See D. 5.1.

[2] Blume: "A stipulation for interest was a separate stipulation from that for the principal (see D. 45.1.75.9), so there might be separate stipulations for interest for different periods (D. 45.1.140.1)."

[4] *Idem A. Popilio.* Si, cum tibi pretium praediorum a curatoribus comparatorum reputaretur et instrumenta emptionis traderentur, quaestionem omissae evictionis non movisti, intellegis semel finitam litem instaurari non oportere.

PP. k. Aug. Modesto et Probo conss.

[5] *Imp. Gordianus A. Marcello.* A iudice iudex delegatus iudicis dandi non habet potestatem, cum ipse iudiciario munere fungatur, nisi a principe iudex datus fuerit.

PP. IIII non. Sept. Pio et Pontiano conss.

[6] *Idem A. Iuniae.* Servus in iudicio interesse non potest nec, si condemnatio aliqua in personam eius facta sit, quod statutum est subsistit.

D. XV k. Sept. Gordiano A. et Aviola conss.

[7] *Impp. Diocletianus et Maximianus AA. et CC. Irenae.* Cum debitoris tui servum, tibi pignoris iure obligatum bona domini sui quondam rebus humanis exempti tenere profitearis, adversus eum dari tibi actiones contra ius postulas, si quidem inter servum et liberum consistere iudicium nullum possit. ad possessionem itaque pignorum magis officio iudicis venire te convenit quam illicita postulare.

S. XIIII k. Mai. Sirmi CC. conss.

[8] *Impp. Constantinus et Licinius AA. ad Dionysium.* Placuit in omnibus rebus praecipuam esse iustitiae aequitatisque quam stricti iuris rationem.

D. id. Mai. Volusiano et Anniano conss.

[9] *Imp. Constantinus A. ad Maximum.* Iudices oportet imprimis rei qualitatem plena inquisitione discutere et tunc utramque partem saepius interrogare, ne quid novi addere desiderent, cum hoc ipsum ad alterutram partem proficiat, sive definienda causa per iudicem sive ad maiorem potestatem referenda sit.

D. prid. id. Ian. Sirmi Crispo II et Constantino II CC. conss.

[4] *The same Augustus to Popilius.* If, while the cost to you of lands bought by your *curatores* was being calculated and the documents of purchase were being delivered, you did not initiate an investigation into the omission of (an agreement on liability for) eviction, you understand that a suit once completed should not be reopened.

Posted August 1, in the consulship of Modestus and Probus (238).

[5] *Emperor* GORDIAN *Augustus to Marcellus.* A judge appointed by another judge does not have the power in turn to appoint a judge, since he himself is to carry out the duty of a judge, unless he had been appointed judge by the Emperor.

Posted September 2, in the consulship of Pius and Pontianus (238).

[6] *The same Augustus to Junia.* A slave cannot be a party to an action; nor, if a judgment has been rendered against him, can the decision stand.

Given August 18, in the consulship of Gordian Augustus and Aviola (239).

[7] *Emperors* DIOCLETIAN *and* MAXIMIAN *and the Caesars to Irena.* Since you declare that the slave of your debtor, who was bound to you by the law of pledge, holds property of his former master, now taken away from human affairs (i.e., dead), you unlawfully ask for a right of action to be given to you against the slave, since it is not possible for any trial to exist between a slave and someone free-born. It is generally accepted, therefore, that you should approach the office of a judge seeking possession of the pledge, rather than asking for things that are not lawful.

Subscribed April 18, at Sirmium, in the consulship of the Caesars (294).

[8][3] *Emperors* CONSTANTINE *and* LICINIUS *Augusti to Dionysius.* We have determined that the foremost consideration in all things should be justice and equity, rather than the strict letter of the law.

Given May 15, in the consulship of Volusianus and Annianus (314).

[9][4] *Emperor* CONSTANTINE *Augustus to Maximus.* Judges should clear up as a priority the nature of the issue in question by full inquiry and should frequently ask both parties if they want to add anything new, since this is to the advantage of both parties, whether the cause is to be decided by the judge himself or is to be referred to a higher authority.

Given January 12, at Sirmium, in the consulship of Crispus, for the second time, and Constantine, for the second time, Caesars (321).

[3] Combine with C. 7.22.3 (May 13, probably correct: Seeck).

[4] = C.Th. 2.18.1; combine with C. 7.62.16. Or June 12 (Seeck).

[10] *Idem A. ad Severum pu.* Nulli prorsus audientia praebeatur, qui causae continentiam dividit et ex beneficii praerogativa id, quod in uno eodemque iudicio poterat terminari, apud diversos iudices voluerit ventilare: poena ei ex officio iudicis imminente, qui contra hanc supplicaverit sanctionem atque alium super possessione, alium super principali quaestione iudicem postulaverit.

D. III k. Aug. Paulino et Iuliano conss.

[11] Κατὰ τοὺς νόμους οἱ διοικηταὶ τὰς ὑποθέσεις τεμνέτωσαν πρὸς τὸ φαινόμενον αὐτοῖς δίκαιον καὶ μὴ φοβείτωσαν βασιλικὴν ἀντιγραφὴν παράνομόν τι ποιῆσαι αὐτοῖς κελεύουσαν ὡς ἀνίσχυρον.

[12] **pr.** Πάντες οἱ ἄρχοντες καὶ οἱ θεῖοι δικασταὶ συντόμως τὰς δίκας τεμνέτωσαν· κἂν τις δικαζομένων πολλάκις τῷ προσφόρῳ δικαστῇ προσελθὼν μὴ δι' ἀναγκαίαν αἰτίαν ὑπερτεθείη, προσίτω τῷ βασιλεῖ τὴν ἐκεῖθεν ἀναμένων βοήθειαν. **1.** Εἰ δὲ καὶ παραιτεῖταί τις τὸν δικαστὴν εὐλόγως πρὸ προκατάρξεως, ἐκ θείας προσελεύσεως ἑτέρου τεύξεται δικαστοῦ ἢ συνδικαστοῦ ἢ καὶ ἀλόγως παραιτησάμενος ὠθισθήσεται· μετὰ προκάταρξιν, δικαστὴς ἕτερος ἢ συνδικαστὴς μὴ αἰτείσθω. **2.** Παρ' ἑνὶ δὲ δικαστῇ τὸ πᾶν κινείσθω τῆς ὑποθέσεως· κἂν ἀπρόσφορος οὗτος ἐπί τινι δόξῃ κεφαλαίῳ, ἐξ οἰκείας ψήφου ἐπὶ τὸν πρόσφορον αὐτὸ παραπεμπέτω. δεύτερον γάρ τις ἢ πλέον αἰτιασάμενος καὶ τὰς ἐκ τῆς δευτέρας αἰτίας κατὰ τὸ διπλάσιον καταθήσει ζημίας καὶ ἐγγυῶν χωρὶς ἢ ἐξωμοσίας ἐκ τῆς δευτέρας ὑπομνήσεως παρὰ τῷ πρώτῳ κινήσει δικαστῇ.

[13] *Imp. Iustinianus A. Iuliano pp.* **pr.** Properandum nobis visum est, ne lites fiant paene immortales et vitae hominum modum excedant, cum criminales quidem causas iam nostra lex biennio conclusit et pecuniariae causae frequentiores sunt et saepe ipsae materiam criminibus creare noscuntur, praesentem legem super his orbi terrarum ponendam, nullis locorum vel temporum angustiis coartandam ponere.[i] **1.**

[i] [ponere]

[10][5] *The same Augustus to Severus, City Prefect.* No hearing whatsoever shall be given to anyone who splits up the contents of a case and, being in receipt of a grant of special imperial favor, wants to air before different judges what could be decided in one trial. A penalty inflicted by the office of a judge hangs over the person who contrary to this enactment petitions the Emperor and demands one judge concerning possession and another concerning the principal matter for investigation (i.e., ownership).

Given July 30, in the consulship of Paulinus and Julian (325).

[11][6] Governors must decide cases according to statutes and following what seems to them to be just; nor need they fear any imperial rescript that commands them to do anything contrary to laws, since this is invalid.

[12] pr. All magistrates and judges appointed by the Emperor shall decide cases quickly; and if a litigant often calls upon the proper judge, but is held off by him without just cause, he may appeal to the Emperor and wait for relief from him. **1.** If any party objects with good reason to a judge before joinder of issue (*litis contestatio*), by approaching the Emperor he will obtain another judge, or an additional one to sit with the former; but if he objects without good cause, he will be repulsed. For after joinder of issue, his request for a new judge or a supplementary judge will be denied. **2.** A case shall, moreover, be tried in its entirety before one judge. If he appears to be incompetent (i.e., to lack jurisdiction) as to any of the main points, he shall, by his own order, have the cause transferred to the appropriate judge. A person who sues a second time or more, shall pay double the damages arising in connection with the second summons and must litigate the terms of the first suit, without sureties or swearing as to any obligation on the part of the defendant arising from his second summons to court.[7]

[13][8] *Emperor Justinian Augustus to Julian, Praetorian Prefect.* **pr.** Lest suits extend almost into infinite time and exceed the measure of a man's life, and since Our law has already fixed the period of two years for criminal cases, but civil cases are more frequent and often are known to furnish the material for

[5] = C.Th. 2.18.3. Seeck dates to May 23, 325.

[6] This constitution and the one that follows are restored from the Basilika (7.6.11–12). They are without subscription, but C. 3.1.12 probably dates to 527; see 13 below.

[7] Blume: "According to other provisions, such party also lost his case. C. 2.2.4; C. 7.17.7. That perhaps referred to the loss of the second case, compelling the party to prosecute the first case to the end, before the judge before whom that case was pending. See D. 5.1.20."

[8] Blume: "The ... law, directing that a suit should be finished in three years, applied only to ordinary civil suits. Criminal cases were required to be finished in two years after joinder of issue (C. 9.44); fiscal cases in six months after joinder of issue (C. 10.1.11); cases involving the question as to whether certain municipal duties should be performed, within three months. C. 10.32.54."

Censemus itaque omnes lites super pecuniis quantaecumque quantitatis, sive super condicionibus sive super iure civitatum seu privato fuerint illatae, super possessione vel dominio vel hypotheca seu servitutibus vel pro aliis quibusdam casibus, pro quibus hominibus contra se litigandum est, exceptis tantummodo causis, quae ad ius fiscale pertinent vel quae ad publicas respiciant functiones, non ultra triennii metas post litem contestatam esse protrahendas: sed omnes iudices, sive in hac alma urbe sive in provinciis maiorem seu minorem peragunt administrationem, sive in magistratibus positi sunt vel ex aula nostra dati vel a nostris proceribus delegati, non esse eis concedendum ulterius lites quam triennii spatio extendere. hoc etenim iudicialis magis esse potestatis nemo est qui ignoret: nam si ipsi voluerint[ii], nullus tam audax invenitur, qui possit invito iudice litem protelare.

2. Et si quidem pars actoris cessaverit, quatenus multiplici dilatione reus fatigetur, et triennii metae post litem contestatam iam prope finem veniant, ut semenstre tempus tantum ei supersit, licentia erit iudici per exsecutores negotii actorem requirere, parte fugiente ex una parte actoris absentiam incusante et iudicibus omnimodo suas aures huiusmodi quaestioni reserantibus, et si per tres vices hoc fuerit subsecutum, decem dierum spatio per unumquemque introitum destinato, et nec ita actoris pars fuerit inventa et neque per se neque per procuratorem instructum pervenerit, tunc iudicem negotii acta apud se confecta conspicere: **2a.** Et si quidem nihil sufficiens actitatum est, ex quo possit termino causae certa fieri coniectura, non solum partem fugientem ab observatione iudicii relaxare, sed etiam in omnes expensas, quae consueto modo circa lites expenduntur, eum condemnare, vera quantitate earum sacramento fugientis manifestanda et omni cautela, quam super lite reus exposuit, reddenda: quae et si remanserit, viribus vacuabitur. **2b.** Sin autem ex gestis apud se habitis parte actoris minime inventa possit invenire viam, ex qua manifestum ei fiat, quid statuendum sit, et absente actore, si eum meliorem causam habere perspexerit, pro eo ferre sententiam non moretur et praesentem reum absenti actori condemnare, expensis tantummodo litis, quas reus legitime se expendisse iuraverit, condemnatione excipiendis, quia hanc poenam actori et meliorem causam habenti propter solam absentiae contumaciam imponimus. **2c.** Nullo penitus ei regressu ad eandem litem conservando: sed actor contumax cadat omnimodo lite, si reus absolvetur: sin vero aliqua condemnatio contra reum pro absente actore proferatur, quam forsitan

[ii] noluerint

criminal causes, it has seemed to Us advisable to hasten to enact the present law concerning these matters, which shall be in force everywhere, and whose force shall not be curtailed by any limits of place or time. **1.** Hence, We order that all suits that have been brought concerning money of any amount, or concerning the status of any persons, or concerning any right of cities or of private persons, or concerning possession, ownership, pledge, servitudes, or certain other occurrences in regard to which men litigate one against the other, shall not be protracted beyond the period of three years from the joinder of issue, with the exception only of cases which concern the rights of the fisc or which relate to public duties. And no judges, whether they occupy high or low administrative positions in this Imperial City or in the provinces, whether they have been elected to magistracies or were put forward by the imperial court, or were consigned by Our highest officials, are permitted to protract suits beyond the period of three years. For there is no one who does not know that this matter rests primarily with the judges; for if judges should not be willing, there is no one audacious enough to protract a lawsuit against their wish.

2. And if the plaintiff tarries for long enough that the defendant is wearied by several delays, and the bounds of three years after joinder of issue are almost reached, so that only six months remain to him, the judge, if the defendant should complain of the plaintiff's absence, may, through his subordinate officials, call on the latter to appear. Judges must by every means open their ears to complaints of this kind. If such a complaint has been lodged on three occasions, with a period of ten days between each filing, and the plaintiff is not then found, and fails to appear either personally or by an authorized procurator (*ad litem*), then may the judge examine the record in the case as to what has been done before him. **2a.** If nothing sufficient has been done in court from which a correct interpretation of the facts may be made for judgment of the action, not only may the defendant be excused from appearing at court, but the plaintiff shall be condemned to pay all costs ordinarily incurred in suits, the true amount thereof to be determined by the oath of the defendant, and every security, furnished by the defendant in the suit, shall be returned; but if the security remains, it shall cease to have validity. **2b.** If, from the archived records of the suit held before him, it is possible to find a way given the minimal involvement of the plaintiff, by which it becomes clear to him as to what should be decided, and if he perceives, in the plaintiff's absence, that the latter has the better cause, he shall not hesitate to render his decision in his favor and to condemn the defendant who is present (in favor of the plaintiff), excepting from the condemnation only those trial expenses which the defendant shall swear to have expended in compliance with the law, since We impose this penalty on the plaintiff even though he has the better cause solely on account of his contempt of the court through his disobedience, with the plaintiff having absolutely no opportunity to recommence the same case. **2c.** But also, if the defendant is absolved, the disobedient plaintiff shall cease from every aspect of the case. However if in fact

non sufficientem sibi actor putaverit fugitivus, nullo modo iterum eandem litem resuscitare concedimus. et haec quidem poena actori fiat imposita.

3. Sin autem reus afuerit et similis eius processerit requisitio, quemadmodum pro persona actoris ediximus, etiam absente eo eremodicium contrahatur et iudex, secundum quod veteribus legibus cautum est, ex una parte cum omni subtilitate causam requirat et, si obnoxius fuerit inventus, et contra absentem promere condemnationem non cesset, quae ad effectum perducatur: et per res et facultates fugientis victori satisfiat, sive ipse iudex ex sua iurisdictione hoc facere potest, sive per relationem ad maiorem iudicem hoc referatur et ex eo legitima via contra res contumacis aperiatur: nulla licentia ei vel alii personam eius solam praetendenti concedenda contradicendi, cum in possessionem ex huiusmodi causa actor mittitur: nec si reversus fuerit et voluerit fideiussiones dare et possessionem recuperare, audiatur: in huiusmodi etenim casibus omnem ei contradictionem excludimus.

4. Cum autem eremodicium ventilatur sive pro actore sive pro reo, examinatio sine ullo obstaculo celebretur. cum enim terribiles in medio proponuntur scripturae, litigatoris absentia dei praesentia repletur nec pertimescat iudex appellationis obstaculum, cum ei, qui contumaciter abesse noscitur, nulla est provocationis licentia, quod et in veteribus legibus esse statutum manifestissimi iuris est. 5. Huiusmodi autem sententia prope finem triennii proferatur, pro quo et praesentem legem induximus. si enim in anteriore tempore, in quo larga temporis superest dilatio et spes absenti relicta fuerit revertendi, alterutra pars cessaverit, in sola expensarum datione et absolutione forsitan praestetur poenalis sententia, non autem tunc mors litis et condemnatio in absentem introducatur, quae in his tantummodo casibus accidunt, in quibus triennii effluentis imminet formido.

6. Sive autem alterutra parte absente sive utraque praesente lis fuerit decisa, omnes iudices, qui sub imperio nostro constituti sunt, sciant in expensarum causa victum victori esse condemnandum, quantum pro solitis expensis litium iuraverit, non ignorantes, quod, si hoc praetermiserint, ipsi de proprio huiusmodi poenae subiacebunt et reddere eam parti laesae coartabuntur.

7. Et haec de alterutra parte litigantium contumaciter absente nobis statuere visum est ad aequitatis rationem omnia corrigentibus. **8.** Sin autem utraque parte imminente et litem peragere cupiente iudex eam accipere noluerit vel propter amicitias vel inimicitias vel turpissimi lucri gratia vel per aliud quicquam vitium, quod miserrimis animis

some judgment is rendered against the defendant in favor of the absent plaintiff, which the absentee happens to deem insufficient, again we grant him no right to reopen the same case. And indeed this penalty is imposed on the plaintiff.

3. If, on the other hand, the defendant should be absent and a search is undertaken for him similar to the process We have prescribed for the plaintiff, if he is still absent, he is considered inexcusably absent and the judge shall, as is provided by the ancient laws, carefully make an examination on one side only, and if he finds the defendant liable, he shall not hesitate to enter judgment against the absent person and he shall carry it into effect: he shall cause the victor to be satisfied out of the goods and property of the defendant, whether he can do this himself by virtue of his own authority or this matter shall be referred by a report to a higher court and thus a legal way shall be opened up to the goods of the person in contempt: no permission shall be given him, or some one else representing him, to raise an objection, when the plaintiff, by reason of the foregoing, is placed in possession of the defendant's property; nor shall such defendant be heard even if he returns and offers to give sureties and recover possession. For indeed in cases of this sort, We preclude him from raising any objection.

4. When the question of inexcusable absence is examined, whether on the part of the plaintiff or defendant, it shall be discussed in an examination without any hindrance. For since this is done with the awe-inspiring Scriptures present, the presence of God stands in place of the absence of the litigant; nor should the judge fear the obstacle of an appeal, when he, whose absence is known to be in contempt of the court, has no right of appeal, which, as is known, is also clearly set down in the ancient laws. **5.** A decision of this kind, however, shall be rendered (only) near the end of the three-year period, in reference to which We have introduced the present law. For if either party has been tarrying at an earlier date, when ample time is left and the absent person has hopes of returning, then a decision concerning penalty shall be rendered only with reference to the payment of, or perhaps release from, expenses, and at that time the lawsuit is not dead nor the absent litigant condemned, for that shall happen only in those cases in which the end of the three-year period threatens.

6. Whether, moreover, a judgment of a suit is rendered in the absence of either party or in the presence of both, all the judges who have been appointed in Our empire must know that the losing party must be condemned to pay costs, as much as the winner has sworn for the usual expenses, not disregarding the fact that if they omit to do this, they themselves will substitute personally for a penalty of this sort and will be compelled to pay it to the injured party.

7. It has seemed best to Us to enact these provisions concerning the contemptuous absence of either party as We correct all things according to the standard of equity. **8.** But if, moreover, both parties are present and desire to pursue a lawsuit but the judge refuses to take it up, or has himself dared to drag out the suit on account of friendship or hatred, or through most wicked bribery, or

huiusmodi iudicum innasci potest, litem ipse ausus fuerit protelare et propter hoc triennium fuerit transactum, iudex, si quidem in magistratu positus est vel in maiore dignitate usque ad illustratus gradum, decem libras auri privatis nostris largitionibus inferre per scholam palatinam compellatur: sin autem iudex minor fuerit, trium librarum auri multa plectetur per eandem scholam exigenda et nostro aerario applicanda, et eo removendo alter iudex in locum eius subrogetur sub similis poenae formidine: his omnibus locum habentibus, cum unus iudex omnem causam ab initio peragat. **8a.** Sin autem in medio triennio vel morte iudicis vel alia inrecusabili occasione iudicium fuerit mutatum, tunc, si quidem ex triennio annale tempus vel amplius residet, in quo alius iudex causae imponitur, intra reliquum tempus causa finiatur: sin autem minus quam annale sit, tunc omne quod deest repleatur, ut non in minore perfecti anni tempore litem possit subrogatus iudex tam discutere quam terminare.

9. Illo procul dubio observando, ut, si neque per alterutram litigantium partem vel per iudicem steterit, quominus lis suo Marte decurrat, sed per patronos causarum, licentia detur iudici et eos duarum librarum auri poena adficere per scholam palatinam exigenda et similiter publicis rationibus adgreganda, ipso videlicet iudice in sua sententia hoc ipsum manifestante, quod per patronos causae vel fugientis vel agentis dilatio facta est vel per omnes vel quosdem ex his: necessitate advocatis imponenda, ex quo litem peragendam susceperint, eam usque ad terminum, nisi lex vel iusta causa impediat, adimplere, ne ex eius recusatione fiat causae dilatio: honorariis scilicet a clientibus, qui dare possint, disertissimis togatis omnimodo praestandis et, si cessaverint, per exsecutores negotiorum exigendis, ne et per huiusmodi machinationem causae merita protrahantur, nisi ipse litigator alium pro alio patronum eligere maluerit.

10. Haec autem omnia in his nobis cauta sunt, quibus perfectae aetatis constitutis arbitrium suum pro omnibus causis sufficit. **11.** Sin vero causae vel pupillorum vel adultorum sint vel aliorum sub cura agentium masculorum vel feminarum, ut per tutores vel curatores vel actores vel procuratores eorum agantur, et eorum desidia triennium fuerit elapsum et causa ceciderint, litem quidem nihilo minus suum habere vigorem, omnem autem iacturam, quae ex hac causa oritur, ad tutores et

because of any other dereliction of duty which can arise in the most wretched mind of such a judge, and on account of this the three-year period has expired, the judge, if he occupies a magistrate's position, or a position of greater dignity up to that of a person who is a *vir illustris*, shall be compelled by the Palatine Corps to pay 10 pounds of gold to Our Privy Purse (*rationes privatae*); but if he is an inferior judge, he shall be punished by a fine of 3 pounds of gold, to be collected by the same corps and turned into Our Treasury (*aerarium*); and the judge must be removed and another substituted for him, under fear of a similar punishment. All these provisions apply when one judge presides over the entire litigation from the beginning. **8a.** But if during the three-year period, either by reason of the death of the judge or some other unavoidable occurrence, there is a change of judge, then, if indeed one year or more remains of the three years during which another judge is substituted in the litigation, the litigation shall be terminated during the time remaining (of the three years); but if, however, less than one year remains, then the time which is thus lacking shall be added, since the substituted judge could not both examine and terminate the litigation in less than a full year.

9. Without doubt it is to be observed that if neither the litigants nor the judge were at fault that the suit did not run its course by its own strength, but the responsibility rests on the legal representatives (*patroni*), the judge shall have power to impose upon the latter a fine of 2 pounds of gold, to be collected by the Palatine Corps and likewise paid into the Public Accounts (*rationes publicae*), while the judge himself shall of course make clear in his decision the fact that the delay was caused by the representatives, either of the defendant or of the plaintiff, and by all or certain of them. For, from the time they undertake a case to be tried, the responsibility must be placed upon representatives to pursue it right through to its conclusion, unless prevented by the law[9] or other valid reason, so that no delay may occur through their refusal to act. Of course, the honorarium is by all means to be given to the learned lawyers by clients who are able to do so, and if clients are in default on this, it is to be collected by the clerk of the court responsible for the case, so that the essential points of the litigation are not be delayed through such trickery, unless the litigant himself should prefer to choose another advocate.

10. All of these things have been provided by Us in regard to those who, being confirmed as having reached full age, have sufficient judgment to guide them in all litigation. **11.** But if in fact the litigation involves either minors under 14 years of age or adults under 25 years of age, or others under guardianship, either male or female, with the result that it is prosecuted in its entirety by their *tutores, curatores*, managers, or procurators, and if through the negligence of

[9] For example C. 3.1.14.4.

curatores et fideiussores eorum heredesque et res eorum et omnes, quorum in hac causa legitime interest, redundare: sin autem non sufficiat pupillis vel minoribus eorum substantia, tunc in quo fuerint detrimentum perpessi, in integrum restitutionis auxilium eis superesse.

D. VI k. April. Constantinopoli Lampadio et Oreste vv. cc. conss.

[14] *Idem A. Iuliano pp.* **pr.** Rem non novam neque insolitam adgredimur, sed antiquis quidem legislatoribus placitam, cum vero contempta sit, non leve detrimentum causis inferentem. cui enim non est cognitum antiquos iudices non aliter iudicialem calculum accipere, nisi prius sacramentum praestitissent omnimodo sese cum veritate et legum observatione iudicium esse dispositururos? **1.** Cum igitur et viam non inusitatam invenimus ambulandam et anteriores leges nostrae, quae de iuramentis positae sunt, non minimam suae utilitatis experientiam litigantibus praebuerunt et ideo ab omnibus merito collaudantur, ad hanc in perpetuum valituram legem pervenimus, per quam sancimus omnes iudices sive maiores sive minores, sive qui in administrationibus positi sunt vel in hac regia civitate vel in orbe terrarum, qui nostris gubernaculis regitur, sive eos, quibus nos audientiam committimus vel qui a maioribus iudicibus dantur vel qui ex iurisdictione sua iudicandi habent facultatem vel qui ex recepto (id est compromisso, quod iudicium imitatur) causas dirimendas suscipiunt vel qui arbitrium peragunt vel[iii] ex auctoritate sententiarum et partium consensu electi, et generaliter omnes omnino iudices Romani iuris disceptatores non aliter litium primordium accipere, nisi prius ante iudicialem sedem sacrosanctae deponantur scripturae: et hoc permaneat non solum in principio litis, sed etiam in omnibus cognitionibus usque ad ipsum terminum et definitivae sententiae recitationem.

2. Sic etenim attendentes ad sacrosanctas scripturas et dei praesentia consecrati ex maiore praesidio lites diriment scituri, quod non magis alios iudicant, quam ipsi iudicantur, cum etiam ipsis magis quam partibus terribile iudicium est, si litigatores quidem sub hominibus, ipsi autem deo inspectore adhibito causas perferunt trutinandas. **3.** Et hoc quidem iusiurandum iudiciale sit omnibus notum et Romanis legibus optimum a nobis accedat incrementum et ab omnibus iudicibus observandum: et si praetereatur, contemptoribus periculosum sit.

iii [vel]

the latter the three-year period elapses and they fail in their litigation, nevertheless the judgment shall indeed retain its force, but the total loss which arises from the litigation shall fall on the *tutores* and *curatores* and their sureties, heirs, and property, and on all who have an interest in this litigation according to law. But if their entire property is not sufficient to make their loss good, then assistance in restoration to their rights will be available to the minors and young adults to the extent of their loss.

Given March 27, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[14] *The same Augustus to Julian, Praetorian Prefect.* **pr.** We come to a matter which is not new or unusual, which was in fact provided for by ancient legislators, and since it has indeed been willfully neglected, has injured suits greatly. For who does not know that ancient judges otherwise never undertook to pass judgment unless they had first taken an oath that in every way they would give judgment truthfully and heeding the statutory law? **1.** While We, therefore, find a not unused path to be traveled, and while former laws of Ours that have been laid down concerning oaths have been proven to be of no little value to litigants, and are, therefore, justly praised by all, We come to this ever-enduring law, through which We ordain that all judges, whether high or low, or those who have been appointed to public offices in this Imperial City or anywhere in the world under Our sway, or those whom We have appointed to legal proceedings or to whom higher judges have delegated, and judges who have inherent jurisdiction to try cases or persons who have undertaken to settle a lawsuit as arbitrator by appointment (*ex recepto*) – that is, by an arbitration agreement (*compromissum*), similar to a trial – or persons who function as arbitrators chosen as such pursuant to a judicial order and the agreement of the parties, and generally absolutely all judges who decide cases under the Roman law, shall not undertake the opening stages of a lawsuit unless they have first placed the Holy Scriptures before the judicial seat: and this shall remain so not only from the beginning of the suit, but even during all the stages of examination through to the very end and the reading of the final decision.

2. For they may thus, paying heed to the Holy Scriptures and consecrated by the presence of God, decide suits with help from on high, knowing that they judge others no more than they are judged themselves, and that the trial is more dreadful for them than it is for the parties, if the litigants bring cases to be examined before men, but the judges try to decide them in the sight of God. **3.** So let this judges' oath indeed be made known to all and let it be joined by Us as a splendid addition to the Roman laws to be observed by all judges: and if is neglected, let it be dangerous to its scorners.

4. Patroni autem causarum, qui utrique parti suum praestantes ingrediuntur auxilium, cum lis fuerit contestata, post narrationem propositam et contradictionem obiectam in qualicumque iudicio maiore seu minore vel apud arbitros sive ex compromisso vel aliter datos vel electos sacrosanctis evangeliis tactis iuramentum praestent, quod omni quidem virtute sua omnique ope quod iustum et verum existimaverint clientibus suis inferre procurent, nihil studii relinquentes, quod sibi possibile est, non autem credita sibi causa cognita, quod improba sit vel penitus desperata et ex mendacibus adlegationibus composita, ipsi scientes prudentesque mala conscientia liti patrocinantur, sed et si certamine procedente aliquid tale sibi cognitum fuerit, a causa recedant ab huiusmodi communione sese penitus separantes: hocque subsecuto nulla licentia concedatur spreto litigatori ad alterius advocati patrocinium convolare, ne melioribus contemptis improba advocatio subrogetur. **5.** Sin autem plurimis patronis adhibitis et iuramento ab omnibus praestito quidam ex his causa procedente patrocinandum esse crediderint, quidam recusaverint, exeant quidem recusantes, volentes autem remaneant: causae etenim terminus manifestare poterit, qui timidius quique audacius iudicium vel reliquerint vel protulerint: nec in hac parte litigatoribus danda licentia alios pro recusantibus subrogare.

D. IIII k. April. Lampadio et Oreste vv. cc. conss.

[15] *Idem A. Iuliano pp.* Sancimus omnes iudices sive in hac florentissima civitate sive in provinciis, si quando absens persona citata postea apparuerit, non aliter ei iudicialem aditum revelare, sed omnem claudere ei iudiciorum copiam, nisi prius omnia damna restituat ex huiusmodi vitio adversariis eius inflicta sive circa ingressus litis sive circa honoraria advocatorum vel alias causas, quae in iudicio vertuntur: aestimatione iudicis quantitate eorum definienda, postquam iuratum ab eo fuerit qui fecit expensas: exsecutoribus negotiorum modis omnibus dispositiones eorum adimplentibus: scituris iudicibus nostris et exsecutoribus, quod, si hoc praetermiserint, ex sua substantia huiusmodi

4. Moreover, the representatives of a case, those who approach either party offering their help, once exposition of the case by both sides has taken place, after an account of the events has been presented and any objections leveled, whether it be before a high or low judge or before arbitrators under an arbitration agreement or who are otherwise appointed or chosen, take an oath while touching the Holy Scriptures that they will, with all the ability and power at their command, take pains to bring forward on behalf of their clients what they shall deem just and true, leaving nothing undone which is possible for them to do; that they do not knowingly or advisedly, and with a bad conscience, assist in a cause entrusted to them, which they know to be faithless, dishonest, without hope and made up of lying allegations, and that if they, during the course of the suit, become advised that such is the fact, they will withdraw from it and entirely sever their connection with it. And if this is done, a spurned litigant cannot reel in the services of another advocate, lest a dishonest advocacy displace a better one that was scorned. **5.** If several representatives have been retained in the case and all have taken the oath, but some of them, during the proceedings, think that their aid should be extended to the client, while others object, then those that are unwilling should withdraw while those that are willing should remain; for the final stage of the litigation can prove which ones have either timidly or audaciously abandoned or protracted the case. In such an event the litigant shall have no right to substitute others for those who withdraw.

Given March 29, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*[10]

[15][11] *The same Augustus to Julian, Praetorian Prefect.* We ordain that if at any time a person formally summoned to appear remains away at the time but appears later, the judges in this flourishing City or in the provinces shall in no way give him a hearing, but shall exclude him from all the facilities of the court unless he has first restored to his adversary the damage occasioned by such default, whether it has arisen from commencing the action, paying an honorarium to lawyers, or other causes which concern the case. The judge in his valuation shall fix the amount thereof after an oath has been taken by the person who incurred the expenses; and the court clerks (*exsecutores*) connected with the case shall in every way execute the wishes of the judge. Our judges and process-servers will know that if they omit to do this, they will be compelled to indemnify, out of their own property, the person injured for the amount of damage sustained. These provisions We also apply to delegated

[10] After Krüger, Lounghis *et al.* date this constitution to March 27, 530.
[11] Combine with C. 2.58.2 and with 16 below. After Krüger, Lounghis *et al.* date to February 20, 531.

detrimentum laesis resarcire compellantur. quod et in pedaneis iudicibus observari censemus, licet non citati, sed requisiti litigatores mala conscientia afuerint.

D. x k. Mai. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[16] *Idem A. Iuliano pp.* Apertissimi iuris est licere litigatoribus iudices, antequam lis inchoetur, recusare, cum etiam ex generalibus formis sublimissimae tuae sedis statutum est necessitatem imponi iudice recusato partibus ad eligendos venire arbitros et sub audientia eorum sua iura proponere. licet enim ex imperiali numine iudex delegatus est, tamen quia sine suspicione omnes lites procedere nobis cordis est, liceat ei, qui suspectum iudicem putat, antequam lis inchoetur, eum recusare, ut ad alium curratur libello recusationis ei porrecto, cum post litem contestatam neque appellare posse ante definitivam sententiam iam statuimus neque recusare posse, ne lites in infinitum extendantur: eodem scilicet exsecutore necessitatem partibus per ordinarium iudicem et omne civile auxilium imponente et arbitros eligere et apud eos venire et sic litem apparente, quasi arbitri fuerint ab imperiali culmine delegati. quod et, si ab imperiali maiestate iudex delegatus non sit, sed ab alio culmine, obtinere censemus.

D. x k. Mart. Constantinopoli post consulatum Lampadii et Orestae vv. cc.

[17] *Idem A. Iohanni pp.* Certi iuris est, quod concessa est militaribus hominibus iudicandi facultas. quid enim obstaculi est homines, qui cuiusdam rei peritiam habent, de ea iudicare? cum scimus et militares magistratus et omnes tales homines per usum cottidianum iam esse approbatos, ut et audiant lites et eas dirimant et pro sui et legis scientia huiusmodi altercationibus fines imponant.

D. k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[18] *Idem A. Iohanni pp.* Cum specialis iudex sive ab augusta fortuna sive ab iudiciali culmine in aliqua provincia, ubi incusatus degit, datus sit et una pars suspectum eum sibi esse dicit, ne forsitan absente persona

judges (*pedanei iudices*), even though the litigants were absent with cognizance of their misdeed and were not summoned to appear (before a higher judge), but simply requested (to appear before a lower one).

Given April 22, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[16][12] *The same Augustus to Julian, Praetorian Prefect.* The law is most clear that litigants are permitted to object to judges before the lawsuit is initiated, since even the precepts of your sublime seat direct that when a judge is objected to, the parties must come to choose a judge arbitrator and submit their claims before him. For even though a judge has been assigned by Our Divine Majesty, still, since We are anxious that all trials shall be conducted without any suspicion, a party who is suspicious of a judge is permitted, before the judicial procedure is begun, to object to him, so that another may be chosen, after presenting a written objection to the former. We have already set down[13] that once issues have been joined no one can appeal till a final decision has been rendered nor object to a judge, in order that trials may not be drawn out to infinite time. Of course, the same clerk of the court shall require the parties, through an ordinary judge (i.e., a governor) and by all the available civil processes, to choose judge arbitrators and to appear before them, and for the suit to proceed in effect as though the judge arbitrators had been appointed by Our Imperial Highness. We believe that this shall also apply if the judge has been chosen not by Our Imperial Majesty, but by another high-ranking judge.

Given February 20, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[17] *The same Augustus to John, Praetorian Prefect.* It is unquestioned law that it has been granted to soldiers to act legally as judges. For what could be the objection to a person passing judgment in a matter with which he is thoroughly conversant, since We know that Masters of Soldiers and all men of that kind have already, by daily usage, been agreed to be appropriate for hearing and deciding suits and ending such disputes, according to their information and legal knowledge.

Given November 1, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[18] *The same Augustus to John, Praetorian Prefect.* When a judge assigned to a case (*iudex specialis*) has been appointed either by Imperial Favor or by the judicial Highness of the province where the defendant lives, and one of the parties

[12] Combine with C. 2.58.2 and with 15 above.
[13] See 12.1 above, and C. 7.62.36.

iudicis et in alia civitate eiusdem provinciae commorante compellatur longo itinere emenso recusationis libellum ei incusatus offerre, sancimus, si quidem praesto est praeses provinciae in illa civitate, ubi de ea re dubitatur, licere ei, qui suspectum sibi esse iudicem dicit, ipsum praesidem adire et hoc facere in actis manifestum: sin autem non est moderator provinciae in praefato loco, haec eadem apud defensorem locorum vel duumviros municipales gestis apud eos habitis celebrare et iudicem quidem eum recusare, ilico autem, id est intra triduum proximum, sine ulla dilatione compelli arbitrum vel arbitros eligere et apud eos litigare, ne et datus iudex removeatur et alter non eligatur: electione videlicet arbitri, si variatum inter partes fuerit, simili modo vel praesidis provinciae, si adest, vel defensoris locorum vel magistratuum municipii arbitrio dirimenda et exsecutore negotii, cui mandata est huiusmodi causae exactio, imminente et statuta ab arbitris effectui mancipante, nisi fuerit provocatum. tunc enim ipse, qui iudicem antea dedit qui suspectus visus est, appellatione trutinata formam causae imponat legitimam.

D. id. Nov. post consulatum Lampadii et Orestis vv. cc.

II De Sportulis et Sumptibus in Diversis Iudiciis Faciendis et de Exsecutoribus Litium

[1] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad Potitum vicarium.* Quisquis fuerit exhibitus, usque ad negotii terminum ab eo apparitore, cui primum traditus fuit, observari eum decernimus: si qua praesumptione fuerit haec mansuetudinis nostrae posthabita praeceptio, primiscrinio qui iussa temeraverit quinque librarum auri condemnatione multando.

D. VIII k. Nov. Ausonio et Olybrio conss.

[2] *Αὐτοκράτωρ Ἰουστινιανός Α ... δουκὶ Θηβαΐδος.* **pr.** Οἱ τὰ διατάγματα κομίζοντες τῶν μελλόντων ἄρχειν πολιτικὴν ἢ στρατιωτικὴν ἀρχὴν δεκαπέντε μόνους χρυσοὺς ἐκ τῆς ἐπαρχίας κομιζέσθωσαν· εἰ δὲ πλέον

says that he objects to the judge, lest the defendant be compelled to hand the written objection to the judge after undertaking a long journey if perchance he is absent and lives in another city of the same province, We ordain that if the governor is present in the city where the controversy about the matter arises, the party who says that he objects to the judge shall have the right to go before the governor himself and make this known for the official record (*in actis*). But if, however, there is no governor of the province in the aforementioned place, these same things he may repeat, before the local representative (*defensor*) or the duumvirs for the archived records of suits held before these officials, that he has refused a judge, but he must immediately, that is within the next three days, without any adjournment choose an appointed judge arbitrator or judge arbitrators and pursue his suit before them, so that the judge assigned may not be removed without another being chosen. Clearly, if the parties cannot agree, the judge arbitrator shall, in like manner, be chosen by the governor of the province, if he is present, otherwise by the local magistrate of the place or the municipal magistrates, and the court clerk to whom the enforcement of such cause is entrusted, advising and taking care that the decisions of the judge arbitrators are carried to effect, unless an appeal is taken. In such case the authority that appointed the suspect judge shall carefully examine the appeal and render a decision according to law.

Given November 13, at Constantinople, in the post-consulate of viri clarissimi *Lampadius and Orestes (531).*[14]

Second Title The Fees and Expenses Incurred in Various Courts, and the Clerks of the Court

[1][15] *Emperors GRATIAN, VALENTINIAN, and THEODOSIUS Augusti to Potitus, Vicar.* We order that if a person is called to court, up until the end of the case he shall be guarded by the subordinate official to whom he is first assigned. If this order of Our Clemency is considered of secondary importance under some presumption of authority, the imperial bureau chief (*primiscrinius*) who dared to violate Our order shall be punished by a fine of 5 pounds of gold.

Given October 25, in the consulship of Ausonius and Olybrius (379).

[2] *Emperor JUSTINIAN Augustus to the Duke of the Thebaid.*[16] **pr.** Those who present the edicts of those who are about to be civil or military magistrates shall not receive more than 15 gold pieces from the province. If they accept

[14] Lounghis *et al.* date to November 1, 531.
[15] = C.Th. 8.8.2, with the date (uncertain; Seeck gives September 22).
[16] The inscription is restored from this and the next constitutions. The text is from Bas. 7.6.18. Lounghis *et al.* date to March 27, 530.

λάβωσι, τὸ τετραπλάσιον διδότωσαν μὴ δυνάμενοι πρὸς ἀπολογίαν προφέρειν, ὡς παρ' ἑκόντων τὸ περιττὸν εἰλήφασιν. **1.** Ἀλλ' ἄχρι μὲν τῶν ἐνταῦθα γενικὴ ἡ διάταξις· λοιπὸν δὲ ἰδικὸν ὁρίζει πρόστιμον κατὰ τοῦ δουκὸς Θηβαΐδος, πρὸς ὃν ἀντεγράφη, καὶ τοὺς μετ' αὐτὸν τὴν αὐτὴν παραληψομένους ἀρχήν, εἰ μὴ τοὺς παραβαίνοντας τὴν νομοθεσίαν τὴν ὡρισμένην ἀπαιτοῦσι ποινήν.

[3] *Idem A. Iuliano pp.* **pr.** Omnibus iudicibus licentiam praestamus, sive his, quibus a nostro numine lites mandantur, illustribus vel spectabilibus vel clarissimis vel togatis fori cuiusque praefecturae vel aliis quibusdam, vel his, qui ex nostris iudicibus delegandas lites accipiunt, exsecutores si cessaverint causas eis instructas offerre, et removere ab exsecutione eos et alios idoneos supponere vel etiam multis adficere, sed si quidem illustres sint iudices, usque ad sex solidorum summam, sin autem alii, usque ad tres tantummodo aureos, et ad iudices quorum interest referre, quatenus militia exuti poenas luant corporales. **1.** Nostris autem amplissimis iudicibus licentia sit et maiores poenas et corporales maculas exsecutoribus imponere, si male fuerint circa lites versati, ut sciant non esse causas a se deludendas nec lucri gratia aliquod eis vitium imponendum.

D. v k. April. Lampadio et Oreste conss.

[4] *Ὁ αὐτὸς βασιλεὺς Ἰουλιανῷ ἐπάρχῳ πραιτωρίων.* **pr.** Προαγορεύομεν ... Ὁ ἐγχειριζόμενος δημοσίας ἢ ἰδιωτικὰς χρείας παρὰ βασιλέως ἢ παρά τινος τῶν ἐνδοξοτάτων ἀρχόντων ὑπομιμνησκέτω μὲν τὸν ἐναγόμενον καὶ πρὶν ἐμφανίσαι αὐτῷ τὰς τοιαύτας κελεύσεις (ἔσθ' ὅτε γὰρ χρὴ ἀγνοεῖσθαι αὐτάς), μήτε δὲ συνηθείας λαμβανέτω παρ' αὐτοῦ μήτε ἐκβιβαζέτω αὐτόν, εἰ μὴ τὸ ἴσον τῆς θείας ἢ μεγίστης κελεύσεως ἐκδῷ αὐτῷ, ἐξ ἧς ὑπέμνησεν αὐτόν. **1.** Εἰ δὲ ἄλλου τινὸς ἄρχοντος δημοσίαν ἢ ἰδιωτικὴν πρόσταξιν ἔχει ἢ τοῦ κατὰ χώραν ἄρχοντος, μὴ ἐκβιβαζέτω τὸν ἐναγόμενον μηδὲ

more, they shall repay four times the amount thereof, and cannot bring in their defense the excuse that the excess obtained by them was voluntarily paid. **1.** So far as these things are concerned, the constitution is general. But it fixes a special penalty against the duke of the Thebaid, to whom it is addressed, and against those who, after him, fill that same magistracy, if they do not demand the fixed fine from those who violate this law.

[3] *The same Augustus to Julian, Praetorian Prefect.* **pr.** We grant power to all Our judges, either those to whom lawsuits are entrusted by Our Divine Majesty – those who are *viri illustres, spectabiles*, or *clarissimi*, or advocates in the forum of every prefecture or certain others – or persons who have taken on cases assigned by Our judges: if the clerks of the court are negligent in laying the case fully argued and evidenced before them, both to remove them from their post and put in their place others who are suitable, or to punish them also by a fine, up to the sum of 6 solidi if imposed by a person of illustrious rank, and if imposed by others up to 3 solidi, and report it to the judges whom it concerns, so that shorn of their office the clerks may pay with corporal punishment. **1.** Moreover, Our highest judges have the power to impose greater fines and inflict severer bodily punishment upon the clerks when the latter conduct themselves badly in connection with suits, so that they may know that suits are not to be made playthings by them, nor should they suffer as a result of any dereliction of duty motivated by greed.

Given March 28, in the consulship of Lampadius and Orestes (530).[17]

[4][18] *The same Augustus to Julian, Praetorian Prefect.* **pr.** We ordain that … a person who is entrusted by the Emperor or by one of Our glorious magistrates with (hearing) any public or private suits shall summon the defendant and before he communicates to him the orders (to conduct the trial) – for sometimes it is necessary that these not go into effect – he shall not take any perquisites from him, nor take him into custody, until he has given him a copy of the imperial or other high order pursuant to which he summons him. **1.** If he has an order, relating to public or private affairs, from any other magistrate or of a governor, he shall not take the defendant into custody, nor take any perquisites from him, until he has first informed the governor (where the defendant is), so that he may be authorized to take the accused persons away

[17] Lounghis *et al.* date to between 527 and 530.

[18] Combine with law 5 below, and C. 10.30.1, 12.40.12, 12.63.2, and perhaps also 3.10.2 and 7.45.15. The inscription is restored from C. 1.4.26. Portions of the text (pr.-2, 6–8) derive from the Basilika (7.6.20); the remainder (3–5) is taken from C. 1.4.26.11–13.

συνηθείας κομιζέσθω, εἰ μὴ ἐμφανίσει πρότερον τῷ ἄρχοντι τῆς ἐπαρχίας, ὥστε δύνασθαι ἐκεῖθεν ἐκλαβεῖν τοὺς αἰτιαθέντας, καὶ βιβλίον αὐτοῖς ἐπιδοθείη ἢ γραφὴ ἐπὶ τῶν ἐγκληματικῶν.

2. Εἰ δὲ μὴ γενομένων τούτων ὑπόμνησιν προσφέρει ἢ συνηθείας ἀπαιτεῖ ὁ ἐκβιβαστής, ἐξέστω τῷ ἐναγομένῳ ἀπωθεῖσθαι αὐτόν. **3.** Ἀλλ' οὐδὲ προφάσει ἐγγυητικῶν ζημίαις τοὺς ἡμετέρους ὑποτελεῖς ὑποβάλλεσθαι συγχωροῦμεν ἢ ὑπὲρ στάσεως ἐντολέως. ἀλλ' εἰ μὲν ἀκίνητον ἔχοιεν οὐσίαν ἀξιόχρεων οἱ ὑπομνησθέντες, ὅρκου γραμματεῖον ἐκτίθεσθαι μόνον· εἰ δὲ οὐκ ἔχοιεν, τηνικαῦτα μὲν ἐγγύην ἄχρι τῆς ἤδη κρατούσης ποσότητος παρέχειν, χωρὶς μέντοι ζημίας ἁπάσης. **4.** Εἰ δὲ ἀμφισβητοῖεν οἱ πράκτορες περὶ τῆς τῶν ἐγγυητῶν ἀξιοπιστίας ἢ τῆς διωμοσίας, κοινῇ συνιόντα εἰς ταὐτὸ τὸν θεοφιλέστατον ἐπίσκοπον τόν τε πατέρα τόν τε ἔκδικον τῆς πόλεως κρίνειν τὸν ἀξιόπιστον φαινόμενον ἐγγυητὴν πρὸς τὴν τῆς ἐναγωγῆς ποσότητα, καὶ ἀνάγκην ἔχειν τὸν πράκτορα δέχεσθαι τοῦτον ἐγγυώμενον, μηδὲν κομιζόμενον ὑπὲρ ἐγγυητικοῦ ἢ ἐξωμοσίας. **5.** Πλὴν εἰ μὴ ἐξ ἰδικῆς ἡμῶν ἢ τινος τῶν μεγίστων ἀρχόντων προστάξεως κελευσθείη τὸ πρόσωπον ἀγαγεῖν, ἐγγυητῇ μὴ καταπιστεύσας· τηνικαῦτα γὰρ ἄδεια ἔσται τῷ πράκτορι ἐγγυητὴν μὴ κομίζεσθαι καὶ τοῦτο μέντοι πράττειν χωρὶς ἁπάσης ζημίας.

6. Ὁ δὲ θεοφιλὴς τῶν τόπων ἐπίσκοπος, ἐὰν συγχωρήσῃ παραβαθῆναι τὸν νόμον ἢ μὴ μηνύσῃ κατὰ τοῦ παραβαίνοντος, καὶ τῷ θεῷ προσκρούει καὶ βασιλικῆς πειραθήσεται κινήσεως. **7.** Ὁμοίως δὲ καὶ ὁ ἄρχων τῆς ἐπαρχίας, εἰ ῥᾳθυμήσει τοῦ νόμου, καὶ παύεται τῆς ἀρχῆς καὶ δημευθεὶς διηνεκῶς ἐξορίζεται. **8.** Μὴ λαμβανέτωσαν δὲ οἱ ἐπιδιδόντες τὰ βιβλία ἢ τὰς γραφὰς πράκτορες καὶ τὰς ἐντυχίας ἢ τὰ συμβόλαια περαιτέρω τῆς διωρισμένης τῇ μετὰ ταῦτα διατάξει παραμυθίας ἢ παραβαίνοντες ὑποκείσθωσαν τοῖς ἐπιτιμίοις αὐτῆς.

D. VIII k. Iul. Chalcedone Lampadio et Oreste conss.

[5] *Ὁ αὐτὸς βασιλεὺς Ἰουλιανῷ ἐπάρχῳ πραιτωρίων.* Διάταξις ἔστι τοῦ ἡμετέρου βασιλέως, ἥτις τοῖς τῶν ὑποθέσεων ἐκβιβασταῖς λόγῳ σπορτούλων ῥητόν τι δίδοσθαι παρεκελεύσατο πρὸς τὴν ποσότητα τὴν τῷ βιβλίῳ τῆς αἰτιάσεως ἐμφερομένην· οἷον λόγου χάριν μέχρις ἑκατὸν νομισμάτων ὥρισε δίδοσθαι τὸ ἥμισυ τοῦ νομίσματος, εἰ δὲ μείζων εἴη ποσότης, πλείονα εἶναι καὶ τὰ σπόρτουλα.

D. VIII k. Iul. Chalcedone Lampadio et Oreste conss.

from there, and until the petition or criminal complaint shall be delivered to the defendants.

2. If the clerk of the court executes the summons or demands his fees without the aforementioned taking place, the defendant may resist him. **3.** Moreover, We do not permit Our subjects to be subject to damages by reason of sureties or for the appointment of a procurator; instead, if those summoned have sufficient immovable property, they may furnish only an oath in writing; if however, they do not have sufficient (immovable property), then they must give surety up to the amount already in usage, but without any loss. **4.** If the court clerks (*exsecutores*) doubt the reliability of the sureties or the oath, then the most reverend bishop, the Father, and the Defender of the City should meet jointly and choose a suitable surety for the amount of the suit, and the court clerk must accept this surety without taking anything for the giving of the surety or oath. **5.** But unless he is ordered by a pragmatic sanction from Us or from one of the exalted Prefects to produce the person, having no faith in the surety, then the court clerk is at liberty not to accept the surety, and this too without any penalty.

6. If the reverend bishop of the place permits this law to be violated, or fails to report the violator, he will offend God and tempt imperial punishment. **7.** So too, if the governor neglects this law, he shall be removed from his magistracy, his property shall be confiscated, and he will be perpetually banished. **8.** The clerks of the court, moreover, who deliver the complaints or accusations and the petitions or documentary proofs, shall receive no emolument above that fixed in the following constitution, and if they do, they shall be subjected to the punishment therein fixed.

Given June 24, at Chalcedon, in the consulship of Lampadius and Orestes (530).

[5][19] *The same Augustus to Julian, Praetorian Prefect.* There is a constitution of Our emperor which directs that a definite amount be paid to the court clerk for the suit as fees in proportion to the sum included in the petition of the complaint; it provides, for instance, that one-half of 1 solidus shall be paid where the amount involved does not exceed 100 solidi; if the amount involved is greater, the fees are greater.

Given June 24, at Chalcedon, in the consulship of Lampadius and Orestes (530).

[19] Combine with law 4 above, and C. 10.30.1, 12.40.12, 12.63.2, and perhaps also 3.10.2 and 7.45.15.

[6] Ὁ αὐτὸς βασιλεύς. ...
D. k. Iun. Constantinopoli dn. Iustiniano pp. A. III cons.

III De Pedaneis Iudicibus

[1] *Imp. Gordianus A. Vicanis.* Procuratori nostro non vice praesidis agenti dandi iudices inter privatas personas non competere facultatem manifestum est: et ideo si, ut adlegatis, inter privatas personas is cuius meministis arbitros dandos putavit, sententia ab eis prolata nullo iure subsistit.
PP. k. Febr. Attico et Praetextato conss.

[2] *Impp. Diocletianus et Maximianus AA. et CC. dicunt:* **pr.** Placet nobis praesides de his causis, in quibus, quod ipsi non possent cognoscere, antehac pedaneos iudices dabant, notionis suae examen adhibere, ita tamen ut, si vel per occupationes publicas vel propter causarum multitudinem omnia huiusmodi negotia non potuerint cognoscere, iudices dandi habeant potestatem. **1.** Quod non ita accipi convenit, ut etiam in his causis, in quibus solebant ex officio suo cognoscere, dandi iudices licentia permissa credatur: quod usque adeo in praesidum cognitione retinendum est, ut eorum iudicia non deminuta videantur, dum tamen de ingenuitate, super qua poterant et ante cognoscere, et de libertinitate praesides ipsi diiudicent.
D. XV k. Aug. CC. conss.

[3] *Exemplum sacrarum litterarum eorundem AA. et CC. ad Serapionem.* Placet, ut iudicibus, si quos gravitas tua disceptatores dederit, insinues, ut delegata sibi negotia lata sententia determinent: nec in his causis, in quibus pronuntiare debent et possunt, facultatem sibi remittendi patere ad iudicium praesidale cognoscant, maxime cum, et si iudicatio alicui litigatorum parti iniusta videatur, interponendae provocationis potestas a sententia ex omni causa prolata libera litigatoribus tribuatur.
D. VIII k. April. Antiochiae CC. conss.

[6] *The same Augustus* … <The substance is lost.>

Given June 1, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, for the third time (533).

Third Title Delegated Judges[20]

[1][21] *Emperor* GORDIAN *Augustus to the villagers.* It is clear that Our procurator, when he is not also acting as governor, has no power to appoint judges for private persons; and, therefore, if, as you allege, the person whom you mention thought that he had the right to appoint judge arbitrators for private persons, the decision given by them has no legal force.

Posted February 1, in the consulship of Atticus and Praetextatus (242).

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *and the Caesars say:* **pr.** It is Our will that the governors themselves take cognizance of cases which they heretofore were accustomed to refer to delegated judges (*iudices pedanei*) because they could not themselves conduct the trials, with the proviso that they shall (still) have power to appoint judges if they are unable to conduct all the trials on account of public business or the multitude of cases. **1.** This must not be construed to mean that they may appoint judges also in those cases that they were heretofore accustomed to try by virtue of their office. Such cases must be tried right at the level of the governors in order that their jurisdiction will not appear to be abridged. Meanwhile, however, cases concerning free birth, which they themselves heretofore could also previously try, and freedman status, the governors must decide themselves.

Given July 18, in the consulship of the Caesars (294).

[3] *Copy of the imperial letter of the same Augusti and Caesars to Serapio.* It is Our will that you inform any judges Your Eminence appoints as triers of a case, that they must determine the cases assigned to them by announcing their decision. Let them recognize that they have no right to refer back to the governor's court cases in which they should give a decision and have the power to do so, especially in view of the fact that even if the decision appears unjust to one of the litigants, he has the free right of appeal from the decision in every case.

Given March 25, at Antioch, in the consulship of the Caesars (294).[22]

[20] *Pedanei iudices*, "petty judges" or "referees" assigned by a judicial officer to hear mundane cases that he was unable to hear himself.

[21] Blume: "An imperial procurator had no jurisdiction in civil cases, but only in fiscal cases, and orders given by him, accordingly, in the former class of cases were absolutely void. But if the parties voluntarily submitted to his jurisdiction, the judgment given by him was valid. C. 3.13.1."

[22] Barnes gives March 25, 300.

[4] *Idem AA. et CC. Firmino.* Placuit, quotiens pedanei iudices dati post litem contestatam vel ad aliud iudicium necessario dirigantur vel publicae utilitatis ratione in alias provincias proficiscantur vel diem obierint atque his rationibus negotiis coeptis finis non possit adhiberi, alium in locum eorum iudicem tribui qui negotium examinet, ne eiusmodi casibus intervenientibus impedimentum aliquod in persequendis litibus adferatur.

D. x k. Dec. Dechioppe Diocletiano VIII et Maximiano VII AA. conss.

[5] *Imp. Iulianus A. Secundo pp.* Quaedam sunt negotia, in quibus superfluum est moderatorem expectare provinciae: ideoque pedaneos iudices, hoc est qui negotia humiliora disceptent, constituendi damus praesidibus potestatem.

D. v k. Aug. Antiochiae Mamertino et Nevitta conss.

[6] *Αὐτοκράτωρ Ζήνων Α. ...*

IIII Qui Pro Sua Iurisdictione Iudices Dare Darive Possunt

[1] *Impp. Theodosius et Valentinianus AA. Cyro pp.* **pr.** In causarum delegationibus illud consultissime praecipimus observari, ut ita valeant, si ad iurisdictionem pertineant delegantis. **1.** Quod si quis alienae iurisdictionis causam crediderit delegandam, nec praecepto cognitorem datum parientiam accommodare censemus et, si contra leges obtemperaverit deleganti, omnia, quae ab ea delegatione geruntur, ita pro infectis haberi praecipimus, ac si ipsi qui delegaverant alienae iurisdictionis iudices resedissent, ut nec appellandi quidem necessitas victis adversus eas sententias imponatur. **2.** Haec, nisi iudices a nobis specialiter delegantibus dati aliis causas delegaverint iudicandas: nam his delegantibus nullo personarum causarumve habito tractatu appellationum ad eos iure iudicia remeabunt.

D. XIII k. Iun. Valentiniano A. V et Anatolio conss.

[4] *The same Augusti and Caesars to Firminus.* It is Our will that whenever delegated judges, appointed after joinder of issue, are necessarily busy with another trial or leave for other provinces on public business or die, and on this account the case commenced cannot be finished, another judge shall be appointed in their place to try the case, so that no impediment to the progress of the case may be interposed by occasion of such accidents.

Given November 22, at Dechioppe (Ioppe?), in the consulship of Diocletian, for the eighth time, and Maximian, for the seventh time, Augusti (303).[23]

[5][24] *Emperor JULIAN Augustus to Secundus, Praetorian Prefect.* There are some cases which are not necessary to be tried by the governor of the province. Governors are, therefore, empowered to appoint delegate judges to try cases which are not important.*Given July 28, at Antioch, in the consulship of Mamertinus and Nevitta (362).*

[6][25] *Empero ZENO Augustus. <The substance is lost.> (486 or 487).*

Fourth Title Those Who Have Jurisdiction to Appoint Judges, and Those Who May Be Appointed as Such

[1][26] *Emperors THEODOSIUS and VALENTINIAN Augusti to Cyrus, Praetorian Prefect.* **pr.** We direct, after most careful deliberation, that the following be observed: assignments of cases for trial to another shall be valid if such cases are within the original jurisdiction of the person assigning them. **1.** But if anyone should presume to delegate a case not within his original jurisdiction, We decree that the delegated judge should not submit himself to this decision, and if he complies with the one who delegated contrary to law, his acts done by virtue of such assignment We order to be considered as void, as if those who made the assignment had been sitting as judges in cases not within their jurisdiction; so that it shall not even be necessary for the defeated parties to appeal from the decisions. **2.** These provisions shall prevail, unless judges specially appointed by Us have assigned cases to others; for if they have assigned cases, trials of appeal therein shall rightly go back (to be heard by) them without first discussing the persons or their cases.

Given May 20, in the consulship of Valentinian Augustus, for the fifth time, and Anatolius (440).

[23] Barnes gives November 22, 301, at Joppa.

[24] = C.Th. 1.16.8; see also CIL 3.459 with a fuller text.

[25] Originally combined with C. 1.51.13, 2.7.18–19, 2.12.27, 3.10.1, and 7.52.5; referred to in C. 2.7.25 pr. and Nov. 82.1.

[26] Combine with C. 7.62.32, 7.63.2 (with slightly different date).

V Ne Quis in Sua Causa Iudicet vel Sibi Ius Dicat

[1] *Imppp. Valens Gratianus et Valentinianus AAA. ad Gracchum pu.* Generali lege decernimus neminem sibi esse iudicem vel ius sibi dicere debere. in re enim propria iniquum admodum est alicui licentiam tribuere sententiae.

Lecta k. Dec. Valente v et Valentiniano AA. conss.

VI Qui Legitimam Personam in Iudiciis Habent vel Non

[1] *Imp. Gordianus A. Candidae.* Si, cum esses pupillaris aetatis, sine tutoris auctoritate cum adversario consisteres, praeses provinciae adversus te pronuntiavit, minime auctoritate iudicati nititur quod statutum est.

D. id. Dec. Gordiano A. et Aviola conss.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Aureliae Agemachae.* In rebus, quae privati iudicii quaestionem habent, sicut pupillus tutore auctore et agere et conveniri potest, ita et adultus curatore consentiente litem et intendere et excipere debet.

D. xviiii k. Febr. CC. conss.

[3] *Impp. Honorius et Theodosius AA. Iuliano proconsuli Africae.* Momentariae possessionis actio exerceri potest per quamcumque personam. sub colore autem adipiscendae possessionis obrepticia petitio alteri obesse non debet, maxime cum absque conventione personae legitimae initiatum iurgium videatur. nihil autem opituletur conventio circa minorem habita, cum id rectius circa curatorem debuerit custodiri.

D. prid. non. Mart. Ravennae Constantio et Constante conss.

Fifth Title No One Shall Be Judge in His Own Case or Pass Judgment on Himself

[1][27] *Emperors* VALENS, GRATIAN, *and* VALENTINIAN *Augusti to Gracchus, City Prefect.* We direct by this general law that no one shall be a judge for himself or pass judgment on himself. For to give anyone power to render a decision in his own case is iniquitous.

Read December 1, in the consulship of Valens Augustus, for the fifth time, and Valentinian, Augusti (376).

Sixth Title Those Who Do and Do Not Have Legal Capacity in Court[28]

[1] *Emperor* GORDIAN *Augustus to Candida.* If the governor decided against you at a time when you were under the age of puberty and you appeared in court with your adversary (but) without consent of your *tutor*, what was decided there will be without judicial authority.

Given December 13, in the consulship of Gordian Augustus and Aviola (239).

[2][29] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Aurelia Agemacha.* In civil cases, just as a minor under the age of puberty with the consent of his *tutor* may sue and be sued, so a minor over the age of puberty may sue and be sued in such a case with the consent of his *curator*.

Given January 14, in the consulship of the Caesars (294).

[3][30] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Julian, Proconsul of Africa.* The action for interim possession (*possessio momentaria*) may be brought by any person. But a fraudulent petition should not, under color of regaining possession, prejudice another (lawsuit), especially since the suit appears to have been started without summoning a person with legal capacity (*persona legitima*) in court. But (in any case) the summoning of a minor can be of no avail, inasmuch as such proceeding should be taken against his *curator*.

Given March 6, at Ravenna, in the consulship of Constantius and Constans (414).

[27] = C.Th. 2.2.1; combine with C. 4.20.10.
[28] *Persona legitima* is in this context the capacity to act for oneself in court.
[29] Combine with *Frag. Vat.* 326 (which omits Aurelia).
[30] = C.Th. 4.22.6. The action for interim possession was an interdictal action.

VII Ut Nemo Invitus Agere vel Accusare Cogatur

[1] *Impp. Diocletianus et Maximianus AA. Camerio.* Invitus agere vel accusare nemo cogitur.

D. id. Oct. Carino II et Numeriano conss.

VIII De Ordine Iudiciorum

[1] *Impp. Severus et Antoninus AA. Marcellinae.* Adite praesidem provinciae et ruptum esse testamentum Fabii Praesentis agnatione filii docete. neque enim impedit notionem eius, quod status quaestio in cognitione vertitur, etsi super causa status cognoscere non possit: pertinet enim ad officium iudicis qui de hereditate cognoscit universam incidentem quaestionem quae in iudicium devocatur examinare, quoniam non de ea, sed de hereditate pronuntiat.

D. XIII k. Dec. Geta et Plautiano conss.

[2] *Imp. Antoninus A. Magnillae.* Si quaestio tibi generis ab his, quos fratres patrueles esse dicis, non fit, adito praeside et accepto iudice familiae erciscundae experire. quod si de ea re quaestio erit, prius de nativitatis veritate secundum iuris formam quaeri idem vir clarissimus curae habebit.

PP. X k. Aug. Antonino A. IIII et Balbino conss.

[3] *Impp. Valerianus et Gallienus AA. Demetrio.* Cum civili disceptationi principaliter motae quaestio criminis inciderit vel crimini prius instituto civilis causa adiungitur, potest iudex eodem tempore utramque quaestionem sua sententia dirimere.

PP. non. ... Gallieno A. V et Faustino conss.

Seventh Title No One Shall Be Compelled to Bring a Civil or Criminal Action Against his Will

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Camerius.* No one shall be compelled to bring a civil or criminal action if he does not wish to do so.

Given October 15, in the consulship of Carinus, for the second time, and Numerianus (284).

Eighth Title The Order of Trials

[1][31] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Marcellina.* Go before the provincial governor and show that the will of Fabius Praesens is voided by the birth of a posthumous son. The governor's investigation is not hindered by the fact that an investigation into personal status has been brought before him, although he cannot (independently) decide the question of personal status. For it is the duty of the judge hearing a suit concerning inheritance to try every incidental question connected with the subject, since he gives judgment not concerning the question of status but concerning the inheritance.

Given November 19, in the consulship of Geta and Plautianus (203).

[2] *Emperor* ANTONINUS *Augustus to Magnilla.* If no question as to your descent is raised by those who you say are paternal cousins, go before the governor and, a judge having been appointed, try the action on dividing an inheritance. But if they question your descent, then the same *vir clarissimus* (i.e. the governor) will take care that the truth of your birth is examined first according to the rules of law.

Posted July 23, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[3] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Demetrius.* If an inquiry into crime incidentally arises in a civil suit, or if a criminal case is first commenced and a civil action is added, the judge has power to decide both the civil and criminal case at the same time.

Posted ..., in the consulship of Gallienus Augustus, for the fifth time, and Faustinus (262).

[31] Blume: "The rescript has been much disputed ... The rescript assumes that ordinarily the president did not have the power to investigate questions of freedom, but only if the question arose incidentally. The next law, and C. 7.19.1 and C. 7.19.3 assume that he had such power in the first instance. It is probable that the law was changed soon after this rescript."

[4] *Imp. Constantinus A. ad Calpurnianum.* Quoniam civili quaestione intermissa saepe fit, ut prius de crimine iudicetur, quod utpote maius merito minori praefertur: ex quo criminalis quaestio quocumque modo cessaverit, oportet civilem causam velut ex integro in iudicium deductam discingi, ut finis criminalis negotii ex eo die, quo inter partes fuerit lata sententia, initium civili tribuat quaestioni.

D. id. Mart. Nepotiano et Facundo conss.

VIIII De Litis Contestatione

[1] *Impp. Severus et Antoninus AA. Valenti.* Res in iudicium deducta non videtur, si tantum postulatio simplex celebrata sit vel actionis species ante iudicium reo cognita. inter litem enim contestatam et editam actionem permultum interest. lis enim tunc videtur contestata, cum iudex per narrationem negotii causam audire coeperit.

D. k. Sept. Severo III et Antonino AA. conss.

X De Plus Petitionibus

[1] *Αὐτοκράτωρ Ζήνων Α.* **pr.** Πᾶς τῶν ἐναγόντων καὶ ἄρρενες καὶ γυναῖκες πρὸ τῆς ὡρισμένης προθεσμίας τῶν χρεῶν ἐνάγοντες καὶ κατὰ τοῦτο τὸν ἐναγόμενον βλάπτοντες ἄλλον τοσοῦτον περιμενέτωσαν χρόνον, μηδένα τόκον ἐν τῷ μέσῳ λαμβάνοντες, ὅσον αὐτοὶ προφθάσαι τὴν προθεσμίαν ἐπεχείρησαν, καὶ τοῦ χρόνου δὲ τούτου παρατρέχοντος μὴ ἄλλως ἐναγέτωσαν, εἰ μὴ τὰ δαπανήματα τῆς πρώτης εἰσόδου τὰ ὑπὲρ τῆς μεθοδείας συμβάντα τῷ διαδίκῳ καταβάλωσιν. **1.** Ἐὰν δὲ ἐπίτροποι ἢ κουράτωρες ἐν χρόνῳ ἢ ποσότητι πλέον ἐπιχειρήσωσιν ἀπαιτῆσαι τοὺς τῶν κηδευομένων χρεώστας, οὐδὲν καταβλαπτέσθωσαν οἱ ἐπιτροπευόμενοι ἢ κουρατωρευόμενοι, αὐτοὶ δὲ οἱ ἐπίτροποι ἢ κουράτωρες ἐπιγινωσκέτωσαν αὐτοῖς τὴν ἐντεῦθεν συμβαίνουσαν ζημίαν.

[4] *Emperor Constantine Augustus to Calpurnianus.* It often happens that a civil proceeding is interrupted in order to first inquire into a criminal accusation, which is done in order that the question of greater moment rightly be preferred to the lesser; wherefore when the criminal matter has been disposed of in whatever manner, the civil case must be decided as if brought into court anew, so that the end of the criminal process becomes, as it were, the beginning of the civil proceeding from the day that a decision between the parties has been rendered (in the criminal matter).

Given March 15, in the consulship of Nepotianus and Facundus (336).

Ninth Title Joinder of Issue

[1][32] *Emperors SEVERUS and ANTONINUS Augusti to Valens.* A matter is not brought into court simply if a mere request for summons has been made or if the defendant has been made acquainted, before the trial, with the kind of action which is brought. For there is a great difference between joinder of issue and notification of the suit. The issues appear to be joined only when the judge has commenced to hear the case by listening to the statement of facts.

Given September 1, in the consulship of Severus, for the third time, and Antoninus, Augusti (202)

Tenth Title Excessive (or Premature) Claims

[1][33] *Emperor ZENO Augustus.* **pr.** If a plaintiff, man or woman, commences an action before the appointed time for paying an obligation and thereby injures the defendant, he must wait for payment as long after the obligation is due as he tried to anticipate that time, and after the lapse of that time he must not bring another action until he has tendered to his adversary the latter's expenses in the former suit, which he caused through his craftiness. **1.** If *tutores* or *curatores*, however, have attempted to demand premature or greater claims from debtors of their wards, their wards or charges shall not be injured as a result, but the *tutores* and *curatores* themselves shall undertake to pay to them the damage caused thereby.

[32] Combine with C. 2.1.3 (dated two days earlier). This constitution (probably heavily interpolated) refers to joinder of issue (*litis contestatio*) under extraordinary cognition. Blume: "When the [formulary procedure] was abolished, and cases were tried only under the extraordinary procedure, the old notion of joinder of issue necessarily disappeared, and with it some of its effects, and a different state of facts was fixed by Justinian to take the place of the old joinder of issue, namely the time when the case was stated in detail to the judge at the time when the case was commenced to be heard by him. See also C. 3.1.14.4."

2. Οἱ δὲ κληρονομιαῖα ἐκδικοῦντες πράγματα ἢ λόγους ἐπιτροπικοὺς ἢ κουρατωρείας ἀπαιτοῦντες καὶ οἱ κατὰ ἀφηλίκων ἢ μειζόνων περὶ διοικήσεως κινοῦντες ἢ παραθήκας ὑφ᾽ ἑτέρων δεδομένας ἀπαιτοῦντες ὡς αὐτοὶ τῶν παραθεμένων διάδοχοι γενόμενοι μηδὲν ἐκ τῆς ὑπεραπαιτήσεως ζημιούσθωσαν ὡς δικαίαν ἔχοντες τῆς ἀγνοίας αἰτίαν· τότε δὲ ὁ ὑπεραπαιτῶν ζημιούσθω, ὅτε προφανῶς ἠλέγχθη πλεονεκτῶν. **3.** Εἰ δέ τις εἰς ἔλαττον τῆς ἀληθείας διετιμήσατο τὴν ἑαυτοῦ δίκην, μὴ προσεχέτω τούτῳ ὁ δικάζων, ἀλλὰ πρὸς τὴν ἀληθῆ ποσότητα τὴν ψῆφον ἐκφερέτω.

[2] *Αὐτοκράτωρ Ἰουστινιανὸς Α.* Ἐάν τις τῶν ἐναγόντων ἐν τῷ διαπεμπομένῳ παρ᾽ αὐτοῦ βιβλίῳ πλείονα ποσότητα τεθεικὼς πλείονος ζημίας αἴτιος τῷ αἰτιαθέντι γένηται, τριπλασίονα διδότω τὴν παρ᾽ αἰτίαν αὐτοῦ συμβᾶσαν τῷ διαδίκῳ ζημίαν. ἀληθὴς δὲ ποσότης τῆς ἐναγωγῆς νοείσθω, εἰς ἣν ὁ δικάζων ἐκφέρει τὴν ψῆφον.

[3] *Imp. Iustinianus A. Iohanni pp.* Odiosas contrahentium calliditates amputare properantes censemus, ut, si quis certa quantitate sibimet debita super ampliore pecunia per dolum et machinationem cautionem exegerit et ad iudicium debitorem vocaverit, si quidem ante inchoatam litem calliditatis eum paeniteat et veritatem debiti confessus fuerit, nullo eum dispendio praegravari: sin autem et liti praebuit exordium et in certaminibus negotii permanens arguatur de adiecta falsi quantitate, non solum ea, sed etiam toto debito eum fraudari: transactionibus scilicet et secundis confessionibus, sive insinuatae sint sive non, etiam in hoc casu suam obtinentibus firmitatem: talibus etenim cautionibus hoc obicere non oportet.

D. xv k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc. anno secundo.

XI De Dilationibus

[1] *Impp. Diocletianus et Maximianus AA. et CC. dicunt:* Quoniam plerumque evenit, ut iudex instrumentorum vel personarum gratia

2. But persons who demand inherited goods, or ask for an accounting by a *tutor* or *curator*, or bring action against persons under age or of age concerning management of affairs, or demand back deposits given by those to whom they have succeeded in the deposit, shall not be mulcted with damages for excessive or premature demands, since they are justly excused on account of want of knowledge. The person who makes excessive or premature demands shall be punished as often as he is clearly shown to have sought unlawful gain. **3.** But if anyone sued for less than is truly due him, the judge shall disregard that and may in his judgment require the true amount.

(486 or 487).

[2][34] *Emperor Justinian Augustus.* If a plaintiff damages the defendant by inserting, in the complaint he sends, a greater amount than is due, he shall pay three times the amount of the damages caused to the defendant by his fault. The correct amount of the claim must be understood to be the amount for which the judge gives judgment.

[3] *Emperor Justinian Augustus to John, Praetorian Prefect.* We hasten to eradicate cheating among those involved in legal activity and decree that if anyone, through fraud and trickery, has demanded in payment for a debt a greater amount than is due him and has called the debtor into court, then, if he repents of his cheating before joinder of issue and admits the true amount, he shall not be unduly burdened with damages; but if, on the other hand, he joins issue, persists in his contentions, and is convicted of claiming a deliberately untrue amount, he shall lose not only the fraudulent amount, but the whole debt as well. Settlements made out of court (*transactiones*), however, and subsequent confessions (acknowledging the amount claimed), whether made a matter of record or not, shall bolster winning parties even in a case like this; for such acknowledgments of debt should not be contradicted.

Given October 18, at Constantinople, in the year following the consulship of the viri clarissimi *Lampadius and Orestes (532).*

Eleventh Title Continuances[35]

[1][36] *Emperors Diocletian and Maximian Augusti and the Caesars say:* **pr.** Since it often happens that a judge is necessarily compelled to grant

[33] The inscription is restored from Inst. 4.6.33e and 34, 4.12.10; combine with C. 3.3.6.

[34] This constitution is restored from Inst. 4.6.24 and 33e; combine, probably, with C. 3.2.5 (dated June 24, 530), but Lounghis *et al.* give a date between August 1, 527, and October 18, 532. Blume: "Fees were paid to the officer who served the summons in proportion to the amount demanded by the plaintiff. See C. 3.2."

[35] See D. 2.12.

dilationem dare rerum necessitate cogatur, spatium instructionis exhibendae postulatum dari conveniet. 1. Quod hac ratione arbitramur esse moderandum, ut, si ex ea provincia ubi lis agitur vel persona vel instrumenta poscentur, non amplius quam tres menses indulgeantur: si vero ex continentibus provinciis, sex menses custodiri iustitiae est: in transmarina autem dilatione novem menses computari oportebit. 2. Quod ita constitutum iudicantes sentire debebunt, ut hac ratione non sibi concessum intellegant dandae dilationis arbitrium, sed eandem dilationem, si rerum urguentissima ratio flagitaverit et necessitas desideratae instructionis exegerit, non facile amplius quam semel nec ulla trahendi arte sciant esse tribuendam.

D. XV k. April. CC. conss.

[2] *Imp. Constantinus A. ad Ursum vicarium.* Si quando quis rescriptum ad extraordinarium iudicem reportaverit, dilatio ei penitus deneganda est: illi autem, qui in iudicium vocatur, danda est ad probanda precum mendacia vel proferenda aliqua instrumenta vel testes, quoniam instructus esse non potuit, si praeter spem ad alienum iudicium trahitur.

D. II non. Mart. Volusiano et Anniano conss.

[3] *Idem A. Profuturo praefecto annonae.* Sive pars sive integra dilatio fuerit data, eo usque iudicis officium conquiescat, donec petiti temporis defluxerint curricula. feriae autem, sive repentinae sive sollemnes sint, dilationum temporibus non excipiantur, sed his connumerentur.

D. VII id. Febr. Sirmi Licinio V et Crispo conss.

[4] *Idem A. ad Catullinum proconsulem Africae.* A procedente iudice dilationem non convenit postulari, etiamsi utraque parte praesente

continuances (*dilationes*) by reason of (the absence of) documents or persons, it is proper that the time requested for procuring proof be given. 1. We think that this should be regulated as follows: if the persons or documents sought are in the same province when the suit is pending, a continuance not exceeding three months should be given; if they are in an adjoining province, it is just that a delay of six months be granted; if they are in a transmarine province, a period of nine months should be allowed. 2. Those sitting in judgment ought to construe this decision as meaning that in this way they understand they do not have the power to grant a continuance at will, but know they may allow a delay only if the most urgent reason demands it and when need for the desired proof requires it, nor should it be readily granted more than once, nor for the purpose of dragging out the suit.

Given March 18 (294).

[2][37] *Emperor CONSTANTINE Augustus to Ursus, Vicar.* If anyone at any time produces an imperial rescript before a judge under extraordinary cognition, he shall be entirely denied the right to have the case continued. But a person who is summoned to appear in court must be granted a continuance to prove the falseness of the complaint or to produce documents or witnesses, since his case could not be prepared if he was unexpectedly dragged into a foreign (hostile) court.

Given March 6, in the consulship of Volusianus and Annianus (314).

[3] *The same Augustus to Profuturus, Prefect of the Food Supply.* Whether only a part or the entire time permitted for a continuance is granted, the judge in carrying out his duties must refrain from doing anything further in the case until the passage of time has run its course. Holidays, however, whether special or conventional, shall not be excepted from the time of the continuances, but shall be included therein.

Given February 7, at Sirmium, in the consulship of Licinius, for the fifth time, and Crispus (318).

[4] *The same Augustus to Catullinus, Proconsul of Africa.* No continuance should be asked from a judge when he is leaving to go out (i.e., not on his tribunal), even if it should be granted in the presence of both parties, since it cannot be given except after investigating the reason for it, and such an investigation cannot legally be considered upon a request made while the judge is off the bench, but only while he is on the bench; if the claim for continuance

[36] Combine, as it seems, with C. 3.3.2 (different date), 7.53.8, and 7.62.6. See also D. 2.12.10; in D. 2.12.7, however, greater leniency is granted.

[37] = C.Th. 2.7.1.

tribuatur, cum non alias nisi causa cognita indulgeri queat et cognitio causae non interpellatione planaria, sed considente magis iudice legitime colligatur, et, si forte dilationis petitio fuerit improbata, suscepta quaestio per sententiam iudicis dirimatur.

D. v id. Febr. Sirmi Licinio v et Crispo conss.

[5] *Idem A. ad Maximum.* Cum a nobis fuerit ad appellationem consultationemve rescriptum, sive sit primo iudicio petita dilatio sive ea tributa non sit sive nec petita quidem, eam dare cuiquam non licebit eadem ratione, qua nec in iudiciis quidem cognitionum nostrarum dilatio tribui solet.

PP. Romae VIII k. April. Probiano et Iuliano conss.

[6] *Impp. Constantius et Constans AA. ad Petronium vicarium Africae.* Inter privatos et fiscum si aliqua lis mota fuerit, utrique parti petendae dilationis per defensores suos copia non est deneganda, si hoc commoditatis ratio postulaverit.

D. v id. April. Aquileiae Acyndino et Proculo conss.

[7] *Impp. Arcadius et Honorius AA. Messalae pp.* Nec de statu ac patrimonio litigantibus in transmarina etiam dilatione mensuum novem spatia egredi concedatur.

D. XII k. Dec. Theodoro cons.

XII De Feriis

[1] *Impp. Constantius et Maximianus AA. et Severus et Maximinus nobilissimi CC. Verino.* Quoniam consulis, an similis observantia a nobis adiciendarum feriarum, quae rebus feliciter gestis proveniunt, ad appellationum quoque tempora porrigenda sit, Verine carissime, rescribi placuit experientiae tuae, ut in causis provocationum iugiter et sine additamento eiuscemodi dierum tempora scias servari debere et supra dictorum dierum in appellationum causis minime fieri adiectionem.

D. non. ... Apollonio superioris Constantio V et Maximiano V CC. conss.

is perchance rejected, the suit that is begun may be decided by decision of the judge (soon after denial of postponement).

Given February 9, at Sirmium, in the consulship of Licinius, for the fifth time, and Crispus (318).

[5] *The same Augustus to Maximus.* When We (Emperors) have issued a rescript either for an appeal or on consultation, no continuance, whether asked for in the court of first instance and refused or not asked for at all (in that court), shall be granted to anyone, for the same reason that no continuance is customarily granted even in cases tried before and decided by Us.

Posted March 25, at Rome, in the consulship of Probianus and Iulianus (322).

[6][38] *Emperors CONSTANTIUS and CONSTANS Augusti to Petronius, Vicar of Africa.* If any suit is brought between private persons and the Treasury (*fiscus*), neither party shall be denied the opportunity to ask for postponement through their representatives, if good reasons require it.

Given April 9, at Aquileia, in the consulship of Acyndinus and Proculus (340).

[7][39] *Emperors ARCADIUS and HONORIUS Augusti to Messala, Prateorian Prefect.* A period of (more than) nine months shall not be allowed to those litigating about status or property, even for a continuance that is sought for collecting evidence from across the seas.

Given November 20, in the consulship of Theodorus (399).

Twelfth Title Holidays[40]

[1][41] *Emperors CONSTANTINE and MAXIMIAN Augusti, and SEVERUS and MAXIMINUS, most noble Caesars, to Verinus.* Since you ask, dearest Verinus, whether the observance of holidays that were added by Us as a consequence of fortunate events should be similarly extended also to the times regulating appeals, it has pleased Us to write to you, Our learned friend, so that you may know that the time fixed for appeals should be uninterrupted and without the addition of days of that kind; (hence) the addition of the days mentioned above cannot be made at all for cases of appeal.

Given ..., at Apollonius Superioris (Apollonopolis Magna?), in the consulship of Constantius, for the fifth time, and Maximian, for the fifth time, Caesars (305).[42]

[38] = C.Th. 2.6.5; combine with C.Th. 10.15.3.
[39] = C.Th. 2.7.3. More likely August 21, 399 (Seeck).
[40] See D. 2.12.
[41] See also C. 3.11.3.
[42] The subscript is partially restored and uncertain in its details. Barnes dates to November 5, 305(?).

[2] *Imp. Constantinus A. Helpidio.* Omnes iudices urbanaeque plebes et artium officia cunctarum venerabili die solis quiescant. ruri tamen positi agrorum culturae libere licenterque inserviant, quoniam frequenter evenit, ut non alio aptius die frumenta sulcis aut vineae scrobibus commendentur, ne occasione momenti pereat commoditas caelesti provisione concessa.

PP. v non. Mart. Crispo II et Constantino II conss.

[3] *Idem A. ad Severum.* A nullo iudice praesumi decet, ut auctoritate sua ferias aliquas condat. nec enim imperiales ferias vocari oportet, quas administrator edixerit, ac per hoc, si nomine eximuntur, etiam fructu carebunt.

D. id. April. Severo et Rufino conss.

[4] *Imppp. Valentinianus Valens et Gratianus AAA. ad Olybrium pu.* **pr.** Publicas ac fiscales causas tua sinceritas etiam feriatis geminis mensibus, hoc est sine aliqua intermissione, discingat. **1.** Pistoriis quoque causis isdem diebus ratum in futurum examen adhibebit.

iiii non. Mai. Tyberiade Valentiniano np. et Victore conss.

[5] *Idem AAA. Albuciano vicario Macedoniae.* Quadraginta diebus, qui auspicio caerimoniarum paschale tempus anticipant, omnis cognitio inhibeatur criminalium quaestionum.

D. VI k. April. Thessalonicae Gratiano V et Theodosio AA. conss.

[6] *Imppp. Valentinianus Theodosius et Arcadius AAA. Albino pu.* **pr.** Omnes dies iubemus esse iuridicos. **1.** Illos tantum manere feriarum dies fas erit, quos geminis mensibus ad requiem laboris indulgentior annus accepit aestivis fervoribus mitigandis et autumnis fetibus decerpendis. **2.** Kalendarum quoque Ianuariarum consuetos dies otio mancipamus. **3.** His adicimus natalicios dies urbium maximarum Romae atque Constantinopolis, quibus debent iura differri, qui[iv] et ab ipsis nata sunt, sacros quoque paschae dies, qui septeno vel praecedunt numero vel sequuntur, dies etiam natalis atque epiphaniorum Christi et quo

[iv] quia

[2] *Emperor* CONSTANTINE *Augustus to Helpidius.* All judges and the people in the city should rest, and the work in all crafts should cease, on holy Sunday. But the people in the country may freely and lawfully apply themselves to cultivating their fields, so that the benefit conferred by the providence of God may not perish in an instant, since it often happens that grain can be sown in the furrows and vines planted in the trenches on no better day.

Posted March 3,[43] *in the consulship of Crispus, for the second time, and Constantine, for the second time (321).*

[3] *The same Augustus to Severus.* No judge should presume to establish holidays on his own authority. And indeed holidays announced by the governor ought not to be called Imperial, and, deprived of that designation, they also lack its advantage (in leading to suspension of judicial activity).

Given April 13, at Sirmium, in the consulship of Severus and Rufinus (323).

[4] *Emperors* VALENTINIAN, VALENS, *and* GRATIAN *Augusti to Olybrius, City Prefect.* **pr.** Your Uprightness must decide public and treasury cases also in the two months of holiday, that is to say, without interruption. **1.** Also, cases pertaining to bakers may in the future be lawfully tried during the same time.

Given May 4, at Tiberias, in the consulship of Valentinian, noble youth, and Victor (369).

[5][44] *The same Augusti to Albucianus, Vicar of Macedonia.* During the forty days which precede Easter with the beginning of ceremonies, all hearings of criminal cases will be suspended.

Given March 27, at Thessalonica, in the consulship of Gratian, for the fifth time, and Theodosius, Augusti (380).

[6][45] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Albinus, City Prefect.* **pr.** We order that all days shall be days on which trials may proceed. **1.** The only days of holiday are those that each year, for a period of two months, indulgently provide rest from labor, in order to mitigate the summer heat and to gather the autumnal fruits. **2.** We also give over to leisure the customary opening days of the year. **3.** We add to these the natal days of the great cities of Rome and Constantinople, during which legal matters, which owe their origin to them, should be deferred.

[43] More likely July 3, 321 (Seeck).
[44] = C.Th. 9. 35. 4 (ascribed to Gratian, Valentinian, and Theodosius).
[45] = C.Th. 2.8.19, with additions from C.Th. 2.8.18 and 15.5.5.

tempore commemoratio apostolicae passionis totius Christianitatis magistrae a cunctis iure celebratur: in quibus etiam praedictis sanctissimis diebus neque spectaculorum copiam reseramus. **4.** In eadem observatione numeramus et dies solis, quos dominicos rite dixere maiores, qui repetito in se calculo revolvuntur. **5.** Parem necesse est habere reverentiam, ut ne apud ipsos arbitros vel a iudicibus flagitatos vel sponte delectos ulla sit agnitio iurgiorum, nostris etiam diebus, qui vel lucis auspicia vel ortus imperii protulerunt. **6.** In quindecim autem paschalibus diebus compulsio et annonariae functionis et omnium publicorum privatorumque debitorum differatur exactio.

D. VII id. Aug. Romae Timasio et Promoto conss.

[7] *Idem AAA. Tatiano pp.* Actus omnes seu publici seu privati diebus quindecim paschalibus conquiescant. in his tamen emancipandi et manumittendi cuncti licentiam habeant, et super his acta non prohibeantur.

D. VI k. Iun. Constantinopoli Arcadio A. II et Rufino conss.

[8] *Impp. Honorius et Theodosius AA. Anthemio pp.* Provinciarum iudices moneantur, ut in quaestionibus latronum et maxime Isaurorum nullum quadragesimae nec venerabilem pascharum diem existiment excipiendum, ne differatur sceleratorum proditio consiliorum, quae per latronum tormenta quaerenda est, cum facillime in hoc summi numinis speretur venia, per quod multorum salus et incolumitas procuratur.

D. V k. Mai. Constantinopoli Basso et Philippo conss.

[9] *Impp. Leo et Anthemius AA. Armasio pp.* **pr.** Dies festos, dies maiestati altissimae dedicatos nullis volumus voluptatibus occupari nec ullis exactionum vexationibus profanari. **1.** Dominicum itaque diem semper honorabilem ita decernimus venerandum, ut a cunctis exsecutionibus excusetur, nulla quemquam urgueat admonitio, nulla fideiussionis flagitetur exactio, taceat apparitio, advocatio delitescat, sit idem dies a cognitionibus alienus, praeconis horrida vox silescat, respirent

We also add the holy paschal days, seven preceding and seven succeeding Easter, also the birthday of Christ and the day of Epiphany and the time during which the suffering of the apostles, an example to all Christianity, is rightly commemorated by all; and these aforementioned holy days shall not be open to shows. **4.** Sundays, too, which the ancients rightly named the Lord's Days and which return at regular intervals, shall be put in this class. **5.** An equal reverence shall be paid to the days which marked Our birth and the beginning of Our reign, and on these days no examination of disputes shall be made before arbitrators, whether appointed by judges upon request or by the choice of the parties. **6.** During the fifteen days of Easter, the exaction of all taxes in kind and of all public and private debts shall be deferred.

Given August 7, at Rome, in the consulship of Timasius and Promotus (389).

[7][46] *The same Augusti to Tatianus, Praetorian Prefect.* All transactions, public or private, shall be suspended during the fifteen days of Easter. Emancipations and manumissions, however, and the enrollment and registration thereof, are not forbidden during these days.

Given May 27, at Constantinople, in the consulship of Arcadius Augustus, for the second time, and Rufinus (392).

[8][47] *Emperors Honorius and Theodosius Augusti to Anthemius, Praetorian Prefect.* Let the judges of the provinces be warned not to think that they should omit any of the forty days of Easter or even the holy day of Easter itself in examining bandits (under torture) and especially the Isaurians, so that the disclosure of criminal conspiracies, which is to be sought through the torture of bandits, may not be deferred, since for this purpose, through which the safety and peace of many is secured, pardon from the Almighty is unquestionably hoped for.

Given April 27,[48] in the consulship of Bassus and Philippus at Constantinople (408).

[9] *Emperors Leo and Anthemius to Armasius, Praetorian Prefect.* **pr.** We do not want the festal days, the days dedicated to the Highest Majesty, to be taken up with pleasures or profaned by vexatious demands. **1.** We decree therefore that the holy Lord's Day shall always be honored and venerated and excused from all executions of judgments. No summons shall disturb anyone; no exaction for providing surety shall be made; the clerks of the court shall be silent; let

[46] = C.Th. 2.8.21, with addition from C.Th. 2.8.1.
[47] = C.Th. 9.35.7.
[48] Possibly February 26, 408 (Seeck).

a controversiis litigantes, habeant foederis intervallum, ad se veniant adversarii non timentes, subeat animos vicaria paenitudo, pacta conferant, transactiones loquantur.

2. Nec tamen haec religiosi diei otia relaxantes obscaenis quemquam patimur voluptatibus detineri. nihil eodem die sibi vindicet scaena theatralis aut circense certamen aut ferarum lacrimosa spectacula: etiam si in nostrum ortum aut natalem celebranda sollemnitas inciderit, differatur. **3.** Amissionem militiae, proscriptionem patrimonii sustinebit, si quis umquam hoc die festo spectaculis interesse vel cuiuscumque iudicis apparitor praetextu negotii publici seu privati haec quae hac lege statuta sunt crediderit temeranda.

D. V id. Dec. Constantinopoli Zenone et Marciano conss.

XIII De Iurisdictione Omnium Iudicum et de Foro Competenti

[1] *Impp. Severus et Antoninus AA. Severo et aliis.* **pr.** Non quidem fuit iudex procurator noster in lite privatorum: sed cum ipsi eum iudicem elegeritis et is consentientibus adversariis sententiam tulerit, intellegitis vos adquiescere debere rei ex consensu vestro iudicatae, cum et procurator iudicandi potestatem inter certas habeat personas et vos, incongruum eum esse vobis iudicem scientes, tamen audientiam eius elegistis. **1.** Quod et in aliis similibus iudiciis tam in actionem proponentis quam in exceptionem opponentis persona locum habebit.

D. II id. Ian. Messala et Sabino conss.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Alexandro.* Iuris ordinem converti postulas, ut non actor rei forum, sed reus actoris sequatur: nam ubi domicilium habet reus vel tempore contractus habuit, licet hoc postea transtulerit, ibi tantum eum conveniri oportet.

PP. VI k. Sept. AA. conss.

advocates retire from court; trials shall not be held on that day; the harsh voice of the auctioneer shall not be heard; litigants shall relax from controversies and have respite from their contracts; let adversaries come together without fear, let reciprocal penitence enter their minds; let pacts be made and settlements speak loudly.

2. But despite allowing this leisureliness on a day dedicated to God, We permit no one to give himself over to unseemly pleasures. The day shall not be open for the theater, the competition of the circus, or the tearful spectacle of wild beasts. If Our birthday or the day when We came to the throne should fall on Sunday, its celebration shall be deferred. **3.** If anyone ever attends spectacles on that festal day, or if any clerk of a judge should believe that he can rashly violate the provisions of this law under the pretext of public or private business, he shall suffer the loss of his office and confiscation of his property.

Given December 9, at Constantinople, in the consulship of Zeno and Marcianus (469).

Thirteenth Title The Jurisdiction of All Judges, and the Appropriate Court

[1][49] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Severus and others.* **pr.** Our procurator was not, indeed, an appropriate judge in private litigation. But since you yourselves chose him as a judge, and he, with the consent of your adversaries, rendered a decision, you understand that you must abide by his judgment of the matter rendered with your consent, since the procurator has the power of judging between specific individuals, and you, knowing that he was unsuitable to act as a judge for you, nevertheless chose him to conduct the proceedings. **1.** This is true also in other similar trials, both with respect to the person bringing the action and the one putting forward the defense.

Given January 12, in the consulship of Messala and Sabinus (214).

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Alexander.* You are asking to reverse correct legal procedure (when you request) that the plaintiff should not follow the forum of the defendant, but the defendant the forum of the plaintiff; for the only place where the defendant can be summoned is where he has his domicile, or where he had it at the time of the making of the contract, even though he afterwards changed it.

Posted August 27, in the consulship of the Augusti (293).

[49] This rescript is actually from Caracalla, as the date below indicates.

[3] *Idem AA. et CC. Iudae.* Privatorum consensus iudicem non facit eum, qui nulli praeest iudicio, nec quod is statuit rei iudicatae continet auctoritatem.

S. VI k. Ian. AA. conss.

[4] *Imp. Constantinus A. ad universos provinciales.* Nemo post litem contestatam ordinariae sedis declinet examen, nec prius praefecti praetorio aut comitis Orientis vel alterius spectabilis iudicis imploret auxilium, sed appellatione legibus facta ad sacrum auditorium veniat.

PP. k. Oct. Basso et Ablabio conss.

[5] *Impp. Arcadius et Honorius AA. Vincentio pp. Galliarum.* **pr.** In criminali negotio rei forum accusator sequatur. **1.** Is vero, qui suam causam sive criminalem sive civilem sine caelesti oraculo in vetito vocabit examine aut exsecutionem poposcerit militarem, actor quidem propositi negotii actione multetur, reus vero pro condemnato habeatur: et tribuni sive vicarii capitalem sibi animadversionem subeundam esse cognoscant, si vel suam vel militum exsecutionem interdictam praebuerint.

D. XV k. Ian. Mediolani Caesario et Attico conss.

[6] *Impp. Honorius et Theodosius AA. Anthemio pp.* Magisteriae potestati inter militares viros vel privato actore in reum militarem etiam civilium quaestionum audiendi concedimus facultatem, praesertim cum id ipsum e re esse litigantium videatur constetque militarem reum nisi a suo iudice nec exhiberi posse nec, si in culpa fuerit, coerceri.

D. V k. Mai. Constantinopoli Lucio vc. cons.

[7] *Imp. Anastasius A. Constantino pp.* **pr.** Periniquum et temerarium esse perspicimus eos, qui professiones aliquas seu negotiationes

[3] *The same Augusti and Caesars to Juda.* The consent of private persons does not make a judge out of a person who is not in charge of a court; nor does his decision have the force of a valid adjudication.

Written December 27, in the consulship of the Augusti (293).

[4][50] *Emperor* Constantine *Augustus to all the provincials.* No one shall, after joinder of issue (*litis contestatio*), decline a trial before the ordinary court, and prior to this he shall not implore the aid of the Praetorian Prefect, the Count of the East, or another judge who is a *vir spectabilis*, but he must come before the imperial court through an appeal (of the judgment once rendered) made according to law.

Posted October 1, in the consulship of Bassus and Ablabius (331).

[5] *Emperors* Arcadius *and* Honorius *Augusti to Vicentius, Praetorian Prefect of Gaul.* **pr.** In criminal cases, the accuser must follow the forum of the defendant. **1.** And a person who brings his action, civil or criminal, into a prohibited court without the sanction of an imperial rescript, or who demands military enforcement, shall, if he is plaintiff, be punished by the loss of his action in the proposed suit, and if he is defendant shall be considered as condemned (by a judgment); and the Tribunes or the Deputies must know that they will suffer capital punishment if they provide the forbidden enforcement either in person or through the soldiers.[51]

Given December 18, at Milan, in the consulship of Caesarius and Atticus (397).

[6] *Emperors* Honorius *and* Theodosius *Augusti to Anthemius, Praetorian Prefect.* We give to the military command the power to hear civil cases between soldiers, or cases where the plaintiff is a person of private station and the defendant a soldier, especially since this itself accords with the position of the litigants, and it is agreed that a defendant who is in the military service, if he is at fault in anything, can only be produced before, and punished by, his own judge (i.e., a military judge).

Given April 27, at Constantinople, in the consulship of vir clarissimus *Lucius (413).*

[7] *Emperor* Anastasius *Augustus to Constantinus, Praetorian Prefect.* **pr.** We think it exceedingly iniquitous and rash for persons who are known

[50] Possibly to combine with C. 1.21.3 (given August 1, posted September 1), with other constitutions cited there. Seeck dates to August 1, 331.

[51] Though Blume points out that according to "D. 2.5.2 pr., whenever a man was cited into court, he was compelled to obey the citation, whether the court had jurisdiction over him or not. He was required to go there and set up the defense of want of jurisidiction."

exercere noscuntur, iudicum, ad quos earundem professionum seu negotiationum cura pertinet, iurisdictionem et praeceptiones declinare conari. **1.** Quapropter iubemus huiusmodi hominibus nec cuiuslibet[1] militiae seu cinguli vel dignitatis praerogativam in hac parte suppetere, sed eos, qui statutis in quacumque militia connumerati sunt vel fuerint seu dignitatem aliquam praetendunt, sine quadam fori praescriptione his iudicibus tam in publicis quam in privatis causis oboedire compelli, ad quorum sollicitudinem professionis seu negotiationis, quam praeter militiam, ut dictum est, exercent, gubernatio videtur respicere, ita tamen, ut ipsis nihilo minus iudicibus, sub quorum iurisdictione militia seu dignitas eorum constituta est, procul dubio respondeant. **2.** His videlicet, quicumque contra eius tenorem venire temptaverint, militiae cingulo seu dignitatis honore pro tali conamine spoliandis.

D. XV k. Mart. Constantinopoli Probo et Avieno conss.

XIIII Quando Imperator Inter Pupillos vel Viduas vel Miserabiles Personas Cognoscat et Ne Exhibeantur

[1] *Imp. Constantinus A. ad Andronicum.* Si contra pupillos viduas vel diutino morbo fatigatos et debiles impetratum fuerit lenitatis nostrae iudicium, memorati a nullo nostrorum iudicum compellantur comitatui nostro sui copiam facere. quin immo intra provinciam, in qua litigator et testes vel instrumenta sunt, experiantur iurgandi fortunam atque omni cautela servetur, ne terminos provinciarum suarum cogantur excedere. **1.** Quod si pupilli vel viduae aliique fortunae iniuria miserabiles iudicium nostrae serenitatis oraverint, praesertim cum alicuius potentiam perhorrescunt, cogantur eorum adversarii examini nostro sui copiam facere.

D. XV k. Iul. Constantinopoli Optato et Paulino conss.

to follow a profession or business to attempt to evade the jurisdiction and directions of judges under whose care such professions or businesses may be. **1.** Hence We order that in this area the privilege of any imperial service, rank (*cingulum*), or station shall be of no avail to such persons. But those who are or shall be among the regularly constituted number of officials in any imperial office or who claim some station, if they lack a particular objection to the location of the court, are compelled in all cases, whether public or private, to obey the jurisdiction of the judges who have jurisdiction over the profession or business which they carry on, as has been said, outside of their public service. Nevertheless, they must certainly also answer before those judges who are confirmed to have jurisdiction over their office or station. **2.** Persons who attempt to violate the tenor of this law shall, for such an attempt, be deprived of the rank of their service and the honor of their station.

Given February 15, at Constantinople, in the consulship of Probus and Avienus (502).

Fourteenth Title When the Emperor Judges Between Minors, Widows, and Sick People, and That They Shall Not Be Compelled to Appear

[1][52] *Emperor* Constantine *Augustus to Andronicus.* **pr.** If anyone obtains an order of Our Mildness against persons below the age of puberty, widows, or persons long afflicted and weak with disease, those mentioned shall not be compelled by any of Our judges to appear at Our court. They should try the dispute within the province within which the litigant, the witnesses, and the documents are, and every precaution shall be taken that they may not be compelled to go outside of their provinces. **1.** But if those below the age of puberty, widows, and others who are wretched through the injuries of fate petition for a rescript from Our Serenity, especially when they fear someone's power, their adversaries shall be compelled to appear before Us for examination.

Given June 17, at Constantinople, in the consulship of Optatus and Paulinus (334).

[52] = C.Th. 1.22.2.

XV Ubi de Criminibus Agi Oportet

[1] *Impp. Severus et Antoninus AA. Laurinae.* Quaestiones eorum criminum, quae legibus aut extra ordinem coercentur, ubi commissa vel inchoata sunt vel ubi reperiuntur qui rei esse perhibentur criminis, perfici debere satis notum est.

PP. IIII non. Oct. Dextro II et Prisco conss.

[2] *Idem AA. et CC. Nicae.* Sciens liberum venumdando plagii crimen committit. ab eo itaque, qui super hoc queri potest, aditus competens iudex, si is, quem puerum ingenuum vendidisse proponis, ibi degit, causam cognoscet.

S. prid. non. Febr. Sirmi CC. conss.

XVI Ubi de Possessione Agi Oportet

[1] *Impp. Valentinianus et Valens AA. ad Festum proconsulem Africae.* Ubi aut vis facta dicitur aut momentaria possessio postulanda est, ibi loci iudicem adversus eum qui possessionem turbavit convenit iudicare.

D. VIII k. Iun. Gratiano nobilissimo puero et Dagalaifo conss.

XVII Ubi Fideicommissum Peti Oportet

[1] *Impp. Severus et Antoninus AA. Demetrio.* Fideicommissum ibi petendum esse, ubi hereditas relicta est, dubitari non oportet.

PP. VIII k. Sept. Cilone II et Libone conss.

Fifteenth Title Where Crimes Should Be Tried

[1] *Emperor* SEVERUS *and* ANTONINUS *Augusti to Laurina.* It is well known that an investigation into crimes that are punished by laws or under extraordinary cognition should be concluded where the offences have been committed or commenced, or where the persons who are said to be guilty are found.

Posted October 4, in the second consulship of Dexter and the consulship of Priscus (196).

[2] *The same Augusti*[53] *and the Caesars to Nicas.* He who knowingly sells a free person commits the crime of kidnapping (*plagium*). If the person who can make a complaint goes before the proper judge, the latter will try the case, providing that the accused, whom you allege to have sold the free-born boy, lives there.

Written February 4, at Sirmium, in the consulship of the Caesars (294).

Sixteenth Title Where Trials over Possession Should Be Conducted

[1][54] *Emperors* VALENTINIAN *and* VALENS *Augusti to Festus, Proconsul of Africa.* It is proper that the case against a person who has disturbed possession should be tried by the judge (either) of the place where force is said to have been used or where interim possession (*momentaria possessio*) is demanded.

Given May 25, in the consulship of Gratian, most excellent youth, and Dagalaifus (366).

Seventeenth Title Where a Testamentary Trust Should Be Demanded

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Demetrius.* There should be no doubt that a testamentary trust (*fideicomissum*) should be claimed in the place where the inheritance was left.[55]

Posted August 25, in the consulship of Cilo, for the second time, and Libo (204).

[53] Actually, Diocletian and Maximianus, as is clear from the date.
[54] See also C. 3.1.15.
[55] See D. 5.1.50; 10.

XVIII Ubi Conveniatur Qui Certo Loco Dare Promisit

[1] *Imp. Alexander A. Heraclidae.* Qui certo loco se soluturum pecuniam obligat, si solutioni satis non fecerit, arbitraria actione et in alio loco potest conveniri: in qua venit aestimatio, quod alterutrius interfuit suo loco potius quam in eo in quo petitur solvi.

D. VI id. Mart. Fusco II et Dextro conss.

XVIIII Ubi in Rem Actio Exerceri Debet

[1] *Impp. Diocletianus et Maximianus AA. et CC. Pancratio.* In rem actio non contra venditorem, sed contra possidentem competit. frustra itaque desideras non tecum congredi, sed cum auctore tuo dominium vindicantem, cum te possidere contendas. nam si denuntiasti ei qui tibi vendidit, intellegit evictionis periculum. nec enim iurisdictionis forma in eadem provincia constitutis tam petitore quam possessore ob auctoris personam, quem in alia provincia dicis consistere, debet immutari.

D. id. April. AA. conss.

[2] *Imp. Constantinus A. ad universos provinciales.* **pr.** Si quis alterius nomine quolibet modo possidens immobilem rem litem ab aliquo per in rem actionem sustineat, debet statim in iudicio dominum nominare, ut, sive in eadem civitate degat sive in agro sive in alia provincia sit, certo dierum spatio ab iudice finiendo eoque ad notionem eius perducendo, vel ipse in locis in quibus praedium situm est perveniens vel procuratorem mittens actoris intentiones excipiat. **1.** Si vero post huiusmodi indultum tempus minime hoc quod dispositum est facere maluerit, tamquam lite quae ei ingeritur ex die, quo possessor ad iudicium vocatus est, ad interrumpendam longi temporis praescriptionem contestata iudex, utpote domino possessionis nec post huiusmodi humanitatem sui praesentiam faciente, edictis legitimis proponendis eum citare

Eighteenth Title Where a Person Should Be Summoned Who Has Promised to Pay at a Specified Place

[1] *Emperor ALEXANDER Augustus to Heraclida.* If a person who has promised to pay a sum of money at a definite place fails to do so, he may be summoned in another place through a discretionary action (*actio arbitraria*). In that action consideration is taken as to which of the respective parties benefits from having the money paid in their own location rather than in the place where the claim is brought.

Given March 10, in the consulship of Fuscus, for the second time, and Dexter (225).

Nineteenth Title Where an Action *in Rem* Must Be Tried

[1] *Emperors DIOCLETIAN and MAXIMIAN Augusti and the Caesars to Pancratius.* An action *in rem* must be brought not against the seller, but against the person (now) in possession. Since, therefore, you state that you are in possession, you ask in vain that the person who claims ownership should sue your seller rather than you. For, if you call as a witness the person who sold the property to you, he will understand that he takes the risk of eviction.[56] And in fact the rules concerning jurisdiction, when both the plaintiff and defendant live in the same province, should not be changed for either, because of the fact that, as you say, the vendor lives in another province.

Given April 13, in the consulship of the Augusti (293).

[2][57] *Emperor CONSTANTINE Augustus to all provincials.* **pr.** If a person, who in any manner possesses immovable property in the name of another, is sued in an action *in rem*, he must immediately tell the court the name of the owner, so that the latter, whether living in the same city, in the country, or in another province, may, within the space of a certain number of days to be fixed by the judge and brought to his knowledge, hear the claims of the plaintiff by himself coming to the place where the property is situated or by sending a procurator. **1.** But if he prefers not at all to participate in this arrangement within the time given him, then, proceeding as if there had been joinder of the issue brought against him on the day on which the owner was called to court – in order to interrupt (acquisition of ownership through) long-time prescription (*longi temporis praescriptio*) – the judge, if the owner of the property does not present himself after he has been granted the favor of such time, shall cause him to be

[56] On the implied warranty against eviction in case of sale of land, see C. 8.44.
[57] Combine with C. 1.21.3, and constitutions listed there; Seeck dates to August 1, 331. Blume: "This law does not appear in the Basilica. Its place was taken by Novel 69."

curabit et tunc in eadem voluntate eo permanente negotium summatim discutiens in possessionem rerum actorem mitti non differet, omni adlegatione absenti de principali quaestione servata.

D. x k. Aug. Basso et Ablabio conss.

[3] *Imppp. Gratianus Valentinianus et Theodosius AAA.* Actor rei forum, sive in rem sive in personam sit actio, sequitur. sed et in locis, in quibus res propter quas contenditur constitutae sunt, iubemus in rem actionem adversus possidentem moveri.

D. x k. Iul. Constantinopoli Arcadio et Bautone conss.

XX Ubi De Hereditate Agatur et Ubi Scripti Heredes in Possessionem Mitti Postulare Debent

[1] *Impp. Valerianus et Gallienus AA. Messiae.* Illic, ubi res hereditarias esse proponis, heredes in possessionem rerum hereditariarum mitti postulandum est. ubi autem domicilium habet qui convenitur vel, si ibi ubi res hereditariae sitae *sunt* degit, hereditatis erit controversia terminanda.

PP. VII k. Mai. Saeculare et Donato conss.

XXI Ubi Agi Oportet de Ratiociniis Tam Privatis Quam Publicis

[1] *Impp. Diocletianus et Maximianus AA. et CC. Aurelio Gerontio.* Eum, qui aliena negotia sive ex tutela sive quocumque alio titulo administravit, ubi haec gessit, rationem oportet reddere.

S. XIIII k. Sept. AA. conss.

[2] *Impp. Honorius et Theodosius AA. Macedonio magistro militum.* Nemo post depositum cingulum privatae vitae redditus ob negotium, quod militiae causa est ei exortum praestandi ratiocinii gratia eius

summoned by lawful edicts. If the owner remains in the same state of mind after that, the judge, dispensing of the matter summarily, shall not delay having the plaintiff put in possession of the property, and shall keep for the absent party the right to litigate the allegations in the main case thereafter.

Given July 23, in the consulship of Bassus and Ablabius (331).

[3][58] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti.* The plaintiff follows the forum of the defendant in actions *in rem* and also *in personam.* But We order that actions *in rem* may also be brought against the possessor in the place where the property concerning which the contention arises is situated.

Given June 22, at Constantinople, in the consulship of Arcadius and Bauto (385).

Twentieth Title Where an Action Concerning an Inheritance is to Be Tried and Where the Appointed Heirs Should Demand to Be Put into Possession

[1][59] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Messia.* A demand to put the heirs into possession of the property of the inheritance is to be made where you say the inheritance is situated. But a controversy about inheritance must be terminated in the place where the defendant has his domicile, or in the place where the inheritance is situated if the defendant lives there.

Posted April 25, in the consulship of Saecularis and Donatus (260).

Twenty-First Title Where an Action Concerning Public or Private Accounts Should Be Brought

[1][60] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Aurelius Gerontius.* The person who has managed affairs for another, either as *tutor* or in some other capacity, should render an account where he conducted the business.

Written August 19, in the consulship of the Augusti (293).

[2] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Macedonius, Master of Soldiers.* No person can object to the jurisdiction of the court if he quits military service and returns to private life, and is now being brought to court by

[58] This rescript modifies the rule in *Frag. Vat.* 326.
[59] Combine with C. 8.1.2. On the substance, see also C. 3.19.3, 6.33.
[60] Combine with C. 4.50.7 and 7.72.9.

numeri, in quo militavit vel quem ipse gessit a quocumque pulsatus fori praescriptionibus utatur. unumquemque enim super huiuscemodi causis, id est publicis, quas dum militaret exercuit, super ratiociniis militaribus, per quae suos contubernales adflixisse adseritur, in militari oportet iudicio respondere, in quo et instructio sufficiens et nota testimonia et verissima possunt documenta praestari.

D. prid. k. Iun. Constantinopoli Asclepiodoto et Mariniano conss.

XXII Ubi Causa Status Agi Debeat

[1] *Imp. Alexander A. Aurelio Aristocrati.* Quae a te, cum tibi serviret, refugit et in aliam provinciam se contulit, libertatem sibi vindicans non iniuria eo loco litigare compellenda est, unde quasi fugitiva recessit. ideoque remittere eam in qua serviret praeses provinciae qui eo loco ius repraesentat curae habebit: sed non ubi deprehensa est audiri debet.

PP. XIII k. Sept. Pompeiano et Peligno conss.

[2] *Imp. Decius A. et Decius et Quintus CC. Felici.* Procuratores nostros status causas examinare non posse omnibus notum est.

PP. k. Dec. Decio A. II et Grato conss.

[3] *Impp. Diocletianus et Maximianus AA. et CC. Zenonidi.* Si in possessione libertatis constituta es, cum in status etiam quaestione actor rei forum sequi debeat, ibi causam liberalem agi oportet, ubi consistit quae ancilla dicitur, licet senatoria dignitate actor decoretur.

D. prid. id. April. Byzantio AA. conss.

[4] *Idem AA. et CC. Sisinniae.* Si ex possessione servitutis in libertatem quis proclamat, ibi agi oportere status causam, ubi domicilium constitutum habet qui se dominum dicit, non est ambigui iuris.

D. II non. Mart. Byzantio CC. conss.

someone in a suit that has arisen from his military service and that requires him to render an account which he kept for the troop in which he served or which he commanded. For everyone should answer for public matters of this kind that he undertook while he was in service – i.e., for accounts which he kept for the soldiers – and by which he is claimed to have injured his comrades, in the military court where adequate evidence exists and where known witnesses and authentic documents may be produced.

Given May 31, at Constantinople, in the consulship of Asclepiodotus and Marinianus (423).

Twenty-Second Title Where an Action Concerning Personal Status Should Be Brought

[1] *Emperor* ALEXANDER *Augustus to Aurelius Aristocratis.* The woman who, while she worked as your slave, fled to another province and now claims freedom is not unjustly compelled to litigate the matter in the place from where she fled as a fugitive. Therefore, the governor, who is the highest legal authority where she is found, must take care that she is returned to the place where she worked as a slave; she must not be heard in the place where she is seized.

Posted August 20, in the consulship of Pompeianus and Pelignus (231).

[2] *Emperor* DECIUS *Augustus and the Caesars* DECIUS *and* QUINTUS *to Felix.* It is known to all that Our procurators cannot try cases involving personal status.

Posted December 1, in the consulship of Decius Augustus, for the second time, and Gratus (250).

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Zenonides.* If you are confirmed as being in possession of freedom, then since the plaintiff even in an action involving personal status must follow the forum of the defendant, the case concerning your liberty must be tried where you, the person who is claimed to be a female slave, are living, even though the plaintiff enjoys the rank of a senator.

Given April 12, at Byzantium, in the consulship of the Augusti (293).

[4] *The same Augusti and Caesars to Sisinnia.* There is no doubt in law that, if anyone in servitude claims liberty, the case concerning his personal status must be tried where the person who claims to be his master has an established domicile.

Given March 6, at Byzantium, in the consulship of the Caesars (294).

[5] *Idem AA. et CC. Diogeni praesidi insularum.* Iam dudum a nobis statutum est, ut, si quae causae libertinitatis et servitutis in provinciis inter fiscum et privatos exorerentur, ad rationalem vel magistrum privatae rei, hoc est unde mota est quaestio, remitterentur, si quae vero ingenuitatis essent, a rectore provinciae examinarentur.

D. IIII non. Aug. CC. conss.

[6] *Imp. Iustinianus A. Menae pp.* In litibus, in quibus utrum ingenuus an libertinus sit aliquis quaeritur, quinquennii divisionem, post quod divino auditorio opus esse veteres leges praecipiebant, in posterum cessare sancimus et huiusmodi lites etiam post memoratum tempus ad exemplum ceterarum vel in provinciis apud earum moderatores vel in hac alma urbe apud competentia maxima iudicia examinari. quod etiam, si clarissima persona super tali condicione vel etiam servili quaestionem patiatur, tenere censemus.

D. III non. Aug.

XXIII Ubi Quis de Curiali vel Cohortali Aliave Condicione Conveniatur

[1] *Impp. Arcadius et Honorius AA. Florentino pu.* Si quis vel curiae vel officiis iudicum aut aliis quibuscumque corporibus obnoxius intra provinciam ab his erit quos aufugerat comprehensus, non expectata eius iudicis notione, sub quo per ambitum coeperat militare, penitusque emendicati honoris praescriptione submota ab iudice, qui in locis aditus fuerit, audiatur manifestarumque rerum probatione convictus eorum societati quos declinaverat adgregetur.

D. XII k. Aug. Mediolani Caesario et Attico conss.

[2] *Impp. Theodosius et Valentinianus AA. Cyro pp.* **pr.** Hac perpetua lege sancimus provincialibus iudiciis non posse fori praescriptionem opponere eos, qui ad curiam vocantur vel cohortalibus deberi dicuntur officiis vel aliis corporibus obnoxii sunt, eos etiam, qui superexactiones

[5] *The same Augusti and Caesars to Diogenes, Governor of the Islands.* We decided long ago that if cases involving the status of freedmen or slaves arise between the Treasury and private persons, they must be referred to the Comptroller or the Master of the Privy Purse, that is to say, from the place where the suit originates; but if cases involve a question of free birth, they must be tried by the governor of the province.[61]

Given August 2, in the consulship of the Caesars (294).

[6] *Emperor JUSTINIAN Augustus to Menas, Praetorian Prefect.* The limitation of five years in suits involving the question as to whether someone is free-born or a freedman – after which an imperial hearing has become necessary according to the ancient laws – shall hereafter be abolished; after five years such suits shall be tried in the same manner as others: either in the provinces before their governors, or in this Imperial City before the proper high authorities. This shall apply even in a case commenced against a person who is *clarissimus* concerning that status or even servile condition.

Given August 3 (528 or 529).

Twenty-Third Title Where One May Be Sued Concerning His Status as a Decurion or Junior Official or Any Other Status

[1][62] *Emperors ARCADIUS and HONORIUS Augusti to Florentinus, City Prefect.* If a person has fled who is bound to a municipal council or to a judge's staff or to any other bodies within a province, but he is seized in that province by those he deserted, then without awaiting the investigation of the judge under whom he had commenced to serve, and ignoring his defense against removing the position of honor he had solicited, he shall be heard by the judge before whom he is taken in that region, and, if he is convicted by manifest proof of the situation, he shall be handed over to those whom he deserted.[63]

Given July 21, at Milan, in the consulship of Caesarius and Atticus (397).

[2][64] *Emperors THEODOSIUS and VALENTINIAN Augusti to Cyrus, Praetorian Prefect.* **pr.** By this ever-enduring law, We ordain that no objection as to venue can be raised before the provincial judges by decurions, junior officials, persons

[61] Though, as Blume points out, "If the question of freedom arose only incidentally, the fiscal officer had jurisdiction. C. 3.1.3."

[62] Combine with C. 10.32.48; C.Th. 6.2.15, 6.14.2, 12.1.153–155, which yield December 21, 391 as the correct date (so also Seeck).

[63] Blume: "As the soldiers were bound to the army, so many others were bound [*obnoxius*] to their service, particularly if such service was for the benefit of the state. Thus the apparitors of a president of the province, that is to say, the members of his official staff, were bound to their positions."

[64] = Nov. Theod. 7.1 pr., with influence from 7.2, 3, and 4. Seeck dates to September 21, 441.

vel concussiones perpetrasse firmentur: exceptis videlicet his qui armata militia praediti sunt, vel aliis qui speciali beneficio principali sese defendant, ita tamen ut, cui ex militaribus viris curiae nomen vel cohortalis officii quaestio ingeratur, rector provinciae super eius nomine tam ad sedem tuae magnificentiae quam ad magisteriam vel ad competentem referat potestatem, ut hi, qui velut debiti postulentur, provinciali iudicio destinati ibi eventum iudicii expectent, ubi iura moveri praecipiunt huiusmodi quaestiones. **1.** Super publicis autem functionibus et debitis nemini liceat fori praescriptionem opponere praeter eos qui specialiter excepti sunt. **2.** Ceteros excelsae tuae sedis et rectorum provinciarum in quolibet negotio declinare minime posse iudicium decernimus, ita ut, qui tam saluberrimam legem pertinaciter violare temptaverint, sciant a moderatoribus provinciarum adversus se tamquam in contumaces sententiam proferendam.

D. XI k. Oct. Constantinopoli Valentiniano A. V et Anatolio conss.

XXIIII Ubi Senatores vel Clarissimi Civiliter vel Criminaliter Conveniantur

[1] *Imp. Constantinus A. ad Octavianum comitem Hispaniarum.* Quicumque non illustris, sed tantum clarissima dignitate praeditus virginem rapuerit vel fines aliquos invaserit vel in aliqua culpa seu crimine fuerit deprehensus, *statim* intra provinciam in qua facinus perpetravit publicis legibus subiugetur nec fori praescriptione utatur. omnem enim huiusmodi honorem reatus excludit.

D. prid. non. Dec. Serdicae acc. V non. Mart. Cordubae Gallicano et Basso conss.

[2] *Imppp. Valens Gratianus et Valentinianus AAA. ad senatum.* Senatores in pecuniariis causis, sive in hac urbe sive in suburbanis degunt, in iudicio tam praetorianae quam urbicariae praefecturae nec non magistri officiorum (quotiens tamen ad eum nostrae pietatis emanaverit iussio), in provinciis vero ubi larem fovent aut ubi maiorem bonorum partem possident et adsidue versantur respondebunt.

D. k. Mart.

tied to any other body, or by those who are confirmed to be guilty of excessive exactions or of extortion, with the exception, of course, of persons who are in the armed military service, or others who are protected by some special imperial rescript. Provided, however, that when a soldier is claimed as a decurion or as junior official, the provincial governor shall report his name both to the office of Your Magnificence as well as to the Commander's office (*magisteria*) or to (another) appropriate authority, so that those who are claimed to be in arrears in their duty may be turned over to the provincial court, where such investigations are by law directed to be tried, and to await the outcome there.

1. If a person is sued for taxes or a public debt, he can raise no objection to the venue unless he is one of those who have been specially exempted. **2.** As to any other individuals, they cannot decline to appear before the court of your high office or of the governors, so that whoever stubbornly violates this salutary law will be punished by the governors as contumacious persons.

Given September 21, at Constantinople, in the consulship of Valentinian Augustus, for the fifth time, and Anatolius (440).

Twenty-Fourth Title Where Senators or Those Holding the Title of *Clarissimus* May Be Sued Civilly or Criminally

[1][65] *Emperor* C*ONSTANTINE* *Augustus to Octavianus, Count of Spain.* If a person is not *illustris*, but only *clarissimus*,[66] and rapes a virgin or invades the property of another, or is apprehended in any wrongful or criminal behavior, he shall be immediately subjected to the public laws in the province wherein he perpetrated the crime, nor shall he have the right to object to the venue. For his status as an accused excludes such a position of honor.

Given December 4, at Serdica, and received March 3, at Córdoba, in the consulship of Gallicanus and Bassus (317).

[2][67] *Emperors* V*ALENS*, G*RATIAN*, *and* V*ALENTINIAN* *Augusti to the Senate.* In cases concerning money, senators who live in this city or its suburbs shall answer suits against them in the court of the Praetorian and city prefectures, as well as in that of the Master of the Offices – provided that Our Piety has given the latter an order to that effect; in the provinces, however, they shall answer where they have their hearth or possess the greater part of their property and where they usually live.

Given March 1 (376).

[65] = C.Th. 9.1.1.

[66] Blume: "The term 'senator,' generally speaking, was applicable to men of all the three ranks, honorable, worshipful, and illustrious ... The foregoing law deals only with persons whose title was that of honorable – *clarissimus*."

[67] Combine with C.Th. 9.1.13, which says the constitution was read in the Senate on February 11, 376; Seeck gives January 1, 376 for its origin.

[3] *Imp. Zeno A. Arcadio pp.* **pr.** Quotiens viro forte patricio vel ex patricio vel ei, quem praetorianae vel urbicariae amplissimae sedis administratio illustravit, vel consulari viro, quem tam ordinaria processio quam sacra nostrae pietatis pariter sublimavit oratio, quive magisteriae potestatis sudoribus clarus factus est, vel ei, qui magistri officiorum vel quaestoris officio functus aut sacri nostrae pietatis cubiculi praepositus post depositam administrationem senatorio ordini sociatus est, aut cui nostra serenitas domesticorum scholam regendam mandavit cuive sacros nostri numinis thesauros aut res privatas nostrae pietatis vel serenissimae Augustae nostrae coniugis gubernandas iniunxit, post depositam videlicet administrationem crimen publicum privatumve, cui tamen non per procuratorem respondere liceat, in hac alma urbe vel in provinciis commoranti ingeratur, nullius alterius iudicis nisi nostrae pietatis huiusmodi esse cognitionem vel sacri tantummodo cognitoris, cui nostra serenitas huiusmodi negotii audientiam vice sua sacris apicibus mittendis mandaverit, ita tamen, ut apud talem iudicem, nullius officii vel scholae intercedente ministerio, more atque habitu sacrarum consultationum absque ulla videlicet observatione dierum fatalium introductae causae, viris devotissimis sacri nostri scrinii libellensibus sollemnia implentibus, audiantur: eo qui in crimen vocatus erit, ne quas ante probationes iniurias patiatur, sedendi quoque in aliqua secretarii parte, quae iudicibus inferior, altercantibus vero superior esse videatur, habituro licentiam.

1. Adeo autem tantarum honores dignitatum duximus augendos, ut nec sacro quidem cognitori, nec postquam crimen fuerit patefactum, contra huiusmodi viros vel eorum substantias statuendi aliquid concedamus facultatem, sed hoc solummodo in huiusmodi viros vice quoque principis audituro licebit, ut intentatum apud se crimen, si patefactum fuisset, ad principalem referat notionem. **1a.** Ultionis autem tantis inferendae dignitatibus modus non nisi in principis residebit arbitrio, cum sit certum oportere accusatoris calumniam (reo videlicet protinus absolvendo) inconsulta quoque nostra serenitate prout leges sanciunt coerceri, nisi forte accusator quoque non minoris quam reus sit dignitatis: in hoc namque casu super coercenda huiusmodi accusatoris calumnia non immerito consulenda erit principalis auctoritas.

[3][68] *Emperor* ZENO *Augustus to Arcadius, Praetorian Prefect.* **pr.** Whenever, after an office has been resigned, an accusation of a public or private crime that cannot be answered through a procurator is brought against a person living in this flourishing City (Constantinople) or in the provinces, and that person happens to be a patrician or ex-patrician, or one who is made *illustris* through the administration at senatorial rank of the Praetorian or city prefecture, or who is a consular made *illustris* through the customary advancement and by the imperial order of Our Piety, or who is made *clarus* by the hardship of the Commander's office (*magisteria potestas*), or who officiated as Master of the Offices or as Quaestor, or who has been at the head of Our sacred bedchamber and, after relinquishing the office, has been made a member of the senatorial order, or to whom Our Serenity has entrusted the management of the corps of the imperial bodyguard, or who had charge of the treasury of Our Divine Majesty or of Our Privy Purse or that of Our consort, the Serene Augusta – when such an accusation is brought, a trial shall be had only before Our Piety or an imperial judge to whom Our Serenity had, by imperial letters, delegated the hearing of the cases in his stead; provided that such cases shall be heard before such a judge without the help of members of any official staff or of any department, in the manner customary in connection with hearings on reports for imperial consultation and without observing the maximum number of trial days before a case must be brought up, and with the devoted secretaries of the bureau of petitions performing the customary services. And, lest the accused might be wronged, before proof is furnished he shall also have the right to sit in another part of the courtroom which is below that of the judges, but above that of the disputants.

1. We believe it proper, moreover, to increase the honor of such positions of rank such that We do not concede the right to the Emperor's appointed judge, even after the crime has been proven, to make any order against such men or against their property; but rather, the judge who hears the case in place of the Emperor shall report his findings as to the accusation laid before him, if it is indeed proven, to the Emperor. **1a.** The measure of punishment to be meted out to persons of dignity rests solely in the discretion of the Emperor. However, it has been determined that if the prosecution was malicious, the accused of course is immediately absolved and the accuser must be punished as the law provides even without consulting Our Serenity, unless, perchance, the accuser also is not of a rank inferior to that of the defendant; for it is proper that in such a situation the Emperor should be consulted concerning the punishment for malicious prosecution of such an accuser.

[68] Combine with C. 12.1.17.

2. Viros autem illustres in hac inclita urbe degentes, qui sine administratione honorariis decorati fuerint codicillis, licet talem praerogativam nostrae iussionis meruerint, ut quod non egerint videantur egisse, in criminalibus causis magnificae tuae sedis et illustrissimae urbicariae praefecturae nec non etiam viri magnifici magistri officiorum (quotiens tamen ad eius iudicium specialis nostrae pietatis emanaverit iussio) sententiis respondere decernimus, ita ut huiusmodi viri sedendi quidem in cognitionibus dicendis minime sibi vindicent facultatem. **2a.** Sciant autem ipsi quoque nec de se vel suis facultatibus iudicaturos aliquid nec probatis criminibus, nisi prius ad nostram pietatem rettulerint, posse statuere. **3.** Quotiens autem viri illustres in provinciis constituti (non hi tamen, quorum cognitio ad nostram maiestatem vel ad vice nostri numinis auditurum pertineat) in querimoniam fuerint criminalem vocati, et sedendi, cum celebratur cognitio, in secretariis iudicantium ius consequantur et iudices patefactis quoque criminibus ferendis contra huiusmodi viros vel facultates eorum sententiis abstineant, dum nostrae pietatis ad suas meruerint relationes responsum: supplicio videlicet, quod accusatoribus patefacta eorum calumnia ingerendum est, nec apud provinciales iudices, si non, sicut superius dictum est, similem dignitatem habeant, differendo.

D. Constantinopoli.

XXV In Quibus Causis Militantes Fori Praescriptione Uti Non Possunt

[1] *Impp. Theodosius et Valentinianus AA. Florentio pp.* **pr.** Omnes omnino domesticos et agentes in rebus et quaecumque alia praetenditur militia vel dignitas sub moderatoribus provinciarum pro functionibus publicis respondere nulla fori praescriptione valitura sancimus, si hac qui exiguntur publica debita uti temptaverint. **1.** Immo et in aliis privatis actionibus occupatos volumus respondere, qui per provincias *ne*gotiantur vel conductorum vocabulis, cum non armata militia praediti sunt, defenduntur, sive domorum divinarum sive virorum potentium seu cuiuslibet condicionis sunt conductores, nisi forte commeatum

2. *Viri illustres*, however, who reside in this Glorious City, and who, without actual administration of the office, have been awarded the honorary title only – so that they seem to have done what in fact they have not done – although by Our order they occupy a privileged position, shall in criminal cases obey the orders of Your Magnificent prefecture and of the illustrious city prefecture and of the magnificent Master of the Offices – in the latter case only when special imperial authority has been sent to his court by Our Piety – so that the accused in such cases cannot claim the right to be seated during the examination. **2a.** But they themselves, too, may know that those who try them cannot make a definite order against them or their property, even when the crime is proven, until they have first reported to Our Piety. **3.** But if *viri illustres* living in the provinces – but not those, however, whose cases are to be heard only before Our Divine Majesty or before a judge appointed in Our place – are summoned to a criminal investigation, they shall have the right, while the trial is in process, to be seated in the judicial chambers, and the judges, whenever the charges under consideration are proven, must refrain from making any definite order against them or their property till they receive an answer from Our Piety pursuant to their reports. Of course, the penalty to be meted out to accusers, whose malicious prosecution has been exposed, must not be deferred by the provincial judges, if, as has been said above, they are not of the same rank as the defendants.

Given at Constantinople (485–486?).[69]

Twenty-Fifth Title Situations in Which Persons in the Imperial Service May Not Raise Objection to the Venue

[1][70] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Florentius, Praetorian Prefect.* **pr.** We ordain that absolutely all the soldiers of the bodyguard and the imperial messengers and all persons who lay claim to any office or position of rank shall answer the summons of the provincial governors in connection with any public indebtedness, and no defense as to the venue shall prevail if sought by persons from whom public debts are demanded. **1.** Those, too, must answer (in the province) who are engaged in actions concerning their private affairs, who are engaged in private business in the provinces, or who, while not belonging to the armed soldiery, are protected by the name of lessee, whether a lessee of property of the Crown or of influential persons or of any other status, unless, perchance, they show that they received leave

[69] Lounghis *et al.* date to 490.
[70] = Nov. Theod. 7.1. See also C. 3.13.7.

ad rem propriam componendam unius anni indutias ostenderint se accepisse. **2.** Eadem forma servanda in his etiam, qui mercandi et militandi sacra beneficia meruerunt, ut etiam ipsi rectoribus provinciarum respondeant.

D. XIII k. Febr. Constantinopoli Theodosio A. XVII et Festo conss.

XXVI Ubi Causae Fiscales vel Divinae Domus Hominumque Eius Agantur

[1] *Impp. Severus et Antoninus AA. Dioscoro.* Non defensae mortis quaestionem apud procuratores nostros non oportere tractari quis ignorat, nec bona fisco peti posse, quam si de crimine constiterit apud eum, cui convictis poenam inrogare licet? plane defunctis homicidii reis apud procuratores quoque causam agendam esse ratio permittit.

PP. VII id. Mai. Laterano et Rufino conss.

[2] *Idem AA. Aristae.* Non animadvertimus, cur causam ad officium procuratorum nostrorum pertinentem ad proconsulis notionem advocare velis. nam cum hoc quaeratur, an pater tuus mortem sibi consciverit metu alicuius poenae ac propterea bona fisco debeant vindicari, iam non de crimine aut poena mortui, sed de bonis quaerendum est.

D. XII k. Oct. Apro et Maximo conss.

[3] *Imp. Antoninus A. Heliodoro.* Procurator meus, qui vice praesidis provinciae non fungitur, sicut exigere poenam desertae accusationis potest, ita iudicare, ut ea inferatur sententia sua, non potest.

D. X k. Sept. Laeto et Cereale conss.

of absence for a year in order to attend to their private affairs. 2. The same rule also applies to those who have received imperial permission to engage in trade while in the imperial service; they, too, shall answer the summons of the governors.

Given January 20, at Constantinople, in the consulship of Theodosius Augustus, for the seventeenth time, and Festus (439).

Twenty-Sixth Title Where Fiscal Cases or Those Pertaining to Imperial Property or to Men Belonging Thereto May Be Conducted

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Dioscorus.* Who is unaware that an investigation into a death which is unavenged by the heirs of the deceased cannot be held before Our procurators, and that the property cannot be claimed as confiscated property for the Treasury until the crime is proven to have been committed before the judge who has authority to inflict punishment on those convicted. Clearly, however, if those accused of homicide have died, the law reasonably allows for the case to be tried before the procurators.[71]

Posted May 9, in the consulship of Lateranus and Rufinus (197).

[2] *The same Augusti to Arista.* We do not see why you want a case that is within the jurisdiction of Our procurators taken before the Proconsul. For, when an investigation is made as to whether your father committed suicide on account of fear of some punishment, and whether, therefore, his property should be confiscated by the Treasury, the inquiry that is to be made relates not to the charge against the deceased or the punishment to be meted out to him, but to his property.

Given September 20, in the consulship of Aper and Maximus (207).

[3] *Emperor* ANTONINUS *Augustus to Heliodorus.* My procurator, who does not assume the function of a governor, although he can collect a penalty for abandoning an accusation, cannot judge that it should be imposed and enter his own decision.

Given September 1, in the consulship of Laetus and Cerealis (215).

[71] According to C. 6.35.1, an heir was obliged to avenge the murder before entering into the inheritance. But if the alleged murderers had died, a Treasury official could investigate whether the heir had entered into the inheritance before investigating the murder.

[4] *Imp. Alexander A. Maximae.* **pr.** Cum vendente procuratore meo emisse te praedia dicas, pretium eorum necessario solvere debes. **1.** Cum his, quibus mandantibus eadem praedia emisse te et tradidisse dicas, agente te procurator meus, si eius audientiam elegeris, cognoscet, ut pecuniam quae pretii nomine tibi debetur et usuras quae fisco solvendae sunt consequi possis.

PP. IIII id. Oct. Maximo et Paterno conss.

[5] *Imp. Constantinus A. ad Ursum.* Ad fiscum pertinentes causas rationalis decidat, omnibus concussionibus prohibendis.

D. non. Febr. Constantino A. IIII et Licinio IIII conss.

[6] *Idem A. ad Italicum.* Si quis adversus conductorem nostrum aliquid agendum crediderit, viro illustri comiti rerum privatarum referri oportet, ne et iudici existimationis et officio eius salutis discrimen immineat.

D. k. Febr. ... conss.

[7] *Idem A. ad Bulephorum rationalem summae rei.* Dominicis colonis et patrimonialibus gravitatem tuam censuimus disceptatricem esse debere. duces enim et praepositos limitum et castrorum et rectores provinciarum evocandis et arcessendis colonis abstinere oportet.

D. XVI k. Mart. Limenio et Catullino conss.

[8] *Idem A. ad Taurum pp.* Cum aliquid colonus aut servus rei privatae nostrae contra disciplinam publicam adseratur perpetrare, ad iudicium rectoris provinciae venire cogendus est, sic videlicet, ut praesente rationali vel procuratore domus nostrae inter eum et accusatorem causa tractetur et, si facinus fuerit adprobatum, iuris severitas exseratur.

D. V non. Mart. Sirmi Datiano et Cereale conss.

[9] *Impp. Valentinianus et Valens AA. ad Philippum vicarium.* Universi fiduciam gerant, ut, cum quis eorum ab actore rerum privatarum

[4] *Emperor Alexander Augustus to Maxima.* **pr.** Since you say that you bought property at a sale held by my procurator, you necessarily must pay the price thereof. **1.** If you as plaintiff litigate with those to whom you say that you transferred it, and at whose behest you bought it, my procurator will, if you choose to bring an action before his tribunal, come to a decision that you may be able to receive back the money which is due to you as the purchase money and the interest to be paid to the fisc.

Posted October 12, in the consulship of Maximus and Paternus (233).

[5] *Emperor* CONSTANTINE *Augustus to Ursus.* The Imperial Comptroller (*rationalis*) must decide all cases relating to the Treasury, and all extortion in connection with it is forbidden.

Given February 5, in the consulship of Constantine Augustus, for the fourth time, and Licinius, for the fourth time (315).

[6] *The same Augustus*[72] *to Italicus.* If anyone wants to bring an action against Our chief tenant (*conductor*), he must report to the *vir illustris* Count of the Privy Purse, lest the good name of the judge and the welfare of his official staff be endangered.

Given February 1 (January 25), at Bononia (Boulogne), in the consulship of Placidus and Romulus (343).

[7] *The same Augustus to Bulephorus, Treasury Comptroller.* We have decided that Your Eminence should act as judge for the tenants (*coloni*) on Our Privy Purse and patrimonial estates. Moreover, the heads of military districts and the leaders of the junior corps (*duces et praepositi*) of the boundaries and of the camps and the governors must refrain from summoning and citing them.

Given February 14, in the consulship of Limenius and Catullinus (349).

[8] *The same Augustus to Taurus, Praetorian Prefect.* When it is alleged that a tied tenant or slave (*colonus aut servus*) of the Privy Purse has violated any public regulation, he should be forced to go before the tribunal of the governor, and the matter between him and his accuser must be tried in the presence of Our Comptroller or the procurator of Our Household, and if the crime is proven, the severity of the law will be felt.

Given March 3, at Sirmium, in the consulship of Datianus and Cerealis (358).

[9][73] *Emperors* VALENTINIAN *and* VALENS *Augusti to Philippus, Vicar.* Everybody may trust in this: that if anyone has been wronged at the hands of an

[72] Along with 7, actually issued by Constantius and Constans. The subscription is restored from C. 11.75.1: *d. VIII k. Febr. Bononiae Placido et Romulo conss.*: Seeck.

[73] = C.Th. 10.4.1 (Constantine; Heraclea; March 5, 313 or, more likely, 326: Seeck). The relation of Constantine's constitution to this one is uncertain, but neither Emperor was in Heraclea on July 5, 365.

nostrarum sive a procuratore fuerit vexatus iniuriis, super eius contumeliis vel depraedationibus deferre querimoniam sinceritati tuae vel rectori provinciae non dubitet et ad publicae sententiam vindictae sine aliqua trepidatione convolare. quae res cum fuerit certis probationibus declarata, sancimus et edicimus, ut, si in provincialem hanc audaciam quisquam moliri fuerit ausus, publice vivus concremetur.

D. III non. Iul. Heracliae Valentiniano et Valente AA. conss.

[10] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad Polemium pp.* Nullum ex officio rationalis, qui exactioni vel chartis inserviat, in alio iudicio adduci oportet, nisi forte cuiuspiam caput accusatio legibus instituta pulsaverit.

D. III k. Mai. Arcadio et Bautone conss.

[11] *Impp. Theodosius et Valentinianus AA. Artaxi praeposito sacri cubiculi.* Hac lege sancimus, ut, sive agat domorum nostrarum colonus aut inquilinus aut servus seu pulsetur ab aliquo super criminali vel civili negotio, non alibi quam tui culminis ac viri spectabilis comitis domorum petatur examen: nullius adlegatione super fori praescriptione penitus admittenda.

D. V id. April. Eudoxio et Dioscoro conss.

XXVII Quando Liceat sine Iudice Unicuique Vindicare Se vel Publicam Devotionem

[1] *Imppp. Valentinianus Theodosius et Arcadius AAA. ad provinciales.* **pr.** Liberam resistendi cunctis tribuimus facultatem, ut quicumque militum vel privatorum ad agros nocturnus populator intraverit aut itinera frequentata insidiis adgressionis obsederit, permissa cuicumque licentia dignus ilico supplicio subiugetur ac mortem quam minabatur excipiat et id quod intendebat incurrat. melius enim est occurrere in tempore, quam post exitum vindicare. **1.** Vestram igitur vobis

agent of Our Privy Purse or by one of Our procurators, he should not hesitate to lodge a complaint about the insults to him or the depredations with Your Sincerity or the provincial governor, and he may without any fear of retribution ask for a decision involving public punishment. We ordain and proclaim that if it is clearly proven that (such agent or procurator) has dared to use such insolence toward a provincial, he shall be publicly burned alive.

Given July 5, at Heraclea, in the consulship of Valentinian and Valens Augusti (365).

[**10**] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Polemius, Praetorian Prefect.* No member of the official staff of the Comptroller who acts as collector or keeps the records should be forced to go before another tribunal, unless he happens to be accused of a capital crime according to law.

Given April 29, in the consulship of Arcadius and Bauto (385).[74]

[**11**][75] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Artaxes, Grand Chamberlain* (praepositus sacri cubiculi). We ordain by this law that if a tenant tied to the land or living in one of Our properties (*colonus aut inquilinus*) or a slave of Our estates sues or is sued by someone concerning a criminal or civil matter, no one may ask for an investigation to be held before any tribunal other than that of Your Highness or that of the *vir spectabilis* Count of the Household (*comes domorum*); no objection to the venue shall in any manner be entertained.

Given April 9, in the consulship of Eudoxius and Dioscorus (442).

Twenty-Seventh Title When One is Permitted, Without a Judge, to Avenge Oneself or (a Breach of) Public Fidelity

[**1**][76] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to the Provincials.* **pr.** We grant everyone the free right of offering resistance if a soldier or civilian should enter his fields as a nocturnal plunderer, or harass heavily used roads with the intention of robbery; permission is granted that he should be subjected to immediate punishment, and (so) receive the death and incur the danger that he himself threatened. For it is better to forestall, rather than to punish after the fact. **1.** We therefore grant you permission to avenge

74 Seeck dates to April 29, 390.
75 This law bestows a privilege enjoyed exclusively by Cappadocians.
76 = C.Th. 9.14.2.

permittimus ultionem et, quod serum est punire iudicio, subiugamus edicto: nullus parcat militi, cui obviare telo oporteat ut latroni.

D. k. Iul. Tatiano et Symmacho conss.

[2] *Imppp. Arcadius Honorius et Theodosius AAA. Hadriano pp.* Opprimendorum desertorum facultatem provincialibus iure permittimus. qui si resistere ausi fuerint, in his velox ubicumque iubemus esse supplicium. cuncti etenim adversus latrones publicos desertoresque militiae ius sibi sciant pro quiete communi exercendae publicae ultionis indultum.

D. VI non. Oct. Theodosio A. et Rumorido conss.

XXVIII De Inofficioso Testamento

[1] *Impp. Severus et Antoninus AA. Victorino.* Cum de inofficioso matris suae testamento filius dicere velit adversus eum, qui ex causa fideicommissi hereditatem tenet, non est iniquum hoc ei accommodari, ut perinde fideicommissarius teneatur, ac si pro herede aut pro possessore possideret.

PP. V k. Iul. Falcone et Claro conss.

[2] *Idem AA. Lucretio.* Quamvis de inofficioso testamento acturum te bonorum possessionem accepisse proponas, tamen scriptis heredibus auferre possessionem incivile est.

D. IIII k. Dec. Dextro II et Prisco conss.

[3] *Idem AA. Ianuario.* **pr.** Si mater filiis duobus institutis tertio post testamentum suscepto, cum mutare idem testamentum potuisset, hoc facere neglexisset, merito utpote non iustis rationibus neglectus de inofficioso querellam instituere poterat. **1.** Sed cum eam in puerperio vita cessisse proponas, repentini casus iniquitas per coniecturam maternae

yourself, and whatever is too late to be punished in court We make subject to this edict. Let no one spare a soldier when he becomes a robber and must be fought off with weapons.

Given July 1, in the consulship of Tatianus and Symmachus (391).

[2][77] *Emperors* ARCADIUS, HONORIUS, *and* THEODOSIUS *Augusti to Hadrianus, Praetorian Prefect.* We rightly give provincials permission to seize deserters. Let swift punishment be inflicted on those who dare to resist. Let everyone know that provincials have the right, for the purpose of insuring public peace, to inflict public punishment upon robbers and deserters from the army.

Given October 2, in the consulships of the Theodosius Augustus and Rumoridus (403).

Twenty-Eighth Title An Undutiful Will[78]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Victorinus.* When a son wishes to bring a claim that his mother's will is undutiful against the person who holds the inheritance by reason of a testamentary trust (*fideicomissum*), it is not unfair that he be accommodated, such that the heir charged with the trust may be held responsible just as though he held the inheritance as heir or as possessor.

Posted June 27, in the consulship of Falco and Clarus (193).

[2] *The same Augusti to Lucretius.* Although you say that when you received the right of the possession of the inheritance, you intended to commence a complaint to set aside a will as undutiful, nevertheless it is not right that possession be taken away from the heirs appointed in the will.[79]

Given November 28, in the consulship of Dexter, for the second time, and Priscus (196).

[3] *The same Augusti to Januarius.* **pr.** If a mother designated in her will two sons as heirs, and afterwards gave birth to a third, and neglected to change the will when she had opportunity to do so, he (the third son) deservedly could bring a complaint to set aside the will as undutiful, because he was disregarded therein for no just reason. **1.** But since you say that she died at

[77] = C.Th. 7.18.14; combine with C.Th. 7.18.13.

[78] See D. 5.2.

[79] Blume: "The right of possession of an inheritance granted by the Praetor ordinarily carried with it the right to enforce actual possession by an interdict. C. 8.2. In the instant case, however, the right was granted merely so as to enable the party to commence the complaint. D. 5.2.8 pr."

pietatis emendanda est. quare filio tuo, cui nihil praeter maternum fatum imputari potest, perinde virilem portionem tribuendam esse censemus, ac si omnes filios heredes instituisset. **2.** Sin autem heredes scripti extranei erant, tunc de inofficioso testamento actionem instituere non prohibetur.

PP. VIII k. Iul. Laterano et Rufino conss.

[4] *Idem AA. Stotericho et aliis.* Cum ex causa fideicommissi secundum decretum praetoris in libertate morati sitis, filios etiam susceperitis, quamvis postea domini vestri testamentum inofficiosum sit pronuntiatum agente filio, non est aequum fieri vobis libertatis quaestionem.

PP. VI id. Mart. Antonino III et Geta II conss.

[5] *Imp. Antoninus A. Aelio.* Si pater tuus post litem contestatam vel postquam propositum habuisset inofficiosum fratris testamentum dicere te herede relicto decessit, causam coeptam vel quocumque modo illi placitam exsequi non prohiberis.

PP. prid. non. Oct. Gentiano et Basso conss.

[6] *Idem A. Ingenuo.* Cum quaeritur, an filii de inofficioso patris testamento possint dicere, si quartam bonorum mortis tempore testator reliquit, inspicitur.

PP. VII k. Iul. Romae duobus Aspris conss.

[7] *Idem A. Secundino.* Neptem defuncti actione de inofficioso testamento, quamvis pater eius emancipatus fuerat defunctus, experiri posse ignorare non debes.

PP. VI k. Iul. Romae Laeto II et Cereale conss.

[8] *Idem A. Florentino.* **pr.** Parentibus arbitrium dividendae hereditatis inter liberos adimendum non est, dum non minus, qui pietatis sibi conscius est, partis quae intestato defuncto potuit ad eum pertinere quarta

[v] inofficioso testamento

childbirth, the injustice of this sudden calamity is to be remedied by assuming that she intended to fulfill her duty as a mother. Therefore let an equal share be assigned to your son, against whom only maternal fate can have acted, as though she had designated all her sons as heirs. **2.** If the designated heirs are strangers, then the son is not forbidden from commencing an action to set aside her undutiful will (in its entirety).

Posted June 24, in the consulship of Lateranus and Rufinus (197).

[4] *The same Augusti to Soterichus and others.* Since, pursuant to a testamentary trust, you lived in freedom according to a decree of the Praetor, and also gave birth to sons, although the will of your master was afterwards pronounced undutiful in an action brought by his son, it would be unjust for there to be an examination of your freedom.

Posted March 10, in the consulship of Antoninus, for the third time, and Geta, for the second time (208).

[5] *Emperor* ANTONINUS *Augustus to Aelius.* If your father died after joinder of issue or after he had showed cause to have his brother's will declared undutiful, and he left you as his heir, you are not prohibited from bringing to a conclusion the suit that was commenced, or in any manner determined by him to be commenced.

Posted October 6, in the consulship of Gentianus and Bassus (211).

[6][80] *The same Augustus to Ingenuus.* When the question is brought as to whether sons may bring a complaint to set a father's will aside as undutiful, it is considered whether the testator left a fourth part of the property that he had at the time of his death.[81]

Posted June 25, in the consulship of the two Aspri (212).

[7] *The same Augustus to Secundinus.* You should know that the granddaughter of the decedent may bring a complaint to set aside a will as undutiful, even though her father, who had been emancipated, had died.

Posted June 26, at Rome, in the consulship of Laetus, for the second time, and Cerealis (215).

[8][82] *The same Augustus to Florentinus.* **pr.** The choice of parents to divide the inheritance among their children must not be taken away, provided that a child, conscious of filial devotion (*pietas*), receives under the will of the parent

[80] Perhaps to be joined with *C. Greg. Visig.* 5.1.

[81] Blume: "Under law 30 of this title, if part, but not all, of the legal or birthright portion was left, only an action to supplement was given. Novel 18 increased this portion."

[82] Combine with C. 6.30.2.

ex iudicio parentis obtineat. **1.** Qui autem agnovit iudicium defuncti eo, quod debitum paternum pro hereditaria parte persolvit vel alio legitimo modo, etiamsi minus quam ei debebatur relictum est, si is maior viginti quinque annis est, accusare ut inofficiosam voluntatem patris quam probavit non potest.

PP. VII id. Febr. Maximo II et Aeliano conss.

[9] *Idem A. Romanae.* De inofficioso testamento militis vel iure militari vel civili facto vel centurionis vel tribuni numeri nec filios posse queri ius certum est.

PP. id. Mai. Maximo II et Aeliano conss.

[10] *Idem A. Quintiliano.* Si heredum Quintiani, quem patrem tuum esse dicis, adversus quos de inofficioso testamento acturus eras, iure successionis bona ad fiscum pertinent, vel ipsius Quintiani bona utpote vacantia fiscus tenet, causam apud procuratorem meum agere potes.

PP. II id. Aug. Maximo II et Aeliano conss.

[11] *Idem A. Ingenuo.* In harenam non damnato, sed sua sponte harenario constituto legitimae successiones integrae sunt, sicuti civitas et libertas manet. sed si testamentum parens eius fecit, neque de inofficioso testamento accusatio neque bonorum possessio ei competit: nam talem filium merito quis indignum sua successione iudicat, nisi et ipse similis condicionis est.

PP. IIII k. Ian. Iuliano et Crispino conss.

[12] *Idem A. Liciniano et Diogeniano.* Si pater puellae, cuius vos curatores esse dicitis, filio ex semisse, ipsa autem ex triente et uxore ex reliquo sextante scriptis heredibus, fidei filiorum commisit, ut, si quis eorum intra viginti quinque annos aetatis decederet, superstitibus portionem suam restitueret, praeterea uxori, ut id, quod ex causa hereditatis ad eam pervenisset, filiis post mortem suam restitueret, fideicommisit, calumniosam inofficiosi actionem adversus iustum iudicium testatoris instituere non debetis, cum ex huiusmodi

a fourth of the amount which he could have received in case of intestacy. 1. A child over 25 years of age, however, who has ratified the action of the deceased by paying the paternal debt in proportion to his inheritance or by some other lawful method, although he received less than his birthright portion, cannot question as undutiful his father's wishes, which he approved.

Posted February 7, in the consulship of Maximus, for the second time, and Aelianus (223).

[9] *The same Augustus to Romana.* The law is certain that sons cannot bring a complaint concerning undutiful wills of a soldier or of a centurion or tribune of a division of an army, whether the will is executed according to military or civil law.

Posted May 15, in the consulship of Maximus, for the second time, and Aelianus (223).

[10] *The same Augustus to Quintilianus.* If the property of the heirs of Quintianus – he was the man against whom you intended to bring an action to set aside the will of the deceased man claimed by you as your father – falls to the Treasury by right of succession, or if the Treasury holds the property of Quintianus himself as heirless (by escheat), you may commence the action before my procurator.

Posted August 12, in the consulship of Maximus, for the second time, and Aelianus (223).

[11] *The same Augustus to Ingenuus.* A person who is not condemned to the arena, but is established as a gladiator voluntarily, retains his legal rights of succession, as well as his citizenship and freedom. But if his parent made a will (that disinherits him), he can neither bring a complaint concerning an undutiful will, nor may he be granted the right of possession of the inheritance (against the will); for a testator may rightly consider such a son as unworthy of inheriting from him, unless he himself occupies the same status.

Posted December 29, in the consulship of Julian and Crispinus (224).

[12] *The same Augustus to Licinius and Diogenianus.* If the father of the girl, whose *curatores* you claim to be, left half of his property to his son, one-third to his daughter, and the remaining one-sixth to his wife, and requested through his will that if either of said children should die before reaching the age of 25 years, the portion of such deceased child should belong to the others, and also requested that the property which thanks to the inheritance should come to his widow, should, after her death, belong to the children, then you should not bring against (such) a just will the disparaging action to set the will aside

fideicommissaria restitutione tam matris quam fratris eius portio ad eam poterat pervenire.

PP. non. Dec. Alexandro A. III et Dione conss.

[13] *Imp. Gordianus A. Prisciano.* Cum duobus heredibus institutis, uno ex quinque, altero ex septem unciis, adversus eum qui ex septem unciis heres scriptus fuerat iusta querella contendisse, ab altero autem victum fuisse adlegas, pro ea parte, qua resolutum est testamentum, cum iure intestati qui obtinuit succedat, neque legata neque fideicommissa debentur, quamvis libertates et directae competant et fideicommissariae praestari debeant.

PP. III k. Febr. Gordiano A. et Aviola conss.

[14] *Idem A. Prisco.* Eum, qui inofficiosi querellam delatam non tenuit, a falsi accusatione non submoveri placuit. idem observatur et si e contrario falsi crimine instituto victus postea de inofficioso actionem exercere maluerit.

PP. VI k. Dec. Gordiano A. et Aviola conss.

[15] *Imp. Philippus A. et Philippus C. Aphrodisiae.* Filiam praeteritam a matre ad successionem eius citra inofficiosi querellam adspirare non posse explorati iuris est.

PP. V k. Aug. Philippo A. et Titiano conss.

[16] *Impp. Valerianus et Gallienus AA. et Valerianus nob. C. Theodotae.* Contra maiores viginti quinque annorum duplicem actionem inferentes, primam, quasi testamentum non iure sit perfectum, alteram, quasi inofficiosum, licet iure perfectum, praescriptio ex prioris iudicii mora quinquennalis temporis non nascitur, quae officere non cessantibus non potest.

PP. id. Aug. Tusco et Basso conss.

[17] *Impp. Carinus et Numerianus AA. Florae.* Cum filium tuum te praeterita sororem heredem instituisse proponas, inofficiosi querellam apud praesidem provinciae persequi potes.

PP. prid. id. Febr. Carino II et Numeriano AA. conss.

as undutiful, since by reason of such testamentary trusts the portion of the mother as well as that of the brother may become the property of the daughter.

Posted December 5, in the consulship of Alexander Augustus, for the third time, and Dio (229).

[13] *Emperor* GORDIAN *Augustus to Priscianus.* When two heirs are named in the will, one receiving five-twelfths, the other seven-twelfths of the property, and you say that you prevailed in your complaint against the one receiving seven-twelfths, but were beaten by the one receiving five-twelfths, then neither legacies nor trusts are good against the portion as to which the will was annulled, since he who wins the suit inherits by the law of intestacy. But direct manumissions are valid and those given by way of trust must be made.

Posted January 30, in the consulship of Gordian Augustus and Aviola (239).

[14] *The same Augustus to Priscus.* It has been determined that a person who fails to win a suit to set a will aside as undutiful is not prohibited from presenting an allegation of forgery. The same holds true if, on the other hand, a man fails in an allegation he has brought for forgery and afterwards prefers to bring an action to have the will set aside as undutiful.

Posted November 26, in the consulship of Gordian Augustus and Aviola (239).

[15] *Emperor* PHILIP *Augustus and* PHILIP *Caesar to Aphrodisia.* It is a matter of existing law that a daughter, overlooked in a mother's will, cannot succeed to the property without a complaint to have the will set aside as undutiful.

Posted July 28, in the consulship of Philip Augustus and Titianus (245).

[16] *Emperors* VALERIAN *and* GALLIENUS *Augusti and the noble Caesar* VALERIAN *to Theodota.* When persons over 25 years of age bring two actions, one that the will has not been legally executed, the other that the will, though legally executed, is invalid because undutiful, the prescription of a five-year period (for complaints to have a will declared undutiful) does not apply when the delay is caused by the first action, since said prescription cannot operate against those who do not cease from their demands.

Posted August 13, in the consulship of Tuscus and Bassus (258).

[17] *Emperors* CARINUS *and* NUMERIAN *Augusti to Flora.* Since you say that your son has overlooked you in his will and has named his sister as his heir, you can bring an action before the governor to have the will set aside as undutiful.

Posted February 12, in the consulship of Carinus, for the second time, and Numerianus, Augusti (284).

[**18**] *Impp. Diocletianus et Maximianus AA. Faustinae.* Cum te pietatis religionem non violasse, sed mariti coniugium quod fueras sortita distrahere noluisse ac propterea offensum atque iratum patrem ad exheredationis notam prolapsum esse dicas, inofficiosi testamenti querellam inferre non vetaberis.

PP. Nicomediae XVI k. Mart. Maximo II et Aquilino conss.

[**19**] *Idem AA. Apollinari.* Si filia tua turpiter et cum flagitiosa foeditate vivit, ut a successione tua eam excludendam putes, si non inconsulto calore, sed ex meritis eius ad id odium incitatus es, postremi iudicii liberum arbitrium habebis.

D. XV k. Iul. Sirmi ipsis V et IIII AA. conss.

[**20**] *Idem AA. et CC. Sabiniano.* Filia in orbitate patris relicta cum marito, cui matre volente nupsit, colens concordiam iustas offensionis post eiusdem matris paenitentiam causas non praestat nec ex momentariis voluntatibus matris nupta atque vidua esse iure compellitur.

D. non. Ian. Sirmi CC. conss.

[**21**] *Idem AA. et CC. Alexandro.* Fratris vel sororis filii, patrui vel avunculi, amitae etiam et materterae testamentum inofficiosum frustra dicunt, cum nemo eorum qui ex transversa linea veniunt exceptis fratre et sorore ad inofficiosi querellam admittatur. de falso sane per accusationem criminis queri non prohibentur.

D. VI id. Febr. CC. conss.

[**22**] *Idem AA. et CC. Statillae.* **pr.** Si maritus tuus facto testamento te quidem ex asse scripsit heredem, filia autem quam habuit in potestate exheredata facta minime probetur nihilque ei relictum est neque iustas causas offensae praestitisse convincatur, eam de inofficioso testamento patris querentem totam hereditatem obtinere posse non ambigitur. **1.** Quod si iam obtinuit vel postea vincat, quodcumque maritus mortis suae tempore debuisse tibi perhibetur, idem ab ea reddi oportet.

D. id. Febr. Sirmi CC. conss.

[18] *Emperors* Diocletian *and* Maximian *Augusti to Faustina.* Since you say that you did not violate your familial duty (*pietatis religio*), but that you were simply unwilling to dissolve the marriage entered into with your husband, because of which your offended and irate father stooped to disgracing you through disinheritance, you will not be prevented from bringing a complaint to have the will set aside as undutiful.

Posted February 14, at Nicomedia, in the consulship of Maximus, for the second time, and Aquilinus (286).

[19] *The same Augusti to Apollinaris.* If your daughter lives dishonestly and in shameful alliance, so that you feel that she should be excluded from inheriting from you, and if you have not been incited to that odious step by inconsiderate passion, but by her just deserts, you are at liberty to make your last will as you wish.

Given June 17, at Sirmium, in the consulship of Diocletian, for the fifth time, and Maximian, for the fourth time, Augusti (293).[83]

[20][84] *The same Augusti and the Caesars to Sabinianus.* A daughter bereft of her father, who marries a man with the consent of her mother, and lives in harmony with him, gives no just cause of offense if her mother afterwards regrets the marriage, and she cannot rightly be compelled to be married or be a widow according to the momentary caprice of her mother.

Given January 5, at Sirmium, in the consulship of the Caesars (294).

[21] *The same Augusti and Caesars to Alexander.* In vain the children of a brother or sister attack as undutiful the will of a paternal or maternal uncle and of a paternal or maternal aunt, since none of those who come from the collateral line, except brothers and sisters, are permitted to bring such complaint. Of course, they are not forbidden to complain of forgery by making an accusation of that crime.

Given February 8, in the consulship of the Caesars (294).

[22] *The same Augusti and Caesars to Statilla.* **pr.** If your husband named you (his wife) as his sole heir in his will, but by means of disinheritance showed disapproval of the daughter whom he had in his power, and if nothing was left her, and she is not shown to have given just cause for offense, then there is no doubt that she can obtain the whole estate in a complaint to have the will of her father set aside as undutiful. **1.** But if she has already obtained it, or is hereafter awarded it, she must return to you whatever is shown to have been owing to you by your husband at the time of his death.[85]

Given February 13, at Sirmium, in the consulship of the Caesars (294).

[83] Mommsen gives December 18, 290.

[84] Combine with C. 5.12.17.

[85] See also C. 3.28.13; the daughter inherits on the rules of intestacy.

[23] *Idem AA. et CC. Philippae.* Testamenti factionem per testationem vos interdixisse matri profitentes iustitiam offensae manifeste testamini.
D. v id. Sept. CC. conss.

[24] *Idem AA. et CC. Successo.* Testamentum militis filii familias in castrensi peculio factum neque a patre neque a liberis eius per inofficiosi querellam rescindi potest.
D. III non. Dec. Nicomediae CC. conss.

[25] *Idem AA. et CC. Menodoto.* Filiis matrem, quae de mariti moribus secus suspicetur, ita posse consulere iure compertum est, ut eos sub hac condicione instituat heredes, si a patre emancipati fuerint, atque eo pacto secundum tabulas bonorum possessionem patrem cum re accipere non videri, qui condicioni minime obtemperavit, neque ei nomine filiorum inofficiosi eo modo actionem posse competere, quibus nullam iniuriam fecerit mater, sed potius putaverit providendum, restituere debet.
D. IIII non. Iul. Antiochiae Titiano et Nepotiano conss.

[26] *Idem AA. et CC. Serapioni suo salutem.* Ex tribus unciis herede instituto filio intra pubertatis annos directam non inutiliter a patre fieri substitutionem certum est.
D. V k. Sept. Nicomediae Diocletiano VIIII et Maximiano VIII AA. conss.

[27] *Imp. Constantinus A. ad Lucrium Verinum.* Fratres vel sorores uterini ab inofficiosi actione contra testamentum fratris vel sororis penitus arceantur: consanguinei autem durante vel non agnatione contra testamentum fratris sui vel sororis de inofficioso quaestionem movere possunt, si scripti heredes infamiae vel turpitudinis vel levis notae macula adsparguntur vel liberti, qui perperam et non bene merentes

[23] *The same Augusti and Caesars to Philippa.* You testify plainly that you gave just offense to your mother when you admit that before witnesses you forbade her to make a will.[86]

Given September 9, in the consulship of the Caesars (294).

[24] *The same Augusti and the Caesars to Successus.* The will of a son under paternal power who is a soldier, which disposes of the property he obtained in military service, cannot be annulled either by his father or by his children in a complaint to have the will declared undutiful.

Given December 3, at Nicomedia, in the consulship of the Caesars (294).

[25] *The same Augusti and Caesars to Menodotus.* It has been ascertained by law that a mother who looks with disfavor on the morals of her husband can rightly look after the interests of her children by designating them as her heirs upon condition that they shall be emancipated by their father. Thus a father who fails to comply with this condition seems not to have an effective right to possess the inheritance in accordance with the provisions of the will (*secundum tabulas*), nor in such case can he bring a complaint to have the will declared undutiful in the name of the children to whom the mother did no wrong, but for whom she rather wanted to provide properly.

Given July 4, at Antioch, in the consulship of Titianus and Nepotianus (301).

[26] *The same Augusti and the Caesars to their Serapio, greetings.* It is certain that a father who appoints his son as heir to three-twelfths of his estate may validly provide for direct substitution in case the son should die while under the age of puberty.[87]

Given August 28, at Nicomedia, in the consulship of Diocletian, for the ninth time, and Maximian, for the eighth time, Augusti (304).

[27][88] *Emperor* CONSTANTINE *Augustus to Lucrius Verinus.* Brothers and sisters who have the same mother only and not the same father are entirely excluded from the complaint of an undutiful will of their half-brothers or half-sisters. Those, however, who have the same father, can, during or after the continuance of the agnatic relationship, bring an action to annul the will of a brother or a sister as undutiful if the designated heirs are infamous, guilty of moral turpitude, or marked by some smaller stain, or if they are freedmen who have been appointed as heirs wrongly and without deserving it, having

[86] Blume: "Persons who hindered another from making a will were considered unworthy persons to inherit from such other." See C. 6.34.

maximisque beneficiis suum patronum adsecuti instituti sunt, excepto servo necessario herede instituto.

D. id. April. Sirmio Constantino A. v *et Licinio C. conss.*

[28] *Imp. Constantinus A. ad Claudium praesidem Daciae.* **pr.** Liberi de inofficioso querellam contra testamentum parentum moventes probationes debent praestare, quod obsequium debitum iugiter, prout ipsius naturae religio flagitabat, parentibus adhibuerunt, nisi scripti heredes ostendere maluerint ingratos liberos contra parentes extitisse. **1.** Sin autem mater contra filii testamentum inofficiosi actionem instituat, inquiri diligenter iubemus, utrum filius nulla ex iusta causa laesus matrem novissima laeserit voluntate nec luctuosam ei et legitimam reliquerit portionem, ut testamento remoto matri successio deferatur. **2.** Si tamen mater inhonestis factis atque indecentibus machinationibus filium forte obsedit insidiisque eum vel clandestinis vel manifestis appetiit vel inimicis eius suas amicitias copulavit atque in aliis sic versata est, ut inimica eius potius quam mater crederetur, ut hoc probato invita etiam adquiescat filii voluntati.

D. viii *id. Febr. Serdicae Crispo* ii *et Constantino* ii *CC. conss.*

[29] *Imp. Zeno A. Sebastiano pp.* **pr.** Quoniam novella constitutio divi Leonis ante nuptias donationem a filio conferri ad similitudinem dotis quae a filia confertur praecepit, etiam ante nuptias donationem filio in quartam praecipimus imputari. **1.** Eodemque modo cum mater pro filia dotem vel pro filio ante nuptias donationem vel avus paternus aut maternus vel avia paterna aut materna pro sua nepte vel pro suo nepote vel proavus itidem vel proavia paterna aut materna pro sua pronepte vel pro suo pronepote dederit, non tantum eandem dotem vel donationem conferri, verum etiam in quartam partem ad excludendam inofficiosi

overborne their patrons with heavy favors, unless it be a case where a slave is appointed as a necessary heir (*necessarius heres*).

Given April 13, at Sirmium, in the consulship of Constantine Augustus, for the fifth time, and the Caesar Licinius (319).

[28][89] *The same Augustus to Claudius, governor of Dacia.* **pr.** Children who bring a complaint to set aside a parent's will as undutiful should prove that they have constantly exhibited toward parents that filial duty (*obsequium*) which the scruples of nature demand, unless the heirs designated in the will prefer to prove them to have been ungrateful children to their parents. **1.** But if a mother brings such a complaint in relation to the will of a son, We direct you to make careful inquiry whether the latter offended his mother in his last will without just reason and failed to leave her the legal portion intended for her consolation, so that, if it is true, the will should be set aside and the succession awarded to the mother. **2.** If, however, the mother, perchance, committed dishonorable acts and was guilty of evil machinations against her son, sought to entrap him secretly or openly, gave her friendship to his enemies, and did other things by reason of which she might be considered an enemy rather than a mother, then she must, on proof thereof, acquiesce even unwillingly in the wishes of her son.

Given February 6, at Serdica, in the consulship of Crispus, for the second time, and Constantine, for the second time, Caesars (321).

[29] *Emperor Zeno Augustus to Sebastianus, Praetorian Prefect.* **pr.** Since a recent novel of Leo of blessed memory[90] directs that a prenuptial gift (*donatio ante nuptias*) shall be given as a contribution by a son in the same manner as a dowry is given as a contribution by a daughter, We also direct that this prenuptial gift shall be charged to the son as part of his fourth (which he is entitled to receive from his father's estate). **1.** Likewise, when a mother gives a dowry for a daughter or a prenuptial gift for a son, or when such gifts are made by a paternal or maternal grandfather or grandmother for a granddaughter or grandson, or by a paternal or maternal great-grandfather or great-grandmother for a great-granddaughter or great-grandson, not only do We want such a dowry or gift to be given as a contribution, but the dowry as well as the prenuptial gift shall also be charged to the fourth (the legal portion) so as to exclude any

[87] This rescript is referring to pupillary substitution.

[88] = C.Th. 2.19.1 (319) and 3 (332).

[89] = C.Th. 2.19.2. The *SC Tertullianum* (*c.* 129 ce) allowed a mother to inherit from her children on intestacy.

[90] C. 6.20.17. This constitution describes "hotchpot" (*collatio*), whereby heirs notionally "contribute" certain personal assets to a decedent's estate before the shares in it are allocated. See C. 6.20.

querellam tam dotem datam quam ante nuptias donationem praefato modo volumus imputari, si ex substantia eius profecta sit, cuius de hereditate agitur.

D. k. Mai. ipso A. II conss.

[30] *Imp. Iustinianus A. Menae pp.* **pr.** Omnimodo testatorum voluntatibus prospicientes magnam et innumerabilem occasionem subvertendae eorum dispositionis amputare censemus et in certis casibus, in quibus de inofficiosis defunctorum testamentis vel alio modo subvertendis moveri solebat actio, certa et statuta lege tam mortuis consulere quam liberis eorum vel aliis personis, quibus eadem actio competere poterat: ut, sive adiciatur testamento de implenda legitima portione sive non, firmum quidem testamentum sit, liceat vero his personis, quae testamentum quasi inofficiosum vel alio modo subvertendum queri poterant, id quod minus portione legitima sibi relictum est ad implendam eam sine ullo gravamine vel mora exigere, si tamen non ingrati legitimis modis arguantur, cum eos scilicet ingratos circa se fuisse testator edixit: nam si nullam eorum quasi ingratorum fecerit mentionem, non licebit eius heredibus ingratos eos nominare et huiusmodi quaestionem introducere. et haec quidem de his personis statuimus, quarum mentionem testantes fecerint et aliquam eis quantitatem in hereditate vel legato vel fideicommisso, licet minorem legitima portione, reliquerint.

1. Sin vero vel praeterierint aliquam eorum personam iam natam vel ante testamentum quidem conceptam, adhuc vero in ventre constitutam, vel exheredatione vel alia eorum mentione facta nihil eis penitus reliquerint, tunc vetera iura locum habere sancimus, nullam ex praesenti promulgatione novationem vel permutationem acceptura.

2. Imputari vero filiis aliisque personis, quae dudum ad inofficiosi testamenti querellam vocabantur, in legitimam portionem et illa volumus, quae occasione militiae ex pecuniis mortui eisdem personis adquisitae posse lucrari eas manifestum est, eo quod talis sit militia, ut vendatur vel mortuo militante certa pecunia ad eius heredes perveniat, ita tamen, ut ille gradus eiusdem militiae inspiciatur, quem morte testatoris militans obtinet, ut tanta ei pecunia in legitimam portionem computetur,

complaint of undutifulness, if it has come from the property of the person concerning whose inheritance a suit is brought.

Given May 1, in the consulship of the Augustus himself, for the second time (479).

[30][91] *Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect.* **pr.** Seeking in every way to uphold the last wishes of testators, We think that We should demolish the main cause that gives an opportunity in numberless cases for nullifying them, and by fixed and ordained law to look after the interests of decedents and their descendants and other persons legally able to sue in certain cases in which an action was usually brought to have a will declared as undutiful or to have it overturned in some other manner. So that whether a provision for supplementing the birthright portion is added to a will or not, it shall remain in force, but the persons who could heretofore complain of an undutiful will or could overturn it in some manner may without hindrance and immediately demand that the legal portion be supplied to the extent that the provisions of the will are deficient therein, provided, however, that they are not, by legal proof, shown to be ungrateful persons when the testator has accused them of ingratitude towards him in his will – for if he makes no mention of such ingratitude, his appointed heirs cannot claim that they were ungrateful and cannot bring that matter into question. These provisions are made for persons whom testators have mentioned in the will, and to whom some property has been left, either as an inheritance, legacy, or testamentary trust, but in an amount which is less than the legal portion.

1. If testators, however, have entirely disregarded such a person, whether already born or conceived before the making of the will although still in the mother's womb, and have left them absolutely no property either by disinheriting them or otherwise mentioning them, then We decree that the ancient laws shall remain in full force, without incurring any addition or alteration as a result of the present provisions.

2. In the case of sons and other persons who have long been permitted to bring a complaint concerning undutiful wills, We wish that the sums paid for them by a testator for the purchase of a governmental position, which is clearly a gain to the recipient, that is to say, a position which may be sold or which entitles the heirs of the holder, upon his death, to a certain sum of money, shall be counted as part of the legal portions of these sons or other persons. In such case, however, that grade only shall be considered which the official has at the time of the death of the testator, and the person who obtained his position by means of the testator's money shall be charged only with that amount, as part

[91] Combine with C. 6.23.24 and 6.41.1. In this and subsequent constitutions, Justinian clears up controversies that had lingered from classical jurisprudence.

quantam dari statutum est, si in eo gradu mortuus esset is, qui militiam ex pecuniis testatoris adeptus est.

3. Exceptis solis viris spectabilibus silentiariis sacri nostri palatii, quibus praestita iam specialia beneficia tam de aliis capitulis quam de pecuniis super memorata militia a parentibus eorum datis, ne in legitimam portionem eis computentur, rata esse praecipimus: in ceteris vero personis praedictam observationem tenere volumus.

D. k. Iun. Constantinopoli Iustiniano A. II cons.

[31] *Idem A. Menae pp.* Quae nuper ad testamenta conservanda nec facile retractanda sanximus, ut ratione Falcidiae minime illis personis derelicta, quae ad inofficiosi testamenti querellam ex prioribus vocabantur legibus, non periclitentur testamenta, sed quod deest legitimae portioni, id est quartae parti ab intestato successionis, tantum repleatur, exceptis illis quibus nihil in testamento derelictum est, in quibus prisca iura illibata servavimus, etiam ad testamenta sine scriptis facienda locum habere sancimus.

D. III id. Dec. Constantinopoli dn. Iustiniano pp. A. II cons.

[32] *Idem A. Menae pp.* Quoniam in prioribus sanctionibus illud statuimus, ut, si quid minus legitima portione his derelictum sit, qui ex antiquis legibus de inofficioso testamento actionem movere poterant, hoc repleatur nec occasione minoris quantitatis testamentum rescindatur, hoc in praesenti addendum esse censemus, ut, si condicionibus quibusdam vel dilationibus aut aliqua dispositione moram vel modum vel aliud gravamen introducente eorum iura, qui ad memoratam actionem vocabantur, minuta esse videantur, ipsa condicio vel dilatio vel alia dispositio moram vel quodcumque onus introducens tollatur et ita res procedat, quasi nihil eorum testamento additum esset.

D. II k. April. Constantinopoli Decio vc. cons.

of his legal portion, which his heirs would receive, under the law, in case he died in that grade.

3. Excepted herefrom only are the watchmen of the imperial palace, *viri spectabiles*. The special benefits already conferred on them in connection with other things, as well as money given them by their parents in connection with their position, shall remain in force, so that such money shall not be charged to them as part of their legal portion. But the foregoing provisions We wish to apply to all other persons.

Given June 1, at Constantinople, in the consulship of Justinian Augustus, for the second time (528).

[31][92] *The same Augustus to Menas, Praetorian Prefect.* The provisions recently made concerning upholding wills and not overturning them easily, shall apply also to wills made without writing – (namely) that wills should not be held invalid by reason of not leaving the Falcidian portion to persons who, under former laws, were authorized to bring complaint to have wills set aside as undutiful; rather, only the amount by which the legal portion, that is the fourth of the amount which an heir would receive upon intestacy, was deficient should be supplied, excepting from the law, however, persons to whom nothing is left and as to whom the ancient laws shall remain undisturbed.

Given December 11, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, for the second time (528).

[32] *The same Augustus to Menas, Praetorian Prefect.* Since We decided in former ordinances[93] that if less than the legal portion is left to those who by virtue of ancient laws could bring an action to set aside a will as undutiful, this deficiency should be compensated and not furnish the occasion for annulling such a will, We think that We should add at present that if the rights of heirs who were permitted to bring such actions should appear to be diminished by reason of certain conditions, deferments, or other provisions involving conditions, delays, or other burden, such condition, deferment, or other provisions involving any delay or burden whatsoever shall be void, and the matter shall proceed as though none of these had been added to the will.

Given March 31, at Constantinople, in the consulship of the vir clarissimus *Decius (529).*

[92] Combine with C. 6.23.26. This constitution alludes to the one just before. It also incorrectly describes the fourth portion as the Falcidian.

[93] 30 and 31 above.

[33] *Idem A. Demostheni pp.* **pr.** Si quis suo testamento maximam quidem portionem libero derelinquat, minusculam autem alii vel aliis de sua stirpe progenitis, ipsam tamen legitimam sive in hereditate vel in legato vel in fideicommisso, ut non possit locus de inofficiosi testamenti[v] querellae fieri, et ille quidem, qui ex parvulo genitoris sui consequitur substantiam, eam suscipere maluerit, qui autem ex maiore parte eam amplexus est, sive unus vel si plures sint, non statim et sine contentioso proposito vel ulla mora eam restituere voluerit, sed expectato iudiciorum strepitu et multis variisque certaminibus habitis post longum tempus ex sententia iudicis vix eam reddiderit, crudelitatem eius competenti poena adgredimur, ut, si haec fuerint subsecuta, non tantum in quod testator voluit eum restituere condemnetur, sed etiam aliam tertiam partem quantitatis, quae fuerat in testamento derelicta, modis omnibus reddere, ut avaritia eius legitimis ictibus feriatur: aliis omnibus, quae in eodem testamento vel elogio scripta sunt, pro sui tenore ad effectum perducendis.

1. Legis autem veteris iniquitatem tollentes, ut non diutius erubescat posita, quam Iulius Paulus in suis scripsit quaestionibus, hanc piissimam adgredimur sanctionem. cum enim infantem suum non posse ingratum a matre sua vocari scripsit neque propter hoc ab ultima suae matris hereditate repelli, nisi hoc odio sui fecerit mariti, ex quo infans progenitus est, hoc iniquum iudicantes, ut alieno odio alius praegravetur, penitus delendum esse sancimus et huiusmodi causam liberis non tantum infantibus, sed etiam quamcumque aetatem agentibus opponi minime concedimus, cum possit sub condicione emancipationis hereditatem suam mater filio derelinquens et patris odium punire et iuri filii sui minime nocere nec suam naturam fallere. satis enim crudele nobis esse videtur eum qui non sentit ingratum existimari.

D. XV k. Oct. Chalcedone Decio vc. cons.

[34] *Idem A. Iohanni pp.* **pr.** Si quis filium suum exheredatum fecerit alio scripto herede, reliquerit autem ex eo nepotem vel vivum vel in ventre nurus suae constitutum, deliberante vero scripto herede filius decesserit, nulla hereditatis petitione ex nomine de inofficioso constituta vel praeparata omne adiutorium nepotem dereliquit. nec enim pater nepoti aliquod ius, cum decesserit, contra patris sui testamentum dereliquit, quia postea et adita est ab extraneo hereditas et supervixit

[33][94] *The same Augustus to Demosthenes, Praetorian Prefect.* **pr.** If a person, by his will, leaves the greater part (of his estate) to one child, and a small part to another or others of his offspring – sufficient, however, to be the legal portion either as an inheritance, legacy, or testamentary trust, so that no complaint to have the will set aside as undutiful may be brought, and the person who receives the small portion from his progenitor decides to accept it, but the person receiving the larger portion – or all of them if more than one – fails to deliver the smaller portion immediately and without contention and delay, but awaits a courtroom confrontation, raises many and various contentions, and then after a long time only grudgingly delivers it pursuant to a judicial order, We shall meet his cruel conduct with proper punishment, so that he shall, if such events arise, be condemned to deliver not only the portion which the testator directed to be delivered, but also to return in any way possible one-third of such amount so left by the will in addition thereto, so that his avarice will meet with proper punishment; all other provisions in the testament or last will, however, must be carried into effect, according to the tenor thereof.

1. We also make the following just provision and eliminate by its roots an iniquity contained in the ancient law, so that the law need no longer blush by reason of a statement which Julius Paulus makes in his *Questions*. For when he wrote that an infant cannot be called ungrateful by its mother and cannot, therefore, be disinherited by its mother unless it is done through hatred of her husband who is the father of the child, We, considering it unjust that one person should be wronged on account of hatred for another, ordain that such a situation shall be entirely nullified and in no way permitted to be set up, not only concerning infants, but also concerning all children of whatever age, since the mother can leave the inheritance to the child upon condition that it is to be emancipated and can thus at the same time punish the hatred of the father, without hurting the right of her child and violating her own nature. For it appears cruel to Us that a child who does not feel so, should be considered ungrateful.

Given September 17, at Chalcedon, in the consulship of the vir clarissimus *Decius (529).*

[34] *The same Augustus to John, Praetorian Prefect.* **pr.** If a testator disinherited his son, designating someone else as heir, but left a grandson through that son either living or confirmed as being in his mother's womb, and the son died while the designated heir was deliberating (whether to enter upon the inheritance or not) but before an action for the inheritance on the ground of the will's undutifulness had been commenced or prepared, the grandson had

[94] Combine with C. 5.9.10.

avo pater eius, ut neque ex lege Vellaea possit in locum patris sui succedere et rescindere testamentum. et hoc nonnulli iuris consulti in medio proponentes inhumane reliquerunt.

1. Sed nos, qui omnes subiectos nostros et filios et nepotes habere existimamus adfectione paterna et imitatione, secundum quod possibile est omnium commodo *pro*spicientes iubemus in tali specie eadem iura nepoti dari, quae filius habebat, et nisi praeparatio facta est ad inofficiosi querellam instituendam, tamen posse nepotem eandem causam proponere: et si non heres apertissimis probationibus ostenderit ingratum patrem nepotis circa testatorem fuisse, testamento remoto ab intestato eum vocari, nisi certa quantitas patri eius minor parte legitima relicta est: tunc etenim secundum novellam nostri numinis constitutionem repletio quartae partis nepoti superest, si qua patri eius competebat: et perfruatur nostro beneficio a vetustate quidem neglectus, a nostro autem vigore recreatus, nisi pater adhuc superstes vel repudiavit querellam vel quinquennium tacuit, scilicet post aditam hereditatem.

D. III k. Aug. Constantinopoli post consulatum Lampadii et Orestae vv. cc.

[35] *Idem A. Iohanni pp.* **pr.** Si quando talis concessio imperialis processerit, per quam libera testamenti factio conceditur, nihil aliud videri principem concedere, nisi ut habeat consuetam et legitimam testamenti factionem. neque enim credendum est Romanum principem qui iura tuetur huiusmodi verbo totam observationem testamentorum multis vigiliis excogitatam atque inventam velle everti.

(until now) no redress. Because the father of the grandson, when he died, left no right to his son to question the will of his father, because the designated heir entered upon the inheritance only subsequently, and because the father survived the grandfather, the grandson cannot, under the Vellaean law,[95] take the place of the father and annul the will. Some of the jurists have published on this subject but have left it in a crude shape.

1. But We, who think that all Our subjects have paternal affection for their sons, and a similar affection for their grandsons, and desirous as We are to look after the welfare of all as nearly as that is possible, order that in such a case the grandson shall have the same rights as the son, and even if no complaint of the will's undutifulness has been prepared, the grandson may nevertheless commence the same action. And unless the heir appointed by the will shows clearly that the father of the grandson was ungrateful toward the testator, the will shall be annulled and the grandson shall inherit as on intestacy, unless a certain amount, less than the legal portion, was left to the father; for in such a case, according to the recent constitution of Our Divine Majesty,[96] there is left to the grandson the right – if it was pertinent to his father – to have the fourth supplemented by other property to make up the legal portion; so that he, long neglected by the ancients, but provided for anew by Our living force, may enjoy Our benefaction, unless his father, then living, either refused to institute the complaint, or was silent for the period of five years, after the inheritance was entered upon.

Given July 30, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*[97]

[35][98] *The same Augustus to John, Praetorian Prefect.* **pr.** Whenever an imperial rescript is obtained by which freedom to make a will is granted, the Emperor is seen thereby to grant nothing more than the right of making it according to the customary and legal manner. For it is not to be thought that a Roman emperor, who preserves the laws, would wish by a pronouncement of this sort to overturn the entire formality, carefully thought out and realized during many vigils, of making wills.

[95] Blume: "The Vellaean law [more exactly, the Lex Iunia Vellaea of 28 CE] is discussed in D. 28.2.29. The law provided a method whereby descendants born after the will might be disinherited. In the foregoing case, the son had been disinherited, but the grandson evidently had not been, and should have been, in accordance with the Vellaean law, if the son had died before the death of the grandfather, because he would have occupied his father's place … But inasmuch as the son died after the death of the grandfather, no disinheritance under the Vellaean law was necessary."

[96] 30 above.

[97] Lounghis *et al.* date to July 29, 531.

[98] Combine with 36 below and C. 6.28.4.

1. Illud etiam sancimus, ut, si quis a patre certas res vel pecunias accepisset et pactus fuisset, quatenus de inofficiosi querella adversus testamentum paternum minime ab eo moveretur, et post obitum patris filius cognito paterno testamento non agnoverit eius iudicium, sed oppugnandum putaverit, vetere iurgio exploso huiusmodi pacto filium minime gravari secundum Papiniani responsum, in quo definivit meritis filios ad paterna obsequia provocandos quam pactionibus adstringendos. **1a.** Sed hoc ita admittimus, nisi transactiones ad heredes paternos filius celebraverit, in quibus apertissime iudicium patris agnoverit.

2. Et generaliter definimus, quando pater minus legitima portione filio reliquerit vel aliquid dederit vel mortis causa donatione vel inter vivos sub ea condicione, ut haec inter vivos donatio in quartam ei computetur, si filius post obitum patris hoc quod relictum vel datum est simpliciter agnoverit, forte et securitatem heredibus fecerit quod ei relictum est accepisse, non adiciens nullam sibi superesse de repletione quaestionem, nullum filium sibi facere praeiudicium, sed legitimam partem repleri, nisi hoc specialiter sive in apocha sive in transactione scripserit vel pactus fuerit, quod contentus relicta vel data parte de eo quod deest nullam habet quaestionem: tunc etenim omni exclusa querella paternum amplecti compellitur iudicium.

3. Quae omnis sanctio suas radices extendat non solum ad filium vel filiam, sed etiam ad omnes personas, quae de inofficioso querellam contra mortuorum ultima elogia possunt movere.

D. k. Sept. Constantinopoli post consulatum Lampadii et Orestae vv. cc.

[36] *Idem A. Iohanni pp.* **pr.** Scimus ante constitutionem fecisse, qua cautum est, si pater minorem debita portionem filio suo reliquisset, omnimodo, etsi non adiciatur viri boni arbitratu repleri filio, attamen ipso iure inesse eandem repletionem. **1.** Quaerebatur itaque, si quis rem donatam vel inter vivos vel mortis causa vel in testamento relictam agnoverit et pro parte sua habuerit, deinde eadem res evicta vel tota vel pro parte fuerit, an debeat ex nostra constitutione pars legitima post

1. We ordain, also, putting to an end an ancient dispute, that if any one had received and agreed to specified property or money from his father under an agreement not to bring a complaint to set aside the father's will as undutiful, and the son, after his father's death and after learning of his father's will, fails to acknowledge it as valid, but thinks of having it attacked, his (previous) agreement shall not hinder him, in accord with a response of Papinian, in which he says that duty toward fathers (*paterna obsequia*) must be instilled in sons by deserving acts rather than by making such agreements binding. **1a.** But We hereby permit this measure only upon condition that the son has not settled with the heirs appointed in the will, through which he overtly ratified the paternal act.

2. And We provide, generally, that whenever a father has left less than the legal portion to his son, or has given him a gift in anticipation of death (*donatio mortis causa*), or as one between the living (*donatio inter vivos*) upon condition that such a gift between the living should be counted as part of his birthright portion, and if the son, after his father's death, merely receives what has been left or given to him, and has, perchance, given a receipt to the heirs that he has received what has been left to him, without adding that there is no question of his legal portion being supplemented, then he shall not be prejudiced. But his legal portion shall be supplemented unless he has specially acknowledged or agreed in a receipt or in a settlement that he is content with what has been left or given him and that there is no question of a deficiency due him; in that case indeed every complaint is barred and he is compelled to abide by his father's will.

3. This law extends its purview not to only to a son or daughter, but also to all other persons who are able to bring a complaint to set aside a will as undutiful.

Given September 1, at Constantinople, in the post-consulship of the viri clarissimi *Lampadius and Orestes (531).*

[36][99] *The same Augustus to John, Praetorian Prefect.* **pr.** We know that We earlier enacted a constitution providing that if a father should leave less than the legal portion to his son, then though it has not been stated that the deficiency should be supplied by the standards of an upright man, nevertheless that same compensation for such a deficiency is, in all cases, part of that very law. **1.** Hence, it has been asked whether, if a person has acknowledged and accepted as his portion a gift between the living (*inter vivos*) or one in anticipation of death (*mortis causa*) or one made by will, but was then legally evicted from all or part thereof, the deficiency in the birthright portion should, after the eviction, be supplied according to Our constitution; or, if legacies, testamentary requests or

[99] Combine with 35 above, and C. 6.28.4. The *principium* alludes to 30 above.

evictionem suppleri: vel si ex lege Falcidia minuantur legata vel fideicommissa vel mortis causa donationes, debet tamen ex hoc casu supplementum introduci: ne, dum totam Falcidiam accipere heres nititur, etiam totum commodum hereditatis amittat.

1a. Sancimus itaque in omnibus istis casibus, sive in totum evictio subsequatur sive in partem, emendari vitium et vel aliam rem vel pecunias restitui vel repletionem fieri, nulla Falcidia interveniente, ut, sive ab initio minus fuerit derelictum sive extrinsecus qualiscumque causa interveniens aliquod gravamen imponat vel in quantitate vel in tempore, hoc modis omnibus repleri et nostrum iuvamen purum filiis inferri. **1b.** Repletionem autem fieri ex ipsa substantia patris, non si quid ex aliis causis filius lucratus est vel ex substitutione vel ex iure adcrescendi, puta usus fructus: humanitatis etenim gratia sancimus ea quidem omnia quasi iure adventicio eum lucrari, repletionem autem ex rebus substantiae fieri. **1c.** Cum autem quis extraneo herede instituto filio suo restituere eum hereditatem suam, cum moriatur, disposuerit, vel in tempus certum restitutionem distulerit, quia nostra constitutio, quae antea posita est, omnem dilationem omnem moram censuit esse abstrahendam, ut quarta pars pura et mox filio restituatur, in huiusmodi specie quid faciendum sit, dubitabatur. **1d.** Sancimus itaque quartae quidem partis *restitut*ionem iam nunc celebrari non expectata nec morte heredis nec temporis intervallo, reliquum autem, quod post legitimam portionem restat, tunc restitui, quando testator disposuit. **1e.** Sic etenim filius suam habebit portionem integram et qualem leges et nostra constitutio definivit, et scriptus heres commodum quod ei testator dereliquit cum legitimo moderamine sentiet.

2. Illud praeterea sancimus, ut tempora de inofficiosi querellae ab adita hereditate secundum Ulpiani opinionem currant, Herennii Modestini sententia recusata, qui a morte testatoris ilico cursum de inofficioso querellae temporibus dabat, ut non liceat heredi quando voluerit adire, ne per huiusmodi tramitem iterum filius defraudetur debito naturali. **2a.** Sancimus itaque, ubi testator decesserit alio scripto herede et speratur de inofficioso querella, necessitatem habere scriptum heredem, si quidem praesto est in eadem commanens provincia, intra sex mensuum spatium, sin autem seorsum utraque pars in diversis provinciis degit, tunc intra annale tantummodo spatium simili modo per continuum a morte testatoris numerandum omnimodo

gifts in anticipation of death are diminished by reason of the Falcidian law, the deficiency should nevertheless also be supplied in such a case – lest while the heir is trying to receive the whole Falcidian fourth, he (the son) might lose all the benefit of his inheritance.

1a. We accordingly ordain that in all such cases, whether the withholding takes place as to all or part of the property, the loss shall be made up, and other property or money shall be supplied, or the deficiency shall be made up, without regard to the Falcidian law, so that whether less than the legal portion was left in the beginning or some outside intervening cause burdens the legal portion, either in quantity or by time (of delivery), all this shall be made up, and Our help (through the law) is extended to the sons without burdens attached thereto. **1b.** We ordain that the deficiency shall be supplied, moreover, out of the property of the father, not out of the property which the son has acquired from any other source – either by reason of being substituted as heir for someone or by right of accrual, for instance, from usufruct; for We ordain, in the spirit of benevolence, that all these things shall be considered as outside gain, and the deficiency must be made good out of the principal of the property (of the father). **1c.** In view of the fact that Our constitution previously enacted forbids all delay and provides that a fourth (the legal portion) shall be turned over to his son (the son of the deceased) without burden to him and quickly, it has been questioned what is to be done if a testator designates a stranger as his heir, but provides further that in case of the stranger's death, the inheritance shall be turned over to the son, or that this shall be done at a certain time. **1d.** We accordingly ordain that the legal fourth shall be delivered immediately, without waiting for the death of the heir or the lapse of time, but that the remainder over and above such legal portion shall be delivered at the time the testator has directed. **1e.** For thus the son will have his portion undiminished and as the laws and Our constitution have defined, and the designated heir will enjoy the benefaction left him by the testator within legal limits.

2. We also ordain that the time for commencing a complaint against an undutiful will shall run from the time of (the designated heir) entering upon the inheritance, in accordance with the opinion of Ulpian, but against that of Herennius Modestinus, who proposed that the time for the complaint would run from the death of the testator and that the designated heir may not enter upon the inheritance when he pleases and again through that process defraud the son out of the property naturally due to him. **2a.** And so We ordain that when the testator has died, having appointed a stranger as heir, and the son is awaiting the time to bring a complaint to set the will aside as undutiful, the designated heir must, if he is present and living in the same province, within six months enter upon the inheritance or make known his sentiment to the contrary, or if both parties live in different provinces, do likewise within an

adire huiusmodi hereditatem, vel manifestare suam sententiam, quod hereditatem minime admittit: expeditus etenim ita tractatus inducitur filio memoratam movere querellam: sin vero scriptus heres intra statuta tempora minime adierit, per officium quidem iudicis scriptum compelli hoc facere. **2b.** In medio tamen, id est a morte quidem testatoris, ante aditam autem hereditatem, etsi decesserit filius, huiusmodi querellam, licet non se praeparaverit, ad suam posteritatem transmittet, ad extraneos vero heredes tunc tantummodo, quando antiquis libris insertam faciat praeparationem.

D. k. Sept. Constantinopoli post consulatum Lampadii et Orestae vv. cc.

[37] *Idem A. Iohanni pp.* **pr.** Cum antiquis legibus declaratum est, ut militaria testamenta de inofficioso querellam evadant, multi alii casus emergunt, in quibus dubitationes exortas sopiri necesse est. **1.** In castrensibus etenim peculiis introducta est et alia subdivisio et peculii triplex invenitur causa. vel enim paganum est peculium vel castrense vel quod medietatem inter utrumque obtinet, quod quasi castrense nuncupatur. **1a.** In tali igitur peculio, quod quasi castrense appellatur, quibusdam personis licentia conceditur condere quidem testamenta, sed non quasi militibus quo voluerint modo, sed communi et licito et consueto ordine observando, quemadmodum constitutum fuerat in consulibus et praefectis legionum et praesidibus provinciarum et omnibus generaliter, qui in diversis dignitatibus vel administrationibus positi a nostra consequuntur manu vel ex publicis salariis quasdam largitates. **1b.** Sed hae quidem personae testamenti faciendi habent potestatem in ipsis tamen tantummodo peculiis, quae iam enumerata sunt, id est quasi castrensibus. **1c.** Sed et veterani, qui tempore quidem militiae sibi peculium adquisierunt, militiam autem deposuerunt, testari (licito tamen modo) non prohibentur.

1d. In his itaque omnibus quasi castrensibus peculiis dubitabatur, si contra huiusmodi testamenta de inofficioso querellam extendi oportet. **1e.** Sed prior quaestio erat, si omnes qui quasi castrense peculium habent testari in hoc possint, quia non omnibus passim, sed quibusdam personis hoc privilegii loco concessum est: quia militibus quidem et veteranis testamenta facere in castrensi peculio undique concessum fuerat, sed militibus quidem in expeditione constitutis iure suo, veteranis autem iure communi: de aliis autem personis omnibus, quae non per speciale privilegium hoc acceperunt, si possint testari, dubitatum fuerat, ut puta viris disertissimis patronis causarum virisque devotissimis

uninterrupted year from the death of the testator; thus the way will be opened for the son to commence his above-mentioned action. But if the designated heir fails to enter upon the inheritance within the time specified, he will be compelled to do so by the official staff of the judge. **2b.** If the son dies in the meantime, that is, after the testator's death and before the inheritance is entered upon, such an action, though not prepared in the son's lifetime, he should pass on to his offspring; but in the case of heirs that are strangers, he may do so (only) when he has prepared for such an action according to the provisions of the ancient laws.

Given September 1, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[37][100] *The same Augustus to John, Praetorian Prefect.* **pr.** Since it is declared in ancient laws that military wills (*testamenta militaria*) are exempt from being attacked as undutiful, many cases have come up in which a doubt that has arisen must be settled. **1.** For a subdivision had been added to military *peculia*, and there are in fact three kinds of *peculium*. It is either non-military or military, or – a class between the two – called quasi-military. **1a.** As to the *peculium* called quasi-military, certain persons are permitted to make wills, not like soldiers in any manner they please, but in the ordinarily permitted and customary manner, as has been provided in the case of Consuls, Prefects of the Legions, governors, and all others who are placed in various ranks and offices and receive emoluments either at Our hands or from public salaries. **1b.** Such persons may make testamentary disposition only of the *peculium* already mentioned, namely the quasi-military property. **1c.** Veterans, too, who acquired *peculium* during the time of service, but who have left the service, are not forbidden to thus dispose of their property by a lawfully executed will.

1d. Now in these cases involving a quasi-military *peculium* doubts have arisen whether the complaint to set aside a will as undutiful should be permitted. **1e.**[101] But a question to be answered first was whether all persons who have such a quasi-military *peculium* might thus dispose of it, since this privilege was not granted indiscriminately to everyone, but only to certain individuals. All soldiers and veterans had the right to dispose of their soldier's *peculium* – but soldiers on active service (could do so) in any manner they pleased, and veterans by the usual will. But whether other persons could do so, unless they received a special privilege, has been doubted – for instance, whether Our most learned advocates, the most dedicated clerks in the bureaus, imperial messengers, and also teachers of the liberal arts, chief physicians as well, and all others, in a word, those who receive public salaries or stipends, could do

[100] Combine with C. 1.3.49 and 1.5.22.
[101] Sections 1e–1f are epitomized in C. 6.22.12.

memorialibus et agentibus in rebus nec non magistris studiorum liberalium, archiatris quoque et omnibus omnino, qui salaria vel stipendia percipiunt publica. **1f.** In his itaque omnibus sancimus, quia ad imitationem peculii castrensis quasi castrense peculium supervenit, omnibus, qui tale peculium possident, super ipsis tantummodo rebus, quae quasi castrensis peculii sunt, ultima condere (secundum leges tamen) posse elogia: hoc nihilo minus eis addito privilegio, ut neque eorum testamenta de inofficioso querella expugnentur. **1g.** Si enim patronus adversus res, quas libertus eius ex castris quaesivit sui iuris indubitanter constitutus, praeteritus fuerit ab ingrato liberto, tamen contra eiusmodi peculium contra tabulas bonorum possessionem non habet secundum veterum legum sanctionem, quemadmodum oportet praefata peculia, quae ad instar castrensis peculii introducta sunt, de inofficioso querellae esse supposita?

2. Sed haec obtinere oportet, donec in sacris parentum suorum constituti sunt hi qui quasi castrense peculium possident. si enim sui iuris efficiantur, procul dubio est eorum testamenta et pro ipsis rebus, quas antea ex quasi castrensi peculio habebant, posse de inofficioso querellam sustinere, cum neque nomen peculii permanet, sed aliis rebus confunditur et similem fortunam recipit, quemadmodum et ceterae res eorum, et unum congregatur ex omnibus patrimonium.

D. k. Sept. Constantinopoli post consulatum Lampadii et Orestae vv. cc.

XXVIIII De Inofficiosis Donationibus

[1] *Imp. Philippus A. Nicanori et Papinianae.* Si, ut adlegatis, mater vestra ad deludendam inofficiosi querellam paene universas facultates suas, dum ageret in rebus humanis, factis donationibus sive in quosdam liberos sive in extraneos exhausit ac postea vos ex duabus unciis fecit heredes easque legatis et fideicommissis exinanire gestivit, non iniuria iuxta formam super inofficioso testamento constitutorum subveniri vobis utpote quartam partem non habentibus desideratis.

PP. XIIII k. Sept. Philippo A. et Titiano conss.

[2] *Impp. Valerianus et Gallienus AA. Aetiae.* Pater si omne patrimonium suum impetu quodam immensae liberalitatis in filium effudit, aut in potestate is permansit, et arbitri familiae erciscundae officio congruit, ut tibi quartam debitae ab intestato portionis praestet incolumem,

so. **1f.** We ordain in regard to all these that since quasi-military *peculium* has arisen following the pattern of military *peculia*, for all persons who have such a *peculium*, with respect only to that property which is quasi-military, they may dispose of it in lawful manner by a last will; they are nevertheless granted the additional privilege that their wills may not be attacked as undutiful. **1g.** For if a patron had been overlooked by his ungrateful freedman who is certainly *sui iuris* and whose property, according to the ancient laws, came from his military duty, and he (the patron) nevertheless has no right of possession of the inheritance contrary to the will of such freedman, why should the aforesaid *peculium* introduced on the pattern of the military *peculium* be subjected to complaint concerning undutiful wills?

2. But these provisions may apply only as long as persons who have quasi-military *peculium* are in the power of their parents. For when they become *sui iuris*, there is no doubt that their wills, even as to that *peculium* which they previously acquired as quasi-military, can be subject to complaint concerning undutiful wills, since then the name of "*peculium*" no longer applies, but such property then is intermingled with, and is subject to the same conditions as, the remainder of their property, and becomes one and the same property.

Given September 1, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

Twenty-Ninth Title Undutiful Gifts

[1] *Emperor* P*HILIP Augustus to Nicanor and Papiniana.* If, as you allege, your mother, in order to frustrate a complaint seeking to have her will set aside as undutiful, during her lifetime almost exhausted all her property by making gifts either to certain of her children or to strangers, and afterwards made you heirs to two-twelfths of her property and wanted to reduce that to nothing through legacies and testamentary requests, you do not unjustly desire to be aided by the provisions of the constitutions made concerning undutiful wills, as not having received your legal portion.

Posted August 19, in the consulship of Philip Augustus and Titianus (245).

[2] *Emperors* V*ALERIAN and* G*ALLIENUS Augusti to Aetia.* If your father, by some impulse of extravagant generosity, gave all his property to his son, the latter either remained in the power of his father, in which case, in an action to divide, it behooves the judge to divide the property in such a way that you fully receive the fourth of the portion due on intestacy; or the son is emancipated, in which case, since a gift requires no outside help but is supported by its own

aut emancipatus fuerit, et, quia donatio non indiget alieno adminiculo, sed suis viribus nititur, iuxta constitutiones is qui provinciam regit ad similitudinem inofficiosi querellae auxilium tibi aequitatis impertiet.

PP. VI k. Aug. Maximo II et Glabrione conss.

[3] *Idem AA. Aeliano.* Precibus quidem tuis proposita rescripta eos parentes denotant, qui, cum testamento facto vivi patrimonium suum immensis donationibus exinanissent, inane nomen heredum liberis reliquissent. sed ad intestatos quoque eadem ratio aequitatis extenditur.

PP. X k. Nov. ipsis IIII et III AA. conss.

[4] *Impp. Diocletianus et Maximianus AA. Calpurniae Aristaenetae.* Si filius tuus immoderatae liberalitatis effusione patrimonium suum exhausit, praesidis provinciae auxilio uteris, qui discussa fide veri, si in integrum restitutionem ex filii persona competere tibi ob improbabilem donationis enormitatem animadverterit, in removendis his quae perperam gesta sunt tibi subveniet. ideoque non est tibi necessarium adversus immodicas donationes auxilium ad instar inofficiosi testamenti.

PP. IIII id. Febr. Mediolani Maximo II et Aquilino conss.

[5] *Idem AA. Cottabeo.* Si totas facultates tuas per donationes vacuefecisti, quas in emancipatos filios contulisti, id, quod ad submovendas inofficiosi testamenti querellas non ingratis liberis relinqui necesse est, ex factis donationibus detractum, ut filii vel nepotes, qui postea ex quocumque legitimo matrimonio nati sunt, debitum bonorum subsidium consequantur, ad patrimonium tuum revertetur.

D. II k. Mart. Maximo II et Aquilino conss.

[6] *Idem AA. Demetrianae.* Cum donationibus in fratrem tuum collatis facultates patris tui exhaustas esse eundemque patrem vestrum ea quae superfuerant codicillis inter vos divisisse proponas, si voluntatem eius non agnovisti nec beneficio aetatis adversus haec iuvari poteris nec

strength (i.e., it requires no confirmation), the governor will, according to the constitutions, extend equitable relief following the pattern of a complaint to set a will aside as undutiful.[102]

Posted July 27, in the consulship of Maximus, for the second time, and Glabrio (256).

[3] *The same Augusti to Aelianus.* The rescripts issued in answer to your petition specify only those parents who, after making a will, exhausted their property during their lifetime by large gifts, leaving to the children the meaningless name of heir. The same principle of equity extends also to parents who die intestate.

Posted October 23, in the consulship of the Augusti themselves, Consuls for the fourth and third times, respectively (257).

[4][103] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Calpurnia Aristaeneta.* If your son exhausted his property through extravagant and lavish generosity, you may call the governor to your aid; and if on investigation of the basis of truth he finds that you, through your son, should have restitution of your rights as to the unreasonably large gifts, he will aid you by annulling the wrongful acts.[104] Hence, for the purpose of setting the immoderate gifts aside, you need no action similar to that of setting a will aside as undutiful.

Posted February 10, at Milan, in the consulship of Maximus, for the second time, and Aquilinus (286).

[5] *The same Augusti to Cottabaeus.* If you exhausted all your property through gifts you made to your emancipated sons, then whatever is required for forestalling the complaints of your children, who are not ungrateful, to set the will aside as undutiful, will be taken from the gifts made and returned as part of your property, so that your sons and grandsons, thereafter born in lawful marriage, may receive the amount legally due them from your property.

Given February 28, in the consulship of Maximus, for the second time, and Aquilinus (286).

[6] *The same Augusti to Demetriana.* When you say that the property of your father was exhausted through gifts made to your brother, and that he divided the remainder between you both in a codicil (to his will), then, if you have not recognized his will as valid, and you are unable to avail yourself of the right of

[102] Gifts to unemancipated sons were generally invalid (C. 8.53.11), while gifts to emancipated sons were valid (C. 8.53.17).

[103] = *Frag. Vat.* 282; combine with C. 8.53.6.

[104] The son, being a minor, could have brought an action for *restitutio in integrum*.

tantum dos a patre data et fideicommissum continent, quantum ad submovendam querellam sufficiat, de enormitate donationum ad exemplum inofficiosi testamenti praeses provinciae iurisdictionis suae partes exhibebit.

PP. VI k. Mai. conss. ut supra.

[7] *Idem AA. Aurelio Ammiano.* Si mater tua ita patrimonium suum profunda liberalitate in fratrem tuum evisceratis opibus suis exhausit, ut quartae partis dimidium, quod ad excludendam inofficiosi testamenti querellam adversus te sufficeret, in his donationibus quas tibi largita est non habeas, quod immoderate gestum est revocabitur.

PP. V id. Mai. Maximo II et Aquilino conss.

[8] *Idem AA. Auxanoni.* **pr.** Si liqueat matrem tuam intervertendae quaestionis inofficiosi causa patrimonium suum donationibus in unum filium collatis exhausisse, cum adversus eorum cogitationes, qui consiliis supremum iudicium anticipare contendunt et actiones filiorum exhauriunt, aditum querellae ratio deposcat, quod donatum est pro ratione quartae ad instar inofficiosi testamenti convicti deminuetur. **1.** Nam quod uxor a marito in se matrimonii tempore donationis causa collatum emancipato filio communi consentiente domino donavit, velut ex bonis patris, de cuius substantia prohibente matrimonio non potuit exire, datum accipi rationis est: in cuius bonis si idem consilium et eventus comprehendatur, lex, quam patrimonio matris ediximus, observabitur.

PP. III id. Sept. CC. conss.

[9] *Imp. Constantius A. Olybrio.* Non convenit dubitari, quod immodicarum donationum omnis querella ad similitudinem inofficiosi testamenti legibus fuerit introducta et sit in hoc actionis utriusque vel una causa vel similis aestimanda vel idem et temporibus et moribus.

D. XIIII k. Iun. Tauro et Florentio conss.

minority in these matters (since *restitutio in integrum* is inapplicable), and the dowry given you and the testamentary trust provided for you in the codicil are insufficiently large to remove your right of complaint over undutifulness, the governor will grant you an action against such gifts, following the pattern of a complaint for setting undutiful wills aside.

Posted April 26, in the consulship as above (286).

[7] *The same Augusti to Ammianus.* If your mother dissipated her property and bled dry her resources through her extravagant generosity to your brother, so that the gifts made to you do not amount to half of the fourth (the legal portion) – the amount that would be sufficient to exclude you from a complaint to set a will aside as undutiful – then her unlawful acts will be annulled.

Posted May 11, in the consulship of Maximus, for the second time, and Aquilinus (286).

[8] *The same Augusti to Auxano.* **pr.** If it seems clear that your mother, in order to frustrate a complaint to set her will aside as undutiful, exhausted her property by making gifts to one son, then, since justice demands (that you have) permission to complain against the plans of those who by their intrigues hasten to anticipate a last will and testament and take rights of action away from sons, the law will require you entering upon a complaint, namely that the gifts be diminished as the legal portion may require, following the pattern of a case in which a will is shown to be undutiful. **1.** For the property which a wife, with the consent of the husband, gives to their common and emancipated son out of the property given to her by her husband as a gift during the time of the marriage, must rightly be considered as property given (to the son) from the husband's estate, from the substance of which it could not depart (into the wife's) on account of the marriage. If, however, the same (cunning) plan and result is discovered in connection with the husband's property, the same law is applicable as that which applies to the property of the mother.

Posted September 11, in the consulship of the Caesars (294).

[9][105] *Emperor* C*onstantius* *Augustus to Olybrius.* There is no doubt that the action concerning immoderate gifts has been introduced into the laws following the pattern of laws regarding undutiful wills, and in this respect both actions must be deemed as one or similar or the same, both as to time and conditions.

Given May 19, in the consulship of Taurus and Florentius (361).

[105] = C.Th. 2.20.1; combine with C.Th. 2.19.4.

XXX De Inofficiosis Dotibus

[1] *Imp. Constantius A. ad Maximum praesidem Ciliciae.* Cum omnia bona a matre tua dote dicantur exhausta, concordare legibus promptum est, ut ad exemplum inofficiosi testamenti adversus dotem immodicam exercendae actionis copia tribuatur et filiis conquerentibus emolumenta debita deferantur.

D. XIIII k. Ian. Sirmio Datiano et Cereale conss.

XXXI De Petitione Hereditatis

[1] *Imp. Titus Aelius*[vi] *Antoninus A. Augurino proconsuli Africae.* **pr.** Senatus consultum auctore divo Hadriano avo meo factum, quo cautum est, quid et ex quo tempore evicta hereditate restitui debeat, non solum ad fisci causas, sed etiam ad privatos hereditatis petitores pertinet. **1.** Usuras vero pecuniarum ante litis contestationem ex die venditionis hereditariarum rerum ab eo factae qui antea possidebat collectas nec non etiam fructus bonae fidei possessores reddere cogendi non sunt, nisi ex his locupletiores extiterunt. **2.** Post litem autem contestatam tam fructus non venditarum rerum, non solum quos perceperunt, sed etiam quos percipere poterant, quam usuras pretii rerum ante litis contestationem venditarum ex die contestationis computandas omnimodo reddere compellantur.

PP. VI k. Febr. Claro et Cethego conss.

[2] *Impp. Severus et Antoninus AA. Marcello militi.* **pr.** Si post motam controversiam Menecratis bonorum partem dimidiam Musaeus ab herede scripto quaestionis illatae non ignarus comparavit, tam ipse quasi malae fidei possessor quam heredes eius fructus restituere coguntur. **1.** Si vero venditionem lite antiquiorem esse liquido probaretur, ex

[vi] [Titius Aelius]

Thirtieth Title Undutiful Dowries

[1][106] *Emperor CONSTANTIUS Augustus to Maximus, Governor of Cilicia.* Since all your mother's property is said to be exhausted by dowry gifts, it is clearly consonant with the laws that, on the pattern of actions for setting aside wills as undutiful, an opportunity should be afforded to bring an action against immoderate dowry gifts, and that the amounts owed to the complaining sons should be paid to them.

Given December 19, at Sirmium, in the consulship of Datianus and Cerealis (358).

Thirty-First Title The Action for an Inheritance[107]

[1] *Emperor ANTONINUS to Augurinus, Proconsul of Africa.* **pr.** The decree of the Senate, made at the instance of my grandfather the deified Hadrian, which sets forth the property of which restitution must be made (by a defendant to the person successfully seeking an inheritance) in case of eviction from the inheritance, and from what point in time forward, pertains not only to Treasury cases, but also to private claimants.[108] **1.** But bona fide possessors will not be compelled to turn over (to the true heir) interest collected, from the date of a sale before joinder of issue, on the (purchase) money of inheritance property that was sold by the prior possessor, nor fruits (gathered by them before joinder of issue) unless they became richer thereby. **2.** But after joinder of issue, not just the fruits from items not sold – those that were received and that could have been received – but also interest on money received from sale of property before joinder of issue, computed from the day of the joinder, must be paid over (to the true heir).

Posted January 27, in the consulship of Clarus and Cethegus (170).

[2] *Emperors SEVERUS and ANTONINUS Augusti to Marcellus, a soldier.* **pr.** If, after the start of a dispute, Musaeus bought half of the property of Menacrates from the heir appointed in his will, and he knew about the commencement of the action (brought by the claimant of the inheritance), he (Musaeus) and his heirs will (if the suit is successful) be compelled, as possessors in bad faith, to restore the fruits thereof. **1.** If, however, it is clearly shown that the sale took place before the litigation, then the fruits must be restored (to the true heir)

[106] = C.Th. 2.21.1.

[107] *Petitio hereditatis*; see D. 5.3. The plaintiff in this action is seeking to enforce rights as an heir (whether testate or intestate), against a current possessor of an estate who may or may not claim to possess the estate as its heir.

[108] This refers to the *SC Iuventianum*, of 129 CE, which distinguished between possession in good faith and possession in bad faith.

eo die fructus restituantur, ex quo lis in iudicium deducta est. fructibus enim augetur hereditas, cum ab eo possidetur, a quo peti potest. **2.** Emptor autem, qui proprio titulo possessionis munitus non est, etiam singularum rerum iure convenitur.

D. k. Iul. Severo A. II et Victorino conss.

[3] *Idem AA. Epictae.* Hereditas materterae petita non infringit alterius hereditatis petitionem, quae venit ex alia successione. sed et si quaestionis titulus prior inofficiosi testamenti causam habuisset, iudicatae rei praescriptio non obstaret eandem hereditatem ex alia causa vindicanti.

PP. V id. Aug. Geta II cons.

[4] *Imp. Antoninus A. Vitaliano.* In restituenda hereditate compensatio eius habebitur, quod te in mortui infirmitate in sumptumque funeris bona fide ex proprio tuo patrimonio erogasse probaveris.

PP. VII k. Mart. Antonino A. IIII et Balbino conss.

[5] *Idem A. Postumianae.* De hereditate, quam bona fide possidebas, si contra te pronuntiatum est, in restitutione eius detrahetur, quod creditoribus eiusdem hereditatis exsolvisse te bona fide probaveris: nam repeti a creditoribus, qui suum receperint, non potest.

PP. VI k. Iun. Antonino A. IIII et Balbino conss.

[6] *Imp. Alexander A. Firmino.* Si putas non iure tutores datos nepotibus tuis, quod eos dicas in potestate tua esse, petere ab his hereditatem filii tui emancipati non moreris, cuius commodum ad te pertinere dicis, iudice statuturo, an a praesidalibus actis discedendum sit, qui eis tutores dedit, cum in tua potestate negarentur esse.

PP. X k. Iul. Iuliano et Crispino conss.

from the time that the litigation was brought to court (i.e., from joinder of issue). For an inheritance is augmented by the fruits if possessed by a person from whom it may be claimed (by an action for the inheritance). **2.** A buyer, moreover, who has no independent title, may also rightly be sued according to the rule governing specific pieces of property.

Given July 1, in the consulship of Severus Augustus, for the second time, and Victorinus (200).

[3] *The same Augusti to Epicta.* An action for the inheritance from a maternal aunt does not prevent an action for another inheritance which stems from a different succession.[109] And if a prior action has been brought to set a will aside as undutiful, the defense of *res iudicata* does not stand in the way of a claimant claiming the same inheritance upon some other ground.

Posted August 11, in the consulship of Geta, for the second time (205).

[4] *Emperor* ANTONINUS *Augustus to Vitalianus.* In restoring an inheritance (recovered from you by the true heir), you have an offset for the expenses that you claim you paid in good faith from your own property for the sickness of the deceased and for his funeral expenses.

Posted February 23, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[5] *The same Augustus to Postumiana.* If judgment is pronounced against you to restore an inheritance which you possessed in good faith, you will be allowed to deduct the amount which you show you paid out in good faith to the creditors of the inheritance; for creditors who have received what is theirs cannot be compelled to repay.

Posted May 27, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[6] *Emperor* ALEXANDER *Augustus to Firminus.* If you think that the *tutores* for your grandsons were not appointed legally because you say that they are in your power, do not delay to bring an action against them to recover the inheritance of your emancipated son, whose property you say belongs to you; and the judge will decide whether or not the order of the governor, who appointed the *tutores* when it was alleged that the grandchildren were not in your power, shall stand.[110]

Posted June 22, in the consulship of Julian and Crispinus (224).

[109] The claimant first sought to recover the inheritance from the aunt, apparently unsuccessfully, and then claimed the same inheritance again from a different heir.

[110] Blume: "In this case the grandfather had apparently emancipated his son, but retained the son's children in his paternal power, which he had a right to do. D. 1.7.28." Delay might imply that the grandfather had emancipated the grandsons: C. 8.46.1.

[7] *Impp. Diocletianus et Maximianus AA. et CC. Restitutae.* **pr.** Hereditatis petitionem, quae adversus pro herede vel pro possessore possidentes exerceri potest, praescriptione longi temporis non submoveri nemini incognitum est, cum mixtae personalis actionis ratio hoc respondere compellat. **1.** A ceteris autem tantum specialibus in rem actionibus vindicari posse manifestum est, si non agentis intentio per usucapionem vel longum tempus explosa sit.

PP. XI k. Aug. CC. conss.

[8] *Idem AA. et CC. Aurelio Asterio.* Liber nec ne fuerit testator, ante omnia disquiri debet, cum hereditas petatur.

D. III k. April. CC. conss.

[9] *Idem AA. et CC. Demophiliae.* Si scripti delatam sibi successionem cognati repudiaverunt et hanc honorario vel civili iure quaesiisti, res hereditarias, quae in eadem causa durant, hereditatis petitione vindicare potes.

D. III k. Dec. Nicomediae CC. conss.

[10] *Idem AA. et CC. Theodotiano.* Si filius familias delatam sibi hereditatem per longum tempus detinuit, eo ipso utpote agnita hereditate patri suo eius commodum adquisiisse videtur.

D. XIII k. Ian. CC. conss.

[11] *Impp. Arcadius et Honorius AA. Aeternali proconsuli Asiae.* Cogi possessorem ab eo qui expetit titulum suae possessionis edicere incivile est praeter eum, qui dicere cogitur, utrum pro possessore an pro herede possideat.

D. XII k. April. Constantinopoli Arcadio IIII et Honorio III AA. conss.

[7] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Restituta.* **pr.** It is not unknown to anyone that an action for an inheritance, which can be brought against persons in possession as heirs or as possessors, is not barred by the rule of long-term prescription (*praescriptio longi temporis*), since the nature of this action as a mixed action *in personam* (and *in rem*) requires that holding. **1.** It is clear, however, that in other cases only special actions claiming a certain thing (which was part of the inheritance) may be brought, provided that the purpose of the plaintiff is not barred by usucapion or by the rule of long-term prescription.

Posted July 22, in the consulship of the Caesars (294).[111]

[8][112] *The same Augusti and the Caesars to Aurelius Asterius.* When recovery of an inheritance is sought, the question which must be solved before all others is whether or not the testator was free.

Given March 30, in the consulship of the Caesars (294).

[9] *The same Augusti and the Caesars to Demophilia.* If the blood relatives designated as heirs in a will have refused the inheritance offered them, and you have sought it either through magisterial grant or civil law, in an action for the inheritance, you may recover the property belonging thereto which remains in the same situation (i.e., is still within the estate).

Given November 29, at Nicomedia, in the consulship of the Caesars (294).

[10] *The same Augusti and the Caesars to Theodotianus.* If an unemancipated son has held in his possession for a long period of time an inheritance left him, he appears by that very fact to have accepted the inheritance and acquired it for his father's benefit.

Given December 20, in the consulship of the Caesars (294).[113]

[11] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Aeternalis, Proconsul of Asia.* It is unjust that a person in possession should be compelled by one who sues him to set forth his title to the property, with the exception of a person who is compelled to answer whether he is in possession as heir or as possessor.

Given March 21, at Constantinople, in the consulship of Arcadius, for the third time, and Honorius, for the third time, Augusti (396).[114]

[111] Mommsen dates to July 22, 293.

[112] Combine with C. 6.59.4 and 7.16.27, and *Consultatio* 6.18 (which gives the nomen Aurelius).

[113] Mommsen dates to December 25, 294.

[114] Seeck dates this constitution to March 21, 402, when they were Consuls again, each for the fifth time.

[12] *Imp. Iustinianus A. Iohanni pp.* **pr.** Cum hereditatis petitioni locus fuerat, exceptio adsumebatur, quae tuebatur hereditatis petitionem, ne fieret ei praeiudicium. magnitudo etenim et auctoritas centumviralis iudicii non patiebatur per alios tramites viam hereditatis petitionis infringi.

1. Cumque multae varietates et controversiae veterum exortae sunt, eas certo fine concludentes sancimus, si quis hereditatis petitionem vel susceperit vel suscipere sperat vel movere, alius autem superveniens vel ex deposito vel commodato vel legato vel ex fideicommisso vel ex aliis causis inquietare vel reum vel agentem ex persona defuncti crediderit sibi esse necessarium, si quidem pro legato vel fideicommisso hoc faciat, rem expeditae quaestionis esse, cum possit scriptus heres cautione interposita non differre hanc petitionem, sed recte exigi vel legatum vel fideicommissum sub cautela vel satisdatione pro qualitate personarum, quod, si non obtinuerint eius iura, restituet legatarius vel fideicommissarius ei datam pecuniam cum usuris ex quarta centesimae parte currentibus, vel agrum cum fructibus quos percepit, vel domum cum pensionibus, scilicet in utroque eorum expensis antea necessariis et utilibus deductis: vel si ipse maluerit litem quidem contestari, expectare autem hereditatis petitionis eventum, hoc ei liceat facere, ut restitutio, si competeret, cum legitimis augmentis legatario vel fideicommissario accedat.

1a. Sin autem ex contractibus defuncti agatur contra possessorem hereditatis vel eius rei de qua agitur, si quidem res sint vel depositae vel commodatae vel pignori datae vel aliae quae extant, non differri sub praetextu hereditatis petitionis memoratum iudicium, quemadmodum, si pro fenerata pecunia vel alia personali actione agatur contra possessorem vel petitorem, non debet iudicium differri, sed exitum suum accipere.

1b. Postquam etenim hereditatis petitionis iudicium finem accipiat, tunc inter petitorem hereditatis et possessorem rationibus contractis non aliter possessor, si victus fuerit, hereditatem restituere compellitur,

[12] *Emperor Justinian Augustus to John, Praetorian Prefect.* **pr.** Whenever (under older civil procedure) there was a suitable occasion for a petition for an inheritance, an objection was used to protect the petition so that it would not be prejudiced. Indeed, the importance and authority of the centumviral court did not allow the path of an action for inheritance to be obstructed by any collateral action.[115]

1. But since many differences and controversies arose among the ancients, We, putting a definite end to them, ordain that if anyone has undertaken or expects to defend or bring such an action, but a third party comes along and believes it necessary for him to sue either the defendant or plaintiff representing the deceased either on account of a deposit, gratuitous loan, legacy, trust, or other matters, then, if indeed he undertakes this on account of a legacy or trust (to him), then there is opportunity for (going ahead with) a completed trial, since a designated heir could not forestall the claim when a bond has been given. But (We further ordain) that a legacy or trust can be rightly claimed if a bond is given with or without surety, according to the standing of the person, to the effect that if he (the person sued for the legacy or trust) fails in the action for the inheritance, the legatee or beneficiary of a the testamentary request will return the money that was paid him with a quarter part of the 12 percent annual interest, or restore that land, with its fruits, that he received, or the house with its rents – in either case deducting the necessary and useful expenses. But if the claimant (in the action for the legacy or trust) simply wants to have the issue joined, and then await the outcome of the action for the inheritance, he may do so, and thus have the legacy or trust, if it is due to him, together with the legal increase thereof, turned over to him (later).

1a. But if, from the deceased's contractual undertakings, a lawsuit is brought against the possessor of the inheritance or against the possessor of the property involved in the litigation, and if the property claimed consists of a deposit, gratuitous loan, pledge, or other similar existing property, then We ordain that the above-mentioned proceedings shall not be deferred on the pretext of the action for the inheritance, no more than when a suit for money loaned with interest or some other personal action is brought against the possessor or claimant of the inheritance, in which case the proceedings cannot be deferred, but must be prosecuted on to completion.

1b. Indeed, when a suit for an inheritance is ended, and the possessor is defeated, he will be compelled to restore the inheritance once a reckoning is made between the claimant and the possessor, and the former pays the latter for

[115] See D. 5.3.5.2. On legatees and trust beneficiaries, see D. 35.3.4.1 and 49.14.35; in classical law, they were required to provide security for return of the legacy depending on the outcome of the main trial, or to await that outcome.

nisi pro omnibus quae rite ab eo gesta sunt petitor ei satisfaciat. **1c.** Quod si petitor fuerit victus, simili modo a possessore iudicis officio ei satisfiat vel, si hoc fuerit praetermissum, negotiorum gestorum vel ex lege condictione.

2. Sin autem libertates vel a possessore vel a petitore fideicommissariae petantur vel directae ipso iure dicantur competere, annale tantummodo spatium expectetur a morte testatoris numerandum. **2a.** Et si quidem hereditatis petitionis iudicium intra id spatium terminum accipiat, secundum eventum iudicii et libertates vel effectum habeant vel evanescant. **2b.** Sin autem tempus annale emanaverit, tunc libertatis favore et humanitatis intuitu competant quidem directae libertates, ex fideicommissariis autem in libertatem servi eripiantur, ita tamen, si non falsum testamentum approbetur: sub ea scilicet condicione, ut, si actores sint vel alias ratiociniis suppositi, et postquam perveniant in libertatem, necessitas eis imponatur res hereditarias et rationes reddere: iure patronatus videlicet competente ei, qui ex legibus ad id possit vocari.

3. Illo, ne in posterum dubitetur, observando, ut et ipsa hereditatis petitio omnimodo bonae fidei iudiciis connumeretur.

D. k. Sept. Constantinopoli post consulatum Lampadii et Orestae vv. cc.

XXXII De Rei Vindicatione

[1] *Impp. Severus et Antoninus AA. Caeciliae.* **pr.** Etiam per alienum servum bona fide possessum ex re eius qui eum possidet vel ex operis servi adquiri dominium vel obligationem placuit. quare tu quoque si bona fide possedisti eundem servum et ex nummis tuis mancipia eo tempore comparavit, potes secundum iuris formam uti defensionibus tuis. **1.** Mancipium autem alienum mala fide possidenti nihil potest adquirere, sed qui tenet non tantum ipsum, sed etiam operas eius nec non ancillarum partum et animalium fetus reddere cogitur.

PP. III non. Mai. Eboraci Faustino et Rufo conss.

everything rightly done by the latter in connection with the inheritance. **1c.** But if the claimant is defeated, by order of the judge the possessor must, in like manner, make satisfaction to him (if he was sued in an independent action), and if this (the order) was omitted, then (satisfaction should be made) by (an action on) management of affairs (*negotiorum gestio*) or for restitution on the basis of law.

2. But if, however, manumissions from testamentary requests are claimed from the possessor or claimant of the inheritance, or direct manumissions are said to be legally due, the wait shall be no longer than a year from the testator's death. **2a.** If indeed the action for the inheritance comes to judgment within that period of time, the manumissions shall be effective or ineffective according to the outcome of the suit. **2b.** But if the period of one year elapses (without the ending of the suit), then, out of favor for freedom (*libertatis favor*) and consideration for justice, the direct manumissions shall be in force, and the slaves mentioned in the trusts shall have freedom, provided, however, that the will is not proven to be forged, and provided further, that if such slaves have acted as managers or have otherwise been put in charge of accounts, they must, after they receive their liberty, surrender the property belonging to the inheritance which was in their charge and must render an account; and the rights of patron shall be due to the person who can legally be called to this (status).

3. It must be borne in mind also, so no doubt may exist in the future, that the action for an inheritance shall be classed absolutely as one of good faith.

Given September 1, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

Thirty-Second Title The Action for Recovery of Owned Property[116]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Caecilia.* **pr.** It has been determined that ownership and obligations may be acquired through another person's slave, possessed in good faith, either through the property belonging to the slave's possessor or by means of the slave's work. Therefore if you possessed this slave in good faith and during that time he purchased some other slaves for you with your money, you too can defend yourself according to the legal rule. **1.** However, a person who possesses a slave in bad faith can gain nothing thereby, but is compelled to surrender not only the slave himself, but also the fruits of his work, (as well as) the children of a female slave and and the offspring of animals.

Posted May 5, at York, in the consulship of Faustinus and Rufus (210).

[116] *Vindicatio rei*; see D. 6.1.

[2] *Idem AA. Aristaeneto.* **pr.** Si inferiorem partem aedificii, quae solum contingit, ad te pertinere probare potes, eam, quam vicinus imposuit, accessisse dominio tuo non ambigitur. **1.** Sed et id, quod in solo tuo aedificatum est, quoad in eadem causa manet, iure ad te pertinet. si vero fuerit dissolutum, materia eius ad pristinum dominium redit, sive bona fide sive mala fide aedificium extructum sit, si non donandi animo aedificia alieno solo imposita sint.

PP. XII k. Nov. Antonino A. IIII et Balbino conss.

[3] *Imp. Alexander A. Domninae.* **pr.** Mater tua vel maritus fundum tuum invita vel ignorante te vendere iure non potuit, sed rem tuam a possessore vindicare etiam non oblato pretio poteris. **1.** Sin autem postea de ea venditione consensisti vel alio modo proprietatem eius amisisti, adversus emptorem quidem nullam habes actionem, adversus venditricem vero de pretio negotiorum gestorum exercere non prohiberis.

PP. III k. Nov. Alexandro A. cons.

[4] *Imp. Gordianus A. Muniano militi.* Adversus eos, qui a malae fidei possessoribus fundum bona fide comparaverunt, ita tibi actio competit, si prius, quam usucapionem implerent vel longae possessionis praescriptionem adipiscerentur, dominium ad te pervenerit.

PP. XII k. Nov. Pio et Pontiano conss.

[5] *Idem A. Herasiano.* **pr.** Domum, quam ex matris successione ad te pertinere et ab adversa parte iniuria occupatam esse ostenderis, praeses provinciae cum pensionibus quas percepit aut percipere poterat et omni causa damni dati restitui iubebit. **1.** Eius autem quod impendit rationem haberi non posse merito rescriptum est, cum malae fidei possessores eius quod in rem alienam impendunt, non eorum negotium gerentes quorum res est, nullam habeant repetitionem, nisi necessarios sumptus fecerint: sin autem utiles, licentia eis permittitur sine laesione prioris status rei eos auferre.

PP. II id. Febr. Gordiano A. et Aviola conss.

[2] *The same Augusti*[117] *to Aristaenetus.* **pr.** If you can prove that the lower part of a building which touches the ground belongs to you, there is no doubt that the part placed above it by a neighbor is an accession to your ownership. **1.** Also a structure built on your soil rightfully belongs to you as long as it remains in that state. But if it is torn apart, its material returns to its prior owner, whether the building was constructed in good or bad faith, and provided that it was not constructed with the intent to make a gift of it to you.

Posted October 21, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[3] *Emperor* ALEXANDER *Augustus to Domnina.* **pr.** Neither your mother nor your husband could rightfully sell your farm against your will and without your knowledge, and you can sue to recover your property from the possessor without returning the purchase price. **1.** But if you afterwards consented to this sale or lost ownership in some other manner, you have, indeed, no case against the purchaser, but you are not forbidden to sue the seller for the price in an action on management of affairs (*negotiorum gestio*).

Posted October 30, in the consulship of the Emperor Alexander (222).

[4][118] *Emperor* GORDIAN *Augustus to Munianus, a soldier.* You have an action against those who in good faith acquired a farm from possessors in bad faith, if you will receive it before they complete usucapion or acquire it through long-term prescription.

Posted October 21, in the consulship of Pius and Pontianus (238).

[5] *The same Augustus to Herasianus.* **pr.** The governor will order restoration to you of the house which you can show belongs to you as part of your mother's inheritance and is wrongly occupied by your adversary, and likewise the rents from it which your adversary received or could have received and all damage caused by any means. **1.** A rescript has been rightly written that no account may be taken of what the adverse party paid, since possessors in bad faith, if they are not managing the affairs of those whose property they possess, have no right to repayment of expenses paid out on the property of another, unless these expenses were necessary (*sumptus necessarii*). If they made useful expenses (*utiles*), they will be permitted to take them (i.e., the resulting structures) away if this can be done without injury to the former condition of the property.

Posted February 12, in the consulship of Gordian Augustus and Aviola (239).

[117] Actually, Caracalla alone.

[118] Combine with C. 2.52.3 (to Mucianus; rescript dated three days later); October 22 in the Cologne Fragment.

[6] *Idem A. Austronio militi.* Si ea pecunia quam deposueras is apud quem collocata fuerat sibi possessiones comparavit ipsique traditae sunt, tibi vel omnes tradi vel quasdam compensationis causa ab invito eo in te conferri iniuriosum est.
PP. v id. Iul. Gordiano A. et Aviola conss.

[7] *Imp. Philippus A. et Philippus C. Aurelio Antonio.* Partum ancillae matris sequi condicionem nec statum in hac specie patris considerari explorati iuris est.
PP. xiiii k. Nov. Philippo A. et Titiano conss.

[8] *Idem A. et C. Philippo militi.* Si, ut proponis, pars diversa pecunia tua quaedam nomine suo comparavit, praeses provinciae utilem vindicationem obtentu militiae tibi eo nomine impertiri desideranti partes aequitatis non negabit. idem mandati quoque seu negotiorum gestorum actionem inferenti tibi iurisdictionem praebebit.
PP. ii non. Mart. Praesente et Albino conss.

[9] *Imppp. Carus Carinus et Numerianus AAA. Antonio.* Doce ancillam, de qua supplicas, dotalem fuisse in notione praesidis: quo patefacto indubium erit vindicari ab uxore tua nequivisse.
PP. iiii k. Mart. Caro et Carino AA. conss.

[10] *Impp. Diocletianus et Maximianus AA. Ianuario.* Cum super vernis mancipiis nulla instrumenta te habere adseveres, in iudicio, in quo negotium coeptum esse proponitur, id quod in precem contulisti postulare debuisti. iudex enim non ignorat servorum dominia etiam citra instrumentorum exhibitionem aliis probationibus vel ipsorum interrogatione posse ostendi.
PP. viii id. Febr. ipsis iiii et iii AA. conss.

[6][119] *The same Augustus to Austronius, a soldier.* If you deposited money with someone and he used it to buy property for himself, and it has been delivered to him, it is improper that all or any part of it (the property) should be delivered to you, without his consent, for the purpose of compensating you.

Posted July 11, in the consulship of Gordian Augustus and Aviola (239).

[7][120] *Emperor* PHILIP *Augustus and* PHILIP *Caesar to Aurelius Antonius.* The law is clear and proven that the offspring of a female slave follows the condition of the mother and that the status of the father is not considered in this connection.

Posted October 19, in the consulship of Philip Augustus and Titianus (245).

[8] *The same Augustus and Caesar to Philippus, a soldier.* If, as you say, the other party acquired some property in his own name with your money, the governor will not refuse to extend justice to you who, because you did military service, desire that an analogous action to recover the property (*vindicatio utilis*) be granted to you. He will also permit you to bring an action on mandate or management of affairs.

Posted March 6, in the consulship of Praesens and Albinus (246).

[9] *Emperors* CARUS, CARINUS, *and* NUMERIAN *Augusti to Antonius.* In the investigation before the governor, show that the female slave, concerning whom you are petitioning, was a part of the dowry (of your wife). If this is made clear, there is no doubt that the slave cannot be recovered from your wife through a vindication.

Posted February 26,[121] *in the consulship of the Emperors Carus and Carinus (283).*

[10] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Januarius.* Since you claim that you have no documentary proof as to your ownership of your home-born slaves, in the court, in which the action concerning them is said to have commenced you ought to demand what you now ask for in your petition. For the judge knows that ownership of slaves can be shown, other than by producing documents, through other modes of proof, including interrogation of the slaves themselves.

Posted February 6, in the consulship of the Augusti themselves, Consuls for the fourth and third times, respectively (290).

[119] Combine with C. 4.34.3 (describing the recipient as a *miles*; dated as "given" on July 15, 239).
[120] = *C. Greg. Visig.* 6.3, which gives the recipient's full name; date confirmed by the Cologne fragment.
[121] Confirmed by Cologne fragment.

[11] *Idem AA. et CC. Gaiano.* **pr.** Si quis sciens agrum alienum sevit vel plantas imposuit, postquam eae radicibus terram fuerint amplexae, solo cedere rationis est. domini enim magis segetem vel plantas quam per huiusmodi factum solum suum facit. **1.** Sane eum, qui bona fide possidens haec fecerit, per doli mali exceptionem contra vindicantem dominium servare sumptus iuris auctoritate significatum est.

D. IIII k. Mart. Sirmi AA. conss.

[12] *Idem AA. et CC. Alexandro.* Incivile atque inusitatum est quod postulas, ut mancipium, quod tradidisti et hoc modo dominium eius transtulisti, invito eo ex nostro rescripto tibi adsignetur. unde intellegis semel ancilla emptoris facta filios etiam postea natos eius dominium sequi, cuius mater eorum eo tempore fuit. sane de pretio, si non te hoc probatum fuerit recepisse, conveni adversarium tuum.

D. VI id. April. AA. conss.

[13] *Idem AA. et CC. Eytychio.* Ordinarii iuris est, ut mancipiorum orta quaestione prius exhibitis mancipiis de possessione iudicetur ac tunc demum proprietatis causa ab eodem iudice decidatur.

D. id. April. AA. conss.

[14] *Idem AA. et CC. Septimae.* Cum a matre domum filii te sciente comparasse proponas, adversus eum dominium vindicantem, si matri non successit, nulla te exceptione tueri potes. quod si venditricis obtinet hereditatem, doli mali exceptione, pro qua portione ad eum hereditas pertinet, uti non prohiberis.

D. III k. Iul. AA. conss.

[15] *Idem AA. et CC. Aurelio Proculino.* **pr.** Quotiens duobus in solidum praedium iure distrahitur, manifesti iuris est eum cui priori traditum est in detinendo dominio esse potiorem. **1.** Si igitur antecedenti tempore possessionem emisse ac pretium exsolvisse apud praesidem provinciae probaveris, obtentu non datorum instrumentorum expelli te possessione non patietur. **2.** Erit sane in arbitrio tuo pretium quod dedisti cum usuris recipere, ita tamen, ut perceptorum fructuum et sumptuum ratio habeatur: cum et si ex causa donationis utrique dominium

[11] *The same Augusti and the Caesars to Gaianus.* **pr.** If anyone knowingly sowed another's field or put plants thereon, and these have struck their roots into the ground, they logically become part of the soil. For he makes the seed and the plants the property of the owner, instead of making the soil his own through such action. **1.** Of course, if he does so when he is in possession in good faith, the authority of the law makes clear that he recovers his expenses by setting up a defense of deceit (*exceptio doli*) against the owner seeking to recover his property.

Given February 26, at Sirmium, in the consulship of the Augusti (293).

[12] *The same Augusti and Caesars to Alexander.* What you request is unreasonable and unheard of, namely that the female slave, whom you delivered and thereby transferred ownership of, should be turned over to you through Our rescript without the owner's consent. Hence you understand that once a female slave has become the purchaser's property, her sons born subsequently belong to the person who is at that time the owner of the mother. Of course, if it is shown that you have not received the purchase price, you may sue your adversary for it.

Given April 8, in the consulship of the Augusti (293).

[13] *The same Augusti and the Caesars to Eytychius.* It is customary law that after a dispute has arisen as to slaves, with the slaves being first produced in court, the question of possession shall be adjudicated, and only then shall the question of ownership be decided, and this by the same judge.

Dated April 13, in the consulship of the Augusti (293).

[14] *The same Augusti and the Caesars to Septima.* Since you say that you knowingly bought a son's house from his mother, you have no defense against his action to recover it unless he has become his mother's heir. But if he has become the seller's heir, you may set up a defense of deceit relative to the proportion of the inheritance that he received.

Given June 29, in the consulship of the Augusti (293).

[15] *The same Augusti and Caesars to Aurelius Proculinus.* **pr.** Whenever an entire farm is legally sold (in separate transactions) to two different persons, the law is clear that the party to whom possession has been first delivered has the better right in holding ownership. **1.** If, therefore, you prove before the governor that you acquired the possession first and paid the price, he will not permit you to be evicted on the basis that you did not receive any documents of sale. **2.** You have, however, the option to recover the price you paid, with interest, but an accounting must be taken of the fruits received and expenses

rei vindicetis, eum, cui priori possessio soli tradita est, haberi potiorem convenit.

D. xv k. Oct. AA. conss.

[16] *Idem AA. et CC. Ianuario.* Si in area communi domum aliquis extruxit, hanc vobis communem iuris fecit ratio. cuius portionem ab eo, qui bona fide possidens aedificavit, si velis vindicare, sumptus offerre debes, ne doli mali possis exceptione submoveri.

D. id. Nov. Sirmi AA. conss.

[17] *Idem AA. et CC. Sabino.* Si fundum vestrum, vobis per denuntiationem admonentibus volentem ad emptionem accedere, quod distrahentis non fuerit, non recte is contra quem preces funditis comparavit vel alio modo mala fide contraxit, tam fundum vestrum constitutum probantibus quam fructus, quos eum mala fide percepisse fuerit probatum, aditus praeses provinciae restitui iubebit.

D. xii k. Dec. Sirmi AA. conss.

[18] *Idem AA. et CC. Claro.* Re tua apud aliquem manente proprietatis error nihil tibi nocere potuit, nisi alia contra te causa intervenerit.

D. viiii k. Ian. AA. conss.

[19] *Idem AA. et CC. Callistrato.* Indicia cetera, quae iure non respuuntur, non minorem probationis quam instrumenta continent fidem: quo iure, si de proprietate domus ambigis negotiumque integrum est, uti non prohiberis.

viii k. Ian. Sirmi. AA. conss.

[20] *Idem AA. et CC. Quartillae.* Non servum, quem res tuas detinere adseveras, sed eius dominum de rebus repetendis conveniendum esse perspicis.

vi k. Mart. CC. conss.

[21] *Idem AA. et CC. Herodi.* A possidentibus vindicata mancipia, quorum dominium ad vos pertinere intenditis, si, posteaquam impleveritis

paid (by you). Even if both of you claim ownership of a property by reason of a gift, the person to whom possession was first delivered has the better right.[122]

Given September 17, in the consulship of the Augusti (293).

[16] *The same Augusti and Caesars to Januarius.* If a person builds a house on property held in common with you, the logic of the law makes the house common property with you. But if you want to recover your portion of it from the person who built it as possessor in good faith, you must offer him his costs thereon, lest you be defeated by the defense of deceit.

Given November 13 in the consulship of the Augusti at Sirmium (293).

[17] *The same Augusti and Caesars to Sabinus.* If the person against whom you direct your petition, who wanted to buy a farm belonging to you, was warned by you against buying it because it was not the seller's property, but nevertheless bought it without right, or in some other manner contracted for it in bad faith, the governor will, when you go before him, order that the farm be restored to you if you prove it to be yours, along with the fruits that are shown to have been received by him in bad faith.

Given November 20, at Sirmium, in the consulship of the Augusti (293).

[18][123] *The same Augusti and Caesars to Clarus.* If your property is in the hands of someone else, your mistake as to the ownership thereof could not hurt you unless some other (legal) ground against you has intervened.

Given December 24, in the consulship of the Augusti (293).

[19] *The same Augusti and Caesars to Callistratus.* Other evidence, if not rejected by the law, has no less evidentiary value than documents. You are not, accordingly, forbidden to use such other evidence if you have a dispute over the ownership of the house and the case has not yet been decided.

Given December 25, at Sirmium, in the consulship of the Augusti (293).

[20] *The same Augusti and Caesars to Quartilla.* You see clearly that, in order to recover your property, you can sue not the slave who, according to your allegations, (currently) holds it, but rather his master.

Given February 24, in the consulship of the Caesars (294).

[21] *The same Augusti and Caesars to Herodes.* If you sue to recover slaves allegedly belonging to you but now in the possession of another person, and

[122] On this final sentence, compare *Frag. Vat.* 315.
[123] Combine, perhaps, with C. 8.43.2.

intentionem, haec non restituantur, iurisiurandi sollemnitate secuta condemnatio procedere debet.

D. VI id. Oct. CC. conss.

[22] *Idem AA. et CC. Diodoto.* Certum est mala fide possessores omnes fructus solere cum ipsa re praestare, bona fide vero extantes, post litis autem contestationem universos.

D. III k. Nov. CC. conss.

[23] *Idem AA. et CC. Magnifero.* Si mancipium tuum per vim vel furtum ablatum alii ex nulla iusta causa distraxerunt, vindicanti tibi dominium solvendi pretii nulla necessitas inrogatur.

D. XVI k. Dec. CC. conss.

[24] *Idem AA. et CC. Iuliano.* Nullo iusto titulo praecedente possidentes ratio iuris quaerere prohibet dominium. idcirco cum etiam usucapio cesset, intentio dominii non absumitur: unde hoc casu postliminio reverso citra beneficium actionis rescissoriae directa permanet integra vindicatio.

D. XVI k. Dec. CC. conss.

[25] *Idem AA. et CC. Eugnomio.* Sollemnibus pensionibus rei pro alio satisfacientem non interveniente venditione solutionis causa minime dominum facit.

D. XVI k. Dec. Nicomediae CC. conss.

[26] *Idem AA. et CC. Heliodoro.* Morae litis causam possessoris non instruunt ad inducendam longae possessionis praescriptionem, quae post litem contestatam in praeteritum aestimatur.

D. X id. Dec. CC. conss.

you subsequently prove your claim, though they are not restored to you, then condemnation will follow upon the customary oath being taken.[124]

Given October 10 in the consulship of the Caesars (294).

[22] *The same Augusti and Caesars to Diodotus.* It is certain that possessors in bad faith regularly restore all fruits, together with the property itself. Possessors in good faith restore only those fruits on hand at the time of joinder of issue, plus all of those which have accrued thereafter.[125]

Given October 30, in the consulship of the Caesars (294).

[23] *The same Augusti and Caesars to Magniferus.* If with no just cause others sold your slave who had been taken away by force or stealth, no necessity is imposed upon you to pay the price (to the current possessor) when you sue for ownership.

Given November 16, in the consulship of the Caesars (294).

[24] *The same Augusti and Caesars to Julian.* Legal logic forbids possessors from seeking ownership of property (through usucapion) if they do not already have proper title. Since, therefore, usucapion does not apply without such title, the owner's claim is not defeated. So, in this case, a person who returns from captivity has a direct real action to recover the property, without resorting to an action for rescission.

Given November 16, in the consulship of the Caesars (294).

[25] *The same Augusti and Caesars to Eugnomius.* Even if one person pays for another the periodic taxes (*pensiones sollemnes*) on property, such payment does not make the payer an owner if no sale is made.

Given November 16, in the consulship of the Caesars at Nicomedia (294).

[26][126] *The same Augusti and Caesars to Heliodorus.* Delay in litigation does not put a possessor in a position to invoke the rule of long-term possession, which, after joinder of issue, is calculated only as to the past.

Given December 4, in the consulship of the Caesars (294).

[124] On this oath, see C. 5.53; the value of the property was assessed according to the claimant's oath, subject to court control.

[125] For *bona fide extantes post litis autem contestateionem universos*, Lenel favored reading something like *bona fide possessorem post litis contestationem perceptos* ("the possessor in good faith (restores fruits) received after joinder of issue").

[126] See C. 7.33.10. Mommsen dates this constitution to December 9, 294.

[27] *Idem AA. et CC. Philadelpho.* Servum emptor non traditum sibi praesentem vindicare non potest.

D. XVIII k. Ian. Nicomediae CC. conss.

[28] *Idem AA. et CC. Sopatro.* Res alienas possidens, licet iustam causam nullam habeat tenendi, non nisi suam intentionem implenti restituere cogitur.

D. VIII k. Ian. CC. conss.

XXXIII De Usu Fructu et Habitatione et Ministerio Servorum

[1] *Impp. Severus et Antoninus AA. Posidonio.* Si usus fructus omnium bonorum testamento uxoris marito relictus est, quamvis cautionem a te prohibuerat exigi, tamen non aliter a debitoribus solutam pecuniam accipere poteris quam oblata secundum formam senatus consulti cautione.

PP. VI k. Oct. Anullino et Frontone conss.

[2] *Idem AA. Felici.* Verbis testamenti, quae precibus inseruisti, usum fructum legatum tibi animadvertimus. quae res non impedit proprietatis dominum obligare creditori proprietatem, manente scilicet integro usu fructu tui iuris.

PP. VI id. Mai. Antonino A. II et Geta II conss.

[3] *Imp. Antoninus A. Antoniano.* **pr.** Si patri tuo usus fructus legatus est, defuncto eo nihil ad te pertinet, cum morte eius, cui fuerat legatus usus fructus vel alio modo adquisitus, ad proprietatem regredi solet.

[27] *The same Augusti and Caesars to Philadelphus.* If a slave, though present (at the time of sale), was not actually delivered to the buyer, he cannot bring an action *in rem* to recover him.[127]

Given December 15, at Nicomedia, in the consulship of the Caesars (294).

[28][128] *The same Augusti and Caesars to Sopater.* A person who possesses property that does not belong to him is not compelled to deliver it to another party unless the latter successfully claims it, even though the former has no just ground for holding it.

Given December 25, in the consulship of the Caesars (294).

Thirty-Third Title Usufruct, Habitation, and the Services of Slaves[129]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Posidonius.* If your wife bequeathed the usufruct of all her property to (you as) her husband in her will, although she forbade requiring any bond (*cautio*) from you, nevertheless you cannot receive the debts paid by her debtors unless you have given a bond in accord with the decree of the Senate.[130]

Posted September 26, in the consulship of Anullinus and Fronto (199).

[2] *The same Augusti to Felix.* We understand from the words of the will, which you have inserted in your petition, that a usufruct was bequeathed to you. This does not prevent the owner of the property from pledging it to a creditor, though your right of usufruct will not be affected.

Posted May 10, in the consulship of Antoninus Augustus, for the second time, and Geta, for the second time (205).

[3] *Emperor* ANTONINUS *Augustus to Antonianus.* **pr.** If a usufruct has been bequeathed to your father and he dies, nothing belongs to you, since with the death of the usufructuary, who was bequeathed a usufruct or acquired it in

[127] The only action was *in personam* for damages on the sale.

[128] Combine with C. 6.59.9. Mommsen dates to December 28, 294.

[129] See D. 7.1, 7–8; Inst. 2.4–5.

[130] *Satisdatio*, a bond with sureties, or security, was required of a person with usufruct of a property that he not damage its principal; see 4 below. This entry, however, mentions no sureties, but only the praetorian *cautio* (written promise), D. 7.9.1 pr. Blume: "It may, accordingly, be that the bond to restore the property was required to be merely a promise in writing, without surety, and such promise could, of course, always be given without harshness. The subject is not clear." On the early imperial *SC*, see D. 7.5.1 and 33.2.24 pr.; it allowed legacy of all properties admitting of private ownership.

1. Usufructuario autem superstite licet dominus proprietatis rebus humanis eximatur, ius utendi fruendi non tollitur.

PP. III k. Aug. Antonino A. IIII et Balbino conss.

[4] *Imp. Alexander A. Verbicio.* Usu fructu constituto consequens est, ut satisdatio boni viri arbitrio praebeatur ab eo apud quem id commodum pervenit, quod nullam laesionem ex usu proprietati adferat. nec interest, sive ex testamento sive ex voluntario contractu usus fructus constitutus est.

PP. VI id. Mart. Alexandro A. II et Marcello conss.

[5] *Idem A. ... evocato et aliis.* Si pater usum fructum praediorum in tempus vestrae pubertatis matri vestrae reliquit, finito usu fructu postquam vos adolevistis, posterioris temporis fructus perceptos ab ea repetere potestis, quos nulla ratione sciens de alieno percepit.

PP. k. April. Alexandro A. II et Marcello conss.

[6] *Imp. Alexander A. Stratonicae.* Interest, usum fructum solum maritus tuus in dotem acceperit, an proprietas quidem doti data sit, verum pactum intercessit, ut moriente eo tibi eadem possessio redderetur. nam usufructuarius quidem proprietatem pignorare non potuit: qui autem proprietatem aestimatam in dotem accepit, non ideo minus obligare eam potuit, quoniam soluto matrimonio restituenda tibi aestimatio eius fuit.

PP. k. Iul. Agricola et Clemente conss.

[7] *Imp. Gordianus A. Ulpiano militi.* Eum, ad quem usus fructus pertinet, sarta tecta suis sumptibus praestare debere explorati iuris est. proinde si quid ultra quam impendi debeat erogatum potes docere, sollemniter reposces.

PP. k. Febr. Arriano et Papo conss.

some other way, the usufruct ceases and becomes again a part of the (principal) property. **1.**[131] But the property owner's death does not deprive the surviving usufructuary of the right of enjoying the usufruct.

Posted July 30, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[4] *Emperor* ALEXANDER *Augustus to Verbicius.* When a usufruct is given, it follows that the man who receives this benefit should give a bond with sureties (*satisdatio*), satisfactory by the standards of an upright man, that he will not cause damage in the use of the principal property. It makes no difference whether the usufruct has been created by a will or by voluntary contract.

Posted March 10, in the consulship of Alexander Augustus, for the second time, and Marcellus (226).

[5] *The same Augustus to a veteran soldier and others.* If your father left (his farms to you and) the usufruct of the farms to your mother during your adolescence, then, after you came of age and her right to the usufruct ended, you may recover from her the fruits that she received for the time thereafter, which she knowingly and without right took from another's property.

Posted April 1, in the consulship of Alexander Augustus, for the second time, and Marcellus (226).

[6] *The same Augustus to Stratonica.* It makes a difference whether your husband received only a usufruct as to your dowry, or whether he also received an ownership right in the property with an agreement that you should have it after his death. For indeed a usufructuary cannot pledge the principal property. But a person who receives property as a dowry at an estimated value (*aestimatio*) was no less able to pledge it, since he must return (it or) its value to you upon the dissolution of the marriage.[132]

Posted July 1, in the consulship of Agricola and Clemens (230).

[7] *Emperor* GORDIAN *Augustus to Ulpianus, a soldier.* The law is clear and proven that a person who has the usufruct (of a house) must repair the roofs at his own expense. But if you can show that you paid out more than it was your duty to pay, you can recover it (the surplus) in the usual manner.

Posted February 1, in the consulship of Arrianus and Papus (243).

[131] = *Frag. Vat.* 42.

[132] At issue here is how the terms of the dowry define the husband's property rights: either usufruct or ownership with a duty to return it to the wife upon the husband's death; this distinction affects the ability of the husband to pledge the property in the interim. However, for dowry properties given with an estimated value, "he became the [effective] owner of them (C. 5.12.1a), and he could then alienate them, as stated in this law, and as appears in C. 5.13.15" (Blume).

[8] *Impp. Diocletianus et Maximianus AA. et CC. Hieroni.* Neque fructuarium ad obtinendam proprietatem rerum, quarum usum fructum habet, neque successores eius ulla temporis ex ea causa tenentes praescriptio munit.

vi k. Iul. AA. conss.

[9] *Idem AA. et CC. Auxanusae.* Usu fructu matri tuae praediorum et mancipiorum relicto tam alienatio quam manumissio interdicta est. sane mancipia, quorum testamento ministerium matri relictum est, cum in his dominium non habet, nec tradendo cuiquam nec manumittendo ad testatoris heredem pertinentia quicquam facit.

D. k. Dec. AA. conss.

[10] *Idem AA. et CC. Pomponio.* Si domina proprietatis uxori tuae usum fructum locavit sub certa annua praestatione, morte conductricis ei quae locavit etiam utendi fruendi causa non est deneganda.

D. xiii k. Ian. Sirmi AA. conss.

[11] *Idem AA. et CC. Claudio Theodoto.* Habitatio morte finitur: nec proprietatem qui habitationem habuit legando dominii vindicationem excludit.

Subscripta iiii k. Oct. Viminaci CC. conss.

[12] *Imp. Iustinianus A. Iuliano pp.* **pr.** Ambiguitatem antiqui iuris decidentes sancimus, sive quis uxori suae sive alii cuicumque usum fructum reliquerit sub certo tempore, in quo vel filius eius vel quisquam alius pervenerit, stare usum fructum in annos, in quos testator statuit, sive persona, de cuius aetate compositum est, ad eam pervenerit sive non: neque enim ad vitam hominis respexit, sed ad certa curricula: nisi ipse cui usus fructus legatus sit ab hac luce fuerit subtractus: tunc etenim ad posteritatem usum fructum transmitti non est possibile, cum morte usum fructum penitus extingui iuris indubitati sit.

1. Sin autem talis fuerit incerta condicio, donec in furore filius vel alius quisquam remanserit, vel in aliis similibus casibus, quorum eventus in incerto sit, si quidem resipuerit filius vel alius, pro quo hoc dictum est, vel condicio extiterit, usum fructum finiri: sin autem adhuc in furore is constitutus decesserit, tunc quasi in usufructuarii vitam eo relicto manere usum fructum apud eum. cum enim possibile erat usque ad omne vitae tempus usufructuarii non ad suam mentem venire

[8] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Hieron.* The rule of long-term prescription does not help a usufructuary or his heirs in acquiring ownership in any property of which he has the usufruct.

June 26, in the consulship of the Augusti (293).

[9] *The same Augusti and Caesars to Auxanusa.* If a usufruct of lands or slaves is left to your mother, alienation or manumission by her is forbidden. Of course, for slaves whose services (*ministerium*) were left to your mother in a will, delivery to anyone or manumission of them is without effect, since she does not own them; they belong to the testator's heir.

Given December 1, in the consulship of the Augusti (293).

[10] *The same Augusti and Caesars to Pomponius.* If the female owner of property gave its usufruct to your wife in return for a fixed annual payment, your wife is not denied the right of enjoying the usufruct because of the owner's death.

Given December 20, at Sirmium, in the consulship of the Augusti (293).

[11][133] *The same Augusti and Caesars to Claudius Theodotus.* The right of habitation (*habitatio*) is ended by the death (of the holder of the right). A person who holds such right cannot bar an action to recover the property by bequeathing the proprietorship thereof.

Written September 28, at Viminacium, in the consulship of the Caesars (294).

[12] *Emperor* Justinian *Augustus to Julian, Praetorian Prefect.* **pr.** Resolving the ambiguities of the ancient law, We ordain that if a person leaves a usufruct to his wife or to anyone else until a son or someone else should reach a certain age, the right to the usufruct shall be in force for the period of years fixed by the testator, whether the person, through whose age the time of its enjoyment is fixed, reaches that age or not; for the testator had in mind a definite period of time and not the period of life of an individual – unless the person to whom the usufruct is left himself departs this life, for then the law is clear that a usufruct cannot be transmitted to posterity and ceases with death.

1. But when an uncertain condition is affixed to the usufruct, for instance, "as long as a son, or someone else, remains insane," or in other similar cases in which the outcome is uncertain, if the son, or someone else in connection with whom this is said, recovers, or if the condition is fulfilled, the usufruct is ended; but if he dies while still insane, then although he is dead the right to the usufruct remains as though given for the life of the usufructuary; for since it was possible that the insane person might not become sane or the condition

[133] = *Frag. Vat.* 43.

furentem vel condicionem impleri, humanissimum est ad vitam eorum usum fructum extendi. quemadmodum etenim, si decesserit usufructuarius ante completam condicionem vel furorem finitum, extinguitur usus fructus, ita humanum est extendi eum in usufructuarii vitam, etsi antea decesserit furiosus vel alia condicio defecerit.

D. k. Aug. Constantinopoli Lampadio et Oreste vv. cc. conss.

[13] *Idem A. Iuliano pp.* **pr.** Cum antiquitas dubitabat usu fructu habitationis legato, et primo quidem cui similis est, utrumne usu*i* vel usui fructui an neutri eorum, sed ius proprium et specialem naturam sortita est habitatio, postea autem si possit is cui habitatio legata est eandem locare vel dominium sibi vindicare, auctorum iurgium decidentes compendioso responso omnem huiusmodi dubitationem resecamus. **1.** Et si quidem habitationem reliquerit, ad humaniorem declinare sententiam nobis visum est et dare legatario etiam locationis licentiam. quid enim distat, sive ipse legatarius maneat sive alii cedat, ut mercedem accipiat? **2.** Et multo magis, si habitationis usum fructum reliquerit, cum et nimiae subtilitati satisfactum videatur etiam nomine usus fructus addito. **3.** In tantum etenim valere habitationem volumus, ut non antecellat usum fructum nec dominium habitationis speret legatarius, nisi specialiter evidentissimis probationibus ipse legatarius possit ostendere et dominium ei domus esse relictum: tunc enim voluntati testatoris per omnia oboediendum est. **4.** Quam decisionem locum habere censemus in omnibus modis, quibus habitatio constitui potest.

D. XVIII k. Oct. Lampadio et Oreste vv. cc. conss.

[14] *Idem A. Iuliano pp.* **pr.** Antiquitas dubitabat, si quis fundum vel aliam rem cuidam testamento reliquerit, quatenus usus fructus apud heredem maneat, si huiusmodi constat legatum. **1.** Et cum quidam inutile legatum esse existimabant, quia usus fructus numquam ad suam redit proprietatem, sed semper apud heredem remanet, et forsitan hoc existimabant, quia et secundus heres et deinceps successores unus esse

might not be fulfilled until the end of the life of the usufructuary, it is just that the usufruct should be extended for his entire life. Likewise, if the usufructuary dies before the condition is fulfilled or the insanity ends, the usufruct is extinguished, and so it is just that the usufruct should be enjoyed during the life of the usufructuary, even if the insane person dies or some other condition fails.

Given August 1, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[13] *The same Augustus to Julian, Praetorian Prefect.* **pr.** Since the ancients had doubts concerning a legacy of "a usufruct of habitation," first as to whether it was like a use or a usufruct, or like neither, but rather was a personal right with its own special nature, and second whether a legatee of a right of habitation could lease it to another or claim ownership of the property for himself, We herewith settle all controversy and remove all doubt by a comprehensive provision. **1.** It seems right to Us to take a humane interpretation and to give the legatee authorization to lease it to another. For what does it matter whether the legatee himself occupies it or leases it out to another so that he may receive the rent? **2.** This is true all the more if a person has left "the usufruct of habitation," for by addition of the word "usufruct" the greatest exactitude seems to be satisfied. **3.** We want the right of habitation to be of value without being superior to a usufruct, such that the legatee may not claim ownership of the property unless he can show expressly by the plainest proofs that the ownership of the house was left him – for if he can show that, the wishes of the testator must be fully carried out. **4.** This decision shall apply in all cases in which the right of habitation can be given.

Given September 14,[134] *in the consulship of the* viri clarissimi *Lampadius and Orestes (530).*

[14] *The same Augustus to Julian, Praetorian Prefect.* **pr.** The ancients had doubts whether a legacy was valid in the case where someone left land or other property to someone by will, but provided that the usufruct thereof should remain with his "heir."[135] **1.** Some of them thought such a legacy ineffective, because the usufruct would never be united with the ownership, but would

[134] More probably, October 1, which is also adopted by Lounghis *et al.*

[135] See D. 7.1.6 pr. and 7.6.4. Blume: "A testator devised certain property to one A, and provided that the usufruct of the property should remain in A's 'heir.' Now what did the term 'heir' in this connection mean? It might mean not only the immediate heir, but also subsequent successors into infinite time. And if construed in the latter sense, the person who would become owner of the property would never have the benefit thereof, and the usufruct would, accordingly, be the equivalent of ownership. Hence, it was claimed that the grant of the usufruct was void. Justinian solved the difficulty by providing that the usufruct should end with the death of the person who first received the usufruct, and should not extend to any heir of such heir."

videntur et non potest huiusmodi usus fructus secundum veterem distinctionem solitis modis extingui, alii autem huiusmodi legatum non esse respuendum existimaverunt: tales altercationes decidentes censemus et huiusmodi legatum firmum esse et talem usum fructum una cum herede finiri et illo moriente vel aliis legitimis modis eum amittente expirare. quare enim iste usus fructus sibi tale vindicat privilegium, ut generali interemptione usus fructus ipse solus excipiatur? quod ex nulla induci rationabili sententia manifestissimum est. **2.** Et propter hoc et usum fructum finiri et ad proprietatem suam redire et utile esse legatum sancientes huiusmodi paucissimis verbis totam eorum ambiguitatem delevimus.

D. xv k. Oct. Lampadio et Oreste vv. cc. conss.

[15] *Idem A. Iuliano pp.* **pr.** Inter antiquam prudentiam dissensio incidit, si per servum usus fructus domino fuerit adquisitus et ex quibusdam casibus (multi enim rebus incidunt mortalibus) pars huiusmodi servi in alium pervenerit, utrum omnis usus fructus, qui antea per servum ad aliquem pervenerit, apud eum remaneat an totus tollatur vel ex parte deminuatur, ex parte autem apud eum resideat? **1.** Et super huiusmodi dubitatione tres sententiae vertebantur, una, quae dicebat ex particulari alienatione servi totum usum fructum deminui, alia in tantum usum fructum deminui, in quantum et servus alienatur, tertia, quae definiebat partem quidem servi posse alienari, usum fructum autem totum apud eum remanere, qui ante servum in solidum habebat. et in novissimam sententiam et summum auctorem iuris scientiae Salvium Iulianum esse invenimus.

2. Nobis autem haec decidentibus placuit Salvii Iuliani admitti sententiam et aliorum qui in eadem fuerunt opinione, quibus humanius visum est non interemptionem usus fructus studiosam esse, sed magis retentionem, quatenus, etsi pars servi alienatur, tamen nec pars usus fructus depereat, sed maneat secundum suam naturam integer atque incorruptus et, quemadmodum et ab initio fixus est, ita conservetur ex huiusmodi casu nullo deterioratus modo.

D. x k. Oct. Lampadio et Oreste vv. cc. conss.

always remain with the "heir." They thought this, perhaps, because the second and subsequent heirs seem to be the one person, and such usufruct cannot be extinguished in the accustomed modes of the ancient law. Others, however, thought that such legacy ought not to be rejected. In settling such disputes, We decree that such a legacy shall be valid and that such usufruct shall come to an end with the (immediate) heir, and shall expire when he dies or loses it in other legal ways. For why should such usufruct be specially privileged and alone be excepted from the general rule that a usufruct ends (with the death of the usufructuary)? It is clear that this cannot be inferred on any reasonable ground. **2.** Hence, by ordaining that such usufruct finds an end and becomes united with the ownership, and is valid, We eliminate all doubt by a few words.

Given September 17, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*[136]

[15] *The same Augustus to Julian, Praetorian Prefect.* **pr.** A dissension arose among the ancient jurists whether when a master acquires a usufruct through a slave, and it should then happen for some reason – for many things happen with mortals – that a third party should become the owner of an interest in the slave, the whole usufruct would remain the right of the party who first acquired it through the slave, or whether it would become wholly void, or void only in part, the first party retaining (his proportionate) part. **1.** Three opinions prevailed concerning this doubtful question: one, that in case of a partial alienation of the slave the usufruct failed entirely; another, that it would fail to the extent that the slave would be alienated; a third, that an interest in the slave could be alienated, but that the whole of the usufruct would remain in the party who owned the entire interest in the slave in the first place. We find that Salvius Julian, the superb master of jurisprudence, held the last opinion.

2. In deciding this controversy, We adopt the opinion of Salvius Julian and of others who held a like view, to whom it appeared benevolent not to favor the destruction, but rather the maintenance, of the usufruct, so that, although an interest in the slave is alienated, nevertheless no part of the usufruct fails, but it remains whole and unimpaired as it was in the beginning; and so it remains as it was established in the beginning and is in no manner lessened in value in such a case.

Given September 22,[137] *in the consulship of the* viri clarissimi *Lampadius and Orestes (530).*

[136] Lounghis *et al.* give October 1, 530.
[137] More probably, October 1, also adopted by Lounghis *et al.*

[16] *Idem A. Iuliano pp.* **pr.** Corruptionem usus fructus multiplicem esse veteribus placuit, vel morte usufructuarii vel capitis deminutione vel non utendo vel aliis quibusdam non ignotis modis. sed de usu fructu quidem hoc indubitatum fuerat: de personali autem actione, quae super usu fructu nascitur, sive in stipulationem usus fructus deductus sive ex testamento relictus est, dubitabatur, morte quidem usufructuarii et capitis deminutione et eam tolli omnibus concedentibus, non utendo autem, si per annum vel per biennium forsitan eundem usum fructum non petierit usufructuarius, si personalis actio tollitur, altercantibus.

1. Sed nos haec decidentes sancimus non solum actionem quae pro usu fructu nascitur, sed nec ipsum usum fructum non utendo cadere, nisi tantummodo morte usufructuarii et ipsius rei interitu, sed usum fructum, quem sibi aliquis adquisivit, hunc habeat, dum vivit, intactum, cum multae et innumerabiles causae rebus incidunt mortalibus, per quas homines iugiter detinere quod habent non possunt, et est satis durum per huiusmodi difficultates amittere quod semel possessum est, nisi talis exceptio usufructuario opponetur, quae, etiam si dominium vindicabat, poterat eum praesentem vel absentem excludere.

2. Sed nec per omnem capitis deminutionem huiusmodi detrimentum imminere nostris patimur subiectis. quare enim, si filius familias fuerit is qui usum fructum habet, forte ex castrensi peculio, ubi nec usus fructus adquiritur ei,[vii] possessum, per emancipationem eum amittat? sed secundum quod definitum est tunc eum tantummodo desinere, cum usufructuarius vel res pereat, et tantummodo eum cum anima vel rei substantia expirare, nisi praedictae exceptionis vigor reclamaverit. **3.** Excepta videlicet tali capitis deminutione, quae vel libertatem vel civitatem Romanam possit adimere: et tunc enim usus fructus omnimodo ereptus ad suam revertatur proprietatem.

D. k. Oct. Constantinopoli Lampadio et Oreste vv. cc. conss.

[17] *Idem A. Iohanni pp.* **pr.** Ex libris Sabinianis quaestio nobis relata est, per quam dubitabatur, si usus fructus per servum adquisitus vel per filium familias capitis deminutione filii magna vel media vel morte vel emancipatione vel servi quacumque alienatione vel morte vel manumissione potest adhuc remanere.

[vii] <cuius in potestate est>

[16] *The same Augustus to Julian, Praetorian Prefect.* **pr.** The ancient jurists held that the destruction of a usufruct arose in many ways, partly through the death of the usufructuary, partly through change of status, partly by lack of use, partly in other but not unknown ways. This much was certain concerning a usufruct. But a dispute arose concerning the personal action arising out of a usufruct – no matter whether such a usufruct was created by a stipulation or left from will – and while all conceded that such action was void in the case of the death of the usufructuary or in case of a change of status, they disputed as to whether the right to such personal action was lost in case of a non-user, that is to say, if the usufructuary failed to demand the usufruct for a year, or perhaps two years.

1. In settling these disputes, We ordain that neither the right of action which arises by reason of the usufruct, nor the usufruct itself, shall fail by reason of lack of use, but only in case of death of the usufructuary or the destruction of the property itself; but the usufruct which a person acquires shall remain in force, unimpaired, while he lives, since many and innumerable situations arise in the lives of mortals, by reason of which they are unable to keep constant possession of what they have, and it is hard enough for anyone to lose through such difficulties what he once possessed. This is to be so unless a defense (of limitation) may be interposed against the usufructuary which, if the latter claimed ownership of the property, would exclude him, whether present or absent.[138]

2. Nor do We permit threats to Our subjects arising from every change in status (*capitis deminutio*). If, for instance, a son (in his father's power) has a usufruct acquired perchance from a soldier's *peculium* – in which case the usufruct is not acquired for the person in whose power he is – does he lose it through his emancipation? According to what has been said, it is lost only when the usufructuary dies or the property perishes; it ceases only with the death of the man or the loss of property, unless the force of the above-mentioned exception reclaims it. **3.** Clearly such change in status is excepted which can remove either liberty or Roman citizenship. For in such case the usufruct is entirely lost and becomes reunited with the ownership.

Given October 1, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[17] *The same Augustus to John, Praetorian Prefect.* **pr.** A question contained in the books of Sabinus is reported to us, raising a doubt whether a usufruct, acquired through a slave or through an unemancipated son, can still be valid after the son suffers a great change in status (loss of liberty; *capitis deminutio*

[138] See C. 3.34.13 on the new terms of limitation.

1. Et ideo sancimus in huiusmodi casibus neque, si servus vel filius familias in praefatos casus inciderit, interrumpi patri vel domino usum fructum qui per eos adquisitus est, sed manere intactum, neque, si pater capitis deminutionem magnam vel mediam passus fuerit vel morte ab hac luce fuerit exemptus, usum fructum perire, sed apud filium remanere, etiamsi heres a patre non relinquatur. 2. Usum fructum enim per eum adquisitum apud eum remanere et post patris calamitatem oportet, cum plerumque verisimile est testatorem[viii] contemplatione filii quam patris usum fructum ei reliquisse.

D. xv k. Nov. Constantinopoli post consulatum Lampadii et Orestae vv. cc.

XXXIIII De Servitutibus et de Aqua

[1] *Imp. Antoninus A. Calpurniae.* Si quas actiones adversus eum, qui aedificium contra veterem formam extruxit, ut luminibus tuis officeret, competere tibi existimas, more solito exercere non prohiberis. is, qui iudex erit, longi temporis consuetudinem vicem servitutis obtinere sciet, modo si is qui pulsatur nec vi nec clam nec precario possidet.

PP. III id. Nov. Gentiano et Basso conss.

[2] *Idem A. Martiali.* Si aquam per possessionem Martialis eo sciente duxisti, servitutem exemplo rerum mobilium[ix] tempore quaesiisti. Quod si ante id spatium eius usus tibi interdictus est, frustra sumptus in ea re factos praestari tibi postulas, cum in aliena possessione operis facti dominium, quoad in eadem causa manet, ad eum pertinet, cuius est possessio.

PP. k. Iul. Laeto II et Cereale conss.

[viii] <magis>
[ix] immobilium

magna) or an intermediate change (loss of citizenship; *c.d. media*), or after his death or emancipation, or after the alienation of the slave, or after the latter's death or manumission.

1. We, therefore, ordain in cases of this sort that if a slave or unemancipated son should be in one of the aforementioned situations, the usufruct of the father or master acquired through them shall not be lost, but it shall remain unimpaired; and if the father suffers a change of status, great or intermediate, or should be removed from the light of day by death, the usufruct shall not perish, but shall remain unimpaired in the hands of the son, even though he is not appointed as his father's heir. 2. For, a usufruct acquired through him should remain with him after his father's misfortune, since it is, in general, very likely that the testator left the usufruct more on account of the son than the father.

Given October 18, in the post-consulate of the viri clarissimi *Lampadius and Orestes at Constantinople (531).*

Thirty-Fourth Title Servitudes and Water[139]

[1] *Emperor* ANTONINUS *Augustus to Calpurnia.* If you think that you have an action against a person who built his house in a form different from the way it formerly was, so that it (now) obstructs your light, you are not forbidden to bring suit in the usual manner. The person who will act as judge will know that a long-time usage (*longi temporis consuetudo*) acquires the same legal force as a servitude, provided that the person sued is not in possession of the property either by force, stealth, or sufferance.

Posted November 11, in the consulship of Gentianus and Bassus (211).

[2] *The same Augustus to Martial.* If you conducted water throughout the lands of Martial with his knowledge, you have acquired a servitude through the lapse of time, in the manner in which one acquires immovable property. But if its use was forbidden to you before the lapse of that period, you ask in vain for the repayment of your outlay in this matter, since the right to put any structure on another's property belongs, as long as it remains in the same situation, to the person who possesses it.

Posted July 1, in the consulship of Laetus, for the second time, and Cerealis (215).

[139] On property servitudes (easements) and water rights, see C. 8.1, 3–4; Inst. 2.3

[3] *Idem A. Ricanae.* Et in provinciali praedio constitui servitus aquaeductus vel aliae servitutes possunt, si ea praecesserint, quae servitutem constituunt: tueri enim placita inter contrahentes debent. quare non ignorabis, si priores possessores aquam duci per praedia prohibere iure non potuerunt, cum eodem onere perferendae servitutis transire ad emptores eadem praedia posse.

PP. k. Mai. Maximo II et Aeliano conss.

[4] *Idem A. Cornelio.* Aquam, quae in alieno loco oritur, sine voluntate eius, ad quem usus eiusdem aquae pertinet, praetoris edictum non permittit ducere.

PP. id. Aug. Maximo II et Aeliano conss.

[5] *Imp. Philippus A. et Philippus C. Luciano militi.* Si quid pars diversa contra servitutem aedibus tuis debitam iniuriose extruxit, praeses provinciae revocare ad pristinam formam, damni etiam ratione habita, pro sua gravitate curabit.

PP. k. Febr. Praesente et Albino conss.

[6] *Imp. Claudius A. Prisco.* Praeses provinciae usu aquae, quam ex fonte iuris tui profluere adlegas, contra statutam consuetudinis formam carere te non permittet, cum sit durum et crudelitati proximum ex tuis praediis aquae agmen ortum sitientibus agris tuis ad aliorum usum vicinorum iniuria propagari.

PP. VII k. Mai. Claudio A. et Paterno conss.

[7] *Impp. Diocletianus et Maximianus AA. Iuliano.* Si manifeste doceri possit ius aquae ex vetere more atque observatione per certa loca profluentis utilitatem certis fundis inrigandi causa exhibere, procurator noster, ne quid contra veterem formam atque sollemnem morem innovetur, providebit.

PP. IIII non. Mai. Maximo II et Aquilino conss.

[3] *The same Augustus*[140] *to Ricana.* The right to have an aqueduct or other servitudes can also be acquired over a provincial farm, provided the formalities which create such servitude precede (creation of the right); for agreements between contracting parties should be performed as made. Hence you are not unaware that if the former possessors could not legally hinder water from being conducted through farms (now belonging to you), these same farms can pass to subsequent purchasers subject to the same burden.

Posted May 1, in the consulship of Maximus, for the second time, and Aelianus (223).

[4] *The same Augustus to Cornelius.* The Praetor's Edict does not permit the taking of water which arises on another's property without the consent of the person who has the right to use it.

Posted August 13, in the consulship of Maximus, for the second time, and Aelianus (223).

[5] *Emperor* PHILIP *Augustus and* PHILIP *Caesar to Lucianus, a soldier.* If your adversary has constructed anything which is detrimental to the servitude enjoyed by your houses, the governor will, in accordance with his power, take care that the former condition is restored and that the cost of the damage is reckoned.

Posted February 1, in the consulship of Praesens and Albinus (246).

[6] *Emperor* CLAUDIUS *Augustus to Priscus.* The governor will not permit that, contrary to established custom, you should be deprived of the use of water which you allege flows from a spring belonging to you, since it would be harsh and almost cruel that a flow of water arising from your lands should be wrongly conducted away for the use of neighbors when your lands are thirsting.

Posted April 25, in the consulship of Claudius Augustus and Paternus (269).

[7] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Julian.* If it can be clearly shown that the right to water, flowing through certain places in accordance with ancient custom and practice, benefits certain lands through irrigation, Our procurator will take care that no innovation against ancient practice and established custom is permitted.

Posted May 4, in consulship of Maximus, for the second time, and Aquilinus (286).

[140] Actually, Alexander, as is indicated by the dating below.

[8] *Idem AA. et CC. Aniceto.* Altius quidem aedificia tollere, si domus servitutem non debeat, dominus eius minime prohibetur. in pariete vero tuo si fenestram Iulianus vi vel clam fecisse convincatur, sumptibus suis opus tollere et integrum parietem restituere compellitur.

D. k. Ian. Sirmi AA. conss.

[9] *Idem AA. et CC. Zosimo.* Si in aedibus vicini tibi debita servitute parietem altius aedificavit Heraclius, novum opus suis sumptibus per praesidem provinciae tollere compellitur. sed si te servitutem habuisse non probetur, tollendi altius aedificium vicino non est interdictum.

PP. v k. Iul. Sirmi AA. conss.

[10] *Idem AA. et CC. Nymphidio.* Si tibi servitutem aquae deberi praeses animadverterit nec hactenus non utentem spatio temporis amisisse perspexerit, uti te iure proprio providebit. nam si hoc minime probetur, loco proprio facto opere dominus fundi continere aquam et facere, quominus ager tuus rigari possit, non prohibetur.

PP. xi k. Febr. Sirmi CC. conss.

[11] *Idem AA. et CC. Aurelio.* Per agrum quidem alienum, qui servitutem non debet, ire vel agere vicino minime licet: uti autem via publica nemo recte prohibetur.

D. xi k. Nov. Sirmi CC. conss.

[12] *Idem AA. et CC. Valeriae.* Non modus praediorum, sed servitus aquae ducendae terminum facit.

PP. iii k. Ian. Nicomediae CC. conss.

[13] *Imp. Iustinianus A. Iohanni pp.* Sicut usum fructum, qui non utendo per biennium in soli rebus, per annale autem tempus in mobilibus vel se moventibus deminuebatur, non passi sumus huiusmodi sustinere compendiosum interitum, sed et ei decennii vel viginti annorum dedimus spatium, ita et in ceteris servitutibus obtinendum esse censuimus, ut omnes servitutes non utendo amittantur non biennio, quia

[8] *The same Augusti and the Caesars to Anicetus.* An owner is not forbidden from raising a building higher if it is not subject to a servitude. But if Julian is shown to have built a window in your wall by force or stealth, he will be compelled to tear the new work down at his expense and restore the former condition of the wall.

Given January 1, at Sirmium, in the consulship of the Augusti (293).

[9] *The same Augusti and Caesars to Zosimus.* If, in neighboring buildings that are subject to a servitude enjoyed by you, Heraclius built a wall higher (than the servitude permits), he will be compelled by the governor to take the new work down at his own expense. But if it is not shown that you own the servitude, your neighbor is not forbidden from raising his building higher.

Posted June 27, at Sirmium, in the consulship of the Augusti (293).[141]

[10] *The same Augusti and Caesars to Nymphidius.* If the governor learns that you are the owner of a servitude of water and observes that you have not hitherto lost it by lack of use during the prescribed period, he will take care that you may enjoy the right that you own. But if this is not shown, the owner of the farm will not be forbidden from impounding the water on his own property through works erected on it, with the result that your fields are not irrigated.

Posted January 22, at Sirmium, in the consulship of the Caesars (294).

[11] *The same Augusti and Caesars to Aurelius.* A neighbor is not permitted to go or drive through another's field that owes no servitude to him. But no one is rightly prohibited from using a public highway.

Given October 22, at Sirmium, in the consulship of the Caesars (294).

[12] *The same Augusti and Caesars.* It is the extent not of the lands but of the servitude that places a limit on the the right of conducting water.

Posted December 30, at Nicomedia, in the consulship of the Caesars (294).

[13][142] *Emperor* Justinian *Augustus to John, Praetorian Prefect.* Just as We have not permitted a usufruct, which (in earlier law) was lost through lack of use for two years in the case of land, or for one year in the case of movables or self-moving property, to undergo (such) swift destruction, but have given ten and twenty years for this, so We have thought best to apply the same rule to servitudes, so that all servitudes shall not be lost by lack of use in two years,

[141] Mommsen dates this constitution to December 28, 293.

[142] Combine with C. 7.31.1. This constitution also refers to C. 3.33.16.

tantummodo soli rebus adnexae sunt, sed decennio contra praesentes vel viginti annorum spatio contra absentes, ut sit in omnibus huiusmodi rebus causa similis differentiis explosis.

D. xv k. Nov. Constantinopoli post consulatum Lampadii et Orestae vv. cc.

[14] *Idem A. Iohanni pp.* **pr.** Cum talis quaestio in libris Sabinianis vertebatur: quidam etenim pactus est cum suo vicino, ut liceat ei vel per se vel per suos homines per agrum vicini transitum facere iterque habere uno tantummodo per quinquennium die, quatenus ei licentia sit in suam silvam inde transire et arbores excidere vel facere, quidquid ei fuerit visum, et quaerebatur, quando huiusmodi servitus non utendo amittitur, et quidam putaverunt, si in primo vel secundo quinquennio per eam viam non itum est, eandem servitutem penitus tolli quasi per biennium ea non utendo deperdita, singulo die quinquennii pro anno numerando, aliis aliam sententiam eligentibus, nobis placuit ita causam dirimere, ut, quia iam per legem latam a nobis prospectum est, ne servitutes per biennium non utendo depereant, sed per decem vel viginti annorum curricula, et in proposita specie, si per quattuor quinquennia nec uno die vel ipse vel homines eius eadem servitute usi sunt, tunc eam penitus amittat viginti annorum desidia. qui enim in tam longo prolixoque spatio suum ius minime consecutus est, sera paenitentia ad pristinam servitutem reverti desiderat.

1. Cum autem apertissimi iuris est fructus aridos conculcatione quae in area fit suam naturam et utilitatem ostendere, aliquis vicinum suum vetabat ita aedificium extollere iuxta suam aream, ut ventus excluderetur et paleae ex huiusmodi obstaculo secerni a frugibus non possent, quasi vento suam vim per omnem locum inferre ex huiusmodi aedificatione vetito, cum secundum regionis situm et auxilium venti aream accedit. sancimus itaque nemini licere sic aedificare vel alio modo versari, ut idoneum ventum et sufficientem ad praefatum opus infringat et inutilem domino aream et fructuum inutilitatem faciat.

D. xi k. Nov. Constantinopoli post consulatum Lampadii et Orestae vv. cc.

since they are annexed only to immovable property, but rather in ten years for residents of the same province and in twenty years for non-residents, so that differences are disapproved and the same position is taken in all such cases.

Given October 18, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[14] *The same Augustus to John, Praetorian Prefect.* **pr.** The following case is discussed in the books of Sabinus: Someone made an agreement with his neighbor that he, in person or through his men, might make a path on and go across the field of that neighbor, but only during one day every five years, so that he could go from there to his own forest to fell trees or do whatever he liked. The question was when such servitude is lost through lack of use. Some thought that if he did not go through in the first or second five-year period, the servitude would be lost, as if it had been lost by lack of use in two years, by considering a single day of each five-year period the same as one year. Others thought differently. We have considered it proper to decide the dispute as follows: since We have, by law, already provided that servitudes are not lost by lack of use in two years, but by lack of use in ten and twenty years,[143] in the present case too, if during four periods of five years each either the owner of the servitude or his men do not use the servitude on the single day, then he entirely loses the right, through his sloth over twenty years. For whoever has not pursued his right for such a long and extended period regrets too late in asking for return to his old servitude.

1. When, moreover, there is a clear right that dry crops display their nature and usefulness through threshing on a threshing floor, someone forbade his neighbor from constructing a building next to his threshing floor in such a way that the wind would be blocked and the separation of the chaff from the crop be prevented by the obstruction, since the wind would be stopped by such a building from exercising its force over the place, even though, according to the situation of the place, help from the wind is a right annexed to the threshing floor. We, accordingly, ordain that no one shall be permitted to construct his building or to act in any manner such that he would weaken wind that is adequate and suitable for the aforesaid work, and (thereby) render the threshing floor and the grain useless to their owner.

Given October 22, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*[144]

[143] See 13 above.
[144] Lounghis *et al.* give October 18, 532.

XXXV De Lege Aquilia

[1] *Imp. Alexander A. Glyconidi.* Damnum per iniuriam datum immisso in silvam igne vel excisa ea si probari potest, actione legis Aquiliae utere.
PP. VII id. Nov. Alexandro A. cons.

[2] *Imp. Gordianus A. Muciano.* Legis Aquiliae actione expertus adversus eum, quem domum tuam deposuisse vel incendio concremasse damnoque te adflixisse proponis, ut id damnum sarciatur, competentis iudicis auctoritate consequeris. quin etiam, si aqua per iniuriam alio derivata est, ut in priorem statum restituatur, eiusdem iudicis cura impetrabis.
PP. VIII id. Nov. Gordiano A. et Aviola conss.

[3] *Idem A. Dolenti.* Ex morte ancillae, quam caesam conquestus es, tam legis Aquiliae damni sarciendi gratia actionem quam criminalem accusationem adversus obnoxium competere posse non ambigitur.
PP. V k. April. Gordiano A. II et Pompeiano conss.

[4] *Impp. Diocletianus et Maximianus AA. et CC. Zoilo.* Contra negantem ex lege Aquilia, si damnum per iniuriam dedisse probetur, dupli procedit condemnatio.
D. XV k. Mai. Heracliae AA. conss.

[5] *Idem AA. et CC. Claudio.* De pecoribus tuis, quae per iniuriam inclusa fame necata sunt vel interfecta, legis Aquiliae actione in duplum agere potes.
D. XV k. Nov. AA. conss.

[6] *Idem AA. et CC. Plinio.* De his, quae per iniuriam depasta contendis, ex sententia legis Aquiliae agere minime prohiberis.
PP. XV k. Nov. CC. conss.

Thirty-Fifth Title The Lex Aquilia[145]

[1] *Emperor* Alexander *Augustus to Glyconides.* If it can be proven that wrongful loss was inflicted by setting fire to your forest or by felling trees, you have a right of action under the lex Aquilia.

Posted November 7, in the consulship of Alexander Augustus (222).

[2] *Emperor* Gordian *Augustus to Mucianus.* If you bring an action under the lex Aquilia against the person who, as you allege, tore or burned down your house and thereby inflicted damage on you, you will obtain relief by the authority of an appropriate judge in order to compensate for this loss. Moreover, by the care of the same judge, you will obtain a judgment that in a case where water is conducted to another place, causing injury to you, it be restored to its former condition.

Posted November 6, in the consulship of Gordian Augustus and Aviola (239).

[3] *The same Augustus to Dolens.* There is no doubt that for the death of the female slave, who, as you complained, was killed, an action under the lex Aquilia to satisfy the damage can be pursued against the guilty person, as well as a criminal action.

Posted March 28, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

[4] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Zoilus.* In an action under the Aquilian law against a defendant who has entered a denial (of liability), if wrongful damage is proven, double compensation will be assessed.

Given April 17, at Heraclea, in the consulship of the Augusti (293).

[5] *The same Augusti and the Caesars to Claudius.* If your cattle were wrongfully shut in and then starved to death or were otherwise killed, you may bring an action for double damage under the lex Aquilia.[146]

Given October 18, in the consulship of the Augusti (293).

[6] *The same Augusti and Caesars to Plinius.* You are not at all forbidden, under the lex Aquilia, from bringing an action concerning property that you claim was wrongfully depastured.

Posted October 18, in the consulship of the Caesars (294).

[145] See D. 9.2; Just. *Inst.* 4.3. The lex Aquilia governed wrongful damage to property.

[146] Presumably the defendant had denied the accusation. Classical sources gave an analogous action, not a statutory one, in this situation: Gaius, 3.219.

XXXVI Familiae Erciscundae

[1] *Impp. Severus et Antoninus AA. Marciano.* Si non omnem paternam hereditatem ex consensu divisisti nec super ea re sententia dicta vel transactio subsecuta est, iudicio familiae erciscundae potes experiri.
PP. VIII k. Oct. Laterano et Rufino conss.

[2] *Imp. Antoninus A. Avitiano.* Uxor tua si mortuo patre tuo, cui dotem numeraverat, cum heres ei extiteris, adhuc in matrimonio tuo fuit, familiae erciscundae actionem ad exsequendam dotem secundum iuris pridem placitum adversus coheredes tuos nactus es eamque retines, etiam si postea, dum tibi nupta est, decessit.
PP. II id. Febr.

[3] *Idem A. Rufo.* Adversus coheredes dividendae hereditatis iudicio secundum iuris formam experire. iudex datus, si quid a coherede etiam tuae portionis ex hereditate sublatum fuerit probatum, adiudicationibus factis secundum iuris formam eum tibi condemnabit. expilatae enim hereditatis crimen frustra coheredi intenditur, cum iudicio familiae erciscundae indemnitati prospiciatur.
PP. VII. ... Nov.

[4] *Imp. Alexander A. Antonio.* Si filius familias fuisti et res mobiles vel se moventes, quae castrensis peculii esse possunt, donatae tibi a patre sunt, eas quoque in cetero peculio castrensi non communes cum fratribus tuis habes. praedia autem, licet eunti tibi in castra filio pater donaverit, peculii castrensis non sunt. diverso iure ea praedia habentur, quae ex occasione militiae filiis familias obveniunt: haec enim castrensi peculio cedunt.

[5] *Idem A. Statiliae.* In ipsius mariti tui fuit potestate mutare, quod iratus in servos suos testamento caverat, ut unus quidem in perpetuis vinculis moraretur, alter vero exportandus venumdaretur. proinde si

Thirty-Sixth Title Dividing an Inheritance[147]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Marcianus.* If you have not divided by agreement all the inheritance from your father, and no (arbitrator's) decision in connection with it has been given or no settlement has followed, through a suit you can claim the right to divide the inheritance.

Posted September 24, in the consulship of Lateranus and Rufinus (197).

[2] *Emperor* ANTONINUS *Augustus to Avitianus.* If you were still united in marriage to your wife at the time of the death of your father, to whom your wife had paid her dowry, and you became his heir, according to long-recognized law you acquired the right to sue your co-heirs for division of inheritance in order to recover the dowry, which you may retain, even though your wife subsequently, while she was (still) married to you, died.[148]

Posted February 12 (211–217).

[3] *The same Augustus to Rufus.* In a suit against your co-heirs on the right to partition, claim the inheritance according to law. If it is proven that any of your part of your inheritance was carried off by your co-heir, the delegated judge, when he makes his adjudication, will condemn him to pay you as provided by law. A criminal accusation of despoiling an inheritance cannot be made against a co-heir, since an heir can take steps to seek indemnification in a decree dividing the inheritance.

Posted ... (211–217).

[4] *Emperor* ALEXANDER *Augustus to Antonius.* If, while you were unemancipated, your father gave you movable property or self-moving property (i.e., animals or slaves), which could be a part of the soldier's *peculium* belonging to you, this, together with the rest of the *peculium* belonging to you, is not held in common by you with your brothers. Real estate, however, is not part of a soldier's *peculium*, even though your father gave it to you when you entered military service. A different law governs real estate acquired by an unemancipated son by reason of his military service – such property does belong to his soldier's *peculium*.

[5] *The same Augustus to Statilia.* It was in the power of your husband to change the provision which he made, while angry, concerning his slaves, namely, that one of them should remain forever in bondage, and that the

[147] See D. 10.2. The action to divide an inheritance (*familiae eriscundae*) was used when the heirs to fractions or portions of an undivided inheritance were unable to reach a settlement on its division among them.

[148] The son had not been emancipated.

offensam istam clementia flexit (quod, licet scriptura non probetur, vel aliis tamen rationibus doceri nihil impedit, praesertim cum posteriora eorum talia merita deprehenduntur, ut ira domini potuerit mitigari), novissimam eius voluntatem arbiter familiae erciscundae sequetur.

[6] *Imp. Gordianus A. Pompeio militi.* Ea quae in nominibus sunt non recipiunt divisionem, cum ipso iure in portiones hereditarias ex lege duodecim tabularum divisa sunt.
PP.

[7] *Idem A. Aeliano.* Si qua fideicommissorum petitio inter coheredes consistat, praetor vel praeses provinciae eius rei disceptator constitutus vel iudex familiae erciscundae iudicio aditus, ut voluntas testatricis servetur, suas partes debet accommodare.
PP. k. Sept. Gordiano ... conss.

[8] *Idem A. Telesphoro.* Bona, quaecumque sunt tibi communia cum fratre tuo ex hereditaria successione patris vel matris, cum eodem familiae erciscundae iudicio experiens, ut dividantur, impetrabis.
PP. VI non. ... Arriano et Papo conss.

[9] *Idem A. Nerviae.* Non est ambiguum, cum familiae erciscundae titulus inter bonae fidei iudicia numeretur, portionem hereditatis, si qua ad te pertinet, incremento fructuum augeri.

[10] *Idem A. Philoterae.* Quotiens inter omnes heredes testator successionem dividit ac singulos certis possessionibus cum mancipiis, quae in isdem sunt constituta, iubet esse contentos, voluntati eius salva legis Falcidiae auctoritate obtemperandum esse manifestum est: nec mutat, quod in sequentibus verbis mancipia sua universa nulla facta eorum discretione commendanda putavit heredibus, cum utique his ea videatur insinuasse, quibus etiam testamento relinquenda esse decrevit.

other should be sold to be sent abroad. If subsequent clemency softened his displeasure – his change of sentiment need not be shown in writing; nothing prevents it being shown by other means of proof, especially since the slaves' later deserts are seen as having been able to mitigate their master's ire – the judge arbitrator appointed for dividing the inheritance will follow his last wishes.

[6] *Emperor* GORDIAN *Augustus to Pompeius, a soldier.* Debts due the estate are not subject to division, as they are divided among the heirs in proportion to the inherited portions, according to and in conformance with the law of the Twelve Tables.[149]

Posted ...

[7] *The same Augustus to Aelianus.* If any claim for testamentary trusts (*fideicommissa*) exists among the heirs, the Praetor or the governor appointed as judge of the dispute, or the judge responsible for dividing the inheritance, when asked, must accommodate the heirs so that the last wish of the woman testator is carried into effect.

Posted September 1, in the consulship of Gordian ... (239 or 241).

[8] *The same Augustus to Telesphorus.* If you bring an action on division of an inheritance in order to divide those goods which you hold in common with your brother by inheritance from your father or mother, you will bring about a division.

Posted ..., in the consulship of Arrianus and Papus (243).

[9] *The same Augustus to Nervia.* Since the law regarding partition of inheritance is included among good faith actions (*bonae fidei iudicia*), there is no doubt that the portion of an inheritance, if any belongs to you, will be increased (in the awarding of it) by the income from it.

[10] *The same Augustus to Philotera.* It is clear that whenever a testator divides his property among all the heirs and orders each of them severally to be content with certain property together with the associated slaves, his wish, provided the Falcidian law is not violated, must be carried out. Nor is this changed if, by subsequent words (i.e., orally), he (changed his mind and) thought that all of his slaves (as a group), without making any distinction between them, should be assigned to his heirs, since in any event he seems to have assigned this property to those to whom also in his will he determined they should be left.

[149] *xii Tab.* 5.9; see also C. 2.3.26.

[11] *Imp. Philippus A. et Philippus C. Antoniae.* Inter filios ac filias bona intestatorum parentium pro virilibus portionibus aequo iure dividi oportere explorati iuris est.
PP. XVI *k. Mart. ... conss.*

[12] *Impp. Gallus et Volusianus AA. Rufo.* Non ideo divisio inter te ac fratrem tuum, ut proponis, facta irrita habenda est, quod eam scriptura secuta non est, cum fides rei gestae ratam divisionem satis adfirmet.
PP. prid. id. Mart. Gallo A. II *et Volusiano conss.*

[13] *Impp. Diocletianus et Maximianus AA. Saturnino.* Certum est liberorum peculia post mortem patris in hereditate dividenda ad communionem esse revocanda. frater autem et coheres tuus ob contractus, quibus vivente patre etiam ignorante ipso obligatus fuit, convenire te et alterum fratrem tuum coheredem vestrum ultra non potest, quam ut de peculio suo recipiat tantam quantitatem, in quantam condemnatus est his, cum quibus ipse contraxit.

[14] *Idem AA. Hermiano.* Si familiae erciscundae iudicio, quo bona paterna inter te ac fratrem tuum aequo iure divisa sunt, nihil super evictione rerum singulis adiudicatarum specialiter inter vos convenit, id est ut unusquisque eventum rei suscipiat, recte possessionis evictae detrimentum fratrem tuum et coheredem pro parte agnoscere praeses provinciae per actionem praescriptis verbis compellet.

[15] *Idem AA. et CC. Theophilae.* Si divisionem conventione factam etiam possessio consensu secuta dominium pro solido rerum, quas pertinere ad patrem tuum placuit, ei firmavit, earum vindicationem habere

[11] *Emperor* Philip *Augustus and* Philip *Caesar to Antonia.* The law is plain and proven that the property of intestate parents must be equally divided, per capita, among the sons and daughters.

Posted February 14, in the consulship of ...

[12] *Emperors* Gallus *and* Volusianus *Augusti to Rufus.* The division which you say was made between you and your brother is not to be considered void because it was not made in writing, since the truth of the fact itself is sufficient to make it valid.

Posted March 14, in the consulship of Gallus Augustus, for the second time, and Volusianus (252).

[13] *Emperors* Diocletian *and* Maximian *Augusti to Saturninus.* It is certain that, in dividing the inheritance, the *peculium* of children must, after their father's death, be put into the common fund with the other property. But your brother and co-heir, because of the contracts which he entered into during your father's lifetime but without his knowledge, cannot call upon you, along with your other brother and co-heir, beyond the point that he may retain out of his own *peculium* an amount equal to what he must pay the parties with whom he made the contracts.[150]

[14] *The same Augusti to Hermianus.* If, in the action of dividing the inheritance whereby the paternal property was equally divided between you and Our brother, no special agreement was made for eviction from the property assigned to you severally, i.e., that each for himself assumed the responsibility for any such result, then the provincial governor will, in an action with special terms (*actio praescriptis verbis*), rightly compel your brother and co-heir to recognize his proportion of the damage to you by reason of your eviction from the property.

[15] *The same Augusti and the Caesars to Theophila.* If a division of the property made by agreement was followed up by (your father taking) the possession which was agreed to, confirming in your father the ownership of the entire interest in the property which it was agreed would belong to him, you can bring an action for the recovery of this property if you have become your father's heir. But if (at his death) the agreement on division stood only at the stage of consent (but your father had not yet entered into possession), the

[150] Saturninus and his brothers (A and B) were co-heirs to their father. During the father's lifetime A had a *peculium*, on the basis of which he contracted without his father's knowledge. After the father's death, all three brothers' *peculia* become part of the estate to be divided between them; but A can retain an amount sufficient to pay his contractual debts, with any surplus going into the common fund.

potes, si patri tuo successisti. si vero placitum divisionis usque ad pactum stetit, arbiter familiae erciscundae iudicio vobis datus communionem inter vos finiri providebit.

[16] *Idem AA. et CC. Heracliano.* Filii patris testamentum rescindendi, si hoc inofficiosum probare non possunt, nullam habent facultatem. sed si tam circa testamentum quam etiam codicillos iudicium eius deficiat, verum quibuscumque verbis voluntas eius declarata sit, licet intestato ei fuerit successum, ex senatus consulto retentionis modo servato familiae erciscundae iudicio aditum iudicem sequi voluntatem oportere iuris auctoritate significatur.

D. VIII k. Sept. AA. conss.

[17] *Idem AA. et CC. Commodiano.* Coheredibus divisionem inter se facientibus iuri absentis et ignorantis minime derogari ac pro indiviso portionem eum, quae initio ipsius fuit, in omnibus communibus rebus retinere certissimum est. unde portionem tuam cum reditibus arbitrio familiae erciscundae percipere potes, ex facta inter coheredes divisione nullum praeiudicium timens.

D. VII k. Dec. Sirmi AA. conss.

[18] *Idem AA. et CC. Domnae.* **pr.** Filiae, cuius pater nomine res comparavit, si non post contrarium eius iudicium probetur, per arbitrium dividendae hereditatis praecipuas adiudicari saepe rescriptum est. his itaque, si patri successisti, quem nomine tuo quaedam comparasse dicis, adversus sororem tuam apud praesidem provinciae, si res integra est, uti potes. **1.** In communi autem hereditate quin sumptus ab uno facti bona fide familiae erciscundae iudicio vel negotiorum gestorum actione servari possint, non est ambiguum.

D. XVIII k. Ian. AA. conss.

[19] *Idem AA. et CC. Lysicratiae.* Incerti iuris non est in familiae erciscundae iudicio earum etiam rerum, quas ex coheredibus quidam de communibus absumpserunt vel deteriores fecerunt, rationem habendam eiusque rei ceteris praestandam indemnitatem.

PP. XVIII k. Ian. AA. conss.

judge arbitrator appointed for you to partition the inheritance will take care that the common property will be dispersed among you.[151]

[16] *The same Augusti and Caesars to Heraclianus.* Sons do not have the ability to break their father's will if they cannot prove it to be undutiful. If his testamentary wish is not clearly expressed in either a will or codicil, but his intentions were declared in certain words of his, then the authority of the law states that the judge overseeing the partitioning of the inheritance must follow this intention, even though he died intestate, while reserving to the heir, however, the right to retain the amount provided by the decree of the Senate.[152]

Given August 25, in the consulship of the Augusti (293).

[17] *The same Augusti and Caesars to Commodianus.* If co-heirs make a division among themselves, it is certain that they cannot take any right away from an heir who is absent and unaware, and he retains the undivided share which belonged to him in the beginning, in all the common property. Therefore you can receive your portion, with its increase, in an action on dividing the inheritance, without fearing any judgment that follows the division made by the co-heirs among themselves.

Given November 25, at Sirmium, in the consulship of the Augusti (293).

[18] *The same Augusti and Caesars to Domna.* **pr.** Rescripts have often been issued stating that if a father bought property in the name of his daughter, and it is not shown that the father subsequently changed his mind, this property will be assigned to her specially as part of her portion in an action to divide an inheritance. Therefore if you are your father's heir, and he, as you say, bought property in your name, you can use these rescripts against your sister before the governor, provided the matter is unchanged (legally; e.g., by his then alienating the property). **1.** Moreover, there is no doubt that, in the case of a common inheritance, the expenses paid out in good faith by one of the heirs may be recovered in an action to divide an inheritance or an action on mandate.

Given December 15, in the consulship of the Augusti (293).

[19] *The same Augusti and Caesars to Lysicratia.* The law is not uncertain that in an action to divide an inheritance, account will be taken of those things which some of the co-heirs have taken from the common property or which they have allowed to deteriorate in value, and they must indemnify the others on account of this matter.

Posted December 15, in the consulship of the Augusti (293).

[151] That is, Theophila cannot take possession in reliance on her father's agreement.
[152] An *SC* of 176 CE, under Marcus Aurelius: D. 38.17.2.18–19.

[20] *Idem AA. et CC. Pactumeiae.* In familiae erciscundae iudicio ab uno pro solido rei veluti communis venumdatae pretium non venit, sed mandati, si praecessit, coheres venditoris agere potest, vel negotiorum gestorum, si ratam fecerit venditionem. nam si velut propriam unus distraxit ac pretium possideat, hereditas ab eo petenda est.
III ... Febr. CC. conss.

[21] *Idem AA. et CC. Fortunato.* Si cogitatione futurae successionis officium arbitri dividendae hereditatis praeveniendo pater communis iudicio suo qualicumque indicio suam declaravit voluntatem, inter eos qui successerunt, exemplo Falcidiae retentionis habita ratione, familiae dividendae causa datus arbiter (virili praeterea portione eorum, quae nulli specialiter vel generaliter adsignavit, facta divisione) in adiudicando patris sequetur voluntatem.
VI k. Dec. CC. conss.

[22] *Idem AA. et CC. Dionysio.* Servum communem non consentientibus coheredibus, sed per errorem ad eum qui possidet pertinere credentibus tenens, cum omnis verus titulus deficiat, suum non facit, sed in eo portiones hereditarias adsignatas penes singulos successores remanere manifestum est.

[23] *Idem AA. et CC. Hermogeni.* Licet pacto divisionis adversus singulos actio pro hereditariis portionibus creditori parata mutari non possit, tamen ad exhibendam fidem his quae convenerant, stipulationis et iuris adhibito remedio, qui placitum excedit, urgueri potest, cum et hoc omisso, si non contrarium convenisse probaretur, praescriptis verbis conveniri potuisset.
S. ...

[24] *Idem AA. et CC. Socrati.* Filium, quam habentem fundum portionem hereditatis fratribus et quibusdam aliis sub condicione verbis precariis restituere sanxit testator, post eius eventum, hereditaria

[20][153] *The same Augusti and Caesars to Pactumeia.* In an action to divide an inheritance, the price (paid) for the entire property that one heir sold as if (the property was) held in common is not an issue. But the seller's co-heir may bring an action on mandate, if there was one earlier, or on management of affairs, if the sale was ratified. But if one heir has sold the property as though it belonged to him exclusively and he has the price, he is to be sued in an action for the inheritance.

..., in the consulship of the Caesars (294).

[21] *The same Augusti and Caesars to Fortunatus.* If a common father, in contemplation of future succession to his property and in anticipation of how a judge arbitrator in the division of his property would carry out his duties, has in any manner publicly declared his wish, the judge arbitrator appointed to hear the case for dividing the inheritance will follow the father's wish in adjudicating the rights of the successors, taking into account the right of retainer in imitation of the Falcidian law and, moreover, dividing in equal shares the property that has not been generally or specially assigned to anyone.

November 26, in the consulship of the Caesars (294).

[22] *The same Augusti and Caesars to Dionysius.* If a person holds a slave owned in common but without the (informed) consent of his co-heirs – since they erroneously believe that this slave belongs to the possessor – he does not thereby make the slave his own, since he has no true title. Rather, it is clear that the individual heirs retain in the slave the hereditary portions that they have been assigned and hold.

(294).

[23] *The same Augusti and Caesars to Hermogenes.* Although an action given to a creditor against the individual heirs in proportion to the part of an inheritance they each received cannot be changed by an agreement on division between the heirs, nevertheless one of the heirs who violates that agreement can be compelled to show his commitment to what was agreed by means of a remedy arising out of the stipulation and the law, since, even though a stipulation had been omitted, he could have been sued in an action with special terms, unless it were shown that an agreement to the contrary had been made

(294).

[24][154] *The same Augusti and Caesars to Socrates.* Through a request (*precariis verbis*) a testator provided that his son, who had a farm, should, under a

[153] = C. 2.18.19, possibly. Mommsen dates to November 11, 293.
[154] Combine with C. 6.20.6.

parte praedii in quartae ratione retenta, compensato praeterea quod a coheredibus vice mutua percepit et, si quid deest, in supplementum deducto, quod a ceteris in eo fundo solvitur supra quartam habens, reddere compelletur.

D. v k. Ian. CC. conss.

[25] *Idem AA. et CC. Diocl.* Ex causa donationis vel aliunde tibi quaesita, si avi successionem respueris, conferre fratribus compelli non potes.

D. id. April. Tusco et Anullino conss.

[26] *Imp. Constantinus A. ad Bassum.* **pr.** Inter omnes dumtaxat heredes suos, qui ex quolibet venientes gradu tamen pares videantur esse, vel emancipatos, quos praetor ad successionem vocat, sive coeptum neque impletum testamentum vel codicillus seu epistula parentis esse memoratur sive quocumque alio modo scripturae quibuscumque verbis vel indiciis inveniantur relictae, iudicio familiae erciscundae, licet intestato ad successionem liberi vocentur, servato senatus consulti auxilio defuncti dispositio custodiatur, etsi sollemnitate legum huiusmodi dispositio fuerit destituta. **1.** Si vero in huiusmodi voluntate designatis liberis alia sit mixta persona, certum est eam voluntatem quantum ad illam dumtaxat permixtam personam pro nullo haberi.

D. Romae k. ... Crispo II et Constantino II CC. conss.

XXXVII Communi Dividundo

[1] *Imp. Antoninus A. Luciano.* **pr.** Frater tuus si solam portionem praedii ad se pertinentem distraxit, venditionem revocari non oportet, sed adversus eum, cum quo tibi idem praedium commune esse coepit, communi dividundo iudicio consiste: ea actione aut universum praedium, si licitatione viceris, exsoluta socio parte pretii obtinebis aut

specified condition, restore his portion of the inheritance to his brothers and some others. Upon fulfillment of the condition, he will retain as heir the portion of the farm he received as part of his fourth birthright portion and he will be compensated besides for that which he received in return from his co-heirs (in fulfillment of the condition), and, after a deduction is taken (from what he was to turn over) to make up whatever is lacking, he will be compelled to turn over what, above the fourth, was contributed for the farm by the others.

Given December 28, in the consulship of the Caesars (294).

[25] *The same Augusti and Caesars to Diocles.* If you refused the inheritance from your grandfather, you cannot be compelled to put into hotchpot (*collatio*) with your brothers what you acquired by gift or otherwise.

Given April 13, in the consulship of Tuscus and Anullinus (295).

[26][155] *Emperor CONSTANTINE Augustus to Bassus.* **pr.** In an action to divide an inheritance, as long as the help provided by the decree of the senate (as to the birthright portion) remains intact, the decedent's wish shall be safeguarded, even though the children inherit by intestacy, and even though the deceased's wish was not expressed in the customary legal formality – whether it was shown in a will commenced but not completed, or was left and found in a codicil, letter of the parent, or writing in any form of words or signs. This shall be true only as to *sui heredes* who, though of different degrees (of kinship), nevertheless are equals (as *sui heredes*), or emancipated children whom the Praetor calls to the succession. **1.**[156] If an outside person is mixed in with the designated children in connection with a wish of this sort, it is certain that such a wish will be considered void as far as relates to such an outside person.

Given ... at Rome, in the consulship of Crispus, for the second time, and Constantine, for the second time, Caesars (321).

Thirty-Seventh Title Division of Common Property[157]

[1] *Emperor ANTONINUS Augustus to Lucianus.* **pr.** If your brother sold just the share of the estate belonging to him, he cannot revoke the sale; rather, through an action to divide common property you must sue the person who thereafter became co-owner of the commonly held property. In this action either you will

[155] As to content, see C.Th. 2.24.1 (August 29, 321); but the year is disputed; Seeck dates this constitution to May 19, 318. On the SC, see 16 above.

[156] Duplicated in C. 6.23.21.3a, of 439.

[157] See D. 10.3. This action allows a co-owner to seek partition of common property.

pretii portionem, si alius meliorem condicionem attulerit, consequeris. **1.** Quod si divisio praedii sine cuiusquam iniuria commode fieri poterit, portionem suis finibus tibi adiudicatam possidebis: hoc videlicet custodiendo, ut post litis contestationem nemo nec partem suam ceteris eiusdem rei dominis non consentientibus alienare possit.

PP. k. Mart. Romae Antonino A. IIII et Balbino conss.

[2] *Imp. Alexander A. Avito militi.* **pr.** Si probatum fuerit praesidi provinciae fratrem tuum vineas communes pignori dedisse, cum partem tuam, quam in vineis habes, creditori obligare non potuerit, praeses provinciae restitui tibi eam iubebit cum fructibus, quos creditor de parte tua percepit. **1.** Idem praeses provinciae de divisione vinearum inter te et creditorem fratris tui cognoscet et iubebit eum accepta pecunia, quanti statuerit partem fratris tui valere, eam partem quam de fratre tuo accepit tibi restituere aut aestimata tua parte ad creditorem fratris tui data pecunia quanti aestimaverit eam transferre.

PP. II id. Sept. Alexandro A. cons.

[3] *Idem A. Verecundiano.* **pr.** Ad officium arbitri, qui inter te et fratrem tuum dividendis bonis datus fuerit, ea sola pertinent, quae manent communia tibi et illi. nam ea, quorum partem is vendidit, cum emptoribus tibi communia sunt et adversus singulos arbitrum petere debes, si ab illorum quoque societate discedi placeat. **1.** Cum autem regionibus dividi aliquis ager inter socios non potest, vel ex pluribus singuli aestimatione iusta facta unicuique sociorum adiudicantur, compensatione invicem pretii facta eoque, cui maiores res pretii obvenit, ceteris condemnato, ad licitationem nonnumquam etiam extraneo emptore admisso, maxime si se non sufficere ad iusta pretia alter ex sociis sua pecunia vincere vilius licentem profiteatur.

PP. V non. Mai. Iuliano et Crispino conss.

[4] *Impp. Diocletianus et Maximianus AA. et CC. Herodae.* **pr.** Si maior quinque et viginti annis soror tua tecum res communes divisit, quamvis non instrumentis, sed aliis probationibus earum dire*m*ptam communionem probetur, stare finitis convenit. **1.** Quod si minor fuit

win the auction and obtain the entire property after paying part of the price to your partner (i.e., the buyer from your brother), or, if the other makes a better bid, a portion of the price (for your share). **1.** If, however, division of the land can be conveniently made without injury to anyone, then you will receive a portion within the boundaries adjudicated to you. It must, of course, be understood that after joinder of issue no one can alienate even his own share without the consent of his co-owners.

Posted March 1, at Rome, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[2] *Emperor* Alexander *Augustus to Avius, a soldier.* **pr.** If it is shown to the governor that your brother pledged vineyards owned in common by you and him, then, since he could not pledge the interest which you have therein, the provincial governor will order that your part, together with its income and profits which the creditor received, be restored to you. **1.** The same governor will hear an action to divide the vineyards between you and your brother's creditor, and will order the latter, upon receiving what the governor considers to be value of your brother's part, to restore the part received from your brother to you, or will order your part to be transferred to the creditor of the brother after the estimated value thereof, as assessed by him, is paid to you.

Posted September 12, in the consulship of Alexander Augustus (222).

[3] *The same Augustus to Verecundianus.* **pr.** The judge arbitrator, who has been appointed to divide the property between you and your brother, has jurisdiction only as to property still held in common between you and him. For the property in which he sold his interest is held in common by you and the purchasers, and you must bring an action against each of them if you do not want to continue to hold it in common with them. **1.** If, however, any field, or any individual fields out of several, cannot be divided because the land is impossible to measure, then it will be assigned to one of the co-owners after a just appraisement is made, and compensation will in turn be made according to the sale price. If any party receives a property of greater value than the value of his share, he will be condemned to pay the others the excess. Sometimes an outsider will even be admitted to the auction, especially if one of the co-owners states that he cannot outbid the lowest bidder with a fair price.

Posted May 3, in the consulship of Julian and Crispinus (224).

[4] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Heroda.* **pr.** If your sister, who is over 25 years of age, divided with you the property you held in common, even though the making of the division cannot be proven by any documents but can be shown by other proof, the agreement must stand.

nec tempus in integrum restitutioni praefinitum adhuc excessit, an in integrum propter divisionem restitui debeat, causa cognita provinciae praeses aestimabit. 2. Idem eorum etiam, quae vobis permanent communia, fieri divisionem providebit, tam sumptuum, si quis de vobis in res communes fecit, quam fructuum, item doli et culpae, cum in communi dividundo iudicio haec omnia venire non ambigitur, rationem, ut in omnibus aequalitas servetur, habiturus.

D. VIII id. Febr. CC. conss.

[5] *Idem AA. et CC. Secundino.* In communionem vel societatem nemo compellitur invitus detineri: quapropter aditus praeses provinciae ea, quae communia tibi cum sorore perspexerit, dividi providebit.

D. VIII k. Sept. CC. conss.

XXXVIII Communia Utriusque Iudicii Tam Familiae Erciscundae Quam Communi Dividundo

[1] *Imp. Antoninus A. Marco.* Divisionem praediorum vicem emptionis obtinere placuit.

PP. VI k. Dec. Gentiano et Basso conss.

[2] *Imp. Alexander A. Euphratae.* Etiamsi is divisioni arbitrum dedit, cui ius dandi non fuit, tamen si socii quondam divisioni consensum dederint, quod quisque eorum secundum placita possedit, pro parte socii dominium nactus est.

PP. XVI k. Dec. Alexandro A. III et Dione conss.

[3] *Impp. Diocletianus et Maximianus AA. Aureliae Severae.* Maioribus etiam, per fraudem vel dolum vel perperam sine iudicio factis divisionibus,

1. But if she was a minor, and the time fixed for restoration of her rights has not passed its limit, the governor will, after investigation, determine whether she should be restored to her former condition as to the division. **2.** He will also see to it that a division is made of the property still held in common between you, and an account will be taken of the expenses which one of you may have incurred in connection with the common property, and of the increase thereof, as well as of fraud and negligence – since all of these matters are clearly to be properly considered in an action on division – so that equality may be preserved in every respect.

Given February 6, in the consulship of the Caesars (294).

[5] *The same Augusti and Caesars to Secundinus.* No one is compelled to be trapped into holding communal property or participating in a partnership. Therefore approach the governor and he will see to a division of the property held by you in common with your sister.

Given August 25, in the consulship of the Caesars (294).

Thirty-Eighth Title Matters Common to an Action to Divide an Inheritance and One to Divide Common Property

[1] *Emperor ANTONINUS Augustus to Marcus.* It has been decided that a division of land has the force of a sale.[158]

Posted November 26, in the consulship of Gentianus and Bassus (211).

[2] *Emperor ALEXANDER Augustus to Euphrata.* Although the judge arbitrator in the division was appointed by a person who had no right to do so, nevertheless if the owners in common have once consented to the division, each will hold as his own that part of the common property which he possesses according to the decision of the judge arbitrator.

Posted November 16, in the consulship of Alexander Augustus, for the third time, and Dio (229).

[3][159] *Emperors DIOCLETIAN and MAXIMIAN Augusti to Aurelia Severa.* Aid is generally extended even to persons who are of age, and who, induced by fraud, cheating, or some other wrong, divided property without an action in court,

[158] Blume: "The parties to the division were regarded as reciprocally vendors and purchasers, each a purchaser of his own share, and a vendor of all the other shares."

[159] = *Consultatio* 2.6.

solet subveniri, quia in bonae fidei iudiciis et quod inaequaliter factum esse constiterit, in melius reformabitur.

PP. XVII k. Iul. ipsis IIII et III AA. conss.

[4] *Idem AA. ad Maximum.* Si patruus tuus ex communibus bonis res comparavit sibi negotium gerens, non omnium bonorum socius constitutus, pro competentium portionum modo indemnitati tuae consuli oportet: et ideo rem emptam eum communicare contra formam iuris postulas.

PP. XVI k. Nov. ipsis IIII et III AA. conss.

[5] *Idem AA. et CC. Frontoni et Glafirioni.* De instrumentis, quae communia fratrem vestrum tenere proponitis, rector aditus provinciae, apud quem haec collocari debeant, aestimabit.

PP. VI id. Febr. Sirmi AA. conss.

[6] *Idem AA. et CC. Thesidianae.* Si cum patruo vestro hac condicione divisionem fecistis, ut se nullum dolum malum adhibuisse iuraret, nec fidem placitis exhibuit, quominus res indivisas requiratis, eorum placitum quae in divisionem venerunt nihil vobis nocere potest.

D. V k. April. Sirmi CC. conss.

[7] *Idem AA. et CC. Severiano et Flaviano.* Si fratres vestri pro indiviso commune praedium citra vestram voluntatem obligaverunt et hoc ad vos secundum pactum divisionis nulla pignoris facta mentione pervenit, evictis partibus, quae ante divisionem sociorum fuerunt, in quibus obligatio tantum constitit, ex stipulatu, si intercessit, alioquin quanti interest praescriptis verbis contra fratres agere potestis. nam si fundi scientes obligationem dominium suscepistis, tantum evictionis promissionem sollemnitate verborum vel pacto promissam probantes eos conveniendi facultatem habetis.

D. II non. Dec. Nicomediae CC. conss.

since in good faith trials what is found to have been done inequitably will also be corrected.

Posted June 15, in the consulship of the Augusti themselves, Consuls for the fourth and third times, respectively (290).

[4] *The same Augusti to Maximus.* If your paternal uncle acquired some property from the assets you held in common and he was acting for himself, and he was not in partnership with you as to all of his property, he must indemnify you only as to your proportion of the assets held in common. You, therefore, demand without legal basis that the property which he bought should be held in common between you.

Posted October 17, in the consulship of the Augusti themselves, Consuls for the fourth and third times, respectively (290).

[5] *The same Augusti and the Caesars to Fronto and Glafirio.* The governor, if you go before him, will decide in whose custody there should be deposited the documents which you claim are common property but your brother (now) holds.

Posted February 8, at Sirmium, in the consulship of the Augusti (293).

[6] *The same Augusti and Caesars to Thesidiana.* If you made a division with your paternal uncle on the condition that he take an oath that he had been guilty of no deceit (*dolus malus*), and he did not remain committed to what had been agreed, the agreement concerning the property to be divided cannot prevent you from demanding the property back as undivided.

Given March 28, at Sirmium, in the consulship of the Caesars (294).

[7] *The same Augusti and Caesars to Severianus and Flavianus.* If your brothers, without your consent, obligated (as security for a debt) the entire property that they held in common with you, and this share came to you in accordance with an agreement on division, yet without any mention to you of the pledge, and if you are evicted from the portion which previous to the division belonged to all the then common owners and against which alone the obligation ran, then you can bring an action against your brothers on the stipulation (over division), if one was entered into, and if not, then an action with special terms. But if you took over the property with knowledge of the obligation on it, you may sue them (over the eviction) only on proof that there was a promise as to eviction in the form of a stipulation or a pact.

Given December 4, at Nicomedia, in the consulship of the Caesars (294).

[8] *Idem AA. et CC. Nicomacho.* Si inter vos maiores annis viginti quinque rerum communium divisio relicta vel translata possessione finem accepit, instaurari mutuo bona fide terminata consensu minime possunt.

D. non. Dec. CC. conss.

[9] *Idem AA. et CC. Demetriano.* Familiae erciscundae vel communi dividundo iudicium ita demum, si corpora maneant communia, agi potest.

D. VI id. Dec. Nicomediae CC. conss.

[10] *Idem AA. et CC. Gallicano.* Scriptura testamenti, qua specialiter omnia divisa continentur, quominus res quarum testator non fecit mentionem heredes inquirere nihil impedit.

Sine die et consule.

[11] *Imp. Constantinus A. Gerulo.* Possessionum divisiones sic fieri oportet, ut integra apud successorem unumquemque servorum vel colonorum adscripticiae condicionis seu inquilinorum proxima agnatio vel adfinitas permaneret. Quis enim ferat liberos a parentibus, a fratribus sorores, a viris coniuges segregari? igitur si qui dissociata in ius diversum mancipia vel colonos traxerint, in unum eadem redigere cogantur.

D. III k. Mai. Proculo et Paulino conss.

[12] *Imp. Iustinianus A. ad senatum.* **pr.** Illud aequitatis vovere rationibus bene nobis apparuit. si quis etenim pro filio suo ante nuptias donationem conscripserit vel dederit vel pro filia sua dotem et hoc quod dedit iterum in eundem revertatur vel stipulatione vel lege hoc faciente, vel et si alio dotem vel ante nuptias donationem dante stipulationis paternae tenor vel forte legis hoc induxerit, ille autem testamento condito vel filios suos vel extraneos scripserit heredes et nihil de huiusmodi rebus, quae ad eum reversae sunt vel pervenerunt, disposuerit, inveniantur autem alii liberi eius res a paterna substantia lucrati vel per ante nuptias donationes vel dotes vel militiae causa, quas utpote testamento existente non coguntur conferre, tunc filius vel filia easdem res, quae

[8] *The same Augusti and Caesars to Nicomachus.* If a division of communal property was made between you when you were (all) over 25 years old, and possession was then abandoned or transferred, the matters thus terminated in good faith by your mutual consent cannot be reopened.

Given December 5, in the consulship of the Caesars (294).

[9] *The same Augusti and Caesars to Demetrianus.* An action to divide an inheritance or property held in common can only be brought if the items in question are still held in common.

Given December 8, at Nicomedia, in the consulship of the Caesars (294).

[10] *The same Augusti and Caesars to Gallicanus.* A written will which states that all property is individually divided, does not forbid the heirs from inquiring about property of which the testator has made no mention.

Without day or consul.

[11][160] *Emperor* Constantine *Augustus to Gerulus.* Divisions of property should be made such that close blood relation or a tie by marriage among slaves, or tenants affixed to the soil or resident there (*coloni vel inquilini*), remains intact upon the succession of a master. For who would tolerate that children should be separated from parents, brothers from sisters, husbands from wives? If therefore anyone has separated slaves or bound tenants and placed them under different ownerships, they are compelled to reunite them as one.

Given April 29, in the consulship of Proculus and Paulinus (334).

[12][161] *Emperor* Justinian *Augustus to the Senate.* **pr.** It has appeared to Us well to dedicate the following provisions to principles of equity. If a father has promised in writing or has (actually) given a prenuptial gift for his son, or a dowry for his daughter, and the property that was given is returned to him either pursuant to a stipulation or by a provision of law to this effect, or if a third party has given a dowry or a prenuptial gift (on behalf of the father) and the tenor of a stipulation or perhaps of a law brings about the return of the property, but the father, in the making of his will, has designated either his children or others as his heirs and has made no provision as to the property that was so returned or came to him, while other children of his may be found who have been financially benefited by property from him as a prenuptial gift, dowry, or purchase money to buy an official position, which need not be put into hotchpot (*collatio*) by reason of the existence of the will, then the son or

[160] = C.Th. 2.25.1, with a significantly different text. Seeck dates it to April 29, 325.

[161] Combine with C. 2.44.4, 5.4.24, and 6.25.6. Blume: "The subject of collation is considered in C. 6.20, and the present law is best read in connection therewith." Later changed: Nov. 18.6.

ad patrem reversae sunt vel pervenerunt, habeant praecipuas, ad simile tamen lucrum computandas, ut in praesenti casu tantum habeat ipsa vel ipse, quantum eius fratres ex patre sunt consecuti secundum eos modos quos supra diximus et quos conferre propter testamentum non coartantur.

1. Sin autem nihil tale penitus in fratres eorum a patre collatum est, neque ipsos sibi praecipue hanc partem vindicare, sed, quasi paternae facta substantiae sit, inter omnes secundum institutionis tenorem dividi. et haec quidem, si inter fratres patris elogium compositum sit.

2. Sin autem extranei sint scripti heredes et nihil in testamento suo neque in hac parte testator dixerit, tunc omnimodo praecipuum habeat filius vel filia, quod ad patrem revertitur vel pervenit. si tamen minus in fratres collatum est, amplius autem ex huiusmodi casu ad patrem pervenit, illo quod ad similem quantitatem concurrit excepto cetera quasi paternae substantiae facta secundum modum institutionum dividantur: illo procul dubio observando, quod, si minus sit quod pater ex huiusmodi causa habuit ea quantitate quae in fratres collata est, tota huiusmodi portio ad eas personas perveniat, quarum occasione res ad patrem revertitur.

3. Ea igitur, quae in paterna persona diximus, obtinere volumus etiam in avum et proavum paternum vel maternum et in matrem et in aviam vel proaviam paternam vel maternam.

D. XI k. Aug. Constantinopoli Lampadio et Oreste vv. cc. conss.

XXXVIIII Finium Regundorum

[1] *Impp. Diocletianus et Maximianus AA. et CC. Nicephoro.* Regionem certam fundi propriis finibus eius mutatis dominus eius distrahere ac residuum retinere non prohibetur. nec amplius emptor, quam quod ratione secundum venditionis fidem ad se pervenit, vindicare potest praetextu terminorum temporis antecedentis venditionem.

D. id. Dec. Nicomediae CC. conss.

the daughter (first referred to) shall have as their *peculium* the property that was so returned or came to the father, but its value should be calculated only to the extent that he or she has in the present situation as much as their siblings have received in property from the father in the manner above mentioned and which, on account of the will, need not be brought into hotchpot.

1. If the other children received nothing from the father, then the siblings first mentioned shall not claim the property (returned as above mentioned) as their *peculium*, but it shall be treated as part of the father's estate and divided among all according to the tenor of the will. This shall be true if this additional clause in the will mentions only the offspring of the father.

2. But if strangers are designated as heirs, and the testator has made no mention of the portion in his will, then the son and daughter shall absolutely have as their *peculium* the property which he so received or was returned to him. If, nevertheless, a lesser amount was given to their brothers (and sisters) while a greater amount came to the father, in that case, then, the amount necessary for equalization being taken out, the remainder of the paternal property shall be divided according to the portions of the will (provided respectively for each). It should, of course, be observed that if the amount that the father had in such a case (namely property returned or which came to him in the contingency mentioned above) is less than the amount given to the other brothers (and sisters), the whole of this portion (so received or returned) shall go to the persons who were the occasion for the return of the property to the father.

3. What We have said as to the father, We wish also to apply to a grandfather and great-grandfather, paternal or maternal, as well as to a mother, grandmother and great-grandmother, paternal and maternal.

Given July 22, at Constantinople, in the consulship of Lampadius and Orestes (530).

Thirty-Ninth Title The Action to Settle Boundaries[162]

[1] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Nicephorus.* An owner is not forbidden from selling a certain portion of his farm, thus changing its boundaries, and retaining the rest. Nor can the purchaser, using the pretext that the sale was according to boundaries from an earlier time, claim more than he bought by a measurement pursuant to the sale.

Given December 13, at Nicomedia, in the consulship of the Caesars (294).

[162] See D. 10.1.

[2] *Idem AA. et CC. Tatiano.* Successionum varietas et vicinorum novi consensus, additis vel detractis agris alterutro, determinationis veteris monumenta saepe permutant.

D. VIIII k. Ian. Nicomediae CC. conss.

[3] *Imp. Constantinus A. ad Tertullianum.* **pr.** Si quis super iuris sui locis prior de finibus detulerit querimoniam, quae proprietatis controversiae cohaeret, prius super possessione quaestio finiatur et tunc agrimensor ire praecipiatur ad loca, ut patefacta veritate huiusmodi litigium terminetur. **1.** Quod si altera pars, ne huiusmodi quaestio terminetur, se subtraxerit, nihilo minus agrimensor in ipsis locis iussione rectoris provinciae una cum observante parte hoc ipsum faciens perveniet.

D. VIII k. Mart. Bessi[x] *Gallicano et Symmacho conss.*

[4] *Idem A. ad Bassum pp.* Si constiterit eum qui finalem detulerit quaestionem, priusquam aliquid sententia determinetur, rem sibi alienam usurpare voluisse, non solum id quod male petebat amittat, sed quod magis unusquisque contentus suo rem non expetat iuris alieni, qui inreptor agrorum fuerit in lite superatus, tantum agri modum, quantum adimere temptavit, amittat.

Lecta apud acta XII k. Iul. Gallicano et Symmacho conss.

[5] *Imppp. Valentinianus Theodosius et Arcadius AAA. Neoterio pp.* Quinque pedum praescriptione submota finalis iurgii vel locorum libera peragatur intentio.

PP. Alexandriae VII k. Aug. Arcadio A. et Bautone conss.

[6] *Imppp. Theodosius Arcadius et Honorius AAA. Rufino pp.* Cunctis molitionibus et machinis amputatis decernimus in finali quaestione

[x] Bessaparae

[2][163] *The same Augusti and Caesars to Tatianus.* Change through inheritances and the new agreements of neighbors, by adding to one field and subtracting from another, frequently alter former boundary monuments.

Given December 24, at Nicomedia, in the consulship of the Caesars (294).

[3][164] *Emperor* CONSTANTINE *Augustus to Tertullianus.* **pr.** If anyone has first brought a complaint about the boundaries of his property, one that also involves the question of the ownership of the property, the investigation into possession shall be settled first and then a surveyor will be required to go to the property, so that this sort of suit may be ended when the truth is known. **1.** Even if your adversary absents himself to prevent the adjudication of this question, a surveyor, accompanied by the party present to observe, shall still be sent to the property for said purpose under an order from the governor.

Given February 22, at Bessapara, in the consulship of Gallicanus and Symmachus (330).

[4][165] *The same Augustus to Bassus, Praetorian Prefect.* If it is shown that the person who brought an action to settle boundaries wished to usurp property of another before any (judicial) determination was made, not only shall he lose what he wrongly claimed, but, in order that everyone may be more content with his own property and not seek that of another, the person who invaded another's field and is defeated in the litigation shall lose as much of his own field as he tried to take from the other's.

Read for the public record June 21, in the consulship of Gallicanus and Symmachus (330).

[5][166] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Neoterius, Praetorian Prefect.* A claim concerning a boundary dispute and also the adjacent property shall be freely decided, the limitation of 5 feet (for usucapion around the boundary line) having been cleared away.

Posted July 26, at Alexandria, in the consulship of Arcadius Augustus and Bauto (385).

[6][167] *Emperors* THEODOSIUS, ARCADIUS, *and* HONORIUS *Augusti to Rufinus, Praetorian Prefect.* Removing all contrivances and machinations, We decree that in actions on boundary disputes the prescriptive period shall not be

[163] See D. 10.1.11.
[164] = C.Th. 2.26.1 (Tertullianus is Count of the Asian Diocese); combine with C. 8.4.5.
[165] = C.Th. 2.26.2 (given June 20).
[166] = C.Th. 2.26.4. On the suspended limitation, see *xii Tab.* 7.4.
[167] = C.Th. 2.26.5.

non longi temporis, sed triginta tantummodo annorum praescriptionem locum habere.

D. prid. non. Nov. Constantinopoli Arcadio A. II *et Rufino conss.*

XXXX De Consortibus Eiusdem Litis

[1] *Imp. Iulianus A. Secundo pp.* Explosis atque reiectis praescriptionibus, quas litigatores sub obtentu consortium studio protrahendae disceptationis excogitare consueverunt, sive unius fori omnes sint sive in diversis provinciis versentur, nec adiuncta praesentia consortis vel consortium agendi vel respondendi iurgantibus licentia pro parte pandatur.

D. III *non. Sept. Antiochiae Mamertino et Nevitta conss.*

[2] *Impp. Valentinianus et Valens AA. Sallustio pp.* Commune negotium post litem legitime ordinatam et quibusdam absentibus in solidum agi sine mandato potest, si praesentes rem ratam dominum habiturum cavere parati sunt, vel, si quod ab his petitur, iudicatum solvi satisdatione firmaverint.

PP. VI *id. Dec. divo Ioviano et Varroniano conss.*

XXXXI De Noxalibus Actionibus

[1] *Imp. Alexander A. Marcello.* Si extat corpus nummorum, quos ablatos ex patris tui hereditate ab eo, quem liberum esse constitit, adlegas, vindicare eos vel ad exhibendum agere non prohiberis. nam quamvis alias noxa caput sequatur et manumissus furti actione teneatur, quae in heredem non competit, cum tamen servus a domino aliquid auferat,

that of the standard "long time" (i.e., ten or twenty years), but fixed at thirty years.

Given November 4, at Constantinople, in the consulship of Arcadius Augustus, for the second time, and Rufinus (392).

Fortieth Title Co-Parties in the Same Litigation

[1][168] *Emperor JULIAN Augustus to Secundus, Praetorian Prefect.* Disapproving and rejecting the exceptions that litigants have been accustomed to contrive, under the pretense that there are co-parties and in a bid to protract the suit, We permit litigants, whether they are living in the same jurisdiction or in different provinces, to sue or defend (only) so far as their own interests are concerned, despite the absence of a co-party or co-parties.

Given September 3, at Antioch, in the consulship of Mamertinus and Nevitta (362).

[2][169] *Emperors VALENTINIAN and VALENS Augusti to Sallustius, Praetorian Prefect.* After the case has been duly established (prior to trial), if some of the interested parties are absent, a common matter can be litigated for all parties without special authorization, providing those present are ready to give security that the absent parties will consider the outcome legally valid; alternatively, if some claim is made against the latter, the parties who are present will give bond with sureties that they will satisfy the judgment.

Posted December 8, in the consulship of the Deified Jovian and Varronianus (364).

Forty-First Title Noxal Actions[170]

[1] *Emperor ALEXANDER Augustus to Marcellus.* You say that money was taken from the property you inherited from your father, by a person confirmed as a free person. If the money itself is still in existence (i.e., still physically identifiable), you are not forbidden to bring an action to claim its ownership or have it produced. Although, generally, a tort follows the person of the perpetrator

[168] = C.Th. 2.5.1 (but greatly condensed here).
[169] = C.Th. 2.12.2, which omits the recipient.
[170] See D. 9.4; Inst. 4.8. When a delict is committed by a slave, the slave's master, if sued, is often accorded the option of either paying the plaintiff what is owed on the delict, or surrendering the slave to the plaintiff *in noxam*.

quamvis furtum committat, furti tamen actio non est nata neque adversus ipsum, si postea manumissus est, locum habet, nisi furtivas res et post manumissionem contractat.

PP. XIII k. Dec. Maximo II et Aeliano conss.

[2] *Imp. Gordianus A. Quintiliano et aliis.* Si servi vestri inscientibus vobis vel etiam prohibentibus furtim arbores ceciderunt, quibus etiam propria poena iuxta legem saltui datam fuerat praestituta, frustra veremini, ne ex persona eorum ultra noxae deditionem sitis obstricti, cum ex delictis servorum domini ignorantes vel prohibentes, si noxali actione conveniantur, ita condemnari debeant, ut aut noxae dedere aut condemnationem sufferre habeant in sua potestate.

PP. III non. Iun. Gordiano et Aviola conss.

[3] *Impp. Diocletianus et Maximianus AA. et CC. Eutychio.* Sive servum plagii paras accusare sollemniter, praesidem provinciae adire non prohiberis, sive dominum eius sollicitati servi noxali iudicio vel furti malueris convenire, suam tibi notionem praeses provinciae commodabit non ignorans, quod, si dominum elegeris et eo non consentiente quod intendis commissum probaveris, vel noxae dedendae vel damni sarciendi ac poenae praestandae habeat facultatem.

PP. V non. Oct. Sirmi AA. conss.

[4] *Idem AA. et CC. Sosio.* **pr.** Si servus ignorante domino vel sciente et prohibere nequeunte res tuas vi rapuit, dominum eius apud praesidem provinciae, si necdum utilis annus excessit, quadrupli, quod si hoc effluxit tempus, simpli noxali iudicio convenire potes: qui si noxae maluerit servum dedere, nihilo minus cum ipso quantum ad eum pervenit experiri non prohiberis: nam si eo conscio et prohibere valente,

of the tort, and a manumitted slave may be sued in an action for a theft (commited while he was a slave), which does not follow his heir, yet when a slave steals anything from the master, although he commits a theft, nevertheless an action for theft does not arise against him, even if he is subsequently manumitted, unless he steals the things after manumission.[171]

Posted November 19, in the consulship of Maximus, for the second time, and Aelianus (223).

[2] *Emperor* Gordian *Augustus to Quintilianus and others.* If your slaves, without your knowledge or against your order, cut down trees they intended to steal, and proper punishment has been assigned to them under the law relating to forests, you needlessly fear that you are liable on their part for anything more than the delivery of the perpetrator of the tort, since masters, if sued in a noxal action for their slaves' delicts of which they are ignorant or which they forbade, should only be condemned to either deliver the perpetrator of the tort or to pay the damage for individuals in their power.

Posted June 3, in the consulship of Gordian and Aviola (239).

[3] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Eutychius.* You are not forbidden to go before the governor if you are preparing to bring, in the usual form, an accusation of kidnapping against a slave. Alternatively, if you prefer to sue the master of the accused slave in a noxal action or for theft, the governor will oblige you with an investigation of the matter, not unaware that if you choose to sue the master, but manage to show only that the offence you claim was committed without his consent, he has the choice to deliver up the slave perpetrator or pay the damage and penalty.

Posted October 3, at Sirmium, in the consulship of the Augusti (293).

[4] *The same Augusti and Caesars to Sosius.* **pr.** If a slave, acting without the master's knowledge or with his knowledge but without his being able to prevent it, robs your property, in a noxal action you can sue his master before the governor for fourfold damage if the judicial year has not elapsed, and for simple damage if this time has already elapsed. If the master prefers to deliver up the slave for satisfaction, still you are not forbidden to sue him for the amount of property which he received. If the robbery was committed with his knowledge and ability to prevent it, the privilege to deliver up the slave

[171] Blume: "In this case, as the Basilica (Bas. 60.5.44) explains this law, the decedent left a son and a slave, and gave the latter conditional liberty, and while the condition was still pending and not fulfilled – in other words, while the slave was still a slave, he stole some property from the inheritance. Afterwards the condition was fulfilled and the slave acquired his liberty. The son thereupon wanted to bring an action against the manumitted slave on account of the property stolen while the latter was in slavery."

detracta noxae deditione conventus ad summam condemnationis solvendam omnimodo compellendus est. 1. Sane si criminis publici accusationem propter uxorem tuam a servo raptam intendendam putaveris, non contra dominum, sed contra eum, quem facinus commisisse proponis, hanc instituere debes.

PP. XVIII k. Ian. Sirmi AA. conss.

[5] *Idem AA. et CC. Menophilo.* Si tibi per furtum nec manifestum ancillam servus ope consilioque domini cum aliis rebus subtraxit, cum inter servum et liberum civile iudicium consistere non possit, eum ob hoc delictum dupli poenali actione et de rebus propriis vindicatione vel condictione convenire potes.

S. V k. April. CC. conss.

XXXXII Ad Exhibendum

[1] *Imp. Alexander A. Crescenti militi.* Si dominium ancillae, de qua agis, ad matrem tuam pertinuit nec iure a patre tuo venumdata est eiusque proprietatem tibi vindicare paratus es, praeses provinciae exhiberi eam iubebit, ut apud iudicem de rei veritate quaeratur.

PP. k. Mai. Alexandro A. cons.

[2] *Idem A. Syro.* Si criminis alicuius reus servus postulatur, per ad exhibendum actionem produci a domino, non celari debet.

PP. XI k. Dec. Alexandro A. cons.

in satisfaction is taken away and he may be sued for, and is always compelled to pay, the entire amount of the damages awarded. **1.** Clearly, however, if you decide to institute a criminal accusation claiming that the slave raped your wife, then you must do so, not against the master, but against the slave who you claim committed the crime.

Posted December 15, at Sirmium, in the consulship of the Augusti (293).

[5] *The same Augusti and Caesars to Menophilus.* If by covert theft a slave took a female slave from you together with other things, acting with the aid and counsel of his master, then, since no civil action can be brought between a free person and a slave, you can sue the master on account of this delict, in a penal action for double penalty and in an action for recovery of the property or for unjust enrichment.

Written March 28, in the consulship of the Caesars (294).

Forty-Second Title The Action to Produce[172]

[1] *Emperor* ALEXANDER *Augustus to Crescens, a soldier.* If ownership of the female slave, about whom you are complaining, belonged to your mother and she was not legally sold by your father, and you are ready to sue to recover ownership of her, the governor will order her to be produced in order that the truth may be investigated before a judge.[173]

Posted May 1, in the consulship of Alexander Augustus (222).

[2][174] *The same Augustus to Syrus.* If a slave is accused of some crime, he must be produced by the master in an action for production (*actio ad exhibendum*), and must not be concealed.

Posted November 21, in the consulship of Alexander Augustus (222).

[172] See D. 10.4. Blume: "The action to produce and exhibit was one in the nature of a bill of discovery, to enable a claimant of personal property (including slaves) or other interested party, to whom the possessor of the property refused to show it, to definitely identify it and bring another action concerning it – e.g. to recover it, which was the usual case (D. 10.4.1), or to sue for the penalty of theft, when the property was stolen, or to exercise the option of choice, given, for instance by a testator, in connection with the property sought to be exhibited (D. 10.4.12.2), or, where a slave was sought to be produced, to pursue him in a criminal action, or to sue for a tort committed by him."

[173] Crescens' father had illegally sold a slave belonging to the soldier's mother, who evidently left Crescens as her heir.

[174] Combine with C. 9.2.2 and 9.35.1.

[3] *Idem A. Felicissimae.* Neque ad exhibendum actio neque proprietatis vindicatio, si nunc competit, propterea perempta est, quod aliquando adversus te ad exhibendum actione aliter pronuntiatum est, quia commutatione litis alia res esse incipit.
PP. k. Sept. Maximo II et Aeliano conss.

[4] *Idem A. Flaccillae.* Non ignorabit iudex, instrumenta tui iuris, quae penes diversam partem fuisse probaveris, si ab eisdem non exhibeantur, iurisiurandi in litem facultatem deferri tibi oportere.
PP. III k. Mart. Agricola et Clemente conss.

[5] *Imp. Gordianus A. Sabiniano militi.* Ad exhibendum actione non tantum eum qui possidet, sed etiam eum teneri, qui dolo fecit, quominus exhiberet, merito tibi a non contemnendae auctoritatis iuris consulto Modestino responsum est.
PP. II id. Febr. Gordiano A. et Aviola conss.

[6] *Imp. Philippus A. Polemonidi.* Instrumenta ad ius tuum pertinentia partem diversam invasisse adseverans, si quidem crimen intendis, sollemnibus accusationibus[xi] impletis fidem adseverationi tuae fac, sin vero ad exhibendum intendis, iudiciorum more experire.
PP. II id. Mart. Peregrino et Aemiliano conss.

[7] *Impp. Diocletianus et Maximianus AA. Vitaliano.* Exhibitionis necessitate tenetur, qui facultatem habens culpam vel dolum in explendo praecepto committit, ita ut, qui rem deteriorem exhibuit, aequitas exhibitionis proficiat, ut, quamvis ad exhibendum agi non potest, in factum tamen actio contra eum detur.
PP. XVI k. Iun. Maximo II et Aquilino conss.

[8] *Idem AA. et CC. Photino.* **pr.** Si res tuas commodavit aut deposuit is, cuius precibus meministi, adversus tenentem ad exhibendum vel vindicatione uti potes. **1.** Quod si pactus sit, ut tibi restituantur, si quidem ei qui deposuit successisti, iure hereditario depositi actione uti non

[xi] accusationis

[3] *The same Augustus to Felicissima.* Neither an action for production nor a claim for the recovery of the property, if it has now been granted, is undone because an action for production was formerly decided against you (the plaintiff), since a change in your suit makes the matter different.

Posted September 1, in the consulship of Maximus, for the second time, and Aelianus (223).

[4][175] *The same Augustus to Flacilla.* The judge will not be unaware that if you have proven that the documents belonging to you are in the possession of your adversaries and are not exhibited by them, you should be given the opportunity to swear an oath in court (assessing your loss).

Posted February 27, in the consulship of Agricola and Clemens (230).

[5] *Emperor* GORDIAN *Augustus to Sabinianus, a soldier.* It was rightly told to you by the jurisconsult Modestinus, an authority not to be despised, that not only a person in possession of property is subject to an action to produce it, but also a person who by fraud prevented himself from producing it.

Posted February 12, in the consulship of the Emperor Gordian and Aviola (239).

[6] *Emperor* PHILIP *Augustus to Polemonides.* You claim that your opponent took by force documents belonging to you. If you make an accusation against him, comply with the formal requirements as to an accusation and prove your case; but if you sue for production of your property, pursue your claim by the customary civil procedure.

Posted March 14, in the consulship of Peregrinus and Aemilianus (244).

[7] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Vitalianus.* A man is still required to produce property if, though being able to produce it, he commits negligence or fraud in fulfilling the (court's) order. So that if he produces the property in deteriorated condition, fairness as regards production demands that although an action to exhibit cannot be brought, an action on the facts may be given against him.

Posted May 17, in the consulship of Maximus, for the second time, and Aquilinus (286).

[8] *The same Augusti and the Caesars to Photinus.* **pr.** If the person whom you mention in your petition loaned or deposited your property, you may bring an action against the possessor to produce or recover the property. **1.** If he (the holder) agreed that the property should be restored to you, then if you are, by

[175] Combine with C. 2.3.12.

prohiberis: si vero nec civili nec honorario iure ad te hereditas eius pertinet, intellegis nullam te ex eius pacto contra quem supplicas actionem stricto iure habere: utilis autem tibi propter aequitatis rationem dabitur depositi actio.

S. v k. Mai. Heracliae AA. conss.

[9] *Idem AA. et CC. Faustino.* Si ex quocumque contractu apud praesidem provinciae iure debitum cui oportuerat te reddidisse probaveris, chirographa tua, ex quibus iam nihil peti potest, et instrumenta ad eum contractum pertinentia tibi naturaliter liberationem consecuto exhiberi ac reddi iubebit.

S. VIII k. Sept. CC. conss.

XXXXIII De Aleae Lusu et Aleatoribus

[1] [*Αὐτοκράτωρ Ἰουστινιανὸς Α. Δημοσθένει ἐπάρχῳ πραιτωρίων.*] **pr.** *Ἡ τῶν κύβων ...* Alearum lusus antiqua res est et extra operas pugnantibus concessa, verum pro tempore prodiit in lacrimas, milia extranearum nominationum suscipiens. quidam enim ludentes nec ludum scientes, sed nominationem tantum, proprias substantias perdiderunt, die noctuque ludendo in argento apparatu lapidum et auro. consequenter autem ex hac inordinatione blasphemare conantur et instrumenta conficiunt.

1. Commodis igitur subiectorum providere cupientes hac generali lege decernimus, ut nulli liceat in privatis seu publicis locis ludere neque in specie neque in genere: et si contra factum fuerit, nulla sequatur condemnatio, sed solutum reddatur et competentibus actionibus repetatur ab his qui dederunt vel eorum heredibus aut his neglegentibus a patribus seu defensoribus locorum: **2.** Non obstante nisi quinquaginta demum annorum aliqua praescriptione:

3. Episcopis locorum hoc inquirentibus et praesidum auxilio utentibus. **4.** Deinde vero ordinent quinque ludos, ton monobolon ton condomonobolon ke kondacca ke repon ke perichyten. sed nemini

inheritance, the successor to the person who deposited it, you are not forbidden to bring an action as heir on the contract of deposit. But if the inheritance from the deceased does not belong to you either under civil or Praetorian law, you understand that you have no action under strict law (*ius strictum*) on his pact against the person about whom you complain; however, an analogous action on the deposit will be given to you for reasons of fairness.

Subscribed April 27, at Heraclea, in the consulship of the Augusti (293).

[9] *The same Augusti and Caesars to Faustinus.* If you prove before the governor that you have delivered to the proper party what was due him by law from any contract, he will order what was written in your hand in that contract, and that nothing further can be claimed from it; also that the documents pertaining to the contract be produced and delivered to you, since you have in the natural course of things obtained freedom from any obligation.

Subscribed August 25, in the consulship of the Caesars (294).

Forty-Third Title The Game of Dice and Dice Players[176]

[1] *The Emperor* JUSTINIAN *Augustus to Demosthenes, Praetorian Prefect.*[177]
pr. The game of dice is ancient and is permitted only to contenders in games, and outside working hours. But in the course of time it has become a calamity, taking hold of thousands of others. For some, though knowing nothing of the game except to name the figures on the dice, gamble, and have lost their property by gambling, day and night with silver, precious stones, and gold. As a result, however, of this impropriety, they dare to blaspheme and they draw up acknowledgments of debt.

1. Desiring, therefore, to look after the interests of Our subjects, We ordain by this general law that no one shall be permitted to gamble in private or public places, either in a particular (game) or in general. If this order is violated, no penalty shall follow, but lost money shall be repaid and recovered in an appropriate action brought by those who have lost or by their heirs or, in case they fail to bring such actions, by the local commissioners or defenders of the cities. **2.** And there shall be no impediment to this except a limit of fifty years.

3.[178] The bishops of the places shall inquire into these matters, using the help of the governors. **4.** They shall further arrange for five games: long jump,

[176] Both constitutions in this title are Latin translations of Greek summaries of ordinances originally written in Greek. Krüger points to numerous textual problems.

[177] This inscription is restored from C. 1.4.25, a "twin" for section 3 below. "The game of dice" is also preserved in the *Paratitla ad Const.* 3–4.

[178] = C. 1.4.25 (Greek, with the fuller original version).

permittimus etiam in his ludere ultra unum solidum, etsi multum dives sit, ut, si quem vinci contigerit, casum gravem non sustineat. non solum enim bella bene ordinamus et res sacras, sed et ista: interminantes poenam transgressoribus, potestatem dando episcopis hoc inquirendi et auxilio praesidum sedandi.

D. x k. Oct. Constantinopoli Decio cons.

[2] [*Ὁ αὐτὸς βασιλεύς.*] **pr.** Prohibemus etiam, ne sint equi lignei: sed si quis ex hac occasione vincitur, hoc ipse recuperaret: domibus eorum publicatis, ubi haec reperiuntur. **1.** Si autem noluerit recipere is qui dedit, procurator noster hoc inquirat et in opus publicum convertat. **2.** Similiter provideant iudices, ut a blasphemiis et periuriis, quae ipsorum inhibitionibus debent comprimi, omnes penitus conquiescant.

XXXXIIII De Religiosis et Sumptibus Funerum

[1] *Imp. Antoninus A. Dionysiae.* Si vi fluminis reliquiae filii tui continguntur vel alia iusta et necessaria causa intervenit, aestimatione rectoris provinciae transferre eas in alium locum poteris.

PP. VIII k. Nov. Antonino A. IIII et Balbino conss.

[2] *Idem A. Hilariano.* Invito vel ignorante te ab alio illatum corpus in puram possessionem tuam vel lapidem locum religiosum facere non potest. si autem voluntate tua mortuum aliquis in locum tuum intulerit, religiosus iste efficitur: quo facto monumentum neque venire neque obligari a quoquam prohibente iuris religione posse in dubium non venit.

PP. k. Mai. Sabino II et Anullino conss.

pole vault, javelin toss, horse racing, and wrestling.[179] But We permit no one to risk more than a gold piece even in these games and even if he is very rich, so that when someone happens to win over another, his loss is not great. For not only do We regulate wars and sacred things well, but these matters also, threatening punishment to transgressors and giving power to bishops to investigate, and, with the help of the governors, to curb transgression.

Given September 22, at Constantinople, in the consulship of Decius (529).

[2] *The same Augustus.* **pr.** We also prohibit (the game with) wooden horses; if anyone loses in it, he may recover the loss. The houses of persons where these games are discovered shall be confiscated. **1.** However, if a person who has lost refuses to reclaim his loss, Our procurator shall make an investigation and direct the amount recovered to public works. **2.** The judges must likewise take care that everyone shall cease completely from blasphemy and perjury, which they should suppress through their restraints.

Forty-Fourth Title Concerning Sacred Places and Expenses on Funerals[180]

[1] *Emperor* ANTONINUS *Augustus to Dionysia.* If the remains of your son are disturbed by the power of a river, or if some other proper and necessary reason arises, you can, with the approval of the governor, transfer them to another place.

Posted October 25, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[2] *The same Augustus to Hilarianus.* If a third party has brought a dead body onto your property, which has not been consecrated to the dead, or into your stone sepulcher against your will or without your knowledge, he cannot thereby make it a place proper for burial (*locus religiosus*). But if someone has brought a dead body onto your place with your consent, it thereby becomes proper for burial. If this happens, then there is no doubt that the burial monument cannot, by sanctity of law, be sold or given as security.

Posted May 1, in the consulship of Sabinus, for the second time, and Anullinus (216).

[179] The names of these gambling games are transliterated from Greek; the text and the identity of the games are both highly uncertain.

[180] See D. 11.7.

[3] *Imp. Alexander A. Primo.* Legatum a defuncto tibi relictum et quod in funus vel morbum eius erogasse te boni viri arbitratu probaveris, praeses provinciae solvi tibi iubebit.

PP. V non. Iul. Maximo II et Aeliano conss.

[4] *Idem A. Licinio.* **pr.** Si sepulchrum monumenti appellatione significas, scire debes iure dominii id nullum vindicare posse, sed et, si familiare fuit, ius eius ad omnes heredes pertinere nec divisione ad unum heredem redigi potuisse. **1.** Profana tamen loca, quae circa id sunt, si semper vicinis aedificiis usui hominum destinatis cesserunt, eius sunt, cui illa, quorum partes esse visae sunt, ex divisione obtigerunt.

PP. VI non. Nov. Maximo II et Aeliano conss.

[5] *Idem A. Cassio militi.* Militis voluntatem, quam circa monumentum sibi faciendum testamento expressit, et mater et pater heredes eius neglegere non debent. nam etsi delatio hoc nomine praeteritis constitutionibus amota est, invidiam tamen et conscientiam circa omissum supremum huiusmodi officium et contemptum iudicium defuncti evitare non possunt.

PP. VIII k. Mai. Iuliano et Crispino conss.

[6] *Idem A. Primitivo et aliis.* Monumentorum inscriptiones neque sepulchrorum iura neque dominium loci puri ad libertos transferunt. praescriptio autem longi temporis, si iustam causam initii habuit, vobis proficiat.

PP. VIII k. Iul. Iuliano et Crispino conss.

[7] *Imp. Gordianus A. Claudio.* Statuas sepulchro superimponere vel monumento, quod te extructurum profiteris, ornamenta quae putas superaddere non prohiberis, cum in iure suo eorum quae minus prohibita sunt unicuique facultas libera non denegetur.

PP. III k. Aug. Gordiano A. II et Pompeiano conss.

[3] *Emperor Alexander Augustus to Primus.* The governor will order payment to you of the legacy left you by the deceased, as well as the amount, as measured by the standards of an upright man, that you have shown you paid out for his funeral and sickness.

Posted July 3, in the consulship of Maximus, for the second time, and Aelianus (223).

[4] *The same Augustus to Licinius.* **pr.** If you designate a burial place with the name "monument," you ought to know that it cannot be claimed by anyone as his own property, and that if it was a household burial place, the right thereto belongs to all the heirs, and it cannot belong to one heir through any division (of the inheritance). **1.** The profane places surrounding it, however, if they have always accrued to the buildings in the neighborhood and been devoted to human use, belong to the person to whom these buildings, to which the profane places are attached, have come by division (of an estate).

Posted November 2,[181] *in the consulship of Maximus, for the second time, and Aelianus (223).*

[5] *The same Augustus to Cassius, a soldier.* A soldier's last wish expressed in his will, namely that a monument be made for him, must not be neglected by his mother or father as his heirs. For although the right to inform (*delatio*) against a person on that account has been taken away by earlier constitutions, still they cannot escape unpopularity and a guilty conscience for leaving these last offices unperformed and defying the directions of the deceased.[182]

Posted April 24, in the consulship of Julian and Crispinus (224).

[6] *The same Augustus to Primitivus and others.* Inscriptions on monuments convey to freedmen neither rights to burial nor ownership of a place proper for burial. But long-time prescription (*praescriptio longi temporis*; for ten or twenty years), if its beginning was founded on proper grounds, will be of benefit to you.

Posted June 24, in the consulship of Julian and Crispus (224).

[7] *Emperor* G*ORDIAN* *Augustus to Claudius.* You are not forbidden to place statues atop a tomb or to add ornaments to the monument that you say you are about to erect. For in connection with his property anyone has the free right to do whatever is not forbidden by law.

Posted July 30, in the consulship of Gordian, for the second time, and Pompeianus (241).

[181] The reported date is *vi non. Nov.*, evidently an error; *iv non. Nov.*?

[182] Blume: "An inheritance could be taken from an heir if he did not comply with the decedent's wishes as to burial. Paul. [*Sent.*] 3.5.13. But that law was abolished in A.D. 224. C. 6.35.5."

[8] *Imp. Philippus A. Iuliae.* Ius familiarium sepulchrorum ad adfines seu proximos cognatos non heredes constitutos minime pertinet.
PP. XVI k. Iul. Peregrino et Aemiliano conss.

[9] *Idem A. et Philippus C. Faustinae.* Locum quidem religiosum distrahi non posse manifestum est. verum agrum purum monumento cohaerentem profani iuris esse ideoque efficaciter venumdari non est opinionis incertae.
PP. VI k. Dec. Philippo A. et Titiano conss.

[10] *Impp. Diocletianus et Maximianus AA. Aquilinae.* Si necdum perpetuae sepulturae corpus traditum est, translationem eius facere non prohiberis.
PP. VIII id. Dec. Diocletiano III et Maximiano AA. conss.

[11] *Idem AA. Gaudentio.* Obnoxios criminum digno supplicio subiectos sepulturae tradi non vetamus.
PP. VIII id. April. ipsis IIII et III AA. conss.

[12] *Idem AA. Victorino.* Mortuorum reliquias, ne sanctum municipiorum ius polluatur, intra civitatem condi iam pridem vetitum est.
PP. III k. Oct. ipsis IIII et III AA. conss.

[13] *Idem AA. et CC. Dionysio.* Ius sepulchri tam hereditarii quam familiaris ad extraneos etiam heredes, familiaris autem ad familiam, etiam si nullus ex ea heres sit, non etiam ad alium quemquam qui non heres est pertinere potest.
S. III id. Nov. Sirmi CC. conss.

[8][183] *Emperor* PHILIP *Augustus to Julia.* The right to burial with the household does not extend to those allied by marriage or to near blood relatives who are not designated as heirs.

Posted June 16, in the consulship of Peregrinus and Aemilianus (244).

[9] *The same Emperor and the Caesar* PHILIP *to Faustina.* That a place proper for burial cannot be sold is clear. On the other hand, it is not doubtful that an unconsecrated field (*ager purus*) which is close to a monument is governed by the rules pertaining to the profane and may, therefore, legally be sold.

Posted November 26, in the consulship of Philip Augustus and Titianus (245).

[10] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Aquilina.* If a dead body has not yet been buried in a permanent tomb, you are not forbidden to transfer it elsewhere.

Posted December 6, in the consulship of Diocletian, for the third time, and Maximian, Augusti (287).

[11][184] *The same Emperors to Gaudentius.* We do not forbid burial of persons guilty of a crime and deservedly punished.

Posted April 6, in the consulship of Diocletian, for the fourth time, and Maximian, for the third time, Augusti (290).

[12] *The same Emperors to Victorinus.* In order that the sacred right of a municipality may not be polluted, it has long been forbidden to bury the remains of dead persons within its boundaries.

Posted September 29, in the consulship of Diocletian, for the fourth time, and Maximian, for the third time, Augusti (290).

[13] *The same Emperors and the Caesars to Dionysius.* The right of burial in a hereditary or household burial place can belong also to outside heirs, but a household burial place belongs to the household, and even if no household member is designated as an heir, cannot belong to anyone else who is not designated as an heir.

Subscribed November 11, at Sirmium, in the consulship of the Caesars (294).

[183] Combine with C. 1.18.3.
[184] Combine with C. 9.49.6.

[14] *Idem AAA. Cynegio pp.* Nemo humanum[xii] corpus ad alterum locum sine Augusti adfatibus transferat.

D. IIII k. Mart. Constantinopoli Honorio nob. puero et Euodio conss.

[15] Ἐν οὐδενὶ τόπῳ οὐδὲν τέλος παρ' οὐδενὸς προσώπου ὑπὲρ τῶν διακομιζομένων σωμάτων παρέχεται.

[xii] Humatum

[14][185] *The same Emperors to Cynegius, Praetorian Prefect.* No one shall transfer an interred corpse to another place without a rescript of the Emperor.

Given February 26, at Constantinople, in the consulship of the Most Noble Boy Honorius and Euodius (386).

[15][186] Nowhere shall anyone pay any tax for the conveyance of dead bodies.

[185] = C.Th. 9.17.7; combine with C. 1.2.3. The constitution actually originates from Valentinian, Theodosius, and Arcadius.

[186] Restored from the Basilika (59.3.15); address and subscription lost.

THE CODEX OF JUSTINIAN

A New Annotated Translation, with Parallel Latin and Greek Text

BASED ON A TRANSLATION BY
JUSTICE FRED H. BLUME

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Justice Fred H. Blume, circa 1921, the year he acceded to the Wyoming Supreme Court and shortly after he had begun his translation of the Codex of Justinian.

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PP. xv k. Iul. Antonino A. IIII et Balbino conss.

[2] *Imp. Alexander A. Felici.* Iurisiurandi contempta religio satis deum ultorem habet. periculum autem corporis vel maiestatis crimen secundum constituta divorum parentum meorum, etsi per principis venerationem quodam calore fuerit periuratum, inferri non placet.
PP. VI k. April. Maximo II et Aeliano conss.

[3] *Impp. Diocletianus et Maximianus AA. Severae.* In bonae fidei contractibus nec non etiam in aliis causis inopia probationum per iudicem iureiurando causa cognita res decidi potest.
PP. x k. Sept. Maximo II et Aquilino conss.

[4] *Idem AA. Maximae.* Si ad excludendam tutelae actionem pupillus iusiurandum tutori dedit, postea eandem litem exercere non prohibetur.
PP. k. Iul. ipsis IIII et III AA. conss.

Fourth Book

edited by Dennis P. Kehoe

First Title Credit and Oaths[1]

[1] *Emperor* ANTONINUS *Augustus to Herculianus.* A case decided by an oath that is tendered pursuant to the agreement of each party, or when the opponent is tendering one and it is accepted or waived, cannot be reconsidered under the pretext of perjury, unless this should specifically be excepted by a statute.

Posted June 17, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[2] *Emperor* ALEXANDER *Augustus to Felix.* The scorned sanctity of an oath has a sufficient avenger in God. So in accordance with the decisions of My deified parents[2] it is decided that neither shall bodily danger be inflicted nor the charge of treason be preferred, even if as a result of some impetuousness perjury should have been committed through an oath sworn on the Emperor.

Posted March 27, in the consulship of Maximus, for the second time, and Aelianus (223).

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Severa.* In good faith contracts and indeed in other cases, in the absence of proofs, the case may be decided by the judge, after investigation, on the basis of an oath.

Posted August 23, in the consulship of Maximus, for the second time, and Aquilinus (286).

[4] *The same Augusti to Maxima.* If a ward has given an oath to a *tutor* to exclude an action on tutorship, afterwards he is not prohibited from bringing the same action.

Posted July 1, in the consulship of the Augusti themselves, Diocletian, for the fourth time, and Maximian, for the third time (290).

[1] See D. 12.1.2. Blume: "On failure or scarcity of proof, the law frequently allowed facts to be settled by one or the other party to a transaction taking an oath, commonly called the decisory or reference oath. This was a peculiar institution of Rome ..."

[2] D. 12.2.13.6.

[5] *Idem AA. Iuliano.* Cum etiam a pupillorum tutoribus velut ab ipsis pupillis relicta fideicommissa videantur, super fideicommisso praeses provinciae cognoscet et, si id tibi relictum esse constiterit, reddi tibi efficiet. idem, si infitietur, ad iusiurandum, ut desideras, tutorem adiget.

PP. III non. Dec. ipsis IIII et III AA. conss.

[6] *Idem AA. Bessio.* Cum proponas partibus placuisse iurisiurandi religione generis et ingenuitatis quaestionem decidi, praeses provinciae iuxta decretum arbitri ad voluntatis vestrae placitum amitae tuae filiis consulet.

PP. V id. Febr. Tiberiano et Dione conss.

[7] *Idem AA. et CC. Eutychianae.* Nec filius nec quisquam alius neque litigando neque paciscendo, sed nec iusiurandum citra voluntatem domini rei deferendo praeiudicium ei facere potest. unde si citra mandatum tuum aliquid erga rem tuam filius tuus gessit nec ratum habuisti, nihil tibi oberit.

S. id. Nov. AA. conss.

[8] *Idem AA. et CC. Alexandro.* Actori delato vel relato iureiurando, si iuraverit vel ei remissum fuerit sacramentum, ad similitudinem iudicati in factum actio competit.

S. XII k. Mai. CC. conss.

[9] *Idem AA. et CC. Marciano.* Delata condicione iurisiurandi reus (si non per actorem, quominus de calumnia iuret, steterit) per iudicem solvere vel iurare, nisi referat iusiurandum, necesse habet.

S. V k. Mai. Sirmi conss.

[10] *Idem AA. et CC. Protogeni.* In actione etiam depositi, quae super rebus quasi sine scriptis datis movetur, iusiurandum ad exemplum ceterorum bonae fidei iudiciorum deferri potest.

S. V k. Dec. CC. conss.

[5][3] *The same Augusti to Julian.* Since trusts are valid that have been bequeathed also by the *tutores* of minor wards just as by the wards themselves, the provincial governor will hold a hearing on the trust and, if it is established that it has been left to you, he will cause it to be returned to you. He will also, as you desire, compel the *tutor* to take an oath, if he should deny it.

Posted December 3, in the consulship of the Augusti themselves, Diocletian, for the fourth time, and Maximian, for the third time (290).

[6] *The same Augusti to Bessius.* Since you state that it was agreed between the parties that the question as to birth and free status be decided by the sanctity of an oath, the provincial governor will look after the interests of the children of your paternal aunt pursuant to the decree of the arbitrator, in accordance with your (plural) wishes.

Posted February 9, in the consulship of Tiberianus and Dio (291).

[7] *The same Augusti and Caesars to Eutychiana.* Neither a son nor anyone else can prejudice the interests of a property owner (*dominus*) by litigation or pact, or by tendering an oath without his consent. Hence, if your son transacted any business in connection with your property without your mandate, and you have not ratified it, it will not harm you.

Written November 13, in the consulship of the Augusti (293).

[8] *The same Augusti and Caesars to Alexander.* An action on the facts (*in factum*), similar to one on the execution of a judgment, is available to the plaintiff if, when an oath has been tendered or re-tendered, he swears it or the oath is waived.

Written April 20, in the consulship of the Caesars (294).

[9] *The same Augusti and Caesars to Marcianus.* When a (testamentary) oath (*condicio iusiurandi*) has been tendered, the defendant (if it is not the plaintiff's doing that he should not swear about tendering a vexatious oath) is compelled by the judge to pay or to swear an oath, unless he has re-tendered an oath.

Written April 27, at Sirmium, in the consulship of the Caesars (294).

[10] *The same Augusti and Caesars to Protogenes.* In an action on a deposit as well, which is brought concerning things delivered as if without written records, an oath may be tendered on the example of the other good faith judgments.

Written November 27, in the consulship of the Caesars (294).[4]

[3] = C. 6.42.20, giving just the principle.

[4] Mommsen dates to September 27, 294.

[11] *Imp. Iustinianus A. Demostheni pp.* **pr.** Si quis iusiurandum intulerit et necdum eo praestito postea, utpote sibi adlegationibus abundantibus, hoc revocaverit, sancimus nemini licere penitus iterum ad sacramentum recurrere (satis enim absurdum est redire ad hoc, cui renuntiandum putavit, et, cum desperavit aliam probationem, tunc denuo ad religionem convolare) et iudices nullo modo eos audire ad tales iniquitates venientes. **1.** Si quis autem sacramentum intulerit et hoc revocare maluerit, licere quidem ei hoc facere et alias probationes, si voluerit, praestare, ita tamen, ut huiusmodi licentia usque ad litis tantummodo terminum ei praestetur. **2.** Post definitivam autem sententiam, quae provocatione suspensa non sit vel quae, postquam fuerit appellatum, corroborata fuerit, nullo modo revocare iuramentum et iterum ad probationem venire cuidam concedimus, ne repetita lite finis negotii alterius causae fiat exordium.

D. XV k. Oct. Chalcedone Decio vc. cons.

[12] *Idem A. Demostheni pp.* **pr.** Generaliter de omnibus iuramentis, quae in litibus offeruntur vel a iudice vel a partibus, definiendum est. cum enim iam increbuit iudices in plenissima definitione sacramentum imponere, evenit, ut provocatione lite suspensa hi quidem, qui iusiurandum praestare iussi sunt, ab hac forte luce subtrahantur, probationes autem rerum cadant, cum multum discrepat iuramentum hereditarium a principali sacramento. necessitate itaque rerum coacti et probationibus pinguius subvenientes ad huiusmodi venimus sanctionem.

1. Omne igitur iuramentum, sive a iudicibus sive a partibus illatum vel in principio litis vel in medio vel in ipsa definitiva sententia, sub ipso iudice detur non expectata vel ultima definitione vel provocationis formidine. **1a.** Sed iuramento illato, cum hoc a partibus fuerit factum et a iudice approbatum vel ex auctoritate iudicis cuicumque parti illatum, si quidem is cui imponitur sacramentum nihil ad hoc fuerit reluctatus, et hoc praestetur vel referatur, necessitate imponenda ei cui refertur relationis subire sacramentum, vel, si hoc recusaverit, quasi illato sacramento praestito causa vel capitulum decidatur, nullo loco provocationi relinquendo. quis enim ferendus est ad appellationis veniens auxilium in his, quae ipse facienda procuravit?

[11] *Emperor* J*USTINIAN* *Augustus to Demosthenes, Praetorian Prefect.* **pr.** We ordain that no one, if he has tendered an oath and afterwards revokes it before it is taken, for instance if he has an abundance of proofs, should ever again have recourse to an oath – for it is rather absurd to return to what someone thought best to renounce, and, when he despaired of other proof, then to fly anew to an oath – and that the judges in no way should listen to those taking such an iniquitous course. **1.** Still, if someone has tendered an oath but has preferred to revoke it, he is permitted to do this and to furnish other proofs, if he wishes, provided, however, that the privilege of this sort be offered to him only up to the end of the litigation. **2.** However, after a final verdict, which has not been suspended by an appeal or which, after it has been appealed, has been confirmed, We permit no one to revoke the tender of oath or to have recourse again to proof, lest, if litigation is reopened, the end of one business become the beginning of another case.

Given September 17, at Chalcedon, in the consulship of the vir clarissimus *Decius (529).*

[12] *The same Augustus to Demosthenes, Praetorian Prefect.* **pr.** There must be a general definition concerning oaths that are tendered in a suit, either by the judge or by the parties. For since it has now become a frequent practice for judges to impose an oath with the most complete application,[5] it happens that, when the litigation is suspended upon appeal, these persons who have been ordered to offer an oath are taken by chance from this light of day and the proofs of the matters fail, since there is a great difference between an oath taken by an heir and that taken by a principal in the transaction. Forced, therefore, by necessity of the situation and assisting more fully in the matter of proof, We come to an enactment as follows.

1. Every oath, accordingly, whether tendered by the judges or the parties, either in the beginning or middle of the litigation or at the final decision itself, should be given before the very judge presiding the case, without awaiting the final judgment or the fear of an appeal. **1a.** But when an oath has been tendered, when this has been done by the parties and approved by the judge or has been imposed on either party by the authority of the judge, if indeed the person on whom the oath is imposed has offered no objection to this, the oath should be offered or re-tendered, with the requirement to be imposed on the person to whom the oath is being re-tendered to take the oath, or, if he refuses this, the case or point shall be decided as if the oath had been tendered and offered, with no place to be left for appeal. For who is to be tolerated resorting to the aid of an appeal in those matters that he himself purposely made happen?

[5] "plenissima definitione"; Blume translates "of most definite scope."

2. Sin autem is, cui sacramentum illatum est vel a parte vel a iudice, hoc subire minime voluerit, licentiam quidem habeat sacramentum recusare, iudex autem, si hoc omnimodo praestandum existimaverit, sic causam dirimat, quasi volente eo sacramentum sit recusatum, et ita cetera sive capitula sive totius negotii summa examinentur et lis suo Marte percurrat, nullo ei obstaculo obviante. **2a.** Ipse autem, qui sacramentum sibi illatum dare recusaverit, vel hoc attestetur vel, si forte non audeat, habeat sibi in ultima provocatione repositum auxilium. **2b.** Et si iudex appellationi praesidens bene quidem illatum iusiurandum, non rite autem recusatum pronuntiaverit, res secundum quod iudicatum est permanebit. **2c.** Sin autem non rite quidem illatum, recte autem recusatum sacramentum pronuntiaverit, tunc ei licebit emendare sententiam iudicis, quae quasi ex recusato sacramento processit, et nihil penitus nec praeiudicii nec iniusti dispendii cuicumque incurret, sed et causae cursus ab initio usque ad novissimum terminum non impediatur et lis aequa lance trutinabitur. **3.** Sive autem illatum iuramentum fuerit praestitum sive recusatum, ipsi parti quae hoc intulit nullum provocationis remedium in hoc servabitur, cum nimis crudele est parti quae hoc detulit propter hoc ipsum, quod iudex eius petitionem secutus est, superesse provocationem.

4. His de praesentibus personis statutis nec absentes nos fugiunt, sed etiam eos huic legi subiugamus. **4a.** Et si persona non praesens inveniatur, cui sacramentum illatum est, lite forte per procuratorem ventilata, necesse est vel ipsam principalem personam datis certis indutiis ad iudicem venire, ut ea quae de sacramentis statuta sunt impleat vel, si iudex existimaverit in provincia ubi degit sub actorum testificatione iuramentum ab ea vel dari vel referri vel recusari, hoc procedere, ut singulis casibus eventus iam definitus imponatur. **4b.** Licentia concedenda etiam parti alteri vel per se vel per procuratorem super hoc ipsum ordinatum adesse his, quae de iuramento aguntur, vel si neutrum facere maluerit, et ex una parte, sub fide tamen gestorum, iuramentum praestari vel referri vel recusari. **4c.** Expensis propter huiusmodi causam praestandis officio iudicis trutinandis, an ab utraque parte vel altera oportet eas dependi. **4d.** Nullo tamen ex hoc litibus impedimento generando, sed, donec ea procedunt, aliis vel capitulis vel litis membris a iudice eximinandis et, postquam fuerint ei

2. But if the person to whom an oath has been tendered, either by a party or a judge, does not want to undergo it, he should indeed have the right to refuse the oath; the judge, however, if he thinks that the oath must absolutely be offered, shall decide the case as if the oath had been declined with the person's consent,[6] and on this basis the remaining matters, either the individual point in dispute or the whole business, should be examined, and the suit should run its course (*suo Marte*), with no obstacle getting in its way. **2a.** The very person, however, who refuses to give an oath tendered to himself should either attest to this, or, if by chance he should not dare do this, should have for himself the aid represented in a final appeal. **2b.** And if the judge presiding over the appeal pronounces that the oath had been well tendered and not rightfully refused, the matter will remain as it was judged. **2c.** If, however, he pronounces that the oath had not rightfully been tendered but correctly refused, then he may modify the decision of the judge, which proceeded as if on the basis that the oath had been refused, and no prejudice at all or unjust expenditure will accrue to anyone, but the course of the case should not be impeded from its beginning to its final termination and the suit will be weighed in an equal balance. **3.** If, however, an oath that was tendered was taken or refused, no remedy of appeal will be reserved for the very party that tendered it, since it is quite cruel that an appeal be available to the party that raised an objection on this very basis, that the judge followed his request.[7]

4. While We make these provisions concerning people present, those absent do not escape Us, but We also subject them to this law. **4a.** And if a person to whom an oath had been tendered should be found not to be present, perhaps airing his case through a procurator, either the principal must, time being given for that purpose, come before the judge to comply with what has been legislated concerning oaths, or follow this procedure, if the judge decides that, under the testimony of agents (*actores*) in the province where he lives, the oath be given, re-tendered, or refused there, so that the result already defined be imposed on individual cases. **4b.** Permission is to be conceded also to the other party, either personally or through a procurator appointed for this very purpose, to be present at the proceedings that are conducted in connection with the oath, or, if he prefers to do neither, that the oath be offered or re-tendered or refused from one party, under the faith, however, of a record of the actions taken (*sub fide gestorum*). **4c.** It is the duty of the judge to weigh the expenses incurred on account of a case of this type, whether they are to be paid by each party or by one or the other. **4d.** However, no impediment is to be generated from this enactment for lawsuits, but, while these matters are proceeding, the judge should examine other individual points or parts of the

[6] "volente eo," referring to the person to whom the oath was tendered, not to the judge.
[7] "quae hoc detulit propter hoc ipsum."

intimata gesta super iuramento subsecuta, tunc iterum ad hoc capitulum iudice redeunte et eo adimpleto ad cetera perveniente. **4e.** Omnibus aliis, quae de praesentibus sancita sunt, et in absentium parte observandis.

5. In omnibus autem casibus, in quibus sacramenta praestantur, observationem iudicialem permanere censemus secundum personarum qualitatem, sive sub ipso iudice praestari oportet iuramentum sive in domibus, sive sacris scripturis tactis sive in sacrosanctis oratoriis. **6.** Similique modo in sua firmitate manere, quae de calumniae iureiurando vel relato sacramento legibus cauta sunt vel a nobis vel a retro divis principibus inducta. non enim, ut aliquid derogetur antiquioribus legibus, haec prolata sunt, sed ut, si quid deesse eis videbatur, hoc repleatur.

Recitata septimo in novo consistorio palatii Iustiniani. D. III k. Nov. Decio vc. cons.

[13] *Idem A. Iohanni pp.* **pr.** Cum quis legatum vel fideicommissum utpote sibi relictum exigebat et testamento forte non apparente pro eo sacramentum ei ab herede delatum est et is religionem suam praestavit, adfirmans sibi legatum vel fideicommissum derelictum esse, et ex huiusmodi testamento id quod petebat consecutus est, postea autem manifestum factum est nihil ei penitus fuisse derelictum, apud antiquos quaerebatur, utrum iureiurando standum est, an restituere debet hoc quod accepit: vel, si re vera ei relictum fuerat legatum vel fideicommissum, si demus licentiam heredi Falcidiam, si competat, ex hoc retinere. **1.** Nobis itaque melius visum est repeti ab eo legatum vel fideicommissum nullumque ex huiusmodi periurio lucrum ei accedere, sed et si verum fuerit inventum, quartae detentionem introduci (si tamen locum habeat), ne quis ex hoc delicto sibi lucrum impium adferre nostris legibus concedatur.

D. XV k. Nov. Constantinopoli post consulatum Lampadii et Orestae vv. cc.

II Si Certum Petatur

[1] *Impp. Severus et Antoninus AA. Modestino.* Neque aequam neque usitatam rem desideras, ut aes alienum patris tui non pro portionibus

suit and, after the actions that have taken place in connection with the oath have been reported to him, then he returns to this point in the case and when that is completed goes on to the other matters. 4e. All other provisions that have been made concerning persons who are present are to be observed in the case of persons who are absent.

5. Moreover, in all cases in which oaths are offered, We direct that judicial custom should be observed in accordance with the standing of the persons, whether the oath should be offered before the judge himself or in houses, whether by touching the sacred scripture or in sacred chapels (*sacrosanctis oratoriis*). 6. In a similar manner, all provisions remain in force that have been made in the laws concerning an oath on a vexatious lawsuit or a re-tendered oath, whether by Us or by divine emperors in the past. For these regulations have been enacted not so that anything be taken away from the ancient laws, but so that if something should seem to be missing from them, that it be supplied by them.

Recited for the seventh time in the New Consistory of Justinian's Palace. Given October 30, in the consulship of the vir clarissimus *Decius (529).*

[13] *The same Augustus to John, Praetorian Prefect.* pr. When someone was demanding a legacy or a trust as though left to him and, since by chance the will was not available, an oath was tendered to him on that account by the heir and he offered his solemn oath, affirming that the legacy or trust had been left to him, and he gained from a will of this type what he was seeking, but afterwards it became manifest that nothing at all had been left to him, it was asked among the ancients whether the oath was to be abided by or whether he ought to restore what he had received; or, if in fact a legacy or trust had been left him, whether We should give permission to the heir to retain from this the Falcidian portion, if this should apply. 1. Thus it has seemed better to Us that the legacy or trust be reclaimed from him and that no profit accrue to him from such perjury, so that no one may be permitted by our laws to make an impious profit out of this wrong, but even if it has been found to be true, the retention of the Falcidian quarter should be allowed (provided it should have a place).

Given October 18, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

Second Title Claims for Fixed Sums[8]

[1] *Emperors* Severus *and* Antoninus *Augusti to Modestinus.* You desire something that is neither just nor usual, that you and your brother, your

[8] See D. 12.1.

hereditariis exsolvatis tu et frater coheres tuus, sed pro aestimatione rerum praelegatarum, cum sit explorati iuris hereditaria onera ad scriptos heredes pro portionibus hereditariis, non pro modo emolumenti pertinere. quod nec ipse ignorare videris, cum creditoribus secundum formam iuris pro portione tua caveris.

D. k. Iul. Cilone et Libone conss.

[2] *Imp. Antoninus A. Hermogeni.* Quamvis pecuniam tuam Asclepiades suo nomine crediderit, stipulando tamen sibi ius obligationis quaesivit. quam pecuniam ut possis petere, mandatis tibi ab eo actionibus consequeris.

PP. VII k. Mai. Messala et Sabino conss.

[3] *Imp. Gordianus A. Sempronio.* Eos, qui officium administrant, neque per se neque per suppositas personas tempore officii sui in provincia fenus agitare posse saepe rescriptum est.

PP. VIII k. Sept. Gordiano A. et Aviola conss.

[4] *Imp. Philippus A. et Philippus C. Maximo.* **pr.** Si absentis pecuniam nomine eius fenori dedisti ac reprobato nomine mandatis actionibus experiris, praeses provinciae iurisdictionem suam praebebit. **1.** Idem, si cessare mandatum animadverterit, utilem tibi adversus debitorem eo nomine actionem competere non negabit.

PP. XV k. Mart. Praesente et Albino conss.

[5] *Impp. Diocletianus et Maximianus AA. et CC. Aristodemo et Proculo.* **pr.** Si non singuli in solidum accepta mutua quantitate vel stipulanti creditori sponte vos obligastis, licet uni numerata sit pecunia vel intercessionis nomine hanc pro rea suscepistis obligationem, frustra veremini, ne eius pecuniae nomine vos convenire possit, quam alii mutuo dedit, si intra praestitutum tempus rei gestae quaestionem detulistis. **1.** Ac multo magis inanem timorem geritis, si pecunia numerata oleum susceptum instrumento sit collatum, cum, si reddendi stipulatio

co-heir, should pay your father's debt, not in proportion to your shares of the inheritance, but in accordance with the valuation the property left to you in specific legacies (*praelegata*),[9] since it is established law that inherited burdens are the responsibility of the heirs in proportion to their shares of the inheritance, and not according to the measure of their gain. You yourself appear not to be ignorant of this, since you have given promises to the creditors in proportion to your share of the inheritance, in accordance with the rule of law.

Posted July 1, in the consulship of Cilo and Libo (204).

[2] *Emperor* ANTONINUS *Augustus to Hermogenes.* Although Asclepiades has loaned out your money in his own name, nevertheless by a stipulation he has sought the right to the obligation for himself. You will gain the right to seek the money if he authorizes you to bring actions.

Posted April 25, in the consulship of Messala and Sabinus (214).

[3] *Emperor* GORDIAN *Augustus to Sempronius.* Rescripts have often been issued that those administering an office cannot during the time of their duty lend money at interest in the province, even through intermediaries (*per suppositas personas*).[10]

Posted August 25, in the consulship of Gordian Augustus and Aviola (239).

[4] *Emperors* PHILIP *Augustus and* PHILIP *Caesar to Maximus.* **pr.** If you have loaned an absent person's money out at interest on his behalf, and after he had repudiated the loan you sue for recovery under the mandated actions (*actionibus mandatis*), the provincial governor will offer his jurisdiction. **1.** The same person, if he determines a mandate is inapplicable, will not deny you an analogous action (*actio utilis*) against the debtor on this account.

Posted February 15, in the consulship of Praesens and Albinus (246).

[5] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Aristodemus and Proculus.* **pr.** If you did not individually obligate yourselves willingly to pay the whole amount, either by accepting a loan (*mutuum*) or by promising to a creditor taking a stipulation, although the money was paid out to one person, or you have taken up this obligation as surety on behalf of a female defendant, you are groundlessly fearing that the creditor can sue you for that money, which he has given in loan to another, if you have raised the question about what has been done within the time allowed. **1.** You are carrying a fear all the more groundless if, after the money was counted out, it is recorded in a

[9] That is, legacies of specific property to heirs, in addition to their shares. See note C. 4.16.3; C. 3.36.24 (Blume).

[10] See D. 12.1.33–34 (Blume).

nulla subiecta est et huius rei est habita sollemnis contestatio, in suo statu remanente eo, quod vere factum intercessit, ex olei accepti scriptura nihil deberi manifestum est.

S. v non. Mai. AA. conss.

[6] *Idem AA. et CC. Nicandro.* **pr.** Si ex pretio debitae quantitatis facta novatione per stipulationem usuras licitas contra quem supplicas stipulatus es, falsa mutuae datae quantitatis demonstratio praemissa, cum obligationis non defecerat substantia, quominus usque ad modum placitum usurae possint exigi, nihil nocet. **1.** Si vero citra vinculum stipulationis tantum mutuam pecuniam datam conscriptum est et eius praestari fenus convenit, simulatis pro infectis habitis huiusmodi placitum nihil de praecedenti mutavit obligatione.

S. xv k. Dec. AA. conss.

[7] *Idem AA. et CC. Pactumeiae.* Non unde originem pecunia quae mutuo datur habet, sed qui contraxit si propriam numeravit, in huiusmodi obligationibus requiritur.

S. v non. Oct. Sirmi AA. conss.

[8] *Idem AA. et CC. Proculo.* Si pro mutua pecunia, quam a creditore poscebas, argentum vel iumenta vel alias species utriusque consensu aestimatas accepisti, dato auro pignori, licet ultra unam centesimam usuras stipulanti spopondisti, tamen sors, quae aestimatione partium placito definita est, et usurarum titulo legitima tantum recte petitur. nec quicquam tibi prodesse potest, quod minoris esse pretii pignus quod dedisti proponis, quominus huius quantitatis solutioni pareas.

S. xvii k. Ian. AA. conss.

written document that oil was delivered, since, if no stipulation for returning the oil has been added, and a solemn declaration before witnesses (*contestatio*) has been made about this thing, with what truly happened remaining as it is, it is manifest that nothing is owed by reason of the receipt for the oil that has been received.

Written May 3, in the consulship of the Augusti (293).

[6] *The same Augusti and Caesars to Nicander.* pr. If by stipulation you made a novation of the price for the amount that was owed, and from the person against whom you are petitioning you took a stipulation for (his payment of) lawful interest, (then,) since there had been substance to the obligation, your having made a false claim (*demonstratio*) that the amount was given "as a loan" does not hinder you from exacting up to the agreed-upon measure of interest. 1. But if, without the binding force of a stipulation, it was simply stated in writing that money was given as a loan and it was agreed that interest be paid for this, since fictitious conditions are treated as not made, an agreement of this type changed nothing from the preceding obligation.[11]

Written November 17, in the consulship of the Augusti (293).[12]

[7] *The same Augusti and Caesars to Pactumeia.* In obligations of this sort it is not asked where the money that is given in a loan has its origin, but if the person who has entered into the contract has paid out his own money.[13]

Written October 3, at Sirmium, in the consulship of the Augusti (293).

[8] *The same Augusti and Caesars to Proculus.* If, instead of a cash loan, which you were requesting from the creditor, you received silver or livestock, or other goods whose value was estimated with the consent of both parties, if you have given gold as a pledge, although you have promised by stipulation an interest rate over 12 percent (1 percent per month), nevertheless the principal, which has been defined by agreement based on the valuation of the parties, is rightly claimed, as is the interest, but only at the legal rate. Nor can it be of any benefit to you at all that you allege that the pledge that you have given was of a lower value, to avoid submitting to a payment of this amount.

Written December 16, in the consulship of the Augusti (293).

[11] Blume: "In this case a debtor owed an amount of money to a creditor on account of some transaction, e.g. on a sale and purchase. A new contract was made which stated the amount was owing because of a loan of money; and interest was agreed to be paid. When the amount of the principal became due under this new contract, the debtor claimed that he did not owe any interest ... A novation could only be made by a stipulation." In section 1, the bare pact could not transform an interest-free debt into an interest-bearing one.

[12] The month here or in the subscription to 7 seems to be corrupt. Mommsen dates this constitution to September 17, 293.

[13] See C. 3.42.8, 4.27.3, 4.34.8 (Blume).

[9] *Idem AA. et CC. Alexandro.* Cum te in Gallia cum Syntropho certum auri pondus itemque numeratam pecuniam mutuo dedisse, ut Romae solveretur, precibus adseveras, aditus competens iudex, si duos reos stipulandi vel re pro solido tibi quaesitam actionem sive ab heredibus Syntrophi procuratorem te factum animadverterit, totum debitum, alioquin quod dedisti solum restitui tibi iubebit.

S. xv k. Ian. AA. conss.

[10] *Idem AA. et CC. Egi Crispino.* Eo, quod a multis proprii debiti singulorum obligationis uno tantum instrumento probatio continetur, exactio non interpelletur. nam si pro pecunia quam mutuo dedisti tibi vinum stipulanti qui debuerant spoponderunt, negotii gesti paenitentia contractum habitum recte non constituit irritum.

S. prid. non. Febr. Sirmi CC. conss.

[11] *Idem AA. et CC. Maximiano.* Incendium aere alieno non exuit debitorem.

S. II id. Febr. Sirmi CC. *conss.*

[12] *Idem AA. et CC. Theophanio.* Si in rem communem cum Ione mutuam sumpsisti pecuniam nec re nec sollemnitate verborum vos obligastis in solidum et post integrum solvisti, de restituenda tibi parte contra Ionem experiri, ut debitum posceres, iudice cognoscente potes.

S. xv k. Sept. CC. conss.

[13] *Idem AA. et CC. Frontoni.* Eum, qui mutuam sumpsit pecuniam, licet in res alienas, creditore non contemplatione domini rerum eam fenori dante, principaliter obligatum obnoxium remanere oportet.

S. xvII k. Nov. Nicomediae CC. conss.

[14] *Idem AA. et CC. Hadriano.* Mutuae pecuniae, quam aliis dedit, creditor citra sollemnitatem verborum subscribentem instrumento non habet obligatum.

Sine die AA. conss.

[9] *The same Augusti and Caesars to Alexander.* Since you claim in your petition that while in Gaul with Syntrophus, you gave a certain weight of gold as a loan along with cash, to be repaid at Rome, when you approach a competent judge, if he decides that you two were joint creditors by stipulation (*reos stipulandi*) or that you have a cause of action for the whole amount from the nature of the contract, or that you have been made procurator by the heirs of Syntrophus, he will order that the whole amount, or otherwise, only what you have given, be restored to you.

Written December 18, in the consulship of the Augusti (293).

[10][14] *The same Augusti and Caesars to Egis Crispinus.* The exaction of a debt will not be interrupted for the reason that the proof of the obligation of individuals in a debt shared by many is contained in just one document. For if those who had owed you promised wine to you by stipulation instead of the money that you gave as a loan, their change of heart over the transaction does not render invalid a contract executed properly.

Written February 4, at Sirmium, in the consulship of the Caesars (294).

[11] *The same Augusti and Caesars to Maximianus.* A fire does not release a debtor from a debt.

Written February 12, at Sirmium, in the consulship of the Caesars (294).

[12] *The same Augusti and Caesars to Theophanius.* If you and Io borrowed money for a common enterprise and the two of you have not in fact (*re*) or by a stipulation (*sollemnitas verborum*) obligated yourselves for the whole amount and afterwards you paid it in full, you can proceed against Io about having (his) share (of the loan) restored to you, with a judge hearing the case, to demand what is owed.[15]

Written August 18, in the consulship of the Caesars (294).

[13] *The same Augusti and Caesars to Fronto.* A person who has borrowed money, though in connection with the affairs of another, must remain liable as the one principally obligated, since the creditor is lending the money without thinking about the principal in the business (*dominus rerum*).

Written October 16, at Nicomedia, in the consulship of the Caesars (294).[16]

[14] *The same Augusti and Caesars to Hadrianus.* A creditor does not hold someone signing a document (promising to pay) liable for money that he has given in loan to others without a stipulation.

Without a day in the consulship of the Augusti (293).[17]

[14] Combine with C. 4.49.12 (where the addressee's name is Egis Crispinus).

[15] Mommsen restores *aut indebitum poscere*, "or to demand what is not owed," i.e., to demand what the petitioner was not obligated to pay.

[16] Mommsen restores the date as November 13, 294.

[17] The mss. have the consulship of the Augusti, but Krüger amends to make the date 294.

[15] *Idem AA. et CC. Charidemo.* Non adversus te creditores, qui mutuam pecuniam sumpsisti, sed eius, cui hanc credideras, heredes experiri contra iuris evidenter postulas formam.

S. v k. Dec. Nicomediae CC. conss.

[16] *Impp. Honorius et Theodosius AA. Theodoro pp.* Quisquis iudici fenebrem pecuniam mutuaverit, si in provincia fuerit versatus, quasi emptor legum atque provinciae, vel si quis collectarius honoris pretium dederit ambienti, exilii poena una cum ipso iudice plectetur.

D. xvii k. Nov. Basso et Philippo conss.

[17] *Imp. Iustinianus A. Menae pp.* Super chirographariis instrumentis haec pro communi utilitate sancienda duximus, ut, si quis pecunias credere supra quinquaginta libras auri voluerit vel super reddito debito securitatem accipere, cum amplius sit memorata quantitate, sciat non aliter debere chirographum a debitore vel creditore percipere, quam si testimonium trium testium probatae opinionis per eorum subscriptiones idem chirographum capiat. nam si citra huiusmodi observationem chirographum pro pecuniis memoratam auri quantitatem excedentibus proferatur, minime hoc admitti ab iudicantibus oportet. quod in futuris creditis vel debitorum solutionibus locum habere oportet.

D. k. Iun. Constantinopoli dn. Iustiniano pp. A. ii cons.

III De Suffragio

[1] *Imppp. Theodosius Arcadius et Honorius AAA. Rufino pp.* pr. Si qui desideria sua explicare cupientes ferri sibi a quoquam suffragium postulaverint et ob referendam vicem se sponsione constrinxerint, promissa restituant, cum ea quae optaverint consequantur: si artibus moras

[15] *The same Augusti and Caesars to Charidemus.* You are demanding, plainly against the rule of law, that the creditors should not sue you, the person who borrowed the money, but (instead) the heirs of the one to whom you had loaned this sum.

Written November 27, at Nicomedia, in the consulship of the Caesars (294).

[16] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Theodorus, Praetorian Prefect.* Whoever has loaned money at interest to a judge, if he had acted in the province as if he were a purchaser of the laws and the province, or if some money changer (*collectarius*) has given a candidate the price of the office, he will be punished with the penalty of exile along with the judge himself.[18]

Given October 16, in the consulship of Bassus and Philippus (408).

[17][19] *Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect.* We have deemed that the following should be ratified for the common benefit concerning written promissory documents (*chirographaria instrumenta*), that if anyone wants to lend money over the amount of 50 pounds of gold or receive a receipt (*securitas*) concerning the repayment of the debt when it is greater than the amount mentioned above, he should know that he should not get a promissory note from the debtor or creditor, unless the same promissory note contains the testimony, through their own signatures, of three witnesses of established reputation. For if, without observing this type of procedure, a promissory note for funds exceeding the quantity of gold mentioned should be introduced, this should not be admitted by those judging the case. This enactment must have a place in future loans or payments of debts.[20]

Given June 1, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, for the second time (528).

Third Title Recommendations[21]

[1][22] *Emperors* THEODOSIUS, ARCADIUS, *and* HONORIUS *Augusti to Rufinus, Praetorian Prefect.* **pr.** If any persons wanting to make known their desires (to the Emperor) have asked that a recommendation (*suffragium*) be brought for them by someone and have bound themselves by a solemn promise (*sponsione*)

[18] In this period, the term *iudex* can refer to a provincial governor. See also C. 4.3.1; D. 12.1.34.
[19] Combine with C. 4.20.18, 4.21.17, 4.30.14, possibly 4.30.15, and 5.15.3.
[20] Blume: "The foregoing law was modified to some extent by novel 73, cc. 8 and 9, appended to C. 4.21 requiring five instead of three witnesses to such documents, if executed in cities by persons without knowledge of writing, and if involving more than one pound of gold."
[21] *Suffragia*, recommendations for a privilege or position.
[22] = C.Th. 2.29.2. Seeck dates to March 4, 394.

nectent, ad solutionem debiti coartandi sunt. **1.** Sed si quid eo nomine in auro vel argento vel ceteris mobilibus datum fuerit, traditio sola sufficiat et contractus habebit perpetuam firmitatem, quoniam collatio rei mobilis inita integra fide hac ratione cumulatur. **2.** Quod si praedia rustica vel urbana placitum continebit, scriptura, quae ea in alium transferat, emittatur, sequatur traditio corporalis et rem fuisse completam gesta testentur: aliter enim ad novum dominium transire non possunt neque de veteri iure discedere. **3.** Quod si quis, dum solo commonitorio de suffragio nititur, bona duxerit occupanda, reus temeritatis ac violentiae retinebitur atque in statum pristinum possessio reducetur, eo a petitione excluso, qui non dubitavit invadere, quod petere debuisset.

D. III non. Mart. Constantinopoli Arcadio III et Honorio II AA. conss.

IIII De Prohibita Sequestratione Pecuniae

[1] *Impp. Honorius et Theodosius AA. Iohanni pp.* Quotiens ex quolibet contractu pecunia postulatur, sequestrationis necessitas conquiescat. oportet enim debitorem primo convinci et sic ad solutionem pulsari. quam rem non tantum iuris ratio, sed et ipsa aequitas persuadet, ut probationes secum adferat debitoremque convincat pecuniam petiturus.

D. V id. Iul. Ravennae Honorio XIII et Theodosio X AA. conss.

V De Condictione Indebiti

[1] *Impp. Severus et Antoninus AA. Muciano.* **pr.** Pecuniae indebitae per errorem, non ex causa iudicati solutae esse repetitionem iure

to return the favor, they should carry out their promises when they gain what they have wished for; if they should create delays by artifices, they are to be compelled to pay their debt. 1. But if anything has been given for that purpose in gold, silver, or other movable property, delivery (*traditio*) alone shall suffice and the contract will have perpetual validity, since the payment of movable property entered into with full faith is completed in this way. 2. But if the agreement will contain rural or urban properties, a written document should be posted that transfers them to another person, the physical delivery should follow, and the public records (*gesta*) should testify to the completion of the transaction; otherwise they (the properties) cannot pass to new ownership or depart from their old legal status. 3. But if someone deems it appropriate to take possession of the property while he is relying only on a letter of instruction asking for a recommendation (*commonitorio suffragio*), he will be held as one guilty of effrontery and violence and the possession will be restored to its previous status, while that person who did not hesitate to take by force (*invadere*) what he ought to have asked for is excluded from any cause of action.[23]

Given March 5, at Constantinople, in the consulship of Arcadius, for the third time, and Honorius, for the second time, Augusti (394).

Fourth Title The Prohibited Sequestration of Money[24]

[1][25] *Emperors* Honorius *and* Theodosius *Augusti to John, Praetorian Prefect.* Whenever money is demanded from a contract of any sort, the need for sequestration should cease. For the debtor must first be convicted and in this way forced to payment. Not only does the rationale of the law urge this course of action, but also fairness itself, that the person who is going to claim money should bring along proofs and should convict the debtor.

Given July 11, at Ravenna, in the consulship of Honorius, for the thirteenth time, and Theodosius, for the tenth time, Augusti (422).

Fifth Title Claim for Restitution[26]

[1] *Emperors* Severus *and* Antoninus *Augusti to Mucianus.*[27] **pr.** There is no doubt that there is recovery through a claim for restitution (*condictio*) for

[23] See C.Th. 2.29.2. As Blume argues, the law may have been repealed by Novel 8. It was not legal to purchase an office: C. 9.27.6.

[24] *Sequestratio* is a pre-trial process whereby two parties contesting for property deposit it with a third party, the *sequester* (stakeholder).

[25] = C.Th. 2.28.1; combine with C. 2.13.2, 4.26.13, 8.15.8, 11.46.17, 12.60.4.

[26] See D. 12.6.

[27] Based on the date, the emperor in this and in the following ch. should be "*Emperor* Antoninus *Augustus.*"

condictionis non ambigitur. si quid igitur probare potueris patrem tuum, cui heres extitisti, amplius debito creditori suo persolvisse, repetere potes. 1. Usuras autem eius summae praestari tibi frustra desideras: actione enim condictionis ea sola quantitas repetitur, quae indebita soluta est.

PP. III k. Aug. Antonino A. IIII et Balbino conss.

[2] *Idem AA. Secundinae.* Si citra ullam transactionem pecuniam indebitam alieno creditori promittere delegata es, adversus eam quae te delegavit condictionem habere potes.

PP. XIIII k. Ian. Antonino A. IIII et Balbino conss.

[3] *Impp. Diocletianus et Maximianus AA. et CC. Pamphilo.* Cum et soluta indebita quantitas ab ignorante repeti possit, multo facilius quantitatis indebitae interpositae scripturae condictio competit vel doli exceptio agenti opponitur.

S. III non. April. Byzantii AA. conss.

[4] *Idem AA. et CC. Heraclio.* Ea, quae per infitiationem in lite crescunt, ab ignorante etiam indebita soluta repeti non posse certissimi iuris est. sed et si cautio indebitae pecuniae ex eadem causa interponatur, condictioni locum non esse constat.

S. V id. April. Byzantii AA. conss.

[5] *Idem AA. et CC. Attalo.* Si a patre emancipatus ei non intra tempora praestituta iure honorario successisti, quidquid indebitum postea per errorem utpote patris successor dedisti, eius condictionem tibi competere non est incerti iuris.

S. XIIII k. Mai. AA. conss.

[6] *Idem AA. et CC. Mnaseae.* Si per ignorantiam facti non debitam solutam quantitatem pro alio solvisti et hoc addito rectore provinciae fuerit probatum, hanc ei cuius nomine soluta est restitui eo agente providebit.

S. VI id. Aug. AA. conss.

money not owed but paid by mistake, not on the basis of a judgment (*ex causa iudicati*). If you can prove, therefore, that your father, whose heir you are, paid something above what was owed to his creditor, you can claim it back. 1. But you desire in vain that interest on this sum be provided to you; for in an action for restitution only that amount is claimed back that was paid but not owed.

Posted July 30, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[2] *The same Augusti*[28] *to Secundina.* If, without any settlement, you were delegated (*delegare*) to promise money not owed to someone else's creditor, you can have a claim for restitution against the woman who ordered you.[29]

Posted on December 19, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Pamphilus.* Since money not owed, when paid even by a person unaware, may be claimed back, much more easily is a claim for restitution available for a written document concerning a sum not owed, or the defense of deceit (*dolus*) is opposed against the party suing.

Written April 3, at Byzantium, in the consulship of the Augusti (293).

[4] *The same Augusti and Caesars to Heraclius.* The law is quite certain that sums paid by one not knowing that are increased in a suit as a result of denial cannot be reclaimed even if they were not owed. But even if a written promise should be interposed on the same basis for money not owed, it is agreed that there is no place for a claim for restitution.

Written April 9, at Byzantium, in the consulship of the Augusti (293).

[5] *The same Augusti and Caesars to Attalus.* The law is not uncertain that, if you were emancipated by your father and did not succeed to your father's inheritance within the time fixed by Praetorian law (*iure honorario*), a suit for recovery is available to you for whatever money not owed you paid afterwards by mistake, as if you were your father's successor.

Written April 18, in the consulship of the Augusti (293).

[6] *The same Augusti and Caesars to Mnasea.* If, in ignorance of the facts, you have paid a sum on behalf of another person that was not owed because it had been paid and this is proved to the provincial governor when he is approached, he will see to it that this sum be restored to the person in whose name it was paid, in a suit brought by this person.

Written August 8, in the consulship of the Augusti (293).

[28] This should read "*the same Augustus.*"

[29] Blume. For "delegation," see C. 8.41.

[7] *Idem AA. et CC. Dionysiae.* Fideicommissum vel legatum indebitum per errorem facti solutum repeti posse explorati iuris est.

S. v id. Sept. AA. conss.

[8] *Idem AA. et CC. Ziparo.* Creditoris falso procuratori solventi adversus eum indebiti repetitio, non obligationis liberatio competit.

S. xv k. Nov. CC. conss.

[9] *Idem AA. et CC. Gratianae.* **pr.** Indebitum solutum sciens non repetit. **1.** Citra mandatum autem ab alio re distracta dominus evicta re vel ob praecedens vitium satis emptori faciens non[1] indebitum praetendere, sed per eiusmodi factum ratum contractum habuisse probans a se debitum ostendit solutum.

S. IIII non. Dec. Nicomediae CC. conss.

[10] *Imp. Iustinianus A. Iuliano pp.* **pr.** Si quis servum certi nominis aut quandam solidorum quantitatem vel aliam rem promiserit et, cum licentia ei fuerat unum ex his solvendo liberari, utrumque per ignorantiam dependerit, dubitabatur, cuius rei datur a legibus ei repetitio, utrumne servi an pecuniae, et utrum stipulator an promissor habeat huius rei facultatem. **1.** Et Ulpianus quidem electionem ipsi praestat qui utrumque accepit, ut hoc reddat quod sibi placuerit, et tam Marcellum quam Celsum sibi consonantes refert. Papinianus autem ipsi qui utrumque persolvit electionem donat, qui et antequam dependat ipse habet electionem quod velit praestare, et huiusmodi sententiae sublimissimum testem adducit Salvium Iulianum summae auctoritatis hominem et praetorii edicti ordinatorem. **2.** Nobis haec decidentibus Iuliani et Papiniani placet sententia, ut ipse habeat electionem recipiendi, qui et dandi habuit.

D. k. Aug. Constantinopoli Lampadio et Oresta vv. cc. conss.

[1] <potest>

[7] *The same Augusti and Caesars to Dionysia.* It is established law that a trust or a legacy that is not owed but is paid through an error of fact can be claimed back.[30]

Written September 9, in the consulship of the Augusti (293).

[8][31] *The same Augusti and Caesars to Ziparus.* For someone making a payment to someone falsely claiming to be the procurator of the creditor, a claim for restitution is available against this person, not a release from the obligation.

Written October 18, in the consulship of the Caesars (294).

[9] *The same Augusti and Caesars to Gratiana.* **pr.** A person who has knowingly paid money not owed does not claim it back. **1.** When, moreover, property is sold by another person without a mandate, the owner who provides compensation to the buyer when the property has been evicted or because of a preceding fault cannot (subsequently) pretend that that the money was not owed; rather, by proving through an act of this type that he considered the contract valid, he shows that he paid what was owed.

Written, December 2, at Nicomedia, in the consulship of the Caesars (294).

[10] *Emperor Justinian Augustus to Julian, Praetorian Prefect.* **pr.** If someone promised a slave of a certain name or (alternatively) some quantity of gold *solidi* or some other property and, when he had leave to be freed of his obligation by paying one of these, he paid both because of ignorance, it was doubted which thing he is allowed to recover by the laws, whether the slave or the money, and whether a stipulator or a promissor would have a choice in this matter. 1. And Ulpian offers the choice to the very person who has received both to return what he decides, and he reports that both Marcellus and Celsus agree with him.[32] Papinian, however, gives the choice to the person who paid both, since he has the choice what he would want to pay before he pays out anything, and he adduces as the most sublime witness for this type of opinion Salvius Julian, a man of the highest authority and the editor (*ordinator*) of the Praetorian edict. **2.** In deciding this point, We choose the opinion of Julian and Papinian, that the very person who also had the choice of giving should have the choice of taking back (what he wishes).

Given August 1, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[30] Blume: "Legacies to a church or other holy place excepted."
[31] Combine with C. 8.41.6. Mommsen dates to October 21, 294.
[32] Ulpian, D. 12.6.26.13.

[11] *Idem A. Iuliano pp.* **pr.** Pro dubietate eorum, qui mente titubante indebitam solverunt pecuniam, certamen legislatoribus incidit, utrumne id, quod ancipiti animo persolverunt, possint repetere an non. 1. Quod nos decidentes sancimus omnibus, qui incerto animo indebitam dederunt pecuniam vel aliam quandam speciem persolverunt, repetitionem non denegari et praesumptionem transactionis non contra eos induci, nisi hoc specialiter ab altera parte approbetur.

D. k. Oct. Constantinopoli Lampadio et Oresta vv. cc. conss.

VI De Condictione ob Causam Datorum

[1] *Imp. Antoninus A. Callistheni.* Pecuniam quam te ob dotem accepisse pactumque interpositum (ut fieri, cum iure matrimonium contrahitur, adsolet) proponis: impediente quocumque modo iuris auctoritate matrimonium constare nullam de dote actionem habet[a] et propterea pecuniam, quam eo nomine accepisti, iure condictionis restituere debes et pactum, quod ita interpositum est, perinde ac si interpositum non esset haberi oportet.

PP. VI k. Aug. Laeto II et Cereale conss.

[2] *Imp. Alexander A. Asclepiadi.* Si, ut proponis, pater tuus ea lege sorori tuae praedia ceteraque quorum meministi donavit, ut creditoribus ipsa satisfaceret ac, si placita observata non essent, donatio resolveretur, eaque contra fidem negotii gesti versata est, non est iniquum actionem condictionis ad repetitionem rerum donatarum tibi qui patri successisti decerni.

PP. XIIII k. Dec. Albino et Maximo conss.

[3] *Impp. Valerianus et Gallienus AA. Aurelio et Alexandro.* Ea lege in vos collata donatio, ut neutri alienandae suae portionis facultas ulla competeret, id efficit, ne alteruter eorum dominium prorsus alienaret, vel ut donatori vel heredi eius condictio, si non fuerit condicio servata, quaeratur.

PP. k. April. Valeriano IIII et Gallieno III AA. conss.

[a] nulla de dote actio locum habet

[11] *The same Augustus to Julian, Praetorian Prefect.* **pr.** Concerning the uncertain status of those who, as a result of a wavering mind, have paid money not owed, a contentious debate arose among the legislators whether they should be able to recover what they have paid with a doubtful intention (*ancipiti animo*). 1. In deciding this, We ordain that recovery is not denied to all those who have given money not owed or some other property as a result of uncertain intention, and that the presumption of a settlement is not raised against them, unless this should be specifically proved by the other party.

Given October 1, at Constantinople, in the consulship of viri clarissimi *Lampadius and Orestes (530).*

Sixth Title Claim for Restitution over the Reason Things Were Given[33]

[1] *Emperor* ANTONINUS *Augustus to Callisthenes.* As to the money which you state you received as a dowry and concerning which a pact was introduced as customarily happens when a marriage is contracted lawfully, if the authority of the law in any manner impedes the marriage's being valid, there is no place for action on the dowry and, in addition, you should restore the money that you have received on that account, on the basis of the claim for restitution, and the pact, which was introduced in this way, should be considered as if it had not been made.

Posted July 27, in the consulship of Laetus, for the second time, and Cerealis (215).

[2] *Emperor* ALEXANDER *Augustus to Asclepiades.* If, as you state, your father gave your sister land and other property that you have mentioned under this condition, (namely) that she herself satisfy the creditors and, if the agreement should not be observed, the gift would be rescinded, and she has acted against the faith of the transaction, it is not unjust that you, who have succeeded your father as heir, be granted an action for a claim for restitution.

Posted November 18, in the consulship of Albinus and Maximus (227).

[3] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Aurelius and Alexander.* A gift made to (both of) you under this condition, that neither should have any power of alienating his individual portion, has this effect, that neither of them (i.e., you) might alienate ownership, or, if the condition is not maintained, that a claim for restitution be gained for the donor or his heir.

Posted April 1, in the consulship of Valerian, for the fourth time, and Gallienus, for the third time, Augusti (257).

[33] See D. 12.4. Blume: "Concerning condiction on the ground of what was given (the ground, or purpose, for which it was given, having failed)."

[4] *Idem AA. et Valerianus C. Aemiliae.* Si, cum exiguam pecuniam re vera susciperes, longe maiorem te accepisse cavisti eo, quod tibi patrocinium adversarius repromitteret, cum dicas fidem promissi non secutam, ut libereris obligatione eius, quod non acceptum propter speratum patrocinium spopondisti, per condictionem consequeris.

PP. v k. Mai. Aemiliano et Basso conss.

[5] *Impp. Diocletianus et Maximianus AA. Martiali.* Si militem ad negotium tuum procuratorem fecisti, cum hoc legibus interdictum sit, ac propter hoc pecuniam ei numerasti, quidquid ob causam datum est, causa non secuta restitui tibi competens iudex curae habebit.

PP. x k. Oct. ipsis IIII et III AA. conss.

[6] *Idem AA. et CC. Curioni et Plotioni.* Cum ancillam patrem vestrum ei, contra quem supplicastis, dedisse proponatis, interest multum, utrumne donandi animo dedit, an ob manumittendam filiam, quam ancillam existimabat, cum perfecta quidem donatio revocari non possit, causa vero dandi non secuta repetitio competat.

S. II id. Mai. AA. conss.

[7] *Idem AA. et CC. Gerontio.* Si repetendi, quod donabas uxori eius, quem ad proficiscendum tecum huiusmodi liberalitate provocare proposueras, nullam addidisti condicionem, remanet integra donatio, cum levitati perfectam donationem revocare cupientium iure occurratur.

S. VII k. Sept. AA. conss.

[8] *Idem AA. et CC. Flaviano.* Dictam legem donationi, si non impossibilem contineat causam, ab eo qui hanc suscepit non impletam condictioni facere locum iuris dictat disciplina. quapropter si titulo liberalitatis res tuas in sponsam conferendo certam dixisti legem nec huic illa, cum posset, paruit, successores ipsius de repetendis quae dederas, si hoc tibi placuerit, convenire non prohiberis.

S. III id. Febr. CC. conss.

[4] *The same Augusti to Aemilia.* If, when you in fact you were taking a small amount of money, you averred (*cavisti*) that you had received a much larger amount for the reason that your adversary was promising to provide you legal representation (*patrocinium*), since you say that the faith of the promise has not ensued, you will gain through a claim for restitution that you be freed from the obligation that you agreed to in exchange for the representation you hoped for but did not receive.

Posted April 27, in the consulship of Aemlianus and Bassus (259).

[5] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Martialis.* If you made a soldier a procurator for your business, although this has been forbidden by the laws, and you have paid out money to him on this account, a competent judge will take care that, since the purpose did not follow, whatever has been given be restored to you.

Posted September 22, in the consulship of the Augusti[34] *themselves, Diocletian, for the fourth time, and Maximian, for the third time (290).*

[6] *The same Augusti and the Caesars to Curio and Plotio.* Since you allege that your father gave a female slave to that person against whom you have petitioned, it makes a great deal of difference whether he gave her with the intention of making a gift, or in order that her daughter, who he thought was a slave, might be manumitted, since a completed gift cannot be revoked. If in fact the reason for giving has not ensued, restitution shall be available.[35]

Posted May 14, in the consulship of the Augusti (293).

[7] *The same Augusti and Caesars to Gerontius.* If you have added no condition for seeking back what you have given to the wife of that person whom you had proposed to induce to travel with you by means of generosity of this sort, the gift remains in force, since the law opposes the caprice of those desiring to revoke a completed gift.

Posted August 26, in the consulship of the Augusti (293).

[8] *The same Augusti and Caesars to Flavianus.* The discipline of the law dictates that a condition imposed on a gift, if it does not contain an impossible purpose, when it has not been fulfilled by the person who took it up, creates a claim for restitution. Therefore if under the guise of generosity you have stated a precise condition when conferring your property on your betrothed, and she, although able, did not comply with this, you are not prohibited, if you so choose, from suing her heirs to recover what you had given.

Posted February 11, in the consulship of the Caesars (294).

[34] "Augusti" is supplied by Krüger.
[35] Blume. See Bas. 24.1.34 for an explanation of this law.

[9] *Idem AA. et CC. Bibulo.* Si liber constitutus, ut filiae tuae manumittantur, aliquid dedisti, causa non secuta de hoc tibi restituendo condictio competit. nam si quid servus de peculio domino dederit, contra eum nullam actionem habere potest: sed dominum, qui semel accipere pecuniam pro libertate passus est, aditus rector provinciae hortabitur salva reverentia (favore scilicet libertatis) placito suo stare.

S. III id. Febr. Sirmi CC. *conss.*

[10] *Idem AA. et CC. Cononianae.* Pecuniam a te datam, licet causa, pro qua data est, non culpa accipientis, sed fortuito casu secuta non est, minime repeti posse certum est.

S. III non. Dec. Nicomediae CC. conss.

[11] *Idem AA. et CC. Stratonicae.* Advocationis causa datam pecuniam, si per eos qui acceperant, quominus susceptam fidem impleant, stetisse probetur, restituendam esse convenit.

S. XVII k. Ian. CC. conss.

VII De Condictione ob Turpem Causam

[1] *Imp. Antoninus A. Ingenuo.* Si ex cautione tua conveniri coeperis, nullam te pecuniam accepisse, sed ob turpem causam et quam fieri prohibitum est interpositam ei, qui super ea re cogniturus est, probandum est et eo impleto absolutio sequetur.

Sine die et consule.

[2] *Idem A. Longino.* Cum te propter turpem causam contra disciplinam temporum meorum domum adversariae dedisse profitearis, frustra eam restitui tibi desideras, cum in pari causa possessoris melior condicio habeatur.

PP. XV k. Dec. Laeto II et Cereale conss.

[9] *The same Augusti and Caesars to Bibulus.* If you, having been established as a free person, have given something so that your daughters might be manumitted, if the purpose does not ensue, you have a claim for restitution concerning this. For if a slave has given something from his *peculium* to his owner, he cannot have any action against him. But the provincial governor when approached will encourage the owner, who at one time permitted receiving money for liberty, to stand by his decision, while maintaining the reverence due a master from his slave – that is, because of the presumption favoring liberty (*favor libertatis*).

Written February 11, at Sirmium, in the consulship of the Caesars (294).

[10] *The same Augusti and Caesars to Cononiana.* It is certain that money given by you cannot at all be recovered, although the reason for which it was given has not ensued, (if this occurred) not as a result of the fault of the person receiving it but of an unavoidable accident (*casus fortuitus*).

Posted December 3, at Nicomedia, in the consulship of the Caesars (294).

[11][36] *The same Augusti and Caesars to Stratonica.* It is generally agreed that money given for the sake of advocacy must be restored, if it should be proved that it was on account of those who had received the money that they did not fulfill the promise that they had undertaken.

Posted December 16, in the consulship of the Caesars (294).

Seventh Title Claim for Restitution on Account of an Immoral Purpose[37]

[1] *Emperor* A*NTONINUS* *to Ingenuus.* If a suit has begun against you on a written promise, it must be proved to the judge who will try this matter that you have not received any money, but that the promise was given on account of an immoral purpose and one that has been prohibited. When this is fulfilled release from the obligation will follow.

Without day and consul.

[2] *The same Augustus to Longinus.* Since you acknowledge that you have given your home to your female adversary on account of an immoral purpose against the discipline of My times, you desire in vain that it be restored to you, since in an equal situation (where both parties are at fault) the case of the possessor is considered better.

Posted November 17, in the consulship of Laetus, for the second time, and Cerealis (215).

[36] Combine with C. 2.40.4 (December 15), 5.42.3. December 15 is the preferable date (Connolly).
[37] See D. 12.5.

[3] *Impp. Diocletianus et Maximianus AA. Dizoni militi.* Quod evitandi tirocinii causa dedisse te apud competentem iudicem ei de quo quereris indubia probationis luce constiterit, instantia eius recipies: qui memor censurae publicae post restitutionem pecuniae etiam concussionis crimen inultum esse non patietur.

PP. III k. Aug. ipsis IIII et III AA. conss.

[4] *Idem AA. et CC. Rufino.* Quotiens accipientis, non etiam dantis turpis invenitur causa, licet haec secuta fuerit, datum condici tantum, non etiam usurae peti possunt.

S. VII id. Ian. Sirmi AA. conss.

[5] *Idem AA. et CC. Bitho.* Promercalem te habuisse uxorem proponis: unde intellegis et confessionem lenocinii preces tuas continere et cautae quantitatis ob turpem causam exactioni locum non esse. quamvis enim utriusque turpitudo versatur ac soluta quantitate cessat repetitio, tamen ex huiusmodi stipulatione contra bonos mores interposita denegandas esse actiones iuris auctoritate demonstratur.

S. VI id. Mai. CC. conss.

[6] *Idem AA. et CC. Eutychiae.* Ob restituenda quae subtraxerat accipientem pecuniam, cum eius tantum interveniat turpitudo, condictione conventum hanc restituere debere convenit.

D. XV k. Iun. CC. conss.

[7] *Idem AA. et CC. Zenonidae.* Eum, qui ob restituenda quae abegerat pecora pecuniam accepit, tam hanc quam quae per hoc commissum tenuit restituere debere convenit, licet mortua vel alio fortuito casu perisse dicantur, cum in hoc casu in rem mora fiat.

D. V k. Dec. Nicomediae CC. conss.

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN AUGUSTI *to Dizon, a soldier.* Whatever it has been made apparent by the unambiguous light of proof before a competent judge that you gave to the person against whom you are complaining for the sake of avoiding being a new recruit, you will receive the money back with his (the judge's) perserverance. Being mindful of public censure after the restitution of the money the judge will also not allow the crime of extortion to be unavenged.

Posted on July 30, in the consulship of the Augusti themselves, Diocletian, for the fourth time, and Maximian, for the third time (290).

[4] *The same Augusti and Caesars to Rufinus.* Whenever the purpose of the recipient, and not of the giver, is found to be immoral, although this has been attained, only what has been given can be claimed back, and interest may not be sought.

Written January 7, at Sirmium, in the consulship of the Augusti (293).

[5] *The same Augusti and Caesars to Bithus.* You state that you put your wife for sale on the open market. From this you understand that your petition contains a confession of pandering and that there is no place for collecting a sum of money promised for an immoral purpose. Although the disgraceful action of each party is involved and restoration is inapplicable when the sum has been paid, nevertheless it is shown by the authority of the law that actions are to be denied on the basis of a stipulation of this type made against good morals.

Written May 10, in the consulship of the Caesars (294).

[6] *The same Augusti and Caesars to Eutychia.* It is agreed that a person who received money to restore what he had stolen, since his disgrace alone is involved, should restore it when sued in a claim for restitution.

Written May 18, in the consulship of the Caesars (294).

[7] *The same Augusti and Caesars to Zenonides.* It is agreed that a person who has received money to restore the livestock that he has driven off should restore both the money and the property he held through this act, although they are said to be dead or to have perished through some other accident, since in this case his delay (in restoring) is pertinent.

Given November 27, at Nicomedia, in the consulship of the Caesars (294).

VIII De Condictione Furtiva

[1] *Impp. Diocletianus et Maximianus AA. et CC. Hermogeni.* Praeses provinciae sciens furti quidem actione singulos quosque in solidum teneri, condictionis vero nummorum furtim subtractorum electionem esse ac tum demum, si ab uno satisfactum fuerit, ceteros liberari, iure proferre sententiam curabit.
S. VI k. Mai. CC. conss.

[2] *Idem AA. et CC. Aristaeneto.* Ante oblationem interemptae rei furtivae damnum ad furem pertinere certissimum est.
D. k. Mai. CC. conss.

VIIII De Condictione ex Lege et sine Causa vel Iniusta Causa

[1] *Impp. Diocletianus et Maximianus AA. et CC. Ulpio.* Licet ante tempus debita exigi non possunt, tamen si te ex primipilo debitorem fisci constitutum ac patrimonium tuum exhaustum praeses provinciae compererit, ut ad solutionis securitatem solum fenebris pecuniae subsidium superesse videatur, commonebit debitorem tuum, si saltem ipse solvendo sit, ut ante definitum tempus debita tibi repraesentet, ut fisco, cuius ob necessitates publicas causam potiorem esse oportet, debita pecunia exsolvatur.
S. XIII k. Aug. Sirmi CC. conss.

[2] *Idem AA. et CC. Scylacio.* Dissolutae quantitatis retentum instrumentum inefficax penes creditorem remanere et ideo per condictionem reddi oportere non est iuris ambigui.
S. III non. April. AA. conss.

[3] *Idem AA. et CC. Galatiae.* Mala fide possidens de proprietate victus extantibus fructibus vindicatione, consumptis vero condictione conventus horum restitutioni parere compellitur.
S. VI id. Febr. CC. conss.

Eighth Title Claim for Restitution of Stolen Property[38]

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Hermogenes.* The provincial governor, knowing that all individuals are held fully liable in an action on theft, will take care to offer his decision in accordance with the law that there be a choice of defendants in a claim for restitution for money taken by theft and only then, if satisfaction has been rendered by one, that the others be released.

Written April 26, in the consulship of the Caesars (294).

[2] *The same Augusti and Caesars to Aristaenetus.* It is absolutely certain that the responsibility belongs to the thief for stolen property that has been destroyed before its return is offered.

Given May 1, in the consulship of the Caesars (294).

Ninth Title Claim for Restitution by Statute, and When There is No Purpose or an Unlawful Purpose

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Ulpius.* Although debts cannot be exacted before their time, nevertheless if the provincial governor learns that because of your office as *primipilus* (first centurion) you have been made a debtor to the Treasury and that your property is exhausted, so that it appears that the only resource to secure your payment is money lent by you at interest, he will order your debtor, at least if he is solvent, to pay you in advance what he owes, so that your debt be paid to the Treasury, whose interests must take priority because of public necessity.

Written July 20, at Sirmium, in the consulship of the Caesars (294).[39]

[2] *The same Augusti and Caesars to Scylacius.* The law is not doubtful that a document for a paid sum of money, though it is retained, is valueless in the hands of a creditor and therefore must be returned through a claim for restitution.

Written April 3, in the consulship of the Augusti (293).[40]

[3] *The same Augusti and Caesars to Galatia.* A person possessing in bad faith, having been defeated in a suit concerning ownership, is compelled in a suit for ownership to submit to the restoration of the fruits when standing, and when consumed under a claim for restitution.

Written February 8, in the consulship of the Caesars (294).

[38] See D. 13.1.
[39] Mommsen dates to February 17, 293.
[40] The date of this rescript falls before that of the previous one, which Mommsen emends with "Written February 17, at Sirmium, in the consulship of the Augusti (293)."

[4] *Idem AA. et CC. Alexandro.* Si non est numeratum, quod velut acceptum te sumpsisse mutuo scripsisti, et necdum transisse tempus statutum vel intra hunc diem habitam contestationem monstrando reddi cautionem praesidali notione postulare potes.

D. XVII k. Ian. CC. conss.

X De Obligationibus et Actionibus

[1] *Imp. Gordianus A. Valeriae.* Data certae pecuniae quantitate ei cuius meministi in vicem debiti actiones tibi adversus debitorem, pro quo solvisti, dicis esse mandatas et, antequam eo nomine litem contestareris, sine herede creditorem fati munus implesse proponis. quae si ita sunt, utilis actio tibi competit.

PP. V k. Mai. Attico et Praetextato conss.

[2] *Impp. Valerianus et Gallienus AA. Celso.* Nominibus in dotem datis, quamvis nec delegatio praecesserit nec litis contestatio subsecuta sit, utilem tamen marito actionem ad similitudinem eius qui nomen emerit dari oportere saepe rescriptum est.

PP. XIIII k. Febr. Saeculari II et Donato conss.

[3] *Impp. Diocletianus et Maximianus AA. Rusticiano.* Ob causas proprii debiti locatoris conveniri colonos pensionibus ex placito satisfacientes perquam iniuriosum est.

PP. prid. k. Iun. Tiberiade Maximo II et Aquilino conss.

[4] *Idem AA. Liciniae.* Bonam fidem in contractibus considerari aequum est.

PP. non. Oct. ipsis IIII et III AA. conss.

[4] *The same Augusti and Caesars to Alexander.* If what you have acknowledged in writing to have received and taken as a loan has not been counted out, by showing that the statutory time has not yet passed or that you have made a declaration before a witness prior to this day, you can demand with the governor's investigation that the written promise (*cautio*) be returned through a claim for restitution.

Given December 16, in the consulship of the Caesars (294).

Tenth Title Obligations and Actions[41]

[1] *Emperor* GORDIAN *Augustus to Valeria.* Having given a certain sum of money to the person whom you have mentioned, you say that the actions against the debtor, on whose behalf you have made the payment, were mandated to you in exchange for the debt, and that before you came to a joinder of issue on this account, you state that the creditor passed away without an heir. If these matters are the case, then an analogous action (*utilis actio*) is available to you.

Posted April 27, in the consulship of Atticus and Praetextatus (242).

[2] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Celsus.* If debt accounts (*nomina*) have been given as part of a dowry, although neither delegation of them has preceded nor a joinder of issue has ensued, even so; rescripts have often been issued that an analogous action must be given to the husband as if to a person who has purchased a debt.

Posted January 19, in the consulship of Saecularis, for the second time, and Donatus (260).

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Rusticianus.* It is thoroughly unlawful that tenant farmers who are making good on their payments in accordance with their agreement be sued for the personal debt of the lessor.

Posted May 31, at Tiberias, in the consulship of Maximus, for the second time, and Aquilinus (286).

[4][42] *The same Augusti to Licinia.* It is fair that good faith be considered in connection with contracts.

Posted October 7, in the consulship of the Augusti themselves, for the fourth and third time, respectively (290).

[41] See D. 44.7; Inst. 3.13.4, 6.

[42] Combine with C. 5.74.1.

[5] *Idem AA. et CC. Camerino et Marciano.* Sicut initio libera potestas unicuique est habendi vel non habendi contractus, ita renuntiare semel constitutae obligationi adversario non consentiente minime potest. quapropter intellegere debetis voluntariae obligationi semel vos nexos ab hac non consentiente altera parte, cuius precibus fecistis mentionem, minime posse discedere.

D. non. April. Byzantii AA. conss.

[6] *Idem AA. et CC. Maurico.* Si in solutum nomen debitoris sui tibi debitor dedit tuus ac te in rem tuam procuratorem fecit, pignora, quae specialiter vel generaliter habes obligata, persequere. quod si ab his, quibus fuerant obligata, cum potiores erant, distracta probentur, ab emptoribus avocari non posse perspicis.

D. VIIII k. Iul. Sirmi AA. conss.

[7] *Idem AA. et CC. Euelpisto.* **pr.** Si a creditore nomen comparasti, ea pignora, quae venditor nominis consequi posset, apud praesidem provinciae vindica. nam si debitum ex eius persona[iii] res obligatas tenentes non transferant, iure communi pignora distrahere non prohiberis. 1. Sane si creditoribus in ordine pignorum antecedentibus venumdantibus qui possident comparaverunt vel longi temporis praescriptione muniti perhibentur, pignorum distrahendorum te non habere facultatem perspicis.

S. III k. Ian. Sirmi AA. conss.

[8] *Idem AA. et CC. Crescentioni.* Si quidem donationis causa ei, quem adfectione patris te dilexisse proponis, tuam accipere pecuniam permisisti, et hanc tuam liberalitatem remunerans te a procuratore suo aliam pecuniam sumere praecepit, rebusque humanis ante perceptionem fuit exemptus, nec quod dederas recuperare, cum perfectam habuit donationem, nec quod tibi dari mandaverat, necdum tibi traditum petere potes a procuratore. quod si mutuo dedisti nec a delegato dari novandi causa stipulatus es, successores eius solutioni parere compellentur.

iii [ex eius persona]

[5] *The same Augusti and the Caesars to Camerinus and Marcianus.* Just as at the outset each person has the free power of making or not making a contract, in the same way one cannot renounce an obligation once it has been established without the consent of one's adversary. On account of this you should understand that, once you are bound to a voluntary obligation, you cannot withdraw from it without the consent of the other party whom you have mentioned in your petition.

Given April 5, at Byzantium, in the consulship of the Augusti (293).

[6] *The same Augusti and Caesars to Mauricus.* If to pay off an obligation your debtor has given the claim on his debtor to you and made you the formal plaintiff (*procurator in rem tuam*),[43] you will pursue the pledges, which you hold as either specifically or generally obligated. But if they should be proved to have been sold by people to whom they were obligated, when they had a prior claim, you see that they cannot be called back from the purchasers.

Given June 23, at Sirmium, in the consulship of the Augusti (293).[44]

[7][45] *The same Augusti and Caesars to Euelpistus.* pr. If you have purchased an account (*nomen*) from a creditor, in the court of the provincial governor sue to recover (*vindica*) those pledges that the seller of the claim might be able to pursue. For if those holding the property obligated should not transfer the debt (to you), by general law (*ius commune*) you are not prohibited from selling the pledges. 1. Of course, if those who possess them have purchased the pledges under a sale made by creditors with a prior right, or if they are understood to be protected by long-time prescription, you see that you do not have the capacity to sell the pledges.

Written December 30, at Sirmium, in the consulship of the Augusti (293).[46]

[8] *The same Augusti and Caesars to Crescentio.* If, for the purpose of a gift, you have permitted a person, whom you state you cherished with the affection of a father, to receive your money, and he, to pay back your generosity, instructed you to take other money from his procurator, and he passed away before you received the money, you cannot recover what you had given, since he had a completed gift, nor can you seek back from the procurator what he had ordered be given you but had not been delivered. But if you have given a loan and have not exacted a stipulation that the money be given by a substituted debtor as part of a transfer of the obligation (*novandi causa*), his heirs will be compelled to submit to payment.[47]

[43] The Bas. version has *procurator in rem suam*, "when he survives you can sue as if from his person."
[44] Mommsen dates to December 24, 293.
[45] Combine with C. 9.33.3.
[46] C. 9.33.3 has "written January 9, at Sirmium, in the consulship of the Augusti (293)."
[47] Blume: "A novation of a debt by giving – assigning – a new debtor to the creditor, was not complete till the new debtor had promised to pay the debt by stipulation. C. 8.41.1."

S. XIII k. Febr. Sirmi CC. conss.

[9] *Idem AA. et CC. Glyconi.* Negantes debitores non oportet armata vi terreri: sed petitore quidem non implente suam intentionem vel exceptione submoto absolvi. convictos autem condemnari ac iuris remediis ad solutionem urgueri convenit.

D. id. Febr. CC. conss.

[10] *Idem AA. et CC. Rufino.* Adversus debitorem electis pignoribus personalis actio non tollitur, sed eo, quod de pretio servari potuit, in debitum computato de residuo manet integra.

D. III non. April. CC. conss.

[11] *Idem AA. et CC. Paulae.* Nimia credulitate circumventa es, quia, quod colonis in rem suam mutuo dedisti, a domino praedii postulare posse credidisti: nec ad eum obligandum actorum ipsius adiuvat te praesentia.

D. VIII k. Aug. CC. conss.

[12] *Idem AA. et CC. Iovino.* Ob aes alienum servire liberos creditoribus iura compelli non patiuntur.

D. XIII k. Nov. CC. conss.

[13] *Idem AA. et CC. Barsimio.* Eum, cui mutuam dedisti pecuniam, ad solutionem urguere competenti debes actione. nam adversus negotiatores, quos ex mercibus pecunias abstulisse tuo debitori proponis, nullam habes actionem.

D. XI k. April. CC. conss.

[14] *Idem AA. et CC. Hermodoto et Nicomacho.* Est in arbitrio vestro, personali debitoris heredes actione, an eum, qui ab his distracta sibique tradita pignora tenet, in rem Serviana, si non longi temporis praescriptione munitus sit, an utrosque conveniatis.

D. V k. Dec. Nicomediae CC. conss.

Written January 20, at Sirmium, in the consulship of the Caesars (294).

[9][48] *The same Augusti and Caesars to Glyco.* Debtors who deny they owe anything should not be terrified by armed force; but it is held that they are absolved if the plaintiff does not satisfy the legal requirements for his claim or if he is removed by a defense. But if convicted they are condemned and are compelled to pay by the remedies of the law.

Given February 13, in the consulship of the Caesars (294).

[10] *The same Augusti and Caesars to Rufinus.* An action *in personam* against debtors is not removed when pledges have been chosen (for sale), but after what was realized from the price has been calculated against the debt the action remains in force for the remainder.

Given April 3, in the consulship of the Caesars (294).

[11] *The same Augusti and Caesars to Paula.* You have fallen prey to excessive credulity, because you believed that you could demand from the owner of the property what you gave as a loan to the tenants on their own account (*in rem suam*); and the presence of his managers (*actores*) does not help you in obligating him.

Given July 25, in the consulship of the Caesars (294).

[12] *The same Augusti and Caesars to Jovinus.* The law does not allow free people to be compelled to serve (as slaves) to their creditors on account of debt.

Given October 20, in the consulship of the Caesars (294).

[13] *The same Augusti and Caesars to Barsimius.* With the appropriate action you should compel payment from the person to whom you have given money as a loan. For you have no action against the merchants who you allege took money from your debtor as a result of their deals.

Given March 22, in the consulship of the Caesars (294).[49]

[14] *The same Augusti and Caesars to Hermodotus and Nicomachus.* It is your choice whether you sue the heirs of the debtor in an action *in personam*, or the person who holds the pledges sold by them and delivered over to him, *in rem* by a Servian action,[50] if he is not protected by a long-time prescription, or you may sue both.

Given November 27, at Nicomedia, in the consulship of the Caesars (294).

[48] Cuiacius combines this with C. 7.53.9 (written November 7, 294).

[49] Mommsen dates to October 22, 294.

[50] The *actio Serviana* allowed a creditor to sue to recover property pledged by a debtor.

XI Ut Actiones et ab Herede et Contra Heredem Incipiant

[1] *Imp. Iustinianus A. Iohanni pp.* **pr.** Cum et stipulationes et legata et alios contractus post mortem compositos antiquitas quidem respuebat, nos autem pro communi hominum utilitate recepimus, consentaneum erat etiam illam regulam, qua vetustas utebatur, more humano emendare. **1.** Ab heredibus enim incipere actiones vel contra heredes veteres non concedebant contemplatione stipulationum ceterarumque causarum post mortem conceptarum. **2.** Sed nobis necesse est, ne prioris vitii materiam relinquamus, et ipsam regulam e medio tollere, ut liceat et ab heredibus et contra heredes incipere actiones et obligationes, ne propter nimiam subtilitatem verborum latitudo voluntatis contrahentium impediatur.

D. XV k. Nov. Constantinopoli post consulatum Lampadii et Orestae vv. cc.

XII Ne Uxor pro Marito vel Maritus pro Uxore vel Mater pro Filio Conveniatur

[1] *Impp. Diocletianus et Maximianus AA. Asclepiodotae.* Frustra disputas de contractibus cum marito tuo habitis, utrumne iure steterint an minime, cum tibi sufficiat, si proprio nomine nullum contractum habuisti, quominus pro marito tuo conveniri possis, quod nec, si sponte pro eo intercessisses, quicquam a te propter senatus consultum exigi iure potuisset.

D. prid. id. April. Diocletiano III et Maximiano AA. conss.

[2] *Idem AA. Terentiae.* Ob maritorum culpam uxores inquietari leges vetant. proinde rationalis noster, si res quae a fisco occupatae sunt dominii tui esse probaveris, ius publicum sequetur.

D. III non. Sept. Diocletiano[iv] *et Maximiano AA. conss.*

[3] *Idem AA. et CC. Carpophoro.* Cum te possessiones non in dotem pro filia tua dedisse, sed ad sustentandam eam extra dotis causam filiae tuae

iv <III>

Eleventh Title How Actions Arise from the Heir and Against the Heir

[1] *Emperor* Justinian *Augustus to John, Praetorian Prefect.* **pr.** Since antiquity rejected stipulations and legacies and other contracts taking effect after death, but We have allowed them for the common benefit of humanity,[51] it was proper to amend in a humane manner even that rule that antiquity used. **1.** The jurists of old did not allow actions on the basis of stipulations or other claims that go into effect after death to arise from heirs or against heirs. **2.** But it is necessary for Us, lest We leave a trace of the prior fault, to remove the very rule from our midst, so that it be permitted that actions and obligations arise both from heirs and against heirs, lest the scope of the wishes of the contracting parties be impeded by an excessive subtlety of words.

Given October 18, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

Twelfth Title A Wife Is Not to Be Sued for Her Husband, or a Husband for His Wife, or a Mother for Her Child

[1] *Emperors* Diocletian *and* Maximian *Augusti to Asclepiodota.* You are unnecessarily disputing over the contracts made with your husband, whether there is a lawful basis or not, since it should be sufficient for you that, if you had no contract under your own name, you cannot be sued for your husband, since, because of the decree of the Senate, nothing could lawfully have been exacted from you if you willingly interceded for him.[52]

Given April 12, in the consulship of Diocletian, for the third time, and Maximian, Augusti (287).

[2] *The same Augusti to Terentia.* The laws prohibit wives from being troubled on account of the fault of their husbands. Therefore Our Comptroller (*rationalis*), if you prove that the property that has been seized by the Treasury is under your ownership, will follow public law.

Given September 3, in the consulship of Diocletian, for the third time,[53] and Maximian, Augusti (287).

[3] *The same Augusti and the Caesars to Carpophorus.* Since you submit that you gave property (*possessiones*) for your daughter not as her dowry, but that

[51] C. 8.37.1.

[52] The *senatusconsultum Velleianum* prohibited women from taking up obligations on behalf of others; see C. 4.29.

[53] "For the third time" is added by Mommsen.

praedia adsignasse proponas, civilium munerum vel onerum municipalium obtentu ex persona mariti eius, quomodo matres ex persona filiorum interpellari non possunt, cum neque maritum pro uxoris obligatione conveniri posse constat, nisi ipse pro ea se obnoxium fecit. certissimum enim est ex alterius contractu neminem obligari.

III id. Sept. Sirmi AA. conss.

[4] *Idem AA. et CC. Philoterae.* Cum te ideo ex persona filii tui commemores conveniri, quod pro debitis eius aliquid intulisse videaris, defensionibus tuis uti apud eum, cuius super ea re notio est, minime prohiberis, ut is ad solutionem alieni debiti urgueri te non patiatur.

D. x k. Sept. Titiano et Nepotiano conss.

XIII Ne Filius pro Patre vel Pater pro Filio Emancipato vel Libertus pro Patrono Conveniatur

[1] *Imp. Gordianus A. Candido militi.* **pr.** Neque ex eius filii persona, qui, cum sui iuris esset, mutuam pecuniam accepit, pater eius, si non fidem suam obstrinxit, conveniri potest, neque ex eius quem in potestate habet, si sine eius iussu contractum est neque contra senatus consultum Macedonianum mutua data est, amplius dumtaxat de peculio actionem sustinere cogitur. 1. Quapropter pater quoque tuus, si ei pecunia a creditore fratris tui extorta est, ob quam reddendam non tenebatur, praesidis provinciae auctoritate eam recuperabit.

PP. III non. Oct. Pio et Pontiano conss.

[2] *Impp. Diocletianus et Maximianus AA. Neoterio et Eutolmio.* Ne contra iuris auctoritatem ab eo, qui patrem vestrum, a quo emancipatos vos dicitis, ad munus civile devocaverat, inquietemini, praeses provinciae providebit.

D. VIII k. Febr. Maximo II et Aquilino conss.

you assigned to your daughter properties (*praedia*) for her support outside of the dowry, they (cannot be seized for)[54] obligatory public services (*munera*) or municipal burdens on the basis of the person of her husband, just as mothers cannot be sued on the basis of the persons of their children, since it is also agreed that a husband cannot be sued for the obligation of his wife unless he has made himself personally liable on her behalf. For it is most certain that no one can be obligated as a result of another's contract.

September 11, at Sirmium, in the consulship of the Augusti (293).

[4] *The same Augusti and Caesars to Philotera.* Since you mention that you are being sued for your son precisely because you seem to have contributed something for his debts, you are not at all prohibited from using your defenses (in a trial) before the person who has jurisdiction over this matter, so that he will not allow you to be forced to pay another's debt.

Given August 23, in the consulship of Titianus and Nepotianus (301).

Thirteenth Title A Son Is Not to Be Sued for His Father, or a Father for His Emancipated Son, or a Freedman for His Patron

[1][55] *Emperor Gordian Augustus to Candidus, a soldier.* **pr.** A father, if he did not pledge his own credit, cannot be sued for a son who, when he was *sui iuris*, received money as a loan. Nor can he be compelled to sustain an action for more than the *peculium* for a son whom he has in his power if the contract was made without his order and the money was not loaned in violation of the *SC Macedonianum*.[56] 1. Therefore your father too, if money has been extorted from him by your brother's creditor that he was not held liable to return, will recover it by means of the authority of the provincial governor.

Posted October 5, in the consulship of Pius and Pontianus (238).

[2] *Emperors Diocletian and Maximian Augusti to Neoterius and Eutolmius.* The provincial governor will see to it that you are not disturbed, contrary to the authority of the law, by that person who had appointed your father, by whom you say you have been emancipated, to perform an obligatory public service (*munus civile*).

Given January 25, in the consulship of Maximus, for the second time, and Aquilinus (286).

[54] As Mommsen points out, some phrase has fallen out here.
[55] Combine with C. 2.2.1.
[56] See C. 4.28, where the SC *Macedonianum* is explained.

[3] *Idem AA. et CC. Theogeni.* Si filius familias invito patre decurio creatus fuerit, pro eo patrem inquietari non posse iure manifestissimo cautum est.
S. x k. Mai. Sirmi CC. conss.

[4] *Idem AA. et CC. Achaeo.* Patris nomine superstitis filium nec munerum civilium nec debiti causa personali posse conveniri constat actione.
S. XII k. Mart. Sirmi CC. conss.

[5] *Idem AA. et CC. Lampetio.* Ex patroni vel domini contractu liberti vel servi conveniri non possunt.
S. III id. April. CC. conss.

XIIII An Servus ex Suo Facto post Manumissionem Teneatur

[1] *Imp. Severus A. Ioviano.* Quamvis cum statulibero contraxeris, tamen ex ante gesto te non habere cum eo post impletam condicionem libertatis actionem scire debes.
PP. IIII id. Dec. Dextro II et Prisco conss.

[2] *Imp. Antoninus A. Baetico.* Creditoribus tuis, qui tibi in servitute pecuniam crediderunt, nulla adversus te actio competit, maxime cum peculium tibi non esse legatum proponas.
PP. III k. Sept. Laeto II et Cereale conss.

[3] *Imp. Alexander A. Aurelio Herodi.* Promissae tibi pecuniae a servo tuo, ut eum manumitteres, si, posteaquam manumisisti, stipulatus ab eo non es, adversus eum petitionem per in factum actionem habes.
PP. Id. Sept. Alexandro A. cons.

[4] *Imp. Gordianus A. Heroni.* Licet servitutis tempore quae pecuniam matris tuae subripuisse dicitur, ob eiusmodi admissum conveniri non

[3] *The same Augusti and the Caesars to Theogenes.* If a son in his father's power has been elected a decurion against his father's will, it has been provided in the clearest law that the father cannot be disturbed on his account.

Written April 22, at Sirmium, in the consulship of the Caesars (294).[57]

[4] *The same Augusti and Caesars to Achaeus.* It is established that a son cannot be sued in the name of his surviving father in an action *in personam* for obligatory public services or for a debt.

Given February 18, at Sirmium, in the consulship of the Caesars (294).

[5] *The same Augusti and Caesars to Lampetius.* Freedmen or slaves cannot be sued on the basis of a contract of their patron or owner.

Written April 11, in the consulship of the Caesars (294).

Fourteenth Title Whether a Slave, after Manumission, Is Held Liable for His Own Act

[1] *Emperor* Severus *Augustus to Jovianus.* Although you have made a contract with a conditionally freed slave (*statuliber*), even so you ought to know that, after the fulfillment of his condition for freedom, you do not have an action against him for something he did previously.

Posted December 10, in the consulship of Dexter, for the second time, and Priscus (196).

[2] *Emperor* Antoninus *Augustus to Baeticus.* Your creditors, who loaned you money while you were a slave, have no right of action against you, especially since you allege that your *peculium* was not bequeathed to you.

Posted August 30, in the consulship of Laetus, for the second time, and Cerealis (215).

[3][58] *Emperor* Alexander *Augustus to Aurelius Herodes.* You have an analogous action (*in factum*) against him for the money promised by your slave for his manumission, if, after you manumitted him, you did not exact a stipulation from him.

Posted September 13 in the consulship of Alexander Augustus (222).

[4] *Emperor* Gordian *Augustus to Hero.* Although the woman who is said to have stolen money belonging to your mother while a slave could not be sued

[57] Mommsen dates to April 22, 293.

[58] Combine with C. 6.2.4 (whence the *nomen* of the addressee).

poterat, ad libertatem tamen perducta (nam caput noxa sequitur) furti actione tenetur.

PP. id. Sept. Pio et Pontiano conss.

[5] *Idem A. Chresto.* Si, ut adlegas, antequam a domina manumittereris, fundos eius coluisti posteaque adempto peculio libertate donatus es, ob reliqua, si qua pridem contracta sunt, res bonorum, quas postea propriis laboribus quaesisti, inquietari minime possunt.

PP. XVI k. Dec. Arriano et Papo conss.

[6] *Impp. Diocletianus et Maximianus AA. et CC. Feliciano.* **pr.** Sive servi sunt ii, quorum precibus fecisti mentionem, domi eos conveni, quia inter dominos ac servos iudicium constare nullum potest: sive post delictum manumissi sunt, ex antecedentibus post datam libertatem eos nulla ratio iuris a dominis quondam conveniri patitur. **1.** Sane si post manumissionem quid illicite commiserunt, hoc apud praesidem provinciae argue accepturus ex iure sententiam.

D. II id. April. Byzantio AA. conss.

XV Quando Fiscus vel Privatus Debitoris Sui Debitores Exigere Potest

[1] *Impp. Severus et Antoninus AA. Valeriano.* Propter aes alienum pupilli res tutoris, qui nihil ex bonis eius tenet, pignori capi non oportet.

PP. XI k. Iun. Laterano et Rufino conss.

[2] *Imp. Antoninus A. Marco.* Si in causa iudicati Valentis, quem tibi condemnatum esse proponis, nihil est, quod sine quaestione pignoris loco capi et distrahi possit, debitores eius conventi ad solutionem auctoritate praesidis provinciae compelluntur.

D. VI non. April. Geta cons.

[3] *Imp. Gordianus A. Primiano.* Si debitum non infitiantur hi, quos obnoxios debitoribus fisci esse proponis, potest videri non esse iniquum quod desideras, ut ad solutionem per officium procuratoris

on account of an act of this sort, when she has been brought to freedom she is held in an action on theft, since noxal liability follows the person.

Posted September 13, in the consulship of Pius and Pontianus (238).

[5] *The same Augustus to Chrestus.* If, as you allege, before you were manumitted by your owner, you cultivated farms belonging to her and afterwards you were given freedom but your *peculium* was taken away, the property that you have acquired subsequently by your own labors cannot be disturbed on account of arrears, if any were contracted previously.

Posted November 16, in the consulship of Arrianus and Papus (243).

[6] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Felicianus.* **pr.** If those people whom you have mentioned in your petition are slaves, sue them within the household, since no lawsuit can arise between owners and slaves; if they have been manumitted after their offense, no logic of the law allows them to be sued by their former owners after they are given freedom. **1.** Clearly if after their manumission they have done something illicitly, make an accusation of this before the provincial governor and you will receive a verdict according to the law.

Posted April 12, at Byzantium, in the consulship of the Augusti (293).

Fifteenth Title When the Treasury or a Private Person Can Exact Payment from the Debtors of their Debtor

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Valerianus.* Property of a *tutor*, who holds none of his ward's property, must not be taken as a pledge on account of the latter's debt.

Posted May 22, in the consulship of Lateranus and Rufinus (197).

[2] *Emperor* ANTONINUS *Augustus to Marcus.*[59] If in the condemnatory judgment (*causa iudicati*) Valens, against whom you allege you have a judgment, has no property that could be taken in the place of a pledge and be sold without an investigation, his debtors, when sued, are compelled to pay by the authority of the provincial governor.

Given April ??, in the consulship of Geta (205).

[3] *Emperor* GORDIAN *Augustus to Primianus.* If these people, who you allege are indebted to debtors of the Treasury, do not deny the debt, what you desire may seem not unfair, that they be compelled to pay through the official staff of

[59] The date indicates that the name of Septimius Severus belongs in the address.

compellantur. nam si quaestio aliqua refertur, id concedi non oportere et ipse perspicis.

PP. VI k. Febr. Sabino II et Venusto conss.

[4] *Impp. Diocletianus et Maximianus AA. et CC. Zosimo.* Non prius ad eos, qui debitoribus fisci nostri sunt obligati, actionem fiscalem extendi oportere, nisi patuerit principales reos idoneos non esse, certissimi iuris est.

S. XII k. Mai. AA. conss.

[5] *Idem AA. et CC. Nanidiae.* In solutum nomine dato non aliter nisi mandatis actionibus ex persona sui debitoris adversus eius debitores creditor experiri potest. suo autem nomine utili actione recte utetur.

D. k. Ian. CC. conss.

XVI De Actionibus Hereditariis

[1] *Imp. Gordianus A. Hermeroti.* Pecuniam, quam tibi a matre debitam fuisse dicis, ab heredibus eius coheredibus tuis pro parte tibi competenti petere debes. sed et res, si quae tibi ob idem debitum obligatae sunt, persequi non prohiberis.

PP. XI k. Mart. Gordiano A. II et Pompeiano conss.

[2] *Imp. Decius A. Telemachae.* Pro hereditariis partibus heredes onera hereditaria agnoscere etiam in fisci rationibus placuit, nisi intercedat pignus vel hypotheca: tunc enim possessor obligatae rei conveniendus est.

PP. XIIII k. Nov. Aemiliano et Aquilino conss.

[3] *Impp. Diocletianus et Maximianus AA. et CC. Maximae.* Heredem mariti quondam tui de dote reddenda tibi conveni: personalem enim actionem contra debitores hereditarios decerni tibi frustra postulas.

PP. XIIII k. Mai. AA. conss.

[4] *Idem AA. et CC. Crispo.* Sub praetextu aetatis pupilli debitoris hereditarii creditorum exactionem differri non posse nimis evidens est.

the Procurator. For if any question (about the status of their debt) is reported, even you see yourself that this cannot be conceded.

Posted January 27, in the consulship of Sabinus, for the second time, and Venustus (240).

[4] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Zosimus.* The law is quite certain that an action on behalf of the Treasury should not be extended to those who are obligated to debtors of the Treasury before it is evident that the principal defendants are not capable of paying.

Written April 20, in the consulship of the Augusti (293).

[5] *The same Augusti and Caesars to Nanidia.* When a claim is given in payment the creditor cannot bring suit against the debtors of his own debtor except on the basis of actions mandated from that person. He will, however, correctly use an analogous action (*utilis actio*) under his own name.

Given January 1, in the consulship of the Caesars (294).

Sixteenth Title Actions Concerning Heirs

[1] *Emperor* GORDIAN *Augustus to Hermeros.* The money that you say was owed to you by your mother you should seek from her heirs, that is, your coheirs, in proportion to the share accruing to yourself. But you are not prohibited from pursuing property, if any has been obligated to you on account of the same debt.

Posted February 19, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

[2] *Emperor* DECIUS *Augustus to Telemache.* It has been decided that, in the accounts of the Treasury as well, heirs acknowledge inherited debts in proportion to their shares of the inheritance, unless a pledge or a hypothec should intervene. Then the possessor of the property that has been obligated should be sued.

Posted October 19, in the consulship of Aemilianus and Aquilinus (249).

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Maxima.* Sue the heir of your former husband about returning the dowry to you; you ask in vain that an action *in personam* be granted you against the debtors to the estate.

Posted April 18, in the consulship of the Augusti (293).

[4] *The same Augusti and Caesars to Crispus.* It is quite evident that the enforcement by creditors against a ward who has inherited a debt cannot be

unde cum te tutorem proponas, quemadmodum a pupillis creditoribus satisfiat, eniti debes.

D. x k. Dec. Sirmi AA. conss.

[5] *Idem AA. et CC. Iulio.* Ut debitum ante de hereditate tibi solvatur ac tunc, si ad te pertineret, quaeri iubeamus, praepostera petitio est. etenim cum tibi soceri successionem quaesitam patuerit, debiti petitionem per confusionem extingui non ambigitur.

D. prid. non. Mart. Sirmi CC. conss.

[6] *Idem AA. et CC. Domno.* Si adulta, cuius curam geris, pro triente patruo suo, quem etiam tutelam eius administrasse proponis, heres extitit nec ab eo quicquam exigere prohibita est, debitum a coheredibus pro besse petere non prohibetur, cum ultra eam portionem qua successit petitio non confundatur. nam adversus adultam tuam rescindi postulas testamentum, si quidem coheredes eius adeuntes hereditatem se etiam obligant et, si non solvendo constituti probentur, postulata separatio nullum ei damnum fieri patietur.

D. k. Dec. CC. conss.

[7] *Idem AA. et CC. Apolausto.* Creditores hereditarios adversus legatarios non habere personalem convenit actionem, quippe cum evidentissime lex duodecim tabularum heredes huic rei faciat obnoxios.

D. VI id. Dec. Nicomediae CC. conss.

XVII Ex Delictis Defunctorum in Quantum Heredes Conveniantur

[1] *Impp. Diocletianus et Maximianus AA. et CC. Macedonae.* Post litis contestationem eo qui vim fecit vel concussionem intulit vel aliquid deliquit defuncto successores eius in solidum, alioquin in quantum ad eos pervenit conveniri iuris absolutissimi est, ne alieno scelere ditentur.

D. v k. Mai. Sirmi CC. conss.

delayed under the pretext of his age. Therefore since you submit that you are a *tutor*, you must try whatever means by which satisfaction may be made to creditors by your wards.

Given November 22, at Sirmium, in the consulship of the Augusti (293).

[5] *The same Augusti and Caesars to Julius.* It is an anomalous request that a debt from an inheritance be paid to you first and then that We order an investigation whether the inheritance belongs to you. For since it was clear that succession to your father-in-law has been obtained by you, there is no doubt that the petition for the debt is extinguished by the identity (*confusio*; i.e., the merger) of the creditor and the debtor.

Given March 6, at Sirmium, in the consulship of the Caesars (294).

[6][60] *The same Augusti and Caesars to Domnus.* If the adult woman, whose curatorship you manage, is heir to one-third of the estate of her paternal uncle, who you state also served as her *tutor*, and she was not forbidden to extract payment from him (of an independent debt he owed her), she is not prohibited from seeking two-thirds of the (uncle's) debt (to her) from her co-heirs, since beyond that portion by which she succeeded her claim is not merged. For it is against the interests of your adult woman that you are requesting that the will be rescinded, if indeed her co-heirs, in taking up the inheritance, should also obligate themselves; and if they should be proved to be insolvent, a requested separation (of property) will not allow any loss to accrue to her.

Given December 1, in the consulship of the Caesars (294).

[7] *The same Augusti and Caesars to Apolaustus.* It is agreed that creditors of an estate do not have a personal action against legatees, since quite obviously the law of the Twelve Tables makes heirs liable in such a case.

Given December 8, at Nicomedia, in the consulship of the Caesars (294).

Seventeenth Title To What Extent Heirs Should Be Sued for the Delicts of the Deceased

[1][61] *Emperors Diocletian and Maximian Augusti and the Caesars to Macedona.* After joinder of issue, if the person who brought force, or engaged in extortion, or committed any type of delict dies, the law is very absolute that his heirs are sued for the whole amount, otherwise up to the amount that comes to them through the inheritance, lest they be enriched by another person's crime.

Given April 27, at Sirmium, in the consulship of the Caesars (294).

[60] = C. 7.72.7, with significant change of the hypothetical (the ward is the recipient's wife).
[61] Bas. 24.7.8.

XVIII De Constituta Pecunia

[1] *Imp. Gordianus A. Felici.* Si pro alieno debito te soluturum constituisti, pecuniae constitutae actio non solum adversus te, sed etiam adversus heredes tuos perpetuo competit.

D. VII k. Iul. Sirmi CC. conss.

[2] *Imp. Iustinianus A. Iuliano pp.* **pr.** Recepticia actione cessante, quae sollemnibus verbis composita inusitato recessit vestigio, necessarium nobis visum est magis pecuniae constitutae naturam ampliare. **1.** Cum igitur praefata actio, id est pecuniae constitutae, in his tantummodo a veteribus conclusa est, ut exigeret res quae in pondere numero mensura sunt, in aliis autem rebus nullam haberet communionem et neque in omnibus casibus longaeva sit constituta, sed in speciebus certis annali spatio concluderetur, et dubitaretur, si pro debito sub condicione vel in diem constituto eam possibile est fieri et si pure constituta pecunia contracta valeret, hac apertissima lege definimus, ut liceat omnibus constituere non solum res quae pondere numero mensura sunt, sed etiam alias omnes sive mobiles sive immobiles sive se moventes sive instrumenta vel alias quascumque res, quas in stipulationem possunt homines deducere: et neque sit in quocumque casu annalis, sed (sive pro se quis constituat sive pro alio) sit et ipsa in tali vitae mensura, in qua omnes personales sunt actiones, id est in annorum metis triginta: et liceat pro debito puro vel in diem vel condicionali constitui:

et non absimilem penitus stipulationi habeat dignitatem, suis tamen naturalibus privilegiis minime defraudata: sed et heredibus et contra heredes competat, ut neque recepticiae actionis neque alio indigeat res publica in huiusmodi casibus adminiculo, sed sit pecuniae constitutae actio per nostram constitutionem sibi in omnia sufficiens, ita tamen, ut hoc ei inhaereat, ut pro debito fiat constitutum (cum secundum antiquam recepticiam actionem exigebatur et si quid non fuerat debitum), cum satis absurdum et tam nostris temporibus quam iustis legibus contrarium est permittere per actionem recepticiam res indebitas consequi

Eighteenth Title A Promise to Pay an Existing Debt[62]

[1] *Emperor* GORDIAN *Augustus to Felix.*[63] If you have promised that you will pay for another person's debt, the action on money promised (*pecuniae constitutae actio*) is available not only against you but also against your heirs in perpetuity.

Given June 25, at Sirmium, in the consulship of the Caesars (294).

[2] *Emperor* JUSTINIAN *Augustus to Julian, Praetorian Prefect.* **pr.** Since the action against a banker's undertaking is dormant (*recepticia actione cessante*), which, composed in customary words, has receded as an outmoded vestige, it has seemed necessary to Us to amplify the nature of the promise to pay an existing debt (*constitutum*). **1.** Since, therefore, the aforesaid action, that is, for an existing debt of money (*pecuniae constitutae*), was confined by the ancient jurists solely to these circumstances, (namely) that there might be a claim for things that are calculable in weight, number, or volume, but that it might have nothing in common in other matters and not be established in all cases to be long-lasting, but to be confined in certain matters to the space of a year, and there was doubt whether it can arise for a debt under a condition or one due to be paid on a certain date (*in diem constituto*) and whether the promise for money contracted unconditionally was valid, in this pellucid law We define that it be permitted to everyone to make a promise to pay not only things that are calculable in weight, number, or measure, but also all other types of property, whether they are movable or immovable, or self-propelling, or documents or any other types of things that people can make part of a stipulation; and it should not be for a year in any case, but – whether one makes a promise for himself or for another – it should also be for such a duration of life that applies to all actions *in personam*, that is, within a limit of thirty years; and it should be permitted that a promise be made for a pure debt or for one due on a future date (*in diem*) or for a conditional one.

And it shall have a status not at all dissimilar from a stipulation, however not at all deprived of its natural privileges; but it shall also be available to heirs and against heirs, so that the republic not require actions for a banker's undertaking (*recepticiae actiones*) or another support in cases of this type, but that the action on the payment of an existing debt of money be self-sufficient for all matters through Our constitution, with this restriction, that this remain part of it, that there be a promise for a debt – since in accordance with the old

[62] See D. 13.5. The action described in this title – *constitutum debiti*, an informal promise by a debtor to repay his preexisting debt – was expanded by Justinian so as to replace the *actio recepticia* to enforce the *receptum argentarii*, a banker's promise to pay another's debt by a certain date.

[63] Based on the date, the address should read "Emperors Diocletian and Maximian Augusti and Caesars." But the corruption may be deeper.

et iterum multas proponere condictiones, quae et pecunias indebitas et promissiones corrumpi et restitui definiunt. 1a. Ut non erubescat igitur tale legum iurgium, hoc tantummodo constituatur, quod debitum est, et omnia, quae de recepticia in diversis libris legislatorum posita sunt, aboleantur et sit pecunia constituta omnes casus complectens, qui et per stipulationem possint explicari.

1b. Et neminem moveat, quod sub nomine pecuniae etiam omnes res exigi definimus, cum et in antiquis libris prudentium, licet pecunia constituta nominabatur, tamen non pecuniae tantum per eam exigebantur, sed omnes res quae pondere numero mensura constitutae sunt. 1c. Sed et possibile est omnes res in pecuniam converti. si enim certa domus vel certus ager vel certus homo vel alia res quae expressa est in constituendis rebus ponatur, quid distat a nomine ipsius pecuniae? 1d. Sed ut et subtilitati eorum satisfiat, qui non sensum, sed vana nominum vocabula amplecti desiderant, ita omnes res veniant in constitutam, tamquam fuisset ipsa pecunia constituta, cum etiam veteres pecuniae appellatione omnes res significari definiunt et huiusmodi vocabulum et in libris iuris auctorum et in alia antiqua prudentia manifestissime inventum est.

2. His videlicet, quae argenti distractores et alii negotiatores indefense constituerint, in sua firmitate secundum morem usque adhuc obtinentem durantibus.

D. x k. Mart. Constantinopoli post consulatum Lampadii et Orestae vv. cc.

[3] *Idem A. Iohanni pp.* Divi Hadriani epistulam, quae de periculo dividendo inter mandatores et fideiussores loquitur, locum habere et in his qui pecunias pro aliis simul constituunt necessarium est: aequitatis enim ratio diversas species actionis excludere nullo modo debet.

D. k. Nov. Constantinopoli post consulatum Lampadii et Orestae vv. cc.

action on a banker's undertaking one could also make a claim if something had not been owed – since it is quite absurd and contrary both to Our times and to just laws to allow the pursuit of things not owed through the action on a banker's undertaking and again to set forth many types of claims (*condictiones*), which define how both sums of money not owed and promises are corrupted and restored. **1a.** Therefore, so that such a criticism of the laws not cause embarrassment, a promise should be established for this alone, namely, what is owed, and all things that have been included in the different books of the jurists (*legislatores*) concerning the action on recovery should be abolished, and it should be a promise for money that embraces all cases that can also be explicated through a stipulation.

1b. And it should disturb no one that We define that all things may be exacted under the name of money, since in the ancient books of the jurisconsults (*prudentes*), although a claim for money was named, nevertheless not just sums of money could be exacted through this action, but all things that have been established in weight, number, or measure. **1c.** But it is also possible for all things to be converted into money. For if a certain house should be mentioned or a certain field or a certain human being or some other thing that has been described in establishing claims, how does that differ from the category of money itself? **1d.** But so as to satisfy the cleverness of those people who desire to embrace not the sense, but the empty names, all things should come under the action on the promise to pay an existing debt, as if money itself had been promised; since even the jurists of old make clear that all things are designated by the name of money and a term of this type has been found very clearly in the books of the authors of the law and in other ancient jurisprudence.

2. It is to be understood that whatever the moneychangers (*argenti distractores*) and other businessmen have unconditionally promised remains in force in accordance with the custom that obtains until this time.

Posted April 22, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[3] *The same Augustus to John, Praetorian Prefect.* It is necessary that the letter of the deified Hadrian that speaks of dividing the risk between mandators and sureties also apply to those people who make promises to pay debts of money on behalf of others, since considerations of equity should in no way exclude other types of actions.[64]

Given November 1, at Constantinople, in the post-consulate of viri clarissimi *Lampadius and Orestes (531).*

[64] In a note on this passage, Krüger cites Papinian, D. 27.7.7, and favors reading *rationem diversa*: "the different type of action should in no way exclude considerations of equity."

XVIIII De Probationibus

[1] *Impp. Severus et Antoninus AA. Faustino.* Ut creditor, qui pecuniam petit, numeratam implere cogitur, ita rursum debitor, qui solutam adfirmat, eius rei probationem praestare debet.
PP. prid. k. Iul. Dextro II et Prisco conss.

[2] *Imp. Antoninus A. Auluzano.* Possessiones, quas ad te pertinere dicis, more iudiciorum persequere. nec enim possessori incumbit necessitas probandi eas ad se pertinere, cum te in probatione cessante dominium apud eum remaneat.
PP. XV k. Dec. Laeto et Cereale conss.

[3] *Imp. Alexander A. Leaenae et Lupo.* Ex persona collegae avi vestri conveniri non debetis, si eundem collegam tempore depositi officii solvendo fuisse ostenderitis.
PP. V k. Ian. Pompeiano et Peligno conss.

[4] *Idem A. Avito.* Proprietatis dominium non tantum instrumento emptionis, sed ex quibuscumque aliis legitimis probationibus ostenditur.
PP. k. Nov. Alexandro A. cons.

[5] *Imp. Philippus A. et Philippus C. Sertorio.* Instrumenta domestica seu privata testatio seu adnotatio, si non aliis quoque adminiculis adiuventur, ad probationem sola non sufficiunt.
PP. VII id. April. Philippo A. et Titiano conss.

[6] *Idem A. et C. Romulo.* **pr.** Rationes defuncti, quae in bonis eius inveniuntur, ad probationem sibi debitae quantitatis solas sufficere non posse saepe rescriptum est. **1.** Eiusdem iuris est et si in ultima voluntate defunctus certam pecuniae quantitatem aut etiam res certas deberi sibi significaverit.
PP. id. Mai. Philippo A. et Titiano conss.

[7] *Imp. Gallienus A. Sabino.* Exemplo perniciosum est, ut ei scripturae credatur, qua unusquisque sibi adnotatione propria debitorem constituit. unde neque fiscum neque alium quemlibet ex suis subnotationibus debiti probationem praebere posse oportet.

Nineteenth Title Proofs[65]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Faustinus.* Just as a creditor, who seeks money, is compelled to fulfill a cash payment (prior to making his claim), so too a debtor, who is affirming that the money has been paid, should provide a proof of this matter.

Posted June 30, in the consulship of Dexter, for the second time, and Priscus (196).

[2] *Emperor* ANTONINUS *Augustus to Auluzanus.* Pursue the properties, which you say belong to you, by the usual procedure of the courts. For the necessity of proving ownership over them does not fall upon the possessor, since if you fail in your proof, ownership remains with him.

Posted November 17, in the consulship of Laetus and Cerealis (215).

[3] *Emperor* ALEXANDER *Augustus to Leaena and Lupus.* You should not be sued on account of the colleague (in a magistracy) of your grandfather, if you show that the same colleague was solvent when he gave up his office.

Posted December 28, in the consulship of Pompeianus and Pelignus (231).

[4] *The same Augustus to Avitus.* The ownership of property is shown not just by a document of purchase, but from any other legitimate proofs.

Posted November 1, in the consulship of Alexander Augustus (222).

[5] *Emperor* PHILIP *Augustus and* PHILIP *Caesar to Sertorius.* Personal documents (of a litigant), whether a private declaration or a notation, if they are not aided by other supports, do not alone suffice for proof.

Posted April 7, in the consulship of Philip Augustus and Titianus (245).

[6] *The same Augustus and Caesar to Romulus.* **pr.** Rescripts have often been issued that the accounts of a deceased person, which are found among his property, do not alone suffice as proof of a debt owed to him. **1.** The law is the same even if by his last wish the deceased signified that a certain amount of money or other certain things are owed to him.

Posted May 15, in the consulship of Philip Augustus and Titianus (245).

[7] *Emperor* GALLIENUS *Augustus to Sabinus.* It is a harmful precedent that a written document should be credited in which anyone establishes his debtor through his own notation. Therefore neither the Treasury nor any other person should be able to offer proof of a debt from his own notations.

[65] See D. 22.3.

PP. prid. non. Sept. Gallieno A. v et Faustino conss.

[8] *Impp. Diocletianus et Maximianus AA. Publicio et Optato.* Frustra veremini, ne ab eo qui lite pulsatur probatio exigatur.

PP. XIII k. Dec. Basso et Quintiano conss.

[9] *Idem AA. et CC. Marcianae.* Cum te minorem quinque et viginti annis esse proponas, adire praesidem provinciae debes et de aetate probare.

D. id. April. AA. conss.

[10] *Idem AA. et CC. Isidoro.* Neque natales tui, licet ingenuum te probare possis, neque honores, quibus te functum esse commemoras, idoneam probationem pro filiae tuae ingenuitate continent, cum nihil prohibeat et te ingenuum et eam ancillam esse.

D. XVIII k. Mai. AA. conss.

[11] *Idem AA. et CC. Antoniae.* Si scriptum heredem ab amita tua vel testamenti vitio vel quacumque alia ratione non posse obtinere hereditatem probari a te posse confidis, de hac hereditate apud rectorem provinciae agere potes.

S. v k. Mai. Heracliae AA. conss.

[12] *Idem AA. et CC. Chroniae.* Cum res non instrumentis gerantur, sed in haec gestae rei testimonium conferatur, factam emptionem et in vacuam possessionem inductum patrem tuum pretiumque numeratum quibus potes iure proditis probationibus docere debes.

D. v non. Oct. AA. conss.

[13] *Idem AA. et CC. Iustino.* **pr.** Non epistulis necessitudo consanguinitatis, sed natalibus vel adoptionis sollemnitate coniungitur, nec adversus absentem hereditatis dividundae gratia velut contra fratrem pro ancilla petitus arbiter substantiae perimit veritatem. **1.** Sive itaque quasi ad sororem, quam ancillam te posse probare confidis, epistulam emisisti, sive familiae erciscundae quasi pro coherede petitus arbiter doceatur, fraternitatis quaestio per haec tolli non potuit.

D. k. Dec. AA. conss.

Posted September 4, in the consulship of Gallienus Augustus, for the fifth time, and Faustinus (262).

[8] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Publicius and Optatus.* You have no need to fear that the burden of proof should be demanded of the person who is attacked with a lawsuit.

Posted November 19, in the consulship of Bassus and Quintianus (289).

[9] *The same Augusti and the Caesars to Marciana.* Since you state that you are below the age of 25 years, you should approach the provincial governor and offer proof about your age (so as to obtain *restitutio in integrum*).

Given April 13, in the consulship of the Augusti (293).

[10] *The same Augusti and Caesars to Isidorus.* Neither your birth, granted that you can prove that you are free-born, nor the offices that you say you have filled carry with them a suitable proof of the free birth of your daughter, since nothing prohibits you from being free-born and her from being a slave.

Given April 14, in the consulship of the Augusti (293).

[11] *The same Augusti and Caesars to Antonia.* If you are confident that it can be proved by you that the heir written by your paternal aunt cannot obtain the inheritance either because of a flaw in the will or for some other reason, you can sue over this inheritance before the provincial governor.

Given on April 27, at Heraclea, in the consulship of the Augusti (293).

[12]*The same Augusti and Caesars to Chronia.* Since business is not transacted in documents (themselves), but testimony as to the business transacted is (instead) compared with them, you should show, by producing what records you lawfully can, that the sale was completed, that your father was brought into quiet possession, and that the price was paid.

Given October 3, in the consulship of the Augusti (293).

[13]*The same Augusti and Caesars to Justinus.* **pr.** A blood relationship is not formed by letters, but by birth or the formality of an adoption, nor can a judge arbitrator undo the truth of the facts when he is approached to divide an inheritance, as it were, against an absent brother on behalf of a slave woman. **1.** So whether you have sent a letter as if to a sister to someone whom you are confident you can prove to be a slave, or the judge arbitrator should be shown to have been approached to divide the inheritance (*familiae erciscundae*) as if on behalf of a co-heir, the question of the (actual) relationship could not be eliminated through these means.

Given December 1, in the consulship of the Augusti (293).

[14] *Idem AA. et CC. Muciano.* Non nudis adseverationibus nec ementita professione, licet utrique consentiant, sed matrimonio legitimo concepti vel adoptione sollemni filii civili iure patri constituuntur. si itaque hunc contra quem supplicas alienum esse confidis, per te vel per procuratorem adfirmationem eius falsam detege.

D. k. Dec. AA. conss.

[15] *Idem AA. et CC. Antonino.* Vis eius, qui se dominum contendit, ad imponendum onus probationis servo minime prodest. cum igitur aufugisse te de domo Severi profitearis, verum nec ab illo iusto initio, sed per violentiam adseveres esse detentum, inquisito prius, an in possessionem libertatis sine dolo malo constitutus sis, tunc etiam, onus probationis qui debeat subire, per huiusmodi eventum declarabitur.

D. VI k. Ian. AA. conss.

[16] *Idem AA. et CC. Philippo et Sebastianae.* Sive possidetis praedia, quae a patre communi sibi fratres emancipati donata contendentes vindicant, ipsis incumbit facti probationis necessitas, sive ipsis ea praedia, quasi a patre vestro sibi donata, tenentibus vos heredes constituti patris petitis, ut intentionem vestram non constitisse detegant, unde domini facti sunt, emergente quaestione docere compelluntur.

D. X k. Febr. CC. conss.

[17] *Idem AA. et CC. Paulinae.* Matrem tuam consecutam libertatem ac te post editam, ut ingenua probari possis, ostendi convenit. quod enim fratribus tuis nulla movetur quaestio, ad defensionem tuam nihil prodesse potest.

D. V id. Febr. CC. conss.

[18] *Idem AA. et CC. Violentillae.* **pr.** Cum precibus tuis significes ignorante te praedium eum cuius meministi sibi velut a te donatum instrumentis inseri fecisse, si vera sunt quae indidisti, nec ad nomen factae donationis fundus iste pervenit. 1. Unde adito iudice competenti

[14] *The same Augusti and Caesars to Mucianus.* Children are established for a father in civil law not by bare assertions or by a contrived profession, although both parties might agree, but when they are conceived in a lawful marriage or through formal adoption. So if you are confident that the person against whom you are pleading belongs to someone else, reveal, either by yourself or through your procurator, the falseness of his affirmation.

Given December 1, in the consulship of the Augusti (293).

[15] *The same Augusti and Caesars to Antoninus.* The power of the person who contends that he is owner (of a slave) cannot at all serve to impose the burden of proof on the slave. Since, then, you claim that you have fled from the home of Severus, and you assert that you have been detained by him, not on any just claim, but through violence, when there first has been an inquiry whether you have been established in the possession of liberty without deceit (*dolus malus*), through the outcome of this type of proceeding it will then be declared who ought to sustain the burden of proof.

Given December 27, in the consulship of the Augusti (293).

[16] *The same Augusti and Caesars to Philippus and Sebastiana.* If you possess properties, over which your brothers, who were emancipated by your common father, claim ownership, contending that they were given to them as a gift, the necessity of proving the fact is incumbent upon them. If you as the heirs established by your father seek these properties from them, when they hold them as if they were given to them by your father, in the emerging investigation they are compelled to demonstrate on what basis they have become owners, so that they might show that your claim is not established.

Given January 23, in the consulship of the Caesars (294).

[17] *The same Augusti and Caesars to Paulina.* It is generally accepted that, for you to be proved to be free-born, it be shown that your mother gained liberty and that you were born afterwards. The fact that no question is raised by your brothers[66] cannot provide any help for your defense.

Given February 9, in the consulship of the Caesars (294).

[18] *The same Augusti and Caesars to Violentilla.* **pr.** Since you indicate in your petition that, without your knowledge, the person whom you have mentioned had the property inserted in the documents (of a gift) as if he had been given it by you, if what you have indicated is true, then that farm does not belong with the entry of the donation that was carried out. **1.** Therefore after

[66] Blume translates: "that no such question is raised as to your brothers."

probare te oportet contra tuam voluntatem hunc fundum instrumento adversarium tuum sibi adscribi laborasse, ut secundum tenorem rescripti nostri possis consequi sententiam.

D. VII id. April. Byzantii CC. conss.

[19] *Idem AA. et CC. Menandro.* Exceptionem dilatoriam opponi quidem initio, probari vero, postquam actor monstraverit quod adseverat, oportet.

D. XVI k. Dec. Nicomediae CC. conss.

[20] *Idem AA. et CC. Phronimae.* Si de possessione servitutis emptionis instrumentis subtractis in libertatem proclamat Eutychia, cum petitori probationis onus incumbat, intentione sua defecta his iuvari minime potest. nam si in servitutem petatur, ad emptionis probationem non est indiciis aliis opus, sed instrumentorum furtum monstrare sufficit.

iiii non. Dec. Nicomediae CC. conss.

[21] *Idem AA. et CC. Crispo.* **pr.** Ad probationem uti dominii aliena subtrahentes instrumenta his minime possunt, quippe cum horum lectio non recitantem, sed quem tenor scripturae designat, adiuvat. **1.** Cum itaque nec cetera probationum indicia reprobentur, iure competenti praediorum, quae in quaestionem veniunt, dominium ad te ostende pertinere. nam res vindicantem ab emptore suos numeratos nummos adseverantem erga probationem laborare non convenit, si quidem huiusmodi, licet probetur, factum intentioni nullum praestet adminiculum.

S. VI id. Dec. Singiduni CC. conss.

[22] *Idem AA. et CC. Agathocleae.* Ad probationem servitutis Glyconis matrem eius ac fratrem servilia fecisse ministeria non sufficit, cum neque ingenuorum coniventia coniunctis necessitudine praeiudicet neque de servis ex eadem matre natis unus libertatem adipisci prohibeatur.

D. VIIII k. Ian. ipsis CC. conss.

[23] *Idem AA. et CC. Menelao.* Actor quod adseverat probare se non posse profitendo reum necessitate monstrandi contrarium non adstringit, cum per rerum naturam factum negantis probatio nulla sit.

approaching a competent judge you must prove that your opponent caused this farm to be assigned to himself against your will, so that you can gain a judgment in accordance with the tenor of Our rescript.

Given April 7, at Byzantium, in the consulship of the Caesars (294).

[19] *The same Augusti and Caesars to Menander.* A motion for continuance (*exceptio dilatoria*) must be proffered at the outset but proved after the plaintiff has demonstrated what he alleges.

Posted November 16, at Nicomedia, in the consulship of the Caesars (294).

[20] *The same Augusti and Caesars to Phronima.* If Eutychia claims liberty from your possession (of her) as a slave after the loss of the documents concerning her purchase, since the burden of proof is incumbent on the petitioner, if her assertion is defective she cannot at all be helped by this. For if she should be claimed into slavery, there is no need for other evidence of the proof of the purchase, but it is enough to demonstrate the theft of the documents.[67]

Posted December 6, at Nicomedia, in the consulship of the Caesars (294).

[21] *The same Augusti and Caesars to Crispus.* **pr.** Those who remove documents belonging to others cannot at all use these for proof of ownership, since their reading does not help the person reciting, but the person whom the sense of the text designates. **1.** So since the other evidence provided by the proofs is not refuted, show by the appropriate law that the ownership of the properties in question belongs to you. For it is not fitting that someone suing for ownership of property should work toward a proof by claiming that his money was paid out by the buyer, if a fact of this sort, assuming that it should be proved, should not offer any support for his claim.

Posted December 8, at Singidunum, in the consulship of the Caesars (294).

[22] *The same Augusti and Caesars to Agathoclea.* It is not sufficient to prove the slave status of Glyco that his mother and brother performed slave duties, since neither the connivance of free-born persons is prejudicial to those joined by a familial relationship nor is one of the slaves born from the same mother prohibited from gaining liberty.

Posted December 24, in the consulship of the Caesars (294).

[23] *The same Augusti and Caesars to Menelaus.* A plaintiff, by acknowledging that he cannot prove his allegations, does not impose on the defendant the necessity of proving the contrary, since by the nature of things there is no burden of proof on one denying a fact.

[67] Blume refers to C. 4.20.2, which shows that testimony of witnesses alone is insufficient to show free birth.

D. VIII k. Ian. CC. conss.

[24] *Impp. Valens Gratianus et Valentinianus AAA. ad Antonium pp.* Iubemus omnes deinceps, qui scripturas suspectas comminiscuntur, cum quid in iudicio prompserint, nisi ipsi adstruxerint veritatem, ut nefariae scripturae reos *et* quasi falsarios esse detinendos.

D. prid. id. Ian. Treviris Valente VI et Valentiniano II AA. conss.

[25] *Imppp. Gratianus Valentinianus et Theodosius AAA. Floro pp.* Sciant cuncti accusatores eam se rem deferre debere in publicam notionem, quae munita sit testibus idoneis vel instructa apertissimis documentis vel indiciis ad probationem indubitatis et luce clarioribus expedita.

D. XV k. Iun. Constantinopoli Antonio et Syagrio conss.

XX De Testibus

[1] Κατὰ ἐγγράφου μαρτυρίας ἄγραφος μαρτυρία οὐ προσφέρεται.

[2] *Imp. Alexander A. Carpo.* Si tibi controversia ingenuitatis fiet, defende causam instrumentis et argumentis, quibus putas: soli etenim testes ad ingenuitatis probationem non sufficiunt.

PP. X k. Mai. Maximo II et Aeliano conss.

[3] *Impp. Valerianus et Gallienus AA. Rosae.* Etiam iure civili domestici testimonii fides improbatur.

PP. III k. Sept. Valeriano III et Gallieno II AA. conss.

[4] *Imppp. Carus Carinus et Numerianus AAA. Aurelio.* Solam testationem prolatam nec aliis legitimis adminiculis causa approbata nullius esse momenti certum est.

PP. VIII k. Dec. Carino II et Numeriano AA. conss.

Posted December 25, in the consulship of the Caesars (294).

[24][68] *Emperors* VALENS, GRATIAN, *and* VALENTINIAN *Augusti to Antonius, Praetorian Prefect.* We order that henceforth all those who fabricate suspect written documents, when they have brought something forward in a court, unless they have demonstrated their veracity, should be detained as charged with executing a nefarious document and as forgers.

Given January 12, at Trier, in the consulship of Valens, for the sixth time, and Valentinian, for the second time, Augusti (378).

[25][69] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Florus, Praetorian Prefect.* All accusers should know that they should report a matter for judicial enquiry that has been fortified with suitable witnesses or furnished with the most transparent documents or equipped with evidence indisputable for proof and clearer than the light of day.

Posted May 18, at Constantinople, in the consulship of Antonius and Syagrius (382).

Twentieth Title Witnesses[70]

[1] Unwritten testimony is not put forward against written testimony.[71]

[2] *Emperor* ALEXANDER *Augustus to Carpus.* If a dispute about your being free-born arises, defend your case with whatever documents and proofs you think (best); but witnesses alone do not suffice for proof of free-born status.

Posted April 22, in the consulship of Maximus, for the second time, and Aelianus (223).

[3] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Rosa.* Even in civil law the trustworthiness of the testimony of family members is rejected.

Posted August 30, in the consulship of Valerian, for the third time, and Gallienus, for the second time, Augusti (255).

[4] *Emperors* CARUS, CARINUS, *and* NUMERIAN *Augusti to Aurelius.* It is certain that no force attaches to the sole statement (of one person[72]) that has been brought forward but without its case confirmed by other lawful evidence.

Posted November 24, in the consulship of Carinus, for the second time, and Numerian (284).

[68] = C.Th. 11.39.7; combine with C. 9.46.9.
[69] = C.Th. 9.37.3 (quite differently worded); combine with C. 9.46.9.
[70] See D. 22.5.
[71] From Bas. 21.1.25. That is, the written documents prevail as a matter of law.
[72] This phrase is in Bas.

[5] *Impp. Diocletianus et Maximianus AA. Candido.* Eos testes ad veritatem iuvandam adhiberi oportet, qui omni gratiae et potentatui fidem religioni iudiciariae debitam possint praeponere.

PP. V k. Mai. Maximo II et Aquilino conss.

[6] *Idem AA. et CC. Tertullo.* Parentes et liberi invicem adversus se nec volentes ad testimonium admittendi sunt.

PP. IIII non. Dec. Nicomediae CC. conss.

[7] *Idem AA. et CC. Diogeni et Ingenuo.* Nimis grave est, quod petitis urgueri ad exhibitionem partem diversam eorum, per quos sibi negotium fiat. unde intellegitis, quod intentioni vestrae proprias adferre debetis probationes, non adversus se ab adversariis adduci.

D. VI k. Mai. AA conss.

[8] *Idem AA. et CC. Deruloni.* Servos pro domino, quemadmodum adversus eum interrogari non posse, pro facto autem suo interrogari posse non ambigitur.

D. k. Nov. Reginassi CC. conss.

[9] *Imp. Constantinus A. ad Iulianum praesidem.* Iurisiurandi religione testes, priusquam perhibeant testimonium, iam dudum artari praecepimus et ut honestioribus potius fides testibus habeatur, simili more sanximus, ut unius testimonium nemo iudicum in quacumque causa facile patiatur admitti. et nunc manifeste sancimus, ut unius omnino testis responsio non audiatur, etiamsi praeclarae curiae honore praefulgeat.

D. VIII k. Sept. Naissi Optato et Paulino conss.

[10] *Imppp. Valens Gratianus et Valentinianus AAA. ad Gracchum pu.* Omnibus in re propria dicendi testimonia facultatem iura submoverunt.

[5] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Candidus.* Those witnesses should be summoned to support the truth who are able to place the trust owed to their judicial oath above all influence and power.

Posted April 27, in the consulship of Maximus, for the second time, and Aquilinus (286).

[6] *The same Augusti and the Caesars to Tertullus.* Parents and children in turn may not be admitted to testimony against one another even voluntarily.[73]

Posted December 2, at Nicomedia, in the consulship of the Caesars (294).

[7][74] *The same Augusti and Caesars to Diogenes and Ingenuus.* It is too much what you ask, that the opposite party be pressed to produce those people through whom a judicial matter might arise for themselves (*per quos sibi negotium fiat*; i.e., the defendants need not produce witnesses to prove the plaintiff's case). Therefore you understand that, because you should bring your own evidence to (support) your claim, this is not to be adduced by your opponents against themselves.

Given April 26 in the consulship of the Augusti (293).

[8] *The same Augusti and Caesars to Derulo.* There is no doubt that slaves cannot be interrogated (under torture) on behalf of their master, any more than against him, but they can be interrogated as to their own act.

Given November 1, at Reginassi, in the consulship of the Caesars (294).[75]

[9][76] *Emperor* CONSTANTINE *Augustus to Julian, Governor.* We have long since directed that witnesses, before they give their testimony, be put under the sanctity of an oath, and also that more credence be accorded to witnesses of more honorable rank (*honestiores*). In a similar manner We have ordained also that no judge readily allow the testimony of (only) one person to be admitted in any case whatsoever. Now We plainly ordain that the response of a single witness should not be heard, even if he is resplendent with the office of the illustrious city council.

Given August 25, at Naissus, in the consulship of Optatus and Paulinus (334).

[10][77] *Emperors* VALENS, GRATIAN, *and* VALENTINIAN *Augusti to Gracchus, City Prefect.* The laws have deprived everyone of the capacity to offer testimony in their own cause.

[73] This text may be connected with 8 below.
[74] = *Collatio* 6.14, where the name is Aurelius Diogenes.
[75] Mommsen emends this to October 25, 294, which Seeck accepts.
[76] = C.Th. 11.39.3.
[77] = C.Th. 2.2.1; combine with C. 3.5.1.

Lecta k. Dec. Valente V et Valentiniano AA. conss.

[11] *Impp. Honorius et Theodosius AA. Caeciliano pp.* **pr.** Quoniam liberi testes ad causas postulantur alienas, si socii et participes criminis non dicantur, sed fides ab his notitiae postuletur, in exhibitione necessariarum personarum, hoc est testium, talis debet esse cautio iudicantis, ut his venturis ad iudicium per accusatorem aut ab his, per quos fuerint postulati, sumptus competentes dari praecipiat. **1.** Idem iuris est et si in pecuniaria causa testes ab alterutra parte producendi sunt.

D. XII k. Febr. Ravennae Honorio VIII et Theodosio III AA. conss.

[12] *Idem AA.* Libertorum adversus patronos illicitas atque improbas voces poenae obiectione praecludimus atque ita, ut non modo sponte prodire non audeant, sed nec vocati quidem in iudicium venire cogantur.

D. IIII id. Aug. Ravennae Mariniano et Asclepiodoto conss.

[13] **pr.** Ὁ τὰ ψευδῆ μαρτυρήσας πρότερον μὲν ἐπιορκεῖ, δεύτερον δὲ καὶ ὡς πλαστογράφος ἐνάγεται καὶ ἐν αὐτῷ καιρῷ τῆς μαρτυρίας ὑπονοηθεὶς ψεύδεσθαι βασάνοις ὑπόκειται. **1.** Εἰ δὲ βουληθείη ὁ ἐκ τῆς ψευδοῦς μαρτυρίας καταδικασθεὶς πολιτικῶς κινῆσαι κατὰ τοῦ ψευδομαρτυρήσαντος, λήψεται παρ᾽ αὐτοῦ πᾶσαν ἣν ὑπέστη ζημίαν πρὸς τῷ καὶ τὴν ἀπὸ τῶν νόμων ὡρισμένην τιμωρίαν ὑφίστασθαι. **2.** Εἰ δὲ καὶ ἐν αὐτῇ τῇ πρωτοτύπῳ δίκῃ ψευσάμενος ἐλεγχθείη, ἔργον ἔστω τοῦ δικάζοντος ἢ εἰς πᾶσαν τὴν ἐπιφερομένην ἐκείνῳ, καθ᾽ οὗ ἐμαρτύρησε, δίκην καταδικάζειν αὐτὸν ἢ εἰς ἔλαττον καὶ τιμωρίαις ὑποβάλλειν αὐτόν· φυλαττομένων πάντων τῶν ἤδη νενομοθετημένων περὶ τῶν τὰ ψευδῆ μαρτυρούντων.

Read December 1, in the consulship of Valens, for the fifth time, and Valentinian, Augusti (376).

[11][78] *Emperors* Honorius *and* Theodosius *Augusti to Caecilianus, Praetorian Prefect.* **pr.** Since free persons (*liberi*) are summoned as witnesses to cases affecting others, if they should not be alleged to be associates and participants in the crime, but faithful disclosure of their knowledge should be asked from them, such should be the care of the person judging in producing necessary persons, that is, witnesses, namely, that he direct that appropriate expenses be given to these persons when they are going to come to court at the behest of the accuser or (of the other party) by whom they were summoned. **1.**[79] The law is the same even if, in a case involving money, witnesses are to be produced by either party.

Given January 21, at Ravenna, in the consulship of Honorius, for the eighth time, and Theodosius, for the third time, Augusti (409).

[12][80] *The same Augusti (to the Senate).* We exclude the illicit and wicked words of freedmen against their patrons under the threat of punishment and in such a way that they not only not dare to come forward of their own accord, but also that they not be forced to come into court upon being summoned.

Given August 10, at Ravenna, in the consulship of Marinianus and Asclepiodotus (423).

[13][81] **pr.** Whoever gives false testimony first perjures himself; then he is prosecuted as a forger, and if he is suspected of lying in the very moment of his testimony he is subject to torture. **1.** If the person condemned on the basis of false testimony should wish to bring civil suit against the false witness, he will receive from him the entire damages to which he was subject, in addition to his (the perjurer's) submitting to the punishment established by the laws. **2.** If he should be caught lying in the original trial, it should be the duty of the judge either to condemn him to the entire amount (involved in the litigation) impending against the person against whom he gave witness, or to subject him a lesser amount in addition to penalties. All measures that have already been enacted against those who give false testimony remain in force.

[78] = C.Th. 11.39.13 (which has *ingenui*, not *liberi*); combine with C. 1.4.9, 1.55.7–9, 9.44.2, and C.Th. 9.2.6, 9.31.1, 9.37.4.

[79] See 16 below; according to Mommsen, this section is Justinianic.

[80] = C.Th. 9.6.4; combine with C. 6.7.3 (which gives the addressee), 9.1.21, 9.2.17, 9.46.10, C.Th. 1.6.11, 2.1.12. Seeck dates to August 6, 423.

[81] = Bas. 21.1.37; the address is lost.

[14] *Imp. Zeno A. Arcadio pp.* Nullum penitus, cum semel ad iudicem quemlibet, licet non suum, dicendi gratia testimonii fuerit ingressus, armatam forte militiam vel quamlibet aliam fori praescriptionem ad evadendum iudicis motum, quem vel testimonii verborum improbitas vel rei qualitas flagitaverit, posse praetendere praecipimus, sed omnes, qui in civili scilicet causa suum praebeant testimonium, separato et tamquam ante iudicium interim deposito exceptionis fori privilegio huiusmodi praesidio denudatos, ita iudicantis intrare secretum, ut, quodcumque aures eius offenderit, non dubitent sibimet formidandum: data cunctis iudicibus absque ullo praescriptionis obstaculo (sicut saepe dictum est) testes, quorum voces falsitate vel fraude non carere perspexerint, pro qualitate videlicet delicti animadvertendi licentia.

D. XII k. Iun. Constantinopoli Longino cons.

[15] pr. Ἡ διάταξις ἀκολούθως τῇ πρὸ αὐτῆς ἐπιτρέπει τοῖς διαιτηταῖς ἐξουσίαν ἔχειν τοὺς τὰ ψευδῆ μαρτυροῦντας ὑποβάλλειν σωφρονισμῷ τῷ δέοντι. **1.** Ἐὰν ἰδιωτικὴν μὲν ὑπογραφόμενοι τύχην, δύνανται βασανισθῆναι, ἤ, ἐὰν συνίδωσιν αὐστηροτέρας τὸ πρᾶγμα δεῖσθαι κολάσεως, καὶ διὰ τοῦ πραίτωρος τοῦ δήμου τούτους ἐπιστρέφειν.

2. Εἰ δὲ ζώνην τυχὸν εἴη ὁ μάρτυς περιβεβλημένος καὶ μὴ δύναται παρὰ τοῦ διαιτητοῦ σωφρονίζεσθαι, τότε γίνεσθαι μὲν ἀναφορὰν πρὸς τὸν ἄρχοντα τὸν πέμψαντα αὐτῷ τὴν ὑπόθεσιν τὰ περὶ τοῦ πράγματος μηνύουσαν, καὶ ἡ τοιαύτη ἀναφορὰ ἀζημίως ἐμφανιζέσθω παρὰ τῷ ἄρχοντι, καὶ λοιπὸν ὁ ἄρχων δεχόμενος τὴν περὶ τῶν μαρτύρων ἀναφοράν, εἰ μὲν εὕροι τὸ πρᾶγμα τελείως κεκριμένον ἐκ τῆς τῶν μαρτύρων, τὰ περὶ αὐτῶν τῶν μαρτύρων ἐξετάσας παρέχει τὴν αὐτοτελῆ ψῆφον· ἐὰν δὲ συνίδῃ καὶ μετὰ τὴν τῶν μαρτύρων ἐξέτασιν δεόμενον τὸ πρᾶγμα ζητήσεώς τινος, τηνικαῦτα πάλιν παραπεμπέτω τὰ λοιπὰ τοῦ πράγματος πρὸς τὸν διαιτητήν. **3.** Ὀφείλει δὲ οὕτω τὰς μαρτυρίας κρίνειν, ὡς εἴρηται ἐν τῇ πρὸ ταύτης διατάξει, τουτέστιν ἵνα μηδεμίαν φόρου παραγραφὴν δύνωνται προβάλλεσθαι πρὸς ἀποφυγὴν τῆς κατ' αὐτῶν ἀγανακτήσεως, ὡς ἅπαξ ἑκουσίως ἑλόμενοι μαρτυρῆσαι.

4. Ἐὰν δέ τις τὸν ἴδιον ἀντίδικον περὶ συγγενείας ἀπαιτήσῃ συστάσεις, λέγων αὐτὸν μὴ εἶναι συγγενῆ, καὶ ἐλεγχθείη ψευδόμενος, ταύτην ἀπολαμβανέτω τὴν τιμωρίαν, ἵνα, κἂν ταῖς ἀληθείαις ἐστὶ συγγενής,

[14] *Emperor* Zeno *Augustus to Arcadius, Praetorian Prefect.* We instruct that no one at all, once he has approached any judge, except his own, for the sake of providing testimony, be able to pretend, for instance, armed military service or any other excuse about the forum (i.e., that it is not his own) for evading the judge's action as to what either the dishonesty of the words of his testimony or the quality of the matter has demanded. But all who offer their testimony in a civil matter, having divested themselves of and set aside as if before the court the privilege of objecting to the forum, enter the sanctuary of the judge, stripped of a defense of this type, in such a way that they may not doubt that they should fear whatever meets his ears. The authority is given to all judges without any obstacle of a defense – as has often been pronounced – of punishing, in accordance with the quality of their crime, witnesses whose words they perceive not to lack in falseness or fraud.

Given May 21, at Constantinople, in the consulship of Longinus (486).

[15][82] pr. This constitution, in accordance with the one preceding, allows delegated judges to have the authority to subject those who have given false testimony to the appropriate punishment. **1.** If they are of private rank, they can be tortured, or, if they (the judges) should recognize that the matter requires more austere punishment, they can correct them through the Praetor of the People (*praetor populi*).

2. If the witness happens to bear the rank of office and cannot be punished by the deputy judge, then there should be a report of the case to the magistrate who delegated the case to him (the delegated judge), making clear the situation concerning the matter, and this report should be exhibited before the magistrate without cost. And then the magistrate, having received the report about the witnesses, if he should find the matter judged completely on the basis of the witnesses' testimony, having investigated the matters concerning the witnesses themselves, issues a final verdict. If he should determine that, even after the examination of the witnesses, the matter requires some investigation, under this circumstance he should send the rest of the case back to the delegated judge. **3.** He (the delegated judge) must judge the testimonies in such a way as has been said in the constitution preceding this one, that is, so that they cannot pretend any excuse on the basis of the forum to escape punishment looming against them, when once they have willingly undertaken to testify.

4. But if someone should demand confirmation concerning a relationship from his own adversary, denying that he is a relative, and should be caught lying, he should take this punishment, that, even if he is a relative in truth, he should lose the rights of intestate succession regarding the one from whom he

[82] Bas. 21.1.39, summarizing the original (which lacks an address). Additional material comes from the *adnotatio Anatolii*. The *praetor populi* was created in 525: Nov. 13.

ἀπολέσει τὰ ἐξ ἀδιαθέτου δίκαια τὰ πρὸς ἐκεῖνον, ὃν ἀπήτησε τὰς περὶ τῆς συγγενείας ἀποδείξεις. **5.** Μᾶλλον δὲ ἐπειδὴ τοῦτο τὸ προνόμιον εὐκαταφρόνητον ἦν, ἑκάστου λέγοντος, ὅτι, κἂν μὴ δουλαγωγήσω, οὐ πάντως ἐγὼ μέλλω κληρονομεῖν αὐτόν, ἴσως γὰρ ἐπὶ διαθήκῃ τελευτᾷ, κελεύει ἡ διάταξις τὸν ἀπαιτοῦντα γένους σύστασιν τέως πρὸ πάντων ὀμνύναι, ὡς νομίζων μὴ εἶναι συγγενῆ τὸν διάδικον τοῦτο λέγει. καὶ εἰ μὲν ἐπομόσεται, δύναται κληρονομῆσαι, λοιπὸν δὲ μετὰ τὸν τούτου ὅρκον ὀφείλει ὁ τὰς συστάσεις ἀπαιτούμενος ταύτας παρασχεῖν.

6. Χρεία δὲ ἐν τῇ ἀποδείξει μαρτύρων πέντε, ἐὰν μὴ ὦσι δικαιώματα πρὸς σύστασιν ἐπιτήδεια· εἰ δὲ εἰσὶ δικαιώματα, ἀρκούμεθα τρισὶ μάρτυσιν· εἰ δὲ τὸ δικαίωμα τοιοῦτόν ἐστι, ὥστε ἀντὶ πάντων ἀρκεῖν (ἴσως γὰρ ὑπόμνημα δημόσιον ἦν), τότε οὐδὲ δεόμεθα μαρτύρων. **7.** Ἐπιφέρει δὲ καὶ ἕτερον κεφάλαιον ἡ διάταξις τοιοῦτον· ἐάν τις ἐν ὑπομνήμασι καὶ ἐν συμβολαίῳ προσμαρτυρήσῃ, ἀνάγκην ἐχέτω πᾶσι τρόποις καὶ δίκης ἐπὶ τῷ πράγματι κινουμένης μαρτυρῆσαι, κἂν ἕτερον φόρον ἐπιγράφηται· εἰ γὰρ μὴ τοῦτο εἴπωμεν, βλάπτεται ὁ δεηθεὶς τῆς αὐτοῦ μαρτυρίας.

[16] pr. Ἡ διάταξις κελεύει μὴ μόνον ἐν ταῖς ἐγκληματικαῖς δίκαις, ἀλλὰ καὶ ἐν ταῖς χρηματικαῖς ἕκαστον ἀναγκάζεσθαι μαρτυρεῖν μεθ᾽ ὅρκου δόσεως, ἅπερ ἐπίσταται, ἢ ὀμνύειν, ὡς οὐκ ἐπίσταται, ὑπεξῃρημένων τῶν προσώπων τῶν ἀπὸ νόμου κωλυομένων μαρτυρεῖν καὶ τῶν ἰλλουστρίων καὶ τῶν ὑπερβεβηκότων αὐτούς, εἰ μὴ θεῖος γένηται τύπος. **1.** Καὶ εἰ μὲν ἐνδημοῦσιν ἐν τῇ βασιλίδι πόλει, δι᾽ οἰκείας φωνῆς μαρτυρεῖν, εἰ δὲ ἀπολιμπάνονται, στέλλεσθαι τοὺς τῶν μερῶν ἐντολέας, ἐφ᾽ ᾧ καταθέσθαι, ἅπερ ἐπίστανται, ἢ ἀπομόσασθαι, ἅπερ ἀγνοοῦσι· δηλονότι καὶ ἐπὶ τῆς ἐν ὑπομνήμασι μαρτυρίας τῶν αὐτῶν προσώπων ὑπεξῃρημένων. **2.** Πάσας δὲ τὰς ἐπὶ τούτοις διαλαλιὰς καὶ τὰς παραγωγὰς ἀζημίους εἶναι τοῖς μάρτυσιν.

[17] *Imp. Iustinianus A. Menae pp.* **pr.** Si quis testibus usus fuerit idemque testes adversus eum in alia lite producantur, non licebit ei personas eorum excipere, nisi ostenderit inimicitias inter se et illos postea emersas fuisse, ex quibus testes repelli leges praecipiunt: non adimenda scilicet ei licentia ex ipsis depositionibus testimonium eorum arguere. **1.** Sed et si liquidis probationibus datione vel promissione pecuniarum eos corruptos esse ostenderit, eam etiam adlegationem integram ei servari praecipimus.

D. k. Iun. Constantinopoli dn. Iustiniano pp. A. II cons.

demanded the proofs of relationship. 5. Indeed since this privilege can be easily scorned, with each person saying: "Even if I do not vindicate him as a slave, I will certainly not be his heir in any event, for perhaps he will die with a will," the constitution orders that the person demanding proof of birth before all swear that he says this on the basis of his considered opinion that his opponent is not related. And if he swears, he can inherit, but after this his oath the one from whom the proofs were demanded should provide them.

6. Five witnesses are needed in proving the case (*apodeixis*), if there are not suitable documents for proof (*systasis*). If there are documents, We are satisfied with three witnesses. If the document is of such a type that it is sufficient instead of everything else – perhaps it was a public memorandum – then We do not require witnesses. 7. The constitution includes another chapter to this effect: if someone has offered testimony in memoranda and in a contract, he absolutely must offer testimony when a case has been brought concerning this matter, even if he should be subject to a different jurisdiction (*forum*). For if We should not say this, the one who has requested his testimony is harmed.

[16][83] *Emperor Justinian Augustus.* **pr.** The constitution orders that each person be compelled, not only in criminal trials but also in civil cases, to testify under oath what he knows, or to swear that he does not have any knowledge, excepting the persons who are prevented by law from offering testimony, both the *illustres* and those who exceed them in rank, unless there should be an imperial rescript (*theios typos*). 1. If they live in the Imperial City, they should offer testimony through their own voice, but if they are away, the procurators of the parties should be sent, so that they might set down what they know, or swear to their ignorance. It is clear that the same persons are exempted with respect to documentary testimony. 2. All orders concerning testimonies and their production are to be without charge to the witnesses.

(527?)

[17] *Emperor Justinian Augustus to Menas, Praetorian Prefect.* **pr.** If someone has made use of witnesses and the same witnesses should be produced against him in another trial, he will not be permitted to object to their persons, unless he shows that enmity has arisen afterwards between himself and them, for which reason the laws instruct that witnesses be rejected; but the opportunity to dispute their testimony on the basis of the depositions themselves is not to be taken away from him. 1. But if he shows by clear proofs that they have been corrupted by a gift or promise of money, We instruct that this allegation also be preserved for him intact.

Given June 1, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, for the second time (528).

[83] Bas. 21.1.39, supplemented from Nov. 99.8.

[18] *Idem A. Menae pp.* **pr.** Testium facilitatem, per quos multa veritati contraria perpetrantur, prout possibile est, resecantes omnibus praedicimus, qui in scriptis a se debita rettulerunt, quod non facile audientur, si dicant omnis debiti vel partis solutionem sine scriptis fecisse velintque viles et forsitan redemptos testes super huiusmodi solutione producere, nisi quinque testes idonei et summae atque integrae opinionis praesto fuerint solutioni celebratae hique cum sacramenti religione deposuerint sub praesentia sua debitum esse solutum, ut scientes omnes ita ea statuta esse non aliter debitum vel partem eius persolvant, nisi vel securitatem in scriptis capiant vel observaverint praefatam testium probationem:

his scilicet, qui iam sine scriptis debitum vel partem eius solverunt, praesenti sanctione merito excipiendis. **1.** Sin vero facta quidem securitas sit, fortuito vero casu vel incendii vel naufragii vel alterius infortunii perempta, tunc liceat his qui hoc perpessi sunt causam peremptionis probantibus etiam debiti solutionem per testes probare damnumque ex amissione instrumenti effugere.

D. k. Iun. Constantinopoli dn. Iustiniano pp. A. II cons.

[19] *Idem A. Iuliano pp.* **pr.** Si quando invitos testes in pecuniariis causis ex nostra lege aliquis trahere maluerit, si quidem sua sponte fideiussionem suae personae sine damno praestare velint, hoc fieri, sin autem noluerint, non carcerali custodia detrudi, sed sacramento eos committi censemus. **1.** Si enim pro toto litis certamine iuriiurando credendum esse testium putaverunt hi qui eos produxerunt, multo magis praesentiam suam testibus sacramento eorum credere debent.

2. Sed cum oportet minime testes in huiusmodi casibus protelari et pro alienis commodis suas invenire difficultates, disponimus non amplius testes observare iudices compelli, postquam fuerint admoniti, nisi tantum quindecim dies, intra quos iudices provideant, quatenus cognitionem suscipiant, in qua testes necessarii visi fuerint, ut omnimodo licentia eis concedatur et alterutra parte cessante et minime eos

[18][84] *The same Augustus to Menas, Praetorian Prefect.* **pr.** Restraining to the extent possible the heedlessness of witnesses, through whom many things contrary to the truth are perpetrated, We announce to all those who have reported in writing debts owed by themselves, that they will not readily be heard if they should say that they have made payment of all of the debt or of part of it without written documentation and they should want to produce lowly and perhaps corrupted witnesses concerning a payment of this kind, unless five witnesses suitable and of the highest and untarnished reputation have been present at the payment made openly and these testify under oath that the debt was paid in their presence, so that everyone, knowing that these measures have been enacted, should not pay off a debt or part of one in any other way, unless they gain assurance in written documentation or have observed the aforesaid proof by witnesses.

To be sure, these people who already have paid a debt or a part of one without written documentation are rightly to be exempted from the present sanction. **1.** But if indeed a written receipt has been made, but it has been destroyed by an accident of a fire or shipwreck or some other misfortune, then the ones who have suffered this, upon proving the reason for the loss (of the documents), shall be permitted to prove the payment of the debt through witnesses and escape the loss resulting from the destruction of the documents.

Given June 1, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, for the second time (528).

[19][85] *The same Augustus to Julian, Praetorian Prefect.* **pr.** If ever someone, in accordance with Our law,[86] should prefer to dragoon unwilling witnesses in monetary (i.e., civil) cases, if they should be willing to offer suretyship for their own person without expense, We decree that this should happen; but if they are unwilling to do so, they should not be constrained by being held in jail, but be committed by an oath. **1.** For if those who have produced them have thought that the witnesses' oath should be believed for the entire hearing of the case, all the more ought they to trust their witnesses for their presence because of their oath.

2. But since witnesses in cases of this type should not be hounded and encounter their own difficulties for other people's benefit, We dispose that witnesses not be compelled to wait for judges longer than fifteen days after they have been notified, within which time the judges should see at what point they will undertake the hearing in which the witnesses have been deemed to be necessary, so

[84] Combine with C. 4.2.17, 4.21.17, 4.30.14, 15?, and 5.15.3.
[85] Combine with C. 4.21.20. Lounghis *et al.* give March 18, 530.
[86] 16 above.

observare volente, si per exsecutores admoniti venire noluerint, testes accipere et alterutra parte praesente, quae eos introducit, testimonia eorum capere. 3. His autem diebus effluentibus liceat quidem testibus decedere a iudice nullam habente licentiam eos, postquam afuerint, iterum retrahere: ipsum autem iudicem, si per eum steterit, quominus testimonium praestetur, parti laesae omnem iacturam pro huiusmodi causa illatam ex suis facultatibus resarcire.

D. XII k. April. Constantinopoli Lampadio et Oresta vv. cc. conss.

[20] *Idem A. Iuliano pp.* Cum apud compromissarios iudices testes fuissent producti, variatum erat, utrum deberet eorum depositionibus in iudicio litigator uti, an non esset audiendus. sancimus, si quidem in compromissis aliquid pro huiusmodi causa statutum est, hoc observari:

sin autem nihil conventum est, in huiusmodi casibus, si quidem supersint testes, licentiam habere eum, contra quem depositiones eorum proferuntur, si eas recusaverit, concedere testes iterum adduci et non opponi eis, quod iam testimonium suum dederunt, vel, si hoc concedere minime maluerit, depositiones eorum quasi factas accipere, omni iure legitimo quod ei competit adversus eas servato: sin autem omnes ab hac luce subtracti sunt, tunc necessitatem ei imponi fide scripturae approbata, in qua depositiones eorum referuntur, eas quasi factas accipere. sin vero res permixtae fuerint et quidam ex his mortui, alii viventes, tunc in superstitum quidem testimonio eandem electionem servari litigatori, adversus quem testimonia proferuntur, in morientium autem personas depositiones eorum non esse respuendas: omni, secundum quod iam praediximus, adversus eas et testes iure legitimo, quod ei competit adversus quem proferuntur, integro reservato.

D. VI k. April. Constantinopoli Lampadio et Oresta vv. cc. conss.

[21] ...

that in all circumstances they (sc. the judges) be granted the right, when one party or the other is both absent and unwilling to wait for them, if they have been unwilling to come after being notified by court clerks, to receive witnesses and to take their testimony in the presence of one party or the other that introduced them. 3. But when these days pass the witnesses should be permitted to depart from the judge, who has no permission to draw them back again after they have been away; but the judge himself, if it is because of him that the testimony not be offered, should make good out of his own resources all the loss inflicted on the injured party for a reason of this sort.

Given March 21, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[20][87] *The same Augustus to Julian, Praetorian Prefect.* When witnesses have been produced before settlement arbitrators (*compromissarii iudices*), opinions varied whether the litigant ought to use their depositions in court, or whether he should not be heard. We ordain that, if in settlements anything has been established for such a case, this be observed (i.e., the depositions can be used).

But if nothing has been agreed upon in cases of this type, if the witnesses should be alive, the person against whom their depositions are brought forward should have the right, if he has refused them, to allow the witnesses to be summoned again and not to be opposed to them on the grounds that they have already given their testimony, or, if he prefers not to allow this, to accept their depositions as if complete, preserving every lawful right that he has against them (the depositions). If, however, all have been withdrawn from this light (i.e., are dead), the necessity is imposed on him, having approved the reliability of the transcript in which their testimonies are reported, of accepting their depositions as if complete. But if the situation is mixed and some of them are dead and others living, then the litigant against whom it is produced should have the same choice as to the testimony of the survivors, but as to dead persons their testimonies should not be rejected. Every lawful right is preserved for the one against whom the witnesses are produced, in accordance with what We have already declared, against the witnesses and their testimonies.

Given March 27, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[21] <A constitution has been lost here.>[88]

[87] Combine with C. 2.55.5.
[88] Bas. 20.1.45 suggests that C. 1.5.21 was repeated.

XXI De Fide Instrumentorum et Amissione Eorum et Antapochis Faciendis et de His Quae sine Scriptura Fieri Possunt

[1] *Imp. Antoninus A. Septimiae Marciae.* Debitores tuos quibuscumque rationibus debere tibi pecuniam si probaveris, ad solutionem compellet aditus praeses provinciae: nec oberit tibi amissio instrumentorum, si modo manifestis probationibus eos debitores esse apparuerit.
PP. v id. Sept. Antonino A. IIII et Balbino conss.

[2] *Imp. Alexander A. Maniliano.* Si uteris instrumento, de quo alius accusatus falsi victus est, et paratus es, si ita visum fuerit a quo pecuniam petis, eiusdem criminis te reum facere et discrimen periculi poenae legis Corneliae subire, non oberit sententia, a qua nec is contra quem data est appellavit nec tu, qui tunc crimini non eras subiectus, appellare debuisti.
PP. III k. Oct. Maximo II et Aeliano conss.

[3] *Idem A. Aeliano.* Si adversarius tuus apud acta praesidis provinciae, cum fides instrumenti quod proferebat in dubium revocaretur, non se usurum contestatus est, vereri non debes, ne ex ea scriptura, quam non esse veram etiam professione eius constitit, negotium denuo repetatur.
PP. III non. Mai. Alexandro A. II et Marcello conss.

[4] *Imp. Gordianus A. Marciano.* Illatae dispensatori pecuniae, si ob amissorum instrumentorum casum probatione defeceris, inspectio rationum fiscalium fidem demonstrabit.
D. II id. Febr. Gordiano A. et Aviola conss.

[5] *Idem A. Aurelio Prisco et Marco mil.* Sicut iniquum est instrumentis vi ignis extinctis debitores quantitatum debitarum renuere solutionem,

Twenty-First Title The Reliability of Documents, Their Loss, Making Counter-Receipts, and Matters That Can Be Transacted Without Written Documentation[89]

[1][90] *Emperor* ANTONINUS *Augustus to Septimia Marcia.* If you prove by whatever means that your debtors owe money to you, the provincial governor, when approached, will compel them to pay; nor will the loss of documents prejudice you as long as it is apparent by clear proofs that they are your debtors.

Posted September 9, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[2] *Emperor* ALEXANDER *Augustus to Manilianus.* If you use a document concerning which another person has been accused and convicted of forgery, and you were prepared, if the person from whom you seek money thought so, to make yourself a defendant on the same charge and to undergo the risk of the peril of the Cornelian law's punishment, the verdict will not prejudice you which the person against whom it was given has not appealed and which you, who at that time had not been subject to the charge, did not need to appeal.

Posted September 29, in the consulship of Maximus, for the second time, and Aelianus (223).

[3] *The same Augustus to Aelianus.* If your adversary has attested in the written record (*apud acta*) of the provincial governor that he will not use a document that he was bringing forward, since its reliability was being called into question, you should not fear that a suit will begin anew on the basis of the writing, which has been established not to be genuine even by his own acknowledgment.

Posted May 5, in the consulship of Alexander Augustus, for the second time, and Marcellus (226).

[4] *Emperor* GORDIAN *Augustus to Marcianus.* An inspection of the accounts of the Treasury (*rationum fiscalium*) will demonstrate that money was paid to the paymaster (*dispensator*) if on account of the unfortunate loss of documents you are lacking proof (of payment).

Given February 12, in the consulship of Gordian Augustus and Aviola (239).

[5][91] *The same Augustus to Aurelius Priscus and Marcus, soldiers.* Just as it is unjust that debtors refuse the payment of the amounts owed when documents

[89] See D. 22.4.
[90] = *C. Greg. Visig.* 21.1.
[91] = *C. Greg. Visig.* 12.2.

ita non statim casum conquerentibus facile credendum est. intellegere itaque debetis non existentibus instrumentis vel aliis argumentis probare fidem precibus vestris adesse.

PP. III k. Iul. Sabino II et Venusto conss.

[6] *Impp. Diocletianus et Maximianus AA. Luscidi.* Statum tuum natali professione perdita mutilatum non esse certi iuris est.

D. XIII k. Febr. Nicomediae Maximo II et Aquilino conss.

[7] *Idem AA. Zinimae.* Si sollemnibus stipendiis honeste sacramento solutus es, licet super huiusmodi re instrumenta, ut dicis, facta perdita sunt, tamen, si aliis evidentibus probationibus veritas ostendi potest, veteranorum privilegia etiam te usurpare posse dubium non est.

D. XV k. Iun. Maximo II et Aquilino conss.

[8] *Idem AA. Alexandrae.* Si constiterit proprietatem possessionis de qua agitur apud vos esse, providebit iudex ex persona fructuarii nullum praeiudicium dominio comparari propter amissionem instrumentorum.

D. XV k. Mart. Diocletiano III et Maximiano AA. conss.

[9] *Idem AA. et CC. Aristaeneto.* Instrumentis etiam non intervenientibus semel divisio recte facta non habeatur irrita.

PP. VI k. Iul. AA. conss.

[10] *Idem AA. et CC. Victorino.* Cum instrumentis etiam non intervenientibus venditio facta rata maneat, consequenter amissis etiam quae intercesserant non tolli substantiam veritatis placuit.

D. VIII k. Nov. Reginassi CC. conss.

are destroyed by the force of fire, so too must one not easily believe those immediately lamenting the misfortune. Accordingly, you should understand, if documents do not exist, how to prove by other arguments that there is credibility in your petition.

Posted June 29, in the consulship of Sabinus, for the second time, and Venustus (240).

[6] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Luscides.* The law is certain that your status is not damaged by the loss of your birth declaration.

Given January 20, at Nicomedia, in the consulship of Maximus, for the second time, and Aquilinus (286).

[7] *The same Augusti to Zinima.* If you have been released honorably from the customary military service by oath, although, as you say, the documents concerning a matter of this kind have been destroyed, if the truth can be shown by other clear proofs, there is no doubt that you can claim the privileges of veterans.

Given May 18, in the consulship of Maximus, for the second time, and Aquilinus (286).

[8] *The same Augusti to Alexandra.* If is has been established that the ownership of the property in litigation belongs to you, the judge will see to it that no prejudice is created to your ownership from the person of the usufructuary (*fructuarius*) on account of the loss of documents.

Given February 15, in the consulship of Diocletian, for the third time, and Maximian, Augusti (287).

[9] *The same Augusti and the Caesars to Aristaenetus.* Even if no documents were prepared, a division (of property), once made properly, should not be considered invalid.

Posted June 26, in the consulship of the Augusti (293).

[10] *The same Augusti and Caesars to Victorinus.* Since a sale transacted even without the preparation of documents remains valid, it has properly been decided that the reality of the truth is not destroyed by the loss of documents that had been prepared.

Given October 25, at Reginassi, in the consulship of the Caesars (294).

[11] *Idem AA. et CC. Theageni.* Emancipatione facta, etsi actorum tenor non existat, si tamen aliis indubiis probationibus vel ex personis vel ex instrumentorum incorrupta fide factam esse emancipationem probari possit, actorum interitu veritas convelli non solet.

D. III id. Nov. CC. conss.

[12] *Idem AA. et CC. Dionysiae.* Non idcirco minus in vacuam inductus praedii donationis causa possessionem, quod eius facti praetermissum instrumentum adseveratur, hanc obtinere potes.

D. id. Dec. Nicomediae CC. *conss.*

[13] *Idem AA. et CC. Leontio.* Apud eos, qui rem gestam ignoraverunt, amissorum instrumentorum habita testatio nihil ad probationem veritatis prodesse potest.

D. XVI k. Ian. Nicomediae CC. conss.

[14] *Idem A. et C. ad Severum comitem Hispaniarum.* Scripturae diversae et fidem sibi invicem derogantes ab una eademque parte prolatae nihil firmitatis habere potuerunt.

D. IIII non. Mai. Constantinopoli Dalmatio et Zenophilo conss.

[15] *Imp. Constantinus A. ad populum.* In exercendis litibus eandem vim obtinent tam fides instrumentorum quam depositiones testium.

D. Romae XII k. Aug. Gallicano et Basso conss.

[16] **pr.** Ἐὰν ἐναγόμενός τις ἀρνήσηται χεῖρα ἰδίαν προφερομένην ἐν γραμματείῳ ἢ ἐν πυκτῇ ἢ ἐν ἑτέρῳ χάρτῃ, εἰ μὲν ἀπὸ συγκρίσεως ἐλεγχθείη, τουτέστιν αὐτοῦ ἑτέρας προφερομένης χειρὸς καὶ ἀντεξεταζομένης πρὸς τὴν ἐν τῷ γραμματείῳ κειμένην, διδόναι αὐτὸν λόγῳ προστίμου τῷ ἐνάγοντι ὑπὲρ αὐτοῦ τοῦ ψεύδους κδ' νομίσματα. **1.** Ἐὰν δὲ ἢ συμβολαιογράφος παρενεχθῇ, παρ' ᾧ τὸ συμβόλαιον ἐγράφη, ἢ καὶ ἕτεροί τινες μαρτυροῦντες τῇ ἀληθείᾳ, τότε αὐτὸν πρὸς τῷ ἐπιτιμίῳ τῶν κδ' νομισμάτων οὐδὲ

[11] *The same Augusti and Caesars to Theagenes.* When an emancipation has taken place, even if the record (*tenor*) of the acts should not exist, nevertheless if it could be proved that the emancipation took place by other indisputable evidence, either from persons or from the unquestioned trustworthiness of documents, the truth is not customarily undermined by the destruction of the acts.

Given on November 11, in the consulship of the Caesars (294).

[12] *The same Augusti and Caesars to Dionysia.* Having been brought into (*inductus*: masculine!) quiet possession of a property given as a gift, you are not any the less able to obtain this for the reason that a document concerning this fact is alleged to have been overlooked.

Given December 13, at Nicomedia, in the consulship of the Caesars (294).

[13] *The same Augusti and Caesars to Leontius.* Testimony about the loss of documents cannot be of help for proving the truth before those who were unaware that a matter had been carried out.

Given December 17, at Nicomedia, in the consulship of the Caesars (294).

[14][92] *The same Augustus and Caesar to Severus, Count of the Spains (Comes Hispaniarum).* Different written documents, brought forth by one and the same party, if they detract from their respective trustworthiness, have not been able to have any reliability.

Given May 4, at Constantinople, in the consulship of Dalmatius and Zenophilus (333).

[15] *Emperor* CONSTANTINE *Augustus to the People.* The trustworthiness of documents holds the same force as the testimonies of witnesses in prosecuting lawsuits.

Given July 21, at Rome, in the consulship of Gallicanus and Bassus (317).

[16][93] **pr.** If a defendant in a lawsuit should deny his own handwriting introduced in a written document or a tablet or in any other writing material, if he should be shown to be wrong through a comparison, that is, if another example of his handwriting should be introduced and compared with the one lying in the document, he should pay the plaintiff as punishment 24 solidi for his lie. **1.** But if the notary by whom the document was written should be produced or other people attesting to the truth, then, in addition to the penalty of 24 solidi,

[92] = C.Th. 11.39.2; combine with C. 8.53.27; this fragment should be placed after 15; the emperor is Constantine.

[93] = Bas. 22.1.75 (address lost).

παρρησίαν δύνασθαι ἔχειν πρὸς τὸ ἀντιτιθέναι τὴν τῆς ἀναργυρίας παραγραφήν, λέγοντα ὅτι, κἂν τὸ συμβόλαιον ἐγένετο, οὐκ ἐδόθησαν τὰ ἐν αὐτῷ γεγραμμένα, ἀλλὰ πάντως καταδικάζεσθαι, κἂν εἰ μηδὲν αὐτῷ ταῖς ἀληθείαις κατεβλήθη.

2. Ταῦτα μέν, ἐὰν ἐνάγηταί τις ἐξ οἰκείου συναλλάγματος. εἰ δὲ ἐπίτροπός ἐστιν ἢ κουράτωρ ἑνὸς τῶν κουρατορευομένων προσώπων, ἄρρην εἴτε θήλεια κατὰ τὰς διατάξεις ἐπιτροπεύουσα τῶν ἰδίων παίδων, καὶ χεῖρα ἰδίαν *προφερομένην ἐν τῷ συναλλάγματι τῶν ἐπιτροπευομένων* ἢ κουρατορευομένων ἀρνήσεται, τηνικαῦτα, εἰ μὲν ἀπὸ μόνης συγκρίσεως ἐλεγχθείησαν ψευδόμενοι, παρέχειν αὐτοὺς τὰ κδʹ νομίσματα· εἰ δὲ ἐκ παραγωγῆς συμβολαιογράφου ἢ μαρτύρων, τὴν μὲν τῆς ἀναργυρίας παραγραφὴν μὴ ἀναιρεῖσθαι τοῖς ἐπιτροπευομένοις ἢ κουρατορευομένοις προσώποις (οὐδὲν γὰρ ἥμαρτον ἐκεῖνοι), αὐτοὺς δὲ τοὺς ἐπιτρόπους ἢ κουράτορορας ἑτέρους κδʹ χρυσοὺς λόγῳ προστίμου διδόναι τῷ ἐνάγοντι, ἐχόντων τῶν ἐπιτροπευομένων καὶ κουρατορευομένων σωζομένην αὐτοῖς τὴν τῆς ἀναργυρίας παραγραφήν. οὐδὲ γὰρ δίκαιόν ἐστιν αὐτοὺς ἐξ ἀλλοτρίων ἁμαρτημάτων ζημιοῦσθαι.

3. Ταῦτα περὶ τῶν ἐναγομένων εἰποῦσα ἡ διάταξις ἔρχεται καὶ εἰς τὸ τῶν ἐναγόντων πρόσωπον κελεύουσα, ἵνα, ἐὰν ὁ ἐνάγων χεῖρα ἰδίαν ἀρνήσηται κειμένην ἐν χάρτῃ κατ᾽ αὐτοῦ προφερομένῳ (τυχὸν ἐν ἀποληπτικῇ ὁμολογίᾳ), καὶ αὐτὸς ὁμοίως, εἰ μὲν ἐκ μόνης συγκρίσεως ἐλγχθείη, παράσχῃ τὰ κδʹ νομίσματα, εἰ δὲ ἐκ παραγωγῆς συμβολαιογράφου ἢ μαρτύρων, τηνικαῦτα πᾶσι τρόποις ὑπολογίζεσθαι αὐτὸν τὰ ἐν ἐκείνῃ τῇ ἀποδείξει περιεχόμενα, κἂν μὴ ταῖς ἀληθείαις κατεβλήθησαν ἐπὶ αὐτοῦ. **4.** Ταῦτα, ἐὰν οἰκείῳ ὀνόματι ἐνάγηται. ἐὰν δὲ ἐπίτροπός ἐστιν ἢ κουράτωρ, δίδωσι μὲν διπλάσιον τὸ ἐπιτίμιον τῶν κδʹ νομισμάτων, ὁ δὲ ἐπιτροπευόμενος ἢ κουρατορευόμενος δύναται ἀντιτιθέναι τῇ ἀποδείξει τὴν ἀναργυρίαν.

[17] *Imp. Iustinianus A. Menae pp.* **pr.** Contractus venditionum vel permutationum vel donationum, quas intimari non est necessarium, dationis etiam arrarum vel alterius cuiuscumque causae, illos tamen, quos in scriptis fieri placuit, transactionum etiam, quas instrumento recipi convenit, non aliter vires habere sancimus, nisi instrumenta in mundum recepta subscriptionibusque partium confirmata et, si per tabellionem conscribantur, etiam ab ipso completa et postremo a partibus absoluta sint, ut nulli liceat prius, quam haec ita processerint, vel a scheda conscripta, licet litteras unius partis vel ambarum habeat, vel ab ipso mundo, quod necdum est impletum et absolutum, aliquod ius sibi ex eodem contractu vel transactione vindicare: adeo ut nec illud in

he cannot have any right to make the defense of money not paid, saying that, even if the document is genuine, the things written in it were not given, but he should be condemned altogether, even if in truth nothing was paid to him.

2. These measures apply if someone should be sued on the basis of a private contract. But if he is a *tutor* or a *curator* of one of the persons who require a *curator*, whether a male or a female serving as *tutor* of her own children in accordance with the constitutions, and should deny his or her own hand when it is adduced in the contract of the persons under tutorship or curatorship, then, if they should be caught lying on the basis of a single comparison, they should pay the 24 solidi; if, however, (they should be caught) as the result of the introduction of a notary or witnesses, the defense of money not paid should not be taken away from the persons under tutorship or curatorship – for they committed no wrong – but the *tutores* themselves or *curatores* should pay another 24 solidi as a penalty to the plaintiff, with the persons under tutorship or guardianship preserving intact the defense of money not paid to them. For it is not just that they should be penalized for the misdeeds of others.

3. Having said these provisions about those who are sued, the constitution goes on also to the plaintiffs, ordering that, if the plaintiff should deny his own hand lying in writing material (*charte*) introduced against himself (for example in a receipt), he likewise, if he should be shown to be wrong through a single comparison, should pay the 24 solidi, but if (is should be shown to be wrong) as a result of the production of a notary or witnesses, then he should be liable in every way for the matters contained in the document, even if in truth they have not been paid to him. 4. These things apply if he should sue in his own name. But if he is a *tutor* or a *curator*, he gives twice the fine of 24 solidi, while the person under tutorship or curatorship can offer against the document the defense of money not paid.

[17][94] *Emperor* Justinian *Augustus to Menas, Praetorian Prefect.* **pr.** We ordain that contracts of sales or barter (*permutationes*) or gifts, which do not have to be registered, or of the giving of earnest money or of any other transaction but those which it has been decided to have in writing, and also contracts of settlements, which it has been agreed to record in a document, do not otherwise have validity, unless the documents have been rendered in fair copy (*mundum*) and have been confirmed with the signatures of the parties, and, if they should be written by a notary, they have been completed (*completa*) by that very person and afterwards have been executed (*absoluta*) by the parties, so that no one be permitted to claim for himself any right from the same contract or settlement before these matters have proceeded, whether it was written from a draft (*scheda*), although it might have the signature of one party or both, or from the fair copy itself, which has not yet been completed

[94] Combine with C. 4.2.17, 4.20.18, 4.30.14, 15(?), 5.15.3.

huiusmodi venditionibus liceat dicere, quod pretio statuto necessitas venditori imponitur vel contractum venditionis perficere vel id quod emptoris interest ei persolvere.

1. Quae tam in postea conficiendis instrumentis quam in his, quae iam scripta nondum autem absoluta sunt, locum habere praecipimus, nisi iam super his transactum sit vel iudicatum, quae retractari non possunt: exceptis emptionalibus tantum instrumentis iam vel in scheda vel in mundo conscriptis, ad quae praesentem sanctionem non extendimus, sed prisca iura in his tenere concedimus. **2.** Illud etiam adicientes, ut et in posterum, si quae arrae super facienda emptione cuiuscumque rei datae sunt sive in scriptis sive sine scriptis, licet non sit specialiter adiectum, quid super isdem arris non procedente contractu fieri oporteat, tamen et qui vendere pollicitus est, venditionem recusans in duplum eas reddere cogatur, et qui emere pactus est, ab emptione recedens datis a se arris cadat, repetitione earum deneganda.

D. k. Iun. Constantinopoli dn. Iustiniano A. II cons.

[18] *Idem A. Menae pp.* Iudices sive in hac inclita urbe sive in provinciis ea quae disposuimus (ut possint, si hoc perspexerint, occasione testium in aliis locis degentium litigantes vel procuratores eorum ibi destinare, ut depositionibus sub utriusque partis praesentia factis res ad eos referatur) etiam in illis servare volumus, qui prolatis instrumentis fidem adhibere exiguntur, ut, si poposcerint in aliis locis id eis facere permitti et hoc iuste peti iudex invenerit, similis proferatur sententia, ut, postquam in locis opportunis fides instrumento data vel minus data fuerit, referatur negotium ad priorem iudicem.

D. VIII id. April. Decio vc. cons.

[19] *Idem A. Demostheni pp.* **pr.** Plures, apochis vel redituum vel usurarum perceptis, si quando super his fuerit dubitatio exorta, eas habere negando ius agentium faciunt vacillare, cum coloni ad dominum certantes et sibi iniquam forte libertatem vindicantes vel debitores creditoribus suis temporalem praescriptionem opponere cupientes ad

and executed. This is true to the extent that it should not be permitted in sales of this type to say that, once the price is established, the seller is bound either to complete the contract of sale or to pay the buyer his interest.

1. We order that these matters have place both in the preparation of documents hereafter as well as in those which have already been written but have not yet been executed, unless there has already been a settlement or a judgment over these matters that cannot be reconsidered. Excepted alone are purchase documents that have been written already in a draft (*scheda*) or in a fair copy, to which We do not extend the present ordinance, but We concede that the old law holds in these. 2. We add, however, this provision, that in the future, if any earnest money has been given in connection with making a purchase of anything whatsoever whether accompanied by writing or not, although no specific provision has been added as to what should happen concerning the same earnest money if the contract does not proceed, nevertheless both the person who has promised to sell, when refusing the sale, should be compelled to repay double the sum, and the person who has contracted to buy, if he withdraws, should lose the earnest money that he has given, with the right of reclaiming it to be denied him.

Given June 1, at Constantinople, in the consulship of Our Lord Justinian Augustus, for the second time (528).

[18] *The same Augustus to Menas, Praetorian Prefect.* We want judges, whether in this Famous City or in the provinces, to maintain what We have set in place[95] – namely, that they might, if they have examined this, in the circumstance of witnesses residing in other locations, designate litigants or their procurators there, so that, when the depositions have been made in the presence of both parties, the matter might be reported to them – also for those witnesses who are compelled to attest to their trustworthiness when documents have been introduced, so that, if they have requested that it be permitted for them to do this in another location and the judge has found that this has been asked justly, a similar verdict should be rendered, so that, after the trustworthiness has or has not been attested to for the document in a convenient location, the business should be referred back to the first judge.

Given April 6, in the consulship of the vir clarissimus *Decius (529).*

[19] *The same Augustus to Demosthenes, Praetorian Prefect.* **pr.** Many people cause the right of litigants to totter, after receipts for rents (*reditus*) or interest have been taken, if ever a doubt about these has arisen, by denying their having occurred, (for example,) when bound tenants (*coloni*) vying to be owners and perhaps claiming for themselves an unjust liberty, or debtors desiring to raise the defense of a long-time prescription (*temporalis praescriptio*) against

[95] C. 4.20.16.

easdem infitiationes perveniunt. 1. Quod resecantes iubemus, ut in praefatis casibus vel aliis privatis similibus, si voluerit is qui apocham conscripsit vel exemplar cum subscriptione eius qui apocham suscepit ab eo accipere vel antapocham suscipere, omnis ei licentia hoc facere concedatur: necessitate imponenda apochae susceptori antapocham reddere, ita tamen, ut si hoc is qui apocham conscribit facere neglexerit vel non curaverit, nullum ei praeiudicium ex eo, quod antapocham non recepit, generetur, cum hoc, quod pro quibusdam introductum est, inferre eis iacturam minime rationi convenit aequitatis.

D. XII k. Oct. Chalcedone Decio vc. cons.

[20] *Idem A. Iuliano pp.* pr. Comparationes litterarum ex chirographis fieri et aliis instrumentis, quae non sunt publice confecta, satis abundeque occasionem criminis falsitatis dare et in iudiciis et in contractibus manifestum est. 1. Ideoque sancimus non licere comparationes litterarum ex chirographis fieri, nisi trium testium habuerint subscriptiones et prius litteris eorum fides imponatur vel ex ipsis hoc deponentibus (sive cunctis sive omnimodo duobus ex his) sive comparatione litterarum testium procedente, et tunc ex huiusmodi chartula iam probata comparatio fiat.

2. Aliter etenim fieri comparationem nullo concedimus modo, licet in semet ipsum aliquis chartam conscriptam proferat, sed tantummodo vel ex forensibus vel publicis instrumentis vel ex huiusmodi chirographis quae enumeravimus comparatione trutinanda. 3. Omnes autem comparationes non aliter fieri concedimus, nisi iuramento antea praestito ab his qui comparationes faciunt fuerit adfirmatum, quod neque lucri causa neque inimicitiis neque gratia tenti huiusmodi faciunt comparationem.

4. Et hoc observari tam in omnibus sacris scriniis nostris quam in apparitione omnis sublimissimae praefecturae nec non magisteriae potestatis ceterisque omnibus iudiciis, quae in orbe nostro constituta sunt, his omnibus in posterum observandis. comparationes etenim iam antea factas retractari extra periculum minime est.

D. XIIII k. April. Constantinopoli Lampadio et Oresta vv. cc. conss.

creditors, resort to the same denials. 1. To curtail this We order that, in the aforesaid or in other similar private cases, if the person who has written a receipt should wish either to receive a copy from the person who took the receipt with his signature or to take a counter-receipt, he should be granted every right to do this. The person taking the receipt is required to return a counter-receipt with this provision that, if the person who wrote the receipt has neglected or not taken care to do this, no prejudice should arise against him because he did not receive a counter-receipt, since it is not consistent with the logic of fairness that this measure, which has been introduced for certain people, should cause a loss to them.

Given September 17,[96] *in the consulship of the* viri clarissimi *Chalcedon and Decius (529).*

[20][97] *The same Augustus to Julian, Praetoran Prefect.* **pr.** It is manifest that comparisons of handwriting from promissory notes (*chirographa*) or other documents that have not been completed publicly readily provide an opportunity for a charge of forgery both in courts and in contracts. 1. For this reason We ordain that comparisons of handwriting may not be done from promissory notes unless they have the signatures of three witnesses and trust in the handwriting is previously verified either through their own attestation – whether all of them or at least two – or when a comparison of the handwriting proceeds, and then the comparison should take place on the basis of this type of document (whose genuineness has been) approved.

2. We do not allow a comparison (of handwriting) to take place in any other way, although someone may introduce a signed document against himself, but handwriting is to be compared only on the basis of judicial or public documents or of promissory notes of the type that We have enumerated. 3. We also do not allow any comparisons to be made in any other way unless affirmed under an oath offered previously by those who make the comparisons, that they are making a this type of comparison neither for the sake of gain nor bound by enmity or influence.

4. And this is to be observed both in all Our sacred bureaus (*scrinia*) and by the servants of every most sublime prefecture as well as of (every) magistral office (*magisteria potestas*) and in all the other courts that have been established in Our world. All these measures are to be observed (only) in the future. For it is not without danger if comparisons previously made be reconsidered.

Given March 18,[98] *at Constantinople, in the consulship of the* viri clarissimi *Lampadius and Orestes (530).*

[96] September 17 is Krüger's date (adopted also by Lounghis *et al.*), although the manuscripts say September 20.
[97] Combine with C. 4.20.19.
[98] Krüger, based on C. 4.20.19; Lounghis *et al.* concur.

[21] *Idem A. Iuliano pp.* pr. Cum quidam instrumentum protulerit vel aliam chartulam eique fidem imposuerit, postea autem persona, contra quam ista chartula vel instrumentum prolatum est, quasi falsum hoc constitutum redarguere niteretur, ne diutius dubitetur, utrum necessitatem ei qui protulit imponi oporteret repetita vice hoc proferre, an sufficiat ei fides iam pridem approbata, sancimus, si aliquid tali eveniat, eum, qui petit eam chartam iterum proferri, prius sacramentum praestare, quod existimans se posse falsum redarguere quod prolatum est ad huiusmodi venit petitionem.

quid enim, si, cum nosset deperditam esse chartam vel forte concrematam vel alio modo diminutam, hanc requiri adsimulans et ad difficultatem productionis respiciens huiusmodi facit petitionem?

1. Et postquam hoc ab actore vel petitore fuerit iuratum et inscriptionum pagina apud competentem iudicem deposita, tunc necessitatem imponi ei, qui protulit chartam de qua quaeritur, iterum eam apud iudicem criminis proferre, quatenus possit apud eum crimen falsitatis ventilari. 2. Sin autem dicat non esse sibi possibile eam ostendere, quia per fortuitos casus huiusmodi copia ei abrepta est, tunc subeat sacramentum, quod neque habet eandem chartulam neque alii eam dedit nec apud alium voluntate eius constituta est nec dolo malo fecit, quominus ea appareat, sed re vera ipsa chartula sine omni dolo deperdita est et productio eius sibi impossibilis est: et si tale subeat sacramentum, ab huiusmodi necessitate eum relaxari.

3. Quod si praedictum iusiurandum subire minime maluerit, tunc quasi falsa chartula nullas habeat vires adversus eum, contra quem prolata est, sed sit penitus vacuata: neque enim ulterius poenam produci contra eos qui non iuraverunt volumus, cum forsitan quidam subtili reverentia tenti nec verum sacramentum praestare patiuntur. 4. Eandem autem copiam ei praestamus, donec causa apud iudicem ventilatur. si enim iam plenissimum finem accepit et neque per appellationem suspensa est neque per solitam retractationem adhuc lis vivere speratur, tunc satis durum est huiusmodi querellae indulgeri, ne in infinitum causae retractentur et sopita iam negotia per huiusmodi viam iterum aperiantur et contrarium aliquid nostro eveniat proposito.

[21] *The same Augustus to Julian, Praetorian Prefect.* **pr.** When someone has produced a document or another writing and has averred its reliability, but afterwards the person against whom that writing or document has been produced should endeavor to reply that it is forged, lest there be doubt any longer whether it be necessary that the obligation be imposed on the person who produced it to do so a second time (*repetita vice*), or whether the reliability already approved should be sufficient for him, We ordain, if something like this should transpire, that the person who is asking that the document be produced again should first offer an oath that he has come to this type of request on the basis of his judgment that he can prove as forged what has been produced.

But what about the case in which if, when he knew that the document had been lost or perhaps burned up or otherwise damaged, he makes a request of this type under the pretence that the document is being asked for with an eye to the difficulty of producing it?

1. And after this was sworn to by the plaintiff or petitioner, and the page with signatures has been deposited with a competent judge, then the necessity is imposed on the one who produced the document about which there is a question to produce it again before the judge for the charge, so that the charge of forgery can be aired before him. **2.** But if he should say that it is not possible for him to show this (the document), because his access to it has been snatched away because of unavoidable accidents, then he should submit to an oath that he neither has this document nor has he given it to another person nor has it been placed with another person by his will, nor has he acted with malicious intent to prevent it from appearing, but in fact the document itself without any deceit has been lost and its production is impossible for him; and if he should submit to such an oath than he should be released from the necessity of this type.

3. But if he prefers not to submit to swearing the aforesaid oath, then the document, as if forged, should have no force against the person against whom it has been submitted, but it should be completely void; for We do not want punishment to be directed any longer at those who have not sworn, since perhaps some people are bound by a subtle reverence and do not endure to offer a true oath. **4.** However, We offer him the same opportunity, until the case is aired before the judge. For if the case has already received its final disposition and has not been suspended because of an appeal, and there is no hope for the suit to remain alive through the customary reconsideration, then it is quite harsh to indulge this kind of complaint, lest cases be considered endlessly and business that has already been put to rest be opened again through this kind of pathway and some outcome arise contrary to Our enactment.

D. v k. Mart. Lampadio et Oresta vv. cc. conss.

[22] [Ὁ αὐτὸς βασιλεύς.] **pr.** Ἐὰν τις ἀπαιτούμενος ἐν δικαστηρίῳ παραγαγεῖν δικαίωμα οὐ καθ' ἑαυτοῦ, ἀλλὰ καθ' ἑτέρου τινός, συμβαλλόμενον δὲ ἑτέρῳ τινί, παραιτεῖται τοῦτο προαγαγεῖν ὡς ἐκ τούτου βλάβην εὐλαβούμενος, ὁ δὲ ἀπαιτῶν τὸν χάρτην προενεχθῆναι λέγει μηδὲν αὐτὸν ἀδικεῖσθαι, ἀλλ' ἢ χρήματα εἰληφέναι παρὰ τῶν μελλόντων ἐλέγχεσθαι ὑπὸ τοῦ προφερομένου δικαιώματος ἢ ἑτέραν τινὰ προβάλλεσθαι πρόφασιν, ἑαυτὸν δὲ μεγάλα βλάπτεσθαι μὴ προφερομένου τοῦ χάρτου, βούλεται μὲν ἡ διάταξις τὸν ἔχοντα τὸ δικαίωμα προφέρειν αὐτό, εἰ μηδὲν ἐκ τῆς προκομιδῆς αὐτοῦ μέλλει καταβλάπτεσθαι· εἰ δὲ τῇ ἀληθείᾳ βλάβην αὐτῷ ποιεῖ προφερόμενον τὸ δικαίωμα, μὴ ἀναγκάζεσθαι αὐτὸν προκομίζειν αὐτό, ἐπειδὴ συμφέρει αὐτῷ μᾶλλον κρύπτειν ἢ δημοσιεύειν αὐτό. **1.** Εἰ δὲ ὁ τοῦ συμβολαίου δεόμενος διαβεβαιοῦται μηδὲν αὐτὸν ἀδικεῖσθαι, ὅρκον διδότω μόνον, ὡς νομίζων βλάβην περὶ τὴν ἰδίαν οὐσίαν ὑπομένειν ἐκ τῆς τοῦ συμβολαίου προκομιδῆς διὰ τοῦτο παραιτεῖται προκομίσαι.

2. Ἵνα δὲ μὴ αὐτὸ τοῦτο τὸ μὴ κερδᾶναι τὰ ἐπαγγελθέντα αὐτῷ πρὸς τὸ μὴ κομίσαι τὸν χάρτην βλάβην οἰκείαν νομίζῃ, περιεργότερον παρεχέτω τὸν ὅρκον, λέγων, ὅτι οὐ διὰ τὸ λαβεῖν χρήματα ἢ ἕτερόν τι διὰ τὸ μὴ προκομίσαι τὸν χάρτην ἢ διὰ τὸ ἔχειν ἐπαγγελίαν δόσεως οὔτε διὰ φόβον ἐκείνου, καθ' οὗ ζητεῖται τὸ δικαίωμα, οὔτε διὰ φιλίαν αὐτοῦ παραιτεῖται τὴν τοῦ χάρτου προκομιδήν, ἀλλ' ὡς ἐξ ὀρθοῦ περὶ τὴν ἰδίαν οὐσίαν μεγάλα βλαπτόμενος. **3.** Ὥσπερ γὰρ ὁ νομιζόμενος εἰδέναι τὸ ἀληθὲς περί τινος ὑποθέσεως ἀναγκάζεται καὶ ἄκων πρὸς μαρτυρίαν, καὶ οὐδὲ εἰ ἐπαγγελίαν ἔχει χρημάτων ὑπὲρ τοῦ μὴ μαρτυρῆσαι οὐδὲ εἰ κατὰ φίλων ἔρχεται μαρτυρῆσαι, παραιτεῖται τὴν μαρτυρίαν, οὕτως οὐδὲ τὰ συμβόλαια ἀπαιτούμενος προενεγκεῖν οὔτε διὰ τὸ εἰληφέναι τι ἢ ἐλπίζειν λαμβάνειν οὔτε διὰ φιλίαν τῶν μελλόντων ἐκ τοῦ συμβολαίου βλάπτεσθαι δύναται τὴν προκομιδὴν αὐτοῦ παραιτεῖσθαι.

4. Ἀλλ' εἰ μέν τις ἐπομόσεται μὴ ἔχειν τὸ ζητούμενον δικαίωμα, μηδὲ ὅλως ἀναγκάζεσθαι προφέρειν ὅπερ μὴ ἔχει· εἰ δὲ οὐκ ἀνέχεται τὸν τοιοῦτον ὅρκον ὑποσχεῖν, πάντως ἀναγκαζέσθω προφέρειν τὸ ἐπιζητούμενον δικαίωμα· εἰ δὲ ἑαυτὸν ἀποκρύψει ὡς μήτε ὀμόσαι μήτε προαγαγεῖν τὸ δικαίωμα, πᾶσαν τὴν ἐκ τούτου συμβησομένην ζημίαν τῷ δεομένῳ τοῦ δικαιώματος οἴκοθεν καταβαλλέτω.

Given February 25, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*[99]

[22][100] (*The same Augustus*). **pr.** If someone is asked in a court to produce a document, not against himself, but against some other person, and the document benefits another person, and he declines to produce this out of caution that he will incur harm from it, but the person demanding that the document be produced says that he is not being injured (*adikeisthai*), but that he has either taken money from the people who are about to be scrutinized on the basis of the document being produced or that some other pretext is being proffered, but that he himself (the claimant) is greatly harmed if the document is not produced, the constitution wants the one who has the document to produce it if he is not going to be harmed by its being brought forward. But if in truth producing the document causes harm to him, he is not to be compelled to produce it, since it is more to his benefit to hide it than to make it public. **1.** But if the one requiring the contract affirms that he (the one who has it) is not at all injured (by its production), let the latter give an oath on one matter, that he declines to produce the document for the reason that he thinks that he will endure harm to his property from its production.

2. So that he not reckon as a personal loss not obtaining what was promised to him for not producing the document, let him offer a more elaborate oath, saying that he does not refuse the production of the document because he took money or received some other consideration for not producing it, or because he has a promise of being given something or because of fear of the person against whom the document is sought, or because of friendship with that person, but because he will suffer directly great harm concerning his private property. **3.** For just as one who is considered to know the truth about some question is compelled to testify even unwillingly, and he does not refuse testifying even if he has a promise of money not to testify or if he is going to testify against friends, thus the person who is asked to produce a contract cannot refuse its production either because he has received something or hopes to do so or because of friendship with those who will be injured by the contract.

4. But if someone swears that he does not have the document being sought, he certainly is not compelled to produce what he does not have. But if he is unwilling to offer such an oath, he should by all means be compelled to produce the requested document; but if he hides so that he does not have to swear or produce the document, then he must pay from his own property the entire loss resulting from this to the person requesting the document.

[99] Krüger amends this to "February 20, in the post-consulate of Lampadius and Orestes . . ." (i.e., 531), a date accepted by Lounghis *et al.*

[100] Bas. 22.1.80. Lounghis *et al.* date this constitution to between 531 and 534.

5. Τῶν αὐτῶν κρατούντων καὶ εἰς τὰ ἀργυροπρατικὰ βρέβια ἢ τὰ παρ' ἑτέρων τινῶν συνταττόμενα, ἅπερ τις ἐπιζητεῖ προκομισθῆναι οὐ κατὰ τῶν τὰς πυκτὰς ταύτας συντεθεικότων, ἀλλὰ καθ' ἑτέρων τινῶν. 6. Ταῦτα δὲ τότε κρατεῖν ἡ διάταξις βούλεται, ὅτε ἐπὶ τῆς αὐτῆς πόλεως διάγουσιν ὁ θέλων προκομισθῆναι τὸ δικαίωμα ἢ τὰς πυκτὰς καὶ ὁ τοῦτο λεγόμενος ἔχειν καὶ ὁ δικάζων τῇ ὑποθέσει· οὐδὲ γὰρ ἀναγκάζεσθαι δεῖ τὸν ἔχοντα δικαιώματα εἰς ἑτέραν χώραν ἐκπέμπειν αὐτὰ ἢ κινδυνεύειν ἐπ' αὐτοῖς διὰ τὴν ἑτέρου χρείαν. 7. Εἰ μέντοι καὶ ἐν ἑτέρᾳ χώρᾳ κείμενα τὰ δικαιώματα ἐπιζητεῖ προκομισθῆναί τις παρὰ τῷ ἐκδίκῳ τῶν τόπων καὶ ἐν ὑπομνήμασιν ἐμφανισθῆναι πρὸς τὸ λαβεῖν τὴν ἐπὶ τούτων πρᾶξιν καὶ χρήσασθαι αὐτῇ ἐν τῷ δικαστηρίῳ, ἐν ᾧ δικάζεται, τότε οὐδέν ἐστι βαρὺ τὸ ἐν αὐτῇ τῇ πόλει, ἐν ᾗ ὑπάρχει τὰ δικαιώματα, προσάγεσθαι αὐτὰ καὶ ἐμφανίζεσθαι.

8. Ἐκεῖνοι δὲ ἀναγκαζέσθωσαν προφέρειν πυκτὰς ἢ δικαιώματα οἱ καὶ μαρτυρεῖν κατά τινων ἀναγκαζόμενοι· καθ' ὧν γὰρ προσώπων ἄκων τις οὐ μαρτυρεῖ, κατὰ τούτων οὔτε προκομίζειν πυκτὰς ἢ δικαιώματα ἢ ἕτερόν τι ἀναγκάζεται τοιοῦτον. 9. Πρόδηλοι δέ εἰσιν ἐκ τῶν νόμων οἱ μὴ ἀναγκαζόμενοι κατά τινων μαρτυρεῖν ἄκοντες καὶ ἐκεῖνοι, καθ' ὧν οὐκ ἀναγκάζονταί τινες μαρτυρεῖν.

10. Οὐδενὶ δὲ ἔξεστιν ἄλλως ἀναγκάζειν προφέρεσθαι δικαιώματα εἰ μὴ ἐν αὐτῷ τῷ δικαστηρίῳ, παρ' ᾧ κινεῖται ἡ ὑπόθεσις, καὶ τότε δὲ ἀναλώμασι τοῦ ζητοῦντος γίνεσθαι τὴν προκομιδὴν τῆς πυκτῆς ἢ τῶν δικαιωμάτων. 11. Χρὴ δὲ γίνεσθαι τὴν ἐμφάνειαν αὐτῶν πρὸς ἅπαξ μόνον· εἰ δὲ ἅπαξ προκομισθέντος τοῦ συμβολαίου ἐπιζητεῖ καὶ δεύτερον γενέσθαι τὴν προκομιδὴν αὐτοῦ ὁ τούτου δεόμενος, εἰ εὔλογον φανείη τῷ δικαστῇ τὸ καὶ δεύτερον προενεχθῆναι τὸν χάρτην, ὁ δὲ προκομίσας αὐτὸν ἤδη παραιτεῖται ἀπαρνούμενος τὴν δευτέραν προκομιδὴν λέγων ἀπολωλεκέναι τὸν χάρτην ἢ ἄλλως πως μὴ ἔχειν εὐχέρειαν τῆς τούτου προκομιδῆς, ὅρκῳ μόνῳ τοῦτο αὐτὸ πιστούσθω καὶ μηκέτι ἀναγκαζέσθω προφέρειν αὐτόν. 12. Τούτων κρατούντων οὐ μόνον ἐν τῇ βασιλίδι πόλει, ἀλλὰ καὶ ἐν πάσῃ τῇ πολιτείᾳ.

XXII Plus Valere Quod Agitur Quam Quod Simulate Concipitur

[1] *Impp. Valerianus et Gallienus AA. Rufino.* In contractibus rei veritas potius quam scriptura prospici debet.

PP. III k. Iun. Aemiliano et Basso conss.

5. These same provisions apply also to the accounts of bankers or those kept by other people, when someone seeks to have them produced not against those who have kept these tablets, but against some other parties. 6. The constitution intends these provisions to have force at that time when the person who wants the document or the tablets to be produced lives in the same city as (both) the person who is said to have them and the judge of the case; the person holding documents must not be compelled to send them to another place or to run a risk on account of them because of the need of another. 7. If indeed someone seeks to have documents that are situated in another location produced before the defender (*defensor*) of the place and to have them be entered into the records so as to take the business (*praxis*) concerned with them and use it in the court in which the case is being judged, then there is no difficulty in taking the documents in the same city in which they are located and entering them in the records.

8. Those who are compelled to testify against others should also be compelled to produce documents or tablets; as to the people against whom someone does not testify unwillingly, he is also not compelled to produce tablets against them or documents or any other such thing. 9. Those who are not compelled to testify unwillingly against some people are clear from the laws, as are those against whom certain people are not compelled to testify.

10. It is not possible for anyone to compel the production of documents in any other way if not in the same court in which the case is being tried, and then the production of the tablets or the documents is at the expense of the one requesting them. 11. Their production must occur one time only. If, after the contract has been produced once, the person needing it requests that its production occur a second time, if producing the document a second time should seem reasonable to the judge, and the person who has produced it already refuses and declines producing it a second time, saying that the document has been destroyed or that in some other way it is not possible to produce it, he should vouch for this very thing in a single oath and should no longer be compelled to produce it. 12. These provisions apply not only in the Imperial City, but in the entire State.

Twenty-Second Title What Is Done Has Greater Value Than What Is Contrived in Pretence

[1] *Emperors* Valerian *and* Gallienus *Augusti to Rufinus.* In contracts the truth of the matter, rather than the writing, should be considered.

Posted May 30, in the consulship of Aemilianus and Bassus (259).

[2] *Impp. Diocletianus et Maximianus AA. et CC. Soteri.* Acta simulata, velut non ipse, sed eius uxor comparaverit, veritatis substantiam mutare non possunt. quaestio itaque facti per praesidem examinabitur provinciae.
D. x k. Mai. CC. conss.

[3] *Idem AA. et CC. Marinae.* Emptione pignoris causa facta non quod scriptum, sed quod gestum est inspicitur.
D. k. Mai. Sirmi CC. conss.

[4] *Idem AA. et CC. Decio.* Si quis gestum a se fecerit alium egisse scribi, plus actum quam scriptum valet.
D. VIII k. Dec. CC. conss.

[5] *Idem AA. et CC. Victori.* Si falsum instrumentum emptionis conscriptum tibi, velut locationis quam fieri mandaveras, subscribere, te non relecto, sed fidem habente, suasit, neutrum contractum in utroque alterutrius consensu deficiente constitisse procul dubio est.
D. XIII k. Ian. CC. conss.

XXIII De Commodato

[1] *Impp. Diocletianus et Maximianus AA. et CC. Sisolae.* Ea quidem, quae vi maiore auferuntur, detrimento eorum quibus res commodantur imputari non solent. sed cum is, qui a te commodari sibi bovem postulabat, hostilis incursionis contemplatione periculum amissionis ac fortunam futuri damni in se suscepisse proponatur, praeses provinciae, si probaveris eum indemnitatem tibi promisisse, placitum conventionis implere eum compellet.
D. VI k. Iun. ipsis AA. conss.

[2] *Idem AA. et CC. Auluzano.* Cum eum, qui temporalis ministerii causa suscepit ancillam, ad restitutionem eius bona fides urgueat, consequens est socerum tuum huius rei causa tradidisse ancillam adito praeside provinciae probare, ut fidem susceptam is adversus quem supplicas compellatur agnoscere.

[2] *Emperors Diocletian and Maximian Augusti and the Caesars to Soter.* Fictitious documents saying that he himself did not make the purchase, but his wife did, cannot change the substance of the truth. Accordingly, the question of fact will be examined by the provincial governor.

Given April 22, in the consulship of the Caesars (294).

[3] *The same Augusti and Caesars to Marina.* In a purchase made on account of a pledge, not what has been written but what has been carried out is examined.

Given May 1, at Sirmium, in the consulship of the Caesars (294).

[4] *The same Augusti and Caesars to Decius.* If someone has caused it to be written that another person carried out what was done by himself, the action carries more weight than the writing.

Given November 24, in the consulship of the Caesars (294).

[5] *The same Augusti and Caesars to Victor.* If he has persuaded you to sign a false contract for sale written for you as if (it was) for the lease that you had (actually) mandated, when you had not read it over but had relied on his good faith, it is far from doubtful that neither contract (i.e., neither the sale nor the lease) was valid, since in each one the consent of one side or the other was lacking.

Given December 20, in the consulship of the Caesars (294).

Twenty-Third Title Gratuitous Loan for Use[101]

[1] *Emperors Diocletian and Maximian Augusti and the Caesars to Sisola.* Things that are carried off by higher force (*vis maior*) are not customarily charged as a loss for the parties to whom the property is loaned. But since that person, who was requesting that an ox be loaned to him by you, is alleged to have taken upon himself, in contemplation of a hostile incursion, the risk for its loss and the chance of future damage, the provincial governor, if you prove that he promised indemnity to you, will compel him to fulfill the agreement in the contract.

Given May 27, in the consulship of the Augusti themselves (290 or 293).

[2] *The same Augusti and Caesars to Auluzanus.* Since good faith urges the person who has taken up a slave woman for temporary service to restore her, it follows that, having approached the provincial governor, you prove your father-in-law handed over the slave woman for this purpose, so that the person against whom you are petitioning will be compelled to acknowledge the terms (*fides*) he has undertaken.

[101] *Commodatum*, loan for use, where the return of the loaned object is anticipated; see D. 13.6.

S. prid. non. Nov. ipsis AA. conss.

[3] *Idem AA. et CC. Soterae.* De restituendis rebus, quas obligandas pro se dederas, postquam debitum fuerit extenuatum, commodati actionem etiam adversus heredes eius exercere potes.

D. III id. April. Sirmi CC. conss.

[4] *Idem AA. et CC. Faustinae.* Praetextu debiti restitutio commodati non probabiliter recusatur.

D. XII k. Dec. ipsis CC. conss.

XXIIII De Actione Pigneraticia

[1] *Impp. Severus et Antoninus AA. Metrodoro.* Οἱ ἐκ τοῦ ἐνεχύρου ληφθέντες καρποὶ ψηφίζονται εἰς τὸ χρέος καί, ἐὰν ἱκανοὶ γένωνται πρὸς τὸ ὅλον χρέος, λύεται ἡ ἀγωγὴ καὶ ἀποδίδοται τὸ ἐνέχυρον. εἰ δὲ καὶ πλείονές εἰσι τοῦ χρέους οἱ καρποί, ἀποδίδονται οἱ περιττεύοντες.

PP. id. Oct. Apro et Maximo conss.

[2] *Imp. Alexander A. Demetrio.* Quod ex operis ancillae vel ex pensionibus domus, quam pignori detineri dicis, perceptum est, debiti quantitatem relevabit.

PP. k. Oct. Antonino IIII et Alexandro conss.

[3] *Idem A. Victori.* Creditor, qui praedium pignori sibi nexum detinuit, fructus quos percepit vel percipere debuit in rationem exonerandi debiti computare necesse habet et, si agrum deteriorem constituit, eo quoque nomine pigneraticia actione obligatur.

PP. VI id. Dec. Antonino IIII et Alexandro conss.

[4] *Idem A. Hermaeo et Maximillae.* Pactum vulgare, quod proposuistis, ut, si intra certum tempus pecunia soluta non fuisset, praedia pignori

Written November 4, in the consulship of the Augusti themselves (293).

[3] *The same Augusti and Caesars to Sotera.* You can bring an action on loan for use (*commodatum*) even against his heirs for the restoration of property that you have given to someone to pledge for his own debt, after the debt has been extinguished.

Given April 11, at Sirmium, in the consulship of the Caesars (294).

[4] *The same Augusti and Caesars to Faustina.* The restitution of a loan for use (*commodatum*) is not credibly refused on the pretext of a debt (owed by the lender to the borrower).

Given November 20, in the consulship of the Caesars themselves (294).

Twenty-Fourth Title The Action on Pledge[102]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Metrodorus.*[103] The fruits (*fructus*) taken from a pledged property are counted toward the debt, and, if they should be sufficient for the entire debt, the action is ended and the pledge is returned. If the fruits are greater than the debt, the surpluses are returned.

Posted October 15, in the consulship of Aper and Maximus (207).

[2] *Emperor* ALEXANDER *Augustus to Demetrius.* The amount taken from the labor services (*operae*) of a slave woman, or from the payments for a house which you say is held as a pledge, will reduce the amount of the debt.

Posted October 1, in the consulship of Antoninus, for the fourth time, and Alexander (222).

[3] *The same Augustus to Victor.* A creditor who held as pledge a property under his lien must count the crops (*fructus*) that he harvested or should have harvested toward reducing the debt. If he has made the farm worse, he is also obligated under the action on pledge on that account.

Posted December 8, in the consulship of Antoninus, for the fourth time, and Alexander (222).

[4] *The same Augustus to Hermaeus and Maximilla.* The common pact that you have mentioned, whereby, if the money should not have been paid within

[102] See D. 13.7. This section goes both to a security possessed by the creditor and to one in which the debtor retains possession. Terminology is inconsistent, but *pignus* is often used for the first type and *hypotheca* for the second.

[103] = Bas. 25.1.43.

vel hypothecae data vendere liceret, non adimit debitori adversus creditorem pigneraticiam actionem.

PP. XII k. Mai. Maximo II et Aeliano conss.

[5] *Idem A. Dioscoridae.* Si creditor sine vitio suo argentum pignori datum perdidit restituere id non cogitur: sed si culpae reus deprehenditur vel non probat manifestis rationibus se perdidisse, quanti debitoris interest condemnari debet.

PP. XIII k. Mai. Iuliano et *Crispino conss.*

[6] *Idem A. Trophimae.* Quae fortuitis casibus accidunt, cum pr*ae*videri non potuerant, in quibus etiam adgressura latronum est, nullo bonae fidei iudicio praestantur: et ideo creditor pignora, quae huiusmodi causa interierunt, praestare non compellitur nec a petitione debiti submovetur, nisi inter contrahentes placuerit, ut amissio pignorum liberet debitorem.

PP. id. April. Fusco et Dextro conss.

[7] *Idem A. Iuliano.* **pr.** Creditor, qui fundos et domos pignori vel hypothecae accepit, damnum in decidendis arboribus domibusque destruendis ab eo datum in rationem deducere cogitur et, si dolo vel culpa rem suppositam deteriorem fecerit, eo quoque nomine pigneraticia actione tenebitur, ut talem restituat, qualis fuerat tempore obligationis. 1. Creditor autem necessarios sumptus, quos circa res pigneraticias fecit, exigere non prohibetur.

PP. XIII k. Aug. Gordiano A. II et Pompeiano conss.

[8] *Imp. Philippus A. et Philippus C. Saturnino.* Si nulla culpa seu segnitia creditori imputari potest, pignorum amissorum dispendium ad periculum eius minime pertinet. sane si simulata amissione etiam nunc eadem pignora, ut adseveras, a parte diversa possidentur, adversus eum experiri potes.

PP. VIII k. Mart. Praesente et Albino conss.

a certain time, it would be permitted to sell the property given as a pledge or as a hypothec, does not take away from the debtor an action on pledge against the creditor.

Posted April 20, in the consulship of Maximus, for the second time, and Aelianus (223).

[5] *The same Augustus to Dioscorides.* If a creditor through no fault of his own has lost the silver given as a pledge, he is not compelled to restore it; but if he is discovered to be guilty of fault or does not prove with clear reasons that he has lost it (without his fault), he should be condemned for the debtor's interest.

Posted April 19, in the consulship of Julian and Crispinus (224).

[6] *The same Augustus to Trophima.* Events that happen as a result of unavoidable accidents, among which is included an attack of brigands, when they could not be foreseen, are recompensed in no good faith trial; and for this reason the creditor is not compelled to furnish the pledges which have been destroyed for a reason of this type, nor is he debarred from seeking the debt, unless it has been agreed between the contracting parties that the loss of the pledges frees the debtor.

Posted April 13, in the consulship of Fuscus and Dexter (225).

[7] *The same Augustus*[104] *to Julian.* **pr.** A creditor who has received farms and houses as a pledge or hypothec is compelled to account for a loss caused by him in cutting down trees or in destroying houses, and, if he has made the property pledged worse by deliberate misconduct (*dolus*) or fault (*culpa*), on that account he will be held liable in an action on pledge to restore it to its condition at the time of its being obligated. **1.** A creditor, however, is not prohibited from exacting necessary expenses that he has incurred in connection with the property pledged.

Posted July 20, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

[8] *Emperors* PHILIP *Augustus and* PHILIP *Caesar to Saturninus.* If no fault or carelessness can be imputed to the creditor, the expense for the loss of the pledges is not at all his risk. Clearly if, as you allege, the same pledges even now are possessed by the other party after their loss was feigned, you can bring an action against him.

Posted February 22, in the consulship of Praesens and Albinus (246).

[104] Actually from Gordian, as the date indicates.

[9] *Impp. Diocletianus et Maximianus AA. et CC. Georgio.* Pignus in bonis debitoris permanere ideoque ipsi perire in dubium non venit. cum igitur adseveres in horreis pignora deposita, consequens est secundum ius perpetuum, pignoribus debitori pereuntibus, si tamen in horreis, quibus et alii solebant publice uti, res depositae sunt, personalem actionem debiti reposcendi causa integram te habere.

PP. VI non. Mai. Mediolani AA. conss.

[10] *Idem AA. et CC. Apollodorae.* **pr.** Nec creditores nec qui his successerunt adversus debitores pignori quondam res nexas petentes, reddita iure debita quantitate vel his non accipientibus oblata et consignata et deposita, longi temporis praescriptione muniri possunt. **1.** Unde intellegis, quod, si originem rei probare potes, adversario tenente vindicare dominium debeas. **2.** Ut autem creditor pignoris defensione se tueri possit, extorquetur ei necessitas probandi debiti vel, si tu teneas, per vindicationem pignoris hoc idem inducitur et tibi non erit difficilis vel solutione vel oblatione atque sollemni depositione pignoris liberatio.

D. non. Mai. ipsis AA. conss.

[11] *Idem AA. et CC. Ammiano.* Pignoris causa res obligatas soluto debito restitui debere pigneraticiae actionis natura declarat. quo iure, si titulo pignoris obligasti mancipia, per eandem actionem uti potes nec creditor citra conventionem vel praesidalem iussionem debiti causa res debitoris arbitrio suo auferre potest.

D. V k. Ian. Sirmi ipsis CC. conss.

[12] *Idem AA. et CC. Heraisco.* Quominus fructuum, quos creditor ex rebus obligatis accepit, habita ratione ac residuo debito soluto, vel si per creditorem factum fuerit, quominus solveretur, pignora quae in eadem causa durant restituat debitori, nullo spatio longi temporis defenditur.

D. XII k. Dec. Nicomediae CC. conss.

[9] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Georgius.* It is not in doubt that a pledge remains in the property of the debtor and perishes at his risk. Since therefore you allege that the pledges were placed in storehouses, it follows in accordance with the perpetual edict (*secundum ius perpetuum*) that, since the pledges perish at the risk of the debtor, as long as the items were deposited in storehouses that others were accustomed to use publicly, you have an unimpaired action *in personam* for demanding back the debt.

Given May 2, at Milan, in the consulship of the Augusti (293).[105]

[10] *The same Augusti and Caesars to Apollodora.* **pr.** Neither creditors nor those who succeed them can be protected by a long-time prescription against debtors seeking property previously pledged as security, when the amount owed has been lawfully returned or when they (the creditors) do not accept what has been offered, sealed, and deposited. 1. Therefore you understand that, if you can prove the origin of the property, you should bring a suit on ownership (*vindicare*) when your adversary holds it. 2. So that, however, the creditor can protect himself with a defense that the property is a pledge (*pignoris defensione*), the necessity of proving the debt is required of him or, if you should hold (the property in question), this same process is undertaken through a suit on ownership of the pledge, and the liberation of the pledge will not be difficult for you either by paying or by making an offer and the customary deposit.

Given May 7, in the consulship of the Augusti themselves (293).

[11] *The same Augusti and Caesars to Ammianus.* The nature of the action on pledge makes clear that property pledged as security should be restored when the debt is paid. You can use this right through the same action if you have obligated slaves as pledges, and the creditor cannot on his own judgment carry away the property of the debtor for the sake of a debt without an agreement or an order from the governor.

Given December 28, at Sirmium, in the consulship of the Caesars themselves (294).[106]

[12] *The same Augusti and Caesars to Heraiscus.* There is no defense on the basis of the passing of a long time (prescription) that the creditor not restore to the debtor pledges that remain in the same status (i.e., in the possession of the creditor), when account has been taken of the fruits that the creditor has received from the pledged property and the remaining debt has been paid, or it has been the creditor's doing that the debt not be paid.

Given November 20, at Nicomedia, in the consulship of the Caesars (294).

[105] According to Mommsen and Krüger, the place of promulgation is erroneous.
[106] Mommsen dates this constitution to December 28, 293.

XXV De Exercitoria et Institoria Actione

[1] *Imp. Antoninus A. Hermeti.* Servus tuus pecuniam mutuam accipiendo ita demum te institoria actione obligavit, si, cum eum officio alicui vel negotiationi exercendae praeponeres, etiam ut id faceret, ei permissum a te probetur. quod si ea actio locum non habet, si quid in rem tuam versum probabitur, actione in eam rem proposita cogeris exsolvere.

PP. VIII k. Sept. duobus Aspris conss.

[2] *Imp. Alexander A. Callisto.* Ex contractibus servorum quamvis de peculio dumtaxat domini teneantur, de eo tamen, quod in rem eorum versum est vel cum institore ex causa cui praepositus fuit contractum est, in solidum conveniri posse dubium non est.

PP. III k. Mai. Alexandro A. cons.

[3] *Idem A. Marciae.* Institoria tibi adversus eum actio competit, a quo servum mensae praepositum dicis, si eius negotii causa, quod per eum exercebatur, deposita pecunia nec reddita potest probari.

PP. non. Mai. Agricola et Clemente conss.

[4] *Impp. Diocletianus et Maximianus AA. et CC. Antigonae.* Et si a muliere magister navis praepositus fuerit, ex contractibus eius ea exercitoria actione ad similitudinem institoriae tenetur.

D. XVI k. Nov. Sirmi AA. conss.

[5] *Idem AA. et CC. Gaio.* Si mutuam pecuniam accipere Demetriano Domitianus mandavit et hoc posse probare confidis, ad exemplum institoriae eundem Domitianum apud competentem iudicem potes convenire.

D. IIII k. Nov. ipsis CC. conss.

Twenty-Fifth Title The Action on Shippers and Managers[107]

[1] *Emperor* Antoninus *Augustus to Hermes.* Your slave, by accepting a loan of money, obligated you under an action on managers (*institoria actione*) only if, when you put him in charge of some job or of conducting some business, it should be proved that it was approved by you that he do this (take money on loan). But if this action does not have a place, (then) if it is proved that anything has turned to your benefit (*si quid in rem tuam versum*), you will be compelled to pay in the action proposed for that situation.

Given August 25, in the consulship of the two Aspri (212).

[2] *Emperor* Alexander *Augustus to Callistus.* On the basis of contracts of slaves, although strictly speaking their owners are liable (only) to the extent of the *peculium*, there is no doubt that they can be sued for the whole amount for what has turned to their benefit (*quod in rem eorum versum est*) or for what was contracted for with a manager (*institor*) from the enterprise in whose charge he was placed.

Posted April 29, in the consulship of Alexander Augustus (222).

[3] *The same Augustus to Marcia.* The action on managers (*institoria actio*) is available to you against the person by whom you say a slave was placed in charge of a bank, if it can be proved that money was deposited and not returned in order to benefit the business that was being transacted through him (the slave).

Posted May 7, in the consulship of Agricola and Clemens (230).

[4] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Antigona.* Even if a master of a ship was appointed by a woman, there is liability for his contracts by that action on shippers (*actio exercitoria*) in a manner similar to the action on managers (*actio institoria*).

Given October 17, at Sirmium, in the consulship of the Augusti (293).

[5] *The same Augusti and Caesars to Gaius.* If Domitianus ordered Demetrianus to receive money on loan (*mutuam pecuniam*) and you are confident you can prove this, you can sue the same Domitianus before a competent judge on an action analogous to the one on managers (*ad exemplum institoriae*).

Given October 29, in the consulship of the Caesars themselves (294).

[107] D. 14.1, 3. The *actio institoria* establishes an owner's liability to third parties for the transactions of a "manager" (*institor*) placed in charge of the owner's business. The *actio exercitoria*, here largely assimilated to the *actio institoria*, establishes the parallel liability of a shipowner or charterer (*exercitor navis*) for the acts of a captain placed in charge of the ship.

[6] *Idem AA. et CC. Onesimae.* Qui secutus domini voluntatem cum servo ipsius habuit contractum, ad instar actionis institoriae recte de solido dominum convenit.

D. XIIII k. Dec. CC. conss.

XXVI Quod cum Eo Qui in Aliena Est Potestate Negotium Gestum Esse Dicitur, vel de Peculio seu Quod Iussu aut de in Rem Verso

[1] *Impp. Severus et Antoninus AA. Aelio.* Cum filius familias tutor aut curator datur, pater tutelae vel negotiorum gestorum iudicio de peculio et de in rem verso conveniendus est. quod si voluntate eius filius decurio sit creatus et a magistratibus tutor constitutus, pater in solidum satisfacere cogitur, cum id onus exemplo ceterorum munerum civilium inductum intellegatur.

D. VII id. Nov. Dextro II et Prisco conss.

[2] *Idem AA. Annio.* Eius rei nomine, quae cum filio familias contracta est sive sua voluntate sive eius in cuius potestate fuit, sive in peculium ipsius sive in rem patris ea pecunia redacta est, et si paterna hereditate abstinuit, actionem nisi in id quod facere possit non dari perpetui edicti interpretatione declaratum est.

PP. VIII k. Dec. Dextro II et Prisco conss.

[3] *Imp. Antoninus A. Artemoni.* Etiam si non mandante neque subscribente neque iubente domina pecuniam mutuam servo Priscae

[6] *The same Augusti and Caesars to Onesima.* A person who, following the wish of the owner had a contract with this very person's slave, appropriately sues the owner for the whole amount on an action analogous to the one on managers (*ad instar actionis institoriae*).

Given November 18, in the consulship of the Caesars (294).

Twenty-Sixth Title Business That is Said to Have Been Transacted with a Person Who Is in Another's Power, or Regarding the *Peculium*, or on an Order, or Regarding What Has Been Turned to One's Profit[108]

[1] *Emperors Severus and Antoninus Augusti to Aelius.* When a son in his father's power is appointed as a *tutor* or a *curator*, his father is to be sued for the tutorship or the management of affairs (*negotiorum gestorum*) in a judgment on the *peculium* or on what has turned to his profit. But if with his consent the son has been elected decurion and has been appointed *tutor* by the magistrates, the father is compelled to be liable for the whole amount (*in solidum satisfacere*), since this burden is understood to have been taken up on the pattern of other civic obligations (*munera*).

Given November 7, in the consulship of Dexter, for the second time, and Priscus (196).

[2] *The same Augusti to Annius.* By an interpretation of the Perpetual Edict, it has been declared that, on account of a contract entered into with a son in his father's power either by his own intent or by that of the person in whose power he was, regardless whether the money was obtained for his own *peculium* or for his father's property, as long as he abstained from (accepting) his father's estate, an action is not given except for what he might be able to pay.[109]

Posted November 24, in the consulship of Dexter, for the second time, and Priscus (196).

[3] *Emperor Antoninus Augustus to Artemo.* Even if you gave money as a loan to Prisca's slave without the owner's mandating it, signing for it, or ordering it,

[108] See D. 14.5, 15.1–4; Inst. 4.7. This section amalgamates several theories concerning vicarious liability of the head of a household for the transactions of children-in-power or slaves. Such liability is often limited to the value of the dependant's *peculium* unless the transaction was ordered or ratified by the household head (*quod iussu*) or the transaction benefited him (*in rem versum*).

[109] Blume: "The edict here mentioned is found in D. 14.5.2. A son under power could be sued the same as any other man. D. 44.7.39. But if he was emancipated, or disinherited, or he did not accept his father's inheritance, he could claim what is called the benefit of competence, namely to be condemned in a suit on his contract only to the amount which he was able to pay. This was one of the peculiar institutes of the Roman law … But it was justly applied in this instance, since the property of a son under paternal power was ordinarily that of his father. The benefit could not be claimed by him, if he was guilty of fraud in misrepresenting his status, or of tort." Krüger deletes *et*, "even."

dedisses, tamen ea quantitas si in rem dominae eius iustis erogationibus versa est, de in rem verso apud suum iudicem eam conveni, consecuturus secundum iuris formam id quod tibi deberi apparuerit.

D. III k. Iul. Laeto II et Cereale conss.

[4] *Idem A. Leontio.* Si ex contractu patris iussu eius pecuniam accepisti teque eius hereditate abstines, frustra vereris, ne a creditoribus eius conveniaris.

D. V k. Ian. Sabino et Anullino conss.

[5] *Imp. Alexander A. Asclepiadi.* Nulla res prohibet filios familias, si pro aliis maiores viginti quinque annis fideiusserint, actione adversus eos competenti teneri. sed si dumtaxat de peculio tecum agatur, defensionibus, si quae tibi competunt, uteris.

PP. VI id. Dec. Maximo II et Aeliano conss.

[6] *Impp. Valerianus et Gallienus AA. et Valerianus nob. C. Matronae.* Si servus tuus sine permissu tuo accepta pecunia mutua in usurarum vicem habitandi facultatem concessit, nullo iure adversarius tuus hospitium ex hac causa sibi vindicat, cum te servi factum non obligaverit: et ingrediens rem tuam contra vim eius auctoritate competentis iudicis protegeris.

D. XII k. Iul. Aemiliano et Basso conss.

[7] *Impp. Diocletianus et Maximianus AA. et CC. Crescenti.* **pr.** Ei, qui servo alieno dat mutuam pecuniam, quamdiu superest servus, item post mortem eius intra annum de peculio contra dominum competere actionem vel, si in rem domini haec versa sit quantitas, post annum etiam esse honorariam non est ambigui iuris. **1.** Quapropter si quidem in rem domini versa pecunia est, heredes eius convenire potes de ea summa, quae in rem ipsius processit. **2.** Si vero hoc probari non potest, consequens est, ut superstite quidem servo dominum de peculio convenias vel, si iam servus rebus humanis exemptus est vel distractus seu manumissus nec annus excessit, de peculio quondam adversus eum experiri possis.

nevertheless if that quantity has been turned to the benefit of his owner by just expenditures, sue her before her judge (*apud suum iudicem*) on (the action for) what has turned to one's benefit, to gain what it will have appeared you are owed in accordance with the rule of law.

Given June 29, in the consulship of Laetus, for the second time, and Cerealis (215).

[4] *The same Augustus to Leontius.* If you received money on the basis of a contract of your father on his authorization (*iussum*) and you are refusing his inheritance, you fear needlessly that you might be sued by his creditors.

Given December 28, in the consulship of Sabinus and Anullinus (216).

[5] *Emperor* ALEXANDER *Augustus to Asclepiades.* No circumstance prevents sons in their fathers' power, if, when over the age of 25, they have become surety for others, from being held liable in an appropriate action against them. But if the lawsuit with you should only concern the *peculium*, you will use whatever defenses are available to you.

Posted December 8, in the consulship of Maximus, for the second time, and Aelianus (223).

[6] *Emperors* VALERIAN *and* GALLIENUS *Augusti and* VALERIAN *most noble Caesar to Matrona.* If your slave, after receiving money on loan without your permission, granted (to the lender) a right of habitation instead of interest, by no legal basis does your adversary claim accommodation on this basis, since the act of your slave has not obligated you; and when you enter your property you are protected against his force by the authority of a competent judge.

Given June 20, in the consulship of Aemilianus and Bassus (259).

[7] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Crescens.* **pr.** It is not doubtful law that a person who lends money to someone else's slave has available an action on the *peculium* against the owner, as long as the slave survives, and even within one year after his death, or, if the amount has been turned to the owner's profit, that he has a Praetorian (*honoraria*) action after the year. **1.** Therefore if indeed the money has been turned to the owner's profit, you can sue his heirs for that sum that has passed into his own property. **2.** But if this cannot be proved, it follows that, if the slave is still alive, you should sue the owner on the *peculium*, or if the slave has already been removed from human affairs (i.e., died) or has been alienated or manumitted and a year has not passed, you can bring a suit against him (the owner) for the former *peculium*.

3. Alioquin si cum libero rem agente eius, cuius precibus meministi, contractum habuisti et eius personam elegisti, pervides contra dominum nullam te habuisse actionem, nisi vel in rem eius pecunia processit vel hunc contractum ratum habuit.

D. non. April. Byzantii AA. conss.

[8] *Idem AA. et CC. Isidoro.* Si ex alio contractu, non ex illicita mutui datione debitor extitisti vel quod patrem tuum in fide suscepisti, tam in patris positus potestate iure teneris quam etiam morte genitoris tui iuris effectus: et si quidem patris heres extitisti, in solidum, alioquin in quantum facere potes, secundum edicti formam. sed et si emancipatione tui iuris factus es, similiter conveniri te posse debes intellegere.

D. VI id. April. Byzantii AA. conss.

[9] *Idem AA. et CC. Diogenio.* Si mandator pro filio tuo extitisti vel iussu tuo cum eo quem in potestate tunc habuisti contractum est, intellegis et sorti et usuris te parere oportere, si te his omnibus obligasti, ut res quae pignoris iure detinentur liberari possint. quod si fideiussor creditae pecuniae intercessisti, teneri te ex ea obligatione explorati iuris est.

D. III k. Mai. CC. conss.

[10] *Idem AA. et CC. Aphrodisio.* **pr.** Si liberam peculii administrationem habentes equas cum fetu de peculio servi venumdederunt, reprobandi contractum dominus nullam habet facultatem. 1. Quod si non habentes liberam peculii administrationem rem dominicam eo ignorante distraxerunt, neque dominium, quod non habent, in alium transferre possunt neque condicionem eorum servilem scientibus possessionis iustum adferunt initium: unde non immerito nec temporis praescriptionem huiusmodi possessoribus prodesse manifestum est, ideoque res mobiles ementes etiam furti actione tenentur.

D. V non. Oct. Sirmi CC. conss.

[11] *Idem AA. et CC. Attalo.* Cum ancilla contrahenti, quam iure non obligari constat, adversus dominum in quantum locupletius eius

3. Otherwise, if you had a contract with a free person conducting the business of the one you have mentioned in your petition and you chose (to do business with) his person (*et eius personam elegisti*), you see that you have had no action against the owner, unless the money was turned to his profit or he ratified this contract.

Given April 5, at Byzantium, in the consulship of the Augusti (293).

[8] *The same Augusti and Caesars to Isidorus.* If you have become a debtor from another contract and not from the illicit donation of a loan or because you have stood surety for your father (*in fide suscepisti*), you are bound by the law both while established in the father's power and when you are made *sui iuris* by the death of your parent. If you have become your father's heir, (you are liable) for the whole amount, or otherwise to the extent that you are able (to pay), in accordance with the rule of the (Perpetual) Edict. But if you have come into your own power (*tui iuris*) by emancipation, you should understand that you can be sued in a similar fashion.

Given April 8, at Byzantium, in the consulship of the Augusti (293).

[9] *The same Augusti and Caesars to Diogenius.* If you were mandator to your son or, in accordance with your order, a contract has been made with him when you held him in your power, you understand that you must pay (*parere oportere*) both the principal and the interest, if you have obligated yourself for all of these, so that the property that is held by right of pledge can be liberated. But if you have stepped in as a surety for money loaned, it is established law that you are liable on the basis of this obligation.

Given April 29, in the consulship of the Caesars (294).[110]

[10] *The same Augusti and Caesars to Aphrodisius.* **pr.** If slaves holding free administration of their *peculium* have sold from it mares along with their offspring, the owner has no capacity to repudiate the contract. **1.** But if without having free administration of the *peculium* they have sold property belonging to the owner without his knowledge, they cannot transfer ownership, which they do not have, to another person, nor can they bring about the lawful beginning of possession in those who know of their servile condition. Therefore it is manifest that a long-time prescription rightly does not benefit possessors of this type, and for that reason if they purchase movable property they are also liable in an action on theft.

Given October 3, at Sirmium, in the consulship of the Caesars (294).

[11] *The same Augusti and Caesars to Attalus.* There is no doubt that a person entering into a contract with a slave woman, who it is established cannot lawfully

[110] Mommsen dates this constitution and the two below to 293 (the consulship of the Augusti).

peculium factum est ea superstite ac post mortem intra utilem annum dandam actionem non ambigitur.

D. prid. k. Dec. Sirmi CC. conss.

[12] *Idem AA. et CC. Victori.* Dominum per servum obligari non posse ac tantum de peculio (deducto scilicet, quod naturaliter servus domino debet) eius creditoribus dari actionem vel, si quid in rem eius versum probetur, de in rem verso edicto perpetuo declaratur.

D. XIII k. Febr. Sirmi CC. conss.

[13] *Impp. Honorius et Theodosius AA. Iohanni pp.* **pr.** Dominos ita constringi manifestum est actione praetoria, quae apellatur quod iussu, si certam numerari praeceperint servo actorive pecuniam. **1.** Igitur in perpetuum edictali lege sancimus, ut, qui servo colono conductori procuratori actorive possessionis pecuniam mutuam det, sciat dominos possessionum cultoresve terrarum obligari non posse.

2. Neque familiares epistulas, quibus homines plerumque commendant absentem, in id trahere convenit, ut pecuniam, quam non rogatus fuerat, impendisse pro praediis mentiatur, cum, nisi specialiter ut pecuniam praestet a domino fuerit postulatus, idem dominus teneri non possit. **3.** Creditaque quantitate multari volumus creditores, si huiusmodi personis non iubente domino nec fideiussoribus specialiter acceptis fuerit credita pecunia.

4. Sane creditori licentiam damus, ut, si liber a rationibus quas gerebat fuerit inventus actor servus procuratorve praediorum, utilis actio pateat de peculio.

D. V id. Iul. Ravennae Honorio XIII et Theodosio X AA. conss.

XXVII Per Quas Personas Nobis Adquiritur

[1] *Impp. Diocletianus et Maximianus AA. Marcello.* **pr.** Excepta possessionis causa per liberam personam, quae alterius iuri non est subdita,

be obligated, must be allowed to bring an action against her owner while she is alive and after her death within the established year, for the amount that her *peculium* was enriched.

Given November 30, at Sirmium, in the consulship of the Caesars (294).

[12] *The same Augusti and Caesars to Victor.* It is declared in the Perpetual Edict that a master cannot be obligated through his slave and that an action is given to his creditors only for the *peculium* – of course with a deduction for what the slave owes the master in an informal manner – or, for what has been turned to his (the owner's) profit if it should be proved that something has accrued to his property.

Given January 20, at Sirmium, in the consulship of the Caesars (294).

[13][111] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to John, Praetorian Prefect.* **pr.** It is clear that masters are liable in the Praetorian action that is called "what by order" (*quod iussu*) if they have instructed that a certain amount of money be paid to their slave or manager (*actor*). **1.** Therefore we establish in perpetuity in an edictal law that whoever should give a loan of money to a slave, bound tenant (*colonus*), lessee, procurator, or manager (*actor*) of an estate (*possessio*) should know that the owners of the estate or the cultivators of the land cannot be obligated (otherwise).

2. And is not it appropriate to draw friendly letters into this, in which people provide a general commendation for an absent person, so that someone might falsely allege that he has spent for properties a sum of money for which he was not (actually) asked, since, unless he had been specifically asked by the owner to provide the money, the same owner cannot be held liable. **3.** We want creditors to be fined the amount of money loaned, if money has been loaned to persons of this type without the owner's order and without sureties having been specifically received.

4.[112] Of course, We give permission to a creditor that an analogous action be available on the *peculium* if the manager, slave, or procurator of the estates has been found to have free management of the accounts.

Given July 11, at Ravenna, in the consulship of Honorius, for the thirteenth time, and Theodosius, for the tenth time, Augusti (422).

Twenty-Seventh Title Through Which Persons Acquisition Is Made for Us[113]

[1][114] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Marcellus.* **pr.** It is indisputably the law that, except for possession, nothing can be acquired

[111] = C.Th. 2.31.1; combine with C. 2.13.2, 4.4.1, 8.15.8, 11.48.17, 12.60.4 (C.Th. 2.32.1 = par. 4).
[112] = C.Th. 2.32.1. Blume translates differently: "if a manager, actor, slave, or procurator of landed-estates has made a complete settlement of his accounts."
[113] See Inst. 2.9.3, 28.
[114] See C. 4.35.9.

nihil adquiri posse indubii iuris est. 1. Si igitur procurator non sibi, sed ei, cuius negotia administrabat, redintegratae rei vindicationem pactus est idque pactum etiam stipulatio insecuta est, nulla domino obligatio adquisita est. servis autem res traditae dominis adquiruntur.

D. k. Iul. ipsis IIII et III AA. conss.

[2] *Imp. Iustinianus A. Iuliano pp.* **pr.** Si duo vel plures communem servum habeant et unus ex his iussit, ut nomine suo servus ab aliquo stipuletur decem puta aureos vel aliam rem, ipse autem servus non eius nomine qui iussit, sed alicuius ex dominis suis mentionem fecit et nomine illius stipulatus est, inter antiquam sapientiam quaerebatur, cui adquiritur actio et lucrum, quod ex hac accidit causa, utrumne ei qui iussit an ei cuius servus mentionem fecit an ambobus.

1. Cumque ex omni latere magna pars auctorum multum effudit tractatum, nobis verior eorum sententia videtur, qui domino qui iussit adferunt stipulationem et ei tantummodo adquiri dixerunt, quam aliorum, qui in alias opiniones deferuntur. neque enim malignitati servorum indulgendum est, ut liceat eis domini iussione contempta sua libidine facere stipulationem et ad alium dominum, qui eum forsitan corrupit, alienum lucrum transferre: quod neque ferendum est, si servus impius domino quidem qui iussit minime oboediendum existimaverit, alii autem, qui forsitan ignorat et nescit, repentinum adducit solacium.

2. Quod enim saepe apud antiquos dicebatur iussionem domini non esse absimilem nominationi, tunc debet obtinere, cum servus iussus ab uno ex dominis stipulationem facere sine nomine stipulatus est: tunc etenim soli ei adquirit qui iussit: sin autem expresserit alium dominum, soli illi necesse est adquisitionem celebrari: multo etenim amplius oportet valere dominici nominis mentionem quam herilem iussionem.

D. XV k. Dec. Lampadio et Oresta vv. cc. conss.

[3] *Idem A. Iohanni pp.* **pr.** Cum per liberam personam, si pecunia alterius nomine fuerit numerata, adquiritur ei cuius nomine pecunia credita

through a free person who is not subjected to the power of another. **1.** If, therefore, a procurator has made a pact concerning a claim on ownership (*vindicatio*) of property restored not to himself, but to the person whose affairs he was administering, and (even if) a stipulation has followed the pact, no obligation has been acquired for the owner. However, property delivered to slaves is acquired for their owners.

Given July 1, in the consulships of (the Augusti) themselves for the fourth and third time, respectively (290).

[2](3)[115] *Emperor* JUSTINIAN *Augustus to Julian, Praetorian Prefect.* **pr.** If two or more people should have a slave in common and one of these has ordered the slave to take a stipulation in his name from someone, say for 10 aurei or other property, but the slave has made mention not of the person who ordered it but of someone else among his owners and has taken the stipulation in the name of that person, it was debated among the ancient authorities (*inter antiquam sapientiam quaerebatur*) for whom the right of action and the profit is acquired that results from this, whether for the person who gave the order or for the one whose name the slave mentioned or for both.

1. Since a large portion of the authors have produced a great deal of treatment from every side of the issue, the opinion seems truer to Us of those (jurists) who assign the stipulation to the owner who gave the order and who have said that that acquisition is made for him alone, than of those who are led into other views. For one must not indulge the malice of slaves, so that they not be allowed to scorn the order of an owner at their whim and make a stipulation and transfer someone's profit to another owner, who had perhaps corrupted him (the slave). It is not to be tolerated if an impious slave thinks that he does not have to obey a master who has given an order, and brings a sudden gain to another owner, who perhaps is unaware and does not know about it.

2. What was often said by the ancient authorities, that the order of a master is not dissimilar from his being named, should then obtain, when a slave, having been ordered by one of the owners to take a stipulation, has done so without a name; in this circumstance he acquires only for the one who gave the order. If, however, he has named another owner, acquisition must be recognized for that one alone; mentioning the owner's name must count more than a master's order.[116]

Given November 17, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[3] (2) *The same Augustus to John, Praetorian Prefect.* **pr.** Since (in traditional law), if money has been paid out in the name of another through a free

[115] The order of chapters 2 and 3 is not consistent in the manuscripts.

[116] As Blume notes, section 2 contradicts the rest of the constitution.

est per huiusmodi numerationem condictio, non autem hypotheca vel pignus, quae procuratori data vel supposita sunt, dominis contractus adquiritur, talem differentiam expellentes sancimus et condictionem et hypothecariam actionem vel pignus ipso iure et sine aliqua cessione ad dominum contractus pervenire. 1. Si enim procuratori necessitas legibus imposita est domino contractus cedere actionem, quare non ab initio quemadmodum in personali actione cessio supervacua videbatur, non etiam in hypothecis et pignoribus simili modo dominus contractus habeat hypothecariam actionem seu pignoris vinculum vel retentionem sibi adquisitam?

D. k. Nov. Lampadio et Oresta vv. cc. conss.

XXVIII Ad Senatus Consultum Macedonianum

[1] *Imp. Pertinax A. Atilio.* Si filius, cum in potestate patris esset, mutuam a te pecuniam accepit, cum se patrem familias diceret, eiusque adfirmationi credidisse te iusta ratione edocere potes, exceptio ei denegabitur.

PP. x k. April. Falcone et Claro conss.

[2] *Impp. Severus et Antoninus AA. Sophiae.* Zenodorus cum sui iuris esse publico[v] videretur aut patris voluntate contraxit aut in eam rem pecuniam accepit, quae patris oneribus incumberet, vel suae potestatis constitutus novatione facta fidem suam obligavit vel alias agnovit debitum, non esse locum decreto amplissimi ordinis rationis est.

PP. v k. Mart. Saturnino et Gallo conss.

[3] *Idem AA. Macrino.* Si filius familias aliquid mercatus pretium stipulanti venditori cum usurarum accessione spondeat, non esse locum senatus consulto, quo fenerare filiis familias prohibitum est, nemini dubium est: origo enim potius obligationis quam titulus actionis considerandus est.

PP. id. Mart. Saturnino et Gallo conss.

[v] publicum

person, the claim for restitution is acquired for the one in whose name the money was lent through this type of payment, but the hypothec or pledge, which are given to or set aside for the procurator, are not acquired for the principals (*domini*) of the contract, rejecting such a distinction, We establish that both the claim for restitution and the action on hypothec or pledge accrue to the principal of the contract by mere operation of the law (*ipso iure*) and without any assignment. 1. If the need has been imposed by the laws on the procurator to assign his right of action to the principal of the contract, for what reason, just as the assignment seemed superfluous in an action *in personam*, should not the principal of the contract in a similar manner have from the beginning in the case of hypothecs and pledges an action on hypothec or the bond of a pledge or its retention that has been acquired for himself?

Given November 1, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

Twenty-Eighth Title The *Senatus Consultum* Macedonianum[117]

[1] *Emperor* PERTINAX *Augustus to Atilius.* If a son, when he was in the power of his father, received a loan of money from you, when he said he was a *paterfamilias*, and you can demonstrate that you believed his affirmation for a just reason, the defense (based on the *SC Macedonianum*) will be denied to him.

Posted March 23, in the consulship of Falco and Clarus (193).

[2] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Sophia.* Zenodorus, when he seemed to be *sui iuris*, either made a public contract (*publicum*, i.e., with the Treasury) in accordance with his father's wish or received money for a matter that impinged on his father's obligations, or, once he was established in his own power, when the debt was novated (*novatione facta*) he obligated his faith or otherwise acknowledged the debt, it is reasonable that there is no place for (a defense based on) the decree of the highest order (*amplissimi ordinis*, the Senate).

Posted February 25, in the consulship of Saturninus and Gallus (198).

[3] *The same Augusti to Macrinus.* If a son in his father's power, when purchasing something, promises the price with the addition of interest to the seller taking a stipulation, it is doubtful to no one that there is no place for (a defense based on) the decree of the Senate whereby lending at interest to sons in their fathers' power has been prohibited; for the origin of the obligation must be considered rather than the title of the action.

Posted March 15, in the consulship of Saturninus and Gallus (198).

117 The *SC Macedonianum* (on which, D. 14.6.) protects fathers from liability for the debts of their sons in power by making certain loans to the sons unenforceable.

[4] *Idem AA. Cyrillae.* Si permittente patre filio familias pecuniam mutuam dedisti, senatus consulti potestas non intervenit, et ideo persecutio pignoris quod in bonis patris fuit non denegabitur, praesertim cum eidem filius heres extiterit, modo si nullus alius iure conventionis ratione temporis et ordinis potior apparuerit.

PP. XII k. Mai. Fabiano et Muciano conss.

[5] *Imp. Alexander A. Septimiae Musae.* **pr.** Macedoniani senatus consulti auctoritas petitionem eius pecuniae non impedit, quae filio familias studiorum vel legationis causa alibi degenti ad necessarios sumptus, quos patris pietas non recusaret, credita est. **1.** Sed ex contractu filii post mortem eius de peculio actio in patrem competere ita demum potest, si anni utilis spatium petitionem non impedit. **2.** Sane si iussu patris datum mutuum probetur, nec in quos usus versa sit pecunia disquiri necesse est perpetua in patrem etiam mortuo filio actio est.

PP. prid. k. Mart. Agricola et Clemente conss.

[6] *Imp. Philippus A. et Philippus C. Theopompo.* **pr.** Si filius tuus in potestate tua agens contra senatus consultum Macedonianum mutuam sumpsit pecuniam, actio de peculio adversus te eo nomine efficaciter dirigi nequaquam potest. **1.** Quod senatus consulti auxilium, licet filii familias meminit, ad nepotes et ad pronepotes porrigitur.

PP. VI non. Mart. Philippo A. et Titiano conss.

[7] *Imp. Iustinianus A. Iuliano pp.* **pr.** Si filius familias citra patris iussionem vel mandatum vel voluntatem pecunias creditas acceperit, postea autem pater ratum habuerit contractum, veterum ambiguitatem decidentes sancimus, quemadmodum, si ab initio voluntate patris vel mandato filius familias pecuniam creditam accepisset, obnoxius firmiter constituebatur, ita et si postea ratum pater habuerit contractum, validum esse huiusmodi contractum, cum testimonium paternum respuere satis iniquum est. necesse est enim patris ratihabitionem principali patris mandato vel consensui non esse absimilem, cum nostra novella

[4] *The same Augusti to Cyrilla.* If with his father's permission you have given a loan of money to a son in his father's power, the power of the decree of the Senate does not intervene, and for that reason a claim for the pledge, which was from the father's property, will not be denied, especially when the son is heir to the same father, as long as no one else has appeared with a stronger claim by the right of an agreement or a consideration of time and order (of priority).

Posted April 20, in the consulship of Fabianus and Mucianus (201).

[5][118] *Emperor* ALEXANDER *Augustus to Septimia Musa.* **pr.** The authority of the *SC Macedonianum* does not impede seeking money that was lent for necessary expenses, which a father's familial loyalty (*pietas*) would not refuse, to a son in his father's power living in another place for his studies or on a foreign mission (*legatio*). **1.** But after the son's death an action for his *peculium* on the basis of his contract is valid against the father only if the period of the year available does not (by lapsing) impede the claim. **2.** Clearly if the loan should be proved to have been given on the father's order, it is not necessary to investigate to what uses the money was put, and the right of action against the father is perpetual even following the son's death.

Posted February 28, in the consulship of Agrippa and Clemens (230).

[6] *Emperors* PHILIP *Augustus and* PHILIP *Caesar to Theopompus.* **pr.** If your son acting in your power has taken a loan of money contrary to the *SC Macedonianum*, an action on his *peculium* cannot at all be validly directed against you on that account. **1.** This help from the decree of the Senate, although it mentions sons in their fathers' power, is extended (also) to grandsons and great-grandsons.

Posted March 2, in the consulship of Philip Augustus and Titianus (245).

[7] *Emperor* JUSTINIAN *Augustus to Julian, Praetorian Prefect.* **pr.** If a son in his father's power has received money on loan without his father's instruction, order, or wish, but afterwards the father has ratified the contract, in order to settle the ambiguity of the ancient authorities (*veterum*) We ordain that, in whatever way the father was made firmly liable, if from the beginning the son had received the money on loan by his father's wish or order, (or) in the same way even if the father afterwards ratified the contract, a contract of this type is valid, since it is quite unjust to scorn the father's testimony. For the father's ratification is by necessity not dissimilar from his original order or agreement, since in our recent law (*novella lege*)[119] and generally every ratification is

[118] = *C. Greg. Visig.* 10.1.
[119] C. 5.16.25 (?).

lege et generaliter omnis ratihabitio prorsus[vi] trahitur et confirmat ea ab initio quae subsecuta sunt. et haec quidem de privatis hominibus sancienda sunt.

1. Sin autem miles filius familias pecuniam creditam acceperit, sive sine mandato vel consensu vel voluntate vel ratihabitione patris, stare oportet contractum, nulla differentia introducenda, ob quam causam pecuniae creditae vel ubi consumptae sunt. in pluribus enim iuris articulis filii familias milites non absimiles videntur hominibus qui sui iuris sunt, et ex praesumptione omnis miles non credatur in aliud quicquam pecunias accipere et expendere nisi in causas castrenses.

D. XII k. Aug. Lampadio et Oresta vv. cc. conss.

XXVIIII Ad Senatus Consultum Velleianum

[1] *Imp. Antoninus A. Lucillae.* Mulieribus, quae alienam obligationem suscipiunt aut in se transferunt, si id contrahentes non ignorant, senatus consulto subvenitur. sed si pro aliis, cum obligatae non essent, pecuniam exsolvunt, intercessione cessante repetitio nulla est.

PP. non. Dec. Carviti duobus Aspris conss.

[2] *Idem A. Nepotianae.* Frustra senatus consulti exceptione, quod de intercessionibus feminarum factum est, uti temptasti, quoniam principaliter ipsa debitrix fuisti. eius enim senatus consulti exceptio tunc mulieri datur, cum principaliter ipsa nihil debet, sed pro alio debitore apud creditorem eius intercessit: sin autem pro creditore suo aliis se obligaverunt vel ab eo se vel debitorem suum delegari passae sunt, huiusmodi senatus consulti auxilium non habent.

PP. III id. Aug. Antonino A. IIII et Balbino conss.

[3] *Idem A. Servato.* Si, cum ipse mutuam pecuniam acciperes, mater tua contra amplissimi ordinis consultum fidem suam interposuit, exceptione tueri potest.

[vi] retrorsus

applied retroactively[120] and confirms from the beginning what has ensued. And these provisions are to be established for private people.

1. If, however, a soldier who is a son in his father's power has received money on loan, whether without the father's order, agreement, wish, or ratification, the contract must stand, with no distinction being introduced as to the reason why the money was loaned or where it was used. For in many provisions of the law sons in their fathers' power are seen as not dissimilar from people who are *sui iuris*, and each soldier should be presumptively believed not to receive or spend money for any purpose other than military ones.

Given on July 21,[121] in the consulship of viri clarissimi *Lampadius and Orestes (530).*

Twenty-Ninth Title The *Senatus Consultum* Velleianum[122]

[1] *Emperor* Antoninus *Augustus to Lucilla.* Women who take up another person's obligation or transfer it to themselves, if the contracting parties are not unaware of this, are aided by the decree of the Senate. But if they pay money on behalf of others, when they were not obligated to do so, since their assumption of liability is (then) irrelevant, they have no right to claim the money back.

Posted December 7, at Carnuntum (?), in the consulship of the two Aspri (212).

[2] *The same Augustus to Nepotiana.* In vain have you tried to use the defense of the decree of the Senate that was made concerning the assumption of liability by women, since you yourself were the principal debtor. The defense of this decree of the Senate is given to a woman in this circumstance, when she herself does not owe anything as the principal debtor, but has assumed liability for another debtor with his creditor. If, however, they (the women) have obligated themselves to others instead of their own creditors or have allowed their own debt or that of their debtor to be delegated by him (i.e., the creditor orders the woman or her debtor to pay an obligation he owes), they do not have such protection from the decree of the Senate.

Posted August 11, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[3] *The same Augustus to Servatus.* If, when you were receiving a loan of money yourself, your mother interposed her credit (*fides*) contrary to the decree of the highest order (the Senate), she can protect herself with the defense.

120 Based on Krüger's emendation of *retrorsus* for *prorsus.*
121 Krüger: perhaps August 1; this date is also accepted by Lounghis *et al.*
122 See D. 16.1. This decree of 46 CE restricted the capacity of women to assume liability (*intercedere*) on behalf of others.

PP. III id. Aug. Antonino A. IIII et Balbino conss.

[4] *Imp. Alexander A. Alexandriae.* **pr.** Senatus consultum locum habet, sive eam obligationem, quae in alterius persona constitit, mulier in se transtulerit vel participaverit sive, cum alius pecuniam acciperet, ipsa se constituit ab initio ream, quod et in rerum earum pro aliis obligationibus admissum est. **1.** Sed si praedia tua annis maior viginti quinque vendidisti et pro marito pecuniam solvisti, deficit auxilium senatus consulti.

PP. VI k. Ian. Maximo II et Aeliano conss.

[5] *Idem A. Popiliae.* Si sine voluntate tua res tuae a marito tuo pignori datae sunt, non tenentur. quod si consensisti obligationi sciente creditrice, auxilio senatus consulti uti potes. quod si patientiam praestitisti, ut quasi suas res maritus obligaret, decipere voluisti mutuam pecuniam dantem et ideo tibi non succurretur senatus consulto, quo infirmitati, non calliditati mulierum consultum est.

D. XV k. Iul. Iuliano et *Crispino conss.*

[6] *Idem A. Torquato.* **pr.** Si mater, cum filiorum suorum gereret patrimonium, tutoribus eorum securitatem promiserit et fideiussorem praestiterit vel pignora dederit, quoniam quodammodo suum negotium gessisse videtur, senatus consulti auxilio neque ipsa neque fideiussor ab ea praestitus neque res eius pigneratae adiuvantur. **1.** Sin autem tutore se excusare volente ipsa se interposuit indemnitatem ei repromittens, auxilio senatus consulti uti minime prohibetur. **2.** Sin vero tutores petiit et sponte periculum suscepit, quominus teneatur, auctoritate iuris tuetur.

PP. VI id. Oct. Modesto et Probo conss.

[7] *Imp. Gordianus A. Viviano.* Si sciens creditor a marito propter proprium debitum fundum mulieris, licet ea consentiente, pignori accepit, propter senatus consulti auxilium vendendo eum dominium mulieri

Posted August 11, in the consulship of Antoninus Augustus, for the fourth time, Balbinus (213).

[4] *Emperor* Alexander *Augustus to Alexandria.* **pr.** The decree of the Senate has a place if a woman has transferred to herself or participated in an obligation that exists in the person of another, or, when another person was receiving money, she established herself as a debtor from the beginning, (a rule) which has been allowed also in obligations of this property for other people. **1.** But if, being over 25 years in age, you have sold your properties and paid money on behalf of your husband, aid from the decree of the Senate fails (to help you).

Posted December 27, in the consulship of Maximus, for the second time, and Aelianus (223).

[5] *The same Augustus to Popilia.* If without your consent your things have been pledged by your husband, they are not subject to a lien. But if you consented to the obligation with the knowledge of the woman who was the creditor, you can use the protection from the decree of the Senate. But if you tolerated the pretense that your husband was obligating his own property, you wished to deceive the woman giving the loan, and for that reason you will not be helped by the decree of the Senate through which provision was taken for the infirmity of women, not their craftiness.

Given June 17, in the consulship of Julian and Crispinus (224).

[6] *The same Augustus to Torquatus.* **pr.** If a mother, when she was managing the patrimony of her children, promised indemnity to their *tutores* or offered a surety or gave pledges, since she seems to have carried on her own business in a sense, neither she herself nor the surety provided by her nor her property that was pledged is assisted by the decree of the Senate's protection. **1.** However, if, when the *tutor* wanted to excuse himself, she has promised him indemnity by assuming liability, she is not at all prohibited from using the protection of the decree of the Senate. **2.** But if she has asked for the *tutores* and of her own volition undertook the risk, she protects herself through the authority of the law, so that she is not held liable.

Posted October 10, in the consulship of Modestus and Probus (228).

[7] *Emperor* Gordian *Augustus to Vivianus.* If a creditor knowingly received from a husband (as a pledge) for his own debt his wife's farm, on account of the decree of the Senate's protection he could not deprive the wife of

auferre nequivit, nec tibi necesse est praestito pretio emptori vindicare, si matri heres extitisti.

PP. XII k. Oct. Pio et Pontiano conss.

[8] *Idem A. Tryphoni.* **pr.** Si paternam obligationem non tantum masculini sexus, verum etiam filiae emancipatae in se receperunt, quamvis filiae virilibus obligationibus eximantur propter exceptionem, quae ex senatus consulto Velleiano descendit, tamen filios in id quod se obligaverunt teneri filiarumque subducta persona patrem in id conveniri posse, in quo conveniretur, si filiae non intercessissent, dubium non est. **1.** Pignora tamen patris, etsi in posteriorem obligationem accepta sunt, sine dubio tenentur: sed et si in priore fuerunt, quatenus ad patrem per restitutoriam actionem redit, hactenus tenebuntur.

PP. non. Oct. Pio et Pontiano conss.

[9] *Idem A. Proculo.* Quamvis pro alio solvere possit mulier, tamen si praecedente obligatione, quam senatus consultum de intercessionibus efficacem esse non sinit, solutionem fecerit eius senatus consulti beneficio munitam se ignorans, locum habet repetitio.

PP. non. Iul. Gordiano A. et Aviola conss.

[10] *Imp. Philippus A. et Philippus C. Tryphaenae.* Si adversarius tuus non cum marito tuo, sed tecum negotium gessit, reliqua conductionis, quae dicis esse contracta, obtentu eiusmodi obligationum non potes recusare. enimvero si, cum eosdem fundos non tibi, sed marito tuo locaret, personam tuam ut idoneam secutus est, beneficio amplissimi ordinis, quod est factum de intercessionibus feminarum, te tueri potes.

PP. XVIII k. Sept. Peregrino et Aemiliano conss.

[11] *Idem A. Theodorae.* Etiam constante matrimonio ius hypothecarum seu pignorum marito remitti posse explorati iuris est.

PP. VIII k. Oct. Peregrino et Aemiliano conss.

ownership by selling it, nor is it necessary for you, if you are the heir of your mother, to sue the purchaser over its ownership (*vindicare*) after offering the price paid for it.

Posted September 20, in the consulship of Pius and Pontianus (238).

[8] *The same Augustus to Trypho.* **pr.** If children, not just of the masculine sex, but also emancipated daughters, have taken their father's obligation upon themselves, although daughters are exempt from the men's obligation by the defense that accrues from the *SC Velleianum*, even so it is not doubtful that sons are held liable for what they obligated themselves to, and, with the removal of the daughters, the father can (also) be sued for what he would be sued for if the daughters had not assumed liability. **1.** The father's pledges, however, even if they have been received for the later obligation, are without doubt held under a lien; but even if they were held under a lien in the prior obligation as well, they will be liable in so far as the obligation returns to the father through a restitutory action (*actio restitutoria*).[123]

Posted October 7, in the consulship of Pius and Pontianus (238).

[9] *The same Augustus to Proculus.* Although a woman can pay on behalf of another, her right to reclaim still has a place if, because of a preceding obligation that the decree of the Senate on assumptions of liability does not allow to be valid, she has made the payment (while) unaware of her protection by the benefit of this decree of the Senate.

Posted July 7, in the consulship of Gordian Augustus and Aviola (239).

[10] *Emperors* PHILIP *Augustus and* PHILIP *Caesar to Tryphaena.* If your adversary conducted business not with your husband but with you, you cannot refuse (to pay) the arrears on the lease that you say were contracted to be paid (by you), under the pretext of obligations of this type (affected by the *SC*). But if indeed he leased the same farms not to you, but to your husband, and he has pursued your person as solvent, you can protect yourself through the benefit of the highest order, which has been made concerning the assumptions of liability by women.

Posted August 18, in the consulship of Peregrinus and Aemilianus (244).

[11] *The same Augustus to Theodora.* It is established law that even when the marriage is continuing the right of hypothecs or pledges can be remitted to the husband.

Posted September 24, in the consulship of Peregrinus and Aemilianus (244).

[123] The *actio quae restituit obligationem* gave the creditor a primary right of action when he lost his first action against a debtor because of an invalid novatory intercession by a woman.

[12] *Impp. Valerianus et Gallienus AA. Sepiducae.* Si dotare filiam volens genero res tuas obligasti, pertinere ad te beneficium senatus consulti falso putas: hanc enim causam ab eo beneficio esse removendam prudentes viri putaverunt.

PP. VIIII k. Mart. Tusco et Basso conss.

[13] *Impp. Diocletianus et Maximianus AA. Condianae.* Si fenebris pecunia iuxta fidem veri a creditore tibi data est, sive tota quantitas fenoris sive pars eius in usum mariti processisse proponatur, decreto patrum non adiuvaris, licet creditor causam contractus non ignoraverit.

D. III k. Sept. ipsis IIII et III AA. conss.

[14] *Idem AA. et CC. Basilissae.* Mulierem contra senatus consulti Velleiani auctoritatem non posse intercedere eademque exceptione fideiussorem eius uti posse iuris auctoritas probat. unde si mater tua marito quondam suo heres non extitit, satis idoneae exceptionis remedio tuta est.

PP. VIII k. April. Byzantii CC. conss.

[15] *Idem AA. et CC. Agrippino.* Si uxor pro marito contra senatus consultum intercessura te rogavit mandatorio nomine pro ea tuam fidem adstringere, initio contractus per exceptionis auxilium obligationi tuae cohaesit securitas, qua conventus defendi potes.

PP. XVIII k. Iun. Sirmi CC. conss.

[16] *Idem AA. et CC. Rufino.* Si mulier alienam suscepit obligationem, cum ei per exceptionem Velleiani senatus consulti succurratur, creditori contra priores debitores rescissoria actio datur.

PP. XVII k. Febr. Sirmi CC. conss.

[17] *Idem AA. et CC. Alexandro.* Si, cum pater vester a Callistrato mutuam sumpsisset pecuniam, velut hanc eius uxor accepisset, instrumentum conscriptum est, nec ad exceptionis tractatum ex senatus

[12] *Emperors* Valerian *and* Gallienus *Augusti to Sepiduca.* If, wishing to provide your daughter with a dowry, you have obligated your property to your son-in-law, you falsely think that the decree of the Senate's benefit applies to you; men learned (in the law, i.e., the jurists) have thought that this reason should be removed from the benefit.

Posted February 21, in the consulship of Tuscus and Bassus (258).

[13] *Emperors* Diocletian *and* Maximian *Augusti to Condiana.* If a loan of money at interest has been given to you by a creditor in good faith, whether it should be stated that the entire amount of the loan or part of it has gone to the benefit of your husband, you are not aided by the decree of the Fathers (Senators), even though the creditor was not unaware of the reason for the contract.

Given August 30, in the consulship of (the Augusti) themselves, Consuls for the fourth and third time, respectively (290).

[14] *The same Augusti and the Caesars to Basilissa.* The authority of the law proves that a woman cannot assume liability in contravention of the authority of the *SC Velleianum* and that her surety can use the same defense. Therefore if your mother was not heir of her erstwhile husband, she is protected by the remedy of a sufficiently suitable defense.

Posted March 25, at Byzantium, in the consulship of the Caesars (294).[124]

[15] *The same Augusti and Caesars to Agrippinus.* If a wife who is going to assume liability for her husband contrary to the decree of the Senate has asked you under the title of a mandate to bind your own faith (*fidem adstringere*, i.e., become a surety), the protection through the aid of the defense, with which you can be defended when sued, was attached to your obligation at the beginning of the contract.

Posted May 20, at Sirmium, in the consulship of the Caesars (294).[125]

[16] *The same Augusti and Caesars to Rufinus.* If a woman has assumed another person's obligation, since she is aided by the defense of the *SC Velleianum*, an action to restore his previous right (*actio rescissoria*) is given to the creditor against the previous debtors.

Posted January 16, at Sirmium, in the consulship of the Caesars (294).

[17] *The same Augusti and Caesars to Alexander.* If, when your father took money on loan from Callistratus, a document was written as though his wife

[124] Mommsen dates to April 6, 293.
[125] Mommsen dates to December 15, 293.

consulto venientem pervenire necesse est, cum eam veritatis substantia, constituta potior quam simulata gesta, tueatur.

iii id. Mart. CC. conss.

[18] *Idem AA. et CC. Zotico.* Feminis alienas novas vel veteres obligationes aliqua ratione suscipientibus subvenitur, nisi creditor aliqua ratione per mulierem deceptus sit: nam tunc replicatione doli senatus consulti exceptionem removeri constitutum est.

S. VI id. Nov. Antiochiae CC. conss.

[19] *Idem AA. et CC. Faustinae.* Cum ad eas etiam obligationes, quae ex mulieris persona calliditate creditoris sumpserunt primordium, decretum patrum, quod de intercessione feminarum factum est, pertinere edicto perpetuo declaratur, si tamen creditor, qui contrahere cum alio proposuerat, mulieris personam elegit, exceptione contra petitores secundum ea quae adseveras defendi potes.

D. XVIII k. Ian. Nicomediae CC. conss.

[20] *Idem AA. et CC. Theodotiano.* Heredes quoque mulieris adversus creditores eadem exceptione, quae ex senatus consulto introducta est, uti posse non dubium est.

D. VIIII k. Ian. ipsis CC. conss.

[21] *Imp. Anastasius A. Celeri magistro officiorum.* Iubemus licere mulieribus et pro uno contractu vel certis contractibus, seu pro una vel certis personis seu rebus iuri hypothecarum sibi competenti per consensum proprium renuntiare, quodque ita gestum sit, hac auctoritate nostra firmum illibatumque custodiri: ita tamen, ut, si generaliter tali renuntiatione pro uno ut dictum est contractu seu certis contractibus vel ad unam vel certas res seu personas consensum proprium accommodantes usae sunt vel fuerint, eadem renuntiatio ad illos contractus et illas res seu personas quibus consensum proprium accommodaverunt vel accommodaverint coartetur, nec aliis quibusdam contractibus, quibus minime mulieres consenserunt vel consenserint, praetendentibus eam opponendi licentia praebeatur: his scilicet omnibus, quae in praesenti per hanc consultissimam legem statuimus, ad praeteritos nihilo minus

had received it, when she comes to consider the defense from the decree of the Senate it is not necessary for her to employ this, since the substance of the truth, which is deemed stronger than pretended acts, protects her.

March 13, in the consulship of the Caesars (294).

[18] *The same Augusti and Caesars to Zoticus.* Women who in any manner take up either new or old obligations of others are protected unless the creditor has been deceived in some way by the woman; for in that situation it has been established that the decree of the Senate's defense is removed by the counter-defense of deceit.

Written November 8, at Antioch, in the consulship of the Caesars (294).[126]

[19] *The same Augusti and Caesars to Faustina.* Since it is declared in the Perpetual Edict that the decree of the Fathers (Senators), which has been enacted concerning the assumption of liability by women, applies also to those obligations that have taken their origin from the person of a woman by the craftiness of the creditor, you can be protected by a defense against the claimants according to what you allege, as long as the creditor, who had intended to contract with another, chose the person of the woman (as debtor).

Given December 15, at Nicomedia, in the consulship of the Caesars (294).

[20] *The same Augusti and Caesars to Theodotianus.* There is no doubt that heir of a woman can also use against creditors the defense that has been introduced on the basis of the decree of the Senate.

Given December 24, in the consulship of the Caesars themselves (294).

[21] *Emperor* ANASTASIUS *Augustus to Celer, Master of the Offices.* We order that it be permitted to women to renounce through their own consent the right of hypothec accruing to themselves, either for a single contract or for specified contracts, whether for one person or for specified persons or things, and that what has thus been done be protected firmly and without compromise by this Our authority; provided that, if, giving their own consent, they have or will have generally had recourse to such a renunciation for one contract, as mentioned, or for specified contracts or for one or specified things or persons, the same renunciation should be restricted to those contracts or things or persons for which they have or will have provided their own consent. Women should not be offered the freedom (*licentia*) to oppose it when they bring it (the renunciation) forward as an excuse for any other contracts to which they have not or will have not consented. That is to say, all these provisions, which for the present We establish through this most considered law,

[126] Mommsen: "November 11, 294, at Pantichum."

contractus pro negotiis et controversiis necdum transactionibus vel definitivis sententiis seu alio legitimo modo sopitis locum habituris.

D. k. April. Anastasio et Agapito conss.

[22] *Imp. Iustinianus A. Iuliano pp.* **pr.** Si mulier perfectae aetatis post intercessionem vel cautionem conscripserit vel pignus aut intercessorem praestiterit, sancimus, antiqua legum varietate cessante, si quidem intra biennale iuge tempus post priorem cautionem numerandum pro eadem causa fecerit cautionem vel pignus aut intercessorem dederit, nihil sibi praeiudicare, quod adhuc ex consequentia suae fragilitatis in secundam iacturam inciderit.

1. Sin autem post biennium haec fecerit, sibi imputet, si, quod saepius cogitare poterat et evitare, non fecit, sed ultro firmavit: videtur etenim ex huiusmodi temporis prolixitate non pro aliena obligatione se illigare, sed pro sua causa aliquid agere et tam ex secunda cautione sese obnoxiam facere, in quantum hoc fecit, quam pignus aut intercessorem utiliter dare.

D. xv k. April. Lampadio et Oreste conss.

[23] *Idem A. Iuliano pp.* **pr.** Antiquae iurisdictionis retia et difficillimos nodos resolventes et supervacuas distinctiones exsulare cupientes sancimus mulierem, si intercesserit, sive ab initio sive postea aliquid accipiens, ut sese interponat, omnimodo teneri et non posse senatus consulti Velleiani uti auxilio, sive sine scriptis sive per scripturam sese interposuerit. **1.** Sed si quidem in ipso instrumento intercessionis dixerit sese aliquid accepisse et sic ad intercessionem venisse et hoc instrumentum publice confectum inveniatur et a tribus testibus consignatum, omnimodo esse credendum eam pecuniam vel res accepisse et non esse ei ad senatus consulti Velleiani auxilium regressum.

1a. Sin autem sine scriptis intercesserit vel instrumento non sic confecto, tunc, si possit stipulator ostendere eam accepisse pecunias vel res et sic subisse obligationem, repelli eam a senatus consulti iuvamine. **1b.** Sin vero hoc minime fuerit ab eo approbatum, tunc mulieri superesse auxilium et antiquam actionem adversus eum servari, pro quo mulier intercessit, vel ei actionem parari.

1c. Sed si minus idoneae mulieri constitutae aliquis pecunias vel res dedit, ut pro eo se obligaret, mulieri quidem, quae re vera haec accepit,

will apply no less to past contracts for transactions and controversies that have not yet been put to rest by settlements or judicial decisions or in another lawful manner.

Given April 1, in the consulship of Anastasius and Agapitus (517).

[22] *Emperor* JUSTINIAN *Augustus to Julian, Praetorian Prefect.* **pr.** If a woman of adult age, after assuming liability, writes a promise or offers a pledge or a surety (*intercessor*), We ordain, since the ancient variety of the laws is obsolete, that, if within a two-year time period after paying the prior promise she makes a promise for the same obligation or gives a pledge or a surety, what up to now has resulted as a consequence of her fragility in a second loss does not cause any prejudice to herself.

1. But if she does this after the two-year period, she should be accountable if she has not done what she could have contemplated quite often and avoided, but of her own accord affirmed it; for after such a long time she seems not to bind herself for another's obligation, but to do some business for her own sake and both to make herself liable on the basis of the second promise, to the extent she has done this, and to give a pledge or surety validly.

Given March 18, in the consulship of Lampadius and Orestes (530).

[23] *The same Augustus to Julian, Praetorian Prefect.* **pr.** To loosen the nets and the most difficult knots of ancient jurisdiction and desiring to drive out antiquated distinctions, We ordain that a woman, if she has assumed liability after receiving some consideration to do so, whether from the outset or later, is held completely responsible and cannot use the protection of the *SC Velleianum*, whether she has interposed herself without written documents or through writing. **1.** But if in the very document concerning her assumption of liability she says that she has received something and in this way came to assuming liability, and this document should be found to have been prepared publicly and to have been signed by three witnesses, it must be completely believed that she received that money or the things and she has no recourse to the protection of the *SC Velleianum*.

1a. If, however, she has assumed liability without writing or in a document not prepared in this way, if the promissee (*stipulator*) should be able to show that she received money or things and thus to have entered into an obligation, she is repelled from the decree of the Senate's benefit. **1b.** If in fact this has not at all been proved by him, then the woman has the protection and the old action is maintained against the person on whose behalf she assumed liability, or an action is prepared for her.

1c. But if someone has given money or things to a woman who is not solvent so that she obligate herself on his behalf, no access to the authority of the

nullus pateat aditus ad senatus consulti auctoritatem, creditori autem liceat adversus eam venire et quod potest ab ea exigere et in reliquum debitorem antiquum adgredi, vel in partem, si aliquid a muliere possit accipere, vel in totum, si ea penitus inopia fatigatur.

2. Ne autem mulieres perperam sese pro aliis interponant, sancimus non aliter eas in tali contractu posse se pro aliis obligare, nisi instrumento publice confecto et a tribus testibus subsignato accipiant homines a muliere pro aliis confessionem: tunc etenim tantummodo eas obligari et sic omnia tractari, quae de intercessionibus feminarum vel veteribus legibus cauta vel ab imperiali auctoritate introducta sunt. 3. Sin autem extra eandem observationem mulieres susceperint intercedentes, pro nihilo habeatur huiusmodi scriptura vel sine scriptis obligatio tamquam nec confecta nec penitus scripta, nec senatus consulti auxilium imploretur, sed sit libera et absoluta, quasi penitus nullo in eadem causa subsecuto.

[24] *Idem A. Iuliano pp.* **pr.** Veterum ambiguitatem decidentes sancimus, si quis, ut servo suo manumissionem imponat, mulierem acceperit obnoxiam sese pro certa quantitate facientem, si in libertatem servum perduxerit, sive principaliter mulier sese obligavit sive pro servo hoc fecit, teneri eam, recte omnimodo senatus consultum Velleianum in hoc casu tacere imperantes. **1.** Satis etenim acerbum est et pietatis rationi contrarium dominum servi, qui credidit mulieri sive soli sive post servi promissionem, et libertatem servo imponere et suum famulum perdere et ea minime accipere, quibus fretus ad huiusmodi venit liberalitatem.

D. k. Aug. Lampadio et Oreste conss.

[25] *Idem A. ad populum urbis Constantinopolitanae et universos provinciales.* **pr.** Generaliter sancimus, ut, si quis maior viginti quinque annis sive masculus sive femina dotem vel pollicitus sit vel spoponderit pro qualibet muliere, cum qua matrimonium licitum est, omnimodo compellatur suam confessionem adimplere. **1.** Neque enim ferendum est quasi casu fortuito interveniente mulierem fieri indotatam et sic a viro forsitan repelli et distrahi matrimonium. cum enim scimus favore

decree of the Senate should be available to a woman who has in truth received these considerations, but the creditor should be allowed to proceed against her and to exact from her what he can and for the rest attack the original debtor, either for a part, if he should be able to receive something from the woman, or for the whole amount, if she is completely worn out by poverty.

2. Lest women improperly interpose themselves for others, We ordain that they cannot otherwise obligate themselves for others in such a contract unless, in a document publicly prepared and signed by three witnesses, people receive an acknowledgment from the woman (of their action) on behalf of others. Only then are they obligated and in this way everything is considered that has been provided for concerning the assumption of liability by women in the old laws or introduced by imperial authority. **3.** If without observing these provisions women undertake obligations by assuming liability, a written document of this type or an obligation without written documents should be considered for naught as if it were not prepared or written at all, nor should the protection of the decree of the Senate be implored, but she should be free and absolved, as if no transaction at all had followed in this cause.

Given (530).[127]

[24] *The same Augustus to Julian, Praetorian Prefect.* **pr.** To resolve the ambiguity of the old authorities, We ordain that, if anyone, to provide for the freeing of a slave, accepts a woman making herself liable for a certain amount of money, if he has given the slave freedom, whether the woman has obligated herself as the principal or has done this on behalf of the slave, she is held liable, and We properly order that the *SC Velleianum* be completely silent in this case. **1.** For it is quite bitter and contrary to the principle of fidelity (*pietas*) that the owner of the slave, who relied on the woman, whether on her alone herself or after the slave gave a promise, give freedom to the slave and lose his servant and not receive those things in consideration of which he has come to such generosity.

Given August 1, in the consulship of Lampadius and Orestes (530).

[25][128] *The same Augustus to the People of the City of Constantinople and all the people of the provinces.* **pr.** We ordain generally that, if someone older than 25 years, whether male or female, has promised or stood as surety to provide a dowry for any woman with whom marriage is permitted, such a person be compelled to fulfill the promise at all events. **1.** For it is not to be tolerated that a woman, as if through an unavoidable accident, should be without a dowry and thus perhaps be repudiated by her husband and the marriage be dissolved. For since We know that out of favor for dowries even the ancient

[127] The date should probably either be March 15, March 27, or August 1, 530 (the date preferred by Lounghis *et al.*).

[128] Apparently to be combined with C. 5.13.1.

dotium et antiquos iuris conditores severitatem legis saepius mollire, merito et nos ad huiusmodi venimus sanctionem. **2.** Nam si spontanea voluntate ab initio liberalitatem suam ostendit, necesse est eum vel eam suis promissionibus satisfacere, ut, quod ab initio sponte scriptum aut in pollicitationem deductum est, hoc et ab invitis postea compleatur, omni auctoritate Velleiani senatus consulti in hac causa cessante.

D. k. Nov. Constantinopoli post consulatum Lampadii et Orestis.

XXX De Non Numerata Pecunia

[1] *Impp. Severus et Antoninus AA. Hilaro.* Si pecuniam tibi non esse numeratam atque ideo frustra cautionem emissam adseris et pignus datum probaturus es, in rem experiri potes: nam intentio dati pignoris neque numeratae pecuniae non aliter tenebit, quam si de fide debiti constiterit. eademque ratione veritas servetur, si te possidente pignus adversarius tuus agere coeperit.

PP. k. Sept. Laterano et Rufino conss.

[2] *Imp. Antoninus A. Maturio.* Minorem pecuniam te accepisse et maioris cautionem interposuisse si apud eum qui super ea re cogniturus est constiterit, nihil ultra quam accepisti cum usuris in stipulatum deductis restituere te iubebit.

D. id. April. Antonino A. IIII et Balbino conss.

[3] *Idem A. Demetriae.* Si ex cautione tua, licet hypotheca data, conveniri coeperis, exceptione opposita seu doli seu non numeratae pecuniae compelletur petitor probare pecuniam tibi esse numeratam: quo non impleto absolutio sequetur.

D. III k. Iul. Laeto et Cereale conss.

[4] *Idem A. Basso.* Cum fidem cautionis agnoscens etiam solutionem portionis debiti vel usurarum feceris, intellegis de non numerata pecunia nimium tarde querellam te deferre.

founders of the law quite often soften its severity, rightly do We also come to an ordinance of this type. **2.** For if someone shows his or her generosity in the first place by a spontaneous expression of will, he or she must satisfy the promise, so that what was at the beginning spontaneously written or formally promised must be fulfilled later even by the unwilling, and no authority of the *SC Velleianumn* will have any application in this case.

Given November 1, at Constantinople, in the post-consulate of Lampadius and Orestes (530).

Thirtieth Title Money Not Paid

[1][129] *Emperors Severus and Antoninus Augusti to Hilarus.* If you assert that money has not been paid to you and for that reason you are going to prove that a promise (to repay it) was invalidly written and a pledge given, you can sue *in rem* (to recover the pledge); for the claim on a pledge given when the money has not been paid does not otherwise hold, unless it is based on the faith of the debt. For the same reason the truth should be maintained if your adversary begins to proceed against the pledge while you possess it.

Posted September 1, in the consulship of Lateranus and Rufinus (197).

[2] *Emperor Antoninus Augustus to Maturius.* If it is established with the person who is going to judge this matter that you received less money and provided a promise for a greater amount, he will order you to restore nothing more than what you received with a deduction for the (excess) interest provided for in the stipulation.

Given April 13 in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[3] *The same Augustus to Demetria.* If you are sued on the basis of your promise, although a hypothec was given (for its execution), when the defense is interposed either of deceit (*dolus*) or of money not paid, the claimant will be compelled to prove that the money was paid to you; if this is not fulfilled, your absolution will follow.

Given June 29, in the consulship of Laetus and Cerealis (215).

[4] *The same Augustus to Bassus.* Since, acknowledging the genuineness of your promise, you have also made a payment of a portion of your debt or the interest, you understand that you are too late in bringing the complaint about money not having been paid.

(No date).

[129] = C. 8.32.1, from which *adseris* is restored. For "when the money has not been paid," that constitution reads "when the money has not been paid back."

[5] *Imp. Alexander A. Augustiano.* Adversus petitiones adversarii si quid iuris habes, uti eo potes. ignorare autem non debes non numeratae pecuniae exceptionem ibi locum habere, ubi quasi credita pecunia petitur, cum autem ex praecedenti causa debiti in chirographum quantitas redigitur, non requiri, an tunc cum cavebatur numerata sit, sed an iusta causa debiti praecesserit.

[6] *Idem A. Iustino.* Frustra opinaris exceptione non numeratae pecuniae te esse munitum, quando, ut fateris, in eius vicem qui erat obligatus substitueris te debitorem.
PP.

[7] *Idem A. Iuliano et Ammoniano.* Si quasi accepturi mutuam pecuniam adversario cavistis, quae numerata non est, per condictionem obligationem repetere, etsi actor non petat, vel exceptione non numeratae pecuniae adversus agentem uti potestis.
PP. non. Nov. Maximo II et Aeliano conss.

[8] *Idem A. Materno.* **pr.** Si intra legibus definitum tempus qui cautionem exposuit nulla querimonia usus defunctus est, residuum tempus eius heres habebit tam adversus creditorem quam adversus heredes eius. **1.** Sin autem questus est, exceptio non numeratae pecuniae heredi et adversus heredes perpetuo competit. **2.** Sin vero legitimum tempus excessit in querimoniam creditore minime deducto, omnimodo heres eius, et si pupillus sit, debitum solvere compelletur.
PP. XII k. April. Modesto et Probo conss.

[9] *Impp. Diocletianus et Maximianus AA. et CC. Zoilo.* Cum ultra hoc quod accepit re obligari neminem posse constet et stipulatione interposita placita creditor non dederit, in factum dandam exceptionem convenit: si necdum tempus, intra quod huius rei querella deferri debet,

[5] *Emperor* ALEXANDER *Augustus to Augustianus*. If you have any basis in law against the claims of your adversary, you can use it. However, you should not ignore that the defense of money not paid is applicable when money is claimed as if for a loan; but when the amount is entered onto a promissory note (*chirographum*) from a preceding cause of a debt, it is not asked whether it was paid at the time when it was being promised, but (rather) whether a proper cause for the debt had preceded.

[6] *The same Augustus to Justinus*. Your opinion is invalid that you are protected by the defense of money not paid when, as you say, you have substituted yourself as debtor in place of the person who had been obligated.

Posted (no date).

[7] *The same Augustus to Julian and Ammonianus*. If, as if you were going to accept a loan of money, which has not been paid, you have made a formal promise to your adversary, you can seek back (the document proving) your obligation through a claim for restitution (*condictio*) even if the claimant (*actor*) should not sue for it (the debt), or you can use the defense of money not paid if he brings a suit.

Posted November 5, in the consulship of Maximus, for the second time, and Aelianus (223).

[8] *The same Augustus to Maternus*. **pr.** If within the time established by the laws the person who has set out a written promise has died without having raised a complaint, his heir will have the remaining time both against the creditor and against his heir. **1.** If, however, he has raised a complaint, the defense of money not paid is available to the heir (of the debtor) even against the heirs (of the creditor) perpetually. **2.** But if indeed the legally established time has passed without any complaint made against the creditor, his (the original debtor's) heir will by all means be compelled to pay the debt, even if he is a ward.

Posted March 21, in the consulship of Modestus and Probus (228).

[9][130] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augsuti and the Caesars to Zoilus*. Since it is established that no one can be obligated beyond what he has in fact received and, after a stipulation has been interposed, the creditor has not given what was agreed upon, it is proper to give an analogous (*in factum*) defense. If the time has not yet passed within which a complaint on this matter should be brought or within this time the law has (not yet) been

[130] A scholion on Basilica 23.1.71 indicates that the beginning of the constitution originally discussed the situation in which the debtor provided a *cautio* for the principal and interest as if the whole sum were principal; the compilers have omitted this on account of Justinian, C. 4.32.28.

transiit vel intra hoc in testando iuri paritum sit, nihil ultra hoc quod accepisti sortis a te nomine praeses provinciae exigi patietur.

D. III id. Dec. ipsis ... conss.

[10] *Idem AA. et CC. Mucazano.* Adseveratio debitum solutum contendentis temporis diuturnitate non excluditur. nec huic obloquitur, quod exceptio non numeratae pecuniae certa die non delata querella prius evanescat, cum inter eum, qui factum adseverans onus subiit probationis, et negantem numerationem, cuius naturali ratione probatio nulla est, et ob hoc ad petitorem eius rei necessitatem transferentem magna sit differentia.

[11] *Idem AA. et CC. Eutychiano.* Si transactionis causa dare Palladio pecuniam stipulanti spopondisti, exceptione non numeratae pecuniae defendi non potes.

D. IIII id. April.

[12] *Idem AA. et CC. Severiano.* Tam mandatori quam fideiussori non numeratae pecuniae exceptio exemplo rei principalis competit.

[13] *Imp. Iustinus A. Theodoto pu.* Generaliter sancimus, ut, si quid scriptis cautum fuerit pro quibuscumque pecuniis ex antecedente causa descendentibus eamque causam specialiter promissor edixerit, non iam ei licentia sit causae probationes stipulatorem exigere, cum suis adquiescere deceat, nisi certe ipse e contrario per apertissima rerum argumenta scriptis inserta religionem iudicis possit instruere, quod in alium quemquam modum et non in eum quem cautio perhibet negotium subsecutum sit. nimis enim indignum esse iudicamus, ut, quod sua quisque voce dilucide protestatus est, id in eundem casum infirmare testimonioque proprio resistere.

[14] *Imp. Iustinianus A. Menae pp.* **pr.** In contractibus, in quibus pecuniae vel aliae res numeratae vel datae esse conscribuntur, non intra

satisfied by a formal announcement (*in testando*), the provincial governor will not allow anything beyond that which you have received to be demanded from you as principal.

Given December 13, in the consulship (of the Augusti) themselves (293).[131]

[10] *The same Augusti and Caesars to Mucazanus.* The claim of one contending that a debt has been paid is not excluded by the length of time. Nor is he criticized because the defense of money not paid, when it has not been lodged on a certain day, becomes void beforehand, since there is a big difference between the one who by alleging a fact undergoes the burden of proof, and the one who denies payment, for which by natural reason there is no proof, and on account of this transfers the necessity of this matter to the claimant.

[11] *The same Augusti and Caesars to Eutychianus.* If by way of a settlement you have stipulated to give money to Palladius, you cannot be protected by the defense of money not paid.

Given April 10 (no year; 294?).

[12] *The same Augusti to Severianus.* The defense of money not paid is available both to a mandator as well as to a surety on the example of the principal defendant.

[13] Emperor *Justin Augustus to Theodotus,*[132] *City Prefect.* We ordain generally that, if any promise to pay has been given in writing for sums of money in whatever amount deriving from an antecedent consideration and the promisor has specifically mentioned this consideration, he should not have permission to demand from the promisee of the stipulation proof for the consideration, since it is appropriate for him to abide by his own proofs, unless he himself on the contrary should be able to satisfy the conscience of a judge, through the plainest proofs of matters made in writing, that the business has transpired in some other manner and not in that to which the written promise pertains. For We judge that it is too unworthy that what each person has affirmed very clearly in his own voice should for the same case weaken his argument and rebut his own testimony.

[14][133] *Emperor Justinian Augustus to Menas, Praetorian Prefect.* **pr.** For contracts in which it is recorded in writing that sums of money or other things have been paid or given, the person who has been recorded as having received

[131] The subscription applies either to this chapter or to the following one. *Augustis* is restored.

[132] See C. 2.7.26, dated to 524, which refers to a City Prefect named Theodorus. Lounghis *et al.* date this constitution between 522 and 526.

[133] Combine with C. 4.2.17, 4.20.18, 4.21.17, 5.15.3.

quinquennium, quod antea constitutum erat, non numeratae pecuniae exceptionem obicere possit, qui accepisse pecunias vel alias res scriptus sit, vel successor eius, sed intra solum biennium continuum, ut eo lapso nullo modo querella non numeratae pecuniae introduci possit: his scilicet, qui propter aliquas causas specialiter legibus expressas etiam lapso quinquennio in praeteritis temporibus adiuvabantur, etiam in posterum, licet biennium pro quinquennio statutum est, eodem auxilio potituris.

1. Sed quoniam securitatibus et instrumentis depositarum rerum vel pecuniarum talem exceptionem opponere litigatores conantur, iustum esse prospicimus huiusmodi potestatem in certis quidem casibus prorsus amputare, in aliis vero brevi tempore concludere. ideoque sancimus instrumento quidem depositionis certarum rerum vel certae pecuniae securitatibusque publicarum functionum, sive in solidum sive ex parte solutae esse conscribantur, illis etiam securitatibus, quae post confectionem dotalium instrumentorum de soluta dote ex parte vel in solidum exponuntur, nullam exceptionem non numeratae pecuniae penitus opponi.

2. Super ceteris vero securitatibus, quae super privatis debitis a creditore conscribuntur partem debiti sortis vel usurarum nomine solutam esse significantes, vel adhuc feneraticia cautione apud creditorem manente, solidi tamen debiti solutionem factam esse demonstrantes, vel etiam futuram esse redhibitionem instrumenti feneraticii promittentes, vel si qua alterius cuiuscumque contractus gratia, in qua numeratio pecuniarum vel datio certarum specierum scripta est, securitas similiter data sit depensas esse pecunias vel alias res vel partem earum significans, intra triginta tantummodo dies post huiusmodi securitatis expositionem connumerandos exceptionem non numeratae pecuniae posse obici, ut, si hi transacti fuerint, eadem securitas ab iudicantibus omnibus modis admittatur, nec liceat ei qui securitatem exposuit post excessum memoratorum dierum non esse sibi solutas vel pecunias vel alias res dicere. 3. Illo videlicet observando, ut, in quibus non permittitur exceptionem non numeratae pecuniae opponere vel ab initio vel post taxatum tempus elapsum, in his nec iusiurandum offerri liceat.

4. In omni vero tempore, quod memoratae exceptioni taxatum est, licebit ei, cui talis exceptio competit, vel denuntiationibus scripto missis querellam non numeratae pecuniae manifestare ei, qui numerasse eam vel alias res dedisse instrumento scriptus est, vel, si abesse eum his locis in quibus contractus factus est contigerit, in hac quidem alma

the sums of money or other things, or his successor, should not be able to oppose the defense of money not paid within the five-year period that had been established previously, but only within an uninterrupted two-year period, so that, when that has lapsed, it might not be possible in any way to introduce the complaint about money not paid (*pecunia non numerata*); provided that these persons who on account of any causes specifically expressed in the laws were in past times helped even after the lapse of the five-year period, will also gain the same aid in the future, although a two-year period has been set instead of a five-year period.

1.[134] But because litigants try to oppose such a defense to receipts and documents for things or sums of money held on deposit, We see that it is just to cut off this type of power entirely in certain cases, and in some others to confine it to a short time. We therefore ordain that absolutely no defense of money not paid be opposed to a document recording the deposit of specified things or a specified sum of money and to receipts for public charges (*publicae functiones*), whether they are recorded as paid for the whole amount or in part, nor also to those receipts, which are produced after the execution of dowry documents for the payment of the dowry for the whole amount or in part.

2. But as to the remaining receipts, which are written by the creditor for private debts indicating that part of the debt, either as principal or interest, has been paid, or, when a written promise for the loan still remains with the creditor, demonstrating that a payment for the entire debt has been made, or promising that there will be a return of the loan document, or if for any other type of contract, in which the payment of sums of money or the giving of specified things has been written, a receipt has similarly been given indicating that sums of money or other things or part of them have been paid back, the defense of money not paid can only be opposed within thirty days to be counted after the issuing of a receipt of this type, so that, if the number of days has been completed, the same receipt be admitted in every way by those judging, nor should the person who issued the receipt be allowed after the expiration of the days mentioned to say that the sums of money or other things have not been paid to him. 3. That is, it should be observed that, in cases in which it is not permitted to oppose the defense of money not paid either from the outset or after the lapse of the established time, it not be permitted for a (decisory) oath to be tendered.

4. But during the whole time that has been established for the aforementioned defense, the person to whom such a defense is available will be permitted either to make known by written notice his complaint of money not paid to the person who is recorded in the document as having paid it or having given other things, or, if it happens that he is absent from the place in which the contract was made, he can make known the same complaint and in that way make

[134] = C. 10.22.5 (partial summary).

urbe apud quemlibet ordinarium iudicem, in provinciis vero apud viros clarissimos rectores earum vel defensores locorum eandem querellam manifestare eoque modo perpetuam sibi exceptionem efficere. 5. Sed si praesens quidem sit, qui pecunias numerasse vel alias res dedisse scriptus est, aliquam vero administrationem vel in hac alma urbe vel in provinciis gerat, ut difficile esse videatur denuntiationem ei mittere, licentiam damus ei, qui memorata exceptione uti velit, alios iudices adire vel in hac alma urbe vel in provinciis et per eos ei manifestare, cui exceptionem huiusmodi obicit, factam a se super non numerata pecunia querellam esse. **6.** Quod si in provinciis vel non sit alius administrator civilis vel militaris, vel per aliquam causam difficile sit ei qui memoratam querellam opponit adire eum et ea quae dicta sunt facere, licentiam ei damus per virum reverentissimum episcopum eandem suam exceptionem creditori manifestare et ita tempus statutum interrumpere. quae etiam in exceptione non numeratae dotis locum habere certum est.

D. k. Iul. Constantinopoli ipso A. II cons.

[15] *Idem A. Menae pp.* Si cui non numeratae pecuniae competere possit exceptio, etiam eo supersedente tali auxilio uti, vel praesente vel absente, creditores eius possint (sive ipsi conveniantur utpote res eius detinentes, ab his qui debita eius exigunt, cui competit huiusmodi exceptio vel dotis vel alterius causae nomine, sive contra alios possidentes aliquam actionem ipsi moveant) possint in examinando negotio suis adversariis eandem non numeratae pecuniae exceptionem opponere nec eo prohibeantur, quod principalis debitor ea numquam usus est: ita tamen, ut neque principali debitori neque fideiussori eius aliquid praeiudicium generetur, si is qui eam exceptionem opposuit victus fuit, sed possint illi postea, si conveniantur, intra statuta scilicet tempora eadem se exceptione tueri.

[16] *Idem A. Iohanni pp.* Indubitati iuris est non numeratae pecuniae exceptionem locum habere et in talibus nominibus vel feneraticiis vel aliis cautionibus, quae etiam sacramenti habent mentionem. quae enim

the defense perpetual for himself, in this Fair City (Constantinople) before any ordinary judge, and in the provinces before their *viri clarissimi* governors or the defenders (*defensores*) of the place. **5.**[135] But if someone who is recorded to have paid money or delivered other things is present but holds some administrative post either in this Fair City or in the provinces, so that it seems difficult to serve him with notice, We grant him who wishes to make use of this defense permission to go before other judges either in this Fair City or in the provinces and, through them, to make known to the person against whom he uses this defense that he has made a complaint of money not paid. **6.** But if in the provinces there is no other civil or military administrator, or it is for some other reason difficult for him who objects with the aforementioned complaint to go before him and do what has been said, We give him permission to make known his defense to his creditor also through the most reverend bishop and thus interrupt the established period of time. It is accepted that this also applies to the defense of a dowry not paid (*exceptio non numeratae dotis*).[136]

Given July 1,[137] *in the consulship of the Augustus himself, for the second time (530).*

[15] *The same Augustus to Menas, Praetorian Prefect.* If someone might have available the defense of money not paid but omits to use such an aid, whether he is present or absent, his creditors should be able – whether they themselves should be sued, for instance when they are holding his property, by those who are exacting the debts of a person to whom the defense of this type is available either for a dowry or for some other reason, or whether they themselves should bring some action against others who possess his property – they should be able,[138] in the trial of the matter, to oppose the same defense of money not paid to their opponents and not be prohibited for the reason that the principal debtor has never used it; provided, however, that no prejudice be engendered for the principal debtor or for his surety, if the person who has opposed this defense was defeated, but afterwards they should, if they should be sued, be able to protect themselves with the same defense, of course within the established time.

(528–529).[139]

[16] *The same Augustus to John, Praetorian Prefect.* It is undoubted law that the defense of money not paid has a place also in such claims either for loans

[135] Sections 5–6 are repeated almost verbatim in C. 1.4.21.
[136] For the unpaid dowry see C. 5.15.3, and Nov. 100 (Blume).
[137] More probably June 1, the same date as C. 5.15.3 and 10.22.5; so also Lounghis *et al.*
[138] For the repeated *possint*; possibly *pro se in*, "they should be able to oppose the same defense on their own behalf ..."
[139] For the date, see the previous chapter.

differentia est in huiusmodi exceptione, sive iusiurandum positum est sive non, tam in feneraticiis cautionibus quam in aliis instrumentis, quae talem exceptionem recipiunt?

XXXI De Compensationibus

[1] *Imp. Antoninus A. Dianensi.* Et senatus censuit et saepe rescriptum est compensationi in causa fiscali ita demum locum esse, si eadem statio quid debeat quae petit. hoc iuris propter confusionem diversorum officiorum tenaciter servandum est. si quid autem tibi ex ea statione cuius mentionem fecisti deberi constiterit, quam primum recipies.

[2] *Idem A. Claudio et Asclepiadi.* Ex causa quidem iudicati solutum repeti non potest, eapropter nec compensatio eius admitti potest. eum vero, qui iudicati convenitur, compensationem pecuniae sibi debitae implorare posse nemini dubium est.

[3] *Imp. Alexander A. Aetrio Capitoni.* In ea, quae rei publicae te debere fateris, compensari ea, quae ab eadem tibi debentur, is cuius de ea re notio est iubebit, si neque ex kalendario neque ex vectigalibus neque ex frumenti vel olei publici pecunia neque tributorum neque alimentorum neque eius, quae statutis sumptibus servit, neque fideicommissi civitatis debitor sis.

PP. k. Oct. Maximo II *et Aeliano conss.*

[4] *Idem A. Flavio et Luciano.* Si constat pecuniam invicem deberi, ipso iure pro soluto compensationem haberi oportet ex eo tempore, ex quo ab utraque parte debetur, utique quoad concurrent quantitates, eiusque solius, quod amplius apud alterum est, usurae debentur, si modo petitio earum subsistit.

or for other promises that also contain the mention of an oath. For what is the difference, in a defense of this type, whether an oath has been included or not, both in promises to pay loans and in other documents that admit such a defense?

(531–532).

Thirty-First Title Offsets[140]

[1] *Emperor* ANTONINUS *Augustus to Dianensis.* The Senate has decreed and rescripts have often been issued that in a fiscal case there is a place for an offset (*compensatio*) in this circumstance: if the same governmental office (*statio*) that is making a claim should owe something (to the defendant). This point of law is to be tenaciously maintained on account of the confusion (*confusio*) of diverse offices. If, however, it is established that something is owed you by the office that you have mentioned, you will regain it as soon as possible.[141]

[2] *The same Augustus to Claudius and Asclepiades.*[142] A payment made on the basis of a judgment cannot be reclaimed, and for that reason an offset for it cannot be admitted. But is it not doubtful to anyone that a person who is sued for a judgment can ask for an offset for the money he is owed.

[3] *Emperor* ALEXANDER *Augustus to Aetrius Capito.* The person who is competent to examine this matter will order that what is owed to you by the municipality (*res publica*) will be set off against what you admit you owe it, provided you are not a debtor of the city on the basis of its debt-book (*kalendarium*), or impost duties (*vectigalia*), or on the basis of money for public grain or oil or for land taxes or alimentary foundations or for a purpose that serves public expenses, or for a trust (*fideicommissum*).

Posted October 1, in the consulship of Maximus, for the second time, and Aelianus (223).

[4] *The same Augustus to Flavius and Lucianus.*[143] If it is established that money is owed reciprocally, then by virtue of the law itself offsets must be considered for what has been paid from the time when there is a debt from either party, and accordingly, to the extent that there is a concurrence of amounts owed, interest is owed only for that amount which is greater for one of the two parties, as long as a claim for it subsists.

140 *Compensatio*, offset, is a judicial device allowing a plaintiff's claim to be reduced by the amount that the plaintiff owes the defendant. See D. 16.2. Offset is encouraged in late Roman law.

141 That is, offset is possible only when the same office is involved.

142 Possibly "Claudius Asclepiades."

143 Possibly "Flavius Lucianus."

D. XVII k. Oct. Alexandro A. III et Dione conss.

[5] *Idem A. Honoratae.* Etiam si fideicommissum tibi ex eius bonis deberi constat, cui debuisse te minorem quantitatem dicis, aequitas compensationis usurarum excludit computationem, petitio autem eius, quod amplius tibi deberi probaveris, sola relinquitur.

PP.

[6] *Idem A. Polydeucae.* Neque scriptura, qua cautum est accepta quae negas tradita, obligare te contra fidem veritatis potuit et compensationis aequitatem iure postulas. non enim prius exsolvi, quod debere te constiterit, aequum est, quam petitioni mutuae responsum fuerit, eo magis, quod ea te persequi dicis, quae a muliere divortii causa amota quereris.

PP. XVI k. Dec. Alexandro A. III et Dione conss.

[7] *Idem A. Flavio Ausonio.* Si ex venditione pretium venditori debetur, compensationis ratio opponitur. adversus fiscum enim solum emptores petitioni pretii compensationem obicere prohibentur.

[8] *Imp. Gordianus A. Aurelio Emerito militi.* Si propter fructus ex possessione tua perceptos vitricus tuus debitor tibi constitutus est, cum id, quod a matre tua legatum est, a te petere coeperit, mutuo debitae quantitatis apud eum qui super ea re iudicaturus est compensationem non immerito obicies.

[9] *Idem A. Liciniae Euctemonidi.* Eius, quod non ei debetur qui convenitur, sed alii, compensatio fieri non potest.

PP. id. Ian.

[10] *Impp. Diocletianus et Maximianus AA. et CC. Iulio Nicandro.* Quoniam liberum fundum distractum proponis, post vero, veluti praecedente emptionem obligatione, certum quid solvisse, si debitum a te apud praesidem provinciae petatur, compensationem eius quod indebite solvisti potes opponere.

Given September 15, in the consulship of Alexander Augustus, for the third time, and Dio (229).

[5] *The same Augustus to Honorata.* Even if it is established that a trust (*fideicommissum*) is owed to you from the property of a person to whom you say you owe a smaller amount, the fairness of the offset excludes a computation of interest, but only a claim is left for the excess that you have proved is owed you.

Posted (229).

[6][144] *The same Augustus to Polydeuces.* A written document, in which it has been provided that what you deny to have been delivered has been received, could not obligate you contrary to the credibility of the truth, and you rightly demand the just solution of an offset (against your ex-wife). For it is not fair that you pay what it is established that you owe before your counterclaim has been satisfied, all the more so since you state that you are suing for that property which you complain has been removed by your wife on account of a divorce.

Posted November 16, in the consulship of Alexander Augustus, for the third time, and Dio (229).

[7] *The same Augustus to Flavius Ausonius.* If the price from a sale is owed to the seller, the principle of an offset is interposed (so as to lower the claim). Against the Treasury alone are the buyers prohibited from interposing an offset to a claim for the price.

[8] *Emperor Gordian to Aurelius Emeritus, a soldier.* If, on account of the fruits acquired (*fructus perceptos*) from your property, your stepfather has been established as your debtor, since he has begun to claim what has been bequeathed in a legacy (to him) by your mother, you will properly interpose, with the person who is going to judge on this matter, an offset for the reciprocal owed amount.[145]

[9] *The same Augustus to Licinia Euctemonis.* There cannot be an offset for what is owed not to the person who is sued, but to another.

Posted January 15.

[10] *Emperors Diocletian and Maximian Augusti and the Caesars to Julius Nicander.* Since you allege that you have been sold a farm free from encumbrance, but afterward you paid (to a third party) some fixed amount, e.g., on an obligation preceding the purchase, if the debt should be claimed from you before the provincial governor, you can oppose an offset for what you have paid without owing it.

[144] = C. 5.21.1 pr.

[145] Blume: "In this case the stepson was the heir of the mother. The latter had left a legacy to the stepfather, and it was the duty of the heir to pay legacies."

[11] *Idem AA. et CC. Claudio Iulio et Paulo.* Si tutores pupillis officio magistratus urguente nominastis ac pro his propter onus primipili pecuniam solvistis, superstitiosam geritis sollicitudinem, ne ab ipsis conventi hanc eis imputare minime possitis vel a vobis quicquam amplius exigatur, si tantum, quantum eis tutores debuerunt, vel vos nomine ipsorum maiorem quantitatem dedisse probetur.

[12] *Idem AA. et CC. Lucio Corneliano.* Invicem debiti compensatione habita, si quid amplius debeas, solvens vel accipere creditore nolente offerens et consignatum deponens de pignoribus agere potes.

PP. XVII k. Ian. Nicomediae CC. conss.

[13] *Idem AA. et CC. Aurelio Basso.* Si velut in id debitum, quod sollemnium publicarum pensitationum debueras nomine, compensaturo tibi nihil petiturum postea Muciano scripsisti, redditis quae venerant in compensationem non indebiti soluti repetitio, sed ante debiti competit exactio.

[14] *Imp. Iustinianus A. Iohanni pp.* **pr.** Compensationes ex omnibus actionibus ipso iure fieri sancimus nulla differentia in rem vel personalibus actionibus inter se observanda.

1. Ita tamen compensationes obici iubemus, si causa ex qua compensatur liquida sit et non multis ambagibus innodata, sed possit iudici facilem exitum sui praestare. satis enim miserabile est post multa forte variaque certamina, cum res iam fuerit approbata, tunc ex altera parte, quae iam paene convicta est, opponi compensationem iam certo et indubitato debito et moratoriis ambagibus spem condemnationis excludi. hoc itaque iudices observent et non procliviores in admittendas compensationes existant nec molli animo eas suscipiant, sed iure stricto utentes, si invenerint eas maiorem et ampliorem exposcere indaginem, eas quidem alii iudicio reservent, litem autem pristinam iam paene expeditam sententia terminali componant: excepta actione depositi

[11] *The same Augusti and Caesars to Claudius Julius and Paulus.*[146] If, at the urging of your duty as magistrates, you have nominated the *tutores* for wards and have paid money for them on account of the expense of being a first centurion, you are engaging in superstitious worry that if sued by them (the wards) you might not be able to charge this expense to them, or that anything more might be exacted from you if it should be proved that you have given as much as or a greater amount in their (sc. the wards') name than the *tutores* owed them.[147]

[12] *The same Augusti and Caesars to Lucius Cornelianus.* After offsetting reciprocal debts, if you should owe something more, you can sue for the pledges (on the debt you owe) either by paying (the excess) or by tendering payment when the creditor is unwilling to accept payment and making a signed deposition.

Posted December 16, at Nicomedia, in the consulship of the Caesars (294).

[13] *The same Augusti and Caesars to Aurelius Bassus.* If you have written to Mucianus that you were not going to make any claim afterwards when he was going to pay an offset to you as if for that debt which you had owed for customary public taxes, when you have paid what had come into the offset, a claim for what was paid but not owed is not available, but (rather) an exaction for what had been owed before.

[14] *Emperor* Justinian *Augustus to John, Praetorian Prefect.* pr. We ordain that offsets arise from all actions by virtue of the law itself, with no difference to be observed for actions *in rem* or *in personam.*

1. We order that offsets be interposed only if the case on whose basis an offset is made should be clear-cut and not knotted with many doubts, but can offer the judge a ready outcome for it. For it is deplorable enough after perhaps many and various contests, when the matter has already been proved, that then an offset be interposed by the other party, who has now almost been convicted, to an already certain and undoubted debt, and that the hope of condemnation be excluded by delaying traps. Therefore the judges should observe this and not be too ready to admit offsets nor take them up with a compliant mind, but relying on the strict law, if they find that claims for offsets require a greater and fuller investigation, they should reserve them for

[146] Possibly "Claudiis," the Claudii.

[147] Blume: "Municipal magistrates were responsible if they did not take sufficient sureties from guardians. C. 5.75 … In this case, the guardian was evidently not able to pay, and the magistrate who nominated him or took a bond from him was threatened to be sued. But he had a set-off. The father of the minors had been primipilus or primipilar, having charge of the food supply to soldiers … As such he owed the fisc. The magistrates above mentioned had paid this amount for him, and [they], accordingly, had a claim against him and his heirs – the minors. This claim was a set-off to the claim of the minors against him."

secundum nostram sanctionem, in qua nec compensationi locum esse disposuimus. 2. Possessionem autem alienam perperam occupantibus compensatio non datur.

D. k. Nov. Constantinopoli post cons. Lampadii et Orestis vv. cc.

XXXII De Usuris

[1] *Imp. Pius A. Aurelio evocato.* Si interrogatione praecedente promissio usurarum recte facta probetur, licet instrumento conscripta non sit, tamen iure optimo debentur.

Sine die et consulibus.

[2] *Impp. Severus et Antoninus AA. Lucio.* Usuras emptor, cui possessio rei tradita est, si pretium venditori non obtulerit, quamvis pecuniam obsignatam in depositi causa habuerit, aequitatis ratione praestare cogitur.

[3] *Idem AA. Iuliano Serpio.* Quamvis usurae fenebris pecuniae citra vinculum stipulationis peti non possunt, tamen ex pacti conventione solutae neque ut indebitae repetuntur neque in sortem accepto ferendae sunt.

PP. v k. Oct. Severo A. II et Victorino conss.

[4] *Idem AA. Aproniae Honoratae.* **pr.** Per retentionem pignoris usuras servari posse, de quibus praestandis convenit, licet stipulatio interposita non sit, merito constitutum est et rationem habet, cum pignora condicione pacti etiam usuris obstricta sint. 1. Sed enim in causa de qua agis haec ratio cessat, si quidem tempore contractus de minoribus usuris petendis convenit, postea autem, cum se debitor praestaturum maiores repromisit, non potest videri rata retentio pignoris, quando eo tempore, quo instrumenta emittebantur, non convenerit, ut pignus etiam ad hanc adiectionem teneatur.

another court but settle the original and almost completed suit with a final verdict, except in an action on deposit in accordance with Our ordinance, for which We have disposed that there is no place for an offset. **2.** An offset, however, is not given to those seizing another person's property unlawfully.

Given November 1, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

Thirty-Second Title Interest on Debts[148]

[1] *Emperor* PIUS *Augustus to Aurelius, a reserve soldier (evocatus).* If, with the question preceding (in a stipulation), a promise of interest should be proved to have been made correctly, although it has not been written down in a document, nevertheless it is owed free from any legal restriction (*optimo iure*).

Without a day and consuls.

[2] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Lucius.* A buyer, to whom possession of the thing has been delivered, if he has not offered the price to the seller, is compelled by reason of fairness to pay interest even if he has the (purchase) money sealed on deposit.

[3] *The same Augusti to Julian Serpius.* Although interest for money loaned cannot be claimed without the bond of a stipulation, nevertheless if it has been paid in accordance with an agreement of a pact it is not reclaimed as not owed, nor is it to be credited against the principal in an oral dissolution of the stipulation (*acceptum*).

Posted September 27, in the consulship of Severus Augustus, for the second time, and Victorinus (200).[149]

[4] *The same Augusti to Apronia Honorata.* **pr.** It has rightly been established through an imperial constitution that by retaining a pledge the right to interest, for whose payment there is an agreement, can be asserted even though a stipulation has not been interposed; and with reason, since pledges are also subject to interest under the condition of a pact. **1.** But in the case about which you are pleading this principle fails, if indeed at the time of the contract there was an agreement about claiming lower interest, but afterwards, when the debtor promised that he would pay higher interest, retention of the pledge cannot be seen as effective since at that time, when the documents were communicated, there was no agreement that the pledge be bound for such an addition.

[148] See D. 22.2.

[149] The consuls are restored from P; but the year should probably be restored as 202 (*Severo III et Antonino AA. conss.*), cf. Ulpian, D. 46.3.5.2 (probably citing the constitution as issued by Severus and Caracalla).

[5] *Idem AA. Ultumio Sabino et aliis.* Adversus creditorem usuras maiores ex stipulatu petentem, si probetur per certos annos minores postea consecutus, utilis est pacti exceptio. secundum quod tueri causam potestis etiam adversus defensores civitatis maiores petentes ex cautione, si probaveritis semper quincunces amitam pupillorum vestrorum, quae maiores caverat, rependisse.

D. non. Iul. Geta cons.

[6] *Imp. Antoninus A. Antigono militi.* Si creditrici, quae ex causa pignoris obligatam sibi rem tenet, pecuniam debitam cum usuris testibus praesentibus obtulisti eaque non accipiente obsignatam eam deposuisti, usuras ex eo tempore quo obtulisti praestare non cogeris. absente vero creditrice praesidem super hoc interpellare debueras.

PP. III id. Febr. duobus Aspris conss.

[7] *Idem A. Domitio Aristaeo.* Creditor instrumentis suis probare debet quae intendit et usuras se stipulatum, si potest. nec enim, si aliquando ex consensu praestitae sunt, obligationem constituunt.

PP. IIII non. Oct. Romae Laeto et Cereale conss.

[8] *Idem A. Claudio Doryphoro.* Quamvis Bassa, cum pecuniam mutuam acciperet, minores usuras Menophano spoponderit et, nisi intra certum tempus eas solvisset, ampliores (licitas tamen) promiserit, si post tempus cautioni praefinitum creditor easdem accepit nec maiores dari sibi postulavit ac per hoc non recessisse a minorum praestatione eum probari potest, eas usuras computari oportet, quarum in exactione creditor perseveravit.

[9] *Idem A. Canio Probo.* Si per te non stetit, quominus intra tempora praefinita pecuniam minorum usurarum solveres, sed per tutores filiorum creditoris, qui eam accipere noluerunt, idque apud iudicem datum probaveris, eius temporis, quo per te non stetisse apparuerit, usurae

[5] *The same Augusti to Ultumius Sabinus and others.* Against a creditor seeking higher interest on the basis of a stipulation, if he should be afterwards proved to have received a lower rate for a certain number of years, the defense of a pact is applicable. In accordance with this, you can protect your case even against the defenders of the city (*defensores civitatis*) who are seeking greater interest on the basis of a promise, if you prove that the aunt of your wards, who promised higher rates, always paid 5 percent.[150]

Given July 7, in the consulship of Geta (205).

[6] *Emperor* ANTONINUS *Augustus to Antigonus, a soldier.* If you have offered to the creditor, who on the basis of a pledge holds the property obligated to herself, the money owed with interest in the presence of witnesses and, when she did not accept this, you deposited the money under seal, you will not be compelled to pay interest from the time that you offered payment. If the creditor was absent you should have pressed the governor on this matter.

Posted February 11, in the consulship of the two Aspri (212).

[7] *The same Augustus to Domitius Aristaeus.* If he can, the creditor should prove with his own documents what he claims and that he has taken a stipulation for interest. For if at any time interest has been paid on the basis of consent, this does not (in itself) create an obligation.

Posted October 4, at Rome, in the consulship of Laetus and Cerealis (215).[151]

[8] *The same Augustus to Claudius Doryphorus.* Although Bassa, when she received money on loan, promised lower interest to Menophanus,[152] and, if she did not pay this within a certain time, she promised by stipulation to pay a higher rate but one that is (legally) permitted, if after the deadline established for the promise the creditor accepted the same interest rate and did not demand that a higher rate be given to him, and it can be proved that through this he did not retreat from the payment of the lower rate, the interest must be calculated (at the rate) in the exaction of which the creditor has persevered.

[9] *The same Augustus to Canius Probus.* If it was not because of you that within the time period established you did not pay the money at a lower interest rate, but (rather) because of the *tutores* of the creditor's children, who were unwilling to accept it, and you have proved this before the appointed judge, the higher interest will not be exacted for the time during which it appeared

[150] If a man agreed to pay a greater interest, but he afterwards paid a lesser rate and this was accepted, there was an implied pact that only the latter should be paid, and such a pact was binding.

[151] This subscription could apply to 10 below.

[152] Menophantus?

maiores non exigentur. quod si etiam sortem deposuisti, exinde ex quo id factum apparuerit, in usuras non convenieris.

[10] *Idem A. Crato et Donato militi.* Usurae per tempora solutae non proficiunt ad dupli computationem. tunc enim ultra sortis summam usurae non exiguntur, quotiens tempore solutionis summa usurarum excedit eam computationem.

[11] *Imp. Alexander A. Aurelio Tyranno.* Frumenti vel hordei mutuo dati accessio etiam ex nudo pacto praestanda est.
PP. k. Mai. Maximo II et Aeliano conss.

[12] *Idem A. Popilio.* Ex praedio pignori obligato creditor post oblatam iure sibi pecuniam, quam non suscepit, si fructum accepit, exonerari sortis debitum certum est.

[13] *Idem A. Eustathiae et aliis.* In bonae fidei iudiciis, quale est etiam negotiorum gestorum, usurarum rationem haberi certum est. sed si finitum est iudicium sententia, quamvis minoris condemnatio facta est non adiectis usuris, nec provocatio secuta est, finita retractanda non sunt: nec eius temporis, quod post rem iudicatam fluxit, usurae ullo iure postulantur nisi ex causa iudicati.

[14] *Idem A. Aurelio Arasiani.* Si ea pactione uxor tua mutuam pecuniam dedit, ut vice usurarum inhabitaret, pactoque ita ut convenit usa est, non etiam locando domum pensionem redegit, referri quaestionem, quasi plus domus redigeret, si locaretur, quam usurarum legitimarum ratio colligit, minime oportet. licet enim uberiore sorte potuerit contrahi locatio, non ideo tamen illicitum fenus esse contractum, sed vilius conducta habitatio videtur.
D. XI k. Mai. Maximo et Urbano conss.

that it was not because of you (sc. that the interest was not paid). But if you have also deposited the principal, you will not be sued for interest from the time that it appears that this was done.

[10] *The same Augustus to Cratus and Donatus, a soldier.*[153] Interest paid from time to time does not count in computing whether interest exceeds the principal. For interest is not exacted over the amount of the principal only whenever the sum of the interest exceeds this computation at the time of its payment.[154]

[11] *Emperor* ALEXANDER *Augustus to Aurelius Tyrannus.* In a loan of grain or barley an additional amount must also be paid in accord with a naked pact.

Posted May 1, in the consulship of Maximus, for the second time, and Aelianus (223).

[12] *The same Augustus to Popilius.* It is certain that, if the creditor has accepted the crop from a property obligated as a pledge, after the lawful tender of money that he did not accept, the amount owed on principal is relieved (to the extent of the payment).

[13] *The same Augustus to Eustathia and others.* In good faith trials (*bonae fidei iudicia*), such as even for the management of affairs (*negotiorum gestio*), it is certain that account is taken of interest (after default). But if the judgment has been ended through a verdict, although the condemnation has been made for a lesser amount without the addition of interest, and an appeal has not followed, there must be no reconsideration of what has been decided; nor is interest demanded by any right for the time which has passed after the judgment of the matter, except on the basis of the judgment (*ex causa iudicati*).

[14] *The same Augustus to Aurelius Arasianes.* If your wife gave you a loan of money under an agreement that instead of interest she have the right of habitation, and she has relied on the pact as it was agreed, and she did not receive any income by leasing the house, the question must not at all be considered as to whether the house would provide a greater amount if it were leased than consideration of lawful interest allows. For although a lease could have been contracted for a larger principal, nonetheless not for that reason does an unlawful interest rate seem to have been contracted, but the right of dwelling seems to have been rented for a cheaper price.

Given April 21, in the consulship of Maximus and Urbanus (234).

153 Possibly "to Cratus Donatus, a soldier." On the rule, see D. 12.6.26.1.

154 See note to 7 above. It was not permissible to exact interest that exceeded the principal of the loan when the loan was paid off. Justinian (27 below) extended this rule to include "all interest previously paid."

[15] *Imp. Gordianus A. Claudio Portorio.* Cum adleges uxorem tuam ea condicione mille aureorum numero quantitatem sumpsisse, ut, si intra diem certum debito satis non fecisset, cum poena quadrupli redderet quod accepit, iuris forma non patitur legem contractus istius ultra poenam legitimarum usurarum posse procedere.

D. non. M. Attico et Praetextato conss.

[16] *Idem A. Flavio Sulpicio.* Cum non frumentum, sed pecuniam fenori te accepisse adleges, ut certa modiatio tritici praestaretur, ac, nisi is modus sua die fuisset oblatus, mensurarum additamentis in fraudem usurarum legitimarum gravatum te esse contendis, potes adversus improbam petitionem competente uti defensione.

PP.

[17] *Imp. Philippus A. et Philippus C. Aurelio Euxeno.* Si ea lege possessionem mater tua apud creditorem tuum obligavit, ut fructus in vicem usurarum consequeretur, obtentu maioris percepti emolumenti propter incertum fructuum eventum rescindi placita non possunt.

[18] *Impp. Diocletianus et Maximianus AA. et CC. Aurelio Castori.* Indebitas usuras, etiam si ante sortem solutae non fuerint ac propterea minuere eam non potuerint, licet post sortem redditam creditori fuerint datae, exclusa iuris varietate repeti posse pensa ratione firmatum est.

[19] *Idem AA. et CC. Aureliae Irenaeae.* **pr.** Acceptam mutuo sortem cum usuris licitis creditori post testationem offer ac, si non suscipiat, consignatam in publico depone, ut cursus usurarum legitimarum inhibeatur. **1.** In hoc autem casu publicum intellegi oportet vel sacratissimas aedes vel ubi competens iudex super ea re aditus deponi eas disposuerit. **2.** Quo subsecuto etiam periculo debitor liberabitur et ius pignorum tollitur, cum Serviana etiam actio manifeste declarat pignoris inhiberi persecutionem vel solutis pecuniis vel si per creditorem steterit, quominus solvatur. **3.** Quod etiam in traiecticiis servari oportet. **4.** Creditori scilicet actione utili ad exactionem earum non adversus debitorem, nisi

[15] *Emperor* GORDIAN *Augustus to Claudius Portorius.* Since you allege that your wife has borrowed the amount of 1,000 aurei under the condition that, if by a certain day she has not satisfied the debt, she return what she has received with a quadruple penalty, the rule of law does not allow the terms (*legem*) of that contract to be able to proceed beyond a penalty of lawful interest.

Given May 7, in the consulship of Atticus and Praetextatus (242).[155]

[16] *The same Augustus to Flavius Sulpicius.* Since you allege that you have not received grain, but money as a loan at interest under the condition that a certain measure of wheat be paid back, and, unless that amount has been offered on the appointed day, you contend that you have been burdened by additions to the measures in fraud of (the limit on) legitimate interest, you can use the appropriate defense against the dishonest claim.

Posted.

[17] *Emperor* PHILIP *Augustus and* PHILIP *Caesar to Aurelius Euxenus.* If your mother obligated a property with your creditor under the condition that he gain the fruits instead of interest, what has been agreed cannot be rescinded on the pretext of his receiving a larger emolument (than allowed) because of the uncertain outcome of the harvest (*propter incertum fructuum eventum*).

[18] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Aurelius Castor.* It has been confirmed, that, to exclude variation in the law and after due deliberation, interest not owed, even if it was not paid before the principal and on that account could not reduce it, can be reclaimed despite its being given to the creditor after return of the principal.

[19] *The same Augusti and Caesars to Aurelia Irenaea.* **pr.** Offer the principal received as a loan with the permitted interest to the creditor after a declaration before witnesses, and, if he should not take it, place it sealed in a public place, so that the accumulation of lawful interest may be inhibited. **1.** In this case a public place must be understood as a most sacred temple or where a competent judge who has been approached on this matter has arranged for the money to be deposited. **2.** When this has happened the debtor will also be freed from risk and the right of the pledges is removed, since the Servian action[156] also clearly declares that the pursuit of the pledge is prevented either when the money is paid or when it is because of the creditor that payment not be made. **3.** This should also be maintained for nautical (bottomry) loans. **4.** Still, the creditor has an analogous action (*actio utilis*) to recover the

[155] The subscription belongs either here or in 16 below.

[156] A creditor can use an *actio Serviana* to claim property pledged as security.

forte eas receperit, sed vel contra depositarium vel ipsas competente pecunias.

[20] *Idem AA. et CC. Aelio Nicopolitano.* Constitutionibus sacris, quae ultra certum modum usuras fenebris exigi pecuniae prohibent, mandatoribus etiam vel fideiussoribus subventum est: quibus quasi mandator vel fideiussor conventus uti potes.

Sub die ...

[21] *Idem AA. et CC. Chresimoni.* Si usuras praestari pignore dato convenerat et in continenti, numeratione facta, postea vel ante, propter quod debitum solutionem feceras, non designasti, habuit creditor in usuras tibi accepto ferendae solutae quantitatis facultatem.

[22] *Idem AA. et CC. Cominio Carino.* Pignoribus quidem intervenientibus usurae, quae sine stipulatione peti non poterant, pacto retineri possunt. verum hoc iure constituto, cum huiusmodi nullo interposito pacto tantum certae summae poenam praestari convenisse proponas, nec peti nec retineri quicquam amplius et ad pignoris solutionem urgueri te disciplina iuris perspicis.

PP. id. Iul. ipsis ... conss.

[23] *Idem AA. et CC. Iasoni.* Oleo quidem vel quibuscumque fructibus mutuo datis incerti pretii ratio additamenta usurarum eiusdem materiae suasit admitti.

D. III k. Oct. Viminaci CC. conss.

[24] *Idem AA. et CC. Culciae.* Si mater tua maior annis constituta negotia quae ad te pertinent gesserit, cum omnem diligentiam praestare debeat, usuras pecuniae tuae, quam administrasse fuerit comprobata, praestare compelli potest.

D. XIIII k. Dec. ipsis CC. conss.

[25] *Imp. Constantinus A. ad populum.* Pro auro et argento et veste facto chirographo licitas solvi vel promitti usuras iussimus.

deposit, not against the debtor, unless he has by chance taken the money back, but either against the depositary or against the money itself by a civil action.

[20] *The same Augusti and Caesars to Aelius Nicopolitanus.* Mandators and sureties have been aided by the sacred constitutions that prohibit the exaction of interest on money loaned over a certain measure; you can use these if you are sued as a mandator or surety.

On the day ...

[21] *The same Augusti and Caesars to Chresimon.* If, when a pledge was given, it had been agreed that interest be paid and, when payment was made immediately, you did not, either before or afterwards, designate the debt on account of which you had made the payment, the creditor had the right (*facultas*) to credit the amount paid toward the interest for what you have received.[157]

[22] *The same Augusti and Caesars to Cominius Carinus.* When there are pledges involved, interest, which could not be claimed without a stipulation, can be retained in accordance with a pact. But although this law is established, since you (as the creditor) state that, without the conclusion of any pact of this type, it had been agreed only that a penalty of a certain sum be paid, you see by the teaching of the law that nothing further can be claimed or retained and that you are (correctly) pressed to release the pledge.

Posted July 15, in the consulship of ... themselves.

[23] *The same Augusti and Caesars to Iason.* When oil or any types of fruits have been given as a loan, consideration of the uncertain price for them has been persuasive that additional amounts of the same substance be admitted as interest.

Given September 29, at Viminacium, in the consulship of the Caesars (294).[158]

[24] *The same Augusti and Caesars to Culcia.* If your aged mother conducted business that pertains to you, since she should display all diligence, she can be compelled to pay interest for money of yours that she has been proved to have administered.

Given November 18, in the consulship of the Caesars themselves (294).

[25][159] *Emperor* Constantine *Augustus to the People.* We have ordered that lawful interest be paid or promised for gold, silver, and clothing when a promissory note has been made.

[157] As Blume points out, the creditor can assign the payment to interest rather than to the principal.

[158] Mommsen restores the consulship of the Caesars as the date.

[159] Possibly to be combined with C. 2.27.2, 5.37.22, and 5.72.4, which in the subscript are described as given at Sirmium in 326. Seeck dates this constitution to March 15, 329.

[26] *Imp. Iustinianus A. Menae pp.* **pr.** Eos, qui principali actione per exceptionem triginta vel quadraginta annorum, sive personali sive hypothecaria, ceciderunt, non posse super usuris vel fructibus praeteriti temporis aliquam movere quaestionem dicendo ex his temporibus eas velle sibi persolvi, quae non ad triginta vel quadraginta praeteritos annos referuntur, et adserendo singulis annis earum actiones nasci: principali enim actione non subsistente satis supervacuum est super usuris vel fructibus adhuc iudicem cognoscere.

1. Super usurarum vero quantitate etiam generalem sanctionem facere necessarium esse duximus, veterem duram et gravissimam earum molem ad mediocritatem deducentes. **2.** Ideoque iubemus illustribus quidem personis sive eas praecedentibus minime licere ultra tertiam partem centesimae usurarum in quocumque contractu vili vel maximo stipulari: illos vero, qui ergasteriis praesunt vel aliquam licitam negotiationem gerunt, usque ad bessem centesimae suam stipulationem moderari: in traiecticiis autem contractibus vel specierum fenori dationibus usque ad centesimam tantummodo licere stipulari nec eam excedere, licet veteribus legibus hoc erat concessum: ceteros autem omnes homines dimidiam tantummodo centesimae usurarum posse stipulari et eam quantitatem usurarum etiam in aliis omnibus casibus nullo modo ampliari, in quibus citra stipulationem usurae exigi solent. **3.** Nec liceat iudici memoratam augere taxationem occasione consuetudinis in regione obtinentis.

4. Si quis autem aliquid contra modum huius fecerit constitutionis, nullam penitus de superfluo habeat actionem, sed et si acceperit, in sortem hoc imputare compelletur, interdicta licentia creditoribus ex pecuniis fenori dandis aliquid detrahere vel retinere siliquarum vel sportularum vel alterius cuiuscumque causae gratia. nam si quid huiusmodi factum fuerit, principale debitum ab initio ea quantitate minuetur, ut tam ipsa minuenda pars quam usurae eius exigi prohibeantur. **5.** Machinationes etiam creditorum, qui ex hac lege prohibiti maiores usuras stipulari alios medios subiciunt, quibus hoc non ita interdictum est, resecantes iubemus, si quid tale fuerit attemptatum, ita computari usuras, ut necesse esset, si ipse qui alium interposuit fuisset stipulatus: in quo casu sacramenti etiam illationem locum habere sancimus.

D. id. Dec. Constantinopoli Iustiniano pp A. II cons.

[26][160] *Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect.* pr. Those persons who have fallen in an action on the principal through the defense of (the statute of limitations of) thirty or forty years, whether in an action *in personam* or on a hypothec, cannot bring an action on the interest or the fruits for the time past by saying that they wanted these things to be paid to them from these times that are not considered in reference to the thirty or forty years past, and by asserting that their actions for the interest arise in individual years; when the action for the principal does not exist it is quite useless for a judge still to investigate questions of interest or fruits.

1. But concerning the amount of interest We have considered it necessary to make a general ordinance, to reduce the old harsh and very heavy burden of interest to a moderate level. 2. For that reason We order that it not be permitted for persons of illustrious or higher rank (*illustres personae*) to stipulate an interest rate higher than 4 percent in any contract whether modest or very large. Those who are in charge of workshops or practice some lawful business should limit their stipulation for interest to 8 percent.[161] In maritime loans, however, or in loans in kind, it should be permitted to stipulate interest only up to 12 percent and not to exceed this, although this had been allowed by the old laws. All other people should be able to stipulate only 6 percent interest and not to increase this amount of interest in any way in all other cases in which interest is customarily exacted without a stipulation. 3. Nor should a judge be allowed to increase the abovementioned rates on the occasion of the custom obtaining in the region.

4. If, however, anyone does something against the limit in this constitution, he should have absolutely no action on the excess interest, but if he has received any, he should be compelled to count it against the principal, and permission is denied to creditors to subtract or retain anything from the money to be given as a loan for the sales tax (*siliquae*) or judicial fees (*sportulae*) or for any other reason. For if something of this type has been done, the principal owed will be lowered from the beginning by that amount, so that it be prohibited to exact the part itself that is to be lessened as well as the interest on it. 5. And to cut off the machinations of the creditors who, prohibited on the basis of this law to stipulate higher interest rates, substitute other middle men for whom this has not been forbidden in this way, We order that, if some such thing should be attempted, the interest be calculated in such a way as it must be if the person himself who has interposed another had taken the stipulation; in this case We ordain that the tendering of an oath also have a place.

Given December 13,[162] *at Constantinople, in the consulship of Justinian Ever Augustus, for the second time (528).*

160 Combine with C. 7.39.8.
161 Here Bas. 23.3.74 (cf. scholia on 25.1.11) indicates that the the original text further restricted the interest payable by respectable families; see also Nov. 110.4 (Krüger).
162 C. 7.39.8 has December 11, which Lounghis *et al.* adopt for this constitution.

[27] *Idem A. Menae pp.* **pr.** De usuris, quarum modum iam statuimus, pravam quorundam interpretationem penitus removentes iubemus etiam eos, qui ante eandem sanctionem ampliores quam statutae sunt usuras stipulati sunt, ad modum eadem sanctione taxatum ex tempore lationis eius suas moderari actiones, illius scilicet temporis, quod ante eandem fluxit legem, pro tenore stipulationis usuras exacturos.

1. Cursum insuper usurarum ultra duplum minime procedere concedimus, nec si pignora quaedam pro debito creditori data sint, quorum occasione quaedam veteres leges et ultra duplum usuras exigi permittebant. **2.** Quod et in bonae fidei iudiciis ceterisque omnibus in quibus usurae exiguntur servari censemus.

D. k. April. Constantinopoli Decio vc. cons.

[28] *Idem A. Demostheni pp.* **pr.** Ut nullo modo usurae usurarum a debitoribus exigantur, et veteribus quidem legibus constitutum fuerat, sed non perfectissime cautum. si enim usuras in sortem redigere fuerat concessum et totius summae usuras stipulari, quae differentia erat debitoribus, qui re vera usurarum usuras exigebantur? hoc certe erat non rebus sed verbis tantummodo leges ponere. **1.** Quapropter hac apertissima lege definimus nullo modo licere cuidam usuras praeteriti vel futuri temporis in sortem redigere et earum iterum usuras stipulari, sed, si hoc fuerit subsecutum, usuras quidem semper usuras manere et nullum aliarum usurarum incrementum sentire, sorti autem antiquae tantummodo incrementum usurarum accedere.

PP. k. Oct. Chalcedone Decio vc. cons.

XXXIII De Nautico Fenore

[1] ...

[2] *Impp. Diocletianus et Maximianus AA. Scribonio Honorato.* Traiecticiam pecuniam, quae periculo creditoris datur, tamdiu liberam esse ab observatione communium usurarum, quamdiu navis ad portum appulerit, manifestum est.

[27] *The same Augustus to Menas, Praetorian Prefect.* **pr.** To remove completely some people's perverse interpretation of interest, whose limit We have already established,[163] We order that those people, who before the same ordinance stipulated interest higher than what has (now) been established, also to restrain their actions as from the time of its passing to the limit established in the same ordinance, although they will exact interest for that time that has elapsed before the same law in keeping with the terms of the stipulation.

1. In addition, We do not allow the total of the interest to exceed double (i.e., it cannot be greater than the amount of the principal), not even if any pledges have been given to the creditor for the debt, on the occasion of which some old laws allowed interest to be exacted even beyond the double amount. **2.** And We decree that this be observed in good faith judgments and in all other cases in which interest is exacted.

Given April 1, at Constantinople, in the consulship of the vir clarissimus *Decius (529).*

[28] *The same Augustus to Demosthenes, Praetorian Prefect.* **pr.** It had been established even in the old laws, but not most perfectly provided for, that interest on interest not in any way be exacted from debtors. For if it had been allowed for interest to be reduced to principal and to stipulate interest for the whole sum, what was the difference for debtors who were in fact being pressed for interest on interest? This was certainly to apply the laws not to facts but only through words (i.e., to interpret overliterally). **1.** On account of this We define by this plainest law that no one be allowed in any way to reduce interest to principal for time past or future and again to stipulate interest for it, but if this has transpired, that interest always remain interest and receive no increase of other interest, but that the increase in interest only be added to the old principal.

Posted October 1,[164] *at Chalcedon, in the consulship of the* vir clarissimus *Decius (529).*

Thirty-Third Title Maritime Loans[165]

[1] [A Greek constitution has fallen out of the Codex.][166]

[2] *Emperors* Diocletian *and* Maximian *Augusti to Scribonius Honoratus.* It is clear that a maritime loan (*traiecticia pecunia*), which is given at the risk of the creditor, is exempt from the observance of common interest rates until the ship has pulled into harbor.

163 In 26 above.
164 Perhaps September 17; so also Lounghis *et al.*
165 *Fenus nauticum* or *traiecticia pecunia* (bottomry loans); see D. 22.2.
166 Krüger, Addendum to 9th edition (515), restores the likely content.

PP. IIII id. Mart. Maximo II et Aquilino conss.

[3] *Idem AA. Aureliae Cosmianae.* Cum dicas pecuniam te ea lege dedisse, ut in sacra urbe tibi restitueretur, nec incertum periculum, quod ex navigatione maris metui solet, ad te pertinuisse profitearis, non dubium est pecuniae creditae ultra licitum te usuras exigere non posse.

PP. prid. id. Mart. Maximo II et Aquilino conss.

[4] *Idem AA. Aureliae Iulianae.* Cum proponas te nauticum fenus ea condicione dedisse, ut post navigium, quod in Africam dirigi debitor adseverabat, in Salonitanorum portum nave delata fenebris pecunia tibi redderetur, ita ut navigii dumtaxat quod in Africam destinabatur periculum susceperis, perque vitium debitoris, nec loco quidem navigii servato, illicitis comparatis mercibus quae navis continebat fiscum occupasse: amissarum mercium detrimentum, quod non ex marinae tempestatis discrimine, sed ex praecipiti avaritia et incivili debitoris audacia accidisse adseveratur, adscribi tibi iuris publici ratio non permittit.

[5] *Idem AA. et CC. Pullio Iuliano Eucharisto.* Traiecticiae quidem pecuniae, quae periculo creditoris mutuo datur, casus, antequam ad destinatum locum navis perveniat, ad debitorem non pertinet, sine huiusmodi vero conventione infortunio naufragii non liberabitur.

D. VIII id. Oct. Retiariae CC. conss.

XXXIIII Depositi

[1] *Imp. Alexander A. Mestrio militi.* Si incursu latronum vel alio fortuito casu ornamenta deposita apud interfectum perierunt, detrimentum ad heredem eius qui depositum accepit, qui dolum solum et latam culpam, si non aliud specialiter convenit, praestare debuit, non pertinet. quod si praetextu latrocinii commissi vel alterius fortuiti casus res,

Posted March 12, in the consulship of Maximus, for the second time, and Aquilinus (286).

[3] *The same Augusti to Aurelia Cosmiana.* Since you say that you gave money under the condition that it be paid back to you in the Sacred City (Rome), and you acknowledge that the uncertain danger that is customarily feared from sailing on the sea did not affect you, there is no doubt that you cannot demand interest for the money lent beyond the permitted rate.

Posted March 14, in the consulship of Maximus, for the second time, and Aquilinus (286).[167]

[4] *The same Augusti to Aurelia Juliana.* Since you state that you have given a maritime loan on the condition that, after the voyage, which the debtor admitted was directed at Africa, the money loaned should be returned to you when the ship was brought to the port of Salona (in Dalmatia), such that you bore the risk only for the voyage which was directed to Africa, and (you further state) that through the fault of the debtor, not observing the place of the voyage, the Treasury seized the ship after he purchased illicit merchandise that the ship was holding; the principle of the public law does not permit the loss for the lost merchandise, which is admitted to have happened not as a result of the danger of a storm at sea, but of the debtor's reckless avarice and inequitable audacity, to be ascribed to you.

[5] *The same Augusti and the Caesars to Pullius Julian Eucharistus.* The loss of a maritime funds, which are given as a loan at the risk of the creditor, does not fall on the debtor before the ship reaches its destined place. But without an agreement of this type he (the debtor) will not be freed from the disaster of a shipwreck.

Given October 8, at Ratiaria, in the consulship of the Caesars (294).

Thirty-Fourth Title Deposit[168]

[1][169] *Emperor* ALEXANDER *Augustus to Mestrius, a soldier.* If, because of an incursion of brigands or another unavoidable accident (*casus fortuitus*), ornaments have been destroyed that were deposited with someone killed, the loss does not fall on the heir of the person who received the deposit, who ought to have been responsible only for malicious intent (*dolus*) and serious fault (*lata culpa*), provided nothing else was specifically agreed upon. But if items that

[167] This subscription may rather apply to the following constitution.
[168] See D. 16.3.
[169] = *Collatio* 10.8, where the date is June 26.

quae in potestate heredis sunt vel quas dolo desiit possidere, non restituuntur, tam depositi quam ad exhibendum actio, sed etiam in rem vindicatio competit.

PP. IIII id. Iul. Maximo II et Urbano conss.

[2] *Imp. Gordianus A. Celsino militi.* Usurae in depositi actione sicut in ceteris bonae fidei iudiciis ex mora venire solent.

D. k. Nov. Pio et Pontiano conss.

[3] *Idem A. Austronio militi.* Si depositi experiris, non immerito etiam usuras tibi restitui flagitabis, cum tibi debeat gratulari, quod furti eum actione non facias obnoxium, si quidem qui rem depositam invito domino sciens prudensque in usus suos converterit, etiam furti delicto succedit.

D. id. Iul. Gordiano A. et Aviola conss.

[4] *Idem A. Timocrati militi.* Si deposita pecunia is qui eam suscepit usus est, non dubium est etiam usuras debere praestare. sed si, cum depositi actione expertus es, tantummodo sortis facta condemnatio est, ultra non potes propter usuras experiri: non enim duae sunt actiones alia sortis alia usurarum, sed una, ex qua condemnatione facta iterata actio rei iudicatae exceptione repellitur.

[5] *Impp. Valerianus et Gallienus AA. et Valerianus C. Claudio.* Propter instrumenta quidem, quae te deposuisse cum adversario tuo dicis, ut residua pecunia quae ex conductione debebatur dissoluta ea reciperes, si id quod placuerat implesti, sequestrem potes convenire. quamvis autem haec reddita non fuerint, tamen adversus eum a quo fundum conduxeras, si omne quod ex hoc contractu debebatur reddidisti, ipsis solutionibus tutus es.

D. id. Iul. Aemiliano et Basso conss.

[6] *Impp. Diocletianus et Maximianus AA. et CC. Antonio Alexandro et Ulpiano Antipatri.* Is, penes quem utrasque partes transactiones vel alia

are in the power of the heir or that he has ceased to possess by malicious intent are not returned under the pretext of the commission of brigandage or other fortuitous accident, an action lies both on deposit and on producing the property (*exhibendum*), as well as a suit *in rem* on ownership (*vindicatio*).

Posted July 12, in the consulship of Maximus, for the second time, and Urbanus (234).

[2] *Emperor* GORDIAN *Augustus to Celsinus, a soldier.* Interest is customarily recoverable as a result of delay in an action on deposit, just as in other good faith trials.

Given November 1, in the consulship of Pius and Pontianus (238).

[3][170] *The same Augustus to Austronius, a soldier.* If you are suing on a deposit, not without merit will you ask that interest be restored to you, since he ought to thank you for not making him liable on an action on theft, provided indeed the person who knowingly and advisedly has turned a thing held on deposit to his own uses against the will of the owner has (also) gone on to (commit) the delict of theft.

Given July 15, in the consulship of Gordian Augustus and Aviola (239).

[4] *The same Augustus to Timocrates, a soldier.* If the person who has taken money on deposit has used it, there is no doubt that he ought to pay interest as well. But if, when you sued on an action on deposit, the condemnation was made only for the principal, you cannot sue further for interest; for there are not two actions, one for the principal and the other for the interest, but one, from which, when a condemnation has been made, a repeated action is repelled on the basis of the defense that the matter was adjudged (*exceptio rei iudicatae*).

[5] *Emperors* VALERIAN *and* GALLIENUS *Augusti and* VALERIAN *Caesar to Claudius.* On account of documents, which you say you along with your opponent have deposited (with a stakeholder) so that you might recover them after the remaining money that was owed from a lease was paid, if you have fulfilled what had been agreed upon, you can sue the stakeholder (*sequester*). Although these (documents) have not been returned, nevertheless you are protected by the payments themselves against the person from whom you had leased the farm if you have paid everything that was owed from this contract.

Given July 15, in the consulship of Aemilianus and Bassus (259).

[6] *Emperors* DIOCLETIAN *and* MAXIMIAN *and the Caesars to Antonius Alexander and Ulpianus Antipater.*[171] The person (a stakeholder) with whom

[170] Combine with C. 3.32.6, dated to July 11.
[171] "You say," however, is singular, not plural.

instrumenta commendasse dicis, legem qua haec suscepit servare necesse habet.

[7] *Idem AA. et CC. Antiocho Attico Calpurniano Democrati.* Desiderium tuum cum rationibus iuris non congruit. nam si custodiam pecuniae suscepisti, quam aliis a te datam instrumentum, quo hanc tibi reddi conscriptum profiteris, arguit, solutionem eius competentem improbe recusas.

[8] *Idem AA. et CC. Aurelio Alexandro.* Si is, qui depositam a te pecuniam accepit, eam suo nomine vel cuiuslibet alterius mutuo dedit, tam ipsum de implenda suscepta fide quam eius successores teneri tibi certissimum est. adversus eum autem qui accepit nulla actio tibi competit, nisi nummi extant: tunc enim contra possidentem uti vindicatione potes.

D. IIII k. Mart. Sirmi AA. *conss.*

[9] *Idem AA. et CC. Aurelio Menophilo et ceteris.* Cum hereditas personam dominae sustineat, ab hereditario servo, priusquam patri vestro successeritis, res commendatas secundum bonam fidem ab eius qui susceperat successoribus apud rectorem provinciae petere potestis.

PP. VII id. Nov. Sirmi AA. *conss.*

[10] *Idem AA. et CC. Septimiae Quadratillae.* Qui depositum non restituit, suo nomine conventus et condemnatus ad eius restitutionem cum infamiae periculo urguetur.

Subscripta pridie Idus Decembres Nicomedia CC. conss.

[11] *Imp. Iustinianus A. Demostheni pp.* **pr.** Si quis vel pecunias vel res quasdam per depositionis accepit titulum, eas volenti ei qui deposuerit

you say both parties have entrusted settlements and other documents must observe the condition (*lex*) under which he has taken them.

[7] *The same Augusti and Caesars to Antiochus Atticus Calpurnianus Democrates.* Your desire is not consistent with the principles of the law. For if you have undertaken the safekeeping (*custodia*) of money, and a document, in which you acknowledge its repayment to you has been written, argues that it was loaned by you to others, you improperly refuse the legally required payment of it (to the depositor).

[8] *The same Augusti and Caesars to Aurelius Alexander.* If a person who has received money on deposit from you has given it as a loan in his own name or that of any other, it is quite certain that both he himself and his successors are bound to you to fulfill the faith undertaken. However, you have no right of action against the person who received the money unless the coins (still) exist (as a distinct entity); for then you can use a suit on ownership (*vindicatio*) against the possessor.

Given February 26, at Sirmium, in the consulship of the Augusti (293).[172]

[9] *The same Augusti and Caesars to Menophilus and others.* Since an inheritance represents the person of the (female) owner, before the provincial governor you can seek things that have, in accordance with good faith, been entrusted by an inheritance slave (*servus hereditarius*) before you succeeded your father, from the successors of the person who had received them.[173]

Posted November 7, at Sirmium, in the consulship of the Augusti (293).

[10][174] *The same Augusti and Caesars to Septimia Quadratilla.* A person who does not restore a deposit will be compelled, after being sued and condemned, to restore it at the risk of infamy (*infamia*).

Subscribed December 12, at Nicomedia, in the consulship of the Caesars (294).

[11] *Emperor* JUSTINIAN *Augustus to Demosthenes, Praetorian Prefect.* **pr.** If someone has received monies or certain things under the title of deposit, he

[172] The *Augusti* are restored as consuls in this and the following constitution.

[173] Blume: "A slave of an inheritance was a slave whose master was dead, and when the inheritance of the master had not been entered upon. Such a slave had deposited some property. The slave, as part of the inheritance, represented the person of the deceased; though he had no living master, his transaction was not void, but the right acquired was for the deceased and his estate. Hence, a deposit made by such slave could be recovered by the heir after accepting the inheritance."

[174] = *Collatio* 10.6. Quadratilla is restored from the *Collatio*.

reddere ilico modis omnibus compellatur nullamque compensationem vel deductionem vel doli exceptionem opponat, quasi et ipse quasdam contra eum qui deposuit actiones personales vel in rem vel hypothecarias praetendens, cum non sub hoc modo depositum accepit, ut non concessa ei retentio generetur, et contractus qui ex bona fide oritur ad perfidiam retrahatur. **1.** Sed et si ex utraque parte aliquid fuerit depositum, nec in hoc casu compensationis praepeditio oriatur, sed depositae quidem res vel pecuniae ab utraque parte quam celerrime sine aliquo obstaculo restituantur, ei videlicet primum, qui primus hoc voluerit, et postea legitimae actiones integrae ei reserventur. **2.** Quod obtinere sicut iam dictum est oportet et si ex una parte depositio celebrata est, ex altera autem compensatio fuerit opposita, ut integra omni legitima ratione servata depositae res vel pecuniae prima fronte restituantur. **3.** Quod si in scriptis attestatio non per dolum vel fraudem fuerit ei qui depositum suscepit ab alio transmissa, ut minime depositum restituat, hocque per iusiurandum adfirmaverit, liceat ei qui deposuit sub defensionis cautela idonea praestita res depositas quantocius recuperare.

Recitata septimo miliario in novo consistorio palatii Iustiniani. d. III k. Nov. Decio cons.

[12] *Idem A. Iohanni pp.* Supervacuam veterum differentiam e medio tollentes, si quis certum pondus auri vel confecti vel in massa constituti deposuerit et plures scripsit heredes et unus ex his contingentem sibi portionem a depositario accepit, alter supersederit vel alias fortuito casu impeditus hoc facere non potuerit, et postea depositarius in adversam inciderit fortunam vel sine dolo depositum perdiderit, sancimus non esse coheredi eius licentiam venire contra coheredem suum et ex eius parte avellere, quod ipse ex sua parte consequi minime potuerit, quasi eo quod coheres accepit communi constituto, cum, ubi certae pecuniae depositae fuerant et suam partem unus ex heredibus accepit, nemini veniret in dubium bene eum accepisse partem suam et non debere aliam partem attingere. nobis etenim non videtur esse homo obnoxius neque in massa neque in specie neque in pecunia numerata qui suam partem suscepit, ne industria poenas desidiae solvat. si enim et alius heres tempora opportuna quemadmodum coheres eius observasset, et suum uterque recipiebat et sequentibus altercationibus minime locus relinquebatur.

should in every way be compelled to restore them promptly to the person who deposited them when the latter wants, and he should interpose no claim for an offset or a deduction or a defense of deceit, as if he himself were bringing certain actions against the person who made the deposit, either *in personam*, or *in rem*, or on hypothecs, since he did not receive the deposit under this condition, that an ungranted right of retention be created for him, and that a contract that arises out of good faith be turned into perfidy. **1.** But if something should have been deposited by each party (with the other), the complication of an offset should not arise in this case, but the things or money deposited should be restored by either party as soon as possible without any obstacle, that is to say, first to the one who first wants this, and afterwards lawful actions should be reserved for him intact. **2.** This must apply as has been described even if the deposit has been recorded (*celebrata*) by one party, but a claim for an offset has been interposed by the other, such that the deposited things or money be restored immediately with every lawful claim intact. **3.** But if a protest in writing has been sent by the other party, not through deceit or fraud, to the person who undertook the deposit, so that he not restore it, and he (the other party) has affirmed this through an oath, the person who made the deposit should be allowed to recover quickly the things deposited by offering a suitable guarantee (*cautela*) for his (the depositary's) protection.

Recited at the seventh milestone in the New Consistory of the Palace of Justinian, October 30, in the consulship of Decius (529).

[12] *The same Augustus to John, Praetorian Prefect.* To remove the unnecessary difference of the ancients from our midst, if someone has deposited a certain weight of gold, either wrought (*confectum*) or in bullion, and has designated several heirs and one of these has received the portion allotted to him from the depositary, but the other has omitted doing this or, otherwise impeded by an accident, has not been able to do this, and afterwards the depositary has fallen into adverse fortune and has lost the deposit without malicious intent, We ordain that it not be permitted for the one co-heir to proceed against the other and to snatch from his share what he was not able to gain from his own share, as if the co-heir received it as jointly owned property. For, when definite sums of money had been deposited and one of the heirs has received his share, it would not be doubted by anyone that he has received his share in good order and should not touch another share. The person who has taken up his share does not seem to Us to be liable either for the bullion or for wrought gold (*species*) or for money counted, lest by his energy he pay the penalty for laziness. For if the other heir had also observed the most opportune time in the same way as his co-heir, each one would have recovered his own property and no place would have been left for subsequent disputes.

(531–532).

XXXV Mandati

[1] *Impp. Severus et Antoninus AA. Leonidae.* Adversus eum cuius negotia gesta sunt de pecunia, quam de propriis opibus vel ab aliis mutuo acceptam erogasti, mandati actione pro sorte et usuris potes experiri: de salario quod promisit a praeside provinciae cognitio praebebitur.

[2] *Imp. Antoninus A. Statio Marcellino.* Cum ex causa fideiussionis pecuniam patrem tuum exsolvisse proponas, habes mandati actionem, qua non solum pecuniam, sed etiam pignora in obligationem eam deducta potes consequi.
PP. VIII.

[3] *Idem A. Germano.* Si pater tuus tibi sui iuris constituto actionem adversus debitores suos mandavit, potuit ipse praesens adversus eos re integra experiri. si quid itaque ab eo apud iudicem actum est, rescindi nulla ratio patitur.
PP. VI k. Nov. Sabino II et Anullino conss.

[4] *Imp. Alexander A. Aurelio Vulnerato.* Etiamsi contrariam sententiam reportaverunt, qui te ad exercendas causas appellationis procuratorem constituerunt, si tamen nihil culpa tua factum est, sumptus, quos in lite probabili ratione feceras, contraria mandati actione petere potes.
S. VIII id. Ian.

[5] *Idem A. Iuliano.* Si maritus sororis tuae tibi procurans petere bonorum possessionem noluit, cum ipso tibi congrediendum est. quam querellam ita cum effectu habes, si mandasse te, ut peteretur bonorum possessio, eumque neglexisse arguas.

[6] *Imp. Gordianus A. Aelio Sosibio militi.* Si fideiussor pro reo patiente fidem suam adstrinxit, mandati cum eo post exsolutam pecuniam vel factam condemnationem potest exercere actionem.
PP. III non. Sept. Pio et Pontiano conss.

Thirty-Fifth Title Mandate[175]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Leonidas.* You can sue a person whose affairs have been managed (by you) for the money you spent from your own resources or received on loan from others, in an action on mandate both for the principal and interest; a hearing will be provided by the provincial governor concerning the honorarium (*salarium*) that he promised.

[2] *Emperor* ANTONINUS *Augustus to Statius Marcellinus.* Since you state that your father paid money in connection with a suretyship (*fideiussio*), you have an action on mandate by which you can pursue not only the money, but also the pledges brought into this obligation.[176]

Posted the eighth day before ...

[3] *The same Augustus to Germanus.* If your father gave you, (at a time) when you were established as *sui iuris* (i.e., emancipated),[177] a mandate for an action against his debtors, he could have when present sued them with the legal situation unchanged (despite the mandate). Thus if anything was done by him before the judge, no reason allows for it to be rescinded.

Posted October 27, in the consulship Sabinus, for the second time, and Anullinus (216).

[4] *Emperor* ALEXANDER *Augustus to Aurelius Vulneratus.* Even if the people who appointed you as procurator to pursue cases on appeal have received an adverse verdict, nevertheless if nothing was done by your fault, you can seek the expenses that you reasonably incurred in the suit through a contrary action on mandate (*actio contraria mandati*, against the mandators).

Written January 6.

[5] *The same Augustus to Julian.* If your sister's husband serving as procurator for you was unwilling to seek possession of an estate (*possessio bonorum*), you must sue him. You have a complaint effective in this way if you argue that you gave a mandate that possession of the estate be sought and he neglected this.

[6] *Emperor* GORDIAN *Augustus to Aelius Sosibius, a soldier.* If a surety, with the permission of the defendant, has bound his faith, he can bring an action for mandate against him after payment of the money or a condemnation has occurred.

Posted September 3, in the consulship of Pius and Pontianus (238).

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175 See D. 17.1; Inst. 7.26. Mandate, a gratuitous contract, may nonetheless involve an honorarium.

176 Blume: "A request ... to become surety was treated as a mandate. C. 8.40.14. When the surety paid, he had the right of regress against the principal debtor by an action on ... the mandate. In this case, the surety – the father – was evidently dead, and his son succeeded to his rights, as heir."

177 See Paul, D. 46.2.20 pr.

[7] *Idem A. Aureliano militi.* Si litteras eius secutus, qui pecuniae[vii] auctor fuerat, ei qui tibi litteras tradidit pecunias credidisti, tam adversus eum, qui a te mutuam sumpsit, quam adversus eum, cuius mandatum secutus es, mandati actio tibi competit.

[8] *Impp. Valerianus et Gallienus AA. et Valerianus nob. C. Aurelio Lucio.* Si tibi pupillorum pater, ut pecuniam in rem suam servis eius crederes, mandavit et in hanc rem aeque ipso praecipiente pignora sunt obligata, et mandati actione pupillos post mortem patris convenire et exsequi ius obligationis pignorum poteris, si in solutione cessabitur.

D. IIII k. Ian. Aemiliano et Basso conss.

[9] *Impp. Diocletianus et Maximianus AA. Marcello.* Cum per procuratorem causam tuam laesam esse dicas, mandati actio adversus eum tibi competit.

[10] *Idem AA. et CC. Aurelio Papio.* Si pro ea contra quam supplicas fideiussor seu mandator intercessisti et neque condemnatus es neque bona eam dilapidare postea coepisse comprobare possis, ut iustam metuendi causam praebeat, neque ab initio ita te obligationem suscepisse, ut eam possis et ante solutionem convenire, nulla iuris ratione, antequam satis creditori pro ea feceris, eam ad solutionem urgueri certum est. fideiussorem vero seu mandatorem exceptione munitum et iniuria iudicis damnatum et appellatione contra bonam fidem minime usum non posse mandati agere manifestum est.

[11] *Idem AA. et CC. Aurelio Gaio.* Procuratorem non tantum pro his quae gessit, sed etiam pro his quae gerenda suscepit, et tam propter exactam ex mandato pecuniam quam non exactam, tam dolum quam culpam, sumptuum ratione bona fide habita, praestare necesse est.

D. ... k. Iun. Sirmi AA. conss.

[vii] [pecuniae]

[7] *The same Augustus to Aurelianus, a soldier.* If, following the instructions in a letter of the person who was its author, you lent funds to the person who handed the letter over to you, an action on mandate is available to you both against the person who received money on loan from you[178] and against the person whose mandate you followed.

[8] *Emperors* VALERIAN *and* GALLIENUS *Augusti and* VALERIAN *most noble Caesar to Aurelius Lucius.* If (before his death) the father of the wards gave a mandate to you to lend money to his slaves for his benefit and pledges were given also for this purpose at his own instruction, you will be able both to sue the wards on an action on mandate after the death of their father and, if they fail to pay, to enforce your right from the obligation of the pledges.

Given December 29, in the consulship of Aemilianus and Bassus (259).

[9][179] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Marcellus.* Since you say that damage was done to your case by your procurator (for a lawsuit), an action on mandate against him is available to you.

[10] *The same Augusti and the Caesars to Aurelius Papius.* If you assumed liability as a surety or mandator for the woman against whom you are pleading, and you have not been condemned (to her creditor), and you cannot prove (either) that she began to dissipate her property afterwards so as to offer a just cause for fearing (her inability to pay) or that you took up the obligation from the beginning so that you could sue her even before payment, it is certain that by no principle of the law is she compelled to pay (you) before you satisfied the creditor on her behalf. It is manifest that a surety or mandator, though protected with a defense, when he has both been condemned through wrongdoing (*iniuria*) on the part of the judge and, contrary to good faith, has not had recourse to an appeal, cannot sue on mandate.

(293).

[11] *The same Augusti and Caesars to Aurelius Gaius.* A procurator must be responsible not only for those things that he has managed, but also for those things that he has undertaken to manage, both for the money exacted on the basis of his mandate as well as money not exacted, and also for deliberate misconduct as well as fault, with account taken for his expenses in accordance with good faith.

Given June 1, at Sirmium, in the consulship of the Augusti (293).[180]

[178] Possibly delete *mandati*: the creditor would have no action on mandate against the debtor.
[179] Perhaps to be combined with C. 4.27.1, dated July 1, 290.
[180] January 1 is more likely

[12] *Idem AA. et CC. Firmo Marcellino.* Cum mandati negotii contractum certam accepisse legem adseveres, eam integram secundum bonam fidem custodiri convenit. unde si contra mandati tenorem procurator tuus ad te pertinentem fundum vendidit nec venditionem postea ratam habuisti, dominium tibi auferre non potuit.

PP. XVII k. Iun. Sirmi AA. conss.

[13] *Idem AA. et CC. Zosimo.* A procuratore dolum et omnem culpam, non etiam improvisum casum praestandum esse iuris auctoritate manifeste declaratur.

D. k. Febr. Sirmi CC. *conss.*

[14] *Idem AA. et CC. Hermiano.* Si secundum mandatum Tryphonis ac Felicis equos tua pecunia comparatos vel in solutum a proprio debitore tibi traditos uni de his utriusque voluntate dedisti, ad parendum placitis eos mandati iudicio conventos bona fides urguet.

D. VI k. April. Sirmi CC. *conss.*

[15] *Idem AA. et CC. Aurelio Precario Athenaeo.* Mandatum re integra domini morte finitur.

D. XVII k. Mai. CC. conss.

[16] *Idem AA. et CC. Uzando.* Ad comparandas merces data pecunia, qui mandatum suscepit, fide rupta quanti interest mandatoris tenetur.

III k. Oct.

[17] *Idem AA. et CC. Aurelio Gorgonio.* Salarium incertae pollicitationis peti non potest.

[18] *Idem AA. et CC. Tusciano.* Post solutionem a se factam, qui dari mutuo mandavit, ab eo, pro quo intercessit, vel successoribus eius quod solutum est etiam cum usuris post moram recte reddi postulat.

[12] *The same Augusti and Caesars to Firmus Marcellinus.* Since you assert the contract for the mandate of a business involved specific terms (*certam legem*), it is accepted that these terms be observed fully in accordance with good faith. Therefore if, contrary to the tenor of the mandate, the procurator sold a farm belonging to you and afterwards you did not ratify the sale, he could not take ownership away from you.

Posted May 16, at Sirmium, in the consulship of the Augusti (293).[181]

[13] *The same Augusti and Caesars to Zosimus.* It is clearly declared by the authority of the law that a procurator is responsible for deliberate misconduct (*dolus*) as well as all fault (*culpa*), but not for an unforeseen accident.

Given February 1, at Sirmium, in the consulship of the Caesars (294).

[14] *The same Augusti and Caesars to Hermianus.* If, in accordance with the mandate of Trypho and Felix, you have given to one of these, with the consent of both, horses purchased with your money or delivered to you as payment by your debtor, good faith compels them, when sued in a judgment on the mandate, to comply with their agreement.

Given March 27, at Sirmium, in the consulship of the Caesars (294).

[15] *The same Augusti and Caesars to Aurelius Precarius Athenaeus.* A mandate, if the legal situation is unchanged (*re integra*), is ended at the death of the owner (the mandator).

Given April 15 in the consulship of the Caesars (294).

[16] *The same Augusti and Caesars to Uzandus.* A person who has undertaken a mandate to purchase goods with money he has been given, if he breaks his faith, is liable for the mandator's interest.

September 29 (294?).

[17] *The same Augusti and Caesars to Aurelius Gorgonius.* An honorarium (*salarium*) cannot be claimed for an indefinite promise (by a mandatary).

(294?).

[18] *The same Augusti and Caesars to Tuscianus.* A person who has mandated that a loan be given, after he has made the payment (to the mandatary), rightly demands what has been paid, along with interest after delay (*mora*, default in payment), from the person for whom he assumed liability (*pro quo intercessit*) or from his successors.[182]

[181] Mommsen dates to December 16, 293.

[182] Person A gave a mandate to B to make a loan to C, and B executed the mandate; A then repaid the loan to B. Now A can claim the amount of the loan (plus interest after default) from C, for whom A is said to have assumed liability.

D. VII k. Oct. Sirmi ... conss.

[19] *Idem AA. et CC. Aurelio Eugenio.* Pretii rerum distractarum, quas venales mandato praecedente acceperas, ultra licitum usuras ex stipulatione vel mora praestare, licet pignora data probentur, compelli non potes.

S. XIIII k. Nov. Sirmi ... conss.

[20] *Idem AA. et CC. Aurelio Epagatho.* **pr.** Si contra licitum litis incertum redemisti, interdictae conventionis tibi fidem impleri frustra petis. 1. Quod si gratuitum mandatum suscepisti, secundum bonam fidem sumptus recte postulas.

[21] *Imp. Constantinus A. Volusiano pp.* In re mandata non pecuniae solum, cuius est certissimum mandati iudicium, verum etiam existimationis periculum est. nam suae quidem quisque rei moderator atque arbiter non omnia negotia, sed pleraque ex proprio animo facit: aliena vero negotia exacto officio geruntur nec quicquam in eorum administratione neglectum ac declinatum culpa vacuum est.

[22] *Imp. Anastasius A. Eustathio pp.* **pr.** Per diversas interpellationes ad nos factas comperimus quosdam alienis rebus fortunisque inhiantes cessiones aliis competentium actionum in semet exponi properare hocque modo diversas personas litigiorum vexationibus adficere, cum certum sit pro indubitatis obligationibus eos magis, quibus antea suppetebant, sua vindicare quam ad alios ea transferre velle.

1. Per hanc itaque legem iubemus in posterum huiusmodi conamen inhiberi (nec enim dubium est redemptores litium alienarum videri eos esse, qui tales cessiones in se confici cupiunt), ita tamen, ut, si quis datis pecuniis huiusmodi subierit cessionem, usque ad ipsam tantummodo solutarum pecuniarum quantitatem et usurarum eius actiones exercere permittatur, licet instrumento cessionis venditionis nomen insertum sit:

2. Exceptis scilicet cessionibus, quas inter coheredes pro actionibus hereditariis fieri contingit, et his, quascumque vel creditor vel is qui res aliquas possidet pro debito seu rerum apud se constitutarum

Given September 25, at Sirmium, in the consulship (of the Caesars, 294?).

[19] *The same Augusti and Caesars to Aurelius Eugenius.* For the price of property that you received to sell pursuant to a preceding mandate, you cannot be compelled to pay interest beyond the permitted rate on the basis of a stipulation or delay, even should it be proved that pledges have been given.

Written October 18, at Sirmium, in the consulship (of the Caesars, 294?).

[20] *The same Augusti and Caesars to Aurelius Epagathus.* **pr.** If, contrary to what is allowed, you have purchased (from a litigant) the uncertain outcome of a lawsuit, you seek in vain the fulfillment of the terms (*fides*) of the forbidden agreement. **1.** But if you have taken up a gratuitous mandate (to pursue the lawsuit), you correctly claim your expenses in accordance with good faith.

[21] *Emperor CONSTANTINE Augustus to Volusianus, Praetorian Prefect.*[183] In a mandated matter there is risk not only for money – for which there is a most certain judgment on mandate – but also for a person's esteem. For each person, as a manager and judge of his own affairs, conducts, not all business, but much of it by his own intention. But the affairs of other people are managed after a duty to do so has been imposed (through a mandate), and nothing in their administration, if neglected or declined, is free of fault.

(313–315?).

[22] *Emperor ANASTASIUS Augustus to Eustathius, Praetorian Prefect.* **pr.** We have learned through diverse appeals (*interpellationes*) made to Us that some people, coveting the property and fortunes of others, hasten the cessions of actions available to others to be transferred to themselves, and in this way afflict various persons with the vexations of litigation, since it is certain that, for undisputed obligations, those people to whom they previously were available want to claim their own rights (*sua vindicare*) from them rather than transfer these to others.

1. Thus through this law We order that this type of attempt be inhibited for the future – for it is not doubtful that the purchasers of other people's lawsuits seem to be those who desire such cessions to be made towards themselves – under this condition, that, if someone gives money and enters into a cession of this type, he be permitted to pursue actions only for the amount of money paid and the interest on it, although the notice (*nomen*) of the sale has been inserted in the document of cession.

2. But cessions are excepted that happen to arise among co-heirs in inherited causes of action, as are ones that a creditor or a person who possesses certain

[183] More probably, City Prefect. Seeck dates to *c.* 321.

munimine ac tuitione acceperit, nec non his, quas in legatarios seu fideicommissarios, quibus debita vel actiones seu res aliae relictae sunt, pro his fieri necesse sit: nulla etenim tali ratione intercedente redemptor, sicuti superius declaratum est, magis existit, qui alienas pecuniis praestitis subiit actiones. **3.** Sin autem per donationem cessio facta est, sciant omnes huiusmodi legi locum non esse, sed antiqua iura esse servanda, ut cessiones tam pro exceptis et specialiter enumeratis quam aliis causis factae seu faciendae secundum actionum, quaecumque cessae sunt vel fuerint, tenorem sine quadam imminutione obtineant.

D. x k. Aug. Areovinda et Messala conss.

[23] *Imp. Iustinianus A. Iohanni pp.* **pr.** Anastasio divae memoriae principi iustissima constitutio conscripta est tam humanitatis quam benivolentiae plena, ut ne quis alienum subeat debitum cessione in eum facta et amplius consequatur a debitore his, quae praestavit cessionis auctori, exceptis quibusdam casibus, qui specialiter illi sanctioni continentur. sed cum hi, qui circa lites morantur, eandem piam dispositionem in sua natura remanere minime concesserunt, invenientes machinationem, ut partem quidem debiti venditionis titulo transferant in alium creditores, reliquam autem partem per coloratam cedant donationem, generaliter Anastasianae constitutioni subvenientes sancimus nulli licere partem quidem debiti cedere pecuniis acceptis et venditione actionum habita, partem autem donationis titulo videri transferre, sed, si voluerit, pure totum debitum donare et per donationem actiones transferre, non occulte nec per artes clandestinas pecunias suscipere, publice autem simulatam donationem celebrare, sed undique puram et non dissimulatam facere donationem: huiusmodi enim cessionibus non adversamur.

1. Si quis autem occulte aliud quidem agere conatur et pecunias pro parte accepit et vendidit particulatim actiones, partem autem donare simulat vel ipsi, qui emptionem actionis subiit, vel forsitan alii per suppositam personam (quia et hoc saepius perpetratum esse didicimus), huiusmodi machinationem penitus amputamus, ut nihil amplius accipiat, quam ipse vero contractu re ipsa persolvit: sed omne, quod superfluum est et per figuratam donationem translatum, inutile esse ex utraque parte censemus, ut neque ei qui cedit actiones neque ei qui eas

property for a debt has accepted for property placed in his possession under his own protection and watchfulness; and also ones that have to be made toward legatees and trustees, to whom debts or actions or other property have been bequeathed. Without such a reason intervening, as discussed above, someone who has entered into another person's actions after paying money is rather a champertor (*redemptor*, the purchaser of a lawsuit). **3.** But if a cession has been made as a gift, everyone should know that there is no place for a law of this type, but that the ancient laws are to be maintained, so that cessions made or to be made for causes excepted and specially enumerated and for other causes in accordance with the terms (*tenor*) of the actions, which have been or will have been ceded, shall be valid without any diminution.

Given July 23, in the consulship of Areovinda and Messala (506).

[23] *Emperor JUSTINIAN Augustus to John, Praetorian Prefect.* **pr.** A most just constitution,[184] full of both kindness and benevolence, has been written by the Emperor Anastasius of blessed memory, that no one should enter upon someone else's debt after he has been ceded the lawsuit, and that he should not gain more from the debtor than what he has paid to the author of the cession, except in certain cases, which are specifically included in that ordinance. But since these persons who spend their time around lawsuits have not allowed this same pious disposition to remain in its nature (i.e., to observe the spirit of the law), finding a device so that the creditors transfer one part of the debt under the title of a sale, but cede the remaining part through a fictive gift, We, in order to provide general support for the constitution of Anastasius, ordain that no one be allowed to receive money and cede part of a debt and, after holding a sale of lawsuits, to be seen to transfer part as a gift. But, if he wants, he can unconditionally make a gift of the entire debt and through the gift transfer rights of action, not to take up funds secretly or by clandestine devices only to celebrate publicly a faked donation, but everywhere to make a donation unrestricted and unconcealed; for We are not opposed to cessions of this type.

1. However, if someone secretly tries to do something else and has received money for a part (of an action) and has sold actions part by part, but feigns making a gift of a part either to the very person who has undergone a purchase of an action, or perhaps to another through an intermediary – for We have learned that even this has often been perpetrated – We cut off scheming of this type completely, so that he receive no more than he himself has actually paid in a true contract. But everything that is left over and transferred through a specious gift, We decree to be legally ineffective for both parties, so

[184] Above, 22.

suscipere curavit aliquid lucri vel fieri vel remanere vel aliquam contra debitorem vel res ad eum pertinentes esse utrique eorum actionem. **2.** Sed et *si quis donationem quidem omnis debiti facere adsimulaverit*, ut videatur esse tota donatio, aliquid autem occulte susceperit, et in hoc casu hoc tantummodo exactionem sortiri, quod datum esse comprobetur, et si hoc a debitore persolvatur, nulla contra eum vel substantiam eius ex dissimulata donatione oriatur molestia.

3. Et iustum quidem fuerat hoc remedium debitoribus ab Anastasianis temporibus impertiri, ex quibus etiam lex lata est, quam homines astute lacerandam esse existimaverunt. sed ne videamur in tanta temporum nostrorum benivolentia aliquid acerbius admittere, in futuris post praesentem legem casibus haec observari censemus, ut omne, quod contra legem Anastasianam excogitatum est, hoc in posterum nostro perfruatur remedio.

[24] [Ὁ αὐτὸς βασιλεύς.] Ἡ παροῦσα διάταξις μέμνηται μὲν τῆς Ἀναστασίου τοῦ τῆς θείας λήξεως διατάξεως τῆς γενομένης περὶ τῶν ἐκχωρήσεων, ἥτις βούλεται τὸν χρήματα δεδωκότα καὶ ἀγωγὰς ἐκχωρηθῆναι μηδὲν πλέον ἀπαιτεῖν ἐκ τῶν ἐκχωρηθεισῶν ἀγωγῶν, εἰ μὴ μόνον ἅπερ δέδωκεν ὑπὲρ αὐτῶν· εὑροῦσα δὲ ἐν ἐκείνῃ τῇ διατάξει πρόσωπά τινα ὑπεξῃρημένα κελεύει καὶ ἐπὶ τούτων τῶν προσώπων τὸ αὐτὸ νόμιμον κρατεῖν καὶ μηκέτι φυλάττεσθαι τὴν ἐν ἐκείνῃ τῇ διατάξει γενομένην ὑπεξαίρεσιν, ἀλλὰ τὸν δεδωκότα χρήματα μόνον αὐτὰ λαμβάνειν μετὰ τῶν τόκων καὶ πλέον οὐδέν. εἰ δὲ δωρέα τις καθαρὰ γένοιτο ἀγωγῶν, τὴν ἐπὶ ταῖς δωρεαῖς ἐκχώρησιν ἰσχύειν βούλεται, εἰ μὴ ἄρα κατὰ περιγραφὴν ἐγένετο.

XXXVI Si Servus Se Emi Mandaverit

[1] *Impp. Diocletianus et Maximianus AA. et CC. Aureliae Dionysiae.* **pr.** Si extero servus se mandaverit emendum, quamvis nec ex persona servi (quia hoc liber mandare non potest) nec ex domini (quoniam qui

that no profit accrue to or remain for either the person who ceded the actions or for the one who has taken care to assume them, or that neither of them have any action against the debtor or property belonging to him. 2. But if someone pretends to make a gift of a whole debt, so that the gift seem to be total, but has secretly taken something, (We decree) both that in this case he only gain the claim which is proved to have been given, and that, if this should be paid by the debtor, no trouble should arise against him or his property from a fake gift.

3. And it was just that this remedy be created for debtors from the times of Anastasius, when the law was passed, which men have cunningly figured out how to tear apart. But lest We seem, in the great benevolence of Our times, to introduce anything very harsh, in future cases after the present law We decree that these measures be observed, so that everything that has been contemplated against the law of Anastasius should benefit from Our remedy in posterity.

(531–532).[185]

[24][186] *(The same Augustus)* The present constitution recalls the measure that Anastasius of divine memory made concerning the cession of actions (*ekchoreseis*),[187] which provides that the person who has given money for ceded actions claim no more from the ceded actions than precisely what he gave for them; finding in that constitution that some persons are excepted, it orders that the same law prevail also with these persons, and that the exception provided for in that constitution no longer be maintained, but that the one who has given money take that alone with interest and nothing more. If there should be some unconditional gift of actions, it provides that the cession for the sake of gifts should have force, if it has not occurred to circumvent the law.

(531–534).

Thirty-Sixth Title If a Slave Has Mandated That He Be Purchased[188]

[1][189] *Emperors* Diocletian *and* Maximianus *Augusti and the Caesars to Aurelia Dionysia.* **pr.** If a slave has given a mandate to an outside party to purchase him, although the action was not believed to exist on the basis of the

[185] Lounghis *et al.* give between February 20, 531 and January 13, 532, or between October 18 and November, 534.

[186] = Bas. 14.1.86.

[187] Above, 22.

[188] Blume compares "Papinian in D. 17.1.54 pr., where it is said: 'When a slave gives a stranger a commission for his own purchase, this is no mandate. But if the mandate was given for the further purpose of the slave being manumitted, and he is not manumitted, the owner can either as vendor recover the price, or on the score of affection proceed upon the mandate, supposing the slave to be a natural son or brother.'"

[189] Bas. 14.1.87.

mandat, ut a se res comparetur, inutiliter mandat) consistere credebatur actio, tamen optima ratione, quia non id agitur, ut ex ipso mandato, sed propter mandatum ex alio contractu nascatur actio, domino quaeri placuit obligationem. 1. Si itaque domino ignorante emi te mandasti ac te nummos subministrante peculiares soluti sunt, emptori minime liberatio per huiusmodi factum potuit pervenire. nec tamen si tradita nec manumissa es, etiam mandati de ancilla et empti de pretio consequendo tam contrarias actiones ei exercere concedi placuit. 2. Sane in illius arbitrio relictum est, utrumne mancipium an pretium consequi velit, cum ex peculio quod eius fuit solutio celebrata obligationis vinculo emptorem liberare non potuit.

Subdita k. Oct. Sirmi ipsis AA. conss.

XXXVII Pro Socio

[1] *Impp. Diocletianus et Maximianus AA. et CC. Aurelio.* Societatem uno pecuniam conferente alio operam posse contrahi magis obtinuit.

D. III non. Mai. AA. conss.

[2] *Idem AA. et CC. Pannonio.* Cum proponas te praedium coniuncto dominio cum patruo tuo comparasse in possessionemque tam te quam ipsum inductum, iuris ratio efficit, ut dominium fundi ad utrumque pertineat. sane quia pretium a te solo numeratum et sollemnibus pensitationibus cessante socio satisfactum esse dicis, iudicio societatis id quod eo nomine praestari oportuerit consequeris.

[3] *Idem AA. et CC. Aurelio Victorino militi.* Cum in societatis contractibus fides exuberet conveniatque aequitatis rationibus etiam compendia aequaliter inter socios dividi, praeses provinciae, si patrem tuum salinarum societatem participasse et non recepta communis compendii portione rebus humanis exemptum esse reppererit,

person of a slave – since a free person cannot mandate this – or of the owner – since a person who mandates that a thing be purchased from himself gives an ineffective mandate – still, on the best reasoning, it was decided that the owner has a right to the obligation, since it is not a question of the action arising from the mandate itself, but on account of a mandate from another contract. 1. Thus if, without your owner's knowing, you have given a mandate that you be purchased, and money from your *peculium* that you supplied was paid, freedom (from the obligation) could not come to the purchaser through a fact of this type. Nor, however, was it decided that, if you were delivered but not manumitted, he be allowed to bring such contrary actions on mandate concerning the slave woman and on sale to gain the price. 2. Certainly it is left in his judgment whether he might wish to seek the slave or the price, since the payment made (to the slave's owner) from the *peculium*, which was (already) his, could not free the purchaser from the bond of his obligation.

Given October 1, at Sirmium, in the consulship of the Augusti themselves (293).

Thirty-Seventh Title (Action on) Partnership[190]

[1] *Emperors Diocletian and Maximian Augusti and the Caesars to Aurelius.* The opinion has prevailed that a partnership can be contracted when one person provides money and another work.

Given May 5, in the consulship of the Augusti (293).

[2] *The same Augusti and Caesars to Pannonius.* Since you state that you have purchased a property under joint ownership with your paternal uncle and that both you and he have been placed in possession, the logic of law establishes that the ownership of the farm belongs to both. Certainly, because you say that the price was paid by yourself alone and that the lawful payments were met without a contribution by your partner, you will gain in a judgment on partnership (*iudicium societatis*) what should have been provided on this account.[191]

[3] *The same Augusti and Caesars to Aurelius Victorinus, a soldier.* Since, in contracts for partnership, (good) faith is preeminent and it is consistent with considerations of fairness that profits also be divided fairly among the partners, the provincial governor, if he finds that your father participated in a partnership for salt beds and passed away without receiving his portion of

[190] See D. 17.2; Inst. 3.25.

[191] That is, the petitioner can sue his uncle for a contribution, but is not sole owner. Possibly dated to 294, in connection with C. 4.35.16.

commodum societatis, quod deberi iuxta fidem veri constiterit, restitui tibi praecipiet.

PP. VI k. Sept. ... conss.

[4] *Idem AA. et CC. Aurelio Celeri.* Si societatis iure vel transactioni stipulatione subdita bonorum omnium aequis partibus inter te et Fabiam divisionem recte fieri placuit, quo minus haec rata serventur, nihil interest, utrumne testatus, qui fuerit obligatus, an intestatus rebus sit humanis exemptus.

[5] *Idem AA. et CC. Aurelio Theodoro.* Tamdiu societas durat, quamdiu consensus partium integer perseverat. proinde si iam tibi pro socio nata est actio, eam inferre apud eum, cuius super ea re notio est, non prohiberis.

D. XII k. Ian. Nicomediae CC. conss.

[6] *Imp. Iustinianus A. Iohanni pp.* De societate apud veteres dubitatum est, si sub condicione contrahi potest: puta 'si ille consul fuerit' societatem esse contractam. sed ne simili modo apud posteritatem sicut apud antiquitatem huiusmodi causa ventiletur, sancimus societatem contrahi posse non solum pure, sed etiam sub condicione: voluntates etenim legitime contrahentium omnimodo conservandae sunt.

D. prid.

[7] *Idem A. Iohanni pp.* Sancimus veterum dubitatione semota licentiam habere furiosi curatorem dissolvere, si maluerit, societatem furiosi, et sociis licere ei renuntiare. et quemadmodum in omnibus aliis contractibus legitimam auctoritatem ei dedimus, ita et in hac parte eum permittimus competenter commodis furiosi providere.

D. ... Constantinopoli post consulatum Lampadii et Orestis.

the common profit, will instruct that the benefit of the partnership, which will have been established to be owed in accordance with the facts (*iuxta fidem veri*), be restored to you.

Posted August 27, in the consulship of ... [192]

[4] *The same Augusti and Caesars to Aurelius Celer.* If it was decided rightly that a division of all property be made in equal shares between you and Fabia on the basis of a partnership or a stipulation made for a settlement, it does not make any difference for observing these provisions as valid whether the person who had been obligated passed away with or without a will.

[5] *The same Augusti and Caesars to Aurelius Theodorus.* A partnership endures as long as the consensus of the parties remains intact. Accordingly, if an action on partnership has already arisen for you, you are not prohibited from bringing this before the person who is competent to investigate this matter (i.e., the judge).

Given December 21, at Nicomedia, in the consulship of the Caesars (294).

[6] *Emperor* JUSTINIAN *Augustus to John, Praetorian Prefect.* There was doubt among the ancients whether a partnership can be contracted under a condition: say, the partnership has been contracted "if he is consul." But lest a legal situation of this type be debated (*ventiletur*) in a similar manner among later generations (*apud posteritatem*) as in ancient times (*apud antiquitatem*), We ordain that a partnership can be contracted not only without restriction, but under a condition; for the wishes of those lawfully entering into a contract are to be observed.

Given April 30, at Constantinople, in the post-consulate of viri clarissimi *Lampadius and Orestes (531).*[193]

[7] *The same Augustus to John, Praetorian Prefect.* We ordain, in order to remove the doubt of the ancients, that the *curator* of an insane person (*furiosi*) have permission to dissolve, if he prefers, the partnership of the insane person, and that it be permitted for the partners to renounce the partnership. And just as We have given him lawful authority in all other contracts, so too do We permit him in this area to provide appropriately for the interests of the insane person.

Given ... at Constantinople, in the post-consulate of Lampadius and Orestes (531).[194]

[192] This subscription may rather apply to ch. 4.
[193] The subscription is entirely restored, but accepted by Lounghis *et al.*
[194] Lounghis *et al.* date to between April 30 and December 31, 531.

XXXVIII De Contrahenda Emptione

[1] *Impp. Valerianus et Gallienus AA. Aurelio Paulo.* Venditiones, etsi in alio loco quam in quo possessiones constitutae sunt fiant, non ideo irritae esse creduntur.

D. XII k. Mai.

[2] *Impp. Diocletianus et Maximianus AA. Aurelio Avito.* Emptionem et venditionem consensum desiderare nec furiosi ullum esse consensum manifestum est. intermissionis autem tempore furiosos maiores viginti quinque annis venditiones et alios quoslibet contractus posse facere non ambigitur.

D. VIII id. Mai. Maximo II et Aquilino conss.

[3] *Idem AA. et CC. Valeriae Viacrae.* Si donationis causa venditionis simulatus contractus est, emptio sui deficit substantia. sane si in possessionem rei sub specie venditionis causa donationis, ut te aleret, induxisti, sicut donatio perfecta facile rescindi non potest, ita legi, quam tuis rebus donans dixisti, parere convenit.

[4] *Idem AA. et CC. Aurelio Luciano.* Cum res tibi donatas ab herede donatricis distractas esse proponas, intellegere debueras duplicari tibi titulum possessionis non potuisse, sed ex donatione et traditione dominum factum frustra emisse, cum rei propriae emptio non possit consistere, ac tunc demum tibi profuit, si ex donatione te non fuisse dominum demonstretur. sane quoniam omnia bona tibi ab ea donata et tradita dicis, ad hoc a filio facta venditio rerum maternarum adferre perfecta etiam donatione poterit defensionem, ne vel exemplo inofficiosi testamenti possit haec avocare.

PP. IIII k. Iun. AA. *conss.*

[5] *Idem AA. et CC. Umbigae Gratiae.* Cum ipse tutor nihil ex bonis pupilli quae distrahi possunt comparare palam et bona fide prohibetur, multo magis uxor eius hoc facere potest.

D. VIII k. Dec. AA. conss.

Thirty-Eighth Title Contracting a Purchase[195]

[1] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Aurelius Paulus.* Sales, even if they should occur in a place different from the one in which the properties are located, are not believed to be invalid for that reason.

Given April 20.

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Aurelius Avitus.* It is manifest that a purchase and a sale require agreement (*consensus*) and that there is no agreement with an insane person. However, it is not doubted that during an interval of remission insane people older than 25 years can make sales and any other contracts.

Given May 6, in the consulship of Maximus, for the second time, and Aquilinus (286).

[3] *The same Augusti and the Caesars to Valeria Viacra.* If a contract of sale has been feigned in order to make a gift, the purchase is deficient in its essential nature. Certainly if you have put a person in possession of the thing under the pretext of a sale but for the purpose of making a gift under the condition that he might support you, then just as a gift completed cannot easily be rescinded, so it is held that he comply with the terms (*lex*) that you pronounced for your property as you were making the gift.

[4][196] *The same Augusti and Caesars to Aurelius Lucianus.* Since you state that the property (previously) given to you has been sold (to you) by the heir of the woman who gave it to you, you should have understood that the title of possession cannot be (thereby) strengthened for you, but that having become owner after gift and delivery, you have purchased invalidly, since there cannot be a purchase of one's own property; but only at that time did the sale benefit you if it could be shown that you were not owner as a result of the gift. Of course, since you say that you were given and delivered all her property, a sale made by the son of his mother's property will be able to provide (you) a defense in addition to this even when the donation is complete, so that he, for example, could not claim these things on the analogy of an undutiful will.

Posted May 29, in the consulship of the Augusti (293).

[5] *The same Augusti and Caesars to Umbiga Gratia.* Since the *tutor* himself is not prohibited to purchase openly and in good faith anything from the property of the ward that can be sold, all the more so can his wife do this.

Given November 24, in the consulship of the Augusti (293).

[195] See D. 18.1; Iust. Inst. 3.23.

[196] = *Frag. Vat.* 293, with a longer text and a fuller dating formula.

[6] *Idem AA. et CC. Aurelio Lucretio.* Si Gaudentius in matrem tuam titulo venditionis sine quadam fraude dominium mancipii transtulit, non idcirco, quod post inter eos matrimonium et divortium secutum dicitur, iuri eius quicquam derogatum est: quod vindicare, te matri tuae successisse probans, minime prohiberis.

[7] *Idem AA. et CC. Aurelio Isioni.* Si ancillam ex emptione sibi quaesitam mater tua donatione a secundo marito postea se simulavit accepisse, tituli falsi figmentum dominium ei duplicare vel auferre non potuit.
S. non. Mart. Sirmi CC. conss.

[8] *Idem AA. et CC. Herodi et Diogeni.* Si non donationis causa, sed vere vineas distraxisti nec pretium numeratum est, actio tibi pretii, non eorum quae dedisti repetitio competit.
D. XVII k. April. CC. conss.

[9] *Idem AA. et CC. Severo militi.* Empti fides ac venditi sine quantitate nulla est. placito autem pretio non numerato, sed solum tradita possessione istiusmodi contractus non habetur irritus, nec idcirco is qui comparavit minus recte possidet, quod soluta summa quam dari convenerat negatur. sed et donationis gratia praedii facta venditione si traditio sequatur, actione pretii nulla competente perficitur donatio.
D. VIII k. April. Sirmi CC. conss.

[10] *Idem AA. et CC. Aureliae Gordianae.* Si mater tua velut ex bonis patris praedium suum comparavit, cum rei propriae non consistat emptio et hanc simulatam proponas, huiusmodi placitum mutare substantiam veritatis et ei nocere non potuit.
D. VII id. April. CC. conss.

[11] *Idem AA. et CC. Aurelio Paterno.* Invitum comparare vel distrahere postulantis causam iustam non continet desiderium.
PP. III non. Dec. CC. conss.

[6] *The same Augusti and Caesars to Aurelius Lucretius.* If Gaudentius transferred the ownership of a slave to your mother under the title of a sale without any fraud, nothing has been removed from her right because afterwards a marriage and a divorce are said to have followed between them; you are not at all prohibited from claiming ownership (*vindicare*) of it (the slave) if you prove that you are heir to your mother.

[7] *The same Augusti and Caesars to Aurelius Isio.* If your mother acquired a slave woman by purchase and later pretended that she received the slave as a gift from her second husband, the faking of a false contract could not strengthen or take away ownership from her.

Written March 7, at Sirmium, in the consulship of the Caesars (294).

[8] *The same Augusti and Caesars to Herodes and Diogenes.*[197] If you have in fact sold vineyards, not (intending) to make a gift, and the price has not been paid, an action is available to you for the price, not one for reclaiming what you have given.

Given March 16, in the consulship of the Caesars (294).

[9][198] *The same Augusti and the Caesars to Severus, a soldier.* There is no faith in a purchase and sale without a quantity (fixed for the price). But when a price has been agreed upon and not paid, but there has only been delivery of the possession (of the object of sale), a contract of this type is not considered invalid, nor for that reason does the person who has purchased possess less rightfully because it is denied that payment was made of the sum that had been agreed upon to give. But when a sale of property has been made for the sake of a gift, if delivery should follow, the gift is complete but with no action available for the price.

Given March 25, at Sirmium, in the consulship of the Caesars (294).

[10] *The same Augusti and Caesars to Aurelia Gordiana.* If your mother purchased her own farm (*praedium*) as if from the property of her husband, since there is no purchase of one's own property and you allege that this purchase was faked, an agreement of this type could not change the truth of the situation and could not harm her.

Given April 7, at Sirmium, in the consulship of the Caesars (294).

[11] *The same Augusti and Caesars to Aurelius Paternus.* The desire of someone demanding that a person purchase or sell unwillingly does not provide a just cause.

Posted December 3, in the consulship of the Caesars (294).

197 Since the subject in the rescript is singular, more likely "Herodes Diogenes."

198 Perhaps to be combined with C. 7.26.8.

[12] *Idem AA. et CC. Aurelio Paciano.* **pr.** Non idcirco minus emptio perfecta est, quod emptor fideiussorem non accepit vel instrumentum testationis vacuae possessionis omissum est: nam secundum consensum auctoris in possessionem ingressus recte possidet. **1.** Pretium sane, si eo nomine satisfactum non probetur, peti potest: nec enim licet in continenti facta paenitentiae contestatio consensu finita rescindit.

[13] *Idem AA. et CC. Aurelio Decio Lolliano.* In vendentis vel ementis voluntatem collata condicione comparandi, quia non adstringit necessitate contrahentes, obligatio nulla est. idcirco dominus invitus ex huiusmodi conventione rem propriam vel quilibet alius distrahere non compellitur.

[14] *Imppp. Gratianus Valentinianus et Theodosius AAA. Flaviano pp. Illyrici.* Dudum proximis consortibusque concessum erat, ut extraneos ab emptione removerent neque homines suo arbitratu vendenda distraherent. sed quia gravis haec videtur iniuria, quae inani honestatis colore velatur, ut homines de rebus suis facere aliquid cogantur inviti, superiore lege cassata unusquisque suo arbitratu quaerere vel probare possit emptorem, nisi lex specialiter quasdam personas hoc facere prohibuerit.
D. VI k. Iun. Vincentiae Tatiano et Symmacho conss.

[15] *Imp. Iustinianus A. Iuliano pp.* **pr.** Super rebus venumdandis, si quis ita rem comparavit, ut res vendita esset, quanti Titius aestimaverit, magna dubitatio exorta est multis antiquae prudentiae cultoribus.

1. Quam decidentes censemus, cum huiusmodi conventio super venditione procedat 'quanti ille aestimaverit', sub hac condicione stare venditionem, ut, si quidem ipse qui nominatus est pretium definierit, omnimodo secundum eius aestimationem et pretia persolvi et venditionem ad effectum pervenire, sive in scriptis sive sine scriptis contractus celebretur, scilicet si huiusmodi pactum, cum in scriptis

[12] *The same Augusti and Caesars to Aurelius Pacianus.* **pr.** A purchase is no less complete for the reason that the purchaser did not accept a surety or that the document attesting quiet possession has been omitted; for someone entering into possession in accordance with the wishes of the seller (*auctor*) rightly possesses. **1.** Certainly the price, if it should be proved that satisfaction has not been made on that account, can be claimed; nor does a declaration before witnesses (*contestatio*) of a change of heart, even if made right away, rescind what has been defined by agreement.

[13] *The same Augusti and Caesars to Aurelius Decius Lollianus.* When a condition for purchasing has been made dependent upon the will of the seller or the purchaser, because it does not bind the parties to the contract with necessity, there is no obligation. Therefore neither an owner nor anyone else is compelled to sell his own property unwillingly on the basis of this type of an agreement.

[14][199] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Flaviaus, Praetorian Prefect for Illyricum.* For a long time it was granted to near relatives and to spouses (*consortes*) that they could prevent outsiders from purchasing and that people could not sell property for sale at their own discretion. But because this injustice, which is cloaked in the empty appearance of honesty, seems burdensome, that people be compelled to do anything unwillingly concerning their own property, the earlier law is annulled and each person should be able to seek or approve a purchaser on his own judgment, unless a law has specifically prohibited certain persons from doing this.

Given May 27, at Vincentia (Vicenza), in the consulship of Tatianus and Symmachus (391).

[15] *Emperor* JUSTINIAN *Augustus to Julian, Praetorian Prefect.* **pr.** Concerning things to be sold, if someone has purchased a thing on the condition that the thing should have been sold for the value that Titius has estimated, a great doubt has arisen among many practitioners of the ancient wisdom (*antiquae prudentiae cultores*).

1. To decide this We ordain that when this type of agreement on a sale occurs "for the value that that person has estimated," the sale stands under this condition if indeed the very person who has been named has defined the price, (and) by all means both the price is paid and the sale is effective in accordance with his estimate, whether the contract is concluded in a written document or without one, provided that a pact of this type, when it has been redacted in written form, has been completed and executed in accordance with the definition of

[199] = C.Th. 3.1.6; combine with C. 1.18.12, which has the more correct listing of the emperors as Valentinian, Theodosius, and Arcadius. C.Th. 3.1.6 adds "and Italy" to the Prefect's title.

fuerit redactum, secundum nostrae legis definitionem per omnia completum et absolutum sit. **2.** Sin autem ille vel noluerit vel non potuerit pretium definire, tunc pro nihilo esse venditionem quasi nullo pretio statuto: nulla coniectura, immo magis divinatione in posterum servanda, utrum in personam certam an in viri boni arbitrium respicientes contrahentes ad haec pacta venerunt, quia hoc penitus impossibile esse credentes per huiusmodi sanctionem expellimus. **3.** Quod et in huiusmodi locatione locum habere censemus.

D. k. Aug. Lampadio et Oreste conss.

XXXVIIII De Hereditate vel Actione Vendita

[1] *Impp. Severus et Antoninus AA. Geminio.* Aes alienum hereditate nomine fisci vendita ad onus emptoris bonorum pertinere nec fiscum creditoribus hereditariis respondere certum et absolutum est.

D. III non. Nov.

[2] *Imp. Antoninus A. Titio Floriano.* Ratio iuris postulat, ut creditoribus hereditariis et legatariis seu fideicommissariis te convenire volentibus tu respondeas et cum eo, cui hereditatem venumdedisti, tu experiaris suo ordine. nam ut satis tibi detur, sero desideras, quoniam eo tempore, quo venumdabatur hereditas, hoc non est comprehensum. quamvis enim ea lege emerit, ut creditoribus hereditariis satisfaciat, excipere actiones hereditarias invitus cogi non potest.

[3] *Imp. Alexander A. Quintiano et Timotheo.* Nominis venditio et ignorante vel invito eo, adversus quem actiones mandantur, contrahi solet.

D. VIII id. Febr. Maximo II et Aeliano conss.

[4] *Idem A. Aurelio Diogeni militi.* Qui nondum certus de quantitate hereditatis, persuadente emptore quasi exiguam quantitatem, eam

Our law[200] in all respects. 2. But if that person either is unwilling or unable to define the price, then the sale is nullified as if no price had been established; no conjecture, or rather guessing, is to be maintained for the future, whether the parties to a contract were taking into consideration either a certain person or the standards of an upright man when they came to these pacts, because, believing the latter (an estimate by the standards of an upright man) to be impossible, We are removing it through this ordinance. 3. We decree that this also apply also in leases of this type.[201]

Given August 1, in the consultship of Lampadius and Orestes (530).

Thirty-Ninth Title The Sale of an Inheritance or a Right of Action[202]

[1] *Emperors Severus and Antoninus Augusti to Geminius.* It is certain and absolute that, when an inheritance is sold in the name of the Treasury, a debt (on the estate) is part of the burden of the purchaser of the property and the Treasury is not responsible to the creditors of the estate.

Given November 3.[203]

[2] *Emperor Antoninus Augustus to Titius Florianus.* The logic of the law (*ratio iuris*) demands that you be responsible to creditors of an inheritance or to legatees or beneficiaries of a trust wishing to sue you, and that in the proper order you should sue the person to whom you have sold the inheritance. For you are late in desiring that security be provided you, because, at the time when the inheritance was being sold, this was not included. For although he bought on condition that he satisfy the creditors of the estate, he cannot be compelled to answer unwillingly to actions relating to the estate.

[3][204] *Emperor Alexander Augustus to Quintianus and Timotheus.* The sale of an account commonly occurs even when the person against whom the actions are mandated (i.e., the debtor) is unaware or unwilling.

Given February 6, in the consulship of Maximus, for the second time, and Aelianus (223).

[4] *The same Augustus to Aurelius Diogenes, a soldier.* A person who, uncertain about its size, has sold an inheritance, when the purchaser was persuading him that it was small, is not compelled in a good faith trial to hand over property or

[200] C. 4.21.17.
[201] This constitution is similar to the wording in Gaius, D. 19.2.25 pr. for *locatio conductio*.
[202] See D. 18.4.
[203] The subscription may apply to this chapter or the following one.
[204] Combine with C. 8.41.1 (posted on February 9).

vendidit, bonae fidei iudicio conveniri,[viii] ut res tradat vel actiones mandet, non compellitur suoque iure eorum persecutionem habet.

D. XVII k. Oct. Maximo II *et Aeliano conss.*

[5] *Idem A. Nonario Onesimo.* Emptor hereditatis actionibus mandatis eo iure uti debet, quo is cuius persona fungitur, quamvis utiles etiam adversus debitores hereditarios actiones emptori tribui placuerit.

PP. k. Mart. Iuliano et Crispino conss.

[6] *Idem A. Pomponio militi.* Qui tibi hereditatem vendidit, antequam res hereditarias traderet, dominus earum perseveravit et ideo vendendo eas aliis dominium transferre potuit. sed quoniam contractus fidem fregit, ex empto actione conventus quod tua interest praestare cogitur.

PP. VIII *k. Iul. Agricola et Clemente conss.*

[7] *Impp. Diocletianus et Maximianus AA. Manaseae.* Postquam eo decursum est, ut cautiones quoque debitorum pignori darentur, ordinarium visum est, ut post nominis venditionem utiles emptori, sic (ut responsum est) vel ipsi creditori postulanti dandas actiones.

[8] *Idem AA. et CC. Aurelio Vigiliano.* Ex nominis emptione dominium rerum obligatarum ad emptorem non transit, sed vel in rem suam procuratori facto vel utilis secundum ea, quae pridem constituta sunt, exemplo creditoris persecutio tribuitur.

S. XV.

[9] *Imp. Iustinianus A. Iohanni pp.* Certi et indubitati iuris est ad similitudinem eius, qui personalem redemerit actionem et utiliter eam movere suo nomine conceditur, et eum, qui in rem actionem comparaverit, eadem uti posse facultate. cum enim actionis nomen generale est omnium sive in rem sive in personam actionum et apud omnes veteres

[viii] conventus

to assign rights of action by mandate, and he has the action to claim (*persecutio*) these things in his own right.

Given September 15, in the consulship of Maximus, for the second time, and Aelianus (223).

[5] *The same Augustus to Nonarius Onesimus.* The purchaser of an inheritance, when actions are assigned, should enjoy the same rights as the person whose place he took, although it has been decided that analogous actions are offered to the purchaser also against the estate's debtors.

Posted March 1, in the consulship of Julian and Crispinus (224).

[6][205] *The same Augustus to Pomponius, a soldier.* The man who sold you an inheritance remained its owner until he delivered it to you, and accordingly he could transfer ownership by selling them to others. But because he has broken the faith of contract, he is compelled, when sued on an action on purchase, to provide you your interest.

Posted June 24, in the consulship of Agricola and Clemens (230).

[7] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Manasea.*[206] After it has come to the point that written promises be given for a pledge for debts, it has seemed normal that after the sale of a claim (*nomen*) analogous actions should be given to the purchaser – as has been provided for in a response – like the ones given to the creditor himself when he demands repayment.

[8] *The same Augusti and the Caesars to Aurelius Vigilianus.* The ownership of obligated property does not pass to the purchaser as the result of a sale of a claim (*nomen*), but, in accordance with what has long been decided, the right to claim it is granted to him as if he were made a procurator for his own case (*procurator in rem suam*) or as an analogous action on the example of a creditor.

Written on the fifteenth day before (…).

[9] *Emperor* JUSTINIAN *to John, Praetorian Prefect.* It is certain and undisputed law that, just as the person who has purchased an action *in personam* is allowed to bring it as an analogous action in his own name, so too can the person who has purchased an action *in rem* use the same recourse. For when there is a general name for all actions whether *in rem* or *in personam* and among the ancient

[205] = C. 7.10.3 (which names the soldier Pompeius and is dated to July 7). That constitution concerns manumission.

[206] Perhaps Mnasea, the same name in a constitution from the same Emperors in C. 4.5.6.

iuris conditores hoc nomen in omnibus pateat, nihil est tale, quod differentiam in huiusmodi utilibus actionibus possit introducere.

D. k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

XXXX Quae Res Venire Non Possunt et Qui Vendere vel Emere Vetantur

[1] *Imppp. Valentinianus Theodosius et Arcadius AAA. Fausto comiti sacrarum largitionum.* Fucandae atque distrahendae purpurae vel in serico vel in lana, quae blatta vel oxyblatta atque hyacinthina dicitur, facultatem nullus possit habere privatus. sin autem aliquis supra dicti muricis vellus vendiderit, fortunarum se suarum et capitis sciat subiturum esse discrimen.

[2] *Imppp. Valentinianus Theodosius et Arcadius AAA. Cariobaudi duci Mesopotamiae.* Comparandi serici a barbaris facultatem omnibus, sicut iam praeceptum est, praeter comitem commerciorum etiamnunc iubemus auferri.

[3] *Impp. Arcadius et Honorius AA. ad senatum et populum.* Quia nonnunquam in diversis litoribus distrahi publici canonis frumenta dicuntur, vendentes et ementes sciant capitali poenae se esse subdendos et in fraudem publicam commercia contracta damnari.

D. XVII k. Mart. Caesario et Attico conss.

[4] *Impp. Honorius et Theodosius AA. Faustino pp.* Ne frumentum, quod devotissimo exercitui mittitur, in praedam lucrumque vertatur, hac sanctione decernimus, ut, quicumque hoc fuerint forte mercati, honestiores quidem stilum proscriptionis incurrant, inferiores autem vilioresque personae capitali supplicio subiaceant.

founders of the law this name is evident in all actions, there is nothing of the sort that can introduce a difference in analogous actions of this type.

Given November 1, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

Fortieth Title Property That Cannot Be Sold and Those Who Are Forbidden to Purchase

[1] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Faustus, Count of Imperial Finances.* No private person should be able to have the right (*facultas*) to dye and sell the purple cloth, either in silk or in wool, which is called purple (*blatta*), or bright purple (*oxyblatta*), and hyacinth. However, if someone sells a cloth with the aforementioned purple dye, he should know that he will undergo a trial for his property and his head.[207]

[2] *The same Augusti to Cariobaudes, Duke of Mesopotamia.* As has already been ordered, We order also now that the privilege of purchasing silk from the barbarians be taken away from everyone, except for a Count of External Trade (*comes commerciorum*).

[3][208] *Emperors* ARCADIUS *and* HONORIUS *Augusti to the Senate and People.* Because sometimes public tax grain is said to be sold on different shores, people selling and buying it should know that they are subject to capital punishment and that commercial contracts in fraud of the public are condemned.

Given February 13, in the consulship of Caesarius and Atticus (397).

[4] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Faustinus, Praetorian Prefect.* Lest grain that is being sent to the most devoted army be turned to booty and profit, We ordain by this law that, whoever has by chance purchased this, people of more honorable rank (*honestiores*) incur the mark of exile, but people of lower rank and dishonorable people (*inferiores vilioresque*) be subject to capital punishment.

(410 or 413?).[209]

[207] Blume: "Purple was the imperial color and was largely reserved for the use of the imperial family. See further C. 11.8.9." Seeck dates this and the following constitution to 383–392.

[208] Combine with C. 11.23.2, as well as C.Th. 6.2.17–18, 6.4.31, 12.6.24, 13.5.27, 13.9.5. In the other texts with this same law, the place of promulgation is Milan. Seeck dates this constitution to April 15, 397.

[209] Seeck dates to August 15, 410.

XXXXI Quae Res Exportari Non Debeant

[1] *Imppp. Valentinianus Valens et Gratianus AAA. ad Theodotum magistrum militum.* Ad barbaricum transferendi vini et olei et liquaminis nullam quisquam habeat facultatem ne gustus quidem causa aut usus commerciorum.

[2] *Imp. Marcianus A. Constantino pp.* **pr.** Nemo alienigenis barbaris cuiuscumque gentis ad hanc urbem sacratissimam sub legationis specie vel sub quocumque alio colore venientibus aut in diversis aliis civitatibus vel locis loricas et scuta et arcus sagittas et spathas et gladios vel alterius cuiuscumque generis arma audeat venumdare, nulla prorsus isdem tela, nihil penitus ferri vel facti iam vel adhuc infecti ab aliquo distrahatur. perniciosum namque Romano imperio et proditioni proximum est barbaros, quos indigere convenit, telis eos, ut validiores reddantur, instruere. **1.** Si quis autem aliquid armorum genus quarumcumque nationum barbaris alienigenis contra pietatis nostrae interdicta ubicumque vendiderit, bona eius universa proscribi protinus ac fisco addici, ipsum quoque capitalem poenam subire decernimus.

XXXXII De Eunuchis

[1] *Imp. Constantinus A. Ursino duci Mesopotamiae.* Si quis post hanc sanctionem in orbe Romano eunuchos fecerit, capite puniatur: mancipio tali nec non etiam loco, ubi hoc commissum fuerit domino sciente et dissimulante, confiscando.

D. VI k. Mart.

[2] *Imp. Leo A. Viviano pp.* **pr.** Romanae gentis homines sive in barbaro sive in Romano solo eunuchos factos nullatenus quolibet modo ad dominium cuiusdam transferri iubemus: poena gravissima statuenda adversus eos, qui hoc perpetrare ausi fuerint, tabellione videlicet, qui huiusmodi emptionis sive cuiuslibet alterius alienationis instrumenta conscripserit, et eo, qui octavam vel aliquod vectigalis causa pro his

Forty-First Title Items That Should Not Be Exported

[1] *Emperors* VALENTINIAN, VALENS, *and* GRATIAN *Augusti to Theodotus, Master of Soldiers.* No one should have the right (*facultas*) to transfer wine, oil, and fish sauce to barbarian territory, not for his own refreshment or for the purpose of commerce.

(370–375).[210]

[2] *Emperor* MARCIAN *Augustus to Constantinus, Praetorian Prefect.* **pr.** To foreign-born barbarians of any nation who come to this Most Sacred City under the guise of an embassy or under any other pretext or in other diverse cities or places, no one should dare to sell breastplates, shields, bows and arrows, long swords, and short swords, or arms of any other type; accordingly, no spears (*tela*) should be sold to the same people by anyone, nor any iron wrought or still unwrought. For it is dangerous to the Roman Empire, and very close to treason, to equip barbarians, who it is generally accepted are lacking these things, with weapons so that they are rendered stronger. **1.** If, however, anyone sells any type of weapons to foreign-born barbarians of any nations in any place against the interdicts made by Our Piety, We decree that all his property be confiscated immediately and assigned to the Treasury, and that he himself undergo capital punishment.

(455–457).

Forty-Second Title Eunuchs

[1] *Emperor* CONSTANTINE *Augustus to Ursinus, Duke of Mesopotamia.* If anyone after this enactment makes eunuchs in the Roman world, he should undergo capital punishment; and such a slave and also the place where this has been committed, if the owner knows and conceals it, are to be confiscated.

Given February 24 (307–337).[211]

[2][212] *Emperor* LEO *Augustus to Vivianus, Praetorian Prefect.* **pr.** We order that men of the Roman nation who were made eunuchs, whether on barbarian or on Roman soil, are not at all in any way to be transferred to anyone's ownership (as slaves). The most serious punishment is to be established against those who have dared to perpetrate this: certainly the notary (*tabellio*) who has signed the documents for this type of purchase or for any other type of alienation, as well as the person who has received one-eighth (of the price as a tax) or anything as

[210] Seeck dates to May 28, 368; *PLRE* 1 p. 903 Flavius Theodosius 3: "370 or 373 May 28." Schmidt-Hofner: 369–375.

[211] Seeck dates to *c.* 337.

[212] Bas. 19.1.85.

susceperit, eidem poenae subiciendo. **1.** Barbarae autem gentis eunuchos extra loca nostro imperio subiecta factos cunctis negotiatoribus vel quibuscumque aliis emendi in commerciis et vendendi ubi voluerint tribuimus facultatem.

XXXXIII De Patribus Qui Filios Distraxerunt

[1] *Impp. Diocletianus et Maximianus AA. et CC. Aureliae Papinianae.* Liberos a parentibus neque venditionis neque donationis titulo neque pignoris iure aut quolibet alio modo, nec sub praetextu ignorantiae accipientis in alium transferri posse manifesti iuris est.

D. XVI k. Dec. Nicomediae CC. conss.

[2] *Imp. Constantinus A. provincialibus suis.* **pr.** Si quis propter nimiam paupertatem egestatemque victus causa filium filiamve sanguinolentos vendiderit, venditione in hoc tantummodo casu valente emptor obtinendi eius servitii habeat facultatem. **1.** Liceat autem ipsi qui vendidit vel qui alienatus est aut cuilibet alii ad ingenuitatem propriam eum repetere, modo si aut pretium offerat quod potest valere, aut mancipium pro huiusmodi[ix] praestet.

D. XV k. Sept. Serdicae Constantino A. VIII et Constantio C. IIII conss.

XXXXIIII De Rescindenda Venditione

[1] *Imp. Alexander A. Aurelio Maroni militi.* Si pater tuus per vim coactus domum vendidit, ratum non habebitur, quod non bona fide gestum est: mala fide enim emptio irrita est. aditus itaque nomine tuo praeses

[ix] pro hoc eiusmodi

an impost (*vectigal*) for these are to be subject to the same punishment. 1. We grant, however, all merchants and any other people the right (*facultas*) to purchase in commerce and to sell where they want eunuchs of a barbarian nation who have been made so outside of places subject to Our power.

(457–465).[213]

Forty-Third Title Fathers Who Have Sold Children

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Aurelia Papiniana.* It is plain law that children cannot be transferred to another by their parents under the title of sale or donation, or the right of pledge, or in any other way, or under the pretext of the ignorance of the person receiving them.

Given November 16, at Nicomedia, in the consulship of the Caesars (294).

[2][214] *Emperor* CONSTANTINE *Augustus to his Provincials.* **pr.** If anyone on account of excessive poverty and lack of the means of support (*victus*) sells a newborn (*sanguinolentus*) son or daughter, as the sale is valid only in this circumstance, the buyer shall have the right to obtain the child as a slave. 1. However, the very person who[215] has sold (the child) or the one who has been alienated or anyone else shall be permitted to reclaim him (the child) to his own free-born status (*ingenuitas*), as long as he should either offer the price that he can be worth or furnish a slave of this type for him.

Given August 18, at Serdica, in the consulship of Constantine Augustus, for the eighth time, and Constantius Caesar, for the fourth time (329).

Forty-Fourth Title Rescinding a Sale[216]

[1] *Emperor* ALEXANDER *Augustus to Aurelius Maro, a soldier.* If your father, compelled by force, sold his house, it will not be held to be valid because it was not done in good faith; for a sale based on bad faith is void. Therefore

[213] According to Krüger, the constitutions addressed to Vivianus in which the day of promulgation is mentioned belong to the years 459 and 460. Seeck gives 459–465.

[214] = C.Th. 5.10 (8).1 (but addressed "to his Italians"). Seeck dates to August 18, 319.

[215] Krüger suggests emending to: "the buyer shall have the right to obtain the child as a slave, the sale being valid only in this circumstance, that the very person who … shall be permitted …" (*emptor obtinendi eius servitii habeat facultatem, venditione in hoc tantummode valente, ut liceat ipsi qui …*).

[216] See D. 18.5.

provinciae auctoritatem suam interponet, maxime cum paratum te proponas id quod pretii nomine illatum est emptori refundere.

D. XI k. Mart. Antonino et Alexandro conss.

[2] *Impp. Diocletianus et Maximianus AA. Aurelio Lupo.* Rem maioris pretii si tu vel pater tuus minoris pretii distraxit, humanum est, ut vel pretium te restituente emptoribus fundum venditum recipias auctoritate intercedente iudicis, vel, si emptor elegerit, quod deest iusto pretio recipies. minus autem pretium esse videtur, si nec dimidia pars veri pretii soluta sit.

PP. V k. Nov. Diocletiano A. II et Aristobulo conss.

[3] *Idem AA. et CC. Titiae et Marcianae.* De contractu venditionis et emptionis iure perfecto alterutro invito nullo recedi tempore bona fides patitur, nec ex rescripto nostro. quo iure fiscum nostrum uti saepe constitutum est.

D. VIII id. Febr. AA. conss.

[4] *Idem AA. et CC. Sempronio Eudoxio.* Ad rescindendam venditionem et malae fidei probationem hoc solum non sufficit, quod magno pretio fundum comparatum minoris distractum esse commemoras.

D. non. April. Byzantio AA. conss.

[5] *Idem AA. et CC. Claudio Rufo.* pr. Si dolo adversarii deceptum venditionem praedii te fecisse praeses provinciae aditus animadverterit, sciens contrarium esse dolum bonae fidei, quae in huiusmodi maxime contractibus exigitur, rescindi venditionem iubebit. 1. Quod si iure perfecta venditio est a maiore viginti quinque annis, intellegere debes consensu mutuo perfectam venditionem resolvi non posse.

D. XV k. Nov. Sirmi AA. conss.

[6] *Idem AA. et CC. Novisio Gaiano veterano.* Non est probabilis causa, propter quam rescindi consensu factam venditionem desideras. quamvis

the provincial governor, when approached in your name, will interpose his authority, especially since you submit that you are ready to refund to the buyer what was paid as the price.

Given February 19, in the consulship of Antoninus and Alexander (222).

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Aurelius Lupus.* If you or your father sold a thing worth more for a smaller price, it is humane (*humanum*) that either, after you restore the price to the buyers, you receive back the farm that has been sold, under the authority of a judge, or, if the buyer chooses, you will receive what was lacking from a just price (*pretium iustum*). However, the price is seen as too little if half of the true price (*pretium verum*) has not been paid.[217]

Posted October 28, in the consulship of Diocletian Augustus, for the second time, and Aristobulus (285).

[3] *The same Augusti and the Caesars to Titia and Marciana.* Good faith does not allow retreating at any time from a contract of lawfully concluded sale and purchase if one party or the other is unwilling (to uphold the contract), not even on the basis of Our rescript. It has often been decided that our Treasury uses this law.

Given February 6, in the consulship of the Augusti (293).

[4] *The same Augusti and the Caesars to Sempronius Eudoxius.* This alone does not suffice for rescinding a sale and proving bad faith, that you mention that a farm purchased for a high price has been sold for a lower one.

Given April 5, at Byzantium, in the consulship of the Augusti (293).

[5] *The same Augusti and the Caesars to Claudius Rufus.* **pr.** If the provincial governor when approached takes note that you made the sale of a property after you were tricked by the deceit (*dolus*) of your adversary, knowing that deceit is contrary to good faith, which is absolutely required in contracts of this type, he will order the sale to be rescinded. **1.** But if the sale has been completed lawfully by someone older than 25 years, you ought to understand that a sale completed by a mutual agreement cannot be undone.

Given October 18, at Sirmium, in the consulship of the Augusti (293).

[6] *The same Augusti and Caesars to Novisius Gaianus, a veteran.* Your reason for desiring that a sale made by agreement be rescinded is not convincing

[217] This constitution, along with 8 below, establishes the rule that became known as *laesio enormis*, for rescinding sales that involve gross inequality of exchange.

enim duplum offeras pretium emptori, tamen invitus ad rescindendam venditionem urgueri non debet.

[7] *Idem AA. et CC. Mucatraulo militi.* Ratas manere semper perfectas iure venditiones vestra etiam interest. nam si oblato pretio rescindere venditionem facile permittatur, eveniet, ut et si quid vos laboribus vestris a fisco nostro vel a privato comparaveritis, eadem lege conveniamini, quam vobis tribui postulatis.

[8] *Idem AA. et CC. Aureliae Euodiae.* Si voluntate tua fundum tuum filius tuus venumdedit, dolus ex calliditate atque insidiis emptoris argui debet vel metus mortis vel cruciatus corporis imminens detegi, ne habeatur rata venditio. hoc enim solum, quod paulo minori pretio fundum venumdatum significas, ad rescindendam emptionem invalidum est. quod videlicet si contractus emptionis atque venditionis cogitasses substantiam et quod emptor viliori comparandi, venditor cariori distrahendi votum gerentes ad hunc contractum accedant vixque post multas contentiones, paulatim venditore de eo quod petierat detrahente, emptore autem huic quod obtulerat addente, ad certum consentiant pretium, profecto perspiceres neque bonam fidem, quae emptionis atque venditionis conventionem tuetur, pati neque ullam rationem concedere rescindi propter hoc consensu finitum contractum vel statim vel post pretii quantitatis disceptationem: nisi minus dimidia iusti pretii, quod fuerat tempore venditionis, datum est, electione iam emptori praestita servanda.

D. k. Dec. AA. conss.

[9] *Idem AA. et CC. Domitio Civalensi.* Pretii causa non pecunia numerata, sed pro eo pecoribus in solutum consentienti datis contractus non constituitur irritus.

D. xv k. Ian. Sirmi AA. conss.

[10] *Idem AA. et CC. Aemilio Severo.* Dolus emptoris qualitate facti, non quantitate pretii aestimatur. quem si fuerit intercessisse probatum,

(*probabilis*). For although you should offer double the price to the buyer, even so he ought not to be compelled unwillingly to rescind the sale.

(293).

[7] *The same Augusti and Caesars to Mucatraulus, a soldier.* It is in your (plural) interest that sales lawfully completed always remain valid. For if it should be readily permitted to rescind a sale on the offer of the price, it will happen that, if you (plural) have purchased something by your labors from Our Treasury or from a private person, you may be sued on the same law that you are asking be granted to you.

(293).

[8][218] *The same Augusti and the Caesars to Aurelia Euodia.* If your son has sold your farm in accordance with your wish, deceit (*dolus*) arising from the cleverness and plotting of the buyer must be proved, or imminent fear of death or of bodily torture must be detected for the sale not to be considered valid. This sole reason, (namely) that you indicate that you have sold the farm for a somewhat lower price, is invalid for rescinding a purchase. But apparently if you had thought about the substance of a contract of sale and purchase, and the fact that the buyer and the seller approach this contract bringing their wishes, the one to buy at a cheaper price, and the other to sell at a higher price, and scarcely after much contention reach agreement on a certain price, with the seller withdrawing from what he had sought, and the buyer adding to what he had offered, you would certainly see that neither good faith, which protects the agreement of purchase and sale, allows, nor does any reason concede, that a contract completed with this agreement, either immediately or after negotiation on the amount of the price, be rescinded on this account; unless less than half of the just price that had obtained at the time of the sale has been given, although the choice already provided the buyer (i.e., to pay the rest of the just price) is to be maintained.[219]

Given December 1, in the consulship of the Augusti (293).

[9] *The same Augusti and the Caesars to Domitius Civalensis.* A contract is not established as void when money is not paid toward the price, but instead livestock have been given as payment with the consent (of the seller).

Given December 18, at Sirmium, in the consulship of the Augusti (293).

[10] *The same Augusti and the Caesars to Aemilius Severus.* Deceit (*dolus*) by the buyer is judged on the basis on the nature of his act, not on the amount

[218] Combine with C. 2.19.9, 2.20.6, and 2.31.2. In these texts the addressee is Hymnoda.

[219] On the choice, see 2 above.

non adversus eum, in quem emptor dominium transtulit, rei vindicatio venditori, sed contra illum cum quo contraxerat in integrum restitutio competit.

[11] *Idem AA. et CC. Aureliae Magnae.* pr. Venditor factum emptoris, quod eum tempore contractus latuit, post arguendo, non qui eo tempore scierit, quo id ageretur, et consensit, de dolo queri potest. **1.** Igitur cum patrem tuum, ut maius comprehenderetur instrumento pretium, quam rei quae distrahebatur esse convenerat, consensisse profitearis, propter hoc solum de circumscriptione frustra queritur. **2.** Sane si placitum pretium non probetur solutum vel in quantitatem debiti per errorem facti compensari cautum fuit, hoc reddi recte postulatur.

[12] *Idem AA. et CC. Antiocho.* Non idcirco minus venditio fundi, quod hunc ad munus sumptibus necessariis urguentibus non vilioris pretii vel urguente debito te distraxisse contendis, rata manere debet. illicitis itaque petitionibus abstinendo ac pretium, si non integrum solutum est, petendo facies consultius.

[13] *Idem AA. et CC. Aurelio Nicae Decaria.* Si maior annis viginti quinque fundum distraxisti, propter hoc solum, quod ementi, ne compararet, socer tuus denuntiavit, emptionem a te rescindi bona fides non patitur.

[14] *Idem AA. et CC. Aurelio Basilidae militi.* Ea condicione distractis praediis, ut quod rei publicae debebatur qui comparavit restitueret, venditor a se celebrata solutione quanti interest experiri potest, non ex eo, quod emptor non satis conventioni fecit, contractus irritus constituitur.

S. XV k. Ian. Nicomediae CC. conss.

[15] *Imppp. Gratianus et Valentinianus et Theodosius AAA. ad Hypatium pp.* Quisquis maior aetate praedia etiam procul posita distraxerit, paulo

of the price. If it has been proved that this has transpired, a suit on ownership (*vindicatio*) for the item is not available to the seller against the person to whom the buyer has transferred ownership, but (rather) a restoration of rights (*restitutio in integrum*) against that person with whom he had made his contract.

[11] *The same Augusti and the Caesars to Aurelia Magna.* **pr.** The seller can complain about deceit by showing afterwards an act of the buyer that was hidden from him at the time of the contract, but not when he knew at the time when it was done and (nonetheless) agreed. **1.** Therefore, since you acknowledge that your father had agreed that a higher price be included in the document of sale than had been agreed upon for the item that was being sold, he (your father) complains in vain about being deceived on this account alone. **2.** Of course, if it should be proved that the agreed upon price has not been paid, or there was a provision that there be compensation for the amount of the debt made in error, it is rightly asked that this be recovered.

[12] *The same Augusti and the Caesars to Antiochus.* Not for that reason should the sale of a farm remain any less valid, because you contend that you sold it because of necessary expenses for a compulsory public service (*munus*) pressing you (to sell) at not too low a price, or (because you were) under pressure from an (ordinary) debt. Therefore, you will be better advised to stay away from illicit petitions and (instead) seek the price, if it has not been paid in full.

[13] *The same Augusti and the Caesars to Aurelius Nica Decaria.* If, being older than 25 years of age, you have sold a farm, good faith does not allow the purchase to be rescinded by you for the sole reason that you father-in-law warned the buyer not to buy it.

[14] *The same Augusti and the Caesars to Aurelius Basilides, a soldier.* When properties are sold under the condition that the person who has purchased them restore what was owed to the municipality (*res publica*), the seller can sue for his interest when he has made the payment himself, and the contract is not considered void for the reason that the buyer has not satisfied the agreement.

Written December 18, at Nicomedia, in the consulship of the Caesars (294).

[15][220] *Emperors* Gratian, Valentinian, *and* Theodosius *Augusti to Hypatius, Praetorian Prefect.* Whoever being of mature age has sold properties,

[220] = C.Th, 3.1.4, with a somewhat extended text.

vilioris pretii nomine repetitionis rei venditae copiam minime consequatur. neque inanibus immorari sinatur obiectis, ut vires sibimet locorum causetur incognitas, qui familiaris rei scire vires vel merita atque emolumenta debuerat.

D. VI non. Mai. Mediolani Merobaude II et Saturnino conss.

[16] *Imppp. Valentinianus Theodosius et Arcadius AAA. ad Magnillum vicarium Africae.* pr. Si quos debitorum mole depressos necessitas publicae rationis adstringat proprias distrahere facultates, rei qualitas et redituum quantitas aestimetur nec sub nomine subhastationis publicae locus fraudibus relinquatur et possessionibus viliore distractis plus exactor ex gratia quam debitor ex pretio consequatur. 1. Hi postremo sub empti titulo perpetuo dominii iure potiantur, qui tantum adnumeraverint fisco, quantum exegerit utilitas privatorum. etenim periniquum est, ut alienis bonis sub gratiosa auctione distractis parum accedat publico nomini, cum totum pereat debitori.

D. XIII k. Iul. Aquileiae. acc. id. Ian. Hadrumeti post consulatum Tatiani et Symmachi vv. cc.

[17] *Impp. Arcadius et Honorius AA. Messalae pp.* Hi, qui imposita munera civitatum fuga destituunt et ineundos furtim existimant esse contractus, intellegant sibi nihil haec profutura esse commenta et pretio emptorem fugae conscium multandum esse, quod dederit.

D. XII k. Sept. Theodoro cons.

[18] *Imppp. Arcadius Honorius et Theodosius AAA. Nestorio comiti rerum privatarum.* Vestium et argenti seu mancipiorum coemendorum, si quando a privatis nostris ea contigerit venumdari, palatini sciant sibi copiam denegatam: poena in eos amissionis pretii exercenda.

D. III k. Ian. R. Arcadio ...

even if situated far away, should not at all gain the right (*copia*) to reclaim the property sold on account of somewhat too low a price. Nor should he be allowed to wallow in empty objections, complaining that the qualities (*vires*) of the place are unknown to him; he should have known about the qualities of his own property or its merits and income.

Given May 2, at Milan, in the consulship of Merobaudes, for the second time, and Saturninus (383).

[16][221] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Magnillus, Vicar of Africa.* **pr.** If necessity imposed by a public account (*ratio publica*) should compel any people burdened by the mass of their debts to sell their own property, the quality of the property and the amount of its revenues should be appraised, nor should a place be left for fraud resulting from the public auction; and, if the properties have been sold for a low price, the collector should not gain more as a result of influence than the debtor gains from the price. 1. On the basis of their purchase, in the end these persons should gain the perpetual right of ownership who have paid as much to the Treasury as the interest of private persons has exacted. For it is quite unjust that, when another person's property has been sold under a rigged auction, little should accede to the public account, since the whole property is lost for the debtor.

Given June 20, at Aquileia, and received January 15, at Hadrumetum, in the post-consulate of viri clarissimi *Tatianus and Symmachus (392).*

[17][222] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Messala, Praetorian Prefect.* Those who avoid compulsory public services (*munera civitatum*) by flight and think that contracts can be entered into by stealth (to sell their property) should understand that these tricks will not benefit them and that a buyer aware of their flight is to be fined in the amount of the price that he has paid.

Given August 21, in the consulship of Theodorus (399).

[18] *Emperors* ARCADIUS, HONORIUS, *and* THEODOSIUS *Augusti to Nestorius, Count of the Privy Purse.* Those serving in the imperial palace (*palatini*) should know that the right to purchase clothing and silver or slaves, if ever they happen to be sold from Our private property, is denied to them; the penalty of the loss of the purchase price is to be exercised against them.

Given December 30 (402 or 406).[223]

[221] = C.Th. 10.17.3. Seeck dates to June 19, 391.
[222] = C.Th. 3.1.8; combine with C. 1.54.6, 9.41.17, 10.32.51.
[223] Seeck gives December 30, 402.

XXXXV Quando Liceat Ab Emptione Discedere

[1] *Imp. Gordianus A. Licinio Rufino.* Re quidem integra ab emptione et venditione utriusque partis consensu recedi potest: etenim quod consensu contractum est, contrariae voluntatis adminiculo dissolvitur. at enim post traditionem interpositam nuda voluntas non resolvit emptionem, si non actus quoque priori similis retro agens venditionem intercesserit.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Aurelio Felici.* **pr.** Perfectam emptionem atque venditionem re integra tantum pacto et consensu posse dissolvi constat. **1.** Ergo si quidem arrae nomine aurum datum sit, potes hoc solum secundum fidem pacti recuperare. **2.** Si vero partem pretii persolvisti, ad ea, quae venditorem oportet ex venditione praestare, magis actionem quam ad pretii quantitatem, quam te dedisse significas, habes.

D. non. April. Byzantii AA. conss.

XXXXVI Si Propter Publicas Pensitationes Venditio Fuerit Celebrata

[1] *Imp. Antoninus A. Geminio Materno.* Venditionem ob tributorum cessationem factam revocari non oportet neque priore domino pretium offerente neque creditore eius iure hypothecae sive pignoris. potior est enim causa tributorum, quibus priore loco omnia cessantis obligata sunt.

[2] *Impp. Diocletianus et Maximianus AA. Atiniae Plotianae.* **pr.** Si deserta praedia ob cessationem collationum vel reliqua tributorum ex permissu praesidis ab his, quibus periculum exactionis tributorum imminet, distracta sincera fide iusto pretio sollemniter comparasti, venditio ob sollemnes praestationes necessitate facta convelli non debet. **1.** Sin autem venditio nulla iusta auctoritate praesidis praecedente facta est, hanc ratam haberi iura non concedunt, idque quod frustra gestum est revocari oportet, ita ut indemnitati tributorum omnibus modis consulatur. **2.** Quae omnia tractari convenit praesente eo, quem emptorem extitisse proponis.

Forty-Fifth Title When It Is Permitted to Withdraw from a Purchase

[1] *Emperor* GORDIAN *Augustus to Licinius Rufinus.* It is possible, while the legal situation is unchanged (*re integra*), to withdraw from a purchase or sale with the agreement of both parties; for what has been contracted by consensus is dissolved on the basis of a contrary will. But after delivery has occurred, a mere expression of will (*nuda voluntas*) does not undo a purchase, unless an act similar to the prior one, putting an end to the sale, has intervened.

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *and Caesars to Aurelius Felix.* **pr.** It is plain that a completed purchase and sale can be dissolved by a pact and agreement only when the legal situation is unchanged. **1.** Therefore if gold has been given as earnest money (*arra*), you can recover this alone in accordance with the terms of the pact. **2.** But if you have paid part of the purchase price, you have an action for what the seller must provide from the sale, rather than for the amount of the price that you indicate you have paid.

Given April 5, at Byzantium, in the consulship of the Augusti (293).

Forty-Sixth Title If a Sale Has Been Made because of Public Payments

[1] *Emperor* ANTONINUS *Augustus to Geminius Maternus.* A sale made on account of a failure to pay taxes (*tributa*) must not be revoked, either when the previous owner offers (to repay) the price or when his creditor does so using the right of a hypothec or a pledge. For the claim for the tribute, for which all the property of the person in default has been obligated with priority, takes precedence.

[2][224] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Atinia Plotiana.* **pr.** If you have in good faith (*sincera fide*) purchased lawfully and for a just price (*pretium iustum*) deserted properties that were sold, with the permission of the governor, because of a failure to pay contributions or arrears of taxes by the people over whom the risk for the exaction of the taxes looms, the sale made by necessity because of lawful payments should not be set aside. **1.** But if the sale occurred without any previous proper authority of the governor, the laws do not allow this to be considered valid, and what was done in vain must be revoked in such a way that consideration be taken in every way for the protection (*indemnitas*) of tax revenue. **2.** All these matters are to be handled in the presence of the person who you state was the buyer.

[224] Pr. = *Frag. Vat.* 22.

[3] *Imp. Constantinus A. ad Egnatium Faustinum praesidem Baeticae.* Si quis fundum vel mancipia aliamve rem ob cessationem tributorum vel etiam ob vestium auri argentique debitum, quae annua exactione solvuntur, occupata convento debitore et apud iudicem interpellatione celebrata, cum solutio cessaverit, sub hasta distracta comparaverit, perpetuam emptionis accipiat firmitatem. sin autem minoris forte persona fuerit inserta, necesse sit legitimae defensionis adesse venditioni personam, nihilque intersit, utrumne officium summae rei procuratoris an certe rectoris provinciae id quod debitum fuerit proposuerit.

D. prid. id. Dec. Feliciano et Titiano conss.

XXXXVII Sine Censu vel Reliquis Fundum Comparari Non Posse

[1] *Imp. Alexander A. Capitoni.* Ex conventione quidem, qua pactam novercam tuam cum patre tuo dicis, cum fundum in dotem daret, ut tributa ipsa agnosceret, actio tibi adversus eam competere non potest, et si pactum in stipulationem deductum probetur. sed et si fundus aestimatus ita, ut pars instrumenti significat, in dotem datus est, ex vendito actio, ut placitis stetur, non competit.

PP. non. Dec. ipso A. III et Dione II conss.

[2] *Imp. Constantinus A. ad Antonium Marcellinum praesidem.* **pr.** Rei annonariae emolumenta tractantes cognovimus hanc esse causam maxime reliquorum, quod nonnulli captantes aliquorum momentarias necessitates sub hac condicione fundos comparant, ut nec reliqua eorum fisco inferant et immunes eos possideant. **1.** Ideoque placuit, ut, si quem constiterit huiusmodi habuisse contractum atque hac lege possessionem esse mercatum, tam pro solidis censibus fundi comparati quam pro reliquis universis eiusdem possessionis obnoxius teneatur, cum necesse sit eum qui comparat censum rei comparatae agnoscere, nec licere cuidam rem sine censu comparare vel vendere.

[3][225] *Emperor* CONSTANTINE *Augustus to Egnatius Faustinus, Governor of Baetica.* If someone has purchased a farm or slaves or other property after they have been sold under an auction (*sub hasta*) on account of failure to pay taxes (*tributa*), or for a debt of clothing, gold, and silver, which are paid in an annual exaction, when they have been seized after the debtor has been sued and payment has been enjoined before a judge, when the payment has failed, he should receive the perpetual assurance of a (valid) purchase. If, however, by chance a person of minor age has been involved, the person legally representing him (*legitimae defensionis persona*) must be present at the sale, and it should not make any difference whether the office of the procurator of the fiscal administration (*summa res*) or certainly that of the provincial governor has given notice as to what was owed.

Given December 12, in the consulship of Felicianus and Titianus (337).

Forty-Seventh Title A Farm Cannot Be Purchased Without Its Tax Assessment or Arrears

[1][226] *Emperor* ALEXANDER *Augustus to Capito.* You say that when your stepmother gave a farm as her dowry, it was agreed between her and your father that she would herself pay the taxes. You cannot have an action against her even if you prove the pact was reduced to a stipulation. But if the farm that was given as dowry was appraised in the manner indicated by a portion of the document, an action on sale to force compliance with the agreement does not lie.

Posted December 5, in the consulship of the Augustus himself, for the third time, and Dio, for the second time (229).

[2][227] *Emperor* CONSTANTINE *Augustus to Antonius Marcellinus, Governor.* **pr.** Investigating the payments to the *annona*, We have learned that it is especially a cause for arrears that some people, taking advantage of the momentary necessity of others, purchase farms under this condition that they not pay their arrears to the Treasury and that they possess them immune from taxation. **1.** For that reason it has been decided that, if it is established that someone had such a contract and has purchased a property under this condition, he should be held liable both for the entire tax liability of the purchased farm and for the entire arrears for the same property, since it is necessary that the person who purchases assume the tax liability for the purchased property; nor is anyone permitted to purchase or sell property without its tax liability.

[225] = C.Th. 11.9.2; perhaps to be combined with C. 11.59.2.

[226] = C. 2.3.11, which adds, after "pay the taxes," "and the interest due to the creditors to whom the estates were obligated (as security for debt)"; but the ruling in the last sentence is reversed.

[227] = C.Th. 11.3.1, which gives the province as Lugdunensis Prima. Seeck dates to July 1, 313.

D. k. Iul. Agrippinae Constantino A. v et Licinio C. conss.

[3] *Imp. Iulianus A. ad Secundum pp.* Omnes pro his agris quos possident publicas pensitationes agnoscant nec pactionibus contrariis adiuventur, si venditor aut donator apud se collationis sarcinam pactione illicita voluerit retinere, etsi necdum translata sit professio censualis, sed apud priorem fundi dominum forte permaneat, dissimulantibus ipsis, ut non possidentes pro possidentibus exigantur.

D. xiiii k. Mart. Antiochiae Iuliano A. iiii et Sallustio conss.

XXXXVIII De Periculo et Commodo Rei Venditae

[1] *Imp. Alexander A. Iuliae Secundinae.* Post perfectam venditionem omne commodum et incommodum, quod rei venditae contingit, ad emptorem pertinet. auctor enim ex his tantum causis suo ordine tenetur, quae ex praecedente tempore causam evictionis parant, et ita, si ei denuntiatum est, ut causae agendae adesset, et non absente emptore contra eum pronuntiatum est.

D. k. Sept. Maximo ii et Aeliano conss.

[2] *Idem A. Gargilio Iuliano.* **pr.** Cum convenit, ut singulae amphorae vini certo pretio veneant, antequam tradantur, imperfecta etiam tunc venditione periculum vini mutati emptoris, qui moram mensurae faciendae non interposuit, non fuit. **1.** Cum autem universum quod in horreis erat postea venisse sine mensura et claves emptoribus traditas adlegas, perfecta venditione quod vino mutato damnum accidit, ad emptorem pertinet. **2.** Haec omnia locum habent non solum si vinum,

Given July 1, at Agrippina (Colonia), in the consulship of Constantine Augustus, for the fifth time, and Licinius Caesar (319).

[3][228] *Emperor* JULIAN *Augustus to Secundus, Praetorian Prefect.* Everyone should assume responsibility for public payments for those lands that they possess, and they should not be helped by agreements to the contrary, (for instance,) if the seller or donor wants to retain for himself the burden for taxes by an illicit agreement; (and this rule holds) even if the tax declaration (*professio censualis*) has not been transferred, but by chance should remain with the prior owner of the farm, since the parties themselves conceal the facts, so that non-possessors are pressed for payment instead of the possessors.

Given February 16, at Antioch, in the consulship of Julian Augustus, for the fourth time, and Sallustius (363).

Forty-Eighth Title The Risk and Advantage of Property Sold[229]

[1] *Emperor* ALEXANDER *Augustus to Julia Secundina.* After the completion of a sale, every advantage and disadvantage that accrues to the property sold belongs to the buyer. For the seller (*auctor*) for his part is held liable only for those causes that create a basis for eviction as of the time preceding (the completion of the sale), and under the following condition: if he has been given notice so that he be present for pleading the case, and there has not been a judgment against him when the buyer was absent.

Given September 1,[230] in the consulship of Maximus, for the second time, and Aelianus (223).

[2] *The same Augustus to Gargilius Julian.* **pr.** When it was agreed that individual amphoras of wine be sold at a certain price (per amphora), before they are delivered, since the sale is even then incomplete, the risk for the wine changing did not belong to the buyer, provided he did not create a delay in making the measurement.[231] **1.** Since, however, you allege that the entire amount that was placed in storehouses was sold without measurement (as a unit) and the keys had been delivered to the buyers, whatever damage occurred from the wine changing, since the sale was complete, belongs to the buyer. **2.** These considerations apply

[228] = C.Th. 11.3.3.
[229] See D. 18.6. Risk (*periculum*) concerns the legal consequence if the object of sale is destroyed after the sale is concluded, but before delivery to the buyer.
[230] Possibly February 1.
[231] The wording is ambiguous, but evidently a large amount of wine was sold at a price per amphora (as a measure) and the parties were unsure about the ultimate quantity prior to measurement.

sed etiam si oleum vel frumentum vel his similia venierint et ea aut deteriora aut penitus corrupta fuerint.

PP. v k. April. Maximo II et Aeliano conss.

[3] *Idem A. Daphenae.* Dolum auctoris bona fide emptori non nocere certi iuris est.

PP. IIII k. Oct. Maximo II et Aeliano conss.

[4] *Imp. Gordianus A. Silvestro militi.* Cum inter emptorem et venditorem contractu sine scriptis inito de pretio convenit moraque venditoris in traditione non intercessit, periculo emptoris rem distractam esse in dubium non venit.

PP. XV k. Ian. Gordiano A. et Aviola conss.

[5] *Impp. Diocletianus et Maximianus AA. Aurelio Leontio.* Cum speciem venditam per violentiam ignis absumptam dicas, si venditionem nulla condicio suspenderat, amissae rei periculum te non adstringit.

PP. III non. Nov. Atubino Diocletiano A. II et Aristobulo conss.

[6] *Idem AA. et CC. Aurelio Cyrillo.* Mortis casus ancillae distractae etiam ante traditionem sine mora venditoris dilatam non ad venditorem, sed ad emptorem pertinet, et hac non ex praeterito vitio rebus humanis exempta solutionem emptor pretii non recte recusat.

S. XV k. Ian. Nicomediae CC. conss.

XXXXVIIII De Actionibus Empti et Venditi

[1] *Imp. Antoninus A. Aelianae.* Adversus eum, cui agrum vendidisti, venditi iudicio consiste: nec enim tibi in rem actio cum emptore, qui personaliter tibi sit obligatus, competit.

PP. IIII id. Iun. Laeto iterum et Cereale conss.

not only if wine but also oil or grain or things similar to these have been sold and they have have become worse or been completely ruined.

Posted March 28, in the consulship of Maximus, for the second time, and Aelianus (223).

[3][232] *The same Augustus to Daphena.* It is certain law that deliberate misconduct (*dolus*) of the seller (*auctor*) does not harm a good-faith buyer.

Posted September 28, in the consulship of Maximus, for the second time, and Aelianus (223).

[4] *Emperor* GORDIAN *Augustus to Silvester, a soldier.* Since, in a contract entered into without writing, the buyer and seller have agreed about the price and a delay in delivery caused by the seller has not intervened, it does not come into doubt that the property has been sold at the risk of the buyer.

Posted December 18, in the consulship of Gordian Augustus and Aviola (239).

[5][233] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Aurelius Leontius.* Since you say that goods that you sold were consumed by the violence of a fire, if no condition had suspended the sale, the risk for the loss of the property does not bind you.

Posted November 3, at Atubinum (?), in the consulship of Diocletian Augustus, for the second time, and Aristobulus (285).

[6][234] *The same Augusti and the Caesars to Aurelius Cyrillus.* The accident of the death of a slave woman who has been sold, even before delivery that was postponed without a delay on the seller's part, does not fall on the seller, but on the buyer, and if she has passed away not as a result of undisclosed flaw (*vitium*), the buyer will not rightly refuse payment of the price.

Written December 18, at Nicomedia, in the consulship of the Caesars (294).

Forty-Ninth Title Actions on Purchase and Sale[235]

[1] *Emperor* ANTONINUS *Augustus to Aeliana.* Continue in a trial on sale against the person to whom you have sold land; for you do not have an action *in rem* with the buyer, who is obligated to you (only) *in personam.*

Posted June 10, in the consulship of Laetus, for the second time, and Cerealis (215).

[232] Combine with C. 8.56.1.
[233] = *Frag. Vat.* 23.
[234] Apparently combine with C. 4.49.16 (slightly different date).
[235] See D. 19.1.

[2] *Impp. Valerianus et Gallienus AA. et Valerianus C. Flavio Domitiano.* **pr.** Venditi actionem ad recipiendum residuum pretium intendere adversario tuo poteris. **1.** Nec quod in compensationem venerit, quasi et tu invicem deberes, id obesse tibi poterit, si in bonae fidei contractu, in quo maiores etiam viginti quinque annis officio iudicis in iis quae dolo commissa sunt adiuvantur, iusto errore te ductum vel fraude adversarii captum, quasi debitum id esset, quod re vera non debebatur, pepigisse monstraveris. **2.** Fructus quoque perceptos ante venditionem contractam, quos, cum venditioni non accessissent, eundem emptorem invasisse proponis, eodem iudicio reposces.

PP. id. Mart. Aemiliano et Basso conss.

[3] *Impp. Diocletianus et Maximianus AA. Serapodoro.* Ex arrali pacto personalis dumtaxat paciscentibus actio praeparatur.

PP. IIII id. Iul. ipsis IIII et III AA. conss.

[4] *Idem AA. Muciano.* Si traditio rei venditae iuxta emptionis contractum procacia venditoris non fiat, quanti interesse compleri emptionem fuerit arbitratus praeses provinciae, tantum in condemnationis taxationem deducere curabit.

PP. VIII id. Sept. ipsis IIII et III AA. conss.

[5] *Idem AA. et CC. Decimo Caplusio.* Curabit praeses provinciae compellere emptorem, qui nactus possessionem fructus percepit, partem pretii quam penes se habet cum usuris restituere, quas et perceptorum fructuum ratio et minoris aetatis favor, licet nulla mora intercesserit, generavit.

PP. XII k. Oct. ipsis IIII et III AA. conss.

[6] *Idem AA. et CC. Neratio.* Venditi actio, si non ab initio aliud convenit, non facile ad rescindendam perfectam venditionem, sed ad pretium exigendum competit.

[2] *Emperors* VALERIAN *and* GALLIENUS *Augusti and* VALERIAN *Caesar to Flavius Domitianus.* **pr.** You will be able to bring an action on sale against your adversary to recover the remaining price. **1.** Nor can what has arisen as a counterclaim be prejudicial to you, on the theory that you too were in debt, if you show, in a good-faith contract for which people older than 25 years are also aided by the office of the judge in those matters committed with deliberate misconduct (*dolus*), that you agreed (to pay) believing something had been owed that in fact was not owed, having been influenced by honest mistake (*iusto errore*) or taken in by the fraud of your adversary. **2.** You also allege that the buyer has appropriated (*invasisse*) the fruits taken before the contracting of the sale, although they were not included in it; you will ask for them back in the same judgment (*iudicium*).

Posted March 15, in the consulship of Aemilianus and Bassus (259).

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Serapodorus.* Only an action *in personam* is created for the parties making a pact over earnest money.

Posted July 12, in the consulship of the Augusti themselves, Diocletian, for the fourth time, and Maximian, for the third time (290).

[4] *The same Augusti to Mucianus.* If the delivery of the property sold should not take place in accord with the purchase contract because of the effrontery of the seller, the provincial governor will take care to add to the limit on damages (*in condemnationis taxationem deducere*) how much he judges it to be in the (buyer's) interest that the purchase be completed.

Posted September 6, in the consulship of Augusti themselves, Diocletian, for the fourth time, and Maximian, for the third time (290).

[5][236] *The same Augusti and the Caesars to Decimus Caplusius.* The provincial governor will take care to compel the buyer, who has taken possession (*nactus possessionem*) and received the fruits, to restore the part of the price that he has in his own possession, with the interest that an accounting of the fruits taken and the favor for a minor have indicated (are due), even though no delay has intervened.

Posted September 21, in the consulship of Augusti themselves, Diocletian, for the fourth time, and Maximian, for the third time (290).

[6] *The same Augusti and Caesars to Neratius.* The action on sale, if something else has not been agreed upon at the outset, is not readily available for rescinding a completed sale, but (only) for exacting the price.

[236] Combine with C. 2.40.3.

S. VI *id. April. Byzantii AA. conss.*

[7] *Idem AA. et CC. Diodoro.* Si servos distraxisti ac pretium de peculio eorum, quod ad te pertinebat, nesciens unde solveretur accepisti, consequens est integram te pretii actionem habere, cum proprii venditoris nummi soluti non praestant emptori liberationem.

S. XVII *k. Mai. Melanthiade AA. conss.*

[8] *Idem AA. et CC. Aurelio Eusebio.* **pr.** Si pater tuus venum portionem suam dedit nec induxit in vacuam possessionem praedii, ius omne penes se eum retinuisse certum est. neque enim velut traditionis factae vectigal exsolutum, si simulatum factum intercessit, veritatem mutare potuit. **1.** Quapropter aditus praeses provinciae, si animadverterit in vacuam possessionem neque patrem tuum neque successores eius emptorem vel heredes ipsius quocumque loco factos induxisse, non dubitabit nihil esse translatum pronuntiare. et si te ex empto ad inducendum in vacuam possessionem perspexerit conveniri, aestimabit, an pretium sit exsolutum: ac si reppererit non esse satis pretio factum, hoc restitui tibi providebit.

S. V *k. Mai. AA. conss.*

[9] *Idem AA. et CC. Aureliae Zaniae Antipatrae.* Si minor a venditore sive sciente sive ignorante dicebatur capitatio praedii venditi et maior inventa sit, in tantum convenitur, quanto, si scisset emptor ab initio, minus daret pretii. sin vero huiusmodi onus et gravamen functionis cognovisset, nullam adversus venditorem habet actionem.

S. XV *k. Iun. Philippopoli AA. conss.*

[10] *Idem AA. et CC. Titio Attalo.* Cum venditorem carnis fide conventionis rupta tempore placito hanc non exhibuisse proponas, empti actione eum quanti interest tua tunc tibi praestitam fuisse apud praesidem provinciae convenire potes.

S. XVII *k. Ian. AA. conss.*

Written April 8, at Byzantium, in the consulship of the Augusti (293).

[7] *The same Augusti and Caesars to Diodorus.* If you have sold slaves and, not knowing from where payment was being made, received their purchase price out of their *peculium* which belonged to you, it follows that you have an action for the entire price, since payment of money belonging to the seller does not provide grounds to release the buyer (from the duty to pay).

Written April 15, at Melantias, in the consulship of the Augusti (293).

[8][237] *The same Augusti and Caesars to Aurelius Eusebius.* **pr.** If your father has sold his portion of the property and has not placed (the buyer) into quiet possession (*vacua possessio*), it is certain that he has retained every right for himself.[238] Nor could (the buyer's) payment of an impost (*vectigal*), as if delivery had taken place, change the truth, if it has emerged that this was a feigned act. **1.** Therefore the provincial governor, when approached, if he takes note that neither your father nor his successors have placed the buyer or his heirs in any degree into quiet possession, will not hesitate to pronounce that nothing has been transferred. And if he notes that you are being sued on purchase to place the buyer into quiet possession, he will judge whether the purchase price has been paid; and if he finds that the price has not been satisfied, he will provide that this price be restored to you.

Written April 27, in the consulship of the Augusti (293).

[9] *The same Augusti and Caesars to Aurelia Zania Antipatra.* If the capitation (the fiscal obligation) of a property sold was said by the seller to be less, whether knowingly or unknowingly, and it has been found to be greater, he (the seller) is liable for the difference in what the buyer would have paid if he had known (the capitation) from the beginning. But if he had been aware of the burden and charge of the public obligation (*functio*), he has no action against the seller.

Written May 18, at Philippopolis, in the consulship of the Augusti (293).[239]

[10] *The same Augusti and Caesars to Titius Attalus.* Since you state that the seller of meat, having broken the terms of the agreement, did not provide it at the time agreed upon, you can sue him before the provincial governor in an action on purchase for what it was worth to you that it be provided to you at that time.

Written December 16, in the consulship of the Augusti (293).

[237] Perhaps combine with C. 4.52.3.

[238] Blume: "Despite the fact that a contract of sale was made, that of itself did not transfer title or ownership. Delivery (or mancipation) was necessary."

[239] Possibly June 17, 293, based on the movements of the Court: Mommsen.

[11] *Idem AA. et CC. Flaviae Eucarpiae.* Si ancillam tibi ex causa venditionis traditam venditor manumisit, libertatem alienae factae praestare non potuit. quod si post venditionem ante traditionem manumisit, pleno iure dominus constitutus civem Romanam facere non prohibebatur: tibi personali propter ruptam fidem contra venditorem actione competente.

S. x k. Ian. AA. conss.

[12] *Idem AA. et CC. Egi Crispino.* Sicut periculum vini mutati, quod certum fuerat comparatum, ad emptorem, ita commodum aucti pretii pertinet. utque hoc verum est, sic certae qualitatis ac mensurae distracto vino fidem placitis servandam convenit: quo non restituto non pretii quantitatis, sed quanti interest empti competit actio.

S. prid. non. Febr. Sirmi CC. conss.

[13] *Idem AA. et CC. Flavio Alexandro.* Fructus post perfectum iure contractum emptoris spectare personam convenit, ad quem et functionum gravamen pertinet: venditorque pretium tantum ac, si moram intercessisse probetur, usuras officio iudicis exigere potest.

S. IIII non. Dec. CC. conss.

[14] *Idem AA. et CC. Aurelio Rusoni.* Emptor servorum recte de his tradendis et de eorum fuga itemque sanitate erronesque non esse aut noxa solutos repromitti sibi recte postulat.

S. v k. Dec. CC. conss.

[15] *Idem AA. et CC. Aurelio Antonino Aeliano.* Ultra modum tritici distracti citra pactum in solutione mora non facta nihil emptor exigere potest.

S. XV k. Ian. Nicomediae CC. conss.

[11] *The same Augusti and Caesars to Flavia Eucarpia.* If the seller has manumitted a slave woman (already) delivered to you in a sale, he could not offer liberty to someone made the property of another. But if he manumitted her after the sale but before delivery, since he was positioned as owner in the full sense of the law, he was not prohibited from making a Roman citizen; but you have an action *in personam* against the seller for breaking the terms of the contract.

Written December 23, in the consulship of the Augusti (293).

[12][240] *The same Augusti and Caesars to Egis Crispinus.* Just as the risk belongs to the seller for the changing (i.e., acidification) of the specific wine that had been purchased, so too does the benefit of an increased price. And as this is true, so it is generally accepted that the (buyer's) reliance (*fides*) on a certain quality and measure of the wine, when it is sold, should be observed in accordance with the terms agreed upon. When this has not been provided, an action on purchase is available, not for the amount of the price, but for the buyer's interest.

Written February 4, at Sirmium, in the consulship of the Caesars (294).

[13] *The same Augusti and Caesars to Flavius Alexander.* It is generally accepted that, after a contract is lawfully completed, the fruits belong to the person of the buyer, to whom also the burden for public taxes (*functionum gravamen*) also belongs; the seller can only exact the purchase price through the office of a judge and, if it should be proved that a delay intervened, interest (as well).

Written December 2, in the consulship of the Caesars (294).

[14] *The same Augusti and Caesars to Aurelius Ruso.* A buyer of slaves rightly demands a stipulation (*sibi repromitti*) about delivering them and about their fleeing, as well as about their health and that they are not wanderers or liable for damage.

November 27, in the consulship of the Caesars (294).[241]

[15] *The same Augusti and Caesars to Aurelius Antoninus Aelianus.* Without a pact, if no delay is made in payment, the buyer can exact nothing beyond the amount of wheat sold.

Written December 18, at Nicomedia, in the consulship of the Caesars (294).

240 Combine with C. 4.2.10, which lacks the name *Egis*.

241 Mommsen dates to December 9, 294.

[16] *Idem AA. et CC. Aurelio Cyrillo.* Post perfectam venditionem fetus quidem pecorum emptori, venditori vero sumptus, si quos bona fide fecerit, restitui debere notissimum est.

S. VIII k. Ian. CC. conss.

[17] *Idem AA. et CC. Hermiano et Hermippo.* Expulsos vos de fundo per violentiam a Nerone, quem habere ius in eo negatis, profitentes nullam vobis adversus eum, ex cuius venditione fundum possidetis, actionem competere probatis. igitur ad instar interdicti seu actionis promissae experiendum esse perspicitis.

L Si Quis Alteri vel Sibi sub Alterius Nomine vel Aliena Pecunia Emerit

[1] *Imp. Antoninus A. Mercatori Secundo.* Si pecunia patris fundus mancipiaque comparata sunt, tamen cum emptiones matris tuae nomine factas esse proponis, ignorare non debes traditione matrem tuam dominam fuisse constitutam. plane si pecuniae petitionem competere tibi propter numerationem pretii existimas, civiliter consiste.

PP. III k. Aug. Antonino A. IIII et Balbino conss.

[2] *Imp. Alexander A. Septimiae.* Si emancipatis vobis fundos, quos nomine vestro, cum in potestate ageretis, pater emerat, tradidit vel in possessione eorum voluntate patris fuistis, dominium adquisistis.

D. XIII k. April. Antonino et Alexandro conss.

[3] *Idem A. Fabio Paterno.* Mancipia quorum meministi si, ut proponis, nomine tuo itemque fratris tui cui successisti empta vobis tradita sunt, licet instrumento emptionis matrem tuam pecuniam numerasse contineatur, persequi ea more iudiciorum non prohiberis.

D. XV k. Iul. Modesto et Probo conss.

[16][242] *The same Augusti and Caesars to Aurelius Cyrillus.* It is very well known that, after the completion of a sale, the offspring of the livestock should be restored to the buyer and the expenses to the seller, if he has made any in good faith.

Written December 25, in the consulship of the Caesars (294).

[17] *The same Augusti and Caesars to Hermianus and Hermippus.* In acknowledging that you have been forcibly expelled from a farm by Nero, who you say has no right in it, you prove that you have no action against the person from whose sale you possess the farm. Therefore you see that you must sue (Nero) on the analogy of the interdict (*unde vi*, for forcible expulsion from property lawfully possessed) or an action promised (for this situation).

Fiftieth Title If Someone Buys for Another Person or for Himself Under Another Person's Name or with Another Person's Money

[1] *Emperor* ANTONINUS *Augustus to Mercator Secundus.* If a farm and slaves have been purchased with your father's money, nevertheless, when you state that the purchases were made in your mother's name, you should not ignore that your mother became owner upon delivery (to her). Clearly, if you think that you (as your father's heir) have a right to seek the money on account of his payment of the price, sue her in a civil action.

Posted July 30, in the consulship of Antoninus Augsutus, for the fourth time, and Balbinus (213).

[2] *Emperor* ALEXANDER *Augustus to Septimia.* If your father, after emancipating you (plural), has delivered to you farms that he had bought in your name when you were in his power, or you have been in possession of them in accordance with your father's wishes, you have acquired ownership.

Given March 20, in the consulship of Antoninus and Alexander (222).

[3] *The same Augustus to Fabius Paternus.* If, as you state, the slaves whom you have mentioned were bought and delivered to you in your name and again in that of your brother whom you have succeeded (as heir), although it is contained in the purchase document that your mother paid the money, you are not prohibited from pursuing them by normal procedure in the courts (*more iudiciorum*).

Given June 17, in the consulship of Modestus and Probus (228).

[242] Combine with, apparently, C. 4.48.6 (December 18). This version has the addressee as Aurelius Hermianus Cyrillus, but Hermianus has probably intruded from the next constitution.

[4] *Impp. Valerianus et Gallienus AA. et Valerianus C. Aurelio Cyrillo.* Quamvis instrumento emptionis socrus nomen inscripseris, tamen si possessionem tenes, dominus effectus es. ob eam rem frustra calumniam mulieris, quamvis ipsa contractus tabulas habeat, formidas.

D. III non. Mai.

[5] *Impp. Diocletianus et Maximianus AA. Vero.* Cum propria pecunia tua te comparante possessionem quondam uxoris tuae nomen tantummodo accommodasse dicas eandemque occasione custodiae suae commissorum instrumentorum contra bonam fidem proprietatem eiusdem fundi usurpasse, rector provinciae, pro sua exercitatione cognitum habens donationem a non domina uxore tua in filiam suam collatam nullum praeiudicium dominio tuo attulisse, docenti tibi veritatem precibus tuis adsistere restituere eandem possessionem habita etiam fructuum taxatione curabit.

D. prid. id. Sept. ipsis IIII et III AA. conss.

[6] *Idem AA. et CC. Aurelio Dionysio.* **pr.** Multum interest, utrumne uxore tua comparante pecuniam numerasti eique possessio tradita est, an contractu emptionis a te nomine tuo habito tantum uxoris nomen post instrumentis scribi feceris. **1.** Nam si quidem uxor tua nomine suo emit eique res traditae sunt nec in te quicquam de his processit, non nisi de pretio adversus eam, in quantum tu pauperior et illa locupletior facta est, habes actionem. **2.** Quod si emisti quidem tu et tibi tradita possessio est, tantum autem nomen instrumento uxoris quondam tuae scriptum est, res gesta potior quam scriptura habetur. **3.** Sin vero ab initio negotium uxoris gerens comparasti nomine ipsius, empti actionem nec illi nec tibi adquisisti, dum tibi non vis nec illi potes: quare in dominii quaestione ille potior habetur, cui possessio tradita est.

D. XIIII k. Sept. Viminacio AA. conss.

[7] *Idem AA. et CC. Aurelio Gerontio.* Cum per eos qui negotia tua gerebant olei materiam te comparasse contractusque fidem pretio

[4] *Emperors* Valerian *and* Gallienus *Augusti and* Valerian *Caesar to Aurelius Cyrillus.* Although you have written the name of your mother-in-law in the purchase document, nevertheless, if you hold possession, you have become owner. For that reason you needlessly fear the woman's vexatious claim (*calumnia*), even though she herself holds the contract.

Given May 5.

[5] *Emperors* Diocletian *and* Maximian *Augusti to Verus.* Since you say that when you were buying a property with your own money you only provided the name of your former wife, and that she, taking advantage of her keeping the documents entrusted to her, usurped the ownership of the same farm contrary to good faith, the provincial governor, determining in accordance with his powers that a gift given by your wife when she was not owner to her daughter has not prejudiced your ownership, will take care that she restore the property to you after also taking account of its fruits, provided you show that the truth supports your petition.

Given September 12, in the consulship of the Augusti themselves, for the fourth and third time, respectively (290).

[6] *The same Augusti and the Caesars to Aurelius Dionysius.* **pr.** It makes a great deal of difference whether you have paid the money when your wife was the purchaser and possession has been delivered to her, or, when the contract of purchase was made by you in your name, you have only afterwards had your wife's name written in the documents. **1.** For if indeed your wife has bought properties in her name and they have been delivered to her and none of these has come to you, you do not have an action against her except on the price to the extent that you have become poorer and she richer. **2.** But if you have purchased and possession has been delivered to you, but only the name of your former wife has been written in the document, the actual facts (*res gesta*) are considered to prevail (*potior habetur*) over writing. **3.** But if, from the beginning, you have purchased in her name while managing her affairs, you have acquired the right to an action on purchase neither for her nor for yourself, granted that you do not wish to do so for yourself and cannot for her; therefore, in a question of ownership, the person to whom possession has been conveyed is considered to prevail.

Given August 19, at Viminacium, in the consulship of the Augusti (293).[243]

[7][244] *The same Augusti and Caesars to Aurelius Gerontius.* Since you state that you have bought timber from olive trees (*olei materiam*) through those people

[243] The subscription may belong with ch. 7.
[244] Combine with C. 3.21.1 (same date), 7.72.9 (299).

suscepto rupisse venditorem proponas, si quidem ex empto his qui iuri tuo subiecti fuerint contrahentibus tibi quaesita est actio, per te vel cui mandaveris, si vero sui iuris constituti secundum mandatum tuum hunc contractum habuerunt ac sibi empti quaesierunt actionem, per eos vel quibus illi dederint mandatum adi competentem iudicem, qui secundum bonam fidem, quae in huiusmodi contractibus observari solet, satisfieri providebit.

S. XIIII k. Sept. AA. conss.

[8] *Idem AA. et CC. Maximae Valentinae.* Qui aliena pecunia comparat, non ei cuius nummi fuerunt, sed sibi tam actionem empti quam dominium, si tamen ei fuerit tradita possessio, quaerit. cum itaque de rebus communibus fratrem patruelem tuum quaedam comparasse contendas, de tua pecunia hunc conveniendo facies consultius. nam in rem de rebus ab eo comparatis tibi contra eum petitio non competit.

D. prid. non. Febr. Sirmi CC. conss.

[9] *Idem AA. et CC. Eminio Rufiniano.* Nihil prohibet altero pecuniam numerante in alium vel utriusque contrahentis consensu vel certe venditore tantummodo volente dominium transferri: eo etiam manifeste constituto, ut inter absentes per mediam personam vel per nuntium vel per epistulam talis contractus perfici possit.

D. V non. ... Sirmi CC. conss.

LI De Rebus Alienis Non Alienandis et de Prohibita Rerum Alienatione vel Hypotheca

[1] *Imp. Alexander A. Cattiano militi.* Si praesidi provinciae probatum fuerit Iulianum nullo iure munitum servos tuos scientibus vendidisse, restituere tibi emptores servos iubebit. quod si ignoraverint et eorum facti sunt, pretium horum tibi solvere Iulianum iubebit.

who were managing your affairs, and that the seller, after receiving the purchase price, has broken the terms of the contract, approach a competent judge either personally or through the person to whom you have mandated this, if indeed an action on purchase has been acquired for those who were subject to your authority (*ius*) when they were contracting on your behalf; but if persons established as *sui iuris* made this contract in accordance with your mandate and acquired the action on purchase for themselves, approach the judge either through them or through the ones to whom they have given the mandate. The judge will see to it that the contract be fulfilled in accordance with good faith, which is customarily observed in contracts of this type.

Written August 19, in the consulship of the Augusti (293).

[8] *The same Augusti and Caesars to Maxima Valentina.* Whoever purchases with someone else's money, acquires both a right of action on purchase and ownership not for the person whose money it was but for himself, as long as possession has been delivered (to him). Thus since you contend that your cousin (*frater patruelis*) has purchased some properties out of common resources, you will act more wisely by suing him concerning your money; for you do not have a claim *in rem* against him for things that he has purchased.

Given February 4, at Sirmium, in the consulship of the Caesars (294).

[9] *The same Augusti and Caesars to Eminius Rufinianus.* Nothing prevents ownership from being transferred to one person when another pays the money, either with the consent of each party to the contract or certainly with that of the seller alone. The principle is clearly established that such a contract can be completed between absent parties through an intermediary or through a messenger or a letter.

Given on the fifth day before the nones ..., at Sirmium, in the consulship of the Caesars (294).[245]

Fifty-First Title Property Belonging to Others That Is Not to Be Alienated, and the Prohibited Alienation or Hypothecation of Property

[1] *Emperor Alexander Augustus to Cattianus, a soldier.* If it is proved to the provincial governor that Julian, supported by no right, has sold your slaves to knowing buyers, he will order them to restore the slaves to you. But if they were not aware (of Julian's lack of authority) and the slaves have become their property, he will order Julian to pay you their price.

[245] Mommsen dates to March 3, 294.

D. VIIII id. Iul. Iuliano et Crispino conss.

[2] *Imp. Gordianus A. Grattiae Aeliae.* Distrahente marito rem iuris tui, si consensum non accommodasti, licet sigillo tuo venditionis instrumentum fraude conquisita signaveris, eiusmodi tamen commentum emptori usucapione non subsecuta vel longi temporis praescriptione non munito nullam praestitisse potest securitatem.

[3] *Impp. Diocletianus et Maximianus AA. et CC. Aurelio Valeriano.* Venditrici succedenti hereditario iure perfectam recte venditionem rescindere ac dominium revocare non licet: sed et si hoc ex persona sua vindicet, vel exceptione te doli mali, si hanc viam elegeris, tueri vel evicta re, etsi defensione monstrata nolueris uti, quanti tua interest poteris experiri.
S. XVI k. Nov. Sirmi AA. conss.

[4] *Idem AA. et CC. Domitio Aphobio.* Mancipia patris, qui fundum a Philippo conduxerat, successione tibi quaesita domino fundi pro debitis in solutum mater tua dando nihil tibi auferre potuit. et ideo si tu maior viginti quinque annis effectus ab ea negotium gestum non fecisti ratum, oblato debito, si non haec locator iure pignoris obligata sibi vendidit, petere poteris.
D. III id. Febr. CC. conss.

[5] *Idem AA. et CC. Aurelio Aegro.* Si fundum tuum pater post emancipationem te non consentiente venumdedit neque ei successisti neque possidens longi temporis praescriptione munitus est, eum tibi agenti rector provinciae reddi efficiet.
viii id. M. Sirmi CC. conss.

[6] *Idem AA. et CC. Aurelio Rufo.* Nemo res ad te pertinentes non obligatas sibi nec ex officio vendendi potestatem habens distrahendo quicquam tibi nocere potuit.
D. k. Nov.

Given July 9, in the consulship of Julian and Crispinus (224).[246]

[2] *Emperor* GORDIAN *Augustus to Grattia Aelia.* When your husband sells property that belongs to you, if you have not given consent although through purposeful fraud you have signed the document of sale with your seal, nonetheless this type of trickery cannot have provided any security to a buyer since usucapion has not ensued or since he is not protected by long-time prescription.[247]

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *and the Caesars to Aurelius Valerianus.* It is not permitted to a person succeeding a (female) seller by hereditary right to rescind a sale correctly completed (by the decedent) and reassume ownership; but if he should sue to recover ownership of this in his own name, either protect yourself with the defense of deceit (*exceptio doli mali*), if you choose this way, or, if you are evicted from the property, even if you are unwilling to use the indicated defense, you will be able to sue for your interest.

Written October 17, at Sirmium, in the consulship of the Augusti (293).

[4][248] *The same Augusti and Caesars to Domitius Aphobius.* Your father had leased a farm from Philippus. Your mother, by giving these slaves, which had been acquired by you through succession, to the farm's owner as payment for debt, could not take away anything from you. And for that reason if, being older than 25 years, you have not ratified her management of affairs, upon offering to pay off the debt you will be able to claim them if the lessor has not sold them as obligated to himself by a right of pledge.

Given February 11, in the consulship of the Caesars (294).

[5] *The same Augusti and Caesars to Aurelius Aegrus.* If your father has sold your farm after your emancipation without your consent and you have not succeeded him (as heir), and the possessor has not been protected by a long-time prescription, the provincial governor will order it to be returned to you when you sue.

May 8, at Sirmium, in the consulship of the Caesars (294).

[6] *The same Augusti and Caesars to Aurelius Rufus.* No one could injure you at all by selling properties belonging to you that have not been obligated to himself or over which he does not have the power to sell by virtue of his office.

Given November 1.

[246] Possibly July 8.

[247] As Blume dryly observes: "It is apparent that a purchaser under Roman law was required to exercise caution."

[248] Combine with C. 2.25.1 (August 11), 8.42.18.

[7] *Imp. Iustinianus A. Iohanni pp.* Sancimus, sive lex alienationem inhibuerit sive testator hoc fecerit sive pactio contrahentium hoc admiserit, non solum dominii alienationem vel mancipiorum manumissionem esse prohibendam, sed etiam usus fructus dationem vel hypothecam vel pignoris nexum penitus prohiberi: similique modo et servitutes minime imponi nec emphyteuseos contractum, nisi in his tantummodo casibus, in quibus constitutionum auctoritas vel testatoris voluntas vel pactionum tenor qui alienationem interdixit aliquid tale fieri permiserit.

D. k. Nov. Constantinopoli.

LII De Communium Rerum Alienatione

[1] *Imp. Gordianus A. Apollodoro evocato.* Si nulla usucapionis praerogativa vel diuturni silentii praescriptio emptorem possessionis, quam a coheredibus patrui tui distractam suggeris, pro portione tua munit, in rem actio incolumis perseverat; aut si receptum ius securitatem emptori praestitit, est arbitrium tibi liberum conveniendi eos, qui pro portione satis illicitam venditionem celebraverunt.

[2] *Idem A. Herenniano militi.* Multum interest, utrum coheredes tui possessionem communem distraxerunt, an vero fiscus, cum partis dominus esset, soliditatem iuxta proprium privilegium vendidit. etenim si a fisco facta est venditio, fidem eius infringi minime rationis est. si vero coheredes soliditatem vendiderunt, licet emptor ab his delegatus partem pretii fisco solverit alteramque in cautionem deduxit, tamen portioni tuae ea venditio non potest obsistere.

[3] *Impp. Diocletianus et Maximianus AA. et CC. Aurelio Eusebio.* Falso tibi persuasum est communis praedii portionem pro indiviso, antequam communi dividundo iudicium dictetur, tantum socio, non etiam extraneo posse distrahi.

PP. id. Febr. ... conss.

[7][249] *Emperor* JUSTINIAN *Augustus to John, Praetorian Prefect.* We ordain, whether a law has prohibited alienation or a testator has done this or a pact made by parties to a contract has included this, not only that the alienation of ownership or the manumission of slaves must be prohibited, but also that the gift of a usufruct or a hypothec or the bond of pledge be completely prohibited. In a similar manner (We ordain that) neither servitudes nor an emphyteutic contract (for perpetual lease) be imposed, except in these cases alone in which the authority of constitutions or the wishes of the testator or the terms of the pact that forbade alienation have allowed something of this sort to take place.

Given November 1, at Constantinople.

Fifty-Second Title Alienation of Property held in Common

[1] *Emperor* GORDIAN *Augustus to Apollodorus, a reserve soldier* (evocatus). If no prerogative of usucapion or prescription of a long silence (long-term prescription) protects the buyer of a property which you allege was sold by the co-heirs of your paternal uncle, an action *in rem* for your share remains unaffected (i.e., is available to you); or if terms agreed upon in the sale (*receptum ius*) have provided security to the buyer, you have the free choice of suing those people who have transacted a sale that was illicit as it concerned your share.

[2] *The same Augustus to Herennianus, a soldier.* It makes a great deal of difference whether your co-heirs have sold a common property or whether the Treasury (*fiscus*), since it was part owner, sold the whole property in accordance with its own privilege. For if the sale was done by the Treasury, it makes no sense to infringe upon its terms (*fides*). But if the co-heirs have sold the entire property, although the buyer, having been delegated by them, has paid part of the price to the Treasury and has made a formal promise concerning the other, even so that sale does not stand in the way of (you claiming) your portion.

[3][250] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Aurelius Eusebius.* You have been falsely persuaded that a portion of a common property can only be sold to a partner, and not also to an outsider, before a judgment about dividing common property should be announced.

Posted February 13.[251]

[249] Perhaps to be combined with C. 4.54.9 (531). Lounghis *et al.* date to October 18, 531.

[250] Perhaps to be combined with C. 4.49.8 (April 27, 293).

[251] This subscription goes with the next constitution, where it is restored.

[4] *Idem AA. et CC. Ulpiano militi.* Portionem quidem tuam militantis alienare frater tuus non potuit. eius autem partem pretio soluto tibi restitui postulare nec militari gravitati convenit.

<PP. id. Febr. CC. conss.>

[5] *Idem AA. et CC. Olympiano.* Si maior annis viginti quinque velut propria nesciens communia cum fratribus tuis praedia distraxisti, licet nullum instrumentum intercesserit nec quicquam specialiter convenit, alienae portionis evictione secuta quanti interest emptoris solves.

LIII Rem Alienam Gerentibus Non Interdici Rerum Suarum Alienatione

[1] *Impp. Severus et Antoninus AA. Publiciae Capriolae.* Non est interdictum tutoribus vel curatoribus, etsi ex eo titulo iudicati debitores sunt constituti, cum sua causa res suas alienare. potuit ergo curator tuus fundum suum cum suo onere obligare fisco nostro: nam et privato potuisset.

D. non. Iun. Antonino et Geta conss.

LIIII De Pactis inter Emptorem et Venditorem Compositis

[1] *Imp. Antoninus A. Claudiae Diotimae.* Si ea lege praedium vendidisti, ut, nisi intra certum tempus pretium fuisset exsolutum, emptrix arras perderet et dominium ad te pertineret, fides contractus servanda est.

D. v id. ... Sabino II et Anullino conss.

[2] *Imp. Alexander A. Charisio militi.* Si fundum parentes tui ea lege vendiderunt, ut, sive ipsi sive heredes eorum emptori pretium quandoque vel intra certa tempora obtulissent, restitueretur, teque parato satisfacere condicioni dictae heres emptoris non paret, ut contractus

[4] *The same Augusti and Caesars to Ulpianus, a soldier.* Your brother could not alienate your portion (of the property) while you were on military service. However, it is not consistent with military seriousness for you to demand that his share be restored to you upon (your) payment of the price.

Posted February 13, in the consulship of the Caesars (294).

[5] *The same Augusti and Caesars to Olympianus.* If, being older than 25 years you have unknowingly sold, as if they were your own, properties owned in common with your brothers, although no document has been involved and nothing has been specifically agreed upon, you will pay the buyer's interest when he is evicted from the other persons' portion of the property.

Fifty-Third Title Persons Managing Another's Business Are Not Forbidden the Alienation of Their Own Property

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Publicia Capriola.* It is not forbidden for *tutores* and *curatores* to alienate their own property with its furnishings (*cum sua causa*) if they have been made debtors as the result of a judgment. Therefore, your *curator* could obligate his farm to Our Treasury with its burden; for he could (also) have done so with a private person.

Given June 5, in the consulship of Antoninus and Geta (205).

Fifty-Fourth Title Pacts Made Between the Buyer and Seller

[1] *Emperor* ANTONINUS *Augustus to Claudia Diotima.* If you have sold a property under the condition that, if the price had not been paid within a certain time, the (female) buyer would lose her earnest money (*arrae*) and ownership would belong to you, the terms (*fides*) of the contract must be observed.

Given on the fifth day before the Ides … in the consulship of Sabinus, for the second time, and Anullinus (216).[252]

[2] *Emperor* ALEXANDER *Augustus to Charisius, a soldier.* If your parents sold a farm under the condition that, if either they themselves or their heirs at any time or within a certain time offered the price to the buyer, the farm would

[252] Either August 9 or October 11. This text and several of those below concern a *lex commissoria*, an agreement that if the price were not paid within a fixed period, the vendor might declare the sale void. Usually in the meantime the property is granted to the provisional buyer on "sufferance" (*precarium*), meaning that the seller retains title. Otherwise, the suit is on the obligation (*in personam*).

fides servetur, actio praescriptis verbis vel ex vendito tibi dabitur, habita ratione eorum, quae post oblatam ex pacto quantitatem ex eo fundo ad adversarium pervenerunt.

D. k. Sept. Alexandro A. cons.

[3] *Idem A. Felici militi.* Qui ea lege praedium vendidit, ut, nisi reliquum pretium intra certum tempus restitutum esset, ad se reverteretur, si non precariam possessionem tradidit, rei vindicationem non habet, sed actionem ex vendito.

D. III id. Iul.

[4] *Idem A. Claudio Iuliano et Proculiano.* Commissoriae venditionis legem exercere non potest, qui post praestitutum pretii solvendi diem non vindicationem rei eligere, sed usurarum pretii petitionem sequi maluit.

[5] *Imp. Gordianus A. Aurelio Longino evocato.* Initio venditionis si pactus es, ut is cui vendidisti possessionem pretii tardius exsoluti tibi usuras pensitaret, non immerito existimas etiam eas tibi adito praeside ab emptore praestari debere. nam si initio contractus non es pactus, si coeperis experiri, ex mora dumtaxat usuras tam ab ipso debitore quam ab eo, qui in omnem causam empti suam fidem adstrinxit, de iure postulabis.

[6] *Imppp. Carus Carinus et Numerianus AAA. Olybrio Romulo.* Cum te fundum tuum certae rei contemplatione inter vos habita exiguo pretio in alium transtulisse commemoras, poterit ea res tibi non esse fraudi, quando non impleta promissi fide dominii tui ius in suam causam reverti conveniat. et ideo aditus competens iudex fundum cuius mentionem facis restitui tibi cum fructibus suis sine ulla ludificatione sua auctoritate perficiet, praecipue cum diversa pars receptis nummis suis nullam passa videri possit iniuriam.

be returned, and when you are ready to fulfill the aforesaid condition the (buyer's) heir does not comply, you will be given an action with special terms (*actio praescriptis verbis*) or on sale so that the terms (*fides*) of the contract be observed, with account taken of what has come to your adversary from that farm after your offer of the price in accordance with the pact.

Given September 1, in the consulship of Alexander Augustus (222).

[3] *The same Augustus to Felix, a soldier.* A person who has sold a property under the condition that, unless the remainder of the price should be paid within a certain time, it would revert to him, (then,) if he has not delivered possession on sufferance (*precaria possessio*), he does not have a suit on ownership for the property, but on sale.

Given July 13.[253]

[4] *The same Augustus to Claudius Julian and Proculianus.* A person who, after the appointed day for paying the price, has preferred not to choose a suit on ownership of the property, but to pursue a claim for interest on the price, cannot (then) exercise a clause to rescind the sale (*commissoriae venditionis lex*).

[5] *Emperor* Gordian *Augustus to Aurelius Longinus, a reserve soldier* (evocatus). If, at the beginning of the sale, you have made a pact that the person to whom you have sold the property pay interest on the purchase price not paid when due, you do not without merit think that, when you approach the governor, it should be provided to you by the buyer. For if you did not make the pact at the beginning of the contract, if you bring a suit, you will justly demand interest for the delay, but only for that, both from the debtor himself and from the person who bound his faith for all aspects of the purchase (i.e., the surety).

[6] *Emperors* Carus, Carinus, *and* Numerian *Augusti to Olybrius Romulus.* When you mention that, after jointly considering a certain matter, you have transferred your farm to another for a small price, this matter cannot be a disadvantage (*fraus*) for you, since it is proper that the right of your ownership should revert to its former status (*in suam causam*) if the terms of the promise are not fulfilled. And for that reason, a competent judge, when approached, will bring about by his authority that the farm that you mention, along with its fruits, be restored to you without any trickery, especially since the other party, after receiving his money back, cannot be seen to have suffered an injury.

[253] This subscription may belong to 7 below.

[7] *Impp. Diocletianus et Maximianus AA. et CC. Fabiano Musco.* Si a te comparavit is cuius meministi et convenit, ut, si intra certum tempus soluta fuerit data quantitas, sit res inempta, remitti hanc conventionem rescripto nostro non iure petis. sed si se subtrahat, ut iure dominii eandem rem retineat, denuntiationis et obsignationis depositionisque remedio contra fraudem potes iuri tuo consulere.

[8] *Idem AA. et CC. Auxanoni.* Tempore contractus inter emptorem et venditorem habitam conventionem integram servari, si ab ea posteriore non recedatur pacto, certum est.

[9] *Imp. Iustinianus A. Iohanni pp.* **pr.** Si quis ita paciscatur in venditionis vel alienationis contractu, ut novo domino nullo modo liceat in loco vendito vel alio modo sibi concesso monumentum extruere vel alio modo humani iuris eum eximere, sancimus, licet hoc apud veteres dubitabatur, tale pactum ex nostra lege esse fovendum et immutilatum permanere. **1.** Forsitan enim multum eius intererat, ne ei vicinus non solum quem nollet adgregetur, sed et pro quo specialiter interdictum est. cum etenim venditor vel aliter alienator non alia lege suum ius transferre passus est nisi tali fretus conventione, quomodo ferendum est aliquam captionem ex varia pati eum interpretatione?

D. xv k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

LV Si Servus Exportandus Veneat

[1] *Impp. Severus et Antoninus AA. Petroniae Flavillae.* **pr.** Lege venditionis exportata mancipia sub denuntiatione manus iniciendae libertatem

[7] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Fabianus Muscus.* If the person whom you mention has purchased from you and there is an agreement that, if the amount given has been restored within a certain time, the property should be considered as not purchased, you do not lawfully seek that this agreement be set aside by Our rescript. But if he should conceal himself, so that he retain the same property under right of ownership, you can protect your rights against fraud (*fraus*) by the remedy of giving formal notice, sealing, and depositing the money.

[8] *The same Augusti and Caesars to Auxanon.* It is certain that an agreement made between the buyer and seller at the time of the contract should be observed intact, except if it should be withdrawn from by a later pact.

[9][254] *Emperor* Justinian *Augustus to John, Praetorian Prefect.* **pr.** If anyone should make a pact in a contract of sale or alienation that the new owner in no way be permitted to build a (funeral) monument in the place that has been sold or otherwise conceded to him, or to consecrate it by other means (*humani iuris eximere*), We ordain, although this was doubted among the old authorities, that such a pact should be supported in accordance with Our law and remain unchanged. **1.** For perhaps it made a great deal of difference to him that he not have as a neighbor not only someone whom he does not want but also one for whom the prohibition was specifically made. For since the seller or a person otherwise alienating the property in another way did not allow his right to be transferred under any other terms except when he was protected with this agreement, how is it to be endured that he should suffer some deception by a different interpretation?[255]

Given October 18, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

Fifty-Fifth Title If a Slave Should Be Sold to Be Exported[256]

[1] *Emperors* Severus *and* Antoninus *Augusti to Petronia Flavilla.* pr. Slaves exported in accordance with a term of the sale and subject to being seized (*sub*

[254] Apparently to be combined with C. 4.51.7.

[255] Blume: "The law here translated was evidently made to correct D. 2.14.61 which states: 'No man can by means of a pact deprive himself of the right to consecrate his own ground, or to bury a dead body on his own land, or to dispose of his estate without his neighbor's consent.'"

[256] See D. 18.7. Blume: "Slaves … were often sold subject to certain conditions, some of which were for the benefit of the vendor, some for the benefit of the slave, and some as a mere punishment. If a slave was sold on condition to be exported, the condition was entirely for the benefit of the vendor, or regarded as a condition for his protection, and could be waived by him." The seller's right to seize the slave if the condition is not observed is frequently *in rem*, i.e., title revives.

ab emptore, vel qui successit in locum eius, antequam fides rumpatur, accipere possunt. **1.** Quae tamen fisco post manumissionem vindicantur et in perpetuam servitutem eadem lege veneunt, cum in his civitatibus conversantur, quas contrahentes exceperant. **2.** Ante manumissionem iniciendae manus facultas non denegatur atque ideo non petuntur in publicum.

PP. XV k. Oct. Severo A. II et Victorino conss.

[2] *Idem AA. Sezo Nedymo.* Si, ut manus iniectionem haberes, cavisti tibi, iure tuo uti potes. quod si hoc omisisti et poenam stipulatus es, homo quidem fisco commissus est, tu vero nactus ex stipulatu actionem. in omnibus tamen quaeritur, an domini voluntate in locum prohibitum venerit.

PP. VII k. Nov. Severo A. II et Victorino conss.

[3] *Imp. Alexander A. Novio liberto.* Ancilla, quae exportanda venit nec exportata est, sed ab emptore in eadem civitate morante empta et[x] manumissa est, adversus legem venditionis libera fieri non potuit: et ideo aditus a te procurator meus partibus suis fungetur.

PP. IIII id. Mart. Maximo II et Aeliano conss.

[4] *Idem A. Aurelio Papiae.* **pr.** Moveor, quod te a servis tuis dominum eorum venisse adfirmas sub ea lege, ne in patria moreris, et ab eo, cui te prior emptor vendiderat, manumissum esse dicis. **1.** Quare competens iudex adversus eum, quem praesentem esse dicis, cognitionem suam praebebit et, si veritas accusationi aderit, exsecrabile delictum in exemplum capitali poena vindicabit. **2.** Sed quoad usque probaveris quae intendis, status tuus esse videtur, qui in te post manumissionem deprehenditur.

PP. XI k. Iul. Iuliano et Crispino conss.

[x] [empta et]

denuntiatione manus iniciendae; if they are not exported) can, before the terms of the contract have been broken, receive liberty from the buyer or the person who has succeeded into his place. 1. However, they are claimed by the Treasury after their manumission, and are (then) sold into perpetual servitude by the same provision, when they are present in those cities that the parties to the contract had excepted. 2. Before manumission the right to seize them (*iniciendae manus facultas*) should not be denied (to the seller) and for that reason they are not claimed for the public.

Posted September 17, in the consulship of Severus, for the second time, and Victorinus (200).

[2] *The same Augusti to Sezus Nedymos.* If you had made a provision (through a stipulation) that you have the right to seize (*manus iniectio*, of a slave sold under a condition of export), you can exercise your right. But if you have omitted this and have a stipulation for a penalty, the person (i.e., the slave) is forfeited to the Treasury, but you have acquired the right of action on the stipulation. In all cases, however, the question is whether the slave has come into a prohibited place with the consent of the owner (the buyer).

Posted October 26, in the consulship of Severus, for the second time, and Victorinus (200).

[3] *Emperor* ALEXANDER *Augustus to Novius, a freedman.* A slave woman who has been sold to be exported and has not been exported, but has been manumitted by a buyer living in the same city, could not become free contrary to the terms of the sale; and for that reason My procurator, when approached by you, will perform his role.

Posted March 12, in the consulship of Maximus, for the second time, and Aelianus (223).

[4] *The same Augustus to Aurelius Papia.* pr. I am moved because you affirm that, although you were their owner, you were sold by your slaves under the condition that you not live in the city, and you say you were manumitted by the person to whom the first buyer sold you. 1. Therefore a competent judge will offer his jurisdiction against the person who you say is present and, if there is truth to the accusation, will make an example of the execrable crime with capital punishment. 2. But until you prove what you charge, your status seems to be what is indicated to be for you after your manumission.

Posted June 21, in the consulship of Julian and Crispinus (224).

[5] *Idem A. Sextiano Serapioni.* Qui exportandus a domino de civitate sua venit, nec in urbe Roma morari debet: qui autem de provincia certa, nec in Italia. si itaque contra legem constitutam factum probare potes, utere iure, quod propterea tibi competit.

PP. VII k. Febr. Fusco II et Dextro conss.

LVI Si Mancipium Ita Venierit, Ne Prostituatur

[1] *Imp. Alexander A. Socrati.* Praefectus urbis amicus noster eam, quae ita venit, ut, si prostituta fuisset, abducendi potestas esset ei, cui secundum constitutionem divi Hadriani id competit, abducendi faciet facultatem: quod si eum patientiam accommodasse contra legem quam ipse dixerat, ut in turpi quaestu mulier haberetur, animadverterit, libertate competente secundum interpretationem eiusdem principis perduci eam ad praetorem, cuius de liberali causa iurisdictio est, ut lis ordinetur, iubebit. nec enim tenor legis, quam semel comprehendit, intermittitur, quod dominium per plures emptorum personas ad Primum[xi] qui prostituit sine lege simili pervenit.

PP. III k. Nov. Maximo II et Aeliano conss.

[2] *Idem A. Severo.* Mulierem, quam ita venisse adlegas, ne prostitueretur aut, si prostituta fuerit, libera esset, per officium militare exhiberi apud tribunale oportet, ut, si controversia referatur pacto (quod tamen si verum est, libertas mulieri existente condicione competit), agatur causa apud eum cuius de ea re notio est. haec autem lex et nisi in tabulas venditionis inserta sit, quamvis epistula vel sine scriptis facta ostenditur, valet.

PP. k. Dec. Maximo II et Aeliano conss.

[xi] primum

[5] *The same Augustus to Sextianus Serapio.* Whoever is sold by his owner to be exported from his city should not live in the city of Rome: and whoever is sold to be exported from a certain province should not live in Italy. So if you can prove a violation of the agreed upon condition, use the right that is available to you on that account.

Posted January 26, in the consulship of Fuscus, for the second time, and Dexter (225).

Fifty-Sixth Title If a Slave Is Sold upon Condition Not to Be Prostituted

[1] *Emperor* ALEXANDER *Augustus to Socrates.* The City Prefect, Our friend, will provide the power to take away a female slave who has been sold under the condition that, if she had been prostituted (after the sale), the person to whom this is available in accordance with the constitution of the divine Hadrian would have the power to take her away. However, if he (the Prefect) learns that he allowed the woman to be kept in the disgraceful trade against the term that he himself had pronounced, since she is entitled to liberty according to the interpretation of the same Emperor, he will order her to be brought to the Praetor who has jurisdiction over cases involving liberty, so that a lawsuit might be begun. Nor are the terms of the condition that he himself previously embraced interrupted because ownership has passed through the persons of several buyers without a similar condition to the person who first (*primus*) prostituted her.

Posted October 30, in the consulship of Maximus, for the second time, and Aelianus (223).

[2] *The same Augustus to Severus.* A woman who you allege was sold under the condition that she not be prostituted, or, if she were prostituted, that she be free, must be exhibited at the tribunal through the military staff (*officium militare*), so that, if a controversy should be reported concerning the pact – under the condition of which, if it is genuine, the woman is entitled to liberty – the case may be tried before the judge who has jurisdiction for this matter. However, this condition is valid even if it has not been included in the sale documents, to the extent that it is shown to have been arranged by a letter or (even) without writing.

Posted December 1, in the consulship of Maximus, for the second time, and Aelianus (223).

[3] *Idem A. Aurelio Aelio.* Eam, quae ita venit, ne corpore quaestum faceret, nec in caupona sub specie ministrandi prostitui, ne fraus legi dictae fiat, oportet.

PP. id. Ian. Fusco II et Dextro conss.

LVII Si Mancipium Ita Fuerit Alienatum, Ut Manumittatur vel Contra

[1] *Imp. Alexander A. Patricensi.* Si[xii] Patroclius, posteaquam te Hermiae donationis causa dedit lege dicta, ut, si quindecim annis continuis servisses, ad libertatem perducereris ita, ut civis Romanus esses, tempore peracto, si modo Patroclius non contrariae voluntatis fuerit aut si iam decesserit, ad libertatem pervenisti, quoniam placuit non solum ad venditos, sed etiam ad donatos eam legem, ut manumitterentur, pertinere, nec te potuit semel translato dominio in Hermiam postea alii Patroclius vendere: et ideo non de praestanda tibi libertate, quam ex constitutione iam fueras adeptus, litigare debuisti, sed libertatem quam obtinueras defendere.

PP. VI id. Nov. Alexandro A. cons.

[2] *Idem A. Eutychiano.* Si ea lege Chreste[xiii] servum, sed naturalem filium venumdedit, ut emptor eum manumitteret, quamvis non est manumissus, ex constitutione divorum Marci et Commodi ad Aufidium Victorinum liber est.

PP. non. Dec. Alexandro A. cons.

[3] *Idem A. Fulcinio Maximo.* **pr.** Si Iusta Saturnino puellam nomine Firmam agentem tunc annos septem hac lege vendiderit, ut, cum haberet annos viginti quinque, libera esset, quamvis factum ab emptore praestandae libertatis pacto non sit insertum, sed ut libera esset expressum, tamen constitutioni divorum Marci et Commodi locus est. **1.** Ideoque impleto vicensimo quinto anno Firma libera facta est nec obest ei, quod vicensimo septimo anno manumissa est, quae iam ex

xii [Si]
xiii Chrestes

[3] *The same Augustus to Aurelius Aelius.* A woman who was sold under the condition that she not earn a profit with her body should not be prostituted in an inn (*caupona*) under the guise of providing service (to customers), lest the stated condition be evaded through fraud.

Posted January 13, in the consulship of Fuscus, for the second time, and Dexter (225).

Fifty-Seventh Title If a Slave Has Been Alienated under the Condition That He Be Manumitted, or the Contrary[257]

[1] *Emperor* ALEXANDER *Augustus to Patricensis.* Patroclius, after he gave you to Hermia as a gift with the stated condition that, if you should have served for fifteen consecutive years, you would be brought to liberty in such a way that you would be a Roman citizen; when the time has passed, as long as Patroclius has not changed his mind or if he has already died, you have arrived at liberty, since it is agreed that the condition that slaves be manumitted applies not just to those who have been sold, but also to those who have been given as gifts;[258] nor could Patroclius afterwards sell you to another once ownership had been transferred to Hermia; and for that reason you did not need to litigate about being provided liberty, which you had already gained from the constitution, but (rather) to defend the liberty that you had obtained.

Posted November 8, in the consulship of Alexander Augustus (222).

[2] *The same Augustus to Eutychianus.*[259] If Chrestes has sold his slave who is also his natural son under the condition that the buyer manumit him, although he has not been manumitted, he is free as a result of the constitution of the deified Marcus and Commodus to Aufidius Victorinus.

Posted December 5, in the consulship of Alexander Augustus (222).

[3] *The same Augustus to Fulcinius Maximus.* pr. If Justa has sold to Saturninus a girl going by the name of Firma, at that time 7 years old, under the condition that she should be free when she reached the age of 25, although the fact of the buyer providing liberty was not included in the pact, but it was expressed that she be free, nevertheless there is a place for the constitution of the deified Marcus and Commodus.[260] **1.** For that reason Firma became free upon completing her twenty-fifth year, and the fact that she was manumitted in her twenty-seventh year is not an obstacle to her, since she was already free in

[257] See D. 18.7.

[258] As Krüger notes, the Basilika favors reading *donatos ea lege, ut manumitterentur, constitutionem pertinere* ("the constitution applies to ... those given on terms that they be freed").

[259] Some manuscripts name Eutychianus a freedman.

[260] A manuscript adds "in semestribus scriptae," apparently based on D. 18.7.10.

constitutione libera erat: et is, quem post vicensimum quintum annum ex te conceptum enixa est, ingenuus est.

PP. x k. Febr. Iuliano et Crispino conss.

[4] *Imp. Gordianus A. Corneliae Iucundae.* Si is, qui pretium pro te acceperat, ut statuto tempore te libertate donaret, moram repromissae libertati praestitit, ex eo te liberam esse factam manifestum est, ex quo, cum posset dari libertas, non est praestita. et ideo ex te natos ingenuos videri procreatos non est incertae opinionis.

PP. VI k. Mai. Sabino et Venusto conss.

[5] *Idem A. Aurelio Marino.* **pr.** Ea quidem mancipia, quorum venditio eam legem accepit, ne ad libertatem perducantur, etiamsi manumittantur, nancisci libertatem non possunt. neque enim condicio, quae personae eius cohaesit, immutari facto eius qui ea lege comparavit potest. **1.** Nec tamen, poenae exactio si qua addita est condicioni non servatae, iustam exigendi tribuit causam. **2.** Qua igitur ratione te poterit vocare ad officium procuratoris, qui eam legem venditioni dedit, perspici non potest, cum nec in privatorum contractibus fiscus se interponere debeat et litterae ad te missae personae factum, si non ipse manumiseris, non contineant.

PP. XVI k. Sept. Sabino et Venusto conss.

[6] *Impp. Diocletianus et Maximianus AA. et CC. Helvidiae Rufinae.* Si puellam ea lege vendidisti, ut manumitteretur et, si manumissa non esset, centum aurei praestarentur, non servata fide nihilo minus eam raptam e vestigio servitutis ad libertatem, quae praestari potuit, constitit nec pecunia quasi rupta fide suscepta recte petetur, cum non mutata venditoris voluntate condicionis potestate post[xiv] manumittentis factum repraesentari optima ratione placuit.

S. XVI k. Iun. ipsis AA. conss.

[xiv] <manumittendo moram factam>

accordance with the constitution; and (so) the son whom she bore when he was conceived from you after her twenty-fifth year is free.

Posted January 23, in the consulship of Julian and Crispinus (224).

[4] *Emperor* GORDIAN *Augustus to Cornelia Iucunda.* If the person who received a price for you under the condition that at an appointed time he would give you liberty caused a delay in the promised liberty, it is clear that you have become free from the time freedom was not provided but it could be given. And for that reason there is no uncertainty that the children borne by you are seen as free-born.

Posted April 26, in the consulship of Sabinus and Venustus (240).

[5] *The same Augustus to Aurelius Marinus.* **pr.** Those slaves whose sale included the clause that they not be brought to liberty, even if they should (thereafter) be manumitted, cannot acquire liberty. For a condition that has attached to a person cannot be changed by the action of the person who has purchased under those terms. **1.** However, the exaction of a penalty, if any has been added for not maintaining the condition, does not provide a just cause for its exaction. **2.** It is not possible to see for what reason the one who added this clause to the sale will be able to summon you to the office of the procurator, since the Treasury should not interpose itself in the contracts of private people and the letter sent to you does not refer to an act done to the slave (*personae factum*), if you yourself have not manumitted him (or her).

Posted August 17, on the consulship of Sabinus and Venustus (240).

[6] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and Caesars to Helvidia Rufina.* If you have sold a slave girl under the condition that she be manumitted and, if she should not have been manumitted, 100 aurei would be paid, it is established that, when the terms (*fides*) of the contract have not been observed, she has nonetheless been seized from the last traces of slavery to the liberty which could have been provided, and the money will not be rightly sought as if taken for breaking the faith (of the contract), since it has been decided by the best reasoning that, without a change of intention by the seller, the act of the manumittor is, after delay occurs in the manumission, given immediate effect by the legal force of the condition.

Given May 17, in the consulship of the Augusti themselves (293).

LVIII De Aediliciis Actionibus

[1] *Imp. Antoninus A. Decentio Veromilio.* Si non simpliciter, sed consilio fraudis servum tibi nescienti fugitivum vel alio modo vitiosum quis vendidit isque fugitivus abest, non solum in pretium servi venditorem conveniri, sed etiam damnum quod per eum tibi accidit competens iudex, ut iam pridem placuit, praestari iubebit.

PP. IIII k. Iun. Messala et Sabino conss.

[2] *Imp. Gordianus A. Petilio Maximo.* Cum proponas servum, quem pridem comparasti, post anni tempus fugisse, qua ratione eo nomine cum venditore eiusdem congredi quaeras, non possum animadvertere: etenim redhibitoriam actionem sex mensum temporibus vel quanto minoris anno concludi manifesti iuris est.

PP. k. Dec. Gordiano A. et Aviola conss.

[3] *Impp. Diocletianus et Maximianus AA. Aurelio Muciano.* **pr.** Si apud priorem dominum fugisse mancipium non doceatur, fuga post venditionem interveniens ad damnum emptoris pertinet. **1.** Sin autem venditor non vitiosum etiam in posterum fieri servum temere promiserit, quamvis hoc impossibile esse videtur, secundum fidem tamen antecedentis vel in continenti secuti pacti experiri posse non ambigitur: posteriores enim casus non venditoris, sed emptoris periculum spectant. **2.** Verum cum servum quem comparaveras ad eum qui distraxerat redisse contendis, iudex competens perspectis omnibus pro repertae rei qualitate proferre curabit sententiam.

PP. XV k. Mai. Maximo II et Aquilino conss.

[4] *Idem AA.* **pr.** Si praedium quis sub ea lege comparaverit, ut, si displicuerit, inemptum erit, id utpote sub condicione venditum resolvi et redhibitoriam adversus venditorem competere palam est. **1.** Idem observatur et si pestibilis fundus, id est pestibulas vel herbas letiferas habens, ignorante emptore distractus sit: nam in hoc etiam casu per eandem actionem eum quoque redhibendum esse.

... k. Mart.

Fifty-Eighth Title Aedilician Actions[261]

[1] *Emperor* ANTONINUS *Augustus to Decentius Veromilius.* If someone has sold a runaway or otherwise flawed slave to you when you were unaware, not innocently but with the intention of fraud, and the runaway slave is missing, a competent judge will order not only that the seller be sued for the price of the slave, but also, as was decided long ago, that you be paid the loss that you incurred because of him.

Posted May 29, in the consulship of Messala and Sabinus (214).

[2] *Emperor* GORDIAN *Augustus to Petilius Maximus.* Since you state that a slave whom you purchased a while ago has fled after a year's time, I cannot figure out by what reasoning you seek to litigate with his seller on that account; for it is clearly the law that an action to rescind the sale (*redhibitoria actio*) is limited to a period of six months whereas an action for the reduction in the price (*actio quanti minoris*) is limited to a year.

Posted December 1, in the consulship of Gordian Augustus and Aviola (239).

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Aurelius Mucianus.* **pr.** If it should not be shown (at trial) that a slave fled from his former owner, a flight occurring after the sale is the buyer's loss. **1.** If, however, the seller has rashly promised that the slave is not flawed even for the future, although this seems to be impossible (to promise), even so there is no doubt that one can sue in accordance with the terms (*fides*) of a pact preceding or immediately following (the sale); for later misfortunes concern the risk not of the seller, but of the buyer. **2.** But when you contend that the slave whom you had purchased has returned to the one who sold him, a competent judge will take care to issue his opinion after examining everything in terms of the nature of the situation that is discovered.

Posted April 17, in the consulship of Maximus, Consul for he second time, and Aquilinus (286).

[4] *The same Augusti.* **pr.** If someone has purchased a property under the condition that, if he does not like it, it will be considered as though not bought, it is clear that a sale that is certainly made under the condition is negated and the action of rescission of the sale is available. **1.** The same is observed also if a noxious farm, i.e., one having pests (*pestibulae*) or deadly grass, has been sold without the buyer's knowledge; for also in this case the farm is to be restored through the same action.

(February ?).

[261] See D. 21.1.

[5] *Imppp. Gratianus Valentinianus et Theodosius AAA. Nebridio pu.* Habito semel bonae fidei contractu mancipioque suscepto et pretio soluto ita demum repetendi pretii potestas est ei qui mancipium comparaverit largienda, si illud, quod dixerit fugitivum, poterit exhibere. hoc enim non solum in barbaris, sed etiam in provincialibus servis iure praescriptum est.

D. III k. Iul. Constantinopoli Honorio np. et Euodio conss.

LVIIII De Monopoliis et de Conventu Negotiatorum Illicito Vel Artificum Ergolaborumque Nec Non Balneatorum Prohibitis Illicitisque Pactionibus

[1] [Αὐτοκράτωρ Λέων Α.] **pr.** ... ‹μονο›πωλίοις ἐν οἱῳδήποτε τόπῳ ἢ πόλει οὖσιν μηδεμιᾶς ὕλης ἢ πράγματος κεχρήσθω, μηδ' ἂν θεῖον πορίσηται τύπον, ὑπεξῃρημένων τῶν ἁλῶν, μήτε δεήσεις ὑπαγορευέτω ἢ ἐπιδοῦναι τολμάτω. **1.** Ὅπως γὰρ πανταχόθεν βέβαια μένοι τὰ καλῶς οὕτως καὶ εὐσεβῶς βεβουλευμένα καὶ νομοθετηθέντα, οὐδὲ τὸν κατὰ καιρὸν μεγαλοπρεπέστατον κυαίστορα ἢ τοὺς ἄλλους ἐνδοξοτάτους ἄρχοντας τοῦ θείου παλατίου ἢ τοὺς περιβλέπτους ἀντιγραφέας ἢ τὸν περίβλεπτον σεκουνδοκήριον ἢ τερτιοκήριον τῶν λαμπροτάτων τριβούνων ἢ τοὺς κατὰ καιρὸν περιβλέπτους ῥεφερενδαρίους ἀπειράτους βασιλικῆς κινήσεως καταλείψομεν, εἰ τοῦ λοιποῦ τοιαύτας τινὰς προσδέξωνται δεήσεις ἢ τοιούτῳ τινὶ σπουδὴν συνεισενέγκοιεν ἢ ὑπαγορεύοντες ἢ ὑποσημαινόμενοι ἢ σουγγεστίοσιν κεχρημένοι ἢ ἄλλην τινὰ ῥοπὴν ἢ χρείαν συνεισφέροντες. **2.** Οἱ δὲ τούτοις προσεδρεύοντες, εἴτε μεμοριάλιοι εἴτε παλατῖνοι εἴτε ἄλλης στρατείας εἶεν, οἱῳδήποτε τρόπῳ τοιοῦτο γράφοντες ἢ διδάσκοντες ἢ ἄλλως γίνεσθαι σπουδάζοντες ἀφαίρεσιν ζώνης καὶ οὐσίας δυστυχήσουσιν. **3.** Ταῦτα τοίνυν εἰδὼς ἕκαστος τῶν ὑπηκόων ἐκ ταύτης ἡμῶν τῆς νομοθεσίας τὴν παρρησίαν ἔχων ἐπ' ἀδείας κεχρήσθω τοῖς περὶ τούτων συναλλάγμασιν, ὧν οὐκέτι κώλυσίς ἐστιν.

PP. III id. Febr. Leone A. V cons.

[2] *Imp. Zeno A. Constantino pu.* **pr.** Iubemus, ne quis cuiuscumque vestis aut piscis vel pectinum forte aut echini vel cuiuslibet alterius ad uictum vel ad quemcumque usum pertinentis speciei vel cuiuslibet materiae pro sua auctoritate, vel sacro iam elicito aut in posterum eliciendo rescripto aut pragmatica sanctione vel sacra nostrae pietatis adnotatione, monopolium audeat exercere, neve quis illicitis habitis conventionibus coniuraret aut pacisceretur, ut species diversorum corporum

[5][262] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Nebridius, City Prefect.* When once a good faith contract has been made, the slave received, and the price paid, the power to seek back the price is to be given to the one who purchased the slave only under this condition, if he can produce the slave who he said was a runaway. This has been rightly ordered not only in the case of barbarian slaves, but also of ones from the provinces.

Given June 29, at Constantinople, in the consulship of Honorius, Most Noble Boy, and Euodius (386).

Fifty-Ninth Title Monopolies and Illicit Gatherings of Merchants, Artisans, or Contractors, As Well As Prohibited and Illicit Pacts of Bath-keepers

[1] (*Emperor Leo Augustus.*) **pr.** ... With the exception of salt, no one should enjoy monopolies of any material or thing in any place or city, not even if he has obtained a sacred rescript; and he should not hint about petitions or dare to present them. **1.** So that what has been well and piously planned and legislated should remain firm everywhere, We will not allow to be exempt from the imperial decision the illustrious (*illustris*) temporary quaestor, or the other most illustrious (*gloriosissimi*) magistrates of the sacred palace, or the noteworthy (*spectablis*) scribes, or the noteworthy deputy (*secundocerius*), or sub-deputy (*tertiocerius*) of the most splendid tribunes, or the noteworthy temporary auxiliary officials (*refendarii*), if in the future they should receive some such petitions or provide help to any such person, either by providing information or signing petitions or resorting to suggestions or providing any other type of decisive influence or need. **2.** Those who assist them, whether they are chancery officials (*memoriales*) or palace functionaries (*palatini*) or of another branch (*militia*), if they should write something of this sort or suggest anything or otherwise provide help, will suffer the loss of their rank (*cingulum*) and their property. **3.** Thus each of the subjects knowing these things and having the freedom from Our legislation should without fear make use of contracts concerning these things for which there is no longer any prohibition.

Posted February 11, in the consulship of Leo Augustus, for the fifth time (473).

[2] *Emperor* ZENO *Augustus to Constantinus, City Prefect.* **pr.** We order that no one dare to exercise a monopoly over any type of clothing, fish, shellfish, or sea urchin, or over any other type of commodity (*species*) or material that pertains to sustenance or to any other use, not on his own authority, (or) after eliciting a sacred rescript, (or) by eliciting one in the future, (or) by a general sanction

[262] = C.Th. 3.4.1 (Valentinian, Theodosius, and Arcadius).

negotiationis non minoris, quam inter se statuerint, venumdentur. **1.** Aedificiorum quoque artifices vel ergolabi aliorumque diversorum operum professores et balneatores penitus arceantur pacta inter se componere, ut ne quis quod alteri commissum sit opus impleat aut iniunctam alteri sollicitudinem alter intercapiat: data licentia unicuique ab altero inchoatum et derelictum opus per alterum sine aliquo timore dispendii implere omnique huiusmodi facinora denuntiandi sine ulla formidine et sine iudiciariis sumptibus. **2.** Si quis autem monopolium ausus fuerit exercere, bonis propriis spoliatus perpetuitate damnetur exilii. **3.** Ceterarum praeterea professionum primates si in posterum aut super taxandis rerum pretiis aut super quibuslibet illicitis placitis ausi fuerint convenientes huiusmodi sese pactis constringere, quinquaginta librarum auri solutione percelli decernimus: officio tuae sedis quadraginta librarum auri condemnatione multando, si in prohibitis monopoliis et interdictis corporum pactionibus commissas forte, si hoc evenerit, saluberrimae nostrae dispositionis condemnationes venalitate interdum aut dissimulatione vel quolibet vitio minus fuerit exsecutum.

D. XVII k. Ian. post consulatum Trocondae.

LX De Nundinis

[1] *Impp. Valentinianus et Valens AA. ad Probum pp.* Qui exercendorum mercatuum aut nundinarum licentiam vel veterum indulto vel nostra auctoritate meruerunt, ita beneficio rescripti potiantur, ut nullum in mercatibus atque nundinis ex negotiatorum mercibus conveniant, vel in venaliciis aut locorum temporali quaestu et commodo privata exactione sectentur, vel sub praetextu privati debiti aliquam ibidem concurrentibus molestiam possint inferre.

LXI De Vectigalibus et Commissis

[1] *Impp. Severus et Antoninus AA. Victorino.* Si iure manumissus es ante quaestionem commissi motam, statum tuum vectigalis nomine convelli non est aequum.

(*pragmatica*), or by the sacred decision (in answer to a petition) of Our Piety, and that no one, after holding illicit meetings, swear or make a pact that the commodities of diverse associations (*corpora*) not be sold for a lower price than what they have agreed among themselves. 1. Constructors of buildings or contractors (*ergolaboi*) or members of other diverse professions and bath-keepers are utterly blocked from making pacts among themselves that no one complete a work that has been entrusted to another, or interfere in a task that has been imposed on another; but everyone is given permission to complete a job begun by another but abandoned, without fear of payment, and everyone may denounce crimes of this type without any fear and without judicial expenses. 2. If, however, someone has dared to exercise a monopoly, he shall be condemned to perpetual exile after having been deprived of his property. 3. In addition, if the leaders of the other professions dare in the future to bind themselves after making deals over setting prices for things or for any such illicit agreements, We determine that they be punished with the payment of 50 pounds of gold. The office of your seat (*sedes*) is to be fined with a penalty of 40 pounds of gold if, because of venality or dissembling or any other vice, it has not pursued the condemnations prescribed by Our most beneficial disposition for violations in prohibited monopolies and forbidden pacts within associations (*corpora*), if this by chance has happened.

Given December 16, in the post-consulate of Trocondas (483).

Sixtieth Title Periodic Markets

[1] *Emperors* VALENTINIAN *and* VALENS *Augusti to Probus, Praetorian Prefect.* Those who have merited permission to hold fairs (*mercatus*) or periodic markets (*nundinae*) by an indulgence of former emperors or by Our authority should should exercise the benefit of the rescript in such a way that they not sue anyone in the fairs and periodic markets on the profits of merchants (from sale of goods), or that they not pursue anyone with a private claim in slave markets or in the places for temporary business and convenience, or that, under the pretext of a private debt, they be able to cause any trouble to their competitors there.[263]

Sixty-First Title Imposts and Confiscations[264]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Victorinus.* If you have been lawfully manumitted before the question of confiscation (*commissum*)

[263] Seeck dates to 367; Schmidt-Hofner, to 374–375.

[264] See D. 39.4. Blume: "If slaves were imported or exported, customs duties or tolls of 12½ percent were payable. If the duties were not paid, the property was confiscated. In case of slaves, however, for which the duty was not paid, the rule was at times relaxed ... "

[2] *Idem AA. Iunio.* Neque commissum, quod ante quinquennium factum dicitur, si lis anticipata non est, vindicari potest, neque pro re, quae in commissi causam cecidit, si ipsa non extat nec dolo supprimatur, pretium peti potest.

[3] *Idem AA. Ingenuo militi.* Omnibus militibus nostris prospeximus, ne ob omissas professiones poena commissi tenerentur. proinde deposito hoc metu, si qua portoria debere te apparuerit, exsolve.

[4] *Imp. Constantinus A. ad Iunium Rufum.* Penes illum vectigalia manere oportet, qui superior in licitatione extiterit, ita ut non minus quam triennii fine locatio concludatur nec ullo modo interrumpatur tempus exigendis vectigalibus praestitutum. quo peracto tempore licitationum iura conductionumque recreari oportet ac simili modo aliis collocari.

D. k. Iul. Crispo C. II et Constantino C. II conss.

[5] *Idem A. Menandro.* **pr.** Universi provinciales pro his rebus, quas ad usum proprium vel ad fiscum inferunt vel exercendi ruris gratia revehunt, nullum vectigal a stationariis exigantur. **1.** Ea vero, quae extra praedictas causas vel negotiationis gratia portantur, solitae praestationi subiugamus: capitali poena proposita stationariis et urbanis militibus et ceteris personis, quorum avaritia id temptari firmatur.

D. III id. Iul. Crispo II et Constantino II *conss.*

[6] *Impp. Valentinianus et Valens AA. ad Florentium comitem sacrarum largitionum.* **pr.** Omnium rerum ac personarum, quae privatam degunt vitam, in publicis functionibus aequa debet esse inspectio. **1.** Hoc ideo dicimus, quia nonnulli privatorum elicitas suffragio proferunt

was raised, it is not just that your status can be compromised by reason of an impost (*vectigalis*).

[2] *The same Augusti to Junius.* Property, which is said to have been confiscated five years previously, if a lawsuit has not (yet) begun, cannot be claimed, nor can the price be sought for an item which has been subject to confiscation if it does not exist and is not concealed by deceit.

[3] *The same Augusti to Ingenuus, a soldier.* We have provided for all Our soldiers that they not be bound by the punishment of confiscation for omitting declarations of property. Accordingly, set aside this fear and, if it appears that you owe any import duties (*portoria*), pay them.

[4][265] *Emperor* CONSTANTINE *Augustus to Junius Rufus.* The (right to collect) imposts should remain with the person who has emerged as superior in the auction, such that the lease be concluded for a period of not less than three years and the time established for collecting imposts not be interrupted in any way. When this time is completed the rights of auctions and leases should be renewed and allocated to others in a similar manner.

Given July 1, in the consulship of Crispus Caesar, for the second time, and Constantine Caesar, for the second time (321).

[5][266] *The same Augustus to Menander.* **pr.** All the residents of the provinces should be exempt from having imposts exacted by the military police (*stationarii*) for those things that they bring in for their own use or for the Treasury. or that they take back for cultivating their land. **1.** But those things which are carried for reasons other than the aforesaid ones or for business, We subject to the customary payment. Capital punishment is established for military police, urban soldiers, and other persons by whose avarice it is established that this is attempted.

Given July 13, in the consulship of Crispus (Caesar), for the second time, and Constantine (Caesar), for the second time (321).

[6][267] *Emperors* VALENTINIAN *and* VALENS *Augusti to Florentius, Count of the Imperial Finances.* pr. In public payments, there should be a fair inspection of all things and persons who lead a private life. 1. We say this for the reason that some

[265] = C.Th. 4.13.1 (where addressee is "consular governor of Aemilia").

[266] = C.Th. 4.13.2. The last sentence is added from C.Th. 4.13.3, where "other persons" is *tertiis Augustan(is)*.

[267] = C.Th. 11.12.3. The last sentence is taken from C.Th. 13.5.24.

sanctiones, quibus vectigalia vel cetera eiusmodi, quae inferri fisco moris est, sibi adserant esse concessa. 2. Si quis ergo privatorum eiusmodi rescriptione nitatur, cassa eadem sit. vectigalium enim non parva functio est, quae debet ab omnibus, qui negotiationis seu transferendarum mercium habent curam, aequa ratione dependi: exceptis naviculariis, cum sibi rem gerere probabuntur.

D. x k. Mart. Mediolani Valentiniano et Valente AA. conss.

[7] *Imppp. Valentinianus Valens et Gratianus AAA. ad Archelaum comitem Orientis.* Ex praestatione vectigalium nullius omnino nomine quicquam minuatur, quin octavas more solito constitutas omne hominum genus, quod commerciis voluerit interesse, dependat, nulla super hoc militarium personarum exceptione facienda.

PP. Beryto IIII k. Febr. post consulatum Valentiniani et Valentis AA.

[8] *Imppp. Gratianus Valentinianus et Theodosius AAA. Palladio comiti sacrarum largitionum.* A legatis gentium devotarum ex his tantum speciebus, quas de locis propriis, unde conveniunt, huc deportant, octavarii vectigal accipiant: quas vero ex Romano solo, quae sunt tamen lege concessae, ad propria deferunt, has habeant a praestatione immunes ac liberas.

D. prid. non. Iul. Constantinopoli. acc. XII k. Aug. Syagrio et Eucherio conss.

[9] *Idem AAA. Palladio comiti sacrarum largitionum.* Usurpationem totius licentiae submovemus circa vectigal alabarchiae per Aegyptum atque Augustamnicam constitutum, nihilque super transductione animalium, quae sine praebitione solita minime permittenda est, temeritate per licentiam vindicari concedimus.

[10] *Impp. Arcadius et Honorius AA. Anthemio pp.* Vectigalia, quaecumque quaelibet civitates sibi ac suis curiis ad angustiarum suarum solacia quaesierunt, sive illa functionibus curialium ordinum profutura sunt seu quibuscumque aliis earundem civitatum usibus designantur,

private people produce ordinances elicited by patronage (*suffragium*), in which they claim that imposts or other charges of this type, which are customarily paid to the Treasury, have been conceded to them. 2. Therefore if any private person should rely on a rescript of this type, this should be null and void. For the payment of imposts is not a small matter, and ought to be paid in an equal manner by everyone who has charge of business or transporting merchandise. Shipowners are excepted when they will be proved to conduct business for themselves.

Given February 20, at Milan, in the consulship of Valentinian and Valens Augusti (365).

[7][268] *Emperors* VALENTINIAN, VALENS, *and* GRATIAN *Augusti to Archelaus, Count of the East.* No reduction shall be made from the payment of imposts under any pretext whatsoever, but every type of person who wants to be involved in commerce shall pay the one-eighth charges established by custom; no exception is to be made on this for persons of military status.

Posted, at Beirut, January 29, in the post-consulate of Valentinian and Valens Augusti (366?).

[8][269] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Palladius, Count of the Imperial Finances.* The collectors of the one-eighth tax (*octavarii*) should receive the impost from ambassadors of friendly (*devotae*) nations only for those products that they bring here from their own places from which they come; but the products that they bring from Roman soil to their own places, as long as they have been allowed by law, they shall have immune and free from payment.

Given July 6, at Constantinople, and received July 21, in the consulship of Syagrius and Eucherius (381).

[9][270] *The same Augusti to Palladius, Count of the Imperial Finances.* We eliminate the usurpation of all presumption concerning the transit impost (*vectigal alabarchiae*) established for Egypt and Augustamnica (a division of Egypt), and We concede that no exemption be impudently claimed for the transportation of animals, which is not to be permitted without the customary payment.

[10] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Anthemius, Praetorian Prefect.* We instruct that whatever imposts any cities have acquired for themselves or for their councils (*curiae*) to relieve their financial difficulties, whether they are to help the payments of the curial orders or are designated for any other

[268] = C.Th. 4.13.6. Seeck gives January 29, 369.
[269] = C.Th. 4.13.8; combine with C. 10.6.2.
[270] = C.Th. 4.13.9. Seeck dates to July 6, 381.

firma his atque ad habendum perpetua manere praecipimus neque ullam contrariam supplicantium super his molestiam formidari.

[11] *Idem AA. Lampadio pp.* Si quis sine persona mancipum, id est salinarum conductorum, sales emerit vendereve temptaverit, sive propria audacia sive nostro munitus oraculo, sales ipsi una cum eorum pretio mancipibus addicantur.

[12] *Impp. Honorius et Theodosius AA. Gaisoni comiti sacrarum largitionum.* Quidquid contra vectigales largitionalium titulorum vel pragmaticis sacris vel adnotationibus fuerit elicitum, effectu et viribus carere censemus.

D. VIIII k. Oct. Ravennae.

[13] *Impp. Theodosius et Valentinianus AA. Flaviano pp.* **pr.** Exceptis his vectigalibus, quae ad sacrum patrimonium nostrum quocumque tempore pervenerunt, cetera rei publicae civitatum atque ordinum aestimatis dispendiis, quae pro publicis necessitatibus tolerare non desinunt, reserventur, cum duas portiones aerario nostro conferri prisca institutio disposuerat: atque hanc tertiam iubemus adeo in dicione urbium municipumque consistere, ut proprii compendii curam non in alieno potius quam in suo arbitrio noverint constitutam. **1.** Designatae igitur consortium portionis eatenus iuri ordinum civitatumque obnoxium maneat, ut etiam locandi quanti sua interest licentiam sibi noverint contributam.

LXII Vectigalia Nova Institui Non Posse

[1] *Impp. Severus et Antoninus AA. Gavio Victorino.* Non quidem temere permittenda est novorum vectigalium exactio: sed si adeo tenuis est patria tua, ut extraordinario auxilio iuvari debeat, adlega praesidi provinciae quae in libellum contulisti: qui re diligenter inspecta utilitatem communem intuitus scribet nobis quae compererit, et an habenda sit ratio vestri et quatenus, aestimabimus.

uses of the same cities, remain firm for these cities and be kept perpetual and that no opposition be feared from people petitioning on these matters.[271]

[11] *The same Augusti to Lampadius, Praetorian Prefect.* If anyone purchases salt or attempts to sell it without involving the bidders at the public auction (*sine persona mancipum*), i.e., the lessees of salt beds (*salinarum conductores*), whether by his own audacity or equipped with Our enactment, the salt itself along with its price shall be forfeit to the bidders.[272]

[12] *Emperors Honorius and Theodosius Augusti to Gaiso, Count of the Imperial Finances.* We decree that whatever has been elicited by sacred enactments or by responses to petitions against the collectors of imposts (*contra vectigales*) belonging to the Imperial Treasury be without effect and strength.
Given September 23, at Ravenna (408–412).[273]

[13][274] *Emperors Theodosius and Valentinian Augusti to Flavianus, Praetorian Prefect.* **pr.** Except for these imposts that have come at all times to Our sacred patrimony, the rest should be reserved for the government of the cities and the orders when an estimate has been made of expenditures that they do not cease enduring for public needs, since the ancient practice had disposed that a two-thirds portion be paid to Our treasury. And for this reason, We order that this third part remain at the disposal of the cities and townspeople, so that they know that the responsibility for their own expenses has been established in no authority other than their own. **1.** The share of the designated portion to that extent should remain subject to the right of the orders of the cities, so that they know that the right of leasing them has been provided to them as far as their interest extends.

Sixty-Second Title New Imposts Cannot Be Established[275]

[1] *Emperors Severus and Antoninus Augusti to Gavius Victorinus.* The exaction of new imposts is certainly not to be permitted rashly; but if your hometown (*patria*) is so poor that it ought to be aided by extraordinary help, present to the provincial governor what you have included in your petition. Having inspected the matter diligently and (after) considering the common utility, he will write to Us what he has discovered, and We will judge whether and to what extent your request should be honored.

[271] Seeck dates to 400–403.
[272] Seeck dates to early 398.
[273] Possibly 410 (see C.Th. 9.38.11) or 412 (C.Th. 8.4.24). Seeck dates to September 23, 409.
[274] Perhaps combine with C. 11.75.5 (dated April 29, 431, at Ravenna); so Seeck.
[275] See D. 39.4.

PP. XII k. Aug.

[2] *Idem AA. Ventilio Callistiano.* Vectigalia nova nec decreto civitatum institui possunt.

[3] *Impp. Valerianus et Gallienus AA. Aurelio Tusco et aliis.* Non solent nova vectigalia inconsultis principibus institui. ergo et exigi aliquid, quod illicite poscatur, competens iudex vetabit et id quod exactum videtur, si contra rationem iuris extortum est, restitui iubebit.

[4] *Imp. Constantinus A. ad Felicem pp.* Si provincialium nostrorum querella de conductorum aviditate extiterit et probatum fuerit ultra vetustam consuetudinem et nostrae terminos iussionis aliquid eos profligasse, rei tanti criminis perpetuo exilio puniantur. sub conspectibus autem tuis vel eorum, qui tuae gravitati succedunt, licitationis cura servetur.

PP. VII id. Mart. Carthagine.

LXIII De Commerciis et Mercatoribus

[1] *Impp. Valentinianus et Valens AA. ad Iulianum comitem Orientis.* Negotiatores, si qui ad domum nostram pertinent, potiorum quoque homines necessitatem debitam pensionum, ut honestas postulat, agnoscere moneantur, ut per cunctos, qui emolumenta negotiationibus captant, tolerabiles fiant agnoscendae devotionis effectus.

D. XV k. Mai. Constantinopoli divo Ioviano et Varroniano conss.

[2] *Idem AA. et Gratianus A. Tatiano comiti sacrarum largitionum.* Non solum aurum barbaris minime praebeatur, sed etiam si apud eos inventum fuerit, subtili auferatur ingenio. si ulterius aurum pro mancipiis vel quibuscumque speciebus ad barbaricum fuerit translatum a mercatoribus, non iam damnis, sed suppliciis subiugentur, et si id iudex repertum non vindicat, tegere ut conscius criminosa festinat.

Posted July 21.

[2] *The same Augusti to Ventillus*[276] *Callistianus.* New imposts cannot be established by a decree of cities.

[3] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Aurelius Tuscus and others.* New imposts are not customarily established without consulting the Emperors. Therefore a competent judge will forbid the levying of anything that is illicitly demanded and, if anything seems to have been exacted, he will order its restoration, if it was extorted against the legal principle.

[4] *Emperor* CONSTANTINE *Augustus to Felix, Praetorian Prefect.* If a complaint of Our provincial residents arises about the greed of the contractors and it is proved that they have caused any ruin exceeding the ancient custom and the limits of Our order, they should be punished with perpetual exile if convicted of so great a crime. The management of the auction, however, should be maintained under your scrutiny or under that of those who succeed Your Eminence.

Posted March 9, at Carthage (333–336).[277]

Sixty-Third Title Commerce and Merchants

[1][278] *Emperors* VALENTINIAN *and* VALENS *Augusti to Julian, Count of the East.* Businessmen, if any belong to Our House, as well as people in the employ of the privileged (*potiorum homines*) should be admonished to acknowledge the necessity associated with (making) payments, as honesty demands, so that the performances of acknowledging their devotion (i.e., paying tax obligations) become tolerable for all those who gain profits from business.

Given April 17, at Constantinople, in the consulship of the deified Jovian and Varronianus (364).

[2] *The same Augusti and* GRATIAN *Augustus to Tatianus, Count of the Imperial Finances.* Not only should gold not be offered to barbarians, but also, if it has been discovered among them, it should be removed by careful ingenuity. If hereafter gold has been transferred by merchants to barbarians for slaves or any other products, they (the merchants) should no longer be subject to fines, but to capital punishment, and if a judge does not avenge this when it is discovered, he is striving to conceal criminal activity as though he were involved in it.

(374?).[279]

[276] Perhaps "Ventidius."
[277] Seeck dates to March 9, 336.
[278] = C.Th. 13.1.5; combine with C. 1.4.1.
[279] Seeck dates to May 21, 374.

[3] *Impp. Honorius et Theodosius AA. Theodoro pp.* Nobiliores natalibus et honorum luce conspicuos et patrimonio ditiores perniciosum urbibus mercimonium exercere prohibemus, ut inter plebeium et negotiatorem facilius sit emendi vendendique commercium.

D.

[4] *Idem AA. Anthemio pp.* **pr.** Mercatores tam imperio nostro quam Persarum regi subiectos ultra ea loca, in quibus foederis tempore cum memorata natione nobis convenit, nundinas exercere minime oportet, ne alieni regni, quod non convenit, scrutentur arcana. **1.** Nullus igitur posthac imperio nostro subiectus ultra Nisibin Callinicum et Artaxata emendi sive vendendi species causa proficisci audeat nec praeter memoratas civitates cum Persa merces existimet commutandas: sciente utroque qui contrahit et species, quae praeter haec loca fuerint venumdatae vel comparatae, sacro aerario nostro vindicandas et praeter earum ac pretii amissionem, quod fuerit numeratum vel commutatum, exilii se poenae sempiternae subdendum.

2. Non defutura contra iudices eorumque apparitiones per singulos contractus, qui extra memorata loca fuerint agitati, triginta librarum auri condemnatione, per quorum limitem ad inhibita loca mercandi gratia Romanus vel Persa commeaverit.

3. Exceptis videlicet his, qui legatorum Persarum quolibet tempore ad nostram clementiam mittendorum iter comitati merces duxerint commutandas, quibus humanitatis et legationis intuitu extra praefinita etiam loca mercandi copiam non negamus, nisi sub specie legationis diutius in qualibet provincia residentes nec legati reditum ad propria comitentur. hos enim mercaturae insistentes non immerito una cum his, cum quibus contraxerint, cum resederint, poena huius sanctionis persequetur.

[3] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Theodorus, Praetorian Prefect.* We prohibit those who are noble by birth, conspicuous by the splendor of their offices, and very wealthy by their patrimony from engaging in commerce pernicious to the cities, so that the market for buying and selling between the plebeian and the businessman be easier.

Given (408 or 409).[280]

[4] *The same Augusti to Anthemius, Praetorian Prefect.* pr. Merchants subject both to Our empire as well as to the king of the Persians should not hold periodic markets (*nundinae*) beyond those places in which it was agreed upon by Us (to do so) at the time of the treaty with the aforesaid nation,[281] lest the secrets of a foreign kingdom be found out, which is inappropriate. 1. Therefore no one hereafter subject to Our empire should dare to set out beyond Nisibis, Callinicum, and Artaxata for the sake of buying and selling merchandise (*species*), nor should he think of exchanging merchandise with a Persian except in the cities mentioned. Each of the parties to the contract should be aware both that products that were sold or purchased in places other than these are to be claimed for Our Sacred Treasury, and that, in addition to the loss of the goods or the price for which they were paid or, they are to undergo the eternal punishment of exile.

2. The condemnation of 30 pounds of gold for individual contracts that have been executed outside of the places mentioned will not be lacking against judges and their subordinates (*apparitiones*) through whose territory a Roman or Persian has gone to prohibited places to conduct commerce.

3. However, these people are exempted, who, accompanying the journey of Persian ambassadors to be sent to Our Clemency at any time, will have brought merchandise to exchange. To these, out of respect for kindness and the embassy, We do not deny the opportunity of trading even outside of the prescribed places, except if, under the pretext of an embassy, they should remain too long in any province and not accompany the return journey of the ambassador to his own territory. For the punishment of this sanction will not undeservedly fall on those insisting on commerce when they have stayed behind, along with those with whom they have contracted.

(408 or 409).[282]

[280] Seeck dates to October 16, 408.
[281] The terms of this treaty resemble one concluded between Diocletian and the Sassanian king Narseh in 298 (see Petrus Patricius, fr. 14); but it is probably later, connected to a thaw in relations at the time that the Persian king Yazdgerd was the guardian of Theodosius II.
[282] Seeck dates to March 23, 409.

[5] *Idem AA. Aetio pu.* Cessante omni ambitione, omni licentia quingentorum sexaginta trium collegiatorum numerus maneat nullique his addendi mutandive vel in defuncti locum substituendi pateat copia, ita ut iudicio tuae sedis sub ipsorum praesentia corporatorum in eorum locum, quos humani subtraxerint casus, ex eodem quo illi fuerant corpore subrogentur: nulli alii corporatorum praeter praedictum numerum per patrocinia immunitate concessa.

D. XII k. Sept. Eudoxiopoli Honorio VIII et Theodosio III AA. conss.

[6] *Idem AA. Maximino comiti sacrarum largitionum.* **pr.** Si qui inditas nominatim vetustis legibus civitates transgredientes ipsi vel peregrinos negotiatores sine comite commerciorum suscipientes fuerint deprehensi, nec proscriptionem bonorum nec poenam perennis exilii ulterius evadent. **1.** Ergo omnes pariter, sive privati seu cuiuspiam dignitatis sive in militia constituti, sciant sibi aut ab huiusmodi temeritate penitus abstinendum aut supra dicta supplicia subeunda.

LXIIII De Rerum Permutatione et de Praescriptis Verbis Actione

[1] *Imp. Gordianus A. Thraseae militi.* Si, cum patruus tuus venalem possessionem haberet, pater tuus pretii nomine, licet non taxata quantitate, aliam possessionem dedit idque quod comparavit non iniuria iudicis nec patris tui culpa evictum est, ad exemplum ex empto actionis non immerito id quod tua interest, si in patris iura successisti, consequi desideras. at enim si, cum venalis possessio non esset, permutatio facta est idque, quod ab adversario praestitum est, evictum est, quod datum est (si hoc elegeris) cum ratione restitui postulabis.

D. VIII id. Nov. Pio et Pontiano conss.

[5][283] *The same Augusti to Aetius, City Prefect.* Let all ambition and license cease: the number of the 563 members of the guild[284] should remain fixed, and and no one shall have power to add to or to change this number or to substitute others for those who have died, so that, in accordance with the judgment of Your Seat and in the presence of the members of the corporation (*corporatores*) themselves, replacements be supplied, in the place of those whom human circumstances have taken away, from the same corporation in which they had been members. No other guild member beyond the prescribed number shall be granted exemption from liturgies through patronage.

Given August 21, at Eudoxiopolis, in the consulship of Honorius, for the eighth time, and Theodosius, for the third time, Augusti (409).

[6] *The same Augusti to Maximus, Count of the Imperial Finances.* **pr.** If any people have been caught themselves crossing through the cities mentioned by name in the ancient laws or receiving foreign businessmen without (the consent of) the Count of External Trade, they will no longer evade proscription of their goods and the punishment of perpetual exile. **1.** Therefore everyone equally, whether of private station or established in any rank (*dignitas*) or in the military, should know that they must abstain completely from such temerity or undergo the aforementioned punishments.[285]

Sixty-Fourth Title Exchange of Property and the Action with Special Terms[286]

[1] *Emperor* GORDIAN *Augustus to Thrasea, a soldier.* If, when your paternal uncle had a property for sale, your father gave a different property as the price even though the (monetary) amount was not calculated, and he (the buyer) was evicted from what he purchased through no injustice on the part of a judge or the fault of your father, if you have succeeded to the rights of your father, you desire not without merit to pursue your interest in an action analogous to that on purchase (*ad exemplum ex empto actionis*). For if, when the property was not for sale, an exchange took place and there was an eviction from what was furnished by your adversary, you will reasonably demand that what was given be restored, if you choose this.

Given October 25, in the consulship of Pius and Pontianus (238).

[283] = C. 1.2.4, in part. Seeck dates to August 21, 420.
[284] Blume: "The collegiate here mentioned were the firemen of Constantinople, as shown by the register of the city of Constantinople (*Notitia Dignitatum* …)."
[285] Seeck dates to March 7, 423.
[286] *Permutatio* and the *actio praescriptis verbis*; see D. 19.4–5.

[2] *Impp. Diocletianus et Maximianus AA. Primitivae.* Permutationem re ipsa utpote bonae fidei constitutam, sicut commemoras, vicem emptionis obtinere non incogniti iuris est.

[3] *Idem AA. et CC. Barcio Leontio.* Ex placito permutationis re nulla secuta constat nemini actionem competere, nisi stipulatio subiecta ex verborum obligatione quaesierit partibus actionem.

[4] *Idem AA. et CC. Leontio.* **pr.** Cum precibus tuis expresseris placitum inter te et alium permutationis intercessisse eumque fundum a te datum vendidisse, contra emptorem quidem te nullam habere actionem perspicis, cum ab eo susceperit dominium, cui te tradidisse titulo permutationis non negasti. **1.** Secundum fidem autem placiti, si stipulatio subsecuta est, successores eius, cum quo contractum habuisti, convenire non prohiberis: si vero nulla stipulatio intercessit, praescriptis verbis actione, ut vel fides placiti servetur tibi vel, quod alterius accipiendi fundi gratia dedisti, causa non secuta restituatur.

[5] *Idem AA. et CC. Theodolanae.* Quoniam adseris patrem tuum ei contra quem preces fundis ea condicione dedisse fundum, ut invicem domum certam acciperet, aditus praeses provinciae placitis eum parere vel, si causam, propter quam fundus datus est, sequi non perspexerit, condictionis ratione datum restituere, sicut postulas, iubebit.

[6] *Idem AA. et CC. Protogeni.* Rebus certa lege traditis, si huic non pareatur, praescriptis verbis incertam civilem dandam actionem iuris auctoritas demonstrat.

[7] *Idem AA. et CC. Timotheo.* Emptionem rebus fieri non posse pridem placuit. igitur cum frumenti certam modiationem Callimacho et Acamato te dedisse, ut tibi repraesentent olei designatum pondus adseveres, si placitis citra stipulationis sollemnitatem non exhibeant fidem, quantum dedisti, causa non secuta condicere pro desiderio tuo potes.

[2] *Emperors* Diocletian *and* Maximian *Augusti to Primitiva.* It is not unknown law that by its very nature an exchange of property, since, as you mention, it is based on good faith, has the same legal force as a purchase (*vicem emptionis*).

[3] *The same Augusti and the Caesars to Barcius Leontius.* It is clear that no action is available to anyone when an agreement for exchange is entirely executory, unless an additional stipulation has resulted in an action for the parties on the basis of the obligations arising out of its words.

[4] *The same Augusti and Caesars to Leontius.* **pr.** Since you have expressed in your petition that an agreement for an exchange arose between yourself and another person and that he sold the farm given by you, you see that you have no action against the purchaser, since he has taken ownership from the person to whom you have not denied that you delivered the farm on the basis of an exchange. **1.** However, in accordance with the terms (*fides*) of the agreement, if a stipulation followed, you are not prohibited from suing the successors of the person with whom you had a contract. But if no stipulation was added, (you can sue) in an action on agreements with special terms (*praescriptis verbis actio*), so that either the terms of the agreement be observed for you, or that the farm that you gave in order to receive another one be restored to you since the condition failed.

[5] *The same Augusti and Caesars to Theodolana.* Since you allege that your father gave a farm to the person against whom you are pouring forth your prayers so that in return he receive a certain house, the provincial governor, when approached, will order him to comply with the agreement, or, if he sees that the reason for which the farm was given cannot be fulfilled, to restore what was given on the basis of a claim for restitution (*ratione condictionis*), as you demand.

[6] *The same Augusti and Caesars to Protogenes.* The authority of the law demonstrates that when things have been delivered under a certain condition, if this is not complied with, an indefinite civil law action with special terms (*actio incerta civilis praescriptis verbis*) should be given.

[7] *The same Augusti and Caesars to Timotheus.* It has long ago been decided that a purchase cannot be made with things. Therefore since you allege that you have given a certain amount of grain to Callimachus and Acamatus so that they furnish you in return with a specified weight of oil, if they should not demonstrate faith to an agreement that lacked the formality of a stipulation, you can, in accordance with your desire, make a claim for restitution (*condicere*) of what you have given if the consideration has not ensued.

S. XIII k. Nov. CC. conss.

[8] *Idem AA. et CC. Paulinae.* Ea lege rebus donatis Candido, ut quod placuerat menstruum seu annuum tibi praestaret, cum huiusmodi conventio non nudi pacti nomine censeatur, sed rebus propriis dictae legis substantia muniatur, ad implendum placitum, sicut postulas, praescriptis verbis tibi competit actio.
S. non. Dec. Nicomediae CC. conss.

LXV De Locato et Conducto

[1] *Imp. Antoninus A. Iulio Agrippino.* Dominus horreorum periculum vis maioris vel effracturam latronum conductori praestare non cogitur. his cessantibus si quid extrinsecus ex depositis rebus inlaesis horreis perierit, damnum depositarum rerum sarciri debet.
PP. prid. non. Ian. Antonino A. IIII et Balbino conss.

[2] *Idem A. Epidio Epicteto.* Adversus eos, a quibus extruenda aedificia conduxisti, ex conducto actione consistens eo iudicio quod est bonae fidei debitum cum usuris solitis consequeris.
PP. k. Iul. Romae Antonino A. IIII et Balbino conss.

[3] *Idem A. Flavio Callimorpho.* Diaetae, quam te conductam habere dicis, si pensionem domino insulae solvis, invitum te expelli non oportet, nisi propriis usibus dominus esse necessariam eam probaverit aut corrigere domum maluerit aut tu male in re locata versatus es.
PP. VIII id. Ian. Messala et Sabino conss.

Written October 20, in the consulship of the Caesars (294).

[8][287] *The same Augusti and Caesars to Paulina.* When things have been given to Candidus on the condition that he provide to you what had been agreed upon on a monthly or yearly basis, since an agreement of this type is not counted under the category of a naked pact (*nudum pactum*, a bare agreement unenforceable as a contract) but the substance of the stated condition is supported by (your having delivered) your own property, an action on agreements with special terms is available to you for fulfilling the agreement, as you demand.

Given December 5, at Nicomedia, in the consulship of the Caesars (294).

Sixty-Fifth Title Lease and Hire[288]

[1][289] *Emperor* ANTONINUS *Augustus to Julius Agrippinus.* The owner of storehouses is not compelled to be responsible to the lessee for the risk of greater force (*vis maior*) or a break-in by brigands. Absent these conditions, if something from the deposited property has perished from an external cause when the storehouses were not damaged, the loss of the deposited things should be made good.

Posted January 4, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[2] *The same Augustus to Epidius Epictetus.* Relying on an action on hire (of a job) against those people from whom you leased the job of constructing buildings, in this trial which is based on good faith you will gain what is owed along with the customary interest.

Posted July 1, at Rome, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[3] *The same Augustus to Flavius Callimorphus.* If you are making the (rental) payment to the owner of the apartment block (*insula*) for the chamber (*diaeta*) that you say you hold under lease, you must not be expelled unwillingly, unless the owner proves that the room is necessary for his own uses or prefers to repair the house, or you have acted badly in the leased property.

Posted January 6, in the consulship of Messala and Sabinus (214).

[287] See C. 8.39, where some manuscripts include a rescript from Diocletian to Paulina.

[288] *Locatio conductio*; see D. 19.2; Inst. 3.25. This contract includes most exchanges of performance for money, including leases of real and personal property, construction contracts, employment contracts, and so on.

[289] = *Collatio* 10.9 where the date is November 2.

[4] *Imp. Alexander A. Arrio Sabino.* **pr.** Et divi Pii et Antonini[xv] litteris certa forma est, ut domini horreorum effractorum eiusmodi querellas deferentibus custodes exhibere necesse habeant nec ultra periculo subiecti sint. **1.** Quod vos quoque adito praeside provinciae impetrabitis. qui si maiorem animadversionem exigere rem deprehenderit, ad Domitium Ulpianum praefectum praetorio et parentem meum reos remittere curabit. **2.** Sed qui domini horreorum nominatim etiam custodiam repromiserunt, fidem exhibere debent.

PP. k. Dec. Alexandro A. cons.

[5] *Idem A. Aurelio Petronio.* Certi iuris est ea, quae voluntate dominorum coloni in fundum conductum induxerint, pignoris iure dominis praediorum teneri. quando autem domus locatur, non est necessaria in rebus inductis vel illatis scientia domini: nam ea quoque pignoris iure tenentur.

PP. k. Mart. Maximo II et Aeliano conss.

[6] *Idem A. Lucilio Victorino.* Nemo prohibetur rem quam conduxit fruendam alii locare, si nihil aliud convenit.

PP. V k. Mart. Iuliano et Crispino conss.

[7] *Idem A. Septimio Terentiano militi.* Si, cum Hermes vectigal octavarum in quinquennium conduceret, fidem tuam obligasti posteaque spatio eius temporis expleto, cum idem Hermes in conductionem ut idoneus detineretur, non consensisti, sed cautionem tibi reddi postulasti, non oportere te posterioris temporis periculo adstringi competens iudex non ignorabit.

PP. V id. Ian. Albino et Maximo conss.

[8] *Idem A. Sabiniano Hygino.* Licet certis annuis quantitatibus fundum conduxeris, si tamen expressum non est in locatione aut mos regionis postulat, ut, si qua labe tempestatis vel alio caeli vitio damna accidissent, ad onus tuum pertinerent, et quae evenerunt sterilitates ubertate aliorum annorum repensatae non probabuntur, rationem tui iuxta

[xv] ex divi Pii Antonini

[4] *Emperor* ALEXANDER *Augustus to Arrius Sabinus.* **pr.** It is a certain rule in a letter of the deified Antoninus Pius that the owners of storehouses that have been broken into must provide guards to those reporting complaints of this type and are not subject to risk (*periculum*) beyond this. **1.** You (plural) too will gain this when you approach the provincial governor. If he notices that the matter requires greater punishment, he will take care to send the criminals to Domitius Ulpianus (Ulpian), the Praetorian Prefect and My parent. **2.** But if the owners of the storehouses have expressly promised to provide custody, they ought to show their faith.

Posted December 1, in the consulship of Alexander Augustus (222).

[5] *The same Augustus to Aurelius Petronius.* The law is that what tenants (*coloni*) have brought onto a leased farm with the consent of the owners is held under the right of pledge to the owners of the properties. When, however, a house is leased, the owner's knowledge is not necessary as to the property brought in or carried in (*inducta vel illata*); for they are also held under the right of (tacit) pledge.

Posted March 1, in the consulship of Maximus, for the second time, and Aelianus (223).

[6] *The same Augustus to Lucilius Victorinus.* Concerning property that he has rented, no one is prohibited from leasing it to another person to use (*fruendam*), if nothing else has been agreed upon (in the original contract).

Posted February 26, in the consulship of Julian and Crispinus (224).

[7] *The same Augustus to Septimius Terentianus, a soldier.* If, when Hermes was leasing (collection of) the one-eighth impost (*vectigal octavarum*) for five years, you obligated your faith (as a surety), and afterwards, at the expiration of this period, when the same Hermes was kept in the lease as suitable (i.e., able to meet the financial obligations), you did not agree but demanded that your written promise (*cautio*) be returned to you, a competent judge will not be unaware that you must not be held liable for the risk of the later period.

Posted January 9, in the consulship of Albinus and Maximus (227).

[8] *The same Augustus to Sabinianus Hyginus.* Although you have leased a farm for fixed annual payments, if, however, it has not been expressed in the lease or if the custom of the region does not require that, if any losses had occurred because of the destruction of a storm or another weather problem, they should be your burden, and if the poor crops that have happened will be proved not to

bonam fidem haberi recte postulabis, eamque formam qui ex appellatione cognoscet sequetur.

PP. k. Aug. Pompeiano et Peligno conss.

[9] *Idem A. Aurelio Fusco militi.* Emptori quidem fundi necesse non est stare[xvi] colonum, cui prior dominus locavit, nisi ea lege emit. verum si probetur aliquo pacto consensisse, ut in eadem conductione maneat, quamvis sine scripto, bonae fidei iudicio ei quod placuit parere cogitur.

PP. VII id. Sept. Maximo II *et Urbano conss.*

[10] *Imp. Gordianus A. Pomponio Sabino.* Viam veritatis ignoras in conductionibus non succedere heredes conductoris existimans, cum, sive perpetua conductio est, etiam ad heredes transmittatur, sive temporalis, intra tempora locationis heredi quoque onus contractus incumbat.

D. VIII k. Mart. Gordiano et Aviola conss.

[11] *Imp. Philippus A. Aurelio Theodoro.* Invitos conductores seu heredes eorum post tempora locationis impleta non esse retinendos saepe rescriptum est.

PP. VI id. Aug. Peregrino et Aemiliano conss.

[12] *Idem A. et Philippus C. Aurelio Nicae.* Damnum, quod per adgressuram latronum in possessionibus locatis rei tuae illatum esse proponis, a domina earundem possessionum, quam nullius criminis ream facere te dicis, sarciri nulla ratione desideras.

PP. IIII k. Nov. Philippo A. et Titiano conss.

[13] *Impp. Valerianus et Gallienus AA. et Valerianus C. Aurelio Heraclidae.* **pr.** Si divisa conductio fuit et in singulis pro partibus facta, alieno nomine conveniri vos non oportet. si autem omnes qui conducebant in solidum locatori sunt obligati, ius ei competens conveniendi quem velit non debeat auferri. **1.** Habetis sane vos facultatem locatori offerendi debitum et, ut transferantur in vos ea, quae ob hanc

xvi <sinere>

have been balanced by the abundant crops of the other years (of the lease), you will rightly demand that your plea (*ratio*) be considered in accordance with good faith, and the judge who will hear the case on appeal will follow this rule.

Posted August 1, in the consulship of Pompeianus and Pelignus (231).

[9] *The same Augustus to Aurelius Fuscus, a soldier.* The purchaser of a farm is indeed not required to allow the tenant to whom a previous owner has leased to remain, unless he buys under this condition. But if he should be proved to have given his consent under some sort of pact that he (the tenant) should remain in the same lease, even without this being in writing, he is compelled in a good-faith judgment to comply with what has been agreed upon.

Posted September 7, in the consulship of Maximus, for the second time, and Urbanus (234).

[10] *Emperor* GORDIAN *Augustus to Pomponius Sabinus.* You are ignoring the path of truth in thinking that the heirs of a lessee do not succeed him in leases, since, if the lease is perpetual, it is also transmitted to the heirs, or if it is for a fixed period, during the time of the lease the burden of the contract also falls on the heir.

Given February 22, in the consulship of Gordian and Aviola (239).

[11] *Emperor* PHILIP *Augustus to Aurelius Theodorus.* It has often been stated in rescripts that lessees or their heirs, after the periods of the leases have been completed, are not to be retained against their will.

Posted August 8, in the consulship of Peregrinus and Aemilianus (241).

[12] *The same Augustus and* PHILIP *Caesar to Aurelius Nica.* You desire without reason that the loss that you state was caused to your goods by an attack of brigands (*latrones*) on properties held under lease be made good by the (female) owner of the same properties, whom you say you are not accusing of any crime.

Posted October 29, in the consulship of Philip Augustus and Titianus (245).

[13] *Emperors* VALERIAN *and* GALLIENUS *Augusti and* VALERIAN *Caesar to Aurelius Heraclides.* **pr.** If the lease was divided and was made for individuals in accordance with their shares, you (plural) must not be sued in another person's name. If, however, all who were leasing were obligated to the lessor for the whole amount, the right allotted to him (the lessor) to sue whom he wants should not be taken away. **1.** You certainly have the opportunity to offer the debt to the lessor and to demand that (a security interest in) the property,

conductionem ab his quorum nomine inquietamini obligata sunt, postulandi.

PP. VIII id. Mart. Aemiliano et Basso conss.

[14] *Idem AA. et C. Aurelio Iulio.* Si hi, qui a vobis redemerant frumentum et hordeum annonae inferendum, accepta pecunia fidem fefellerunt, ex locato agere cum his potestis.

PP. VIII k. Ian. Aemiliano et Basso conss.

[15] *Idem AA. et C. Aureliae Euphrosynae.* Si fundo a locatore expulsa es, agere ex conducto potes poenamque, quam praestari rupta conventionis fide placuit, exigere ac retinere potes.

PP. id. Aug. Aemiliano et Basso conss.

[16] *Idem AA. et C. Aurelio Timotheo.* Legem quidem conductionis servari oportet nec pensionum nomine amplius quam convenit reposci. sin autem tempus, in quo locatus fundus fuerat, sit exactum et in eadem locatione conductor permanserit, tacito consensu eandem locationem una cum vinculo pignoris renovare videtur.

PP. IIII k. Aug. Saeculare II et Donato conss.

[17] *Impp. Diocletianus et Maximianus AA. Hostilio Hectario.* Praeses provinciae ea quae ex locatione debentur exsolvi sine mora curabit, non ignarus ex locato et conducto actionem, cum sit bonae fidei, post moram usuras legitimas admittere.

PP. XV k. April. Diocletiano IIII et Maximiano III *AA. conss.*

[18] *Idem AA. Annio Ursino.* Excepto tempore, quo edaci lucustarum pernicie sterilitatis vitium incessit, sequentis temporis fructus, quos tibi iuxta praeteritam consuetudinem deberi constiterit, reddi tibi praeses provinciae iubebit.

PP. XI k. Oct. ipsis IIII et III AA. conss.

which was obligated on account of this lease by these people in whose name you are troubled, be transferred to you.

Posted March 8, in the consulship of Aemilianus and Bassus (259).

[14] *The same Augusti and Caesar to Aurelius Julius.* If these people have undertaken by contract (*redemerant*) with you (plural) (the job of) delivering grain and barley to the *annona* (food supply), and they have failed to keep faith after receiving the money, you can sue them on lease.

Posted December 25, in the consulship of Aemilianus and Bassus (259).[290]

[15] *The same Augusti and Caesar to Aurelia Euphrosyna.* If you have been expelled from the farm by the lessor, you can sue on hire, and you can exact and keep the penalty (*poena*) that was agreed to be provided on breaking the terms of the agreement.

Posted August 13, in the consulship of Aemilianus and Bassus (259).

[16] *The same Augusti and Caesar to Aurelius Timotheus.* The terms of the lease must be observed and nothing more should be demanded as rent than what has been agreed upon. But if the time in which the farm had been leased should be completed and the tenant has remained in the same lease, he is seen to renew the same lease, along with his pledge bond, by his tacit agreement (*tacito consensu*).

Posted July 29, in the consulship of Saecularis, for the second time, and Donatus (260).

[17] *Emperors* D*IOCLETIAN and* M*AXIMIAN to Hostilius Hectarius.* The provincial governor will take care that what is owed from the lease be paid without delay, and he will not be unaware that the action on lease and hire, since it is one of good faith, allows legal interest after delay (*mora*).

Posted March 18, in the consulship of Diocletian, for the fourth time, and Maximian, for the third time, Augusti (290).

[18] *The same Augusti to Annius Ursinus.* Except for the time in which the defect of a poor harvest (*vitium sterilitatis*) occurred because of a devouring plague of locusts, the provincial governor will order that there be given to you the crops of the following period that have been established as owed to you in accordance with past custom.

Posted September 21, in the consulship of (the Augusti) themselves, Consuls for the fourth and third time, respectively (290).

[290] Or possibly May 25 (favored by Krüger).

[19] *Idem AA. et CC. Iulio Valentino.* Circa locationes atque conductiones maxime fides contractus servanda est, si nihil specialiter exprimatur contra consuetudinem regionis. quod si alii remiserunt contra legem contractus atque regionis consuetudinem pensiones, hoc aliis praeiudicium non possit adferre.
S. v k. Mai. Heracleae AA. conss.

[20] *Idem AA. et CC. Aurelio Carpophoro.* Qui rem propriam conduxit existimans alienam, dominium non transfert, sed inefficacem conductionis contractum facit.
S. III k. Mart. Heracleae AA. conss.

[21] *Idem AA. et CC. Antoniae.* Si olei certa ponderatione fructus anni locasti, de contractu bonae fidei habito propter hoc solum, quod alter maiorem obtulit ponderationem, recedi non oportet.
D. VIII id. Oct. Sirmi AA. conss.

[22] *Idem AA. et CC. Papiniano.* Si hi, contra quos supplicas, facta locatione temporis certi suas tibi locaverint operas, quatenus bona fides patitur, causa cognita competens iudex conventionem servari iubebit.

[23] *Idem AA. et CC. Aurelio Prisco.* Ad probationem rei propriae sive defensionem non sufficit locatio ei facta, qui post de dominio coeperit contendere, cum nescientia dominii proprii et errantis nullum habeat consensum: sed ex eventu, si victus fuerit, contractus locationis non constitisse magis declaratur. nemo enim sibi iure possessionem mutare potest.

[24] *Idem AA. et CC. Aurelio Antonino.* Contractus locationis conductionisque non intervenientibus etiam instrumentis ratus habeatur:

[19] *The same Augusti and Caesars to Julius Valentinus.* In leasing and hiring (*circa locationes atque conductiones*) the terms of the contract (*fides contractus*) are especially to be observed, if nothing specific should be expressed against the custom of the region. But if some persons have remitted rent payments contrary to the terms of the contract and the custom of the region, this should not be able to prejudice the claims of others.

Written April 27, at Heraclea, in the consulship of the Augusti (293).

[20] *The same Augusti and Caesars to Aurelius Carpophorus.* Whoever has leased his own property thinking it belongs to another does not transfer ownership, but makes the contract for hire ineffectual.

Written February 27, at Heraclea, in the consulship of the Augusti (293).

[21] *The same Augusti and Caesars to Antonia.* If you have leased out the year's harvest in exchange for a certain weight of oil, one must not withdraw from a contract made in good faith for the sole reason that another has offered a greater weight.

Given October 8, at Sirmium, in the consulship of the Augusti (293).[291]

[22] *The same Augusti and Caesars to Papinianus.* If these people against whom you are petitioning have leased their labor services (*operae*) to you under a lease made for a certain period, a competent judge, on hearing the case, will order that the agreement be maintained to the extent that good faith allows.

(293).

[23] *The same Augusti and Caesars to Aurelius Priscus.* For proving or defending that property is one's own a lease made with a person (a tenant) who afterwards has begun to contest its ownership does not suffice, since the lack of knowledge over one's ownership and of a person in error does not produce a consensus. But, in accordance with the outcome, if he (the lessor) has been defeated (in the suit on ownership), the contract for lease is rather declared not to have existed. For no one can lawfully change possession for himself.[292]

(293).

[24] *The same Augusti and Caesars to Aurelius Antoninus.* A contract for lease and hire, even without prepared documents, should be considered valid. In

[291] Mommsen dates to April 28, 293.

[292] Blume: "Here a lessee first gave up possession in accordance with law 25 h.t. and then brought a real action to recover. Proof of the lease was itself not sufficient to show that the former lessee was not owner or that the former lessor was owner."

secundum quod heredes conductoris, etsi non intervenerint instrumenta, non uxorem convenire debes. sane de posteriore tempore, quo conductricem ipsam proponis fuisse, adesse fidem precibus tuis probans pensiones integras ab ea pete.

PP. VIII k. Ian. AA. conss.

[25] *Idem AA. et CC. Aurelio Epagatho.* Si quis conductionis titulo agrum vel aliam quamcumque rem accepit, possessionem debet prius restituere et tunc de proprietate litigare.

iii k. Ian. Sirmi AA. conss.

[26] *Idem AA. et CC. Aurelio Opilioni et Hermio.* Si conductionis implestis fidem, eius rei gratia factum instrumentum evanuit. quod si quid vestrum in fundo fuit vel vi direptum est, hoc restitui vobis praeses provinciae iubebit.

D. III k. Mai. CC. *conss.*

[27] *Idem AA. et CC. Maximiano Agopodi.* Si tibi quae pro colonis conducti praedii prorogasti dominus fundi stipulanti dare spopondit, competens iudex reddi tibi iubebit. nam si conventio placiti fine stetit, ex nudo pacto perspicis actionem iure nostro nasci non potuisse.

[28] *Idem AA. et CC. Tusciano Neoni.* In iudicio tam locati quam conducti dolum et custodiam, non etiam casum, cui resisti non potest, venire constat.

D. XV k. Oct. CC. conss.

[29] *Idem AA. et CC. Aurelio Iuliano.* Cum conductorem aedificia, quae suscepit integra, destruxisse proponas, haec heredes etiam eius praeses provinciae instaurare aedificiorum inter vos habita ratione iubebit.

[30] *Impp. Theodosius et Valentinianus AA. Florentio pp.* Curialis neque procurator neque conductor alienarum rerum nec fideiussor

accordance with this, even if there have not been documents prepared, you ought to sue the heirs of the lessee, and not his wife. Certainly if you prove that there is truth in your petition for the latter period in which you state that she herself was the lessee, seek payment in full from her.

Posted December 25, in the consulship of the Augusti (293).

[25] *The same Augusti and Caesars to Aurelius Epagathus.* If anyone has received land or anything else under a lease, he should first restore possession and then litigate about ownership.

December 30, at Sirmium, in the consulship of the Augusti (293).

[26] *The same Augusti and Caesars to Aurelius Opilio and Hermius.* If you have fulfilled the terms (*fides*) of the lease, the document made for that purpose has become void. But if something of yours was on the farm or has been carried off by force, the provincial governor will order that it be restored to you.

Given April 29 in the consulship of the Caesars (294).

[27] *The same Augusti and Caesars to Maximianus Agopodes.* If the owner of the farm has promised by stipulation to give to you what you have advanced on behalf of the tenants of a property held under lease, a competent judge will order it to be returned to you. For (on the other hand) if the agreement stood at the end of an informal agreement (*placitum*),[293] you see that an action on a naked pact could not have arisen by Our law.

(294).

[28] *The same Augusti and Caesars to Tuscianus Neo.* It is agreed that in a judgment for both lease and hire, deceit (*dolus*) and safekeeping (*custodia*) are taken into account (in evaluating a party's performance), but not an accident (*casus*) that cannot be resisted.

Given September 17, in the consulship of the Caesars (294).

[29] *The same Augusti and Caesars to Aurelius Julian.* Since you state that the lessee has demolished the buildings which he took in good condition, the provincial governor will order his heirs as well to restore these after making an accounting between you for the buildings.

[30][294] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Florentius, Praetorian Prefect.* A decurion (*curialis*) should not be a procurator or a lessee

[293] Blume translates: "But if the contract consists of an informal agreement only (placitum)."
[294] = Nov. Theod. 9; combine with C. 1.14.5.

aut mandator conductoris existat. alioquin nullam obligationem neque locatori neque conductori ex huiusmodi contractu competere sancimus.

D. VII id. April. Constantinopoli Theodosio A. XVII et Festo conss.

[31] *Imp. Leo A. Aspari magistro militum.* Milites nostros alienarum rerum conductores seu procuratores aut fideiussores vel mandatores conductorum fieri prohibemus, ne omisso armorum usu ad opus rurestre se conferant et vicinis graves praesumptione cinguli militaris existant. armis autem, non privatis negotiis occupentur, ut numeris et signis suis iugiter inhaerentes rem publicam, a qua aluntur, ab omni bellorum necessitate defendant.

D. prid. non. Iul. Constantinopoli Leone A. cons.

[32] *Imp. Zeno A. Adamantio pu.* **pr.** Ne cui liceat, qui aliquam domum alienam vel locum aut ergasterium nomine conductionis accepit, alteri, qui post eum domini voluntate ad eandem conductionem accessit, litem inferre, quasi rem illicitam aut agenti damnosam temptaverit, sed patere facultatem dominis domos suas vel ergasteria vel loca cui voluerint locandi, ipsis nihilo minus qui conduxerint ab omni super hoc molestia liberis conservandis: nisi forte pacta per scripturam specialiter inita cum dominis vel cum his qui postea conduxerunt, legibus videlicet cognita, agentis intentionibus suffragantur. **1.** Quod si quis huiusmodi controversiam sacris iussionibus interdictam crediderit commovendam, si privatus est, acriter caesus exilii subeat poenam, si militat, decem librarum auri dispendio feriatur.

[33] *Imp. Zeno A. Sebastiano pp.* Conductores rerum alienarum seu alienam cuiuslibet rei possessionem precario detinentes seu heredes eorum, si non eam dominis recuperare volentibus restituerint, sed litem usque ad definitivam sententiam expectaverint, non solum rem locatam, sed etiam aestimationem eius victrici parti ad similitudinem invasoris alienae possessionis praebere compellantur.

D. V k. April. Constantinopoli Theoderico cons.

(*conductor*) of someone else's property, or a surety or a mandator of a lessee. Indeed, We ordain that no obligation arise either to a lessor or a lessee from a contract of this type.

Given April 7, at Constantinople, in the consulship of Theodosius Augustus, for the seventeenth time, and Festus (439).

[31][295] *Emperor* LEO *Augustus to Asparis, Master of Soldiers.* We forbid Our soldiers from becoming lessees of other people's property, procurators, sureties, or mandators of lessees, lest, neglecting the use of their weapons, they turn to rural work and become oppressive to their neighbors on the presumption of their military rank (*cingulum*). They should rather be occupied with their weapons, not with private business, so that, remaining with their units (*numeri*) and standards, together they might defend the State, by which they are nourished, from all necessity of wars.

Given July 6, at Constantinople, in the consulship of Leo Augustus (458).

[32] *Emperor* ZENO *Augustus to Adamantius, City Prefect.* pr. No one who has received another's house, plot of land (*locus*), or workshop in a lease should be able to bring a lawsuit against another who has come to the same lease after him at the wish of the owner, as if he has attempted something illegal or harmful to the person bringing the suit; but the capacity should be open to owners to lease their houses, workshops, or plots of land to whom they wish. Those people who have leased are no less to be kept free from any trouble on this account; unless perchance agreements, that is, ones recognized by the laws, specifically entered into in writing with the owners or with those who have leased afterwards, should support the claims of the plaintiff. 1. But if someone believes that a controversy of this type, (although) forbidden by sacred orders, must be raised, (then) if he is a private person, after having been severely beaten he shall undergo the penalty of exile; if he is in service, he shall be struck with the expenditure of 10 pounds of gold.[296]

[33][297] *The same Augustus to Sebastianus, Praetorian Prefect.* The lessees of other people's property, or those holding on sufferance (*precario*) the possession belonging to another of any type of thing, or their heirs, if they have not restored it to the owners wishing to take it back, but have waited on a lawsuit up to a final verdict (*definitiva sententia*), shall be compelled to provide not just the property leased, but also its appraised value to the victorious party, as in a case in which someone invades another's property.

Given March 28, at Constantinople, in the consulship of Theoderic (484).

[295] Combine with C. 12.35.15.
[296] Lounghis *et al.* date to between 476 and 479.
[297] = C. 8.4.10 pr., entirely reworded.

[34] Ἑκατέρῳ ἡ διάταξις ἐπιτρέπει καὶ τῷ μισθώσαντι καὶ τῷ μισθωσαμένῳ ἐξεῖναι ἐντὸς ἐνιαυτοῦ λύειν τὴν μίσθωσιν καὶ ἐν Ἰταλίᾳ καὶ ἐν πάσαις ταῖς ἐπαρχίαις, καὶ μὴ διδόναι πρόστιμον ὡς ἐκ παραβασίας, εἰ μὴ ἄρα ἐν ἀρχῇ τοῦ συναλλάγματος ἀπετάξαντο ἰδικῶς τῷ τοιούτῳ συμφώνῳ ἢ ἀγράφως ἀπεῖπον.

[35] *Imp. Iustinianus A. ad senatum.* **pr.** Licet retro principes multa de militibus, qui alienas possessiones vel domus conductionis titulo procurandas suscipiunt, sanxisse manifestum est, tamen quia res sic est contempta, ut neque interminationis sacratissimae constitutionis milites memores ad huiusmodi sordida audeant venire ministeria et relictis studiis publicis signisque victricibus ad conductiones alienarum rerum prosilire et armorum atrocitatem non in hostes ostendere, sed contra vicinos et forsitan adversus ipsos miseros colonos, quos procurandos susceperunt, convertere, necessarium duximus ad hanc sacratissimam venire constitutionem altius et plenius huiusmodi causam corrigentes.

1. Iubemus itaque omnes omnino, qui sub armis militant, sive maiores sive minores (milites autem appellamus eos, qui tam sub excelsis magistris militum tolerare noscuntur militiam quam in undecim devotissimis scholis taxati sunt, nec non eos, qui sub diversis optionibus foederatorum nomine sunt decorati) saltem in posterum ab omni conductione alienarum rerum temperare scituros, quod ex ipso contractus initio sine aliquo facto vel aliqua sententia cadant militia et non sit regressus eis ad pristinum gradum neque a beneficio imperiali neque a consensu vel permissu iudicis, sub quo tolerandam sortiti sunt militiam: ne, dum alienas res conductionis titulo esse gubernandas existimant, suas militias suamque opinionem amittant, ex militibus pagani, ex decoratis infames constituti: et quod post huiusmodi conductionem, quam penitus interdiximus, a publico susceperint, et hoc sine aliqua mora vel procrastinatione reddere compellantur.

2. Scituris et ipsis, qui suas facultates post hanc legem eis ad conductionem permiserint nostra lege eorum conamine violata, quod nulla eis exactio contra eos concedatur, ut, qui alieni appetens constitutus militem procuratorem elegerit, et suis cadat reditibus.

[34][298] The constitution grants permission to both the lessor and the lessee to cancel within a year the lease both in Italy and in all the provinces, and not to pay a penalty as if for non-observance of the lease, unless at the beginning of the contract they have specifically bargained this away with such a pact or refused this without writing.

[35] *Emperor* JUSTINIAN *Augustus to the Senate.* **pr.** Although it is clear that emperors in the past have made many ordinances about soldiers who have taken up the management of other people's properties or houses under a lease, nevertheless because the matter has been so scorned that soldiers, not mindful of the threat of punishment in the most sacred constitution, dare to come to such sordid jobs and, abandoning their public pursuits and their victorious standards, to jump into leases of other people's property and not to show the ferocity of their weapons against the enemy, but to turn them against their neighbors and perhaps the very wretched bound tenants (*coloni*) whose management they have undertaken, We have considered it necessary to come to this most sacred constitution to correct this type of case rather deeply and fully.

1. Therefore We order that all those who serve under arms, whether of greater or lesser rank – We call soldiers both those who are known to tolerate service under the high Masters of Soldiers (*excelsi magistri*) and those who are counted in the eleven most devoted corps (*scholae*), as well as those who have been decorated as allies under diverse officials (*optiones*) – in the future to refrain completely from every lease of property belonging to another. They will know that, from the very outset of a contract, without an act or a verdict, they shall fall from military service and have no return to their old rank, either by an imperial benefit or by the agreement or permission of the judge under whom they have gained the toleration of military service, lest, while they think that they should manage the affairs of others under a lease, they lose their own military service and their assessment (*opinio*), having become civilians instead of soldiers, infamous instead of decorated. And, after a lease of this type, which We have utterly forbidden, they should be compelled to return without any delay or procrastination what they have taken from the public treasury.

2. They themselves, who have permitted their wealth to these people for a lease after Our law, when they have violated it by their effort, will know that no right of exaction is conceded to them against them (the lessees), so that a person who, in the role of someone of seeking another's property, has chosen a soldier as a procurator, should also lose his own income.

298 Bas. 20.1.95; a shorter version exists in Epit. 7.21.

3. Pateat autem omnibus huiusmodi copia apud competentes iudices accusationis, ut, qui in hac causa delator existat, laudandus magis quam vituperandus intellegatur: poena, quam contra milites nostrorum praeceptorum contemptores et ipsos, qui eis conductionem rerum ad se pertinentium permiserint, statuimus, in futuris causis obtinente.

LXVI De Emphyteutico Iure

[1] *Imp. Zeno A. Sebastiano pp.* Ius emphyteuticarium neque conductionis neque alienationis esse titulis addicendum, sed hoc ius tertium sit constitutum ab utriusque memoratorum contractuum societate seu similitudine separatum, conceptionem definitionemque habere propriam et iustum esse validumque contractum, in quo cuncta, quae inter utrasque contrahentium partes super omnibus vel etiam fortuitis casibus pactionibus scriptura interveniente habitis placuerint, firma illibataque perpetua stabilitate modis omnibus debeant custodiri: ita ut, si interdum ea, quae fortuitis casibus sicut eveniunt, pactorum non fuerint conventione concepta, si quidem tanta emerserit clades, quae prorsus ipsius etiam rei quae per emphyteusin data est facit interitum, hoc non emphyteuticario, cui nihil reliquum mansit, sed rei domino, qui quod fatalitate ingruebat, etiam nullo intercedente contractu habiturus fuerat, imputetur: sin vero particulare vel aliud leve damnum contigerit, ex quo non ipsa rei penitus laedatur substantia, hoc emphyteuticarius suis partibus non dubitet adscribendum.

[2] *Imp. Iustinianus A. Demostheni pp.* **pr.** In emphyteuticariis contractibus sancimus, si quidem aliae pactiones in emphyteuticis instrumentis fuerint conscriptae, easdem et in aliis omnibus capitulis observari et de reiectione eius qui emphyteusin suscepit, si solitam pensionem vel publicarum functionum apochas non praestiterit.

1. Sin autem nihil super hoc capitulo fuerit pactum, sed per totum triennium neque pecunias solverit neque apochas domino tributorum reddiderit, volenti ei licere eum a praediis emphyteuticariis repellere:

3. The opportunity to make an accusation of this type should be open to everyone before competent judges, so that the person who is an informer in this case should be understood as worthy of praise rather than vituperation. The punishment that We have established against soldiers scorning Our precepts and against those very people who have allowed them a lease for property belonging to themselves will apply in future cases.[299]

Sixty-Sixth Title Emphyteutic Right[300]

[1] *Emperor* ZENO *Augustus to Sebastianus, Praetorian Prefect.* The emphyteutic right should not be added to the categories of leasing and alienation, but this should be established as a third legal right (*ius*) and be separated from a relationship with or a similarity to either of the contracts mentioned. It has its own conception and definition and is a lawful and valid contract, in which everything that has been agreed upon in writing between both contracting parties over all contingencies including even unavoidable accidents should be maintained in all ways firm and unchanged with perpetual stability, so that, if at some time those things that happen as a result of unavoidable accidents have not been provided for in the terms of the pacts, if indeed such a catastrophe arises that it causes the loss of the very property which has been given through an emphyteutic lease (*emphyteusis*), they be charged not to the holder of an *emphyteusis* (*emphyteuticarius*), for whom nothing has remained, but to the owner of the property, who would have incurred what happened as a result of the disaster even without any contract intervening. But if a particular or other moderate loss happens, as a result of which the very substance of the property is not completely damaged, the emphyteuticary might not hesitate to have this reckoned to his account.

(476–484).[301]

[2] *Emperor* JUSTINIAN *Augustus to Demosthenes, Praetorian Prefect.* **pr.** In emphyteutic contracts We ordain that, if other agreements have been included in emphyteutic documents, these same ones (agreements) be observed both in all other provisions and especially with regard to ejecting the person who has undertaken the emphyteutic lease (*emphyteusis*) if he has not provided the customary rent or the receipts for public dues.

1. If, however, no agreement has been made for this provision, but he has not paid the money for an entire three-year period and has not returned receipts to the owner for taxes, if the latter wishes he may eject him from the emphyteutic

[299] Possibly dated to July 22, 530; so also Lounghis *et al.*

[300] *Emphyteusis* is a long-term lease of land, in which the tenant has some property rights less than ownership.

[301] Lounghis *et al.* date to between 476 and 480 or 484.

nulla ei adlegatione nomine meliorationis vel eorum quae emponemata dicuntur vel poenae opponenda, sed omnimodo eo, si dominus voluerit, repellendo neque praetendente, quod non est super hac causa inquietatus, cum neminem oportet conventionem vel admonitionem expectare, sed ultro sese offerre et debitum spontanea voluntate persolvere, secundum quod et anteriore lege nostri numinis generaliter cautum est.

2. Ne autem ex hac causa dominis facultas oriatur emphyteutas suos repellere et reditum minime velle suscipere, ut ex huiusmodi machinatione triennio elapso suo iure is qui emphyteusin suscepit cadat, licentiam ei concedimus attestatione praemissa pecunias offerre hisque obsignatis et secundum legem depositis minime deiectionis timere periculum.

D. xv k. Oct. Chalcedone Decio vc. cons.

[3] *Idem A. Iuliano pp.* **pr.** Cum dubitabatur, utrum emphyteuta debeat cum domini voluntate suas meliorationes, quae Graeco vocabulo emponemata dicuntur, alienare vel ius emphyteuticum in alium transferre, an eius[xvii] expectare consensum, sancimus, si quidem emphyteuticum instrumentum super hoc casu aliquas pactiones habeat, eas observari: sin autem nullo modo huiusmodi pactio posita est vel forte instrumentum emphyteuseos perditum est, minime licere emphyteutae sine consensu domini suas meliorationes aliis vendere vel ius emphyteuticum transferre.

1. Sed ne hac occasione accepta domini minime concedant emphyteutas suos accipere pretia meliorationum quae invenerint, sed eos deludant et ex hoc commodum emphyteutae depereat, disponimus attestationem domino transmitti et praedicere, quantum pretium ab alio re vera accipit. 2. Et si quidem dominus hoc dare maluerit et tantam praestare quantitatem, quantam ipsa veritate emphyteuta ab alio accipere potest, ipsum dominum omnimodo haec comparare.

3. Sin autem duorum mensuum spatium fuerit emensum et dominus hoc facere noluerit, licentia emphyteutae detur, ubi voluerit, et sine consensu domini suas meliorationes vendere, his tamen personis, quae non solent in emphyteuticis contractibus vetari ad huiusmodi venire

[xvii] <non>

property; and he (the holder of an *emphyteusis*) is not to oppose any claim over improvements or what are called *emponemata* (agricultural improvements) or over a penalty. Rather, he is to be utterly rebuffed, if the owner wishes, and he has no claim that he has not been warned over this matter, since no one should await a lawsuit or a warning, but should offer himself of his own accord and pay his debt with his spontaneous will in accordance with what has been generally provided for in a previous law of Our Divine Majesty.[302]

2. Lest, however, it become easier for owners on this account to repel their emphyteutic leaseholders (*emphyteuta*) and be unwilling to receive the income, so that, as a result of such scheming, after the lapse of a three-year period the person who has undertaken an emphyteutic lease (*emphyteusis*) lose his right, We grant him permission, having provided testimony before witnesses, to tender the money and, after it is sealed and deposited in accordance with the law, not to fear the danger of expulsion.

Given September 17, at Chalcedon, in the consulship of the vir clarissimus *Decius (529).*

[3] *The same Augustus to Julian, Praetorian Prefect.* pr. Since there was a question whether an emphyteutic leaseholder (*emphyteutes*) should, with the consent of the owner, alienate his own improvements, which are called by their Greek term *emponemata* (agricultural improvements), or transfer the emphyteutic right to another, or whether he should not await (the owner's) consent, We ordain that, if the emphytuetic document should include any provisions for this contingency, they be observed. If, however, a provision of this type has in no way been included, or by chance the document of the emphyteutic lease has been lost, the emphyteutic leaseholder should not be permitted to sell his own improvements to others without the owner's consent or to transfer the emphyteutic right.

1. But lest owners take this opportunity and not allow their emphyteutic leaseholders to receive the prices for improvements that they have made, but cheat them so that, as a result, the benefit for the emphyteutic leaseholder be lost, We dispose that that a sworn attestation be transmitted to the owner and that he (the emphyteutic leaseholder) declare how great a price he is truthfully receiving from another person. 2. And if the owner prefers to give this and to offer the amount that the emphyteutic leaseholder is in fact able to receive from another, the owner himself should purchase these by all means.

3. If, however, the period of two months has passed and the owner has been unwilling to do this, permission shall be given to the emphyteutic leaseholder to sell his improvements when he wants and without the consent of the

[302] C. 8.37.12.

emptionem: necessitatem autem habere dominos, si aliis melioratio secundum praefatum modum vendita sit, accipere emphyteutam vel, ius emphyteuticum ad personas non prohibitas sed concessas et idoneas ad solvendum emphyteuticum canonem transponere si emphyteuta maluerit, non contradicere, sed novum emphyteutam in possessionem suscipere, non per conductorem nec per procuratorem, sed ipsos dominos per se vel per litteras suas vel, si hoc non potuerint vel noluerint, per depositionem in hac quidem civitate apud virum clarissimum magistrum censuum vel praesentibus tabulariis per attestationem, in provinciis autem per praesides vel defensores celebrandam. **4.** Et ne avaritia tenti domini magnam molem pecuniarum propter hoc efflagitent, quod usque ad praesens tempus perpetrari cognovimus, non amplius eis liceat pro subscriptione vel depositione nisi quinquagesimam partem pretii vel aestimationis loci, qui ad aliam personam transfertur, accipere.

5. Sin autem novum emphyteutam vel emptorem meliorationis suscipere minime dominus maluerit et attestatione facta intra duos menses hoc facere supersederit, licere emphyteutae et non consentientibus dominis ad alios ius suum vel emponemata transferre. **6.** Sin autem aliter fuerit versatus, quam nostra constitutio disposuit, iure emphyteutico cadat.

D. xv k. April. Constantinopoli Lampadio et Oreste vv. cc. conss.

[4] [Ὁ αὐτὸς βασιλεύς.] **pr.** Ἐὰν ἐπὶ τρεῖς ἐναυτοὺς ὁ μὲν ἐμφυτευτὴς προσφέρῃ τῷ δεσπότῃ τὸν τῆς ἐμφυτεύσεως κανόνα, ὁ δὲ δεσπότης ἀναβάλληται δέξασθαι αὐτὸν ἢ ἐν τῇ βασιλίδι πόλει διάγων ἢ ἐν ἐπαρχίαις, ἐξεῖναι τῷ ἐμφυτευτῇ προσάγειν αὐτῷ τὸ ἐμφύτευμα καὶ μελλούσης περαιοῦσθαι τῆς τριετίας, εἰ μὴ ἀνάσχοιτο λαβεῖν, σφραγίζειν αὐτὸ καὶ ἐπιμαρτύρεσθαι περὶ τούτου ἢ τὸν ἐνδοξότατον ἔπαρχον τῆς πόλεως ἢ τοὺς ἐνδοξοτάτους ἐπάρχους τῶν ἱερῶν πραιτωρίων ἢ τὸν πρόσφορον ἄρχοντα, ᾧτινι ὑπόκειται ὁ τοῦ χωρίου δεσπότης· ἐν δὲ ταῖς ἐπαρχίαις ἢ παρὰ τῷ ἄρχοντι ἢ ἐν ἀπουσίᾳ τοῦ ἄρχοντος παρὰ τῷ ἐκδίκῳ τῶν τόπων ἢ παρὰ τῷ ἐπισκόπῳ τῆς πόλεως, καθ' ἣν ὁ δεσπότης τοῦ κτήματος διάγει, πράττειν περὶ τούτου, ὥστε καὶ τὴν ἐξ ἑνὸς τῶν

owner, provided it be to these persons who are not customarily forbidden in emphyteutic contracts to make this kind of purchase. However, owners must, if the improvement has been sold to others in accordance with the aforesaid method, accept the (new) emphyteutic leaseholder, or not refuse if the (old) emphyteutic leaseholder prefers to transfer the emphyteutic right to persons not prohibited but allowed and suitable for paying the emphyteutic charge, but admit the new emphyteutic leaehoider into possession, not through a lessee or a procurator, but (through action of) the very owners by themselves or through a letter, or, if they are unable or unwilling to do this, through a deposition in this city before the *vir clarissimus* Master of the Censuses, or through a sworn declaration made in the presence of the tax officials (*tabularii*), but in the provinces through their governors or defenders (*defensores*). 4. And lest owners be gripped by avarice and demand a great amount of money on account of this, something We have learned is perpetrated up to the present time, they should not be permitted to receive, for a written agreement (*subscriptio*) or declaration, more than a fiftieth part of the price or the appraised value of the place that is being transferred to another person.

5. However, if the owner does not prefer to accept the new emphyteutic leaseholder or the buyer of the improvement and has failed to do this within two months after notice has been given, We order that it be permitted for the emphyteutic leaseholder to transfer his right or the agricultural improvements to others even without the consent of the owners. 6. But if he (the emphyteutic leaseholder) has acted in a manner other than as Our constitution has disposed, he shall lose his emphyteutic right.

Given March 18, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[4][303] (*The same Augustus.*) **pr.** If for three years the emphyteutic leaseholder should offer the owner the payment (*canon*) for the emphyteutic lease (*emphyteusis*), and the owner, residing in the Imperial City or in the provinces, delays in accepting it, the emphyteuticary is permitted to offer him the payment, and, when the three-year period is about to end, if he should be unwilling to take it, he may seal it and make an attestation concerning it either before the most glorious (*endoxotatos*) City Prefect or the most glorious Praetorian Prefects, or the appropriate magistrate (*archon*) to whom the owner of the farm is subject;[304] in the provinces, he may take action concerning this either before the governor, or, in the absence of the governor before the defender of the place (*ekdikos, defensor*) or before the bishop of the city in which the owner of the

[303] = C. 1.4.32.

[304] A version of this constitution in the *Ecclesiasticarum Constitutionum Collectio* indicates that a phrase like "or before the Patriarch, if he is powerful" has fallen out.

εἰρημένων προσώπων προστεθῆναι τῷ πράγματι μαρτυρίαν. **1.** Καὶ εἰ μηδὲ οὕτως ἕλοιτο λαβεῖν προσαγόμενον τὸ ἐμφύτευμα ὁ δεσπότης, κερδαινέτω μὲν αὐτὸ ὁ ἐμφυτευτής, μηδεμίαν ἀγωγὴν ἔχοντος εἰς ἀπαίτησιν αὐτοῦ τοῦ δεσπότου.

2. Μήτε δὲ ἡ ἐμφύτευσις λυέσθω παρατρεχούσης τῆς τριετίας μήτε τῶν ἐφεξῆς ἐνιαυτῶν ἀπαιτείτω τὸν εἰωθότα κανόνα ὁ δεσπότης, ἕως ἂν αὐτὸς ἄνωθεν ὀχλήσας τῷ ἐμφυτευτῇ καὶ διαμαρτυρίαν αὐτῷ στείλας ἄρξηται αἰτεῖν τὸν ἐμφυτευτικὸν κανόναν· τότε γὰρ οὐ μὴν τοῦ προλαβόντος χρόνου παντὸς ἀπαιτείτω τὸν κανόνα ὁ δεσπότης, ὡς αὐτὸς αἴτιος τοῦ μὴ λαβεῖν αὐτὸν γεγονώς, τοῦ δὲ τρέχοντος χρόνου μετὰ τὴν διαμαρτυρίαν αὐτοῦ ἀπαιτείτω τὸ ἐμφύτευμα. **3.** Ἐὰν δὲ ἐπὶ τριετίαν μετὰ τὴν διαμαρτυρίαν τοῦ δεσπότου μὴ καταβάλῃ ὁ ἐμφυτευτὴς εὐγνωμόνως τὸν κανόνα, ἀκολούθως ἐξωθείτω αὐτὸν ὁ δεσπότης τῆς ἐμφυτεύσεως κατὰ τὴν δευτέραν τούτου τοῦ τίτλου διάταξιν.

property dwells, so that the attestation from one of the aforesaid persons be offered for the matter. **1.** And if the owner thus should not choose to accept the emphyteutic payment offered, the emphyteutic leaseholder may profit from it, with the owner having no right of action to demand the payment from him.

2. The emphyteutic lease (*emphyteusis*) should not be dissolved when the three-year period has expired, nor should the owner seek the customary payment for the following years, until he himself, pressing the emphyteutic leaseholder and sending him a written declaration, should begin to seek the emphyteutic payment. For then the owner should not seek the rent payment for all the previous time, since he is responsible for not taking it, but he should seek the emphyteutic payment for the time lapsed since his declaration. **3.** If for three years after the owner's declaration the emphyteutic leaseholder should not willingly pay the payment, the owner should immediately expel him from the emphyteusic lease in accordance with the second constitution of this title.

(531–534).

Liber Quintus

I De Sponsalibus et Arris Sponsaliciis et Proxeneticis

[1] *Impp. Diocletianus et Maximianus AA. et CC. Bianori.* Alii desponsata renuntiare condicioni ac nubere alii non prohibetur.
D. XVIII *k. Mai. AA. conss.*

[2] *Imp. Constantinus A. et Constantius C. ad Pacatianum pp.* Si is, qui puellam suis nuptiis pactus est, intra biennium exsequi nuptias in eadem provincia degens supersederit, eiusque spatii fine decurso in alterius postea coniunctionem puella pervenerit, nihil fraudis ei sit, quae nuptias maturando vota sua diutius ludi non passa est.
D. prid. id. April. Marcianopoli Pacatiano et Hilariano conss.

[3] *Imppp. Gratianus Valentinianus et Theodosius AAA. Eutropio pp.* Arris sponsaliorum nomine datis, si interea sponsus vel sponsa decesserit, quae data sunt iubemus restitui, nisi causam, ut nuptiae non celebrentur, defuncta persona iam praebuit.
D. XV *k. Iul. Thessalonicae Gratiano* V *et Theodosio AA. conss.*

Fifth Book

edited by Thomas A. J. McGinn

First Title Engagement (*Sponsalia*), Payments of Earnest Money for Engagement, and Payments for Engagement Negotiations[1]

[1][2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Bianor.* A woman formally engaged to one man is not forbidden from repudiating the match and marrying another.

Given April 14,[3] *in the consulship of the Augusti (293).*

[2][4] *Emperor* CONSTANTINE *Augustus and the Caesar Constantius to Pacatianus, Praetorian Prefect.* If a man engaged to a girl neglects to marry her within two years while living in the same province where she lives, and she marries another after that time has elapsed, she is not guilty of any wrongdoing. By concluding her marriage in good time, she did not allow her solemn promises to be mocked any longer.

Given April 12, at Marcianopolis, in the consulship of Pacatianus and Hilarianus (332).

[3][5] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Eutropius, Praetorian Prefect (of Illyricum).* If, after earnest money (*arrae*) for an engagement is given, either one of the engaged couple should die, We hold that the money shall be restored, unless the deceased person was responsible for the marriage not being concluded.

Given June 17, at Thessalonica, in the consulship of Gratian, for the fifth time, and Theodosius, Augusti (380).

[1] See D. 23.1. A *proxeneta* is a broker, in this case a marriage broker.
[2] Combine with C. 9.12.3.
[3] The precise day is uncertain; Mommsen gives April 24, 293.
[4] = (with minor changes) C.Th. 3.5.4. Combine with C.Th. 3.5.5. In both, Pacatianus is Urban Perfect.
[5] = (evidently) C.Th. 3.5.10. Combine with C. 5.2.1, 6.23.16, 9.49.8, 12.7.1; C.Th. 3.5.11, 4.19.1, 9.27.2, 9.42.9. Although addressed to different persons, the following appear to be part of the same statute: C. 5.7.1, 8.36.3; C.Th. 8.15.6; see also C. 5.9.1, 6.56.4.

[4] *Impp. Honorius et Theodosius AA. ad Marinianum pp.* **pr.** Si pater pactum de filiae nuptiis inierit et humana sorte consumptus ad vota non potuerit pervenire, id inter sponsos firmum ratumque permaneat, quod a patre docebitur definitum, nihilque permittatur habere momenti, quod cum defensore, ad quem minoris commoda pertinebunt, docebitur fuisse transactum. **1.** Periniquum est enim, ut contra patriam voluntatem redempti forsitan tutoris aut curatoris admittatur arbitrium, cum plerumque etiam ipsius feminae adversus commoda propria inveniatur laborare consilium.

D. IIII non. Nov. Ravennae Honorio XIII et Theodosio X AA. conss.

[5] *Impp. Leo et Anthemius AA. Erythrio pp.* **pr.** Mulier iuris sui constituta arrarum sponsalium nomine usque ad duplum teneatur, id est in id quod accepit et aliud tantundem nec amplius, si post completum vicesimum quintum annum vel post impetratam veniam aetatis atque in competenti iudicio comprobatam huiusmodi arras suscepit: in simplum autem, id est tantummodo quod accepit, si minoris aetatis est, sive virgo sive vidua sit, sive per se sive per tutorem vel curatorem vel aliam personam easdem arras acceperit.

1. Patrem vero vel matrem, legitimae videlicet aetatis constitutos, sive simul sive separatim arras pro filia susceperint, avum autem vel proavum pro nepte seu pronepte, in duplum tantummodo convenit teneri.

2. Quae ita custodiri censemus, si non propter personam vel condicionem aut aliam causam legibus vel generalibus constitutionibus interdictam futurum matrimonium constare prohibetur: tunc enim

[4][6] *Emperors* Honorius *and* Theodosius *Augusti to Marinianus, Praetorian Prefect (of Italy).* **pr.** If a father entered into an agreement concerning the marriage of his daughter, and passed away without being able to witness the fulfillment of his wishes, that which is proved to have been decided by the father shall remain fixed and valid regarding the engaged couple, and an out-of-court settlement which is shown to have been arranged by the legal representative charged with the interests of the girl less than 25 years of age shall not be allowed to have force. 1. For it would be highly unfair to let the decision of a *tutor* or *curator*, perhaps one who has been corrupted, nullify the father's wish, since it is frequently true that the wishes even of the woman herself are found to run counter to her own interests.

Given November 3, at Ravenna, in the consulship of Honorius, for the thirteenth time, and Theodosius, for the tenth time, Augusti (422).

[5][7] *Emperors* Leo *and* Anthemius *Augusti to Erythrius, Praetorian Prefect (of the East).* **pr.** A *sui iuris* woman shall be liable for the agreed-upon amount of earnest money for engagement (*arrae sponsales*) up to twice this amount, meaning the amount she received plus the same sum over this, and no more, provided that, when she received earnest money of this kind, she either was more than 25 years of age or had secured a release from curatorship though under age (i.e., received the *venia aetatis*) and this has been proven before the appropriate court. She shall, however, be liable (only) for the amount itself, that is, just as much as she received, if she is under age (i.e., less than 25 without the *venia*), whether never married or previously married (*vidua*), and whether she received the aforesaid earnest money personally, through a *tutor*, a *curator*, or some other person.

1. But it is agreed that a father or mother, because they are clearly past the age-limit defined by law (i.e., 25 years), shall be liable for precisely twice the amount whether they receive the earnest money on behalf of their daughter conjointly or separately, just like a grandfather or a great-grandfather on behalf of a granddaughter or a great-granddaughter.

2. We ordain that these rules are to hold as such, unless the intended marriage is forbidden by statutes (*leges*) or general constitutions (*generales constitutiones*), on the ground of a person's status or the nature of the match or some

[6] = C.Th. 3.5.12. Combine with C. 5.9.4, 5.18.11, 5.19.1.
[7] Combine with C. 1.18.3, 5.6.8, 5.30.3.

quasi nullo facto, utpote sine causa easdem arras praestitas tantummodo reddi consequens esse praecipimus. **3.** Hoc quoque his adicimus, ut etiam, si legibus prohibitae non sint speratae nuptiae, post arras autem sponsalicias sponsa coniugium sponsi propter turpem vel impudicam conversationem aut religionis vel sectae diversitatem recusaverit vel eo, quod quasi vir coitum, ex quo spes subolis oritur, facere non potuerit, vel ob aliam iustam excusationis causam, si quidem probatum fuerit ante datas easdem arras sponsalicias hoc idem mulierem vel parentes eius cognovisse, sibi debeant imputare. **4.** Sin vero horum ignari sponsalicias arras susceperint vel post arras datas aliqua iusta causa paenitentiae intercesserit, isdem tantummodo redditis super alterius simpli poena liberi custodiantur.

5. Quae omnia simili modo etiam de sponsis super recipiendis nec ne arris praestitis custodiri censemus: quadrupli videlicet poena, quae anterioribus legibus definita erat, in qua et arrarum quantitas imputabatur, cessante, nisi specialiter aliud ex communi consensu inter contrahentes de eadem quadrupli ratione placuit.

6. Extra definitionem autem huius legis si cautio poenam stipulationis continens fuerit interposita, ex utraque parte nullas vires habebit, cum in contrahendis nuptiis libera potestas esse debet.

D. k. Iul. Constantinopoli Marciano cons.

[6] pr. Ἡ διάταξις βούλεται τὸν προξενοῦντα γάμον μάλιστα μὲν μηδὲν λαμβάνειν. εἰ δὲ ὅλως ἀνέχεται λαβεῖν, εἰ μὲν μηδὲν συνεφώνησε περὶ τούτου, μηδὲν ὅλως λαμβάνειν· εἰ δὲ συνεφώνησε, μὴ ὑπὲρ τὴν εἰκοστὴν μοῖραν τῆς προικὸς καὶ τῆς προγαμιαίας δωρεᾶς ἐπιζητεῖν, ἐὰν ἡ προῖξ ἄχρι διακοσίων λιτρῶν ἐστι χρυσίου· ἔλαττον δὲ εἰ βούλεται λαβεῖν, ἐπιτρέπει αὐτῷ. **1.** Εἰ δὲ καὶ ὁσησδήποτε ποσότητός ἐστιν ἡ προῖξ, περαιτέρω τῶν δέκα λιτρῶν τοῦ χρυσίου οὐκ ἐπιτρέπει τῷ προξενητῇ λαμβάνειν, οὐδὲ εἰ τελεία ἐστὶν ἡ προῖξ ἢ ἡ πρὸ γάμου δωρεά. **2.** Εἰ δὲ παρὰ ταῦτα τις συμφωνήσει, μὴ ἀπαιτεῖσθαι, ἀλλὰ καὶ τὸ καταβληθὲν ἀναδιδόσθω, εἴτε

other reason. For in that case We instruct, as a matter of logic, that the aforesaid earnest money be returned in the equivalent amount, on the ground that the payment is void insofar as it has no valid purpose. 3.[8] We add also the following provision. Even in the case where the prospective marriage is not forbidden by statutes, and the bride-to-be, after receiving the earnest money for engagement, refuses to marry her fiancé because of his unseemly or immoral conduct, or because he belongs to a different religion or branch of a religion, or on account of the fact that the man is incapable of sexual relations, from which the hope of offspring arises, or from any other just reason for release: if it should be shown that the woman or her parents knew of this fact before the aforesaid earnest money for engagement was given, they shall have no one but themselves to blame (for its loss). 4. But if, however, they accepted the earnest money for engagement in ignorance of such matters, or some just reason for rescinding the engagement arose thereafter, once they have returned only as much as they received, they shall be freed from the obligation of paying the same amount beyond this as a penalty.

5. We rule that all this shall in like manner apply to grooms as to whether they shall receive back the earnest money given or not. This means that the fourfold penalty, in which the amount of the earnest money was also prescribed, as established by prior legislation,[9] is suspended, unless by the mutual consent of the contracting parties some other particular provision concerning said fourfold penalty has been agreed to.

6. If, however, a guaranty (*cautio*) is offered containing a penalty backed by a stipulation that exceeds the terms of this legislation, it shall have no binding force for either party, since freedom of choice ought to hold in contracting marriages.[10]

Given July 1, at Constantinople, in the consulship of Marcian (472).

[6][11] **pr.** The imperial constitution (*diataxis*) lays down that marriage brokers shall in principle receive no compensation. If indeed they should attempt to receive something, when no agreement was (previously) made about this, they shall receive nothing at all. If an agreement was made, they shall demand no more than one-twentieth of the dowry and prenuptial gift, provided that the dowry is less than 200 pounds of gold. If they are content with less, this shall be allowed to them. **1.** But whatever the amount of the dowry may be, the marriage broker shall not be permitted to receive more than 10 pounds of gold, not even if the dowry or prenuptial gift has been paid. **2.** Anything agreed to over and

[8] §§3–5 = (in part) C. 1.4.16.
[9] See C. 5.2.1, 5.8.1; C.Th. 3.5.11, 3.6.1, 3.10.1.
[10] See C. 8.38.2; Paul. D. 45.1.134 pr.; Sch. Sinaitica 4.
[11] = Bas. 54.15.4, a summary in Greek of an imperial law of unknown authorship and date.

χρήματα ἔλαβεν εἴτε πράγματα ἢ ἀνεδόθη αὐτῷ ὁμολογία χρέους ἢ ὅλως ἔλαβέ τι κινητόν ἢ ἀκίνητον ἢ αὐτοκίνητον, κινουμένων τῶν ἀγωγῶν οὐ μόνον κατὰ τοῦ λαβόντος, ἀλλὰ καὶ κατὰ τῶν αὐτοῦ κληρονόμων, καὶ οὐ μόνον παρὰ τοῦ δεδωκότος, ἀλλὰ καὶ παρὰ τῶν αὐτοῦ κληρονόμων· ὡρισμένου δέκα χρυσίου λιτρῶν ἐπιτιμίου τοῖς παρὰ ταῦτα πράττειν ἐπιχειροῦσιν.

II Si Rector Provinciae vel ad Eum Pertinentes Sponsalia Dederint

[1] *Imppp. Gratianus Valentinianus et Theodosius AAA. Eutropio pp.* **pr.** Si quis in potestate publica positus atque honore administrandarum provinciarum, qui parentibus aut tutoribus aut curatoribus aut ipsis quae matrimonium contracturae sunt potest esse terribilis, arras sponsalicias dederit, iubemus, ut deinceps, sive parentes sive eadem mutaverint voluntatem, non modo iuris laqueis liberentur poenaeque statutae expertes sint, sed extrinsecus data pignora lucrativa habeant, si ea non putent esse reddenda. **1.** Quod ita late patere volumus, ut non solum circa administrantes, sed et circa administrantium filios nepotes ac propinquos, participes (id est consiliarios) domesticosque locum habeat, quibus tamen administrator operam dederit. **2.** Impleri autem id postea matrimonium non vetamus, quod tempore potestatis ob eas personas, de quibus locuti sumus, arris fuerat obligatum, si sponsarum consensus accedat.

D. xv k. Iul. Thessalonicae Gratiano v et Theodosio AA. conss.

III De Donationibus ante Nuptias vel Propter Nuptias et Sponsaliciis

[1] *Impp. Severus et Antoninus AA. Metrodoro.* Multum interest, si ea, quae donat vir futurus, tradiderit uxori et postea in dotem acceperit, an vero donandi animo dotem auxerit, ut videatur accepisse, quod non accepit. priore enim casu donatio non impeditur, et res, quae in

above this limit shall not be collected, and if it has, it shall be returned, whether he or she (the marriage broker) has received cash, or another asset, such as the cancellation of a debt or full ownership of property that is movable, immovable, or self-moving. Actions may be launched not only against the recipient, but also against recipient's heirs, not only by the giver, but by giver's heirs as well. A penalty of 10 pounds of gold has been established for those who venture to break these rules.

Second Title If the Governor of a Province or Persons Connected to Him Give Engagement Gifts

[1][12] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Eutropius, Praetorian Prefect.* **pr.** If a person wielding authority in an official capacity and holding the position of provincial administrator gives earnest money for engagement, since he is capable of inspiring with fear ascendant male relatives, *tutores, curatores,* or the very women who are about to marry, We lay down that if the ascendant male relatives or the women themselves change their minds thereafter, they shall not only be released from the strictures of the law and freed from the penalty fixed therein, but they shall also keep as a benefit what has been given as a pledge, if they decide not to return it. **1.** We wish this rule to extend broadly, so that it shall apply not only to provincial administrators but to their sons, grandsons, and (other) close relatives, as well as official staff, meaning advisors, and household members, provided, however, that the administrator renders them assistance. **2.** We do not, however, forbid the subsequent conclusion of a marriage, when this was contracted through the payment of earnest money during an administrator's tenure, regarding any of those persons just mentioned, as long as the engaged woman gives her consent.

Given June 17, at Thessalonica, in the consulship of Gratian, for the fifth time, and Theodosius, Augusti (380).

Third Title Prenuptial Gifts, Gifts on Account of Marriage, and Engagement Gifts[13]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Metrodorus.* It makes a great deal of difference whether a husband-to-be actually delivers a gift of property to a wife which he later receives as a dowry, or whether, on the other hand, with the (mere) intention of making a gift, he augments the dowry, so

[12] = (with changes) C.Th. 3.6.1. Combine with C. 5.1.3 and the laws mentioned there.
[13] Many subscriptions in this Title are lost.

ea causa sunt, dotis effectae iudicio de dote peti possunt: posteriore autem nihil actum est donatione et, quod in dotem datum non est, non potest repeti.

[2] *Imp. Alexander A. Attalo.* Si praesidi provinciae probaveris, ut Eucliam uxorem duceres, munera te parentibus eius dedisse, nisi tibi Euclia nupserit, restitui tibi quod dedisti iubebit.

[3] *Idem A. Marcellae.* Pollicitatione a fratre quondam tuo sponsalium causa facta, et si in stipulationem deducta ideo praestanda non fuerit, quoniam in dote uxor maritum fefellit, exceptionem adversus actionem ex stipulatu recte obicies.

[4] *Imp. Gordianus A. Marco.* Quod sponsae ea lege donatur, ut tunc dominium eius adipiscatur, cum nuptiae fuerint secutae, sine effectu est.
PP. VIII k. Dec. Gordiano A. et Aviola conss.

[5] *Impp. Valerianus et Gallienus AA. Theodorae.* Ea, quae tibi ut sponsae daturum se repromisit is, qui te ficto caelibatu, cum aliam matrem familias domi reliquisset, sollicitavit ad nuptias, petere cum effectu non potes, cum tu sponsa uxore domi posita non fuisti.
Acc. id. Mai. Antiochiae Tusco et Basso conss.

[6] *Imp. Aurelianus A. Donatae.* Cum in te simplicem donationem dicas factam esse die nuptiarum et in ambiguo possit venire, utrum a sponso an marito donatum sit, sic distinguendum est, ut, si in tua domo donum acceptum est, ante nuptias videatur facta esse donatio, quod si penes se dedit sponsus, retrahi possit: uxor enim fuisti.

that he might seem to have received what he did not receive. For in the former case the gift is valid, and the property, as part of the dowry, can, under such circumstances, be recovered in an action on the dowry (after dissolution of the marriage). In the latter case, the gift is void, and what is not actually given as part of the dowry cannot be recovered.

[2] *Emperor* ALEXANDER *Augustus to Attalus.* If you prove to the governor of the province that you made gifts to the parents of Euclia in order that that you might take her as a wife, (then,) unless Euclia did in fact marry you, he will order the gifts to be restored to you.

[3] *The same Augustus to Marcella.* If your decedent brother promised a gift on the occasion of his engagement, even if this (promise) was framed in a stipulation, there is no liability because (of the fact that) his wife deceived him as to (the size of) her dowry, and you will properly raise an affirmative defense when sued in an action on the stipulation.[14]

[4] *Emperor* GORDIAN *Augustus to Marcus.* A gift made to an engaged woman upon the condition that she acquires ownership of the property in question after the marriage takes place is not valid.

Posted November 24, in the consulship of Gordian Augustus and Aviola (239).

[5][15] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Theodora.* You cannot successfully sue for a gift promised to you, as though to his fiancée, by a man who, pretending to be unmarried, proposed marriage to you, when in fact he had left behind another "wife" at home, since, (precisely) because he had a wife at home, you were not (in fact) his fiancée.

Received May 15, at Antioch, in the consulship of Tuscus and Bassus (258).

[6] *Emperor* AURELIAN *Augustus to Donata.* As to your declaration that you received an unconditional gift on the day of your wedding, it is potentially unclear whether it was made by your husband-to-be or by your husband. We must make the following distinction. If you received the gift in your house, it seems to have been made before the marriage; but if your "fiancé" gave it to you in his own house, it may be reclaimed, for you were then his wife.

[14] Evidently the addressee was her brother's heir: see Bas. 28.3.3.

[15] = (though on a different point, in part, with changes) C. 9.9.18.1, dated to May 15; Krüger prefers that date to the anomalous *xv id. Mai.* (= May 1?) in some manuscripts for this constitution.

[7] *Imppp. Carus Carinus et Numerianus AAA. Iuncianae.* Si, cum ante nuptias munera darentur, ita conventum est atque huiusmodi conscripta pactio est, ut, si qua fors extitisset contra voluntatem eius et matrimonium distraxisset, tunc quae data erant apud eum qui dedisset heredemve eius remanerent, potest qui eius hereditatem accepit, cui pacta puella munera supra dicta lege susceperat, eadem iure postulare.
PP. k. April.

[8] *Impp. Diocletianus et Maximianus AA. et CC. Euphrosyno.* Si ante matrimonium maior quinque et viginti annis constitutus sponsae suae, licet ante sponsalia, fundum donavit eamque in vacuam induxit possessionem, postea nullo titulo superstitem vel testamento eundem relinquentem alienare potuisse certi ac manifesti iuris est.
D. k. Mai. Tirallo AA. conss.

[9] *Idem AA. et CC. Iuliano.* Cum te sponsae filii tui quaedam donasse confitearis, perfectam donationem rescindi nec nostro oportet rescripto, quam tua voluntas iurisque auctoritas fecit ratam.
VIII k. Ian. AA. conss.

[10] *Idem AA. et CC. Dionysio.* Si filiae tuae sponsus ei mancipium donavit ac tu in eum iumenta liberalitatis ratione contulisti nec nuptiis secutis contra iuris rationem quod dederat abstulit, non invicem datorum restitutio, sed eius quod illicite rapuit repetitio competit.

[11] *Idem AA.* et CC. *Neae.* Si tibi res proprias liberalitatis causa sponsus tuus tradidit, eo, quod ab hostibus postea interfectus est, irrita donatio fieri non potest.

[12] *Idem AA. et CC. Timocleae et Cleotimae.* Si mater vestra filiae suae sponso vel marito praedia sine ulla repetendi lege donavit et eum in vacuam induxit possessionem, nuptiis divortio solutis perfecta non dissolvitur donatio.
S. VI id. Febr. Sirmi CC. conss.

[7] *Emperors* Carus, Carinus, *and* Numerian *Augusti to Iunciana.* If, when a prenuptial gift was made, it was agreed, in writing, that if ill luck (i.e., his wife's death) should, contrary to the prospective husband's wishes, dissolve the marriage, the gift should remain the property of the giver or his heir(s), the heir of the man whose fiancée had received the gift upon the above-mentioned condition may rightfully (*iure*) demand it back.

Posted April 1.

[8] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Euphrosynus.* If a man over 25 years of age gave a farm as a prenuptial gift to his fiancée even before their engagement, and he delivered undisturbed possession to her, the certain and unambiguous rule (*certum ac manifestum ius*) is that from this point on he could not alienate it in any way while living, nor dispose of it in his will.

Given May 1 at Tirallum, in the consulship of the Augusti (293).

[9] *The same Augusti and Caesars to Iulianus.* Whereas you acknowledge that you made a gift of some property to the fiancée of your son, and the transaction followed through, since your voluntary action and the authority of law has rendered it valid, it cannot be rescinded even by an imperial rescript.

December 25, in the consulship of the Augusti (293).

[10] *The same Augusti and Caesars to Dionysius.* If the fiancé of your daughter gave her a slave as a gift and you, in a spirit of generosity, made him a gift of some draft animals, and the marriage did not take place, and he unlawfully (*contra iuris rationem*) took away what he had given, there is no place for the restitution of what was reciprocally given, but an action is granted to recover what he illegally (*illicite*) carried away.

[11] *The same Augusti and Caesars to Nea.* If your fiancé, out of a sense of generosity, made over to you a gift of property that belonged to him, the gift cannot become void by the fact that he was afterwards killed by the enemy.

[12] *The same Augusti and Caesars to Timoclea and Cleotima.* If your mother gave properties to the fiancé or to the husband of her daughter without any conditions for its return and delivered undisturbed possession to him, the gift, because a completed transaction, cannot be revoked even though the marriage has been dissolved by divorce.

Written February 8, at Sirmium, in the consulship of the Caesars (294).

[13] *Idem AA. et CC. Alexandro.* De rebus in sponsam donationis gratia collatis creditores mariti facti, si non prius obligatas sibi probent, eam convenire minime possunt.

[14] *Idem AA. et CC. Aureliae.* Si consentiente matre sua sponsus filiae tuae mancipia donavit et his acceptis in dotem non aestimatis in matrimonio post decessit, mater eademque heres eius pretium offerens restitutionem eorum improbe recusat.

[15] *Imp. Constantinus A. ad Maximum pu.* **pr.** Cum veterum sententia displiceat, quae donationes in sponsam nuptiis quoque non secutis decrevit valere, ea, quae largiendi animo inter sponsos et sponsas iure celebrantur, redigi ad huiusmodi condiciones iubemus, ut, sive adfinitatis coeundae causa sive non ita, vel in potestate patris degentes vel ullo modo proprii iuris constituti tamquam futuri causa matrimonii aliquid sibi ipsi vel consensu parentum mutuo largiantur, si quidem sponsus vel parens eius sortiri noluerit uxorem, id quod ab eo donatum fuerit nec repetatur traditum et, si quid apud donatorem resedit, ad sponsam et heredes eius submotis ambagibus transferatur. **1.** Quod si sponsa vel is in cuius agit potestate causam non contrahendi matrimonii praebuerit, tunc sponso eiusque heredibus sine aliqua deminutione per condictionem aut per utilem in rem actionem redhibeantur. **2.** Quae similiter observari oportet et si ex parte sponsae in sponsum donatio facta sit. *D. xvii k. Nov. Constantino A. v et Licinio C. conss.*

[16] *Idem A. ad Tiberianum vicarium Hispaniarum.* **pr.** Si ab sponso rebus sponsae donatis interveniente osculo ante nuptias hunc vel illam mori contigerit, dimidiam partem rerum donatarum ad superstitem pertinere praecipimus, dimidiam ad defuncti vel defunctae heredes, cuiuslibet gradus sint et quocumque iure successerint, ut donatio stare

[13] *The same Augusti and Caesars to Alexander.* A husband's creditors cannot sue his wife to recover a gift he made to her when she was engaged to him, unless they prove that they had a lien on it previously.

[14] *The same Augusti and Caesars to Aurelia.* If the fiancé of your daughter gave slaves as a gift to her with the consent of his mother and these were received by him as part of your daughter's dowry without an appraisal (*aestimatio*), and he subsequently died while still married, his mother and heir, though she offers to pay the value of the slaves, has no right to refuse to turn them over.

[15][16] *Emperor* Constantine *Augustus to Maximus, City Prefect.* **pr.** Since we are dissatisfied with the traditional view that gifts made to an engaged woman are valid even when the marriage does not take place, We order that the following conditions shall apply in the case of gifts lawfully made, from a spirit of generosity, between engaged persons. If persons make gifts to each other, either for the (express) purpose of contracting a marriage relationship, or otherwise, but with a view to a marriage in future, whether such persons are under paternal power or *sui iuris*, whether they act simply of their own accord or together with the consent of their ascendant male relatives, if in fact the groom-to-be (later) refuses to marry the woman or his ascendant male relative refuses to have him do so, the gift he has handed over cannot be recovered, and if any part of the gift has remained in the possession of the giver, it shall, without any legal obscurities (intervening), be turned over to the woman or her heirs. **1.** But if the engaged woman or the person in whose power she stands should be responsible for the marriage not taking place, then the gift shall be recovered in its entirety by the engaged man and his heirs in an action for restitution (*condictio*) or in an analogous property action (*actio utilis in rem*). **2.** These provisions shall also apply if a bride-to-be's side has made a gift to her fiancé.

Given October 16, in the consulship of Constantine Augustus, for the fifth time, and the Caesar Licinius (319).

[16][17] *The same Augustus to Tiberianus, Vicar of the Spanish provinces.* **pr.** If an engaged man gives property as a gift to his bride-to-be, and the transaction is sealed with a kiss, but it happens that he or she dies before the marriage takes place, We direct that one-half of the property given as a gift shall belong to the survivor, and the other half shall belong to the heirs of the deceased, no matter what their degree of relationship, and by whatever right they become heirs, so

[16] = (in part, with changes) C.Th. 3.5.2.
[17] = (with minor changes) C.Th. 3.5.6.

pro parte media et solvi pro parte media videatur: osculo vero non interveniente, sive sponsus sive sponsa obierit, totam infirmari donationem et donatori sponso vel heredibus eius restitui. 1. Quod si sponsa interveniente vel non interveniente osculo donationis titulo (quod raro accidit) fuerit aliquid sponso largita et ante nuptias hunc vel illam mori contigerit, omni donatione infirmata ad donatricem sponsam sive eius successores donatarum rerum dominium transferatur.

D. id. Iul. Constantinopoli Nepotiano et Facundo conss.

[17] *Impp. Theodosius et Valentinianus AA. Hierio pp.* Minoribus aetate feminis etiam actorum testificatione in ante nuptias donatione ad eas facta omissa, si patris auxilio destitutae sint, iuste consulitur, ut firma donatio sit.

D. x k. Mart. Constantinopoli Tauro et Felice conss.

[18] *Imp. Zeno A. Sebastiano pp.* Si liberis ex priore matrimonio procreatis pater ad secundas migraverit nuptias vel non migraverit, nihil omnino filiis prioris coniugii ex donatione ante nuptias, quam ipse vel alius pro ipso uxori quondam eius matri communium liberorum donaverat, servare cogatur, quoniam et mater liberis ex priore matrimonio extantibus post secundas nuptias multoque amplius, si non fuerit alteri marito sociata, nihil isdem filiis ex dote, quam patri eorum ipsa vel alius pro ea obtulerit, servare compellitur.

D. k. Mai. Zenone A. cons.

[19] *Imp. Iustinus A. Archelao pp.* pr. Si constante matrimonio consilium augendae dotis inierit vel uxor forte vel eius nomine quilibet alius, nihilo minus marito quoque liceat seu pro marito cuilibet alii tanto donationem ante nuptias additamento maiorem facere, quanto dotis augetur titulus, nec obsit in huiusmodi munificentiis interdictas

that the gift shall be deemed valid for half and invalid as to the other half. But if no kiss has been exchanged and the man or woman dies, the whole gift shall be void, and shall be restored to the giver or to his heirs. 1. But in a situation where the bride-to-be makes a gift to her fiancé, which seldom happens, and he or she should happen to die before the marriage takes place, then the entire gift shall be void whether a kiss has been exchanged or not, and ownership of the property given as a gift shall be restored to the giver or to her heirs.

Given July 15, at Constantinople, in the consulship of Nepotianus and Facundus (336).[18]

[17][19] *Emperors Theodosius and Valentinian Augusti to Hierius, Praetorian Prefect.* Prenuptial gifts, when made to women less than 25 and deprived of paternal assistance, shall be valid, on a proper reading of the law, even without registering them in public documents.

Given February 20, at Constantinople, in the consulship of Taurus and Felix (428).

[18][20] *Emperor Zeno Augustus to Sebastianus, Praetorian Prefect.* Whether a father, who has children by a prior marriage, marries again or not, he shall not be compelled to keep for the children of his prior marriage any part at all of the prenuptial gift which he, or someone else for him, had given to his former wife, the mother of their common children, since the mother too, though she has children surviving from a prior marriage, is not compelled to keep for these children, after remarrying, and even more so if she does not remarry, any part of the dowry which she personally, or someone for her, had given to their father.

Given May 1, in the consulship of Zeno Augustus (479).[21]

[19] *Emperor Justin Augustus to Archelaus, Praetorian Prefect.*[22] pr. If, while she is married, a wife, or someone else acting on her behalf, happens to plan on increasing her dowry, the husband, or someone else acting on his behalf, may also increase the prenuptial gift by an amount equal to the increase in the dowry, nor shall it be an objection, regarding such acts of generosity, that a

[18] The date is more likely to be July 15, 335: so Seeck and Projet Volterra.
[19] = (in part, with changes) C.Th. 3.5.13. Combine with C. 2.57.2, 5.4.22, 5.11.6, 6.18.1, 6.24.11, 6.61.2.
[20] Combine with C. 3.28.29.
[21] Other constitutions show that this was Zeno's second consulship.
[22] C. 5.3.20.9 suggests that Justinian issued this constitution along with Justin; but Inst. 2.7.3 also attributes the constitution to Justin alone. Lounghis *et al.* date to between April 4 and August 1, 527.

esse liberalitates tempore nuptiarum: indulgendum est namque consensui communi partium, ne, cum negetur augendae potestas donationis, dotis etiam pigrius constituatur augmentum. **1.** Idemque licere praecipimus etiam in his matrimoniis, in quibus interdum accidit ante nuptias quidem donationem nullam esse, solam vero dotem marito mulierem obtulisse, ut etiam tunc muliere dotem augente liceat marito quoque donationem in uxorem suam eiusdem quantitatis facere, quantum aucta dos continere dignoscitur: pactis videlicet de redhibitione vel retentione auctae dotis vel donationis, prout partes consenserint, pro iam statuto modo ineundis sive iniungendis veteribus pactis, quae initio nuptiarum de ante nuptias donatione et dote principaliter constituenda inita sunt. **2.** Iura etiam hypothecarum, quae in augenda dote vel donatione fuerint, ex eo tempore initium accipiant, ex quo eaedem hypothecae contractae sunt, et non ad prioris dotis vel ante nuptias donationis tempora referantur.

3. Sed et si e contrario maritus et uxor ad deminuendam dotem et ante nuptias donationem consenserint, licere eis ad similitudinem deminutionis quae in dote fit etiam ante nuptias minuere donationem, ut pacta de amborum deminutionibus ineunda firma et legitima esse intellegantur: exceptis videlicet his casibus, in quibus aut maritus ex priore matrimonio liberos habens ad secundas migraverit nuptias aut uxor similiter ex anteriore matrimonio liberis ei existentibus secundo marito se iunxerit. in hoc enim secundo matrimonio vel a parte mariti vel a parte mulieris vel ab utraque, si hoc etiam evenerit, interdictam esse deminutionem dotis et ante nuptias donationis, ne aliquid adversus filios prioris matrimonii machinari videatur, censemus.

[20] *Imp. Iustinianus A. Iohanni pp.* **pr.** Cum multae nobis interpellationes factae sunt adversus maritos, qui decipiendo suas uxores faciebant donationes, quas ante nuptias antiquitas nominavit, insinuare autem eas actis intervenientibus supersedebant, ut ineffectae maneant et ipsi quidem commoda dotis lucrentur, uxores autem sine nuptiali remedio relinquantur, sancimus nomine prius emendato ita rem corrigi et non ante nuptias donationem eam vocari, sed propter nuptias donationem. **1.** Quare enim dotem quidem et constante matrimonio mulier marito dare conceditur, donationem autem marito nisi ante nuptias facere non permittitur? et quae huius rei differentia rationabilis potest inveniri, cum melius erat mulieribus propter fragilitatem sexus quam maribus

gift during marriage is forbidden. We should yield to the common consent of the parties, so as to avoid the result that, if the right to increase the prenuptial gift is denied, an increase in the dowry will also be made more sparingly. 1. We direct that this shall be permitted also in cases in which, as sometimes happens, no prenuptial gift at all was made, but the wife simply brought a dowry to her husband, so that if a woman in such a case increases her dowry, the husband shall be permitted to make a gift to his wife to the extent that the dowry has manifestly been increased. That is to say that a new agreement shall be made, in the manner already provided, as to the return or retention of the increased dowry or prenuptial gift, as the parties desire, or additions shall be made to the original agreements entered into at the beginning of the marriage to lay out the details directly pertaining to the prenuptial gift and the dowry. 2. Also, the rights deriving from (real) security arrangements in connection with an increased dowry or prenuptial gift shall take their beginning from the time when these very contracts were entered into, and shall not be related to the time of the prior dowry or prenuptial gift.

3. All the same, if on the contrary the husband and wife should agree to diminish the dowry and prenuptial gift, they shall be permitted to decrease the prenuptial gift in like manner as the dowry, and the agreements made as to the mutual decrease shall be valid and legal, except, of course, in those cases in which the husband, having children by a prior marriage, remarries, or the wife, similarly having children surviving from a former marriage, remarries. For We ordain that if the husband or wife or even both remarry, decrease of dowry or prenuptial gift shall be forbidden, so that no detriment shall seem to be contrived for the children of the prior marriage.

(527?).

[20] *Emperor Justinian Augustus to John, Praetorian Prefect.* pr. Since many appeals have been made to Us against husbands who, to deceive their wives, have been accustomed to make gifts which in antiquity were called prenuptial gifts, and which, however, they neglected to register in the public records with the intent that they (the gifts) might remain invalid although they (the husbands) enjoyed the benefit of the dowry, leaving their wives moreover without a remedy once married, We lay down that the situation shall be corrected by changing the old name, and such a gift shall no longer be called prenuptial (*donatio ante nuptias*), but a gift on account of marriage (*donatio propter nuptias*). 1. For why is a woman permitted to give a dowry to her husband even, to be sure, during marriage, while a husband is not permitted to make any gift except before marriage? And how can this difference be considered reasonable, when it would be better to help women on account of the weakness of their

subveniri? 2. Sicut enim dos propter nuptias fit et sine nuptiis quidem nulla dos intellegitur, sine dote autem nuptiae possunt celebrari, ita et in donationibus, quas mariti faciunt vel pro his alii, debet esse aperta licentia et constante matrimonio talem donationem facere, quae quasi antipherna possit intellegi et non simplex donatio. ideo enim et antiqui iuris conditores inter donationes etiam dotes connumerant. 3. Si igitur et nomine et substantia nihil distat a dote ante nuptias donatio, quare non etiam ea simili modo et matrimonio contracto dabitur?

4. Sancimus itaque omnes licentiam habere sive priusquam matrimonia contraxerint sive postea donationes mulieribus dare propter dotis dationem, ut non simplices donationes intellegantur, sed propter dotem et propter nuptias factae. simplices etenim donationes non propter nuptias fiunt, sed propter nuptias vetitae sunt: et propter alias causas et libidinem forsitan vel unius partis egestatem, non propter ipsam nuptiarum adfectionem efficiuntur. 5. Si igitur dote iam praestita maritus nulla ante nuptias facta donatione donare mulieri res maluerit, ita tamen, ut dotis quantitatem non excedant, et hoc ipsum significaverit, quod non simplicem faciat donationem, sed propter dotem iam conscriptam et ipse ad donationem venerit, licebit ei hoc facere et supponatur pactis dotalibus huiusmodi donatio. et si quidem hoc fuerit specialiter expressum, pacta conventa servari oportet. 6. Sin autem donatio quidem talis facta sit, utpote autem dotali instrumento antecedente nulla pacta tali donationi post nuptias inserantur, re ipsa videatur esse hoc pactum, et secundum dotales conventiones intellegantur et in tali donatione pacta fuisse conventa, ut aequis passibus utraque ambulet tam dos quam donatio.

7. Ita tamen, ut Leoniana constitutio, quae super exaequatione pactionum loquitur non in quantitate, sed in partibus, maneat in his casibus intacta, et non solum ea immutilata custodiatur, sed etiam nostra, quam

gender (*fragilitas sexus*),[23] rather than come to the aid of males? **2.** For as dowry comes about on account of marriage, and no dowry is recognized without a marriage, certainly, while marriage may be entered into without a dowry, so husbands, or others acting on their behalf, ought to have free rein to make such a gift even during marriage, which can be understood as a counter-dowry (*antipherna*) rather than as a mere gift. That is because those who established the law in antiquity categorized even dowry as a gift. **3.** If, then, a prenuptial gift does not differ at all either in name or substance from dowry, why, likewise, should it not be permitted to be given even during marriage?

4. We accordingly lay down that everyone has permission to make gifts to women before or after the marriage begins on account of the giving of a dowry. These gifts shall not be considered as mere gifts, but as gifts made on account of dowry and on account of marriage. For mere gifts are not made on account of marriage, but are forbidden (precisely) on account of marriage. They come about for other motives, such as lust, perhaps, or the poverty of one of the parties, but not because of the very desire for marriage. **5.** If, therefore, a dowry has already been given, but no prenuptial gift has been made, and the husband wants to make one to his wife, and he expressly states that he does not make a mere gift, but is making it on account of a dowry already reduced to writing, and he arrives at (the idea of) the gift himself, he will be permitted to do so, provided, however, it does not exceed the value of the dowry, and a record of this kind of gift shall be added to the dowry agreement. And if indeed this has been specifically set forth, it ought to be respected as a formal agreement. **6.** If, moreover, such a gift has in fact been made, and, as one might expect, however, a document concerning the dowry had been previously drawn up containing no reference to a gift made after the marriage, this agreement (concerning the gift made on account of marriage) shall be construed in actual fact such that the formal agreements (concluded at the time of marriage) are understood both to have been made in line with the terms of the dowry arrangements and to have included this gift, so that both the dowry and gift shall stand on the same footing.

7. The constitution of Leo,[24] however, which speaks to the equalization of agreements, not as to quantity but as to the portions, shall remain in force in such cases. Not only shall that law remain in effect, but also Our constitution,[25] which We enacted to interpret the former, so as to dispel all ambiguity therein. Where, then, agreements providing for unequal gifts are made, We ordain that

[23] The Romans themselves typically regarded gender weakness as a biological fact (so suggesting a translation of *sexus* as "sex"), whereas we would classify it as a social/cultural construct (thus supporting the translation of "gender"). There is evidence all the same that some Romans viewed it in a manner similar to ours: see Gaius 1.190.

[24] C. 5.14.9.

[25] C. 5.14.10.

de interpretatione eius fecimus ambiguitatem eius tollentes: disparibus etenim pactionibus factis maiorem lucri partem ad minorem deducendam esse censemus, ut eodem modo uterque minorem partem lucretur. **8.** Similique modo si facta quidem fuerit talis donatio, quae antea quidem ante nuptias vocabatur, nunc autem propter nuptias, non autem ante nuptias fuerit actis intervenientibus insinuata, licebit et constante matrimonio eam insinuare, nullo obstaculo penitus ex nuptiarum interventu faciendo: si enim fieri eas post nuptias concedatur, multo magis insinuari. **9.** Similique modo et ea constitutio, quam pro augendis tam dotibus quam ante nuptias donationibus fecimus, intacta illabataque conservetur: omnibus videlicet, quae de simplicibus donationibus inter maritum et uxorem constante matrimonio vel a veteribus vel a nobis statuta sunt, in suo robore duraturis.

IIII De Nuptiis

[1] *Impp. Severus et Antoninus AA. Potito.* Cum de nuptiis puellae quaeritur nec inter tutorem et matrem et propinquos de eligendo futuro marito convenit, arbitrium praesidis provinciae necessarium est.

D. non. Mai. Anullino et Frontone conss.

[2] *Idem AA. Trophimae.* Si nuptiis pater tuus consensit, nihil oberit, quod instrumento ad matrimonium pertinenti non subscripsit.

[3] *Idem AA. Valeriae.* Libertum, qui patronam seu patroni filiam vel coniugem vel neptem vel proneptem uxorem ducere ausus est, apud competentem iudicem accusare poteris moribus temporum meorum congruentem sententiam daturum, quae huiusmodi coniunctiones odiosas esse merito duxerunt.

Id. Nov. Dextro II et Prisco conss.

the greater gift shall be equalized with the smaller, that is to say, both parties shall in equal manner have the benefit only of the smaller gift.

8. If, in like manner, such a gift shall in fact have been made, which was formerly called a prenuptial gift, but now a gift on account of marriage, but was not registered in the public records before marriage, it may be registered even during marriage, and the existing marriage shall not at all be an obstacle thereto. For if these gifts are permitted to be made after marriage, all the more shall they be permitted to be registered (after marriage). **9.** In the same way, that constitution which We enacted as to the increase of both dowry and prenuptial gifts[26] shall also remain in full force and effect. Clearly all provisions laid down by the ancients or by us concerning mere gifts between husband and wife during marriage shall retain their full vigor.

(531–533).[27]

Fourth Title Marriage[28]

[1] *Emperors Severus and Antoninus Augusti to Potitus.* When a judicial hearing is held on the marriage of a young (*sui iuris*) girl, and her *tutor*, mother, and close relatives fail to reach an agreement over the choice of her husband-to-be, the decision of the provincial governor is required.

Given May 7, in the consulship of Anullinus and Fronto (199).

[2] *The same Augusti to Trophima.* If your father consented to your marriage, the fact that he did not sign the appropriate marriage document is not a problem.

[3][29] *The same Augusti to Valeria.* Should a freedman dare to marry his former owner, or the daughter, wife, granddaughter, or great-granddaughter of his former owner, you will be able to prosecute him before the appropriate judge. The judge will issue a sentence consistent with the policy I have pursued as emperor (*mores temporum meorum*), which has rightly regarded unions of this kind as hateful.

November 13, in the consulship of Dexter, for the second time, and Priscus (196).

[26] C. 5.3.19.
[27] See Inst. 2.7.3.
[28] See. D. 23.2; Inst. 1.10.
[29] This text is out of place; it should precede the first *constitutio* in the Title.

[4] *Imp. Alexander A. Perpetuo.* Liberi concubinas parentum suorum uxores ducere non possunt, quia minus religiosam et probabilem rem facere videntur. qui si contra hoc fecerint, crimen stupri committunt.
III id. April. Modesto et Probo conss.

[5] *Idem A. Maximae.* Si, ut proponis, pater quondam mariti tui, in cuius fuit potestate, cognitis nuptiis vestris non contradixit, vereri non debes, nepotem suum ne non agnoscat.

[6] *Imp. Gordianus A. Valeriae.* Etsi contra mandata principum contractum sit in provincia consentiente muliere matrimonium, tamen post depositum officium si in eadem voluntate perseveraverit, iustae nuptiae efficiuntur: et ideo postea liberos susceptos natosque ex iusto matrimonio legitimos esse responsum viri prudentissimi Pauli declarat.
XII k. Sept. Gordiano A. et Aviola conss.

[7] *Idem A. Apro.* Si, ut proponis, post querellam de marito a filia ad te delatam dissociatum est matrimonium nec te consentiente ad eundem regressa est, minus legitima coniunctio est cessante patris voluntate, in cuius est potestate: atque ideo non paenitente filia petitionem dotis repetere non prohiberis.
PP. IIII k. Nov. Sabino et Venusto conss.

[8] *Idem A. Romano.* In copulandis nuptiis nec curatoris, qui solam rei familiaris sustinet administrationem, nec cognatorum vel adfinium ulla auctoritas potest intervenire, sed spectanda est eius voluntas, de cuius coniunctione tractatur.
D. V k. Mart. Gordiano A. II et Pompeiano conss.

[9] *Imp. Probus A. Fortunato.* Si vicinis vel aliis scientibus uxorem liberorum procreandorum causa domi habuisti et ex eo matrimonio filia suscepta est, quamvis neque nuptiales tabulae neque ad natam filiam

[4] *Emperor* ALEXANDER *Augustus to Perpetuus.* Children (or grandchildren) cannot marry the concubines of their male ascendants, because this is deemed to be an act that is morally and socially objectionable. Those who do so are guilty of criminal fornication (*stuprum*).

April 11, in the consulship of Modestus and Probus (228).

[5] *The same Augustus to Maxima.* If, on the facts as you state them, the father of your decedent husband, in whose power (*potestas*) the latter stood, did not oppose your marriage though he knew about it, you need not worry that he refuses to acknowledge his grandson as his own.

[6][30] *Emperor* GORDIAN *Augustus to Valeria.* Even though, in violation of standing imperial instructions (*mandata principum*), a marriage (with an administrator) took place in a province with the consent of the woman, nevertheless, if, after (the husband) has stepped down from his post, she should continue to be so minded, the marriage becomes valid. And for that reason a reply to a request for legal advice (*responsum*) from Paul, a man very learned (in the law), holds that their children are legitimate, being begotten and born in a valid marriage.

August 21, in the consulship of Gordian Augustus and Aviola (239).

[7] *The same Augustus to Aper.* If, on the facts as you state them, after your daughter complained to you about her husband and the marriage was ended, she then went back to him without your consent, this is not a valid marriage, since the agreement of the father, in whose power (*potestas*) she stands, is lacking. And, for that reason, if your daughter does not have a change of heart, you will not be barred from bringing an action to recover the dowry.

Posted October 29, in the consulship of Sabinus and Venustus (240).[31]

[8] *The same Augustus to Romanus.* In contracting a marriage, no weight is given to the agreement of the *curator*, who has responsibility only for managing the household assets, nor that of relatives by blood or by marriage; but consideration must be taken (only) of the will of the party to the marriage.

Given February 25, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

[9] *Emperor* PROBUS *Augustus to Fortunatus.* If your neighbors or others knew that you have had a wife at home for the purpose of siring children and a daughter has been born from this marriage, then, although no documents

[30] = (in part, with changes) Paul. (7 *resp.*), D. 23.2.65.1.

[31] Other constitutions show that this was the second consulship for Sabinus.

pertinentes factae sunt, non ideo minus veritas matrimonii aut susceptae filiae suam habet potestatem.

[10] *Impp. Diocletianus et Maximianus AA. Paulinae.* Cum te non ex senatore patre procreatam ob matrimonium cum senatore contractum clarissimae feminae nomen adeptam dicas, claritas, quae beneficio mariti tibi parata est, si secundi ordinis virum postea sortita es redacta ad prioris dignitatis statum, deposita est.

[11] *Idem AA. Alexandro.* Si invita detinetur uxor tua a parentibus suis, interpellatus rector provinciae amicus noster exhibita muliere voluntatem eius secutus desiderio tuo medebitur.

[12] *Idem AA. Sabino.* Ne filium quidem familias invitum ad ducendam uxorem cogi legum disciplina permittit. igitur, sicut desideras, observatis iuris praeceptis sociare coniugio tuo quam volueris non impediris, ita tamen, ut in contrahendis nuptiis patris tui consensus accedat.

D. non. Nov. Diocletiano A. II et Aristobulo conss.

[13] *Idem AA. et CC. Onesimo.* Neque sine nuptiis instrumenta facta matrimonii ad probationem sunt idonea diversum veritate continente, neque non interpositis instrumentis iure contractum matrimonium irritum est, cum omissa quoque scriptura cetera nuptiarum indicia non sunt irrita.

[14] *Idem AA. et CC. Titio.* Neque ab initio matrimonium contrahere neque dissociatum reconciliare quisquam cogi potest. unde intellegis liberam facultatem contrahendi atque distrahendi matrimonii transferri ad necessitatem non oportere.

[15] *Idem AA. et CC. Titiano.* Uxorem libertam suam manumissori, si non sit ex his personis, quae specialiter prohibentur, ducere non est interdictum, et ex eo matrimonio iustos patri filios nasci certissimum est.

were drawn up relating to the marriage or the daughter's birth, nonetheless the truth of the marriage and of the daughter you have had possesses a (probative) force of its own.

[10] *Emperors Diocletian and Maximian Augusti to Paulina.* Since you declare that you were not born of a senatorial father, but that through marriage with a senator you acquired the status of a woman from the senatorial order (*clarissima femina*), senatorial status (*claritas*), which was achieved by you thanks to your husband, has (now) been set aside if, having subsequently chosen a husband of the second rank (i.e., an equestrian), you have been reduced to the level of your previous social rank.

[11] *The same Augusti to Alexander.* If your wife is being detained by her parents against her will, when you appeal to our good friend the provincial governor, he will, once she has been produced in court and pursuant to her wishes, provide balm for your heartache.

[12] *The same Augusti to Sabinus.* The rule of law (*disciplina legum*) does not permit that even a son in paternal power (*filiusfamilias*) be compelled to marry against his will. Therefore, in accordance with your desires, you are not prevented, provided that the relevant legal rules (*iuris praecepta*) are respected, from marrying the woman you wish, but only if your father consents to the marriage.

Given November 5, in the consulship of Diocletian Augustus, for the second time, and Aristobulus (285).

[13] *The same Augusti and the Caesars to Onesimus.* Documents drawn up to prove the existence of a marriage are void when the marriage does not take place, since the truth of the matter contradicts them. Nor is a lawfully contracted marriage invalid when documents have not been drawn up, since, even in the absence of written documentation, the other proofs of marriage are not without effect.

[14] *The same Augusti and Caesars to Titius.* No one can be compelled to start a new marriage or patch one together once it has come apart. From this you understand that the free capacity of beginning or ending a marriage ought not to be transformed into constraint.

[15] *The same Augusti and Caesars to Titianus.* A man who manumits his slave is not prohibited from marrying her when she is freed, unless he is among those persons who are specifically forbidden to do so, and it is a very fixed rule that children born from this marriage are their father's legitimate offspring.

[16] *Idem AA. et CC. Rhodoni.* Patrem, qui filiam exposuit, at nunc adultam sumptibus et labore tuo factam matrimonio coniungi filio desiderantis favere voto convenit. qui si renitatur, alimentorum solutioni in hoc solummodo casu parere debet.

[17] *Impp. Diocletianus et Maximianus AA. et CC.* Nemini liceat contrahere matrimonium cum filia nepte pronepte, itemque matre avia proavia et ex latere amita ac matertera, sorore sororis filia et ex ea nepte, praeterea fratris filia et ex ea nepte, itemque ex adfinibus privigna noverca nuru socru ceterisque, quae iure antiquo prohibentur: a quibus cunctos volumus abstinere.

D. k. Mai. Damasco Tusco et Anullino conss.

[18] *Imppp. Valentinianus Valens et Gratianus AAA. ad senatum.* **pr.** Viduae intra quintum et vicesimum annum degentes, etiam si emancipationis libertate gaudent, tamen in secundas nuptias sine patris sententia non conveniant. **1.** Quod si in condicionis delectum mulieris voluntas repugnat sententiae propinquorum, placet admodum, ut in virginum coniunctionibus sanctum est, habendo examini auctoritatem quoque iudiciariae cognitionis adiungi, ut, si pares sunt genere ac moribus petitores, is potior aestimetur, quem sibi consulens mulier adprobaverit.

2. Sed ne forte ii, qui gradu proximo ad viduarum successiones vocantur, et honestas nuptias impediant, si huiusmodi rei suspicio processerit, eorum volumus auctoritatem iudiciumque succedere, ad quos, etiamsi fatalis sors intercesserit, tamen hereditatis commodum pervenire non possit.

D. XVII k. Aug. Gratiano A. II et Probo conss.

[19] *Impp. Arcadius et Honorius AA. Eutychiano pp.* Celebrandis inter consobrinos matrimoniis licentia huius legis salubritate indulta est, ut revocata prisci iuris auctoritate restinctisque calumniarum fomentis

[16] *The same Augusti and Caesars to Rhodo.* It is appropriate that a father, who abandoned his daughter as an infant, if she has now been raised to adulthood through your expense and effort, agree with your wish of uniting her to your son in marriage. But if he should refuse, he ought, only in this situation, to accede to paying the expenses incurred in rearing the child (*alimenta*).

[17][32] *The same Augusti and Caesars.* No one shall be permitted to contract marriage with a daughter, granddaughter, or great-granddaughter, and likewise with a mother, grandmother, or great-grandmother, and collaterally with a father's or mother's sister, one's own sister, her daughter, or her granddaughter through that daughter, and, moreover, a brother's daughter or his granddaughter through that daughter, and likewise, among relatives by marriage, a stepdaughter, stepmother, daughter-in-law, mother-in-law, and all the rest forbidden by ancient legal principle (*ius antiquum*). We wish everyone to keep away from these (marriage partners).

Given May 1, at Damascus, in the consulship of Tuscus and Anullinus (295).

[18][33] *Emperors* Valentinian, Valens, *and* Gratian *Augusti to the Senate.* pr. Previously married womens less than 25 years old, even if they delight in having been emancipated from paternal power, shall nevertheless not agree to a subsequent marriage without a father's consent. 1. But if, in the choice of a marriage partner, a woman's preference (*voluntas*) is in conflict with the decision of her near relatives, We are very much of the view that, with regard to the marriages of never-married women, the rule is that, after an obligatory investigation, an authoritative judicial hearing shall also be held, so that, if the suitors are equals in birth and character, one shall be reckoned the better candidate whom the woman, consulting her own interest, has approved.

2. But so that it not happen that they, who as next-of-kin are eligible to succeed to the estates of decedent previously married women, block even honorable marriages, if a suspicion of this sort of thing should arise, We wish that the authority and judgment prevail of those persons who, even if death should intervene, nevertheless cannot gain the benefit of an inheritance.

Given July 16, in the consulship of Gratian Augustus, for the second time, and Probus (371).

[19] *Emperors* Arcadius *and* Honorius *Augusti to Eutychianus, Praetorian Prefect.* Permission is given by this salutary statute (*lex*) for first cousins to marry each other. With the authority of the ancient law (*priscum ius*) reinstated

[32] = (with changes) *Collatio* 6.4.5, omitting "moreover, a brother's daughter or his granddaughter through that daughter."

[33] = (in part, with changes) C.Th. 3.7.1.

matrimonium inter consobrinos habeatur legitimum, sive ex duobus fratribus sive ex duabus sororibus sive ex fratre et sorore nati sunt, et ex eo matrimonio editi legitimi et suis patribus successores habeantur.

D. III id. Iun. Nicaeae Stilichone II et Anthemio conss.

[20] *Impp. Honorius et Theodosius AA. ad Theodorum pp.* **pr.** In coniunctione filiarum in sacris positarum patris expectetur arbitrium: si sui iuris puella sit intra quintum et vicesimum annum constituta, ipsius quoque exploretur adsensus. si patris auxilio destituta, matris et propinquorum et ipsius quoque requiratur adultae iudicium. **1.** Si vero utroque orbata parente sub curatoris defensione consistat et inter honestos competitores matrimonii oriatur forte certamen, ut quaeratur, cui potissimum puella iungenda sit, si puella cultu verecundiae propriam noluerit depromere voluntatem, coram positis propinquis iudici deliberare permissum sit, cui melius adulta societur.

[21] *Impp. Theodosius et Valentinianus AA. Basso pp.* A caligato milite usque ad protectoris personam et sine aliqua sollemnitate matrimoniorum liberam cum ingenuis dumtaxat mulieribus contrahendi coniugii permittimus facultatem.

[22] *Idem AA. Hierio pp.* Si donationum ante nuptias vel dotis instrumenta defuerint, pompa etiam aliaque nuptiarum celebritas omittatur, nullus aestimet ob id deesse recte alias inito matrimonio firmitatem vel ex eo natis liberis iura posse legitimorum auferri, inter pares honestate personas nulla lege impediente consortium, quod ipsorum consensu atque amicorum fide firmatur.

D. x k. Mart. Constantinopoli Felice et Tauro conss.

and the kindling of malicious accusations extinguished, marriage between first cousins shall be deemed valid, regardless of whether they are the children of two brothers, or of two sisters, or of a brother and a sister. Offspring produced by such a marriage shall be deemed legitimate children and lawful claimants to their father's estates.

Given June 11, at Nicaea, in the consulship of Stilicho, for the second time, and Anthemius (405).

[20][34] *Emperor* HONORIUS *and* THEODOSIUS *Augusti to Theodorus, Praetorian Prefect.* **pr.** The decision of the father shall be awaited regarding the marriage of daughters in his power (*sacra*). If the girl is *sui iuris* and less than 25 years old, her consent shall be ascertained as well. If she is deprived of her father's assistance, the views of her mother, near relatives, and herself too, if she is an adult, shall be solicited. **1.** But if she should be a full orphan, standing under the protection of a *curator*, and a contest should happen to arise among honorable suitors for her hand in marriage, with the result that the question is brought before a court as to which candidate the girl should preferably be joined in marriage, if the girl, out of an affectation of modesty declines to disclose her own preference, it shall be permitted to the judge to take counsel, in the presence of her near relatives, as to with whom it is better that the young woman be united in marriage.

(408–409).

[21][35] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Bassus, Praetorian Prefect.* We grant the free capacity to contract marriage, provided this is with free-born women, (to all soldiers, ranging) from the infantry rank-and-file to the imperial bodyguard, even without any kind of marriage ceremony.

(426).

[22][36] *The same Augusti to Hierius, Praetorian Prefect.* If documentation of prenuptial gifts or of the dowry is lacking, and if there is no marriage procession or other aspects of a wedding ceremony, no one shall reckon on this account that a marriage otherwise correctly entered into lacks validity or that the rights of legitimate children can be taken from those born of this union, when it is contracted between persons of equal status. No law impedes it, and it is sealed by the consent of the parties and the witness of their friends.

Given February 20, at Constantinople, in the consulship of Felix and Taurus (428).

[34] Combine perhaps with C. 5.8.1, dated to 409; Seeck gives January 409.
[35] Combine with perhaps C. 6.7.4; C.Th. 4.6.7; see C.Th. 4.6.8. Seeck dates to March 30, 426.
[36] = C.Th. 3.7.3. Combine with C. 2.57.2, 5.3.17, 5.11.6, 6.18.1, 6.24.11, 6.61.2; C.Th. 4.6.8.

[23] *Imp. Iustinus A. Demostheni pp.* **pr.** Imperialis benevolentiae proprium hoc esse iudicantes, ut omni tempore subiectorum commoda tam investigare quam eis mederi procuremus, lapsus quoque mulierum, per quos indignam honore conversationem imbecillitate sexus elegerint, cum competenti moderatione sublevandos esse censemus minimeque eis spem melioris condicionis adimere, ut ad eam respicientes improvidam et minus honestam electionem facilius derelinquant. nam ita credimus dei benevolentiam et circa genus humanum nimiam clementiam quantum nostrae naturae possibile est imitari, qui cottidianis hominum peccatis semper ignoscere dignatur et paenitentiam suscipere nostram et ad meliorem statum reducere: quod si circa nostro subiectos imperio nos etiam facere differamus, nulla venia digni esse videbimur.

1. Itaque cum iniustum sit servos quidem libertate donatos posse per divinam indulgentiam natalibus suis restitui postque huiusmodi principale beneficium ita degere, quasi numquam deservissent, sed ingenui nati essent, mulieres autem, quae scaenicis quidem sese ludis immiscuerunt, postea vero spreta mala condicione ad meliorem migravere sententiam et inhonestam professionem effugerunt, nullam spem principalis habere beneficii, quod eas ad illum statum reduceret, in quo, si nihil peccatum esset, commorari potuerint: praesenti clementissima sanctione principale beneficium eis sub ea lege condonamus, ut, si derelicta mala et inhonesta conversatione commodiorem vitam amplexae fuerint et honestati sese dederint, liceat eis nostro supplicare numini, ut divinos adfatus sine dubio mereantur ad matrimonium eas venire permittentes legitimum: **1a.** His, qui eis coniungendi sunt, nullo timore tenendis, ne scitis praeteritarum legum infirmum esse videatur tale coniugium, sed ita validum huiusmodi permanere matrimonium confidentibus, quasi nulla praecedente inhonesta vita uxores eas duxerint, sive dignitate praediti sint sive alio modo scaenicas in matrimonium ducere prohibeantur, dum tamen dotalibus omnimodo instrumentis, non sine scriptis tale probetur coniugium. **1b.** Nam omni macula penitus direpta et quasi suis natalibus huiusmodi mulieribus

[23] *Emperor* JUSTIN *Augustus to Demosthenes, Praetorian Prefect.* **pr.** Deeming it a particular characteristic of imperial goodwill at all times to take care to look into benefits for our subjects as much as to devise relief for them, We ordain that the errors of women, by means of which they might choose, through the weakness of their gender (*imbecillitas sexus*),[37] a way of life unworthy of their dignity, shall be alleviated by the application of proper restraint and that in no way at all are they to be deprived of the hope of a better marriage prospect, so that, looking back upon that imprudent and dishonorable choice, they shall more easily leave it behind. For in this way We believe that We are imitating, as much as this is possible for Our (mortal) nature, the goodwill and – excessive where the human race is concerned – the forgiveness of God, who deems it ever worthy to pardon the daily sins of men and women, accept our repentance, and lead us back to a better condition. But if We should put off even doing this with respect to those subject to our power, We (Ourselves) will seem unworthy of forgiveness.

1. And so, since it would be unjust that slaves, at any rate, once granted their freedom, can be, through an act of imperial favor, granted the right of free birth, and afterwards experience an imperial benefit of this nature in such a way as though they had never been slaves, but had been born free, but that those who are born free, while females, who, admittedly, having gotten involved with theatrical productions, but later scorning their lowly status, change their disposition for the better and flee their dishonorable profession, have no hope of an imperial benefit, which would bring them back to that condition, in which, if they had done no wrong, they could have remained. We grant to them, through this instant, most forgiving statute (*sanctio*), an imperial benefit under this condition, that if they abandon their bad and dishonorable way of living, embrace a more advantageous lifestyle, and devote themselves to honorable pursuits, they shall be permitted to petition Our Divine Majesty, so that they shall without doubt merit an imperial pronouncement allowing them to proceed to a valid marriage. **1a.** Those about to marry such women shall not be held back by a concern that such a marriage appear to be rendered invalid by the enactments of past laws (*leges*), but confident that a marriage of this kind will remain valid, as though they married women with no dishonorable past, whether they (such husbands) enjoy a high rank or for any other reason are forbidden to marry actresses, provided all the same that evidence for such a union be supplied by a full complement of dowry agreements and not without written documents. **1b.** For it is Our wish that in future, once every blot has been completely torn away and these women have been, as it were, restored to a birthright of this kind, neither any dishonorable terminology cling to them

[37] On "gender" as a translation here see the note at C. 5.3.20.

redditis neque vocabulum inhonestum eis inhaerere de cetero volumus neque differentiam aliquam eas habere cum his, quae nihil simile peccaverunt:

2. Sed et liberos ex tali matrimonio procreandos suos et legitimos patri esse, licet alios ex priore matrimonio legitimos habeat, ut bona eius tam ab intestato quam ex testamento isti quoque sine ullo impedimento percipere possint. 3. Sed etsi tales mulieres post divinum rescriptum ad preces earum datum ad matrimonium venire distulerint, salvam eis nihilo minus existimationem servari praecipimus tam in aliis omnibus quam ad transmittendam quibus voluerint suam substantiam et suscipiendam competentem sibi legibus ab aliis relictam vel ab intestato delatam hereditatem.

4. Similes vero tale merentibus ab imperatore beneficium mulieribus illas etiam esse volumus, quae dignitatem aliquam, etsi non serenissimo principi supplicaverunt, ultronea tamen donatione ante matrimonium meruerint, ex qua dignitate aliam etiam omnem maculam, per quam certis hominibus legitime coniungi mulieres prohibentur, aboleri penitus oportet.

5. His illud adiungimus, ut et filiae huiuscemodi mulierum, si quidem post expurgationem prioris vitae matris suae natae sint, non videantur scaenicarum esse filiae nec subiacere legibus, quae prohibuerunt filiam scaenicae certos homines in matrimonium ducere. 5a. Sin vero ante procreatae sint, liceat preces offerentibus invictissimo principi sacrum sine ullo obstaculo mereri rescriptum, per quod eis ita nubere permittatur, quasi non sint scaenicae matris filiae: nec iam prohibeantur illis copulari, quibus scaenicae filias vel dignitatis vel alterius causae gratia uxores ducere interdicitur, ut tamen omnimodo dotalia inter eos etiam instrumenta conficiantur.

6. Sed et si a scaenica matre procreata, quae usque ad mortem suam in eadem professione duravit, post eius obitum preces imperatoriae clementiae obtulerit et divinam indulgentiam meruerit liberationem maternae iniuriae et nubendi licentiam sibi condonantem, istam quoque posse sine metu priorum legum in matrimonio illis copulari, qui dudum scaenicae filiam uxorem ducere prohibebantur.

nor there be any difference between them and those women who have not committed a similar wrong.

2. Further, (We wish) also that children shall be produced by such a marriage and that these shall be legitimate heirs of their father, even if he has legitimate children from a prior marriage, so that they are able to inherit his estate without obstacle both on intestacy and under a will. 3. And even if such women, after receiving an imperial rescript given in response to their petition, should delay marriage, We instruct that their good name shall nonetheless be preserved intact, just as in all other things, so also for the purpose of bequeathing their property to whom they wish and of receiving that inheritance which is left to them by others and due to them under the laws or that which comes their way on intestacy.

4. We also wish that those women be similar in fact to the women (just mentioned) who receive such a benefit from the Emperor, who, even if they do not (themselves) make application to the most tranquil monarch, all the same achieve before marriage some social rank, given as a gift without asking.[38] In accordance with this status, all other blots on their reputation, because of which women are forbidden lawfully to marry certain men, ought utterly to be removed.

5. To these rules We add the following, that, if women of this kind have daughters, provided they be born after the cleansing of the mother's prior life, they shall not be deemed to be daughters of actresses, nor to be liable to the laws which have forbidden certain men from marrying the daughter of an actress. 5a. But if, however, they were born beforehand, they shall be permitted, through addressing a petition to the Most Unconquered Emperor, to receive without any hindrance an imperial rescript, through which it shall be allowed to them to marry in such a manner as though they were not daughters of an actress mother. Nor then shall they be forbidden any longer to marry those men for whom it is prohibited, because of their social rank or for some other reason, to marry the daughters of actresses, so that, in any case, a complete set of dowry documents shall also be drawn up for them.

6. But even should the daughter of an actress, who has remained in the same profession up until her death, address a petition, after her mother's passing, to the imperial clemency and receive an imperial favor, one that grants her release from the affront committed by her mother and freedom of discretion in marrying, (We wish) that she too can, without concern for prior legislation, marry those who previously used to be forbidden to marry the daughter of an actress.

[38] Some believe that Justin, Justinian's uncle as well as imperial predecessor, enacted this law at his nephew's prompting. Justinian and Theodora were married after the law, but he had raised her to patrician status before its enactment.

7. Immo et illud removendum esse censuimus, quod etiam in priscis legibus, licet obscurius, constitutum est, ut matrimonia inter impares honestate contrahenda non aliter quidem valeant, nisi dotalia instrumenta confecta fuerint, his vero[1] intercedentibus omnimodo firma sint sine aliqua distinctione personarum, si modo liberae sint et ingenuae mulieres, nullaque nefariarum vel incestarum coniunctionum suberit suspicio. 7a. Nam nefarios et incestos coitus omnibus modis amputamus, sicut et illos, qui praeteritarum legum sanctione specialiter vetiti sunt, exceptis videlicet his, quos praesenti lege permisimus legitimique matrimonii iure muniri praecepimus.

8. His itaque per hanc generalem legem ita constitutis et de cetero conservandis, praeteritas etiam huiusmodi coniunctiones ex subiecto tempore factas secundum praedictam dispositionem iudicari praecipimus, ut, si quis talem uxorem ab initio nostri imperii, prout dictum est, iam duxerit et liberos ab ea procreaverit, iustos eos et legitimos et tam ab intestato quam ex testamento pater successores habeat, et legitima in posterum nihilo minus ea uxore permanente procreandi quoque liberi legitimi sint.

[24] *Imp. Iustinianus A. ad senatum.* Sancimus, si quis nuptiarum fecerit mentionem in qualicumque pacto, quod ad dandum vel faciendum vel non dandum vel non faciendum concipitur, et sive nuptiarum tempus dixerit sive nuptias nominaverit, non aliter intellegi esse condicionem adimplendam vel extenuandam, nisi ipsa nuptiarum accedat festivitas, et non esse tempus inspiciendum, in quo nuptiarum aetas vel feminis post duodecimum annum accesserit vel maribus post quartum decimum annum completum, sed ex quo vota nuptiarum re ipsa processerint. sic etenim et antiqui iuris contentio dirimetur et immensa librorum volumina ad mediocrem modum tandem pervenient.

D. Constantinopoli XI *k. Aug. Lampadio et Oreste conss.*

[25] *Idem A. Iuliano pp.* **pr.** Si furiosi parentis liberi, in cuius potestate constituti sunt, nuptias possunt contrahere, apud veteres agitabatur. 1. Et filiam quidem furiosi marito posse copulari omnes paene iuris

[1] <non>

7. Rather, We have ordained that the following also shall be abolished, which is also laid down in the ancient statutes, although less clearly, namely, that marriages to be contracted between parties of unequal standing are not, in fact, otherwise valid unless dowry documents have been drawn up. When these are indeed lacking, the marriage shall be entirely valid, without any distinction drawn between persons, provided that the women are free and free-born, and there is no reason to believe that the union is immoral or incestuous. **7a.** For We are eradicating in every way immoral and incestuous relationships, just as also those which are in particular forbidden by the rules laid down by legislation in the past, except for those, obviously, which We have allowed by this instant law and which We have ordered to be endowed with full legal force of marriage.

8. Therefore, these rules laid down in this way through this general statute (*lex generalis*) shall be preserved in future. We also order that past unions of this sort that have been formed during our reign be treated according to the aforesaid rule, so that, if someone has already married such a wife from the beginning of our reign onwards, just as has been said, and has had children with her, he, as their father, shall have them as his lawful and legitimate children and his heirs both upon intestacy and under a will. Further, if she remains nonetheless in the future his lawful wife, children born later shall be legitimate as well.

(520–523).[39]

[24] *Emperor Justinian Augustus to the Senate.* We lay down that, if anyone mentions marriage in any kind of contract for giving or doing or not giving or not doing something, whether he establishes the date of the marriage or (simply) mentions marriage, the condition shall not otherwise be considered fulfilled, in whole or in part, unless the actual celebration of the marriage takes place, and the date shall not be considered at which the age for marriage arrives, which for females is after 12 years and for males after 14 years, but instead that at which the marriage vows in actual fact take effect. For in this way both an ancient legal controversy will be settled and immense volumes of books will at last be reduced to a moderate size.

Given July 22, at Constantinople, in the consulship of Lampadius and Orestes (530).

[25] *The same Augustus to Julian, Praetorian Prefect.* pr. Among the ancient legal authorities (*veteres*) it used to be debated whether the children (or grandchildren) of a male ascendant in whose power they stood could contract marriage, if he were insane (*furiosus*). **1.** And, almost all of the experts in the ancient

[39] Lounghis *et al.* date to between June 521, and July 522.

antiqui conditores admiserunt: sufficere enim putaverunt, si pater non contradicat.

2. In filio autem familias dubitabatur. et Ulpianus quidem rettulit constitutionem imperatoris Marci, quae non de furioso loquitur, sed generaliter de filiis mente capti, sive masculi sive feminae sint qui nuptias contrahunt, ut hoc facere possint etiam non adito principe, et aliam dubitationem ex hoc emergere, si hoc, quod in demente constitutio induxit, etiam in furiosis obtinendum est, quasi exemplo mente capti et furiosi adiuvante.

3. His itaque dubitatis tales ambiguitates decidentes sancimus hoc repleri, quod divi Marci constitutioni deesse videtur, ut non solum dementis, sed etiam furiosi liberi cuiuscumque sexus possint legitimas contrahere nuptias, tam dote quam ante nuptias donatione a curatore eorum praestanda: **4.** Aestimatione tamen in hac quidem regia urbe excellentissimi praefecti urbis, in provinciis autem virorum clarissimorum earum praesidum vel locorum antistitum tam opinione personae quam moderatione dotis et ante nuptias donationis constituenda, praesentibus tam curatoribus dementis vel furiosi quam his, qui ex genere eorum nobiliores sunt: **5.** Ita tamen, ut nulla ex hac causa oriatur vel in hac regia urbe vel in provinciis iactura substantiae furiosi vel mente capti, sed gratis omnia procedant, ne tale hominum infortunium etiam expensarum incremento praegravetur.

D. k. Oct. Constantinopoli Lampadio et Oreste vv. cc. conss.

[26] *Idem A. Iuliano pp.* **pr.** Si quis alumnam suam libertate donaverit et in matrimonio suo collocaverit, dubitabatur apud antiquos, utrumne huiusmodi nuptiae legitimae esse videantur, an non. **1.** Nos itaque vetustam ambiguitatem decidentes non esse vetitum matrimonium censemus. si enim ex adfectu omnes introducuntur nuptiae et nihil impium neque legibus contrarium in tali copulatione spectamus, quare praedictas nuptias inhibendas existimaverimus? nec enim homo sic impius inveniatur, ut, quam ab initio loco filiae habuit, eam postea

law (*iuris antiqui conditores*) allowed that the daughter, certainly, of an insane father could marry. For they thought it enough if the father did not object.

2. In the case of a son-in-power, however, there was hesitation. Ulpian, for example, reports a constitution of the Emperor Marcus (Aurelius), which does not speak about an insane person, but in general terms about the children of a person not in his right mind (*mente captus*), whether they are male or female who contract marriage, to the effect that they can do so even without approaching the Emperor. (Ulpian reports) that some doubt arose from this result, as to whether the rule which the *constitutio* established in the case of the person not in his right mind should also apply in the case of insane persons, on the ground that the precedent of the person not in his right mind assists the children of insane persons.

3.[40] Therefore, since these points have been doubted, in resolving such ambiguities We ordain that that shall be supplied which seems to be lacking in the *constitutio* of the deified Marcus, so that the children of either sex not only of an unstable but also of an insane person may contract a legitimate marriage, with the dowry or premarital gift to be furnished by their *curator*. **4.** Nevertheless, appraisal, however, both of the reputation of the person and the amount of the dowry and premarital gift shall be made: in this Imperial City, certainly by the *vir excellentissimus* City Prefect; in the provinces, by the *viri clarissimi* governors or the local bishops. The *curatores* both of the demented and of the insane are to be present, as well as the more distinguished members of their family (*nobiliores*). **5.** But (this shall be accomplished) in such a way, nevertheless, that no loss for any reason shall befall the property of the insane or demented person either in this Imperial City or in the provinces, but everything shall be done gratuitously, so that the misfortune of such persons shall not be further aggravated by loss due to expenses.

Given October 1, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[26] *The same Augustus to Julian, Praetorian Prefect.* **pr.** If someone raised a female slave as a foster-child (*alumna*), freed her, and then married her, there was a controversy among the ancient legal authorities (*antiqui*) as to whether or not this was deemed a lawful marriage. **1.** Therefore, by way of resolving this long-term source of doubt, We lay down that this marriage shall not be forbidden. For if all (such) marriages are motivated by affection and We observe nothing in such unions that is immoral or against the laws, why should We deem them as something to be repressed? No man could be found to be so immoral that he would raise a girl as his daughter from the beginning and

[40] §§3–5 = (in part, with changes) C. 1.4.28.

in suo collocaverit matrimonio, sed ei credendum est, qui eam ab initio non ut filiam educavit et libertate donavit et dignam esse postea suo putavit matrimonio.

2. Ea videlicet persona omnimodo ad nuptias venire prohibenda, quam aliquis, sive alumna sit sive non, a sacrosancto suscepit baptismate, cum nihil aliud sic inducere potest paternam adfectionem et iustam nuptiarum prohibitionem, quam huiusmodi nexus, per quem deo mediante animae eorum copulatae sunt.

D. k. Oct. Constantinopoli Lampadio et Oreste vv. cc. conss.

[27] *Idem A. Iohanni pp.* Sancimus nuptias, quae inter masculos et feminas maiores vel minores sexagenariis vel quinquagenariis lege Iulia vel Papia prohibitae sunt, homines volentes contrahere et ex nullo modo vel ex nulla parte tales nuptias impediri.

[28] *Idem A. Iohanni pp.* **pr.** Si libertam quis uxorem habeat, deinde inter senatores scribatur dignitate illustratus, an solvatur matrimonium, apud Ulpianum quaerebatur, quia lex Papia inter senatores et libertas stare conubia non patitur. **1.** Nos igitur dei sequentes iudicium non patimur in uno eodemque conubio mariti felicitatem uxori fieri infortunium, ut, quantum vir in altum tollatur, tantum et coniux eius decrescat, immo magis penitus depereat. **2.** Absit itaque a nostro tempore huiusmodi asperitas et firmum maneat matrimonium et uxor marito concrescat et sentiat eius fulgorem stabileque maneat matrimonium ex huiusmodi superventu minime deminutum.

3. Simili modo si privati hominis filia ad liberti veniat conubium et postea pater mulieris ad senatoris dignitatem fuerit elatus, taceat Papiae legis crudelissima sanctio et neque per hunc modum dissolvatur matrimonium inter facti senatoris filiam et libertum, ne soceri prosperitas sine genero inveniatur. **4.** Melius est enim legis Papiae severitatem in utroque casu compescere, quam eam sequendo hominum matrimonia

later take her as his wife. Instead, he should be trusted who did not bring her up from the beginning as his daughter, freed her, and afterwards deemed her worthy of marriage with him.

2. Clearly that person, whether she is his foster-child or not, shall be utterly prevented from marrying a man who received her (as a godchild) from Holy Baptism, since nothing else can so generate fatherly affection and a just prohibition of marriage as a tie of this kind, through which their souls are joined together through God's mediation.[41]

Given October 1, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[27] *The same Augustus to John, Praetorian Prefect.* We ordain that marriages between men and women older or younger than 60 years or 50 years, which were forbidden by (legislation pursuant to)[42] the Lex Julia et Papia, may be entered into if the parties are willing and shall not in any way or from any direction be hindered.

(531 or 532).[43]

[28] *The same Augustus to John, Praetorian Prefect.* **pr.** The question was put to Ulpian, as to whether, if someone had a freedwoman as his wife, and then was made a senator, the marriage was ended, because (legislation pursuant to) the Lex Papia does not allow legally valid marriage between senators and freedwomen. 1. Therefore We, following the judgment of God, do not permit, in one and the same marriage, the success of the husband to become a misfortune for the wife, so that, as high as the husband is raised up, to the same extent his spouse is lowered, or rather is entirely destroyed. 2. So let harshness of this sort be absent from Our reign and let the marriage relationship remain valid. Let the wife prosper along with the husband, let her bask in his reflected glow, and let their marriage bond remain strong and not at all diminished by a supervening event of this kind.

3. In a similar manner, if the daughter of a man not in public life should marry a freedman, and afterwards the father of the woman is raised to senatorial status, the very cruel regime of the lex Papia shall fall silent, and by this means the marriage between the daughter of a man who becomes a senator and a freedman shall not be dissolved, so that success not deprive the father-in-law of his son-in-law. 4. For it is better to assuage the severity of the Lex Papia in both cases, rather than by enforcing it to destroy people's marriages, not

[41] Blume: "This is the first instance of prohibiting marriage on account of spiritual relationship."

[42] The *SCC Persicianum* and *Calvisianum*, with the *SC Claudianum*.

[43] Lounghis *et al.* date to between February 20, 531 and January 13, 532. This constitution must date before October 18, 532; see C. 6.58.12.

dispergere non ex vitio mulieris et mariti, sed ex prospera alterutrius partis fortuna: cum enim ex una radice vitium nascitur, consequens est, ut una lege tollatur.

[29] Ὁ αὐτὸς βασιλεύς. ... **pr.** Πάσης ... [Μ]ηδεὶς τὴν μὴ βουλομένην ἑλκέτω εἰς σκηνὴν μηδὲ τὴν ἑκουσίως κατελθοῦσαν κωλυέτω ὕστερον βουλομένην ἡσυχάσαι μηδὲ προτροπὴν διδότω καὶ λαμβανέτω αὐτῶν ἐγγύας περὶ τοῦ μηκέτι ἀφίστασθαι τῆς σκηνῆς. **1.** Πᾶς οὖν ἐν οἱᾳδήποτε τάξει ὢν βίου ἢ οἱανδήποτε ἀρχὴν ἄρχων εἰ τοῦτο ποιήσειεν, ἐξέστω τῇ γυναικὶ καὶ τῷ ἄρχοντι προσιέναι, εἰ μὴ αὐτός ἐστιν ὁ βιαζόμενος, καὶ τῷ ἐπισκόπῳ, ἵνα ἐκεῖνοι ἀποστήσωσι τὸν τὴν γυναῖκα βιαζόμενον, εἰδότα ὡς, ἐὰν ἀντιστῇ, τῆς πόλεως ἐκβάλλεται καὶ δημεύεται. ταῦτα μὲν εἴ τις ἑλκύσειέ τινα πρὸς τὴν σκηνήν.

2. Εἰ δὲ τὴν ἑκουσίως κατελθοῦσαν κωλύει πάλιν ἀποστῆναι, καὶ ἡ τῶν ἐγγυῶν δόσις λυέσθω καί, εἴ τι ἀπητήθησαν δοῦναι οἱ ἐγγυηταί, διπλᾶ λαμβανέτωσαν. **3.** Ὁμοίως δέ, [εἰ] καὶ αὐταὶ αἱ γυναῖκες ἀπητήθησάν τι παρασχεῖν, εἰς διπλάσιον ἀπολαμβανέτωσαν, τοῦ ἄρχοντος καὶ τοῦ ἐπισκόπου ταῦτα ἐκβιβαζόντων. **4.** Καὶ αὐτὸ[u] τὴν ἀρχὴν μηδὲ ἐγγύας ἐξέστω ἀπαιτεῖσθαι τὰς εἰς σκηνὴν κατελθούσας περὶ τοῦ μηκέτι ἀφίστασθαι.

5. Ἐξουσίαν ἔχοντος τοῦ ἐπισκόπου, ἐὰν ὁ τῆς ἐπαρχίας ἄρχων ἐστὶν ὁ βιαζόμενος, ἐναντιοῦσθαι αὐτῷ καὶ ἀζημίους φυλάττειν τοὺς ἐγγυητάς· εἰ δὲ μὴ ἐνδίδωσιν ὁ ἄρχων, ἐξέστω τῷ ἐπισκόπῳ μηνύειν, ὥστε τὸν ἄρχοντα ἀποστῆναι τῆς ἀρχῆς καὶ δημευθῆναι καὶ διηνεκῶς ἐξορισθῆναι.

6. Ἐξουσίας οὔσης ταῖς τοιαύταις γυναιξὶ καὶ προσομιλεῖν γάμοις καὶ ἄνευ θείας ἀντιγραφῆς. **7.** Ἀλλὰ τ[αύτην τὴν] διάταξιν κρατεῖν τοῖς ἰδίοις χρόνοις, κωλ[υομένων] πάντων τῶν ἐξ ἀρχῆς κωλυομένων γάμ[ων], πλὴν τούτου τοῦ νῦν ἐπινοηθέντος τοῦ ποτε μὲν δεομένου θείας ἀντιγραφῆς, νῦν δὲ οὐκέτι.

8. Ταῦτα πάντα νομοθετήσασα ἡ διάταξις ἐπιφέρει τότε κρατεῖν, ἡνίκα μείνωσι σωφρονοῦσαι· εἰ γὰρ μετὰ τὸ γῆμαι πάλιν βουληθῶσι γενέσθαι σκηνικαί, οὐ μόνον τῆς εὐγενείας ἧς εἶχον ἐκπίπτουσιν, ἀλλ᾽ οὐδὲ μετέχουσιν

[u] [αὐτό]

through any fault of the wife or husband, but because of the success that one party or the other has enjoyed. For since this failing arises from one source, it is logical that it be removed by one statute.

(531 or 532).[44]

[29][45] *(The same Augustus ...).* **pr.** No one shall force an unwilling woman to become a stage performer, nor prevent (from retiring) one who became one willingly and later wishes to retire, nor offer encouragement and accept sureties from her against her retirement from the stage. **1.** For if anyone of any social rank whatsoever or holding any kind of public office whatsoever should do this, it shall be possible for the woman to approach the governor, unless he is the person using force against her, and the bishop, so that they compel the person exercising force upon the woman to cease and desist, in the knowledge that, should he resist, he shall be cast out of the city and have his property confiscated by the State. This is the rule where someone forces a person to be a stage performer.

2. But if someone prevents a woman who of her own volition became a stage performer from going into retirement, any bond given by sureties shall be void and, if anything has been claimed from the sureties, they shall receive twice that amount back. **3.** In the same way, if the women themselves are made to pay a claim, they are to receive twice the amount back. The governor and the bishop shall enforce these rules. **4.** In fact, it shall not even be possible from the outset to demand from female stage performers bonds against their retirement from the stage.

5. The bishop shall have the authority, if the provincial governor is the one applying force, to resist him and to ensure that the sureties are not required to pay. But if the provincial governor does not yield, it shall be possible for the bishop to make an accusation so that the governor step down from office, have his property confiscated by the State, and go into permanent exile.

6. Such women shall also be entitled to marry, even without an imperial rescript. **7.** Moreover, (We ordain) that this imperial law (*diataxis*) shall have force (only) within its own limits, as all of those marriages that were previously forbidden are still forbidden. The only exception is the kind of marriage provided for now, which previously required an imperial rescript, but now no longer.

8. All of those things which this *diataxis* lays down shall have force as long as the women remain committed to honorable comportment. For if, after marriage, they again wish to become stage performers, not only shall they

[44] Lounghis *et al.* date to between 531 and 534.

[45] = Nomoc. 13.21. See C. 1.4.33. This constitution was issued on the same day as C. 1.4.33 or shortly before; Lounghis *et al.* date it to November 1, 534, the same day.

οὐδεμιᾶς βοηθείας οὔτε ἐκ ταύτης οὔτε ἐκ τῆς Ἰουστίνου τοῦ τῆς θείας λήξεως διατάξεως· ὑπόκεινται γὰρ στούπρου ἐγκλήματι.

V De Incestis et Inutilibus Nuptiis

[1] *Imp. Alexander A. Amphigeni.* Liberta eademque uxor tua, si a te invito discessit, conubium cum alio non habet, si modo uxorem eam habere velis.

[2] *Impp. Diocletianus et Maximianus AA. Sebastianae.* Neminem, qui sub dicione sit Romani nominis, binas uxores habere posse vulgo patet, cum et in edicto praetoris huiusmodi viri infamia notati sint. quam rem competens iudex inultam esse non patietur.

PP. III id. Dec. Diocletiano A. II et Aristobulo conss.

[3] *Imp. Constantinus A. Patroclo.* **pr.** Cum ancillis non potest esse conubium: nam ex huiusmodi contubernio servi nascuntur. **1.** Ideoque praecipimus, ne decuriones in gremia potentissimarum domorum libidine servarum ducente confugiant. si enim decurio clam actoribus atque procuratoribus nescientibus alienae fuerit servae coniunctus, et mulierem in metallum trudi per sententiam iudicis iubemus et ipsum decurionem in insulam deportari, omnibus bonis eius civitati, cuius curialis fuerat, mancipandis, si patria potestate fuerit liberatus nullosque habeat liberos vel parentes vel etiam propinquos, qui secundum legum ordinem ad eius successionem vocantur.

2. Quod si actores vel procuratores loci, in quo flagitium admissum est, fuerunt conscii vel compertum facinus promere noluerunt, metallo eos convenit implicari. **3.** Si vero dominus hoc fieri permisit vel postea cognitum celavit, si quidem in agro id factum est, fundus cum mancipiis et pecoribus ceterisque rebus, quae cultui rustico sustinentur, fisci

lose the rights of free birth which they possess, but they shall have no claim to assistance on the basis of either this *diataxis* nor that of emperor Justin of blessed memory.[46] For they are liable to a charge of criminal fornication (*stuprum*).

Fifth Title Incestuous and Void Marriages

[1] *Emperor* ALEXANDER *Augustus to Amphigenes.* If the woman who is at once your wife and freedwoman has separated from you against your will, she does not possess the legal capacity to marry (*conubium*) with another man, provided that you wish to keep her as your wife.

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Sebastiana.* It is commonly known law that no one who finds himself under the dominion of Rome can have two wives, since even in the Praetor's Edict men of this type have been marked with legal infamy (*infamia*). A judge with the appropriate jurisdiction will not allow this matter to go unavenged.

Posted December 11, in the consulship of Diocletian Augustus, for the second time, and Aristobulus (285).

[3][47] *Emperor* CONSTANTINE *Augustus to Patroclus.* **pr.** There can be no legal capacity to marry (*conubium*) with slave-women. From this type of union slaves are born. **1.** And on this account We instruct that decurions shall not take refuge, motivated by lust for slave-women, in the inner recesses of the most powerful houses. For if a decurion secretly, without the knowledge of the managers and the procurators, begins a relationship with someone else's slave, We ordain both that the woman shall be cast into the mines as a consequence of a sentence issued by a judge and that the decurion suffer capital exile to an island, with all of his property made over to the town in which he was a councilor, if he has been freed from paternal power (*patria potestas*) and he has no descendants, ascendants, or even close relatives, who according to the rule of law (*legum ordo*) are eligible to succeed to him.

2. But if the managers or procurators of the place in which the offense has been committed were aware of it (at the time) or refused to disclose it when they (later) became aware of it, it is fitting that they be sent to the mines. **3.** If, on the other hand, the slave-owner permitted this thing to happen or concealed it when he later found out about it, if indeed this took place in the countryside,

[46] C. 5.4.23.
[47] = (in part, with changes) C.Th. 12.1.6.

viribus vindicetur: si vero in civitate id factum est, dimidiam bonorum omnium partem praecipimus confiscari poenam augentes, quoniam intra domesticos parietes scelus admissum est, quod noluit mox cognitum publicare.

D. k. Iul. Aquileiae Constantino A. v et Licinio C. conss.

[4] *Imppp. Valentinianus Theodosius et Arcadius AAA. ad Andromachum comitem rerum privatarum.* **pr.** Qui contra legum praecepta vel contra mandata constitutionesque principum nuptias forte contraxerit, nihil ex eodem matrimonio, sive ante nuptias donatum sive deinceps quoquo modo datum fuerit, consequatur, idque totum, quod ab alterius liberalitate in alterum processerit, ut indigno indignaeve sublatum fisco vindicari sancimus:

1. Exceptis tam feminis quam viris, qui aut errore acrissimo, non adfectato insimulatove, neque ex causa vili decepti sunt aut aetatis lubrico lapsi. 2. Quos tamen ita demum legis nostrae laqueis eximi placuit, si aut errore comperto, aut ubi ad legitimos pervenerint annos, coniunctionem huiuscemodi sine ulla recrastinatione diremerint.

D. vii k. Mart.

[5] *Idem AAA. Cynegio pp.* Fratris uxorem ducendi vel duabus sororibus coniungendi penitus licentiam submovemus, nec dissoluto quocumque modo coniugio.

D. ... k. Dec. Constantinopoli Theodosio A. iii et Abundantio conss.

[6] *Impp. Arcadius et Honorius AA. Eutychiano pp.* **pr.** Si quis incesti vetitique coniugii sese nuptiis funestavit, proprias quamdiu vixerit teneat facultates, sed neque uxorem neque filios ex ea editos habere

the farm with its slaves, its herd animals, and the other things which are maintained for agricultural purposes, shall be claimed for the accounts of the Treasury. But if this took place in a town, We instruct that one-half of all of (the owner's) goods shall be confiscated, increasing the penalty, because this wicked deed was committed within the walls of his or her house, which (the owner) refused to disclose immediately upon learning of it.

Given July 1, at Aquileia, in the consulship of Constantine Augustus, for the fifth time, and Licinius Caesar (319).[48]

[4] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Andromachus, the Count of the Privy Purse.* **pr.** Whoever happens to contract a marriage in violation of the instructions of the laws (*praecepta legum*) or in violation of imperial mandates and constitutions (*mandata constitutionesque*) shall attain nothing from said marriage, whether a gift is made before the marriage or something is given later, in any manner whatsoever, and all of this property, which has issued from the generosity of one party for the benefit of the other, We ordain shall be seized from the recipient on the ground that he or she is unworthy to receive it, and shall be claimed for the Treasury.

1. Exception shall be made for women as well as for men who have been led astray through a very serious mistake, not one which is feigned or pretended, and not from some cheap motive, or who have erred because of the unreliable judgment of the young. **2.** Nevertheless they shall be eligible for this exemption from our law only insofar as, either upon discovery of their mistake or when they attain full legal majority (i.e., 25 or over), they dissolve a union of this kind without any delay.

Given February 23.[49]

[5] *The same Augusti to Cynegius, Praetorian Prefect.* We utterly revoke the freedom to marry a brother's wife, or two sisters (in succession), even where the (first) union has ended in any way whatsoever.[50]

Given December 1, at Constantinople, in the consulship of Theodosius Augustus, for the third time, and Abundantius (393).[51]

[6][52] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Eutychianus, Praetorian Prefect.* **pr.** If anyone has defiled himself through an incestuous and forbidden union, although he hold his own property as long as he lives, he shall not be

[48] The year is more likely to be 318: so Seeck and Projet Volterra.
[49] Seeck gives February 23, 392.
[50] See C.Th. 3.12.2.
[51] Seeck dates to November 22, 387.
[52] = (in part, with changes) C.Th. 3.12.3.

credatur. 1. Nihil prorsus praedictis nec per interpositam quidem personam vel donet superstes vel mortuus derelinquat. 2. Dos si qua forte sollemniter aut data aut promissa fuerit, iuxta ius antiquum fisci nostri commodis cedat.

3. Testamento suo extraneis nihil relinquat, sed sive testato sive intestato legibus ei et iure succedant, si qui forte ex iusto et legitimo matrimonio editi fuerint, hoc est de descendentibus filius filia nepos neptis pronepos proneptis, de ascendentibus pater mater avus avia, de latere frater soror patruus amita. 4. Testandi sane ita demum habeat facultatem, ut his tantum personis pro iuris ac legum quod voluerit arbitrio relinquat, quas succedere imperialis praecepti tenore mandavimus: ita tamen, ut hereditate defuncti penitus arceatur, si quis ex his quos memoravimus in contrahendis incestis nuptiis consilium inisse monstrabitur, successuro in locum illius, qui post eum gradum proximus invenitur.

5. Ea sane, quae de viris cavimus, etiam de feminis, quae praedictorum sese consortiis commaculaverint, custodiantur. 6. Memoratis vero personis non extantibus fisco locus pateat.

D. VI id. Dec. Constantinopoli Arcadio IIII et Honorio III AA. conss.

[7] *Impp. Valentinianus et Marcianus AA. Palladio pp.* **pr.** Humilem vel abiectam feminam minime eam iudicamus intellegi, quae, licet pauper, ab ingenuis tamen parentibus nata sit. 1. Unde licere statuimus senatoribus et quibuscumque amplissimis dignitatibus praeditis, ex ingenuis natas quamvis pauperes in matrimonium sibi adsciscere, nullamque inter ingenuas ex divitiis et opulentiore fortuna esse distantiam.

2. Humiles vero abiectasque personas eas tantummodo mulieres esse censemus: ancillam, ancillae filiam, libertam, libertae filiam, scaenicam vel scaenicae filiam, tabernariam vel tabernarii vel lenonis aut harenarii filiam, aut eam quae mercimoniis publice praefuit: ideoque huiusmodi inhibuisse nuptias senatoribus harum feminarum, quas nunc enumeravimus.

deemed to have a wife or children born from her. **1.** To the aforesaid he shall give nothing at all while he is alive or leave it after he is dead, not even, through a third person. **2.** If any dowry happens to be formally handed over or promised, it shall accrue to the accounts of Our Treasury in accordance with ancient law (*ius antiquum*).

3. He shall leave nothing in his will to non-family members, but, whether he dies with a valid will or without, those persons shall succeed to him by legislation and under (juristic) law (*leges et ius*) if any exist who happened to be born in a just and valid marriage, that is, among descendants, a son, daughter, grandson, granddaughter, great-grandson, great-granddaughter; among ascendants, a father, mother, grandfather, grandmother; among collaterals, a brother, sister, paternal uncle, paternal aunt. **4.** Certainly he shall have the capacity to make dispositions by will only to the extent that he may leave what he wishes subject to the rules established by (juristic) law and statutes only to those persons whom We have ordered to succeed by the terms of imperial legislation, with the proviso nevertheless that if anyone among those whom We mentioned be shown to have planned to contract an incestuous marriage, he be utterly disqualified from inheriting from the decedent, and the person most closely related to him succeed in his place.

5. Those things, to be sure, which We lay down concerning men shall also be observed in the case of women who disgrace themselves through unions with the aforesaid types of persons. **6.** If, however, none of the aforesaid persons remains alive, a claim (of escheat) shall lie for the Treasury.

Given December 8, at Constantinople, in the consulship of Arcadius, for the fourth time, and Honorius, for the third time, Augusti (396).

[7][53] *Emperors* VALENTINIAN *and* MARCIAN *Augusti to Palladius, Praetorian Prefect.* **pr.** We determine that a "low and degraded" (*humilis vel abiecta*) woman is not at all she who, although poor, is all the same born from free-born parents. **1.** So We decree that it shall be permitted for senators and whoever is distinguished by high rank to marry women born from free-born parents, even though they are poor, and that, among free-born women, there exist no gulf in status on the basis of wealth and relative size of patrimony.

2. Indeed, We decree to be "low and degraded" (*humiles abiectaeque*) persons only these women: a slave-woman, the daughter of a slave-woman, a freedwoman, the daughter of a freedwoman, an actress or the daughter of an actress, a female tavern-worker, or the daughter of a tavern-worker, a pimp, or a gladiator, and a woman who has charge of merchandise for sale to the general public. And (We decree) that on this account We have curbed marriages of this kind for senators with those women whom we have now listed.

[53] = (in part, with changes) Nov. Marciani 4.1.2–3; combine with C. 1.14.9.

D. prid. non. April. Constantinopoli Aetio et Studio conss.

[8] *Imp. Zeno A. Epinico pp.* Licet quidam Aegyptiorum idcirco mortuorum fratrum sibi coniuges matrimonio copulaverint, quod post illorum mortem mansisse virgines dicebantur, arbitrati scilicet, quod certis legum conditoribus placuit, cum corpore non convenerint, nuptias re non videri contractas, et huiusmodi conubia tunc temporis celebrata firmata sunt, tamen praesenti lege sancimus, si quae huiusmodi nuptiae contractae fuerint, earumque contractores et ex his progenitos antiquarum legum tenori subiacere nec ad exemplum Aegyptiorum, de quibus superius dictum est, eas videri fuisse firmatas vel esse firmandas.
D. k. Sept. Constantinopoli post consulatum Leonis iunioris.

[9] *Idem A. Sebastiano pp.* Ab incestis nuptiis universi qui nostro reguntur imperio noverint temperandum. nam rescripta quoque omnia vel pragmaticas formas aut constitutiones impias, quae quibusdam personis tyrannidis tempore permiserunt scelesto contubernio matrimonii nomen imponere, ut fratris filiam vel sororis et eam, quae cum fratre quondam nuptiali iure habitaverat, uxorem legitimam turpissimo consortio liceret amplecti, aut ut alia huiusmodi committerentur, viribus carere decernimus, ne dissimulatione culpabili nefanda licentia roboretur.

VI De Interdicto Matrimonio inter Pupillam et Tutorem seu Curatorem Liberosque Eorum

[1] *Impp. Severus et Antoninus AA. Mario.* Senatus consulti auctoritatem, quo inter pupillam et tutoris filium conubium saluberrime sublatum est, circumveniri rusticitatis et imperitiae velamentis non oportet.

Given April 4, at Constantinople, in the consulship of viri clarissimi *Aetius and Studius (454).*

[8] *Emperor* Zeno *Augustus to Epinicus, Praetorian Prefect.* Although certain Egyptians have married the wives of their decedent brothers on the ground that they were said to have remained virgins after their (the brothers') passing, evidently being persuaded that, in line with the position taken by certain legal experts (*legum conditores*), marriage was not deemed to have been contracted in actual fact without sexual intercourse, even unions of this kind, solemnized at that point in time, are valid (as marriages). Nevertheless, We ordain by this instant law that if any marriages of this kind are in future contracted, the parties to them and their children shall be liable to the thrust of the ancient laws and that they shall not, on the model of the Egyptians spoken of above, be deemed to have been valid marriages, nor shall they be rendered valid.

Given September 1, at Constantinople, in the post-consulate of Leo the Younger (475).

[9] *The same Augustus to Sebastianus, Praetorian Prefect.* All those subject to Our rule shall know that they must abstain from incestuous marriages. For We decree also that all the wicked rescripts (*rescripta*), specially drafted enactments (*pragmaticae formae*), and constitutions, which allowed, during the period of tyranny,[54] certain persons to place upon an evil union the name of marriage, so that it was permitted to embrace as a lawful wife, in a most disgraceful relationship, the daughter of a brother or of a sister, and the lawful wife of a deceased brother, or so that other offenses of this type were committed, are (now) void, in order that unspeakably outrageous conduct not gain strength from a blameworthy pretense.

(476–484).[55]

Sixth Title Forbidden Marriage between a Female Minor Ward and a *Tutor*, *Curator*, or Their Children

[1] *Emperor* Antoninus *Augustus to Marius.*[56] The weight of the decree of the Senate most salubriously removing the legal capacity to marry (*conubium*) between a minor female ward and her *tutor*'s son ought not to be evaded through the pretexts of a rustic lack of sophistication and inexperience (*rusticitas et imperitia*).[57]

[54] This refers to a coup staged in 475 by Basiliscus, the brother of Zeno's mother-in-law Verina, that ousted Zeno for a short period.

[55] Lounghis *et al.* date to between 476 and 480 or 484.

[56] The inscription wrongly attributes this law to both Severus and Caracalla.

[57] The SC, which prohibited marriage between a female ward and her *tutor*, his son, or grandson, was passed in the joint reign of Marcus Aurelius and Commodus (176–180).

PP. VII id. Febr. Laeto II et Cereale conss.

[2] *Imp. Alexander A. Burrio.* Mater pupillae cum tutore filiae suae vel filio tutoris nuptias contrahere non prohibetur.
PP. non. Nov. Maximo II et Aeliano conss.

[3] *Imp. Gordianus A. Rogatiano.* **pr.** Cum proponas ei, quam matrimonio tuo iunctam suggeris, post liberos susceptos curatorem patrem tuum datum, quem contendis nec te in potestate habuisse: cum rite contractum matrimonium ex post facto vitiari non potuerit, iusta interpretatione metuere non debes, ne liberi quos habetis non ex iusto matrimonio suscepti videantur. **1.** Ut autem omnis scrupulus auferatur, insistere pater tuus debet nec non et uxor tua, ut alius loco eius detur: habebit enim facultatem repetendae rationis negotiorum gestorum ab eo qui fuerit substitutus.

[4] *Imp. Philippus A. Hygiae.* Libertinum, qui filio suo naturali, quem in servitute susceperat, postea manumisso pupillam suam eandemque patroni sui filiam in matrimonio collocavit, ad sententiam amplissimi ordinis, qui huiusmodi nuptiis interdicendum putavit, pertinere dubitari non oportet.

[5] *Imp. Philippus A. et Philippus C. Apuleio.* Curatorem adulto suo filiam suam nuptui collocare non posse falso tibi persuasum est.
PP. XV k. Sept. Philippo A. et Titiano conss.

[6] *Impp. Valerianus et Gallienus AA. Lucio.* **pr.** Si patris tui pupillam nondum reddita tutelae ratione vel post redditam nondum exacto quinto et vicesimo nec non etiam utili anno uxorem duxisti, nec matrimonium cum ea habuisse nec filium ex huiusmodi coniunctione procreasse videri potes. **1.** Sane si hoc pater puellae, cum decederet, postulavit, et nuptiae rite contractae et filius videtur iure susceptus.

Posted February 7, in the consulship of Laetus, for the second time, and Cerealis (215).

[2] *Emperor* ALEXANDER *Augustus to Burrius.* The mother of a female minor ward is not prohibited from contracting marriage with the *tutor* of her own daughter or with the *tutor*'s son.

Posted November 5, in the consulship of Maximus, for the second time, and Aelianus (223).

[3] *Emperor* GORDIAN *Augustus to Rogatianus.* **pr.** As you contend that your father, who, you allege, did not (then) have you in his paternal power (*potestas*), was given as a *curator* to the woman who you claim was (previously) joixned to you in marriage and by whom you had children, (and) since a properly contracted marriage cannot be invalidated after the fact, you ought not, on a proper reading of the law, be concerned that your children will be deemed to have been born illegitimately. **1.** So that, moreover, every source of anxiety is removed, your father, as well as your wife, ought to urge that another be given in his place. For she will have the possibility of demanding from the substitute an accounting regarding the management of her affairs.

[4] *Emperor* PHILIP *Augustus to Hygia.* There ought to be no doubt that a freedman who has married his female minor ward, the daughter of his patron, to his own "natural" (illegitimate) son,[58] who was born into slavery and later manumitted, is liable under the decree of the most distinguished Senate, which believed that marriages of this kind should be prohibited.

[5] *The same Augustus and* PHILIP *Caesar to Apuleius.* You have been wrongly led to believe that a *curator* cannot marry his daughter to his adult ward.

Posted August 18, in the consulship of Philip Augustus and Titianus (245).

[6] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Lucius.* **pr.** If you have married your father's (former) female minor ward before he has rendered an account of his guardianship, or after he has done this but before she has passed 25 years of age as well as a year's worth of days in which her interests could be effectively pursued in court, you can be deemed neither to have married her nor to have sired a (legitimate) child from a union of this kind. **1.** Certainly, if the father of the girl requested this (marriage) at the time of his death, the marriage is considered to have been properly contracted and the child to have been legitimately sired.

[58] *Naturalis* is also translatable here and elsewhere by the terms "biological" and "genetic", both commonly found in modern legal discourse.

PP. id. Mai. Saeculare II et Donato conss.

[7] *Impp. Diocletianus et Maximianus AA. et CC. Paregorio.* Si tutor vel curator pupillam vel adultam quondam suam sibi vel filio suo nullo divino impetrato beneficio in matrimonio collocaverit, manet infamia contra eum velut confessum de tutela, quia huiusmodi coniunctione fraudem administrationis tegere laboravit, et dos data per condictionem repeti potest.

[8] *Impp. Leo et Anthemius AA. Erythrio pp.* Si quis tutoris vel curatoris nomine usurpato, id est pro tutore seu pro curatore vel negotiorum gestore res pupillae administraverit eamque sibi filiove suo copulaverit, tales nuptias stare et non ad exemplum tutorum infirmari, ne ex huiusmodi subtili vel maligno tractatu matrimonia seu proles ex his progenita vel dos super his data vel promissa aliquam laesionem vel calumniam patiantur.

D. k. Iul. Marciano cons.

VII Si Quacumque Praeditus Potestate vel ad Eum Pertinentes ad Suppositarum Iurisdictioni Suae Adspirare Temptaverint Nuptias

[1] *Imppp. Gratianus Valentinianus et Theodosius AAA. Neoterio pp.* **pr.** Si quis ordinaria vel qualibet praeditus potestate circa nuptias invitis ipsis vel parentibus contrahendas, sive pupillae sive apud patres virgines sive viduae erunt, sive et iuris sui viduae, denique cuiuscumque sortis, occasione potestatis utatur et minacem favorem suum invitis his, quorum utilitas agitur, exhibere aut exhibuisse detegitur, hunc, licet

Posted May 15, in the consulship of Saecularis, for the second time, and Donatus (260).

[7] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Paregorius.* If a *tutor* or a *curator* either himself marries his former female minor or adult ward or gives her in marriage to his son, without having obtained imperial permission, legal infamy (*infamia*) remains for him as though he has admitted to wrongdoing regarding his guardianship, because he has made an effort to conceal fraud in his administration of the property through a union of this kind; and the dowry that has been given can be reclaimed by an action for restitution (*condictio*).

[8][59] *Emperors* Leo *and* Anthemius *Augusti to Erythrius, Praetorian Prefect.* If anyone has wrongfully assumed the status of a *tutor* or a *curator*, that is, as a *tutor*, a *curator*, or a manager of affairs (*negotiorum gestor*) he administers the property of a female minor ward and marries her himself or gives her in marriage to his own son, (We decree) that such a marriage shall be valid and not rendered void on the model of *tutores*, so that, from such fastidious or malicious dealings, marriages and the children they produce or the dowries given or promised in connection with them do not result in material loss or vexatious litigation (*calumnia*).

Given July 1, in the consulship of Marcian (469).

Seventh Title If Persons of Any Degree of Authority or Their Subordinates Attempt Marriage with Women Subject to Their Jurisdiction

[1][60] *Emperors* Gratian, Valentinian, *and* Theodosius *Augusti to Neoterius, Praetorian Prefect.* **pr.** If someone with regular authority or any authority at all should make use of this opportunity in the matter of contracting marriage for unwilling parties or those whose ascendant male relatives are unwilling, whether it is a matter of female minor wards, never-married or previously married adult women in these last two cases living in a father's house, or previously married *sui iuris* women – in short, (women) of any status whatsoever – and he is discovered to display or to have displayed his menacing favor toward unwilling persons whose interests are at stake, even if he does not carry through with the prohibited marriage, for such an attempt we

[59] Combine with C. 1.4.46, 1.18.13, 5.1.5, 5.30.3.
[60] = (with changes) C.Th. 3.11.1. See C. 5.1.3.

prohibitas nuptias non peregerit, attamen pro tali conamine multae librarum auri decem obnoxium statuimus et, cum honore abierit, peractam dignitatem usurpare prohibemus, tali scilicet poena, ut, si circa honorem eum, quo male usus est, vindicandum statutis nostris parere noluerit, eam provinciam, in qua sibi usurpaverit, habitare per iuge biennium non sinatur.

1. Illo videlicet adiciendo, ut et in potestate adhuc constituto liceat personae, quam huiusmodi ambitu circumire temptaverit, confestim contestatione proposita cum sua suorumque domo iurisdictionem eius evitare, curaturis hoc uniuscuiusque civitatis defensoribus et eiusdem iudicis apparitoribus.

2. Et quidem si haec pravitas ordinarii iudicis erit, universa eius domus ratio atque omnia vel civilia vel criminalia negotia, quamdiu idem in administratione fuerit, vicario competant. **3.** Sin autem vicarius vel similis potestatis vim in huiusmodi contrahendo matrimonio molietur, vicissim ordinarius iudex intercessor existat. **4.** Sin erunt uterque suspecti, ad illustrem praefecturam specialiter talium domorum, quamdiu idem administraverit, tuitio pertineat.

D. XV k. Iul. Thessalonicae Gratiano V et Theodosio AA. conss.

VIII Si Nuptiae ex Rescripto Petantur

[1] *Impp. Honorius et Theodosius AA. Theodoro pp.* **pr.** Quidam vetusti iuris ordine praetermisso obreptione precum nuptias, quas se intellegunt non mereri, de nobis existimant postulandas, saepe habere puellae consensum confingentes. quapropter tale sponsalium genus praesentis legis definitione prohibemus. **1.** Si quis igitur contra hanc definitionem nuptias precum subreptione meruerit, amissionem bonorum et poenam deportationis subiturum se esse non ambigat et amisso iure matrimonii,

lay down that he shall be liable to a fine of 10 pounds of gold. Further, when he leaves office, we forbid that he assume the rank he otherwise has earned. Of course, he suffers the following penalty: if he has refused to comply with our enactments regarding that office, which he has badly used, and which must be avenged, he shall not be permitted to live in that province in which he abused his authority, for a continuous period of two years.

1. Plainly, the proviso shall be added that, if he still retains his office, the person whom he attempted to impose upon in this way, along with his or her household and that of any dependents, shall be permitted to avoid his jurisdiction while advancing a claim immediately. The defenders (*defensores*) in each and every city, as well as the staff members attached to the same judge, shall take responsibility for this matter.

2. And, to be sure, if such wrongful behavior is displayed by a judge with regular authority, all of the affairs of his household, as well as civil and criminal matters, shall fall to his subordinate as long as the judge remains in office. **3.** But if, however, the subordinate or a person of like authority should employ force in contracting marriages of this kind, the judge equipped with regular authority shall intercede in his turn. **4.** But if they both fall under suspicion, the safekeeping of such households shall, by way of exception, as long as the same person remains in office, fall to the distinguished (Praetorian) Prefecture.

Given June 17, at Thessalonica, in the consulship of Gratian, for the fifth time, and Theodosius Augusti (380).

Eighth Title Marriages Requested by Rescript

[1][61] *Emperors Honorius and Theodosius Augusti to Theodorus, Praetorian Prefect.* **pr.** Certain persons, having evaded the provisions of the ancient law (*vetustum ius*) through the manipulative recourse to petitions, believe that they should make judicial requests of Us to permit marriages for which they know they do not qualify, often faking the acquisition of the consent of the young woman concerned. For this reason, We prohibit this kind of engagement through the provisions of this instant statute. **1.** Therefore, if anyone in violation of these provisions gains permission to marry through manipulative recourse to petitions, let him not doubt that he will suffer confiscation of his property and the penalty of deportation. Having lost the right to marry that he gained through a claim that was wrongful and forbidden, let him also not doubt that he will not have the children sired in this union qualify as legitimate,

[61] = (in part, with changes) C.Th. 3.10.1. Combine with perhaps C. 5.4.20. Seeck dates to January 409.

quod prohibita usurpatione meruerit, filios se ex hac coniunctione susceptos iustos non habiturum nec umquam postulatae indulgentiae adnotationisve indulto efficacem se veniae effectum meruisse: exceptis his, qui parentum sponsionem de nuptiis filiarum impleri desiderant vel sponsalia, hoc est arrarum data nomine, reddi sibi praecepto legum cum statuta poena deposcunt.

D. k. Febr. Ravennae Honorio VIII et Theodosio III AA. conss.

[2] *Imp. Zeno A. Basilio pp.* **pr.** Nefandissimum scelus fratris sororisve filiae nuptiarum, quod sacratissimis constitutionibus sub gravissimae poenae interminatione damnatum est, iterato praesentis divinae sanctionis tenore modis omnibus prohibemus. **1.** Precandi quoque in posterum super tali coniugio, immo potius contagio, cunctis licentiam denegamus, ut unusquisque cognoscat impetrationem quoque rei, cuius est denegata petitio, nec si per subreptionem post hunc diem obtinuerit, sibimet profuturam.

VIIII De Secundis Nuptiis

[1] *Imppp. Gratianus Valentinianus et Theodosius AAA. Eutropio pp.* **pr.** Si qua mulier nequaquam luctus religionem priori viro nuptiarum festinatione praestiterit, ex iure quidem notissimo sit infamis. **1.** Praeterea secundo viro ultra tertiam partem bonorum in dotem ne det neque ei testamento plus quam tertiam partem relinquat. **2.** Omnium praeterea hereditatum legatorum fideicommissorum suprema voluntate relictorum, mortis causa donationum sit expers. haec namque ab heredibus vel coheredibus aut ab intestato succedentibus vindicari iubemus, ne in his, quibus correctionem morum induximus, fisci videamur habere rationem.

3. His etiam amittendis, quae prior maritus ei suprema reliquerit voluntate, quamquam haec, quae mulieri a priore viro relinquuntur et

nor that he ever earned a valid result of pardon from the grant of (imperial) favor or written release upon his appeal. Exceptions will be made for those who request that the engagement arranged by ascendant male relatives on behalf of their daughters be respected, or who demand that engagement gifts, that is, those given under the title of earnest money (*arrae*), be returned to them on the authority of the laws, along with the statutory penalty.

Given February 1, at Ravenna, in the consulship of Honorius, for the eighth time, and Theodosius, for the third time, Augusti (409).

[2] *Emperor* Zeno *Augustus to Basilius, Praetorian Prefect.* pr. We forbid in every way the most unspeakably evil act of marrying the daughter of a brother or a sister, which has been condemned in the most sacred (i.e., imperial) constitutions under repressive threat of a very severe penalty, the gist of this (condemnation) being repeated in this instant imperial enactment (*sanctio*). **1.** We deny to everyone the possibility also in the future of making a petition regarding such a union, or rather abomination, so that each and every person realizes that even the achievement of this thing, for which the appeal process is hereby placed off limits, will not avail him even if he gains it by devious means, from this day hence.[62]

Ninth Title Remarriage

[1][63] *Emperors* Gratian, Valentinian, *and* Theodosius *Augusti to Eutropius, Praetorian Prefect.* pr. If, in her haste to remarry, any woman utterly fails to show proper respect (*religio*) in mourning her prior husband, she shall be infamous[64] in accordance with certainly very well-known law. **1.** What is more, she shall not give to her new husband more than a third of her property as a dowry, nor shall she leave more than a third to him in a will. **2.** Moreover, she shall have no portion of all inheritances, legacies, or trusts left to her in a will, as well as gifts in contemplation of death (*mortis causa*). For We command that such things be claimed by the heirs, co-heirs, or those succeeding on intestacy, so that We not seem, in the case of those whose moral improvement we have promoted, to prefer the advantage of the Treasury.

3. That property too shall be forfeited which her prior husband left to her in his will, although such property which has been left to the woman by

[62] Lounghis *et al.* date to 486.

[63] pr. = (in part, with changes) C. 6.56.4; combine with perhaps C. 5.1.3 and the references mentioned there.

[64] The term *infamis* designates persons involved in disgraced professions, as well as certain people who have suffered legal disabilities as a result of criminal or civil convictions.

per immaturum matrimonium vacuata esse coeperunt, primo a decem personis edicto praetoris enumeratis, id est adscendentibus et descendentibus et ex latere usque ad secundum gradum, scilicet gradibus servatis, deinde praesumi a fisco iubemus. **4.** Eandem quoque mulierem infamem redditam hereditates ab intestato, vel legitimas vel honorarias, non ultra tertium gradum sinimus vindicare.

PP. xv k. Ian. Gratiano v et Theodosio AA. conss.

[2] *Idem AAA. Eutropio pp.* Si qua ex feminis perdito marito intra anni spatium alteri festinavit innubere (parvum enim temporis post decem menses servandum adicimus, tametsi id ipsum exiguum putemus), probrosis inusta notis honestioris nobilisque personae et decore et iure privetur atque omnia, quae de prioris mariti bonis vel iure sponsalium vel iudicio defuncti coniugis consecuta fuerat, amittat.

D. III k. Iun. Constantinopoli Eucherio et Syagrio conss.

[3] *Idem AAA. Floro pp.* **pr.** Feminae, quae susceptis ex priore matrimonio filiis ad secundas post tempus luctui statutum transierint nuptias, quidquid ex facultatibus priorum maritorum sponsalium iure, quidquid etiam nuptiarum sollemnitate perceperint, aut quidquid mortis causa donationibus factis aut testamenti iure directo aut fideicommissi vel legati titulo vel cuiuslibet munificae liberalitatis praemio ex bonis, ut dictum est, priorum maritorum fuerint adsecutae, id totum, ita ut perceperint, integrum ad filios, quos ex praecedente coniugio habuerint, transmittant vel ad quemlibet ex filiis (dummodo ex his tantum, quos tali successione dignissimos iudicamus), in quem contemplatione meritorum liberalitatis suae iudicium mater crediderit dirigendum.

her prior husband and now begins to be ownerless thanks to her over-hasty remarriage, We order to be claimed first by the ten types of persons listed (as intestate heirs) in the Praetor's Edict,[65] that is, by the ascendants and descendants, and collaterally up to the second degree – of course, with the regular order of degrees preserved – then, by the Treasury. **4.** We also permit the same woman, now burdened with legal infamy (*infamis*), to claim inheritances left on intestacy, both under the civil and Praetorian rules, (but) not beyond the third degree.

Posted December 18,[66] *in the consulship of Gratian, for the fifth time, and Theodosius Augusti (380).*

[2][67] *The same Augusti to Eutropius, Praetorian Prefect.* If any woman, having lost her husband, has hastened to marry another in less than a year – for We add a short period of time to be respected after ten months have passed,[68] even though We consider even this to be brief – branded with the marks of shame, she shall be deprived of the social rank and legal rights of a person of relatively elevated and distinguished status, and she shall forfeit all that she obtained from the property of her prior husband, either as engagement gifts or through his will.

Given May 30, at Constantinople, in the consulship of Eucherius and Syagrius (381).

[3][69] *The same Augusti to Florus, Praetorian Prefect.* **pr.** As to women who, having children born from a prior marriage, proceed to a new marriage after the appointed time for mourning has passed: whatever they have received from the property of their prior husbands under title of engagement gifts, whatever they have also received at the time the marriage was solemnized, and whatever they have obtained from gifts made in contemplation of death (*mortis causa*) or by will, either by direct right (as an inheritance) or under title of a trust or a legacy, or as a reward motivated by any sort of lavish generosity from the estates of their husbands, as just said, all of this, just as they received it, they shall transmit in its entirety to the children they had by their prior husbands, or to any one of these children toward whom the mother believes, in consideration of their merits, the benefit of her generosity ought to be directed – provided that it only goes to those whom We deem to be most worthy of such a bequest.

[65] See Inst. 3.93 and 5.
[66] The month is uncertain: December or June. Seeck accepts Krüger's date.
[67] = (in part) C.Th. 3.8.1.
[68] The ten months reflect a long-standing prohibition on remarriage by widows that has been explained in terms of a desire both to avoid confusion over paternity and to respect a decedent husband's memory.
[69] = (in part, with changes) C.Th. 3.8.2.

1. Nec quicquam eaedem feminae ex isdem facultatibus abalienandi in quamlibet extraneam personam vel successionem ex alterius matrimonii coniunctione susceptam praesumant atque habeant potestatem: possidendi tantum ac fruendi in diem vitae, non etiam abalienandi facultate concessa. nam si quid ex isdem rebus in alium quemlibet fuerit ab ea translatum, ex maternis redintegrabitur facultatibus, quo illibata ad hos quos statuimus liberos bona et incorrupta perveniant.

1a. Illud etiam addimus legi, ut, si aliquis ex isdem filiis, quos ex priore matrimonio susceptos esse constabit, forte decesserit, matre iam secundis nuptiis funestata, aliis etiam ex eodem matrimonio progenitis liberis superstitibus, id, quod per eandem successionem ab intestato vel ex testamento suae posteritatis mater videbitur consecuta, in diem vitae pro sibi debita portione sola tantum possessione delata, omne his qui supererunt ex priore susceptis matrimonio filiis relinquat nec super istiusmodi facultatibus testandi in quamlibet aliam extraneam personam vel quicquam alienandi habeat potestatem. 2. Quod si nullam ex priore matrimonio habuerit successionem vel natus native decesserint, omne, quod quoquo modo percepit, pleni proprietate iuris[iii] obtineat atque ex his nanciscendi dominii et testandi circa quem voluerit liberam habeat potestatem.

D. xv k. Ian. Constantinopoli Antonio et Syagrio conss.

[4] *Impp. Honorius et Theodosius AA. Mariniano pp.* **pr.** Cum aliis sanctionibus iusserimus materna bona integra ad liberos pervenire, quod tamen mulier mariti largitate perceperit, ex eo tantum liberi coniugio procreati sibi speciale tamquam paternum noverint vindicandum. 1. Itaque si habens filios in secundas nuptias fortasse transierit, sponsaliciam largitatem, quam vir secundus contulerit in uxorem, tantummodo filii qui ex secundo matrimonio suscepti sunt pro soliditate possideant, nec prosit liberis ex priore susceptis marito, quod mulier in tertia minime vota migraverit.

2. Quod si posterior vir sine liberis ex eodem matrimonio susceptis decesserit, quidquid ab eo ex sponsalium largitate uxor fuerit consecuta, id sibi iurique suo sciat esse collatum, etiamsi ex priore matrimonio donator filios reliquisse doceatur.

iii pleno proprietatis iure

1. Nor shall these same women appropriate or enjoy the right of alienating any of this property to any non-related person or to successors born from the union of the other marriage. Only the right of the lifetime use and enjoyment of the property (usufruct) is granted, not also that of alienation. For if she should transfer any of this property to someone else, it shall be restored from her own resources, so that this property pass whole and undiminished to the children whom We specify.

1a. This provision We add as well to this statute, that if any of those children who are shown to have been born in the prior marriage happen to pass away, at a time when the mother has already been polluted by a subsequent marriage and the other children born in that same marriage are still surviving, then as to what the mother shall be deemed to obtain through the same succession to her child, whether on intestacy or under a will, she shall receive only the lifetime possession of the portion that is due her; she shall leave the whole to the surviving children from the prior marriage, and she shall not enjoy, with respect to property of this kind, a right of leaving it by will to any non-related person or of alienating any of it. **2.** But if she has no successors from the prior marriage, or if such child or children have passed on, all that which she has obtained in any way whatsoever she shall enjoy with the full rights of ownership and she shall have the full right of acquiring ownership from these children and of leaving it by will to whom she wishes.

Given December 18, at Constantinople, in the consulship of Antonius and Syagrius (382).

[4][70] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Marinianus, Praetorian Prefect.* **pr.** In other statutes (*sanctiones*)[71] We have ordered that a mother's property go in its entirety to her children; nevertheless, as to that which a woman receives because of the generosity of her husband, the children born from that union shall know that it must be claimed only by them, because (it is) specific to them as though it (still) were their father's property. **1.** So if a woman with children should happen to pass to a new marriage, only the children born from the subsequent marriage shall possess in its entirety that which the new husband gave as a generous engagement gift. Nor shall the fact that the mother does not marry a third time benefit the children from a prior husband.

2. But if a subsequent husband dies without children from that marriage the wife shall know that whatever she obtained from the generous engagement gift he gave to her has accrued to her and her right (of ownership), even if it should come to light that the giver had left behind children from a prior marriage.

[70] Combine with C. 5.1.4, 5.18.11, 5.19.1; C.Th. 3.5.12.
[71] These have not survived.

3. Ad maternas sane veniens vel ex hoc vel ex quolibet alio titulo facultates omnis posteritas ex quocumque suscepta viro pro debita sibi portione, ut a matre vel spontanea largitate vel per testamentum eius fuerit collata, possideat. 4. Nos enim hac lege id praecipue custodiendum esse decrevimus, ut ex quocumque coniugio suscepti filii patrum suorum sponsalicias retineant facultates.

D. III non. Nov. Ravennae Honorio XIII et Theodosio X AA. conss.

[5] *Impp. Theodosius et Valentinianus AA. Florentio pp.* **pr.** Generaliter censemus, quoquo casu constitutiones ante hanc legem mulierem liberis communibus, morte mariti matrimonio dissoluto, quae de bonis mariti ad eam devoluta sunt servare sanxerunt, isdem casibus maritum quoque quae de bonis mulieris ad eum devoluta sunt morte mulieris matrimonio dissoluto communibus liberis servare, nec interesse, si alter pro marito donationem ante nuptias vel pro muliere dotem crediderit offerendam. 1. Haec observari praecipimus, licet res ante nuptias donatae, ut adsolet fieri, in dotem a muliere redigantur.

2. Dominium autem rerum, quae liberis vel huius legis vel praeteritarum constitutionum auctoritate servantur, ad liberos pertinere decernimus. itaque defuncto eo, qui eas liberis reservabat, extantes ab omni possessore liberi vindicabunt, consumptas ab heredibus eius exigent, qui eas servare debuerat. 3. Alienandi sane vel obligandi suo nomine eas res, quae liberis servari praeceptae sunt, eis qui reservaturi sunt adempta licentia est. 4. Negotia vero liberorum patri utiliter administrare concedimus. 5. Dividendi quoque res inter eos ipsos liberos parentibus pro suo arbitrio vel eligendi quem voluerint licentiam non negamus.

6. In his autem casibus, in quibus res ut paternas mater liberis communibus servare praecepta est, hoc est ubi morte mariti matrimonio dissoluto mulier ad alias nuptias venit, vel ubi ut maternas patrem liberis communibus servare censuimus, hoc est ubi morte mulieris matrimonio dissoluto vir ad alias nuptias venit, si hereditatem eius parentis qui prior mortuus est non adierint liberi, licebit eis, tamquam eius

3. Certainly all children coming into a mother's property under this or any title at all, whoever the husband who sired them may be, shall possess (it) in line with the portion due them, whether it accrued to them from the mother by free gift or under a will. 4. For We decree that by this law the following principle must be especially safeguarded, (namely) that children born in any marriage at all shall hold onto the engagement gifts made by their own fathers.

Given November 3, at Ravenna, in the consulship of Honorius, for the thirteenth time, and Theodosius, for the tenth time, Augusti (422).

[5][72] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Florentius, Praetorian Prefect.* pr. We lay down as a general rule that in whatever situation constitutions passed before this law (*lex*) have ordained that, when a marriage is ended through the death of the husband, the wife shall preserve for their children in common the property belonging to him that has devolved to her, in these same situations the husband too shall preserve for their common children the property of hers accruing to him when a marriage is ended through the death of the wife, nor does it matter if another person thought that a prenuptial gift should be made on behalf of the husband or a dowry should be offered on behalf of the wife. 1. We lay down that these rules shall be respected even if, as customarily happens, property given as a prenuptial gift is transformed into a dowry by the wife.

2. We decree, moreover, that ownership over that property which is guaranteed to the children by the authority of this statute or of preceding *constitutiones* shall accrue to those children. Therefore, with the death of that person who was preserving the property in question for the children, the children will (successfully) claim ownership of property that survives from every possessor, and if the property is used up they will have recourse from the heirs of the person who ought to have preserved it for them. 3. Of course, the power of alienating or making subject to lien under their own name the property which they are instructed to preserve for the children is removed from those who are going to preserve it. 4. We permit, on the other hand, fathers to administer the affairs of their children with full legal effect. 5. We also do not deny to parents the power of dividing, according to their wishes, the property among the children themselves or to choose whom they wish (as heirs).

6. In those situations, moreover, in which a mother is instructed (by prior statute) to preserve, for children she had in common with her decedent husband, property on the ground that it is paternal – that is, when after a marriage has been ended by the death of the husband the wife remarries – or where We have ordained that a father preserve, for children he had in common with his

[72] = (in part, with changes) Nov. Theod. 14.1; combine with C. 6.61.3.

tantum res fuerint qui posterior moritur, eas sibimet vindicare, scilicet si vel eius qui posterior moritur hereditatem crediderint adeundam, ne, quod favore liberorum inductum est, quibusdam casibus ad laesionem eorum videatur inventum.

7. Illud etiam humanis sensibus huic legi credidimus inserendum, ut eo quoque casu, quo lucratur vel mulier res, quae ad eam a marito perveniunt, vel maritus eas, quae ex bonis mulieris ad eum transeunt (hoc est ubi primum matrimonium alterius morte dissolvitur nec superstes ad secundas nuptias venit), si res vel maritus vel uxor (hoc est qui superstes est) non consumpserit vel alienaverit (quod eis ad secundas nuptias non venientibus quasi rerum dominis concessum esse non dubium est), liberis liceat res a patre profectas ut paternas, a matre ut maternas accipere.

D. VII id. Sept. Constantinopoli Theodosio A. XVII et Festo conss.

[6] *Impp. Leo et Anthemius AA. Erythrio pp.* **pr.** Hac edictali lege in perpetuum valitura sancimus, si ex priore matrimonio procreatis liberis pater vel mater ad secunda vel tertia aut ulterius repetiti matrimonii vota migraverit, non sit ei licitum novercae seu vitrico testamento vel sine scriptura seu codicillis, hereditatisve iure sive legati vel fideicommissi titulo plus relinquere, nec dotis aut ante nuptias donationis nomine seu mortis causa habita donatione conferre nec inter vivos conscribendis donationibus (quae etsi constante matrimonio civili iure interdictae sint, morte tamen donatoris ex certis causis confirmari solent), quam filio vel filiae, si unus vel una extiterit.

1. Quod si plures liberi fuerint, singulis aequas partes habentibus minime plus, quam ad unumquemque eorum pervenerit, ad eorum

decedent wife, property on the ground that it is maternal – that is, when after a marriage has been ended by the death of a wife the husband remarries – if the children do not enter upon the inheritance of the parent who has predeceased the other, they will be permitted (successfully) to claim ownership of such property as though it had belonged only to the parent who died second, obviously, even if they believed they should enter upon the inheritance only of the parent who died in second place, so that a rule that has been introduced to benefit children in certain situations does not seem to have been contrived to their disadvantage.[73]

7. Consistent with Our humane sensibility, We believe that the following provision should also be added to this law, namely, that even in that situation in which either a wife gainfully acquires the property she has received from her husband or a husband gainfully acquires the property which has passed to him from his wife – that is, when a first marriage has ended through the death of one spouse and the other does not remarry – if the husband or wife – i.e., the surviving spouse – does not use up or alienate such property – something that is without doubt permitted to those who do not remarry, on the ground that they are owners of the property in question – the children shall be permitted to receive the property deriving from the father in that it is paternal, and that from the mother in that it is maternal.

Given September 7, at Constantinople, in the consulship of Theodosius Augustus, for the seventeenth time, and Festus (439).

[6][74] *Emperors* Leo *and* Anthemius *Augusti to Erythrius, Praetorian Prefect.*
pr. Through this law in the form of an Edict (*lex edictalis*), which shall be valid for all time to come, We lay down that, if, having children from a prior marriage, a father or a mother should marry a second or third time, or still further, it shall not be permitted to leave to him or her, as stepmother or stepfather, more than to a son or daughter if one or the other survives, in a will whether through oral declaration or through (written) codicils, whether under the rules of inheritance or the title of legacy or trust, nor to transfer more under the category of dowry, prenuptial gift, gift in contemplation of death (*mortis causa*), or for the purpose of registering gifts made during the lifetime of the giver – which, even if these are for the duration of a marriage forbidden under the rules of private law, nevertheless upon the death of the giver are for certain reasons customarily confirmed.

1. But if there is more than one child, when each one enjoys an equal share, their stepfather or stepmother shall not at all be permitted to receive more

[73] The last part of 6 = (with changes) C. 1.14.6. Blume: "The property became that of the children as a matter of law although they did not accept the inheritance of either parent."
[74] Combine with C. 6.20.1, 6.61.4.

liceat vitricum novercamve transferri. 2. Sin vero non aequis portionibus ad eosdem liberos memoratae transierint facultates, tunc quoque non liceat plus eorum novercae vel vitrico testantem relinquere vel donare seu dotis vel ante nuptias donationis titulo conferre, quam filius vel filia habet, cui minor portio ultima voluntate derelicta vel data fuerit aut donata, ita tamen, ut quarta pars, quae isdem liberis debetur ex legibus, nullo modo minuatur nisi ex his causis, quae de inofficioso excludunt querellas.

3. Quam observationem in personis etiam avi et aviae, proavi et proaviae, nepotum vel neptum, item pronepotum vel proneptum, sive in potestate sive emancipati emancipataeve sint, ex paterna vel materna linea venientibus, custodiri censemus. sin vero plus quam statutum est aliquid novercae vel vitrico relictum vel donatum aut datum fuerit, id, quod plus relictum vel donatum aut datum fuerit, tamquam non scriptum neque derelictum vel donatum aut datum ad liberorum personas deferri et inter eas dividi iubemus: omni circumscriptione, si qua per interpositam personam vel alio quocumque modo fuerit excogitata, cessante.

4. His illud adiungimus, ut mulier in his casibus, in quibus ante nuptias donationes, ceteras etiam res a marito ad se devolutas secundum priorum legum statuta liberis communibus ut paternas servare compellitur (hoc est ubi morte mariti matrimonio dissoluto ad alias nuptias venerit), immobilium rerum et mancipiorum annonarumque civilium usu fructu dumtaxat vitae suae temporibus potiatur, alienatione earum penitus interdicta: 5. Mobilium vero rerum, iustis pretiis aestimatione habita per eos, quos utraque pars elegerit, arbitros iudicaturos interposito sacramento, simili modo usum fructum habeat, si idoneam fideiussionem praebuerit, quod easdem res mobiles vel earum pretium filiis et filiabus ex eodem matrimonio procreatis vel post mortem eorum nepotibus et neptibus ex isdem liberis procreatis, sive omnibus vel uno unave superstite mori contigerit, secundum legum modum restituat:

6. Vel certe si fideiussiones idoneas praestare distulerit aut nequiverit, praedictae res mobiles necdum matri a liberis traditae apud eosdem manebunt: solutae vero eidem matri vel ab eadem detentae restituentur liberis, si tamen ab his fideiussio idonea matri fuerit oblata, qua caveri debet, quod eidem superstiti pro usu fructu earundem rerum mobilium vel pretio, quo taxatae sunt, usurarum nomine centesimae partem tertiam annuis quibusque temporibus praestare non differant, ita ut in eadem fideiussione hoc quoque caveatur, quod

than what accrues to each one of them. 2. But if, however, the aforementioned resources pass to the children in unequal shares, then too the will-maker shall not be permitted to leave, make over as a gift, or to transfer under the title of dowry or prenuptial gift more to their stepmother or stepfather than is received by the son or daughter to whom the smallest share has been left by will, transferred, or presented as a gift, with the result in any case that the portion of one-fourth, which is owed to these same children in accordance with the laws, is in no way diminished except for those reasons that exclude a claim based on an undutiful will.

3. We ordain that these rules shall hold regarding also the grandfather and grandmother, the great-grandfather and great-grandmother, grandsons and granddaughters, likewise great-grandsons and great-granddaughters, whether they are in paternal power (*potestas*) or emancipated, on both the father's and the mother's side. But if, however, something above the legislative limit has been left, transferred, or given as a gift to a stepmother or stepfather, We order that the amount in excess that has been left, given as a gift, or transferred shall be made over to the children and divided among them, as though it had not been (validly) left, given as a gift, or transferred. Every dodge shall be stripped of validity, whether one has been constructed using a third party or in any other way whatsoever.

4. We add to these provisions the following, that in those situations in which the wife is compelled to preserve for their common children, in that this is paternal property, the prenuptial gift and the other property of her husband that accrues to her pursuant to the rules of prior legislation – that is, when, after the marriage is ended by her husband's death, she remarries – she shall have the usufruct only during her lifetime of real property, slaves, and entitlements to the public grain supply. She is strictly forbidden to alienate this property. 5. She shall in fact have in a similar manner the usufruct of movable goods, after their just value is determined on an appraisal performed, upon oath, by arbitrators chosen by both parties, provided she produces a suitable surety, (guaranteeing) that she return, in accordance with the statutory rules, the property itself or its value to the sons and daughters born from that marriage or, after their death, to the grandsons and granddaughters born from these children, whether all of the children happen to pass away or if one or the other survives.

6. To be sure, if she delays in producing or cannot produce adequate sureties, the aforesaid movable property that has not yet been handed over by the children to the mother will remain with them. If it has on the other hand been given to the mother or is held by her, it will be restored to the children. Nevertheless, (this shall happen) if they offer an adequate surety to their mother, through which it ought to be provided that, for as long as she lives, they pay her promptly, in place of the usufruct of the movable goods or

a filiis filiabusque et ex his genitis liberis, si ante eandem matrem omnes eos obire contigerit, omnes res praedictae mobiles secundum legum moderationem matri, ut ad eandem lucrum redeat luctuosum, restituentur.

7. Erit itaque licitum utrilibet parti, quae fideiussionem praebuerit, si sibi commodum esse perspexerit, his rebus mobilibus uti frui easdemque dare mutuo vel obligare vel vendere, ut ex his maxime liberi adquirentes possint materno adfectui sine suo incommodo servire. 8. Sin autem utraque pars praedictam fideiussionem dissimulaverit aut forte offerre nequiverit, eaedem res apud mulierem usque in diem vitae suae manebunt.

9. Omnibus videlicet isdem maritalibus facultatibus, his etiam, quas habet habiturave est, tamquam si iure pignoris vel hypothecae suppositae sint, super eadem ante nuptias donatione vel rebus aliis ad eam ex mariti substantia devolutis ex eo die, quo eaedem res ad eam pervenerint, liberis obligatis, ut, si quis post traditas matri vel detentas ab ea res (si ita contigerit) contractum aliquem cum eadem muliere inierit, quae se repetitis nuptiis copulaverit, in vindicandis isdem suppositis rebus posterior habeatur, liberis, qui ex eodem matrimonio procreati sunt, et nepotibus neptibusve, qui ex his liberis geniti sunt, sine dubio praeponendis.

10. Sin vero liberorum suorum adfectione servata pater materve ad alias nuptias migrare noluerit, neque vir his, quae de bonis uxoris ad se transeunt, neque mulier rebus, quae ex substantia mariti ad se pervenerint, pro suo arbitrio uti vel eas vendere aut quocumque iure vel modo eas alienare vel pignoris iure sive hypothecae (si voluerint) obligare, utpote domini earum, prohibebuntur. 11. Extantes autem praedictas res, si non fuerint alienatae sive consumptae vel suppositae, licebit liberis vindicare etiam non adeuntibus hereditatem parentum.

D. II k. Mart. Marciano cons.

[7] *Imp. Zeno A. Sebastiano pp.* In quibus casibus pater dotem, mater ante nuptias donationem vel alias res ad se ex altera parte devolutas filiis utriusque sexus servare praecepti sunt, si quem ex filiis vel filiabus ante

the value at which they are appraised, an annual rate of 3 percent interest, so that in the same surety agreement it is also laid down that from her sons and daughters and the children born from them, if they all happen to predecease her, all of the aforesaid movables will be returned to their mother, in accord with the guidance of the laws, so that the benefit, however sorrowfully, accrue to her.

7. And so either of the parties (the mother or the children) who offers surety will be permitted, if they deem it an advantage to themselves, to have the use and enjoyment (usufruct) of these movables, or to lend, place under a lien, or sell them, so that in particular the children, as they profit from this property, can pay due respect to a mother's affection without disadvantage to themselves. **8.** But if, however, either party should offer the aforesaid security in a fraudulent manner or by chance should not be able to offer any, the same property will remain with the woman until the last day of her life.

9. Plainly, all of the property which the woman has received from her husband, as well as that which she has acquired (in addition) or shall acquire, shall be placed under a lien to the children (of that marriage), as though it were bound by pledge or hypothec (*hypotheca*), as well as the premarital gift and other items that she has acquired from her husband's estate, from the day on which the property came to her, so that if anyone shall enter into any contract with the mother after such property has been handed over to or kept by – if it happens this way – said woman, who remarries, in claiming a right to such encumbered property this party's claim shall not be as strong as that of the children born from said marriage or that of the grandsons and granddaughters born of these children, whose claims shall without doubt be preferred.

10. But if, however, a father or mother, out of affection for their children, refuses to remarry, neither the man, regarding the property that comes to him from his wife's estate, nor the woman, regarding the property that comes to her from her husband's estate, will be prohibited from using this as they please, or selling it, alienating it under any title or in any way whatsoever, or encumbering it under pledge or hypothec, if they wish, insofar as they are its owners. **11.** Moreover, it will be permitted for children to claim such property (still) available, if it has not been alienated, consumed, or placed under a lien, even if they do not enter upon the estates of their parents.

Given February 29, in the consulship of Marcian (472).[75]

[7] *Emperor* Zeno *Augustus to Sebastianus, Praetorian Prefect.* In certain situations the father is required to preserve the dowry; the mother, the prenuptial gift; and both, property that has come to one from the estate of the other, for

[75] Seeck gives February 26, 472.

patris vel matris obitum mori contigerit sive ante secundas nuptias sive postea, filio vel filia vel nepte aut nepote vel pluribus patre suo adhuc vivo vel matre superstite derelictis, portionem, quae defuncto filio vel filiae debebatur vel lucrum ex ea non ad fratres vel sorores mortui, sed ad filios eius vel filias vel nepotes utriusque sexus aut pronepotes avis vel proavis superstitibus pervenire decernimus: eligendi videlicet quos voluerint ex liberis superstitibus non adempta licentia.

D. k. Mart. Illo vc. cons.

[8] *Imp. Iustinianus A. Menae pp.* **pr.** Si quis prioris matrimonii filiorum ante secundas nuptias patris vel matris mortuus fuerit filiis a se vel nepotibus vel pronepotibus relictis, partem eius non ad fratres vel, si nullus alius frater vel soror sit, ad patrem vel matrem eius pervenire, sed ad filios vel nepotes vel pronepotes eiusdem mortuae personae sancimus, ut, sive unus sive plures sint, eam tantummodo partem vindicare possint, quae mortuo competit.

1. Illud etiam certa sanctione definire censemus, ut, si quis vel si qua ex aliquo matrimonio filiis procreatis minime ad secundas venerit nuptias, ut eo modo liceat quidem genitori res ex priore coniugio sibi adquisitas quo modo voluerit alienare vel administrare, si quae vero earum minime sint alienatae, possint liberi etiam non adeuntes paternam vel maternam hereditatem eas vindicare, certum esse sancimus,[iv] quod etiam illa de cetero videbitur earundem fuisse rerum alienatio, quae in testamento genitoris vel specialiter relinquendo vel generaliter heredem instituendo facta sit. **2.** Talem vero licentiam filiis, ut etiam non adeuntes paternam vel maternam hereditatem lucra vindicarent, quae parens eorum ex matrimonio, quod secundo toro minime mutavit, sibi adquisita non alienavit, nullo modo eis concedimus, si paternam vel maternam hereditatem ab intestato ex parte (si forte alii etiam ex anteriore matrimonio morienti parenti filii sint) sibi adquisierint.

3. In illo etiam veterem sanctionem adimplentes praecipimus exemplo matris, cuius res post secundas nuptias filiis ex priore matrimonio natis suppositae sunt ad conservanda eis lucra, quae ex priore marito ad eam pervenerunt, patris quoque bona, quae habet habiturusque est, filiis ex

[iv] {sancimus}

their children of both sexes. If any of the sons or daughters should happen to predecease the father or mother, either before he or she has remarried or afterwards, leaving behind one or more sons, daughters, grandsons, granddaughters, with his or her own father or mother surviving, We decree that the share owed to the decedent son or daughter, or any benefit deriving from this, shall not pass to the brothers or sisters of the decedent, but to his or her sons or daughters or grandchildren of both sexes or great-grandchildren, although there are surviving grandparents or great-grandparents. Plainly, the power of choosing whom they wish (to benefit) from among their surviving children has not been taken away from them.

Given March 1, in the consulship of the vir clarissimus *Illus (478).*

[8][76] *Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect.* pr. If any of the children of a prior marriage should die before the remarriage of a father or mother, leaving behind children, grandchildren, or great-grandchildren, We ordain that his or her share shall not go to his or her siblings or, if there is no brother or sister, to his or her father or mother, but to the children, grandchildren, or great-grandchildren of the aforesaid decedent, so that, whether there are one or more, they can claim only that part to which the decedent was entitled.

1. We also aim to establish the following by a fixed enactment (*certa sanctio*), that if any man or woman with children from a prior marriage does not at all remarry, he or she shall be permitted – as a parent, at all events – to alienate or to administer property acquired from a prior marriage in any way he or she wishes. But if this property has not been alienated, it is certain that their children can claim it even if they do not enter upon the inheritance of their father or mother. This will also hold in the future for the alienation of that property that occurs when a parent makes a will, either leaving a particular item to someone or in general when appointing an heir. 2. In fact, We permit children, even if they do not enter upon the inheritance of a father or mother, to claim the benefit accruing from property which their parent acquired during marriage, and, after not remarrying, did not then alienate; but in no way (do We permit this) if they have acquired a portion of their father's or mother's inheritance on intestacy – if by chance there are other children of a decedent parent also from a prior marriage.

3. Also, in fulfilling the old rule, We lay down, as in the case of the mother whose property after remarriage is placed under a lien for the children from a prior marriage, so as to preserve for them its benefits which have come to her from her former husband, that the property also of a father, which he has acquired or later acquires, is placed under a lien for the children born in a prior

[76] Combine with C. 5.12.29.

priore matrimonio natis post secundas eius nuptias ad ea conservanda, quae ex eorum matre lucratus est, supposita esse. 4. Illius etiam patris, qui in sua potestate talem liberum vel liberos habens maternam eis substantiam vel ex materna linea ad eos devolutam servare compellitur, isdem liberis bona supposita esse ad conservandas easdem maternas res decernimus: ita tamen, ut occasione talium hypothecarum neque patris neque matris filii valeant administrationem perscrutari vel aliquam eis movere super hoc quaestionem, cum perspicui iuris sit, etiamsi alienata sint eorum bona, quae extra memorata lucra vel maternas res sunt, ius hypothecae integrum isdem manere filiis.

D. III id. Dec. dn. Iustiniano A. II cons.

[9] *Idem A. Menae pp.* **pr.** Quoniam praeteritae leges omnia, quae liberis ex priore matrimonio procreatis mulier quidem secundo marito, vir autem uxori secundae dotis vel ante nuptias donationis nomine vel alio quocumque modo dederit vel reliquerit ampliora his, quae uni filio vel filiae ex anteriore matrimonio progenitis danda vel relinquenda sunt, revocata ad solos filios ex priore matrimonio natos pervenire constituerunt nullaque in hac parte filiorum ex secundo matrimonio natorum mentio facta est, hoc quoque corrigentes omnia quae memorato modo revocantur non solum ad filios prioris matrimonii, sed etiam ad eos qui ex secundis nuptiis nati fuerint pertinere et in capita inter omnes dividenda sancimus.

1. Ad haec lucra, quae marito vel uxori ex dote vel ante nuptias donatione occasione repudii accedunt, indistincte post secundas eorum nuptias liberis ex priore coniugio procreatis ad similitudinem matrimonii morte dissoluti servari nec de cetero repudii causam requiri vel aliam in ea re exquisitionem fieri.

D. id. April. Constantinopoli Decio vc. cons.

[10] *Idem A. Demostheni pp.* **pr.** Cum apertissime legibus cavetur ingratos liberos a maiorum suorum hereditate merito esse repellendos, si hoc idem in suis elogiis conscripserint et re vera fuerit revelatum,

marriage after he remarries, in order to preserve those benefits he has acquired from their mother.

4. We decree that the property of that father also, who having such a child or children in his power (*potestas*), is compelled to preserve for them the property that was their mother's or that derives from their mother's family, be placed under a lien for those same children for the purpose of preserving their mother's property. But (this shall occur) on the following condition, that where such (real) security arrangements (*hypothecae*) are in place the children shall not be empowered to examine minutely the management by their father or mother or to carry out any other enquiry about this, since it is a very clear point of law (*perspicuum ius*) that even if their property, beyond that mentioned above or which was their mother's, is alienated, the right of hypothec is preserved intact as far as these same children are concerned.

Given December 11 in the consulship of Our Lord Justinian Augustus, for the second time (528).

[9] *The same Augustus to Menas, Praetorian Prefect.* pr. Laws in the past have enacted that, when there are children born in a prior marriage, everything that a woman, certainly, gives or leaves behind to a new husband, or that a man, moreover, (gives or leaves behind) to a new wife under the title of dowry, prenuptial gift, or in any other way, and that amounts to more than is to be given or left behind to a single son or daughter born from the prior marriage, shall be recalled and made over only to the children born in the prior marriage. No mention is made of children born in the subsequent marriage. By way of correcting this point as well, We ordain that all things recalled in the manner just mentioned shall accrue not only to children born in the prior marriage but to those born in the subsequent one as well, and must be divided up equally among all of them.

1. Moreover, (We ordain that) the benefits, which accrue to a husband or wife from the dowry or prenuptial gift at the time of a divorce, shall after remarriage, be preserved indifferently for the children born in the prior marriage on the analogy of a marriage dissolved by the death of one of the partners, and that in the future the reason for the divorce shall not be inquired into, nor shall any other enquiry be made in this matter.

Given April 13,[77] *at Constantinople, in the consulship of the* vir clarissimus *Decius (529).*

[10] *The same Augustus to Demosthenes, Praetorian Prefect.* pr. Although in the laws it is laid down most clearly that ungrateful children are rightly to be excluded from the inheritance of their elders, if the latter have written such a

[77] The precise day is uncertain: the alternatives are April 1 (preferred by Lounghis *et al.*) or April 6.

reclamare videtur huiusmodi sanctioni divalis constitutio Leonis inclitae recordationis, quam super filiis ex priore matrimonio procreatis conscripsit. **1.** Nam cum necessitas est patri vel matri, qui ad secunda vota migraverunt, tantum praestare per quamcumque causam secundo marito vel novercae, quantum filio vel filiae ex anterioribus nuptiis progenitis qui partem minimam habiturus est reliquerit, maxima iniquitas ex hac sanctione contra genitores efficiebatur. **2.** Liberi etenim scientes, quod omnimodo aliquid sibi a genitoribus suis et nolentibus relinquendum est, et tantum, quantum secundus maritus vel noverca acceperit, cum omni licentia et lascivia suos genitores iniuriis adficiebant.

3. Quapropter sancimus ingratos re vera liberos neque hoc beneficium, quod divalis constitutio Leonis augustae memoriae eis praestitit, in posterum posse sibi vindicare, sed quasi ingratos ab omni huiusmodi lucro repelli. **4.** Quam observationem in personis etiam avi et aviae, proavi et proaviae, nepotum vel neptum, item pronepotum et proneptum, sive in potestate sive emancipati emancipataeve sint, ex paterna vel materna linea venientibus custodiri censemus.

5. Sed quemadmodum genitoribus providimus, ita et innocuam posteritatem nullis adfici iniuriis patimur, ut non genitores, qui sese secundis nuptiis devoverunt, irrationabile odium ad priores liberos forsitan habentes sine iusta ratione eos ingratos vocare concedantur. **6.** Eos etenim liberos huiusmodi beneficio defraudari volumus, qui re ipsa ingrati circa suam antiquitatem ab heredibus genitorum liquidis et indubitatis probationibus convicti fuerint ex huiusmodi casibus, qui antea priscis legibus enumerati sunt.

D. xv k. Oct. Chalcedone Decio vc. cons.

[11–18] …

X Si Secundo Nupserit Mulier, Cui Maritus Usum Fructum Reliquerit

[1] *Imppp. Valentinianus Theodosius et Arcadius AAA. Tatiano pp.* **pr.** Si usum fructum maritus rerum suarum decedens uxori reliquerit eaque in secundas nuptias consortiumque convenerit, usum fructum,

thing in their wills and it was shown to be justified in actual fact, the imperial constitution[78] of Leo of distinguished memory, which he composed concerning children born in a prior marriage, seems to reject a rule of this kind. **1.** For when the necessity was enjoined upon a father or a mother, who had remarried, to give to the new husband or stepmother, for any reason whatsoever, only as much as he or she left to the son or daughter from the prior marriage who was going to receive the smallest share, this rule was creating a (situation of) very great unfairness for the parents. **2.** For, since the children knew that in any case something had to be left to them by their parents even if the latter were unwilling and that this would be as much as the new husband or stepmother received, they were inflicting injury upon their parents with all freedom and lack of restraint.

3. For this reason We decree that truly ungrateful children shall not in future be able to claim for themselves that benefit which the imperial constitution of Leo of revered memory granted to them, but that, because they are ungrateful, they shall be excluded from every advantage of this kind. **4.** We lay down that this same principle shall be observed in the case also of a grandfather and grandmother, great-grandfather and great-grandmother, grandsons and granddaughters, likewise great-grandsons and great-granddaughters, whether they are in paternal power (*potestas*) or are emancipated, whether they derive from the paternal or the maternal line.

5. But in the same way as We provide for the parents, We do not allow innocent progeny to suffer any injury, so that parents who remarry and are perhaps possessed by an irrational hatred for their children from a prior marriage shall not be allowed to designate them as ungrateful without good reason. **6.** For We wish those children to be deprived of a benefit of this kind who are shown by the heirs of their parents to be genuinely ungrateful in regard to their filial reverence, through clear and undoubted proofs linked to situations which have been previously set forth in the ancient laws.

Given September 17, at Chalcedon, in the consulship of the vir clarissimus *Decius (529).*[79]

Tenth Title If a Woman, Whose Husband Has Left Her a Usufruct, Remarries

[1] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Tatianus, Praetorian Prefect.* **pr.** If a husband upon his death leaves the usufruct of his property to his wife and she (then) remarries, she shall lose the

[78] C. 5.9.6.
[79] As many as seven additional constitutions seem to be missing from this title.

quem ex priore marito consecuta fuerit, amittat atque eum filiis ex die quo nupserit mature restituat. 1. Quod si liberos ex priore matrimonio adhuc imbecillitas habebit infantiae nec muniet tutoris auxilium ac per huiusmodi occasionem mater quae relicta fuerant usurpaverit, omnia, cum legitime repetantur, cum competentibus fructibus ad liquidum deducta ratione restituet. 2. Haec de usu fructu, quem vir extremam constituens voluntatem de rebus propriis uxori reliquerit. de usu fructu vero rerum ante nuptias donatarum ea servari quae anteriores constitutiones decreverunt sancimus.

D. id. Mart. Arcadio A. II et Rufino conss.

XI De Dotis Promissione vel Nuda Pollicitatione

[1] *Imp. Alexander A. Claudio.* Frustra existimas actionem tibi competere, quasi promissa dos tibi nec praestita sit, cum neque species ulla nec quantitas promissa sit, sed hactenus nuptiali instrumento adscriptum, quod ea quae nubebat dotem dare promiserit.

PP. k. Aug. Pompeiano et Peligno conss.

[2] *Imp. Gordianus A. Herodoto.* Si pro dote promissa usuras dare socer tuus spopondit, id quod deberi ostenderis competens iudex solvi tibi praecipiet.

PP. XII k. Sept. Pio et Pontiano conss.

[3] *Idem A. Claudio.* Si, cum ea quae tibi matrimonio copulata est nuberet, is cuius meministi dotem tibi non addita quantitate, sed quodcumque arbitratus fuisset pro ea daturum se rite promisit et interpositae stipulationis fidem non exhibet, competentibus actionibus usus ad repromissi emolumentum iure iudiciorum pervenies: videtur enim boni viri arbitrium stipulationi insertum esse.

usufruct that she obtained from her first husband and she shall promptly restore it to her children on the day she remarries. 1. But if the weakness of infancy (*imbecillitas infantiae*) still grips the children from the prior marriage and the assistance of a *tutor* does not protect them, and the mother seizes this opportunity to appropriate what has been bequeathed, she will restore everything upon the launch of a proper lawsuit, along with the relevant fruits (*fructus*) after a transparent accounting has been made. 2. This rule applies in the case of a usufruct which a man in making a will leaves to his wife from his own property. We ordain however that, in the case of a usufruct of property deriving from a prenuptial gift, the rules shall continue to stand that have been established by prior constitutions.

Given March 15, in the consulship of Arcadius Augustus, for the second time, and Rufinus (392).

Eleventh Title Constitution of a Dowry through Formal and Informal Promise

[1] *Emperor* Alexander *Augustus to Claudius.* You are wrong to think that you are eligible for a right of action (*actio*) on the ground that a dowry has been formally promised (by stipulation) but not delivered to you, when there has been no promise of a particular item or a particular amount, but a note was simply made in the marriage document to the effect that the bride promised to give a dowry.

Posted August 1, in the consulship of Pompeianus and Pelignus (231).

[2] *Emperor* Gordian *Augustus to Herodotus.* If your father-in-law has undertaken by stipulation to give interest on a formally promised dowry, that sum, which you prove is owed, a judge with the appropriate jurisdiction will instruct to be paid.

Posted on August 21, in the consulship of Pius and Pontianus (238).

[3] *The same Augustus to Claudius.* If, at the time when you wed the woman (now) joined to you in marriage, the person whom you mentioned formally promised (by stipulation) that he would give to you a dowry on your wife's behalf, specifying not a particular value but whatever he deemed appropriate, and he does not live up to the stipulation, then by relying on the relevant rights of action (*actiones*), you will receive through the operation of the courts the benefit promised. For "the judgment of a good man" (*arbitrium boni viri*) is deemed to have been embedded in the stipulation.

PP. k. Ian. Sabino et Venusto conss.

[4] *Impp. Diocletianus et Maximianus AA. et CC. Rufo.* Si voluntate dotantis in dotali instrumento plura tibi tradita scripsisti quam suscepisti, intellegis de his quae desunt petendis pactum esse consecutum.

S. non. April. AA. conss.

[5] *Idem AA. et CC. Dasumianae.* Si pro te pater marito tuo stipulanti promisit dotem, non tibi, sed marito contra successores soceri competit actio.

D. VIII k. Dec. AA. conss.

[6] *Impp. Theodosius et Valentinianus AA. Hierio pp.* Ad exactionem dotis, quam semel praestari placuit, qualiacumque sufficere verba censemus, sive scripta fuerint sive non, etiamsi stipulatio in pollicitatione rerum dotalium minime fuerit subsecuta.

D. x k. Mart. Constantinopoli Felice et Tauro conss.

[7] *Imp. Iustinianus A. Iohanni pp.* **pr.** Si pater dotem pro filia simpliciter dederit vel pro filio ante nuptias donationem fecerit, habeat autem filius vel in potestate constitutus vel forte emancipatus res maternas vel ex alio modo tales, quae adquisitionem effugiunt, quarum usus fructus solus apud patrem remanet, vel quocumque modo poterat quasdam actiones contra patrem habere, dubitabatur apud veteres, utrumne videatur pater ex ipso debito dotis vel ante nuptias donationis fecisse promissionem vel dationem, ut sese ab huiusmodi nexu liberet, an debitum quidem remanet in sua natura, liberalitas autem paterna dotem vel ante nuptias donationem dare suggessit. **1.** Et in tali dubitatione multa

Posted on January 1, in the consulship of Sabinus and Venustus (240).[80]

[4][81] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Rufus.* If, in accordance with the wishes of the person providing the dowry, you wrote in the dowry document that more was handed over to you than what was actually received, you understand that a pact has been (implicitly) made about claiming the missing items.

Written April 5,[82] *in the consulship of the Augusti (293).*

[5] *The same Augusti and Caesars to Dasumiana.* If your father formally promised a dowry on your behalf through a stipulation with your husband, it is not you, but your husband, who has an action against his father-in-law's heirs.

Given on November 24, in the consulship of the Augusti (293).

[6][83] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Hierius, Praetorian Prefect.* For the repayment of a dowry which it has been agreed was paid in the first place, We lay down that any sort of language whatsoever suffices, whether placed in written form or not, even if no stipulation accompanied the informal promise (*pollicitatio*) of dowry property.

Given February 20, at Constantinople, in the consulship of Felix and Taurus (428).

[7] *Emperor* JUSTINIAN *Augustus to John, Praetorian Prefect.* **pr.** If a father, without further ado, gives a dowry on behalf of his daughter or a prenuptial gift on behalf of his son, and the child, whether in power (*potestas*) or by chance emancipated, should possess property that had belonged to his mother or derived from another source, which the father did not own but of which he had only the usufruct, or he or she (the child) in any way at all might be entitled to raise certain rights of action (*actiones*) against his or her father,[84] there was a controversy among the ancient jurists (*veteres*) as to whether the father is deemed to have formally promised or given the dowry or prenuptial gift out of that debt, so that he is released from liability for it, or (whether) the debt remained intact and it was the father's spirit of generosity that prompted the giving of a dowry or prenuptial gift. **1.** And great numbers of lawgivers were

[80] Other constitutions show that this was the second consulship for Sabinus.

[81] Combine with perhaps C. 2.21.5 and/or 5.14.6.

[82] The precise day is uncertain: the alternatives are May 3 and 7.

[83] = (with changes) C.Th. 3.13.4. Combine with C. 2.57.2, 5.3.17, 5.4.22, 6.18.1, 6.24.11, 6.61.2.

[84] Blume: "A child under paternal power originally could own no property of his own. Whatever he had was his father's (or grandfather's, whoever had paternal power over him.) But gradually such child retained the title to the property which he or she received from sources other than the father. This included property derived from the mother's side." See C. 6.60.

pars legislatorum sese divisit, alio etiam incremento huiusmodi quaestioni addito, si forte dixerit in instrumento dotali ex rebus paternis et maternis dotem vel ante nuptias donationem dare, utrum pro dimidia parte videtur datio vel promissio facta esse, an pro rata portione utriusque substantiae.

2. Utramque igitur dubitationem certo fini tradentes sancimus, si quidem nihil addendum existimaverit, sed simpliciter dotem vel ante nuptias donationem dederit vel promiserit, ex sua liberalitate hoc fecisse intellegi, debito in sua figura remanente. neque enim leges incognitae sunt, quibus cautum est omnimodo paternum esse officium dotes vel ante nuptias donationes pro sua dare progenie. 3. Et liberalitas itaque talis maneat vera et irrevocabilis et puro nomine liberalitas, et debitum suam sequatur fortunam.

4. Ubi autem ex rebus tam suis quam maternis vel aliis quae non adquiruntur vel ex suis debitis dixerit fecisse huiusmodi liberalitates, tunc si quidem penitus inopia tentus est, ex illis videri rebus dotem vel ante nuptias donationem esse datam, quae ad filios vel filias pertinent. 5. Si vero et ipse substantiam idoneam possidet, et in hoc casu de suo patrimonio dotem vel ante nuptias donationem dedisse intellegatur. poterat enim secundum suas vires dotem pro filia vel ante nuptias donationem pro filio dare et consentire filiis suis, quando voluerint partem vel forte totam suam substantiam quam habent paternae liberalitati pro dote et ante nuptias donatione adgregare, ut re vera appareat, quid ipse vult dare et quid de substantia filiorum proficiscitur, ne, dum effuso sermone sese iactet, in promptum incidat sui periculum.

D. k. Nov. post consulatum Lampadii et Orestis vv. cc.

XII De Iure Dotium

[1] *Impp. Severus et Antoninus AA. Nicephoro.* **pr.** Evicta re, quae fuerat in dotem data, si pollicitatio vel promissio fuerit interposita, gener contra socerum vel mulierem seu heredes eorum condictione vel ex stipulatione agere potest.

divided over this controversy, with an additional factor aggravating the debate. If by chance he (the father) declared in the dowry document that he was giving a dowry or prenuptial gift deriving from paternal and maternal property, (it was disputed) whether the formal promise or gift was deemed to arise one-half from each estate or in proportion to the relative size of each.

2. Therefore, putting a definite end to both points of dispute, We ordain that if, in fact, he (the father) thought that no explanation should be added, but without further ado gave or formally promised a dowry or prenuptial gift, he shall be understood to have done this out of his own generosity, leaving the debt (to his child) intact. For the laws in which it is laid down that it is entirely the responsibility of a father to give dowries or prenuptial gifts on behalf of his descendants are not obscure. 3. And therefore such generosity shall remain genuine, unimpeachable, and unconditional in motive, and the debt shall run its own course.

4. When, however, he declares that he has made such gifts out of his own property as well as out of the maternal estate, or from other property which he does not own outright, or in payment of debts owed by him to the child, then indeed, if he is seriously afflicted with poverty, the dowry or prenuptial gift shall be considered to have been given out of the property accruing to the sons or daughters. 5. But if he possesses sufficient wealth, he shall be understood even in this situation to have given the dowry or the prenuptial gift out of his own property. For he could have given a dowry on behalf of a daughter or a prenuptial gift on behalf of a son in a manner consistent with his level of resources, and reached an agreement with his children when they wished to add a part or perhaps all of their own property to the generous act of their father in respect to the dowry or prenuptial gift. The result in actual fact would be that it is clear what he himself wished to give and what derived from the property of the children, so that, while he puffed himself up with loose talk, he did not readily incur liability with respect to his property.

Given November 1, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

Twelfth Title Dowry Law[85]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Nicephorus.* **pr.** If title has failed for property given as dowry (and the husband is evicted from it), whether this was promised formally or informally, the son-in-law can sue his father-in-law, his own wife, or their heirs, either through a claim for restitution (*condictio*) or on the stipulation.

[85] See D. 23.3.

1. Sin autem nulla pollicitatio vel promissio intercesserit, post evictionem eius, si quidem res aestimata fuerit, ex empto competit actio. **2.** Sin vero hoc non factum est, si quidem bona fide eadem res in dotem data est, nulla marito competit actio: dolo autem dantis interposito de dolo actio adversus eum locum habebit, nisi a muliere dolus interpositus sit: tunc enim, ne famosa actio adversus eam detur, in factum actio competit.

PP. k. Aug. Muciano et Fabiano conss.

[2] *Imp. Antoninus A. Alcibiadi.* **pr.** Si stipulatio de restituenda portione dotis datae subiecta est condicioque eius extitit, habet ex ea actionem, in cuius personam utiliter concepta commissaque est. **1.** Secundum quod si Polla soror tua de restituenda sibi parte dotis habet actionem eo, quod mater vestra donandi animo passa est partem dimidiam dotis post obitum matris filiam stipulari, metuere non debet doli exceptionem, quod matri suae quae pactum interposuit heres ex minore quam dimidia portione extitit, nisi liquido probatum fuerit matrem eius mutasse dotis pacti voluntatem contentamque esse voluisse filiam suam pro portione hereditatis praelegationibus maritumque suum exactione liberari voluisse.

PP. d. III k. Aug. Antonino A. IIII et Balbino conss.

[3] *Imp. Alexander A. Euphemo.* Etsi dotis exactio defuncta in matrimonio filia potuisset ad patrem pertinere, dotalibus tamen servis maritus testamento directam et fideicommissariam libertatem iure dedit et praestita revocari non debuit, cum et inter vivos manumittendi mancipia dotalia constante matrimonio liberam maritus habet facultatem.

PP. VI id. Dec. Antonino et Alexandro conss.

[4] *Idem A. Valenti.* Nulla lege prohibitum est universa bona in dotem marito feminam dare.

PP. IIII id. Iul. Maximo II et Aeliano conss.

1. Without an informal or formal promise (of the dowry), however, upon failure of title a right of action on purchase (*actio ex empto*) lies if in fact the property has been appraised (*aestimata*). 2. But if, however, this has not been done, provided to be sure that the property has been given as dowry in good faith, no action is available for the husband. If, however, there was deceit (*dolus*) on the part of the giver, an action on *dolus* will lie against him. An exception occurs when *dolus* was present on the part of the wife. For in that case, in order that an action detrimental to her status and reputation (*famosa*) not lie against her, she shall be liable (only) in an action *in factum*.

Posted on August 1, in the consulship of Mucianus and Fabianus (201).

[2] *Emperor* ANTONINUS *Augustus to Alcibiades.* **pr.** If a stipulation has been made concerning the return of a portion of a dowry and a condition relevant to it has come into play, the person for whose benefit this (condition) was validly designed and executed has the action. 1. Accordingly, if your sister Polla has an action for the recovery of a portion of the dowry by reason of the fact that your mother, with the intention of making a gift, permitted her daughter to stipulate (from her step-father, evidently) for one-half of her dowry after the mother's death, she (Polla) ought not to fear the raising of an affirmative defense of deceit (*exceptio doli*; by her step-father), because she is heir to her mother, who was a party to the agreement on the dowry, for less than the half-portion (of the dowry). This does not hold if it is clearly proved that the mother changed her mind with respect to the dowry agreement and wished her daughter to be content, in place of her share of the estate, with specific legacies, and (wished) her husband to be freed from (the duty of) repayment.

Posted on July 30, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[3] *Emperor* ALEXANDER *Augustus to Euphemus.* Although the father of a daughter whose marriage terminated by her death might have been eligible to claim repayment of her dowry, nevertheless her husband has rightly manumitted dowry slaves either through operation of the last will (of his wife) or in fulfillment of a trust. Once given, this freedom cannot be revoked, since even without a will (*inter vivos*) a husband has the free discretion to manumit dowry slaves during the marriage.

Posted on December 8, in the consulship of Antoninus and Alexander (222).

[4] *The same Augustus to Valens.* It is prohibited by no law for a woman to give all of her property as a dowry to her husband.

Posted on July 12, in the consulship of Maximus, for the second time, and Aelianus (223).

[5] *Idem A. Statiae.* Quotiens res aestimatae in dotem dantur, maritus dominium consecutus summae velut pretii debitor efficitur. si itaque non convenit, ut soluto matrimonio res restituerentur et iure aestimatae sunt, retinebit eas, si pecuniam tibi offerat.

D. III id. April. Alexandro A. II et Marcello conss.

[6] *Idem A. Sulpicio.* Avia tua eorum, quae pro filia tua in dotem dedit, etsi verborum obligatio non intercessit, actionem ex fide conventionis ad te, si heres extitisti, transmittere potuit. nec enim eadem causa est patris et matris paciscentium, quippe matris pactum actionem praescriptis verbis constituit, patris dotis actionem profecticiae nomine competentem conventione simplici minime creditur innovare.

D. III id. Febr. Maximino A. et Africano conss.

[7] *Imp. Gordianus A. Marco.* Cum a socero tuo pro uxore dos tibi daretur, si ea in stipulationem deducta non est sub tempore dationis, sed postea, socer tuus tecum paciscendo, si id non ex voluntate filiae suae fecit, condicionem eius laedere non potuit. quandoque enim sola de dote experiens id pactum non debere ad sui dispendium operari de iure defenditur.

PP. d. k. Octobribus Pio et Pontiano conss.

[8] *Idem A. Agrippinae.* Etiamsi non dotem reddi sibi mater, sed ea, quae in dotem data sunt, ut eam sequerentur vel ad se pertineant in matrimonio defuncta filia, stipulata sit, durante matrimonio filia decedente actionem ex stipulatu videri quaesitam aequissimum esse iudicamus. cui consequens est, ut etiam id, quod additamenti causa in dotem datum est, eadem actione repetatur.

PP. k. Febr. Sabino et Venusto conss.

[5] *The same Augustus to Statia.* Whenever property with an appraised value (*res aestimatae*) is given as a dowry, the husband acquires ownership of it and becomes liable for this value as though this were its price. Therefore, if it was not agreed that the property should be restored upon dissolution of the marriage, and it was properly appraised, he will (be able to) keep it if he pays you (its value in) money.

Given on April 11, in the consulship of Alexander Augustus, for the second time, and Marcellus (226).

[6] *The same Augustus*[86] *to Sulpicius.* Even without a stipulation, on the basis of an informal agreement (with the husband), your grandmother could transfer to you, if you became her heir, the action for property that she gave as dowry for your daughter. For the legal basis of the claim (*causa*) of a mother making such an agreement is not the same as that of a father, since the mother's agreement gives rise to an action on the facts as indicated (*actio praescriptis verbis*), while it is held that a father's action, which he holds under the title of *dos profecticia*, cannot at all be altered by mere (informal) agreement.

Given February 11, in the consulship of Maximinus Augustus and Africanus (236).

[7] *Emperor* G*ORDIAN* *Augustus to Marcus.* When a dowry was given to you by your father-in-law on behalf of your wife, with a stipulation not being made at that time but only afterwards, your father-in-law, in making an agreement with you, could not cause injury to the marital situation (*condicio*) of his daughter if he acted in this way contrary to her wishes. For whenever she brings suit on her own over the dowry, as is rightly claimed, this agreement ought not to operate to her disadvantage.

Posted on October 1, in the consulship of Pius and Pontianus (238).

[8] *The same Augustus to Agrippina.* Even if a mother did not stipulate (explicitly) that a dowry be returned to her, but only (stipulated) that the items given as the dowry should "follow her" or "belong to her" if the daughter's marriage terminates through her death, if the daughter dies while married We hold that it is most just that the mother be deemed to acquire a right of action (*actio*) on the stipulation. As a logical result, even property that is given as dowry in the form of a supplement shall be recoverable through the same action.

Posted February 1, in the consulship of Sabinus and Venustus (240).

[86] In fact, the constitution is from Maximinus, as shown by the date. The grandmother's agreement on return of the dowry is exercised by her son as her heir.

[9] *Impp. Decius A. et Decius C. Urbicanae.* Dotis tuae potiorem causam magis esse convenit quam rei publicae, cui postea idem maritus obnoxius factus est.

PP. VI id. Iun. Decio A. et Grato conss.

[10] *Impp. Diocletianus et Maximianus AA. Ingenuo.* Cum dotem te aestimatam accepisse profitearis, apparet iure communi per pactum quod doti insertum est formato contractu ex empto actionem esse. quis enim dubitet aestimationem a te mulieri deberi, cum periculo tuo res deteriores fiant vel augmenta lucro tuo recipiantur?

PP. XII k. Mai. Maximo II et Aquilino conss.

[11] *Idem AA. et CC. Severae.* De his, quae in dotem data ac direpta commemoras, mariti tui esse actionem nulla est dubitatio.

D. X k. Mai. Heracliae AA. conss.

[12] *Idem AA. et CC. Rufinae.* Ex pecunia dotali fundus a marito tuo comparatus non tibi quaeritur, cum neque maritus uxori actionem empti possit adquirere ac dotis tantum actio tibi competat. unde aditus praeses provinciae, si non te transegisse reppererit, sed ex maiore dote partem consecutam, residuum restitui providebit.

D. VIII k. Mai. Heracliae AA. conss.

[13] *Idem AA. et CC. Catulae.* Si a matre vestra superstite aliquid ad vos pertinens in dotem scienti vitrico vestro datum est, intellegis nullam firmitatem iuris dationem habere, si neque pollicitatio neque stipulatio intercessit.

D. prid. k. Mai. Heracliae AA. conss.

[14] *Idem AA. et CC. Basilissae.* Mater pro filia dotem dare non cogitur nisi ex magna et probabili vel lege specialiter expressa causa: pater autem de bonis uxoris suae invitae nullam dandi habet facultatem.

[9] *Emperor* Decius *Augustus and* Decius *Caesar to Urbicana.* It is appropriate that your claim on your dowry (i.e., for its return) is stronger than that of the State, to which your husband subsequently became indebted.

Posted June 8, in the consulship of Decius Augustus and Gratus (250).

[10] *Emperors* Diocletian *and* Maximian *Augusti to Ingenuus.* Since you declare that you accepted a dowry that was at an appraised value, it seems, according to commonly established principles of law (*ius commune*), that under the agreement embedded in the dowry contract which was drawn up, a right of action on purchase (*actio ex empto*) lies (for you against the property's seller, after your eviction by a true owner). For who would doubt that the appraised value of the dowry is owed by you to your wife, when any loss in value to the property occurs at your risk, just as any increase in value accrues to your advantage?

Posted April 20, in the consulship of Maximus, for the second time, and Aquilinus (286).

[11] *The same Augusti and the Caesars to Severa.* There is no doubt that your husband has the action concerning those things which you claim were given as dowry and then stolen.

Given April 22, at Heraclea, in the consulship of the Augusti (293).

[12] *The same Augusti and Caesars to Rufina.* A farm bought by your husband with dowry money does not become yours, since a husband cannot acquire the action on purchase (*actio empti*) for his wife, and all you have is the action on the dowry. So if you approach the provincial governor, and he finds that you have not made an out-of-court settlement (*transactio*, with the ex-husband) and that you have recovered only a part of your dowry, he will see to it that the remainder is restored (to you).

Given April 24, at Heraclea, in the consulship of the Augusti (293).

[13] *The same Augusti and Caesars to Catula.* If during her lifetime your mother gave property belonging to you as a dowry to your stepfather, and he knew this, you understand that this transfer has no legal validity if accompanied by neither an informal promise nor a stipulation (from you).

Given April 30, at Heraclea, in the consulship of the Augusti (293).

[14] *The same Augusti and Caesars to Basilissa.* A mother is not obligated to give a dowry on behalf of a daughter except for a great and demonstrable reason or one that is expressly laid down in a statute. Moreover, a father has no authority to give (a dowry) from the property of his wife against her will.

S. d. IIII *non. Nov. Philippopoli AA. conss.*

[15] *Idem AA. et CC. Ulpianae.* Cum citra fidem etiam instrumentorum datam dotem aliunde probanti post divortium quondam uxoris secundum bonam fidem restitui debere constet, amissis etiam instrumentis sine dubio cetera probationum indicia iure prodita non habentur irrita.

D. VIII *k. Aug. Sirmi AA. conss.*

[16] *Idem AA. et CC. Aemiliano.* Ante divisionem soror tua intestato patri etiam ipsa succedens pro indiviso portionem fundi communis in dotem dare non prohibebatur.

D. non. Iul. Sirmi CC. conss.

[17] *Idem AA. et CC. Sabiniano.* Res, quarum usu fructu sibi deducto socrus in dotem dedit, venumdando auferre tibi nihil potest.

D. nonis Iul. Sirmi CC. conss.

[18] *Idem AA. et CC. Menestrato.* Si socrus tua fundum deducto usu fructu uxori tuae donavit tibique in dotem uxor quidem proprietatem, socrus autem usum fructum dedit, uxore tua rebus humanis in matrimonio exempta fundum apud te remansisse secundum placiti inter vos fidem non ambigitur. nam si acceptura certum quid annuum filiae suae usum fructum locavit, mortua conductrice usus fructus extingui minime potuit.

D. XIIII *k. Ian. Sirmi CC. conss.*

Written November 2,[87] *at Philippopolis, in the consulship of the Augusti (293).*

[15] *The same Augusti and Caesars to Ulpiana.* Since it is settled law that, even without the evidence of dowry documents, the dowry of a former wife after divorce ought to be restored, in accord with good faith, to a person who offers proof from some other source, other means of proof are, when brought forth in the legally prescribed manner, without doubt considered valid even when the dowry documents are lost.

Given July 25,[88] *at Sirmium, in the consulship of the Augusti (293).*

[16] *The same Augusti and Caesars to Aemilianus.* Before division of the estate, your sister, who is herself also an heir on intestacy to your father, was not forbidden to give as dowry her share of an as yet undivided farm to which all heirs have a claim.

Given July 7,[89] *at Sirmium, in the consulship of the Caesars (294).*

[17][90] *The same Augusti and Caesars to Sabinianus.* The property, which your mother-in-law gave you as dowry (on behalf of her daughter) after reserving its use and enjoyment (usufruct) for herself, cannot be taken from you through sale.

Given July 7, at Sirmium, in the consulship of the Caesars (294).

[18] *The same Augusti and Caesars to Menestratus.* If your mother-in-law gave a farm as a gift to your wife after reserving its usufruct for herself, and your wife, in fact, (then) gave you ownership of it in the form of a dowry, while your mother-in-law (simultaneously) gave you its usufruct, there is no doubt that if your wife's death has ended the marriage, the farm remains with you according to the sense of the agreement reached between the two of you (the mother- and the son-in-law). For if she (the mother-in-law) leased the usufruct to her daughter for a fixed annual fee, the usufruct could in no way be extinguished by the death of the lessee.

Given December 19,[91] *at Sirmium, in the consulship of the Caesars (294).*

[87] The precise day is uncertain, as is the month: Mommsen gives July 4, 293.
[88] The month is uncertain: Mommsen prefers December 25, 293, but there are three other possibilities.
[89] The month is uncertain: Mommsen gives January 5, 294, for this constitution and the next.
[90] Combine with C. 3.28.20.
[91] The precise day is uncertain, as is the month: Mommsen prefers January, so the alternatives are January 15, 19, December 15.

[19] *Idem AA. et CC. Achilli.* **pr.** Cum patrem pro filia dotem tibi dantem, si post suam mortem in matrimonio constituta rebus humanis eadem eximatur, partem dimidiam dotis Ammiae reddi pactum proponas, post vero testamento facto cum aliis etiam Ammiam heredem scripsisse nec Ammiam quicquam ex stipulatu petere velle sanxisse, si quidem hanc sibi reddi secundum fidem pacti stipulatam Ammiam non probetur, ex alieno pacto nec prorsus ei ulla competit actio.

1. Si vero ex verborum conceptione sibi quaesivit obligationem ac tibi testatorem prospexisse probetur, contra eam ex stipulatu post eventum condicionis petentem, quatenus accepit ex defuncti voluntate quae fuit stipulata, exceptione (salva Falcidia) uti potes.

D. XIII k. Febr. Sirmi CC. conss.

[20] *Idem AA. et CC. Tiberio.* Pro oneribus matrimonii mariti lucro fructus dotis totius esse, quos ipse cepit, vel, si uxori capere donationis causa permisit, eum in quantum locupletior facta est posse agere manifestissimi iuris est.

D. V k. Mai. Sirmi CC. conss.

[21] *Idem AA. et CC. ad Geminum.* Si inter virum et uxorem pactum sit interpositum, ut, si matrimonium intra quinquennii forte tempora quoquo modo esset dissolutum, species aestimatae doti datae pretiis quibus aestimatae sunt redderentur, manifestum est non pretia specierum dari, sed ipsas species debere restitui, cum in placito specierum reddendarum idcirco pretiorum nomen videatur adnexum, ne, si species aliqua deminuta fuisset aut perdita, alio pretio quam quo taxata fuerat posceretur.

D. non. Aug. Agrippinae CC. conss.

[22] *Idem AA. et CC. Polybianae.* Rem, quam pater in dotem genero pro filia dedit nec recepit, alienare non potest.

D. V k. Oct. isdem CC. conss.

[19] *The same Augusti and Caesars to Achilles.* **pr.** Since you set forth that a father who gave you a dowry on behalf of his daughter made an agreement that if, after his own death, his daughter's marriage was terminated by her death, half of the dowry should be turned over to Ammia, and afterwards in fact when making his will he appointed, in addition to others, Ammia as heir and made clear that he did not want Ammia to claim anything on the basis of the (dowry) stipulation, if indeed it is not proved that Ammia (herself) stipulated, according to the sense of the agreement, for the return of the dowry to her, she has absolutely no right of action accruing to her from someone else's agreement.

1. But if she did formally make an agreement on her own behalf and it is shown that the writer of the will made the provision (barring Ammia) on your behalf, if she sues on the stipulation after its condition is fulfilled, you can, to the extent that she benefited from the decedent's will with respect to her interest in the stipulation, raise an affirmative defense (*exceptio*) against her, after appropriate deduction of the Falcidian fourth.

Given January 20, at Sirmium, in the consulship of the Caesars (294).

[20] *The same Augusti and Caesars to Tiberius.* It is a very clear point of law (*manifestissimum ius*) that, in compensation for the financial burdens of marriage, the fruits of the entire dowry accrue to the husband as income should he take them himself; or, if he has allowed his wife to take them as a gift, he can sue for them to the extent that they have increased the value of her estate.

Given April 27, at Sirmium, in the consulship of the Caesars (294).

[21] *The same Augusti and Caesars to Geminus.* If an agreement has been made between husband and wife to the effect that, if the marriage were by chance dissolved in any way within the space of five years, the appraised items (*species aestimatae*) given as dowry should be returned at their appraised value, it is clear that it is not the value of the items that is given back, but that the items themselves ought to be returned, since it is settled law (*in placito*) that a value is assigned to the items to be returned for this reason, so that if any item were damaged or lost, no other value than the one at which it was appraised would be demanded back.

Given August 5, at Agrippina (Colonia), in the consulship of the Caesars (294).

[22] *The same Augusti and Caesars to Polybiana.* A father cannot alienate property that he has given as a dowry to his son-in-law on behalf of his daughter and that he has not received back (after the dissolution of their marriage).

Given September 27, in the consulship of the Caesars (294).

[23] *Idem AA. et CC. Diogeni.* Si praedium uxor tua dotale venumdedit, sponte nec ne contractum habuerit, nihil interest, cum rei tibi quaesitae dominium auferre nolenti minime potuerit.
D. v k. Oct. Viminaci CC. conss.

[24] *Idem AA. et CC. Aurelio et Lysimacho.* Si dotem marito libertae vestrae dedistis nec eam reddi soluto matrimonio vobis in continenti pacto vel stipulatione prospexistis, hanc culpa uxoris dissoluto matrimonio penes maritum remansisse constitit, licet eam ingratam circa vos fuisse ostenderitis.
D. vi k. Nov. Antiochiae CC.[v] *CC. conss.*

[25] *Idem AA. et CC. Eutychiano.* Si mulier dotem a viro dari stipuletur, ut de ea testari possit, cum ordinationis testamenti cogitatio mortis[vi] antecedens tempus significat nec condicionem, sed causam continet, intestata quoque muliere defuncta stipulationem committi proficiet.
D. iii id. Nov. Antiochiae CC.[vii] *CC. conss.*

[26] *Idem AA. et CC. Demostheni.* Si genero dotem dando pro filia pater communis eam reddi tibi extraneo constituto stipulatus est, nec sibi cessante voluntate nec tibi prohibente iure quaerere potuit actionem.
D. vi k. Ian. ipsis CC. conss.

[27] *Idem AA. et CC. Pompeiano.* Licet dos iure penes maritum remanserit, pro rebus tamen hereditariis successores, non maritus quondam, sollemnibus pensitationibus parere debent.
S. vi k. Ian. Sirmi CC. conss.

[28] *Imp. Zeno A. Aeliano pp.* **pr.** Mulier in minore aetate constituta dotem marito consentiente generali vel speciali curatore recte dare et exigi potest, licet ipse tempore creationis fideiussorem in minorem

[v] [CC]
[vi] morti
[vii] [CC]

[23] *The same Augusti and Caesars to Diogenes.* If your wife sold a dowry property, it makes no difference whether she made this agreement voluntarily or not, since against your will she was not at all able to take away the ownership of property acquired by you.

Given September 27, at Viminacium, in the consulship of the Caesars (294).

[24] *The same Augusti and Caesars to Aurelius and Lysimachus.* If you gave a dowry to the husband of your freedwoman and, in an agreement or stipulation made simultaneously (with the constitution of the dowry), did not make provision for its return to you upon dissolution of the marriage, it is settled law that the dowry remain with the husband after the marriage is dissolved through the wife's fault, even though you show that she has been ungrateful to you.

Given October 27, at Antioch,[92] *in the consulship of the Caesars (294).*

[25] *The same Augusti and Caesars to Eutychianus.* If a woman stipulates with her husband that he give back a dowry so that she might dispose of it by will, since the contemplation of making a will signifies a time prior to death and so stands not as a condition but as a rationale (for the stipulation), her having made the stipulation will be a benefit (to her heirs) even should she die intestate.

Given November 11, at Antioch,[93] *in the consulship of the Caesars (294).*

[26] *The same Augusti and Caesars to Demosthenes.* If your common father, giving a dowry to his son-in-law on behalf of his daughter (your half-sister), stipulated that this be returned to you after you have been emancipated, he could acquire a right of action neither for himself, since this was not his intention, nor for you, since the rule (*ius*) (against third-party beneficiaries) prevents this.

Given December 27, in the consulship of the Caesars (294).

[27] *The same Augusti and Caesars to Pompeianus.* Although the dowry stays with the husband (after his wife's death) by operation of law, nevertheless her heirs, and not her former husband, are responsible for making the payments on her estate that are prescribed by law.

Written December 27, at Sirmium, in the consulship of the Caesars (294).

[28][94] *Emperor* Zeno *Augustus to Aelianus, Praetorian Prefect.* **pr.** With the approval of her general or special *curator*, a woman less than 25 years of age can validly give and be compelled to pay out a dowry to her husband, even though

[92] The location is uncertain. Mommsen has it "given" at Anchialus on October 28, 294.
[93] The location is uncertain.
[94] Combine with C. 2.21.9, 5.75.6.

quam dos est quantitatem dicitur praestitisse. **1.** Hoc idem observatur et si minor ante nuptias donationem consentiente, ut dictum est, curatore fecerit.

D. k. Ian. Basilio cons.

[29] *Imp. Iustinianus A. Menae pp.* **pr.** Ubi adhuc matrimonio constituto maritus ad inopiam sit deductus et mulier sibi prospicere velit resque sibi suppositas pro dote et ante nuptias donatione rebusque extra dotem constitutis tenere, non tantum mariti res ei tenenti et super his ad iudicium vocatae exceptionis praesidium ad expellendum ab hypotheca creditorem secundum praestamus, sed etiam si ipsa contra detentatores rerum ad maritum suum pertinentium super isdem hypothecis aliquam actionem secundum legum distinctionem moveat, non obesse ei matrimonium adhuc constitutum sancimus, sed ita eam posse easdem res vindicare vel a creditoribus posterioribus vel ab aliis, qui non potiora iura legibus habere noscuntur, ut potuisset, si matrimonium eo modo esset dissolutum, quo dotis et ante nuptias donationis exactio ei competere poterat: ita tamen, ut eadem mulier nullam habeat licentiam eas res alienandi vivente marito et matrimonio inter eos constituto, sed fructibus earum ad sustentationem tam sui quam mariti filiorumque, si quos habeant, abutatur.

1. Creditoribus scilicet mariti contra eum eiusque res, si quas postea forte adquisierit, integra sua iura habentibus: ipsis etiam marito et uxore post matrimonii dissolutionem super dote et ante nuptias donatione pro dotalium instrumentorum tenore integro suo iure potituris.

D. III id. Dec. dn. Iustiniano A. II cons.

[30] *Idem A. Demostheni pp.* **pr.** In rebus dotalibus sive mobilibus sive immobilibus seu se moventibus, si tamen extant, sive aestimatae sive inaestimatae sint, mulierem in his vindicandis omnem habere post dissolutum matrimonium praerogativam et neminem creditorum mariti, qui anteriores sunt, sibi potiorem causam in his per hypothecam

the husband, at the time the dowry was constituted, is said to have offered a surety for (repayment of) less than the value of the dowry. 1. This same rule holds even if a person younger than 25 makes a prenuptial gift with, as was said, the approval of the *curator*.

Given January 1,[95] *in the consulship of Basilius (480).*

[29][96] *Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect.* **pr.** When during marriage a husband is reduced to poverty and the wife wants to consult her own interests and hold the property obligated as dowry, as well as a prenuptial gift and her own property beyond the dowry, not only do We confer upon her, if she (already) holds her husband's property and more and she is sued, the safeguard of an affirmative defense for the purpose of defeating subsequent creditors' security arrangements (*hypothecae*), but also, if she herself raises an action in accord with the provisions of the laws (*distinctio legum*) against those holding her husband's property on the basis of such securities, We ordain that the fact that her marriage still exists shall not be an impediment to her, but that she can claim this same property either from subsequent creditors or from others whose rights are recognized as no more valid under the laws, just as she could if the marriage had been dissolved in a manner that allows her the recovery of the dowry and the prenuptial gift. She does so, however, under the condition that she shall have no power of alienating this property while her husband is alive and the marriage continues, though she shall use the fruits deriving from it for the support of herself and her husband, as well as of their children, if they have any.

1. Plainly, the creditors shall have unimpaired recourse against the husband and his property, if he should by chance acquire any afterwards, while the husband and wife, after the marriage is dissolved, shall also retain unimpaired their rights over the dowry and the prenuptial gift in accordance with the content of the dowry documents.

Given December 11, in the consulship of Our Lord Justinian, for the second time (528).

[30] *The same Augustus to Demosthenes, Praetorian Prefect.* **pr.** After the dissolution of her marriage, (We ordain that) a wife shall enjoy all prior claims on dowry property, whether it is movable, immovable, or self-propelling, if it is still in existence, whether it has an appraised value or not, and that no prior creditor of the husband shall have a stronger claim in connection with a security arrangement (*hypotheca*), both since this property had belonged to the wife from the start and since it has remained in her ownership as a matter

[95] The exact day is uncertain: the alternative is December 28. Lounghis *et al.* accept either.
[96] Combine with C. 5.9.8.

vindicare, cum eaedem res et ab initio uxoris fuerant et naturaliter in eius permanserunt dominio. non enim quod legum subtilitate transitus earum in mariti patrimonium videtur fieri, ideo rei veritas deleta vel confusa est. 1. Volumus itaque eam in rem actionem quasi in huiusmodi rebus propriis habere et hypothecariam omnibus anteriorem possidere, ut, sive ex naturali iure eiusdem mulieris res esse intellegantur vel secundum legum subtilitatem ad mariti substantiam pervenisse, per utramque viam sive in rem sive hypothecariam ei plenissime consulatur.

2. Omnis autem temporalis exceptio, sive per usucapionem inducta sive per decem sive per viginti annorum curricula seu per triginta vel quadraginta annorum metas sive ex alio quocumque tempore maiore vel minore introducta, ea mulieribus ex eo opponatur, ex quo possint actiones movere, id est opulentis quidem maritis constitutis post dissolutum matrimonium, minus autem idoneis ex quo hoc eis infortunium illatum esse claruerit, cum constante etiam matrimonio posse mulieres contra maritorum parum idoneorum bona hypothecas suas exercere iam nostra lege humanitatis intuitu definitum est: ficti divortii falsa simulatione in huiusmodi causa, quam nostra lex amplexa est, stirpitus eruenda.

Recitata septimo in novo consistorio palatii Iustiniani. d. III k. Nov. Decio vc. cons.

[31] *Idem A. Iuliano pp.* **pr.** Cum quidam dotes pro mulieribus dabant sive matres sive alii cognati vel extranei, recte quidem eas mariti sine monumentorum observatione suscipiebant: cum autem mulier redhibitionem casus stipulabatur et huiusmodi fortuitus casus evenisset, ipsa mulier utpote a se non facta donatione propter hoc, quod monumenta deerant, necessitatem habebat actiones huiusmodi casus ad eum qui dotem dedit per cessionem transferre vel ipsas res reddere: et ita inveniebatur forsitan post prolixa matrimonii annorum curricula et liberos forte editos infelix mulier indotata.

1. Sancimus itaque in huiusmodi omnibus casibus nullis monumentis rem indigere, sed in omni persona ratas esse huiusmodi donationes et mulierem dotem suam ipsam habere, cum fortuitus casus hoc lucrum

of course. For the truth of the matter is not effaced or obscured because, owing to the contrivance of the laws (i.e., on dowry), it seems to have passed into the estate of the husband. 1. We wish, therefore, that she have a right of action to claim the property (*actio in rem*) as though she were claiming her own property and to enjoy an action on the hypothec prior to all others, so that, whether this property is understood to be her own by reason of natural right, or it is understood to have formed part of her husband's property through legal contrivance, by either path, that of the action *in rem* or that on the hypothec, her interest shall be consulted to the fullest.

2. Every affirmative defense (*exceptio*) based on the passage of time, however, whether generated by acquisition of ownership through usucapion or based on the passing of 10, 20, 30, or 40 years (prescription), or on any other period of time whether greater or smaller, shall be opposed to such women from the time when they are able to bring such actions, i.e., only for those married to wealthy husbands, after the marriage is dissolved, but for those wed to less wealthy husbands from the time at which it is clear that this misfortune overtook them, since it is already prescribed in Our legislation[97] through consideration of humane sympathy (*humanitas*) that even during marriage wives can assert their own security arrangments with regard to the property of husbands who are insufficiently prosperous. False claims based on fictitious divorce in the situation contemplated by Our law are to be eliminated root and branch.

Recited for the seventh time in the New Consistory of Justinian's Palace. Given October 30, in the consulship of the vir clarissimus *Decius (529).*

[31] *The same Augustus to Julian, Praetorian Prefect.* **pr.** When certain individuals, like mothers, other blood relatives (*cognati*), or unrelated persons, used to give dowries on behalf of brides, husbands received these, perfectly legally, without recourse to documentation. When, however, the brides used to make a stipulation for return of the dowry in a certain situation, and this situation by chance would come to pass, the woman herself, inasmuch as she had not made the gift herself and documentation was lacking, found it necessary to make formal transfer (*cessio*) of the actions in this kind of situation to the person who gave the dowry, or to return the property itself. And so she would turn out to be, perhaps after a long period of years being married and perhaps after giving birth to children, an unhappy woman without a dowry.

1. We therefore lay down that in all situations of this kind there shall be no need of documentation, and that for all persons gifts of this kind shall be valid, and that the woman shall keep her own dowry if the circumstances

[97] 29 above.

ei addiderit, et firmiter hoc apud eam permanere, nisi ipse, qui ab initio dotem dederit, sibi dari huiusmodi casum stipulatus est: tunc etenim, cum neque ab initio suspicio aliqua liberorum concurrit, sed sibi omnem rem ille qui dotem dedit pepigerit, huiusmodi tractatus habere locum non potest. **2.** Atqui in aliis omnibus casibus, in quibus ipse non stipulatus est, tristitiae suae mulier hoc proprium habeat solacium per actionem dotis.

3. Similique modo si quis extraneorum (id est qui eum pro quo dat non in potestate habeat) pro alio ante nuptias donationem nupturae dedit mulieri et necessaria monumenta adhibuerit, cum excedat summam legitimam donatio, vel non minor mater familias nuptura sit, non solum ad eam, cui ante nuptias donatio datur, monumenta suam habeant firmitatem, sed etiam ad illum pro quo dedit, ut, si lucrum ei ex dotalibus pactis accesserit, non hoc cedat donatori, sed in suum lucrum hoc maritus convertat firmumque et inrevocabile habeat, nisi donator et hic sibi reddi huiusmodi casum fuerit stipulatus, ne et in praefato casu simile anteriori vitium oriatur. **4.** Sin autem minor quantitas sit vel ita res gesta sit, ut monumentorum ex omni parte nulla sit utilitas, et tunc donatio ad utramque personam valeat et maritus casum lucretur, nisi et hic donator eum stipulatus sit.

5. Praeterea sancimus, si quis in dotem vel praedia vel certum reditum vel aedes vel panes civiles spopondit vel promisit, si ex tempore matrimonii biennium transactum sit, ilico redituum vel pensionum nec non panis civilis quaestum eum praestare, etiamsi non fuerint adhuc res principales traditae: et si tota dos in auro sit, itidem post biennium usuras usque ad tertiam partem centesimae praestari.

6. Sin autem aliae res praeter immobiles vel aurum fuerint in dote, sive in argento sive in muliebribus ornamentis sive in veste sive in aliis quibuscumque, si quidem aestimatae fuerint, simili modo post biennium et earum usuras ex tertia parte currere: aestimatione earum, quia et hoc apertius declarare oportet, ea intellegenda, quae pro singulis

(stipulated for) happen to materialize and bring her this asset, and that it shall remain with her unshakably unless the person who initially gave the dowry stipulated that in such a situation it be returned to him. For when initially there has been no thought of children, but he (the giver) has exacted the return of the entire dowry to himself, the aforesaid solution cannot find a place. **2.** And yet in all other situations in which he did not make such a stipulation, the wife shall have this particular consolation for her loss in the form of an action on the dowry.

3. And in a similar fashion if an unrelated person – that is, someone who does not have in his power (*potestas*) the person on whose behalf he gives – has given on someone else's behalf a prenuptial gift to a woman about to marry and provides the necessary documentation, if the gift exceeds the legally prescribed limit, or a woman of respectable status (*mater familias*) about to marry is 25 years of age or more, the documents shall retain their validity not only with respect to her to whom the prenuptial gift was given but also with respect to him on whose behalf he gave it, so that, if any gain accrue to him from the dowry agreement, this shall not be yielded to the giver, but the husband shall turn this to his own profit, holding it firm and irrevocable, unless the giver even here had stipulated that in such a situation it be returned to him, so that, just as in the case mentioned above,[98] a problem not arise similar to the previous one. **4.** But if, however, the value is less (than the legally prescribed limit) or the arrangements are made in such a way that the documentation is utterly useless, even then the gift shall be valid with respect to both persons and the husband shall profit from the situation, unless the giver has stipulated (otherwise) here as well.

5. Moreover, We lay down that, if anyone has stipulated or (otherwise) promised as dowry properties, a fixed return (on an investment), a house, or (entitlement to) the public distributions of bread, if a two-year period has passed from the time of the wedding, he shall immediately turn over the value of the returns, or of the rents, or the value of the public distributions of bread, even if the main items have not yet been handed over. And if the entire dowry consists of gold, likewise after a two-year period he shall pay interest at the rate of 3 percent.

6. But if, however, other property apart from immovables or gold is given as a dowry, whether in the form of silver or of women's jewelry or of clothing or of any other items whatsoever, if in fact they have an appraised value, in a similar fashion after a two-year period the interest on them shall also accrue at a 3 percent rate. By "appraisal" (*aestimatio*), because this term too needs clearer

[98] In the *principium*.

speciebus facta est vel pro unoquoque genere dotalium specierum, id est pro argento vel pro ornamentis vel pro veste aliisque speciebus, et non esse expectandam post singulas aestimationes unam coadunationem totius calculi, quod satis scrupulosum et per nimiam subtilitatem perniciosum est. 7. Sin autem minime res mobiles fuerint aestimatae, ea post biennium observari, quae leges post litem contestatam pro omnibus huiusmodi rebus definiunt.

8. Sin vero res permixtae fuerint et partim in auro partim in aliis rebus mobilibus vel immobilibus, pro iam facta divisione omnia procedere. licentia minime deneganda marito quando voluerit dotem petere, ne is qui debet putet sibi licentiam esse reditus vel pensiones vel usuras vel alias accessiones solventi dotis solutionem protelare: sed sive ante biennium sive postea voluerit dotem pars mariti petere, queat et secundum leges eam exigere.

D. XII k. April. Lampadio et Oreste vv. cc. conss.

XIII De Rei Uxoriae Actione in ex Stipulatu Actionem Transfusa et de Natura Dotibus Praestita

[1] *Imp. Iustinianus A. ad populum urbis Constantinopolitanae et universos provinciales.* **pr.** Rem in praesenti non minimam adgredimur, sed in omni paene corpore iuris effusam, tam super rei uxoriae actione quam ex stipulatu, earum communiones et differentias resecantes et in unum tramitem ex stipulatu actionis totum rei uxoriae ius, quod dignum esse valere censemus, concludentes.

1. Rei uxoriae itaque actione sublata sancimus omnes dotes per ex stipulatu actionem exigi, sive scripta fuerit stipulatio sive non, ut intellegatur re ipsa stipulatio esse subsecuta. **1a.** Eodemque modo et si

definition, one ought to understand that which is made regarding individual items or regarding each and every class of dowry items, that is, regarding silver, jewelry, clothing, or other items. One ought not to wait for the individual appraisals to result in an overall tally of the entire value, because this would be a fairly sharp practice and ruinous in its excessive attention to detail. **7.** But if, however, the movable property was not appraised at all, (We order) that after two years those rules shall hold which the laws lay down for all matters of this kind following joinder of issue.

8. But if, on the other hand, the property is of a mixed nature and consists partly of gold and partly of other movable or immovable property, (We order) that all things shall proceed as though the (above) distinction had already been made. The husband is not at all to be denied the power of claiming the dowry when he wishes, so that the one who owes it shall not think that he has the power to postpone the payment of the dowry by paying the returns, rents, interest or other forms of increase. But whether the husband's side wishes to claim the dowry before the lapse of the two-year period or afterwards, he shall be able to sue for that also in accordance with the laws.

Given March 21,[99] *in the consulship of the* viri clarissimi *Lampadius and Orestes (530).*

Thirteenth Title The Action on the Dowry Merged with That on Stipulation, and the Nature Ascribed to Dowries

[1][100] *Emperor* *Justinian* *Augustus to the People of the city of Constantinople and to all those living in the provinces.* **pr.** We hereby take on a matter of no small importance, but something that is diffused in almost every branch of the law, regarding the right of action on the dowry (*actio rei uxoriae*) as well as that on stipulation (*actio ex stipulatu*), clearing away their commonalities and their differences, and directing the entire law of dowry, which We consider worth validation, into the one route of the action on the stipulation.

1. So by abolishing the action on the dowry We ordain that all dowries shall be recoverable by an action on the stipulation, whether the stipulation exists in written form or not, so that the execution of the stipulation is regarded as

[99] The exact day is uncertain: the alternative is March 18, preferred by Lounghis *et al.*

[100] Combine with perhaps C. 4.29.25 (dated exactly a year later).

inutiliter facta est stipulatio: adiuvari enim eam magis quam evanescere oportet. si enim, cum una in instrumento stipulatio valida inveniatur, et aliis inutilibus suam noscitur praestare fortitudinem, quare non ex nostra lege huiusmodi stipulationibus robur accedat legitimum? est enim consentaneum nobis, qui censemus, et ubi supposita stipulatio non est, intellegi eam fuisse adhibitam, multo magis etiam, si inutilis est, validam eam effici.

1b. Et ut plenius dotibus subveniatur, quemadmodum in administratione pupillarium rerum et in aliis multis iuris articulis tacitas hypothecas inesse accipimus, ita et in huiusmodi actione damus ex utroque latere hypothecam, sive ex parte mariti pro restitutione dotis sive ex parte mulieris pro ipsa dote praestanda vel rebus dotalibus evictis, sive ipsae principales personae dotes dederint vel promiserint vel susceperint, sive aliae pro his personae, et dos sive adventicia sive profecticia sit secundum veteris iuris nominationem. **1c.** Ita enim et imperitia hominum et rusticitas nihil eis possit adferre praeiudicium, cum nos illis et ignorantibus et nescientibus in hoc casu nostram induximus providentiam. si enim et stipulationes et hypothecae inesse dotibus intelleguntur et inutiles stipulationes emendantur, sic in posterum causa inveniatur valida et perfecta, quasi omnibus dotalibus instrumentis a prudentissimis iuris confectis.

1d. Et nemo putet nos haec sancire in his tantummodo dotibus, quae instrumentis receptae sunt: nihil enim prohibet, etsi sine scriptis dos vel detur vel promittatur vel suscipiatur, simili modo intellegi factam

implied in the thing itself (i.e., the constitution of the dowry).[101] **1a.** The same holds even where the stipulation is void, for this ought to be be validated rather than allowed to disappear. For if one valid stipulation is found in a document, and it is recognized as supporting others that are invalid, why should legal validity not accrue to stipulations of this kind, in accordance with our law (*lex*)? For it is agreeable to Us, since We hold that even where a stipulation has not been made it shall be regarded as implied, and all the more so that even where one is void that it shall be rendered valid.

1b. And so that dowries receive greater support, to the extent that in the management of the property of minor wards and in many other points of law We accept that tacit hypothecs (*hypothecae*; real security arrangements) exist, with the result that in an action of this type we grant a hypothec on both sides, both on that of the husband regarding the return of the dowry and on that of the wife regarding the furnishing of the dowry or loss of title to dowry property, whether the two parties themselves have given, formally promised, or undertaken to constitute a dowry, or others have done so on their behalf, (and) whether the dowry itself is given by the woman's father or other male ascendant (*profecticia*) or by someone else (*adventicia*) according to the terminology of the old law (*vetus ius*). **1c.** For in this way neither people's inexperience nor their lack of sophistication shall be able to prejudice their interests, since We have offered Our wisdom in this situation to those who are oblivious and ignorant. For if both stipulations and hypothecs are regarded as implicit and stipulations that are void are granted validity, so the arrangements in future shall be revealed to be as valid and perfect as though all of the dowry documents had been crafted by the most expert jurists.

1d. And let no one imagine that We ordain these things only in the case of those dowries that are set forth in documents. For nothing prevents a dowry, whether given, formally promised, or undertaken, from having an implied

[101] Blume: "The instant law shows, perhaps better than any other in the Code, that the Romans, contrary to present day conceptions, considered remedies the basic foundation of all law, grouping all rights around certain remedies. They started with remedies and attached certain substantive rights thereto – such and such could be done or could be recovered thereunder. Thus as stated in the instant law, certain things could be done, or certain rights could be enforced in an action on a stipulation, certain other things or rights in an action on dowry (*uxorial actio*) – the action for the recovery of a dowry in the absence of a stipulation or other express contract. The instant law fused the two actions, so far as the recovery of dowry was concerned, and created a special action, called an action on a stipulation, which partook of the nature of the two former actions – one on an actual stipulation and the other the ordinary action, and made the new action an equitable one, although the ordinary action on a stipulation – the strict and formal contract under the Roman law (C. 8.37) – was one at strict law … A stipulation was to be implied whenever any dowry was constituted, whether orally or in writing. If an actual stipulation had been entered into, any provisions contrary to the instant law were, of course, invalid. The law will be easily understood, if we but bear in mind the substantive rights therein intended to be given."

stipulationem et hypothecam ex utraque parte, quasi fuerit scripta. et natura quidem ex stipulatu actionis haec intellegatur, re uxoria in posterum cessante.

2. Sed etsi non ignoramus ex stipulatu actionem stricto iure esse vallatam et non ex bona fide descendere, tamen, quia novam naturam de dote stipulatio sibi invenit, accommodetur ei a natura rei uxoriae etiam bonae fidei beneficium. **2a.** Et omnes quidem eventus, quos dos ex stipulatu habet, maneat pro sui natura exercens: si quid autem optimum ex rei uxoriae actione invenimus, hoc in praesenti specialiter ei addimus, ut sit et nova ista ex stipulatu quam composuimus et non propria tantum, sed etiam veteris actionis pulchritudine decorata.

3. Primum itaque quid naturale sit ex stipulatu actionis, exponatur et ita, si quid ex actione rei uxoriae supervenerit, addatur. **3a.** Sciendum itaque est edictum praetoris, quod de alterutro introductum est, in ex stipulatu actione cessare, ut uxor et a marito relicta accipiat et dotem consequatur, nisi specialiter pro dote ei maritus ea dereliquit, cum manifestissimum est testatorem, qui non hoc addidit, voluisse eam utrumque consequi.

4. Maneat ex stipulatu actionis ius ad successores et sine mora transmissionis incorruptum.

5. Taceat in ea retentionum verbositas. quid enim opus est inducere ob mores retentionem alio auxilio ex constitutionibus introducto? **5a.** Vel ex qua causa ob res donatas retentio introducatur, cum sit donatori facultas per actionem in rem directam vel per utilem vel per condictionem suo iuri mederi? **5b.** Sed nec retentio ob res amotas necessaria est, cum pateat omnibus maritis rerum amotarum iudicium. **5c.** Sileat ob liberos retentio, cum ipse naturalis stimulus parentes ad liberorum suorum educationem hortatur.

5d. Ne varium genus culpae mariti contra uxores excogitent, ut possint eadem retentione contra eas uti, cum iam etiam imperialibus constitutionibus statutum sit, si culpa mulieris dissolutum fuerit

stipulation and hypothec on both sides, though it is not committed to writing, in the same way as though these were committed to writing. And the nature, certainly, of the action shall be regarded as arising from the stipulation, since that on the dowry is hereby abolished.

2. And although We are not unaware that the action on the stipulation is hedged in by formal law (*ius strictum*) and does not derive from good faith (*bona fides*), nevertheless, because the stipulation finds a new identity for itself in connection with the dowry, it shall appropriate for itself even the advantages of *bona fides* from the action on the dowry. **2a.** And all, to be sure, of the legal effects which the dowry has in connection with stipulation it shall maintain as a function of it own intrinsic nature. If, moreover, We discover any excellent feature of the action on the dowry, We add this specifically now to that on the stipulation, so that this new version of the latter that we have created shall be adorned not only by its own attractions, but also those of the old action (on the dowry) as well.

3. First of all, therefore, We shall set forth what is inherent in the action on the stipulation, and then shall add what survives from the action on the dowry. **3a.** Accordingly, it must be recognized that the provision of the Praetor's Edict, which compels a widow to elect either to recover her dowry or receive a bequest under her husband's will,[102] shall have no force regarding the action on stipulation, so that a wife shall both receive a bequest from a husband and recover her dowry, unless the husband made particular provision leaving her a bequest in place of the dowry, since it is most clear that the writer of a will who did not add this provision wanted her to have both.

4. The right to the action on the stipulation shall remain transmissible to the heirs unaffected by any delay in transmission.

5. That blather about rights of retention shall be silenced. For what need is there to introduce a retention on account of character and conduct (*mores*), when another form of assistance has been introduced by constitutions? **5a.** And for what reason was the retention on property given as a gift introduced, when the giver had ability to seek a remedy for his (injured) right through either a direct or analogous real action (*actio in rem*) or a (personal) claim for restitution (*condictio*)? **5b.** But neither is the retention on account of property that has been removed necessary, since the right of action (*iudicium*) on property that has been removed is open to all husbands. **5c.** The retention for children shall be silenced, since nature offers a motive encouraging parents to attend to the raising of their own children.

5d. Husbands shall not elaborate the complex category of fault (*culpa*) to the disadvantage of their wives, so that they can employ this same retention against them, although it is also already laid down in the imperial constitutions what

[102] The *edictum de alterutro*: Lenel, *Edictum*³ (1927) 308.

matrimonium, quid fieri oportet. **5e.** Sed nec ob impensas in res dotis factas retentio satis esse nobis videtur idonea. cum enim necessariae quidem expensae dotis minuunt quantitates, utiles autem expensae non aliter in rei uxoriae actione detinebantur nisi ex voluntate mulieris, non ab re est, si quidem voluntas mulieris intercedat, mandati actionem a nostra auctoritate marito contra uxorem indulgeri, quatenus possit per hanc hoc quod utiliter impensum est observari: vel si non intercedat mulieris voluntas, utiliter tamen res gesta est, negotiorum gestorum adversus eam sufficit actio. **5f.** Quod si voluptariae sunt, licet voluntate eius expensae, deductio operis quod fecit, sine laesione tamen prioris speciei, marito relinquatur, ut sit omnium retentionum expeditus tractatus et ex stipulatu actio merito secundum sui naturam nullam accipiat retentionem.

6. Illo procul dubio in ex stipulatu actione servando, ut, si decesserit mulier constante matrimonio, dos non in lucrum mariti cedat nisi ex quibusdam pactionibus, sed ad heredes mulieris ex stipulatu actio secundum sui naturam transmittatur, sive expressa fuerit sive ex hac lege inesse intellegatur.

7. Cum autem in exactione dotis ex stipulatu quidem actio naturaliter restitutionem dotis a parte mariti uxori ilico et in solidum fieri iubebat, rei uxoriae autem annua bima trima die in his quae pondere numero mensura consistunt exactionem pollicebatur, et non in solidum, sed quantum maritus facere potest, si non dolo malo suam deminuit substantiam, in hac parte rudem figuram ex stipulatu damus actioni, ut, si matrimonium fuerit dissolutum nullo pacto adhibito, in tantum quidem maritus condemnetur, in quantum facere potest, quia hoc aequissimum est et reverentiae debitum maritali, si non dolo malo versatus est: cautione videlicet ab eo exponenda, quod, si ad meliorem fortunam pervenerit, etiam quod minus persolvit, hoc restituere procuret. **7a.** Exactio autem dotis celebretur non annua bima trima die, sed omnimodo intra annum in rebus mobilibus vel se moventibus vel incorporalibus: ceteris videlicet rebus quae solo continentur ilico

ought to happen when a marriage is dissolved through a wife's *culpa*.[103] **5e.** But neither does the retention for expenses made regarding the dowry seem sufficiently satisfactory to Us. For since necessary expenses (*necessariae expensae*) indeed diminish the value of the dowry, while expenses for practical reasons (*utiles expensae*) were not retained (by the husband) in the action on the dowry without the consent of the wife, it is not inappropriate, if, in fact, the wife consents, that an action on mandate be granted on Our authority to the husband against the wife, so that he be protected as much as possible by this remedy for that which he has paid out to the advantage of the dowry. And if the wife's consent is lacking, and the husband's act was nevertheless advantageous to the dowry, the action for managing the affairs of another (*negotia gesta*) suffices against the wife.[104] **5f.** But if the expenses are luxurious in nature (*voluptuariae expensae*), although made with the wife's approval, removal of the improvements made shall be left to the husband, provided however that this occur without harm to the original item. The result shall be an efficient treatment of all retentions, and the action on the stipulation, rightly in accordance with its nature, shall admit of no retention.

6. It must remain far from doubt regarding the action on the stipulation that, if the marriage ends through the death of the wife, the dowry shall not accrue to the benefit of the husband unless pursuant to certain agreements, but that the action on the stipulation inherently shall pass to the heirs of the wife whether the stipulation was actually made or it is understood as implied in accordance with this statute.

7. Moreover, although in the matter of repaying the dowry the action on the stipulation, at any rate, by its nature compelled the husband to give back the dowry to the wife immediately and in its entirety, the action on the dowry on the other hand guaranteed repayment over three years in annual installments for those objects that can be weighed, counted or measured, and not in its entirety, but as much as the husband is able to pay, if he has not diminished his own estate through deliberate misconduct (*dolus malus*), We give to the action on stipulation an unfamiliar form in respect to this point, so that, if the marriage is dissolved with no agreement made, the husband shall be condemned for only as much as he is able to pay because this is most fair and owed to the respect spouses should have for each other, if he has not been involved in *dolus malus*. Clearly, he must give a formal guarantee that if he should become wealthier, he will make up the difference. **7a.** The recovery of the dowry, moreover, shall not take place over three years in annual installments, but entirely within a year in the case of movable, self-propelled, and incorporeal property. Plainly, the rest of the properties, namely immovables,

[103] See C. 5.17.8.
[104] See C. 2.18.

restituendis, quod commune utriusque fuerat actionis. **7b.** Sin autem supersederit res mobiles vel se moventes vel incorporales post annale tempus restituere vel ceteras res statim post dissolutum matrimonium, etiam usuras aestimationis omnium rerum, quae extra immobiles sunt, usque ad tertiam partem centesimae ex bona fidei introducendas maritus praestet: fructibus videlicet immobilium rerum parti mulieris ex tempore dissoluti matrimonii praestandis, similique modo pensionibus vel vecturis navium sive iumentorum vel operis servorum vel quaestu civilium annonarum et aliis quae sunt eis similia parti mulieris restituendis.

8. Igitur et in sequenti capitulo sua ex stipulatu actio utatur natura, ut, si mulier a marito fuerit heres instituta et legis Falcidiae ratio emerserit, etiam dotis debitum liceat ei sicuti alia debita ex substantia mariti subtrahere et sic quartam partem deducere.

9. Cumque ex stipulatu actio in his casibus quos enumeravimus propriam habeat naturam, necessarium est in sequenti tractatu ea exponere, quae vel communia sunt utriusque actionis, quae in solam ex stipulatu actionem colligi oportet, vel propria quidem rei uxoriae actionis, exinde autem ex stipulatu actioni accommodanda. **9a.** Itaque partus dotalium ancillarum, id est quae aestimatae non sunt, vel quae servi dotales ex quacumque causa nisi ex re mariti vel operis suis adquisierint, ad mulierem pertinere utraque actio similiter voluit. **9b.** Fetus autem iumentorum et omnia quae fructuum nomine continentur ad lucrum mariti pertineant pro tempore matrimonii, sive aestimata sive non aestimata sint. **9c.** Sed et novissimi anni, in quo matrimonium solvitur, fructus pro rata temporis portione debere utrique parti adsignari commune utriusque actionis est, in rebus scilicet non aestimatis. aestimatarum enim rerum maritus quasi emptor et commodum sentiat et dispendium subeat et periculum expectet.

10. Cautione videlicet defensionis in specie, in qua dotem suae uxoris vel nurus in familiae herciscundae iudicio praecipuam filius defuncti detrahit, secundum propriam naturam ex stipulatu actionis coheredibus suis praestanda.

11. Videamus igitur, quali incremento ei de rei uxoriae actione accedente formare decet ex stipulatu actionem. cumque iuris certi et indubitati est, si parens per virilem sexum adscendens dote pro filia vel nepte praestita emancipaverit eam vel ipse decesserit, in rei uxoriae

shall be given back immediately, a feature common to both actions. **7b.** But if, however, a year has passed without the return of the movable, self-propelled, or incorporeal property, or the immovables have not been surrendered immediately upon the dissolution of the marriage, the husband shall also pay interest, based on an appraisal of all property apart from immovables consistent with the principle of good faith (*bona fides*) at the rate of 3 percent. The fruits of the immovable property obviously shall be paid to the wife's side from the time of the dissolution of the marriage, and in a similar manner rents, carriage fees from ships or draft animals, returns on the services of slaves, the value of public food distributions, and other things of like kind shall be given over to the wife's side.

8. Therefore too in this chapter that follows, this action shall preserve its own intrinsic nature, so that if the wife was named an heir by her husband and there was a need to calculate the fourth part ordained by the Lex Falcidia, it shall thus be permitted for her to deduct even the dowry as a debt, just as other debts, from the husband's estate and thus create the Falcidian fourth.

9. And since in these cases that We have listed the action on the stipulation shall possess its own intrinsic nature, it is necessary in the discussion that follows to set forth those features, which either are common to both actions, or which attach only to that on stipulation, or are only characteristic in fact of that on dowry, so that, however, they shall be appropriated therefrom for the action on stipulation. **9a.** Therefore both actions in like wise have assured that the children of dowry slave women, that is, those who have not been appraised as to their value, as well as any property that the dowry slaves have acquired for any reason at all, except in connection with the husband's property or by their own labor, belong to the wife. **9b.** Moreover, the offspring of draft animals and everything that is included under the term "fruits" (*fructus*) accrue to the husband's benefit during the marriage, whether these are appraised as to their value or not. **9c.** Both actions also contemplated that the fruits of the year in which the marriage is dissolved ought to be made over to both parties, in proportion to the period of time (during which the marriage still existed), in the case, clearly, of property that has not been appraised. For the husband, as the constructive buyer of appraised property, shall reap the benefits, bear the losses, and take on the risks.

10. Of course, in the case of a suit to divide an inheritance where the son of the decedent takes the dowry of his own wife or daughter-in-law before the distribution is made, he shall, according to the nature of the action on stipulation, provide a guaranty (*cautio*) to his co-heirs against a suit for its recovery.

11. Let us see, therefore, what addition taken from the action on dowry appropriately shapes the (new) action on stipulation. Since it is fixed and undoubted law (*ius certum et indubitatum*) that if a male ascendant, after having provided a dowry for a daughter or a granddaughter, emancipates her or predeceases

actione dotem omnimodo ad mulierem pertinere, etsi fuerit exheredata (quod non erat in ex stipulatu actione: ibi etenim velut aliae actiones in omnes heredes actio dividebatur), aequissimum nobis visum est et in ex stipulatu actione mulierem dotem suam praecipuam accipere, etsi emancipata vel exheredata sit vel cum aliis heredibus scripta.

12. Quo a nobis recepto et aliae multae species promptum accipiunt exitum, cum dos possit et de inofficioso actionem excludere, maxime si sufficit ad quartam, et in collationem ferri, si intestatus pater familias decesserit, et testamento facto, quando hoc testator dixerit. quae omnia ex stipulatu actio a rei uxoriae actione accipit.

13. Accedit ei et alia species a rei uxoriae actione. si quando etenim extraneus dotem dabat nulla stipulatione vel pacto pro restitutione eius in suam personam facto, quisquis is fuerat, mulier habebat rei uxoriae actionem: quod antea in ex stipulatu actione non erat. stipulatione autem vel pacto interposito stipulator vel is qui paciscebatur habebat vel ex stipulatu vel praescriptis verbis civilem actionem. **13a.** In praesenti autem non sic esse volumus, sed si non specialiter extraneus dotem dando in suam personam dotem stipulatus est vel pactum fecerit, tunc praesumatur mulier ipsa stipulationem fecisse, ut ei dos ex huiusmodi casu accedat. **13b.** Neque enim in hac specie volumus videri extraneum tacitam stipulationem fecisse, ne, quod pro mulieribus introduximus, hoc adversus mulieres convertatur. immo magis in huiusmodi dotibus, quae ab extraneis dantur vel promittuntur, ipsa mulier videatur fecisse tacitam stipulationem, nisi expressim extraneus sibi dotem reddi pactus fuerit vel stipulatus, cum donasse magis mulieri quam sibi aliquid ius servasse extraneus non stipulando videtur. **13c.** Extraneum autem intellegimus omnem citra parentem per virilem sexum adscendentem et in potestate dotandam personam habentem: parenti enim tacitam ex stipulatu actionem donamus.

14. Et hoc ex rei uxoriae actione simili modo ex stipulatu actioni accommodandum est. si quando etenim post solutum matrimonium dos a patre petebatur, si quidem rei uxoriae fuerat actio, non poterat solus pater sine consensu filiae suae agere: et si necdum actione mota ab hac luce fuerat subtractus et si lis contestata esset, ad filiam quasi

her, under the action on dowry the property entirely belongs to her, even if she were disinherited, it seemed most fair to Us that even under the action on stipulation the woman receive her dowry before the distribution is made, even if she has been emancipated or disinherited, or made a co-heir. This was not the case under the action on stipulation, for there, just as with other actions, the action was shared among all the heirs.

12. Once this point has been accepted by Us, many other issues also meet with a ready solution, since the dowry can even exclude an action on an undutiful will, especially if it adds up to a fourth (of what would have been due on intestacy) and can be brought as a contribution to the estate (*collatio*), if a *pater familias* dies without a valid will or, in the case of a valid will, its maker insists that this be done. The action on stipulation receives all of these attributes from that on dowry.

13. Other items too are added to it from the action on dowry. For whenever an unrelated person used to give a dowry without any stipulation or agreement about its return to himself, whoever he was, the woman used to have the action on dowry. This was previously not the case with the action on stipulation. The person who made a stipulation or an agreement, however, had a private law action either on the stipulation or with special terms (*praescriptis verbis*). 13a. From now on, however, We do not wish it to be thus, but if an unrelated person (*extraneus*) in giving a dowry has not made a particular stipulation or agreement giving him the right to its return, then the wife herself shall be assumed to have made a stipulation, so that the dowry accrues to her in this kind of situation. 13b. For in this case We do not wish the unrelated person to be deemed to have made an implicit stipulation, so that this (the benefit) which We have introduced on behalf of women not be turned against them. Rather, all the more so with dowries of this type, meaning those that are given or formally promised by unrelated persons, the woman herself shall be deemed to have made an implicit stipulation, unless the unrelated person has made a stipulation or agreement in express terms that the dowry be returned to him, since by not making a stipulation an unrelated person is considered more to have made a gift to the woman than to have preserved some right for himself. 13c. Moreover, by "unrelated person" We understand everyone apart from male ascendants who have a woman in their power (*potestas*) who must be given a dowry. For to (such) male ascendants We grant an implicit action on stipulation.

14. And in a similar manner the following incident from the action on dowry shall be transferred to that on stipulation. For whenever after the dissolution of a marriage the dowry used to be claimed by the father, if indeed he did this under the action on dowry, he could not bring suit by himself without the consent of his daughter, and if he died before trial, but after joinder of issue, the dowry used to revert to his daughter as if part of her own

proprium patrimonium dos revertebatur. **14a.** Quod non erat in ex stipulatu actione: ibi enim et solus exactionem habebat consensu filiae non expectato et, si decedebat, ad suos heredes transmittebat. sed rei uxoriae ius et in ex stipulatu actionem transponere satis humanum, satis pium, satis utile matrimoniis est.

15. Et cum lex Iulia fundi dotalis Italici alienationem prohibebat fieri a marito non consentiente muliere, hypothecam autem nec si mulier consentiebat, interrogati sumus, si oportet huiusmodi sanctionem non super Italicis tantummodo fundis, sed pro omnibus locum habere. **15a.** Placet itaque nobis eandem observationem non tantum in Italicis fundis, sed etiam in provincialibus extendi. cum autem hypothecam etiam ex hac lege donavimus, sufficiens habet remedium mulier, et si maritus fundum alienare voluerit. **15b.** Sed ne ex consensu mulieris hypothecae eius minuantur, necessarium est et in hac parte mulieribus subvenire hoc tantummodo addito, ut fundum dotalem non solum hypothecae titulo dare nec consentiente muliere maritus possit, sed nec alienare, ne fragilitate naturae suae in repentinam deducatur inopiam. **15c.** Licet enim Anastasiana lex de consentientibus mulieribus vel suo iuri renuntiantibus loquitur, tamen eam intellegi oportet in res mariti vel dotis quidem, aestimatas autem, in quibus dominium et periculum mariti est: in fundo autem inaestimato, qui et dotalis proprie nuncupatur, maneat ius intactum, ex lege quidem Iulia imperfectum, ex nostra autem auctoritate plenum atque in omnibus terris effusum et non tantum Italicis et sola hypotheca conclusum.

16. Illud etiam generaliter praesenti addere sanctioni necessarium esse duximus, ut, si qua pacta intercesserint vel pro restitutione dotis vel pro tempore vel pro usuris vel pro alia quacumque causa, quae nec contra leges nec contra constitutiones sunt, ea observentur. **16a.** Sin autem repudio matrimonium fuerit dissolutum, omnia iura, quae ex Theodosiana vel nostra lege descendunt, immutilata custodiantur. **16b.** Simili modo ea, quae Anastasianae legi pro his quae bona gratia

estate. **14a.** This was not a feature of the action on stipulation. For in that case he also had the right to recovery of the dowry by himself without waiting for the consent of his daughter. And if he died, the action passed to his heirs. But it is sufficiently humane, sufficiently dutiful, sufficiently useful for marriages to transfer this element of the law on dowry to the action on stipulation.

15. And since the Lex Julia prohibited the alienation of Italic rural dowry land by the husband without the consent of the wife and its being placed under hypothec even with her consent,[105] We have been asked whether this rule (*sanctio*) ought to have a place not only in the case of rural Italic land, but all (rural) land. **15a.** It is therefore Our decision that this usage (*observatio*) shall operate not just for rural Italic land, but be extended to rural provincial land as well. Since, moreover, we have also granted a hypothec in connection with this statute,[106] the wife has an adequate remedy, even if the husband wishes to alienate the property. **15b.** But in order that the wife's hypothecs not be diminished pursuant to her consent, it is necessary even here to come to the aid of wives with just this provision added, that the husband shall not only not be able to place rural dowry property under hypothec even with his wife's consent but that he shall not be able to alienate it, so that she, through the weakness of her own nature (*fragilitas naturae suae*), not be reduced suddenly to poverty. **15c.** For although the statute (*lex*) of Emperor Anastasius[107] speaks about women giving their consent or renouncing their rights, nevertheless, this ought to be understood to apply to property of the husband or dowry property certainly, but only if appraised as to its value, of which the husband has the title and the liability (for damage). In the case, moreover, of an unappraised piece of rural property, which is properly described also as "dowry," her rights shall remain unabridged. Though not fully realized, admittedly, under the Lex Julia, thanks to the interposition of Our authority they are full, diffused throughout all lands, and not limited only to Italic lands nor to just a hypothec.

16. We also have deemed it necessary to add the following general point to this instant law (*sanctio*), namely, that if any agreements are made concerning the recovery of the dowry, the timeframe for this, the interest to be paid, or for any other reason whatsoever, those which do not contradict statutes (*leges*) or constitutions shall remain valid. **16a.** But if, however, the marriage has been ended through divorce, all rights that derive from the statute of Emperor Theodosius[108] or from Our own[109] shall be preserved intact. **16b.** In like

[105] The *lex Iulia de adulteriis coercendis* contained a rule (once itself referred to as the *lex Iulia de fundo dotali*) that prohibited a husband from selling Italic rural dowry land without his wife's consent.
[106] In subsection 1b.
[107] C. 4.29.21.
[108] C. 5.17.8.
[109] C. 5.17.10.

separarantur enumerata sunt, firma illibataque permaneant. **16c.** Et generaliter quidquid sacratissimis constitutionibus vel libris prudentium cautum est, quod non contrarium huic legi inveniatur, et hoc in sua maneat firmitate et ex stipulatu actioni adgregetur, licet in re uxoria tractatum est.

16d. Quae omnia in his tantummodo dotibus locum habere censemus, quae post hanc legem datae fuerint vel promissae vel etiam sine scriptis habitae: instrumenta enim iam confecta viribus suis carere non patimur, sed suum expectare eventum.

D. k. Nov. Lampadio et Oreste conss.

XIIII De Pactis Conventis Tam Super Dote Quam Super Donatione ante Nuptias et Paraphernis

[1] *Impp. Severus et Antoninus AA. Nicae.* Legem, quam dixisti, cum dotem pro alumna dares, servari oportet, nec obesse tibi debet, quod dici solet ex pacto actionem non nasci: tunc enim hoc dicimus, cum pactum nudum est: alioquin cum pecunia datur et aliquid de reddenda ea convenit, utilis est condictio.

PP. VII k. Febr. Albino et Aemiliano conss.

[2] *Imp. Antoninus A. Theodotae.* Fructus praediorum in dotem datorum si secundum pactum sumptibus tuis tuorumque servierunt, repeti non posse ambigere non debes.

D. XI k. April. Antonino A. IIII et Balbino conss.

[3] *Imp. Gordianus A. Torquatae.* Quamvis pater tuus, cum te nuptui collocaret, pactus sit, ut, si maritus tuus superstitibus filiis communibus in matrimonio decessisset, pars dotis liberorum nomine retineatur, eiusmodi tamen conventio, quominus actionem integrae dotis habeas, proficere non potest.

D. VI id. Ian. Gordiano A. et Aviola conss.

manner, those rights which are set forth in the statute of Emperor Anastasius for those who divorce by mutual consent[110] shall remain fixed and unimpaired. **16c.** And, in general, whatever is laid down in the most revered *constitutiones* or in the works of the jurists (*prudentes*), which is found not to be contrary to the contents of this statute, shall also remain valid, and shall be associated with the action on stipulation, even though it was dealt with in the context of dowry.

16d. We ordain that all of these rules shall apply only to those dowries that are given, formally promised, or also received without documentation after this statute is enacted. For We do not permit that documents already executed shall lose their validity, but they shall remain effective on their own terms.

Given November 1, in the consulship of Lampadius and Orestes (530).

Fourteenth Title Agreements about Dowries, Prenuptial Gifts, and Non-Dowry Property of the Wife[111]

[1][112] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Nica.* The terms that you provided in giving a dowry for your foster daughter must be observed. Nor ought the objection be raised against you that, as is customarily said, no action arises from a pact; for we apply this rule (only) when there is a naked pact (*pactum nudum*). But when money is given with some agreement on its return, there is available a claim for restitution (*utilis condictio*).

Posted January 26, in the consulship of Albinus and Aemilianus (206).

[2] *Emperor* ANTONINUS *Augustus to Theodota.* If the fruits of properties given as dowry have been used, according to an agreement (*pactum*), for the expenses incurred by you and yours, you ought not to entertain doubt that they cannot be recovered (by your husband).

Given March 22, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[3] *Emperor* GORDIAN *Augustus to Torquata.* Although your father, when he arranged your marriage, made an agreement that, if the marriage ended by your husband's death and the children he had with you survived him, a part of the dowry would be kept back for the maintenance of the children, nevertheless, an agreement of this kind cannot prevent you from raising an action for the recovery of the entire dowry.

Given January 8, in the consulship of Gordian Augustus and Aviola (239).

[110] C. 5.17.9.
[111] See D. 23.4.
[112] = C. 2.3.10. The *lex geminata* dates to February 27, 227.

[4] *Idem A. Agatho.* Pactum dotale, quo matrem convenisse cum patre tuo proponis, ut, si in matrimonio decessisset, tibi et fratribus tuis dos restitueretur, si stipulatio ex persona vestra, cum in potestate patris constituti non essetis, legitima minus intercessit, defuncta ea in matrimonio actionem vobis quaerere non potuit. sed si obligatione verborum rite intercedente dotis petitionem habere potuisti, maxime si ad vinculum potestatis patriae non attigeris, petitionem exsequi[viii] non prohiberis.

PP. V id. Iun. Sabino et Venusto conss.

[5] *Impp. Diocletianus et Maximianus AA. Claudio.* Hereditas extraneis testamento datur. cum igitur adfirmes dotali instrumento pactum interpositum esse vice testamenti, ut post mortem mulieris bona eius ad te pertinerent, quae dotis titulo tibi non sunt obligata, intellegis te nulla actione posse convenire heredes seu successores eius, ut tibi restituantur, quae nullo modo debentur.

PP. non. Febr. ipsis IIII et III AA. conss.

[6] *Idem AA. et CC. Rufo.* Si convenit, ut in matrimonio uxore defuncta dos penes maritum remaneret, profecticiae dotis repetitionem huiusmodi pactum inhibuisse explorati iuris est, cum deteriorem causam dotis, in quem casum patri soli repetitio competit, pacto posse fieri auctoritate iuris saepissime sit responsum.

D. V non. Mai. ipsis AA. conss.

[7] *Idem AA. et CC. Phileto.* Pater, pro filia dotem datam genero ea prius in matrimonio defuncta nepotibus pactus restitui, licet his actionem quaerere non potuit, tamen utilis eis ex aequitate accommodabitur actio.

D. XIIII k. Ian. Nicomediae CC. conss.

[viii] [maxime] si ... petionem <maxime> exsequi

[4] *The same Augustus to Agathus.* A dowry agreement through which you allege that your mother and father agreed that, if their marriage ended through her death, the dowry would be given back to you and your brothers, could not, if she died while married, confer a right of action on you unless a legally valid stipulation were made with you after you had been released (emancipated) from your father's power (*potestas*). But if a legally proper stipulation were made, you in particular could have a right of action (*petitio*) on the dowry. If you are not bound by your father's power (*patria potestas*), you above all are not prevented from launching a claim.

Posted June 9, in the consulship of Sabinus and Venustus (240).[113]

[5] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Claudius.* Unrelated persons (*extranei*) are made heirs (only) through a will. Since, therefore, you assert that an agreement was inserted in the dowry documents in place of a will, to the effect that after the wife's death her property would belong to you, and that property is not owed to you under title of dowry, you understand that you can sue neither her heirs nor successors in order to recover that which is in no way owed to you.

Posted February 5, in the consulship of the Augusti, for the fourth and third time, respectively (290).

[6] *The same Augusti and the Caesars to Rufus.* If an agreement is made that, should a marriage end by the death of the wife, the dowry is to remain with the husband, it is settled law (*exploratum ius*) that such an agreement blocks recovery of a dowry given by a male ascendant (*dos profecticia*), since it has very often been given as an authoritative legal opinion that, in a situation in which the father alone is entitled to sue to recover the dowry, this right can be waived through an agreement.

Given May 3, in the consulship of the Augusti (293).

[7] *The same Augusti and Caesars to Philetus.* A father gave a dowry to his son-in-law on behalf of his daughter and made an agreement that, if the marriage were ended by her death, the dowry would be given back to his grandchildren. Although he could not acquire a right of action for them, an analogous action will nevertheless be framed for them from reasons of equity (*aequitas*).[114]

Given December 19, at Nicomedia, in the consulship of the Caesars (294).

[113] Other constitutions show that this was the second consulship for Sabinus.
[114] The Byzantine jurist Thalelaeus claims that the compilers added the last phrase in contravention of classical law.

[8] *Impp. Theodosius et Valentinianus AA. Hormisdae pp.* Hac lege decernimus, ut vir in his rebus, quas extra dotem mulier habet, quas Graeci parapherna dicunt, nullam uxore prohibente habeat communionem nec aliquam ei necessitatem imponat. quamvis enim bonum erat mulierem, quae se ipsam marito committit, res etiam eiusdem pati arbitrio gubernari, attamen quoniam conditores legum aequitatis convenit esse fautores, nullo modo, ut dictum est, muliere prohibente virum in paraphernis se volumus immiscere.

S. d. v id. Ian. post consulatum Protogenis et Asterii.

[9] *Impp. Leo et Anthemius AA. Nicostrato pp.* **pr.** Ex morte cuiuscumque personae sive mariti sive mulieris eandem partem, non pecuniae quantitatem, tam virum ex dote quam mulierem ex ante nuptias donatione lucrari decernimus. **1.** Veluti si maritus mille solidorum ante nuptias donationem confecerit, licebit mulieri et minoris et amplioris quantitatis dotem offerre et marito similiter ante nuptias donationem: hoc tamen observandum est, ut quantam partem mulier stipuletur sibi lucro cedere ex ante nuptias donatione, si priorem maritum mori contigerit, tantam et maritus ex dote partem, non pecuniae quantitatem, stipuletur sibi, si constante matrimonio prior mulier in fata collapsa fuerit. **2.** Et si pactum contra vetitum fuerit subsecutum, infirmum atque invalidum hoc esse, ut nulla ex eo procedere possit exactio, praecipimus.

3. Eadem custodiri censemus, sive pater pro filio sive mater sive ipse ducturus uxorem sui iuris constitutus sive quilibet alius pro eo ante nuptias donationem nupturae dederit. **4.** Simili quoque modo, sive pater pro filia sive mater sive ipsa pro se, sui iuris videlicet constituta, sive quilibet alius pro ea uxorem ducturo dotem dederit seu promiserit, quoniam et alio pro ea offerente dotem ipsa eam pro se videtur offerre.

5. Quod adeo verum est, ut et ipsa ab alio pro se oblatam dotem in lucrum suum reposcat, nisi forte is qui eam obtulit statim, id est tempore oblationis seu promissionis, stipulatus vel pactus sit, ut sibi dos praedicta reddatur.

D. xv k. Sept. Anthemio A. II cons.

[8] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Hormisdas, Praetorian Prefect.* With this statute We decree that a husband, when his wife forbids it, shall have no right of ownership in, and shall place no lien upon, the property which a woman possesses beyond her dowry, which the Greeks call *parapherna*. For although it would be a good thing for a woman who entrusts herself to her husband also to permit her property to be managed at his discretion, yet because it becomes the founders of the laws (*conditores legum*) to be the partisans of equity (*aequitas*), We wish, as is said above, the husband in no way to become entangled in his wife's *parapherna*, if she forbids this.

Written January 9, in the post-consulate of Protogenes and Asterius (450).

[9] *Emperors* LEO *and* ANTHEMIUS *Augusti to Nicostratus, Praetorian Prefect.* **pr.** We decree that in the case of the death of either party, the husband or the wife, the same proportion, not the same amount of money, shall benefit both the husband from the dowry and the wife from the prenuptial gift. **1.** For example, if the husband made a prenuptial gift of 1,000 solidi, the wife will be allowed to offer a dowry of a greater or lesser amount, and likewise the husband (is allowed to offer) a prenuptial gift (of a greater or lesser amount than the dowry). All the same, this rule must be observed, that whatever the proportion the wife shall stipulate to accrue to her from the prenuptial gift if the husband predeceases her, the same proportion, and not the (same) sum of money, the husband shall stipulate to accrue to him from the dowry, if the wife predecease him, thus ending the marriage. **2.** And if an agreement is made contrary to what is forbidden, We instruct that this shall be without effect and void, so that no recovery can be made on the basis of it.

3. We ordain that the same rules hold whether a father or a mother on behalf of a son, the groom-to-be himself, being *sui iuris*, or anyone else at all on his behalf gives a prenuptial gift to the bride-to-be. **4.** In a similar manner, too, whether a father or a mother on behalf of a daughter, (or) the bride herself – obviously if we assume she is *sui iuris* – or anyone else at all on her behalf gives or promises a dowry to the groom-to-be, since, even when someone else offers a dowry for her, she is deemed to offer it on her own behalf.

5. This is true to the extent that she also may demand back for her own benefit the dowry that has been offered by someone else on her behalf, unless by chance the person offering the dowry immediately – that is, at the time of the (actual) transfer or formal promise – made a stipulation or pact that the aforesaid dowry be returned to him.

Given August 18, in the consulship of Anthemius Augustus, for the second time (468).

[10] *Imp. Iustinianus A. Menae pp.* Lege Leonis divae memoriae pacta lucrorum dotis et ante nuptias donationis paria esse sanciente nec adiciente, quid fieri oporteat, si hoc minime observatum sit, nos omnia clara esse cupientes praecipimus disparibus eis factis maiorem lucri partem ad minorem deduci, ut eo modo uterque minorem partem lucretur.

D. VIII id. April. Constantinopoli Decio vc. cons.

[11] *Idem A. Iohanni pp.* **pr.** Si mulier marito suo nomina, id est feneraticias cautiones, quae extra dotem sunt dederit, ut loco paraphernarum apud maritum maneant, et hoc dotali instrumento fuerit adscriptum, utrumne habeat aliquas ex his actiones maritus sive directas sive utiles, an penes uxorem omnes remaneant, et in quem eventum dandae sint marito actiones, quaerebatur.

1. Sancimus itaque, si quid tale evenerit, actiones quidem omnimodo apud uxorem manere, licentiam autem marito dari easdem actiones movere apud competentes iudices nulla ratihabitione ab eo exigenda, et usuras quidem eorum circa se et uxorem expendere, pecunias autem sortis quas exegerit servare mulieri vel in causas, ad quas ipsa voluerit, distribuere. **2.** Et si quidem in dotali instrumento hypothecae pro his nominatim a marito scriptae sunt, his esse mulierem ad cautelam suam contentam. sin autem minime hoc scriptum inveniatur, ex praesenti nostra lege habeat hypothecam contra res mariti, ex quo pecunias ille exegit. **3.** Antea etenim habeat ipsa mulier facultatem, si voluerit, sive per maritum sive per alias personas easdem movere actiones et suas pecunias percipere et ipsas cautiones a marito recipere, securitate ei competente facienda.

4. Dum autem apud maritum remanent eaedem cautiones, et dolum et diligentiam maritus circa eas praestare debet, qualem circa suas res habere invenitur, ne ex eius malignitate vel desidia aliqua mulieri accedat iactura. quod si evenerit, ipse eandem de proprio resarcire compelletur.

D. k. Nov. Lampadio et Oreste vv. cc. conss.

[10] *Emperor* Justinian *Augustus to Menas, Praetorian Prefect.* Since the statute of Emperor Leo of blessed memory[115] provided that agreements regarding benefits from dowry and prenuptial gift shall be equal, but did not add what ought to be done if this rule is not at all observed, from Our desire that everything be clear, We instruct that in the case where the proportions are unequal the greater share shall be reduced to the level of the smaller, so that in this way both shall benefit from the smaller-sized share.

Given April 6, at Constantinople, in the consulship of vir clarissimus *Decius (529).*

[11] *The same Augustus to John, Praetorian Prefect.* **pr.** If a wife gives to her husband names – that is, of guarantors for loans at interest – that are outside the dowry, so that they remain with the husband under the category of her non-dowry property, and this detail has been recorded in the dowry document, the question arose as to whether the husband has some rights of action in connection with these, whether direct or analogous, or they all stay with the wife, or in what situation they should be given to the husband.

1. We therefore lay down that, if any such thing come to pass, the actions, at any rate, shall remain entirely with the wife, but that the power shall be given to the husband of raising these same actions before the appropriate judges, without demanding of him proof of his wife's approval, of spending interest, certainly, from this property on himself or his wife, moreover, of preserving for the wife the principal which he has collected, or of distributing this for purposes as she directs. 2. And if, in fact, hypothecs (*hypothecae*; real security arrangements) are specifically made for these by a husband in a dowry document, (We direct) that the wife shall be content with these for her own protection. But if, however, this is discovered not at all been to have been written down, she shall, in accordance with this instant statute of Ours, have a hypothec against her husband's property from the time when he collected the money. 3. For beforehand the wife herself shall have the capacity, if she wishes, to launch, either through her husband or through other persons, these actions, to collect her money, or to receive the guaranties (*cautiones*) from her husband, though she shall give him appropriate security (for them).

4. While, however, the same guaranties remain with the husband, he ought to refrain from the intentional infliction of harm (*dolus*) and maintain the same standard of care toward them as he is shown to display toward his own property (*diligentia quam suis*), so that some loss not accrue to the wife through his maliciousness or slackness. But if it occurs, he himself will be forced to compensate her from his own resources.

Given November 1, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[115] C. 5.14.9.

XV De Dote Cauta et Non Numerata

[1] *Impp. Severus et Antoninus AA. Dionysiae.* Dotem numeratio, non scriptura dotalis instrumenti facit: et ideo non ignoras ita demum ad petitionem dotis admitti te posse, si dotem a te re ipsa datam probatura es.
D. XIII k. Aug. Cilone et Libone conss.

[2] *Imp. Alexander A. Papinianae.* Quod de suo maritus constante matrimonio donandi animo in dotem adscripsit, si eandem donationem legitime confectam non revocavit, qui incrementum doti dedit, et durante matrimonio mortem obiit, ab heredibus mariti, quatenus interposita liberalitas munita est, peti potest.
PP. non. Dec. Alexandro A. III et Dione conss.

[3] *Imp. Iustinianus A. Menae pp.* In dotibus, quas datas esse dotalibus instrumentis conscribi moris est, cum adhuc nulla datio, sed pollicitatio tantum subsecuta sit, liceat non numeratae pecuniae exceptionem opponere non solum marito contra uxorem vel heredes eius morte mulieris vel repudio dissoluto matrimonio, sed etiam heredibus mariti, cuius morte dissolutum est matrimonium, socero etiam vel eius heredibus, si cum filio suo dotem suscepisse dotalibus instrumentis scriptum sit, omnique personae, quam dotem suscepisse una cum marito conscribitur, et eius similiter heredibus, ita tamen, ut intra annum tantum continuum a morte mariti vel mulieris vel missione repudii computandum ea licentia detur.
D. k. Iun. dn. Iustiniano A. II cons.

Fifteenth Title Dowry Promised But Not Paid

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Dionysia.* The act of paying out, and not the execution of a dowry document, makes a dowry. And for this reason you are not unaware that to this extent you can be allowed to sue for a dowry: if you are prepared to show that the dowry was in actual fact given by you.

Given July 20,[116] *in the consulship of Cilo and Libo (204).*

[2] *Emperor* ALEXANDER *Augustus to Papiniana.* That which your husband recorded as an addition to the dowry with the intention of giving a gift from his own estate during your marriage, provided he did not recall this gift, made in a legally valid manner, if it increased the value of the dowry and the marriage is ended through his death, can be claimed from the husband's heirs (by the wife), insofar as this generosity is fortified by the production (of proof).[117]

Posted December 5, in the consulship of Alexander Augustus, for the third time, and Dio (229).

[3][118] *Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect.* Concerning dowries, for which it is the custom to register in dowry documents (items) as having been given when there has been as yet no actual giving, but only an informal promise has been made, not only the husband shall be permitted to raise an affirmative defense of "money not paid out" (*exceptio non numeratae pecuniae*) against his wife or her heirs when the marriage is ended through her death or a divorce, but also the husband's heirs, when the marriage is ended through his death, as well as the (wife's) father-in-law or his heirs, if it were written in the dowry documents that he, together with his own son, had received the dowry, and every person, who is recorded as having received the dowry together with the husband, and likewise his or her heirs, in such a way, however, that this power shall be given only for a year to be reckoned continuously from the death of a husband or wife, or from the sending of notice of divorce.

Given June 1, in the consulship of Our Lord Justinian Augustus, for the second time (528).

[116] The precise day is uncertain: the alternative is July 18.
[117] The original text required a stipulation.
[118] Combine with C. 4.2.17, 4.20.18, 4.21.17, 4.30.14, 4.30.15(?).

XVI De Donationibus Inter Virum et Uxorem et a Parentibus in Liberos Facti et de Ratihabitione

[1] *Imp. Antoninus A. Tryphaenae.* Bona quondam mariti tui fiscus si nemine ei successore exsistente ut vacantia occupavit, donationes ab eo factae, si usque ad finem vitae in eadem voluntate permansit, revocari non possunt.

PP. III id. Ian. duobus Aspris conss.

[2] *Idem A. Marco militi.* Si ancillam nummis tuis comparatam esse praesidi provinciae probaveris donationisque causa focariae tuae nomine instrumentum emptionis esse conscriptum, eam tibi restitui iubebit. nam licet cessante iure matrimonii donatio perfici potuerit, milites tamen meos a focariis suis hac ratione fictisque adulationibus spoliari nolo.

PP. XII k. Mart. Antonino A. IIII et Balbino conss.

[3] *Idem A. Epicteto.* **pr.** Donatio mancipiorum aliarumque rerum, quas tibi ab uxore tua donatas dicis, si modo suae potestatis, cum donaret, fuit vel patris voluntate id fecit et in eadem voluntate donationis usque ad ultimum diem vitae perseveravit, ex mea et divi Severi patris mei constitutione firmata est. **1.** Sin autem post mortem filiae facta est donatio a quondam socero tuo, etiam inter vivos ea perfici potuit.

PP. IIII non. Mart. Antonino A. IIII et Balbino conss.

[4] *Imp. Alexander A. Claudiano.* Nec inter eas quidem personas, quarum iuri subiecti sunt vir et uxor quive in eorum potestate sunt, donationes iure civili fieri possunt.

PP. XVII k. Oct.

[5] *Idem A. Quintillae.* Si, ut proponis, pater tuus, in cuius potestate fuisti, marito tuo genero suo instrumentum debitoris donationis causa

Sixteenth Title Gifts Between Husband and Wife, by Parents to Children, and Ratification of Them[119]

[1] *Emperor* ANTONINUS *Augustus to Tryphaena.* If your decedent husband has no surviving heir and the Treasury has seized his estate as unclaimed property (*bona vacantia*), the gifts made by him (to you), provided he did not change his mind before he died, cannot be revoked.

Posted January 11, in the consulship of the two Aspri (212).

[2] *The same Augustus to Marcus, a soldier.* If you prove to your provincial governor that the slave-woman was purchased with your money, and that a sale document was written up under the name of your concubine in order to make a gift, he will order her to be returned to you. For, although the gift could have been validly made since there was no marriage, nevertheless, I do not wish my soldiers to be stripped of their goods in this way by their concubines through their feigned blandishments.

Posted February 18, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[3] *The same Augustus to Epictetus.* **pr.** A gift of slaves and other property, which you allege was given to you by your wife, provided that she was of independent legal status (*suae potestatis*) when she made the gift or did so with the approval of her father, and did not change her mind about the gift as long as she lived, is confirmed according to the constitution promulgated by myself and my father, the deified Severus.[120] **1.** But if, however, the gift was made by your former father-in-law after his daughter's death, this gift could be validly made even between living persons (*inter vivos*).

Posted March 4, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[4] *Emperor* ALEXANDER *Augustus to Claudianus.* Under private law (*ius civile*), gifts cannot be validly made between persons, certainly, in whose power (*potestas*) a husband or wife stands, or between those who are in the *potestas* of such persons.

Posted September 15.

[5] *The same Augustus to Quintilla.* If, as you allege, your father, in whose power (*potestas*) you were, gave as a gift to your husband, his son-in-law, a document

[119] See D. 24.1.

[120] This refers to an *SC* prompted by an *oratio* of Severus and Caracalla in 206. It allowed gifts between spouses to be valid where the donor died during the marriage and had not revoked the gift.

dedit isque matrimonio durante vita functus est ac postea a marito divortisti, quod gestum est non valet.

PP. id. Febr. Albino et Maximo conss.

[6] *Idem A. Nepotiano.* **pr.** Etiamsi uxoris tuae nomine res quae tui iuris fuerunt depositae sunt, causa proprietatis ea ratione mutari non potuit, etsi donasse te uxori res tuas ex hoc quis intellegat, cum donatio in matrimonio facta prius mortua ea quae liberalitatem excepit irrita sit. **1.** Nec est ignotum, quod, cum probari non possit, unde uxor matrimonii tempore honeste quaesierit, de mariti bonis eam habuisse veteres iuris auctores merito credidissent.

PP. non. Dec. Alexandro A. III et Dione conss.

[7] *Idem A. Theodotae.* Si ex voluntate patris tui filio tutoris nupta es, collata in maritum donatio ipso iure irrita est. sed si matrimonium iure non valuit, licet ipso iure donatio tenuerit, quia tamen indigna persona eius fuit, qui nec maritus potest dici, utiles actiones super revocandis his tibi competunt.

PP. k. Oct. Lupo et Maximo conss.

[8] *Idem A. Leoni.* Si fructus eorum praediorum, quae in dotem accepisse te dicis, matrimonii tempore uxorem tuam percipere passus es eosque uxor tua absumpsit, restitui tibi post divortium oportere nulla ratione contendis. sin autem ab his locupletior facta est, in tantum potest conveniri.

PP. V k. Oct. Maximo et Paterno conss.

[9] *Imp. Gordianus A. Origeni.* Etsi de tua pecunia mancipia uxori tuae comparata sunt, tamen, si ei sunt tradita, eorum dominium non ad te, sed ad eam pertinet, pecuniae autem tantummodo repetitionem habes, sive negotium eius gerens numerationem fecisti sive in eam donationem conferens quantitatem pretii largitus es: etenim vel in solidum vel quatenus locupletior facta est actione cum ea competenti poteris experiri.

PP. VII k. Oct. Pio et Pontiano conss.

testifying to the existence of a debt, and he (your father) died during the marriage, after which you divorced your husband, your father's action is not valid.

Posted February 13,[121] *in the consulship of Albinus and Maximus (227).*

[6] *The same Augustus to Nepotianus.* **pr.** Although property belonging to you was given as a deposit under your wife's name, title to property could not be changed in this way, even if someone might understand from this that you gave the property as a gift to your wife, since a gift made during a marriage is void when the beneficiary predeceases the benefactor. **1.** Nor is it unrecognized that, when the source of what a wife honorably acquired during marriage cannot be demonstrated, the ancient legal authorities (*veteris iuris auctores*) rightly believed that she had acquired this from the property of her husband.

Posted December 5, in the consulship of Alexander Augustus, for the third time, and Dio (229).

[7] *The same Augustus to Theodota.* If, in accordance with the last wishes of your father, you married the son of your *tutor*, a gift made (by you) to your husband is invalid by operation of law. But if the marriage was not legally valid, although by operation of law the gift would (then) be valid, because nevertheless his status was unworthy and he cannot even be called a husband, analogous actions (*actiones utiles*) for reclaiming this property are available to you.

Posted October 1, in the consulship of Lupus and Maximus (232).

[8] *The same Augustus to Leo.* If while you were married you allowed your wife to reap the fruits of those properties which you declare you received as a dowry, and she consumed them, you have no reason to claim that they (the fruits) ought to be restored to you after divorce. But if, however, she has been enriched for this reason, up to this amount she can be sued.

Posted September 27, in the consulship of Maximus and Paternus (233).

[9] *Emperor Gordian Augustus to Origenes.* Even if slaves were bought for your wife with your money, nevertheless, if they have been delivered to her, ownership of them is not yours but hers. You have, however, a suit to recover (not the slaves but) just the money, (regardless of) whether you paid it out while managing her business or you paid the purchase price in order to make her a gift. For you will be able to raise the relevant action (*actio*) against her for the entire amount or to the extent that she has been enriched.

Posted September 25,[122] *in the consulship of Pius and Pontianus (238).*

[121] The precise day is uncertain: the alternative is February 9.

[122] The precise day is uncertain: the alternative is September 24.

[10] *Idem A. Veriano.* Si maritus quondam uxoris tuae, cum sui iuris esset, in eam praedia vel cetera donationis titulo contulit et in ea voluntate usque ad mortem suam perseveravit, ex oratione divi Severi confirmata est donatio: ac si eas res pater defuncti iniuriose abstulit, per praesidem provinciae eas restituere cogetur. nec enim, quasi maleficiis eius sit maritus extinctus, crimen intendens sub praetextu accusationis quae donata sunt auferre debuit, cum causa liberalitatis a criminatione separata sit.

PP. III k. April. Gordiano A. et Aviola conss.

[11] *Idem A. Maximo.* Sicut cessat petitio quantitatis, quam de suo maritus uxori in menses singulos vel annos singulos proprii usus eius gratia promittit, ita ex ea causa nummi soluti erogatique non dari repetitionem manifestum est.

PP. V k. Iul. Gordiano A. II et Pompeiano conss.

[12] *Idem A. Secundinae.* Si maritus tuus creditores sortitus post factam in te donationem fundum, quem ex donatione iuri tuo vindicas, isdem specialiter obligavit, eandem obligationem defensionis tuae firmitatem inrumpere intellegere debes, cum sit manifestum non solum ex huiusmodi obligatione, sed etiam ex donatione vel venditione vel alio quolibet modo rebus alienatis revocatam esse a viro in mulierem factam donationem.

PP. VI k. Febr. Arriano et Papo conss.

[13] *Impp. Diocletianus et Maximianus AA. Rufinae.* **pr.** Si quidem ante donationem possessionis in te iure, ut dicis, a marito collatam praedium ab eodem creditori obligatum fuit, alienationem eius salvo iure debiti (si tamen iuris ratio actionem eius non excludit) factam esse dubium non est. **1.** Quod si donatione iure celebrata eo, quod vel ante nuptias facta est vel in isdem casibus, in quibus etiam constante matrimonio donatio procedere potest, obligatio insecuta est, factum mariti, quem diem suum obisse memorasti, iuri tuo officere non posse certum est.

PP. XII k. Iul. Maximo II et Aquilino conss.

[10] *The same Augustus to Verianus.* If the decedent husband of your wife, when he was *sui iuris*, gave her real properties and other things as a gift and did not change his mind about this before his death, in accordance with the legislative proposal (*oratio*) of the deified Severus, the gift is validated. And if the father of the decedent wrongfully seized those properties, he will be compelled to restore them by the governor of the province. For he ought not to seize those gifts under the pretext of an accusation, by raising a criminal charge on the ground that the husband died because of her wrongdoing, since the question of the legal status of the gift is a different matter from a criminal prosecution.

Posted March 30, in the consulship of Gordian Augustus and Aviola (239).

[11] *The same Augustus to Maximus.* Just as a suit fails to lie for the amount of money that a husband formally promises to pay his wife from his own funds for her own use on a monthly or yearly basis, so for the same reason it is clear that a suit for recovery is not given for money that (with or without such a promise) has been paid and expended.

Posted June 27, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

[12] *The same Augustus to Secundina.* If your husband, after making a gift to you of a farm which you now claim as your own in connection with the gift, later specially bound it over as security to creditors, you ought to understand that this same encumbrance shatters the foundation of your argument, since it is clear that not only by an encumbrance of this kind, but also by a gift, sale, or alienation of property in any other way, a gift made by a husband to his wife is revoked.

Posted January 27, in the consulship of Arrianus and Papus (243).

[13] *Emperors Diocletian and Maximian Augusti to Rufina.* **pr.** If, in fact, a gift of land was legally made to you, as you claim, by your husband and he had previously bound it over to a creditor, there is no doubt that its alienation has been validly accomplished even as the debt-obligation is preserved, if, all the same, no rule of law (*iuris ratio*) bars a right of action over this. **1.** But if the gift were accomplished in a legally valid manner, (whether) because it was made before marriage or because it was made in one of those situations in which a gift (between spouses) can be made even during marriage, and the placing of the property under lien followed, then it is certain that the action of your husband, who, as you say, has passed on, cannot impede your right over it.

Posted June 20, in the consulship of Maximus, for the second time, and Aquilinus (286).

[14] *Idem AA. Octavianae.* **pr.** Ex verbis, quae in postremis iudiciis inseruntur, licet ad fideicommissum vel legatum utilia sunt, non omnimodo legati vel fideicommissi persecutio datur, sed ita demum, si relinquendi studio huiusmodi verba fuerint adscripta. unde te voluntatis, non iuris quaestionem in preces tuas contulisse palam est. **1.** Cum igitur lecto testamento animadvertimus maritum tuum ex praecedente donatione dominium tibi conservasse securitatique tuae ad obtinendam proprietatem cavisse, inditorum verborum conceptio non fideicommissum relictum ostendit, sed ex senatus consulti auctoritate liberalitatem mariti tui, cui custodiendae etiam moriens prospexit, quatenus firmare potuit dominium, mortis tempore tibi esse addictam.

PP. III non. Oct. ipsis AA. conss.

[15] *Idem AA. Iustiniano et aliis.* **pr.** Si non verum contractum pater vester gessit, sed sub specie venditionis donationem possessionis in matrem vestram contulit nec ex bonis, quae in persona patris vestri permansisse videbantur, ob primipilum indemnitati fiscali satisfieri potuit, licet in eadem donandi voluntate perseverasse eum probari potest, ex eadem possessione ad supplendam pecuniam, quae ex bonis ab eo relictis colligi nequivit, conferendum est. **1.** Quod si liberalitatis tenorem mutata voluntate pater tuus interrupit, in hereditate eius dominium resedisse nulla dubitatio est.

PP. IIII k. Febr. Tiberiano et Dione conss.

[16] *Idem AA. Theodoro.* Si filii tui emancipati matris hereditatem sibi adquisierunt, proba apud praesidem provinciae non donandi animo te nomine uxoris tuae praedia comparasse, sed nominis dumtaxat eius titulo usum per possessionem rerum a venditoribus tibi traditarum dominum esse effectum, ut comprehensa filiorum tuorum iniuria proprietatis ius incolume perseveret. nam si largiendi proposito id te fecisse constiterit, pecuniae tibi persecutio competit.

PP. VI id. Mart. Tiberiano et Dione conss.

[14][123] *The same Augusti to Octaviana.* **pr.** Although words inserted into a will may create a trust or a legacy, a claim on a trust or a legacy does not always arise therefrom, but only to the extent that such words were written with the intent of making an actual bequest. So it is manifest that your petition raises an issue of fact regarding decedent's wishes, not one of law. **1.** Since therefore, upon reading the will, We note that your husband confirmed your ownership of the gift he had previously made to you and took care that you should be safe in your ownership thereof, the precise language shows that he did not leave a trust but that the generous gift of your husband, which he took care to safeguard even at the time of his death, insofar as he was able to confirm ownership of the property, was assigned to you precisely at the time of his death, in accordance with the authoritative decree of the Senate.[124]

Posted October 5,[125] *in the consulship of the Augusti (290).*

[15] *The same Augusti to Justinianus and others.* **pr.** If your father did not make an actual contract, but under the appearance of a sale made a gift of a property to your mother, and his liability to the Treasury arising from his holding the position of chief centurion (*primipilus*) could not be made good out of the property that appeared to have remained in his ownership, (then) even though he can be shown not to have changed his mind about the gift, a contribution must be made from this land to top off the money which could not be collected from the property he left behind. **1.** But if your father changed his mind and abrogated the gift, there is no doubt that the ownership of this land re-accrued to his estate.

Posted January 29, in the consulship of Tiberianus and Dio (291).

[16] *The same Augusti to Theodorus.* If your children, being emancipated, have come into their mother's inheritance, prove before the provincial governor that you did not buy real properties in your wife's name with the intent of giving them to her as a gift, but that having used her name you became owner of the properties by taking possession of them when the sellers conveyed them to you, so that the offensive conduct of your children shall be understood for what it is and your rights of ownership shall continue intact. For if it is shown that you did this with the intention of making a gift, you (still) have a claim for recovering the money (that you paid).

Posted March 10,[126] *in the consulship of Tiberianus and Dio (291).*

[123] See C. 8.10.5.
[124] Passed in 206 (above).
[125] The precise day is uncertain: the alternative is October 2.
[126] The precise day is uncertain: the alternative is March 11.

[17] *Idem AA. et CC. Capitolinae.* De his, quae extra dotem in domum illata a marito erogata commemoras, si quidem te donante consumpta sunt, intellegis adversus heredes non nisi in quantum locupletior fuit habere te actionem: si vero contra voluntatem tuam, omnia tibi restitui oportere.

Sub die VIII k. Mai. Heracliae AA. conss.

[18] *Idem AA. et CC. Maternae.* A marito in uxorem donatione collata matrimonii tempore nec initio dominium transferri potest nec post, si divortium intercesserit vel prior persona quae liberalitatem accepit rebus humanis fuerit exempta vel ab eo qui donavit fuerit revocata, potest convalescere.

Sub die IIII k. Iul. Serdicae AA. conss.

[19] *Idem AA. et CC. Dionysiae.* Si constante matrimonio tibi mater domum tradidit, hanc in tuis fecit bonis.

D. id. Iul. Philippopoli CC. conss.

[20] *Idem AA. et CC. Claudiae.* Creditor debito soluto de pignore liberato nihil ad uxorem debitoris quondam transferre potuit. sed nec consensus eiusdem debitoris per eum qui creditor fuit accedens imaginariae factae venditioni ad dominium transferendum prodesse quicquam potuit, cum tam ea quae simulate aguntur, quam quae in uxorem a marito donationis causa tempore matrimonii procedunt propter iuris civilis interdictum (cum proponas uxorem superstite marito rebus humanis exemptam) pro infectis habeantur.

D. V id. Aug. Viminaci CC. conss.

[21] *Idem AA. et CC. Cacaliae.* Si propriis habitis contractibus quam acceperas mutuam pecuniam pro marito donationis causa erogasti, cum nec ad dignitatem profuerit nec locupletior sit factus, intellegis nullam tibi contra eum competere actionem.

D. III id. Aug. Viminaci CC. conss.

[17][127] *The same Augusti and the Caesars to Capitolina.* Regarding that property, apart from dowry, that you claim was brought into your marital home and used by your husband, if, in fact, you gave this as a gift and it was consumed, you understand that you have a right of action (*actio*) against his heirs only to the extent that he was enriched thereby. If, indeed, this happened without your consent, everything ought to be restored to you.

On April 24,[128] at Heraclea, in the consulship of the Augusti (293).

[18] *The same Augusti and Caesars to Materna.* When a gift is made by a husband to a wife during marriage, ownership cannot pass at the start. Nor can it become valid afterwards, if a divorce occurs, the recipient predeceases the giver, or the gift is revoked by the giver.

On June 28, at Serdica, in the consulship of the Augusti (293).

[19] *The same Augusti and Caesars to Dionysia.* If your mother conveyed a house to you while you were married, she made this accrue to your property (and not your husband's).

Given July 15, at Philippopolis, in the consulship of the Caesars (294).[129]

[20] *The same Augusti and Caesars to Claudia.* A creditor could not, when his debt was paid, transfer any of the now unencumbered pledge to the wife of the former debtor. Nor could the consent of said debtor (the husband), along with that of the former creditor, to an imaginary sale avail at all in transferring ownership, since not only those acts which are done as a pretense, but also the transfer of property by the husband to the wife during marriage as a gift – since you allege that the wife has died and her husband survives her – shall be regarded as void, because of a prohibition that arises in the private law (*ius civile*).

Given August 9, at Viminacium, in the consulship of the Caesars (294).[130]

[21] *The same Augusti and Caesars to Cacalia.* If you, having made your own contracts, paid out money as a gift to your husband that you had accepted as a loan, since it did not help him advance in status (*dignitas*) nor was he enriched thereby, you understand that no action lies for you against him.

Given August 11, at Viminacium, in the consulship of the Caesars (294).[131]

[127] Combine with C. 8.42.11.
[128] The precise day is uncertain: the alternative is April 27.
[129] The precise year is uncertain: Mommsen prefers July 15, 293.
[130] The precise year is uncertain: Mommsen prefers August 9, 293.
[131] The precise year is uncertain: Mommsen prefers August 11, 293.

[22] *Idem AA. et CC. Arsinoae.* Maritus manumissionis causa servum mulieri constante matrimonio donare potest.

S. k. Aug. Sirmi CC. conss.

[23] *Idem AA. et CC. Caecilianae.* Si te in vacuam possessionem praedii socrus tua titulo donationis ante matrimonium vel post induxit, ad rescindendam donationem paenitentia nihil proficit.

S. k. Nov. Brundusii CC. conss.

[24] *Imp. Constantinus A. Petronio Probiano.* **pr.** Res uxoris, quae vel successione qualibet vel emptione vel etiam largitione viri in eam ante reatum iure pervenerant, damnato ac mortuo ex poena marito vel in servilem condicionem ex poenae qualitate deducto, illibatas esse praecipio nec alieni criminis infortunio stringi uxorem, cum paternis maternisve ac propriis frui eam integro legum statu religiosum sit. **1.** Et donatio maritalis ante tempus criminis ac reatus collata in uxorem, quia pudicitiae praemio cessit, observanda est, tamquam si maritum eius natura, non poena subduxerit.

2. Sin autem aqua et igni ei interdictum erit vel deportatio illata, non tamen mors ex poena subsecuta, donationes a viro in uxorem collatae adhuc in pendenti maneant, quia nec matrimonium huiusmodi casibus dissolvitur, ita ut, si usque ad vitae suae tempus maritus eas non revocaverit, ex morte eius confirmentur: fisco nostro ad easdem res nullam in posterum communionem habituro.

D. III k. Mart. Serdicae Crispo II et Constantino II CC. conss.

[25] *Imp. Iustinianus A. Menae pp.* **pr.** Donationes, quae parentes in liberos cuiuscumque sexus in potestate constitutos conferunt vel uxor in suum maritum vel maritus in suam uxorem vel alteruter eorum in aliam personam, cui constante matrimonio donare non licet, vel ipsae aliae personae in eam cui donare non poterant, ita firmas esse per

[22] *The same Augusti and Caesars to Arsinoa.* During marriage a husband can give a slave as a gift to his wife for the purpose of manumission.

Written August 1, at Sirmium, in the consulship of the Caesars (294).

[23] *The same Augusti and Caesars to Caeciliana.* If your mother-in-law granted you undisturbed possession of a piece of real property as a gift either before or after you married, a change of heart on her part avails nothing for the purpose of rescinding the gift.

Subscribed November 1, at Brundisium,[132] *in the consulship of the Caesars (294).*

[24][133] *Emperor* CONSTANTINE *Augustus to Petronius Probianus.* **pr.** I instruct that a wife's property, whether this has been acquired in a legally valid manner through any kind of bequest, purchase, or even as a gift from her husband before his commission of a criminal offense, shall remain intact after her husband has been condemned and suffered a sentence of death or has been reduced to slave status per the nature of the penalty. The wife shall not suffer misfortune on account of someone else's criminal offense, since it is fair that she enjoy her paternal, maternal, or her own property with her status under the laws unimpaired. **1.** And a husband's gift made to the wife before the commission of his crime and his prosecution for it, because it accrued to her as a reward for her chastity (*pudicitia*), must be upheld, as though nature, not a criminal law penalty, had carried off the husband.

2. But if, however, he is sentenced to denial of fire and water or deportation (i.e., capital exile), and death nevertheless does not follow from the penalty, gifts made from a husband to a wife shall still remain in suspense, because the marriage is not ended in situations of this kind, with the result that, if the husband up until the end of his life does not revoke them, they shall be confirmed at the time of his death. Our Treasury shall have no claim on such property in future.

Given February 27, at Serdica, in the consulship of Crispus, for the second time, and Constantine, for the second time, Caesars (321).

[25] *Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect.* **pr.** Gifts that ascendant male relations give to children of either sex who are in their power (*potestas*), (or) that a wife gives to a husband, a husband to his wife, (or) either of them to some other person, to whom they are not permitted to make gifts during marriage, or those other persons themselves to a person to whom they were not permitted to give gifts, We ordain shall be valid through the silence

[132] Written at Burtudizum: Mommsen.

[133] pr.-1 = (in part, with changes) C.Th. 9.42.1.

silentium donatoris vel donatricis sancimus, si usque ad quantitatem legitimam vel eam excedentes actis fuerint intimatae. nam amplioris quantitatis donationem minime intimatam nec per silentium eius qui donavit confirmari concedimus.

1. Sin vero specialiter eas in suprema voluntate donator vel donatrix confirmaverit, sine ulla distinctione ratae habebuntur, ita tamen ut, si quidem ultra lege finitam quantitatem expositae minime actis intimatae fuerint, specialis earum confirmatio ex eo tempore vim habeat, ex quo eaedem donationes confirmatae sunt.

2. Sin vero vel non amplior sit donatio vel, cum amplior esset, in actis insinuata sit, tunc et silentium donatoris vel donatricis et specialis confirmatio ad illud tempus referatur, quo donatio conscripta sit: sicut et alias ratihabitiones negotiorum ad illa reduci tempora oportet, in quibus contracta sunt. nec in ceterum subtilem divisionem facti vel iuris introduci posse.

D. III id. Dec. dn. Iustiniano A. II cons.

[26] *Idem A. Menae pp.* Donationes, quas divinus imperator in piissimam reginam suam coniugem vel illa in serenissimum maritum contulerit, ilico valere sancimus et plenissimam habere firmitatem, utpote imperialibus contractibus legis vicem obtinentibus minimeque opitulatione quadam extrinsecus egentibus.

D. VIII id. April. Constantinopoli Decio vc. cons.

[27] *Idem A. Iohanni pp.* **pr.** Si unus ex his, qui matrimonio fuerant copulati, in alium donatione facta ab hostibus captus est et in servitutem deductus et postea ibi morte peremptus, quaerebatur, an huiusmodi liberalitas, quam antea fecit, ex hoc roborari videtur an vacillare: et iterum si donator quidem in civitate Romana constitutus decesserit, mortis autem eius tempore is qui donationem accepit in captivitate degebat et postea reversus est, an videtur et tunc donatio rata haberi.
1. Cum itaque in utroque casu oportet augusto remedio causam dirimi, cum nihil aliud tam peculiare est imperiali maiestati quam humanitas, per quam solam dei servatur imitatio, in ambobus casibus donationem firmam esse censemus.

D. k. Dec. Lampadio et Oresta vv. cc. conss.

of the male or female giver, if it is at or below the legally prescribed value or, if above this, recorded in the public register. For We do not permit that a gift which exceeds this value and is not at all recorded (in the public register) to be confirmed as valid by the silence of the giver.

1. But if, however, the giver confirms such gifts specifically in his or her will, they will be considered valid without distinction, with the result all the same that if, in fact, the value of the gifts exceeded that set forth in the statute and they were not at all recorded in the public register, this particular confirmation shall have force (only) from that time in which these gifts are (thus) confirmed.

2. But if, however, the gift either does not exceed (the statutory limit), or it does but is recorded in the public register, then the silence of the male or female giver and the particular confirmation shall relate back to the time in which the gift was made, just as also other legally valid ratifications ought to refer back to the times at which the transactions being ratified took place. Nor in the future shall an overly fine distinction of fact or of law be able to be introduced.

Given December 11, in the consulship of Our Lord Justinian Augustus, for the second time (528).

[26] *The same Augustus to Menas, Praetorian Prefect.* Gifts which the blessed emperor gives to his most devout queen and wife, or which she gives to her most serene husband, We ordain shall be immediately valid and enjoy a very full force, inasmuch as imperial transactions have the force of statute and do not at all require any external assistance.

Given April 6, at Constantinople, in the consulship of vir clarissimus *Decius (529).*

[27] *The same Augustus to John, Praetorian Prefect.* **pr.** If someone who was joined to another in marriage made a gift to the other, and then was captured by the enemy, reduced to slavery, and subsequently died there, the question used to be debated as to whether a gift of this kind, that had been made previously, seemed to be confirmed or invalidated on this set of facts. And again if the giver, to be sure, died while still a Roman citizen, while the recipient at the time of the giver's death was living in captivity and later returned, (the question used to be debated as to) whether in that case too it seemed that the gift was considered valid. 1. Since therefore in both situations the controversy ought to be removed by the application of an imperial remedy, given that nothing else is as peculiar to the imperial majesty as humane sympathy (*humanitas*), through which alone the imitation of God is preserved, in both situations We lay down that the gift shall be valid.

Given December 1, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*[134]

[134] Lounghis *et al.* date to November 27, 531.

XVII De Repudiis et Iudicio de Moribus Sublato

[1] *Imp. Alexander A. Avitianae.* Matrimonium quidem deportatione vel aqua et igni interdictione non solvitur, si casus, in quem maritus incidit, non mutet uxoris adfectionem. ideoque dotis actio ipso iure non competit, sed indotatam esse eam, cuius laudandum propositum est, nec ratio aequitatis nec exempla permittunt.

PP. non. Nov. Alexandro A. III et Dione conss.

[2] *Impp. Valerianus et Gallienus AA. et Valerianus C. Paulinae.* Liberum est filiae tuae, si sponsum suum post tres peregrinationis annos expectandum sibi ultra non putat, omissa spe huius coniunctionis matrimonium facere, ne opportunum nubendi tempus amittat, cum posset nuntium remittere, si praesente eo consilium mutare voluisset.

PP. VII k. April. Aemiliano et Basso conss.

[3] *Impp. Diocletianus et Maximianus AA. Tullio.* **pr.** Dubium non est omnia omnino, quae consilio recte geruntur, iure meritoque effectu et firmitate niti. **1.** Quare si tu dotem pro muliere dedisti et ex morte eius repetitionem stipulatus es, circumscribendi autem tui causa ficto repudio matrimonium brevi tempore rescissum est, res dotales, quas ante nuptias obtulisti, praeses provinciae recipere te non dubitabit. **2.** Certum est enim daturum operam moderatorem provinciae, ut, quae contra fas gesta sunt, fructum calliditatis obtinere non possint, cum nobis huiusmodi commenta displiceant. **3.** Imaginarios enim nuntios (id est repudia) nullius esse momenti, sive nuptiis fingant se renuntiasse sive sponsalibus, etiam veteribus iuris auctoribus placuit.

D. II k. Sept. Tiberiade ipsis AA. conss.

Seventeenth Title Divorce and the Abolition of the Action on Misconduct[135]

[1] *Emperor* ALEXANDER *Augustus to Avitiana.* A marriage, to be sure, is not ended by the infliction (of a penalty of capital exile) of deportation or of the refusal of fire and water,[136] as long as the misfortune into which the husband has fallen does not alter the affection his wife has (for him). And for that reason an action on the dowry does not lie by operation of law (independently of her wish to remain married). Instead, neither arguments from equity (*aequitas*) nor precedents allow that she remain without a dowry whose course of action should be praised.

Posted November 5, in the consulship of Alexander Augustus, for the third time, and Dio (229).

[2] *Emperors* VALERIAN *and* GALLIENUS *Augusti and* VALERIAN *Caesar to Paulina.* Your daughter, if she does not think that she should wait any longer for her fiancé, having lost hope of marriage with him after three years of him traveling about, is free to marry (someone else), so that she does not see close a favorable window of time for getting married, since (*a fortiori*) she would have been able to send notice were he nearby and she wished to change her intentions.

Posted March 26,[137] in the consulship of Aemilianus and Bassus (259).

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Tullius.* **pr.** There is no doubt that all things carried out properly and with due deliberation rest entirely on a bedrock, rightly and deservedly, of effectiveness and validity. 1. For this reason, if you gave a dowry on behalf of a woman and contracted, through stipulation, that it be returned to you (only) upon her death, but in order to defraud you the marriage was ended a short time later by a phony divorce, the provincial governor will not hesitate to assist you in recovering the dowry property you gave before the marriage. 2. For it is a certainty that the provincial governor will see to it that those acts which offend against a fundamental moral sensibility are not able to reap the fruits of their cunning, since falsehoods of this type are displeasing to Us. 3. For the principle that fictitious divorce notices – that is, divorces – are void, whether they (the parties) pretend to dissolve a marriage or engagement, was settled law even for the ancient legal authorities (*veteres iuris auctores*).

Given August 31, at Tiberias, in the consulship of the Augusti (290).[138]

[135] See D. 24.2.
[136] Alexander treats these as alternatives; Ulpian, D. 48.19.2.1, has deportation replace refusal of fire and water.
[137] The precise day is uncertain: the alternative is March 28.
[138] So Krüger, though other years, e.g., 293, seem possible. Mommsen dates to August 31, 286.

[4] *Idem AA. et CC. Pisoni.* Filiae divortium in potestate matris non est.
D. III k. Ian. Sirmi CC. conss.

[5] *Idem AA. et CC. Scyrioni.* **pr.** Dissentientis patris, qui initio consensit matrimonio, cum marito concordante uxore filia familias ratam non haberi voluntatem divus Marcus pater noster religiosissimus imperator constituit, nisi magna et iusta causa interveniente hoc pater fecerit. **1.** Invitam autem ad maritum redire nulla iuris praecepit constitutio. **2.** Emancipatae vero filiae pater divortium in arbitrio suo non habet.
D. V k. Sept. Nicomediae CC. conss.

[6] *Idem AA. et CC. Phoebo.* Licet repudii libellus non fuerit traditus vel cognitus marito, dissolvitur matrimonium.
D. XVIII k. Ian. Nicomediae CC. conss.

[7] *Imp. Constantinus A. ad Delmatium.* **pr.** Uxor, quae in militiam profecto marito post interventum annorum quattuor nullum sospitatis eius potuit habere indicium atque ideo de nuptiis alterius cogitavit nec tamen ante nupsit, quam libello ducem super hoc suo voto convenit, non videtur nuptias inisse furtivas nec dotis amissionem sustinere nec capitali poenae esse obnoxia, quae post tam magni temporis iugitatem non temere nec clanculo, sed publice contestatione deposita nupsisse firmatur. **1.** Ideoque observandum est, ut, si adulterii suspicio nulla sit nec coniunctio furtiva detegitur, nullum periculum ab his quorum coniugio erant copulatae vereantur, cum, si conscientia maritalis tori furtim esset violata, disciplinae ratio poenam congruam flagitaret.
D. ... Naisso Feliciano et Titiano conss.

[8] *Impp. Theodosius et Valentinianus AA. Hormisdae pp.* **pr.** Consensu licita matrimonia posse contrahi, contracta non nisi misso repudio

[4] *The same Augusti and the Caesars to Piso.* A mother has no legally recognized authority to bring about the divorce of her daughter.

Given December 30, at Sirmium, in the consulship of the Caesars (294).[139]

[5] *The same Augusti and Caesars to Scyrio.* **pr.** The deified Marcus, Our predecessor (*pater*) and a most scrupulous emperor, established that if a father initially granted consent to a marriage and (then after the marriage) changed his mind, his will (*voluntas*) is deemed legally ineffective when his daughter-in-power is living in harmony with her husband. But (the outcome is) otherwise if the father acts on the basis of a great and just reason. **1.** No imperial constitution, however, has required that an unwilling woman return to her husband. **2.** A father, in fact, does not have it within his discretion to bring about the divorce of a daughter who is freed from his power (emancipated).

Given August 28, at Nicomedia, in the consulship of the Caesars (294).[140]

[6] *The same Augusti and Caesars to Phoebus.* Although a written announcement of a divorce has not been delivered to or is not known to a husband, the marriage is ended.

Given December 15, at Nicomedia, in the consulship of the Caesars (294).

[7] *Emperor* C*ONSTANTINE Augustus to Delmatius.* **pr.** A wife whose husband set out on military service and who has been able to secure no evidence of his well-being after a period of four years, and so has considered marrying another man, and yet did not marry before approaching his (her husband's) commanding officer through a document disclosing her intentions, is not deemed to have entered upon a secret marriage, nor to be liable to the loss of her dowry, nor to be vulnerable to the capital penalty (*capitalis poena*), since she, after such a long period of time, is shown to have begun a new marriage not rashly or secretly but publicly, by submitting a declaration (of her intent). **1.** On that account the rule must be upheld that, if there is no reason to suspect adultery and no secret union is uncovered, women shall fear no risk from the men to whom they are joined, since, it is (only) if the marriage bed were knowingly violated in secret that criminal law policy would demand a suitable punishment.

Given ... at Naissus, in the consulship of Felicianus and Titianus (337).[141]

[8] *Emperors* T*HEODOSIUS and* V*ALENTINIAN Augusti to Hormisdas, Praetorian Prefect.* **pr.** We instruct that lawful marriages can be contracted

[139] The precise year is uncertain: Mommsen prefers December 30, 293.

[140] The precise month is uncertain: Mommsen gives November 27, 294.

[141] Seeck dates the constitution to winter 337; Barnes, to summer 337.

solvi praecipimus. solutionem etenim matrimonii difficiliorem debere esse favor imperat liberorum.

1. Causas autem repudii hac saluberrima lege apertius designamus. sicut enim sine iusta causa dissolvi matrimonia iusto limite prohibemus, ita adversa necessitate pressum vel pressam, quamvis infausto, attamen necessario auxilio cupimus liberari. 2. Si qua igitur maritum suum adulterum aut homicidam vel veneficum vel certe contra nostrum imperium aliquid molientem vel falsitatis crimine condemnatum invenerit, si sepulchrorum dissolutorem, si sacris aedibus aliquid subtrahentem, si latronem vel latronum susceptorem vel abactorem aut plagiarium vel ad contemptum sui domi suae ipsa inspiciente cum impudicis mulieribus (quod maxime etiam castas exasperat) coetum ineuntem, si suae vitae veneno aut gladio vel alio simili modo insidiantem, si se verberibus, quae ab ingenuis aliena sunt, adficientem probaverit, tunc repudii auxilio uti necessariam ei permittimus libertatem et causas discidii legibus comprobare.

3. Vir quoque pari fine claudetur nec licebit ei sine causis apertius designatis propriam repudiare iugalem, nec ullo modo expellat nisi adulteram, nisi veneficam aut homicidam aut plagiariam aut sepulchrorum dissolutricem aut ex sacris aedibus aliquid subtrahentem aut latronum fautricem aut extraneorum virorum se ignorante vel nolente convivia appetentem aut ipso invito sine iusta et probabili causa foris scilicet pernoctantem, nisi circensibus vel theatralibus ludis vel harenarum spectaculis in ipsis locis, in quibus haec adsolent celebrari, se prohibente gaudentem, nisi sui veneno vel gladio aut alio simili modo insidiatricem, vel contra nostrum imperium aliquid machinantibus consciam, seu falsitatis se crimini immiscentem invenerit, aut manus audaces sibi probaverit ingerentem: tunc enim necessariam ei discedendi permittimus facultatem et causas discidii legibus comprobare.

4. Haec nisi vir vel mulier observaverint, ultrici providentissimae legis poena plectentur. nam mulier si contempta lege repudium mittendum esse temptaverit, suam dotem et ante nuptias donationem amittat

through the consent of the parties, (but) that, once contracted, they shall not be ended except by sending a notice of divorce. For a policy bias in favor of children (*favor liberorum*) demands that dissolving a marriage ought to be rather difficult.[142]

1. Moreover, We more clearly lay down in this most salutary statute (*lex*) the grounds for divorce. For just as We forbid marriages to be ended without just cause, (placing them) within appropriate parameters, so We desire that a husband or a wife overwhelmed by dire necessity shall be freed through assistance that, although unfortunate, is nevertheless necessary. 2. Therefore, if any woman discovers that her husband is an adulterer, a murderer, a poisoner, or, at any rate, that he is contriving some plot against Our rule, or that he has been condemned on the charge of falsification, or if she proves that he is a tomb-robber, that he steals from churches, that he is a brigand, an accomplice of brigands, rustles cattle, steals slaves, or that, out of self-contempt in his own house in her sight – something which especially tries the patience of even chaste women – he has sex with unchaste women, or that he is plotting to murder her by poison, sword, or in some other similar fashion, or that he beats her, an inappropriate treatment for the free-born, then We allow her to employ, as a necessary means of freeing herself, the aid of a divorce notice, and (thereafter) to demonstrate the grounds for divorce in accordance with statute.

3. Husbands also will be constrained by a like boundary, nor will it be permitted to them to divorce their own spouses without grounds that are spelled out more openly, and (so) they shall not in any way cast a wife out unless he finds that she is an adulterer, a poisoner, a murderer, a stealer of slaves, a tomb-robber, someone who steals from churches, an accomplice of brigands, someone who frequents the dinner parties of men not related to her without her husband's knowledge or consent, or who unmistakably spends the night away from home against his will and without a demonstrably good reason, (or) who takes pleasure, against his express prohibition, in circus games, theatrical productions, or shows at the amphitheater, in the places in which these are usually staged, (or he finds out) that she is plotting to murder him by poison, sword, or in some other similar fashion, or that she is an accomplice of those who are hatching a plot against Our rule, or that she is involved in a criminal act of falsification, or he shows that she has attacked him physically. For then We allow him the necessary capacity to divorce and then to demonstrate the grounds for divorce in accordance with statute.

4. Unless husband and wife observe these provisions, they will be struck by the vengeful sanction of this most provident law. For if a woman attempts to send a notice of divorce in defiance of this statute, she shall lose her dowry and

[142] See Nov. Theod. 12 pr.

nec intra quinquennium nubendi habeat denuo potestatem: aequum est enim eam interim carere conubio, quo se monstravit indignam. **4a.** Quod si praeter haec nupserit, erit ipsa quidem infamis, conubium vero illud nolumus nuncupari: insuper etiam arguendi hoc ipsum volenti concedimus libertatem. **4b.** Si vero causam probaverit intentatam, tunc eam et dotem recuperare et ante nuptias donationem lucro habere aut legibus vindicare censemus et nubendi post annum ei, ne quis de prole dubitet, permittimus facultatem.

5. Virum etiam, si mulierem interdicta arguerit attemptantem, tam dotem quam ante nuptias donationem sibi habere seu vindicare uxoremque, si velit, statim ducere hac iusta definitione sancimus. sin autem aliter uxori suae renuntiare voluerit, dotem redhibeat et ante nuptias donationem amittat.

6. Servis scilicet seu ancillis puberibus, si crimen adulterii vel maiestatis ingeritur, tam viri quam mulieris ad examinandam causam repudii, quo veritas aut facilius eruatur aut liquidius detegatur, si tamen alia documenta defecerint, quaestionibus subdendis. super plagis etiam, prout dictum est, illatis ab alterutro commovendis easdem probationes (quoniam non facile quae domi geruntur per alienos poterunt confiteri) volumus observari.

7. Si vero filio seu filiis, filia seu filiabus extantibus repudium missum est, omne quidquid ex nuptiis lucratum est filio seu filiis, filiae seu filiabus post mortem accipientis servari, id est si pater temere repudium miserit, donationem ante nuptias a matre servari, si mater, dotem ipsam eidem vel eisdem filio seu filiae[ix] patre moriente dimitti censemus: patri videlicet vel matri in scribendis filiis heredibus, unum seu unam vel omnes si scribere vel uni ex his donare velit, electione servata. **7a.** Nec ullam alienandi seu supponendi memoratas res permittimus facultatem: sed si aliquid ex isdem rebus defuerit, ab heredibus seu earum detentatoribus, si tamen non ipsos heredes scripserit aut scripti filii non adierint, praecipimus resarciri, ut etiam hoc modo inconsulti animi ad repudium mittendum detrimento retrahantur.

[ix] eidem vel eisdem, si mater, dotem ipsam filio seu filiae

her prenuptial gift, and she shall not again have the capacity to marry for a five-year period. For it is just that in the meantime she lack the right to marry (*conubium*) who has shown herself unworthy of it. **4a.** But if she remarries anyway, she herself, certainly, will be punished with legal infamy (*infamis*). We refuse in fact to call that union a legitimate marriage. We moreover allow to anyone who wishes the freedom also to prosecute this relationship. **4b.** But if she proves the grounds for divorce she raises, then We lay down that she shall recover her dowry and keep the prenuptial gift as a benefit or claim it under statute. We also allow her the capacity to remarry after a year, so that no one entertains doubts about the offspring.

5. We ordain with this lawful pronouncement (*iusta definitio*) that the husband too, if he successfully accuses his wife of setting out to do what is forbidden, shall keep or claim the dowry as well as the prenuptial gift, and if, he wishes, immediately remarry. But if, however, he wishes to divorce his wife otherwise, he shall return the dowry and lose the prenuptial gift.

6. It is clear that if a charge of adultery or of treason is brought (by one party against the other), but other proofs are lacking, the male and female adult slaves of the husband as well as of the wife are to be put to judicial examination under torture for the purpose of critical evaluation of the reason behind the divorce, so that the truth may be unearthed more easily or more clearly uncovered. We wish this same method of examining evidence also to be followed in raising the matter of physical violence visited, as said above, by one upon the other, because it is not easy for outsiders to be able to attest to what goes on inside the household.

7. But if notice of divorce is sent when one or several male or female children are alive, We lay down that all gain, whatever there is, arising from the marriage shall be preserved for the child or children, male or female, until the time of death of the party receiving the benefit. That is, We instruct that, if a father sends a notice of divorce without just cause, the prenuptial gift shall be preserved by the mother for the same person or persons, while if the mother does so the dowry itself shall, upon the death of the father, be released to the male or female child. Clearly, choice shall be preserved for the father and the mother in appointing their children as heirs, if they should wish to appoint one or the other or all of them, or give to one of them a gift. **7a.** Nor do We grant any capacity to alienate or place under lien the aforesaid property. But if some of this property is not accounted for, We instruct that restitution shall be made by the heirs or the persons into whose physical control the property has come, if all the same the children have not been named as heirs or were named but have not entered upon the inheritance, so that even in this manner unreflecting minds shall be restrained from sending a divorce notice with destructive consequences.

8. Pactiones sane, si quae adversus praesentia scita nostrae maiestatis fuerint attemptandae, tamquam legum contrarias nullam habere volumus firmitatem.

D. v id. Ian. Protogene et Asterio conss.

[**9**] *Imp. Anastasius A. Theodoro.* Si constante matrimonio communi consensu tam mariti quam mulieris repudium sit missum, quo nulla causa continetur, quae consultissimae constitutioni divae memoriae Theodosii et Valentiniani inserta est, licebit mulieri non quinquennium expectare, sed post annum ad secundas nuptias convolare.

D. xv k. Mart. Anastasio A. II cons.

[**10**] *Imp. Iustinianus A. Menae pp.* In causis iam dudum specialiter definitis, ex quibus recte mittuntur repudia, illam addimus, ut, si maritus uxori ab initio matrimonii usque ad duos continuos annos computandos coire minime propter naturalem imbecillitatem valeat, possit mulier vel eius parentes sine periculo dotis amittendae repudium marito mittere, ita tamen, ut ante nuptias donatio eidem marito servetur.

D. III id. Dec. dn. Iustiniano A. pp. II cons.

[**11**] *Idem A. Hermogeni magistro officiorum.* **pr.** Iubemus, ut, quicumque mulierem cum voluntate parentium aut, si parentes non habuerit, sua voluntate maritali adfectu in matrimonium acceperit, etiamsi dotalia instrumenta non intercesserint nec dos data fuerit, tamquam si cum instrumentis dotalibus tale matrimonium processisset, firmum coniugium eorum habeatur: non enim dotibus, sed adfectu matrimonia contrahuntur.

1. Si quis autem eam, quam sine dote uxorem acceperat, a coniugio suo repellere voluerit, non alias ei hoc facere licebit, nisi talis culpa intercesserit, quae a nostris legibus condemnatur. **1a.** Si vero sine culpa eam reiecerit vel ipse talem culpam contra innocentem mulierem commiserit, compellatur ei quartam partem propriae substantiae pro

8. Of course, We wish any agreements that are drawn up in violation of these instant imperial decisions (*scita*) to have no validity, on the ground that they are against the laws (*leges*).

Given January 9, in the consulship of Protogenes and Asterius (449).

[9] *Emperor* ANASTASIUS *Augustus to Theodorus.* If, during a marriage, notice of divorce has been sent by the common consent of husband and wife, and this contains none of the justifications set forth in the very prudent constitution of Theodosius and Valentinian,[143] of blessed memory, the woman need not wait five years, but will be permitted to remarry after a year.

Given February 15, in the consulship of Anastasius Augustus, for the second time (497).

[10] *Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect.* To the justifications now for some time specifically set forth under which notice of divorce is properly sent, We add this one, namely, that if a husband is utterly unable, because of biological impotence (*naturalis imbecillitas*), to have sexual relations with his wife for two continuous years reckoned from the beginning of the marriage,[144] the woman or her parents can, without risk of losing her dowry, send a notice of divorce to the husband, on condition, however, that the premarital gift accrues to the husband.

Given December 11, in the consulship of Our Lord Justinian, Ever Augustus, for the second time (528).

[11][145] *The same Augustus to Hermogenes, Master of Offices.* **pr.** We order that whenever someone has taken in marriage a woman with the consent of her parents, or if she had no parents, with her own consent, and with conjugal affection (*affectus maritalis*), even if no dowry documents were executed and no dowry was given, their union shall be considered as valid as though such a marriage had begun attended by dowry documents. For it is not by dowries, but by (marital) affection that marriages are contracted.

1. If, moreover, anyone wishes to divorce a woman whom he had married without a dowry, he will not be permitted to do this unless such misconduct (*culpa*) is present as is condemned by our laws. **1a.** But if he divorces her when she is innocent of (such) misconduct, or if he himself is guilty of such misconduct toward his wife, who is blameless, he shall be compelled to pay to her one-fourth of his property in a fixed proportion, so that if, at all events, the husband

[143] C. 5.17.8.

[144] Nov. 22.6 extends this to three years.

[145] Combine with C. 1.3.53, 7.24.1(?), 9.13.1, 11.48.24(?). The present law was reenacted and lightly amended: Nov. 22.18, 117.5. See also Nov. 74.5.

rata portione persolvere, ut, si quidem quadringentarum librarum auri vel amplius vir substantiam habeat, centum libras auri mulieri praestet et nihil amplius, etsi quantamcumque substantiam possideat: sin vero minus quadringentis libris auri puta substantia eius fuerit, tunc quarta pars computatione facta purae[1] substantiae eius usque ad minimam quantitatem mulieri detur. **1b.** Eodem modo servando et in mulieribus, quae indotatae constitutae sine culpa mariti constitutionibus cognita eos repudiaverint vel ipsae culpam innocenti marito praebuerint, ut ex utraque parte aequa lance et aequitas et poena servetur. **1c.** Hoc lucro quartae partis filiis quidem non extantibus ipsis viro et mulieri competenti et ab his quo modo voluerint disponendo, filiis autem et deinceps personis ex eodem matrimonio intervenientibus eis servando ad similitudinem dotis et propter nuptias donationis per omnia, quae super his statuta sunt.

2. Inter culpas autem uxoris constitutionibus enumeratas et has addimus, si forte uxor sua ope vel ex industria abortum fecerit, vel ita luxuriosa est, ut commune lavacrum viris libidinis causa habere audeat, vel, dum est in matrimonio, alium maritum fieri sibi conata fuerit. **2a.** Et in his enim causis locum habere constitutiones sancimus, quae de culpa tam mariti quam uxoris loquuntur, ut, quemadmodum dos et donatio propter nuptias perit, ita et mulieres indotatae in quartam partem, quam et viris et mulieribus ex hac lege destinavimus, amissionis periculum sustineant.

2b. Iudicio de moribus, quod antea quidem in antiquis legibus positum erat, non autem frequentabatur, penitus abolito: omnibus etenim causis requisitis et perlectis, quas antiquitas introducebat, nihil validum praeter eas, quas anteriores constitutiones et praesens dispositio introduxit, invenimus.

D. XV k. Dec. Constantinopoli dn. Iustiniano pp. A. III cons.

[12] Ὁ αὐτὸς βασιλεὺς Ἰωάννῃ ὑπάρχῳ πραιτωρίων. Ζητήσεως εἰς ἡμᾶς ἐλθούσης τοιαύτης τινὸς ἐκ τῆς Κωνσταντινίσων πόλεως, ἥπερ μία τῶν ἐπὶ τῆς Ὀσροηνῆς πόλεών ἐστι, ἔγνωμεν, ὡς παῖδές τινες πονηροὶ τοῖς ἑαυτῶν ἐπιβουλεύοντες πατράσιν παρὰ τὴν τῶν πατέρων γνώμην διέλυσαν τὰ

[1] pura

owns property worth 400 pounds of gold or more, he shall pay 100 to his wife and no more, despite the fact that he has property of whatever (greater) value. But if, however, he has property worth less than 400 pounds of gold, net, then, after a valuation is made, one-fourth of the net value of his property, down to the last penny, shall be given to the wife. **1b.** The same rule shall apply also to undowered wives who divorce their husbands when the latter is innocent of misconduct recognized by constitutions or are themselves guilty of such misconduct while their husbands are blameless, so that on both sides justice and punishment shall be maintained in an even balance. **1c.** If there are, in fact, no children still living, the benefit of the one-fourth share shall accrue to the husband and wife, and they shall dispose of this in whatever manner they wish. If there are, however, children and others standing in a line of descent from the same marriage this shall be preserved for them like the dowry and the prenuptial gift through all the regulations that have been devised concerning these.

2. Moreover, to the cases of wifely misconduct laid down in constitutions We add the following: if, say, the wife causes an abortion through her own means or deliberately, or is so given over to extravagant living that she dares to share a bath with men for sexual purposes, or, while she is still married, attempts to acquire another husband for herself. **2a.** For even in these cases We ordain that the constitutions dealing with misconduct by the husband as much as by the wife shall apply, so that, in the same way that the dowry and the premarital gift are lost, so too undowered wives shall incur the risk of losing the one-fourth share of the property which we have set aside for both husbands and wives under this law.

2b. The action on misconduct (*iudicium de moribus*), which was in the past certainly provided for in the ancient laws, but was not being used very much, is completely abolished. This is because after seeking out and examining thoroughly all of the causes for divorce that antiquity introduced, we have found nothing valid, except for those which prior constitutions and this instant enactment (*dispositio*) have laid down.

Given November 17, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, for the third time (533).

[12][146] *The same Augustus to John, Praetorian Prefect.* From an enquiry that came to Us on this subject from Constantine, a city in the province of Osrhoene, We have learned that some wicked children, plotting against their fathers, ended their marriages against the wishes of their fathers, working in

[146] See Nov. 22.19. There are considerable gaps in the preserved text. The translation in part relies on supplements.

πρὸς τὰς γαμετὰς συνοικέσια ταῖς γαμεταῖς συνεργασάμενοι .... | αὐταῖς την.. .... τῆς πρὸ γάμου δωρεᾶς [ε]ἴσπρα[ξ]ι[ν] * | ἐντεῦθεν ι...... | *οντας προῖκας ἢ πρὸ γάμ[ο]υ δωρεὰς ἢ καὶ ὑποδεξα[μένους ὑποβαλ]| λοντες τοιαύταις ἀπαιτήσεσιν του|*** ἀπόρους τελευτᾶν παν ... | ***η*α****** δι'αἰσχύνην κατ.. | .... αἱ γαμεταὶ .... | ἄποροι ... . | .... | .... | .... θ[εσπ]ίζομεν.. | .... | .... |. .... εἴτε ἄρρενες ε[ἴτε] | θήλειαι, διαλ[ύε]ιν τὰ πρὸς τοὺς [ὁ|μοζύγ]ους κατα[στάντα] συ[νοι]|κέ[σια] εἰς βλάβην καὶ ζημίαν τῶν | [τὰς προῖ]κ[α]ς [ἢ τὰς] πρ[ὸ] γάμου δωρεὰς ἐπιδεδωκότων ἢ ὑποδεξαμένων γονέων ἀρρένων τε καὶ θηλειῶν· καὶ ὥσπερ ὁ γάμος οὐκ ἂν **|***** εἰ μὴ συναινέσει τῶν ἐχόντων [τοὺς] παῖδας ὑπε[ξ]ουσίους, [οὔ]τως οὐδὲ λύειν τοὺς γάμους παρὰ γνώμην] τῶν γονέων.. | .... κἂν εἴ τι τοιοῦτο παρὰ τῶν παίδων [με]λετηθείη, μηδεμίαν εἶναι κατὰ τῶν γονέων εἴσπραξιν προικὸς ἢ προγαμιαίας δωρεᾶς, κἂν εἰ τύχοιεν αὐτοὶ ταύτας ἐπιδεδωκότες ἢ ὑποδεξάμενοι, ἀλλ' ἐπ' αὐτὸν τὸν τοῦτο πεπραχότα φέρεσθαι καὶ τὸν ἐντεῦθεν κίνδυνον· ταύτην γὰρ τῆς κακουργίας ἐπιτίθεμεν τὴν ποινὴν τοῖς οὕτως ἀσεβῶς τοῖς πράγμασι χρωμένοις, ὡς καὶ ἑαυτοῖς αἰσχύνην καὶ τοῖς γεγεννηκόσιν τὴν ἐντεῦθεν ἐνάγειν ἀπορίαν. καὶ γὰρ ἀνοήτων [οἴ]όμεθα κατάξιον τοῖς μὲν πατράσιν ἀπηγορεῦσθαι, καθάπερ Μάρκῳ τῷ φιλοσοφωτάτῳ τῶν αὐτοκρατόρων ἐδόκει, δίχα τῆς τῶν παίδων συναινέσεως διαλύειν τὸν γάμον μεγάλης ἐκτὸς καὶ ἀπαραιτήτου προφάσεως, τοῖς δὲ παισὶν ἴσως καὶ νέοις οὖσιν καὶ οὐδὲ τὸ συμφέρον ἐπισταμένοις ἢ καὶ ἐξεπίτηδες, καθάπερ εἰπόντες ἔφθημεν, κακουργοῦσιν δοθῆναι παρρησίαν ἑαυτοὺς μὲν αἰσχύνειν, ζημιοῦν δὲ τοὺς γεγεννηκότας.

D. III id. Aug. Constantinopoli dn. Iustiniano pp. A. IIII et Paulino vc. conss.

XVIII · Soluto Matrimonio Dos Quemadmodum Petatur

[1] *Impp. Severus et Antoninus AA. Geminae.* Dubium non est post aestimationem dotis pactione vel stipulatione interposita, ut ipsae res, si dissoluto matrimonio extarent, uxori reddantur, ancillas cum partu ex stipulatu iudicio restitui oportere.

PP. III id. April. Laterano et Rufino conss.

[2] *Idem AA. Aquiliae.* Secundum rationem iuris existimas restitui tibi debere dotem a fisco, qui bona damnati patris tui suscepit. licet enim viro quondam tuo pater tuus heres extiterit, attamen iuri tuo hoc

concert with their wives, (so that) the recovery of (the dowry and) of the prenuptial gift (would be facilitated). They thereupon forced parents who had given or received a dowry or prenuptial gift to make repayments of this nature … (that children, whether in-power or emancipated,) male or female, shall not be able to end their marriages through divorce in order to defraud and cause loss to their parents, male or female, who have given or received dowries or prenuptial gifts. Just as marriage shall not (be valid) without the consent of those who have (the spouses as) children in their power, (neither shall marriage be ended against the will) of the parents … and if any wrong of this kind has been done by the children, that there shall be no claim against the parents to repay a dowry or a prenuptial gift, even if they have given or received the same; instead, the relevant liability shall be borne by the same person who behaves in this way. For We impose this penalty for evildoing on those who act so impiously that they bring shame on themselves and by so doing cause financial distress for their parents. For We think it would be a proposition worthy of fools to forbid fathers to end a marriage without the consent of their children, as Marcus, the most philosophical of emperors decided, without a great and inexorable reason, but to allow children, who are perhaps young and do not understand their own interest or who, as We stated above, even deliberately do wrong, free rein to bring shame on themselves and loss on their parents.

Given August 11, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, for the fourth time, and vir clarissimus *Paulinus (534).*

Eighteenth Title How to Sue for the Dowry When a Marriage Ends[147]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Gemina.* There is no doubt that, after a dowry has been appraised and a stipulation or agreement (pact) has been put in place, the property itself, if still in existence when the marriage ends, shall be returned to the wife, and female slaves and their offspring ought to be returned in an action on the stipulation.

Posted April 11, in the consulship of Lateranus and Rufinus (197).

[2] *The same Augusti to Aquilia.* In accord with the rules of private law (*ratio iuris*), you (rightly) believe that your dowry ought to be restored to you by the Treasury, which seized the property of your father when he was condemned. For although your father became heir to your decedent husband, nevertheless,

[147] See D. 24.3.

derogari non potest, cum et ipse pater sine voluntate tua nec exigere nec accipere dotem poterat.

PP. prid. non. April. Apro et Maximo conss.

[3] *Imp. Antoninus A. Hostiliae.* Si ignorans statum Erotis ut liberum duxisti et dotem dedisti isque postea servus est iudicatus, dotem ex peculio recipies et si quid praeterea tibi debuisse eum apparuerit. filii autem tui, ut ex libera nati incerto tamen patre, spurii ingenui intelleguntur.

PP. VI k. Sept. Laeto II et Cereale conss.

[4] *Idem A. Apollonio.* Dos a patre profecta, si in matrimonio decesserit mulier filia familias, ad patrem redire debet.

PP. XVI k. Sept. Fusco II et Dextro conss.

[5] *Impp. Valerianus et Gallienus AA. et Valerianus C. Tauro.* Si quidem vivit apud hostes uxor tua, nondum frater eius quasi heres dotem repetere potest. si vero diem functa est et hereditatem eius possit vindicare, dotis quoque repetitio ei iure competit, cum in stipulatum deducta sit.

PP. II non. Mai. Aemiliano et Basso conss.

[6] *Impp. Diocletianus et Maximianus AA. Alexandriae et Neroni.* **pr.** Si circumscripta matre vestra viliore pretio dotales res aestimatae sunt, quid super huiusmodi contractuum vitio statutum sit, vulgo patet. **1.** Proinde si dolosis artibus mariti circumventam matrem vestram iniqua aestimatione circumscriptam apud praesidem provinciae evidentibus probationibus ostenderitis, quando possidentibus vobis ad obtinenda praedia etiam doli mali exceptionis potestas opituletur, sciet, quatenus religionem iudicationis suae temperare debeat. **2.** Sin autem etiam maritus in aestimatione gravatum se adleget, veritate examinata non amplius quam pretium iustum restituere compellatur.

this cannot impair your right, since even your father himself could not, without your consent, either demand or receive your dowry.

Posted April 4, in the consulship of Aper and Maximus (207).

[3] *Emperor* ANTONINUS *Augustus to Hostilia.* If, ignorant of the status of Eros, you married him and gave him a dowry as though he were free and subsequently he was adjudged to be a slave, you will receive your dowry from his *peculium* as well as anything else he is found to owe you. Moreover, your children, inasmuch as they were born from a free mother but from a father of uncertain status, are understood to be free-born and illegitimate.

Posted August 27,[148] *in the consulship of Laetus, for the second time, and Cerealis (215).*

[4] *The same Augustus*[149] *to Apollonius.* If the marriage of a wife who was a daughter-in-power (*filiafamilias*) ends through her death, a dowry given by her father (*dos profecticia*) ought to return to him.

Posted August 17,[150] *in the consulship of Fuscus, Consul for the second time, and Dexter (225).*

[5] *Emperors* VALERIAN *and* GALLIENUS *Augusti and* VALERIAN *Caesar to Taurus.* If, in fact, your wife lives among the enemy, her brother does not yet have the right to claim the dowry back on the ground that he is her heir. But if she has died, he shall be able to claim the inheritance too. The right to claim the dowry also lies for him by law, since this was provided for by stipulation.

Posted May 6, in the consulship of Aemilianus and Bassus (259).

[6] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Alexandria and Nero.* **pr.** If your mother was defrauded and her dowry property was appraised at too low a value, it is very clear what rule holds in the case of a defective agreement of this kind. **1.** So if you prove by clear evidence before the provincial governor that your mother was misled by the deceitful practices of her husband and defrauded through an unfair appraisal, since, for the purpose of retaining them, you as possessors of the properties shall also be assisted by the prerogative of an affirmative defense for fraud (*exceptio doli mali*), he will know how he ought to fulfill his solemn duty of giving judgment. **2.** But if, however, the husband too claims that he was harmed in the assessment, the truth of the matter shall be looked into and he shall be forced to restore not more than the just value.

[148] The precise day is uncertain: the alternative is August 30.
[149] Actually, Alexander Severus, as the date indicates.
[150] The precise day is uncertain: the alternative is August 15.

3. Haec tum locum habent, cum res in natura sunt. si tamen extinctae sint, pretium, quod dotali instrumento inditum sit, id considerabitur.
PP. VII k. Nov. ipsis AA. conss.

[7] *Idem AA. et CC. Erotio.* **pr.** Filiae pecuniam adimere, quam habes in potestate, minime prohiberis. nam si pro ea dotem dedisti, hanc constante matrimonio ne consentiente quidem ipsa, matrimonio autem dissoluto invita repetere non potes.
S. V id. Febr. Sirmi CC. conss.

[8] *Idem AA. et CC. Sallustiae.* Nec maritus, licet post divortium in quantum facere possit condemnandus est, post idoneus factus, qui non reddiderat integrum, residuam probabiliter solutionem recusat. at cum eius heredes in solidum conveniendos non ambigitur, ne cum his solvendo factis experiri non possis, superstitiosam geris sollicitudinem.
D. XIII k. April. Sirmi CC. conss.

[9] *Idem AA. et CC. Marciae.* Dotis actione successores mariti super eo, quod ei dotis nomine fuerat datum, convenire debes. ingrediendi enim in possessionem rerum dotalium, heredibus mariti non consentientibus, sine auctoritate competentis iudicis nullam habes facultatem.
S. d. viii k. Nov. CC. conss.

[10] *Idem AA. et CC. Epigono.* Si socero filiae tuae dotem dedisti, licet in eius positus potestate gener tuus rebus humanis exemptus sit, tamen non de peculio, sed in solidum a te consentiente filia conventum eum satis oportet facere.
S. VII id. Nov. Heracliae CC. conss.

[11] *Impp. Honorius et Theodosius AA. Mariniano pp.* Si constante matrimonio maritus fatali fuerit sorte consumptus, dos, quae data dicitur vel promissa ex eius uxoris facultatibus, ad eam revertatur, nihilque sibi

3. These provisions apply when the property still exists. If they do not, the value that is set forth in the dowry document will be taken into consideration.
Posted October 26, in the consulship of the Augusti (290 or 293).

[7] *The same Augusti and the Caesars to Erotium.* You are not at all prevented from taking the money[151] of your daughter whom you have in power (*potestas*). For (on the other hand) if you have given a dowry on her behalf, you cannot, even with her consent, claim this back during the marriage, and when the marriage is ended you cannot claim it against her will.
Written February 9, at Sirmium, in the consulship of the Caesars (294).

[8] *The same Augusti and Caesars to Sallustia.* Although a husband ought to be condemned after divorce to pay as much as he is able, if he subsequently becomes wealthy and has not paid the full amount, he has no good reason to refuse to repay the remainder. And since there is no doubt that his heirs can be sued for the full amount, your concern about being able to sue those who are solvent is without foundation.
Given March 20,[152] at Sirmium, in the consulship of the Caesars (294).

[9] *The same Augusti and Caesars to Marcia.* You ought to sue, through an action on dowry (*actio dotis*), the heirs of your husband over that which was given to him as a dowry. For you have no right to enter into possession of the dowry properties without the consent of the heirs, except with authorization from the appropriate judge.
Written October 25, in the consulship of the Caesars (294).

[10] *The same Augusti and Caesars to Epigonus.* If you gave a dowry to the father-in-law of your daughter, although your son-in-law died while in his father's power (*potestas*), nevertheless, if sued with the consent of your daughter, he (the father-in-law) ought to return the whole, not just an amount up to the value of his son's *peculium*.
Written November 7, at Heraclea, in the consulship of the Caesars (294).

[11][153] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Marinianus, Praetorian Prefect.* If a marriage is ended through the death of the husband, the dowry, which is said to have been given or formally promised from the resources of his wife, shall return to her, and the heir of the decedent shall not

[151] Preferable may be to read *peculium* here.
[152] The precise day is uncertain: the alternative is April 15
[153] = (with minor changes) C.Th. 3.13.3 pr. Combine with C. 5.1.4, 5.9.4, 5.19.1; C.Th. 3.5.12.

ex hoc defuncti heres audeat vindicare, quod ad mulierem recurrere fecit obitus maritalis.

D. III non. Nov. Ravennae Honorio XIII et Theodosio X AA. conss.

XVIIII Si Dos Constante Matrimonio Soluta Fuerit

[1] *Impp. Honorius et Theodosius AA. Mariniano pp.* Si constante matrimonio a marito uxori dos sine causa legitima refusa est, quod legibus stare non potest, quia donationis instar perspicitur obtinere, eadem uxore defuncta ab eius heredibus cum fructibus ex die refusae dotis marito restituatur, ita ut proprietas eiusdem liberis ex eadem susceptis alienari contra leges a marito non possit.

D. III non. Nov. Ravennae Honorio XIII et Theodosio X AA. conss.

XX Ne Fideiussores vel Mandatores Dotium Dentur

[1] *Imppp. Gratianus Valentinianus et Theodosius AAA. Cynegio pp.* Sive ex iure sive ex consuetudine lex proficiscitur, ut vir uxori fideiussorem servandae dotis exhibeat, eam iubemus aboleri.

D. VIII non. Sept. Eucherio et Syagrio conss.

[2] *Imp. Iustinianus A. Iuliano pp.* Generali definitione constitutionem pristinam ampliantes sancimus nullam esse satisdationem vel mandatum pro dote exigendum vel a marito vel a parte eius vel ab omnibus qui dotem suscipiunt. si enim credendam mulier se suamque dotem parti mariti existimavit, quare fideiussor vel alius intercessor exigitur, ut causa perfidiae in conubio eorum generetur?

D. X k. Aug. Lampadio et Oresta conss.

dare to claim for her- or himself anything which the death of her husband has made revert to the wife.

Given November 3, at Ravenna, in the consulship of Honorius, for the thirteenth time, and Theodosius, for the tenth time, Augusti (422).

Nineteenth Title Return of the Dowry during Marriage

[1][154] *Emperors Honorius and Theodosius Augusti to Marinianus, Praetorian Prefect.* If during a marriage a dowry was returned to a wife by her husband without a legally valid reason, something which cannot stand according to the laws because it is regarded as having the status of a gift, and the wife dies, the dowry, together with its fruits from the day on which it was returned, shall be restored by her heirs to the husband, so that ownership of it cannot be alienated by the husband from her children in violation of the laws.

Given November 3, at Ravenna, in the consulship of Honorius, for the thirteenth time, and Theodosius, for the tenth time, Augusti (422).

Twentieth Title No Sureties or Mandators Shall Be Given for Dowry

[1] *Emperors Gratian, Valentinian, and Theodosius Augusti to Cynegius, Praetorian Prefect.* Whether deriving from law (*ius*) or custom (*consuetudo*), the rule (*lex*) that a husband give a surety to his wife for the preservation of the dowry We order to be abolished.

Given September 6,[155] in the consulship of Eucherius and Syagrius (381).[156]

[2] *Emperor Justinian Augustus to Julian, Praetorian Prefect.* Filling out an older constitution[157] with a general rule (*definitio*), We ordain that no security or mandate shall be demanded from the husband, or from anyone on his side, or from anyone who receives a dowry. For if a woman thought she should entrust herself and her dowry to her husband's side, why is a surety or other guarantor demanded, so that a rationale for mistrust is created during the marriage?

Given July 23,[158] in the consulship of Lampadius and Orestes (530).

[154] = (with changes) C.Th. 3.13.3.1. Combine with C. 5.1.4, 5.9.4, 5.18.11; C.Th. 3.5.12.
[155] This is to take id. for non.: the date as given is impossible.
[156] Gothofredus points out that these consuls do not suit the prefecture of Cynegius, which fell in the years 384–389. Seeck gives September 2, 381.
[157] A reference to the immediately preceding C. 5.20.1.
[158] The precise day is uncertain: the alternative is August 1, preferred by Lounghis *et al.*

XXI Rerum Amotarum

[1] *Imp. Alexander A. Polydeucae.* **pr.** Compensationis aequitatem iure postulas. non enim prius exsolvi quod debere te constiterit aequum est, quam petitioni mutuae responsum fuerit, eo magis, quod ea te persequi dicis, quae divortii causa amota quereris. **1.** Cum igitur apud competentem iudicem ex stipulatu conveniaris, apud eundem doce tui iuris res ablatas esse.

PP. XVI k. Dec. Alexandro A. III et Dione conss.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Sereno.* Divortii gratia rebus uxoris amotis a marito vel ab uxore mariti rerum amotarum edicto perpetuo permittitur actio. constante etenim matrimonio neutri eorum neque poenalis neque famosa actio competit, sed de damno in factum datur actio.

D. V k. Oct. ipsis AA. conss.

[3] *Idem AA. et CC. Quartioni.* De rebus, quas divortii causa quondam uxorem tuam abstulisse proponis, rerum amotarum actione contra successores eius non in solidum, sed quantum ad eos pervenit, quod si res extent, dominii vindicatione uti non prohiberis.

D. V non. Dec. ipsis AA. conss.

XXII Ne pro Dote Mulieri Bona Mariti Addicantur

[1] *Impp. Diocletianus et Maximianus AA. et CC. Apollinariae.* Ut uxori pro dote addicantur bona quondam mariti, iure prohibitum est. sane si nullo relicto successore non idoneus decessit, secundum iuris formam,

Twenty-First Title Property Removed[159]

[1][160] *Emperor* ALEXANDER *Augustus to Polydeuces.* **pr.** You rightly demand the just solution of an offset (against your ex-wife). For it is not fair that you pay what it is established that you owe before your counterclaim has been satisfied, all the more so since you state that you are suing for that property which you complain has been removed on account of divorce. **1.** Since therefore you shall sue on the stipulation before the appropriate judge, make sure he knows that the property over which you have a legally valid claim has been carried off.

Posted November 16,[161] in the consulship of Alexander Augustus, for the third time, and Dio (229).

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Serenus.* A right of action (*actio*) for property removed is granted by the Perpetual Edict when, because of a divorce, a wife's property is removed by a husband or a husband's by a wife. For during a marriage neither party is allowed to bring either a criminal law action or one entailing infamy (*famosa*), but an action on the facts is given for loss.

Given September 27, in the consulship of the Augusti (290 or 293).

[3] *The same Augusti and Caesars to Quartio.* Concerning the property that you allege your former wife has carried off because of a divorce, (you may raise) an action for property removed against her heirs, not for all of it, but for as much as they have acquired of it. But if the property itself still exists, you are not prevented from bringing a suit on ownership (*vindicatio*).

Given December 1,[162] in the consulship of the Augusti (290 or 293).

Twenty-Second Title A Husband's Property Shall Not Be Adjudged to a Wife in Place of the Dowry

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Apollinaria.* It is prohibited by law that the property of a deceased husband shall be adjudged to his wife in place of the dowry. Clearly, if he died insolvent and without an heir, according to the rules of law (*iuris forma*) you are not

[159] See D. 25.2. The action on removed property (*actio rerum amotarum*) was available to a spouse for recovering property in the other spouse's control at the end of a marriage.
[160] Pr. = (with changes) C. 4.31.6.
[161] The precise day is uncertain: the alternative is November 27.
[162] The precise date is uncertain: Mommsen dates to December 3, 293.

quatenus successionis modus patitur, indemnitati tuae consulere non prohiberis.

D. v non. Dec. AA. conss.

XXIII De Fundo Dotali

[1] *Impp. Severus et Antoninus AA. Didae.* Si aestimata praedia data essent in dotem et convenisset, ut electio mulieri servetur, nihilo minus lex Iulia locum habet. est autem alienatio omnis actus, per quem dominium transfertur.

PP. xII k. Mart. Antonino A. IIII et Balbino conss.

[2] *Imp. Gordianus A. Domitianae.* Mariti, qui fundum communem cum alio in dotem inaestimatum acceperunt, ad communi dividundo iudicium provocare non possunt, licet ipsi possint provocari.

PP. v non. Oct. Gordiano A. II et Pompeiano conss.

XXIIII Divortio Facto apud Quem Liberi Morari vel Educari Debent

[1] *Impp. Diocletianus et Maximianus AA. et CC. Caelestinae.* Licet neque nostra neque divorum parentium nostrorum ulla constitutione caveatur, ut per sexum liberorum inter parentes divisio celebretur, competens tamen iudex aestimabit, utrum apud patrem an apud matrem matrimonio separato filii morari ac nutriri debent.

S. xvI k. Iul. Beroae CC. conss.

prevented from consulting your interest in being made whole, insofar as the situation of his estate allows.

Given December 1,[163] in the consulship of the Augusti (290 or 293).

Twenty-Third Title Dowry Land[164]

[1] *Emperors* Severus *and* Antoninus *Augusti to Dida.* If appraised real properties were given to you as a dowry and it had been agreed that the wife's right of election (to take the property or its assessed value upon return of the dowry) was to be preserved, nonetheless the Lex Julia applies.[165] Moreover, every act in law whereby ownership of property is transferred counts as alienation.

Posted February 18,[166] in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[2] *Emperor* Gordian *Augustus to Domitiana.* Husbands who have accepted an unappraised farm owned in common with another person as dowry cannot sue for the division of property, though they themselves can be sued.

Posted October 3, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

Twenty-Fourth Title Persons with Whom Children Ought to Reside or by Whom They Ought to Be Raised Following a Divorce

[1] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Caelestina.* Although it is not specified in any constitution of ours or of our deified predecessors (*parentes*) that a distinction according to the sex of the children be made when assigning them to parents, nevertheless the appropriate judge will reckon whether the children ought to reside with and be raised by their father or by their mother when a marriage has ended through divorce.

Written June 16, at Beroe (Stara Zagora), in the consulship of the Caesars (294).[167]

[163] The precise date is uncertain: Mommsen dates to December 3, 293.

[164] See D. 23.5.

[165] The *lex Iulia de adulteriis coercendis* contained a rule (once itself referred to as the *lex Iulia de fundo dotali*) that prohibited a husband from selling rural Italic dowry land without a wife's consent.

[166] The precise day is uncertain: the alternative is February 27.

[167] The precise day is uncertain (the alternative is June 24), as is the year; Mommsen prefers May 17, 293.

XXV De Alendis Liberis ac Parentibus

[1] *Imp. Pius A. Basso.* Parentum necessitatibus liberos succurrere iustum est.
Sine die et consule.

[2] *Divi fratres Celeri.* Competens iudex a filio te ali iubebit, si in ea facultate est, ut tibi alimenta praestare possit.
D. id. April. ipsis III *et* II *AA. conss.*

[3] *Idem AA. Tatianae.* Si competenti iudici eum, quem te ex Claudio enixam esse dicis, filium eius esse probaveris, alimenta ei pro modo facultatum praestari iubebit. idem, an apud eum educari debeat, aestimabit.
PP. XIII *k. Mart. Romae Rustico et Aquilino conss.*

[4] *Impp. Severus et Antoninus AA. Sabino.* Si patrem tuum officio debito promerueris, paternam pietatem tibi non denegabit. quod si sponte non fecerit, aditus competens iudex alimenta pro modo facultatium praestari tibi iubebit. quod si patrem se negabit, quaestionem istam in primis idem iudex examinabit.
PP. non. Febr. Laterano et Rufino conss.

XXVI De Concubinis

[1] *Imp. Constantinus A. ad populum.* Nemini licentia concedatur constante matrimonio concubinam penes se habere.
PP. XVIII *k. Iul. Caesareae Constantino A.* VII *et C. conss.*

Twenty-Fifth Title Providing Support for Children and Parents[168]

[1] *Emperor* Pius *Augustus to Bassus.* It is right for children to come to the assistance of their parents in need.

Without day or year.

[2] *The* Deified Brothers *(Augusti) to Celer.* The appropriate judge will order your son to support you if his financial situation is such that he is able to provide you with support (*alimenta*).

Given April 13, in the consulship of Marcus Aurelius, for the third time, and Lucius Verus, for the second time, Augusti (161).

[3] *The same Augusti to Tatiana.* If you prove to the appropriate judge that he, whom you claim to be the son of Claudius and you, is his son, he (the judge) will order him (Claudius) to provide support (*alimenta*) for him in accordance with his means. He will also assess whether he ought to be raised by him.

Posted February 17, at Rome, in the consulship of Rusticus and Aquilinus (162).

[4] *Emperors* Severus *and* Antoninus *Augusti to Sabinus.* If you have deserved well of your father in terms of the respect (*officium*) you owe him, he will not deny you a father's affection (*pietas*). But if he does not do so of his own accord, the appropriate judge, once you approach him, will order him to provide support (*alimenta*) in accordance with his means. But should he deny that he is your father, the same judge will look into that issue first of all.

Posted February 5, in the consulship of Lateranus and Rufinus (197).

Twenty-Sixth Title Concubines[169]

[1] *Emperor* Constantine *Augustus to the People.* No one shall be allowed to keep a concubine while he is married.

Posted June 14, at Caesarea, in the consulship of Constantine Augustus, for the seventh time, and Constantius Caesar (326).

[168] See D. 25.3.
[169] See D. 25.7.

XXVII De Naturalibus Liberis et Matribus Eorum et ex Quibus Casibus Iusti Efficiuntur

[1] *Imp. Constantinus A. ad Gregorium.* pr. Senatores seu perfectissimos, vel quos in civitatibus duumviralitas vel sacerdotii, id est Phoenicarchiae vel Syriarchiae, ornamenta condecorant, placet maculam subire infamiae et alienos a Romanis legibus fieri, si ex ancilla vel ancillae filia vel liberta vel libertae filia vel scaenica vel scaenicae filia vel ex tabernaria vel ex tabernarii filia vel humili vel abiecta vel lenonis aut harenarii filia vel quae mercimoniis publicis praefuit susceptos filios in numero legitimorum habere voluerint aut proprio iudicio aut nostri praerogativa rescripti: ita ut, quidquid talibus liberis pater donaverit, sive illos legitimos seu naturales dixerit, totum retractum legitimae suboli reddatur aut fratri aut sorori aut patri aut matri.

1. Sed et uxori tali quodcumque datum quolibet genere fuerit vel emptione collatum, etiam hoc retractum reddi praecipimus: ipsas etiam, quarum venenis inficiuntur animi perditorum, si quid quaeritur vel commendatum dicitur, quod his reddendum est quibus iussimus aut fisco nostro, tormentis subici iubemus. 2. Sive itaque per ipsum donatum est qui pater dicitur, vel per alium sive per interpositam personam, sive ab eo emptum vel ab alio, sive ipsorum nomine comparatum, statim retractum reddatur quibus iussimus aut, si non existunt, fisci viribus vindicetur. 3. Quod si existentes et in praesentia rerum constituti agere noluerint pacto vel iureiurando exclusi, totum sine mora fiscus invadat.

4. Quibus tacentibus et dissimulantibus a defensione fiscali duum mensuum tempora limitentur, intra quae si non retraxerint vel propter retrahendum rectorem provinciae interpellaverint, quidquid talibus filiis vel uxoribus liberalitas impura contulerit, fiscus noster invadat, donatas vel commendatas res sub poena quadrupli severa quaestione perquirens.

Twenty-Seventh Title Illegitimate Children, Their Mothers, and in What Situations They Are Rendered Legitimate[170]

[1][171] *Emperor* Constantine *Augustus to Gregorius.* **pr.** It is laid down that senators and *viri perfectissimi*, as well as those in the towns distinguished by the position of duumvir or a priesthood, meaning that of Phoenicarch or Syriarch, shall suffer the disgrace of infamy (*infamia*) and loss of citizenship if they, relying on their own opinions or on the authority of Our rescript, should wish to treat as legitimate the children born to them from a slave-woman, the daughter of a slave-woman, a freedwoman, the daughter of a freedwoman, an actress, the daughter of an actress, a female tavern-worker, the daughter of a (male or female) tavern-worker, a lowborn and degraded woman, the daughter of a pimp or gladiator, or a woman who has charge of merchandise for sale to the general public. Whatever a father gives to such children, whether he describes them as legitimate or "natural," shall be seized in its entirety and restored to his legitimate offspring, or to his brother, sister, father, or mother.

1. So also if any property of any sort is given to such a wife or bestowed upon her through a sale, this too We order to be seized and restored. We command as well that the women themselves, by whose black arts the minds of ruined men are poisoned, shall be given over to torture, should something be sought from them or said to have been handed over to them which ought to be restored to those whom We have ordered, or to Our Treasury. **2.** Thus, whether a gift has been made by a person alleged to be the father or by another, whether by a person introduced (for this purpose), or something has been bought by him or another person, or it has been is acquired in the name of (the children and mother) themselves, it shall be immediately seized and restored to those whom We have ordered or, if there are no such persons, it shall be made over to the coffers of the Treasury. **3.** But if they do exist and, when present, refuse to bring suit because prevented by private agreement or oath, the Treasury shall seize the property in its entirety without delay.

4. If such persons should remain silent and feign ignorance, a period of two months shall be set for them to exclude the claim of the Treasury, within which, if they have not recovered the property or made application to the governor of the province with the aim of recovering it, Our Treasury shall seize whatever a disreputable generosity has bestowed upon such children or wives, seeking out by means of a severe enquiry and through the imposition of a fourfold penalty the property that has been given as a gift or entrusted (to them).

[170] In what follows the words "natural" and "illegitimate" translate the same word, *naturalis*, usually found in the phrase *naturales liberi*, and refer to the same thing, namely, children who are in biological terms regarded as those of their putative father, but not recognized in law as legitimate. *Naturalis* is also translatable here and elsewhere by the terms "biological" and "genetic," both commonly found in modern legal sources.

[171] = (in part, with changes) C.Th. 4.6.3. See Nov. Marc. 4.1.

Lecta XII k. Aug. Carthagine Nepotiano et Facundo conss.

[2] *Impp. Arcadius et Honorius AA. Anthemio pp.* Matre vel legitimis filiis vel nepotibus aut pronepotibus cuiuscumque sexus, uno pluribusve, existentibus bonorum suorum unam tantum unciam pater naturalibus filiis seu filiabus eorumque genetrici vel, si sola sit concubina, semunciam largiendi vel relinquendi habeat potestatem. quidquid vero ultra modum concessum relictum sit, legitimis liberis vel matri vel ceteris successoribus iure reddetur.

D. id. Nov. Constantinopoli Stilichone II et Anthemio conss.

[3] *Impp. Theodosius et Valentinianus AA. ad Apollonium pp.* **pr.** Si quis seu liber ipse seu curiae sit nexibus obligatus, et tradendi filios naturales, vel omnes vel quos quemve maluerit, eius civitatis curiae unde ipse oritur et in solidum heredes scribendi liberam ei concedimus facultatem. **1.** Quod si cui non ex urbe, sed vico vel possessione qualibet oriundo naturales liberi contigerunt, eosque velit sub definitione praedicta curiae splendore honestare et hereditatis opibus adiuvare, eius civitatis adscribendi sunt ordini, sub qua vicus ille vel possessio censeatur.

2. Quod si alterutram regalium civitatum patriam sortiatur, sit ei liberum susceptam ex inaequali coniugio subolem cuiuscumque civitatis decurionibus immiscere, dummodo civitas quae eligitur totius provinciae teneat principatum. indignum est enim, ut, qui sacratissimae urbis ubere gloriatur, naturales suos non illustris ordine civitatis illuminet.

3. Haec sive postrema definiat sive donationem cuiuslibet quantitatis in liberos naturales pater conferat: et quod de subeunda sorte curiali seu testamento seu actorum fide constituat, ita ratum esse stabiliterque

Read July 21, at Carthage, in the consulship of Nepotianus and Facundus (336).

[2][172] *Emperors* Arcadius *and* Honorius *Augusti to Anthemius, Praetorian Prefect.* When a father is survived by legitimate children, (their) mother, (his) legitimate grandchildren or great-grandchildren of either sex,[173] whether there are one or more of these, he shall have the power (*potestas*) of bestowing on or leaving as a bequest to his "natural" (i.e., illegitimate) sons or daughters and their mother only one-twelfth of his property or, if there is only a concubine, one-twenty-fourth. Whatever, on the other hand, has been left beyond the approved limit will be restored by operation of law to the legitimate children, their mother, or the remaining successors.

Given November 13, at Constantinople, in the consulship of Stilicho, for the second time, and Anthemius (405).

[3][174] *Emperors* Theodosius *and* Valentinian *Augusti to Apollonius, Praetorian Prefect.* **pr.** Whether someone is free from the obligation to serve on his town council (*curia*) or not, We grant him the free choice both of giving over his "natural" (illegitimate) children, either all of them or one or more as he prefers, to (serve on) the council (*curia*) of his city of origin, and of appointing them as heirs to his estate in its entirety. **1.** But if someone who does not come from a city, but from a settlement not recognized as a town (*vicus*) or any kind of landed estate (*possessio*), happens to have natural children and wishes to honor them with the status of town councilor on the terms described above and to assist them with the resources of an inheritance, they are to be enrolled in the town council (*ordo*) of the town to which the *vicus* or *possessio* is officially ascribed.

2. If he happens to come from either of the ruling cities (Rome or Constantinople) he shall be free to place the progeny arising from a union between unequals (i.e., concubinage) among the town councilors (*decuriones*) of any city whatsoever, provided that the city which is chosen is the capital of an entire province. For it is unworthy that a person who boasts of provenance from a most sacred (i.e., imperial) city should honor his natural children with membership in the *ordo* of a town that is not distinguished.

3. Whether a father sets forth these matters in a will or gives a gift of any size to his natural children, We wish that what he establishes regarding the enrolment in a council, whether in a will or in a public register (associated

[172] = (with changes) C.Th. 4.6.6.

[173] The order of the survivors has been altered to make clearer that the "mother" is the parent of the children and not of the testator: see C.Th. 4.6.6.

[174] Pr.-3 = (with changes) Nov. Theod. 22.1.5, 7–9.

volumus observari, ut, sive abstinendo hereditatibus sive abdicando donationes naturales liberi curialem voluerint evitare fortunam posteaque paternarum opum vel in solidum vel ex parte reperti fuerint possessores, licet eas alienaverint, omnimodo ad condicionem, in qua pater eos amplificatis opibus esse voluit, etiam inviti cogantur accedere.

4. Et si filiam naturalem vel filias habuit et eam vel eas curiali vel curialibus civitatis, ex qua oriundus est vel sub qua vicus vel possessio unde oritur consistit, vel eius civitatis, quae principatum totius provinciae tenet, matrimonio collocavit, haec eadem et in persona eius vel earum ad exemplum marium obtinebunt. **5.** Quid enim interest, utrum per filios an per generos commoditatibus civitatum consuletur, et utrum novos lex faciat curiales, an foveat quos invenit?

D. XVII k. Ian. Constantinopoli post consulatum Eudoxii et Dioscori.

[4] *Impp. Leo et Anthemius AA. Armasio pp.* **pr.** Quoniam desideria morientium ex arbitrio viventium non sine iusta ratione colligimus, et is, qui naturalem filium habens hortantibus legibus ultro ad instar legitimi filii municipalibus eum voluit adgregare muneribus et donare patriae principalem, manifestavit notumque fecit sine dubio professione certissima facultatum suarum omnium elegisse se adfectione debita successorem, cum certe huiusmodi personis adeo sacratissima constitutione subventum sit, ut nec renuntiandi eis aut alienandi vel repudiandi paternas hereditates aut donationes in fraudem curiae concedatur facultas, sed muneribus patriae susceptis patrimonia subire cogantur, nullam e diverso calumniantium vocem penitus patiemur admitti, sed ipsum Philocalum et paternorum bonorum omnium ab intestato heredem et Bostrenae civitatis curiae principalem iniuncta vel iniungenda sibi munera subire ex eoque genitos vel nascendos filios

with the gift), be maintained as valid and sound, so that, if the natural children wish to avoid enrolment in a council by renouncing the inheritance or abstaining from the gift, and are afterwards found to be in full or partial possession of their father's property, even if they have (subsequently) alienated this, they shall be in every way compelled, even against their will, to assume the status which their father wished for them, having increased their material resources.

4.[175] And if he had one or more natural daughters and married off one or more of them to a member or members of the council of his town of origin or that to which his *vicus* or *possessio* of origin is assigned, or of that which is the capital of an entire province, the same rules will apply also to them on the analogy of males. 5. For what does it matter if the interests of cities are consulted through sons or sons-in-law, and whether legislation makes new town councilors (*curiales*) or supports those whom it finds?

Given December 16, at Constantinople, in the post-consulate of Eudoxius and Dioscorus (443).[176]

[4] *Emperors* LEO *and* ANTHEMIUS *Augusti to Armasius, Praetorian Prefect.* **pr.** A man who had a "natural" son and who wished, of his own accord and with the encouragement of the laws, to associate him with municipal duties and present him as a gift to his home town as a leader, like a legitimate son, (subsequently) made it clear and well known beyond doubt through a very unambiguous declaration that he had chosen him, out of due affection, as the heir of all his property. Because we construe the wishes of dying persons, not without good reason, from the decisions they took while alive, (and) since, at any rate, assistance is (also) provided to persons of this kind by a most sacred (i.e., imperial) constitution[177] to such an extent that the possibility neither of refusing, nor of alienating, nor of rejecting the inheritances or gifts from their fathers for the purpose of wrongfully evading membership in a town council (*curia*) is granted to them – instead, they are compelled to enter upon their inheritance (only) after undertaking the public duties associated with their home towns – We will not at all allow the contrary claims of false accusers to find a place. Instead, We instruct that Philocalus himself, the intestate heir of all his father's property and a leader of the council of the town of Bostrena, shall take up the duties that have been and that are going to be laid upon him, and that his children, already born or to be born in future, shall be likewise subject to their father's status.

[175] 4–5 = (with changes) Nov. Theod. 22.2.11.
[176] Seeck gives December 16, 442.
[177] C. 5.27.3.

similiter paternae condicioni subiacere praecipimus. **1.** Et huiusmodi formam in omnibus causis, quae similiter in cuiuscumque civitatis ordine curiaque contigerint, in posterum decernimus observari.

D. k. Ian. Constantinopoli Iordane et Severo conss.

[5] *Imp. Zeno A. Sebastiano pp.* **pr.** Divi Constantini, qui veneranda Christianorum fide Romanum munivit imperium, super ingenuis concubinis ducendis uxoribus, filiis quin etiam ex isdem vel ante matrimonium vel postea progenitis suis ac legitimis habendis, sacratissimam constitutionem renovantes iubemus eos, qui ante hanc legem ingenuarum mulierum (nuptiis minime intercedentibus) electo contubernio cuiuslibet sexus filios procreaverunt, quibus nulla videlicet uxor est, nulla ex iusto matrimonio legitima proles suscepta, si voluerint eas uxores ducere, quae antea fuerant concubinae, tam coniugium legitimum cum huiusmodi mulieribus ingenuis, ut dictum est, posse contrahere, quam filios utriusque sexus ex earundem mulierum priore contubernio procreatos, mox quam nuptiae cum matribus eorum fuerint celebratae, suos patri et in potestate fieri et cum his, qui postea ex eodem matrimonio suscepti fuerint, vel solos, si nullus alius deinde nascatur, tam ex testamento volentibus patribus etiam ex integro succedere quam ab intestato petere hereditatem paternam: pactis, quae matrimonii tempore super dotalibus vel ante nuptias donationis rebus subsecuta fuerint, etiam ad ipsorum personas pertinentibus, ut una cum fratribus suis postea ex isdem parentibus forte progenitis, aut soli, si nullus alius sit procreatus, dotis et ante nuptias donationis pro tenore legum nec minus pactorum emolumenta recipiant.

1. Hi vero, qui tempore huius sacratissimae iussionis necdum prolem aliquam ex ingenuarum concubinarum consortio meruerunt, minime huius legis beneficio perfruantur, cum liceat easdem mulieres sibi prius iure matrimonii copulare non extantibus legitimis liberis aut uxoribus ac legitimos filios utpote nuptiis procedentibus procreare, nec debeant, quos ex ingenua concubina dilato post hanc legem matrimonio nasci voluerint, ut iusti ac legitimi postea videantur, magnopere postulare.

D. x k. Mart. post consulatum Armati.

1. And We decree that this sort of rule (*forma*) shall be maintained in future in all cases that arise in a similar way regarding the councilors (*ordo*) and council of each town.

Given January 1 at Constantinople, in the consulship of Jordanes and Severus (470).

[5] *Emperor* Zeno *Augustus to Sebastianus, Praetorian Prefect.* **pr.** In revisiting the most sacred (i.e., imperial) constitution[178] of the blessed Constantine, who fortified the Roman empire with the venerable Christian religion, as to marrying free-born concubines and, moreover, as to considering children born from such unions either before or after marriage as their *sui heredes* and legitimate, We order that those who, before this (instant) law (*lex*), have chosen concubinage – where no marriage at all occurs – with free-born women, have sired children of either sex, and manifestly have no wife and no legitimate children born from a legally valid marriage, if they wish to marry those women who have previously been concubines, they shall be able, as has been said, to contract lawful marriage with free-born women of this kind, just as the children of either sex born from the prior concubinage with these same women, as soon as marriage is concluded with their mothers, shall become *sui heredes* and be in his power (*potestas*) along with those who are subsequently born from this same marriage, or by themselves, if no other is born later. They shall succeed, even in full, through a will in accordance with the wishes of their fathers, as well as seek their paternal inheritance on intestacy. They shall also benefit from the agreements made at time of marriage regarding dowry and prenuptial gifts so that they, together with their siblings, if any happen to be born subsequently to the same parents or on their own, if no one else is born, shall receive the benefits of the dowry and prenuptial gift, according to the substance of the laws as well as of the agreements.

1. Those however who at the time (of enactment) of this most sacred law (*iussio*) have not yet had children from a union with free-born concubines shall not at all enjoy the benefit of this (instant) law, since they shall be permitted, if they have no legitimate children and lawful wives, first to marry these same women under the law of marriage and to produce legitimate children insofar as marriage has preceded them, nor ought they earnestly to request that those children whom they have wished to be born from a free-born concubine, having put off marriage after the passage of this (instant) law, later be deemed proper and legitimate.

Given February 20, in the post-consulate of Armatus (477).

[178] Evidently a reference to a lost law missing from the beginning of C.Th. 6.1.

[6] *Imp. Anastasius A. Sergio pp.* **pr.** Iubemus eos, quibus nullis legitimis existentibus liberis in praesenti aliquae mulieres uxoris loco habentur, ex his sibi progenitos seu procreandos suos et in potestate sua legitimosque habere propriasque substantias ad eos vel per ultimas voluntates vel per donationes seu alios legi cognitos titulos si voluerint transferre, ab intestato quoque eorum ad hereditatem vocandos, nec aliquam quaestionis seu altercationis exercendae sub qualibet astuta subtilique legum vel constitutionum occasione super his vel agnatis seu cognatis genitoris eorum vel quibusdam aliis superesse facultatem in posterum: nihilo minus, quisquis huiusmodi mulierem uxoris loco dotalibus instrumentis confectis habuerit, pro eius subole similem eandemque formam custodiri, ne adimatur ei licentia sibi quodammodo per liberos proprios suum patrimonium adquirendi. **1.** Filios insuper vel filias iam per divinos adfatus a patribus suis in adrogationem susceptos vel susceptas huius providentissimae nostrae legis beneficio et iuvamine potiri censemus.

D. k. April. Anastasio et Agapeto conss.

[7] *Imp. Iustinus A. Marino pp.* **pr.** Legem Anastasii divinae recordationis, quae super naturalibus filiis emissa est, in his valere tantum casibus concedimus, qui nunc usque subsecuti sunt pro eiusdem legis tenore in matrimoniis tunc constantibus vel postea contractis, ita tamen, ut non aliunde progenitis subvenisse credatur quam non ex nefario nec incesto coniugio. **1.** Naturalibus insuper filiis seu filiabus ex cuiuslibet mulieris cupidine non incesta non nefaria procreatis et in paterna per adrogationem seu per adoptionem sacra susceptis ex divinis iussionibus, sive antequam eadem lex inrepserit seu post eandem legem usque ad praesentem diem, non sine ratione duximus suffragandum, ut adoptio seu adrogatio firma permaneat, nullis prorsus improbanda quaestionibus, quasi quod impetrarunt lege quadam interdictum sit, quoniam, et si qua prius talis emergebat dubitatio, remittenda fuit movente misericordia, qua indigni non sunt qui alieno laborant vitio. **2.** Sint itaque post eandem adrogationem seu adoptionem sui et in potestate patrum successionesque tam ex testamento quam ab intestato capiant, prout in adoptatis seu et in adrogatis constitutum est.

[6] *Emperor* ANASTASIUS *Augustus to Sergius, Praetorian Prefect.* pr. We order that those, who have no surviving legitimate children and presently have some woman in place of a wife, shall consider children already or subsequently born to them from such women to be their *sui heredes*, in their power (*potestas*), and legitimate, and, if they wish, transfer their property to them either through a will, gift, or other means known to law. (We order) also that these children shall be eligible to receive the estates of their fathers on intestacy. There shall also remain in future no possibility of launching a judicial procedure or confrontation on any clever and complicated pretext arising from legislation (*leges*) or constitutions regarding these matters, neither for agnates or cognates of their father, nor for certain others. Equally, one and the same rule shall hold on behalf of his offspring for any man having a woman of this kind in place of a wife after drawing up dowry documents, so that the power of acquiring property through his children in a certain manner not be taken from him. 1. We ordain, moreover, that sons and daughters already adopted through adrogation by their fathers thanks to imperial permission shall enjoy the benefit and assistance of this most providential law of Ours.

Given April 1, in the consulship of Anastasius Augustus and Agapetus (517).

[7] *Emperor* JUSTIN *Augustus to Marinus, Praetorian Prefect.* pr. We allow that the law (*lex*) of Anastasius, of blessed memory, which was enacted regarding "natural" children, shall be valid only in those cases which have occurred up to this point in congruence with the sense of the law, meaning for marriages then existing or contracted later, so nevertheless, with the qualification that it shall only be deemed to benefit those children born in unions that are not immoral or incestuous. 1. Moreover, We deemed it necessary, not without reason, to assist both natural sons and daughters who were born in a passionate union with any sort of woman that is not incestuous or immoral and who have been brought under paternal power (*sacra*) through adrogation or adoption in accordance with imperial pronouncements (*iussiones*), whether before this law was promulgated or after this same law up to the present day, so that the adoption or adrogation shall remain valid, and must not be rendered invalid under any judicial procedure at all, on the ground that what they (the children) sought was forbidden by some law, because, even if some such hesitation used to arise previously, it ought to be dismissed, from considerations of mercy, for the reason that they are not unworthy who suffer from someone else's fault. 2. Therefore, they shall be, subsequent to the same adrogation or adoption, *sui heredes* and in the power (*potestas*) of their fathers. They shall also take their inheritance either under a will or on intestacy, just as is laid down for those who have been adrogated or adopted.

3. In posterum vero sciant omnes legitimis matrimoniis legitimam sibi posteritatem quaerendam, ac si praedicta constitutio lata non esset. iniusta namque libidinum desideria nulla de cetero venia defendet, nullum sublevabit novum adminiculum praeter anteriorum dispositionum ordinem, non ante lata sanctio, quam ex hoc die resecandam pia suggesserit ratio, non adrogationum vel adoptionum praetextus, quae ulterius minime ferendae sunt, non astutiae sive divinis adfectandae litteris seu quibusdam illicitis ambiendae machinationibus, cum nimis indignum, nimis sit impium flagitiis praesidia quaerere, ut et petulantiae servire liceat et ius nomenque patris, quod eis denegatum est, id altero legis colore praesumant.

D. v id. Nov. Constantinopoli Iustino A. et Eutherico conss.

[8] *Imp. Iustinianus A. Menae pp.* **pr.** Humanitatis intuitu naturalibus patribus hoc indulgemus, ut liceat eis nulla legitima subole vel matre subsistente naturalem vel naturales filios matremque eorum non tantum ex tribus unciis, quod praeteritae leges permittebant, sed etiam ex duplici portione, id est sex unciis, heredes scribere, ut, licet ab intestato nullam communionem ad patris naturalis successionem haberent, ex suprema tamen eius voluntate permittatur eis usque ad praedictas sex uncias (si hoc scilicet naturalis pater voluerit) hereditatem eius capere, ita tamen, ut memoratam sex unciarum quantitatem in omnibus naturalibus filiis et matre eorum minime testator excedat. **1.** Quam et in legatis et fideicommissis eis relinquendis et dotibus et donationibus, tam aliis quam ante nuptias, usque ad aestimationem sex unciarum liberam similiter naturalibus eorum patribus damus potestatem. **2.** Haec autem in futuris tantummodo testamentis vel ultimis voluntatibus vel dotibus vel donationibus locum habebunt.

D. k. Ian. Constantinopoli dn. Iustiniano A. II cons.

[9] *Idem A. Menae pp.* **pr.** Communium rerum esse utilitatem recte iudicantes lucidis et omni ambiguitate segregatis legibus uti nostro

3. As for the future, however, let everyone know that they must seek legitimate offspring in lawful marriages, as though the aforesaid constitution was not enacted. For henceforth no pardon will safeguard the improper desires occasioned by lust, no new prop will support them contrary to the tenor of previous provisions, as will no previously enacted rule, which a moral rationale has prompted Us to rescind from this day forth, no allegations of adrogations or adoptions, which are from this point not at all to be tolerated, no exercise of cleverness, is to be either applied to the interpretation of imperial correspondence (*litterae*; i.e., legislation) or engineered by means of certain unlawful schemes, since it is highly unworthy, highly immoral, to seek protections for improper behavior, in order both that it is permitted (to them) to be a slave to outrageous conduct and that they usurp under an alternative pretense of law the rights and status of "father" which had (otherwise) been denied to them.

Given November 9, at Constantinople, in the consulship of Justin Augustus and Euthericus (519).

[8][179] *Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect.* **pr.** Prompted by humane sympathy (*humanitas*), We grant to fathers of "natural" children that it shall be permitted to them, if they have no surviving legitimate children nor lawful mother of the same, to name their natural child or children and the mother of the latter as heir(s) not only for one-quarter, which past legislation permitted, but even for double this fraction of the estate, namely, one-half, so that, although they have no claim on the intestate succession to their natural father, it shall nevertheless be permitted to them, in accordance with his will, to take an inheritance up to the aforesaid one-half of the estate (clearly, if their natural father should wish this), so that, all the same, the will-maker not exceed the aforesaid one-half of his estate for all his natural children and their mother (combined). **1.** We likewise grant to their fathers this free capacity, up to the appraisal of one-half, in bequeathing legacies, trusts, dowries, and gifts, prenuptial as all others, to their natural children. **2.** These provisions, moreover, will apply only to future wills, expressions of last wishes, dowries, and gifts.

Given January 1,[180] at Constantinople, in the consulship of Our Lord Justinian Augustus, for the second time (528).

[9][181] *The same Augustus to Menas, Praetorian Prefect.* **pr.** Rightly judging it to be useful for the public interest that those subject to Our imperial command

[179] Combine with C. 5.27.9, 10.35.3, 10.44.4.
[180] The precise month is uncertain: January or rather June (preferred by Lounghis *et al.*).
[181] Combine with C. 5.27.8, 10.35.3, 10.44.4.

subiectos imperio, ad praesentem sanctionem venimus, per quam omni dubitatione amputata, quae usque adhuc obtinebat, certissimum facimus, ut, quotiens naturales filii curiali fortunae patriae sui genitoris adsignantur, vel adhuc vivente patre vel post eius obitum pro dispositione testamenti ab eo conditi, et eo modo legitima iura in paterna successione adipiscuntur (quod recte fieri minime dubium est), licet illustrem dignitatem, ex qua curialis fortunae liberatio competere non potest, naturales filii antea meruerunt, ne permittatur eis contra substantiam ab eodem naturali patre descendentium vel adscendentium vel ex latere cognationis vel agnationis iure eidem patri coniunctorum, licet ipsi legitimi successores eidem naturali patri per memoratam fortunam efficiantur, aliquod ius sibi vindicare.

1. Quod et in his locum habebit, qui iam a naturali patre curiali condicioni traditi adhuc superstites sunt, eodem scilicet modo nec illis contra substantiam eiusdem naturalis filii vel ex eo descendentium vel adscendentium vel ex latere coniunctorum aliquod sibi ius vindicare valentibus. 2. Sed si quidem iste naturalis filius sive postquam legitimus successor patri factus sit sive in antecedenti tempore filios ex legitimo matrimonio vel alios descendentes liberos habeat, eos modis omnibus ad eius successionem sine testamento morientis vocari nec curiae locum esse, praeterquam si quarta portio bonorum eius eidem curiae debeatur eo, quod nullus forte ex mortui liberis curialia munera peragere cogitur: illo videlicet observando, ut ii, quos iste naturalis filius, posteaquam fortunae curiali datus est, procreaverit, decuriones sine dubio sint et curialia peragere munera compellantur.

3. Sin vero sine liberis cuiuscumque gradus intestatus decesserit, si quidem matre superstite, tertiam quidem partem bonorum eius matrem habere, duas vero alias partes curiam, cui a patre datus est. 4. Sin autem mater quidem defuncti non superesset, alii vero cognati ex materna linea descendentes vel adscendentes vel ex latere venientes ad eius vocentur successionem, tunc ea quidem, quae a patre naturali ad eum pervenerunt, eidem curiae competere: si quid vero filio posteaque legitimo successori effecto vel a matre sua vel aliunde quocumque legitimo modo adquisitum sit, hoc ad proximos maternos eius cognatos pervenire.

5. Illo videlicet observando, ut, sive matre eius superstite sive ea ante filium mortua aliquis ex eius genere eiusdem curiae fortunam subire

employ laws that are clear and free from every ambiguity, We arrive at the instant rule (*sanctio*), through which, after every hesitation which has held up to this point has been cleared away, We make most certain that whenever "natural" sons are assigned (by their father) to the council (*curia*) of his native town either while the father is still alive or after this death through the dispositions of his will, and in this way they acquire legally recognized rights to the estate of their father – something which it is perfectly certain occurs rightly – although the natural sons have previously risen to the rank of *vir illustris*, which cannot free them from the council, it shall not be permitted for them to claim any right to the property of (legitimate) ascendants or descendants of their natural father, or of collateral relations linked to the same father by cognate or agnate right, even though they themselves are rendered lawful successors to their natural father through assignment to the council, as mentioned.

1. This rule will also apply to those who have already been assigned to the status of town councilor by their natural father and are still living. Clearly in the same way they (the relations of the father listed above) do not have any valid claim to the property of the natural son, nor to that of his ascendants, descendants, or collaterals. **2.** And if indeed a natural son has children born of a lawful marriage or other descendants who count as *liberi* (i.e., the first Praetorian class of heirs), whether this occurred after he was made a legitimate successor to his father or beforehand, (We order) that they in every way shall be eligible to succeed to his estate if he dies intestate and that the council shall have no claim, apart from when a fourth part of his property is owed to that same council because not one perhaps of the decedent's *liberi* (i.e., heirs in the first Praetorian class) is compelled to perform duties in connection with the council. It is clear that this rule shall be observed, that those sons born to a natural son after he joins the council shall themselves without doubt become councilors (*decuriones*) and shall be compelled to perform the duties associated with this status.

3. But if, however, he dies intestate without *liberi* (heirs in the first Praetorian class), of whatever degree, if in fact his mother survives him, (We order) that his mother shall receive one-third, at any rate, of his property and the council, to which his father assigned him, two-thirds. **4.** But if, however, the mother of the decedent does not survive him, while other blood relatives (*cognati*) on his mother's side, descendants, ascendants, or collaterals, are eligible to succeed to his estate, then that property, to be sure, which came to him from his natural father accrues to the same council. If the son, who afterwards became (his father's) legitimate successor, has in fact acquired something from his mother or from some other source in any legally recognized manner (We allow) this to accrue to his nearest maternal blood relatives (*cognati*).

5. It is clear that this rule shall be observed, that, whether his mother has survived or predeceased him, should someone from her side be willing to

paratus sit, liceat ei se offerenti eidem curiae bona mortui, quae de substantia patris ad eum pervenerunt, capere muneraque peragere curialia, quo accedente mater defuncti, si adhuc supersit, non solum tertiam partem eorum, quae extra paternam substantiam filius eius aliunde adquisivit, sed omnia ea vel ipsa sola vel cum coheredibus suis capiet.

6. Ea vero, quae de successione naturalis filii post curialem condicionem morientis constituimus, non tantum in his locum habere debent, qui postea a patre suo naturali curiae dati fuerint, sed etiam in illis, qui iam dati sunt, si tamen adhuc supersunt. **7.** Quod si ante praesentem sanctionem mortui sunt, minime ad eorum successionem eandem nostram sanctionem extendimus.

8. Et quoniam omnimodo favendum est curiis civitatum, illud etiam in hac parte addendum esse censemus, ut liceat patribus naturales filios curiae patriae suae tradere non solum nulla eis legitima subole existente, sed etiam si filios vel alios liberos ex legitimis matrimoniis procreatos habeant, et eo modo naturales quoque filios sibi legitimos successores efficere, ita tamen, ut minime eisdem patribus liceat per donationem vel ultimam voluntatem amplius eidem naturali filio dare vel relinquere, quam uni filio ex matrimonio legitimo procreato dederit vel reliquerit, cui minima portio data vel relicta sit.

D. k. Iun. dn. Iustiniano A. II cons.

[10] *Idem A. Demostheni pp.* **pr.** Cum quis a muliere libera et cuius matrimonium non est legibus interdictum cuiusque consuetudine gaudebat aliquos liberos habuerit, minime dotalibus instrumentis compositis, postea autem ex eadem adfectione etiam ad nuptialia pervenerit instrumenta et alios iterum ex eodem matrimonio liberos procreaverit, ne posteriores liberi, qui post dotem editi sunt, sibi omne paternum patrimonium vindicare audeant quasi iusti et in potestate effecti, fratres suos, qui ante dotem fuerant nati, ab hereditate paterna repellentes, huiusmodi iniquitatem non esse ferendam censemus. **1.** Cum enim adfectio prioris subolis et ad dotalia instrumenta efficienda et ad posteriorem filiorum edendam progeniem praestitit occasionem, quomodo

enter the same council, it shall be permitted to the one volunteering for the same council to take the property of the decedent that accrued to him from the estate of his father and to perform the duties associated with the council. If this happens, the mother of the decedent, if she is still alive, will receive not only a third part of the property which, apart from that of his father, the son acquired from other sources, but all of it, either by herself or together with her co-heirs.

6. Those rules, certainly, which We establish concerning the succession to the estate of a natural son who dies after becoming a town councilor ought to apply not only to those who shall afterwards be assigned to the council by their natural father but also to those who have already been assigned, if they are still alive. 7. But if they have died before this instant enactment (*sanctio*), We do not at all apply this same set of rules (*sanctio*) of Ours to the succession to their estate.

8. And because the *curiae* of the towns are to be favored in every way, We ordain that this rule too must be added at this point, that it shall be permitted for fathers to hand over their natural sons to the council of their native town not only when they have no legitimate progeny, but even if they have children or others who qualify as *liberi* born in lawful marriages, and in this manner to make their natural sons too their lawful successors, with this qualification all the same, that it shall not at all be permitted for the same fathers through gift or will to give or bequeath more to their natural son than the smallest portion they have given or bequeathed to any child from a lawful marriage.

Given June 1, in the consulship of Our Lord Justinian Augustus, for the second time (528).

[10][182] *The same Augustus to Demosthenes, Praetorian Prefect.* **pr.** A man has some children with a free woman with whom marriage is not forbidden by the laws and he has been happy in the relationship, no dowry documents having been drawn up. Afterwards, however, he proceeds, from this same spirit of affection, even to the point of framing a marriage contract, and he produces other children, again from the same marriage. The younger children, who were born after the constitution of the dowry, shall not dare to claim the entire paternal estate for themselves on the ground that they are legitimate and were in their father's power (*potestas*), driving their siblings, who were born before the constitution of the dowry, from their father's inheritance. We ordain that an injustice of this kind is not to be tolerated. **1.** For since affection for the prior offspring provided the motive both for drawing up the dowry documents and for producing the subsequent children, how is it not most unjust that the later progeny exclude the prior as illegitimate, when they ought to express gratitude to their siblings

[182] Combine with C. 6.57.5.

non est iniquissimum ipsam stirpem secundae posteritatis quasi iniustam excludere, cum gratias agere fratribus suis posteriores debeant, quorum beneficio ipsi sunt iusti filii et nomen et ordinem subsecuti. **2.** Neque enim verisimile est eum, qui postea vel donationem vel dotem conscripsit, et ab initio talem adfectionem circa mulierem non habuisse, quae eam dignam esse uxoris nomine faciebat.

3. Quapropter sancimus in huiusmodi casibus omnes liberos, sive ante dotalia instrumenta editi sunt sive postea, una eademque lance trutinari et omnes suos et in potestate suis existere genitoribus, ut nec prior nec iunior ullo habeatur discrimine, sed ii, qui ex isdem maioribus procreati sunt, et simili perfruantur fortuna.

D. XV k. Oct. Chalcedone Decio vc. cons.

[11] *Idem A. Iuliano pp.* **pr.** Nuper legem conscripsimus, per quam iussimus, si quis mulierem in suo contubernio collocaverit non ab initio adfectione maritali, eam tamen, cum qua poterat habere conubium, et ex ea liberos sustulerit, postea vero adfectione procedente etiam nuptialia instrumenta cum ea fecerit filiosque vel filias habuerit, non solum secundos liberos qui post dotem editi sunt iustos et in potestate esse patribus, sed etiam anteriores, qui et his qui postea nati sunt occasionem legitimi nominis praestiterunt.

1. Quam legem quidam putaverunt sic interpretari, ut sive non progeniti fuerint post dotem conscriptam liberi sive etiam ab hac luce subtracti, non anteriores filios iustos haberi, nisi in utroque tempore viventes et superstites liberi inveniantur. **2.** Quorum supervacuam subtilitatem penitus inhibendam censemus. sufficiat etenim talem adfectionem habuisse, ut post liberorum editionem et dotalia efficiant instrumenta et spem tollendae subolis habeant. **3.** Licet enim hoc quod speratum est ad effectum non pervenit, nihil anterioribus liberis fortuitus casus derogare concedatur: et multo magis, si quis mulierem, quam in contubernio suo habuerat, praegnantem fecerit, postea autem adhuc gravida muliere constituta dotalia fecerit instrumenta et puer vel puella editus vel edita sit, iusta patri suboles nascatur et in potestate efficiatur et heres ei existat morienti sive ab intestato sive ex testamento. satis enim absurdum est, si filii post dotem progeniti et anterioribus liberis adiutorium adferant, ipsum puerum vel puellam sibi opitulari non posse.

thanks to whom they attained both the status and the condition of legitimate children? 2. For it is not likely that he, who afterwards has put into writing either a (prenuptial) gift or a dowry, did not also from the beginning possess such an affection regarding the woman which rendered her worthy of the status of wife.

3. For this reason We lay down in cases of this kind that all children, whether they are born before the drawing up of dowry documents or afterwards, shall be weighed in one and the same scale, and that all shall rank as *sui heredes* and stand in the power (*potestas*) of their fathers, so that no distinction be drawn between older and younger, but those who are born to the same parents shall enjoy a like fortune.

Given September 17, at Chalcedon, in the consulship of the vir clarissimus *Decius (529).*

[11][183] *The same Augustus to Julian, Praetorian Prefect.* pr. Recently We put into writing a law (*lex*), in which We ordained that, if anyone enters into a union with a woman whom he had the right to marry (*conubium*) without the intent to marry at the beginning, and he has children with her, but afterwards, as the intent to marry develops, he even draws up marriage documents with her, and has sons and/or daughters, not only shall the children born after the constitution of the dowry be legitimate and in the power (*potestas*) of their fathers, but also the children born beforehand, who provided the opportunity of legitimate status for those born later.

1. Certain persons have thought to interpret this law in such a way that, if there were no children born after the dowry was put into writing or if they died, the prior ones should not be considered legitimate, unless it were shown that there were children from both periods surviving. 2. We ordain that their useless cleverness must be entirely checked. For it shall suffice that he had an intention of such a kind that, after the birth of children, they drew up the dowry documents and entertained the hope of raising (more) children. 3. For, although this hope is not realized, this chance circumstance shall not be allowed to take anything away from the prior children. This is all the more true if someone makes pregnant a woman whom he had as a concubine and, while the woman is still pregnant, he draws up dowry documents and a boy or girl is born. The offspring shall be born as the legitimate child of the father, shall stand in his power (*potestas*), and shall qualify as his heir either under a will or on intestacy when he dies. For it is fairly absurd that, if children born after the constitution of the dowry benefit the prior children, this very boy or girl cannot benefit him- or herself.

[183] Pr. = (with changes) Inst. 3.1.2a; combine with C. 5.29.4; 5.35.3. This constitution refers to the previous one.

4. Et generaliter definimus et, quod super huiusmodi casibus variabatur, definitione certa concludimus, ut semper in huiusmodi quaestionibus, in quibus de statu liberorum est dubitatio, non conceptionis, sed partus tempus inspiciatur: et hoc favore facimus liberorum. et editionis tempus statuimus esse inspectandum exceptis his tantummodo casibus, in quibus conceptionem magis approbari infantium condicionis utilitas expostulat.

D. xv k. April. Constantinopoli Lampadio et Oresta vv. cc. conss.

[12] *Idem A. Iohanni pp.* **pr.** Cuidam, qui iustum filium habebat, nepos accessit naturalis: si nepotis nomen huiusmodi suboli legibus accommodandum est, quaerebatur. volebat enim tali naturali nepoti ex suo legitimo filio iam defuncto progenito totam suam substantiam relinquere, quasi sacris constitutionibus tantummodo in filiis naturalibus prohibentibus totum patrimonium sive quantam partem voluerit eis relinquere et certo fini partes eorum concludentibus. **1.** Huiusmodi autem dubitatio et in alia specie ventilata est. quid enim, si ex naturali filio nepotem habet avus legitimum patri suo vel naturalem?

2. In omnibus itaque talibus dubitationibus cum nulla legitima consequentia in huiusmodi personis custoditur, sed interventu subolis naturalis nihil ius legitimum subesse potest, ut necessitas relinquendi aliquid eis ex legibus immineat, liceat eis quantum voluerint suae substantiae in eos conferre, scilicet nulla legitima subole subsistente. **3.** Filiis enim naturalibus relinqui constitutiones quantum voluerint ideo prohibuerunt, quia vitium paternum frenandum esse existimaverunt. in nepotibus autem non eadem observatio in praefatis speciebus custodienda est, ubi legitima minime suboles facit impedimentum. ea enim subsistente veterum constitutionum tenorem in naturalibus filiis statutum et in nepotes extendimus. **4.** Sed haec in his tantummodo sancimus, in quibus voluntate aliquid consecuti sunt. iura etenim ab intestato in avi successionem nemini eorum penitus aperimus. **5.** Et haec non solum eis accedere censemus a substantia avi paterni naturalis, sed etiam proavi vel eius cognationis, si quid saltem huiusmodi vocabuli in tam degeneres homines extendere maluerint.

D. k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

4. We both make precise in general terms and round off with a fixed rule (*definitio*) what was presenting itself in a variety of ways in this sort of matter, that always in cases of this kind, where there is doubt about the status of children, the time, not of conception, but of birth, shall be looked at. And this We do to benefit children.[184] And (so) We lay down that the time of birth is to be looked into, with the sole exception of those instances in which benefiting the children's status demands that the time of conception be emphasized.

Given March 18, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[12] *The same Augustus to John, Praetorian Prefect.* **pr.** A certain man with a legitimate son had a "natural" (i.e., illegitimate) grandson. The question was put as to whether, under the laws, the status of (legitimate) grandson ought to be granted to this kind of progeny. For he wished to bequeath all of his property to this natural grandson born of that legitimate son, who was now dead, on the ground that the imperial constitutions that prohibited bequeathing an entire estate or as much as one wished to bequeath of it, and limited the bequest to a fixed share, only applied to natural children (i.e., and not natural grandchildren). **1.** A doubt of this kind however arose also in another case. What if a grandfather has a legitimate or natural grandson by a son who is himself natural?

2. Therefore in all such doubtful cases, when there is no legitimate progeny to safeguard with regard to such persons and the presence of natural offspring cannot prejudice the rights of the legitimate, so that the necessity of bequeathing something to (the latter) pursuant to the laws looms, they shall be permitted to bequeath as much of their property to (the former) as they wish, clearly, (only) when there is no legitimate progeny surviving. **3.** For the constitutions prohibited leaving to natural children as much as one desired for this reason, because they thought that paternal misbehavior should be reined in. In the case of grandchildren, however, the same rule does not have to be observed in the aforesaid circumstances, where no legitimate offspring presents an obstacle. For if there is surviving legitimate progeny We apply the content set forth in the ancient *constitutiones* regarding natural children also to the case of grandchildren. **4.** But We enact these rules only in the case where they have obtained something through a will. For We do not open at all to any of them the right to succeed to a grandfather on intestacy. **5.** And We lay down that these benefits shall accrue to them from the estate not only of a paternal natural grandfather, but also of a great-grandfather or of his cognate relative, if they wish to apply any term even of this kind to such immoral persons.

Given November 1, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[184] The phrase *favor liberorum* suggests a policy inclination to benefit children. Compare similar phrases such as *favor libertatis, favor matrimonii, favor dotis.*

XXVIII De Tutela Testamentaria

[1] *Impp. Severus et Antoninus AA. Speratae.* Quem dicis tibi tutorem testamento patronae datum, si administrationi se non miscuit, nulla actione tibi tenetur: neque enim iure datus tutor fuit. quod si administravit sponte res tuas, experiri adversus eum actione negotiorum gestorum potes.

PP. XVII k. Aug. Apro et Maximo conss.

[2] *Imp. Antoninus A. Sabiniano.* Etsi a patre tuo testamento iure tutor tibi datus eo tempore, quo heres extitisti, in rebus humanis fuit, tamen codicillis alius tutor recte datus est et uterque propter voluntatem testatoris tutor erit, nisi testamento datum pater alium codicillis dando reprobaverit: tunc enim posterior solus tutor erit.

PP. id. April. duobus Aspris conss.

[3] *Imp. Alexander A. Gorgiae.* Si tutores testamento vobis dati sunt, quamquam unus vestrum suae aetatis factus sit, id est pupillarem aetatem excesserit, tutela tamen vestra ad eum non pertinet.

PP. V k. Ian. Maximo II et Aeliano conss.

[4] *Idem A. Feliciano.* Mater testamento filiis tutores dare non potest, nisi eos heredes instituerit. quando autem eos heredes non instituerit, solet ex voluntate defunctae datus tutor a praesidibus confirmari. nullo vero ex his interveniente si res pupillares qui dati sunt administraverint, protutelae actione tenentur.

PP. VII k. Iun. Iuliano et Crispino conss.

[5] *Impp. Valerianus et Gallienus AA. Daphno.* Si pupillorum pater alienum servum, de quo postulas, et tutorem esse voluit et liberum, ante tamen tutore alio pupillis dato, redimi et manumitti hunc apud praesidem et curatorem adiungi oportet.

PP. III k. Mart. Saeculare II et Donato conss.

Twenty-Eighth Title Tutelage Granted under a Will[185]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Sperata.* If the man you claim was given to you as a *tutor* in your female patron's will did not involve himself in the management of your affairs, he is not liable to you on an action (on tutelage), since he was not lawfully given as a *tutor*. But if he took up managing your property of his own accord, you can sue him with an action on the management of affairs (*negotia gesta*).

Posted July 16, in the consulship of Aper and Maximus (207).

[2] *Emperor* ANTONINUS *Augustus to Sabinianus.* Although the *tutor* who was given lawfully to you by your father in his will was still alive at the time you became heir, another *tutor* was nevertheless properly appointed in codicils. Both will be *tutores* in accordance with the wishes of the will-maker, unless your father in appointing the second one in the codicils released the one appointed in the will, for in that case only the second one will be *tutor*.

Posted April 13, in the consulship of the two Aspri (212).

[3] *Emperor* ALEXANDER *Augustus to Gorgias.* If *tutores* were given to you in a will although one of you had already reached adulthood, tutelage does not apply in his case.

Posted December 28, in the consulship of Maximus, for the second time, and Aelianus (223).

[4] *The same Augustus to Felicianus.* A mother cannot give her children *tutores* in her will unless she makes them her heirs. When, however, she does not make them heirs, it is customary for provincial governors to confirm the *tutor* named in the will of the decedent. But if this does not happen and those who are given (nonetheless) manage the affairs of the ward, they are liable in an action on quasi-tutelage (*actio protutelae*).

Posted May 26, in the consulship of Julian and Crispinus (224).

[5][186] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Daphnus.* If a father of minor children wished that someone else's slave, about whom you are making a claim, be free and the *tutor* of these children, and, nevertheless, another person has been given as a *tutor* to them beforehand, the slave ought to be purchased and manumitted before the provincial governor and added as a *curator*.

Posted February 28, in the consulship of Saecularis, for the second time, and Donatus (260).

[185] See D. 26.2; Inst. 1.14.
[186] Combine with C. 7.4.10.

[6] *Impp. Diocletianus et Maximianus AA. et CC. Domnae.* Si tibi pater avunculum testamento recte tutorem dedit nec is excusatus est, eum tutelae iudicio tam administratis quam neglectis, cum administrari deberent, apud competentem iudicem conveni secundum bonam fidem tibi satisfacere iussurum.

S. non. April. Sirmi CC. conss.

[7] *Idem AA. et CC. Tryphaenae.* Tutelae contra tutorem mota, quem testamento patris (si in eius fuisti potestate) datum proponis, reddi tibi si quid debetur competens iudex aditus iubebit. curatorem enim inutiliter in testamento dari non ambigitur.

D. XVII k. Mai. Sirmi CC. conss.

[8] *Impp. Theodosius et Valentinianus AA. Florentio pp.* Tutores etiam Graecis verbis licet in testamentis relinquere, ut ita tutores dari videantur, ac si legitimis verbis eos testator dedisset.

D. prid. id. Sept. Constantinopoli Theodosio A. XVII et Festo conss.

XXVIIII De Confirmando Tutore

[1] *Imp. Alexander A. Prisco.* Testamento matris tutores dati excusare necesse non habent, nisi decreto secundum voluntatem defunctae, et quidem inquisitione habita, dati fuerint.

PP. III non. Mart. Iuliano et *Crispino conss.*

[2] *Idem A. Valerio.* Neque per epistulam neque ex imperfecto testamento tutorem recte dari indubitati iuris est. sed voluntas patris in constituendis tutoribus vel curatoribus in huiusmodi casibus a iudice, ad cuius officium haec res pertinet, servari solet. secundum quae vereri non debes, ne tempus, antequam confirmareris, cesserit.

PP. VIII id. Aug. Alexandro A. II et Marcello conss.

[6] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Domna.* If your father properly gave you your maternal uncle as a *tutor* in his will, and he has not been excused, sue him in an action on tutelage for affairs that have been either managed or neglected – since they should have been managed – before the appropriate judge, who will order him to make you whole according the standard of good faith (*bona fides*).

Written April 5, at Sirmium, in the consulship of the Caesars (294).

[7] *The same Augusti and Caesars to Tryphaena.* If you raise an action on tutelage against the *tutor* you allege was appointed in your father's will – provided you were in his power (*potestas*) – the appropriate judge, once approached, will order whatever is owed to you to be paid. There is no doubt that a *curator* cannot be appointed in a will.

Given April 15, at Sirmium, in the consulship of the Caesars (294).

[8][187] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Florentius, Praetorian Prefect.* It is permitted to appoint *tutores* in a will even using Greek, so that *tutores* are deemed to have been appointed, as though the testator had used the statutory language (i.e., Latin).

Given September 12, at Constantinople, in the consulship of Theodosius Augustus, for the seventeenth time, and Festus (439).

Twenty-Ninth Title Confirming a *Tutor*[188]

[1] *Emperor* ALEXANDER *Augustus to Priscus. Tutores* appointed in a mother's will do not need to be excused (from acting) unless they were (subsequently) appointed by a judicial decree confirming this provision in the decedent's will, following, certainly, an enquiry into the facts.

Posted March 5, in the consulship of Julian and Crispinus (224).

[2] *The same Augustus to Valerius.* It is undoubted law (*indubitatum ius*) that a *tutor* cannot be properly appointed by a letter or by an invalid will. But in cases of this kind the wishes of a father in appointing *tutores* and *curatores* are customarily safeguarded by the judge responsible for these matters. Accordingly, you need not fear that time has run out before your confirmation.

Posted August 6, in the consulship of Alexander Augustus, for the second time, and Marcellus (226).

[187] = (with changes) Nov. Theod. 16.1.8. Combine with C. 6.23.21, 7.2.14.

[188] See D. 26.3. In this and following titles, the compilers tend to equate *tutores* and *curatores*.

[3] *Idem A. Sosiano.* Si, ut proponis, pupillo cuius meministi pater inutiliter testamento tutores dedit et, priusquam ii confirmarentur, alii ab eo cuius interest[xi] dati sunt, id quidem, quod iure gestum est, revocari non potest: an autem qui iudicium patris habent curatores eidem pupillo constitui debeant, aditus competens iudex perspectis utilitatibus eius aestimabit.

PP. III id. April. Modesto et Probo conss.

[4] *Imp. Iustinianus A. Iuliano pp.* Naturalibus liberis providentes damus licentiam patribus eorum in his rebus, quas quocumque modo eis dederint vel dereliquerint, scilicet intra praefinitum nostris legibus modum, etiam tutorem eis relinquere, qui debet apud competentem iudicem se confirmare et ita res gerere pupillares.

D. XV k. April. Constantinopoli Lampadio et Oresta conss.

XXX De Legitima Tutela

[1] *Impp. Diocletianus et Maximianus AA. Firminae.* Ad avunculos nec masculorum tutelae ex lege duodecim tabularum deferuntur, cum solum patruis, si non excusaverint, id ius tributum sit.

PP. VIII k. Iun. ipsis AA. IIII et III conss.

[2] *Idem AA. et CC. Asclepiodoto.* Ad agnatos pupilli iure legitimo sollicitudinem tutelae pertinere, nisi capitis deminutionem sustinuerunt, manifestissimum est.

S. III non. April. AA. conss.

[3] *Imp. Leo A. Erythrio pp.* Constitutione divae memoriae Constantini lege Claudia sublata, pro antiqui iuris auctoritate salvo manente

[xi] iurisdictio est

[3] *The same Augustus to Sosianus.* If, as you allege, a father, without legal effect, appointed *tutores* in his will for the minor child whom you mention, and, before these were confirmed, others were appointed by the official with jurisdiction in the matter, that which was done according to the law cannot, certainly, be rescinded. Whether, however, those who enjoyed the confidence of the father ought to be appointed as *curatores* to the same minor ward, the appropriate judge, once approached, will determine with an eye to the child's best interest (*utilitates*).

Posted April 11, in the consulship of Modestus and Probus (228).

[4][189] *Emperor Justinian Augustus to Julian, Praetorian Prefect.* In looking out for the interests of "natural" (illegitimate) children, We grant permission to their fathers also to appoint a *tutor* for them (in their will) regarding that property which in any way at all they give or bequeath to them, clearly within the limits already set forth in Our laws. The *tutor* ought to be confirmed by the appropriate judge and then manage the property of the minor ward.

Given March 18, at Constantinople, in the consulship of Lampadius and Orestes (530).

Thirtieth Title Statutory Tutelage[190]

[1] *Emperors Diocletian and Maximian Augusti to Firmina.* Under the Twelve Tables tutelage of males is not granted to maternal uncles, since this privilege is conceded only to paternal uncles, unless they are excused.

Posted May 25, in the consulship of the Augusti, for the fourth and the third time, respectively (290).

[2][191] *Emperors Diocletian and Maximian Augusti and the Caesars to Asclepiodotus.* It is very clear that the responsibility for tutelage of a minor ward accrues to his or her agnates according to a privilege granted by statute (the Twelve Tables), unless they have undergone a change in legal status (i.e., emancipation).

Written April 3, in the consulship of the Augusti (293).

[3][192] *Emperor Leo Augustus to Erythrius, Praetorian Prefect.* Under the constitution enacted by Constantine of blessed memory abolishing the Lex Claudia,[193]

[189] Combine with C. 5.27.11, 5.35.3.

[190] See D. 26.4; Inst. 1.15, 17–18. In the context of tutelage, *legitimus vel sim.* consistently refers to the Twelve Tables (5.6) as modified by subsequent statutes.

[191] Combine with C. 5.31.9.

[192] Combine with C. 1.4.16, 1.18.13, 5.1.5, 5.6.8.

agnationis iure tam consanguineus (id est frater) quam patruus cetérique legitimi ad pupillarum feminarum tutelam vocantur.

D. k. Iul. Marciano cons.

[4] *Imp. Anastasius A. Polycarpo pp.* Frater emancipatus, qui in germani sui vel sororis successionem omnes inferiores seu prolixiores gradus non tantum cognatorum, sed etiam agnatorum antecedere a nobis pro nostra dispositione iussus est, etiam ad legitimam fratrum et sororum nec non liberorum fratrum tutelam, quasi minime patris potestate per ius emancipationis relaxatus, si non alia iuri cognita excusatione munitus sit, vocari nec sub praetextu capitis deminutionis alienum huiusmodi onere semet contendere sancimus.

D. k. April. Iohanne et Paulino conss.

[5] *Imp. Iustinianus A. Demostheni pp.* **pr.** Nemo neque frater neque alius legitimus in tutelam sive ingenui sive liberti vocetur, antequam quintum et vicesimum annum suae aetatis impleat. immineat enim ei pro sua tantummodo administratione periculum nec alieno onere alius praegravetur. **1.** Sic etenim et pupillis et adultis competens gubernatio inducitur et naturalis ordo per omnia conservabitur. cui[xii] enim ferendum est eundem esse tutorem et sub tutela constitui, et iterum eundem curatorem et sub cura agere? haec certe et nominum et rerum foeda confusio est.

2. Discretis itaque omnibus vel dativi vel legitimi fiant tutores vel curatores ii, qui talis aetatis sunt, cui suarum rerum administratio committitur, quorumque res possunt plenissimo iure hypothecarum teneri. **3.** Omnibus, quae de successionibus tam ingenuorum quam libertorum prioribus legibus disposita sunt, in suo robore duraturis nec aliquam

[xii] qui

the rights of agnates were restored as in the ancient law (*ius antiquum*), meaning that, for the tutelage of female minor wards, siblings with the same father – that is, a brother – are as eligible as paternal uncles and the rest recognized by statute (*legitimi*).

Given July 1, in the consulship of Marcian (472).[194]

[4] *Emperor* Anastasius *Augustus to Polycarpus, Praetorian Prefect.* We ordained in a prior statute (*dispositio*)[195] that, with regard to succeeding to a full brother or sister, an emancipated brother shall take precedence over all persons of lesser or more distant degrees of relationship, not only cognates but also agnates. We (now) lay down that he shall also be eligible under the statutory regime for the tutelage of his brothers and his sisters, as well as of his brother's children, as though he had not at all been freed from paternal power (*potestas*) through the procedure of emancipation unless he is protected by some other legally recognized excuse; nor shall he assert that he is free from such a burden under the pretext of his change in status.

Given April 1, in the consulship of John and Paulinus (498).

[5] *Emperor* Justinian *Augustus to Demosthenes, Praetorian Prefect.* pr. No one, not a brother nor any person statutorily charged (*legitimus*), shall be eligible for the tutelage of a free-born or freed-person before completing 25 years of age. So he shall bear liability only in connection with the management of his own property and shall not be weighed down by someone else's burden. 1. For in this way sound management is introduced for the property of both minor and adult wards, and the natural order will be preserved in all things. For how is it tolerable that the same person is both a *tutor* and placed under tutelage, or again is both a *curator* and placed under curatorship? Such phenomena are at minimum an ugly confusion of names and things.

2. Therefore, with all proper distinctions having been drawn, those persons shall become *tutores* or *curatores*, whether appointed (in a will or by an official) or qualifying under statute (*legitimi*), who are old enough to have the management of their own property granted to them and whose property can be liable to an unrestricted lien (hypothec). 3. All dispositions made by prior laws regarding the succession to the estates both of free-born and of freed-persons shall remain (fully) valid and not suffer any derogation through the rules (*sanctio*) of this instant statute (*lex*), especially concerning the succession

[193] C.Th. 3.17.2. The lex Claudia, passed in the reign of the Emperor Claudius, abolished the agnatic tutelage over women.

[194] The precise year is uncertain: 472 or 469. Seeck accepts Krüger's date.

[195] This does not survive. See under C. 6.57.15.1.

imminutionem ex praesentis legis sanctione accepturis maxime in libertorum successionibus ne videantur ex eo, quod ad tutelae gravamen non veniunt, successionis emolumentum amittere.

Recitata septimo in novo consistorio palatii Iustiniani. d. III k. Nov. Decio vc. cons.

XXXI Qui Petant Tutores vel Curatores

[1] *Imp. Antoninus A. Chrysanthae.* Admone adulescentem, adversus quem consistere vis, ut curatores sibi dari postulet, cum quibus secundum iuris formam consistas. qui si in petendis his cessabit, potes tu competentem iudicem adire, ut in dandis curatoribus officio suo fungatur.

PP. II non. Febr. Messala et Sabino conss.

[2] *Idem A. Epaphrodito.* Patroni tui filii si eius aetatis sunt, ut res eorum per tutores administrari debeant, cura adire praetorem et nomina edere, ex quibus tutores constituantur, ne, si cessaveris, obsequii deserti periculum subeas.

PP. III non. Iul. Messala et Sabino conss.

[3] *Idem A. Atalantae.* In locum tutoris defuncti vel in perpetuum relegati alium dari tutorem filiis tuis idoneum ex eadem provincia ab iudice competente postula, qui secundum officium suum utilitatibus eorum providebit.

PP. IIII id. Iul. Laeto II et Cereale conss.

[4] *Idem A. Domnino.* Si filiis debitoris tui non sunt necessarii, qui tutores petant, potes ipse curare, ut accipiant, per quos legitime defendantur.

PP. III id. Iul. Laeto II et Cereale conss.

[5] *Imp. Alexander A. Fuscianae.* Amita tutores petere filiis fratris sui non prohibetur.

to the estates of freed-persons, so that they (i.e., the young) are not deemed to lose the benefits of succession because they are not eligible for the burden of tutelage.

Recited seven times in the New Consistory of Justinian's Palace. Given October 30, in the consulship of the vir clarissimus *Decius (529).*

Thirty-First Title Those Seeking to Have *Tutores* or *Curatores*[196]

[1] *Emperor* ANTONINUS *Augustus to Chrysantha.* Admonish the young adult (*adulescens*), against whom you wish to bring a lawsuit, to apply for *curatores* to be appointed for him, so that you may proceed with them according to the rules of law (*iuris forma*). If he fails to apply for them, you can approach the appropriate judge to fulfill his responsibility by appointing *curatores.*

Posted February 4, in the consulship of Messala and Sabinus (214).

[2] *The same Augustus to Epaphroditus.* If the children of your patron are of an age such that their property ought to be managed through *tutores*, take care to approach the Praetor and produce names (of persons) from among whom *tutores* can be appointed, in order that you avoid liability for neglect of a required duty if you fail to do so.

Posted July 5, in the consulship of Messala and Sabinus (214).

[3] *The same Augustus to Atalanta.* In place of a *tutor* who is deceased or permanently relegated (exiled), apply to the appropriate judge for another *tutor* for yout children who is suitably wealthy and from the same province. He (the judge) will, in fulfillment of his duty, provide for their interests (*utilitates*).

Posted July 12, in the consulship of Laetus, for the second time, and Cerealis (215).

[4] *The same Augustus to Domninus.* If no close relatives of the children of your (now deceased) debtor are available to apply for *tutores*, you yourself can see to it that they receive ones through whom they are defended according to the rules of law.

Posted July 13,[197] in the consulship of Laetus, for the second time, and Cerealis (215).

[5] *Emperor* ALEXANDER *Augustus to Fusciana.* A paternal aunt is not forbidden to apply for *tutores* for her brother's children.

[196] See D. 26.6.

[197] The precise day is uncertain: the alternative is July 12.

PP. v k. Iul. Maximo II et Aeliano conss.

[6] *Idem A. Otaciliae.* Matris pietas instruere te potest, quos tutores filio tuo petere debes, sed et observare, ne quid secus quam oportet in re filii pupilli agatur. petendi autem filiis curatores necessitas matribus imposita non est, cum puberes minores anno vicesimo quinto ipsi sibi curatores, si res eorum exigit, petere debeant.

PP. x k. Oct. Iuliano et *Crispino conss.*

[7] *Imp. Gordianus A. Dionysio.* Admone eam, quae quondam pupilla tua fuit, cum eam non tantum viri potentem, sed etiam nupsisse proponas, ut sibi petat curatorem. quod si ea petere neglexerit, quo maturius possis rationes reddere administrationis, adito eo cuius super ea re notio est petere curatorem non vetaris.

PP. VI id. Ian. Gordiano A. et Aviola conss.

[8] *Impp. Diocletianus et Maximianus AA. Musico.* Cum a matribus sedulum petendi tutoris officium exigatur, non fortuiti casus impedimentis adscribantur, proponasque procuratorem, qui ad petendum pupillo tutorem a matre fuerat constitutus, a latronibus interfectum petitionem[xiii] ex necessitate demoratam esse, ab hereditatis successione matrem repelli, cuius nullum vitium intercessisse adseris, perquam durum est.

PP. v id. Mart. Tiberiano et Dione conss.

[9] *Idem AA. et CC. Asclepiodoto.* Cum iure habenti tutorem tutor dari non possit, intellegis matrem non officium pietatis in petendo tutore deseruisse, sed iure munitam merito filio suo tutorem non postulare.

S. III non. April. Byzantii AA. conss.

[10] *Idem AA. et CC. Prisco.* Nepotibus fratris tui, si eorum mater in petendis tutoribus debito non fungatur officio, petere tutores sollemniter potes.

S. prid. k. Mai. Sirmi CC. conss.

[xiii] petitionemque

Posted June 27, in the consulship of Maximus, for the second time, and Aelianus (223).

[6][198] *The same Augustus to Otacilia.* The familial affection (*pietas*) of a mother can instruct you as to which *tutores* you ought to seek for your son, but also ensure that nothing untoward is done regarding the property of your son, a minor ward. Moreover, the necessity of applying for *curatores* for their children is not imposed on mothers, since those who are past the age of adulthood (i.e., *c.* 14 for males and 12 for females) but younger than 25 ought to seek *curatores* for themselves, if their situation demands it.

Posted September 22, in the consulship of Julian and Crispinus (224).

[7] *Emperor* G*ORDIAN Augustus to Dionysius.* Admonish the woman who used to be your minor ward, since you assert that she is not only of marriageable age, but in fact married, to apply for a *curator* for herself. But if she neglects to seek one, in order that you may more quickly give a final account of your management, you are not forbidden from approaching the official with jurisdiction in this matter and applying for a *curator* (for her).

Posted January 8, in the consulship of Gordian Augustus and Aviola (239).

[8] *Emperors* D*IOCLETIAN and* M*AXIMIAN Augusti to Musicus.* Although energetic exercise of the responsibility of seeking a *tutor* is required of mothers, random events shall not be counted against them. You allege that a procurator, who was chosen by a mother to apply for a *tutor* for her son, a minor ward, had been murdered by robbers, and the application (for a *tutor*) has been of necessity delayed; but it is very harsh to deny rights to the inheritance to a mother whom you assert to be without blame.

Posted March 11, in the consulship of Tiberianus and Dio (291).

[9][199] *The same Augusti and the Caesars to Asclepiodotus.* Since a *tutor* cannot be given to someone who lawfully has a *tutor*, you understand that the mother has not neglected the duty imposed upon her by familial affection (*pietas*) in seeking a *tutor*, but that, fortified by legal principle, she rightly does not apply for a *tutor* for her son.

Written April 3, at Byzantium, in the consulship of the Augusti (293).

[10] *The same Augusti and Caesars to Priscus.* If the mother of your brother's grandsons does not discharge the duty she owes in seeking *tutores* for them, you can make formal application for *tutores*.

Written April 30, at Sirmium, in the consulship of the Caesars (294).

[198] Combine with C. 5.35.1.
[199] Combine with C. 5.30.2.

[11] *Imp. Zeno A. Dioscoro pp.* Matres naturalibus etiam filiis ad similitudinem eorum, qui ex iustis ac legitimis nuptiis sunt procreati, petendorum tutorum necessitati subiaceant, nulla eis ignorantia iuris ad evitanda legibus vel sacris constitutionibus definita, si petitionem tutorum minus curaverint, profutura.

D. k. Sept. Constantinopoli Zenone A. II cons.

XXXII Ubi Petantur Tutores vel Curatores

[1] *Imp. Antoninus A. Aristobulae.* Magistratus eius civitatis, unde filii tui originem per condicionem patris ducunt vel ubi eorum sunt facultates, tutores vel curatores his quam primum secundum formam perpetuam dare curabunt. quod si filii tui neque possident quicquam in provincia, ubi morantur, neque inde originem ducunt, restituti apud patriam suam et ubi patrimonium habent morabuntur, ut ibi defensores legitimos sortiantur.

PP. k. Oct. Laeto II et Cereale conss.

XXXIII De Tutoribus et Curatoribus Illustrium vel Clarissimarum Personarum

[1] *Imppp. Valentinianus Theodosius et Arcadius AAA. Proculo pu.* pr. Illustris praefectus urbis adhibitis decem viris e numero senatus amplissimi et praetore clarissimo viro, qui tutelaribus cognitionibus praesidet, tutores curatoresve ex quolibet ordine idoneos faciat retentari. et sane id libero iudicio expertesque damni constituent iudicantes. 1. Et si regendis pupillaribus substantiis singuli creandorum pares esse non possunt, plures ad hoc secundum leges veteres conveniet advocari, ut, quem coetus ille administrandis negotiis pupillorum dignissimum iudicabit,

[11] *Emperor* Zeno *Augustus to Dioscorus, Praetorian Prefect.* Mothers shall be subject to an obligation to seek *tutores* also for their "natural" (illegitimate) children, on the analogy of those who are born in proper and legitimate marriages, and no ignorance of the law (*ius*) shall avail them in evading what is prescribed in the laws (*leges*) and imperial constitutions if they fail to make an application for *tutores*.

Given September 1,[200] *at Constantinople, in the consulship of Zeno Augustus, for the second time (479).*

Thirty-Second Title Where Application Is Made for *Tutores* and *Curatores*[201]

[1] *Emperor* Antoninus *Augustus to Aristobula.* The public officials of the town from which your children trace their origin because of their father's status, or where they have their sources of income, will see to appointing *tutores* or *curatores* for them as soon as possible according to the rules set forth in the Perpetual Edict (*forma perpetua*). But if your children neither possess any property in their province of residence, nor trace their origin from that place, they will be restored to their hometown and where they own property and will reside there, so that they there obtain legally recognized protectors.

Posted October 1, in the consulship of Laetus, for the second time, and Cerealis (215).

Thirty-Third Title *Tutores* and *Curatores* of Persons with the Rank of *Illustris* or *Clarissimus*

[1][202] *Emperors* Valentinian, Theodosius, *and* Arcadius *Augusti to Proculus, City Prefect.* **pr.** The *vir illustris* City Prefect shall summon ten men from the ranks of the most distinguished Senate as well as the *vir clarissimus* Praetor who presides over cases involving tutelage, and shall see to it that suitable *tutores* and *curatores* are secured without regard to rank (*ordo*). Of course, they will make decisions of their own accord, free from liability. **1.** If individual candidates are not equal to the task of managing a ward's property, it will be appropriate, according to the ancient laws, that several persons be appointed to this end, so that the one whom the above committee (*coetus*) will deem most

[200] Lounghis *et al.* date to February 1, 475.
[201] See D. 26.6.
[202] = (with changes) C.Th. 3.17.3 (omitting §5).

sola sententia obtineat praefecturae, super cuius nomine, sollemnitate servata, postea per praetorem interponatur decretum. **2.** Itaque hoc modo remoti a metu qui consilio adfuerint permanebunt et parvulis adultisque clarissimis iusta defensio sub hac prudentium deliberatione perveniet.

3. Quod tamen circa eorum personas censuisse nos palam est, quibus neque testamentarii defensores neque legitimi vita aetate facultatibus suppetunt. nam ubi forte huiuscemodi homines offeruntur, si nihil ad defensionem suis privilegiis comparabunt, ut teneri possint, iure praescribimus. **4.** Ceterum alia, quae in causis minorum antiquis legibus cauta sunt, manere intemerata decernimus.

5. In provinciis autem curiales in nominandis tutoribus et curatoribus clarissimarum personarum exhibeant debitam cautionem, et discriminis sui memores cognoscant indemnitati minorum obnoxias etiam suas deinceps esse facultates.

D. III k. Ian. Mediolani Timasio et Promoto conss.

[2] *Imppp. Valentinianus Theodosius et Arcadius AAA. Aurelio pu.* Generali lege prospectum est, ne qui ad illustrium senatorum tutelam curialibus occupati necessitatibus vocarentur.

D. VIII k. Aug. Theodosio A. III et Abundantio conss.

XXXIIII Qui Dare Tutores vel Curatores et Qui Dari Possunt

[1] *Imp. Alexander A. Ambibulo.* Cum tibi in ea aetate constituto, ut, si de statu constaret, per tutores sive curatores negotia tua administrari deberent, libertatis controversiam fieri adleges, non oportuit impediri,

capable of managing the ward's property shall hold this position solely through the decision of the Prefect, which nomination shall be confirmed, with due procedure being preserved, by a subsequent judicial decree of the Praetor. **2.** Accordingly, those who participate in the work of the committee (*consilium*) will in this way remain free from fear (of liability for the acts of guardians) and an adequate protection of the interests of minor and adult wards with the rank of *clarissimus* will be afforded through the deliberations of men of learning.

3. It is clear, all the same, that We have made provision (only) concerning such persons as have no guardians (*defensores*) given under a will or provided according to statutory rules (and) who are of an appropriate lifestyle, age, and level of financial resources. For when men of this type happen to present themselves, We with justice direct that they be held to perform this duty if they obtain nothing by way of privileges to excuse them. **4.** As for the rest, We ordain that the other things that have been laid down by the ancient laws concerning the situations of minor wards shall remain unchanged.

5. Moreover, town councilors (*curiales*) in the provinces shall furnish the guaranty (*cautio*) required in naming *tutores* and *curatores* for persons with the rank of *clarissimus* and, mindful of the risk to themselves, shall realize that henceforth their property too shall be liable to make good the losses incurred by minor wards.

Given December 30,[203] at Mediolanum (Milan), in the consulship of Timasius and Promotus (389).

[2] *Emperors VALENTINIAN, THEODOSIUS, and ARCADIUS Augusti to Aurelius, City Prefect.* It has been laid down through general statute (*lex generalis*) that no one involved with the duties of a town councilor shall be eligible to act as *tutor* for senators with the rank of *illustris*.

Given July 25, in the consulship of Theodosius Augustus, for the third time, and Abundantius (393).

Thirty-Fourth Title Those Who Can Appoint, and Those Who Can Be Appointed As, *Tutores* and *Curatores*[204]

[1] *Emperor ALEXANDER Augustus to Ambibulus.* Although you are of an age such that, if your status were unambiguous, your affairs ought to be managed through *tutores* or *curatores*, and you declare that your status as a free person

[203] The precise day is uncertain: an alternative is December 28, but Seeck prefers December 27, 389.
[204] See D. 26.5.

quo magis liberali causa ordinata, quia interim pro libero habebaris, curator tibi daretur, per quem defendi causa tua potest.

PP. k. Nov. Alexandro A. cons.

[2] *Idem A. Artemisiae.* Maritus etsi rebus uxoris suae debeat adfectionem, tamen curator ei creari non potest.

PP. k. Iul. Fusco II et Dextro conss.

[3] *Imp. Philippus A. Dolenti.* Luminibus captum curatorem habere falso tibi persuasum est.

PP. XIII k. Aug. Peregrino et Aemiliano conss.

[4] *Idem A. Emerito militi.* Armatae militiae muneribus occupatus neque si legitimus sit neque si ex testamento datus fuerit nec alio modo, etsi voluerit, tutor aut curator fieri potest: sed si errore ductus res administraverit, negotiorum gestorum actione convenitur.

PP. X k. Aug. Peregrino et Aemiliano conss.

[5] *Impp. Diocletianus et Maximianus AA. et CC. Aelianae.* Neque a praeside alterius provinciae neque a magistratibus municipalibus tutorem ortum ex alia civitate nec domicilium ubi nominatur habentem iure dari posse ab eo, cuius iurisdictioni subiectus non est, certissimi iuris est: neque cessatio iniuncti perperam officii ad periculum eius pertinet.

S. XII k. Mai. AA. conss.

[6] *Idem AA. et CC. Leontio.* Quod dicis matrem filiis tutores nolle petere, super hac re adi praesidem provinciae, cum, si eam neglexisse perspexerit, etiam ipse magistratus dare tutores vel nomina mittere, ut ab ipso decreto tribui possint, iubere non prohibeatur.

PP. prid. k. Mai. AA. conss.

[7] *Idem AA. et CC. Rufo.* In servili condicione constitutum tutorem vel curatorem a praeside dari non posse nullam habet iuris dubitationem.

S. prid. non. Iul. Philippopoli AA. conss.

has been disputed, this ought not to have prevented a *curator* being appointed for you through whom your case can be defended, and all the more so since the judicial procedure over your status had begun and so in the meantime you were considered free.

Posted November 1, in the consulship of Alexander Augustus (222).

[2] *The same Augustus to Artemisia.* Even if a husband should show concern for his wife's property, he cannot be appointed as a *curator* for her.

Posted July 1, in the consulship of Fuscus, for the second time, and Dexter (225).

[3] *Emperor* PHILIP *Augustus to Dolens.* You have been wrongly persuaded that a sight-impaired person has a *curator* (appointed for him or her).

Posted July 20, in the consulship of Peregrinus and Aemilianus (244).

[4] *The same Augustus to Emeritus, a soldier.* A person employed in the duties of active military service cannot become a *tutor* or *curator*, whether appointed in a will, through statutory rules, or in any other way, even if he wishes this. But if he, induced by mistake, manages (a ward's) property, he can be sued on an action for management of affairs (*negotia gesta*).

Posted July 23, in the consulship of Peregrinus and Aemilianus (244).

[5] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Aeliana.* It is a very settled legal rule (*certissimum ius*) that a person who is a native of another town and who does not have his legal domicile where he is nominated cannot validly be appointed as a *tutor* by someone to whose jurisdiction he is not subject, whether by the governor of a different province or by the municipal officials (of a different town). He is not liable for failure to fulfill a duty wrongly imposed upon him.

Written April 20, in the consulship of the Augusti (293).

[6][205] *The same Augusti and Caesars to Leontius.* Since you say that a mother refuses to seek *tutores* for her children, approach the governor of the province about this matter. If he determines that she has neglected her duty, even he shall not be forbidden to order the municipal authorities to appoint *tutores* or to provide names from whom they can be appointed by his own judicial decree.

Posted April 30, in the consulship of the Augusti (293).

[7] *The same Augusti and Caesars to Rufus.* There is no doubt at law that a man of slave status cannot be appointed *tutor* or *curator* by a provincial governor.

Written July 6, at Philippopolis, in the consulship of the Augusti (293).

[205] Combine, probably, with C. 5.71.12, addressed on the same day to Leontius.

[8] *Idem AA. et CC. Euelpisto.* Creditorem debitoribus tutorem datum non tantum petitionem non amittere, sed etiam ipsum sibi posse solvere non ambigitur.

PP. V[xiv] *non. Ian. CC. conss.*

[9] *Idem AA. et CC. Maximiano.* Si sororis tuae filiis, tutore legitimo patruo constituto nec ullo excusato privilegio, tutor datus es, cum habenti tutorem alium dari prohibeant iura, necessitatem administrationis ad eum pertinere nec te datione teneri non ambigitur.

S. III k. Febr. Sirmi CC. conss.

[10] *Idem AA. et CC. Florentino.* Curatorem habenti neque adiungi nisi causa cognita nec in loco eius alium substitui non ante priore remoto ambigui iuris non est: teque adfuturum damni, quod medio tempore negotiis pupillaribus contigit, esse succedaneum, cum actorem periculo tuo constituere debueris, nec iure magistratum in absentiam tuam alium creasse certum est.

PP. III k. April. CC. conss.

[11] *Imp. Constantinus A. et Constantinus C. ad Bassum pu.* In universis litibus placet non prius puberem iustam habere personam, nisi interposito decreto aut administrandi patrimonii gratia aut in litem fuerit curator datus, ut iuxta praecedentia nostrae pietatis statuta legitime initiatae litis agitata in iudiciis controversia finiatur.

D. IIII id. Oct. Aquileiae Constantino A. V et Licinio C. conss.

[12] *Imppp. Gratianus Valentinianus et Theodosius AAA. Eutropio pp.* Curator adulescenti ordinatus post inchoatam litem non potest

[xiv] II

[8] *The same Augusti and Caesars to Euelpistus.* There is no doubt that a creditor appointed *tutor* for his debtors not only does not lose his claim, but can even pay himself.

Posted January 4, in the consulship of the Caesars (294).[206]

[9] *The same Augusti and Caesars to Maximianus.* If you have been appointed *tutor* to your sister's children after their paternal uncle had (previously) been made *tutor* according to statutory rules and has no legally recognized excuse, since the law (*iura*) forbids appointing a *tutor* for a person who already has one, there is no doubt that he has the obligation to manage their property and that you are not bound by your appointment.

Written January 30, at Sirmium, in the consulship of the Caesars (294).

[10] *The same Augusti and Caesars to Florentinus.* There is no doubt at law that a person who has a *curator* cannot be given another one without a judicial hearing or that a substitution cannot be made without removing the prior *curator*. So it is certain that you are going to be liable for loss that befell the minor ward's property in the period of your absence, since you ought to have appointed a representative at your own risk, nor (could) an official have legally appointed another while you were away.

Posted March 30, in the consulship of the Caesars (294).

[11][207] *Emperor* CONSTANTINE *Augustus and* CONSTANTINE *Caesar to Bassus, City Prefect.* It is decided that in all lawsuits a (young adult) person who has reached the age of legal majority shall not possess full legal capacity before a *curator* has been appointed through judicial decree, whether to manage the ward's property or to serve as his or her representative in court, so that, in addition to prior legislative manifestations of Our affection for Our subjects (*pietas*),[208] a controversy debated in the courts over a lawfully initiated lawsuit may reach closure.

Given October 12, at Aquileia, in the consulship of Constantine Augustus, for the fifth time, and Licinius Caesar (319).[209]

[12] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Eutropius, Praetorian Prefect.* Once a lawsuit has begun, a *curator* appointed for a young adult ward (*adulescens*) cannot, under the pretext of a special

[206] Mommsen dates to January 3, 294.
[207] = (with minor changes) C.Th. 3.17.1.
[208] C.Th. 2.4.1.
[209] The precise day is uncertain (an alternative is October 13, but Seeck gives October 2); the year is more likely to be 318: Projet Volterra.

sub praetextu specialis curatoris a se nominati aut litem contestatam deserere aut ab administratione se subtrahere.

D. IIII k. Oct. Constantinopoli Eucherio et Syagrio conss.

[13] *Impp. Honorius et Theodosius AA. Monaxio pu.* Ne magistratuum ulterius procedat licentia, plenius designamus, ne patrimonialem colonum sive alium, qui privilegio ab hac nuncupatione defenditur, tutelae muneris adstringat officium.

D. ... Honorio VIII et Theodosio III AA. conss.

XXXV Quando Mulier Tutelae Officio Fungi Potest

[1] *Imp. Alexander A. Otaciliae.* Tutelam administrare virile munus est, et ultra sexum femineae infirmitatis tale officium est.

PP. x k. Oct. Iuliano et *Crispino conss.*

[2] *Imppp. Valentinianus Theodosius et Arcadius AAA. Tatiano pp.* **pr.** Matres, quae amissis viris tutelam administrandorum negotiorum in liberos postulant, priusquam confirmatio officii talis in eas iure veniat, fateantur actis sacramento praestito ad alias se nuptias non venire. 1. Sane in optione huiuscemodi nulla cogitur, sed libera in condiciones quas praestituimus voluntate descendat: nam si malunt alia optare matrimonia, tutelas filiorum administrare non debent. 2. Sed ne sit facilis in eas post tutelam iure susceptam inruptio, bona eius primitus, qui tutelam gerentis adfectaverit nuptias, in obligationem venire et teneri obnoxia rationibus parvulorum praecipimus, ne quid incuria, ne quid fraude depereat.

curator being named by himself, either abandon a lawsuit that is underway or withdraw himself from management of the ward's property.

Given September 28, at Constantinople, in the consulship of Eucherius and Syagrius (381).

[13] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Monaxius, City Prefect.* In order that the outrageous conduct of public officials proceed no further, We point out more clearly that the responsibility of taking up a tutelage shall not obligate a bound tenant of the Emperor (*patrimonialis colonus*) or anyone protected from such an appointment by a legally recognized excuse.

Given ... in the consulship of Honorius, for the eighth time, and Theodosius, for the third time, Augusti (409).[210]

Thirty-Fifth Title When a Woman Can Discharge the Responsibility of Tutelage

[1][211] *Emperor* ALEXANDER *Augustus to Otacilia.* Managing a tutelage is a duty reserved for males (*munus virile*), such a responsibility being beyond (the capacity of) the gender of womanly weakness (*ultra sexum femineae infirmitatis*).[212]

Posted September 22, in the consulship of Julian and Crispinus (224).

[2][213] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Tatianus, Praetorian Prefect.* **pr.** Mothers who, after losing their husbands, formally request tutelage in order to administer their children's property, before they receive ratification at law of such a responsibility, shall declare in the public records, upon offering an oath, that they will not remarry. **1.** Of course, no woman is forced to make such a choice, but shall, of her own free will, agree to the conditions We have set forth. For if they prefer to remarry, they ought not to manage the tutelage of their children. **2.** And so to prevent easy interference with such women after they lawfully undertake tutelage, We instruct that, from the first, the property of that man who aims at marriage with a woman managing (her children's) tutelage shall be encumbered and bound to cover (losses in) the accounts of the little ones so that nothing be lost through neglect or through fraud.

[210] A version of the constitution at C. 1.4.30 has perhaps dropped out here.
[211] Combine with C. 5.31.6.
[212] On "gender" as a translation here see the note at C. 5.3.20.
[213] = (with changes) C.Th. 3.17.4.

3. His illud adiungimus, ut mulier, si aetate maior est, tunc demum petendae tutelae ius habeat, cum tutor testamentarius vel legitimus defuerit vel privilegio a tutela excusetur vel suspecti genere submoveatur vel ne suis quidem per animi aut corporis valetudinem administrandis facultatibus idoneus inveniatur. 4. Quod si feminae tutelas refugerint et praeoptaverint nuptias, tunc demum vir illustris praefectus urbis adscito praetore, qui impertiendis tutoribus praesidet, sive iudices, qui in provinciis iura restituunt, de alio ordine per inquisitionem dari minoribus defensores iubebunt.

D. XII k. Febr. Mediolano Valentiniano A. IIII et Neoterio conss.

[3] *Imp. Iustinianus A. Iuliano pp.* **pr.** Si pater secundum nostram constitutionem naturalibus liberis in his rebus, quae ab eo in eos profectae sunt, tutorem non reliquerit, mater autem voluerit eorum, sive masculi sunt sive feminae, subire tutelam, ad exemplum legitimae subolis liceat ei hoc facere, quatenus actis sub competenti iudice intervenientibus iuramentum antea praestet, quod ad nuptias non perveniat, sed pudicitiam suam intactam conservet et renuntiet senatus consulti Velleiani praesidio omnique alio legitimo auxilio suamque substantiam supponat. 1. Et ita filiorum suorum vel filiarum naturalium tutricem eam existere sancimus: omnibus, quae pro matribus et liberis earum ex legitimo matrimonio progenitis divalibus constitutionibus cauta sunt, in huiusmodi matribus observandis. 2. Si enim in filiis iustis, in quibus et testamentariae et legitimae sunt tutelae, tamen matribus (his deficientibus) ad providentiam filiorum suorum venire conceditur, multo magis in huiusmodi casibus, ubi legitima tutela evanescit, saltem alias eis dari humanissimum est.

D. XV k. April. Constantinopoli Lampadio et Oreste vv. cc. conss.

3. To these rules We add that the woman, if she is of age (i.e., 25 or older), shall only then have the right to request the tutelage when no *tutor* has been named in a will or appointed according to statutory rules, or when one has been released from tutelage for a legally recognized excuse, has been removed because he falls into a class of suspect persons, or has been found to be inadequate, for reasons of mental or physical health, to manage even his own property. 4. But if women shun tutelage and prefer marriage instead, then in the end the *vir illustris* City Prefect, acting in concert with the Praetor who supervises the appointment of *tutores*, or the judges (at minimum, governors) who administer the laws in the provinces, will, after an investigation, order the appointment of guardians of another sort (*ordo*) for the minor wards in question.

Given January 21, at Milan, in the consulship of Valentinian Augustus, for the fourth time, and Neoterius (390).

[3][214] *Emperor* JUSTINIAN *Augustus to Julian, Praetorian Prefect.* **pr.** If a father has not, in accordance with Our constitution,[215] named a *tutor* for his "natural" (illegitimate) children regarding that property which they have obtained from him, but their mother wishes to undertake the tutelage, then, regardless of whether they are male or female, she shall be permitted to do this on the analogy of legitimate children, provided that she swears beforehand an oath for the public records before the appropriate judge, that she will not remarry, but preserve her chastity (*pudicitia*) intact, she renounces the protection of the *SC Vellaeanum* and every other legally recognized safeguard, and places a lien on her own property. **1.** We ordain that she shall become in this way the female *tutor* (*tutrix*) of her natural sons and daughters. All provisions that have been set forth in imperial constitutions regarding mothers and their children born from lawful marriage shall apply to mothers of this kind. **2.** For just as in the case of legitimate children, who have (in theory) a *tutor* named in a will or appointed according to the statutory rules, but, when these are unavailable, their mothers are permitted to intervene in order to look out for the interests of their own children, so it is much more consistent with a very high standard of humane sympathy (*humanissimum*) that in cases of this kind, where there is no prospect of tutelage according to the statutory rules, it is at least otherwise provided for them.

Given March 18, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[214] Combine with C. 5.27.11, 5.29.4.
[215] C. 5.29.4.

XXXVI In Quibus Causis Tutorem Habenti Tutor vel Curator Dari Potest

[1] *Imp. Antoninus A. Tiberiano et Rufo.* **pr.** Si in locum eius tutoris ad tempus dati estis, qui rei publicae causa aberat, isque iam finito munere quod ei iniunctum est abesse desiit, quin ad eius officium curamque pertineant negotia pupillae, ambigere non debetis. **1.** Sed consultius feceritis, si praesidem provinciae virum clarissimum adieritis, ut is ad administrationem tutelae compellatur.

PP. VIII k. Aug. Antonino A. IIII et Balbino conss.

[2] *Imp. Alexander A. Valentino.* Potuit quidem et debuit competens iudex in locum excusati curatoris, licet pupillus alios quoscumque haberet tutores, dare. quamvis autem curator cum aliis in locum eius substitutus sis, tamen periculo administrationis ultra pubertatis tempora non adstringeris.

PP. V id. Iun. Modesto et Probo conss.

[3] *Idem A. Hylae.* Propter late diffusum (id est in diversis locis constitutum) patrimonium vel quod solus administrationi non sufficias, an tibi tutelam administranti adiungi aliquos curatores oporteat, praeses provinciae, si te non sufficientem deprehenderit, aestimabit.

PP. VIII id. Dec. Pompeiano et Peligno conss.

[4] *Impp. Valerianus et Gallienus AA. Euploio.* Licet tutorem habenti tutor dari non potest, tamen certis ex causis alius idoneus substitui sententia competentis iudicis solet, id est in locum suspecti, qui convictus ac remotus est, et in locum excusati vel defuncti vel relegati tutoris.

PP. id. Mart. Saeculare II et Donato conss.

Thirty-Sixth Title In What Situations a *Tutor* or a *Curator* Can Be Appointed for Someone Who Has a *Tutor*

[1] *Emperor* ANTONINUS *Augustus to Tiberianus and Rufus.* **pr.** If you have been appointed as temporary replacements for a *tutor* who is away on public business, and he, having now concluded the task that was assigned to him, has returned, you need not doubt that the affairs of the female ward are now his responsibility and concern. **1.** But you would be acting more advisedly if you were to approach the *vir clarissimus* governor of the province in order that he (the *tutor*) be compelled to resume the management of the tutelage.

Posted July 25, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[2] *Emperor* ALEXANDER *Augustus to Valentinus.* The appropriate judge had the authority to appoint a substitute, certainly – and (indeed) was bound to do so – for the *curator* who was excused, even though the minor ward had other *tutores* of whatever kind. Moreover, though you were appointed as *curator* along with others in his place, you are nevertheless not liable for the risk of management past the time when the ward reaches adulthood.[216]

Posted June 9, in the consulship of Modestus and Probus (228).

[3][217] *The same Augustus to Hylas.* Because the property is widely distributed – meaning it is situated in different places – so that you are perhaps not equal to its management by yourself, the governor of the province will decide, if he discovers that you are not able to act alone, whether some *curatores* ought to be added alongside you as you manage the tutelage.

Posted December 6, in the consulship of Pompeianus and Pelignus (231).

[4][218] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Euploius.* Although a *tutor* cannot be appointed for a person who already has one, nevertheless, for certain reasons, it is customary for the appropriate judge to appoint through judicial decree another appropriate person as a substitute, for example, in place of a suspect person who has been convicted and removed, and in place of a *tutor* who has been excused, is deceased, or has been relegated.

Posted March 15,[219] in the consulship of Saecularis, for the second time, and Donatus (260).

[216] The rescript deals with two issues, presumably raised by the recipient. First, was his appointment as *curator* legitimate? (yes); second, over what period of time did his liability run? (not past the time of ward's legal majority).

[217] = (in part, with changes) C. 5.62.11.1.

[218] Combine with C. 5.42.2.

[219] The precise month is uncertain: March or May.

[5] *Impp. Diocletianus et Maximianus AA. et CC. Zenoni.* **pr.** Cum ob augmentum facultatum curatores adiungi solent, non prius tutores dati administratione eorum liberantur. 1. Sane si is qui administravit tempore finitae tutelae fuit solvendo, secuti temporis periculum ad te pertinere non potuisse manifestum est.

D. III k. April. CC. conss.

XXXVII De Administratione Tutorum et Curatorum et de Pecunia Pupillari Feneranda vel Deponenda

[1] *Impp. Severus et Antoninus AA. Modesto.* Frustra times administrare res adulescentis, cuius curator es, ne ex hoc aliquis existimet commune periculum prioris temporis te recepisse: sed ea, quae agenda putas, age et, quod magis interest omnium partium, insta, ut iudex inter te et tutores datus quam primum partibus suis fungatur.

PP. XII k. Oct. Albino et Aemiliano conss.

[2] *Idem AA. Timoni et Helpidophoro.* Adversus curatorem adulescentis, cui collegae dati estis, quamdiu administratio communis durat, exerceri iudicium non potest.

PP. II k. Mai. Apro et Maximo conss.

[3] *Imp. Antoninus A. Eumuso.* Sumptus in pupillum tuum necessario et ex honestis iustisque causis iudici, qui super ea re cogniturus est, si probabuntur facti, accepto ferentur, etiamsi praetoris decretum de dandis eis non sit interpositum. nam quod a tutoribus sive curatoribus bona fide erogatur, potius iustitia quam aliena auctoritate firmatur.

D. XIIII k. Sept. duobus Aspris conss.

[4] *Idem A. Proculae.* Nisi eam pecuniam, quam constiterit libertum paternum tutorem filiae tuae rationi eius debere, vel deposuerit vel

[5] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Zeno.* **pr.** Although customarily *curatores* are added on account of an increase of property, the *tutores* who had been previously appointed are not released from their duty of management. **1.** Of course if the person who managed the tutelage was solvent at the time his responsibility ended, it is clear that the liability for the period that followed could not accrue to you.

Given March 30, in the consulship of the Caesars (294).

Thirty-Seventh Title Management by *Tutores* and *Curatores*, and Money Belonging to Wards That Should Be Lent out at Interest or Placed in Deposit[220]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Modestus.* Your concern is groundless that, in managing the property of the young adult (*adulescens*) whose *curator* you are, for this reason someone would think that you had taken on a joint share of the liability for the preceding period. But do what you think needs to be done and, what is in the greater interest of all parties, press the judge who has been appointed to decide between you and the *tutores* to fulfill his duty as quickly as possible.

Posted September 20, in the consulship of Albinus and Aemilianus (206).

[2] *The same Augusti to Timo and Helpidophorus.* A suit cannot be launched against a *curator* of the young adult (*adulescens*) to whom you were assigned as colleagues as long as your joint management persists.

Posted April 30, in the consulship of Aper and Maximus (207).

[3] *Emperor* ANTONINUS *Augustus to Eumusus.* Expenses paid on behalf of your minor ward that are necessary and arise from reasons that are honorable and appropriate, if they are proved to have been made before the judge who is going to decide the case, will be credited even if there is no judicial decree of the Praetor about repaying them. For what is paid out by *tutores* and *curatores* in good faith (*bona fides*) is validated by general considerations of justice (*iustitia*) rather than by someone else's authorization.

Given August 19, in the consulship of the two Aspri (212).

[4] *The same Augustus to Procula.* Unless your father's freedman, the *tutor* of your daughter, has either placed on deposit or used for the purchase of real properties the money that it is clear he owes to her account, he will be

[220] See D. 26.7.

in praediorum comparationem converterit, remittetur ad praefectum urbis, secundum ea quae constituta sunt arbitrio eius puniendus.

PP. XII k. Oct. Antonino A. IIII et Balbino conss.

[5] *Idem A. Rufino.* Frustra tutores quondam adulescentium, quorum curam administras, iudicatum facere detractant, cum exacta pecunia possit auctoritate praesidis in depositi causam haberi.

PP. k. Iul. Laeto II et Cereale conss.

[6] *Imp. Alexander A. Paconio.* Non est ignotum tutores vel curatores, si nomine pupillorum vel adultorum scientes calumniosas instituunt actiones, eo nomine condemnari oportere, ne sub praetextu nominis eorum propter suas simultates secure lites suas exercere posse existiment.

PP. VI id. Mai. Maximo II et Aeliano conss.

[7] *Idem A. Valerio.* Tutelam pupillorum tuorum sic administrare debes, ne aedificium, quod his relictum est, contra formam alienandi testamento datam vendas.

PP. VI id. Iul. Maximo II et Aeliano conss

[8] *Idem A. Aprili.* Etsi scisses te curatorem datum nec administrasses, ceteris curatoribus et administrationem peragentibus et sufficientibus damno praestando contra te actio dari non potest. si autem nescisses curatorem datum, etiamsi solvendo ceteri non sint, damni periculum ad te non redundabit.

PP. VI id. Dec. Alexandro A. III et Dione conss.

remanded to the City Prefect according to standard operating procedure, to be punished at his discretion.

Posted September 20, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[5] *The same Augustus to Rufinus.* It is futile for the former *tutores* of the young adults (*adulescentes*) for whom you now act as *curator*, to refuse to comply with the judgment against them, since the money can be paid out and placed in a deposit (for safekeeping) under the aegis of the provincial governor.[221]

Posted July 1,[222] in the consulship of Laetus, for the second time, and Cerealis (215).

[6] *Emperor* ALEXANDER *Augustus to Paconius.* It is not unknown that, if *tutores* or *curatores* knowingly bring false accusations under the names of their minor or adult wards, they ought to be condemned under that name (i.e., their own), so that they do not think they can pursue their own suits, motivated by their private quarrels, free from care under the pretext of suing under the name of their wards.

Posted May 10, in the consulship of Maximus, for the second time, and Aelianus (223).

[7] *The same Augustus to Valerius.* You ought to manage the tutelage of your minor wards in such a way that you do not sell the building that was left to them on condition against alienating it as set forth in the will.

Posted July 10, in the consulship of Maximus, for the second time, and Aelianus (223).

[8] *The same Augustus to Aprilis.* Even if you knew that you had been appointed as a *curator* and you did not take up the management of the property in question, since the other *curatores* were doing a thoroughly sufficient job of it, an action for recovering loss cannot be granted against you. If, however, you did not know that you had been appointed as *curator*, even if the rest are not solvent, liability for loss will not fall to you.

Posted December 8,[223] in the consulship of Alexander Augustus, for the third time, and Dio (229).

[221] Blume: "In this case, as stated in the Basilica 38.9.19, the guardians would not pay till it had been shown that the curator was about to loan the money out at interest or buy some property with it; and they also raised the objection that he was spendthrift. None of these objections were available because the money could be deposited for safe-keeping."

[222] The precise month is uncertain: July or June.

[223] The precise day is uncertain: the alternative is November 25.

[9] *Idem A. Melitiae.* Si curatores habes hique dotare te[xv] bonis tuis cessant, adito praeside impetrabis, ut, quod moderatum est honestae personae, praestare cogantur.

PP. XVII k. Mai. Agricola et Clemente conss.

[10] *Idem A. Rufinae.* Si liberti eiusdemque curatoris culpa seu fraude ratio vestra laesa sit, sarciri damnum ab eo qui dedit praeses provinciae curabit, non dubitaturus etiam graviorem exsecutionem adhibere, si quid tam aperta fraude commissum est, ut puniendum in liberto crimen deprehendatur.

PP. XI k. Aug. Agricola et Clemente conss.

[11] *Imp. Gordianus A. Caecilio.* Si bonam causam ea cuius tutor es habuit et adversus latam sententiam non appellasti seu post appellationem provocationis sollemnia implere cessaveris, tutelae iudicio indemnitatem pupillae praestare debes.

PP. V id. Aug. Gordiano A. et Aviola conss.

[12] *Idem A. Octavianae.* De his, quae in fraudem administrationis a tutore gesta vel neglegenter acta a curatoribus eorum quibus successisti adlegas, agere debes, si modo annos legitimae aetatis implesti. neque enim ignoras non multum patrocinari fecunditatem liberorum feminis ad rerum suarum administrationem, si intra aetatem legitimam sunt constitutae.

PP. III non. Oct. Gordiano A. II et Pompeiano conss.

[13] *Idem A. Longino.* Tutores debita pupillaria seu deposita reposcentes ad satisdationem compelli non posse manifestum est.

PP. VIII k. Mai. Arriano et Papo conss.

[14] *Imp. Philippus A. et Philippus C. Clementi.* Rationes curae administratae ante impletum vicesimum et quintum annum durante officio posci iure non posse manifestum est.

PP. prid. non. Aug. Philippo A. et Titiano conss.

[xv] de

[9] *The same Augustus to Melitia.* If you have *curatores* and they fail to constitute a dowry (for you) from your property, once you approach the provincial governor you will prevail upon them to provide what is becoming to a respectable person.

Posted April 15, in the consulship of Agricola and Clemens (230).

[10] *The same Augustus to Rufina.* If your account has been compromised through the negligence or fraud of the man who is both your freedman and *curator*, the governor of the province will see to it that the loss is made whole by the person who caused it. He is not going to hesitate to resort to more serious measures as well, if anything was done through such a manifest fraud that a criminal offense that ought to be punished on the part of the freedman is uncovered.

Posted July 22, in the consulship of Agricola and Clemens (230).

[11] *Emperor* Gordian *Augustus to Caecilius.* If the female minor ward whose *tutor* you are had a just cause and you did not appeal an adverse decision, or after making the appeal you failed to carry out the formalities for proceeding, you ought to make your ward whole under a suit for tutelage.

Posted August 9, in the consulship of Gordian Augustus and Aviola (239).

[12] *The same Augustus to Octaviana.* You ought to sue regarding those things which you allege were done through the fraudulent management of a *tutor* or performed negligently by the *curatores* of those whose heir you are, provided that you have reached the age of full legal majority (i.e., 25 or over). For you are not unaware that the bearing of children by women does not avail them much in the management of their property if they have not reached the age of full majority.

Posted October 5, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

[13] *The same Augustus to Longinus.* It is clear that *tutores* calling in the debts or deposits of their minor wards cannot be compelled to give security.

Posted April 24, in the consulship of Arrianus and Papus (243).

[14] *Emperor* Philip *Augustus and* Philip *Caesar to Clemens.* It is clear that the accounts of a *curator* cannot at law be demanded for review before the ward has completed his twenty-fifth year (i.e., turned 25) and while the *curator* is still in place.

Posted August 4, in the consulship of Philip Augustus and Titianus (245).

[15] *Impp. Diocletianus et Maximianus AA. Licinio.* Si non subscripsisti quasi fideiussor, frustra vereris, ne ex ea intercessione, qua signasti ut curator, olim liberatus (ut adfirmas) sententia praesidis, ex officio curatoris conveniri possis.

PP. prid. non. Mart. Diocletiano III et Maximiano AA. conss.

[16] *Idem AA. et CC. Proculo.* Non omni titulo rerum[xvi] pupilli potestatem alienandi tutores habent, sed administrationis tantum causa distrahentes, quae venum eis dare licet, iustam causam possidendi comparantibus praestant. cum itaque donare nulla ratione res eorum quorum administrant negotia potestatem habent, vindicare dominium a possidentibus non prohiberis.

S. x k. Mai. Heracliae AA. conss.

[17] *Idem AA. et CC. Martiali.* De successione sua tutores frustra timent, cum his qui tutelam administraverunt testamenti factio non denegetur. nec de bonis suis donare aliquid prohibentur.

S. XVI k. Nov. Sirmi AA. conss.

[18] *Idem AA. et CC. Sotericho.* Debitoribus pupillae pro officii ratione, tutorem te constitutum adseverans ad te nominum periculo pertinente, parere solutioni denuntia. qui si satis non fecerint, in venditione pignorum uti communi iure potes.

S. prid. k. Ian. Sirmi AA. conss.

[19] *Idem AA. et CC. Vindiciano.* Tutor licet absens decreto datus, si sciens se sollemniter non excusaverit, administrationi constituitur obnoxius.

S. III id. Febr. Sirmi CC. conss.

[20] *Imp. Constantinus A.* Pro officio administrationis tutoris vel curatoris bona, si debitores existant, tamquam pignoris titulo obligata

[xvi] res

[15] *Emperors* Diocletian *and* Maximian *Augusti to Licinius.* If you did not sign on as a surety, you are groundlessly concerned that you can be sued in connection with your responsibilities as *curator* on the basis of the assumption of an obligation you signed as though you were *curator* when you had already been – as you allege – freed from these duties through a judicial decision of the provincial governor.

Posted March 6, in the consulship of Diocletian, for the third time, and Maximian Augusti (287).

[16] *The same Augusti and the Caesars to Proculus. Tutores* do not have the capacity to alienate the property of a minor ward on every basis. By making over property solely in connection with their duties of management, which permits them to sell, they provide a legally recognized ground for possession to buyers. Since, therefore, they do not enjoy a capacity under any theory to give as a gift the property of those whose affairs they manage, you (as a former ward) are not prevented from claiming ownership from the possessors.

Written April 22, at Heraclea, in the consulship of the Augusti (293).

[17] *The same Augusti and Caesars to Martialis.* Your *tutores* are groundlessly concerned about their rights under the law of succession, since making a will is not denied to those who manage a tutelage, nor are they forbidden to give away some of their own property as a gift.

Written October 17, at Sirmium, in the consulship of the Augusti (293).

[18] *The same Augusti and Caesars to Soterichus.* Since you assert that you have been appointed *tutor*, so that the liability for (collecting) the (relevant) debts accrues to you, make a formal demand for payment to the debtors of your female minor ward, in accordance with your responsibilities. If they do not pay up, you can make use of the standard entitlement to sell their pledges.

Written December 31, at Sirmium, in the consulship of the Augusti (293).

[19] *The same Augusti and Caesars to Vindicianus.* If a *tutor* has been appointed by judicial decree even though he is not present, he is obligated to manage the property if he knew about the appointment and did not formally seek to be excused.

Written February 11, at Sirmium, in the consulship of the Caesars (294).

[20][224] *Emperor* Constantine *Augustus.* Wards are not at all prevented from claiming the property of a *tutor* or a *curator* if the latter owe them money in connection with their duties of management, as though the property were

[224] = (with changes) C.Th. 3.30.1.

minores sibimet vindicare minime prohibentur. idem est et si tutor vel curator quis constitutus res minorum non administravit.

D. VII k. April. Treviris Volusiano et Anniano conss.

[21] *Idem A. ad Maximum pp.* Pupillorum seu minorum defensores, si per eos donationum condicio neglecta est, rei amissae periculum praestent.

D. III non. Febr. Romae Sabino et Rufino conss.

[22] *Idem A. ad populum.* **pr.** Lex, quae tutores curatoresque necessitate adstrinxit, ut aurum argentum gemmas vestes ceteraque mobilia pretiosa, urbana etiam mancipia, domos balnea horrea atque omnia intra civitates venderent omniaque ad nummos redigerent praeter praedia et mancipia rustica, multum minorum utilitati adversa est. **1.** Praecipimus itaque, ut haec omnia nulli tutorum curatorumve liceat vendere, nisi hac forte necessitate et lege, qua rusticum praedium atque mancipium vendere vel pignorare vel in dotem dare in praeteritum licebat, scilicet per inquisitionem iudicis, probationem causae, interpositionem decreti, ut fraudi locus non sit.

2. Ante omnia igitur urbana mancipia, quia totius suppellectilis notitiam gerunt, semper in hereditate et in domo retineant: nam boni servi fraudem fieri prohibebunt, mali, si res exegerit, sub quaestione positi poterunt prodere veritatem. **2a.** Atque ita omnia observabunt, ut nec inventaria minuere nec mutare vel subtrahere aliquid tutor valeat: quod in veste margaritis gemmis et in vasculis ceteraque suppellectili necessarium est. **2b.** Et tolerabilius est, si ita contigerit, servos mori suis dominis, quam servire extraneis. quorum fuga potius tutori adscribitur, sive neglegentia dissolutam patiatur esse disciplinam, sive duritia vel inedia atque verberibus eos adficiat. **2c.** Nec enim dominos execrantur, sed magis diligunt, ita ut haec lex per hoc quoque melior antiqua sit: tunc enim remota servorum custodia etiam vita minorum saepius prodebatur.

obligated under the title of pledge. The same holds even if someone who has been appointed as a *tutor* or *curator* has not managed the property of their wards.

Posted March 26, at Trier, in the consulship of Volusianus and Annianus (314).

[21][225] *The same Augustus to Maximus, Praetorian Prefect.* If the guardians of minor or adult wards have neglected a condition attached to a gift, they shall be liable for making good the loss.

Given February 3,[226] at Rome, in the consulship of Sabinus and Rufinus (316).[227]

[22][228] *The same Augustus to the People.* **pr.** The law (*lex*) which has required *tutores* and *curatores* to sell gold, silver, precious stones, clothing, and all other movables of value, as well as city slaves, townhouses (*domus*), baths, storage facilities and everything situated in towns, and to liquidate everything except rural real properties and slaves, is very much contrary to the interests (*utilitas*) of their wards. **1.** Therefore, We instruct that no *tutor* or *curator* shall be permitted to sell any of these things except perhaps under the same necessary circumstances given in the law that permitted them in the past to sell, pledge, or give as dowry rural real property and slaves, obviously after a judge's investigation, the furnishing of proof, and the issuance of a judicial decree, so that there be no opportunity for fraud.

2. Above all, therefore, let them hold onto, always as part of the inheritance and in the household, city slaves, because they have knowledge of all the furnishings. For good slaves will prevent fraud from occurring, while bad ones, if necessary, once put to judicial examination under torture, will be able to disclose the truth. **2a.** And so they will keep watch over everything, so that the *tutor* will not be able to diminish the inventory nor to alter or filch something. This is necessary in the case of clothing, pearls, precious stones, as well as for household utensils and the rest of the furnishings. **2b.** And it is more tolerable for slaves to die, if such happens, along with their masters, than that they serve others. Their flight will be ascribed to the *tutor*, whether he permits discipline to be softened through neglect, or he visits them with harsh treatment, hunger, or corporal punishment. **2c.** For they do not hate, but rather love, their masters, so that this statute for this reason too is better than the ancient one. For then, when the protective care of slaves was taken away, even the lives of wards were too often being placed in jeopardy.

[225] = (with minor changes) C.Th. 3.30.2; *Frag. Vat.* 249.4. Combine with C. 8.53.25; Consultatio 9.13.
[226] The precise day is uncertain: the alternative is January 30.
[227] The year is uncertain: Mommsen prefers 323 (Projet Volterra); Seeck argues for 320.
[228] = (in part, with changes) C.Th. 3.30.3. Combine with C. 2.27.2; perhaps also 4.32.25.

3. Nec vero domum vendere liceat, in qua defecit pater, minor crevit, in qua maiorum imagines aut videre fixas aut revulsas non videre satis est lugubre. ergo et domus et cetera omnia immobilia in patrimonio minorum permaneant, nullumque aedificii genus, quod integrum hereditas dabit, collapsum tutoris fraude depereat. **3a.** Sed et si parens vel cuiuscumque heres est minor reliquerit deformatum aedificium, tutor testificatione operis ipsius et multorum fide id reficere cogetur: ita enim annui reditus plus minoribus conferent quam per fraudes pretia deminuta.

4. Servi etiam, qui aliqua sunt arte praediti, operas suas commodo minoris inferent et reliqui, qui in usum minoris domini esse non poterunt quibusque ars nulla est, partim labore suo partim alimoniarum taxatione pascantur. **5.** Lex enim non solum contra tutores, sed etiam contra feminas immoderatas atque intemperantes prospexit minoribus, quae plerumque novis maritis non solum res filiorum, sed etiam vitam addicunt. **5a.** Huic accedit, quod ipsius pecuniae, in qua robur omne patrimoniorum veteres posuerunt, fenerandi usus vix diuturnus, vix continuus et stabilis est: quo facto saepe intercidente pecunia ad nihilum minorum patrimonia deducuntur.

6. Iam ergo venditio tutoris nulla sit sine interpositione decreti, exceptis his dumtaxat vestibus, quae detritae usu aut corruptae servando servari non potuerint. **7.** Animalia quoque supervacua minorum quin veneant, non vetamus.

D. id. Mart. Sirmi Constantino A. VII *et Constantio C. conss.*

[23] *Idem A. Felici.* Si tutoris vel curatoris culpa vel dolo, eo quod vectigal praedio emphyteutico impositum minime dependere voluissent, minori fuerit amissum, damnum quod ei contigit ex substantia eorum resarciri necesse est.

D. XIIII *k. Mai. Constantinopoli Dalmatio et Zenophilo conss.*

3. Nor in fact shall it be permitted to sell the house in which the father died, the ward grew up, and in which it is fairly depressing either to see the images of the ancestors still in place or not to see them because they have been removed. Therefore, the houses and all the other immovables shall remain in the wards' estate, and no kind of structure that has been bequeathed in good shape, shall collapse and degrade through the fraudulent action of a *tutor*. **3a.** Furthermore, if a parent or the person whose heir the ward is has bequeathed a house in bad condition, the *tutor* will be compelled to repair it as needed, on the evidence of the refurbishing itself and of the testimony of many persons. For in this way the annual returns in rent will benefit the wards more than a sale price depressed by fraud.

4. Slaves, too, who are equipped with some skill, will turn their services to the benefit of the ward, and the rest, who cannot be of use to their master the ward and have no (particular) skill, shall be supported partly by their own efforts and partly by a set level of maintenance. **5.** For the law has protected wards not only against *tutores*, but also against extravagant and unrestrained women (i.e., the mothers of wards), who frequently give over to their new husbands not only the property of their children but even their lives. **5a.** A further point is the fact that with regard to the money itself, which the ancients regarded as the entire backbone of the estate, the practice of lending it out at interest is hardly lasting, hardly uninterrupted and secure. When this is done, the money is often lost and the estates of wards are reduced to nothing.

6. Therefore there shall now be no capacity to sell property granted to *tutores* without the issuance of a judicial decree, with the exception only of clothing that is worn with use or spoiled and cannot be preserved even with effort.[229] **7.**[230] We also do not forbid the sale of animals belonging to the wards that are not needed.

Given March 15, at Sirmium, in the consulship of Constantine Augustus, for the seventh time, and Constantius Caesar (326).[231]

[23][232] *The same Augustus to Felix.* If a ward should lose a long-term lease arrangement (by *emphyteusis*), because through the negligence (*culpa*) or malicious intent (*dolus*) of a *tutor* or *curator* they refused to pay the rent due, it is necessary that the loss which befell the ward be made up from the (guardian's) property.

Given April 18,[233] *at Constantinople, in the consulship of Dalmatius and Zenophilus (333).*

[229] "with the exception … effort" = C. 5.72.4.
[230] 7 = (with minor changes) C.Th. 3.30.3.7.
[231] The year is more likely to be 329: Seeck and Projet Volterra.
[232] = (with changes) C.Th. 3.30.5.
[233] So Seeck. The precise day is uncertain; the alternative is April 19.

[24] *Impp. Arcadius et Honorius AA. Eutychiano pp.* **pr.** Tutores vel curatores, mox quam fuerint ordinati, sub praesentia publicarum personarum inventarium sollemniter rerum omnium et instrumentorum facere curabunt. **1.** Aurum argentumque et quidquid vetustate temporis non mutatur, si in pupilli substantia reperiatur, in tutissima custodia collocent, ita tamen, ut ex mobilibus aut praedia idonea comparentur aut, si forte (ut adsolet) idonea non potuerint inveniri, iuxta antiqui iuris formam usurarum crescat accessio, quarum exactio ad periculum tutoris pertinet.

D. VI k. Mart. Constantinopoli Arcadio IIII et Honorio III AA. conss.

[25] *Imp. Iustinianus A. Iuliano pp.* Sancimus creatione tutorum et curatorum cum omni procedente cautela licere debitoribus pupillorum vel adultorum ad eos solutionem facere, ita tamen, ut prius sententia iudicialis sine omni damno celebrata hoc permiserit. **1.** Quo subsecuto, si et iudex pronuntiaverit et debitor persolverit, sequitur huiusmodi causam plenissima securitas, ut nemo in posterum inquietetur: non enim debet, quod rite et secundum leges ab initio actum est, ex alio eventu resuscitari. **2.** Non autem hanc legem extendimus etiam in his solutionibus, quae vel ex reditibus vel ex pensionibus vel aliis huiusmodi causis pupillo vel adulto accedunt: sed si extraneus debitor ex feneraticia forsitan cautione vel aliis similibus causis solutionem facere et se liberare desiderat: tunc enim eandem subtilitatem observari censemus.

D. X k. Mart. Constantinopoli post consulatum Lampadii et Orestis VV. CC.

[26] *Idem A. Iohanni pp.* **pr.** Cum quaedam mulier testamento condito filium suum praeterisset, idem autem filius, qui praeteritus erat, vel fratris vel extranei esset tutor vel curator, qui scriptus a matre tutoris fuerat heres, in praesenti specie manifestissimum erat stare tutorem vel curatorem in praecipiti loco. **1.** Sive enim auctoritatem suam vel consensum ad adeundam hereditatem praestare pupillo vel adulto minime voluerit, ne ex hac causa sua iura aliquod patiantur praeiudicium, satis

[24][234] *Emperors* Arcadius *and* Honorius *Augusti to Eutychianus, Praetorian Prefect.* **pr.** As soon as they are appointed, *tutores* and *curatores* will see to making a formal inventory of all property and documents in the presence of public officials. **1.** They shall place in very safe custody, gold, silver, and whatever is not altered through the passing of time, if it is found to belong to the ward's estate, provided however that they either shall use the movables to purchase suitable properties or, if as usually happens suitable lands cannot be found, according to the precepts of the ancient law (*antiqui iuris forma*) they shall increase the estate through lending money at interest, the collection of which is the liability of the *tutor.*

Given February 24 or 25,[235] *at Constantinople, in the consulship of Arcadius, for the fourth time, and Honorius, for the third time, Augusti (396).*

[25][236] *Emperor* Justinian *Augustus to Julian, Praetorian Prefect.* **pr.** We ordain that, since the appointment of *tutores* and *curatores* proceeds with every caution, it shall be permitted to the debtors of minor or adult wards to pay them, on the condition however that previously a judicial decree permitting this be issued, without court costs. **1.** When this has happened, if the judge has spoken and the debtor has paid, a very full safeguard accompanies this kind of case so that no one in future be disturbed. For what has been done from the beginning properly and according to the laws, ought not to be revisited when things turn out differently. **2.** We do not, however, extend this (instant) law also to those payments which accrue to the minor or adult ward from income, rents, or other such causes. But if an outside debtor wants to make payment and so free himself perhaps from a guaranty on a promise to pay interest or for other similar reasons, then We lay down that the same complex procedure shall be followed.

Given February 20, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[26] *The same Augustus to John, Praetorian Prefect.* **pr.** When a certain woman, in making her will, passed over her own son, and the same son, who was passed over, was the *tutor* or *curator* of a (younger) brother or a non-relative who was appointed her heir by the mother of the *tutor*, it was very clear that in the present case the *tutor* or *curator* is in a delicate situation. **1.** For if he refused to give his formal release or consent to the minor or adult ward to accept the inheritance, so that for this reason his own claims suffer no prejudice, he has a fair prospect of liability under an action on tutelage or an analogous one on

[234] = (with changes) C.Th. 3.30.6.
[235] Seeck gives February 24, 396. The precise day is uncertain: alternatives are February 22 and 23.
[236] See Inst. 2.8.2.

ei imminet periculum tutelae vel utilis negotiorum gestorum actionis, ne pupillus vel adultus utpote ex illius tarditate laesus litem ei ingerat: sive huiusmodi timore perterritus auctor fuerit pupillo vel adulto, aliud periculum emergebat: dum enim alii consentit, ipse sua iura perdit: videbatur etenim confirmare matris suae iudicium, quod oppugnandum esse existimabat.

2. Et multae aliae insuper species oriuntur, ex quibus verendum est tutori vel curatori circa suas res praeiudicium, puta in hypothecis et aliis variis casibus. **3.** Invenimus autem generaliter definitum post officium depositum omnes actiones, quas tutor vel curator ex necessitate officii subierit, in quondam pupillum vel adultum transferri. **4.** Quare tam optimo exemplo argumentati non et in aliis omnibus casibus, in quibus veretur tutor vel curator, ne praeiudicium aliquid ei fiat, timorem eius removemus?

5. Damus igitur eis cum summa fiducia res pupillorum vel adultorum gubernare, scituris, quod lex nostra eis sua iura inmutilata reservat nihil ex huiusmodi auctoritate vel consensu praeiudicii subituris.

D. x k. Sept. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[27] *Idem A. Iohanni pp.* Constitutionem, quam nuper fecimus disponentes, quemadmodum debent solutiones in contractibus minorum causa fieri sive ex reditibus sive ex pensionibus sive ex aliis similibus causis, etiam in usuras extendimus, quae tamen non summatim neque ex multis annis collectae iam debentur, biennales metas et centum solidorum quantitatem minime excedentes.

D. k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[28] *Idem A. Iohanni pp.* **pr.** Sancimus neminem tutorum vel curatorum pupilli vel adulti vel furiosi aliarumque personarum, quibus tam ex veteribus quam ex nostris constitutionibus curatores creantur, defensionem quam pro lite susceperunt recusare, sed ab initio litis modis omnibus memoratas personas defendere et litem praeparatam secundum leges instruere scientes, quod et hoc munus necessarium est tam tutelae quam curationi.

management of affairs (*negotia gesta*) which the ward may bring inasmuch as he or she has suffered loss from the guardian's delay. Or if, worried about this kind of situation, he granted his authorization to the ward, another risk would arise, that in giving his consent to another, he loses his own rights. For it seemed as though he was confirming his mother's decision (to exclude him), which he thought should be countered.

2. And many other individual instances are arising besides this one, in which a *tutor* or a *curator* must fear incurring prejudice to his own interests, for example, in (real) security arrangements (*hypothecae*) and other varied situations. 3. We find it, however, generally provided that after their charge has expired, all actions to which a *tutor* or a *curator* is necessarily exposed by virtue of his position are transferred to the former minor or adult ward. 4. Therefore, reasoning from such an excellent precedent, shall We not also, in all other cases in which a *tutor* or a *curator* fears incurring some prejudice to his interests, remove this anxiety?

5. We accordingly grant them the capacity to manage the affairs of their minor or adult wards with the greatest confidence, in the knowledge that Our law preserves their rights for them untrammeled, and since they shall suffer no prejudice from such a grant of authorization or consent.

Given August 23, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[27] *The same Augustus to John, Praetorian Prefect.* The constitution which We have recently enacted,[237] providing in what manner payments ought to be made regarding contracts on behalf of wards for income, rents, or other similar things, We extend also to loans for interest, where, however, the interest is not owed in a lump sum nor has accrued over many years and is still owed, but when it does not exceed the time limit of two years or the amount of 100 solidi.

Given November 1,[238] *at Constantinople, in the post-consulate of the* viri clarissimi *Lampadius and Orestes (531).*

[28] *The same Augustus to John, Praetorian Prefect.* **pr.** We ordain that no one who is a *tutor* or *curator* of a minor or adult ward, of an insane person, or of the other types for whom *curatores* are appointed not only in accordance with ancient but also our own constitutions, shall refuse to defend a lawsuit which they have undertaken, and that from the start of the suit they shall in every way defend the aforesaid persons and shall prepare and conduct the lawsuit in accordance with the laws, in the knowledge that this responsibility too is an essential part of managing a tutelage as much as a curatorship.

[237] C. 5.37.25.
[238] The precise day is uncertain: the alternative is October 23.

1. Et si hoc recusaverint vel subire distulerint, non solum utpote suspecti amoveantur amissa eorum existimatione, sed etiam ex substantia sua omne detrimentum, quod antelatae personae ex recusatione defensionis sustineant, resarcire cogantur. **1a.** Sed et si quis ex quadam interpellatione admonitus, propter litis instructionem consuetam cautelam exposuerit, vel post litem contestatam, quam per se et non per procuratorem suscepit, vel demens vel furiosus factus fuerit, sancimus continuo curatorem ei in competenti iudicio ordinari cura et provisione tam iudicis, sub quo lis vertitur, quam cognatorum et propinquorum et actoris, si voluerit, ut non ab eo instituta lis diutius protrahatur: necessitatem habente creando curatore defensionem subire et cetera litis adimplere.

2. Personis etiam, quae periculo proprio vel suae substantiae tutores vel curatores petierunt, sive matres forte fuerint vel quidam alii, compellendis eos, quos ordinaverint tutores vel curatores, praeparare talem subire defensionem. **2a.** Vel si illi noluerint hoc facere et propter huiusmodi defensionis recusationem tutela vel curatione removeantur, sic necessitatem imponimus memoratis personis alios tutores vel curatores ordinare in ipsis gestis, in quibus tutores vel curatores creantur, ex sua confessione declarantes talem subire defensionem. **2b.** Ne autem tales personae sine provisione debita relinquantur vel contra eos agentium iura diutius protelentur, sancimus continuo, id est post recusationem defensionis, in casibus videlicet, in quibus (sicut dictum est) hoc fieri possit, creationem aliorum tutorum vel curatorum celebrari: cognatis aliisque propinquis vel adfinibus vel creditoribus vel aliis quorum interest adeuntibus vel admonentibus eos, qui secundum leges ius habent tutores vel curatores constituere.

3. Defensionem autem et nomen eius in hoc casu apertius declarantes, ne forte putaverint tutores vel curatores gravamen sibimet imponi, illam decernimus defensionem eos subire, quae non satisdatione pro eventu litis constituitur, sed ut tantummodo litem secundum legum ordinem pro pupillo vel adulto aliisque personis instruant, licentiam ex hac nostra auctoritate habentes sine decreto res quarum gubernationem gerunt pro cautela litis subsignare.

4. Omnem autem dubitationem pro defensione pupillorum et adultorum aliarumque personarum penitus amputantes sancimus omnes

1. Furthermore, if they refuse this or put off taking it up, not only shall they be removed inasmuch as they are suspect, with consequent loss to their reputation (*existimatio*), but they shall also be compelled to make whole from their own property all material loss which the aforesaid persons have suffered, because of the refusal to defend the suit. **1a.** What is more, if someone, admonished by (notice of) a certain lawsuit, for the sake of building a case has furnished the customary guaranty, or who, after joinder of issue in a suit that he has undertaken on his own and not through a procurator, has become unstable or insane, We ordain that a *curator* shall be appointed immediately for him in the appropriate court, through the care and foresight not only of the judge overseeing the lawsuit, but also of the blood relatives and near relations (of the ward), and of the plaintiff, if he wishes, so that the lawsuit he has initiated not drag on for too long. For the *curator* who shall be appointed has the obligation to defend the suit and perform the remaining responsibilities connected with this.

2. Persons too, who request *tutores* or *curatores* at their own risk or that of their property, whether they are perhaps mothers or certain others, shall be compelled to prepare those whom they have caused to be appointed as *tutores* or *curatores* to undertake such a defense. **2a.** Or even if they refuse to do this and for such a refusal to defend a suit are removed from the tutelage or curatorship, We thus enjoin upon the aforesaid persons the obligation of seeking the appointment of other *tutores* or *curatores*, who declare openly that they will undertake such a defense, in the context of those procedures by which *tutores* or *curatores* are appointed. **2b.** Moreover, so that such persons shall not be left without due oversight, and the rights of those who are their adversaries at trial shall not be too long postponed, We ordain that immediately, that is, after the refusal to defend, in cases, clearly, in which – as stated above – this can happen, the appointment of other *tutores* or *curatores* shall take place. Blood relatives, other close relations, connections by marriage, creditors and others who have an interest shall approach and encourage those, who have this right according to the laws, to appoint *tutores* or *curatores*.

3. Making clearer, moreover, what we mean by defense and the status of the person who undertakes this, so that *tutores* and *curatores* do not imagine perchance that a great burden is being imposed upon them, We decree that they shall undertake a form of defense that does not consist in giving security against the outcome of the case, but that they merely prepare the lawsuit pursuant to the dictates of the laws on behalf of the minor or adult ward, or other types of ward, in possession of permission granted by this authorization of Ours to assign the property that they manage as a guaranty for the suit without the issuance of a judicial decree.

4. Moreover, clearing away thoroughly every doubt regarding the defense of minor and adult wards, as well as of the other types of ward, We ordain that

tutores vel curatores non alias creari, nisi prius cum aliis sollemnibus verbis, quae pro gubernatione rerum tam in gestis quam in cautionibus ab his conscribuntur, et hoc specialiter expresserint, quod omnimodo sine ulla dilatione defensionem pro pupillis et adultis aliisque supra memoratis personis subire eos necesse est.

5. Hisque adicimus nullam neque in hoc capitulo ambiguitatem relinquentes tutoribus et omnibus curatoribus licere fructus, sive qui ex reditibus praediorum colliguntur sive ex substantia personarum quarum gubernationem habent inventi fuerint, id est vinum et oleum et frumentum vel cuiuscumque speciei sunt, sine decreto distrahere iusto pretio, quod in his locis, in quibus venditio celebratur, tunc temporis noscitur obtinere, et quae ex venditione eorundem fructuum colliguntur pecuniae, cum alia pupillorum vel adultorum aliarumque personarum substantia administrentur.

D. XII k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

XXXVIII De Periculo Tutorum et Curatorum

[1] *Imp. Alexander A. Quinto.* Et qui notitiae causa liberti tutores dantur, quamvis soli administrandorum negotiorum pupillorum sive adultorum facultatem interdum non accipiant propter tenuitatem sui patrimonii, periculo tamen omnes sunt obligati, sive ea, quae scire deberent ex utilitate eorum, tutores sive curatores dissimulaverunt aut fraudem aliquam adhibuerunt vel cum aliis participaverunt aut, cum suspectos facere deberent, in officio muneris vel obsequio debito cessaverunt.

PP. VIIII k. Febr. Alexandro A. II et Marcello conss.

[2] *Idem A. Saturo.* Ad eos, qui in alia provincia tutelam administrant, periculum administrationis ex persona tutorum, qui in alia provincia res pupilli gerunt, non porrigitur.

PP. non. Iul. Alexandro A. II et Marcello conss.

all *tutores* and *curatores* shall be appointed on condition that, beforehand, in addition to the other formal promises which they commit to writing regarding their management of (the ward's) property in the public records as well as in the form of sureties, they also make particular mention of the fact that they are obligated in every way without delay to take up the defense of minor and adult wards as well as the other types mentioned above.

5. To these provisions We add, leaving no room for ambiguity in this chapter as well, that it shall be permitted for *tutores* and all (types of) *curatores* to sell, at a just price that is then known to prevail at the point and time of sale and without a judicial decree, the fruits that derive from the returns on real properties or that otherwise arise from the property of the persons whose affairs they manage, meaning wine, oil, grain, or any other kind of produce. Also, the money that derives from the sale of these fruits shall be managed along with the other property of the minor or adult wards or other types of ward.

Given October 21, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*[239]

Thirty-Eighth Title Liability of *Tutores* and *Curatores*[240]

[1] *Emperor* ALEXANDER *Augustus to Quintus.* Even freedmen who are appointed *tutores* because of their knowledge, although sometimes, on account of their poverty, they do not assume management of the affairs of the minor or adult ward by themselves, are all, nevertheless, held to liability (for mismanagement), whether as *tutores* or *curatores* they have feigned ignorance of those things they should have known to the advantage (*utilitas*) of their wards, or they have engineered some fraud on their own or have participated in such with others, or, when they ought to have called others into suspicion, have failed in the fulfillment of the duty or the respect that they owe.

Posted January 24, in the consulship of Alexander Augustus, for the second time, and Marcellus (226).

[2] *The same Augustus to Saturus.* The liability for management of those *tutores* who manage a minor ward's tutelage in one province does not extend to those who manage the tutelage in another province.

Posted July 7, in the consulship of Alexander Augustus, for the second time, and Marcellus (226).

[239] The precise day (the alternative is October 18, preferred by Lounghis *et al.*) and year are uncertain: 531 or 532.

[240] See D. 26.7.

[3] *Imp. Philippus A. et Philippus C. Gratiano.* Si res pupillares, quas horreo conditas habere aut etiam venumdare debuisti, in hospitio tuo, ut adseveras, vi ignis absumptae sunt, culpam seu segnitiam tuam non ad tuum damnum, sed ad pupilli tui spectare dispendium minus probabili ratione deposcis.

PP. III k. April. Philippo A. et Titiano conss.

[4] *Idem A. et C. Floro.* Tutoribus seu curatoribus fortuitos casus, adversus quos caveri non potuit, imputari non oportere saepe rescriptum est.

PP. XII k. Sept. Philippo A. et Titiano conss.

[5] *Impp. Diocletianus et Maximianus AA. Severo.* Si tutor petitus vel testamento datus tutorem te constitutum esse non ex remissioris neglegentiae vitio, sed iustae ignorationis ratione non didicisti idque liquidis probationibus ostenderis, periculo eius temporis, quod ignorante te transmissum est, non teneberis.

PP. III id. Sept. ipsis IIII et III AA. conss.

[6] *Idem AA. et CC. Epicteto.* Temporis, quod insequitur post tutelae translationem, administrationis officio finito ad eos qui fuerunt tutores gerendae rei non pertinere periculum rationis est.

S. V k. Dec. CC. conss.

XXXVIIII Quando ex Facto Tutoris vel Curatoris Minores Agere vel Conveniri Possunt

[1] *Imp. Antoninus A. Septimo.* Iuliana, cuius tibi curatores condemnati sunt, si vicesimum quintum annum aetatis egressa est, actio iudicati utilis adversus ipsam bonaque eius exercenda est. nam tutores curatoresque finito officio non esse conveniendos ex administratione pupillorum adulescentiumque saepe decretum est.

PP. VIII k. Iul. Romae Antonino A. IIII et Balbino conss.

[3] *Emperor* Philip *Augustus and* Philip *Caesar to Gratianus.* If the property of your minor ward, which you ought to have placed in a storage facility or even to have sold, was destroyed by a fire in your lodgings, as you assert, you request unpersuasively that your fault (*culpa*) or inertia count not as your loss, but as that of your ward.

Posted March 30, in the consulship of Philip Augustus and Titianus (245).

[4] *The same Augustus and Caesar to Florus.* It has often been laid down in rescripts that random accidents (*fortuiti casus*), which could not be guarded against in advance, ought not count to the detriment of *tutores* and *curatores.*

Posted August 21, in the consulship of Philip Augustus and Titianus (245).

[5] *Emperors* Diocletian *and* Maximian *Augusti to Severus.* If you were appointed as *tutor* upon petition to an official or in a will, and you did not learn of your appointment, not through the fault of a rather lax negligence on your part but because of a justified ignorance that you demonstrate with clear proofs, you will not be liable for that period of time which passed without you knowing of your appointment.

Posted September 11, in the consulship of the Augusti, for the fourth and third time, respectively (290).

[6] *The same Augusti and the Caesars to Epictetus.* It is reasonable that liability for managing property does not extend to former *tutores* for the period of time subsequent to their transfer of the tutelage (to others), when their responsibility for management has been concluded.

Written November 27, in the consulship of the Caesars (294).

Thirty-Ninth Title When Wards May Sue or Be Sued Because of the Act of a *Tutor* or *Curator*[241]

[1] *Emperor* Antoninus *Augustus to Septimus.* If Juliana, against whose *curatores* you had a judgment, has passed her twenty-fifth year (i.e., turned 25), an analogous action on the judgment (*actio iudicati utilis*) shall be given against her and her property. For it has often been held in court that *tutores* and *curatores,* once their responsibilities have been concluded, cannot be sued in connection with their management on behalf of their minor or adult wards.

Posted June 24, at Rome, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[241] See D. 26.9.

[2] *Imp. Alexander A. Sosandro.* Etsi tutores tui, cum pecuniam pupillarem crederent, ipsi stipulati sunt, utilis actio tibi datur.

PP. XV k. Sept.

[3] *Imp. Gordianus A. Prudentiano.* Si in rem minoris pecunia profecta sit, quae curatori vel tutori eius nomine mutuo data est, merito personalis in eundem minorem actio danda est.

PP. non. Sept. Gordiano A. et Aviola conss.

[4] *Impp. Diocletianus et Maximianus AA. et CC. Maximianae.* Si hi, qui te in pupillari aetate constituta fuerunt tutores, postea in administratione perseverantes vel curatores constituti tua praedia locaverunt, eos competenter conveni: sed ex eorum contractu utilis tibi quaeri potuit contra successores conductoris actio.

S. III non. Mart. AA. conss.

[5] *Idem AA. et CC. Onesimae.* Per tutorem pupillo actio nisi certis ex causis quaeri non potest.

D. id. Dec. CC. conss.

XXXX Si ex Pluribus Tutoribus vel Curatoribus Omnes vel Unus Agere pro Minore vel Conveniri Possunt

[1] *Imp. Antoninus A. Miltiadi.* Ab uno ex tutoribus vel curatoribus posse causam minoris defendi, cum alii tutores vel curatores eum defendere noluerint, ignorare non debes.

PP. non. Nov. Messala et Sabino conss.

[2] *Imp. Constantinus A. et Licinius C. ad Symmachum.* Si divisum administrationis periculum per provincias sit, his tantum omnibus insinuari convenit et ab ipsis inferri litem, qui in ea provincia tutelae vel curae officium sustinent, ne de aliis provinciis defensores minorum ad iudicia producantur.

D. prid. non. Febr. Constantino A. V et Licinio C. conss.

[2] *Emperor* ALEXANDER *Augustus to Sosandrus.* Even if your *tutores*, when they lent out the money you had as a ward, themselves made the stipulation (for its return), an analogous action (*actio utilis*) is granted to you.
Posted August 18.

[3] *Emperor* GORDIAN *Augustus to Prudentianus.* If money given as a loan to a *curator* or *tutor* in the name of a ward was spent on the ward's property, a personal action (*actio personalis*) rightly shall be given against the same ward.
Posted September 5, in the consulship of Gordian Augustus and Aviola (239).

[4] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Maximiana.* If those who, while you were under age, were your *tutores* continued to manage your property afterwards, perhaps following appointment as *curatores*, and leased out your real properties, you have the right to sue them. But you have had the possibility of acquiring on their contract an analogous action against the heirs of the lessee.
Written March 5, in the consulship of the Augusti (293).

[5] *The same Augusti and Caesars to Onesima.* An action cannot be acquired by a minor ward through a *tutor* except in certain situations.
Given December 13, in the consulship of the Caesars (294).

Fortieth Title If, Out of Several *Tutores* or *Curatores*, All or One Can Sue or Be Sued on Behalf of the Ward

[1] *Emperor* ANTONINUS *Augustus to Miltiades.* You ought not to be unaware that a ward's case can be defended by one of the *tutores* or *curatores*, (even) when the others refuse to do so.
Posted November 5, in the consulship of Messala and Sabinus (214).

[2][242] *Emperor* CONSTANTINE *Augustus and* LICINIUS *Caesar to Symmachus.* If the liability for management has been divided by province, it is settled that only all those can be sued or sue who have the responsibility for managing a tutelage or a curatorship in that province, so that defenders of lawsuits against wards not be summoned to court from other provinces.
Given February 4, in the consulship of Constantine Augustus, for the fifth time, and Licinius Caesar (319).

[242] = (in part) C.Th. 2.4.1.1, ascribing the constitution to Constantine alone. Seeck dates to February 4, 318.

XXXXI Ne Tutor vel Curator Vectigal Conducat

[1] *Imp. Antoninus A. Sexto.* **pr.** Competens iudex non ignorat non esse admittendos ad vectigalia conducenda eos, qui pupillorum vel adulescentium tutelam seu curam administrant vel eius administrationis rationem nondum reddiderunt. **1.** Sed quamvis contra interdictum ad vectigale conducendum accesseris, tamen, quoniam ultro me adisti, si tam vectigali quam pupillis satisfeceris, falsi crimine carebis. **2.** Cum autem fisco iam obstrictum postea tutorem esse dicas, periculo te excusare poteris.

PP. VIII k. Aug. Romae Antonino A. IIII et Balbino conss.

XXXXII De Tutore vel Curatore Qui Satis Non Dedit

[1] *Impp. Valerianus et Gallienus AA. Titio et Flaviano.* Si nondum vobis aetas legitima completa est, satisdationem ab his, quos minus idoneos curatores vobis ab adversario, cum magistratu fungeretur, datos dicitis, postulate. prohibentur enim ab administratione, nisi securitati vestrae satisdatione prospexerint.

PP. non. Iul. Aemiliano et Basso conss.

[2] *Idem AA. et Valerianus C. Euploio.* **pr.** Et eum tutorem qui superest, si secundum praesidis praeceptum et iuris formam satis non dat, removeri a tutela (si inopia hoc faciat, sine infamia, si fraude, etiam cum nota) aditus provinciae rector iubebit: et in locum defunctorum alios idoneos substitui praecipiet, praesertim cum patrimonium pupilli nova hereditate auctum esse proponas. **1.** Tutores autem dati ab heredibus eorum, quos decessisse dicis, rationem tutelae reposcent.

PP. id. Mai. Saeculare et Donato conss.

Forty-First Title A *Tutor* or *Curator* Shall Not Farm Taxes

[1] *Emperor* ANTONINUS *Augustus to Sextus.* **pr.** The appropriate judge is not unaware that those who manage the tutelage or curatorship of minor or adult wards or who have not yet given an account of their management shall not be allowed to lease contracts (from the Treasury) for the collection of impost duties (*vectigalia*). **1.** And although you have violated this prohibition against farming taxes, nevertheless, because you have approached me of your own accord, if you make good on the tax lease as well as to your wards, you will be free from a charge of falsification. **2.** Since, moreover, you declare that when you were already obligated to the Treasury you then became a *tutor*, you will be able to excuse yourself from liability (for violating the prohibition).

Posted July 25, at Rome, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

Forty-Second Title A *Tutor* or *Curator* Who Has Not Given Security

[1] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Titius and Flavianus.* If you have not yet arrived at the age of full legal majority (i.e., 25), demand security from those, who, as you say, were appointed as your *curatores* – even though they did not possess sufficient resources – by your personal enemy when he was a public official. For they are prohibited from managing your property unless they make provision for your financial stability by giving security.

Posted July 7, in the consulship of Aemilianus and Bassus (259).

[2][243] *The same Augusti and* VALERIAN *Caesar to Euploius.* **pr.** And the governor of the province, once approached, will order that the remaining *tutor*, if he does not give security in accordance with the instructions of the governor and pursuant to the rules of law (*iuris forma*), be removed from the tutelage – if he fails to do this through poverty, without legal infamy (*infamia*); if through fraud, with legal infamy. And he will instruct that other sufficiently wealthy persons shall replace those who have passed away, especially since you allege that the minor ward's estate has been increased through a new inheritance. **1.** Moreover, the *tutores* who are appointed will demand an accounting of the tutelage from the heirs of those who you say are deceased.

Posted May 15,[244] in the consulship of Saecularis and Donatus (260).

[243] Combine with C. 5.36.4.
[244] The precise month is uncertain: May or March.

[3] *Impp. Diocletianus et Maximianus AA. Stratonicae.* **pr.** In dubium non venit tutores, qui non testamento dati sunt, administrandi potestatem nisi satisdatione emissa salvam tutelam fore non habere. **1.** Si igitur tutor, qui pro tutelari officio non caverat, iudicio expertus est, adversus eum lata sententia iuri tuo officere non potuit, nec ea quae ab eo gesta sunt ullam firmitatem obtinent. **2.** Frustra igitur in integrum restitutionis auxilium desideras, quando ea quae ab eo gesta sunt ipso iure irrita sunt.

PP. XVIII k. Ian. Nicomediae Diocletiano III et Maximiano AA. conss.

[4] *Idem AA. et CC. Tertullo.* Non omnium tutorum par similisque causa est. quapropter exemplo testamentarii confirmatum a praeside vel datum ex inquisitione non onerari satisdatione rem salvam fore pupillorum manifestum est, pluribus autem datis ex inquisitione tutoribus illum, qui satis secundum formam edicti rem pupilli salvam fore dedit, in administratione praeferri iam dudum obtinuit.

S. id. Dec. Nicomediae CC. conss.

[5] *Impp. Constantius et Maximianus AA. et Severus et Maximinus CC.* **pr.** Tutor, qui satisdationem, cum dare debuit, minime interposuit, nihil omnino ex bonis pupilli alienare potest. **1.** Posteaquam autem ad tutelae administrationem electus est, et bonorum possessionem pupilli nomine agnoscere eum potuisse et cetera eius, quae tempore artarentur, persequi debuisse aperte claret.

D. XI k. Ian. Constantio V et Maximiano V AA. conss.

XXXXIII De Suspectis

[1] *Imp. Antoninus A. Domitiae.* Libertum tuum et tutorem filii tui, si fraudulenter res eius administrare existimas, suspectum facere potes,

[3][245] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Stratonica.* pr. There is no doubt that *tutores* who are not appointed in a will lack the capacity of managing the ward's property if they do not give security that the tutelage will be protected. 1. If, then, your *tutor*, who gave no security for his tutelage, was involved in a lawsuit, a verdict against him could not prejudice your rights, nor do his transactions have any validity. 2. Hence you needlessly seek the benefit of restoration of rights, since his acts are void by operation of law.

Posted December 15, at Nicomedia, in the consulship of Diocletian, for the third time, and Maximian, Augusti (287).[246]

[4] *The same Augusti and the Caesars to Tertullus.* The situation of all *tutores* is not exactly the same. For this reason, though it is clear that, like a *tutor* named in a will, one who is confirmed by a provincial governor or appointed after a judicial hearing is not burdened with the obligation to give security that the minor wards' property is going to be protected, when, nonetheless, several *tutores* are appointed in a judicial hearing, it has for a long time been the rule that the one who has given security guaranteeing the ward's estate pursuant to the regulations in the Edict is preferred for the active management of the property.

Written December 13, at Nicomedia, in the consulship of the Caesars (294).

[5] *Emperors* CONSTANTIUS *and* MAXIMIAN *Augusti and* SEVERUS *and* MAXIMINUS *Caesars.* pr. A *tutor* who has not at all given security when he ought to have done so can make no alienation at all of the minor ward's property. 1. It is reasonably clear, however, that, after he has been chosen to manage the tutelage, he could have acknowledged the possession of property (*bonorum possessio*) and ought to have carried out the remaining aspects of the ward's affairs that do not admit of delay.

Given December 22, in the consulship of Constantius, for the fifth time, and Maximian, for the fifth time, Augusti (305).

Forty-Third Title Suspect *Tutores* and *Curatores*[247]

[1] *Emperor* ANTONINUS *Augustus to Domitia.* You can request the removal of the man who is your freedman and the *tutor* of your son, if you think he is managing the ward's property fraudulently, on the ground of suspected misconduct, provided that his responsibilities have not been concluded by the

[245] §§1–2 = (with changes) C. 2.40.4.
[246] Mommsen dates to December 15, 294.
[247] See D. 26.10; Inst. 1.26.

modo si officium eius pubertate pupilli finitum non est. nam si eo iure tutor esse desiit, iudicio tutelae conveniendus est.

PP. id. Aug. Romae duobus Aspris conss.

[2] *Idem A. Longino.* Curatores quidem suo periculo, quanto tardius ad eos tutela transfertur, cessant. quod si id fraude factum existimas, suspectos eos postula: qui si submoveri meruerint, in locum eorum alios accipies.

PP. id. Ian. Laeto II et Cereale conss.

[3] *Imp. Alexander A. Fortunatae.* Praeses provinciae tutores filiorum tuorum strictioribus remediis adhibitis omnimodo administrationis officium compellet agnoscere. quod si in eadem contumacia perseveraverint, suspectos postulare, ut alii in locum eorum petantur, non prohiberis.

PP. id. Ian. Alexandro A. III et Dione conss.

[4] *Idem A. Thalidae.* Etiam testamento patris tutorem datum suspectum postulare potes, si fraudem tutoris argueris.

PP. V id. Sept. Alexandro A. III et Dione conss.

[5] *Idem A. Asclepiadi.* In postulandis suspectis tutoribus seu curatoribus non vires patrimoniorum principaliter, sed an nihil segniter, nihil fraudulenter geratur, perpendi oportet.

PP. VIII k. Ian. Maximo II et Paterno conss.

[6] *Imp. Gordianus A. Felici.* **pr.** Pietatis fungeris munere, qui fratris tui filios, ut necessitudo sanguinis suadet, protegere conaris. **1.** Si igitur tutores vel curatores eorum non recte administrant, suspectis eis postulatis atque ostensis, ut alii in loco eorum constituantur, facile impetrabis. **2.** Quod si nihil in fraudem egerunt, verum ita egeni sunt, ut in eorum administratione fratris tui filiorum substantia periclitetur,

son's arrival at the age of adulthood. For if he has ceased to be *tutor* for that reason, he must be sued in an action on tutelage (*iudicium tutelae*).

Posted August 13, at Rome, in the consulship of the two Aspri (212).

[2] *The same Augustus to Longinus. Curatores*, to be sure, who fail to take up their responsibilities, are liable in proportion to the delay in the transfer of the tutelage to them. But if you think this was done fraudulently, make a judicial request that they be removed on the ground of suspected misbehavior. If they deserve to be removed, you will receive others in their place.

Posted January 13, in the consulship of Laetus, for the second time, and Cerealis (215).

[3] *Emperor* ALEXANDER *Augustus to Fortunata.* The governor of the province will force the *tutores* of your children thoroughly to undertake their duty of management by applying rather severe measures. But if they persist in the same spirit of contempt, you are not prevented from requesting in court their removal on the ground of suspect behavior, so that others can be sought in their place.

Posted January 13, in the consulship of Alexander Augustus, for the third time, and Dio (229).

[4] *The same Augustus to Thalida.* You can make a judicial request for the removal, on the ground of suspect conduct, even of a *tutor* appointed in a father's will, if you accuse him of fraud in connection with his duties as a *tutor*.

Posted September 9, in the consulship of Alexander Augustus, for the third time, and Dio (229).

[5] *The same Augustus to Asclepiades.* In making judicial requests for the removal of *tutores* and *curatores* on the ground of suspected misconduct, it is not chiefly the financial health of the estate, but whether it has been managed in a passive or fraudulent manner, that ought to be weighed.

Posted December 25, in the consulship of Maximus, for the second time, and Paternus (233).

[6] *Emperor* GORDIAN *Augustus to Felix.* **pr.** You will fulfill a duty of family affection (*pietas*), when, urged on by the ties of blood, you try to protect the children of your brother. **1.** If, then, their *tutores* or *curatores* do not properly manage their property, and they have been accused and found to be guilty of misconduct, you will easily gain your request that others be appointed in their place. **2.** But if they have done nothing fraudulently, but are so poor that under their management the property of your brother's children is placed in danger, the governor of the province will determine whether a *curator* of

an eis iniungendus sit curator, qui idoneis facultatibus sit, rector provinciae aestimabit. 3. Removendi autem licentia non solum parentibus utriusque sexus, sed etiam cognatis et extraneis et infamibus et ipsi cuius res administrantur, si non impubes sit, arbitrio cognatorum bonae opinionis constitutorum conceditur.

PP. v id. Nov. Pio et Pontiano conss.

[7] *Idem A. Gorgoniae.* Eum, quem ut suspectum tutorem vel curatorem accusas, pendente causa cognitionis abstinere ab administratione rerum tuarum, donec causa finiatur, praeses provinciae iubebit. alius tamen interea in locum eius in administratione rerum ordinandus est.

PP. vii k. Mart. Sabino ii et Venusto conss.

[8] *Imp. Philippus A. et Philippus C. Proculo.* Si non suspectum contutorem tuum postulare ac removere ab administratione bonorum pupilli curaveris, admitti nequaquam potest ratio desiderii tui iam nunc postulantis tutelam tibi nomine eiusdem pupilli restitui.

PP. xiii k. Nov. Peregrino et Aemiliano conss.

[9] *Impp. Diocletianus et Maximianus AA. et CC. Ammiano.* Suspectos tutores ex dolo, non etiam eos, qui ob neglegentiam remoti sunt, infames fieri manifestum est.

S. viii k. Mai. CC. conss.

XXXXIIII De in Litem Dando Tutore vel Curatore

[1] *Imp. Antoninus A. Miltiadi.* Si quas petitiones adversus pupillos tuos habes, dirigere eas potes, adsistentibus causamque defendentibus contutoribus tuis, cum et, si alios tutores non haberent, ad hoc genus litis defendendae curatores accipere deberent.

PP. xiii k. Aug. Antonino A. iiii et Balbino conss.

[2] *Imp. Alexander A. Euaristo.* **pr.** An tibi partis fundi paterni vindicatio competat, is cuius de ea re notio est aestimabit. 1. Respicere autem

sufficient resources must be appointed to act with them. 3. Moreover, freedom of (requesting) removal is granted not only to ascendant relatives of either sex, but also to (other) blood relatives, non-relatives, and persons marked with legal infamy (*infames*), as well as to the very person whose property is under management, at the discretion of the blood relatives who enjoy a good reputation, if he or she is not a minor.

Posted November 9, in the consulship of Pius and Pontianus (238).

[7] *The same Augustus to Gorgonia.* The governor of the province will order that the man whom you accuse of misconduct as *tutor* or *curator* abstain from the management of your property while the case is pending, until it is completed. Meanwhile, however, another person must be appointed to manage the property in his place.

Posted February 23, in the consulship of Sabinus, for the second time, and Venustus (240).

[8] *Emperor* Philip *Augustus and* Philip *Caesar to Proculus.* If you failed to request in court that your fellow *tutor* be removed from the management of the minor ward's property for misconduct, and thereby to remove him, the basis for your claim, as you now request in court that the tutelage in the name of the same ward be turned over to you, can in no way be respected.

Posted October 20, in the consulship of Peregrinus and Aemilianus (244).

[9] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Ammianus.* It is clear that *tutores* who are accused of and removed for intentional misconduct (*dolus*), not also those who are accused of and removed for negligence, are marked with legal infamy (*infames*).

Written April 24, in the consulship of the Caesars (294).

Forty-Fourth Title Appointing a *Tutor* or *Curator* for a Lawsuit

[1] *Emperor* Antoninus *Augustus to Miltiades.* If you have any claims against your minor wards, you can put them forward (in court) with your fellow *tutores* present and defending the suit. Also, if the wards have no other *tutores*, they ought to receive *curatores* for defending a suit in this kind of situation.

Posted July 20, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[2] *Emperor* Alexander *Augustus to Euaristus.* **pr.** Whether you have the right to recover a part of your father's farm will be decided by the public official

debes officium, in quo te esse tutorem dicis, ne ob eiusmodi petitionem evictione secuta ultra pretii quantitatem auctoris heredem pupillum tuum oneres, qui laudatus per te defendi debeat, cum aut compensationis rationem habere aut contrario tutelae iudicio experiri possis.

2. Sed ne tuum ius, si quod habes, impediatur, ad eam rem defendendam, quae adversus te vindicantem agenda erit, curatores pupillo petuntur.

PP. XII k. Mai. Iuliano et *Crispino conss.*

[3] *Imp. Gallienus A. Valerio.* Ad protegendam causam tutor sive curator datus conveniri non potest administrationis periculo, cum sola suscepti negotii tutela mandata est. si nihil igitur, ut adlegas, praeter negotium gessisti, frustra conveniris.

PP. k. April. Valeriano et Lucillo conss.

[4] *Idem A. Irenaeo.* Ad litem datus tutor si quid bona fide erogasti, a contutoribus more solito exigere potes.

PP. k. Nov. Paterno et Arcesilao conss.

[5] *Impp. Diocletianus et Maximianus AA. et CC. Tigrani.* Sive ex testamento sive iure legitimo fratris tui filiorum tutelae onus ad te pertineat, vereri non debes de his quaestionibus, quas adversus fratrem quondam tibi fuisse dicis, cum, si qua emerserit lis, procuratore dato et illis curatore ad litem constituto et sollemnitati iuris, ubi tutor exigitur, et indemnitati utriusque prospici possit.

S. IIII k. Mai. CC. conss.

with jurisdiction in this case. **1.** You ought to have regard, however, for the responsibilities that you have as a *tutor*, as you declare you are, so that upon eviction on such a claim you do not burden your ward, the heir of the seller, beyond the value of the price itself, since the just-mentioned ward ought to be defended by you, and you can either exercise the right of set-off (*compensatio*) or raise a countersuit on the tutelage.

2. But so that the exercise of your right, if you have one, not be hindered, *curatores* are assigned to the ward to defend against the matter that will have to be pursued in court with you as plaintiff.[248]

Posted April 20, in the consulship of Julian and Crispinus (224).

[3] *Emperor* GALLIENUS *Augustus to Valerius.* A *tutor* or *curator* appointed to oversee a lawsuit cannot be sued as if liable for managing the estate, since only the tutelage of the task he undertook was entrusted to him. If, then, as you allege, you did nothing aside from that task, you are being sued to no effect.

Posted April 1, in the consulship of Valerianus and Lucillus (265).

[4] *The same Augustus to Irenaeus.* As a *tutor* appointed for a lawsuit, if you have paid out any expenses in good faith (*bona fides*), you can claim these from your fellow *tutores* in the usual manner.

Posted November 1, in the consulship of Paternus and Arcesilaus (267).

[5] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Tigranes.* Whether the burden of the tutelage over your brother's children rests on you because of appointment in his will or according to the statutory rules, you ought to have no concern over those disputes that as you say, you had with your deceased brother. The reason is that, if a lawsuit arises, a procurator will be appointed who will be their *curator* for the lawsuit. The legal formalities that require a *tutor* can (thus) be observed and the interests of both parties can be safeguarded against loss.

Subscribed April 28, in the consulship of the Caesars (294).

[248] The constitution concerns a potential conflict between the financial interests of a *tutor* and those of his ward, but the details are a little obscure. P(laintiff) has a property right in a farm that survives the death of T(estator), and exercise of this right potentially prejudices the interests of H(eir), who is P's ward. If P forces a return of the farm by its purchaser, H will be forced to pay the latter twice the value of the whole (the penalty for eviction). The Emperor invites P to respect his fiduciary relationship with H (*tutor* and minor ward) by seeking the value of the portion due to him directly from the latter, and outlines two possible means: set-off and counter-suit on the tutelage. We are not told the full extent of the relationship between P and H, apart from the tutelage; P may be an emancipated brother of H or a family friend, for example.

XXXXV De Eo Qui Pro Tutore Negotia Gessit

[1] *Impp. Valerianus et Gallienus AA. Marcello.* Etiam mulieres, si res pupillares pro tutore administraverunt, ad praestandam rationem tenentur.
PP. Aemiliano et Basso conss.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Marco.* Non utiliter nominatus tutor pupillorum agendo nomine, licet ex eorum persona iniunctam impleat intentionem, exceptione 'si tutor non est' submovetur.
D. non. Dec. CC. conss.

XXXXVI Si Mater Indemnitatem Promiserit

[1] *Imp. Alexander A. Bruttiae.* Suo potius periculo magistratus tutores quos petisti dederunt, quam tu contra sexus condicionem alicui ex ea obligatione obstricta es, quod tuo periculo tutores filiis tuis dari postulasti.
PP. III id. Mart. Maximo II *et Urbano conss.*

[2] *Imp. Philippus A. et Philippus C. Asclepiadi et Menandro.* Quaedam pupillorum vestrorum a matre itemque avo paterno administrata eorumque nomine indemnitatem vobis promissam esse adseveratis. quae si ita sunt et idem pupilli legitimae aetatis effecti non adversus matrem suam itemque avum, sed contra vos congredi malunt, non immerito indemnitatem ab his praestari desiderabitis, quos et administrationem suo periculo pridem suscepisse proponitis.
PP. IIII id. Iul. Praesente et Albino conss.

[3] *Impp. Diocletianus et Maximianus AA. et CC. Gaiano.* Ob tutorem non idoneum a matre petitum frustra vobis eam teneri contenditis, cum

Forty-Fifth Title Persons Who Act in Place of a *Tutor*[249]

[1] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Marcellus.* Even women, if they have managed the property of a minor ward in place of a *tutor,* are held to give an account of their management.

Posted in the consulship of Aemilianus and Bassus (259).

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Marcus.* One who was appointed *tutor* without legal effect, although victorious in a lawsuit enjoined upon him in the name of his wards, will fail (to recover his expenses) if the affirmative defense that "he is not a *tutor*" is raised.

Subscribed December 5, in the consulship of the Caesars (294).

Forty-Sixth Title A Mother Promises Security Against Loss

[1] *Emperor* ALEXANDER *Augustus to Bruttia.* The public officials have appointed the *tutores* you requested with their own risk of liability, rather than that you, contrary to the status of your gender (*sexus condicio*),[250] should be bound to someone from an obligation that arose because you made a request in court that *tutores* be appointed for your children at your risk of liability.

Posted March 13, in the consulship of Maximus, for the second time, and Urbanus (234).

[2] *Emperor* PHILIP *Augustus and* PHILIP *Caesar to Asclepiades and Menander.* You assert that certain matters regarding your minor wards were managed by their mother and likewise their paternal grandfather, and that it was promised in their names you would not be held liable (in these matters). If that is so, and the same wards, when they reach adulthood, prefer to sue not their own mother or likewise their grandfather, but you instead, not unjustly will you seek freedom from liability to be furnished by those who, as you declare, also took up the management some time ago at their own risk.

Posted July 12, in the consulship of Praesens and Albinus (246).

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Gaianus.* You assert to no purpose that your mother is liable because she nominated a *tutor* without sufficient resources. For she is not bound by that obligation,

[249] See D. 27.5.
[250] On "gender" as a translation here, see the note at C. 5.3.20.

non, nisi specialiter eius periculo dari decreto fuisset comprehensum, ex ea obligatione obstricta est.

S. k. Dec. AA. conss.

XXXXVII Si Contra Matris Voluntatem Tutor Datus Sit

[1] *Impp. Severus et Antoninus AA. Tertio.* Si contra matris ultimam voluntatem Fuscinium filio communi tutorem datum probaveris, eum sine damno existimationis a tutela removendum praetor decernet. quae rescriptio, si in fraude convictus fuerit, non suffragabitur.

PP. XIII k. Mart. Laterano et Rufino conss.

XXXXVIII Ut Causae post Pubertatem Adsit Tutor

[1] *Imp. Philippus A. Dextro.* **pr.** Tutores, qui necdum administrationis rationem ad curatores transtulerunt, defensioni causarum pupillarium adsistere oportere saepe rescriptum est. **1.** Et ideo, si (ut proponis) instrumenta, quibus adseri possunt causae provocationis, etiam nunc hi quorum meministi apud se detinent, aditus praeses provinciae periculi sui eos admoneri praecipiet.

PP. XII k. Nov. Philippo A. et Titiano conss.

XXXXVIIII Ubi Pupilli Educentur

[1] *Imp. Alexander A. Dionysodoro.* **pr.** Educatio pupillorum tutorum nulli magis quam matri eorum, si non vitricum eis induxerit, committenda est. **1.** Quando autem inter eam et cognatos et tutorem super hoc

unless particular provision was made in the judicial decree that the appointment was made at her risk.

Written December 1, in the consulship of Diocletian and Maximian Augusti (293).

Forty-Seventh Title A *Tutor* Has Been Appointed Against the Wishes of the Mother

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Tertius.* If you prove that Fuscinius was appointed *tutor* for the son you have in common against the last wishes of his mother, the Praetor will decree his removal from the tutelage without his incurring legal infamy (*damnum existimationis*). This rescript will not avail him if he is found guilty of fraud.

Posted February 17, in the consulship of Lateranus and Rufinus (197).

Forty-Eighth Title A *Tutor* Shall Assist with a Lawsuit after the Ward Reaches Adulthood

[1] *Emperor* PHILIP *Augustus to Dexter.* **pr.** It has often been laid down in rescripts that *tutores*, who have not yet transferred accounts of the management of the ward's estate to *curatores*, ought to assist in defending the ward's lawsuits. **1.** And, for that reason, if, as you allege, those whom you mention are even now holding onto documents which can be used to launch an appeal, the governor of the province, once approached, will direct that they be admonished of the risks they are running.

Posted October 21, in the consulship of Philip Augustus and Titianus (245).

Forty-Ninth Title Where Wards Shall Be Raised[251]

[1] *Emperor* ALEXANDER *Augustus to Dionysodorus.* **pr.** The rearing of your minor wards shall be entrusted to no one but their mother, if she does not introduce a stepfather into the household. **1.** But whenever a dispute arises over this issue between her, the blood relatives of the children, and the *tutor*, the governor of the province, once approached, having enquired into the status of the parties and their degree of relationship to the wards, will weigh the question as to where the boy ought to be raised. **2.** But if, moreover, he comes to a

[251] See D. 27.2.

orta fuerit dubitatio, aditus praeses provinciae inspecta personarum et qualitate et coniunctione perpendet, ubi puer educari debeat. **2.** Sin autem aestimaverit, apud quem educari debeat, is necessitatem habebit hoc facere, quod praeses iusserit.

PP. VII id. Febr. Maximo II et Aeliano conss.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Gratae.* Utrum nepos tuus ex filia apud te an patruum suum morari debeat, ex singulorum adfectione et qui magis ad suspicionem ex spe successionis propior sit, aestimabitur.

S. XVIII k. Nov.[xvii] *Nicomediae CC. conss.*

L De Alimentis Pupillo Praestandis

[1] *Imp. Antoninus A. Faustino.* **pr.** Pupillus, si ei alimenta a tutore suo non praestantur, praesidem provinciae adeat, qui, ne in alimentorum praestatione mora fiat, partibus suis fungetur. **1.** Idem est et si de statu pupilli seu adulti et de bonis eius controversia pendeat.

PP. VI id. Iul. Romae Laeto II et Cereale conss.

[2] *Imp. Alexander A. Aufidio.* **pr.** Quod plerumque postulatur, ut arbitrio praetoris alimenta pro modo facultatum pupillis vel iuvenibus constituantur, pro officio suo hi qui aliena negotia gerunt, ne apud iudicem controversiam habeant, faciunt. **1.** Ceterum si bonus vir et innocens tutor arbitrio suo aluit pupillos (quod interdum etiam necesse est fieri, ne[xviii] secreta patrimonii et suspectum aes alienum, quod melius est interim taceri quam, cum de modo bonorum quaeritur, ultro proferri et apud acta ius dicentis contra utilitatem pupillorum signari), non dubio accepto ferre debebunt ea, quae vir bonus arbitrabitur merito ad exhibitionem educationis ministeria studiaque erogata esse. **2.** Nec ferendus est iuvenis, qui, cum praesens esset studiisque[xix]

[xvii] XVIII k. Ian.
[xviii] [ne] <propter>
[xix] qui pro censu studiis

decision as to by whom the ward ought to be brought up, this person will be obligated to do what the governor has ordered.

Posted February 7, in the consulship of Maximus, for the second time, and Aelianus (223).

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Grata.* Whether your grandson through your daughter ought to reside with you or with his paternal uncle will be determined through consideration of the affection each has for him and of which is worthier of suspicion because of an expectation of succeeding to him.

Written December 15, at Nicomedia, in the consulship of the Caesars (294).

Fiftieth Title Providing Support to a Minor Ward[252]

[1] *Emperor* ANTONINUS *Augustus to Faustinus.* **pr.** If a minor ward does not receive material support (*alimenta*) from his *tutor*, he shall approach the governor of the province, who will play his role in seeing that there is no delay in furnishing support. **1.** The same holds if a dispute is pending over the status of a minor or adult ward and his or her property.

Posted July 10, at Rome, in the consulship of Laetus, for the second time, and Cerealis (215).

[2] *Emperor* ALEXANDER *Augustus to Aufidius.* **pr.** Those who manage the property of another, as part of their responsibilities, avoid wrangling in court generally by requesting that the level of support for minor and adult wards be established, at the discretion of the Praetor, in a manner consistent with their resources. **1.** But if a good man (*bonus vir*) and blameless *tutor* has provided support to minor wards at his own discretion – which sometimes even happens of necessity, because of undisclosed aspects of the estate and debts that are unproven, which it is better to be silent about in the meantime than, during a judicial enquiry into the value of the property, to produce them of one's own accord and register them in the records of the official with jurisdiction, to the disadvantage (*contra utilitatem*) of the minor wards – he should without doubt be credited with a amount which a respectable man (*bonus vir*) would think was justly paid out as expenses for upbringing in the form of servants and education. **2.** Nor is the young person to be tolerated who, after he has been educated and maintained in a manner consistent with his resources, if he does not acknowledge that he attained those benefits through

[252] See D. 27.2.

eruditus atque alitus est, si ea per alium se consecutum non probet, sumptusque[xx] recuset, quasi vento vixerit aut nullo liberi hominis studio imbui meruerit.

PP. non. Dec. Maximo II et Aeliano conss.

LI Arbitrium Tutelae

[1] *Imp. Antoninus A. Leoni.* Cum tutelae administratae ratio a te peti coeperit, neque veritati neque iustis probationibus officit, quod (ut dicis) testator modum patrimonii sui verbis testamenti ampliavit vel minuit.

PP. V k. Oct. Romae duobus Aspris conss.

[2] *Idem A. Praesentino.* Nomina paternorum debitorum si idonea fuerunt initio susceptae tutelae et per latam culpam tutorum minus idonea tempore tutelae esse coeperunt, iudex qui super ea re datus fuerit dispiciet: et si palam dolo tutoris vel manifesta neglegentia cessatur, tutelae iudicio damnum, quod ex cessatione accidisset, pupillo praestandum esse statuere curabit.

PP. non. Iul. Antonino A. IIII et Balbino conss.

[3] *Idem A. Vitalio.* Curator, qui post decretum praesidis, sublata pecunia, quae ad comparationem possessionis fuerat deposita, praedium sibi comparavit, elige, utrum malis in emptione tibi negotium eum gessisse, an, quia in usus suos conversae pecuniae sunt, legitimas usuras ab eo accipere: secundum quae iudex tutelae iudicio redditus partem religionis implebit.

PP. III k. Iul. Romae Laeto II et Cereale conss.

[4] *Imp. Alexander A. Aglao.* **pr.** Eum, qui bonis paternis secundum edicti formam abstentus est, hereditariis actionibus conveniri nulla

[xx] sumptus

(the expenditure of) another, rejects the expenses claimed, as though he lived on wind or did not deserve to be educated in any manner consistent with the status of a free person.

Posted December 5, in the consulship of Maximus, for the second time, and Aelianus (223).

Fifty-First Title The Action on Tutelage[253]

[1] *Emperor* ANTONINUS *Augustus to Leo.* When an accounting is sought from you for a tutelage you have managed, the fact that, as you say, the testator either exaggerated or understated the value of the estate in the text of the will presents an obstacle neither to the truth nor to the presentation of the appropriate evidence.

Posted September 27, at Rome, in the consulship of the two Aspri (212).

[2][254] *The same Augustus to Praesentinus.* If your father's debtors had sufficient resources when you began to be in tutelage, and through the serious fault (*lata culpa*) of your *tutores* this changed during the period of tutelage, the judge appointed to hear the case will look into it. And if it is clear that such inactivity was due to the intentional fault (*dolus*) or the manifest negligence (*manifesta neglegentia*) of a *tutor*, he will see to it that the loss which came about from this idleness shall be made good to the minor ward through the action on tutelage.

Posted July 7, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[3] *The same Augustus to Vitalius.* If your *curator*, following a judicial decree of the provincial governor, appropriated money that had been deposited for the purchase of real estate, acquiring a property for himself with it, choose whether you prefer to treat him as though he had made the purchase on your account or, because the money was converted to his use, you prefer to receive lawful interest from him. Pursuant to what you decide, the judge who is appointed to hear the case on the action on tutelage will do his duty.

Posted June 29, in the consulship of Laetus, for the second time, and Cerealis (215).

[4][255] *Emperor* ALEXANDER *Augustus to Aglaus.* **pr.** No reason allows a person who has refused to enter upon his father's property according to the rules of

[253] See D. 27.3.
[254] Combine with C. 5.56.1.
[255] Pr. = C. *Greg.* 6.18.

ratio suadet. 1. Nec ad rem facit, quod adversus curatores, si non consulte abstentus sit, actio competat: nihil quippe in ea quae ex officio gesta sunt vel geri debebunt veniet, sed culpa solum quantique interfuit eius non fuisse abstentum aestimatur. 2. Cui consequens est, ut, si propter eam causam transegisti cum curatoribus, nulla adversus te creditoribus patris tui petitio competat.

PP. III k. Mai. Alexandro A. cons.

[5] *Imp. Gordianus A. Victorino.* Omnes tutores seu heredes eorum, qui administraverunt tutelam, ad eundem iudicem ire debere iam pridem constitutum est. cum igitur patrem tuum cum alio tutelam administrasse adlegas, praeses provinciae eundem iudicem adversus te atque heredes contutorum patris tui dare debebit, quatenus quisque condemnari debeat, examinaturum.

PP. X k. Aug. Pio et Pontiano conss.

[6] *Impp. Diocletianus et Maximianus AA. Septimo et Cononi.* **pr.** Cum interdictae venditionis vitium etiam pretii fraude tutor vester cumulasse proponatur, non dubitabit praeses provinciae, quando venditionem confirmare voluistis, residuum pretium cum usuris venditae a tutore possessionis celeriter vobis restitui iubere. 1. Quod autem petitis ab heredibus eius qui vendidit pretium vobis exsolvi, superfluo a nobis desideratis, quia nec praesidis experientiam possit latere, tutores qui gesserint sive heredes eorum ob ea negotia, quae per eos administrata sunt, principali loco conveniri debere, ceteris ob culpae rationem non servati detrimenti periculo substitutis, vel, si pariter administrasse doceantur, etiam adversus unum liberum experiundi arbitrium competere, ita ut actiones, quas adversus alios habetis, ad electum transferantur.

PP. IIII k. Sept. ipsis IIII et III AA. conss.

[7] *Idem AA. et CC. Alexandro.* Quidquid tutoris dolo vel lata culpa vel levi culpa sive curatoris minores amiserint vel, cum possent, non

the Edict to be sued on actions that lie against the heir. 1. Nor does it make a difference that an action lies against his *curatores* if he refused imprudently, for nothing will be relevant regarding what they have done or ought to do in future in connection with their duties. Only (their) negligence (*culpa*) is taken into account, in that the calculation is made of the consequences (for the ward) of not entering upon the inheritance. 2. It follows from this that if you have settled with your *curatores*, no suit against you lies for your father's creditors.

Posted April 29, in the consulship of Alexander Augustus (222).

[5] *Emperor* Gordian *Augustus to Victorinus.* It has been for a long time settled law (*constitutum*) that all *tutores* who have managed a tutelage (with others), or their heirs, ought to go before the same judge. Since, then, you allege that your father managed, with another person, a tutelage, the governor of the province ought to appoint the same judge for you and the heirs of your father's fellow *tutores*, who will look into how much each of you ought to be condemned to pay.

Posted July 23, in the consulship of Pius and Pontianus (238).

[6] *Emperors* Diocletian *and* Maximian *Augusti to Septimus and Conon.* **pr.** Since, on the facts put forward, your *tutor*, besides being guilty of making a sale that he was forbidden to make, has acted with fraud as to the price, the governor of the province will not hesitate, if you want to confirm the sale, to order that the remainder of the price of the property that was sold by the *tutor* be quickly returned to you with interest. 1. As far as concerns your suit, however, against the heirs of the man who sold the property, it is superfluous for you to ask Us that the (residual) price be paid to you, because it cannot have escaped an experienced governor that the *tutores* who have managed the tutelage or their heirs ought to be sued in the first place over the affairs that they have managed, with the others added in proportion to the liability they bore for negligence in not preventing the loss, or, if they are shown to have managed the property on an equal footing, the free right of suit lies against any one of them, so that the actions, which you have against the others, shall be transferred against the one who is chosen as defendant.

Posted August 29, in the consulship of the Augusti, for the fourth and third time, respectively (290).

[7] *The same Augusti and the Caesars to Alexander.* It is not an uncertain point of law (*incertum ius*) that whatever wards have lost or, when it would have been possible, failed to gain through the intentional wrong (*dolus*), gross negligence (*culpa lata*), or minor negligence (*culpa levis*) of a *tutor* or a *curator*

quaesierint, hoc etiam in tutelae sive negotiorum gestorum utile iudicium venire non est incerti iuris.

S. prid. id. April. AA. conss.

[8] *Idem AA. et CC. Dalmatio.* Tutores tutelae conveniri longi temporis praescriptio non prohibet. unde si his transactione vel novatione atque acceptilatione liberationem non praestitisti, apud rectorem provinciae quaecumque tibi debentur repetere non prohiberis.

S. XVI k. Mai. AA. conss.

[9] *Idem AA. et CC. Iuliano.* Tutorem quondam, ut tam rationem quam si quid reliquorum nomine debet reddat, apud praetorem convenire potes. quamvis enim matrem tuam susceptis bonis vestris indemnitatem pro hac administratione tutori se praestituram promisisse proponatur, tamen adversus tutorem tibi tutelae, non adversus matris successores ex stipulatu competit actio.

S. prid. k. Ian. AA. conss.

[10] *Idem AA. et CC. Pomponio.* **pr.** Si defunctus tutelam vestram administravit, non rerum eius dominium vindicare vel tenere potes, sed tutelae contra eius successores tibi competit actio. **1.** Debitum autem aliis indiciis probari oportet. nam quod neque ipse neque uxor eius quicquam ante administrationem habuerunt, non idoneum huius continet indicium: nec enim pauperibus industria vel augmentum patrimonii, quod laboribus ac multis casibus quaeritur, interdicendum est.

S. XI k. Febr. Sirmi CC. conss.

[11] *Idem AA. et CC. Chrysianae.* Tutor post puberem aetatem puellae si in administratione conexa perseveraverit, tutelae actione totius temporis rationem praestare cogitur. sin autem post finitam administrationem in isdem rebus minime se immiscuerit, temporis quod insequitur periculum ad eum non pertinet.

S. V k. Dec. Anchialo CC. conss.

comes too under an action on tutelage or an analogous action on the management of affairs (*negotia gesta*).

Written April 12, in the consulship of the Augusti (293).

[8] *The same Augusti and Caesars to Dalmatius.* The long-time prescription (*longi temporis praescriptio*) does not bar *tutores* from being sued on an action on tutelage. So if you have not released your *tutores* through settlement, novation, or formal discharge, you are not prevented from suing for whatever they owe you before the governor of the province.

Written April 16, in the consulship of the Augusti (293).

[9] *The same Augusti and Caesars to Julian.* You can sue your former *tutor* before the Praetor, both for an accounting and for whatever residue he owes you. For although it is put forward that your mother took over your property and promised your *tutor* that she would guarantee his freedom from liability in connection with its management, nevertheless an action on tutelage lies for you against the *tutor*, not an action on the stipulation against the heirs of your mother.

Written December 31, in the consulship of the Augusti (293).

[10] *The same Augusti and Caesars to Pomponius.* **pr.** If the decedent managed your tutelage, you cannot claim ownership of his property or hold it, but an action on tutelage lies for you against his heirs. **1.** That something is owed, however, ought to be proved by other evidence (than what you have produced so far). That neither he nor his wife had anything before (the period of) his management is insufficient proof of this. For energy and an increase in wealth earned through effort and in many (varied) circumstances is not to be forbidden to persons of modest means.

Written January 22, at Sirmium, in the consulship of the Caesars (294).

[11] *The same Augusti and Caesars to Chrysiana.* If a *tutor* has continued without interruption to manage the property of a girl after she has reached adulthood, under an action on tutelage he is compelled to render an account for the entire time period. But if, however, after the conclusion of his management he had nothing at all to do with the property, he is not liable for the subsequent time period.

Written November 27,[256] *at Anchialus, in the consulship of the Caesars (294).*

[256] The precise month is uncertain: Mommsen prefers October 28, 294.

[12] *Idem AA. et CC. Quintillae.* Tutelae actio tam heredibus quam etiam contra successores competit.

S. x k. Dec. Sirmi CC. conss.

[13] *Imp. Iustinianus A. Iuliano pp.* **pr.** Veteris iuris dubitationem decidentes sancimus, si quidem tutor vel curator pro substantia pupilli vel adulti aliquid ubicumque dixerit ad maiorem quantitatem eam reducens, sive pro utilitate pupilli vel adulti sive per solam simplicitatem sive per aliam quamcumque causam, nihil veritati praeiudicare, sed hoc obtinere, quod ipsius rei inducit natura et mensura pupillaris vel adulti ostendit substantiae. **1.** Sin autem inventario publice facto res pupillares vel adulti conscripserit et ipse per huiusmodi scripturam confessus fuerit ampliorem quantitatem substantiae, non esse aliud inspiciendum nisi hoc quod scripsit, et secundum vires eiusdem scripturae patrimonium pupilli vel adulti exigi: neque enim sic homo simplex, immo magis stultus invenitur, ut et in publico inventario contra se scribi aliquid patiatur.

2. Illo procul dubio observando, ut non audeat tutor vel curator res pupillares vel adulti aliter attingere vel ullam sibi communionem ad eas vindicare, nisi prius inventario publice facto secundum morem solitum res eis tradantur: nisi testatores qui substantiam transmittunt specialiter inventarium conscribi vetaverint. **3.** Scituris tutoribus et curatoribus, quod, si inventarium facere neglexerint, et quasi suspecti ab officio removeantur et poenis legitimis, quae contra eos interminatae sunt, subiacebunt et postea perpetua macula infamiae notabuntur, neque ab imperiali beneficio absolutione huiusmodi notae fruituri.

D. k. Aug. Constantinopoli Lampadio et Oreste vv. cc. conss.

LII De Dividenda Tutela et pro Qua Parte Quisque Tutorum Conveniatur

[1] *Imp. Gordianus A. Optato.* Si post finitum administrationis officium collegae tui indemnitati praestandae idonei fuerunt posteaque, dum

[12] *The same Augusti and Caesars to Quintilla.* The action on tutelage lies not only for the heirs of the ward but also against those of the *tutor*.

Written November 22, at Sirmium, in the consulship of the Caesars (294).[257]

[13] *Emperor* JUSTINIAN *Augustus to Julian, Praetorian Prefect.* **pr.** Removing the hesitation of the ancient law (*vetus ius*), We lay down that if, in fact, a *tutor* or a *curator* has said something anywhere about the property of a minor or adult ward, exaggerating its size, whether he does this in the interest of the ward, or through sheer foolishness, or for any other reason at all, no prejudice shall be caused to the truth, but what the nature and measure of the ward's property itself shows to be its value shall be the determining factor. **1.** But if, however, he made a public inventory, writing up the details of the minor or adult ward's property, and he himself, in producing a document of this kind, exaggerated the value of the property, nothing else shall be considered except what he wrote, and the estate of the ward shall be demanded from him in accordance with the valuation provided by this same document. For no person is so foolish, or rather downright stupid, as to allow something to be written down even in a public inventory against his own interest.

2. It is far from doubt that this rule shall be observed, that a *tutor* or a *curator* shall not dare to lay hold of a ward's property or claim any interest in it for himself before he makes a public inventory and the property is turned over to him in the customary way. An exception arises (only) if a will-maker in bequeathing the estate specifically forbids the writing up of an inventory. **3.** All *tutores* and *curatores* will know that if they fail to make an inventory they shall be removed from their position on the ground of being suspected of misconduct, and they both will be subject to the legal penalties, which in their case are boundless, and afterwards will be marked by the permanent stain of legal infamy (*infamia*), without (ever) enjoying release from such infamy through a grant of imperial favor.

Given August 1, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

Fifty-Second Title Dividing a Tutelage and Deciding Which Part Is Appropriate for each *Tutor*

[1] *Emperor* GORDIAN *Augustus to Optatus.* If your colleagues possessed suitable resources for the purpose of shielding you from the financial impact of liability after laying down their responsibilities of management, and, during a

[257] Mommsen dates to December 13, 294.

non conveniuntur, minus idonei effecti sunt, vitium alienae cessationis ad dispendium tuum pertinere iuris ratio non patitur.

PP. VI id. Mai. Gordiano A. II et Pompeiano conss.

[2] *Imppp. Carus Carinus et Numerianus AAA. Primigenio.* **pr.** Si divisio administrationis inter tutores sive curatores in eodem loco seu provincia constitutos necdum fuit, licentiam habet adulescens et unum eorum eligere et totum debitum exigere, cessione videlicet ab eo adversus ceteros tutores seu curatores actionum ei competentium facienda. **1.** In divisionem autem administratione deducta sive a praeside sive a testatoris voluntate unumquemque pro sua administratione convenire potest, periculum invicem tutoribus seu curatoribus non sustinentibus, nisi per dolum aut culpam suspectum non removerunt vel tardae suspicionis rationem moverunt, cum alter eorum non solvendo effectus sit, vel suspicionis causam agendo sua sponte iura pupilli prodiderunt. **2.** Nec prodest eis dicentibus contutorem suum non administrasse pupillares res. **3.** Sin vero ipsi inter se res administrationis diviserunt, non prohibetur adulescens et unum ex his in solidum convenire, ita ut actiones, quas adversus alios habet, ad electum transferat.

PP. Hemesae XV k. April. Carino II et Numeriano AA. conss.

[3] *Impp. Diocletianus et Maximianus AA. et CC. Zotico.* Licet tutorum conventione mutuum periculum minime finiatur, tamen eum qui administravit, si solvendo sit, in primo loco eiusque successores conveniendos esse non ambigitur.

S. IIII k. Oct. CC. conss.

LIII De in Litem Iurando

[1] *Impp. Severus et Antoninus AA. Asclepiodoto.* Adversus heredem tutoris ad transferendam tutelam iudicem accipiens tempore litis ad puberem instrumenta pertinentia restitui desiderabis. quod si dolo non

delay in bringing suit against them, they became insufficiently wealthy (to do so), the accepted legal logic (*ratio iuris*) does not permit the fault of someone else's inaction to redound to your disadvantage.

Posted May 10, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

[2] *Emperors* CARUS, CARINUS, *and* NUMERIANUS *Augusti to Primigenius.* pr. If there has not yet been a division of managing duties among the *tutores* or *curatores* appointed in the same place or province, the ward has the ability to choose one of them and demand the entire amount owed from him, clearly under the obligation of transferring (to him) the actions that lie against the remaining *tutores* or *curatores.* **1.** When a division of management has been made, however, either by the governor or through the expressed preference of a testator, he (the ward) can sue each one (only) for his part of the management, since the *tutores* or *curatores* do not bear liability for each other, unless through intentional fault (*dolus*) or negligence (*culpa*) they have not removed someone suspected of misconduct, they made a request for removal tardily, so that one of them became insolvent, or in pursuing the removal of their own accord they betrayed the rights of the ward. **2.** Nor does it avail them when they say that their fellow *tutor* did not manage the ward's property. **3.** But if, however, they themselves divided the property to be managed among themselves, the ward is not forbidden to sue one of them for the whole, so that he transfers the actions that he has against the others to the one he has chosen.

Posted March 18,[258] *at Emesa, in the consulship of Carinus, for the second time, and Numerianus, Augusti (284).*

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Zoticus.* Although no agreement has been concluded about the respective liability of a group of *tutores*, nevertheless there is no doubt that he who took on the active management, as well as his heirs, should be sued first, if he is solvent.

Written September 28, in the consulship of the Caesars (294).

Fifty-Third Title A Plaintiff's Oath[259]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Asclepiodotus.* When you receive a judge in a suit against the heir of a *tutor* for the purpose of transferring a tutelage, you will request, at the time of the suit, that the documents

[258] The precise day is uncertain; the alternative is March 21.

[259] See D. 12.3. Blume: "The assessment oath, here dealt with – *juramentum in litem* – was an oath whereby the plaintiff assessed or taxed the damages he had suffered by the loss of any object, that is to say, he was permitted to estimate the extent of his damages and to swear that i[t] amounted to a certain sum."

exhibeantur, in litem iurandi tibi facultas erit, modo si quondam pupillo debitam adfectionem ad vincula quoque religionis extendere volueris.
PP. k. Aug. Geta II cons.

[2] *Imp. Antoninus A. Severo.* **pr.** Is, qui rationes tutelae seu curae reposcit, invitus in litem iurare compelli non potest. sed volens ita demum audiendus est, si heres per longam successionem tutoris instrumenta pupillaria dolo circumveniendi pupilli gratia exhibere non vult. **1.** Sin vero neque dolus neque lata culpa neque fraus heredis convincetur, omissa iurisiurandi facultate iudex de veritate cognoscet, quae etiam argumentis liquidis investigari potest.
PP. XI k. Oct. duobus Aspris conss.

[3] *Idem A. Prisciano militi.* Summa sententia comprehensa, quam cessantibus curatoribus quondam tuis iudex secutus iurisiurandi a te prolati religionem in condemnationem deduxit, minui pacto non potuit.
PP. k. Iul. Laeto II et Cereale conss.

[4] *Imp. Gordianus A. Muciano.* **pr.** Alio iure est tutor, alio heres eius. tutor enim inventarium ceteraque instrumenta si non proferat, in litem iusiurandum adversus se potest admittere: at enim heres eius ita demum, si reperta in hereditate dolo malo non exhibeat. **1.** Sed cum adversus ipsum tutorem litem contestatam esse dicatis, transferentibus in heredes eius actionem praeses provinciae partes suas exhibebit non ignorans, nisi exhibeantur instrumenta, quatenus iuxta formam constitutionum partes suas debeat moderari.
PP. VII k. Oct. Pio et Pontiano conss.

[5] *Impp. Diocletianus et Maximianus AA. et CC. Artemidoro.* Licet adversus heredes ob non factum inventarium iusiurandum in actione

relevant to the ward, now arrived at the age of legal majority, be turned over. But if, as a consequence of fraud, they are not produced, you will have the right to swear a plaintiff's oath assessing the damages, provided that you wish to elevate the affection you owe to the former minor ward to the bonds even of a sacred duty.

Posted August 1, in the consulship of Geta, for the second time (205).[260]

[2] *Emperor* ANTONINUS *Augustus to Severus.* **pr.** The person who demands an accounting of a tutelage or a curatorship cannot be forced to swear a plaintiff's oath against his will. And even if he is willing he shall be heard only to the extent that the distant heir of the *tutor* fraudulently (*dolo*) refuses to produce the ward's documents so as to cheat the ward. **1.** But if, however, neither malicious intent to cause harm (*dolus*), serious fault (*culpa lata*), nor fraud (*fraus*) on the part of the heir is shown, the judge, dropping the possibility of a plaintiff's oath, will investigate the truth of the matter, which can also be scrutinized through clear proofs.

Posted September 21, in the consulship of the two Aspri (212).

[3][261] *The same Augustus to Priscianus, a soldier.* The amount laid down in a judicial decree, which a judge, respecting the authority of the plaintiff's oath you swore, inflicted on your former *curatores* who were derelict in their duty, could not be diminished through private agreement (*pactum*).

Posted July 1,[262] *in the consulship of Laetus, for the second time, and Cerealis (215).*

[4] *Emperor* GORDIAN *Augustus to Mucianus.* **pr.** One set of rules (*ius*) applies to a *tutor*, another set to his heir. For if a *tutor* does not produce the inventory and the other relevant documents, a plaintiff's oath can be allowed against him. But this applies to his heir only if he finds the documents in his bequest and does not produce them out of fraud (*dolus malus*). **1.** But since you say that there was joinder of issue (*litis contestatio*) with the *tutor* himself, the governor of the province will play his role as you transfer the action against his heirs, not unaware to what extent, unless the documents are produced, he ought to exercise his authority consistently with the content of imperial constitutions.

Posted September 25, in the consulship of Pius and Pontianus (238).

[5] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Artemidorus.* Although it is settled law that a plaintiff's oath for failure to make

[260] So Krüger, but Geta's first consulship was in 205, his second in 208, while Caracalla's second was in 205, his third in 208.

[261] = (in part, with minor changes) Consultatio 9.8.

[262] The precise day is uncertain: the altenative is June 22.

tutelae praetermitti placuerit, iudicem tamen velut ex dolo tutoris aliis indiciis instructum adversus eos ferre sententiam convenit.

S. VIII k. Ian. Nicomediae CC. conss.

LIIII De Heredibus Tutorum

[1] *Impp. Severus et Antoninus AA. Fusciano.* Heredes tutoris ob neglegentiam, quae non latae culpae comparari possit, condemnari non oportet, si non contra tutorem lis inchoata est neque ex damno pupilli lucrum captatum aut gratiae praestitum sit.

PP. VI id. Mart. Laterano et Rufino conss.

[2] *Imp. Antoninus A. Valentiniano et Materno.* **pr.** Pater vester tutor vel curator datus si se non excusavit, non ideo vos minus heredes eius tutelae vel utili iudicio conveniri potestis, quod eum tutelam seu curam non administrasse dicitis: nam etiam cessationis ratio reddenda est. **1.** Prius tamen propter actum suum eos conveniendos esse qui administraverint saepe rescriptum est.

PP. XI k. Mart. Antonino A. IIII et Balbino conss.

[3] *Idem A. Avitae.* Adversus heredes quondam tutoris tui tutelae actione consiste. in iudicium autem veniet etiam id, quod tibi tutor ex causa fideiussionis debuit.

PP. III non. Iul. Antonino A. IIII et Balbino conss.

[4] *Imp. Alexander A. Frontino.* Heredes eorum, qui tutelam vel curam administraverint, si quid ad eos ex re pupilli vel adulti pervenit, restituere coguntur: et in eo autem, quod tutor vel curator administrare debuit nec administravit, rationem reddere eos debere non est ambigendum.

PP. VIII k. Nov. Alexandro A. III et Dione conss.

an inventory does not lie in an action on tutelage against the heirs, nevertheless it is agreed that a judge, for example, when informed from other sources about the fraud (*dolus*) of the *tutor*, shall find against them.

Written December 25, at Nicomedia, in the consulship of the Caesars (294)

Fifty-Fourth Title The Heirs of *Tutores*[263]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Fuscianus.* The heirs of a *tutor* ought not to be condemned for negligence (*neglegentia*) that does not amount to serious fault (*lata culpa*), unless the suit against the *tutor* has (already) begun and profit has been taken by the *tutor* himself or turned over to another as a favor (*gratia*), to the detriment of the minor ward.

Posted March 10, in the consulship of Lateranus and Rufinus (197).

[2] *Emperor* ANTONINUS *Augustus to Valentinianus and Maternus.* **pr.** If your father was appointed as a *tutor* or as a *curator* and did not excuse himself, the fact that you claim that he did not manage the tutelage or the curatorship does not mean that you, as his heirs, cannot be sued on an action on tutelage or on an analogous action. For an account must be rendered even of a failure to perform. 1. Nevertheless, it has often been laid down in rescripts that those who had active management shall be sued beforehand on account of their actions.

Posted February 19, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[3] *The same Augustus to Avita.* Bring an action on tutelage against the heirs of your deceased guardian. Moreover, that which your *tutor* owed you as a surety will also enter into the suit.

Posted July 5,[264] *in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).*

[4] *Emperor* ALEXANDER *Augustus to Frontinus.* If the heirs of someone who has managed a tutelage or a curatorship have acquired anything from the property of the minor or adult ward, they are forced to return it. Moreover, there shall be no doubt that they must render an account even in a situation where a *tutor* or *curator* ought to have managed the estate but failed to do so.

Posted October 25, in the consulship of Alexander Augustus, for the third time, and Dio (229).

[263] See D. 27.7.

[264] The precise day is uncertain: the alternative is July 4.

LV Si Tutor Non Gesserit

[1] *Imp. Alexander A. Zotico.* **pr.** Certum est non solum eos qui gesserunt, sed etiam qui gerere debuerunt tutelam teneri etiam in ea, quae a contutoribus servari non potuerunt, si modo, cum suspectos facere deberent, id officium omiserunt. 1. Tu autem, etsi contra patronum tuum famosam actionem instituere non potuisti, providere tamen, ne quid tutelae deesset, necessariis postulationibus apud eum, cuius de ea re iurisdictio fuit, potuisti.

PP. prid. id. Mai. Maximo II et Aeliano conss.

[2] *Idem A. Iusto.* Qui se non immiscuerunt tutelae vel curae, ex persona eorum, qui gesserunt et idonei sunt, non onerantur. si qua vero sunt, quae, cum geri debuerunt, omissa sunt, latae culpae ratio omnes aequaliter tenet.

PP. VIII k. Mai. Iuliano et Crispino conss.

LVI De Usuris Pupillaribus

[1] *Imp. Antoninus A. Praesentino.* Tutorem vel curatorem pecuniae, quam in usus suos convertit, legitimas usuras praestare debere olim placuit.

PP. non. Iun. Antonino A. IIII et Balbino conss.

[2] *Imp. Alexander A. Ampliato.* Eius, quod ex causa tutelae debetur, usuras praestari oportere dubium non est, quamvis aliis pro participe muneris necessitas solutionis inrogetur, quia id non alias contingit, quam si cessatio contutoris in suspecto faciendo imputari possit.

PP. XIII k. Iul. Iuliano et Crispino conss.

Fifty-Fifth Title If a *Tutor* Fails to Manage

[1][265] *Emperor* ALEXANDER *Augustus to Zoticus.* **pr.** It is certain that not only those who have managed a tutelage, but also those who ought to have managed one, are liable even for that which could not be recovered from their fellow *tutores*, provided that, when they ought to have had them removed on the ground they were suspected of misconduct, they failed to do so. **1.** You, however, even though you could not bring an action which involves infamy against your patron, nevertheless could have seen to it that nothing was lacking in (the management of) the tutelage, by making the necessary judicial requests to him who has jurisdiction in this matter.

Posted May 14, in the consulship of Maximus, for the second time, and Aelianus (223).

[2] *The same Augustus to Iustus.* Persons who did not involve themselves in the management of a tutelage or a curatorship are not burdened in the same way as those persons who assumed active management and have sufficient resources. But if there are some things which ought to have been managed and have not been, the principle of serious fault (*lata culpa*) makes all of them equally liable.

Posted April 24, in the consulship of Julian and Crispinus (224).

Fifty-Sixth Title Interest Due to Wards

[1][266] *Emperor* ANTONINUS *Augustus to Praesentinus.* It has for a long time been settled law that a *tutor* or a *curator* must pay lawful interest on the (ward's) money which he turns to his own uses.

Posted June 5, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[2] *Emperor* ALEXANDER *Augustus to Ampliatus.* There is no doubt that interest ought to be paid on money which is owed in connection with a tutelage, although the obligation to pay may be imposed on some in place of a co-participant in the responsibility, which only occurs when a failure to perform on the part of a fellow *tutor* can be imputed to them for not asking for the removal of someone on the ground of suspected misconduct.

Posted June 19, in the consulship of Julian and Crispinus (224).

[265] = (in part, with minor changes) C. 6.6.1.
[266] Combine with C. 5.51.2.

[3] *Idem A. Vitalio.* Si pecuniam pupillarem neque idoneis hominibus credere neque in emptionem possessionum convertere potuisti, non ignorabit iudex usuras eius a te exigi non oportere.

PP. id. April. Modesto et Probo conss.

[4] *Impp. Diocletianus et Maximianus AA. et CC. Aurelio.* **pr.** Pupillus agere vobiscum actione tutelae compelli non potest. **1.** Verum adversus futuram calumniam et ut, si quid ei debetis, cursus eius inhibeatur usurarum, denuntiationibus frequenter interpositis ad iudicium eum provocate ac, si rem dissimulatione proferat, actis apud praesidem provinciae factis voluntatis vestrae rationem declarate: quo facto tam vobis ipsis quam securitati filiorum vestrorum consulatis. **2.** Quod et in curatoribus locum habet.

PP. III id. Febr. Sirmi CC. conss.

LVII De Fideiussoribus Tutorum seu Curatorum

[1] *Imp. Alexander A. Felici.* Eligere debes, utrum cum ipsis tutoribus vel curatoribus heredibusve eorum an cum his, qui pro eis se obligaverunt, agere debeas vel, si ita malis, dividere actionem. nam in solidum et cum reo et cum fideiussoribus agi iure non potest.

PP. X k. Febr. Iuliano et Crispino conss.

[2] *Idem A. Prisco.* **pr.** Non est ambigui iuris electo reo et solvente fideiussorem liberari. **1.** Et ideo si simpliciter acceptus est fideiussor in id, quod tutor seu curator debiturus esset, cum proponas tutorem seu curatorem condemnatum solvisse, quid dubium est liberatum esse fideiussorem? **2.** Plane si stipulatio rem salvam fore interposita est vel cautum est in id, quod a tutore seu curatore servari non potest, manet fideiussor obligatus ad supplendam tibi indemnitatem.

PP. VIII k. Aug. Fusco II et Dextro conss.

[3] *The same Augustus to Vitalius.* If you were unable to lend your minor ward's money to suitable persons nor to use it for the acquisition of real properties, the judge will not be unaware that payment of interest on this ought not to be required from you.

Posted April 13, in the consulship of Modestus and Probus (228).

[4] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Aurelius.* **pr.** A minor ward cannot be compelled to sue you on an action on tutelage. **1.** But to guard against a malicious prosecution in the future and to keep down the cost of interest on any money you may owe, call him (the ex-ward) into court with frequent summonses. And if he deceitfully delays the matter, have a declaration of your intentions placed on the records of the provincial governor. By doing this you shall protect yourselves as well as the interests of your children. **2.** This also applies to *curatores.*

Posted February 11,[267] at Sirmium, in the consulship of the Caesars (294).

Fifty-Seventh Title Sureties of *Tutores* and *Curatores*[268]

[1] *Emperor* ALEXANDER *Augustus to Felix.* You must choose whether you ought to litigate with your *tutores* or *curatores* themselves, or (where relevant) their heirs, or with those who have obligated themselves on their behalf, or, if you so prefer, you ought to divide the action. For it is not possible to sue both the principals and the sureties (simultaneously) for the entire amount.

Posted January 23, in the consulship of Julian and Crispinus (224).

[2] *The same Augustus to Priscus.* **pr.** It is not a doubtful point of law (*ius ambiguum*) that, if a principal is sued and pays, the surety is released. **1.** And, for that reason, if a surety is liable on the books for that which a *tutor* or *curator* is going to owe, since you claim that the *tutor* or *curator* has been condemned and paid, what doubt remains that the surety is released? **2.** Clearly, if a stipulation was entered into that any loss was going to be made good by the surety or it was laid down that he would be liable for what could not be recovered from the *tutor* or *curator*, the surety remains obligated to make up any difference to you.

Posted July 25,[269] in the consulship of Fuscus, for the second time, and Dexter (225).

[267] The precise month and day are uncertain; the alternative is August 30.
[268] See D. 27.7.
[269] The precise day is uncertain: the alternative is July 26.

LVIII De Contrario Iudicio

[1] *Impp. Severus et Antoninus AA. Stratoni.* Si pro iudicato contutore pecuniam solvisti, nullum iudicium tibi contra pupillum competit, ut delegetur tibi adversus liberatum actio. quod si nomen emisti, in rem suam procurator datus heredes eius iudicati poteris convenire.

PP. VII k. Mart. Fabiano et Muciano conss.

[2] *Imp. Antoninus A. Primitivo.* Si non ex propria culpa solus pupillae condemnatus es, sed absens et indefensus adquievisti, cum ex causa iudicati satisfacere coeperis, actionem adversus contutores tuos mandari tibi a pupilla desiderabis vel utili actione uteris.

PP. prid. id. Oct. duobus Aspris conss.

[3] *Idem AA. et CC. Thesidi.* **pr.** Si pater tuus, quem et privigni sui tutelam administrasse proponis, testamento recte facto, pupillo etiam quondam suo herede instituto decessit, quoniam non nisi pro portione hereditaria tutelae petitionem confusione constet extingui, pro residua parte succedentem patri tutelae te convenit apud competentem iudicem reddere rationes. **1.** Qui secundum bonam fidem, eorum etiam, quae patrem tuum in re eius erogasse dicis, admissa compensatione, reliqui (si quid amplius debetur) faciet condemnationem. **2.** Quod si sciens amplius in rem suam erogatum agendum propterea tutelae non putaverit, eum contrario iudicio convenire potes.

S. XVIII k. Ian. CC. conss.

LVIIII De Auctoritate Praestanda

[1] *Impp. Diocletianus et Maximianus AA. et CC. Antoniano.* Neque tutoris neque curatoris absentia quicquam stipulationi pro pupillo habitae nocet.

Sine die et conss.

Fifty-Eighth Title Countersuit[270]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Strato.* If you have paid out money on behalf of your fellow *tutor* against whom judgment has been rendered, no action lies for you against the minor ward in order to transfer an action to you against the man released by your payment. But if you have purchased title to the debt (*nomen*), after being appointed as procurator on your own behalf, you can sue the heirs of the judgment debtor.

Posted February 23, in the consulship of Fabianus ad Mucianus (201).

[2] *Emperor* ANTONINUS *Augustus to Primitivus.* If judgment was rendered for your minor female ward against you alone, through no fault (*culpa*) of yours, but, absent and undefended, you went along with this result, since you have begun to make payment on the judgment, you will ask the ward to assign you the right of action against your fellow *tutores* or make use of an analogous action (*actio utilis*).

Posted October 14, in the consulship of the two Aspri (212).

[3] *The same Augusti and the Caesars*[271] *to Thesis.* **pr.** If your father, who, you allege, managed the tutelage even of his stepson, made a proper will in which he named also the former ward as one of his heirs, and then died, because it is obvious that a claim on the tutelage cannot be extinguished by confusion except regarding the portion bequeathed, it is appropriate that you, as the heir of your father, render an account of the tutelage before the appropriate judge regarding the remainder. 1. The judge will, pursuant to the standard of good faith (*bona fides*), allow a set-off (*compensatio*) even for that which you say your father paid out in connection with the stepson's property and will give judgment for the remainder, if anything else is owed. 2. But if he (the stepson), knowing that more was paid out than what was owed in connection with his property, did not think he should sue on the tutelage, you can sue him in a countersuit.

Written December 15, in the consulship of the Caesars (294).

Fifty-Ninth Title Giving Authorization[272]

[1][273] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Antonianus.* The absence of a *tutor* or *curator* does not prejudice in any way a stipulation given on the ward's behalf.

Without day or year.

[270] See D. 27.4.
[271] The authors of this constitution are, in fact, Diocletian and Maximian, along with the Caesars.
[272] See D. 26.7; Inst. 1.21.
[273] = (in part, with minor changes) C. 8.37.7 (to Antoninus). The *lex geminata* dates to January 16, 294.

[2] *Idem AA. et CC. Serenae.* Nec actiones sine tutoris auctoritate in aetate pupillari constituta remittendo quicquam amittere poteris.

S. XVII k. Mai. CC. conss.

[3] *Idem AA. et CC. Gaio.* Eum, qui a pupillo sine tutoris auctoritate distrahente comparavit, longi temporis spatium non defendit.

S. VIII id. Dec. CC. conss.

[4] *Imp. Iustinianus A. Iuliano pp.* Clarum posteritati facientes sancimus omnimodo debere et agentibus et pulsatis in criminalibus causis minoribus viginti quinque annis adesse curatores vel tutores, in quibus casibus et pupillos leges accusari concedunt, cum cautius et melius est cum suasione perfectissima et responsa facere minores et litem inferre, ne ex sua imperitia vel iuvenali calore aliquid vel dicant vel taceant, quod, si fuisset prolatum vel non expressum, prodesse eis poterat et a deteriore calculo eos eripere.

D. X k. Mart. Constantinopoli post consulatum Lampadii et Orestis VV. CC.

[5] *Idem A. Iohanni pp.* **pr.** Veterem dubitationem amputantes, per quam testamentarii quidem vel per inquisitionem dati tutoris et unius auctoritas sufficiebat, licet plures fuerant, non tamen diversis regionibus destinati, legitimi autem vel simpliciter dati omnes consentire compellebantur, sancimus, si plures tutores fuerint ordinati, sive in testamento paterno sive ex lege vocati sive a iudice vel ex inquisitione vel simpliciter dati, et unius tutoris auctoritatem omnibus tutoribus sufficere, ubi non divisa est administratio vel pro regionibus vel pro substantiae partibus: ibi etenim necesse est singulis pro suis partibus vel regionibus auctoritatem pupillo praestare, quia in hoc casu non absimiles esse testamentariis et per inquisitionem datis legitimos et simpliciter datos iubemus eo, quod fideiussionis onere praegravantur et subsidiariae actionis adminiculum speratur.

[2] *The same Augusti and Caesars to Serena.* You cannot lose anything by putting off bringing actions without the authorization of a *tutor* while you are still a minor ward.

Written April 15, in the consulship of the Caesars (294).

[3][274] *The same Augusti and Caesars to Gaius.* Long-time prescription (*longi temporis spatium*) does not protect a person who has purchased something from a minor ward who was alienating (the property) without the authorization of a *tutor*.

Written December 6,[275] in the consulship of the Caesars (294).

[4] *Emperor* Justinian *Augustus to Julian, Praetorian Prefect.* Making it clear to posterity, We ordain that *curatores* and *tutores* ought in every way to assist those less than 25 years old when they are plaintiffs or defendants in criminal cases where the laws allow even minor wards to be prosecuted, since it is more prudent and better that wards respond to suit and bring suit with the most seasoned counsel, so that they from inexperience or youthful impetuousness do not say or keep quiet about something which, if it were set forth or not expressed, could be of help to them and snatch them from a worse outcome.

Given February 20, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[5] *The same Augustus to John, Praetorian Prefect.* pr. We remove an ancient hesitation, in which the authorization of one *tutor* was sufficient if he was appointed in a will, certainly, or by a court after a hearing, even if there was more than one, as long as they were not appointed to different geographical areas; however, if they were appointed according to the statutory rules or simply appointed (by an official), all were compelled to give their consent. We lay down that, if more than one *tutor* is appointed, whether in a father's will, according to the statutory rules, or by a judge either after a hearing or without one, the authorization even of one *tutor* shall be sufficient for all *tutores*, where the management is not divided according to geographical area or portions of the estate. For in that case the authorization of a *tutor* must be given to the minor ward for each area or portion. We order that in this situation those appointed according to the statutory rules or simply appointed shall not be different from those appointed in a will or after a hearing for the reason that they labor under the weight of a surety and there is the possibility of a subsidiary action.

[274] = (in part, with minor changes) C. 7.26.9.

[275] The precise day is uncertain: the alternatives are December 7, 10, and 11.

1. Sed haec omnia ita accipienda sunt, si non res quae agitur solutionem faciat ipsius tutelae, ut puta si pupillus in adrogationem se dare desiderat. etenim absurdum est solvi tutelam nec consentiente, sed forsitan et ignorante eo, qui tutor fuerat ordinatus. 2. Tunc etenim, sive testamentarii sive per inquisitionem dati sive legitimi sive simpliciter creati sunt, necesse est omnes suam auctoritatem praestare, ut, quod omnes similiter tangit, ab omnibus comprobetur.

3. Quae omnia simili modo et in curatoribus observari oportet.

D. k. Sept. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

LX Quando Curatores vel Tutores Esse Desinant

[1] *Imp. Antoninus A. Hermillae.* Si curatores tutoribus adiuncti sunt, pubertate pupilli tam tutorum quam curatorum adiunctorum officium finiri ideoque alios propter aetatis infirmitatem curatores esse dandos manifestissimum est.

PP. IIII k. Aug. Romae Antonino A. IIII et Balbino conss.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Menippo.* Tutoris officium ex sola voluntate pupilli non finiri certissimum est.

S. XIII k. Febr. CC. conss.

[3] *Imp. Iustinianus A. Menae pp.* Indecoram observationem in examinanda marum pubertate resecantes iubemus: quemadmodum feminae post impletos duodecim annos omnimodo pubescere iudicantur, ita et mares post excessum quattuordecim annorum puberes existimentur, indagatione corporis inhonesta cessante.

D. VIII id. April. Constantinopoli Decio vc. cons.

1. But all of these provisions must be understood to apply only if the matter in question does not involve the dissolution of the tutelage itself, for example, if the ward wants to give himself in adrogation. For it is absurd that the tutelage be dissolved when a person who has been appointed *tutor* does not consent to this, and perhaps does not even know about it. 2. For in that case, whether they are appointed in a will, after a hearing, according to the statutory rules, or simply appointed, it is necessary that all of them give their authorization so that something which touches them all in the same way is approved by all of them.

3. All of these rules ought in like manner also to apply to the case of *curatores*.

Given September 1, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

Sixtieth Title Conclusion of Tutelage or Curatorship[276]

[1] *Emperor* ANTONINUS *Augustus to Hermilla.* It is very clear that, if *curatores* have been appointed to act in conjunction with *tutores*, with the minor ward reaching the age of adulthood the responsibilities of the *tutores* as well as of the *curatores* appointed with them are concluded, and for that reason other *curatores* must be appointed on account of the (young adult's) weakness of youth (*aetatis infirmitas*).

Posted July 29, at Rome, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Menippus.* It is very certain that the responsibilities of a *tutor* are not concluded through the mere wish of the minor ward.

Written January 20, in the consulship of the Caesars (294).

[3] *Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect.* In terminating the indelicate practice of examining males to ascertain that they have reached adulthood (and so of legal majority), We order the following: in the same way that females, once they have completed 12 years of age, are deemed to have reached adulthood in every sense (and legal majority), so also males, after they have completed 14 years, shall be considered to sense be adults, and the dishonorable physical examination is abolished.

Given April 6, at Constantinople, in the consulship of the vir clarissimus *Decius (529).*

[276] See Inst. 1.22.

LXI De Actore a Tutore seu Curatore Dando

[1] *Imp. Alexander A. Sebastiano.* **pr.** Neque tutores neque curatores ex sua persona in re pupilli vel adulescentis procuratorem facere possunt, sed actorem constituere debent. **1.** Pupillus autem vel pupilla vel adultus vel adulta tam ad agendum quam ad defendendum, tutore seu curatore interveniente, procuratorem ordinare possunt. **2.** Ipsi etiam tutores et curatores post litis contestationem a se factam ad exemplum procuratorum, qui litem contestati sunt, dare procuratores non prohibentur.

PP. prid. id. Mai. Alexandro A. III et Dione conss.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Alphocrationi.* Si sui iuris constituti filii tui matri successerunt, licet te tutorem eorum esse probetur, tamen non per procuratorem, sed actorem decreto constitutum a te res eorum te absente peti convenit.

S. non. Ian. Sirmi CC. conss.

LXII De Excusationibus et Temporibus Earum

[1] *Impp. Severus et Antoninus AA. Aviolae.* Falsa suasione credis te propterea, quod spado sis, immunitatem a tutelis habere.

PP. k. Mai. Cilone et Libone conss.

[2] *Idem AA. Aventiano et Cosconio.* Si curatores dati estis generaliter nec decreto significatum est Italicarum tantum rerum vobis munus adiunctum, adire debetis competentem iudicem, ut vos a provinciali administratione liberet. quod si factum fuerit, petent sibi in provincia curatores adulescentes.

PP. VIII k. Sept. Cilone et Libone conss.

[3] *Idem AA. Crispino.* Excusationis quidem tuae, si ingenuus libertino tutor datus es, certa causa est. sed cum te praeses provinciae audiendum

Sixty-First Title A Manager Appointed by a *Tutor* or *Curator*

[1][277] *Emperor* ALEXANDER *Augustus to Sebastianus.* **pr.** Neither *tutores* nor *curatores* can, by virtue of their roles (*ex sua persona*), appoint a procurator for the affairs of their minor or adult ward; instead, they ought to appoint a manager (*actor*). **1.** A minor or adult ward of either sex can, however, with the consent of a *tutor* or *curator*, appoint a procurator both for bringing and for defending an action. **2.** Even the *tutores* and *curatores* themselves, after they effect a joinder of issue (*litis contestatio*), are not prevented from appointing a procurator (to complete the trial), on the analogy of procurators who have joined issue.

Posted May 14, in the consulship of Alexander Augustus, for the third time, and Dio (229).

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Alphocratio.* If your children are *sui iuris* and have succeeded to their mother, although it is shown that you are their *tutor*, nevertheless, it is appropriate that their property be claimed (in a lawsuit) by you in your absence not through a procurator, but through a manager (*actor*) appointed by a judicial decree.

Written January 5, at Sirmium, in the consulship of the Caesars (294).

Sixty-Second Title Excuses and Their Time-Limits[278]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Aviola.* You are falsely persuaded that you enjoy immunity from managing a tutelage because you are a eunuch (*spado*).

Posted May 1, in the consulship of Cilo and Libo (204).

[2] *The same Augusti to Aventianus and Cosconius.* If you were given a general appointment as *curatores* and there was no mention in the judicial decree that your responsibility embraced only property in Italy, you ought to approach the appropriate judge in order that he frees you from the duty of managing property in the provinces. But if this is done, the young adult wards (*adulescentes*) will seek *curatores* for themselves in the provinces.

Posted August 25, in the consulship of Cilo and Libo (204).

[3] *The same Augusti to Crispinus.* If you, as a free-born person, were appointed as a *tutor* for a freedperson, you have a good reason, admittedly, to be excused. But since the governor of the province refused to hear your case because the

[277] = (with a minor change) C. 2.12.11.
[278] See D. 27.1.

non putaverit propter praescriptionem, quasi tardius adires, nec a decreto provocaveris, intellegis parendum esse sententiae.

PP. id. Mart. Albino et Aemiliano conss.

[4] *Imp. Antoninus A. Agathodaemoni.* **pr.** Amplissimi ordinis consulto, qui pupillam suam uxorem ducit, nuptias contrahere non intellegitur et tamen infamis constituitur. **1.** Sed si tu Demetriae, cum eam in matrimonio haberes, absens et ignorans curator constitutus es, potes esse securus, dum tamen alius substituatur. non enim debet ignorantia maritorum amplissimi ordinis consulto fraus quaeri.

PP. XI k. Iul. Sabino et Anullino conss.

[5] *Imp. Alexander A. Bassiae.* Libertos a tutela vel cura liberorum patroni seu patronae nullam excusationem impetrare amplissimus ordo auctore divo Marco censuit. et ideo nec illud prodesse eis debet, quominus curatores etiam inviti patroni seu patronae liberis dentur, quod eorundem tutelam administraverunt.

[6] *Idem A. Maximo.* **pr.** Quinquaginta dies, qui praefiniti sunt ad professionem excusationis his qui tutores seu curatores dati sunt, ex eo die cedere, ex quo decretum praetoris aut testamentum parentis notum factum erit ei qui ad munus vocatus fuerit, ipsa constitutio quae hoc induxit sanxit. **1.** Sed si quis in eius temporis computatione ab eo cuius de ea re notio fuit iniuriam passus non provocavit, adquiescere rebus iudicatis debet.

PP. III non. Mai. Iuliano et Crispino conss.

[7] *Idem A. Antonino.* Neque a tutela neque a cura ideo quis excusatur, quod creditor sive debitor eius est, cui tutor sive curator datus est, sed participem in munere habere debet, ut (si res exegerit) is qui alieno auxilio eget defendatur.

PP. III id. Iul. Iuliano et Crispino conss.

time limit had passed, which is to say you approached him too late, and you did not appeal this decision, you understand that it must be respected.

Posted March 15, in the consulship of Albinus and Aemilianus (206).

[4] *Emperor* Antoninus *Augustus to Agathodaemon.* **pr.** By a decree of the most-respected Senate, he who takes his female ward as his wife is not deemed to have contracted a lawful marriage and all the same is marked with legal infamy (*infamis*).[279] **1.** But if you, in your absence and without your knowledge, were appointed *curator* for Demetria when you were already married to her, you can be certain of being safe, provided, however, that someone else is substituted for you. For the ignorance of husbands ought not to count as a deliberate violation (*fraus*) of the senatorial decree.

Posted June 21, in the consulship of Sabinus and Anullinus (216).

[5] *Emperor* Alexander *Augustus to Bassia.* The most-respected Senate, upon the proposal (*oratio*) of the deified Marcus (Aurelius), ordained that freedmen shall not at all be eligible to be excused from the tutelage or curatorship of the children of their male or female patron. And on this account the fact that they managed the children's tutelage ought not to benefit them by preventing them from being appointed *curatores* even against their will for a male or female patron's children.

[6] *The same Augustus to Maximus.* **pr.** The same constitution that fixed the period of fifty days in which those appointed *tutores* or *curatores* can offer an excuse (also) laid down that this period runs from the moment that the judicial decree of the Praetor or the contents of the male ascendant's will are made known to the person called to this responsibility. **1.** And if anyone who has suffered harm from the person with jurisdiction in this matter has not appealed within that time-frame, he ought to abide by the court's decision.

Posted May 5, in the consulship of Julian and Crispinus (224).

[7] *The same Augustus to Antoninus.* No one is excused either from tutelage or from curatorship because he is a creditor or a debtor of the person for whom he has been appointed *tutor* or *curator*, but he ought to have someone as a colleague in this responsibility, so that, if the situation demands it, the person who has need of someone else's assistance shall have his or her interests protected.

Posted July 13,[280] *in the consulship of Julian and Crispinus (224).*

[279] This *SC* was passed under Marcus Aurelius and Commodus (176–180).

[280] The precise day is uncertain: the altenative is July 10.

[8] *Idem A. Maximo.* Coloni (id est conductores) praediorum ad fiscum pertinentium hoc nomine excusationem a muneribus civilibus non habent ideoque iniunctae tutelae munere fungi debent.

PP. IIII k. Febr. Fusco et Dextro conss.

[9] *Idem A. Romano.* Frater tuus non ideo a tutela vel cura excusari debet, quod oculum amisit. proinde intellegis munus susceptum eum deserere non posse.

PP. k. Febr. Modesto et Probo conss.

[10] *Idem A. Crispino.* Exactores tributorum tanto tempore, quanto rationem tributariam tractaverunt, non solum ab oneribus, sed etiam a tutelis vacationem habere dubitare non debuisti.

D. id. Aug. Alexandro A. III et Dione conss.

[11] *Idem A. Hylae.* **pr.** Testamento tutor datus, ut a bonis his excuseris, quae pupilli tui in alia provincia quam unde es ubique moraris possident, intra quinquagesimum diem postulare debuisti. **1.** Quod si facere cessasti, excusatio quidem temporis praescriptione submovetur, sed propter late diffusum patrimonium an tibi adiungi aliquos curatores oporteat, praeses provinciae, si te insufficientem deprehenderit, aestimabit.

PP. VIII id. Dec. Pompeiano et Peligno conss.

[12] *Imp. Gordianus A. Valentino.* Voluntaria tutelae munera privilegiis nihil derogant.

PP. XI k. Nov. Pio et Pontiano conss.

[13] *Idem A. Apollinari.* Nec senatorum quidem liberti, nedum ceterorum, propterea, quia patronorum negotia gerunt, a muneribus civilibus habent immunitatem. tantummodo etenim unus senatoris libertus, qui patroni negotia gerit, habet a tutela sive cura vacationem.

PP. x k. Febr. Gordiano A. et Aviola conss.

[8] *The same Augustus to Maximus.* Tenant farmers – that is, lessees – of properties owned by the Treasury are not under that title excused from civic responsibilities and on this basis ought to discharge the duty of a tutelage that is enjoined upon them.

Posted January 29, in the consulship of Fuscus and Dexter (225).[281]

[9] *The same Augustus to Romanus.* Your brother ought not to be excused from managing a tutelage or a curatorship because he has lost an eye. So you understand that he cannot abandon the responsibility he has undertaken.

Posted February 1, in the consulship of Modestus and Probus (228).

[10] *The same Augustus to Crispinus.* You ought not to have doubted that collectors of the direct tax (*tributum*), for as long as they dealt with the workings of the tax, enjoyed a release not only from civic obligations (in general) but also from managing a tutelage.

Given August 13, in the consulship of Alexander Augustus, for the third time, and Dio (229).

[11][282] *The same Augustus to Hylas.* **pr.** When you were appointed *tutor* in a will, in order to be excused from the responsibility for managing that property which your minor wards possess in a province other than where you are from and where you reside, you ought to have made a judicial application within fifty days. **1.** But if you failed to do so, the excuse at any rate is not granted because of the lapse of time. Still, because the property is widely distributed, the governor of the province will decide, if he discovers that you are not able to act alone, whether some *curatores* ought to be added alongside you.

Posted December 6, in the consulship of Pompeianus and Pelignus (231).

[12] *Emperor* Gordian *Augustus to Valentinus.* The voluntary assumption of a tutelage does not abrogate any privileges.

Posted October 22, in the consulship of Pius and Pontianus (238).

[13] *The same Augustus to Apollinaris.* Not even the freedmen of senators, let alone those of everyone else, are excused from civic responsibilities on account of the fact that they conduct their patrons' business dealings. For only a single freedman of a senator, who manages his patron's affairs, is excused from managing a tutelage or curatorship.

Posted January 23, in the consulship of Gordian Augustus and Aviola (239).

[281] Other constitutions show that this was the second consulship for Fuscus.

[282] 1 *fin.* = (in part, with changes) C. 5.36.3.

[14] *Idem A. Heraclidae.* **pr.** Severiter praeses provinciae exsequetur, si animadverterit avunculum tuum propterea nominari tutorem, ut metu eiusmodi creationis a magistratibus iniuriam redimat. **1.** Quin etiam si aliqua ei excusatio competit et non alia causa nominatus est, quam ut lite fatigetur, quod in eam rem absumptum fuerit, is qui eum nominavit iuxta formam constitutionum ei reddere cogetur.

PP. id. Sept. Gordiano A. et Aviola conss.

[15] *Idem A. Tauro.* Quamquam in tutela detentus eo, quod excusatio quam obiciebas non est admissa, provocationis auxilium flagitares et in medio tempore hi quorum meministi in adulta aetate agere coeperunt, tamen non eo minus causa interpositae provocationis propter periculum administrationis eius temporis iudiciorum more examinanda est.

PP. VIII k. Nov. Arriano et Papo conss.

[16] *Imp. Philippus A. Theodoto.* Si, ut adlegas, his tutor datus es, cum quibus disceptationem hereditatis tibi esse proponis, et tempora antiquitus excusationibus praestituta etiam nunc opitulantur, adire praesidem provinciae potes, formae super ea re statutorum principalium obtemperari pro sua gravitate iussurum.

PP. X k. Aug. Peregrino et Aemiliano conss.

[17] *Impp. Valerianus et Gallienus AA. Epagatho.* Licet orationis sub divo Marco habitae verba deficiant, is tamen, qui post contractas nuptias nurui suae curator datur, excusare se debet, ne manifestam sententiam eius offendat et labem pudoris contrahat.

D. VI id. Ian. Valeriano II et Lucillo conss.

[18] *Impp. Diocletianus et Maximianus AA. et CC. Sabino.* **pr.** Tutores nominatos appellationem interponere necesse non habere certissimi iuris est. **1.** Quapropter, licet non appellasti, si quam te excusationem habere confidis, intra tempus, quod divi Marci constitutione praescriptum est, hac apud praesidem provinciae uti non prohiberis. **2.** Nam

[14] *The same Augustus to Heraclidas.* **pr.** The governor of the province will act with severity if he discovers that your maternal uncle was nominated as a *tutor* in order that he, out of fear over such an appointment, bribe the public officials to release him. **1.** The same holds also if he is eligible for some excuse and he was nominated for no other reason than that he be harassed by a lawsuit; the person who nominated him will be compelled to reimburse him for the relevant expenses according to the rules of imperial constitutions.

Posted September 13, in the consulship of Gordian Augustus and Aviola (239).

[15] *The same Augustus to Taurus.* You were held (obligated) to manage a tutelage because the excuse you were offering was not accepted. Although you were demanding the right of an appeal, and in the meantime those whom you have made mention of began to reach the age of adulthood, nevertheless, the appeal shall be heard according to standard judicial usage, all the more because of the liability for management that exists during this time.

Posted October 25, in the consulship of Arrianus and Papus (243).

[16] *Emperor Philip Augustus to Theodotus.* If, as you allege, you were appointed *tutor* for those with whom you assert you have a dispute over an inheritance, and the time period long ago set for offering excuses is still now operative, you can approach the governor of the province, who will, consistently with his seriousness of character (*gravitas*), issue an order in compliance with the rules laid down in this matter by imperial laws (*statuta principalia*).

Posted July 23, in the consulship of Peregrinus and Aemilianus (244).

[17] *Emperors Valerian and Gallienus Augusti to Epagathus.* Although the words of the legislative proposal (*oratio*) of the deified Marcus (Aurelius) are lacking (i.e., do not expressly ordain this), nevertheless, a man who is appointed as *curator* for his daughter-in-law after the marriage between her and his son is contracted ought to excuse himself so as to avoid violating the manifest intent of that law and attracting blame for disgraceful conduct.

Given January 8, in the consulship of Valerian Augustus, for the second time, and Lucillus (265).

[18] *Emperors Diocletian and Maximian Augusti and the Caesars to Sabinus.* **pr.** It is a very certain point of law (*ius certissimum*) that persons (merely) nominated as *tutores* are not obligated to make an appeal. **1.** Therefore, although you did not make an appeal, if you are confident that you have a valid excuse, you are not prevented from offering this to the governor of the province within the time period set by the constitution of the deified Marcus (Aurelius). **2.** As to the fact that you assert that the father of the minor

quod omnium bonorum patrem pupilli usum fructum reliquisse quondam uxori suae proponis, ad excusandos vos a tutela non est idoneum.
D. non. April. CC. conss.

[19] *Idem AA. et CC. Dionysio.* Inusitatam rem desideras, de tutela filii te dimitti postulans, quod te posse contrario tutelae iudicio matrem eius convenire contendis.
Sine die et conss.

[20] *Idem AA. et CC. Charitino.* Curator adultis nominatus, quorum tutor antea fueris, invitus in administratione teneri non potes. proinde si dies excusationibus praefinitus nondum excessit, uti competenti defensione potes.
S. x k. Dec. Nicomediae CC. conss.

[21] *Idem AA. et CC. Paramono.* Quod res cum uterinis fratribus tibi communes esse profitearis, ad excusationem tutelae non est idoneum, cum harum divisio curatore dato fieri possit.
S. XVIII k. Ian. Nicomediae CC. conss.

[22] *Idem AA. et CC. Hermodoro.* Si tutor nominatus decreto praesidis habens excusationem absolutus es, ad te non pertinere periculum administrationis manifestum est.
D. XIII k. Ian. Nicomediae CC. conss.

[23] *Idem AA. et CC. Neophyto.* **pr.** Humanitatis ac religionis ratio non permittit, ut adversus sororem vel filios sororis actionum necessitates tutelae occasione suscipias, cum ipsius etiam pupilli, cui tutor datus es, aliud exigere videatur utilitas, scilicet ut eum tutorem potius habeat, qui ad defensionem eius non inhibeatur adfectu. **1.** Iuxta formam igitur, quam consulti dedimus, praetorem adiri oportet, ut et iusto tuo desiderio et pupilli ipsius commodo consulatur.
S. VI k. Febr. Sirmi CC. conss.

ward left the usufruct of all his property to his former wife, this is not sufficient reason to excuse you from tutelage.

Given April 5, in the consulship of the Caesars (294).

[19] *The same Augusti and Caesars to Dionysius.* You ask for something unusual when you make a judicial application to be released from the tutelage of a (woman's) son because you assert that you have the possibility of suing his mother in a countersuit on (her) tutelage.

Without day and year (294).

[20] *The same Augusti and Caesars to Charitinus.* Though nominated as *curator* for the adult wards whose *tutor* you were previously, you cannot be held to the management of their property against your will. So if the time period established for offering excuses has not passed, you can raise the appropriate defense.

Written November 22, at Nicomedia, in the consulship of the Caesars (294).

[21] *The same Augusti and Caesars to Paramonus.* The fact that you acknowledge owning property in common with your uterine brothers is not a sufficient reason to be excused from managing their tutelage, since it is possible for a division to be made of the property after a *curator* has been appointed (for your brothers).

Written December 15, at Nicomedia, in the consulship of the Caesars (294).

[22] *The same Augusti and Caesars to Hermodorus.* If you were appointed *tutor* by a judicial decree of a governor and, having a valid excuse, you have been freed, it is clear that you have no liability for management.

Given December 20, at Nicomedia, in the consulship of the Caesars (294).

[23] *The same Augusti and Caesars to Neophytus.* **pr.** The principles of humane sympathy (*humanitas*) and devout scruple (*religio*) do not allow that you, by reason of a tutelage, undertake the obligation of suing your sister, or your sister's children, although the interest even of the minor ward himself, for whom you have been appointed *tutor*, seems to demand something else, clearly that he rather have that man as a *tutor* who is not constrained in protecting that interest by familial affection. **1.** Pursuant, therefore, to the rules (*forma*) that We have laid down when consulted, the Praetor ought to be approached, so that both your wishes – appropriate as they are – and the interests of the ward himself are consulted.

Written January 27, at Sirmium, in the consulship of the Caesars (294).[283]

[283] The precise year is uncertain: 294 or 295.

[24] *Impp. Arcadius et Honorius AA. Flaviano pp.* Excusationem naviculariis tutelae sive curae hactenus ipsis tribuimus, ut in huiusmodi officiis minoribus sui tantum corporis obligentur.

D. III non. Mart. Mediolani Stilichone et Aureliano conss.

[25] *Imp. Anastasius A. Antiocho praeposito sacri cubiculi.* Viros clarissimos sacri nostri palatii silentiarios circa latus nostrum militantes de tutelis et curationibus excusari sancimus.

D. k. Ian. Iohanne cons.

LXIII Si Falsis Adlegationibus Excusatus Sit

[1] *Imp. Alexander A. Lysimacho et Diotimo.* Si absentibus necessariis personis vel his, qui sua sponte vos defendere volebant, non competentibus adlegationibus, qui vobis tutores aut curatores dati erant, liberati esse a munere visi sunt, ne eis circumvenisse iudicis religionem prosit, praeses provinciae audiet vos et, si iniustum decretum extorsisse eos apparuerit, exinde ad eos periculum administrationis pertinere pronuntiabit, ex quo dati sunt.

PP. XII k. Mai. Maximo II et Aeliano conss.

[2] *Imp. Philippus A. et Philippus C. Auluzano.* Tutores, quos postea quam bona pupillorum administraverunt a praeside provinciae quasi re integra excusari se impetrasse adseveras, periculum administrationis evitare minime posse manifestum est.

PP. XIIII k. Iun. Philippo A. et Titiano conss.

[3] *Idem A. et C. Otani.* Si, ut proponis, pars diversa administratione tutelae seu curae tuae itemque fratris tui ambitione potius quam iuris ratione se excusavit, periculo iniuncti muneris minime liberatus est.

Sine die et consule.

[24][284] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Flavianus, Praetorian Prefect.* We excuse shipowners (*navicularii*) from tutelage and curatorship to the extent that they are obliged to perform such duties only for wards belonging to their association.

Given March 5, at Milan, in the consulship of Stilicho and Aurelianus (400).

[25] *Emperor* ANASTASIUS *Augustus to Antiochus, Head of the Imperial Quarters.* We ordain that *viri clarissimi* members of the imperial bodyguard (*silentiarii*) in Our imperial palace, who are on active service in Our presence, shall be excused from managing tutelage and curatorship.

Given January 1, in the consulship of John (499).

Sixty-Third Title Excuses Granted under False Pretenses

[1] *Emperor* ALEXANDER *Augustus to Lysimachus and Diotimus.* If your relatives and those who voluntarily wished to protect you were absent, while those who were appointed as your *tutores* or *curatores* seem to have been released from this responsibility through irrelevant assertions, in order that their deception of the judge in the scrupulous performance of his duty not benefit them, the governor of the province will grant you a hearing and, if it seems that they have wrangled an unjust judicial decree, he will thereupon lay down that the liability for management lies with them from the date of their appointment.

Posted April 20, in the consulship of Maximus, for the second time, and Aelianus (223).

[2] *Emperor* PHILIP *Augustus and* PHILIP *Caesar to Auluzanus.* It is clear that the *tutores*, who, you assert, after managing the property of their minor wards, succeeded in having themselves excused by the governor of the province as though nothing had been done by them, can in no way avoid liability for management.

Posted May 19, in the consulship of Philip Augustus and Titianus (245).

[3] *The same Augustus and Caesar to Otanes.* If, as you allege, your adversary at trial excused himself from the management of your tutelage or curatorship and likewise that of your brother through corrupt solicitation rather than in reliance on legal principles (*iuris ratio*), he has not at all been released from liability for the duty enjoined upon him.

Without day and year.

[284] = C.Th. 3.31.1.

LXIIII Si Tutor Rei Publicae Causa Aberit

[1] *Imp. Gordianus A. Guttio.* **pr.** Qui tutores vel curatores dati rei publicae causa afuturi sunt, ad tempus se excusare debent a tutela, ne etiam medii temporis periculo obstringantur. 1. Quod quidem et tu si fecisti, eius intervalli quo afuisti periculum non debes pertimescere. quod si id praetermisisti, ut priore loco is conveniatur qui administravit, de iure postulabis.

PP. id. Mart. Gordiano A. et Aviola conss.

[2] *Idem A. Reginio.* Certum est eos, qui rei publicae causa abesse desierunt, ab omni nova tutela anno vacare debere.

PP. v k. Mart. Gordiano A. II et Pompeiano conss.

LXV De Excusatione Veteranorum

[1] *Imp. Antoninus A. Saturnino.* Qui causaria missione sacramento post viginti stipendia solvuntur, et integram famam retinent et ad publica privilegia veteranis concessa pertinent.

PP. VII id. Aug. Antonino A. IIII et Balbino conss.

[2] *Imp. Gordianus A. Celeri veterano.* Quod placuit veteranos tantummodo conveterani filiorum seu militum, et quidem unam tutelam seu curam eodem tempore administrare compelli, eo pertinet, ut, si aliis dati fuerint, intra sollemnia tempora causas excusationis apud competentem iudicem deferant.

PP. III k. Iul. Gordiano A. et Aviola conss.

Sixty-Fourth Title A *Tutor* Is Absent on Public Business

[1] *Emperor* Gordian *Augustus to Guttius.* **pr.** Those appointed as *tutores* or *curatores* who are going to be away on public business ought to excuse themselves temporarily from the management of the guardianship, so that they not be exposed to liability even during the period of their absence. **1.** If you have, in fact, done this, you need not worry about liability for the period of your absence. But if you have failed to do so, you will correctly ask the court that the person who had the active management be sued first.

Posted March 15, in the consulship of Gordian Augustus and Aviola (239).

[2] *The same Augustus to Reginius.* It is certain that those who have ceased to be away for public business ought to be excused from every new tutelage for one year.

Posted February 25, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

Sixty-Fifth Title Veteran Status as an Excuse

[1] *Emperor* Antoninus *Augustus to Saturninus.* Those who are discharged from military service after twenty years because of a disability both retain their good name (*fama*, i.e., they avoid legal infamy) and are eligible for the public privileges granted to veterans.[285]

Posted August 7, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[2] *Emperor* Gordian *Augustus to Celer, a veteran.* With reference to the settled rule that veterans are compelled to manage the tutelage or curatorship only of the children of a fellow veteran or of active duty soldiers, and, to be sure, (are compelled to manage) only one (tutelage or curatorship) at the same time, it is relevant that, if they are appointed in other circumstances, they bring the reasons for their request to be excused before the appropriate judge within the established time frame.

Posted June 29, in the consulship of Gordian Augustus and Aviola (239).

[285] On the *missio causaria* see Iul. D. 3.2.2.2.

LXVI Qui Numero Liberorum Se Excusant

[1] *Impp. Severus et Antoninus AA. Claudio Herodiano.* Qui ad tutelam vel curam vocantur, Romae quidem trium liberorum incolumium numero, quorum etiam status non ambigitur, in Italia vero quattuor, in provinciis autem quinque habent excusationem.
PP. non. April. Geta et Plautiano conss.

[2] *Imp. Antoninus A. Marcello.* Neque filia amissa in numero prodest ad declinanda municipalia munera neque nepotes numerantur, quorum pater superest, cum suo nomine patri prosunt.
D. id. Iun. Antonino A. IIII et Balbino conss.

LXVII Qui Aetate

[1] *Imp. Philippus A. et Philippus C. Severo.* Pater tuus si maior est annis septuaginta, ad tutelam seu curam devocatus excusare se sollemniter potest.
PP. XIII k. April. Praesente et Albino conss.

LXVIII Qui Morbo

[1] *Impp. Severus et Antoninus AA. Sabino.* Luminibus captus aut surdus aut mutus aut furiosus aut perpetua valitudine tentus tutelae seu curationis excusationem habent.
PP. V id. Sept. Cilone et Libone conss.

LXVIIII Qui Numero Tutelarum

[1] *Impp. Severus et Antoninus AA. Pompeiano.* **pr.** Si tres tutelas vel curas eodem tempore non defunctorie susceptas administras, onere quartae tutelae vel curationis pupillorum seu adulescentium non gravaberis. 1. Finito autem officio pubertate pupillorum vel aetate

Sixty-Sixth Title Number of Children as an Excuse

[1][286] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Claudius Herodianus.* Those who are called to manage a tutelage or a curatorship have a valid reason to be excused if they have, at Rome, at any rate, three thriving children whose status also is not open to doubt; (elsewhere) in Italy, on the other hand, four; but in the provinces, five.

Posted April 5, in the consulship of Geta and Plautianus (203).

[2] *Emperor* ANTONINUS *Augustus to Marcellus.* A daughter who is deceased does not help qualify for one to be excused from municipal duties, nor do grandchildren count, if their father is alive, since they serve to excuse the father himself.

Given June 13, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

Sixty-Seventh Title Age as an Excuse

[1] *Emperor* PHILIP *Augustus and* PHILIP *Caesar to Severus.* If your father is older than 70 years, he can formally excuse himself should he be called upon to manage a tutelage or a curatorship.

Posted March 20, in the consulship of Praesens and Albinus (246).

Sixty-Eighth Title Disability as an Excuse

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Sabinus.* Those who are sight-impaired, deaf, mute, insane, or permanently disabled are excused from managing a tutelage or curatorship.

Posted September 9, in the consulship of Cilo and Libo (204).

Sixty-Ninth Title Number of Tutelages as an Excuse

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Pompeianus.* **pr.** If you are managing three tutelages or curatorships at the same time, and not in a perfunctory way, you will not be weighed down with the burden of a fourth tutelage or curatorship of minor or adult wards. 1. But if a guardianship has

[286] = (in part, with changes) FV 247.

adulescentium aliae substitui possunt, licet nondum ratio tutelae sive curae administratae reddita sit.

2. Sed imperfectae diversae species vacationis, licet permixtae, ad excusationem non proficiunt. scire igitur debes eum, qui duos filios habet et duas tutelas administrat, excusationem non mereri.

PP. IIII id. Oct. Antonino A. II et Geta II conss.

LXX De Curatore Furiosi vel Prodigi

[1] *Imp. Antoninus A. Marinianae.* Curatores impleta legitima aetate prodigis vel furiosis solent tribui.

PP. IIII k. Aug. Messala et Sabino conss.

[2] *Imp. Gordianus A. Anicio.* **pr.** Orationis divi Severi beneficium, quo possessiones rusticas sine decreto praesidis pupillorum seu adulescentium distrahi vel obligari prohibitum est, non iniuria etiam ad agnatum furiosi porrigitur. **1.** Si igitur citra decretum praesidis fundus mente capti etiam ab agnato eius tibi pignori nexus est, vinculum pignoris in eo non consistit, utilem tamen adversus eum personalem actionem, si ob eius utilitatem pecunia mutua accepta est, poteris habere.

PP. k. Ian. Pio et Pontiano conss.

[3] *Idem A. Aureliano.* Si pater tuus mentis compos non est, pete ei curatores, per quos, si quid gestum est, quod revocari oporteat, possit causa cognita in pristinum statum restitui.

PP. VII id. April. Gordiano A. et Aviola conss.

concluded because the minor wards have reached adulthood or the young adult wards have attained that of full adult status, others can be substituted, even though an accounting has not been made of the tutelage or curatorship that was under management.

2. But different incomplete claims for release, although patched together, cannot suffice to grant an excuse. So you ought to know that he who has two children and manages two tutelages has not earned an exemption.

Posted October 12, in the consulship of Antoninus Augustus, for the second time, and Geta, for the second time (205).[287]

Seventieth Title *Curatores* of Lunatics and Prodigals[288]

[1] *Emperor* ANTONINUS *Augustus to Mariniana.* *Curatores* are customarily appointed for prodigals or the insane when they have reached adulthood (and are *sui iuris*).

Posted July 29, in the consulship of Messala and Sabinus (214).

[2] *Emperor* GORDIAN *Augustus to Anicius.*[289] **pr.** The benefit of the legislative proposal (*oratio*) of the deified Severus, by which it is forbidden to alienate or place under lien rural properties owned by minor or adult wards without a judicial decree of the governor, is rightly extended also to the statutory (agnate) *curatores* of insane persons. **1.** If, then, without such a decree a farm belonging to a mentally challenged person was pledged to you even by the agnate serving as *curator*, the pledge is invalid, and all the same you will be able to raise a personal analogous action (*actio personalis utilis*) against him, if the loan was made for his benefit.

Posted January 1, in the consulship of Pius and Pontianus (238).

[3] *The same Augustus to Aurelianus.* If your father is not in his right mind, apply for *curatores* to be appointed for him. They will bring it about that if anything has been done which ought to be rescinded, he can, after a judicial hearing, be restored to his prior position.

Posted April 7, in the consulship of Gordian Augustus and Aviola (239).

[287] So Krüger, but Geta's first consulship was in 205, his second in 208, while Caracalla's second was in 205, his third in 208.

[288] See D. 27.10; Inst. 1.23. In this title, *furiosus* is translated as "lunatic," "insane person," and the like, while *prodigus* is rendered as "prodigal," "spendthrift." Both represent categories of persons assigned to a *curator* by a public official.

[289] Perhaps better attributed to the Emperor Maximinus.

[4] *Impp. Diocletianus et Maximianus AA. et CC. Asclepiodoto.* Cum repudiante furiosam sui iuris constitutam marito, qui solus repudiare potuit, quaedam matrem furiosae marito quondam eius instrumenta confecisse significas, intellegis nihil eam contra furiosam disponere potuisse, cum eius ad eam iure non pertinuerit defensio.

S. id. April. Byzantii AA. conss.

[5] *Imp. Anastasius A. ad populum.* Ne lucrum quidem antea indebitae successionis emancipato vel emancipatis deputasse, nihil vero de oneribus tutelae prospexisse videamur, curatores nihilo minus eos pro duodecim tabularum lege furiosis fratribus et sororibus utpote legitimos existere hac legis sanctione decernimus.

[6] *Imp. Iustinianus A. Iuliano pp.* **pr.** Cum aliis quidem hominibus continuum furoris infortunium accidit, alios autem morbus non sine laxamento ingreditur, sed in quibusdam temporibus quaedam eis intermissio pervenit, et in hoc ipso multa est differentia, ut quibusdam breves indutiae, aliis maiores ab huiusmodi vitio inducantur, antiquitas disputabat, utrumne in mediis furoris intervallis permanet eis curatoris intercessio, an cum furore quiescente finita iterum morbo adveniente redintegratur.

1. Nos itaque eius ambiguitatem decidentes sancimus, cum incertum est in huiusmodi furiosis hominibus, quando resipuerint, sive ex longo sive in propinquo spatio, et[xxi] impossibile est et in confinio furoris et sanitatis eum saepius constitui et per longum tempus sub eadem esse varietate, ut quibusdam videatur etiam paene furor esse remotus, curatoris creationem non esse finiendam, sed manere quidem eum, donec talis furiosus vivit, quia non est paene tempus in quo huiusmodi morbus desperatur: sed per intervalla, quae perfectissima sunt, nihil

[xxi] <non>

[4] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Asclepiodotus.* As you have given evidence that a husband, who had the power to divorce unilaterally, has divorced his insane wife, who is *sui iuris,* and that her mother has made some written agreements (about her daughter's property) with the ex-husband, you understand that she had no power to dispose over her insane daughter's property, since under law she plays no role in protecting her (daughter's) interests.

Written April 13, at Byzantium, in the consulship of the Augusti (293).

[5][290] *Emperor* ANASTASIUS *Augustus to the People.* So that We do not appear to have granted to one or more emancipated children the benefit of an inheritance that was not at all previously owed to them, while not making provision for the burdens of guardianship, We decree with this statutory provision (*legis sanctio*) that they nonetheless shall, inasmuch as they qualify, become *curatores* for their insane brothers and sisters in accordance with the statutory rules laid down by the Twelve Tables.[291]

[6] [292] *Emperor* JUSTINIAN *Augustus to Julian, Praetorian Prefect.* **pr.** Since some persons to be sure are visited with the misfortune of continuous insanity, while others suffer the disability not without occasional relief, so that they experience a certain suspension of it for certain periods of time, and in this situation there are significant differences, so that for some the periods of remission from mental illness are brief, and for others longer, the ancients used to debate whether in the periods of respite from madness the authority of a *curator* remained valid, or whether it concluded with the remission of the illness and became valid again with its return.

1. Removing this doubt, We accordingly ordain that, since it is uncertain in cases of insane persons of this kind when (precisely) they have recovered their senses, whether this occurs over a long or a brief space of time, and it is not impossible for the person to find him- or herself rather often situated on the margin between sickness and health and to remain in this ambiguous situation for a long period, so that to some people the madness seems almost even to have lifted, the appointment of the *curator* shall not be concluded, but he shall, certainly, remain in place, as long as such a lunatic lives, because there is hardly any period of time in which this kind of disability is not in prospect. But in

[290] Compare C. 5.30.4, 6.58.15.1b; Inst. 3.5.1. Lounghis *et al.* date this constitution to between 491 and 498.

[291] Blume: "Anastasius allowed emancipated brothers and sisters to succeed as agnates, subject, it seems, to deduction of a third if there were unemancipated persons of the same class … Hence they were burdened with the same duty of guardianship as their unemancipated brothers." *xii Tab.* 5.7.

[292] Combine with C. 5.70.7, 6.22.9.

curatorem agere, sed ipsum posse furiosum, dum sapit, et hereditatem adire et omnia alia facere, quae sanis hominibus competunt: sin autem furor stimulis suis iterum eum accenderit, curatorem in contractus vocari, ut nomen quidem curatoris in omne tempus habeat, effectum autem, quotiens morbus redierit, ne crebra vel quasi ludibriosa fiat curatoris creatio et frequenter tam nascatur quam desinere videatur.

D. k. Sept. Lampadio et Oreste vv. cc. conss.

[7] *Idem A. Iuliano pp.* **pr.** Cum furiosus, quem morbus detinet perpetuus, in sacris parentis sui constitutus est, indubitate curatorem habere non potest, quia sufficit ei ad gubernationem rerum, quae ex castrensi peculio vel aliter ad eum pervenerint et vel ante furorem adquisitae sunt vel in furore obveniunt, vel in his, quorum proprietas ei tantummodo competit, paterna verecundia. **1.** Quis enim talis adfectus extraneus inveniatur, ut vincat paternum? vel cui alii credendum est res liberorum gubernandas parentibus derelictis? **1a.** Licet Tertullianus iuris antiqui interpres libro singulari, quem de castrensi peculio condidit, tali tractatu proposito videatur obscure eandem attingere sententiam, tamen nos hoc apertissime introduximus. **1b.** Sin autem parentes ab hac luce decedere contigerit, nostra constitutio, quam promulgavimus de his quae in testamento furioso relinquenda sunt vel substitutione eorum, in suo robore maneat.

2. Sin autem perpetuus furiosus sui iuris sit, tunc in paterna quidem hereditate, quae quasi debita ad posteritatem suam devolvitur, nulla est iuris veterum dubitatio, cum ilico apparet et[xxii] suus heres suis extat parentibus.

3. Sin autem ex alia quacumque causa hereditas ad eum vel successio perveniat, tunc magna et inextricabilis vetustissimo iuri dubitatio exorta est, sive adire hereditatem vel bonorum possessionem petere

[xxii] [et] <quod>

the intervals which are absolutely unimpaired the *curator* shall take no action, and the insane person himself, while he has sense, shall be able to enter upon an inheritance and do all the other things which sane persons are entitled to do. But if, however, madness returns in its full force, the *curator* shall be summoned to authorize contracts. The point is that he possesses the title of *curator* the whole time, assuredly, but the power only as often as the illness returns, so that the appointment of a *curator* not become a frequent and almost humorous occasion, and they seem to come in as often as they go out.

Given September 1, in the consulship of viri clarissimi *Lampadius and Orestes (530).*

[7][293] *The same Augustus to Julian, Praetorian Prefect.* **pr.** When an insane person, afflicted by a permanent illness, is in the power (*sacra*) of a male ascendant, there is no doubt that he or she cannot have a *curator*, because the respectful affection (*verecundia*) of the male ascendant suffices for the management of his or her property, which arises from a *peculium castrense* or from other sources, whether he or she acquired it while insane or beforehand or of which he or she has mere ownership (and not the usufruct). **1.** For what outsider shall be found of such an affection that it is superior to that of a male ascendant? Or to what other person should the management of the children's property be entrusted once the male ascendants have been abandoned? **1a.** Although Tertullianus, expert in the ancient law (*ius antiquum*), in writing a monograph on the *peculium castrense* and treating this subject, seems to have reached the same position in an obscure fashion, nevertheless, We have brought it back very openly. **1b.** But if, however, the male ascendants happen to pass away, Our constitution,[294] which we enacted regarding what is to be left in a will to an insane person and the substitution (of heirs) for such property, shall remain valid.

2. But if, however, the permanently insane person is *sui iuris*, then, regarding the inheritance from a male ascendant, certainly, which devolves upon descendants as though it were owed to them, there is no doubt on the part of the ancient jurists (*iuris veteres*), since it is immediately clear that he or she is a privileged heir (*suus heres*) to his or her male ascendants.

3. But if, however, he or she acquires an inheritance or bequest in any other way, in that case a great and unresolvable dispute arose in the most ancient law (*vetustissimum ius*) as to whether or not an insane person could enter upon the inheritance or claim the right to possession of the property (*bonorum possessio*), and whether his or her *curator* ought to be allowed to claim the right

[293] 5–6c = (in part, with changes) C. 1.4.27; combine with C. 5.70.6, 6.22.9.
[294] C. 6.26.9.

furiosus possit, sive non, et si curator eius ad bonorum possessionem petendam admitti debeat. et iuris auctores ex utroque latere magnum habuere certamen.

3a. Nos itaque utramque aciem auctorum certo foedere compescentes sancimus furiosum quidem nullo modo posse vel hereditatem adire vel bonorum possessionem agnoscere: curatori autem eius licentiam damus, immo magis necessitatem imponimus, si utilem esse successionem existimaverit, eam bonorum possessionem agnoscere, quae antea ex decreto dabatur, et ad similitudinem bonorum possessionis habere, cum petitio bonorum possessionis Constantiniana lege sublata est et ab ea introducta observatio pro antiqua sufficit petitione.

4. Sed cum antiquitas in curatore furiosi multas ambages constituit, quemadmodum ab eo vel cautio vel satisdatio detur, vel pro quibus rebus vel quibus personis, et si omnis curator talem praestabat cautelam, necessarium nobis visum est, ut humano generi consulentes omnem quidem obscuritatem et inextricabilem circuitum tollamus, compendioso autem et dilucido remedio totum complectamur. et prius de creatione curatoris, qui furiosis utriusque sexus datur, sancientes tunc et aliis certum finem imponimus.

5. Et si quidem parens curatorem furioso vel furiosae in ultimo elogio heredibus institutis vel exheredatis dederit (ubi et fideiussionem cessare necesse est paterno testimonio pro satisdatione sufficiente), ipse qui datus est ad curationem perveniat, ita tamen, ut in hac florentissima civitate apud urbicariam praefecturam deducatur, in provincia autem apud praesidem eius, praesente ei tam viro religiosissimo locorum antistite quam tribus primatibus, et actis intervenientibus tactis sacrosanctis scripturis edicat omnia se recte et cum utilitate furiosi gerere neque praetermittere ea, quae utilia furioso esse putaverit, neque admittere, quae inutilia existimaverit. **5a.** Et inventario cum omni subtilitate publice conscripto res suscipiat et eas secundum sui opinionem disponat sub hypotheca rerum ad eum pertinentium ad similitudinem tutorum et adulti curatorum.

6. Sin autem testamentum quidem parens non confecerit, lex autem curatorem utpote agnatum vocaverit, vel eo cessante aut non idoneo forsitan existente ex iudiciali electione curatorem ei dare necesse fuerit,

to possession. And the legal experts (*iuris auctores*) on both sides of the issue engaged in a great controversy over it.

3a. We, therefore, in pacifying the battle lines of jurists drawn on both sides of the issue through a final treaty, ordain that an insane person, certainly, can in no way either enter upon an inheritance or take possession of the estate (*bonorum possessio*). To the *curator*, however, We grant permission for this or rather We impose upon him the obligation, if he should deem the inheritance advantageous, to take the possession of the estate thereof, which previously used to be granted in a judicial decree, and to hold it on the analogy of possession of the estate (granted by decree), since the suit for possession of the estate (*petitio bonorum possessionis*) was abolished by a law of Constantine,[295] and the procedure this (statute) introduced stands in place of the ancient suit.

4. But since antiquity established many roundabout usages regarding the *curator* of an insane person, regarding how a promise or a security (*cautio vel satisdatio*) is given by him or for what things and what persons, and if every *curator* should furnish such a guaranty, it seemed necessary to Us, in consulting the interests of the human race, to remove every, to be sure, unclear instance and unresolvable conundrum, embracing the whole, moreover, with a thorough and clear set of remedies. And after first making rules concerning the appointment of *curatores* for insane persons of both sexes, We then enact definite solutions as to other things.

5. And if, in fact, an ascendant male relative appoints a *curator* for an insane person of either sex in his last will, whether they have been appointed heirs or disinherited – in which case the giving of surety must also cease, since the father's testimony is security enough – the person appointed shall take up the curatorship, under this proviso, however, that in this most prosperous city (Constantinople) he shall be brought before the City Prefect, while in the provinces (he shall be brought) before the governor, and in the presence of the most pious local bishop as well as three of the leading men, he shall declare on official record while touching the sacred scriptures that he will conduct all business properly and to the advantage of the insane person, and will neither omit anything that he should deem advantageous to the insane person nor permit anything that he should deem detrimental. **5a.** Once an inventory has been publicly drafted in every detail, he shall receive the property and dispose of it according to his judgment under a security arrangement on his property, on the analogy of *tutores* and *curatores* of an adult ward.

6. If, however, the male ascendant does not, to be sure, make a will and the law summons an agnate relative to be *curator*, or in default of such one or if one with sufficient property should not be available, and it is necessary that a

[295] C. 6.9.9, which is actually of Constantius, not Constantine.

tunc secundum praefatam divisionem in hac quidem florentissima civitate apud gloriosissimam urbicariam praefecturam creatio procedat: sed si quidem nobilis sit furiosi persona, etiam florentissimo senatu convocando, ut ex inquisitione curator optimae atque integrae opinionis nominetur. sin vero non talis persona sit, etiam solo viro gloriosissimo praefecto urbis praesidente hoc procedat. **6a.** Et si quidem curator substantiam idoneam possidet et sufficientem ad fidem gubernationis, et sine aliqua satisdatione nominationem eius procedere: sin autem non talis eius census inveniatur, tunc et fideiussio in quantum possibile est ab eo exploretur. **6b.** Creatione quidem omnimodo sacris scripturis propositis in omni causa celebranda, ipso autem curatore, cuiuscumque vel substantiae vel dignitatis est, praefatum sacramentum pro utiliter rebus gerendis praestante et inventarium publice conscribente, quatenus possint undique res furiosi utiliter gubernari.

6c. In provinciis vero his omnibus observandis, ut apud praesidem cuiuscumque provinciae et virum religiosissimum episcopum civitatis nec non tres primates memorata creatio procedat, eadem observatione et pro iureiurando et pro inventario et satisdatione et hypotheca rerum curatoris modis omnibus adhibenda.

7. Tali itaque ordinatione in curatore furiosi disposita, si quid postea ad furiosum pervenerit sive ex hereditate vel successione vel legato vel fideicommisso vel alio quocumque modo, hoc furioso accedat et hoc cum alia eius substantia manibus curatoris tradatur, inventario etiam super his rebus scilicet faciendo: et sub eius cura constituatur, quatenus, si quidem resipuerit furiosus et adquisitionem admiserit, ipsi restituatur.

8. Sin autem in furore diem suum obierit vel in suam sanitatem perveniens eam repudiaverit, si quidem successio est, ad eos referatur, volentes tamen, id est vel substitutum vel ab intestato heredes vel ad nostrum aerarium: eo scilicet observando, ut hi veniant ad successionem, qui mortis tempore furiosi propinquiores existant ei ad cuius bona vocabantur, si non in medio erat furiosus, omni satisdatione vel cautione, quam per inextricabilem circuitum veteris iuris auctores induxerunt, radicitus excisa.

9. Legatis autem procul dubio vel fideicommissis ceterisque adquisitionibus furioso adquirendis et substantiae eius adgregandis: sin autem ipse resipuerit et noluerit ea admittere et aperte haec respuerit vel heres

curator be appointed for him by judicial nomination; then the appointment shall take place according to the aforesaid arrangement exclusively in this most prosperous city before the most renowned City Prefect. But if indeed the insane person is of aristocratic status, the most flourishing Senate also shall be convened, so that, after a hearing, a *curator* of excellent and unblemished reputation is named. But if, however, the (lunatic) is no such person, this shall proceed even under the sole authority of the most renowned City Prefect. **6a.** And if in fact the *curator* possesses suitable means sufficient for faithful management (of the property of the insane person), his appointment shall take place even without requiring any security. But if his property assessment is not found sufficient, then as much security as possible shall be sought from him. **6b.** The appointment certainly shall in every case entirely be made solemnly before the holy scriptures; the *curator* himself, whatever his property or rank is, shall take the aforementioned oath to conduct the affairs of the insane person advantageously, and shall publicly draft an inventory, so that the property of the insane person may be managed on every side as advantageously as possible.

6c. In the provinces certainly all these measures shall be observed, so that the aforesaid appointment also go forward, before the governor of each province and the most devout bishop of each city as well as three leading men, with the same procedure to be observed in every way with respect to the oath, the inventory, the security, and the hypothec of the property of the *curator.*

7. Therefore, after such an appointment of a *curator* for an insane person has been made, if afterwards anything comes to the lunatic, whether through inheritance, succession (intestate or under a will), legacy, trust, or in any other way, this shall accrue to him or her and with the rest of his or her property shall be handed over to the *curator,* and an inventory shall obviously be made for this property too. And it shall be placed under (the *curator*'s) management, so that if, indeed, the insane person recovers his or her senses and approves the acquisition (of this property), it shall be restored to him or her.

8. But if, however, he or she ends life as a lunatic or, to be sure, becomes sane but refuses such acquisition, if it is indeed a succession, it shall accrue, if, however, they accept it, to the substitute heir, the heirs on intestacy, or Our Treasury. This rule clearly shall be observed, that those shall come to the succession who are, at the time of the lunatic's death, the closer relations (*propinquiores*) to the person for whose property they would have been eligible had the lunatic never lived. Every security or guaranty, which the experts in the ancient law (*veteris iuris auctores*) introduced through an inextricably roundabout route, is utterly abolished.

9. It is far from doubtful, however, that legacies, trusts, and other acquisitions shall be acquired for the insane person and associated with his or her (other) property. But if, however, he or she recovers his or her senses, refuses

eius hoc fecerit, a substantia eius ilico separandis, quasi nec fuerant ab initio ad eum devoluta, et legitimum tramitem ambulantibus, substantiam furiosi neque praegravantibus neque adiuvantibus.

10. Sin autem curator furiosi secundum nostram legem nominatus decesserit, sub eodem modo eademque observatione alius creabitur: quemadmodum et, si suspectus reperiatur, alter subrogatur. quod etiam veteribus legibus placuit.

11. Haec autem omnia, quae de creationibus curatorum cum per novam definitionem introducta sunt, futuris casibus imponantur et neque antea facti curatores removeantur neque aliquid novum eis accedat, sed antiquo ordine statuti in antiquos quantum ad creationem permaneant terminos: cautione videlicet vel satisdatione, quae antiquitus fuerat introducta, super postea venientibus ad furiosos successionibus minime praestanda.

D. k. Sept. Constantinopoli Lampadio et Oreste vv. cc. conss.

LXXI De Praediis vel Aliis Rebus Minorum sine Decreto Non Alienandis vel Obligandis

[1] *Imp. Antoninus A. Muciano.* **pr.** Venditio quidem praedii, quod iure pignoris vel in causa iudicati captum et distractum est, ad senatus consultum, quod de alienandis praediis pupillorum vel adulescentium auctore praetore vel praeside provinciae factum est, non pertinet. **1.** Sed si etiam nunc in ea aetate es, cui subveniri solet, aditus competens iudex, an te in integrum restituere debeat, praesente diversa parte causa cognita dispiciet.

PP. XIII k. Dec. duobus Aspris conss.

[2] *Imp. Gordianus A. Clearcho et Aphrodisio.* **pr.** Non est vobis necessaria in integrum restitutio, si tutores vel curatores vestri possessionem, licet pignori nexam, vendiderunt. **1.** Quod si creditores id fecerint, ita

to accept this property, and openly rejects it, or if his or her heir does so, it shall immediately be separated from his or her property, as if it had not come to him or her in the first place, and, following the path set forth by the law, it neither burdens nor increases the property of the lunatic.

10. But if, however, the *curator* of the insane person appointed according to Our law should pass away, another will be appointed in the same way and by the same procedure, with this proviso as well, that if he is suspected of misconduct, another is appointed in his place. This was also a settled principle of the ancient laws.

11. All of these rules, however, which have been introduced regarding the appointments of *curatores* under a recasting of regulations, shall apply (only) to future cases. Neither shall those *curatores* already appointed be removed, nor shall any new rule apply to them, but, being governed by the old rules, they shall remain within the old limits as far as their appointment is concerned. Clearly, the security or guaranty which was introduced in antiquity shall not at all be furnished regarding future successions accruing to insane persons.

Given September 1, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

Seventy-First Title Real Properties and Other Property of Wards Are Not to Be Alienated or Placed Under Lien without a Judicial Decree[296]

[1] *Emperor* A*NTONINUS Augustus to Mucianus.* **pr.** To be sure, the sale of a property which has been seized and sold because subject to a pledge or a court judgment is not covered by the decree of the Senate regarding the alienation of properties belonging to minor and adult wards which is accomplished on the authority of the Praetor or the provincial governor. **1.** But if you are even now of an age for which it is customary to provide assistance, the appropriate judge, once approached, will look into whether he ought to restore your rights (*restituere in integrum*), having conducted a judicial hearing with your adversary present.

Posted November 19, in the consulship of the two Aspri (212).

[2] *Emperor* G*ORDIAN Augustus to Clearchus and Aphrodisius.* **pr.** Restitution of your rights (*restituere in integrum*) is not necessary if your *tutores* or *curatores* have sold a property of yours although it is bound as a pledge. **1.** But if it was your creditors who did this, you will enjoy the benefit provided by the

[296] See D. 27.9. The SC in question was prompted by a legislative proposal (*oratio*) of Septimius Severus in 195.

demum iuxta formam edicti beneficium tibi impertietur, si fraudulenta venditione, participante consilium emptore, damnum tibi inflictum esse doceatur.

PP. III k. Febr. Gordiano A. et Aviola conss.

[3] *Impp. Valerianus et Gallienus AA. Theodosiano et aliis.* Cum emancipatis vobis praedium adquisitum foret, alienari a patre eodemque curatore sine praesidis auctoritate non potuit, maxime si, tamquam suum esset, non tamquam pupillare vendiderit, illibataque vobis persecutio eius manet.

PP. III non. Ian. Tusco et Basso conss.

[4] *Idem AA. Mithridati.* **pr.** Non solum per venditionem rustica praedia vel suburbana pupilli vel adulescentes alienare prohibentur, sed neque transactionis ratione neque permutatione et multo magis donatione nec alio quoquo modo ea transferre e dominio suo possunt. **1.** Igitur et tu si fratribus tuis per transactionem fundum dedisti, vindicare eum potes. sed si quid invicem ab eis ex eodem pacto consecutus es, id mutuo restituere debebis.

PP. XV k. Mai. Saeculare II et Donato conss.

[5] *Idem AA. Sereno.* Etsi praeses decreverit alienandum vel obligandum pupilli suburbanum vel rusticum praedium, tamen actionem pupillo, si falsis adlegationibus circumventam religionem eius probare possit, senatus reservavit: quam exercere tu quoque non vetaris.

PP. III k. Mai. Saeculare II et Donato conss.

[6] *Imppp. Carus Carinus et Numerianus AAA. Varo.* Minorum possessionis venditio, per procuratorem delato ad praetorem vel praesidem provinciae libello, fieri non potuit, cum ea res confici recte aliter non potest, nisi apud acta causis probatis, quae venditioni necessitatem inferant, decretum sollemniter interponatur.

PP. non. Mart. Caro et Carino AA. conss.

[7] *Idem AAA. Isidoro.* Si ad resolvendam donationem, quam in emancipatum te pater contulerit, minor annis cautionem emisisti, cum

rules of the Edict (on restoration of rights) only if it is demonstrated that a loss was inflicted on you through a fraudulent sale made in collusion with the purchaser.

Posted January 30, in the consulship of Gordian Augustus and Aviola (239).

[3] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Theodosianus and others.* Since a property was acquired for you after you were emancipated, it could not be alienated by your father, who was also your *curator*, without the authorization of the governor, especially if he sold it as though it was his own land, not that of his ward, and your ability to sue remains unimpaired for you.

Posted January 3, in the consulship of Tuscus and Bassus (258).

[4] *The same Augusti to Mithridates.* **pr.** Not only are minor and adult wards forbidden to alienate rural and suburban properties through sale, but they cannot transfer these properties from their ownership through settlement of a suit (*transactio*), barter (*permutatio*), much less gift, or in any other manner. **1.** So too if you gave a farm to your brothers pursuant to a settlement, you can claim it back. But if you obtained something from them in turn according to the same agreement, you ought to return this in exchange.

Posted April 17, in the consulship of Saecularis, for the second time, and Donatus (260).

[5] *The same Augusti to Serenus.* Although the governor issued a judicial decree ordering the alienation or placing under lien of a minor ward's rural or suburban property, nevertheless the Senate has reserved an action for the ward, if he can show that the governor's scrupulous attention to duty (*religio*) was deceived by false allegations. You too are not forbidden from exercising this (action).

Posted April 29, in the consulship of Saecularis, for the second time, and Donatus (260).

[6] *Emperors* CARUS, CARINUS, *and* NUMERIANUS *Augusti to Varus.* The sale of real property belonging to wards, conducted through a procurator by a petition to the Praetor or a provincial governor, could not succeed. The reason is that this matter cannot properly be accomplished unless a judicial decree is formally issued, after a showing upon the public records (*apud acta*) of the reasons why the sale was necessary.

Posted March 7, in the consulship of Carus and Carinus Augusti (283).

[7] *The same Augusti to Isidorus.* If while you were an adult ward you sent a (written) guaranty (*cautio*) in order to renounce a gift which your father made to you after you were emancipated, since you issued a document of this kind

huiusmodi scriptura contra senatus consulti auctoritatem data sit, non oberit iuri tuo.

PP. VI id. Sept. Hemesae Caro et Carino AA. conss.

[8] *Impp. Diocletianus et Maximianus AA. Theodotae.* Praedia rustica, quae contra senatus consultum donata esse ante nuptias sponsaliorum nomine precum tuarum confessio ostendit, cum proprietas ad te propter iuris interdictum transire non potuerit, in dominio mariti permansisse palam est.

PP. III non. Nov. Diocletiano A. II et Aristobulo conss.

[9] *Idem AA. Muciano.* **pr.** Etsi is, quem praedium rusticum minoris distraxisse adfirmas, curatoris officio functus id fecit, venditio tamen contra divi Severi orationem facta praesidis sententia non immerito rescissa est. **1.** Pignora sane, quae ob evictionis periculum idem curator ex rebus propriis tibi obligavit, non prohiberis persequi.

PP. non. Nov. Diocletiano A. II et Aristobulo conss.

[10] *Idem AA. Grato.* Praediorum, quae sine decreto alienata sunt, dominium tibi persequenti praeses opem feret. apud quem si illuxerit non universa pretia, quae curatori tuo data sunt, in patrimonium tuum processisse, pro ea dumtaxat pecuniae parte conveniri te permittit, quam in facultates tuas erogatam esse constiterit.

PP. V id. Aug. ipsis IIII et III AA. conss.

[11] *Idem AA. Trophimo.* **pr.** Si quidem sine decreto minor annis patronus tuus rusticum praedium venumdedit, supervacuum est de vili pretio tractare, cum senatus consulti auctoritas retento dominio alienandi viam obstruxerit. **1.** Si vero iure interposito decreto venditionem

contrary to the authoritative rule laid down by the decree of the Senate, it will not prejudice your right.

Posted September 8,[297] *at Emesa, in the consulship of Carus and Carinus Augusti (283).*

[8][298] *Emperors* D*IOCLETIAN and* M*AXIMIAN Augusti to Theodota.* In your petition you openly admit that rural properties were given before marriage, as an engagement gift in violation of the senatorial decree. Since ownership of this cannot pass to you because of the prohibition at law, it is clear that it has remained the property of your husband.

Posted November 3, in the consulship of Diocletian Augustus, for the second time, and Aristobulus (285).

[9] *The same Augusti to Mucianus.* **pr.** Even if he, whom you allege to have alienated the rural property of a ward, did so having discharged the responsibility of a *curator*, nevertheless, because the sale was accomplished in violation of the legislative proposal (*oratio*) of the deified Severus, it has, not unjustly, been rescinded by a judicial decree of the governor. **1.** You are not prevented from suing for the recovery of the pledges, reasonably enough, which the same *curator* bound over to you from his own property as a hedge against the risk of eviction.

Posted November 5, in the consulship of Diocletian Augustus, for the second time, and Aristobulus (285).

[10] *The same Augusti to Gratus.* The governor will assist you in your suit to recover ownership of the properties that were alienated without a judicial decree. If it becomes clear in his court that the entire price which was paid to your *curator* did not wind up in your account, he will allow you to be sued only for that portion which, it is established, was paid over to you.

Posted August 9, in the consulship of the Augsuti, for the fourth and third time, respectively (290).

[11] *The same Augusti to Trophimus.* **pr.** If, in fact, an adult ward, your patron, sold a rural property without a judicial decree, it is beside the point to be concerned about the low price received, since the authoritative rules of the senatorial decree have removed his ability to alienate it, reserving ownership for him. **1.** But if after the proper issuance of a judicial decree, he sold the property for a low price, not knowing its worth, pursuant to the authoritative contents

[297] The precise month is uncertain: September or December.
[298] Combine with C. 2.29.1.

vili pretio eius possessionis, cuius vires ignorabat, fecit, iuxta perpetui edicti auctoritatem in integrum restitutio causa cognita ei praebetur.

PP. XII k. Dec. ipsis IIII et III AA. conss.

[12] *Idem AA. et CC. Leontio.* Ob aes alienum tantum causa cognita praesidali decreto praedium rusticum minoris provinciale distrahi permittitur.

S. prid. k. Mai. Heracliae AA. conss.

[13] *Idem AA. et CC. Zenonillae.* Etiam vectigale vel patrimoniale sive emphyteuticum praedium sine decreto praesidis distrahi non licet.

S. VIII k. Sept. Sirmi AA. conss.

[14] *Idem AA. et CC. Frontoni.* Utere viri prudentissimi Papiniani responso ceterorumque, quorum precibus fecisti mentionem, sententiis ac doli mali exceptionem oppone, pretium ob eorum debitum solutum probans, si sortem cum usuris, quae fisco deberentur, pupilli non offerentes fundos provinciales citra decretum praesidis venumdatos cum fructibus petant.

S. XVIII k. Dec. AA. conss.

[15] *Idem AA. et CC. Sabinae.* Si minor viginti quinque annis praedium rusticum, cum aliud deberes, sine decreto in solutum dedisti, dominium a te discedere non permisit senatus consulti auctoritas.

S. VIII k. Dec. AA. conss.

[16] *Idem AA. et CC. Eutychiae.* **pr.** Si praedium rusticum vel suburbanum, quod ab urbanis non loco, sed qualitate secernitur, in pupillari aetate constituta tutore auctore vel adulta sine decreto praesidis provinciae in qua situm est venumdedisti, secundum sententiam senatus

of the Perpetual Edict he will be awarded, after a judicial hearing, restoration of his rights (*restituere in integrum*).

Posted November 20, in the consulship of the Augusti, for the fourth and third time, respectively (290).

[12] [299] *The same Augusti and the Caesars to Leontius.* A provincial rural property belonging to a ward is allowed to be alienated only for debt, after a judicial hearing, and upon issuance of a judicial decree by the governor.

Written April 30, at Heraclea, in the consulship of the Augusti (293).

[13] *The same Augusti and Caesars to Zenonilla.* It is not permitted to alienate without a governor's judicial decree even a property which is leased by the state or by local government (*vectigale*), or which belongs to the Emperor (*patrimoniale*), or which is tied to a long-term lease arrangement (*emphyteuticum*),

Written August 25,[300] *at Sirmium, in the consulship of the Augusti (293).*

[14] *The same Augusti and Caesars to Fronto.* Make use of the response (*responsum*) of the most learned Papinian and the opinions of the others whom you mention in your petition, and offer an affirmative defense of fraud (*exceptio doli mali*) by showing the amount paid in satisfaction of the minor wards' debt, if, without offering to repay the principal with interest, which they owed to the Treasury, they should sue to recover the provincial lands, along with their income (*fructus*), that were sold without a judicial decree of the governor.

Written November 14,[301] *in the consulship of the Augusti (293).*

[15] *The same Augusti and Caesars to Sabina.* If as an adult ward you paid off a debt by alienating a rural property without a judicial decree, the authoritative rule of the decree of the Senate does not permit ownership to be transferred from you.

Written November 24, in the consulship of the Augusti (293).

[16] *The same Augusti and Caesars to Eutychia.* **pr.** If, while a minor or adult ward, you sold a rural or suburban property, which is distinguished from urban real estate not by location but by type, with the approval of your *tutor* (as a minor ward) but without a judicial decree of the governor of the province in which the land is situated, according to the rules of the decree of the Senate your ownership and rights over it continue in force, and it is established that a

[299] Combine, probably, with C. 5.34.6, received on the same day.
[300] Mommsen dates to September 24, 293.
[301] The precise day is uncertain: the alternative is November 23.

consulti dominium eius sive ius a te discedere non potuit, sed vindicationem eius et fructuum, vel his non existentibus condictionem competere constitit. 1. Emptor autem si probare potuerit ex ceteris facultatibus oboedire te muneribus sive honoribus non potuisse, ad utilitates praeterea tuas cessisse pecuniam, quam pretii nomine sumpseras, doli exceptionis auxilio pretium cum usuris, quas praestatura esses, et sumptus meliorati praedii servare tantummodo potest.

S. VI id. April. Anchialo CC. conss.

[17] *Idem AA. et CC. Philippo.* Inter omnes minores nec commune praedium sine decreto praesidis sententia senatus consulti distrahi patitur. nam ad divisionis causam provocante tantum maiore socio eius alienationem et sine decreto fieri iam pridem obtinuit.

S. VII id. Dec. CC. conss.

[18] *Imp. Constantinus A. et Constantius C. ad Severum.* Si minores vel ex patris nomine vel ex suo, debitis dumtaxat fiscalibus ingruentibus, vel ex privatis contractibus reperiantur obnoxii, decreti interpositio a Constantiniano praetore celebranda est, probatis examussim causis, ut patefacta rerum fide firma venditio perseveret.

D. XV k. Ian. Serdicae Probiano et Iuliano conss.

LXXII Quando Decreto Opus Non Est

[1] *Imp. Antoninus A. Valenti militi.* Si probare potes patrem pupilli, cuius tutorem convenisti, consensisse, ut reddito tibi praedio pretium reciperaret, id quod convenit servabitur. neque enim in ea re auctoritas praesidis necessaria est, ut tutorum sollicitudini consulatur, si voluntati defuncti pareant.

claim of ownership (*vindicatio*) lies for you regarding the land and its income (*fructus*), or a claim for restitution (*condictio*) for the latter if it no longer exists. 1. But if the buyer can show that out of the remainder of your property you were unable to meet the demands imposed by your civic duties and the obligations of positions in public life, and that, moreover, you used the money you received as a price for your own benefit, he can, with the assistance of the affirmative defense of fraud (*exceptio doli*), recover only the price with interest which you would have paid, as well as expenses for the improvement of the property.

Written April 8,[302] *at Anchialus, in the consulship of the Caesars (294).*

[17] *The same Augusti and Caesars to Philippus.* The rule of the senatorial decree does not permit even a property owned in common by wards (i.e., all of the joint owners are wards) to be alienated without a judicial decree of the governor. For it has long been the rule that only when a partner who has passed the age of full legal majority (i.e., 25 years) requests a division does this happen even without a decree.

Written December 7, in the consulship of the Caesars (294).

[18][303] *Emperor* CONSTANTINE *Augustus and* CONSTANTIUS *Caesar to Severus.*[304] If wards are shown to be liable, either under their father's name or their own, for debts, provided they are owed to the Treasury or under private contracts, a decree must be issued by the Constantinian Praetor, after the reasons have been proved with precision, so that the sale shall be validated after the trustworthiness of the facts has been rendered transparent.

Given December 18, at Serdica, in the consulship of Probianus and Julian (322).[305]

Seventy-Second Title When a Judicial Decree Is Not Needed

[1] *Emperor* ANTONINUS *Augustus to Valens, a soldier.* If you can prove that the father of the minor ward, whose *tutor* you have sued, had given his agreement that the property would be returned to you and he would recover the price, the agreement will be upheld. For in this matter the authorization of the governor is not necessary to protect *tutores* from anxiety if they obey the wishes of the decedent.

[302] The precise day and month are uncertain; the alternative is October 28.
[303] = (in part, with minor changes) C.Th. 3.32.2. Combine with C. 7.62.17.
[304] The identification of the recipient is uncertain.
[305] The year is perhaps 326: Projet Volterra. Seeck gives December 31, 326.

PP. IIII k. Ian. Antonino A. II et Geta II conss.

[2] *Imp. Aurelianus A. Pulchro.* Illud requirendum est, an adito principe Saturninus vir clarissimus specialiter ius venditionis acceperit. ad instar enim praesidalis decreti concessio principalis accedit.

PP. Byzantii id. Ian. sine conss.

[3] *Impp. Diocletianus et Maximianus AA. et CC. Stratoniciano.* Praedium rusticum vel suburbanum a minore viginti quinque annis alienari sine decreto praesidis, nisi parentis voluntas seu testatoris, ex cuius bonis ad minorem pervenit, super alienando eo aliquid mandasse deprehendatur, nulla ratione potest.

PP. XV k. April. Nicomediae Tusco et Anullino conss.

[4] *Imp. Constantinus A. ad populum.* Et sine interpositione decreti tutores vel curatores quarumcumque personarum vestes detritas et supervacua animalia vendere permittimus.

D. id. Mart. Sirmi Constantino A. VII et Constantio C. conss.

LXXIII Si Quis Ignorans Rem Minoris Esse sine Decreto Comparavit

[1] *Imp. Gordianus A. Felici.* Si ea, quae in iura tutoris hereditario titulo successit, possessionem tuam vendidit, si ut pupillarem distraxit, emptor, qui sciens a tutoris herede mercatus est, cum officium morte finiatur, alienam rem comparando de temporis intervallo nullam potuit adquirere defensionem: si vero ut suam distraxit ignoransque rem alienam emptor comparavit, neque statim per traditionem possessionis

Posted December 29,[306] *in the consulship of Antoninus Augustus, for the second time, and Geta, for the second time (205).*[307]

[2] *Emperor* AURELIANUS *Augustus to Pulcher.* It shall be determined whether *vir clarissimus* Saturninus approached the Emperor and received a special right to sell (landed property). For imperial permission operates on the analogy of a judicial decree issued by the governor.

Posted January 13, at Byzantium, without year.

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Stratonicianus.* A rural or suburban property can in no way be alienated by a ward less that 25 years of age without a judicial decree of a governor, unless the (last) wishes (i.e., will) of a male ascendant or the testator whose property accrues to the ward are discovered to have given some instructions regarding the alienation of this property.

Posted March 18, at Nicomedia, in the consulship of Tuscus and Anullinus (295).[308]

[4][309] *Emperor* CONSTANTINE *Augustus to the People.* We allow the *tutores* and *curatores* of anyone whatsoever to sell, even without the issuance of a judicial decree, clothing that is worn with use and animals that are not needed.

Given March 15, at Sirmium, in the consulship of Constantine Augustus, for the seventh time, and Constantius Caesar (326).[310]

Seventy-Third Title If Someone, While Unaware, Has Bought a Ward's Property Without a Judicial Decree

[1] *Emperor* GORDIAN *Augustus to Felix.* If the woman who succeeded to the estate of your *tutor* by inheritance sold a property of yours as if she were (in fact) alienating a minor ward's property, the buyer, who knowingly bought from the heir of a *tutor*, when the duty (of management of the tutelage) was ended by his death, could not, in purchasing a property belonging to someone else (i.e., other than the seller), use the defense of lapse of time. If indeed she sold it as her own and the buyer purchased property not the

[306] The precise day is uncertain: the alternatives are December 27 and 28.

[307] So Krüger, but Geta's first consulship was in 205, his second in 208, while Caracalla's second was in 205, his third in 208.

[308] The precise year is uncertain: 295 or 293.

[309] = (in part, with changes) C. 5.37.22.6–7. Combine with C. 2.27.2; perhaps also C. 4.32.25.

[310] The year is more likely to be March 15, 329: Seeck and Projet Volterra.

dominus effectus est, sed tantummodo adversus te statuti temporis, cum te legitimae aetatis esse non diffitearis, potest uti praescriptione.

PP. v id. Sept. Pio et Pontiano conss.

[2] *Idem A. Crispinae.* Si contra amplissimi ordinis decretum possessiones tuae distractae sunt, conveni earum possessorem, ut, si ita probaveris gestum, et possessio retrahatur et fructus universi revocentur, si non bona fide emptorem fuisse qui emit constiterit.

PP. xvi k. Ian. Gordiano A. ii et Pompeiano conss.

[3] *Impp. Diocletianus et Maximianus AA. et CC. Agathae.* Possessiones rusticae vel suburbanae sine causae cognitione et interpositione decreti contra senatus consultum alienatae nec a secundo emptore recte tenentur, nisi statutum temporis spatium intercesserit.

PP. id. Febr. Nicomediae CC. conss.

[4] *Idem AA. et CC. Alexandro.* Quoniam adversus emptorem, ad quem ex persona eius, cui contra senatus consultum donata res est, iusto titulo interveniente ea res de qua lis est transitum fecit, requirere oportebit, an praesente priore domino et maiore effecto sine controversia bonae fidei decennio vel absente viginti annis qui quaestionem patitur possessor fuisse monstretur. quod si apud gravitatem tuam manifeste constiterit, sine ulla cunctatione habita longi temporis praescriptione petitorem oportebit excludi.

D. vi id. Iun. Dorostolo Diocletiano viii et Maximiano vii AA. conss.

seller's in ignorance, he or she was not made owner of the property immediately through its (informal) conveyance (*traditio*), but can only make use of the defense of the lapse of the prescribed time (*praescriptio statuti temporis*) against you, since you do not deny that you are (now) of the age of full legal majority (i.e., 25 years or older).

Posted September 9, in the consulship of Pius and Pontianus (238).

[2] *The same Augustus to Crispina.* If your real properties were alienated in violation of the decree of the most distinguished Senate, sue their possessor, so that, if you prove that this happened, the properties shall be returned to you as well as all of their income (*fructus*) recovered, unless it is established that the purchaser acted in good faith (*bona fides*).

Posted December 17,[311] *in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).*

[3] *Emperors* D*IOCLETIAN and* M*AXIMIAN Augusti and the Caesars to Agatha.* Rural or suburban properties are not lawfully held even by a subsequent purchaser when, in violation of the senatorial decree, they have been alienated without a hearing and the issuance of a judicial decree, unless the fixed prescriptive period has elapsed.

Given February 13,[312] *at Nicomedia, in the consulship of the Caesars (294).*

[4] *The same Augusti and Caesars to Alexander.* Because (a suit has been raised) against the buyer to whom the property at the center of the suit has passed with just ground (*iustus titulus*) from the hands of the person to whom it was given as a gift in violation of the decree of the Senate, it ought to be looked into whether the person whose title is questioned is shown to have been a good faith (*bona fide*) possessor without challenge after the prior owner reached the full legal age of majority (i.e., 25 years) and ten years have passed with him or her present or twenty in his or her absence. If this is clearly established before your respected court, the plaintiff will have to be denied without any delay on the ground that the prescriptive period has elapsed.

Given June 8, at Dorostolum, in the consulship of the Augusti, for the eighth and seventh time, respectively (303).[313]

[311] The precise month is uncertain: December or June.
[312] Mommsen dates to December 13, 294.
[313] The precise year is uncertain: 303 or 294.

LXXIIII Si Maior Factus sine Decreto Factam Alienationem Ratam Habuerit

[1] *Impp. Diocletianus et Maximianus AA. Liciniae.* Cum proponas curatorem patris tui non interposito praesidis decreto praedium rusticum heredi creditoris seu tutori eius destinasse venumdare eamque venditionem deceptum patrem tuum ratam habuisse, si minore pretio distractum praedium est et inconsulto errore lapsum patrem tuum perperam venditioni consensum dedisse constiterit, non ab re erit superfluum pretii in compensationem deduci: quod praesidis provisione fieri convenit, cuius sollertiae congruum est, si diversa pars bonam fidem non amplectatur, in arbitrio eius ponere, an velit possessionem cum fructibus restituere, ita ut fenebris pecunia cum competentibus usuris restituatur.

PP. non. Oct. ipsis IIII et III AA. conss.

[2] *Idem AA. et CC. Alexandro.* Si sine decreto praesidis praedia tua a tutore tuo alienata sunt nec speciali confirmatione vel, si bona fide possessor fuisset, statuti temporis excursu id quod perperam est actum fuerat stabilitum, praeses provinciae possessionem in ius tuum retrahet.

D. k. Ian. Sirmi AA. conss.

[3] *Imp. Iustinianus A. Menae pp.* **pr.** Si quando sine decreto minorum vel adhuc sub curatoribus constitutorum vel per veniam aetatis eorum curam excedentium res alienantur vel supponuntur, et ad perfectam aetatem idem minores provecti longo silentio querellam huiusmodi tradiderint, ut inutilis alienatio vel suppositio diuturno silentio roboretur, certum tempus ad talem confirmationem praefinitum esse censemus.

1. Ideoque praecipimus, si per quinque continuos annos post impletam minorem aetatem (id est viginti quinque annos) connumerandos

Seventy-Fourth Title Confirmation by an Adult Ward Who Has Reached the Age of Full Legal Majority of an Alienation Made without Issuance of a Judicial Decree

[1][314] *Emperors* Diocletian *and* Maximian *Augusti to Licinia.* Since you allege that your father's *curator* had chosen to sell a rural property, without issuance of a judicial decree by the governor, to the heir of a creditor or to his or her *tutor*, and that your father, deceived, confirmed this sale (when he was 25 or older), if the property was alienated at too low a price and it is established that your father, having fallen into an injudicious mistake, wrongly gave his approval to the sale, it will not be inappropriate that the difference in price be made up for. It is fitting that this be accomplished through the diligent oversight of the governor, with whose shrewdness it is consistent that, if your opponent in the suit does not embrace the standard of good faith (*bona fides*), he give him or her the option (of paying the difference in price) or of returning the property together with its income (*fructus*), against repayment of the price – which has been lent out – along with the relevant interest.

Posted October 7, in the consulship of the Augusti, for the fourth and third time, respectively (290).

[2] *The same Augusti and the Caesars to Alexander.* If your properties were alienated by your *tutor* without a judicial decree of the governor and this has neither been confirmed in an apposite manner (by you) nor been rendered valid by the lapse of the prescribed period of time which ratifies that which has been wrongly done provided the possessor has acted in good faith (*bona fides*), the governor of the province will restore the property to you.

Given January 1, at Sirmium, in the consulship of the Augusti (293).

[3][315] *Emperor* Justinian *Augustus to Menas, Praetorian Prefect.* **pr.** Whenever the property of adult wards, both those still under the supervision of a *curator* and those who have been released from curatorship though under age (i.e., received the *venia aetatis*), is alienated or placed under lien without a judicial decree, and the wards, having reached the age of full legal entitlement (i.e., 25), maintain a long silence about such a ground for complaint, the result is that the invalid alienation or encumbrance is confirmed by their lengthy silence, We ordain that a fixed time period shall be established in advance for such validation.

1. On that account, We instruct that if for five continuous years that are to be reckoned after attaining full legal entitlement – that is, age 25 – the person

[314] Combine with C. 4.10.4.
[315] Combine with C. 2.44.3.

nihil conquestus est super tali alienatione vel suppositione is qui eam fecit vel heres eius, minime retractari eam occasione praetermissionis decreti, sed sic tenere, quasi ab initio legitimo decreto fuisset alienata res vel supposita.

2. Cum autem donationes a minoribus nec cum decreto celebrari possunt, si minor vel post veniam aetatis rem immobilem donationis titulo in alium (excepta propter nuptias donatione) transscripserit, non aliter hoc firmitatem habebit, nisi post viginti quinque annos impletos inter praesentes quidem decennium, inter absentes autem vicennium donatore adquiescente effluxerit: ut tamen in heredis persona illud tantummodo tempus accederet, quod post eiusdem heredis minoris aetatem silentio transactum sit.

D. VIII id. April. Constantinopoli Decio vc. cons.

LXXV De Magistratibus Conveniendis

[1] *Imp. Antoninus A. Muciano.* **pr.** Si magistratus a tutoribus seu curatoribus, quos tibi dederunt seu nominaverunt, stipulati sunt se eo nomine indemnes futuros inque eam rem fideiussores acceperunt extra rem salvam fore satisdationem, actio, quam adversus tutores seu curatores tuos instituisti, alienam obligationem non resolvit. **1.** Sed adversus magistratus qui curatorem dederunt actio utilis ita demum competit, si universis bonis excussis revocatisque, quae eum in fraudem alienasse constiterit, indemnitati tuae in solidum satisfieri non potuit. **2.** Quam si exercueris, mandatis tibi ab eis actionibus adversus fideiussores quos acceperunt consistere potes, licet utilem actionem sine cessione habeas.

Accepta non. Ian. duobus Aspris conss.

[2] *Imp. Alexander A. Paterno.* In heredes magistratus, cuius non lata culpa idonee cautum pupillo non est, non solet actio dari.

PP. III non. Iul. Iuliano et *Crispino conss.*

who made the alienation or encumbrance or his or her heir has made no complaint about it, it shall not at all be rescinded on the ground that no judicial decree was issued, but it shall hold as if the property in question was alienated or encumbered under a lawful decree from the start.

2. Since, moreover, gifts cannot be made by wards even with a judicial decree, if a ward or a person granted the *venia aetatis* signs over immovable property to another – with the exception of a prenuptial gift – this will only be validated if, having turned 25, the giver acquiesces for a ten-year period, while present, assuredly, but for twenty years, if he or she is absent. Nevertheless, (this happens) with this proviso in the case of an heir, that only that period of time would accrue, which has passed in silence after he or she reaches the age of full legal entitlement (i.e., 25 years).

Given April 6, at Constantinople, in the consulship of the vir clarissimus *Decius (529).*

Seventy-Fifth Title Suing Public Officials[316]

[1] *Emperor* ANTONINUS *Augustus to Mucianus.* **pr.** If public officials have made stipulations with the *tutores* or *curatores* they have appointed or nominated for you, that they (the public officials) would sustain no claims for loss arising from that appointment or nomination, and they have accepted sureties for this purpose, distinct from the surety guaranteeing the security of your property, the action which you have raised against your *tutores* or *curatores* does not release the obligation borne by another (i.e., the public officials). **1.** But an analogous action (*actio utilis*) lies against public officials who have appointed a *curator* only if all of the property, which it is established he alienated fraudulently, has been searched out and reclaimed and this has not been able to make you whole. **2.** If you bring that action, you can rely on those actions they have assigned to you against the sureties whom they received, although you have an analogous action even without a formal assignment.

Received January 5, in the consulship of the two Aspri (212).

[2] *Emperor* ALEXANDER *Augustus to Paternus.* It is not customary to grant an action against the heirs of a public official who, without serious fault (*lata culpa*), failed to take adequate precautions for (protecting) a minor ward.

Posted July 5, in the consulship of Julian and Crispinus (224).

[316] See D. 27.8.

[3] *Imp. Gordianus A. Aproniano.* Si tu et collega tuus, cum magistratu fungeremini, minus idoneum tutorem dedistis cautionemque idoneam non exegistis nec alias servari pupillo indemnitas potest et utrique solvendo estis, pro virili parte in vos actionem dari non iniuria postulabis.
D. VIII k. Nov. Pio et Pontiano conss.

[4] *Idem A. Arruntiano.* Adversus nominatorem tutoris vel curatoris minus idonei non ante perveniri potest, quam si bonis nominati itemque fideiussoris eius nec non collegarum quoque, ad quorum periculum consortium administrationis spectat, excussis non sit indemnitati pupilli vel adulti satisfactum.
PP. id. Mart. Attico et Praetextato conss.

[5] *Impp. Diocletianus et Maximianus AA. et CC. Eugeniae.* In magistratus municipales tutorum nominatores, si administrationis finito tempore non fuerint solvendo nec ex cautione fideiussionis solidum exigi possit, pupillis quondam in subsidium indemnitatis nomine actionem utilem competere ex senatus consulto, quod auctore divo Traiano parente nostro factum est, constitit.
D. VII id. Dec. ipsis et conss.

[6] *Imp. Zeno A. Aeliano pp.* **pr.** Cum sit adiecta praetoris sententia generalem curatori administrationem mandantis et, quod eam pro more sequitur, decretum pariter sit compositum, manifestum est non curatoris dationem fuisse invalidam, sed in aestimanda adultae substantia scribae vitium, qui, tamquam non amplius ducentis libris auri patrimonium valeret, fideiussorem acceperat, intercessisse. **1.** In quo casu non curatoris erit ratio[xxiii] reprehendenda, si qua laesio rebus minoris illata fuisse adversus legum ordinem comprobetur, sed super neglegentia vel dolo scribae, qui veram substantiae taxationem passus est occultari, legibus erit agendum.
D. V k. Ian. Basilio vc. cons.

[xxiii] datio

[3] *Emperor* GORDIAN *Augustus to Apronianus.* If you and your colleague, while serving as public officials, appointed a man insufficiently wealthy as a *tutor* while not demanding an adequate guaranty (*cautio*), nor could the minor ward otherwise be protected from loss, and you are both solvent, you will not be in the wrong to make a judicial request that an action be given against you for an equal share (of the loss, i.e., that you each pay only half).

Given October 25, in the consulship of Pius and Pontianus (238).

[4] *The same Augustus to Arruntianus.* Against someone who nominated a *tutor* or *curator* of insufficient means a lawsuit cannot be launched until the property of the person nominated, his surety, and his colleagues, for whom liability arises from their joint management of the property, has been thoroughly investigated and there was not enough to make whole the minor or adult ward.

Posted March 15, in the consulship of Atticus and Praetextatus (242).

[5] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Eugenia.* It is established that, pursuant to a senatorial decree passed on the proposal of the deified Trajan,[317] Our predecessor (*parens*), an analogous action (*actio utilis*) lies for former minor wards, as an aid to making them whole, against municipal officials who have nominated *tutores* if, at the conclusion of the period for management of the estate, they (the *tutores*) are not solvent, and a sufficient amount cannot be derived from the guaranty (*cautio*) given as a surety (*fideiussio*).

Given December 7, in the consulship of the Caesars and ... (294?).

[6] [318] *Emperor* ZENO *Augustus to Aelianus, Praetorian Prefect.* pr. When the Praetor has made a formal appointment entrusting general management (of a ward's property) to a *curator* and the customary practice ensues of issuing an apposite judicial decree, it is clear that the appointment of the *curator* is not invalid, but that the clerk (*scriba*) had made an error in estimating the value of the female adult ward's property when he accepted a surety as though the estate was not worth more than 200 pounds of gold. 1. In this situation, the appointment of the *curator* is not to be faulted if any loss is shown to have been inflicted on the property of the ward contrary to the rules laid down in statutes, but legal action shall be taken regarding the negligence (*neglegentia*) or fraud (*dolus*) of the clerk who allowed the true value of the property to be concealed.

Given December 28, in the consulship of the vir clarissimus *Basilius (480).*

[317] See Ulp. D. 27.8.1.
[318] Combine with C. 2.21.9, 5.12.28.

Liber Sextus

I De Fugitivis Servis et Libertis Mancipiisque Civitatum Artificibus et ad Diversa Opera Deputatis et ad Rem Privatam vel Dominicam Pertinentibus

[1] *Impp. Diocletianus et Maximianus AA. Aemiliae.* Servum fugitivum sui furtum facere et ideo non habere locum nec usucapionem nec longi temporis praescriptionem manifestum est, ne fuga servorum dominis suis ex quacumque causa fiat damnosa.
PP. v id. Dec. Maximo II et Aquilino conss.

[2] *Idem AA. et CC. Pompeiano.* Requirendi fugitivos potestatem fieri dominis praesidalis officii est.
PP. III k. Mai. CC. conss.

[3] *Imp. Constantinus A. et Licinius C. ad Probum.* Si fugitivi servi deprehendantur ad barbaricum transeuntes, aut pede amputato debilitentur aut metallo dentur aut qualibet alia poena adficiantur.
Sine die et consule.

Sixth Book

edited by Simon Corcoran, Michael Crawford, and Benet Salway; and by Bruce W. Frier, Dennis P. Kehoe, and Thomas A. J. McGinn[1]

First Title Runaway Slaves and Runaway Freedmen and Slave Craftsmen of Cities, Both Those Assigned to Various Jobs and Those Belonging to the Privy Purse or the Imperial Domain[2]

[1] *Emperors DIOCLETIAN and MAXIMIAN Augusti to Aemilia.* It is manifest that a runaway slave (*servus fugitivus*) commits a theft of himself and that, therefore, usucapion and long-time prescription do not apply, so that the flight of slaves does not cause loss to their masters for any reason.
Posted December 9, in the consulship of Maximus, for the second time, and Aquilinus (286).

[2] *The same Augusti and the Caesars to Pompeianus.*[3] It is the governor's duty to give masters the right to search for their runaway slaves.
Posted April 29, in the consulship of the Caesars (294).

[3] *Emperor CONSTANTINE Augustus and LICINIUS Caesar*[4] *to Probus.*[5] Whenever fugitive slaves are seized while going over to the barbarians, they are either to be mutilated by the amputation of a foot or condemned to the mines or inflicted with some other punishment at will.
Without day or consul (310/324?).

[1] Titles 1–20 were translated by Corcoran, Crawford, and Salway; the remainder by Frier, Kehoe, and McGinn.

[2] See D. 11.4.

[3] It is not clear if this is a private rescript or a letter to a governor (Corcoran, *Empire of the Tetrarchs* (2000), 141).

[4] Since Licinius is never mentioned in Theodosian Codex headings, the origin of this text is generally attributed to the Hermogenian Codex. It is one of only four such texts in Justinian's Codex (with C. 3.1.8, 7.16.41, and 7.22.3). See Corcoran, "Hidden from History" (1993), 105–107; Corcoran, *Empire of the Tetrarchs* (2000), 280. Krüger followed the *Summa Perusina* in identifying in the heading Licinius *fils* as Caesar, rather than his father as Augustus, and so proposed the date range 317/323 (i.e., from Licinius junior becoming Caesar to the older date accepted for the fall of Licinius).

[5] The issuer of the letter is often supposed to be Licinius, rather than Constantine, and the recipient identified as Licinius' Praetorian Prefect, Pompeius Probus (consul in 310). See *PLRE* 1, p. 740, Probus 6. The recipient may (or may not) be the same as the Probus of C.Th. 4.12.1 (April 1, 314). See Corcoran, "Hidden from History" (1993), 114–115; Corcoran, *Empire of the Tetrarchs* (2000), 287–288. Seeck dates the constitution to April 1, 314.

[4] *Imp. Constantinus A. ad Valerianum.* pr. Quicumque fugitivum servum in domum vel in agrum inscio domino eius susceperit, eum cum pari alio vel viginti solidis reddat. 1. Sin vero secundo vel tertio eum susceperit, praeter ipsum duos vel tres alios vel praedictam aestimationem pro unoquoque domino repraesentet: in minorum persona tutoribus vel curatoribus poena simili imminente. 2. Quod si ad praedictam poenam solvendam is qui susceperit minime sufficiat, aestimatione competentis iudicis castigatio in eum procedat. 3. Quod si servus ingenuum se esse mentitus sub mercede apud aliquem fuerit, nihil is qui eum habuit poterit incusari. 4. Sane mancipium torqueri oportet, ut manifestetur, utrum propter lucrum capiendum callide a domino ad domum vel agrum eius qui suscepit immissus est, an non. 5. Quod si maligne factum esse ex servi interrogatione patuerit, servo etiam suo eum qui hoc fecerit privari oportet et ad fiscum pertinere mancipium.

D. v k. Iul. Thessalonicae Gallicano et Basso conss.

[5] *Idem A. ad Ianuarium.* Mancipia diversis artibus praedita, quae ad rem publicam pertinent, in isdem civitatibus placet permanere, ita ut, si quis tale mancipium sollicitaverit vel avocandum crediderit, cum servo altero sollicitatum restituat, duodecim solidorum summa inferenda rei publicae illius civitatis, cuius mancipium abduxit: libertis quoque artificibus, si sollicitati fuerint, cum eadem forma civitati reddendis: ita ut pro fugitivo servo, si sollicitudine defensoris non fuerit requisitus et revocatus, idem defensor duo vicaria mancipia exigatur, nec beneficio principali nec venditione in eius persona iam de cetero valituris.

D. xvi k. Mart. Constantino A. v et Licinio C. conss.

[4] *Emperor* CONSTANTINE *Augustus to Valerianus.* **pr.** Whoever, without knowledge of the master, receives a runaway slave into his house or land is to return him, together with another comparable slave or 20 solidi. **1.** But if he has taken him in a second or third time, he is, besides returning him, to give the master two or three others, or the aforesaid amount for any one of them. *Tutores* or *curatores*, on behalf of minors, are subject to the same punishment. **2.** If the property of the person who took the slave does not suffice for the payment of the aforesaid penalty, he is to be chastised at the discretion of the proper judge. **3.** But if the slave has falsely claimed that he is free-born and is hired by another, that person who had him cannot be incriminated. The slave must, of course, be subjected to torture, to find out whether or not he was craftily sent by his master to the house or land of the person, who took him in, for the purpose of gain. If it appears from interrogation of the slave that this was indeed done maliciously, he who did this is to be deprived of his slave and the slave is to pass to the Treasury.

Given June 27 (December 28?), at Thessalonica, in the consulship of Gallicanus and Bassus (317).[6]

[5] *The same Augustus to Januarius.*[7] It is decided that slaves skilled in various trades, who belong to a public authority, must remain in these same cities, on the basis that, if anyone entices away such a slave or supposes that he may be called away, he is to restore him together with another slave and pay the sum of 12 solidi to the public authority of that city, whose slave he abducted; freedmen craftsmen, too, if enticed away, must be restored to the city under the same rule; with the proviso regarding a runaway slave that if he is not demanded back or recalled through the care of the defender (of the city), that defender is to be liable to provide two replacement slaves; in such a case from now onwards neither an imperial grant nor the sale (of the runaway slave) will any longer have any validity in his favor.[8]

Given February 14, in the consulship of Constantine Augustus, for the fifth time, and Licinius Caesar (319).

[6] Date as emended hesitantly (*Iun.* to *Ian.*) by Barnes, *New Empire* (1982), 73 n. 117. Seeck, *Regesten* (1919), 180 emended the consulship to that of Gallicanus and Symmachus (330), followed by *PLRE* I, p. 938, Valerianus 4. Seeck gives June 27, 330.

[7] Generally identified as Ianuarinus, Vicar of the Moesias (*PLRE* I, p. 453, Ianuarinus 1; Barnes, *New Empire* (1982), 142–143; Corcoran, *Empire of the Tetrarchs* (2000), 309).

[8] This last clause is not entirely clear, but the translation here reflects also the interpretation of the Basilika (60.7.10, Scheltema, A vol. VIII, p. 2804), as well as of the Dutch Codex version (Spruit *et al.*, *Corpus Iuris Civilis* VIII (2005), 409).

[6] *Idem A. ad Tiberianum comitem Hispaniarum.* **pr.** Cum servum quispiam repetit fugitivum et alius vitandae legis gratia, quae in occultantes mancipia certam poenam statuit, proprietatem opponet, vel in vocem libertatis eum animaverit, ilico nequissimus verbero super quo ambigitur tormentis subiciatur, ut aperta veritate disceptationi terminus fiat. **1.** Quod non solum utrisque iurgantibus proderit, sed etiam servorum animos a fuga poterit deterrere.

D. XV k. Sept. Constantinopoli Pacatiano et Hilariano conss.

[7] *Imppp. Valentinianus Valens et Gratianus AAA. ad Felicem consularem.* Si quis servum fiscalem putaverit occultandum, non solum eum restituere, sed etiam duodecim libras argenti poenae nomine fisci viribus dependere compellatur.

D. II id. April. Gratiano A. II et Probo conss.

[8] *Imppp. Valentinianus Theodosius et Arcadius AAA. Albino pu. Romae.* Si qui publicorum servorum fabricis seu aliis operibus deputati tamquam propriae condicionis immemores domibus se alienis et privatarum ancillarum consortiis adiunxerint, tam ipsi quam uxores eorum et liberi confestim condicioni pristinae laborique restituantur.

D. VIII k. Aug. Timasio et Promoto conss.

II De Furtis et de Servo Corrupto

[1] *Impp. Severus et Antoninus AA. Theogeni.* Si pecunia tua mandantibus servis quidam praedia comparaverunt, eligere debes, utrum furti actionem et condictionem an mandati potius inferre debeas. neque enim aequitas patitur, ut et criminis causam persequaris et bonae fidei contractum impleri postules.

D. XI k. Mai. Severo A. II et Victorino conss.

[6] *The same Augustus to Tiberianus, Count of the Spains.*[9] If anyone seeks to reclaim a runaway slave, and another opposes his ownership, for the purpose of evading the law which imposes a fixed penalty on those hiding slaves, or incites the slave to claim that he is free, the wicked whipping-fodder, whose status is in doubt, is to be immediately subjected to torture, so that there may be an end to the dispute upon the discovery of the truth. This will not only benefit the two in dispute, but will also deter the minds of slaves from flight.

Given August 18 (or October 27), at Constantinople, in the consulship of Pacatianus and Hilarianus (332).[10]

[7] *Emperors* VALENTINIAN, VALENS, *and* GRATIAN *Augusti to Felix, the Consular.*[11] If anyone should think to hide a fiscal slave, he is not only to be compelled to restore him, but also to pay to the Treasury 12 pounds of silver by way of penalty.

Given April 12, in the consulship of Gratian Augustus, for the second time, and Probus (371 [366]).

[8][12] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Albinus, City Prefect of Rome.* If any public slaves assigned to state factories or other public works, as though unmindful of their proper status, should go to the houses of others and join themselves in unions to the female slaves of private persons, both they and their wives and children are to be returned immediately to their former condition and work.

Given July 25, in the consulship of Timasius and Promotus (389).

Second Title Thefts and the Corruption of a Slave[13]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Theogenes.* If certain persons have bought lands with your money upon the order of your slaves (who took your money), you must choose whether you prefer to bring an action for theft and claim for restitution or an action on the mandate. For equity does not permit you both to pursue an action for the crime and also to ask that a good faith contract be performed.

Given April 21, in the consulship of Severus Augustus, for the second time, and Victorinus (200).

[9] See PLRE 1, pp. 911–912, Tiberianus 4; Barnes, *New Empire* (1992), 145.

[10] Haloander gives the August date, L the October date.

[11] For the identification of Felix as *consularis* of Macedonia and the redating of the text to 366, see Seeck, *Regesten* (1919), 228; *PLRE* 1, p. 332, Felix 4; Schmidt-Hofner, "Regesten" (2008), 543–544, 574 and 591.

[12] Part of the same law as C.Th. 11.30.49; Honoré, *Crisis of Empire* (1998), 59 n. 4 and *Palingenesia* 2, E280–1.

[13] See D. 11.3, 47.2.

[2] *Idem AA. negotiatoribus.* Incivilem rem desideratis, ut agnitas res furtivas non prius reddatis, quam pretium fuerit solutum a dominis. curate igitur cautius negotiari, ne non tantum in damna huiusmodi, sed etiam in criminis suspicionem incidatis.
PP. III k. Dec. Cilone et Libone conss.

[3] *Imp. Antoninus A. Secundo.* Si nondum rem templo divino dedicatam vitricus tuus furto abstulit, habes adversus eum furti actionem.
PP. VI id. Sept. Laeto II et Cereale conss.

[4] *Imp. Alexander A. Aurelio Herodi.* Adversus eum dumtaxat, quem servum tuum sollicitasse dicis, si eum deterioris animi fecit, servi corrupti agere potes. quod si sollicitatum occultavit, etiam furti cum eo agere potes. quas actiones etiam per procuratorem exercere minime prohiberis.
PP. id. Sept. Alexandro A. cons.

[5] *Idem A. Cornelio.* Civile est, quod a te adversarius tuus exigit, ut rei, quam apud te fuisse fatearis, exhibeas venditorem. nam a transeunte etiam ignoto emisse dicere non convenit volenti evitare alienam boni viri suspicionem.
PP. III k. Mai. Maximo II et Aeliano conss.

[6] *Idem A. Pythodoro.* Alienum servum sine voluntate domini qui sciens vendidit seu donavit vel alio modo alienavit, nihil domino diminuere potest: et si contractet vel apud se detinuerit, furtum facit.
PP. VI k. Ian. Maximo II et Aeliano conss.

[7] *Idem A. Dato.* Si is, cui te pecuniam ad matrem tuam perferendam dedisse proponis, parva quantitate numerata reliquam in usus suos convertit, furtum fecit.
PP. prid. id. Iun. Modesto et Probo conss.

[2] *The same Augusti to the men of business* (negotiatores). You demand something not in accordance with Civil Law, when you do not want to return property acknowledged as stolen until the price has been paid by the owners. Take care, therefore, to conduct your business with more caution, lest you not only sustain a loss of this kind, but also fall under the suspicion of a crime.

Posted November 29, in the consulship of Cilo and Libo (204).

[3] *Emperor* ANTONINUS *Augustus to Secundus.* If your stepfather stole and carried away property not yet dedicated to a god's temple, you have an action for the theft against him.

Posted September 8, in the consulship of Laetus, for the second time, and Cerealis (215).

[4] [14] *Emperor* ALEXANDER *Augustus to Aurelius Herodes.* You may sue the person, who you say has enticed your slave, in an action for corruption of a slave, only if he made his character worse. But if he has hidden the slave so enticed, you may sue him also in an action for theft. You are not at all forbidden from exercising these rights of action even through a procurator.

Posted September 13, in the consulship of Alexander Augustus (222).

[5] *The same Augustus to Cornelius.* The demand of your adversary, that you produce the seller of the property which you acknowledge to have been in your possession, is in accordance with Civil Law. For it is not fitting for someone wishing to avoid the suspicion alien to an honest man to say that he has purchased from a person passing through, indeed unknown.

Posted April 29, in the consulship of Maximus, for the second time, and Aelianus (223).

[6] *The same Augustus to Pythodorus.* Whoever knowingly sells, gives away, or in any other manner alienates the slave of another without the consent of the master, cannot diminish the latter's right; and if he seizes or detains him with him, he commits theft.

Posted December 27, in the consulship of Maximus, for the second time, and Aelianus (223).[15]

[7] *The same Augustus to Datus.* If the person to whom, as you state, you gave money, for the purpose of carrying it to your mother, delivers a smaller quantity, and converts the remainder to his own use, he commits theft.

Posted June 12, in the consulship of Modestus and Probus (228).

[14] Part of the same rescript as C. 4.14.3: Honoré, *Emperors and Lawyers* (1994), 95 n. 285.

[15] Haloander's edition gives the date very differently as May 1, 224.

[8] *Idem A. Valenti.* Etiam furti actione tributorum exactor tenetur, si non cessante te in tributoria exactione sciens, quod nihil deberetur, ancillam tui iuris abduxit aut vendidit. quae res facit, ut nec emptor usucaperet vindicatioque tibi ipsius competat.

PP. x k. Mart. Pompeiano et Peligno conss.

[9] *Impp. Diocletianus et Maximianus AA. et CC. Aedesio.* Subtracto furto vel vi abrepto mancipio, quamvis hoc rebus humanis non oblatum fuerit exemptum, tam ad raptorem quam ad furem periculum redundabit et uterque eorum poena legitima coercebitur.

S. VII id. Febr. Sirmi AA. conss.

[10] *Idem AA. et CC. Valerio.* Si abducta mancipia furto vel plagio venumdata praeses provinciae perspexerit, cum nec ab emptore propter cohaerens vitium, antequam ad dominum possessio revertatur, usucapi possunt, et te ei cuius fuerunt successisse reppererit, restitui tibi providebit.

Sine die et conss.

[11] *Idem AA. et CC. Demostheni.* De his, quae subtraxisse novercam pupilli tui precibus significas, rectorem adi provinciae, qui si eam, posteaquam dominus rerum is pro quo supplicas factus est, aliquid furatam cognoverit, non ignorat in quadruplum manifesti, nec manifesti vero dupli actione furti constituta condemnationem formare.

D. VII k. Sept. Viminacio AA. conss.

[12] *Idem AA. et CC. Quintillae.* **pr.** Ancillae subtractae partus apud furem editi, priusquam a domino possideantur, usucapi nequeunt: matris furem etiam eorum causa furti teneri convenit actione. **1.** Quapropter furti actione et condictione vel adversus possidentem vindicatione de mancipiis uti non prohiberis, cum altera poenam continens alterius electione minime tolli possit. **2.** Nam extra poenam rei

[8] *The same Augustus to Valens.* A tax collector is also liable to an action for theft, if, knowing that you were not in default in paying tax, because nothing was owing, he abducted or sold your female slave. The result is that the purchaser cannot become owner by usucapion and a suit for ownership of her is available to you.

Posted February 20, in the consulship of Pompeianus and Paelignus (231).

[9] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Aedesius.* When a slave is taken by theft or abducted by force, although he left the mortal world before he was offered back, the risk will fall upon both the abductor and the thief, and each of them will be punished by the legal penalty.

Subscribed February 7, at Sirmium, in the consulship of the Augusti (293).

[10] *The same Augusti and Caesars to Valerius.* If the provincial governor learns that slaves stolen or kidnapped have been sold – since the right of usucapion cannot be enjoyed by the purchaser, because of the inherent defect, before the stolen slaves are returned to their master – and that you are the successor to him whose slaves they were, he will take care that they are restored to you.

Without day and consuls (April 13, 293?).[16]

[11] *The same Augusti and Caesars to Demosthenes.* As to the things which you indicate in your petition were carried off by the stepmother of your ward, go before the governor of the province, who, if he learns that she stole anything, after he for whom you bring your supplication became the owner of his property, will not overlook to formulate a condemnation in an action brought for theft, with a fourfold penalty for theft detected in the act, and twofold if not so detected.

Given August 26, at Viminacium, in the consulship of the Augusti (293).

[12] *The same Augusti and Caesars to Quintilla.* **pr.** The offspring of a stolen female slave, born at the home of the thief, cannot become the property of anyone by usucapion before coming into the possession of the master. It is the case that the thief of the mother is liable to an action for theft on account of the offspring as well. **1.** Therefore you are not prohibited from bringing an action for theft and a claim for restitution, or a suit for ownership of the slaves against the possessor, as the action which carries a penalty cannot be barred by the choice to bring the other. **2.** For the law is not in question that the property itself can

[16] This date is that of C. 7.32.6 (given at Byzantium), which should probably be combined with this rescript: Honoré, *Emperors and Lawyers* (1994), 140 n. 10.

persecutionem esse nulla iuris quaestio est, cum etiam hi qui aliena mancipia comparaverunt, si hanc causam non ignorant, furti actione tenentur.

D. id. Oct. Sirmi AA. conss.

[13] *Idem AA. et CC. Domno.* Post decisionem furti leges agi prohibent. quod si non transegisti, sed de sublatis partem tantum accepisti, residuam vindicare vel condicere et actione furti apud praesidem agere potes.

D. k. Dec. Sirmi AA. conss.

[14] *Idem AA. et CC. Dionysio.* Eos, qui a servo furtim ablata scientes susceperint, non tantum de susceptis convenire, sed etiam poenali furti actione potes.

D. VIII k. Ian. Sirmi AA. conss.

[15] *Idem AA. et CC. Socratiae.* Furti actione minime teneri successores ignorare non debueras. de instrumentis autem ablatis in rem actione tenentem convenire potes.

D. III k. Ian. Sirmi AA. conss.

[16] *Idem AA. et CC. Artemidoro et aliis.* Si servum vestrum nutriendum qui susceperat venumdedit, furtum commisit.

D. k. Oct. Viminacii CC. conss.

[17] *Idem AA. et CC. Cononi.* Quamvis etiam hereditatis expilatae crimine promiscuus usus exemplo actionis furti ream uxorem fieri non patiatur, tamen heredes idemque filii super his, quae de patris bonis possidet, adversus eam in rem actione experiri non prohibentur.

D. id. Dec. CC. conss.

[18] *Idem AA. et CC. Dionysodoro.* In eum, qui ex naufragio vel incendio cepisse vel in his rebus damni quid dedisse dicitur, infra annum utilem ei cui res abest quadrupli, post in simplum actionem proditam praeter poenam olim statutam edicti forma perpetui declarat.

S. III k. Ian. Nicomediae CC. conss.

be pursued separately from the penalty (i.e., the fine for theft), since even those who have bought the slaves of others may, if the facts were not unknown to them, be sued in an action for theft.

Given October 15, at Sirmium, in the consulship of the Augusti (293).

[13] *The same Augusti and Caesars to Domnus.* After a settlement as to theft, the laws forbid action in court. But if you made no compromise, but only received part of the stolen property, you may bring a suit for ownership of the remainder or claim restitution, or sue by an action for theft before the governor.

Given December 1, at Sirmium, in the consulship of the Augusti (293).

[14] *The same Augusti and Caesars to Dionysius.* You may sue those, who knowingly received things taken away in theft by a slave, not only for the things received, but also with a penal action for theft.

Given December 25, at Sirmium, in the consulship of the Augusti (293).

[15] *The same Augusti and Caesars to Socratia.* You ought not to have been unaware that heirs cannot be held liable in an action for theft. But you can sue the holder of stolen documents in an action *in rem* (i.e. for recovery).

Given December 30, at Sirmium, in the consulship of the Augusti (293).

[16] *The same Augusti and Caesars to Artemidorus and others.* If he, who took in your slave for the purpose of raising him, then sold him, he committed theft.

Given October 1, at Viminacium, in the consulship of the Caesars (294).

[17] *The same Augusti and Caesars to Conon.* Although common usage does not permit a wife to become a defendant for the crime of despoiling an inheritance, any more than in an action for theft, however the heirs, being also the children, are not forbidden to bring an action *in rem* against her to recover the property of their father, which she has in her possession.

Given December 13, in the consulship of the Caesars (294).

[18] *The same Augusti and Caesars to Dionysodorus.* The rule of the Perpetual Edict declares that an action for fourfold damages is available for a year to him, whose property is lost, against him, who is said to have taken or caused any loss to property from a shipwreck or fire, and after that time an action lies for the simple value, apart from the existing statutory penalty.

Subscribed December 30, at Nicomedia, in the consulship of the Caesars (294).

[19] *Idem AA. et CC. Mnesitheo.* Falsus procurator depositum recipiendo vel aes alienum exigendo citra domini voluntatem furtum facit ac praeter rei restitutionem actione dupli furti nec manifesti convenitur.

Sine die et consule.

[20] *Imp. Iustinianus A. Iuliano pp.* **pr.** Si quis servo alieno suaserit aliquam rem domini sui subripere et ad se deducere, servus autem hoc domino manifestaverit et domino concedente res eius ad iniquum huiusmodi suasionis auctorem pertulerit, et ipse inventus fuerit rem detinere, quali tenetur actione is qui res suscepit, utrumne pro occasione furti an pro servo, quia eum corrumpere voluit, ut non solum furti, sed etiam servi corrupti is obligetur, veteres dubitaverunt. **1.** Nobis itaque eorum altercationes decidentibus placuit non solum furti actionem, sed etiam servi corrupti contra eum dare. licet enim servus deterior minime factus est, tamen consilium corruptoris ad perniciem probitatis servi introductum est: et quemadmodum secundum iuris regulas furtum quidem non est commissum, quia is videtur furtum committere, qui contra domini voluntatem res eius contractat, ipse autem furti actione propter dolum suum tenetur, ita et servi corrupti contra eum actio propter suum vitium non ab re extendatur, ut sit ei poenalis actio imposita, tamquam re ipsa fuisset servus corruptus, ne ex huiusmodi impunitate et in alium servum, qui possit corrumpi, hoc facere pertemptet.

D. k. Aug. Lampadio et Oreste vv. cc. conss.

[21] *Idem A. Iuliano pp.* **pr.** Apud antiquos quaerebatur, si servus, quem aliquis bona fide possidebat, furtum commiserit alienarum rerum vel ipsius apud quem constitutus est, si ipse qui bona fide eum detinet noxalem furti actionem adversus verum dominum habet, vel ipse ab eo qui

[19] *The same Augusti and Caesars to Mnesitheus.* A pretended procurator commits theft by receiving a deposit or collecting a debt without the consent of the owner, and, aside from the restitution of the property, may be sued for double its value in an action for non-manifest theft.

Without day and consul.

[20][17] *Emperor* Justinian *Augustus to Julian, Praetorian Prefect.* **pr.** If someone has tried to persuade another's slave to steal and bring to him any property of the slave's master, and the slave made this known to the master and, with the master's consent, took his (the master's) property to the wicked author of this type of persuasion, and he was discovered holding the property, the ancients were in doubt under what action he, who received the property, was held liable, whether for the instance of the theft or in regard to the slave, because he wished to corrupt him, so that he was answerable not only for the theft, but also for the corruption of the slave. **1.** Therefore, it has pleased Us, making a decision about their dispute, to grant against him not only an action for theft, but also one for the corruption of the slave. For, although the slave was not made worse, still the plan of the corrupter intended to destroy the probity of the slave. And just as no theft was actually committed according to the rules of law, since it is a person who handles the property of an owner against his will who is considered as committing a theft, nevertheless he is liable in an action for theft on account of his evil intention. So too on account of his depravity, an action is not unjustly given against him for corruption of a slave, so that he is to be subject to a penal action, as though the slave had in fact been corrupted, lest from impunity of this sort he should attempt to do this again to another slave, who could be corrupted.

Given August 1, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[21][18] *The same Augustus to Julian, Praetorian Prefect.* **pr.** It was questioned among the ancients, in the case of a slave, possessed by someone in good faith, who committed a theft of the property of another or of him, with whom he resided, whether he who held him (the slave) in good faith had a noxal action

[17] Part of a series of constitutions issued on August 1, 530: Lounghis *et al.*, *Regesten* (2005), 200–202. The use of the term *decidentibus* in section 1 makes it likely that this is one of the Fifty Decisions, settling the disputes of the ancients.

[18] Part of a series of constitutions issued on October 1, 530: Lounghis *et al.*, *Regesten* (2005), 203–205. Possibly also one of the Fifty Decisions.

furtum passus est praedicta convenitur actione. 1. Cumque generalis regula ab antiqua prudentia exposita est huiusmodi hominis gratia, pro quo noxalem furti actionem suscipere aliquis compellitur, adversus alium furti actionem habere non concedens, quidam ita eam per coniecturam interpretati sunt, adversus bona fide quidem possessorem nullo modo furti actionem extendi, ipsi autem, si furtum fuerit passus, adversus verum dominum furti actionem noxalem recte decerni: tunc autem bona fide possessorem furti nomine quod passus est noxalem actionem contra dominum habere posse, quando servus sub domini sui fuerit constitutus possessione: et pro his rebus posse eum adversus dominum habere actionem, non solum quas servus subtraxerit iam apud eum constitutus, sed et pro his quas furatus est, quando fugit quidem a bona fide possessore, adhuc autem nondum sub domini sui manibus fuerit constitutus.

2. Quam interpretationem prisca quidem iura per coniecturam introducebant: nos autem altius et verius ad eam respicientes generalem regulam sic ab initio esse prolatam accipimus. 3. Cum igitur bona fide possessor domini cogitatione furem possidet, merito, donec apud eum constitutus est, et aliis tenetur noxali actione, si extranei furtum a servo fuerint passi, et ipse adversus verum dominum non habet actionem secundum regulam dicentem: qui habet adversus alium furti actionem, ipse ea teneri non potest. sin autem desinat in servi retentione et ille apud verum dominum fuerit inventus, tunc ipse quidem noxali furti actione minime potest teneri, adversus verum autem dominum habet ipse furti noxalem actionem, id est pro rebus, quas vel nunc furatus est, cum est apud verum dominum, vel antea, postquam bona fide possessoris retentionem excesserit necdum apud verum dominum factus.

4. Et sic iterum regulae generali casus evenit consentaneus: qui enim habet tunc furti actionem adversus dominum, ipse aliis teneri furti actione non potest. sic ex tempore omnibus discretis vetustissima dubitatio nostro foedere conquiescat et bona fide possessor in parte certa temporis et habeat actionem et non teneatur, et ipse dominus in alio tempore non teneatur actione et in alio sub actione constituatur.

5. De eo autem, qui liber constitutus ab alio bona fide tenetur, si furtum commiserit, recte et sine aliqua dubitatione dicitur posse eum, qui liber est cognitus, et ab ipso qui bona fide eum detinet pro furto conveniri, et bona fide possessorem, si ab extraneo furtum liber commiserit,

for theft against the true owner, or whether he himself might be sued under the aforesaid action by the party who suffered the theft. 1. And since ancient jurisprudence adopted a general rule that anyone forced to submit to a noxal action for theft on account of a slave of this sort, was not allowed an action for theft against another, some therefore through conjecture interpreted this to mean that in no way was an action for theft extended against a possessor in good faith, but to him, if he suffered theft, was rightly granted a noxal action for theft against the true owner; but then the possessor in good faith, under the name of the theft he had suffered, could bring a noxal action against the owner, once the slave was settled in the possession of his (true) owner; and he could bring the action against the owner not only for those things, which the slave took while he was settled with him, but also for that which he stole, when he ran away indeed from the possessor in good faith and while he was still not yet settled under the power of his (true) owner.

2. The early law indeed brought in this interpretation through conjecture; but We, considering this general rule more deeply and truly, starting from scratch accept it as meaning this: 3. since the possessor in good faith possesses the thief, thinking that he is the owner, he is justly liable to others in a noxal action, if outsiders should suffer theft by the slave, while he is settled with him; and he himself has no action against the true owner according to the rule which says: he who has an action for theft against another cannot himself be liable to such an action.[19] But if he ceases in his retention of the slave and the latter is found with the true owner, then he himself cannot at all be liable to a noxal action for theft; but has himself a noxal action for theft against the true owner: that is to say, for the property, which he (the slave) stole either now when he is with the true owner, or previously after he left the control of the possessor in good faith, though not yet placed with the true owner.

4. In this manner, the case becomes once again consistent with the general rule; for he, who has an action for theft against the owner, cannot himself be held liable to others in such an action. Thus, by making a distinction as to time, let the ancient doubt be stilled by Our settlement, and during a defined period of time the possessor in good faith both has an action and is not liable to one, and during the rest of the time the owner himself is not liable to an action, but is allowed to bring an action against the other (i.e., the bona fide possessor).

5. But if a person who is free, although held as slave by another in good faith, commits a theft, it is held rightly and without any doubt, that he, who has been recognized as free, can be sued for theft even by him who kept him in good faith, and the latter cannot be sued, if the free man commits theft against an outsider,

[19] This rule (i.e., that one able to bring a noxal action could not be subject to one) is logically different from that stated above (i.e., that one liable to a noxal action could not himself bring one). However, they can be regarded as having the same effect, since the basic rule is still that only one person at any time can be noxally liable for theft.

non posse conveniri, sed ipsum pro suo furto respondere, quia generalis regula de servo prolata est, et pro eo, qui non servus, sed liber et suae potestatis est, noxalem moveri actionem impossibile nostrisque legibus incognitum est.

D. k. Oct. Constantinopoli Lampadio et Oreste vv. cc. conss.

[22] *Idem A. Iuliano pp.* **pr.** Manifestissimi quidem iuris est furto perpetrato ei competere furti actionem, cuius interest, ne furtum committatur. **1.** Sed quaerebatur apud antiquos legum interpretes, si quis commodavit alii rem ad se pertinentem et ipsa res subtracta est, an furti actio adversus furem institui possit ab eo qui rem utendam accepit, idoneo scilicet constituto, quia et ipse commodati actione a domino pro ea re conveniri potest. **1a.** Et hoc quidem paene iam fuerat concessum, ut habeat ipse actionem, nisi inopia noscitur laborare: tunc enim furti actionem domino competere dicebant.

1b. Sed ea satis increbuit dubitatio, si tempore quo furtum committebatur idoneus erat is qui rem commodandam accepit, postea autem ad inopiam pervenit, antequam moveatur actio quae ei antea competebat, an debeat actio quae semel ei adquisita est firmiter apud eum manere vel ad dominum reverti, cum et hoc quaerebatur, an in hoc casu furti actio ambulatoria sit nec ne. **1c.** Sed omnem talem tractatum alia sequitur subdivisio, si ex parte solvendo sit is qui rem utendam accepit, ut possit non in totum, sed particularem solutionem ei facere, an habeat furti actionem vel non. **1d.** Tales itaque ambiguitates veterum, immo magis, quod melius dicendum est, ambages nobis decidentibus in tanta rerum difficultate simplicior sententia placuit, ut in domini sit voluntate, sive commodati actionem adversus res accipientem movere desiderat sive furti adversus eum qui rem subripuit, et alterutra earum electa dominum non posse ex paenitentia ad alteram venire. **1e.** Sed si quidem furem elegerit, illum qui rem utendam accepit penitus liberari: sin autem quasi commodator veniat adversus eum qui rem utendam accepit, ipsi quidem nullo modo competere posse adversus furem furti actionem, eum autem, qui pro re commodata convenitur, posse adversus furem furti habere actionem, ita tamen, si dominus sciens rem esse subreptam adversus eum qui eam accepit perveniat.

but he himself must answer for his theft; for the general rule was adopted only as to slaves, and bringing a noxal action is impossible and unknown to Our laws, where the thief is not a slave, but is free and his own master.

Given on October 1, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[22][20] *The same Augustus to Julian, Praetorian Prefect.* **pr.** The law is very clear that, when a theft is perpetrated, an action for theft lies in favor of the party, in whose interest it is that the theft not be committed. **1.** But it used to be questioned among the ancient interpreters of the laws, in the case where anyone loaned an item of his property to another and the thing loaned was stolen, whether an action for theft against the thief might be instituted by the party who received the property for use, when indeed he was solvent, because he himself could be sued for the property by the owner in an action on the loan. **1a.** And this has virtually now been granted, so that he has an action, unless he is known to be struggling with insolvency; for then they held that the owner had an action for theft.

1b. But in the case when, at the time the theft was committed, the borrower of the property was solvent, but afterwards became impoverished before the commencement of the action, which was previously open to him, a considerable doubt arose as to whether a right of action, which he had once acquired, ought to remain firmly open to him or to revert to the owner; since it was also asked whether or not in this case the right of action could pass from the one to the other. **1c.** And there follows on another subdivision in the treatment of this subject: If the borrower of the property is only partially solvent, so that he cannot make a total but only partial payment to him (the owner), has he the right of action for theft or not? **1d.** So, We, deciding the differences of the ancients, or what We may better call their vagaries, have decreed a simpler rule in such a difficult situation; that is to say, it shall be in the discretion of the owner, whether he wishes to commence an action on the loan against the borrower of the property, or an action for theft against the party who stole it, and whichever course the owner chooses, he cannot change his mind and have recourse to the other. **1e.** But if he elects to pursue the thief, the person who received the property for use is to be entirely released; but if he proceeds as lender against him, who received the property for use, he indeed in no way can have a right of action for theft against the thief, but he, who is sued for the loan, can have a right of action for theft against the thief, provided that the owner sues the borrower in the knowledge that the property has been stolen.

[20] Part of a series of constitutions issued on November 17, 530: Lounghis *et al.*, *Regesten* (2005), 206–208. This law is one, in fact probably more than one, of the Fifty Decisions as indicated by Inst. 4.1.16 (= 1c–1d below).

2. Sin autem nescius et dubitans rem non esse apud eum commodati actionem instituit, postea autem re comperta voluit remittere quidem commodati actionem, ad furti autem pervenire, tunc licentia ei concedatur et adversus furem venire, nullo obstaculo ei opponendo, quoniam incertus constitutus movit adversus eum qui rem utendam accepit commodati actionem, (nisi domino ab eo satisfactum est: tunc etenim omnimodo furem a domino quidem furti actione liberari, suppositum autem esse ei, qui pro re sibi commodata domino satisfecit), cum manifestissimum est, etiam si ab initio dominus actionem instituit commodati ignarus rei subreptae, postea autem hoc ei cognito adversus furem transivit, omnimodo liberari eum qui rem commodatam suscepit, quemcumque causae exitum dominus adversus furem habuerit: eadem definitione obtinente, sive in partem sive in solidum solvendo sit is qui rem commodatam accepit.

3. Sed cum in secunda dubitatione incidebat, quid statuendum sit, si quis rem commodatam habuerit, quam aliquis furto subtraxerat et lite pulsatus condemnationem passus fuerat non tantum in rem furtivam, sed etiam in poenam furti, et postea dominus rei venerit omnem condemnationem accipere desiderans utpote ex suae rei occasione ortam, alia dubitatio incidit veteribus, utrumne rem tantummodo suam vel eius aestimationem consequatur, an etiam summam poenalem. **3a.** Et licet ab antiquis variatum est et ab ipso Papiniano in contrarias declinante sententias, tamen nobis haec decidentibus Papinianus, licet variavit, eligendus est, non in prima, sed in secunda eius definitione, in qua lucrum statuit minime ad dominum rei pervenire: ubi enim periculum, ibi et lucrum collocetur, nec sit damno tantummodo deditus qui rem commodatam accepit, sed liceat ei etiam lucrum sperare.

4. Cum autem in confinio earum dubitationum tertia exorta est, quare non et eam decidimus? cum enim apertissimi iuris est non posse maritum constante matrimonio furti actionem contra suam uxorem habere, quia lex ita atrocem actionem dare in personas ita sibi coniunctas erubuit, huiusmodi incidit veterum sensibus quaestio. **4a.** Quidam etenim re sibi commodata huiusmodi rei furtum a sua muliere passus est: et dubitabatur, utrumne domino rei furti actio contra mulierem praestatur, an propter necessitatem causae et maritus eius utpote commodati actioni suppositus potest habere furti actionem. **4b.** Et auctores quidem iuris satis et in hac specie contra se iurgium exercuerunt: ex praesente autem lege et anterioribus nostris decisionibus, quae in ista positae sunt constitutione, potest et haec species apertius dirimi. **4c.** Si

2. But if he (the lender) has instituted an action on the loan, unaware or uncertain that the property is not with him (the borrower), but afterwards, discovering the facts, wanted to abandon the action on the loan and proceed to that for theft, then he is to be granted licence to proceed also against the thief, without any obstacle being put in his way, since he commenced the action on the loan against the receiver of the property, while in a position of uncertainty; unless that is the borrower has already compensated the owner; for then the thief is entirely free indeed from an action for theft by the owner, but he, who compensated the owner for the property loaned to him, is substituted (in the action against the thief). It is also very clear that if the owner initially instituted an action on the loan, without knowing the item had been taken, but afterwards, when this became known to him, changed to proceed against the thief, he who received the loan is entirely released, whatever outcome of the case the owner has against the thief. The same rule applies whether the person who received the loan is solvent in whole or in part.

3. But a second doubt arose as to what the rule should be in the case when a person had borrowed property which another had then taken by theft, and the thief, beaten in a suit (by the borrower), was condemned not only for the thing stolen but also for the fine for theft, and thereupon the owner of the property came wishing to take the whole amount of the condemnation by reason of the fact that it arose in connection with his property: so this other doubt arose among the ancients, whether he should get only his property or its value, or in addition the penal sum. 3a. And although different ideas existed among the ancients, with Papinian himself changing between contradictory opinions, We however, in deciding the dispute, have chosen Papinian, despite his inconsistency, not for his first but his second decision, in which he ruled that the gain should not belong to the owner; for where the risk is located, there also the gain; and the person receiving the property as a loan should not be subject to loss only, but must also be permitted to hope for gain.

4. Since, moreover, in the same area of these doubts a third has arisen, why do We not decide that as well? For since the law is quite clear that a husband cannot sue his wife in an action for theft while the marriage continues, because the law blushed to give such an atrocious action between persons so joined to each other, a question of this type arose in the minds of the ancients: 4a. For a man borrowed property, and suffered theft of this thing at the hands of his wife. And there was doubt whether the owner of the thing had an action for theft against the woman, or whether her husband, on account of the interrelation of the matter, since he was subject to an action on the loan, could bring an action for theft. 4b. And the authorities of law greatly disputed among themselves as to the law in such case. And this situation can obviously be solved by the present law and Our earlier decisions placed in this constitution. 4c. For We gave

enim domino dedimus electionem ad quem voluit pervenire, sive ad eum qui rem commodatam accepit, sive contra eum qui furtum commisit, et in hac specie maritus quidem propter matrimonii pudorem non furti, sed rerum amotarum actionem habeat, si ipsum dominus elegerit, dominus autem omnem licentiam possideat sive adversus maritum commodati sive adversus mulierem furti actionem extendere: ita tamen ut, si ipse qui rem commodatam accepit solvendo sit, nullo modo adversus mulierem furti actio extendatur, ne ex huiusmodi occasione inter maritum et uxorem, qui non bene secum vivunt, aliqua machinatio oriatur, et forsitan marito volente uxor eius et trahatur et furti patiatur poenalem condemnationem.

D. xv k. Dec. Lampadio et Oreste vv. cc. conss.

III De Operis Libertorum

[1] *Impp. Severus et Antoninus AA. Romano.* Si tempore manumissionis operae tibi impositae sunt, scis te eas praestare debere. solet autem inter patronos et libertos convenire, ut pro operis aliquid praestetur, licet pretium non possit, nisi quando propter inopiam pro alimentis id extra ordinem peti necessitas suaserit, cum, etsi operae non erant impositae, defectis tamen facultatibus patroni alere eum cogebaris.

PP. III k. Ian. Cilone et Libone conss.

[2] *Idem AA. Eutycheti.* Manumissionis causa traditus neque in servitutem deduci a manumissore potest neque impositas operas praestare cogitur.

PP. VI k. Mai. Geta II cons.

[3] *Idem AA. Quintiano.* Qui nummis acceptis ab extraneo servum suum manumisit et pro operis pecuniam ab eo accepit, sive fuerant operae impositae sive non fuerant, ut indebita soluta reddere cogitur.

PP. k. Nov. Albino et Aemiliano conss.

[4] *Imp. Antoninus A. Valeriano.* Si quam pecuniam tibi a liberto tuo ex venditione operarum deberi probaveris, restitui tibi a liberto tuo praeses iubebit (ex hoc enim liberam testamenti factionem libertus

a choice to the owner against whom he wished to proceed, whether against the party in receipt of the loan or the party who committed the theft. And, if the owner has chosen the husband, in this case the husband, on account of matrimonial delicacy, is not to have an action for theft, but one for the removal of property. The owner, however, is to have complete liberty to bring either an action on the loan against the husband or one for theft against the wife; provided that, if the husband who received the loan is solvent, in no way is an action for theft to be brought against the woman, lest from this sort of situation between husband and wife, who do not live happily together, some trickery should arise, through which perhaps, at her husband's wish, the wife might both be dragged into court and suffer penal condemnation for theft.

Given on November 17, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

Third Title The Services (*Operae*) of Freedmen[21]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Romanus.* If the performance of services was imposed on you at the time of manumission, you know that you must provide them. However, it is customary for patrons and freedmen to agree that instead of the services something else is to be provided, although this cannot be a monetary amount, except when necessity has persuaded that this be sought extraordinarily for sustenance on account of (the patron's) poverty; since, even if services were not imposed, when, however, your patron's means failed, you were compelled to maintain him.

Posted December 30, in the consulship of Cilo and Libo (204).

[2] *The same Augusti to Eutyches.* A slave delivered to another for the purpose of manumission cannot be led back into slavery by the manumitter, nor is he compelled to perform services imposed on him.

Posted April 26, in the second consulship of Geta (205).

[3] *The same Augusti to Quintianus.* If a man manumitted his slave upon receiving payment from an outsider and accepted money from him (the slave) in place of services, he is compelled to return the payment as not owing, whether services were or were not imposed.

Posted November 1, in the consulship of Albinus and Aemilianus (206).

[4] *Emperor* ANTONINUS *Augustus to Valerianus.* If you prove that money is owing you from your freedman, by virtue of the sale (to him) of his services, the governor will order it to be restored to you by your freedman, for as a result

[21] See D. 38.1.

habet), modo si non onerandae libertatis gratia emissam cautionem probabitur.

PP. XIIII k. Mai. duobus Aspris conss.

[5] *Idem A. Terentio.* Mater tua ab eo, quem ex causa fideicommissi manumisit, operas impositas petere non potest, nisi eius tantummodo temporis, quo eum ante manumisit, quam dies fideicommissae libertatis existeret. sed nisi ei honorem patronis debitum exhibuerit, adeat competentem iudicem pro modo admissi vindicaturum.

PP. III id. Mai. duobus Aspris conss.

[6] *Imp. Alexander A. Caecilio.* Liberti libertaeque defunctorum operas neque extraneis heredibus patronorum debent neque maritis patronarum.

PP. k. Nov. Alexandro A. cons.

[7] *Idem A. Minicio.* **pr.** Nec patronis pro operis mercedem accipere licet, quamvis, si indictae operae praestitae non sint, ad pecuniae exactionem obsequii non praestiti aestimatio convertatur. **1.** Qui autem duos filios in potestate vel diversis temporibus habuit, lege Iulia de maritandis ordinibus obligatione operarum liberatur.

D. XII k. Iun. Iuliano et *Crispino conss.*

[8] *Idem A. Augustino.* Si tuis nummis emptus es ab eo a quo manumissus es, nec operas ei debes neque puniri ab eo utpote ingratus potes: patronum tamen tuum esse negari non oportet.

D. III id. Sept. Iuliano et *Crispino conss.*

[9] *Idem A. Laetorio.* Libertae tuae ducendo eam uxorem dignitatem auxisti, et ideo non est cogenda operas tibi praestare, cum possis legis beneficio contentus esse, quod invito te iuste non possit alii nubere.

D. X k. Mart. Fusco et Dextro conss.

of this the freedman has freedom in making a will;[22] but only if it is proved that the promise was not issued for the sake of burdening his liberty.

Posted April 18, in the consulship of the two Aspri (212).

[5] *The same Augustus to Terentius.* Your mother cannot claim imposed services from him, whom she manumitted on the basis of a testamentary trust, except only for the period when she manumitted him before the date specified for freedom under the trust. But, unless he shows her the honor due to patrons, she may go before a suitable judge to have him punished according to the measure of his crime.

Posted May 13, in the consulship of the two Aspri (212).

[6] *Emperor* ALEXANDER *Augustus to Caecilius.* Freedmen and freedwomen of deceased persons owe services neither to outside heirs of patrons nor to husbands of patronesses.

Posted November 1, in the consulship of Alexander Augustus (222).

[7] *The same Augustus to Minicius.* **pr.** Patrons are not permitted to receive money in place of services, although, if the specified services have not been provided, a valuation of the duty not performed is to be converted into a money payment. **1.** But if someone had two sons in his power, even at different times, he is released from the obligation of services under the lex Iulia *de Maritandis Ordinibus*.[23]

Given May 21, in the consulship of Julianus and Crispinus (224).

[8] *The same Augustus to Augustinus.* If you were bought with your own money by the person by whom you were manumitted, you neither owe him services nor can you be punished by him as ungrateful. However, it must not be denied that he is your patron.

Given September 11, in the consulship of Julianus and Crispinus (224).

[9] *The same Augustus to Laetorius.* You have increased the dignity of your freedwoman by marrying her and, therefore, she is not to be compelled to render you services, since you could be content with the benefit of the law, that she could not legally marry another man without your consent.

Given February 20, in the consulship of Fuscus and Dexter (225).

[22] See also D. 38.2.37.

[23] For this this law (18 BCE), which in the legal writers is usually subsumed under the consolidating rubric "lex Iulia et Papia," along with the lex Papia Poppaea (9 CE), see *Acta Divi Augusti* I, pp. 166–98, esp. p. 177; Crawford, *Roman Statutes*, vol. II (1996), 801–809; Treggiari, "Social Status" (1996), 887–889.

[10] *Idem A. Herculiano.* Titius si, cum testamentum faceret, servo suo libertatem cum condicione hac dedit: 'Gaium servum meum a die mortis meae annis tribus peractis manumitti volo, ita ut praestet heredibus meis, sicut me vivo praestabat', et cum idem servus testatori diurnum quiddam praestabat et post mortem eius usque ad diem praestandae libertatis etiam heredibus praestiterat, manifestum est, quod adeptus libertatem ad eandem praestationem compelli non possit.

D. VII id. Aug. Fusco et Dextro conss.

[11] *Imp. Gordianus A. Africano.* **pr.** Quod ex liberta muliere nascitur, ingenuum est. **1.** Is autem, qui libertae suae nubenti commodavit adsensum, quamvis operas ab ea exigere non possit, iura patronatus non amittit.

PP. III non. Aug. Pio et Pontiano conss.

[12] *Impp. Diocletianus et Maximianus AA. et CC. Veneriae.* Qui manumittuntur, liberum ubi voluerint commorandi arbitrium habent nec a patronorum filiis, quibus solam reverentiam debent, ad serviendi necessitatem redigi possunt, nisi ingrati probentur, cum neque cum patrono habitare libertos iura compellunt.

S. VIIII k. Iun. ipsis AA. conss.

[13] *Imppp. Valentinianus Valens et Gratianus AAA. ad Probum pp.* In redhibitione operarum maneat poena eum, qui alienum libertum recipiendum esse duxerit.

D. III id. Iul. Gratiano A. II et Probo conss.

IIII De Bonis Libertorum et de Iure Patronatus

[1] *Impp. Severus et Antoninus AA. Secundae.* **pr.** Multum interest, utrum quis suis nummis emptus ac manumissus sit ab emptore, an a

[10] *The same Augustus to Herculianus.* If Titius,[24] when he made his will, gave freedom to his slave with this condition: "I want Gaius, my slave, to be manumitted three years after the date of my death, provided he gives service to my heirs as he gave service to me while I lived," and, since the same slave used to perform some daily work for the testator and after his death also did this for his heirs up to the date for his freedom to be given, it is clear that, having acquired his liberty, he cannot be compelled to continue the same services.

Given August 7, in the consulship of Fuscus and Dexter (225).

[11] *Emperor* Gordian *Augustus to Africanus.* **pr.** What is born of a freedwoman is free-born. **1.** But he, who granted consent to his freedwoman marrying, although he cannot exact services from her, does not lose his rights as a patron.

Posted August 3, in the consulship of Pius and Pontianus (238).

[12] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Veneria.* Those who are manumitted have a free choice of where to live, nor can they be reduced back to the necessity of servitude by the sons of patrons, to whom they owe reverence alone, unless they are shown to be ungrateful, since the laws do not compel freedmen to live with a patron.

Subscribed May 24, in the consulship of the Augusti themselves (293).

[13][25] *Emperors* Valentinian, Valens, *and* Gratian *Augusti to Probus, Praetorian Prefect.* For him, who considered receiving a freedman belonging to another, there should await the penalty of paying compensation for the (freedman's) services.

Given July 13, in the consulship of Gratian Augustus, for the second time, and of Probus (371).[26]

Fourth Title The Property of Freedmen and the Right of Patronage[27]

[1] *Emperors* Severus *and* Antoninus *Augusti to Secunda.* **pr.** There is a great deal of difference whether a slave is bought with his own money and

[24] Titius is one of the John Does or Richard Rowes of Roman legal writing, so might have replaced the true name in this text.

[25] This constitution is adapted from a clause in the fuller version at C. 11.53.1, which concerns *coloni* not freedmen. However, that constitution ends by saying that the same provisions are to apply to freedmen, which Justinian's commissioners have used as their guide in editing. Seeck, *Regesten* (1919), 240, associates also with C.Th. 9.3.5 and C. 11.48.8; but against this, see Schmidt-Hofner, "Regesten" (2008), 577.

[26] The date here is preserved by Haloander, but is otherwise missing at the parallel C. 11.53.1.

[27] See D. 37.14, 38.2.

domino suo data pecunia mereatur libertatem. priore enim casu ad contra tabulas admitti patronum non placet, posteriore omnia iura patronatus retinet. **1.** Et ideo cum Sabiniani patroni filii, qui plenum ius habuit, ut hostis publici bona fisco vindicata sunt, secundum ea, quae divo Pertinaci placuerunt et nos secuti sumus, in iura libertorum eius fiscus noster successit.

PP. V non. Iul. Faustino et Rufino conss.

[2] *Impp. Valentinianus et Valens AA. ad Florianum comitem rerum privatarum.* Si liberti coniventibus patronis consortium cum ancillis colonisve nostris elegerint, sciant illi se deinceps commoda patronatus amissuros.

D. III id. Oct. Treveris Lupicino et Iovino vv. cc. conss.

[3] *Imp. Iustinianus A. Demostheni pp.* **pr.** Si quis patronorum in posterum huiusmodi narrationem conceperit vel in libertatibus, quae inter vivos actitantur, vel in his, quae ex testamento vel codicillis scriptis vel sine scriptis habitis proficiscuntur, ut liberti eorum a iure patronatus liberentur, antiqua interpretatione semota non dubitet etiam patronatus ius ex sola tali verborum conceptione libertis esse remittendum nec successionibus quae ab intestato descendunt, quas veteres et post huiusmodi actus servari in libertorum bonis decreverunt, a nobis patronis integris reservandis. **1.** Sed quemadmodum in natalium restitutione omne ius tollitur patronatus, ita et in huiusmodi verbis eandem esse vim observandam omnes non ignorent. **2.** Idemque iuris est, si inter vivos manumissione imposita in ultimis voluntatibus concessio data fuerit patronatus: ita tamen, ut in omnibus natalium restitutiones, ex quibus paene solis ingenuitas mera libertis competit, tam obtineant quam in nostra re publica polleant, cum nobis cordi est ingenuis magis hominibus quam libertis eam frequentari. **3.** Reverentia tamen, quae a libertis debetur, et iure, quod adversus ingratos libertos patronis competit, integris reservandis, et si per verborum conceptionem secundum a nobis inductum modum ius patronatus fuerit amissum, cum etiam haec ingenuitatis praemio

manumitted by the purchaser, or whether he earned freedom from his master upon the payment of money. For in the first case the patron is not allowed to be admitted to the inheritance (of the freedman) contrary to a will; in the latter case he retains all the rights of patronage. **1.** And, therefore, since the property of Sabinianus, the patron's son who possessed the full rights of patronage, was confiscated to the Treasury, as that of a public enemy, our Treasury has succeeded to the rights in respect of his freedmen, according to the orders which pleased the divine Pertinax[28] and which We have followed.

Posted July 2, in the consulship of Faustinus and Rufinus (210).

[2][29] *Emperors* VALENTINIAN *and* VALENS *Augusti to Florianus, Count of the Privy Purse.* If freedmen, with the connivance of their patrons, have chosen to have relationships with Our female slaves or bound tenants (*colonae*), let them (the patrons) know that they will thereafter lose all the benefits of patronage.

Given October 13, at Trier, in the consulship of Lupicinus and Jovinus (367).

[3] *Emperor* JUSTINIAN *Augustus to Demosthenes, Praetorian Prefect.* **pr.** If any patron hereafter frames this sort of scenario, either in connection with manumissions enacted during life or those declared by will or by written or unwritten codicils, that his freedmen are to be released from the right of patronage, he need not doubt also that, the ancient interpretation being removed, the right of patronage is to be released to his freedmen by such a framing of the words alone; and the rights of succession, which arise on intestacy and which the ancients decided were preserved in regard to freedmen's property even after acts of this sort, are by Our ruling not to be reserved intact to the patrons. **1.** But just as with the restoration of status of free-birth all right of patronage is removed; thus all are not to be ignorant that the same force must be given to statements of this kind also. **2.** The law is the same if a cession of patronage is made in a last will, manumission having been granted during life; provided, however, that restitutions of birth-rights, which are almost the only way for the pure condition of free birth to be bestowed on freedmen, are to have as full force as possible in our state, since we sincerely wish it to be inhabited by free-born men rather than by freedmen. **3.** Nevertheless, the duty of reverence, which is owed by freedmen, and the right, which patrons have against ungrateful freedmen, are to be kept intact, even though by the framing of the words the right of patronage is lost according to the limits introduced by us; for these also (reverence and action for ingratitude) are removed by the gift of free birth,

[28] Aside from this allusion, only three legal rulings from the brief reign of Pertinax are known (C. 4.28.1, 6.27.1; D. 50.6.6.2).

[29] Probably part of the same constitution as C. 11.68.4. See Seeck, *Regesten* (1919), 230; Schmidt-Hofner, "Regesten" (2008), 574 and 581.

tolluntur, quam paene sola natalium restitutio inducit. 4. His videlicet casibus, per quos poenalibus modis ius patronatus quasi ab indignis patronis eripitur, in suo robore durantibus.

Recitata septimo miliario in novo consistorio palatii Iustiniani. D. III k. Nov. Decio vc. cons.

[4] (Ὁ αὐτὸς βασιλεύς.) **pr.** Μέλλουσα διδόναι τύπον καινὸν ἐπὶ τοῖς πατρωνικοῖς δικαίοις ἡ διάταξις διηγεῖται πρότερον τὰ ἀπὸ τοῦ δυοκαιδεκαδέλτου καὶ ἀπὸ τοῦ πράιτωρος καὶ ἀπὸ τοῦ Παπίου νόμου κρατοῦντα τὸ παλαιὸν πατρωνικὰ δίκαια καὶ οὕτως ἄρχεται τῆς νομοθεσίας. **1.** Καὶ πρῶτον μὲν ἐξαριθμεῖται τοὺς μὴ ὑποκειμένους πατρωνικοῖς δικαίοις. ὅπερ συμβαίνει, ἡνίκα ὁ ἐλευθερῶν ἐν ζωῇ, ἢ ἐν τελευταίᾳ βουλήσει εἴπῃ συγχωρεῖν τῷ ἀπελευθέρῳ τὸ πατρωνικὸν δίκαιον· τότε γὰρ πρόδηλον, ὡς οὔτε αὐτῷ τῷ πάτρωνι οὔτε τοῖς ἐκ τοῦ γένους αὐτοῦ, πολλῷ δὲ μᾶλλον οὐδὲ ἐξωτικοῖς αὐτοῦ κληρονόμοις ἁρμόζει κατ' αὐτοῦ πατρωνικὸν δίκαιον. καὶ ὅτε δὲ ὁ δεσπότης ὁρῶν τὸν οἰκέτην αὐτοῦ στρατευσάμενον ἢ ἀξίας ἐπιτυγχάνοντα μὴ ἀντιλέγει, οὐ μόνον ἐλεύθερος γίνεται διὰ τούτου ὁ οἰκέτης, ἀλλὰ καὶ ἀπήλλακται παντὸς πατρωνικοῦ δικαίου.

2. Εἰ δὲ καί τις τὴν ἑαυτοῦ θεράπαιναν προστήσει ἐπὶ τὸ πορνεύεσθαι, πάλιν καὶ αὐτὴ ἡ θεράπαινα ἐλευθεροῦται καὶ ἀποστερεῖται παντὸς πατρωνικοῦ δικαίου ὁ δεσπότης· ὥσπερ ὁ νοσοῦντα τὸν οἰκέτην περιορῶν καὶ μήτε αὐτὸς ἐπιμελόμενος αὐτοῦ μήτε εἰς ξενῶνα πέμπων αὐτὸν μήτε τὴν συνήθη χορηγῶν αὐτῷ σίτησιν παντὸς ἀποστερεῖται δικαίου κατὰ τῆς τούτου περιουσίας. **3.** Εἰ δὲ καὶ προσπαθών τις θεραπαίνῃ αὐτοῦ καὶ μὴ ἔχων νόμιμον γαμετὴν παλλακὴν αὐτὴν σχοίη καὶ μείνῃ μέχρι τελευτῆς ἐπὶ τῆς αὐτῆς προαιρέσεως μηδὲν εἰπὼν περὶ τῆς τύχης αὐτῆς, οὐ μόνον ἐλευθέρα γίνεται καὶ αὐτὴ καὶ οἱ παῖδες, οὓς ἔτεκεν ἐκ τοῦ δεσπότου, ἀλλὰ καὶ εἰς εὐγένειαν ἀφαρπάζονται, κερδαίνοντες καὶ τὸ ἴδιον πεκούλιον· καὶ εἰκότως οὐδὲν πατρωνικὸν δίκαιον ἔχουσιν ἐπὶ αὐτοῖς οἱ τοῦ δεσπότου κληρονόμοι, εἴτε παῖδές εἰσιν εἴτε ἐξωτικοί.

which is brought in almost only by the restitution of birth-rights. **4.** However, these cases are to keep their validity, through which the right of patronage is as it were stripped from unworthy patrons in a penal manner.

Recited at the seventh milestone in the New Consistory of the Palace of Justinian. Given October 30, in the consulship of the vir clarissimus *Decius (529).*[30]

[4][31] [*The same Emperor.*][32] **pr.** This constitution, which is going to give a new form to the rights of patronage, first explains the old rights of patronage which existed according to the Twelve Tables, the Praetorian law and the Papian law, and commences its legislation thus: **1.** It first enumerates those not subject to patronal rights; this happens when the manumitter while alive or by his last will states that he cedes the right of patronage to the freedman; for then it is clear that in such cases the right of patronage does not apply against him (the freedman) in favor of the patron himself, nor those descended from him, and much less so in favor of his external heirs. Likewise, if the master sees his slave perform state service or acquire a rank and does not object, not only does the slave become free by reason of this, but he is also released from every right of patronage.

2. Likewise, if anyone puts his female slave to prostitution, this again makes her free and the master is deprived of every right of patronage; just as a master, who overlooks a sick slave, and neither himself takes care of him nor sends him to a hospital, nor furnishes him with the victuals accustomed from an employer, loses every right in the slave's property. **3.** Likewise, if anyone, who both has a passion for his female slave and does not have a legal wife, should take her as his concubine and remain with that same decision till his death, saying nothing about her status, not only does she become free, both herself and the children which she bore to the master, but they are raised up to free birth, gaining in addition their own *peculium*; and naturally the heirs of the master, whether they are the children or external heirs, have no right of patronage against them.

[30] This constitution formed part of a major and ceremonial promulgation of legislation, marking the new legal order with Tribonian in charge as quaestor: Bianchini, "La Subscriptio" (1999), 47–54.

[31] The concluding part (from the middle of section 23) of this Greek constitution is preserved in the Verona palimpsest (Fig. 2, in vol. 1, clx above), but it is otherwise known mainly from a Greek summary in the Basilika (49.1.28, Scheltema A, vol. VI, pp. 2274–2281). There is also a partial Latin summary, known from marginalia to the medieval Institutes (Krüger *ad loc.*). Justinian states that this constitution was composed in Greek "to be accessible to all" (Inst. 3.7.3).

[32] The heading is inferred from the context. The Latin version names Julian, Praetorian Prefect, as recipient, but this cannot be true, since he left office early in 531 (*PLRE* III, pp. 729–30, Iulianus 4), thus at odds with the subscript date. Krüger suggested the addressees could be the Senate, the people of Constantinople, or the provincials more generally.

4. Εἰ δὲ καί τις ὑπέρ τινος τὴν περὶ ἐλευθερίας δίκην ἀγωνισάμενος ἡττηθῇ τῷ δεσπότῃ καὶ τὸ τίμημα ὑπὲρ τῆς τοῦ δούλου διατιμήσεως καταβάλῃ, ἐλευθεροῦται μὲν ὁ οἰκέτης, ὑπὲρ οὗ τὸ τίμημα δέδοται τῷ δεσπότῃ, οὐκ ἔχει δὲ ἐπ᾿ αὐτῷ πατρωνικὸν δίκαιον ὁ δεσπότης, ὥσπερ οὐδὲ ἐπὶ ἐκείνῳ τῷ κατὰ τοὺς παλαιοὺς νόμους ἰδίοις ἀργυρίοις ἀγορασθέντι· κατὰ τούτου γὰρ καὶ οἱ παλαιοὶ τὰ ἀπὸ τοῦ πραίτωρος πατρωνικὰ δίκαια ἠρνοῦντο τῷ ἐλευθερώσαντι.

5. Εἰ δὲ καὶ ἀργύρια ἀντὶ τῶν ὑπηρεσιῶν ἐπερωτήσει ὁ πάτρων τὸν ἀπελεύθερον ἢ τὴν ἀπελευθέραν ἢ ὁρκώσει αὐτοὺς μὴ γῆμαι μηδὲ παιδοποιήσασθαι, καὶ οὗτος πάντων ἐκπίπτει τῶν πατρωνικῶν, ἐπειδὴ καὶ τὸ παλαιὸν καὶ τῶν ἀπὸ τοῦ δυοκαιδεκαδέλτου καὶ τῶν ἀπὸ τοῦ πραίτωρος πατρωνικῶν δικαίων ἐξέπιπτεν. **6.** Εἰ δὲ καὶ ἀναφωνήσαντος ἀπελευθέρου πρὸς εὐγένειαν συμπαιγνίᾳ χρησάμενος ὁ πάτρων συγχωρήσῃ αὐτὸν εὐγενῆ ἀποφανθῆναι, ἐλεγχομένης τῆς πρὸς τὸν ἀπελεύθερον συμπαιγνίας πάντων ἐκπίπτει τῶν πατρωνικῶν δικαίων καὶ οὗτος ὁ πάτρων.

7. Εἰ δὲ καὶ ὁ τιμηθεὶς fideicommissαρίᾳ ἐλευθερίᾳ, ἀγνωμόνως πειρασθεὶς τοῦ ὀφείλοντος ἐπιθεῖναι αὐτῷ τὴν ἐλευθερίαν, προσελθὼν τῷ ἄρχοντι τὴν ἀπουσίαν αὐτοῦ ἢ τὸ λανθάνειν αὐτόν, διελέγξει, καὶ ἁρπάζεται ἀπὸ δογμάτων συγκλήτου εἰς ἐλευθερίαν καὶ οὐδενὶ πατρωνικῷ δικαίῳ ὑπόκειται. **8.** Εἰ δὲ καὶ υἱὸς πάτρωνος ἢ κεφαλικὴν κατηγορίαν κατὰ τοῦ πατρῴου ἀπελευθέρου ἐνστήσηται ἢ πρὸς δουλείαν ἑλκύσαι πειραθείη, ἀπαλλάττεται καὶ οὗτος ὁ ἀπελεύθερος παντὸς πατρωνικοῦ δικαίου, ἐπειδὴ καὶ τὸ παλαιὸν τῶν ἐκ τοῦ πραίτωρος πατρωνικῶν δικαίων ἀπηλλάττετο.

9. Τούτων τοίνυν ἁπάντων τοῦ πατρωνικοῦ δικαίου ἀτέλειαν ἐχόντων νομοθετεῖ λοιπὸν μετὰ τὴν τούτων ὑπεξαίρεσιν, ποῖα βούλεται εἶναι πατρωνικὰ δίκαια κατὰ τῶν ἄλλων ἀπελευθέρων. **9a.** Καὶ εἰ μὲν ἐλάττονα τῶν ἑκατὸν νομισμάτων σχοίη περιουσίαν ἀπελεύθερος ἢ ἀπελευθέρα, οὐ περιεργάζεται ταύτην τὴν ποσότητα ἡ διάταξις, ἀλλὰ ἐπιτρέπει αὐτοῖς διατίθεσθαι, καθάπερ ἂν βουληθείησαν· ἀδιαθέτων δὲ καὶ ἀπαίδων τελευτώντων τῶν ἐχόντων τὴν ἐλάττονα τῶν ἑκατὸν νομισμάτων περιουσίαν δίδωσι τοῖς πάτρωσι τὴν ἐξ ἀδιαθέτου διαδοχήν. **10.** Τῶν δὲ ὑπὲρ τοὺς ἑκατὸν χρυσίνους καταλιμπανόντων οὐσίαν εἰ μὲν εἴησαν παῖδες ἢ ἔγγονοι ἢ προέγγονοι ἢ ἀπέγγονοι, ἄρρενες ἢ θήλειαι, δι᾿ ἀρρένων ἢ διὰ θήλεων προσώπων κατιόντες ὁσοιδήποτε, εἴτε προελευθερωθέντες τῶν γονέων εἴτε συνελευθερωθέντες αὐτοῖς εἴτε καὶ μετ᾿ αὐτοὺς ἐλευθερωθέντες ἢ καὶ μετὰ τὴν ἐλευθερίαν τεχθέντες, αὐτοὺς καλεῖ πρὸς τὴν τῶν ἀπελευθέρων διαδοχήν, ἐπειδὴ καὶ τῇ φύσει δίκαιόν ἐστι τοὺς παῖδας τὰ τῶν γονέων διαδέχεσθαι. **10a.** Καὶ ὁ δυοκαιδεκάδελτος γὰρ ὑπεξουσίους εὑρὼν τοῦ ἀπελευθέρου παῖδας οὐδὲν παρεῖχε τοῖς πάτρωσιν, ὁ μέντοι πραίτωρ

4. Likewise, if anyone, bringing a suit involving the question of someone's freedom, is defeated by the master, and pays the estimate of the value of the slave, the slave, for whom the price is paid to the master, becomes free, nor has the master any rights of patronage over him, just as he does not have over one who, according to the ancient laws, was bought with his own money; for against him (i.e., the slave bought with his own money) the ancient laws also denied to the manumitter the rights of patronage given by the Praetor.

5. Likewise, if a patron has a freedman or freedwoman stipulate to pay him money instead of services, or binds them by an oath not to enter into matrimony or procreate children, he too loses all patronal rights, since even formerly he lost the rights of patronage both under the Twelve Tables and from the Praetor. **6.** Likewise, if a freedman proclaims himself free-born, and the patron, employing collusion, agrees that he be pronounced free-born, if the collusion with the freedman is proved, this patron also loses every right of patronage.

7. Likewise, if any one, honored with freedom from a testamentary trust, senselessly suffers delays from him who ought to give him his freedom, and goes before the governor and proves that the trustee is absent or hiding, under the senatorial decrees he also is brought to freedom; and he is not subject to any right of patronage. **8.** Likewise, if the son of a patron institutes a capital accusation against a freedman of his father or attempts to drag him back into slavery, this freedman also is released from every right of patronage, since formerly also he was released from the Praetorian rights of patronage.

9.[33] All these are exempt from the rights of patronage and after this exclusion it (the constitution) next lays down what sort of rights of patronage it wishes there to be over the other freedmen. **9a.** If a freedman or freedwoman has property of less than 100 solidi,[34] the constitution takes no account of such an amount, but permits them to leave this by will as they wish; but if those having property less than 100 solidi die intestate and without children, it gives the right of intestate succession to the patrons. **10.** For those leaving property of more than 100 solidi, if there are children or grandchildren or great-grandchildren or great-great-grandchildren, male or female, descending through the male or female line, of whatever number, whether manumitted before their parents, or manumitted with them or manumitted after them, or whether born after the manumission (of their parents), these are called to the succession of the freedmen, because it is by nature just that the children should succeed to the property of the parents. **10a.** For the Twelve Tables also, if they find children in the power of a freedman, give nothing to the

[33] With 9–16, compare the summary in Inst. 3.7.3.

[34] "Nomisma" in Greek, used to denote the standard gold coin, the solidus. See Avotins, *On the Greek of the Code* (1989), 113.

καὶ ὑπεξουσίων καὶ αὐτεξουσίων ὑπόντων τῷ ἀπελευθέρῳ παίδων οὐκ ἐκάλει τὸν πάτρωνα πρὸς τὴν ἐναντίωσιν τῆς διαθήκης. **10b.** Τούτοις τοίνυν ἀκολουθήσασα καὶ ἡ προκειμένη διάταξις, ὅταν εὕρῃ παῖδας τοῦ ἀπελευθέρου ἢ τῆς ἀπελευθέρας, οὐδὲ ἓν δίκαιον τοῖς πάτρωσιν ἢ τοῖς παισὶν αὐτῶν ἐκ τῶν ἐξ ἀδιαθέτου δικαίων χαρίζεται, ἀλλὰ καλεῖ τοὺς τῶν ἀπελευθέρων παῖδας εἰς τὴν αὐτῶν διαδοχήν. εἰ καὶ ἐν δουλείᾳ τεχθέντες συνελευθερώθησαν.

11. Καὶ τὸ μεῖζον οὐ τότε μόνον αὐτοὺς καλεῖ, ὅτε μόνοι ὕπεισιν οἱ ἐν δουλείᾳ τεχθέντες καὶ τῷ πατρὶ ἢ καὶ τῇ μητρὶ συνελευθερωθέντες, ἀλλ' εἰ καὶ ἑτέρους ἔχοι παῖδας ὁ ἀπελεύθερος ἢ ἡ ἀπελευθέρα μετὰ τὴν ἐλευθερίαν τεχθέντας ἢ ἐκ τῶν αὐτῶν γάμων ἢ ἐξ ἑτέρων, κοινῶς ἅπαντας καλεῖ. **11a.** Καὶ τὸ ἔτι τούτου παραδοξότερον καὶ αὐτοὺς τοὺς παῖδας εἰς τὴν ἀλλήλων κληρονομίαν καλεῖσθαι βούλεται ἡ διάταξις, χαρίζεται δὲ καὶ τῷ ἀπελευθέρῳ καὶ τῇ ἀπελευθέρᾳ τὴν τῶν ἰδίων παίδων διαδοχήν, ὥσπερ ἐπὶ τῶν εὐγενῶν οἱ πατέρες καὶ αἱ μητέρες καλοῦνται πρὸς τὴν τῶν παίδων κληρονομίαν, καὶ βούλεται ἐπὶ τούτων τῶν θεμάτων τὸ πατρωνικὸν δίκαιον ἀργεῖν, ὥστε καὶ ἀπελευθέρους καὶ ἀπελευθέρας ὑπὸ τῶν παίδων κληρονομεῖσθαι καὶ αὐτοὺς τοὺς παῖδας ὑπ' ἀλλήλων καὶ ὑπὸ τῶν γονέων αὐτῶν, καὶ μηδαμοῦ χώραν εἶναι τῇ πατρωνικῇ διαδοχῇ τῶν τοιούτων προσώπων ὑπόντων.

12. Ταῦτα περὶ τῶν τελευτώντων ἐξ ἀδιαθέτου νομοθετήσασα μεταβαίνει καὶ πρὸς τοὺς διατιθεμένους ἀπελευθέρους καὶ παρακελεύεται, εἰ τοὺς ἰδίους παῖδας γράψοιεν κληρονόμους οἱ ἀπελεύθεροι ἢ αἱ ἀπελεύθεραι, πάντως ἀργεῖν τὴν πατρωνικὴν κλῆσιν. **13.** Εἰ δὲ ἀποκληρονόμους ποιήσαιεν τοὺς παῖδας, εἰ μὲν ἀδίκως, ὥστε καὶ ἀνατραπῆναι τὴν διαθήκην διὰ τῆς μέμψεως (δίδωσι γὰρ καὶ ταύτην τοῖς οἱοισδήποτε τῶν ἀπελευθέρων παισὶν ἡ διάταξις), πάλιν ἀργεῖν βούλεται τὴν πατρωνικὴν διαδοχήν, ὡς ἀδιαθέτου τελευτῶντος τοῦ ἀπελευθέρου καὶ ὑπὸ τῶν παίδων ἐξ ἀδιαθέτου κληρονομουμένου. **14.** Εἰ δὲ εὐλόγως τοὺς παῖδας ἀποκλήρους ἐποίησαν τοὺς ἰδίους οἱ ἀπελεύθεροι, καλείσθωσαν οἱ πάτρωνες, ὡς αὐτῶν μὴ ἐσχηκότων παῖδας. **14a.** Ἐπειδὴ δὲ δοκοῦσι συγγενεῖς εἶναι τῶν ἐλευθερουμένων οἱ ἐλευθεροῦντες αὐτούς, διὰ τοῦτο καὶ καλοῦνται ἐκ τῆς νομίμου διακατοχῆς,[1] ὥσπερ ἐπὶ τῶν εὐγενῶν οἱ κατὰ βαθμὸν ἐγγύτεροι καλοῦνται, οὕτως καὶ ἐπὶ τῶν ἀπελευθέρων. **14b.** Ὅθεν εἰ μὲν παῖδας ἔχουσιν οἱ ἀπελεύθεροι καὶ κληρονομοῦσιν αὐτούς, ἀποκλείουσι τὸν πάτρωνα. **14c.** Εἰ δὲ μὴ ὄντων παίδων ἢ ἀποκληρονόμων γενομένων οἱ πάτρωνες ἔλθωσι, κατὰ βαθμὸν καλείσθωσαν εἰς τὴν οὐσίαν τῶν ἀπελευθέρων τῶν κεκτημένων οὐσίαν ὑπερβαίνουσαν τὴν ποσότητα τῶν ἑκατὸν νομισμάτων,

[1] διαδοχῆς

patrons, while the Praetor, when children of a freedman are living, both those "in power" and those emancipated, does not permit the patron to oppose the will. **10b.** The present constitution also, therefore, follows these examples, and whenever it finds children of a freedman or freedwoman, it grants no right out of the rights under intestacy to the patrons or their children, but calls the children of freedmen to the succession to them, even if, born in slavery, they were manumitted along with them.

11. And, even more, not only does it then call the children when there exist only those who were born in slavery and were manumitted along with their father or even mother, but also, if the freedman or freedwoman has other children born after manumission whether from the same or another marriage, it calls them all jointly. **11a.** And even more incredible than this, the constitution wants these same children to be called to the inheritance from each other, and grants also to the freedman and freedwoman the succession to their own children, just as the fathers and mothers of the free-born are called to the inheritance of their children, and it wants the right of patronage to be ineffective in these cases, so that both freedmen and freedwomen are succeeded by their children, and these same children by each other and by their parents, and there is no place for patronal succession, while such persons survive.

12. Having laid down these rules concerning those who die intestate, it passes on to the freedmen who have made a will and orders that, if the freedmen or freedwomen should appoint their own children as heirs, the patronal right of succession is entirely void. **13.** If they have disinherited their children, and that unjustly, so that the will is overturned by the complaint of an undutiful will (for the constitution grants this also to freedmen's children of any sort), again it wants patronal succession to be void, as if the freedman had died intestate and the inheritance went to the children by intestate succession. **14.** But if the freedmen disinherited their children for just cause, the patrons may be called just as if they (the freedmen) had not left children. **14a.** Since, moreover, manumitters seem themselves to be cognate relatives of freedmen, for this reason also they are called under lawful succession;[35] just as those nearest in degree among the free-born are called (to the succession), so also in the case of freedmen. **14b.** Hence, if freedmen have children and the latter inherit from the former, they exclude the patron. **14c.** But if there are no children or they are disinherited, the patrons enter and are called according to degree to take the property of those freedmen possessing property exceeding 100 aurei, so that in the first place patrons and patronesses are called, then after them

[35] Reading διαδοχῆς (so Reitz, Scheltema), which makes better sense than the manuscript διακατοχῆς (= *bonorum possessio*) printed by Krüger.

ἵνα πρῶτοι αὐτοὶ οἱ πάτρωνες καὶ αἱ πατρώνισσαι καλῶνται, εἶτα μετ' αὐτοὺς οἱ παῖδες αὐτῶν, καὶ ἐὰν μὴ ὕπεισι παῖδες αὐτῶν, οἱ ἔγγονοι αὐτῶν οἱ κατιόντες ἐξ ἀρρένων ἢ ἀπὸ θηλειῶν. **14d.** Τοῦτο γὰρ εἴρηται καὶ ἐπὶ τῶν εὐγενῶν, ὥστε κατὰ βαθμὸν καλεῖσθαι πάντας τοὺς συγγενεῖς πρὸς τὴν κληρονομίαν, καὶ τῶν πρώτων ἀτονούντων τότε τοὺς μετὰ ταῦτα ἔρχεσθαι καὶ κληρονομεῖν. **14e.** Εἰ δὲ μηδένας ἔχει κατιόντας ὁ πάτρων ἤτοι ἡ πατρώνισσα, τότε καὶ τοὺς ἐκ πλαγίου αὐτῶν καλοῦμεν κατὰ βαθμόν, ἵνα οἱ ἐγγύτεροι συγγενεῖς προτιμῶνται τῶν ὄντων ἐν μακροτέρῳ βαθμῷ. **14f.** Ἕως δὲ πέμπτου βαθμοῦ οἱ ἐκ πλαγίου συγγενεῖς τοῦ πάτρωνος καὶ οἱ κατιόντες αὐτοῦ κληρονομείτωσαν τὸν ἀπελεύθερον.

15. Ταῦτα μὲν πάντα εἴρηται, ἐὰν οἱ ἀπελεύθεροι παῖδας ἔχωσιν. ἐὰν δὲ παντελῶς οὐκ ἔχωσι παῖδας, ἀλλὰ ποιήσωσι διαθήκην καὶ γράψωσιν ἐξωτικοὺς κληρονόμους, οὐδὲ κατὰ τὸν δυοκαιδεκάδελτον λέγομεν, ἐπειδὴ γέγονε διαθήκη, τοὺς πάτρωνας ἀποκλείεσθαι παντελῶς, οὐδὲ κατὰ τὸν Πάπιον δεχόμεθα αὐτούς, ἵνα καὶ ἑνὸς παιδὸς γραφέντος κληρονόμου τὸ ἥμισυ λάβωσιν ἢ δύο παίδων γραφέντων κληρονόμων τὸ τρίτον λάβωσιν, ἀλλὰ καλοῦμεν αὐτούς, ἵνα μόνον τὸ τρίτον τῆς τοῦ ἀπελευθέρου κληρονομίας δυνηθῶσι λαβεῖν, οὐ πάντες οἱ καλούμενοι πρὸς τὴν πατρωνικὴν κληρονομίαν, ἀλλὰ πάτρων καὶ πατρώνισσα καὶ παῖδες αὐτῶν καὶ ἔγγονοι καὶ ἀπέγγονοι, τουτέστιν οἱ ἕως πέμπτου βαθμοῦ κατιόντες τῶν πατρώνων καὶ μόνοι. **15a.** Οἱ οὖν περαιτέρω αὐτῶν κατιόντες ἢ ἐκ πλαγίου οὐκ ἔχουσι τὴν ἐναντίωσιν τῆς διαθήκης ἐξωτικῶν γραφομένων κληρονόμων ἐπὶ τὸ λαβεῖν τὸ τρίτον τῆς οὐσίας. **16.** Ὥσπερ γὰρ ἐπὶ τῶν εὐγενῶν τριούγκιον ἐν τοῖς χρόνοις τούτου τοῦ κώδικος ὡρισμένον ἦν τοῖς δυναμένοις κινῆσαι τὴν κατὰ τῆς διαθήκης μέμψιν, οὕτως, ἐὰν ἀπελεύθερος τελευτήσῃ τετραούγκιον καθαρὸν καὶ ἀπηλλαγμένον ληγάτων καὶ fideicommissων τῷ πάτρωνι καταλείψας, ἀποκλείει αὐτόν. **16a.** Κἂν γὰρ παισὶν ἰδίοις κατέλειψεν ὁ ἀπελεύθερος ἀπὸ τοῦ πάτρωνος λήγατον, οὐκ ἔχει καθαρὸν τὸ τρίτον. ὥσπερ γὰρ ἐπὶ τῆς μέμψεως ζητοῦμεν, ἵνα καθαρόν ἐστι πάντων τῶν ληγάτων τὸ τριούγκιον, οὕτως καὶ ἐνταῦθα ἀπαιτοῦμεν, ἵνα καθαρόν ἐστι πάντων τῶν ληγάτων τὸ πατρωνικὸν τετραούγκιον. **16b.** Ἐλευθερίαις δὲ ὑπόκειται καὶ τὸ τετραούγκιον τοῦ πάτρωνος. τὸ γὰρ παλαιὸν παῖδες μὲν κινοῦντες τὴν κατὰ τῆς διαθήκης μέμψιν ἐδίδουν τὰς ἐλευθερίας, πάτρωνες δὲ κινοῦντες εἰς ἥμισυ τὴν ἐναντίωσιν τῆς διαθήκης κατὰ τῆς τοῦ ἀπελευθέρου διαθήκης οὐκ ἐπεγίνωσκον τὰς ἐλευθερίας. **16c.** Πάντα δὲ τὰ λήγατα, ὧν ὁ πάτρων ἀπήλλακται, διδότωσαν οἱ κληρονόμοι τοῦ ἀπελευθέρου, δηλονότι πρότερον παρακατέχοντες ἑαυτοῖς ἐκ τῆς οὐσίας τὸν Φαλκίδιον τῶν περιλιμπανομένων αὐτοῖς ὀκταουγκίων, ἵνα μηκέτι τριούγκιον, ἀλλὰ μόνον διούγκιον παρακατάσχωσιν. **17.** Εἴτε οὖν ὁ πάτρων παντελῶς μηδὲν ἔχει, λαμβάνει τὸ τετραούγκιον, εἴτε

their children, and if their children do not survive, their grandsons in the male or female line. **14d.** For it is said as to free-born persons also, that all blood relatives are called to the inheritance according to degree, and when the first in degree fail, then those next in line enter and become heirs. **14e.** But if the patron or patroness has no descendants, then we also call their collateral relatives according to degree, so that the relatives of nearer degree have preference over those of remoter degree. **14f.** The collateral relatives of the patron and his descendants inherit from the freedman up to the fifth degree.

15. All these things are stated for cases when freedmen have children. If they do not have children at all, but make a will and appoint external heirs, then we do not agree with the Twelve Tables that, when a will has been made, the patrons are entirely excluded, nor do we accept according to the lex Papia that, when one child is appointed heir, they (the patrons) take half or, if two children are appointed heirs, they take a third, but we call them on the basis that they can take only a third of the freedman's inheritance; not all those are called to the patron's inheritance, but only the patron, patroness, their children, grandchildren, great-grandchildren, and great-great-grandchildren, that is to say, those who descend from the patron to the fifth degree and only those. **15a.** Therefore descendants of remoter degree and collateral relatives have no claim against the will to take a third of the estate, when external heirs are appointed. **16.** And just as with free-born men at the time of this Codex a fourth part (lit. "3 ounces" out of 12)[36] was the minimum portion for those entitled to bring a complaint about an (undutiful) will, so, if a freedman dies leaving a third part (lit. "4 ounces" out of 12) to his patron, free and clear of legacies and trusts, he excludes him (i.e., the patron, from the rest). **16a.** But if the freedman bequeathes a legacy to his own children due from the patron, the latter does not have his third unencumbered. For just as in cases of complaint (of undutiful will) we expect that the quarter part be free of all legacies, so we also require here that the patron's third part be free of all legacies. **16b.** But even the patron's third is subject to manumissions. For, of old, children, who instituted complaint concerning a will, granted manumissions, whereas patrons, who brought a testamentary challenge for one-half against the freedman's will, did not recognize manumissions. **16c.** But all legacies from which a patron is released must be paid by the heirs of a freedman, first retaining for themselves from the estate the Falcidian portion out of the two-thirds ("8 ounces") left to them, so that they no longer keep a quarter ("3 ounces"), but only a sixth ("2 ounces"). **17.** Therefore, if the patron has nothing at all (under the will), he

[36] For full exposition of Latin and Greek terms for the parts of an estate, see Theophilus, *Paraphrasis* 2.14.5 (Lokin *et al.*, *Paraphrasis Institutionum* (2010), 340–341); also Avotins, *On the Greek of the Code* (1989), 158 and 160–161.

ἐγράφη κληρονόμος εἰς ἧττον τοῦ τετραουγκίου, ἀναπληροῦται καθαρὸν τὸ τετραούγκιον πάσης αἱρέσεως καὶ πάσης ὑπερθέσεως ἀπηλλαγμένον, τουτέστιν ἵνα, κἂν γράψῃ αὐτὸν ὁ ἀπελεύθερος κληρονόμον ὑπὸ αἵρεσιν, περιέλωμεν τὴν μνήμην τῆς αἱρέσεως. **17a.** Εἰ δὲ καὶ ἡ αἵρεσις τῶν πάντως ἐξερχομένων ἐστίν, ὑπέρθεσιν δὲ ἔχει, τυχὸν "ἐὰν φθάσῃ ὁ τῶν καλανδῶν καιρός" καὶ ταύτην τὴν αἵρεσιν περιαιροῦμεν, φυλάττοντες αὐτοῖς τὸ τετραούγκιον, εἴτε εἷς ἐστιν εἴτε πλείονες.

18. Εἰ δὲ γραφῶσι κληρονόμοι ὑπὲρ τὸ τετραούγκιον καὶ βαρηθῶσι ληγάτοις, ἐὰν αὐτοὶ μόνοι ὦσι κληρονόμοι, παράσχωσι τὰ ληγάτα καὶ τὰ fideicommissa, δηλονότι μὴ βλαπτομένου τοῦ τετραουγκίου αὐτῶν· ὁ γὰρ Φαλκίδιος ἐπὶ αὐτοῦ τετραουγκίου ἐστίν. **18a.** Ἐὰν δὲ μὴ εἰς ὁλόκληρον, εἰς πλέον μέντοι τοῦ τετραουγκίου, τυχὸν εἰς ἓξ ἢ εἰς ὀκτὼ οὐγκίας ἐγράφησαν κληρονόμοι καὶ ἐβαρήθησαν ληγάτοις, τότε τὸ περισσὸν ὑπὲρ τὸ τετραούγκιον διδότωσαν τοῖς ληγαταρίοις καὶ fideicommissariois, τὸ δὲ λοιπὸν παρεχέτωσαν οἱ κληρονόμοι, φυλάττοντες ἑαυτοῖς ἐκ τῆς ἰδίας ἐνστάσεως τὸν Φαλκίδιον.

19. Ὅσοι δὲ ἂν εἴησαν πάτρωνες, κἂν ἐξ ἀνίσων μερῶν ἦσαν δεσπόται τοῦ οἰκέτου, μεθ' ὃ γένωνται πάτρωνες, ἐξ ἴσου κληρονομοῦσιν. **19a.** Ἐὰν δὲ τελευτήσωσιν οἱ πάτρωνες, καὶ ὁ μὲν ἔχει παῖδας, ὁ δὲ ἐγγόνους, οἱ ἐγγύτεροι περὶ τὸν βαθμόν, τουτέστιν οἱ παῖδες τοῦ ἑνὸς πάτρωνος, ἀποκλείσουσι τοὺς ἐγγόνους τοῦ ἄλλου πάτρωνος. **19b.** Καὶ γινέσθω ἡ κλῆσις οὐχὶ κατὰ σειράν, ἀλλὰ προσωπικῶς, τουτέστιν ἵνα πρὸς τὸν ἀριθμὸν τῶν παίδων τοῦ πάτρωνος τὸ μέρος διαιρῆται. καὶ τυχὸν ἐὰν δύο πάτρωνες τελευτήσωσιν ἐπὶ παισίν, ὁ μὲν ἐπὶ δύο, ὁ δὲ ἐπὶ τέτρασι, εἰς ἓξ μέρη γίνεται ἡ κληρονομία, οὐκέτι εἰς δύο, ἐπειδὴ καὶ δύο πατρώνων παῖδές εἰσιν. **19c.** Ἐὰν δὲ εἷς τῶν δύο πατρώνων τὸ μέρος τὸ ἴδιον παραιτήσηται, τότε τὸ μέρος αὐτοῦ οἱ λοιποὶ πάτρωνες λαμβανέτωσαν. **20.** Εἰ δὲ καὶ ὁ προλαμβάνων βαθμὸς παραιτήσηται, τότε πάλιν ὁ μετὰ ταῦτα βαθμὸς καλείσθω· δεχόμεθα γὰρ τὰς κατὰ συγγένειαν διαδοχὰς ἐπὶ τῶν ἀπελευθέρων, τουτέστιν ἵνα τοῦ πρώτου παραιτουμένου ὁ μετὰ ταῦτα βαθμὸς ὑπεισέρχηται. **20a.** Τοῦτο γὰρ καὶ ἐπὶ τῶν εὐγενῶν κρατεῖ, ἐπειδὴ καὶ τὸ παλαιόν, ὅτε ἐπὶ κληρονομίας οὐκ ἦν ὑπεισέλευσις τῶν μετὰ ταῦτα, ἐπὶ τῆς ἐπιτροπῆς ἐφυλάττετο, καὶ τοῦ πρώτου τυχὸν καλουμένου ἐξκουσατεύοντος ἑαυτὸν ὁ μετὰ ταῦτα ἐκαλεῖτο.

21. Καλείσθωσαν δὲ μὴ μόνον οἱ ἐν φύσει κατιόντες τῶν πατρώνων, ἀλλὰ καὶ οἱ κυοφορούμενοι αὐτῶν καὶ οἱ εἰς θέσιν παρ' αὐτῶν δεδομένοι. ἡ οὖν παλαιὰ ὑπόκρισις καὶ παρατήρησις, ὅτε ἐπλαττόμεθα τὴν θυγατέρα τοῦ πάτρωνος υἱὸν πάτρωνος εἶναι, ἀνῃρείσθω· σήμερον γὰρ καὶ αὕτη καλεῖται πρὸς τὴν κληρονομίαν. **21a.** Καὶ καλείσθωσαν μὴ μόνον διακατοχὴν αἰτοῦντες, ἀλλὰ καὶ ὡς νόμιμοι κληρονομοῦντες,

takes a third ("4 ounces"), and if he is appointed as heir for less than a third, the third is made up free and clear of every condition and every delay; that is to say, that if the freedman should appoint him an heir upon a condition, we remove the terms of the condition. **17a.** But even if the condition is one of those which absolutely will happen, but entails a delay, for instance "if the time of the Kalends shall come," this condition too we remove, preserving the third for them, whether that goes to one or more.

18. But if they (the patrons) were appointed heirs for more than a third and are burdened with legacies, if they are sole heirs, they are to pay the legacies and trusts, except that their third is not to be touched; for the Falcidian portion relates to that third. **18a.** If they are appointed heirs not to the entire estate, but to more than a third, say to a half ("6 ounces") or two-thirds ("8 ounces"), and are burdened with legacies, then they are to pay to the legatees and trustees the amount in excess of the third, while the (other) heirs pay the remainder, they (the patrons) keeping for themselves the Falcidian portion from their own inheritance.

19. However many patrons there are, even if they were masters of the slave in unequal shares, after they become patrons, they inherit equally. **19a.** But if the patrons are dead, and one has children, but another grandchildren, the nearer in degree, that is to say the children of the first patron, exclude the grandchildren of the other patron. **19b.** And the succession is not to be *per stirpes* (by lines of agnatic descent), but *per capita* (by individuals); that is to say, the share is to be divided according to the number of the patron's children. And if it happen that two patrons die leaving children, one of them two, the other four, the inheritance is to be divided into six parts, no longer into two, because there are children of two patrons. **19c.** If one of the patrons repudiates his share, then the other patrons are to take his share. **20.** And if those of the degree that takes first repudiate (the inheritance), then again those of the next degree are to be called; for we accept cognate succession in relation to freedmen; that is, when the first degree refuses, the next degree succeeds in their place. **20a.** This is also true among the free-born, and while under the ancient rule there was no substitution in inheritance of those of remoter degrees, this was observed in tutorship, and if it happen that the first to be called excused himself, the next one was called.

21. Moreover, not only are already living descendants of patrons to be called, but also posthumous children and those given by them in adoption. And let the ancient pretence and rule be abolished, whereby we used to feign that a daughter of a patron was son of a patron; for today she herself also is called to the inheritance. **21a.** And they are to be called not only as claimants to the possession of an inheritance (*bonorum possessio*), but also as statutory heirs,

καὶ κληρονόμοι δὲ γραφόμενοι ὡμολογημένως ἐχέτωσαν τὴν ἐκ τῆς διαθήκαης βοήθειαν· αἱ δὲ λοιπαὶ πατρωνικαὶ διακατοχαὶ ἡσυχαζέτωσαν. **22.** Ἐὰν δὲ θετοὺς παῖδας ἔχωσιν οἱ ἐλευθερωθέντες ἢ οἱ πάτρωνες, τούτους, εἰ καὶ ὑπεξουσίους ἔχωσιν, οὐ δεχόμεθα ἐν τάξει υἱῶν, ἀλλὰ ἐν τάξει ἐξωτικῶν. εἰ δὲ καὶ τελευτήσωσιν οἱ πάτρωνες ἐπὶ ἐξωτικοῖς κληρονόμοις, οὐ καλοῦνται πρὸς τὴν τοῦ ἀπελευθέρου κληρονομίαν· συγγενικῷ γὰρ δικαίῳ κληρονομοῦνται οἱ ἀπελεύθεροι. **23.** Ἐπειδὴ δὲ ἡ παλαιὰ διακατοχὴ ἥρμοζε καὶ ὅτε ἐτελεύτησεν υἱὸς ἀπελευθέρου γεννηθεὶς μετὰ τὴν ἐλευθερίαν διαθήκης καὶ συγγενείας χωρίς, καὶ ἐκάλει τὸν ἐλευθερώσαντα τὸν πατέρα καὶ τοὺς ἐξ ἀρρενογονίας αὐτοῦ συγγενεῖς, εἴτε ἔμειναν συγγενεῖς εἴτε ἔπαθον καταστάσεως ἐναλλαγήν, ἐκέλευσε δέ, ἵνα, ἐὰν ὁ πάτρων τούτου τοῦ ἀπελευθέρου καὶ αὐτὸς ἀπελεύθερος ἦν ἑτέρου τινός, καὶ ὁ τοῦ πάτρωνος πάτρων καὶ ἡ συγγένεια αὐτοῦ καλῆται, κελεύει ἡ διάταξις, ἵνα, ἐὰν μετὰ τὴν ἐλευθερίαν γεννηθέντες τοῦ ἀπελευθέρου παῖδες τελευτήσωσιν ἀδιάθετοι καὶ μηδένα παντελῶς ἔχοντες συγγενῆ, καλῶνται ὁ πάτρων καὶ ἡ πατρώνισσα μόνοι. ἔστιν οὖν τοῦτο τὸ δίκαιον ἐπὶ μόνων υἱῶν τοῦ ἀπελευθέρου ἢ θυγατέρων, πάτρωνος ἢ πατρωνίσσης περιόντων, ἵνα δόξωσι μηκέτι κληρονομεῖν ἀπελεύθερον, (πῶς γὰρ ἔστιν ἀπελεύθερος ὁ τεχθεὶς μετὰ τὴν ἐλευθερίαν;) ἀλλ' ἔχειν τὸ κέρδος ἀπὸ τούτου τοῦ νόμου.

... χωρὶς συγγενείας ἁπάσης τελευτώντων μόνους τὸν πάτρωνα καὶ τὴν πατρώνισσαν τούς τε αὐτῶν υἱοὺς καὶ θυγατέρας καλεῖσθαι, καὶ μέχρι τούτου ταύτην ἵστασθαι τὴν διαδοχήν, οὐκ ἀπελευθερικῆς τῆς κλήσεως αὐτοῖς, ἀλλ' ἐκ τῆς παρούσης ἡμῶν διατάξεως διδομένης.

24. Κἀκεῖνο δὲ τῷ νόμῳ προσθεῖναι καλόν τε καὶ ἀναγκαῖον ᾠήθημεν, ὡς, εἰ συμβαίη τοὺς ἐλευθερωτὰς ἀπὸ κληρονόμων ποιήσασθαι τοὺς ἑαυτῶν παῖδας καὶ μηδὲν αὐτοῖς τῆς ἑαυτῶν περουσίας καταλιπεῖν, μὴ δυνηθῆναι δὲ αὐτοὺς μάτην ὑβρισμένους ἀποδεῖξαι μηδὲ τούτους ἕξειν κατὰ τῶν διαθηκῶν τῶν ἀπελευθέρων πατρωνικὰ δίκαια. ἀδιαθέτων μέντοι καὶ ἀπαίδων τελευτώντων τῶν ἀπελευθέρων κἀκείνους, ἴσως μὲν οὐκ ἀξίως διὰ φιλανθρωπίαν δὲ ὅμως καλοῦμεν, καὶ μάλιστα ἐπεὶ παρὰ πάντα τὸν ἡμέτερον νόμον πρὸς τὴν φύσιν ἡρμόσαμεν. **25.** Σώζεσθαί γε μὴν καὶ τῷ τὸν ὑπεξούσιον ἢ τὴν ὑπεξουσίαν ἔχοντι καὶ τοῦτον ἢ

and when appointed as heirs they are to have the right to possession according to the will (*secundum tabulas*). But let the other patronal rights of possession fall silent. **22.** If the freedmen or patrons have adopted children, even if they have them in their power (*in potestate*), we do not treat them as being in the category of children, but in the category of external persons. And if the patrons die leaving external heirs, these are not called to the inheritance of the freedman; for the inheritance from freedmen is by virtue of the rights of relationship. **23.** And since the ancient right of possession also accrued (to the patron), when the son of a freedman, born after manumission, died without will and blood-relatives, and it (the right) called the manumitter of the father and his blood-relatives in the male line (agnates), whether they remained relatives or had suffered a change in status, and ordered that, if the patron of this freedman was himself the freedman of someone else, the patron of the patron and his relatives should be called, the constitution ordains that if the children of a freedman born after manumission die intestate and having no blood-relatives at all, the patron and patroness alone are to be called. Now this right relates only to the sons and daughters of the freedman, when the patron or patroness survive them, so that the latter no longer seem to inherit from a freedman – for how can a person born after manumission be a freedman? – but they receive gain (only) by virtue of this law.

[If the free-born children of a freedman] die[37] [intestate] and without any blood-relatives at all, only the patron and patroness (of the freedman patron) and their sons and daughters are called, and only this far does the same right of succession exist, not by their being called in relation to freedmen, but from being given by our present constitution.

24. We also think it becoming and necessary to add to this law, that if it happens that the manumitters have disinherited their own children and left them nothing of their property, and it cannot be shown that they have been mistreated without reason, neither do these (the children) have patronal rights against wills of freedmen. However, if such freedmen die intestate and childless, nevertheless out of humanity we call those (children), although probably not deserving, since most of all we have in every way tailored our law to nature. **25.** Now we rule indeed that, when someone, having a son or daughter in their power (*in potestate*), has emancipated him or her, the patronal right, which he also had previously, is preserved for him, so that if the emancipated child dies intestate and childless or appoints external heirs, the emancipator is to be called either to the whole estate on intestacy or to the third share ("4 ounces") in complaint against the will, as if the emancipation (*emancipatio*) appeared

[37] The Verona palimpsest preserves the full text of the constitution from this point on (Fig. 2 in vol. 1, clx above). The words in brackets attempt to fill out the missing sense. It seems clear that this section is parallel to the end of section 23 in the Basilika and deals with the free-born children of freedmen, not with freedmen patrons of freedmen, as Blume thought.

ταύτην ἠλευθερωκότι τὸ πατρωνικὸν δίκαιον, ὅπερ καὶ πρόσθεν εἶχεν, θεσπίζομεν, ὅπως εἰ ἀδιάθετος καὶ ἄπαις ὁ ἐλευθερωθεὶς τελευτήσειεν ἢ γράψας ἐξωτικοὺς κληρονόμους, ἢ εἰς τὸ πᾶν ἐξ ἀδιαθέτου ἢ πρὸς τὸ τετραούγκιον κατὰ τῆς διαθήκης ὁ ἐλευθερώσας κληθείη, ὡσανεὶ δοκούσης contracta fiducia τῆς emancipationis γεγενῆσθαι. **26.** Ταῦτα μέντοι κρατεῖν ἐπὶ τῶν τὴν ἐλευθερίαν ἐπιθέντων θεσπίζομεν, οὓς δὴ καὶ μόνους χρῆσθαι τῇ τοῦ πάτρωνος προσηγορίᾳ συγχωροῦμεν. τοὺς γὰρ δὴ κατά τινα περίνοιαν νομισθέντας ἐν τοῖς παλαιοῖς βιβλίοις πάτρωνας εἶναι, καίτοι γε οὐκ ἐλευθερώσαντας, ὁποῖον δὴ τὸν ἐλέγξαντα τὴν συμπαιγνίαν τοῦ ἀπελευθέρου, τὸν οὐκ ὄντα μετά τε ἀληθείας πάτρωνα, ἐξ ὧν δὲ ὤμοσεν ψευδῶς, πειρώμενον ἑαυτῷ πατρωνικὰ περιτιθέναι δίκαια, εἰ καί τις ὅλως ἕτερος τοιοῦτος ἐν τοῖς βιβλίοις ἐστιν, τοῦτον παντελῶς παντὸς κέρδους ἐκ πατρωνικοῦ δικαίου χωρίζομεν, μόνην αὐτῷ τὴν ῥεβερεντίαν φυλάττεσθαι παρὰ τῶν τοιούτων δῆθεν ἀπελευθέρων συγχωροῦντες, ἐκείνους εἶναι μόνους πάτρωνας ταῖς ἀληθείαις κρίνοντες, ὅσοι ταῖς ἀληθείαις τὴν ἐλευθερίαν ἐπιτιθέασιν. **27.** Τὰ αὐτὰ δὲ δίκαια δίδομεν καὶ τοῖς κατιοῦσιν καὶ τῇ λοιπῇ φαμιλίᾳ τῶν ἐν διαθήκαις ἢ τελευταίαις ὅλως βουλήσεσιν ἐλευθερωσάντων τινὰς κατὰ τῶν καλουμένων ὀρκίνων ἀπελευθέρων, ὡσανεὶ παρ' αὐτῶν τούτων ἐλευθερωμένων.

PP. k. Dec. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

V Si in Fraudem Patroni Alienatio Facta Est

[1] *Impp. Diocletianus et Maximianus AA. et CC. Claudio.* Si in fraudem patroni libertus aliquid alienaverit, quatenus legitima pars deminuta est, revocandi tributam convenit esse potestatem.

S. XVI k. Nov. Sirmi CC. conss.

[2] *Idem AA. et CC. Iuliae.* **pr.** Defuncto quidem liberto patronus intestato succedens per actionem Calvisianam in eius fraudem alienata revocare potest. **1.** Verum cum patronum post liberti sui mortem ab eo fundi collatam donationem habuisse ratam adseveras, manumissoris factum infirmare successores eius minime possunt.

S. VIII k. Ian. Sirmi CC. conss.

to have been made *contracta fiducia* (under a fiduciary agreement).[38] **26.** However, we rule that these things have force for those granting freedom, and for them and them alone we agree the use of the name of patron. For regarding those who were considered patrons by some clever thinking in the old books, although they did not in fact manumit, such as one who proved (his claim) in collusion with the freedman, or who, while not being in truth the patron, attempted by swearing false oaths to gain patronal rights for himself, and if there is anyone else at all of this type in the books, him we bar absolutely from all profit from patronal rights, agreeing to keep for him only the *reverentia* due indeed from such freedmen, judging only those to be real patrons, who have granted real freedom. **27.** We give the same rights both to descendants and to the rest of the family of those who manumit in their wills or through any last wishes at all any persons in the category of those freedmen called *orcini*, as though they had been manumitted by themselves.

Posted December 1, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

Fifth Title If an Alienation (of Property) Has Been Made in Fraud of a Patron[39]

[1] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Claudius.* If a freedman has alienated anything in fraud of a patron, in so far as the statutory portion (of the latter)[40] has been diminished, it is proper for the power to revoke (the alienation) to be granted.

Subscribed October 17, at Sirmium, in the consulship of the Caesars (294 [293]).[41]

[2] *The same Augusti and Caesars to Julia.* **pr.** When a freedman has died, the patron who inherits from him on intestacy may recover property fraudulently alienated by means of a Calvisian action. **1.** But since you allege that the patron, after the death of his freedman, ratified the gift of a farm conveyed by him (the freedman), the heirs of the manumitter can in no way invalidate the act.

Subscribed December 25, at Sirmium, in the consulship of the Caesars (294 [293]).[42]

[38] See Inst. 1.12.6 and 3.2.8; C. 8.48.6.

[39] See D. 38.5.

[40] Under Justinianic law, probably the third share of the estate under a will as described under C. 6.4.4.

[41] Based on Diocletian's movements, Mommsen, *Gesammelte Schriften II* (1905), 231 and 276, emended the consulship to that of the Augusti (293), which is reflected in Krüger's chronological list (vol.3, p. 3127 below), but not the text of his edition proper of the Codex.

[42] See the previous note (with Mommsen, *Gesammelte Schriften II* (1905), 277; vol. 3, p. 3129 below).

VI De Obsequiis Patronis Praestandis

[1] *Imp. Alexander A. Zotico.* Contra patronum tuum famosam actionem instituere non potes.
PP. prid. id. Mai. Maximo II et Aeliano conss.

[2] *Idem A. Leontogono.* Libertae, quae voluntate patroni aut iure nuptae sunt, non coguntur officium patronis suis praestare.
PP. XVII k. Aug. Maximo II et Aeliano conss.

[3] *Idem A. Xantho.* Etiam qui pactione data a dominis manumittuntur, mero iure omne obsequium patronis debent.
PP. k. Nov. Maximo II et Aeliano conss.

[4] *Idem A. Victorino.* **pr.** Si manumissori tuo vim et audaciam obiecisti ei, qui te beneficio suo ex servitute liberando, ut adversarium haberet, fecit, praeses provinciae, quatenus coercere eiusmodi temerariam licentiam debeat, aestimabit. **1.** Nam si qua tibi pecunia debebatur sive de rebus adversus patronum disceptatio fuerat, non protinus ad litigandum currere debueras: maxime autem si hoc facere auderes, sine atrocitate certe verborum aequitatem petitionis tuae commendare iudici potuisti, omni honore patrono debito reservato.
PP. prid. k. Oct. Iuliano et Crispino conss.

Sixth Title Respectful Conduct (*Obsequium*) to be Shown to Patrons[43]

[1][44] *Emperor* ALEXANDER *Augustus to Zoticus.* You cannot bring an action which involves infamy[45] against your patron.

Posted May 14, in the consulship of Maximus, for the second time, and Aelianus (223).

[2] *The same Augustus to Leontogonus.*[46] Freedwomen, who are with the patron's consent or otherwise[47] legally married, are not compelled to render service to their patrons.

Posted July 16, in the consulship of Maximus, for the second time, and Aelianus (223).

[3] *The same Augustus to Xanthus.* Even those who are manumitted by masters by means of an agreement[48] owe every respect to patrons according to basic law.

Posted November 1, in the consulship of Maximus, for the second time, and Aelianus (223).

[4] *The same Augustus to Victorinus.* **pr.** If you used force and insolence against your manumitter, who in liberating you from slavery by his kindness has made it possible that he should have you as an adversary (in court),[49] the governor of the province will weigh up to what extent to repress your unbridled temerity. **1.** For, if any money was due you, or you had a dispute with your patron concerning property, you should not have rushed straight to litigation; but especially, if you dared to do this, you might at least have submitted the equity of your claim to the judge without insulting words, maintaining all the honor due to a patron.

Posted September 30, in the consulship of Crispinus and Julian (224).

[43] *Obsequium* was the respect intrinsically owed to his patron and patron's heirs by a freedman. See D. 37.15; Mouritsen, *Freedman* (2011), 53–58.

[44] A fuller version of this rescript appears at C. 5.55.1; Honoré, *Emperors and Lawyers* (1994), 99. n. 327.

[45] That is, bringing a case against the patron, which would brand the patron with *infamia* (involving a severe diminution of status and civil rights), if he lost.

[46] This name is otherwise unattested and should perhaps be Leontogenes.

[47] "or otherwise" translates *aut*; this is omitted in the Greek of the Basilika (49.2.11, Scheltema A, vol. VI, p. 2283), which perhaps gives more straightforward sense: "legally married with the patron's consent."

[48] The Basilika (49.2.12, Scheltema A, vol. VI, p. 2283) reference to "money" makes the point clearer. While payment at manumission would usually preclude the rendering of future services (*operae*), *obsequium* was invariable.

[49] That is, a manumitting master, by creating a free person, also creates someone with the ability to go to court.

[5] *Imp. Gordianus A. Sulpiciae.* Etiam liberis damnatorum consuetum obsequium libertos paternos praestare debere in dubium non venit. proinde si non agnoscunt reverentiae debitae munus, non immerito videntur ipsi adversus se provocare severitatem.

PP. III non. Sept. Sabino II et Venusto conss.

[6] *Idem A. Cornelio.* Libertos sive libertas, maxime quibus impositae operae non sunt, consuetum potius obsequium quam servile ministerium manumissoribus exhibere debere neque vincula perpeti non est opinionis incertae.

PP. III k. April. Attico et Praetextato conss.

[7] *Impp. Diocletianus et Maximianus AA. Metrodoro.* **pr.** Neque libertis novercae inferendae iniuriae privignis eius libera facultas esse debet: paternos etiam libertos, sicuti dicis, iniuriosos tibi fuisse ferendum non est. **1.** Praeses igitur provinciae vindictam tibi personarum condicioni congruentem impertiri non dubitabit.

PP. V id. Mai. Maximo II et Aquilino conss.

[8] *Idem AA. Hermiae.* Nec patronae tuae obsequiis refragari te fas est.

PP. XII k. Febr. Diocletiano III et Maximiano AA. conss.

VII De Libertis et Eorum Liberis

[1] *Imp. Antoninus A. Daphno.* Non est ignotum, quod ea, quae ex causa fideicommissi manumisit, ut ingratum libertum accusare non potest, cum id iudicium extra ordinem praebeatur ei, qui voluntate servo suo libertatem gratuitam praestitit, non qui debitam restituit.

PP. V k. Mai. Messala et Sabino conss.

[5] *Emperor* GORDIAN *Augustus to Sulpicia.* Even towards the children of the condemned there is no doubt that the father's freedmen must show the accustomed respect. Therefore, if they do not acknowledge the duty of due reverence, they are not undeservedly seen to call a severe punishment upon themselves.

Posted September 3, in the consulship of Sabinus, for the second time, and Venstus (240).

[6] *The same Augustus to Cornelius.* There is no uncertainty of opinion that freedmen and freedwomen, especially those on whom no services (*operae*) have been imposed, ought rather to show the accustomed respect towards their manumitters than perform servile labor; nor ought they to endure being chained.

Posted March 30, in the consulship of Atticus and Praetextatus (242).

[7] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Metrodorus.* **pr.** Freedmen of a stepmother should not be permitted the free right of inflicting harm (*iniuria*) on her stepsons; nor is it to be tolerated that freedmen of your father also should be causing you harm, as you state. **1.** The governor of the province, therefore, will not hesitate to grant you the retribution fitting these persons' status.

Posted May 11, in the consulship of Maximus, for the second time, and Aquilinus (286).

[8] *The same Augusti to Hermia.* It is not lawful for you to refuse respect towards your patroness.

Posted January 21, in the consulship of Diocletian, for the third time, and Maximian, Augusti (287).

Seventh Title Freedmen and Their Children

[1] *Emperor* ANTONINUS *Augustus to Daphnus.*[50] It is not unknown that she, who manumitted a slave pursuant to a testamentary trust, cannot accuse a freedman as ungrateful, since that extraordinary procedure is only open to one who voluntarily extended gratuitous liberty to his slave, not to one who fulfilled what was due.

Posted April 27, in the consulship of Messala and Sabinus (214).

[50] In the manuscripts, the name is either Daphus or something incomprehensibly reduplicated like Daphidaponus. Daphnus is the most likely emendation.

[2] *Imp. Constantinus A. ad Maximum pu.* **pr.** Si manumissus ingratus circa patronum suum extiterit et quadam iactantia vel contumacia cervices adversus eum erexerit aut levis offensae contraxerit culpam, a patronis rursus sub imperia dicionemque mittatur, si in iudicio vel apud pedaneos iudices patroni querella exserta ingratum eum ostendat: filiis etiam qui postea nati fuerint servituris, quoniam illis delicta parentium non nocent, quos tunc ortos esse constiterit, dum libertate illi potirentur. **1.** Sane si is, qui in nostro consilio vindicta liberatus est, post coercitionem ex paenitentia dignum se praestiterit, ut ei civitas Romana reddatur, non prius fruetur beneficio libertatis, quam si hoc patronus eius oblatis precibus impetraverit.

PP. id. April. Romae Constantino A. VII et Constantio C. conss.

[3] *Impp. Honorius et Theodosius AA. ad senatum.* Liberti non modo adversus patronos non audientur, verum etiam eandem quam patronis ipsis reverentiam praestent heredibus patronorum, quibus ingrati actio sicut ipsis manumissoribus deferetur, si illi datae sibi libertatis immemores nequitiam receperint servilis ingenii.

D. VIII id. Aug. Ravennae Mariniano et Asclepiodoto conss.

[2][51] *Emperor* CONSTANTINE *Augustus to Maximus, City Prefect.* **pr.** If a manumitted slave acts ungratefully to his patron and boastfully and contumaciously carries his head high in front of him, or becomes guilty of a slight offense, he is to be again subjected to the power and control of the patron,[52] if a complaint by the patron is brought and proves him ungrateful in court or before delegated judges; in addition the children born subsequently shall be slaves; but the wrongs of their parents do not prejudice those who, it is established, were born at the time during which they (the parents) possessed freedom. 1. And if a freedman who was liberated in our council[53] by the rod, shows himself through penitence after punishment (i.e., re-enslavement) worthy of having Roman citizenship restored to him, he is not to enjoy the grant of liberty until his patron obtains it by presenting a petition.[54]

Posted April 13, at Rome, in the consulship of Constantine Augustus, for the seventh time, and Constantius Caesar (326? [320]).[55]

[3][56] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to the Senate.*[57] Freedmen will not only be refused a hearing against their patrons, but the same reverence shown by them to their patrons must also be shown to the patrons' heirs, to whom is granted the same action for ingratitude as the manumitters themselves, if they (the freedmen), unmindful of the liberty given them, revive the perverse disposition of a slave.

Given August 6, at Ravenna, in the consulship of Marinianus and Asclepiodotos (423).

[51] Combine also with C.Th. 2.22.1 and C. 7.1.4.

[52] The constitution up to this point derives from C.Th. 4.10.1 (Constantine to the Council of the Byzaceni, given at Cologne, July 332), which must have been merged into the longer constitution to Maximus, whose Theodosian original is missing from the incomplete Theodosian Book 4. Krüger restores C. 6.7.2 to the same title at his C.Th. 4.11.1a.

[53] This is one of two references (with the associated C. 7.1.4) to the continued existence of the imperial *consilium* under Constantine, which was superseded by the more formal and ceremony-bound consistory at the latest under Constantius II. Note that "in consistorio" (C. 9.47.12: Diocletian and Maximian) is most likely an anachronistic expansion of "in cons(ilio)": Crook, *Consilium Principis* (1955), 96–97; Corcoran, *Empire of the Tetrarchs* (2000), 255–256.

[54] Judging by the mention of Latin status in C.Th. 2.22.1, the original constitution may have given Latin status to re-freed freedmen, with special rules, as here, for "up-grade" to full citizenship. Justinian's abolition of Latin status (C. 7.6.1) necessitated the excision of references to Latins from the second edition of his Codex: Falchi, "Osservazioni" (1990); Corcoran, "Softly and Suddenly" (2011), 142.

[55] On the basis of the other parts of this constitution, the year should be 320 (Constantine for the sixth time with Constantine II as Caesar), being issued by Constantine from Serdica (January 30), and posted at Rome (April 13). See Seeck, *Regesten* (1919), 169; Barnes, *New Empire* (1982), 74; Corcoran, *Empire of the Tetrarchs* (2000), 311.

[56] Derived from C.Th. 4.10.2, as is C. 9.1.21. Part of a larger constitution reconstructed by Honoré, *Crisis of Empire* (1998), 247 n. 308 and *Palingenesia* 8, W560–564, as follows: C.Th. 9.1.19 (C. 9.2.17 and 9.46.10), C.Th. 2.1.12, 1.6.11, 4.10.2 (C. 6.7.3 and 9.1.21), C.Th. 9.6.4 (C. 4.20.12).

[57] The parallel Theodosian texts have the fuller address "to the Consuls, Praetors, Tribunes of the People and the Senate greeting." See also Corcoran, "After Krüger" (2009), 439.

[4] *Impp. Theodosius et Valentinianus AA. Basso pp.* Libertinae condicionis homines vel eorum filii si militantes docebuntur ingrati, ad servitutis nexum procul dubio reducentur.

D. III k. April. Ravennae Theodosio XII et Valentiniano II AA. conss.

VIII De Iure Aureorum Anulorum et de Natalibus Restituendis

[1] *Impp. Diocletianus et Maximianus AA. et CC. Philadelpho.* Natales antiquos et ius ingenuitatis non ordo praestare decurionum, sed a nobis peti potuit.

D. XV k. April. Ravennae ipsis AA. conss.

[2] *Idem AA. et CC. Eumeni.* Aureorum usus anulorum beneficio principali tributus libertinitatis[ii] quoad vivunt imaginem non statum ingenuitatis praestat, natalibus autem antiquis restituti liberti ingenui nostro beneficio constituuntur.

D. XIII k. ... Sirmi CC. conss.

VIIII Qui Admitti ad Bonorum Possessionem Possunt et intra Quod Tempus

[1] *Impp. Severus et Antoninus AA. Macrinae.* Bonorum possessio filio familias delata cum ignorante quoque patre possit peti, emolumentum et patri adlatura, si ratam petitionem pater habuerit, amittitur transacto tempore.

Sine die et conss.

[ii] libertinis

[4][58] *Emperors* Theodosius *and* Valentinian *Augusti to Bassus, Praetorian Prefect.* There is no question that men of freed status or their children, if they are shown to be ungrateful while in the imperial service, will be reduced to the bonds of slavery.

Given March 30, at Ravenna, in the consulship of Theodosius, for the twelfth time, and Valentinian, for the second time, Augusti (426).

Eighth Title The Right of Gold Rings and the Restoration of Free Birth[59]

[1][60] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Philadelphus.* The order of decurions could not grant ancient birth rights and the right of free birth, but this could only be sought from us.

Given March 18, at Ravenna, in the consulship of the Augusti themselves (293?).[61]

[2] *The same Augusti and Caesars to Eumenes.* The right to the use of gold rings given by imperial grant to freedmen bestows, while they live, the appearance but not the actual status of free-birth. But freedmen restored to their ancient birth rights (*natalibus antiquis restitutus*) are by our grant made free-born.

Given at Sirmium, in the consulship of the Caesars (294).[62]

Ninth Title Who Can Be Admitted to the Possession of an Estate and Within What Time

[1] *Emperors* Severus *and* Antoninus *Augusti to Macrina.* Since the possession of an estate granted to a son in his father's power can be claimed also without the father's knowledge, bringing a usufruct to the father as well, if the father should ratify the claim,[63] it is lost when the time (for claiming it) has elapsed.

Without day or consul.

[58] Derived from C.Th. 4.10.3. To be combined with C. 11.48.18: Honoré, *Crisis of Empire* (1998), 249; possibly to be associated also with C.Th. 4.6.7 and C. 5.4.21.

[59] See D. 40.10–11.

[60] Combine with C. 7.9.3: Honoré, *Emperors and Lawyers* (1994), 164 n. 317.

[61] If the place of issue is correct (Mommsen, *Gesammelte Schriften* II (1905), 279 preferred emendation to Heraclea), this is a rescript of Maximian rather than Diocletian: Barnes, *New Empire* (1982), 59; Corcoran, *Empire of the Tetrarchs* (2000), 79; Wieling, "Die Gesetze der Herculier" (1995), 623. The year is generally taken as 293, but 290 is possible.

[62] The exact day is unknown as the month is not preserved by Haloander, the only source for the subscript.

[63] The Basilika version (Bas. 40.1.17, Scheltema, A, vol. V, p.1787) is clearer, as it sets out two situations, the first with subsequent parental ratification, which gave the father a usufruct in the property acquired, the second without ratification, which gave the father nothing. The legal point of the text is that the father's knowledge or actions were irrelevant to the time-limit that the son had to make a claim, since it was valid either way. This represents the Justinianic legal situation (cf. C. 7.61.8). This seems to have differed from the original text of the rescript, before Justinianic editing, according to which the father's ratification was essential (Bas. Schol. 40.1.17.2, Scheltema, B, vol. VI, p. 2361).

[2] *Idem AA. Crispino.* Si bonorum possessio dumtaxat tibi competit proximitatis nomine, habuisti spatium centum dierum utilium, ex quo eum defunctum scisti, ad bonorum possessionem amplectendam.

PP. III non. Nov. Geta II cons.

[3] *Impp. Diocletianus et Maximianus AA. Crescentino.* Infantis nomine agnitam bonorum possessionem et antequam loqueretur diem functi recte competere nulla dubitatio est.

PP. V k. Ian. Maximo II et Aquilino conss.

[4] *Idem AA. et CC. Marcello.* Emancipata si non agnovit intra annum unde liberi bonorum possessionem, nullam ad heredes vindicationem successionis transmittere potuit.

D. XIIII k. Mai. Heracliae CC. conss.

[5] *Idem AA. et CC. Maximo.* Quamdiu per facti quaestionem incertum est, utrumne secundum tabulas an ab intestato, et ex quo capite possessio sit delata, ne tibi tempus agnoscendae bonorum possessionis praefinitum cedat, superstitiosam geris sollicitudinem.

[6] *Idem AA. et CC. Frontinae.* Iuris ignorantiam nec mulieribus prodesse in edicti perpetui cursum de agnoscenda bonorum possessione manifestum est.

D. IIII k. Mai. Sirmi CC. conss.

[7] *Pars epistulae Constantii et Maximiani AA. et Severi et Maximini nobilissimorum CC.* **pr.** Bonorum quidem possessionem pupilli nomine

[2][64] *The same Augusti to Crispinus.* If you are entitled to the possession of the estate only on the basis of being close kin,[65] you had 100 available court days from the time you knew he had died, in which to take possession of the estate.

Posted November 3, in the consulship of Geta for the second time[66] (205).

[3] *Emperors Diocletian and Maximian Augusti to Crescentinus.* There is no doubt that claim of possession of an estate in the name of an infant is legally effectual, even if it died before it could speak.

Posted December 28, in the consulship of Maximus, for the second time, and Aquilinus (286).

[4] *The same Augusti and the Caesars to Marcellus.* If an emancipated daughter did not claim the possession of an inheritance under *unde liberi*[67] within a year, she could not transmit to her heirs any claim to the succession.

Given April 18, at Heraclea, in the consulship of the Caesars (294 [293]).[68]

[5] *The same Augusti and Caesars to Maximus.* As long as the question of fact is undecided, upon which grounds the possession of an estate is due, whether according to a will or as a result of intestacy, you are needlessly anxious lest the time fixed for you to claim possession of the estate has passed.

[undated; 293 or 294].

[6] *The same Augusti and Caesars to Frontina.* It is clear that ignorance of the law cannot help even women as to the time fixed in the Perpetual Edict for accepting the possession of an estate.

Given April 29 at Sirmium, in the consulship of the Caesars (294).

[7] *Part of the letter of the Emperors Constantius and Maximianus[69] Augusti and of Severus and Maximinus, the most noble Caesars.*[70] **pr.** It is

[64] This is part of the same rescript as at C. 6.55.1, but there addressed to Crispina; Honoré, *Emperors and Lawyers* (1994), 81 n. 65.

[65] According to C. 6.55.1, Crispinus (or Crispina) was sibling to the deceased, thus able to claim as an agnate (*proximus agnatus*) entitled under *unde legitimi*. A direct descendant would have had a year to claim (C. 6.9.4).

[66] The consular iteration numeral is not preserved in the manuscripts, but the year is confirmed by C. 6.55.1.

[67] That is, the Praetorian action which allowed all the children, in the first instance, to lay claim to the estate under intestacy (C. 6.14).

[68] Diocletian's movements necessitate emending the consular year to 293. See Mommsen, *Gesammelte Schriften* II (1905), 274; Barnes, *New Empire* (1982), 52.

[69] Maximianus is more generally referred to in modern works as Galerius (Caesar 293–305; Augustus 305–311).

[70] This letter, which lacks any addressee, is one of only three constitutions of the Second Tetrarchy present in the Codex (with C. 3.12.1 and 5.42.5; perhaps also C. 7.16.40 although more probably Diocletianic). They may have emanated from the court of the Caesar Maximinus, but this is not certain. See Corcoran, *Empire of the Tetrarchs* (2000), 142–143.

agnoscere tutorem potuisse aperte declaratur. 1. Ipse autem pupillus bonorum possessionem sine tutoris auctoritate amplecti non potest, nisi etiam impuberi sine tutoris auctoritate hoc postulanti sciens hoc competens iudex dedit bonorum possessionem: tunc enim emolumentum successionis videtur praetorio iure quaesitum esse.

VI id. Sept. Constantio et Maximiano conss.

[8] *Imp. Constantinus A. ad Dionysium.* Quicumque res ex parentum vel proximorum successione iure sibi competere confidit, sciat sibi non obesse, si per rusticitatem vel ignorantiam facti vel absentiam vel quamcumque aliam rationem intra praefinitum tempus bonorum possessionem minime petisse noscatur, quoniam haec sanctio huiusmodi consuetudinis necessitatem mutavit.

PP. prid. id. Mart. Heliopoli Constantino A. et Constant. C. conss.

[9] *Idem A. ad populum.* Ut verborum inanium excludimus captiones, ita haec observari decernimus, ut apud quemlibet iudicem vel etiam apud duumviros qualiscumque testatio amplectendae hereditatis ostendatur, statutis prisco iure temporibus coartanda, eo addito, ut, etiamsi intra alienam vicem, id est prioris gradus, properantius exseratur, nihilo minus tamen efficaciam parem, quasi suis sita curriculis, consequatur.

plainly declared that a *tutor* can claim possession of an estate in the name of a ward. 1. The ward himself, moreover, cannot take possession of the estate without the *tutor*'s consent, unless a proper judge in full knowledge of this gives possession of the estate to one under the age of puberty, who requests it without the *tutor*'s consent; for then the profit from the succession is seen to have been sought under Praetorian law.

September 8, in the consulship of Constantius and Maximianus (305?).[71]

[8][72] *Emperor* CONSTANTINE *Augustus to Dionysius.*[73] Whoever is confident in lawfully seeking for himself property on the grounds of succession from parents or relatives is to know that there is no impediment for him, if, through his rusticity or ignorance of the facts or absence or any other reason, he is known not to have claimed possession of the estate within the time-limit, since this ordinance has changed the compulsion of such a custom.

Given (Posted?) March 14, at Heliopolis (Baalbek), in the consulship of Constantius Augustus and Constantius Caesar (329 or 339?).[74]

[9][75] *The same Augustus to the people.* In order to banish the sophistry of empty words, we order the following to be observed, that any sort of declaration accepting an inheritance may be made before any judge or even before duovirs (*duumviri*), but kept within the times fixed by the former law; with this added, that, even if exercised too hastily and during another's turn, that is of a nearer degree of relationship, it is nonetheless to have the same efficacy as if made within its proper time-schedule.

[71] No consular iteration is given, so that the year could be 305 or 306, although the other Second Tetrarchy texts seem to belong to 305. See Corcoran, "The Tetrarchy: Policy and Image" (2006), 46.

[72] Combine with C.Th. 8.18.4.

[73] Identified as governor of Phoenice in 328–9: *PLRE* I, pp. 259–60, Dionysius 11; Barnes, *New Empire* (1982), 153.

[74] The date translated is that of Haloander's Code edition (Krüger prints *Constantino* not *Constantio*). The associated Theodosian text gives the date as that of posting in the second consulship of Constantius and Constans (thus 339). Seeck, followed by Barnes (see previous note), attributed the text to Constantine in 329 (consuls: Constantine Aug. VIII and Constantine Caes. IV), posted up at Heliopolis (*Regesten* (1919), 179). Cuneo, *La Legislazione* (1997), 42–45, attributes it to Constantius II as issued in 339 at Heliopolis, which could match that emperor's movements: Barnes, *Athanasius and Constantius* (1993), 219.

[75] This is often taken as part of a long edict reforming the law of succession issued by Constantine at Serdica on January 31, 320, and posted at Rome on April 1 (thus, Seeck, *Regesten* (1919), 169; Corcoran, *Empire of the Tetrarchs* (2000), 194 n. 47; Matthews, *Laying Down the Law* (2000), 236–240), supported also by a reference to this ruling as a *lex Constantiniana* by Justinian himself (C. 5.70.7.3). Others, however, prefer to keep the date and place, and attribute this and two other Code texts (C. 6.23.15, 6.37.21) to a separate measure of Constantius II in 339: Cuneo, *La Legislazione* (1997), 31–36). The pertinent C.Th. texts are 3.2.1, 4.12.3, 8.16.1, 11.7.3

D. k. Febr. Laodiceae Constantio A. II et Constante A. conss.

X Quando Non Petentium Partes Petentibus Adcrescunt

[1] *Imp. Gordianus A. Marcianae.* Quotiens pluribus liberis cessante legitima successione bonorum possessio defertur, beneficium edicti perpetui quibusdam omittentibus his solis qui bonorum possessionem agnoverunt portionem non petentium adcrescere in dubium non venit.

D. id. Ian. Peregrino et Aemiliano conss.

XI De Bonorum Possessione Secundum Tabulas

[1] *Imp. Alexander A. Vitali.* Pendente appellatione a sententia, qua falsum testamentum pronuntiatum est, incerto adhuc, an defunctus intestatus decesserit, proximitatis nomine bonorum possessioni locus non est.

D. III k. Mai. Maximo II et Aeliano conss.

[2] *Imp. Gordianus A. Cornelio.* **pr.** Bonorum quidem possessionem ex edicto praetoris non nisi secundum eas tabulas, quae septem testium signis signatae sunt, peti posse in dubium non venit. **1.** Verum si eundem numerum adfuisse sine scriptis testamento condito doceri potest, iure civili testamentum factum videri ac secundum nuncupationem bonorum possessionem deferri explorati iuris est.

PP. XII k. Mart. Attico et Praetextato conss.

Given February 1, at Laodicea, in the consulship of Constantius, for the second time, and Constans, Augusti (339).[76]

Tenth Title When the Shares of Non-Claimants Accrue to the Benefit of Claimants

[1] *Emperor* GORDIAN *Augustus to Marciana.* There is no doubt that, whenever statutory succession does not apply and possession of the estate is available to several children, if some of them fail to claim the benefit of the Perpetual Edict, the portion of those not claiming accrues to those alone who have claimed possession of the estate.

Given January 13, in the consulship of Peregrinus and Aemilianus (244).

Eleventh Title Possession of an Estate According to a Will[77]

[1][78] *Emperor* ALEXANDER *Augustus to Vitalis.*[79] Pending an appeal from a verdict by which a will has been declared a forgery, and it being still uncertain whether the deceased died intestate, there in no room for the claim to the possession of an estate by reason of close-kin status.

Given April 29, in the consulship of Maximus, for the second time, and Aelianus (223).

[2] *Emperor* GORDIAN *Augustus to Cornelius.* **pr.** There is no doubt that the possession of an estate under the Praetor's Edict cannot be claimed according to a will unless it has been sealed by the seals of seven witnesses, **1.** But if it can be shown that this same number was present when a will not in writing was made, it is the considered law that the will is seen to have been made according to the Civil Law and that the possession of the estate is granted according to the verbal declaration.

Posted February 18, in the consulship of Atticus and Praetextatus (242).

[76] The subscript is partially preserved only by Haloander, with the consular year taken by Krüger from the associated C. 6.23.15 and 6.37.21. The place of issue is preserved in C. 6.23.15 as Serdica. If Haloander is correct, the city could be one of several Laodiceas. There were two in Syria alone. Constantius was based in Antioch and Syria in and around 339 (Barnes, *Athanasius and Constantius* (1993), 219).

[77] See D. 37.11.

[78] Combine with C. 6.24.3; Honoré, *Emperors and Lawyers* (1994), 99 n. 327.

[79] According to C. 6.24.3, Vitalis was a soldier, named as substitute heir in the will of a cavalryman, Alexander. The question of forgery is not mentioned in that rescript.

XII De Bonorum Possessione Contra Tabulas Quam Praetor Liberis Pollicetur

[1] *Imp. Alexander A. Rufo.* Liberi contra tabulas parentium bonorum possessione admissa solis parentibus et liberis legata praestare debent secundum edictum.

PP. IIII id. Oct. Maximo II et Aeliano conss.

[2] *Idem A. Hilarae.* Postumo nato, qui neque heres institutus a patre neque nominatim exheredatus est, testamentum rumpitur: et si contra tabulas bonorum possessio infanti a tutore petita est, secundum tabulas possessio locum habere non potest.

D. k. Mart. Iuliano et Crispino conss.

XIII De Bonorum Possessione Contra Tabulas Liberti, Quae Patronis vel Liberis Eorum Datur

[1] *Imp. Gordianus A. Herculiano.* Licet ex causa fideicommissi manumissus sit, quem ex voluntate patris cum sorore te manumisisse proponis, tamen, si extraneos scripsit heredes, partis legitimae contra tabulas eius bonorum possessionem petendo, vel contra nuncupationem, si testamentum sine scriptis conditum est, intra tempora edicto praestituta eam partem poteris obtinere.

PP. VI k. Dec. Gordiano A. et Aviola conss.

[2] *Imp. Theodosius A. Asclepiodoto pp.* Patronus liberti muneribus electis et operis contra tabulas bonorum possessione repellitur.

D. XIII k. Mart. Constantinopoli Victore cons.

XIIII Unde Liberi

[1] *Impp. Diocletianus et Maximianus AA. Sarpedoni.* Si avus tuus relictis tribus emancipatis filiis decessit hique bonorum possessionem unde liberi acceperunt, pro portione heredes eos extitisse palam est.

Twelfth Title Possession of an Estate Contrary to a Will, Which the Praetor Promises to Children[80]

[1] *Emperor* ALEXANDER *Augustus to Rufus.* When children are admitted to the possession of an estate contrary to their parents' will, according to the Edict they are compelled to pay the legacies only to parents and children.

Promulgated October 12, in the consulship of Maximus, for the second time, and Aelianus (223).

[2] *The same Augustus to Hilara.*[81] When a posthumous child is born, one who has neither been appointed an heir nor been expressly disinherited, the will is broken; and if possession of the estate contrary to the will has been sought by a *tutor* for the infant, possession in accordance with the will can have no place.

Given March 1, in the consulship of Julian and Crispinus (224).

Thirteenth Title Possession of an Estate Contrary to the Will of a Freedman, Which Is Given to Patrons or Their Children[82]

[1] *Emperor* GORDIAN *Augustus to Herculianus.* Although he, whom you state you with your sister manumitted in accordance with your father's will, was manumitted on the basis of a trust, however, if he has written (into his will) external heirs, you can within the time fixed in the Edict obtain your share, by claiming possession of the statutory portion of the estate contrary to the will, or contrary to the verbal declaration, if the will was made without writing.

Posted November 26, in the consulship of Gordian Augustus and Aviola (239).

[2][83] *Emperor* THEODOSIUS *Augustus to Asclepiodotus, Praetorian Prefect.* The patron of a freedman, by having chosen to have gifts and services, is excluded from the possession of the estate contrary to a will.

Given February 17, at Constantinople, in the consulship of Victor (424).

Fourteenth Title "Whereby Children" (*Unde Liberi*)[84]

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Sarpedon.* If your grandfather died leaving three emancipated children and they have taken possession of the estate under the rules of *unde liberi*, it is clear that they became heirs in equal portions.

[80] See D. 37.4.
[81] The name is given as Clara in the *Summa Perusina*: Patetta, *Adnotationes Codicum* (1900/2008) 177.
[82] See D. 37.14.
[83] This short text is an extract from the longer text at C.Th. 4.4.7, whence also C.Th. 2.19.7 and C. 6.36.8.
[84] *Unde liberi* refers to the clause in the Praetor's Edict, which allowed children, in the first instance, to claim the inheritance under Praetorian rather than Civil intestacy rules.

PP. IIII non. Mart. Maximo II et Aquilino conss.

[2] *Idem AA. et CC. Zosimo.* Ex testamento vel ab intestato existente filio vel nepote suo herede nemo potest intestato heres existere.

D. VII id. Mai. AA. conss.

[3] *Imp. Constantius A. ad Leontium comitem Orientis.* Qui se patris post avum intestatum defuncti negat heredem, mortui avi paterni suscipere facultates non potest, maxime emancipatus, nisi per bonorum possessionem ad huiusmodi beneficium pervenerit.

D. VIII id. April. Limenio et Catulino conss.

XV Unde Legitimi et Unde Cognati

[1] *Imp. Alexander A. Ulpio.* Consobrinorum tuorum intestatorum bona, si ad prioris necessitudinis neminem iure pertinuerunt, tuque eorum possessionem agnovisti, persequi non prohiberis.

D. IIII id. Ian. Iuliano et Crispino conss.

[2] *Impp. Diocletianus et Maximianus AA. Sozioni.* Cum propiorem sobrinum, id est natum a consobrina, rebus humanis intestatum defunctum proponas, intellegis sine auxilio bonorum possessionis eius te successionem vindicare non posse.

Posted March 4, in the consulship of Maximus, for the second time, and Aqulinus (286).

[2] *The same Augusti and the Caesars to Zosimus.* If there survives a son or grandson as *suus heres* under a will or on intestacy, there can be no other heir on intestacy.

Given May 9, in the consulship of the Augusti (293).

[3][85] *Emperor* CONSTANTIUS *Augustus to Leontius, Count of the East.* He, who repudiates the inheritance of his father, who died after his grandfather had died intestate, cannot take over the property of his deceased paternal[86] grandfather, especially if emancipated, unless he comes to this benefit through the right of possession of the estate.

Given April 6, in the consulship of Limenius and Catulinus (349).

Fifteenth Title "Whereby Statutory Heirs and Whereby Cognates" (*Unde Legitimi et Unde Cognati*)[87]

[1] *Emperor* ALEXANDER *Augustus to Ulpius.* You are not forbidden to acquire the property of your intestate maternal cousins,[88] if it does not legally belong to anyone of nearer relationship and if you have applied for possession of it.

Given January 10, in the consulship of Julian and Crispinus (224).

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Sozon.*[89] Since you state that your second cousin,[90] that is the son of your female maternal cousin, died intestate, you realize that you cannot claim to succeed him without the grant of possession of the estate.

[85] This derives from C.Th. 8.18.5, as does C. 6.30.15.

[86] This is not stated explicitly in C.Th. 8.18.5, whose focus is on the maternal grandfather.

[87] This title refers to two actions under the Praetor's Edict (cf. D. 38.7–8). Under the Praetorian rules of succession, next in line after the children came the Civil Law heirs (agnates, those in the male line) and after them cognate relatives (through the female line). For the grades of relationship, see Inst. 3.5–6; D. 38.10.1.

[88] Strictly "consobrinus/-a" means the child of a maternal aunt, but the term could be used loosely for all first cousins, who belonged to the "fourth grade" of relationship (D. 38.10.1.6; Inst. 3.6.4; Theophilus, *Paraphrasis* 3.6.4).

[89] The name, variously transmitted, is printed by Krüger as Sozion, but this is an otherwise unattested name, in contrast to the fairly common Sozon; e.g., Osborne and Byrne, *LGPN* II, pp. 411–412.

[90] Correctly "propior sobrino," succeeding in the "fifth grade" of relationship; so D. 38.10.1.7 (corrected in the Florentine manuscript); Festus, *De Verborum Significatu*, s.v. propior sobrino (ed. Lindsay, 260.25F, 261.7P); Moreau, "Le lexique de Festus" (2007). Almost all manuscripts write this vulgarly as "proprior sobrinus"; e.g., Inst. 3.6.5 and also Theophilus, *Paraphasis* 3.6.5 (so the manuscripts, but corrected at Lokin *et al.*, *Paraphrasis Institutionum* (2010), 548–549).

D. VII k. Iun. Laodiceae AA. conss.

[3] *Idem AA. et CC. Felici.* Nepotibus avi materni pro virili portione etiam iure honorario successio defertur.

D. id. Oct. Sirmi AA. conss.

[4] *Idem AA. et CC. Syriscae.* Non hoc, an tenuerit quis res hereditarias nec ne, sine voluntate adquirendae sibi hereditatis, quaerendum est, sed an admisit hereditatem vel bonorum possessionem.

D. XI k. Ian. Sirmi AA. conss.

[5] *Idem AA. et CC. Platoni.* Certum est quidem cognationis iure citra admissionem bonorum possessionis neminem posse succedere: defuncti vero cognati succedere nolentes petere bonorum possessionem non urguentur.

D. XII k. Mart. Sirmi CC. conss.

XVI De Edicto Successorio

[1] *Imp. Alexander A. Iulio.* Si mater tua propter furorem suum patrui sui bonorum possessionem non accepit, tu filius eius ad eorundem bonorum patrui magni possessionem ex edicto, quo prioribus non petentibus sequentibus permittitur, admissus es.

PP. IIII id. Dec. Maximo II et Aeliano conss.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Firmo.* Si aviae frater eorum, de quorum successione agitur, velut ex testamento adiit hereditatem, quos intestatos decessisse ac falsum testamentum prolatum contendis, et ab intestato non petita bonorum possessione vita functus est, ac tu licet quinto gradu constitutus ex successorio capite petisti bonorum possessionem vel necdum exclusus petas, eorum successionem potes vindicare. nam si is, quem quarto gradu constitutum non ambigitur, ex edicto petiit nec hoc te latuit, frustra nobis supplicasti.

Given May 26, at Laodicea, in the consulship of the Augusti (290).[91]

[3] *The same Augusti and the Caesars to Felix.* Succession to a maternal grandfather is granted also by Praetorian law to the grandchildren in equal portions.

Given October 15, at Sirmium, in the consulship of the Augusti (293).

[4] *The same Augusti and Caesars to Syrisca.* The question is not whether or not someone held the property of an inheritance without the intention of acquiring the inheritance, but whether he claimed the inheritance or possession of the estate.

Given December 22, at Sirmium, in the consulship of the Augusti (293).

[5] *The same Augusti and Caesars to Plato.* It is certain that no one can succeed by right of cognate relationship without claiming possession of the estate. Cognate relatives of someone deceased, who do not wish to succeed, are not compelled to seek possession of the estate.

Given February 18, at Sirmium, in the consulship of the Caesars (294).

Sixteenth Title The Edict Relating to the Order of Succession[92]

[1] *Emperor ALEXANDER Augustus to Julius.* If your mother failed, on account of her insanity, to take possession of the estate from her paternal uncle, you, as her son, are admitted to possession of the same estate of your great-uncle on the basis of the Edict, whereby this is allowed to those of remoter degree of relationship, when those of nearer degree make no claim.[93]

Posted December 10, in the consulship of Maximus, for the second time, and Aelianus (223).

[2] *Emperors DIOCLETIAN and MAXIMIAN Augusti and the Caesars to Firmus.* If the brother of the paternal grandmother of those, the succession to whom is in question, entered on the inheritance as if on the basis of a will, when you assert that they died intestate and a forged will was produced, and if he (the grandmother's brother) died without having claimed possession of the estate on intestacy, and you, although placed in the fifth degree of relationship, have sought possession of the estate under the clause relating to the order of succession, or seek it while not yet barred from so doing, you can legally take over the succession to them. But if he (the grandmother's brother), who, there is no doubt, is placed in the fourth degree, claimed under the Edict and this was not unknown to you, you have petitioned Us to no purpose.

[91] Diocletian's movements mean that the year is best identified as 290. See Barnes, *New Empire* (1982), 51.

[92] See D. 38.9.

[93] Julius' mother was an agnate (descendant in the male line) of her paternal uncle, but since she did not claim, Julius could, but only on the basis of belonging to the next category of claimants (cognates, in the female line).

S. VI id. April. Sirmi CC. conss.

XVII De Carboniano Edicto

[1] *Impp. Diocletianus et Maximianus AA. et CC. Florae.* Si tibi ac filio tuo status ab his contra quos supplicas movetur quaestio, perspicis praemature rerum, quas velut de patris successione filius tuus vindicat, restitutionem postulari, cum, si in pupillari permaneat aetate, secundum formam edicti Carboniani data bonorum possessione satisdatione impleta tunc demum in possessionem eum constitui conveniat vel hac non oblata portionem ab omnibus quam vindicat possideri, servitutis vero quaestionem in tempus differri pubertatis.

S. XII k. Nov. Sirmi AA. conss.

[2] *Imppp. Valentinianus Theodosius et Arcadius AAA. ad Rufinum pp.* Carbonianum edictum sub personis legitimis indubitato matrimonio, custodito partu et probata legitima successione defertur, scilicet ut in possessione novus heres constitutus usque ad pubertatis annos sine inquietudine rebus utatur interdum alienis.

D. IIII k. Oct. Constantinopoli Theodosio A. III et Abundantio conss.

XVIII Unde Vir et Uxor

[1] *Impp. Theodosius et Valentinianus AA. Hierio pp.* Maritus et uxor ab intestato invicem sibi in solidum pro antiquo iure succedant, quotiens deficit omnis parentium liberorum seu propinquorum legitima vel naturalis successio, fisco excluso.

Subscribed April 8, at Sirmium, in the consulship of the Caesars (294).

Seventeenth Title The Carbonian Edict[94]

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Flora.* If a question as to the status of yourself and your son is raised by those against whom you direct your petition,[95] you notice that the demand for the restitution (to them) of the property which your son claims as if as an inheritance from his father is premature, since, if he is still of age to be a ward, under the rules of the Carbonian Edict, with possession of the estate granted and security supplied, it is then fitting for him to be established in possession, or, if this (security) is not provided, for the part, which he claims, to be in the possession of all (the claimants); but the question of his slavery is to be deferred to the time of his reaching puberty.

Subscribed October 21, at Sirmium, in the consulship of the Augusti (293).

[2][96] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Rufinus, Praetorian Prefect.* The Carbonian Edict is granted in the case of legitimate persons, from an undoubted marriage, where childbirth was monitored[97] and a legal right to succession shown, so that the new (i.e. posthumous) heir, established in possession, may in the meantime have the use of property not his own without molestation until the age of puberty.

Given September 28, at Constantinople, in the consulship of Theodosius Augustus, for the third time, and Abundantius (393).

Eighteenth Title "Whereby Husband and Wife" (*Unde Vir et Uxor*)[98]

[1][99] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Hierius, Praetorian Prefect.* A husband and wife inherit from each other the whole of the property on intestacy according to ancient law, whenever the entire statutory or natural succession of parents, children or relatives fails, with the Treasury excluded.

[94] Cf. D. 37.10.

[95] Identified in the Basilika (40.5.17, Scheltema A, vol. v, p. 1808) as the father's brother, claiming that Flora and thus her son were slaves.

[96] This derives from C.Th. 4.3.1. Part of a larger constitution, reconstructed by Honoré, *Crisis of Empire* (1998); *Palingenesia* 2, E420–3, in this order: C.Th. 11.30.52, 2.12.5, 4.3.1 (C. 6.17.2), C.Th. 4.8.9.

[97] That is, to ensure that a child really was born (and born alive) without substitution.

[98] Another action reflecting the form of the Praetor's Edict; cf. D. 38.11.

[99] This derives from C.Th. 5.1.9. Part of a larger constitution, reconstructed by Honoré, *Crisis of Empire* (1998); *Palingenesia* 4, E854–9, in this order: C.Th. 3.7.3 (C. 5.4.22), C.Th. 3.5.13 (C. 5.3.17), C.Th. 4.6.8, C.Th. 5.1.9 (C. 6.18.1), C.Th. 2.3.1 (C. 2.57.2), C. 6.61.2.

D. x k. Mart. Constantinopoli Felice et Tauro conss.

XVIIII De Repudianda Bonorum Possessione

[1] *Impp. Diocletianus et Maximianus AA. et CC. Theodotiano.* Emancipatus repudiata bonorum possessione absentiae patroni causae velamento rursum ad eandem redire quaestionem frustra conatur.
Sine die et conss.

[2] *Idem AA. et CC. Theodoro.* Filio delatam bonorum possessionem patri ad fraudem filii repudiare non licet.
S. VI k. Dec. Nicomediae CC. conss.

XX De Collationibus

[1] *Imp. Alexander A. Deuteriae.* Emancipatos liberos testamento heredes scriptos et ex eo successionem obtinentes a patre donata fratri conferre non oportere, si pater, ut hoc fiat, supremis iudiciis non cavit, manifesti iuris est.
PP. III id. Iul. Iuliano et Crispino conss.

[2] *Idem A. Primo.* Si pater intestato decessit relictis duobus filiis et filia, cuius nomine dotem promiserat, portiones hereditatis aequae sunt et dos nihilo minus ita conferenda est, ut pro portionibus fratres eius a necessitate praestandae eius liberentur.
PP. IIII id. Sept. Iuliano et Crispino conss.

Given February 20, at Constantinople, in the consulship of Felix and Taurus (428).[100]

Nineteenth Title The Repudiation of Possession of the Estate

[1][101] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Theodotianus.* An emancipated son, who has repudiated the possession of an estate, tries in vain to use the absence of his legal representative (*patronus*) for a case as a basis to return again to the same question.
Without day or consuls ([294]).

[2] *The same Augusti and Caesars to Theodorus.* A father is not permitted, in fraud of his son, to decline possession of an estate available to his son.
Subscribed November 26, at Nicomedia, in the consulship of the Caesars (294).

Twentieth Title Hotchpot (*Collatio*)[102]

[1] *Emperor* ALEXANDER *Augustus to Deuteria.* It is plainly the law that emancipated children, named as heirs in a will and from that obtaining the succession, need not bring into hotchpot with their brother gifts from their father, if the father did not require that to be done by his last wishes.
Posted July 13, in the consulship of Julius and Crispinus (224).

[2] *The same Augustus to Primus.* If a father has died intestate, leaving two sons and a daughter, in whose name he had promised a dowry, the portions of the inheritance are equal, and the dowry nonetheless must be brought into hotchpot, so that the portions of the brothers may be freed from the necessity of furnishing it (the dowry).
Posted September 10, in the consulship of Julius and Crispinus (224).

[100] The consulship is taken from the Theodosian Codex. The Verona palimpsest reads "Hierio et Tauro," probably a contamination from the name of the recipient. Krüger (*ad loc.*) suggests that a similar erroneous subscript was incorrectly emended in Haloander's edition to read "Hierio et Ardaburio" (= 427).

[101] For a slightly different version of this rescript (dated to December 294 at Nicomedia), see C. 2.6.4. Combine also with C. 6.31.3 (dated "sine die" 294) (cf. different version at 2.4.38, dated December 294) addressed to the same recipient. It appears that there were two divergent versions of the same rescript (this one perhaps deriving from the Gregorian, the other from the Hermogenian Codex?).

[102] Hotchpot or collation principally arose on intestacy, when emancipated children, technically excluded as outside the *familia* and, therefore, not being *sui heredes* in Civil Law, applied for their share under Praetorian law. They were required to bring their property into account for the purposes of equalization with the unemancipated children, who were unable to hold property in their own name. See also D. 37.6–7.

[3] *Idem A. Alexandro.* Pactum dotali instrumento comprehensum, ut contenta dote quae in matrimonio collocabatur nullum ad bona paterna regressum haberet, iuris auctoritate improbatur nec intestato patri succedere filia ea ratione prohibetur. dotem sane quam accepit fratribus qui in potestate manserunt conferre debet.

D. XIIII k. Iul. Agricola et Clemente conss.

[4] *Imp. Gordianus A. Marino.* Filiae dotem in medium ita demum conferre coguntur, si vel ab intestato succedant vel contra tabulas petant: nec dubium est profecticiam seu adventiciam dotem a patre datam vel constitutam fratribus qui in potestate fuerunt conferendam esse. his etenim, qui in familia defuncti non sunt, profecticiam tantummodo dotem post varias prudentium opiniones conferri placuit.

PP. IIII id. Mart. Gordiano A. et Aviola conss.

[5] *Idem A. Alexandrae.* Dotis quidem petitio perseverante matrimonio tibi non competebat: quamvis enim eam intestato patre defuncto fratri conferre debueras, non tamen eo nomine adversus maritum tibi actio potuit esse, cum eo minus in partem tibi delatae successionis patris auferre potueris.

D. non. Sept. Gordiano A. et Aviola conss.

[6] *Idem A. Claudio.* Ea demum ab emancipatis fratribus his qui manserunt in potestate conferri consueverunt, quae in bonis eorum fuerunt eo tempore, quo pater fati munus implevit, exceptis videlicet quae ab ipsis aliis debentur.

D. VII k. Mai. Peregrino et Aemiliano conss.

[7] *Imp. Philippus A. Tyranniae.* Filiam testamento patris institutam heredem fratribus isdemque coheredibus dotem conferre non oportere, nisi pater hoc ipsum specialiter designavit, explorati iuris est.

PP. VI k. Mai. Praesente et Albino conss.

[3] *The same Augustus to Alexander.* The agreement contained in the dotal document, that the woman should be content with the dowry, which was given in connection with the marriage, and should have no further claim on her father's property, is not supported by the authority of the law, nor is the daughter on that basis prohibited from the succession to her intestate father. Obviously, she must bring the dowry, which she received, into hotchpot with her brothers, who had remained under their father's power.

Given June 18, in the consulship of Agricola and Clemens (230).

[4] *Emperor* GORDIAN *Augustus to Marinus.* Daughters must bring dowry into hotchpot only if they inherit on intestacy or claim contrary to a will; nor is it doubtful that the dowry given or set up by the father, either from his own or another's property, must be brought into hotchpot for the benefit of brothers who were in the power (of their father). And indeed, for those, who are not in the *familia* of the deceased, it was decided, after the varying opinions of the experts, that only the dowry coming from the father's property need be brought into hotchpot.

Posted March 12,[103] in the consulship of Gordian Augustus and Aviola (239).

[5] *The same Augustus to Alexandra.* You certainly had no right to reclaim dowry during continuance of the marriage. For, although you must bring it into hotchpot with your brother on the death of your intestate father, there could not on that basis, however, be an action for you against your husband, since you would simply take that much less in the portion of your father's inheritance given to you.

Given September 5, in the consulship of Gordian Augustus and Aviola (239).

[6] *The same Augustus to Claudius.* Only those things, which were part of their property at the time when their father fulfilled the duty of fate, have customarily been put into hotchpot by emancipated brothers with those who remained in the power (of their father), with the exception, that is, of what is owed by them (sc. the emancipated brothers) to others.

Given April 25, in the consulship of Peregrinus and Aemilianus (244).

[7] *Emperor* PHILIP *Augustus to Tyrannia.* The law is clear that a daughter appointed as heir in her father's will need not bring her dowry into hotchpot with her brothers also co-heirs, unless the father specifically required this very thing.

Posted April 26, in the consulship of Praesens and Albinus (246).

[103] So Haloander's edition; May 10 in the manuscripts.

[8] *Impp. Diocletianus et Maximianus AA. Callippo.* Si soror tua in paternorum bonorum divisione te fefellit nec dotem, quam acceperat a patre vestro intestato diem functo, contulit, praeses provinciae examinatis partium adlegationibus cum bonis dotem confundi iubebit et, quod deducta ratione plus apud eam esse animadverterit, restitui tibi iubebit. idem est et si arbitro dato divisio celebrata est.

S. VI id. Iul. ipsis AA. conss.

[9] *Idem AA. et CC. Onesimo.* Si emancipati utrique fuistis a patre, collatio cessat. si autem frater tuus in potestate mortis tempore fuerat nec ullum testamentum relictum vel novissimum iudicium communis patris teque emancipatum probatum fuerit, ab intestato te ad successionem paternam venientem ad collationem forma edicti perpetui certo iure provocat.

S. VI k. Mai. Heracliae AA. conss.

[10] *Idem AA. et CC. Irenaeae.* A patre verbis precariis in codicillis relictum extero iure capiens filia ad collationem dotis urgueri non potest.

S. VI k. Dec. Sirmi AA. conss.

[11] *Idem AA. et CC. Artemiae.* Postumo praeterito patris testamentum rumpenti atque intestato succedenti emancipatum petita bonorum possessione conferre debere bona sua perpetuo edicto cavetur, cum his etiam, qui sui futuri essent, si vivo patre nati fuissent, conferri manifeste significatur, et emancipatis, si legi datae collationi non pareatur, denegandas actiones non est ambigui iuris.

PP. V k. Ian. ipsis AA. conss.

[8] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Callippus.* If your sister cheated you in the division of your father's property, by not bringing into hotchpot the dowry, which she had received from your father who died intestate, the governor of the province, having examined the allegations of the parties, will order the dowry to be included in the property, and he will order her to restore to you the excess which he finds her to have, when he has made the appropriate deduction. This is the same even if the division was made by an appointed arbitrator.

Subscribed July 10, in the consulship of these same Augusti (290).

[9] *The same Augusti and the Caesars to Onesimus.* If both of you were emancipated by your father, hotchpot does not happen. But if your brother was in his father's power at the time of his death, and it is shown that the father you have in common left no will nor last wishes and that you were emancipated, the rule of the Perpetual Edict by clear law requires you to carry out hotchpot, when coming into the succession to your father under intestacy.

Subscribed April 26, at Heraclea, in the consulship of the Augusti (293).[104]

[10] *The same Augusti and Caesars to Irenaea.* Since a daughter takes property bequeathed by her father at his discretion in a codicil under the rules for outsiders, she cannot be compelled to bring her dowry into hotchpot.

Subscribed November 26, at Sirmium, in the consulship of the Augusti (293).[105]

[11] *The same Augusti and Caesars to Artemia.* When a posthumous child, passed over in a testament, breaks it and succeeds on intestacy, an emancipated son must, as provided by the Perpetual Edict, bring his property into hotchpot when seeking the possession of the estate, since it is clearly required to bring property into hotchpot also with those, who would be *sui heredes*, if they had been born while their father lived, and the law is not uncertain that rights of action are to be denied to emancipated children, if they do not comply with hotchpot as provided by the law.[106]

Posted December 28, in the consulship of the Augusti (293).

[104] Haloander's edition, the only source for the subscript, gives the Caesars as consuls (294), but this is emended by Krüger, since the rescript must come chronologically before the subsequent constitutions. Numerous others attest Diocletian's presence at Heraclea at this period (Mommsen, *Gesammelte Schriften* II (1905), 274; Barnes, *New Empire* (1982), 52).

[105] Haloander's edition is the only source for the consulate and records the Caesars, but this is emended by Krüger as with the previous constitution. See Mommsen, *Gesammelte Schriften* II (1905), 276; Barnes, *New Empire* (1982), 53.

[106] Taking "collationi" with "pareatur" and following the sense of the Greek *kata podas* translation (Basilika scholia 41.7.27, Scheltema B, vol. VI, p. 2489).

[12] *Idem AA. et CC. Nilanthiae.* **pr.** Filiae, licet maneat in sacris, si dotem non conferat, quam mortis tempore communis patris habuit, fratribus in eadem familia constitutis, actiones hereditarias negari non ambigitur. **1.** Unde consulte ac pro iuris ratione collationem fratribus tuis, quos in patris communis mortis tempore fuisse potestate proponis, offers. **2.** Quin autem fratres tui durantes in familia patris peculium, si hoc neque castrense neque relictum eis doceatur, praecipuum habere non possint, sed in divisione paternae veniat hereditatis, nec quicquam mutet, penes quem res ex hoc proficiscentes et in eadem causa durantes constitutae reperiantur, absoluti manifestique iuris est.

D. XI k. Febr. Sirmi CC. conss.

[13] *Idem AA. et CC. Antistiae.* Si donatione tibi post mortem patris quaesisti fundum, soror tua portionem eius vindicare non potest. nam si is filiae familias constitutae tibi a patre donatus est, cum sorore patri communi succedens eum praecipuum habere contra iura postulas.

D. VI id. Febr. Sirmi isdemque CC. conss.

[14] *Idem AA. et CC. Stratonicae.* Si maritus quondam tuus ab intestato patri suo heres extitit et ei postumus editus successit, actionem hereditariam amitae filii vestri, quam habuit patris sui mortis tempore dotem non conferenti, denegare praeses non dubitabit.

PP. VII k. Mart. Trimontii Tusco et Anullino conss.

[15] *Idem AA. et CC. Philippo.* Nec emancipati post mortem communis patris quaesita conferre coguntur, sed haec retinentes eius bona pro hereditaria dividunt portione.

D. id. Dec. ipsis CC. conss.

[12] *The same Augusti and Caesars to Nilanthia.* **pr.** There is no doubt that actions for an inheritance are to be denied to a daughter who, although she remained in her father's power, does not bring into hotchpot with her brothers, who were part of the same *familia*, the dowry, which she had at the time of their common father's death. **1.** It is, therefore, advisable and in accordance with the law that you participate in hotchpot with your brothers, whom you state to have been in the power of your common father at the time of his death. **2.** It is, moreover, absolute and clear law that your brothers, as members of their father's *familia*, cannot keep as their own their *peculium*, if it is shown to be neither their military *peculium* nor bequeathed to them, but it must come into the division of the paternal inheritance. Nor does it make a difference with whom the property, which arose from this and has continued in the same condition, is found placed.

Given January 22, at Sirmium, in the consulship of the Caesars (294).

[13] *The same Augusti and Caesars to Antistia.* If you acquired a farm by gift after the death of your father, your sister cannot claim a portion of it. But if it was given to you by your father while you were a *filiafamilias*, and you are succeeding your father in common with your sister, you are asking contrary to law to keep it as your own property.

Given February 8, at Sirmium, in the consulship of the same Caesars (294).

[14] *The same Augusti and Caesars to Stratonica.* If your former husband was heir to his intestate father, and a posthumous son succeeded him, the governor will not hesitate to deny to the paternal aunt of your son the action for the inheritance, which she had at the time of her father's death, if she does not bring her dowry into hotchpot.

Posted February 23, at Trimontium, in the consulship of Tuscus and Anullinus (295).[107]

[15] *The same Augusti and Caesars to Philippus.* Emancipated children are not compelled to bring into hotchpot what they acquired after the death of their common father, but they retain that and divide his property in accordance with their hereditary shares.

Given December 13, in the consulship of the Caesars (294).

107 The subscript is only known from Haloander's edition, and the year is out of sequence. Trimontium, not a rare place-name, is most plausibly Philippopolis (Plovdiv). As Diocletian was still at Nicomedia in March 295 (C. 5.72.3), emendation of the year would be required (thus Mommsen). Connolly suggests "Tricornium" near Sirmium in 294. For the possibilities of date and place, see Mommsen, *Gesammelte Schriften II* (1905), 288; Barnes, *New Empire* (1982), 54 n. 33; Corcoran, *Empire of the Tetrarchs* (2000), 80; Connolly, *Lives Behind the Laws* (2010), 204.

[16] *Idem AA. et CC. Socrati.* Filiam cum fratribus suis heredibus intestato patri succedentem ultra relictum codicillis non conferentem dotem iudicio familiae erciscundae nihil posse consequi summa cum ratione placuit.

D. v k. Ian. ipsis CC. conss.

[17] *Imp. Leo A. Erythrio pp.* Ut liberis tam masculini quam feminini sexus, iuris sui vel in potestate constitutis, quocumque iure intestatae successionis, id est aut testamento penitus non condito vel, si factum fuerit, contra tabulas bonorum possessione petita vel inofficiosi querella mota rescisso, aequa lance parique modo prospici possit, hoc etiam aequitatis studio praesenti legi credidimus inserendum, ut in dividendis rebus ab intestato defunctorum parentium tam dos quam ante nuptias donatio conferatur, quam pater vel mater, avus vel avia, proavus proavia paternus vel maternus dederit vel promiserit pro filio vel filia, nepote vel nepte aut pronepote sive pronepte, nulla discretione intercedente, utrum in ipsas sponsas pro liberis suis memorati parentes donationem contulerint, an in ipsos sponsos earum, ut per eos eadem in sponsas donatio celebretur: ut in dividendis rebus ab intestato parentis, cuius de hereditate agitur, eadem dos vel ante nuptias donatio ex substantia eius profecta conferatur: emancipatis videlicet liberis utriusque sexus pro tenore praecedentium legum, quae in ipsa emancipatione a parentibus suis (ut adsolet fieri) consequuntur vel post emancipationem ab isdem adquisierint, collaturis.

D. v k. Mart. Marciano cons.

[18] *Imp. Anastasius A. Constantino pp.* Liberos, qui nostrae legis auctoritate per oblationem precum et imperiale rescriptum sui iuris effecti fuerint, ad similitudinem ceterorum, qui emancipati ex antiquo iure

[16][108] *The same Augusti and Caesars to Socrates.* It has been decided by the best reasoning that a daughter, who succeeds her intestate father together with her brothers as heirs, cannot receive anything in an action to divide the inheritance beyond that left by codicil, if she does not bring her dowry into hotchpot.

Given December 28, in the consulship of the Caesars (294).

[17][109] *Emperor LEO Augustus to Erythrius, Praetorian Prefect.* In order that for children of the male or female sex, whether *sui iuris* or established in another's power, there may be protection by a fair balance and equal measure under any law of intestate succession, that is to say either where no will at all has been made, or, if it was made, where it is rescinded by a claim for possession of the estate contrary to a will or by a complaint of undutiful will, in the desire for equity We have deemed it best to insert in the present law this also, that, in dividing the property of deceased parents on intestacy, there is to be brought into hotchpot both the dowry and the prenuptial gift, which the father or mother, grandfather or grandmother, great-grandfather or great-grandmother whether paternal or maternal, has given or promised for a son or daughter, grandson or granddaughter or great-grandson or great-granddaughter, with no distinction made as to whether the aforesaid relatives made the gift to the betrothed women as being their children, or made it to their fiancés, in order that the same gift be bestowed through them (the fiancés) on the betrothed women; so that in dividing the property of an intestate parent, whose inheritance is the subject of legal action, the dowry or prenuptial gift derived likewise from his (the deceased's) property is to be brought into hotchpot. Clearly emancipated children of either sex will bring into hotchpot, according to the tenor of the preceding laws, what they receive from their parents, as usually happens, at the time of their emancipation, or what they acquire from the same persons after emancipation.

Given February 26, in the consulship of Marcianus (472).

[18][110] *Emperor ANASTASIUS Augustus to Constantinus, Praetorian Prefect.* We order that children, who have been made *sui iuris* by the authority of Our law[111] through the presentation of a petition and an imperial rescript, just as in the case of those, who are emancipated under the ancient law, be compelled

[108] Combine with C. 3.36.24.

[109] Combine with C. 5.9.6, 6.24.12, 6.61.4; Seeck, *Regesten* (1919), 417. C. 5.9.6 and 6.61.4 include Anthemius as Emperor in the heading.

[110] Associated with C. 6.58.11 and 8.48.5; Lounghis *et al.*, *Regesten* (2005), 105.

[111] C. 8.48.5.

sunt, collationes facere iubemus compelli secundum ea, quae super ceteris emancipatis statuta sunt.

D. XII k. Aug. Constantinopoli Probo et Avieno iuniore conss.

[19] *Imp. Iustinianus A. Menae pp.* **pr.** Illam merito dubitationem amputare duximus, quae super collatione dotis vel ante nuptias donationis inter certas personas satis iam ventilata est. **1.** Nam si intestatus quis defunctus esset filio vel filiis vel filia vel filiabus relictis et ex mortua filia cuiuscumque sexus aut numeri nepotibus, vel si qua intestata defuncta esset filio quidem vel filiis similiter relictis, ex mortuo vero filio vel filia itidem nepotibus cuiuscumque sexus, de modo quidem successionis minime dubitabatur, sed palam erat, quod huiusmodi nepotes duas partes maternae vel paternae portionis tantummodo haberent, tertiam partem patruis suis vel avunculis vel amitis vel materteris pro iam posita constitutione concedentes.

2. De collatione vero dotis vel ante nuptias donationis, quam defuncta persona pro filio vel filia superstitibus et pro mortuo vel mortua filio vel filia dedisset, multa dubitatio orta est, superstitibus quidem filiis defunctae personae non debere se dotem et ante nuptias donationem pro se datam a suo patre vel matre conferre filiis mortui fratris sui vel mortuae sororis suae contendentibus eo, quod nulla constitutio super huiuscemodi collatione posita est, nepotibus vero mortuae personae non tantum huic resistentibus, sed etiam illud adserentibus, quod onus collationis constitutione Arcadii et Honorii divae memoriae sibi impositum in personis tantummodo suorum avunculorum, non etiam patruorum vel amitarum vel materterarum locum habere potest.

3. Talem igitur subtilem dubitationem amputantes praecipimus tam filios vel filias defunctae personae dotem vel ante nuptias donationem a parentibus suis sibi datam conferre nepotibus vel neptibus mortuae personae, quam eosdem nepotes vel neptes patruis suis aut avunculis, amitis etiam et materteris dotem et ante nuptias donationem patris sui vel matris, quam pro eo vel ea mortua persona dedit, similiter conferre, ut commixtis huiusmodi collationibus cum bonis mortuae personae

to carry out hotchpot according to what has been laid down regarding other emancipated children.

Given July 21, at Constantinople, in the consulship of Probus and Avienus the younger (502).

[19][112] *Emperor* Justinian *Augustus to Menas, Praetorian Prefect.* **pr.** We have justly thought of removing the doubts, much discussed among certain persons, concerning bringing dowry and prenuptial gifts into hotchpot. **1.** For if a man has died intestate, leaving a son or sons or a daughter or daughters, as well as any number of grandchildren, of either sex, from a deceased daughter, or if a woman has died, similarly leaving a son or sons, and likewise grandchildren of either sex born of a deceased son or daughter, there was indeed no doubt as to the manner of succession, but it was clear that these grandchildren would have only two parts of their mother's or father's portion, conceding the third part to their paternal or maternal uncles or paternal or maternal aunts in accordance with a constitution already laid down.[113]

2. Much doubt has arisen as to the bringing into hotchpot of a dowry or prenuptial gift, which a deceased person had given for a surviving son or daughter or a deceased son or daughter, with the surviving children of the deceased person contending that they should not put dowry and prenuptial gifts given for them by their father or mother into hotchpot for the children of their deceased brother or their deceased sister, for this reason, that no constitution had been issued about this sort of hotchpot. But the grandchildren of the deceased person not only resisted that, but also claimed this, that the burden of bringing into hotchpot, imposed on them by the constitution of Arcadius and Honorius, of divine memory,[114] only applied as to the persons of their maternal uncles and not of their paternal uncles or paternal or maternal aunts.

3. Removing such subtle doubts, We direct both that the sons or daughters of a deceased person are to bring into hotchpot with the grandsons or granddaughters of the dead person the dowry or prenuptial gift given to them by their parents, and also that the same grandsons or granddaughters are similarly to bring into hotchpot with their paternal or maternal uncles and also paternal and maternal aunts the dowry and prenuptial gift of their father or mother, which the dead person gave for him or her (the father or mother), so that, when what is brought into hotchpot is mingled with the property of the dead person, the grandsons or granddaughters are to have, indeed, two parts of that portion,

[112] This is one of numerous constitutions addressed to Menas on June 1, 528: Lounghis *et al.*, *Regesten* (2005), 160–164.
[113] C. 6.55.9 (deriving from C.Th. 5.1.4).
[114] C.Th. 5.1.5.

duas quidem partes nepotes vel neptes habeant illius portionis, quae patri vel matri eorum, si superesset, deferebatur, tertiam vero eiusdem portionis partem una cum sibi competentibus portionibus filii vel filiae defunctae personae, cuius de hereditate agitur, capiant.

D. k. Iun. Constantinopoli dn. Iustiniano A. pp. II cons.

[20] *Idem A. Menae pp.* **pr.** Illud sine ratione a quibusdam in dubietatem deductum plana sanctione revelamus, ut omnia, quae in quarta portione ab intestato successionis computantur his, qui ad actionem de inofficioso testamento vocantur, etiam si intestatus is decesserit, ad cuius hereditatem veniunt, omnimodo coheredibus suis conferant. **1.** Quod tam in aliis quam in his, quae occasione militiae uni heredum ex defuncti pecuniis adquisitae lucratur is qui militiam meruit, locum habebit, ut lucrum, quod tempore mortis defuncti ab eum pervenire poterat, non solum testamento condito quartae parti ab intestato successionis computetur, sed etiam ab intestato conferatur.

2. Haec autem regula, ut omnia quae portioni quartae computantur etiam ab intestato conferantur, minime e contrario tenebit, ut possit quis dicere etiam illa quae conferuntur omnimodo in quartam partem his computari, qui ad de inofficioso querellam vocantur: ea enim tantummodo ex his quae conferuntur memoratae portioni computabuntur, pro quibus specialiter legibus, ut hoc fieret, expressum est. **3.** Ad haec, cum ante nuptias donatio vel dos a patre data vel matre vel aliis parentibus pro filio vel filia, nepote vel nepte ceterisque descendentibus conferatur, si unus quidem vel una liberorum ante nuptias tantummodo donationem vel dotem, non etiam simplicem donationem accepit vel acceperit, alter vero vel altera neque dotem neque donationem ante nuptias a parente suo suscepit vel susceperit, sed simplicem tantummodo donationem, ne ex eo iniustum aliquid oriatur, ea quidem persona, quae ante nuptias donationem vel dotem suscepit, conferre eam cogenda, illa vero, quae simplicem tantummodo donationem meruit, ad collationem eius minime coartanda: si quid huiusmodi accidit vel acciderit, iubemus ad similitudinem eius, qui ante nuptias donationem

which would have been passed to their father or mother, if they had survived, but the sons or daughters of the deceased person, whose inheritance is the subject of legal action, are to take the third part of the same portion together with the portions proper to them.

Given June 1, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, for the second time (528).

[20] *The same Augustus to Menas, Praetorian Prefect.* **pr.** We hereby clarify by a plain sanction a point which has without reason been brought into doubt by some persons; as a result everything, which is counted as part of the quarter portion on intestate succession, for those who are summoned to an action on an undutiful will, is to be brought into hotchpot with their co-heirs, even if the person, to whose property they succeed, has died intestate.[115] 1. This will apply not only to other things, but also to those things, which he, who has purchased an office, gains by virtue of a post acquired for one of the heirs out of the deceased's resources, so that the gain, which could have come to him at the time of the deceased's death, is not only to be counted towards the quarter portion on intestate succession, when a will has been made, but is also to be brought into hotchpot in case of intestacy.

2. But the rule, that everything counting towards the quarter portion is also to be put into hotchpot in case of intestacy, does not hold in the converse case, that anyone could say that those things, which are brought into hotchpot, are in every way to be counted towards the quarter portion, for those who are summonded to a complaint of an undutiful will; for of the things, which are brought into hotchpot, those only, for which it is specifically stated in law that it be so, will be counted towards the abovementioned portion. 3. Further, since a prenuptial gift or dowry, given by a father or mother or other ascendants for a son or daughter, grandson or granddaughter and other descendants comes into hotchpot, if one male or one female child has or shall have received only a prenuptial gift or dowry, but not a straight gift as well, but another male or female has or shall have taken from their parent not a dowry nor a prenuptial gift, but only a straight gift, lest some injustice arise from this, that indeed this person, who took a prenuptial gift or dowry, is compelled to bring it into hotchpot, while that person, who acquired only a straight gift, is not constrained to bring it into hotchpot, We order that, if anything of this sort has or will have arisen, on the model of him, who is compelled to bring a prenuptial gift or dowry into hotchpot, that person also, who has received no dowry or prenuptial gift from

[115] A will could be broken, if the testator did not leave his *sui heredes* the legal minimum one-quarter of what they would have received on intestacy (see title C. 3.28). In this constitution, the same rules regarding which property to include in calculating that one-quarter are to be applied also to hotchpot, irrespective of whether there is a will.

vel dotem conferre cogitur, etiam illam personam, quae nulla dote vel ante nuptias donatione data solam simplicem donationem a parentibus suis accepit, conferre eam nec recusare collationem eo, quod simplex donatio non aliter confertur, nisi huiusmodi legem donator tempore donationis suae indulgentiae imposuerit.

D. VIII id. Aug. Constantinopoli Decio vc. cons.

[21] *Idem A. Iohanni pp.* **pr.** Ut nemini super collatione de cetero dubietas oriatur, necessarium duximus constitutioni, quam iam favore liberorum fecimus, hoc addere, ut res, quas parentibus adquirendas esse prohibuimus, nec collationi post obitum eorum inter liberos subiaceant. 1. Ut enim castrense peculium in communi conferre in hereditate dividenda ex prisci iuris auctoritate minime cogebantur, ita et alias res, quae minime parentibus adquiruntur, proprias liberis manere censemus.

D. XV k. Nov. Lampadio et Oreste vv. cc. conss. anno secundo.

XXI De Testamento Militis

[1] *Imp. Antoninus A. Floro militi.* Frater tuus miles si te specialiter bonis quae in paganico habebat heredem fecit, bona quae in castris reliquit petere non potes, etiamsi is qui eorum heres institutus est adire ea noluerit: sed ab intestato succedentes veniunt, modo si in eius loco substitutus non est[iii] et liquido probatur fratrem tuum castrensia bona ad te pertinere noluisse. nam voluntas militis expeditione occupati pro iure servatur.

Accepta V id. Sept. duobus Aspris conss.

[2] *Idem A. Septimo militi.* Miles si castrensium tantummodo bonorum commilitonem suum instituit heredem, cetera bona eius ut intestati

[iii] es

his parents, but only a straight gift, is to bring it into hotchpot and not to refuse hotchpot on the grounds that a straight gift is not otherwise brought into hotchpot, unless the donor should have imposed this sort of condition at the time of his grant of the gift.

Given August 6 [April 6], at Constantinople, in the consulship of the vir clarissimus *Decius (529).*[116]

[21] *The same Augustus to John, Praetorian Prefect.* **pr.** So that no doubt may in the future arise regarding hotchpot, We have deemed it necessary to add this to the constitution, which we have already made in favor of children,[117] so that property, which We forbade being acquired in the parents' name, is not to be subject to hotchpot between the children after their (the parents') death. **1.** For as they were not, according to the authority of ancient law, compelled to pool their military *peculium* in hotchpot in dividing an inheritance, so we decree that other property also, which is not acquired in the parents' name, remains the children's own.

Given October 18, in the second post-consulate of the viri clarissimi *Lampadius and Orestes (532).*[118]

Twenty-First Title A Soldier's Will[119]

[1] *Emperor* ANTONINUS *Augustus to Florus, a soldier.* If your brother, a soldier, made you heir specifically to the property he had as a civilian (*in paganico*), you cannot claim the property he left "in camp" (*in castris*) even if the designated heir to it declines to accept it. Rather, his intestate successors receive it if you were not substituted for him (should the named heir decline) and it is (also) clearly shown that your brother did not wish his camp property to belong to you. For the disposition of a soldier who is on campaign is enforced as law (*pro iure*).

Accepted September 9, in the consulship of the two Aspri (212).

[2] *The same Augustus to Septimus, a soldier.* If a soldier designated his fellow soldier as heir only of his camp property, his mother rightfully possesses his remaining property as having died intestate. But if he named a non-family

[116] The date should probably be April 6 (*viii id. Apr.*), the date of the last constitutions added to the first edition of the Codex (Lounghis *et al.*, *Regesten* (2005), 176–178). There are no further Codex constitutions until September 529, by which time Menas had been replaced as Praetorian Prefect by Demosthenes.

[117] C. 6.61.6.

[118] Adapting the consular formula to that of C. 6.21.18, which is probably to be associated with this constitution.

[119] See D. 29.1; Inst. 2.11.

defuncti mater eius iure possedit. quod si extraneum scripsit heredem isque adiit hereditatem, bona eius in te transferri non iure desideras.

PP. XI k. Mart. Antonino A. IIII et Balbino conss.

[3] *Idem A. Vindiciano.* **pr.** Quamquam militum testamenta iuris vinculis non subiciantur, cum propter simplicitatem militarem quomodo velint et quomodo possint ea facere his concedatur, tamen in Valeriani quondam centurionis testamento institutio etiam iure communi accepit auctoritatem. **1.** Nam cum pater familias filiam ex duabus unciis, uxorem ex uncia heredem scripserit nec de residuis portionibus quicquam significaverit, in tres partes divisisse eum apparet hereditatem, ut duas habeat quae sextantem accepit, tertiam quae ex uncia est heres instituta.

PP. k. Nov. Antonino A. IIII et Balbino conss.

[4] *Imp. Alexander A. Iunio.* **pr.** Si Rufinus vir clarissimus tribunus laticlavius maior annis lege definitis faciens testamentum te manumisit, iustam tibi libertatem competisse scire debes. **1.** Quod si minor annis ex lege constitutis fuerit, cum faceret testamentum, lege impediente nullam libertatem adeptus es, quae in hac parte nec militibus remissa est. **2.** Quod si idem testator causam manumittendi te habuit, quae probabilis vivo manumittente consilio futura esset, quia per fideicommissum data libertas a quolibet minore annis ei, cuius causa probari potuit, praestari debet, et ex testamento militis eiusmodi servis iustam libertatem competere consequens est.

PP. XVI k. Dec. Alexandro A. cons.

[5] *Idem A. Sozomeno.* Ex testamento militis, sive adhuc in militia sive intra annum missus honeste decessit, hereditas et legata omnibus quibus relicta sunt debentur, quia inter cetera, quae militibus concessa sunt, liberum arbitrium quibus velint relinquendi supremis suis concessum est, nisi lex specialiter eos prohibuerit.

PP. XVII k. Febr. Iuliano et Crispino conss.

member (*extraneus*) as heir and that person entered into the inheritance, you wrongfully seek transfer of his property to you.

Posted February 19, in the consulship of Antoninus, for the fourth time, and Balbinus (213).

[3] *The same Augustus to Vindicianus.* **pr.** Although soldiers' wills are not subject to legal restrictions since, on account of their soldierly naiveté, they are allowed to make them in whatever way they wish and are able to, nevertheless the designation (of an heir) in the will of Valerianus the former centurion has validity also in the common law. **1.** For when a *paterfamilias* names his daughter as heir to two-twelfths and his wife to one-twelfth, but indicates nothing about the remaining shares, it appears that he had divided the inheritance into three shares, with the woman who received a sixth getting two of them, and the one designated heir to a twelfth (getting) the third.

Posted November 1, in the consulship of Antoninus, for the fourth time, and Balbinus (213).

[4] *Emperor* ALEXANDER *Augustus to Junius.* **pr.** If the *vir clarissimus* Rufinus, a (military) tribune of Senatorial rank (*laticlavius*) who is above the age fixed by statute,[120] in making his will manumitted you, you should know that freedom is legally yours. **1.** But if he was below the statutory age, by this statutory impediment you received no freedom; the law in this area is not relaxed even for soldiers. **2.** But if the same testator had a reason for manumitting you and this would have been approved by a (manumission) council while the manumitter was alive, (then) because freedom that is granted through a trust (*fideicommissum*) by any below-age person ought to be provided to a person whose cause can be proven, it follows that also from a soldier's will slaves of this kind receive legally valid freedom.

Posted November 16, in the consulship of Alexander Augustus (222).

[5] *The same Augustus to Sozomenus.* From the will of a soldier who died either while in service or within a year after honorable discharge, an inheritance or legacies are owed to all to whom they are left, because among the things that are granted to soldiers there is granted the free determination of leaving to whom they wish in their last will, unless the law specifically prohibits them (from doing so).

Posted January 16, in the consulship of Julian and Crispinus (224).

[120] The lex Aelia Sentia of 4 CE required manumitters to be at least 20 years old, unless they showed cause to a special *consilium* appointed by the competent magistrate.

[6] *Idem A. Valenti.* **pr.** In testamento quidem eius, qui non miles fuit, si duobus heredibus institutis, altero, cui potuit usque ad tempus pubertatis parens facere testamentum, altero, cui posteaquam heres extitit substituere non potuit, invicem substitutio eisdem verbis facta esset, in eum solum casum eam locum habere et sententiis prudentium virorum et constitutionibus divorum parentium meorum placet, quo utrique pari ratione potuit substitui.

1. Sed cum ex testamento militis controversiam esse proponas, defuncta parvula eius filia, posteaquam heres extitit patri, cum qua simul aequis partibus heres institutus eras substitutione invicem facta, et mater quidem intestatae filiae sibi successionem defendat, tu autem ex substitutione ad te pertinere contendas, iuris quidem ratio manifesta est licere militibus proprio privilegio etiam heredibus extraneis, posteaquam heredes extiterint, mortuis substituere. **2.** Sed tibi probandum est, an ita frater tuus senserit.

PP. XII k. Mai. Fusco et Dextro conss.

[7] *Idem A. Fortunato.* **pr.** Ex his verbis: 'Fortunato liberto meo do lego' vindicare tibi libertatem non potes, si pagani testamentum proponatur. **1.** At enim cum testatorem militem fuisse proponas, si non errore ductus libertum te credidit, sed dandae libertatis animum habuit, libertatem, et quidem directam, competere tibi, sed et legati vindicationem habere praerogativa militaris privilegii praestat.

PP. XII k. Iul. Alexandro A. III et Dione conss.

[8] *Imp. Gordianus A. Aeternio militi.* Certi iuris est militem ad tempus etiam heredem instituere posse.

PP. III k. Oct. Pio et Pontiano conss.

[6] *The same Augustus to Valens.* **pr.** Indeed, in the will of a man who was not a soldier, if he designated two heirs – one for whom (he as) a male ascendant could make a will up to the age of puberty; the other for whom, after that person becomes an heir, he cannot appoint a substitute heir – and a reciprocal substitution was (nonetheless) made with identical words, both the opinions of the learned men (jurists) and the constitutions of my deified parents hold that this is effective only for the case in which substitution was possible for each of the two (the pupillary and the ordinary substitution) with the same reasoning.

1. But you declare that the dispute arose from a soldier's will: his young daughter died after she became heir to her father, and you had been simultaneously designated heir to equal shares with her, with each substituted for the other reciprocally; and the mother of the intestate daughter (now) claims succession to her (as her intestate heir), while you contend that it comes to you through the substitution. The rule of law is clear that soldiers, by a unique privilege, are permitted to name a substitute heir even for third-party heirs after they become heirs. **2.** But you must show that your brother wanted it thus.[121]

Posted April 20, in the consulship of Fuscus and Dexter (225).

[7] *The same Augustus to Fortunatus.* **pr.** On the basis of these words (in a will): "I give and bequeath to my freedman Fortunatus," you cannot claim your liberty if a civilian's will is in question. **1.** But since you state that the testator was a soldier, if he was not (just) mistaken in thinking you a freedman, but intended to bestow freedom, the prerogative of military privilege gives you (not only) freedom, and that directly, but also a claim for the legacy.

Posted June 20,[122] in the consulship of Alexander Augustus, for the third time, and Dio (229).

[8] *Emperor* Gordian *Augustus to Aeternius, a soldier.* It is established law that a soldier can designate an heir even for a period of time.

Posted September 29, in the consulship of Pius and Pontianus (238).

[121] If Valens can prove this, he wins because his dead brother was a soldier. Blume: "In this case a soldier made a testament and appointed his daughter below the age of puberty, as heir to part of this property and his brother Valens as heir for another part, and further provided that they should be substituted as heirs for each other reciprocally; that is to say, that if one died, the other should be substituted as heir. The daughter accepted her part of the inheritance through a guardian. She thereupon died – intestate while still under the age of puberty. Valens then contended that he, being substituted for her as heir, should have the property; but the mother claimed it as the daughter's heir on intestacy." Blume discusses this intricate situation at length.

[122] Haloander has December 21.

[9] *Idem A. Valerio.* Sicut certi iuris est militem, qui scit se filium habere aliosque scripsit heredes, tacite eum exheredare intellegi, ita si ignorans se filium habere alios scribat heredes, non esse filio ademptam hereditatem, sed minime valente testamento, si sit in potestate, eum ad successionem venire in dubiis non habetur.

PP. v non. Oct. Pio et Pontiano conss.

[10] *Imp. Philippus A. et Philippus C. Iustino militi.* **pr.** Si, cum vel in utero haberetur filia inscio patre milite, ab eo praeterita sit, vel cum in rebus humanis eam non esse falso rumore prolato pater putavit, nullam eius testamento fecit mentionem, silentium huiusmodi exheredationis notam nequaquam infligit. **1.** Is autem miles, qui testamento filiam appellavit eique legatum dedit, non instituendo eam heredem exheredavit.

PP. xii k. Iun. Praesente et Albino conss.

[11] *Idem A. et C. Aemilio militi.* Captatorias institutiones et in militis testamento nullius esse momenti manifestum est.

PP. vii k. Iul. Praesente et Albino conss.

[12] *Idem A. et C. Domitiae.* In testamento militis legem Falcidiam et in legatis et in fideicommissis cessare explorati iuris est. sane si quid ultra vires patrimonii postulatur, competenti defensione tueri te potes.

PP. vi non. Iul. Praesente et Albino conss.

[13] *Impp. Valerianus et Gallienus AA. Claudiae.* Et militibus nostris, centurionibus quoque ob flagitium militare damnatis non aliarum quam castrensium rerum testamenta facere permittitur et intestatis iure proprio succeditur a fisco.

PP. non. Aug. Valeriano et Gallieno AA. conss.

[14] *Impp. Diocletianus et Maximianus AA. et CC. heredibus Maximae.* Si a fratre suo militante mater vestra scripta heres successionem eius sibi quaesiit, quamvis testamenti scriptura non continet iuris observationem, hanc hereditatem fratrem testatoris vel eius filios ab intestato evincere non potuisse iure constitit.

[9] *The same Augustus to Valerius.* Just as it is established law that a soldier, if he knows he has a son and has named others as heirs, is understood to disinherit him tacitly, so also, if he is unaware he has a son and names others as heirs, it is not considered doubtful that the inheritance is not taken away from the son, but, since the will is invalid (because it passes over the son), the son succeeds if he is in (his father's) power.

Posted October 3, in the consulship of Pius and Pontianus (238).

[10] *Emperor* PHILIP *Augustus and the Caesar* PHILIP *to Justin, a soldier.* **pr.** If a daughter, when still in the womb without her soldier father's knowing this, was passed over by him (in his will), or on the basis of a false rumor he thought her no longer living and did not mention her in his will, such silence hardly inflicts the stigma of disinheritance. **1.** But a soldier who named his daughter in his will and gave her a legacy disinherited her by not designating her as heir.

Posted May 21, in the consulship of Praesens and Albinus (246).

[11] *The same Augustus and Caesar to Aemilius, a soldier.* It is obvious that "estate hunter" designations[123] are ineffectual also in a soldier's will.

Posted June 25, in the consulship of Praesens and Albinus (246).

[12] *The same Augustus and Caesar to Domitia.* It is settled law that for a soldier's will the lex Falcidia does not apply to both legacies and trusts. But if a demand is made beyond the estate's resources, you can protect yourself with an applicable defense.

Posted July 2, in the consulship of Praesens and Albinus (246).

[13] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Claudia.* Our soldiers, including centurions, condemned for some military crime, are not permitted to make wills for property other than that in camp (*bona castrensia*); and when they are intestate, the Treasury succeeds under its own right.

Posted August 5, in the consulship of Valerian and Gallienus Augusti (254).[124]

[14] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to the heirs of Maxima.* If your mother was named heir by her brother while he was a soldier, and she claimed succession to him for herself, even if the will's language did not observe the law (for writing wills), it is settled that the testator's brother or his sons could not claim this inheritance on (the basis of) intestacy.

[123] *Designationes captatoriae*, in which the testator names an heir on condition that this person reciprocates. But see C. 2.3.19.

[124] Haloander dates this constitution to 255.

S. v non. Mai. Aurris CC. conss.

[15] *Imp. Constantinus A. ad populum.* **pr.** Milites in expeditione degentes, si uxores aut filios aut amicos aut commilitones suos, postremo cuiuslibet generis homines amplecti voluerint supremae voluntatis adfectu, quomodo possint ac velint testentur, nec uxorum aut filiorum eorum, cum voluntatem patris reportaverunt, meritum aut libertas dignitasque quaeratur. **1.** Proinde sicut iuris rationibus licuit ac semper licebit, si quid in vagina aut in clipeo litteris sanguine suo rutilantibus adnotaverint, aut in pulvere inscripserint gladio sub ipso tempore, quo in proelio vitae sortem derelinquunt, huiusmodi voluntatem stabilem esse oportet.

D. III id. Aug. Nicomediae Optato et Paulino conss.

[16] *Imp. Anastasius A. Hierio pp.* Scriniarios vel apparitores, qui virorum magnificorum magistrorum militum iussionibus vel actibus obtemperant, etsi nomina eorum matriculis militaribus referri videantur, nullatenus in ultimis a se conficiendis voluntatibus iuris militaris habere facultatem decernimus.

D. id. Febr. Constantinopoli Paulo vc. cons.

[17] *Imp. Iustinianus A. Menae pp.* Ne quidam putarent in omni tempore licere militibus testamenta quomodo voluerint componere, sancimus his solis, qui in expeditionibus occupati sunt, memoratum indulgeri circa ultimas voluntates conficiendas beneficium.

D. IIII id. April. Constantinopoli Decio vc. cons.

[18] *Idem A. Iohanni pp.* Licet antiquis legibus permittebatur pupillis, si tribunatum numeri mereantur, ultimum elogium conficere posse, attamen indignum nostris temporibus esse videtur eum, qui stabilem mentem nondum adeptus est, propter privilegia militum sapientium hominum iura pertractare et in tenera aetate ex tali licentia parentibus

Written May 3, at Aurri,[125] *in the consulship of the Caesars (294).*

[15] *Emperor* CONSTANTINE *Augustus to the people.* pr. If soldiers on a campaign wish that their wives or children or friends or fellow soldiers, or indeed persons of any sort, be embraced through an expression of their final wish, they may make a will in whatever way they can and wish, nor should inquiry be made as to the merits or the freedom and status of their wives and children, when they have achieved the father's wish. 1. And such an (expression of) intent ought to be enduring, just as, for reasons of law, it has been and always will be permitted if they note anything on a scabbard or shield in letters running red with their blood, or they write with a sword in the dust at the very time they are losing their life in battle.

Given August 11, at Nicomedia, in the consulship of Optatus and Paulinus (334).[126]

[16] *Emperor* ANASTASIUS *Augustus to Hierius, Praetorian Prefect.* We decree that the secretaries and subordinates who submit to the orders or acts of the *viri magnifici* Masters of the Soldiers, even if their names seem to be inscribed in the military rolls, have no privilege whatsoever of military law in writing out their last wills.

Given February 13, at Constantinople, in the consulship of vir clarissimus *Paul (496).*

[17][127] *Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect.* In order that no one think soldiers are allowed to write their wills at any time (and) however they wish, We ordain that the aforementioned (right) of making last wills be extended only to those who are engaged in a campaign.

Given April 10, at Constantinople, in the consulship of vir clarissimus *Decius (529).*

[18] *The same Augustus to John, Praetorian Prefect.* Although ancient laws allowed minor wards (*pupilli*; boys under 14), if they obtained the position of (military) tribune, to be able to write a final will, still it seems unworthy of our times that a person, not yet of steady mind, enjoy the rights of mature men because of military privileges, and, at a tender age, because of such a permission perhaps do injury to his male ascendants or other relatives by leaving his

[125] Unidentified, perhaps Mons Aureus near Sirmium (Connolly); compare C. 4.51.5, 4.7.6 (dated just before and just after this one; both from Sirmium).

[126] Haloander has Paulinus and Julian as Consuls (325). Seeck gives August 11, 325.

[127] Combine with C. 2.50.8 (dated April 8, which Krüger prefers), 7.35.8 (April 1). Lounghis *et al.* date to April 6, 529.

forte suis vel aliis propinquis nocere propriam substantiam extraneis relinquentem. ideoque hoc fieri nullo modo concedimus.

D. XII k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc. anno II.

XXII Qui Facere Testamentum Possunt vel Non Possunt

[1] *Imp. Gordianus A. Petronio militi.* **pr.** Quamquam omnium bonorum socer tuus itemque frater eius socii fuerunt, tamen non eo minus idem frater eius, cum fati munus impleret, testamento suo potuit sibi heredem instituere quem vellet. **1.** Item non idcirco minus is testamenti factionem habet, quod indivisam successionem cum sorore sua dicatur habuisse.

PP. XII k. Aug. Arriano et Papo conss.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Viatori et Pontiae.* **pr.** Si is, qui tecum uxorem tuam heredem scripsit, quando testamentum ordinavit, sanae mentis fuerit nec postea alicuius sceleris conscientia obstrictus, sed aut impatiens doloris aut aliqua furoris rabie constrictus se praecipitem dedit, eiusque innocentia liquidis probationibus commendari potest a te, adscitae mortis obtentu postremum eius iudicium convelli non debet. **1.** Quod si futurae poenae metu voluntaria morte supplicium antevenit, ratam voluntatem eius conservari leges vetant.

PP. k. Dec. ipsis IIII et III AA. conss.

[3] *Idem AA. et CC. Licinio.* **pr.** Senium quidem aetatis vel aegritudinem corporis sinceritatem mentis tenentibus testamenti factionem certum est non auferre. **1.** Filiam autem, quae in potestate est, testamentum facere non posse indubitati iuris est.

S. IIII non. April. Sirmi CC. conss.

[4] *Idem AA. et CC. Rhodoni.* **pr.** Si frater patruelis tuus ante quartum decimum aetatis annum suae decessit, cum facere non potuit testamentum, nihil ex eius postremo recte postulatur iudicio. **1.** Nam si hanc aetatem egressus, licet vigoris necdum emersissent vestigia, suum ordinavit sollemniter iudicium, hoc convellere frustra conaris.

own property to non-family members (*extranei*). And so we do not permit this being done in any way.

Given October 21, at Constantinople, in the second post-consulate of the viri clarissimi *Lampadius and Orestes (532).*

Twenty-Second Title Who Can Make a Will, and Who Cannot[128]

[1] *Emperor* GORDIAN *Augustus to Petronius, a soldier.* **pr.** Although your father-in-law and his brother were partners as to all their property (*socii omnium bonorum*), nonetheless his brother, when he felt his end approaching, could by his will designate whom he wished as heir. **1.** Nor does he have diminished right to make a will (*testamenti factio*) because (at his death) he is said to have held along with his sister an undivided inheritance.

Posted July 21, in the consulship of Arrianus and Papus (243).

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Viator and Pontia.* **pr.** If a person named your wife heir along with you, and he was of sound mind when he drew up his will, and he subsequently hurled himself down (and committed suicide) while not compelled by consciousness of some crime, but (rather) was either intolerant of pain or driven by some mad frenzy, and his innocence can be vouched for by clear proofs, his final wish may not be overthrown in light of his allegedly having committed suicide. **1.** But if through fear of future punishment he anticipated punishment by a voluntary death, the laws forbid his will being enforced as valid.

Posted on December 1, in the consulship of the Augusti themselves, for the fourth and third time, respectively (290).

[3] *The same Augusti and Caesars to Licinius.* **pr.** It is certain that weakness of age or physical ill-health does not take away the right to make a will from those retaining mental soundness. **1.** But (also) it is undisputed law that a daughter who is in (a father's) power cannot make a will.

Written April 2, at Sirmium, in the consulship of the Caesars (294).[129]

[4] *The same Augusti and Caesars to Rhodo.* **pr.** If your paternal cousin died before reaching age 14, since he could not make a will, nothing is rightly claimed on the basis of his final wish. **1.** For if he passed this age even though visible traces of adulthood were lacking, and he drew up his will in proper form, your attempt to overturn it is of no avail.

[128] See D. 28.1; Inst. 2.12.

[129] Other manuscripts date this constitution to 293.

S. III id. Nov. Pantichi CC. conss.

[5] *Imp. Constantius A. ad Rufinum pp.* Eunuchis liceat facere testamentum, componere postremas exemplo omnium voluntates, conscribere codicillos salva testamentorum observantia.

D. V k. Mart. Sirmi Constantio A. V et Constantio C. conss.

[6] *Idem A. ad Volusianum pu.* Si quis imperatorem forte heredem instituerit, habeat mutandi iudicii facultatem, et quemcumque voluerit secundum leges in testamento suo heredem scribendi.

D. XII k. Mart. Mediolani Arbitione et Lolliano conss.

[7] *Imppp. Valentinianus Valens et Gratianus AAA. ad Maximum.* Cum heredes instituuntur imperator seu Augusta, ius commune cum ceteris habeant: quod et in codicillis vel fideicommissariis epistulis iure scriptis observandum erit. et sicuti priscis legibus cautum est, imperatori quoque vel Augustae testamentum facere liceat et mutare.

D. VII id. Aug. Contionaci Gratiano A. II et Probo conss.

[8] *Imp. Iustinus A. Demostheni pp.* **pr.** Hac consultissima lege sancimus, ut carentes oculis seu morbo vel ita nati per nuncupationem suae condant moderamina voluntatis, praesentibus septem testibus, quos aliis quoque testamentis interesse iuris est, tabulario etiam: ut cunctis ibidem collectis primum ad se convocatos omnes, ut sine scriptis testentur, edoceat, deinde exprimat nomina specialiter heredum et dignitates singulorum et indicia, ne sola nominum commemoratio quicquam ambiguitatis pariat, et ex quanta parte vel ex quotis unciis in successionem admitti debeant et quod unumquemque legatarium seu fideicommissarium adsequi velit: omnia denique palam edicat, quae ultimarum capit dispositionum series lege concessa. **1.** Quibus omnibus ex ordine peroratis uno eodemque loco et tempore, sed et tabularii manu conscriptis sub obtentu septem (ut dictum est) testium et eorundem testium manu subscriptis, dehinc consignatis tam ab isdem testibus quam a tabulario, plenum obtinebit robur testantis arbitrium.

Written November 11, at Pantichium, in the consulship of the Caesars (294).

[5] *Emperor* CONSTANTIUS *Augustus to Rufinus, Praetorian Prefect.* Eunuchs may, with due observance of testamentary rules, make a will, compose their last wishes like everyone (else), and add codicils.

Given February 26, at Sirmium, in the consulship of Constantius Augustus, for the fifth time, and Constantinus Caesar (352).

[6] *The same Augustus to Volusianus, Urban Prefect.*[130] If someone happens to designate the Emperor as his heir, he has the power to change his mind and name in his will whomever he wishes as heir, in accord with the laws.

Given February 18, at Milan, in the consulship of Arbitio and Lollianus (355).

[7] *Emperors* VALENTINIAN, VALENS, *and* GRATIAN *Augusti to Maximus.*[131] When the Emperor or the Augusta are designated as heirs, they shall have rights in common with others (heirs), and this (rule) shall be observed also for codicils or for legally executed letters creating trusts (*epistulae fideicommissariae*). And as was provided in ancient laws, also the Emperor or the Augusta may make and change a will.

Given August 7, at Contionacum, in the consulship of Gratian Augustus, for the second time, and Probus (371).

[8] *Emperor* JUSTIN *Augustus to Demosthenes, Praetorian Prefect.* **pr.** In this most carefully considered statute We ordain that those lacking eyesight, whether by disease or at birth, may set down the directives of their desire through an oral declaration (*nuncupatio*) in the presence of the seven witnesses, who by law are present also for other (kinds of) wills, along with a notary (*tabularius*). When all are gathered together, he should first tell them they are summoned to him to bear witness without writings, then state specifically the names of the heirs and the ranks and characteristics of each, so that the memory of the names alone not give rise to some ambiguity, and (also state) for what portion or for how many twelfths they should be admitted into succession, and what he wishes each legatee or trust beneficiary to receive. In short, let him say openly that which the legally permissible sequence of final dispositions embraces. **1.** If all this is properly stated in one place and time, but also written out in the notary's hand before the seven aforementioned witnesses, and signed by the hand of these witnesses, and then sealed by these same witnesses as well as the notary, the testator's judgment will have full

[130] C. 7.62.22 and C.Th. 11.36.1, also from 355, are addressed to Volusianus as Praetorian Prefect (in Gaul).

[131] Krüger emends to Maximinus.

1a. Quae in eundem modum erunt observanda, quamvis non heredes instituere, sed legata solum vel fideicommissa et in summa quae codicillis habentur congrua duxerit ordinanda.

1b. At cum humana fragilitas mortis praecipue cogitatione turbata minus memoria possit res plures consequi, patebit eis licentia voluntatem suam sive in testamenti vel in codicilli tenore compositam cui velint scribendam credere, ut in eodem postea collocatis testibus et tabulario, re etiam (ut dictum est) patefacta, cuius causa convocati sunt, et chartula prometur, quam susceptam testatori recitabit tabularius simul et testibus, ut, ubi tenor eorum[iv] cunctis innotuerit, elogium ipse suum profiteatur agnoscere et ex animi sui quae lecta sunt disposuisse sententia, et in fine subscriptio sequatur testium nec non omnium signacula tam testium (prout dictum est) quam tabularii.

2. Sed quia tabulariorum copia non in omnibus locis datur quaerentibus, iubemus, ubi tabularius reperiri non possit, octavum adhiberi testem, ut, quod tabulario pro supra dicto modo commisimus, id per octavum testem effectum capiat: libera potestate concedenda suas voluntates in praedictum modum ordinantibus chartulam ita subscriptam, ita denique consignatam, ut antelatae formae declarant, cui velint ex testibus custodiendam mandare. sic fieri namque confidimus, ut non recipiat se tantum in caecis testandi licentia, sed ne locum quidem ullum relinquat insidiis tot oculis spectata, tot insinuata sensibus, tot insuper in tuto locata manibus.

D. k. Iun. Constantinopoli Iustiniano et Valerio conss.

[9] *Imp. Iustinianus A. Iuliano pp.* **pr.** Furiosum in suis indutiis ultimum condere elogium posse, licet ab antiquis dubitabatur, tamen et retro principibus et nobis placuit: nunc autem hoc decidendum est, quod simili modo antiquos animos movit, si coepto testamento furor eum invasit. **1.** Sancimus itaque tale testamentum hominis, qui in ipso actu testamenti adversa valetudine tentus est, pro nihilo esse. sin vero voluerit in dilucidis intervallis aliquod condere testamentum vel ultimam voluntatem et hoc sana mente et inceperit facere et consummaverit nullo tali morbo interveniente, stare testamentum sive quamcumque ultimam voluntatem censemus, si et alia omnia accesserint, quae in huiusmodi actibus legitima observatio sequitur.

[iv] coram

strength. **1a.** These provisions shall be observed to the same extent even if he wanted not to name heirs, but only to bequeath legacies or trusts, and in sum what are considered fitting for codicils.

1b. But since human weakness, especially when troubled by thoughts of death, cannot hold in memory numerous things, they (the blind) shall have permission to entrust the writing of their will – whether set out in the form of a testament or codicils – to whom they wish, so that afterwards, when the witnesses and the notary are assembled and the reason for their gathering also set out as described, the document shall be produced, and the notary shall take it up and recite it simultaneously to the testator and the witnesses, so that, when the content is openly known to all, he himself (the testator) may declare recognition of his will and to have disposed of what was read according to the intention of his mind; and at the end the signature of the witnesses shall follow, as well as the seals both of the witnesses, as mentioned, and the notary.

2. But since notaries are not everywhere available to those who seek them, We order that when a notary cannot be found, an eighth witness be summoned, so that what in the process set forth above We entrusted to the notary can be effected through the eighth witness. To those arranging their wishes in the aforesaid manner, free power shall be granted to entrust for safekeeping, to whichever witness they wish, the document signed and sealed as the instructions set out above. For in this way We trust that not only is testamentary permission granted for the blind, but it – having been examined by so many eyes, impressed on so many senses, and further entrusted to so many hands – leaves no room for fraud.

Given June 1, in Constantinople, in the consulship of Justinian and Valerius (521).

[9][132] *Emperor* JUSTINIAN *Augustus to Julian, Praetorian Prefect.* **pr.** Although it was doubted by the ancients whether a mad person can conclude a final will during his quiet intervals, nonetheless this was accepted by prior emperors and by Us. Now this must be determined, something that similarly stirred ancient attention: what if madness overcame him after a will was begun? **1.** We ordain that if a man who in the very act of making a will was struck by bad health, such a will is void. But if, during lucid intervals, he wished to establish a testament or last will, and he began to do this and completed it with no such disease intervening, We think that a testament or such a last judgment stands, provided that all other things occur which statutory observance requires for such acts.

[132] Combine with C. 1.4.27, 5.70.6–7.

D. k. Sept. Constantinopoli Lampadio et Oreste vv. cc. conss.

[10] *Idem A. Iuliano pp.* **pr.** Discretis surdo et muto, quia non semper huiusmodi vitia sibi concurrunt, sancimus, si quis utroque morbo simul laborat, id est ut neque audire neque loqui possit, et hoc ex ipsa natura habeat, neque testamentum facere neque codicillos neque fideicommissum relinquere neque mortis causa donationem celebrare concedatur nec libertatem sive vindicta sive alio modo imponere: eidem legi tam masculos quam feminas oboedire imperantes. **1.** Ubi autem et in huiusmodi vitiis non naturalis sive masculo sive feminae accedit calamitas, sed morbus postea superveniens et vocem abstulit et aures conclusit, si ponamus huiusmodi personam litteras scientem, omnia, quae priori interdiximus, haec ei sua manu scribenti permittimus.

2. Sin autem infortunium discretum est, quod[v] ita raro contingit, et surdis, licet naturaliter huiusmodi sensus variatus est, tamen omnia facere et in testamentis et in codicillis et in mortis causa donationibus et in libertatibus et in aliis omnibus permittimus. **3.** Si enim vox articulata ei a natura concessa est, nihil prohibet eum omnia quae voluit facere, quia scimus quosdam iuris peritos et hoc subtilius cogitasse et nullum esse exposuisse, qui penitus non exaudit, si quis supra cerebrum illius loquatur, secundum quod Iuventio Celso placuit. **4.** In eo autem, cui morbus superveniens auditum tantummodo abstulit, nec dubitari potest, quin possit omnia sine aliquo obstaculo facere.

5. Sin vero aures quidem apertae sint et vocem recipientes, lingua autem penitus praepedita, licet a veteribus auctoribus saepius de hoc variatum est, attamen si et hunc peritum litterarum esse proponamus, nihil prohibet et eum scribentem omnia facere, sive naturaliter sive per interventum morbi huiusmodi infortunium ei accessit.

6. Nullo discrimine neque in masculis neque in feminis in omni ista constitutione servando.

D. x k. Mart. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[11] *Idem A. Iohanni pp.* **pr.** Nemo ex lege, quam nuper promulgavimus, in rebus, quae parentibus adquiri non possunt, existimet aliquid esse innovandum, et permissum fuisse filiis familias cuiuscumque gradus vel sexus testamenta facere, sive sine patris consensu bona possideant secundum nostrae legis distinctionem, sive cum eorum voluntate.

[v] quod <non>

Given September 1, in Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[10] *The same Augustus to Julian, Praetorian Prefect.* **pr.** Distinguishing "deaf" and "mute," since such defects do not always coexist, We ordain that if anyone suffers simultaneously from both illnesses, that is, can neither hear nor speak, and is so innately (from birth), he is not allowed to make a will, nor to leave codicils nor a trust, nor to make known a gift in contemplation of his death (*mortis causa*), nor to grant freedom by rod (*vindicta*) or otherwise. We order that both males and females obey the same rule. **1.** But also for such defects when a disaster befalling a male or female is not natural (innate), but rather afterwards a supervening disease both took away speech and closed ears, (then,) presuming such a person is literate, all the things that we forbade the first person We permit to this one if he writes in his own hand.

2. But if the misfortune is divided, which not so rarely occurs, and a person is deaf (but not mute) – although the degree of disability of such a person has been altered by nature – nevertheless We allow him to do everything with respect to both wills and codicils and gifts in contemplation of death and (granting) freedom and all other things. **3.** For if nature granted him articulate speech, nothing stops him doing whatever he wishes, since we know that some jurists, having considered this matter more precisely, explained that there is no one who is altogether deaf if someone speaks above his cranium, according to the view of Juventius Celsus. **4.** As for a person whose hearing is only removed by a supervening illness, there can be no doubt that he can do everything without any obstacle.

5. If, indeed, the person's ears are open and receive speech, but his own speech is entirely precluded, although there was quite frequent debate about this among ancient authors (the jurists), still, presuming that his person too is literate, nothing forbids him also doing everything by writing, whether the misfortune occurred naturally or by intervention of such a disease.

6. In this entire constitution no distinction is to be made among males and females.

Given February 20, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[11][133] *The Same Augustus to John, Praetorian Prefect.* **pr.** Let no one think that there was any innovation through the statute We recently promulgated concerning property that cannot be acquired for male ascendants, and that it was permitted to children in a father's power, of whatever rank or sex, to make

[133] Combine with C. 6.61.8. The law referred to in the *principium* is C. 6.61.6. For the "ancient law" in section 1, see C. 6.22.3.1.

1. Nullo etenim modo hoc eis permittimus, sed antiqua lex per omnia conservetur, quae filiis familias nisi in casibus certis testamenta facere nullo concedit modo, et in his personis, quae huiusmodi facultatem habere iam concessae sunt.

D. IIII k. Aug. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[12] *Idem A. Iohanni pp.* Omnes omnino, quibus quasi castrensia peculia habere ex legibus concessum est, habeant licentiam in ea tantummodo ultimas voluntates condere secundum nostrae constitutionis tenorem, quae talibus testamentis de inofficiosi querella immunitatem praestavit.

D. k. Sept. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

XXIII De Testamentis: Quemadmodum Testamenta Ordinantur

[1] *Imp. Hadrianus A. Catonio Vero.* Testes servi an liberi fuerunt, non oportet in hac causa tractari, cum eo tempore, quo testamentum signabatur, omnium consensu liberorum loco habiti sunt nec quisquam eis usque adhuc status controversiam moverit.

Sine die et conss.

[2] *Imp. Alexander A. Expedito.* Publicati semel testamenti fides, quamvis ipsa materia, in qua primum a testatore scriptum relictum fuit, casu qui probatur intercidit, nihilo minus valet.

PP. k. Iun. Fusco II et Dextro conss.

[3] *Idem A. Antigono.* Ex imperfecto testamento nec imperatorem hereditatem vindicare saepe constitutum est. licet enim lex imperii sollemnibus iuris imperatorem solverit, nihil tamen tam proprium imperii est, ut legibus vivere.

PP. XI k. Ian. Lupo et Maximo conss.

wills, whether, following the distinction in Our statute, they possess property without a father's consent or by their (fathers') wish. **1.** For in no respect do We permit this to them, but in every respect the ancient law remains in force; it in no way allows children in a father's power to make wills except in certain cases and in the case of those persons who are now allowed to have a power of this kind.

Given July 29, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[12] [134] *The same Augustus to John, Praetorian Prefect.* All of those who are allowed by statutes to have "quasi-camp" *peculia,* shall have permission to establish their last wishes for it alone, following the sense of Our constitution that gave such wills immunity from the complaint of undutifulness.

Given September 1, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

Twenty-Third Title Wills: How Wills Are Drawn Up[135]

[1] *Emperor HADRIAN Augustus to Catonius Verus.* Whether witnesses (to a will) were slave or free should not be considered in this case, when at the time when the will was sealed they were considered as free by general agreement and no one thus far has raised a dispute as to their status.[136]

Without date and consul.

[2] *Emperor ALEXANDER Augustus to Expeditus.* Once a will is published, even if the material on which it was first left written by the testator (then) perished by a demonstrated accident, nonetheless its validity remains.

Posted June 1, in the consulship of Fuscus, for the second time, and Dexter (225).

[3] *The same Augustus to Antigonus.* Constitutions have often stated that not even the Emperor can claim an inheritance from a deficient testament. For although the statute granting sovereignty (*lex imperii*) releases the Emperor from legal formalities, still nothing is as becoming of sovereignty as living by the laws.

Posted December 22, in the consulship of Lupus and Maximus (232).

[134] This law epitomizes C. 3.28.37.1e–f; combine with C. 1.3.49, 1.5.22. Justinian refers to C. 3.28.37.1f.

[135] See D. 28.1; Inst. 2.10.

[136] This constitution (the oldest in the Codex) is referred to by Inst. 2.10.7

[4] *Imp. Gordianus A. Rufino.* Si in nomine praenomine seu cognomine testator erravit nec tamen de quo senserit incertum sit, error huiusmodi nihil officit veritati.

PP. XII k. Aug. Gordiano A. et Aviola conss.

[5] *Impp. Valerianus et Gallienus AA. Lucillo.* Neque professio neque adseveratio nuncupantium filios, qui non sunt, veritati praeiudicant: et quae ut filiis testamento relinquuntur, iuxta ea quae a principibus statuta sunt non deberi certi iuris est.

Accepta IIII non. Iul. Valeriano II et Gallieno AA. conss.

[6] *Impp. Diocletianus et Maximianus AA. Terentiae.* Verba testamenti, quibus mater vestra decedens nihil se cuiquam donasse significavit, si res se aliter habet, fidem veri non perfringunt.

PP. III non. Nov. Diocletiano A. II et Aristobulo conss.

[7] *Idem AA. Rufinae.* Errore scribentis testamentum iuris sollemnitas mutilari nequaquam potest, quando minus scriptum, plus nuncupatum videtur. et ideo recte testamento facto, quamquam desit 'heres esto', consequens est existente herede legata sive fideicommissa iuxta voluntatem testatoris oportere dari.

PP. XVII k. Febr. ipsis IIII et III AA. conss.

[8] *Idem AA. Marcellino.* **pr.** Casus maioris ac novi contingentis ratione adversus timorem contagionis, quae testes deterret, aliquid de iure laxatum est: non tamen prorsus reliqua etiam testamentorum sollemnitas perempta est. **1.** Testes enim huiusmodi morbo oppresso eo tempore iungi atque sociari remissum est, non etiam conveniendi numeri eorum observatio sublata.

[4] *Emperor* GORDIAN *Augustus to Rufinus.* If a testator makes a mistake on a nomen or praenomen or cognomen, and yet it is not uncertain what he meant, a mistake of this sort does not obstruct the truth (and so can be corrected).

Posted July 21, in the consulship of Gordian Augustus and Aviola (239).[137]

[5] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Lucillus.* Neither enrolment (on public registers), nor an affirmation by persons declaring children who are not (their children), can sway the truth. And it is settled law that things left by will (to them) "as children" are not owed, in accord with imperial ordinances.[138]

Received July 4,[139] *in the consulship of Valerian, for the second time, and Gallienus. Augusti (254).*

[6] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Terentia.* The words of the will whereby your (plural) dying mother made known that she had made no gift to anyone cannot break down the credibility of the truth if the matter is otherwise.

Posted November 3, in the consulship of Diocletian Augustus, for the second time, and Aristobulus (285).

[7] *The same Augusti to Rufina.* A legal formality can hardly be undermined by a mistake of the will's writer, since it (the will) seems less written than orally declared (*nuncupatio*). So, when the will is correctly made even though (the phrase) "let him be my heir" is missing, the result is that, when the heir emerges, the legacies or trusts must be given as the testator wished.

Posted January 16, in the consulship of the Augusti themselves, for the fourth and third time, respectively (290).

[8] *The same Augusti to Marcellinus.* **pr.** Because of a greater and newly arising adversity, there was some legal relaxation in response to witnesses being deterred by fear of contagion; but the remainder of the formality of wills was not wholly removed. **1.** Relaxed was (the requirement) that such witnesses, overwhelmed by (their fear of) disease, be linked and associated at that time (when the will is formalized); but observance of the number of them to be gathered was not removed.

[137] Haloander gives July 2, 255.

[138] Blume: "Here the gift of property to one as to a child, when the beneficiary was not in fact a child, was void. Ordinarily a misdescription made no difference. C. 6.44.2 ... But the instant rescript is confirmed by the Syrian Law Book ... which shows that a testator could leave any part of his estate to an illegitimate child only in the manner in which he would leave anything to a stranger. In the same way a bequest to one named as brother who was not such was void."

[139] Haloander has July 10.

S. k. Iul. ipsis IIII et III AA. conss.

[9] *Idem AA. Patrocliae.* Si non speciali privilegio patriae tuae iuris observatio relaxata est et testes non in conspectu testatoris testimoniorum officio functi sunt, nullo iure testamentum valet.
PP. k. Iul. ipsis IIII et III AA. conss.

[10] *Idem AA. et CC. Menophiliano.* Si testamentum iure factum sit et heres sit capax, auctoritate rescripti nostri rescindi non oportet.
S. XV k. ... AA. conss.

[11] *Idem AA. et CC. Zetho.* Non idcirco minus iure factum testamentum suas obtinet vires, quod post mortem testatoris subtractum probatur.
S. prid. non. Iul. AA. conss.

[12] *Idem AA. et CC. Matroniae.* **pr.** Si unus de septem testibus defuerit vel coram testatore omnes eodem loco testes suo vel alieno anulo non signaverint, iure deficiat testamentum. **1.** De his autem, quae interleta sive supra scripta dicis, non ad iuris sollemnitatem, sed ad fidei pertinet quaestionem, ut appareat, utrum testatoris voluntate emendationem meruerunt, vel ab altero inconsulte deleta sunt, an ab aliquo falso haec fuerint commissa.
S. prid. non. Iul. Philippopoli AA. conss.

[13] *Idem AA. et CC. Euripidi.* Testandi causa de pecunia sua legibus certis facultas, non iurisdictionis mutare formam vel iuri publico derogare cuiquam permissum est.
S. VI k. Dec. CC. conss.

[14] *Idem AA. et CC. Achilleo.* Non codicillum, sed testamentum aviam vestram facere voluisse institutio et exheredatio facta probant evidenter.
S. id. Dec. CC. conss.

Written July 1,[140] *in the consulship of the Augusti themselves, for the fourth and third time, respectively (290).*

[9] *The same Augusti to Patroclia.* If observance of law was not relaxed by a special privilege (conferred) on your homeland, and witnesses did not perform the duty of witnessing in the testator's sight, under no rule of law is the will valid.

Posted July 1, in the consulship of the Augusti themselves, for the fourth and third times, respectively (290).

[10] *The same Augusti and the Caesars to Menophilianus.* If the will was made legally and the heir is competent to take, it ought not to be annulled on the authority of a rescript from Us.

Written on the fifteenth day before the kalends[141] *... in the consulship of the Augusti (293).*

[11] *The same Augusti and Caesars to Zethus.* A legally made will does not lose its force because it is shown to have been purloined after the testator's death.

Written July 6,[142] *in the consulship of the Augusti (293).*

[12] *The same Augusti and Caesars to Matronia.* pr. If one of the seven witnesses was absent, or all the witnesses, in the same place and in the testator's presence, did not seal it with their own or another's ring, the will shall be legally defective. 1. But regarding what you say are erasures or interlineations, this goes not to a legal formality, but to the issue of (the will's) credibility, so that it be apparent whether they merited change with the testator's consent, or were carelessly deleted by someone else, or were fraudulently perpetrated by someone.

Written July 6, at Philippopolis, in the consulship of the Augusti (293).

[13] *The same Augusti and Caesars to Euripides.* To each person is granted the power to use definite rules for disposing of their assets (*pecunia*) by will, but not to alter the rules of the (Perpetual) Edict or to deviate from public law.

Written November 26, in the consulship of the Augusti (293).

[14][143] *The same Augusti and Caesars to Achilleus.* Her making a designation (of an heir) and disinheritance clearly show that your grandmother wished to make, not a codicil, but a will.

Written December 13, in the consulship of the Caesars (294).

[140] Haloander has "Given June 16."
[141] Haloander: "July 18."
[142] Haloander: November 12.
[143] Combine with C. 2.4.36 (possibly) and 6.42.29, with slightly different dates.

[15] *Imp. Constantinus A. ad populum.* **pr.** Quoniam indignum est ob inanem observationem irritas fieri tabulas et iudicia mortuorum, placuit ademptis his, quorum imaginarius usus est, institutioni heredis verborum non esse necessariam observantiam, utrum imperativis et directis verbis fiat an inflexa.[vi] **1.** Nec enim interest, si dicatur 'heredem facio' vel 'instituo' vel 'volo' vel 'mando' vel 'cupio' vel 'esto' vel 'erit', sed quibuslibet confecta sententiis, quolibet loquendi genere formata institutio valeat, si modo per eam liquebit voluntatis intentio, nec necessaria sint momenta verborum, quae forte seminecis et balbutiens lingua profudit. **2.** Et in postremis ergo iudiciis ordinandis amota erit sollemnium sermonum necessitas, ut, qui facultates proprias cupiunt ordinare, in quacumque instrumenti materia conscribere et quibuscumque verbis uti liberam habeant facultatem.

S. d. k. Febr. Serdiceae Constantio A. et Constante C. conss.

[16] *Imppp. Gratianus Valentinianus et Theodosius AAA. Eutropio pp.* **pr.** Non dubium nec incertum est, sicut imperatoribus, ita qualibet dignitate vel potestate decoratis viris tam hereditatem quam legatum seu fideicommissum relinqui posse. **1.** Illud adiciendum est, ut, qui ex testamento vel ab intestato heres extiterit, etsi voluntas defuncti circa legata seu fideicommissa seu libertates legibus non sit subnixa, tamen, si sua sponte agnoverit, implendi eam necessitatem habeat.

S. d. k. Iul. Thessalonicae Gratiano V et Theodosio AA. conss.

[17] *Impp. Arcadius et Honorius AA. Aeternali proconsuli Asiae.* Testamentum non ideo infirmari debebit, quod diversis hoc deficiens nominibus appellavit, cum superflua non noceant. namque necessaria praetermissa imminuunt contractus et testatoris officiunt voluntati, non abundans cautela.

D. XII k. April. Arcadio IIII et Honorio III AA. conss.

[18] *Idem AA. Africano pu.* Testamenta omnia ceteraque, quae apud officium censuale publicari solent, in eodem reserventur nec usquam

[vi] inflexis

[15][144] *Emperor* CONSTANTINE *Augustus to the people.* **pr.** Since it is unworthy that the wills and judgments of the dead become invalid through empty technicality, and with those whose value is nominal having been removed, it is determined that no particular words are required for designating an heir, whether this is done by imperative, direct, or indirect words. **1.** For it makes no difference whether it is worded "I make an heir," or "I designate," or "I wish," or "I charge," or "I desire," or "Let him be," or "He will be"; but a designation shall be valid by whatever wording it is accomplished and in whatever mode of speech it is formed, provided only that the intended disposition is comprehensible through it; nor shall there be required weighty words that, perchance, the stammering tongue of a moribund man poured out. **2.** And thus in drawing up final wishes the necessity of formal words will be taken away, so that those who wish to dispose of their own resources have free rein to write on a document of any material and to use whatever words they want.

Written and given February 1, at Serdicea, in the consulship of Constantius Augustus and Constans the Caesar (339).

[16][145] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Eutropius, Praetorian Prefect.* **pr.** It is neither doubtful nor uncertain that both an inheritance and a legacy or trust can be left to men adorned with any rank or power, just as to emperors. **1.** This should be added, that a person who becomes heir through a will or on intestacy, even if the wishes of the deceased as to legacies or trusts or grants of freedom are not supported by legal formalities, is nevertheless obliged to carry them out if he voluntarily recognizes them.

Written and given July 1, at Thessalonica, in the consulship of Gratian, for the fifth time, and Theodosius, Augusti (380).

[17][146] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Aeternalis, Proconsul of Asia.* A will should not be invalidated because the decedent called it by different names, since trivial matters are not prejudicial. For (only) the omission of necessary things subverts contracts or thwarts the testator's wishes, (but) not an abundance of caution.

Given March 21, in the consulship of Arcadius, for the fourth time, and Honorius, for the third time, Augusti (396).

[18][147] *The same Augusti to Africanus, Urban Praetor.* All wills and other documents that are customarily announced in the registration office (*officium*

[144] Combine with C. 6.9.9 and the constitutions cited there; see the note on C. 6.9.9. Probably issued in fact by Constantius (11); but Seeck gives January 31, 320, and associates this constitution with a single original law.

[145] Combine with C. 5.1.3, and constitutions cited there. On the substance, see C. 6.42.1–2.

[146] = C.Th. 4.4.3; combine with C. 3.31.11. Seeck gives March 21, 402.

[147] = C.Th. 4.4.4. On the registration office, see C. 8.53.32 (registration of gifts).

permittatur fieri ulla translatio. mos namque retinendus est fidelissimae vetustatis, quem si quis in hac urbe voluerit immutare, irritam mortuorum videri faciet voluntatem.

D. VI k. Oct. Constantinopoli Caesario et Attico conss.

[19] *Impp. Honorius et Theodosius AA. Iohanni pp.* **pr.** Omnium testamentorum sollemnitatem superare videatur, quod insertum mera fide precibus inter tot nobiles probatasque personas etiam conscientiam principis tenet. **1.** Sicut igitur securus erit, qui actis cuiuscumque iudicis aut municipum aut auribus privatorum mentis suae postremum publicavit iudicium, ita nec de eius umquam successione tractabitur, qui nobis mediis et toto iure, quod nostris est scriniis constitutum, teste succedit. **2.** Nec sane illud heredibus nocere permittimus, si rescripta nostra nihil de eadem voluntate responderint. voluntates etenim hominum audire volumus, non iubere, ne post sententiam nostram inhibitum videatur commutationis arbitrium, cum hoc ipsum, quod per supplicationem nostris auribus intimatur, ita demum firmum sit, si ultimum comprobatur nec contra iudicium suum defunctus postea venisse detegitur.

3. Ne quid sane praetermisisse credamur huiusmodi institutionis successoribus designatis, omnia quae scriptis heredibus competunt iubemus eos habere nec super bonorum possessionis petitione ullam controversiam nasci, cum pro herede agere cuncta sufficiat et ius omne ipsa complere aditio videatur. **4.** Omnibus etenim praestandum esse censemus, ut libero arbitrio, cui testandi facultas suppetit, successorem suum oblatis possit precibus declarare et stabile sciat esse quod fecerit, nec institutus heres pertimescat, cum oblatas preces secundum voluntatem defuncti idoneis possit testibus approbare, si ei alia nocere non possunt.

D. XII k. Mart. Ravennae post consulatum Honorii VIIII et Theodosii V AA.

censuale) are (also) kept there, nor is any removal of them allowed anywhere. For this ancient custom must be preserved most faithfully; if anyone in this city (Constantinople) should wish to alter it, he would make the wishes of the dead seem idle.

Given September 26, at Constantinople, in the consulship of Caesarius and Atticus (397).

[19][148] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to John, Praetorian Prefect.* **pr.** It should be considered as exceeding the formality (required) of all wills when there also comes to the Emperor's knowledge one that, on the basis of pure trust (i.e., lacking the formal requirements) is created by (the testator's) prayers before so many noble and worthy persons. **1.** For just as he (a testator) will be protected who has announced the final judgment of his mind in the records of any judge or municipality or in the hearing of private individuals, so no question will ever arise about the succession of a person who succeeds in Our midst and with the witness of the entire law that is founded in Our bureaus. **2.** Nor do We allow it to harm heirs if Our rescripts say nothing about the same will. For We wish to hear men's wills, not to command them, so that a decision to change (a will) not seem deterred after We give a judgment (in a rescript), when this very will which through a petition is communicated to Our ears shall only then be confirmed if it is shown to be his final (judgment) and the deceased is not discovered to have gone contrary to his judgment.

3. In order that We not be thought to have omitted something, We order that, when the successors of such a designation have been appointed, they have everything that falls to written heirs (under a private will), nor does any lawsuit over a claim to possession of the estate arise, since it is enough to conduct business as heir and the very entry (into succession) fulfills every legal requirement. **4.** For We hold that everyone possessing the power of testation shall be provided with the ability freely to declare his successor through a petition submitted (to Us), and he shall know that his act is enduring. Nor should the designated heir fear, since he can prove, through suitable witnesses, the petition submitted according to the decedent's wishes, assuming that nothing else can prejudice his rights.

Given February 18, at Ravenna, in the post-consulate of Honorius, for the ninth time, and Theodosius, for the fifth time, Augusti (413).

[148] Combine with C.Th. 1.2.12, 2.19.6, and 8.17.4. Seeck dates to February 14, 413. Blume: "The law is important. It shows that there were two kinds of testaments, public and private. Formalities in execution applied only to the latter. Public wills are those that were (a) presented to the emperor, in council, and subsequently kept in the archives of one of the imperial bureaus, probably that of petitions; (b) those that were recorded on the public records of a judge (president, rector, etc.) or of a municipal officer, which might be done either by going to such office and letting the officer record the testament upon oral declaration, or by taking a written document there and having it spread upon the public records."

[20] *Idem AA. edictum ad populum urbis Constantinopolitanae et ad omnes provinciales.* **pr.** Nolumus convelli deficientium scriptas iure ac sollemniter voluntates, dum quoddam morientis supremum et non adscriptum processisse confirmatur arbitrium, tamquam patrimonium suum ad nos deficiens maluerit pertinere. **1.** Omnibus enim privatis et militantibus interdicimus, ut huiusmodi perhibeant testimonia, et falsi criminis reos teneri praecipimus, si, cum scriptae iure ac sollemniter deficientium extiterint voluntates, non scriptum aliquid sub nostrorum nominum mentione falso adstruere moliantur. **2.** Nemo itaque relictus heres vel legibus ad successionem vocatus nostrum vel potentium nomen horrescat: nemo ferre testimonia in hunc modum vel suscipere gestis huiusmodi voces audeat nostro vel etiam privatorum potentium nomine.

D. VII id. Mart. Constantinopoli Theodosio A. VII et Palladio conss.

[21] *Impp. Theodosius et Valentinianus AA. Florentio pp.* **pr.** Hac consultissima lege sancimus licere per scripturam conficientibus testamentum, si nullum scire volunt quae in eo scripta sunt, signatam vel ligatam vel tantum clausulam involutamque proferre scripturam vel ipsius testatoris vel cuiuslibet alterius manu conscriptam, eamque rogatis testibus septem numero civibus Romanis puberibus omnibus simul offerre signandam et subscribendam, dum tamen testibus praesentibus testator suum esse testamentum dixerit quod offertur eique ipse coram testibus sua manu in reliqua parte testamenti subscripserit: quo facto et testibus uno eodemque die ac tempore subscribentibus et consignantibus valere testamentum nec ideo infirmari, quod testes nesciant quae in eo scripta sunt testamento. **1.** Quod si litteras testator ignoret vel subscribere nequeat, octavo subscriptore pro eo adhibito eadem servari decernimus.

2. In omnibus autem testamentis, quae praesentibus vel absentibus testibus dictantur, superfluum est uno eodemque tempore exigere testatorem et testes adhibere et dictare suum arbitrium et finire testamentum. sed licet alio tempore dictatum scriptumve proferatur testamentum, sufficiet uno eodemque die nullo actu interveniente testes omnes, videlicet simul nec diversis temporibus, subscribere signareque testamentum. **2a.** Finem autem testamenti subscriptiones et signacula testium esse decernimus. non subscriptum namque a testibus ac

[20][149] *The same Augusti, an edict to the people of the city of Constantinople and to all the people of the provinces.* **pr.** We do not want the wishes of decedents, when written out in legal and proper form, to be overturned while some "final," unwritten judgment of the dying man is affirmed to have been made, whereby the decedent preferred that his estate come to Us. **1.** For We forbid all persons, (both) private individuals and officials, from providing testimony of this kind, and We order them held guilty of falsification if, when decedent's wishes exist written out in legal and proper form, they fraudulently undertake to establish some unwritten (will) through mention of Our names. **2.** So let no one who is appointed heir or summoned by statutes to the inheritance fear Our name or that of the powerful: no one shall dare to produce witnesses in such a way, or to accept testimony for such acts, on the basis of Our name or that of powerful private individuals.

Given March 9, at Constantinople, in the consulship of Theodosius Augustus, for the seventh time, and Palladius (416).

[21][150] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Florentius, Praetorian Prefect.* **pr.** Through this well-considered law We ordain that persons making a will in writing are permitted, if they want no one to know what is written in it, to produce the writing sealed or tied up, or simply closed and folded, written either by the testator's hand or that of any third party; and, before seven summoned witnesses who are all adult Roman citizens, to offer it for their simultaneous signature and sealing, provided that in the witnesses' presence the testator says this is his will which is offered, and before the witnesses he signs it in his own hand on the will's final part. If this is done and the witnesses sign and seal it on one and the same day and time, (We ordain that) the will is valid and is not void because the witnesses do not know what is written in the will. **1.** But if the testator is illiterate and unable to sign, We decree that, with an eighth signatory summoned in his place, the same process be followed.

2. For all wills that are dictated when witnesses are present or absent, it is excessive to demand that the testator summon witnesses and dictate his judgment and complete his will at one and the same time. On the contrary, if a will is dictated or written at a different time, it shall suffice if all the witnesses sign and seal the will on one and the same day with no intervening transaction, that is, simultaneously and not at different times. **2a.** We decree that the conclusion of a will is the signatures and seals of witnesses; for a will not signed and

[149] = C.Th. 4.4.5 (either March 9 or 13), whence the heading is restored. Seeck prefers March 13, 416.
[150] = Nov. Theod. 16.1.2–5; combine with C. 5.28.8, 7.2.14.

signatum testamentum pro imperfecto haberi convenit. **3.** Ex imperfecto autem testamento voluntatem tenere defuncti, nisi inter solos liberos a parentibus utriusque sexus habeatur, non volumus. **3a.** Si vero in huiusmodi voluntate liberis alia sit extranea mixta persona, certum est eam voluntatem, quantum ad illam dumtaxat permixtam personam pro nullo haberi, sed liberis adcrescere.

4. Per nuncupationem quoque, hoc est sine scriptura, testamenta non alias valere sancimus, nisi septem testes, ut supra dictum est, simul uno eodemque tempore collecti testatoris voluntatem ut testamentum sine scriptura facientis audierint.

5. Si quis autem testamento iure perfecto postea ad aliud pervenerit testamentum, non alias quod ante factum est infirmari decernimus, quam id, quod secundum facere testator instituit, iure fuerit consummatum, nisi forte in priore testamento scriptis his, qui ab intestato ad testatoris hereditatem successionemve venire non poterant, in secunda voluntate testator eos scribere instituit, qui ab intestato ad eius hereditatem vocantur. eo enim casu, licet imperfecta videatur scriptura posterior, infirmato priore testamento secundam eius voluntatem non quasi testamentum, sed quasi voluntatem intestati valere sancimus. **5a.** In qua voluntate quinque testium iuratorum depositiones sufficient: quo non facto valebit primum testamentum, licet in eo scripti videantur extranei.

6. Illud etiam huic legi perspeximus inserendum, ut etiam Graece omnibus liceat testari.

D. prid. id. Sept. Constantinopoli Theodosio A. XVII et Festo conss.

[22] *Imp. Zeno A. Sebastiano pp.* Dictantibus testamenta vel aliam quamlibet ultimam voluntatem legatum vel fideicommissum vel quodcumque aliud quolibet legitimo titulo testatorem posse relinquere minime dubitandum est. Testibus etiam ad efficiendam voluntatem adhibitis pro suo libitu quod voluerit testator relinquere non prohibetur.

D. k. Mai. Constantinopoli Basilio iuniore vc. cons.

[23] *Imp. Iustinus A. Archelao pp.* Consulta divalia, quibus considerate prospectum est, ne voluntates ultimae deficientium in hac regia urbe confectae apud alium aperiri possint quam virum clarissimum

sealed by witnesses is considered as incomplete. **3.** We do not want the wishes of a decedent to bind on the basis of an incomplete will, except as it is made between descendants alone by ascendants of either sex. **3a.**[151] But if another non-family member (*extranea persona*) is mixed with the descendants, it is certain that it is held void insofar as the added person is concerned, and his share goes to the descendants.

4. We also ordain that wills made through oral declaration (*per nuncupationem*), that is, without a writing, are not otherwise valid unless seven witnesses, as said above, are gathered together at one and the same time and hear the wish of the testator as of one making an unwritten will.

5. If someone with a legally complete will later comes to make a second will, We decree that the earlier one is not invalidated otherwise than if the second one that the testator undertakes to make is legally completed – unless, perchance, those named (as heirs) in the earlier will are persons who could not come into the testator's inheritance or succession upon intestacy, while in the second will the testator undertakes to name persons who are summoned to his inheritance upon intestacy. For in this case, although the later writing is held incomplete, the earlier will is invalidated; in accord with his wish We ordain that it (the second will) is valid not as a will, but as the wish of one dying intestate. **5a.** In this will the statements of five sworn witnesses will suffice; if this is not done, the first will shall prevail, even though third parties appear to be named in it.[152]

6. We have also observed that this should be added to this law, that all are permitted to make wills also in Greek.

Given September 12, at Constantinople, in the consulship of Theodosius Augustus, for the seventeenth time, and Festus (439).

[22] *Emperor* Zeno *Augustus to Sebastianus, Praetorian Prefect.* There is not the slightest doubt that a testator can leave, under any legal title, a legacy or trust or anything else to persons dictating their testaments or any other (expression of) final will. A testator is also not forbidden from freely leaving what he wishes to the witnesses summoned to finalize a will.

Given May 1, at Constantinople, in the consulship of the vir clarissimus *Basilius the younger (480).*

[23] *Emperor* Justin *Augustus to Archelaus, Praetorian Prefect.* We now also confirm the imperial ordinances whereby it was thoughtfully provided that decedents' final wills, executed in this Imperial City (Constantinople), cannot be opened before anyone but the *vir clarissimus* acting Master of the Census,

[151] This section is inserted on the basis of C. 3.36.26.1.
[152] In other words, the decedent is held to prefer intestacy.

pro tempore census magistrum, monumentis intervenientibus pro iuris ordine, neve in hereditate, cuius summa centum aureorum pretium non excedit, mercedis quicquam aut sumptuum censum administrantes aut censualis apparitio super intimandis isdem elogiis audeant adsequi, firma nunc quoque edicimus ac repetita promulgatione non solum iudices quorumlibet tribunalium, verum etiam defensores ecclesiarum, quos turpissimum intimationis genus inrepserat, praemonendos censemus, ne rem attingant, quae nemini prorsus omnium secundum constitutionum praecepta quam census magistro competit. absurdum est namque, si promiscuis actibus rerum turbentur officia et alii creditum alius subtrahat, ac praecipue clericis, quibus opprobrium est, si peritos se velint disceptationum esse forensium: poena etiam feriendis temeratoribus praesentis sanctionis quinquaginta librarum auri. nec enim concedendum est, ut suprema vota deficientium eversionis quicquam ex incongrua insinuatione contrahant, dum res ab incongruis usurpatur audacter.

D. XIII k. Dec. Constantinopoli Iustino A. II et Opilione conss.

[24] *Imp. Iustinianus A. Menae pp.* Ambiguitates, quae vel imperitia vel desidia testamenta conscribentium oriuntur, resecandas esse censemus et, sive institutio heredum post legatorum dationes scripta sit vel alia praetermissa sit observatio non ex mente testatoris, sed vitio tabellionis vel alterius qui testamentum scribit, nulli licentiam concedimus per eam occasionem testatoris voluntatem subvertere vel minuere.

D. k. Ian. dn. Iustiniano A. pp. II cons.

[25] *Idem A. Menae pp.* Praeposteri reprehensionem, quam novella constitutio in dotalibus instrumentis sustulisse noscitur, in aliis quoque omnibus tam contractibus quam testamentis tollimus, ut tali exceptione cessante et stipulatio et alii contractus et testatoris voluntas indubitate valeat, exactione videlicet post condicionem vel diem competente.

S. d. VII id. Dec. dn. Iustiniano A. pp. II cons.

[26] *Idem A. Menae pp.* In testamentis sine scriptis faciendis omnem formalem observationem penitus amputamus, ut, postquam septem

with a record kept in accord with ordinary legal procedure; nor for an estate whose amount does not exceed 100 gold coins shall the census administrators or census subordinates dare to accept any pay or expense for recording these same will clauses. By this fixed repeated proclamation[153] We also hold that not only the judges of all tribunals, but also the defenders of churches, who have adopted a most base form of (testamentary) publication, must be warned not to meddle in a matter that, by the precepts of all constitutions, falls, in a word, to no one but the Master of the Census. For it is ridiculous if administration of affairs is troubled by indiscriminate acts and one person take away what is entrusted to another, and (so) especially for the clergy, for whom it is disgraceful to affect skill in legal disputes. Those transgressing the present ordinance shall be inflicted with a fine of 50 pounds of gold. For it must not be allowed that decedents' final wishes suffer any invalidation from an inappropriate publication, as long as the matter has been rashly undertaken by inappropriate persons.

Given November 19, at Constantinople, in the consulship of Justin Augustus, for the second time, and Opilio (524).

[24][154] *Emperor Justinian Augustus to Menas, Praetorian Prefect.* Uncertainties arising from the inexperience or sloth of those writing wills We hold should be pruned back, and, whether the designation of heirs is written after the giving of legacies or some other formality is overlooked not through the testator's intention, but by the fault of the notary or someone else writing the will, We give no one permission by this opportunity to overturn or diminish the testator's wish.

Given January 1, in the consulship of Our Lord Justinian, Ever Augustus, for the second time (528).

[25][155] *The same Augustus to Menas, Praetorian Prefect.* The objection that a formulation is inverted, which a recent constitution is acknowledged to remove for dowry documents, We lift also for all other acts, both contracts and wills, so that such a defense fails, and both a stipulation and other contracts and a testator's wish are unquestionably valid, with execution due, obviously, after (fulfillment of) a condition or a deadline.

Written and given December 7, in the consulship of Our Lord Justinian, Ever Augustus, for the second time (528).

[26][156] *The same Augustus to Menas, Praetorian Prefect.* In the making of non-written wills (through *nuncupatio*), We abolish all formal ritual entirely, so that,

153 = C. 1.3.40, through "50 pounds of gold."
154 Combine with C. 3.28.30 (June 1, adopted here by Lounghis *et al.*), 6.41.1.
155 Combine with C. 8.37.11 (December 11, adopted here by Lounghis *et al.*). Justinian refers to a lost ordinance of Leo, but see Inst. 3.19.14.
156 Combine with C. 3.28.31 (December 11, the likelier date, which is adopted by Lounghis *et al.*).

testes convenerint, satis sit voluntatem testatoris vel testatricis simul omnibus manifestari significantis, ad quos substantiam suam pervenire vellet vel quibus legata vel fideicommissa vel libertates disponeret, etiamsi non ante huiusmodi dispositionem praedixerit testator vel testatrix illa formalia verba: ideo eosdem testes convenisse, quod sine scriptis suam voluntatem vel testamentum componere censuit.

S. d. IIII *id. Dec. Constantinopoli dn. Iustiniano A. pp.* II *cons.*

[27] *Idem A. Iuliano pp.* **pr.** Sancimus, si quis legitimo modo condidit testamentum et post eius confectionem decennium profluxit, si quidem nulla innovatio vel contraria voluntas testatoris apparuit, hoc esse firmum. quod enim non mutatur, quare stare prohibetur? quemadmodum enim, qui testamentum fecit et nihil voluit contrarium, intestatus efficitur? **1.** Sin autem in medio tempore contraria voluntas ostenditur, si quidem perfectissima est secundi testamenti confectio, ipso iure prius tollitur testamentum. **2.** Sin autem testator tantummodo dixerit non voluisse prius stare testamentum, vel aliis verbis utendo contrariam aperuit voluntatem, et hoc vel per testes idoneos non minus tribus vel inter acta manifestaverit et decennium fiat emensum, tunc irritum esse testamentum tam ex contraria voluntate quam ex cursu temporali. **3.** Aliter etenim testamenta mortuorum per decennii transcursionem evanescere nullo patimur modo, prioribus constitutionibus, quae super huiusmodi testamentis vacuandis latae fuerant, penitus antiquandis.

D. XV *k. April. Constantinopoli Lampadio et Oreste vv. cc. conss.*

[28] *Idem A. Iuliano pp.* **pr.** Cum antiquitas testamenta fieri voluit nullo actu interveniente et huiusmodi verborum compositio non rite interpretata paene in perniciem et testantium et testamentorum procederet, sancimus in tempore, quo testamentum conditur vel codicillus nascitur vel ultima quaedam dispositio secundum pristinam celebratur observationem (nihil enim ex ea penitus immutandum esse censemus), ea quidem, quae minime necessaria sunt, nullo procedere modo, quippe causa subtilissima proposita ea quae superflua sunt minime debent intercedere. **1.** Si quid autem necessarium advenerit et in ipsum corpus laborantis respiciens contigerit, id est vel victus necessarii vel potionis oblatio vel medicaminis datio vel impositio, quibus relictis ipsa sanitas testatoris periclitatur, vel si quis necessarius naturae usus

after the seven witnesses gather, it is enough that the will of the male or female testator is revealed to all at once, indicating to whom he or she wishes the property to come or to whom he or she assigns legacies or trusts or grants of freedom, even if the male or female testator does not, prior to such a allocation, first say those formal words, that "these same witnesses have come together because he or she wanted to compose, without writing, a will or testament."

Written and given December 10, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, for the second time (528).

[27][157] *The same Augustus to Julian, Praetorian Prefect.* **pr.** We ordain that if anyone has executed a will in a legal manner and ten years have passed after its making, it is valid if there is, in fact, no evidence the testator has altered or reversed his wish. For why is what is unchanged forbidden to remain valid? How can someone be made intestate who made a will and wanted nothing that was opposed to it? **1.** But if an opposing wish is shown in the meantime, (then) if, indeed, there is a wholly complete execution of a second will, by operation of law the earlier will is void. **2.** But if the testator said merely that he did not want the earlier will to remain, or by using other words revealed a change of mind, and he makes this clear either through not less than three reliable witnesses or in (public) records, and ten years have passed, then (We hold that) the will is void both owing to change of mind and lapse of time. **3.** Otherwise in no way do We allow decedents' wills to become void through passage of ten years; earlier constitutions[158] that were enacted on voiding such wills are entirely repealed.

Given March 18, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[28] *The same Augustus to Julian, Praetorian Prefect.* **pr.** Antiquity wished that wills be executed with no interrupting transaction. But since this verbal formulation was not properly interpreted and led to near disaster for both testators and wills, We ordain that, during the time when a will is made or a codicil arises or some final disposition is proclaimed in accord with traditional ritual – for We think that none of it should be entirely altered – everything (in the traditional procedure) that is not at all required shall in no respect continue, since, when an overly complicated case is presented, things that are superfluous should hardly interfere (with the will's validity). **1.** If something necessary arises and happens to concern the very body of the sufferer, that is, either required food or the presentation of drink or the giving or administration of medicine, by omission of which the testator's very health is endangered, or if some natural requirement

[157] Combine with C. 6.33.3.
[158] See C.Th. 4.4.6.

ad depositionem superflui ponderis immineat vel testatori vel testibus, non esse ex hac causa testamentum subvertendum, licet morbus comitialis, quod et factum esse comperimus, uni ex testibus contigerit, sed eo quod urguet et imminet repleto vel deposito iterum solita per testamenti factionem adimpleri. 2. Et si quidem a testatore aliquid fiat testibus paulisper separatis, cum coram his facere aliquid naturale testator erubescat, iterum introductis testibus consequentiam factionis testamenti procedere. 3. Si tamen in quendam vel quosdam testium aliquid tale contingat, si quidem ex brevi temporis intervallo necessitas potest transire, iterum eorundem testium reversum expectari et sollemnia peragi.

4. Sin autem longiore spatio refectio fortuiti casus indigeat, et maxime si salus testatoris periclitantis immineat, tunc illo vel illis testibus, circa quos aliquid tale eveniet, separatis alios subrogari et ab eo vel ab eis tam testatorem quam alios testes sciscitari, si ea, quae eorum praesentiam antecedunt, omnia coram eis processissent. 5. Et si hoc fuerit undique manifestum, tunc eos vel eum una cum aliis testibus ea quae oportet facere, etsi in medio subscriptiones testium iam fuerant subsecutae. sic etenim et naturae medemur et mortuorum elogia in suo statu facimus permanere.

6. Cum autem constitutione, quae de testamentis ordinandis processit, cavetur, quatenus septem testium praesentia in testamentis requiratur et subscriptio a testatore fiat vel alio pro eo, et constitutio sic edixit: 'octavo subscriptore adhibito', et quidam testamentum suum omne manu propria conscripsit et post eius litteras testes adhibiti suas subscriptiones supposuerunt aliaque omnia sollemniter in testamento peracta sunt et testamentum ex hoc, de quo dubitatur, irritum factum est, eandem constitutionem corrigentes sancimus, si quis sua manu totum testamentum vel codicillum conscripserit et hoc specialiter in scriptura reposuerit, quod sua manu hoc confecit, sufficiat ei totius testamenti scriptura et non alia subscriptio requiratur neque ab eo neque pro eo ab alio, sed sequantur huiusmodi scripturam et litterae testium et omnis quae expectatur observatio, et sit testamentum validum, et codicillus, si quinque testium litterae testatoris scripturae coadunentur, in sua firmitate remaneat, et nemo callidus machinator huiusmodi iniquitatis in posterum inveniatur.

for disposal of an excess burden threatens either the testator or witnesses,[159] a will should not be overturned for this reason, even if – what we have learned has also happened – a bout of epilepsy befalls one of the witnesses. Rather, when what presses or threatens has been completed or unloaded, the usages shall again be carried out through execution of the will. 2. And if something is done by the testator a little apart from the witnesses, when the testator is embarrassed to do something natural in their presence, after the witnesses are once again led in (We allow) the completion of the will's execution to proceed. 3. But if some such thing happens to one or more witnesses, provided the necessity can pass in a short time, again (We allow) the return of the same witnesses to be awaited and the formalities to be completed.

4. But if recovery from misfortune requires a longer time, and especially if the testator's health turns threatening, then, after the departure of one or more witnesses to whom some such thing occurs, (We allow) others to be substituted and both testator and other witnesses to be asked by him or them if what happened prior to their coming were all done in presence of them. 5. And if this is in all respects clear, then he or they, along with the other witnesses, shall do what is required, even if in the meantime witness signatures had already occurred. For in this way We both satisfy nature and make the testator's will remain valid.

6. In addition, it is provided in the constitution on drawing up wills[160] to what extent the presence of seven witnesses is required for wills and it is signed either by the testator or another for him, and the constitution states "with an eighth signatory summoned." Someone wrote his entire will in his own hand, and, following his writing, witnesses were summoned and added their own signatures, and all other formalities were performed for the will; (but) the will was rendered void by the uncertainty in question. Correcting the same constitution, We ordain that if anyone writes out his entire will or codicil in his own hand, and specifically states in writing that he did this in his own hand, the writing of the entire testament shall suffice for him and no additional signature shall be required either from him or for him by another; but both the writing of witnesses and all the required formality shall take place after such a writing. The will shall be valid (if this is done), and a codicil shall retain its validity if the writing of five witnesses is added to the testator's writing; and let no cunning intriguer of such an injustice (questioning such a document's validity) be found hereafter.

[159] In sections 1–3, Justinian refers obliquely to use of bathroom facilities.

[160] C. 6.23.21 above. As to the case in this section, Blume: "Here the testator did not sign his name, though he wrote the whole testament in his own handwriting. The point in question was whether he should not have signed his name, or summoned an eighth witness for him. The law provides that such testament is valid, without either of these requirements."

D. VI k. April. Constantinopoli Lampadio et Oreste vv. cc. conss.

[**29**] *Idem A. Iuliano pp.* **pr.** Iubemus omnimodo testatorem, si vires ad scribendum habeat, nomen heredis vel heredum in sua subscriptione vel in quacumque parte testamenti ponere, ut sit manifestum secundum illius voluntatem hereditatem esse transmissam. **1.** Sin autem forsitan ex morbi acerbitate vel litterarum imperitia hoc facere minime poterit, testibus testamenti praesentibus nomen vel nomina heredis vel heredum ab eo nuncupari, ut omnimodo sciant testes, si non ipse subscribere potest, qui sunt scripti heredes, et ita certo heredis nomine successio procedat. **2.** Si enim talis est testator, qui neque scribere neque articulate loqui potest, mortuo similis est et falsitas in elogiis committitur, quam, ut exul fiat a re publica nostra, maxime in testamentorum confectione cupientes hanc edictalem legem in orbem terrarum ponimus. **3.** Quod si non fuerit observatum et nomen heredis vel heredum non fuerit manu testatoris scriptum vel voce coram testibus nuncupatum, hoc testamentum stare minime patimur vel in totum, si tota heredum nomina fuerint praetermissa, vel in eius heredis institutionem, cuius nomen neque lingua neque manus testatoris significavit.

4. Sed ne aliqua forsitan oblivio testium animis incumbat pluribus interdum nominibus heredum expressis, ipsi testes in suis subscriptionibus, cum testator non haec scripserit, sed nuncupaverit, eorum nomina scribere non differant ad aeternam rei memoriam. **5.** Sin vero ipse testator in qualicumque parte testamenti nomina heredum (sicut dictum est) scripserit, supervacuum est testes in sua subscriptione hoc exprimere, cum forsitan nescire eos testator suos heredes voluit et semel causa ex ipsius testatoris scriptura appareat.

6. Oportet enim omnimodo vel ex litteris testatoris vel ex voce quidem testatoris, litteris autem testium, qui ad elogium conficiendum fuerint convocati, nomina manifestari heredum. quemadmodum enim in elogio, quod sine scriptura conficitur, necesse est testatorem voce exprimere nomen vel nomina heredum, ita oportet et in testamentis per scripturam conficiendis, cum ipse testator manu sua scribere heredes vel noluerit vel minime potuerit, voce tamen eius eos manifestari.

7. Quae in posterum tantummodo observari censemus, ut, quae testamenta post hanc novellam nostri numinis legem conficiuntur, haec cum tali observatione procedant: quid enim antiquitas peccavit, quae praesentis legis inscia pristinam secuta est observationem? scituris et

Given March 27, at Constantinople, in the consulship of viri clarissimi *Lampadius and Orestes (530).*

[29] *The same Augustus to Julian, Praetorian Prefect.* **pr.** We order a testator, if he has the strength to write, in all circumstances to place (write out) the name of the heir or heirs in his signature or in some part of the will, to make it clear that the inheritance is transmitted pursuant to his wish. **1.** But if, perchance, owing to severe sickness or illiteracy he can in no way do this, in the presence of the witnesses to the will he is to announce the name or names of the heir or heirs, so that, if he himself cannot write out those named heirs, at least the witnesses know, and so the succession takes place with a definite named heir. **2.** For if the testator is one who can neither write nor speak articulately, he is like a dead person, and (so) forgery occurs in wills. Desiring to banish this from our state particularly in the making of wills, We publish to the world this law in the form of an edict. **3.** But if this is not observed and the name of the heir or heirs is not written in the testator's hand or orally declared before witnesses, We do not at all allow this will to stand, either in its entirety if all the names of heirs are omitted, or for the designation of an heir whose name neither the testator's tongue nor his hand makes known.

4. But so that, perchance, no sort of forgetfulness overtake the minds of witnesses when many names of heirs are stated, when the testator does not write but declares them, the witnesses themselves should not hesitate to write these names in their signatures, for the enduring recollection of the event. **5.** But if the testator himself writes the names of heirs in some part of the will, as said above, it is needless for the heirs to state this in their own signature, since perhaps the testator did not want them to know his heirs, and the matter is clear once and for all from the testator's own writing.

6. For in any case the names of heirs must be clear either from the testator's writing or from the testator's voice as well as the writing of the witnesses assembled to execute the will. For as in a will made without writing the testator must necessarily state orally the name or names of heirs, so also in making written wills, when the testator himself either does not wish to name the heirs with his own hand or cannot at all do this, nevertheless they must be made clear by his voice.

7. We determine that these (provisions) be observed in the future, so that testaments made subsequent to this new statute of Our Divine Majesty go forward with such a formality. For how was the past at fault, which was unaware of the present law and followed the old formality? Both notaries and those who

tabellionibus et his qui conficienda testamenta procurant, quod, si aliter facere ausi fuerint, poenam falsitatis non evitabunt, quasi dolose in tam necessaria causa versati.

D. k. Mart. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[30] *Idem A. Iohanni pp.* Nostram provisionem, maxime circa ultima elogia defunctorum, nunc etiam extendi properamus. unde cum invenimus quasdam controversias veteribus iuris interpretatoribus exortas propter testamentum, quod legitimo modo conditum est septemque testium signa habens, postea fortuito casu vel per ipsius testatoris operam lino toto vel plurima eius parte incisa in ambiguitatem inciderit, solitum ei praebemus remedium sancientes, si quidem testator linum vel signacula inciderit vel abstulerit utpote voluntate eius mutata testamentum non valere: sin autem ex alia quacumque causa hoc contigerit, durante testamento scriptos ad hereditatem vocari, maxime cum nostra constitutio, quam super tuitione testamentorum promulgavimus, testatorem disposuit vel sua manu nomen heredis scribere vel, si imperitia litterarum vel adversa valitudine seu alio modo hoc facere non potest, testes ipsos audito nomine heredis sub praesentia ipsius testatoris nomen heredis suis subscriptionibus declarare.

D. XV k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[31] *Idem A. Iohanni pp.* **pr.** Et ab antiquis legibus et a diversis retro principibus semper rusticitati consultum est et in multis legum subtilitatibus stricta observatio eis remissa est, quod ex ipsis rerum invenimus documentis. cum enim testamentorum ordinatio sub certa definitione legum instituta est, homines rustici et quibus non est litterarum peritia quomodo possunt tantam legum subtilitatem custodire in ultimis suis voluntatibus? ideo ad dei humanitatem respicientes, necessarium duximus per hanc legem eorum simplicitati subvenire.

1. Sancimus itaque in omnibus quidem civitatibus et in castris orbis Romani, ubi et leges nostrae manifestae sunt et litterarum viget scientia, omnia, quae etiam libris nostrorum digestorum seu institutionum et imperialibus sanctionibus nostrisque dispositionibus in condendis testamentis cauta sunt, observari nullamque ex praesenti lege fieri innovationem. 2. In illis vero locis, in quibus raro inveniuntur homines litterati, per praesentem legem rusticanis concedimus antiquam eorum

see to the making of wills shall know that, if they will dare to do otherwise, they will not escape the penalty for falsification, as having acted deceitfully in such an important matter.[161]

Given March 1,[162] *at Constantinople, in the post-consulate of the* viri clarissimi *Lampadius and Orestes (531).*

[30] *The same Augustus to John, Praetorian Prefect.* We hasten now to extend our foresight especially concerning the last wills of decedents. When we learned that some disputes arose for the ancient interpreters of law over a will that was executed legally and bore the seven seals of witnesses, but afterwards, by accident or through the testator's own effort, fell into doubt because the linen band (binding the will's tablets) was cut entirely or in large part. Affording the usual remedy, We ordain that, if indeed the testator cuts or tears off the linen band or the seals to indicate his change of mind, the will is invalid. But if this happens for some other reason, the will remains in force and those named (as heirs) are summoned to the inheritance, especially because Our constitution that We proclaimed to safeguard wills[163] provided that the testator either write the heir's name in his own hand or, if he cannot do this owing to illiteracy or adverse health or any other reason, the witnesses themselves, having heard the heir's name in the testator's presence, declare the heir's name in their signatures.

Given October 18, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[31] *The same Augustus to John, Praetorian Prefect.* **pr.** Concern for rural conditions (*rusticitas*) has always been expressed both by ancient statutes and by various previous emperors. In many legal intricacies, strict observation has been relaxed for them, as We discover from the very documents of transactions. Since the drawing up of wills has been established under definite rules of law, how can rural people and those ignorant of letters preserve such legal technicality in their last wills? And so, in consideration of God's humanity, We held it necessary to aid their simplicity through this law.

1. So we ordain that, in all cities and army camps of the Roman world where Our laws are known and where literacy flourishes, all provisions for creating wills be observed (as set down) also in the books of Our Digest or Institutes and imperial ordinances and Our orders, and no change result from the present law. **2.** But in those places where literate men are rarely found, through

[161] This impracticable law was virtually repealed by Nov. 119.9 (544).
[162] Krüger prefers February 20; so, too, Lounghis *et al.*
[163] C. 6.23.29 above.

consuetudinem legis vicem obtinere, ita tamen, ut, ubi scientes litteras inventi fuerint, septem testes, quos ad testimonium vocari necesse est, adhibeantur et unusquisque pro sua persona subscribat: ubi autem non inveniuntur litterati, septem testes et sine scriptura testimonium adhibentes admitti. 3. Si autem in illo loco minime inventi fuerint septem testes, usque ad quinque modis omnibus testes adhiberi iubemus: minus autem nullo modo concedimus. 4. Si vero unus aut duo vel plures scierint litteras, liceat his pro ignorantibus litteras, praesentibus tamen, subscriptionem suam imponere, sic tamen, ut ipsi testes cognoscant testatoris voluntatem et maxime quem vel quos heredes sibi relinquere voluerit, et hoc post mortem testatoris iurati deponant. 5. Quod igitur quisque rusticorum, sicut praedictum est, pro suis rebus disposuerit, hoc omnimodo legum subtilitate remissa firmum validumque consistat.

D. III non. Iul. Constantinopoli dn. Iustiniano A. IIII et Paulino vc. conss.

[32] ...

XXIIII De Heredibus Instituendis et Quae Personae Heredes Institui Non Possunt

[1] *Imp. Titus Aelius Antoninus A. Antestiano.* Qui deportantur, si heredes scribantur, tamquam peregrini capere non possunt, sed hereditas in ea causa est, in qua esset, si scripti non fuissent.

Sine die et consule.

[2] *Imp. Antoninus A. Caecilio.* Pater tuus si ex residua parte heres institutus est, quam alter heres scriptus capere non posset, isque ad nullam partem hereditatis propter condicionem suam admitti potuit, ex asse heres extitit: nam residui commemoratio etiam totum admittit.

PP. XV k. Iul. Romae duobus Aspris conss.

[3] *Imp. Alexander A. Vitali militi.* **pr.** Cum proponas Alexandrum equitem testamento primo loco Iulianum ut libertum suum heredem instituisse eique substituisse his verbis: 'quod si ex aliqua causa primus hereditatem meam adire noluerit vel non potuerit, tunc in locum secundum heredem substituo Vitalem', post mortem autem testatoris

the present law We allow country folk (*rusticani*) to observe their ancient custom as statute, provided, however, that where literate men are to be found, the seven witnesses necessarily summoned to (making) a will be gathered and each sign for himself; but where literate men are not found, seven offering testimony even without writing are allowed. **3.** But if in that place not even seven witnesses are found, We order that as few as five witnesses be employed by any means; but in no way do We allow fewer. **4.** But if one or two or more of them are literate, they shall be permitted to write their signature for the illiterate who nonetheless are present, provided that these witnesses know the testator's wish and especially whom he wants to leave as his heir or heirs; and after the testator's death they attest this under oath. **5.** What, therefore, any country person, as said above, provides for his property shall remain valid and in force, with legal technicalities altogether relaxed.

Given July 5, at Constantinople, in the consulship of Our Lord Justinian Augustus, for the fourth time, and the vir clarissimus *Paulinus (534).*

[**32**] <A Greek constitution is lost.>

Twenty-Fourth Title Designating Heirs, and What Persons Cannot Be Designated as Heirs[164]

[**1**] *Emperor Titus Aelius Antoninus Augustus to Antestianus.* Those who are permanently banished, if named as heirs, cannot take (under a will), like resident non-citizens (*peregrini*); but the inheritance remains in the situation it would have been in had they not been named.

Without date and consul.

[**2**] *Emperor Antoninus Augustus to Caecilius.* Your father, if he was designated heir "to the remaining portion" that the other named heir could not take, and on account of his legal status he (the other named heir) could not be admitted to any part of the inheritance, becomes heir to the entirety (*ex asse*); for the meaning of "remaining" also includes "all."

Posted June 17, in Rome, in the consulship of the two Aspri (212).

[**3**] [165] *Emperor Alexander Augustus to Vitalis, a soldier.* **pr.** Since you allege that Alexander, a cavalryman, by his will had designated Julian in the first place as his freedman heir, and provided a substitute in these words: "But if for some reason the first (heir) will not or cannot accept my inheritance, then in second place I substitute Vitalis as heir," but after his death it emerged that Julian was the co-owned slave of the dead soldier (Alexander) and Zoilus his

[164] *See* D. 28.5; *Inst.* 2.14.
[165] Combine with C. 6.11.1.

Iulianum servum communem fuisse defuncti militis et Zoili fratris eius apparuerit, an tu ex substitutione admittereris, voluntatis est quaestio. 1. Nam si credens eum proprium et suum libertum heredem instituit nec per eum ad alium quemquam hereditatem pertinere voluit, extitit condicio substitutionis tibique delata hereditas est. 2. Quod si verba substitutionis subscriptae ad ius rettulit, ut si nec per semet ipsum alium fecisset heredem (potuit enim quamvis iubente domino nolle adire), ita demum substitutus vocaretur, si tamen paruit domino et adiit, substitutioni locus non est.

PP. VI k. Mai. Maximo II et Aeliano conss.

[4] *Imp. Gordianus A. Ulpio.* Si pater tuus eum quasi filium heredem instituit, quem falsa opinione ductus suum esse credebat, non instituturus, si alienum nosset, isque postea subditicius esse ostensus est, auferendam ei successionem divi Severi et Antonini placitis continetur.

PP. prid. non. Oct. Pio et Pontiano conss.

[5] *Idem A. Cassiano.* Non ideo minus uxor iure heres videtur instituta, quod non uxor, sed adfinis testamento nominata est.

PP. V k. Oct. Gordiano A. II et Pompeiano conss.

[6] *Imp. Philippus A. et Philippus C. Antonio.* Si compensandi debiti gratia uxor maritum fecit heredem, desiderio tuo praeter portionem hereditatis debitum quoque restitui postulantis non tantum iuris severitas, verum etiam defunctae voluntas refragatur.

PP. XII k. Mart. Praesente et Albino conss.

brother, whether you are admitted by the substitution is a question of (the testator's) intention. 1. For if he designated him heir believing him to be his own freedman and did not want the inheritance to come to someone else (here, Zoilus) through him, the condition for the substitution is met and the inheritance is delivered to you. 2. But if by the substitution's words he referred to the rule that the substitute is summoned (as heir) only if the primary heir had not made another person (here, Zoilus) heir through himself – for he (Julian) could decline to accept despite his master's order – only then is the substitute summoned as heir, provided that he obeyed his master and entered into the inheritance.[166]

Posted April 26, in the consulship of Maximus, for the second time, and Aelianus (223).

[4] *Emperor* G*ORDIAN* *Augustus to Ulpius.* If your father designated someone as though his son to be his heir, whom he was misled by false report to believe his offspring, and he would not designate him if he knew him to be another's, and this person was afterwards shown to be spurious, in the opinions of the deified Severus and Antoninus it is held that the inheritance be removed from him.

Posted October 6, in the consulship of Pius and Pontianus (238).

[5] *The same Augustus to Cassianus.* A wife is deemed to be no less rightfully designated an heir because the will called her not "wife" but "relative by marriage" (*adfinis*).

Posted September 27, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

[6] *Emperor* P*HILIP* *Augustus and* P*HILIP* *the Caesar to Antonius.* If a wife made her husband (Antonius) an heir to pay back a debt (she owed you), not only the rigor of the law but also the decedent's wish oppose your desire in asking that the debt be repaid in addition to your share of the inheritance.

Posted February 18, in the consulship of Praesens and Albinus (246).

[166] Blume: "In this case Alexander appointed Julianus his heir, calling him his freedman, and substituting Vitalis as heir in his stead in case Julianus would not or could not enter on the inheritance. Now the testator was mistaken in calling Julianus his freedman, for he was the slave both of the testator and of one Zoilus. If he was mistaken and believed that Julianus was his slave alone and that he would be his freedman alone (intending, as the law says, that he alone and not some master through him should receive the inheritance), then the appointment was invalid, because of the error, and the substitute took his place. C. 6.20.7; C. 6.23.4 and 5; C. 6.24.14 … If, on the contrary, the testator was not mistaken, and he wanted the joint master of Julianus to have the inheritance (for whatever a slave acquired, he acquired for the benefit of his master), the substitution failed when Julianus accepted the inheritance, and the substitution would have applied only in case Julianus had not accepted."

[7] *Impp. Diocletianus et Maximianus AA. Zizoni.* Nec apud peregrinos fratrem sibi quisquam per adoptionem facere poterat. cum igitur, quod patrem tuum voluisse facere dicis, irritum sit, portionem hereditatis, quam is adversus quem supplicas velut adoptatus frater heres institutus tenet, restitui tibi curae habebit praeses provinciae.

PP. III non. Dec. Diocletiano II et Aristobulo conss.

[8] *Idem AA. Hadriano.* Collegium, si nullo speciali privilegio subnixum sit, hereditatem capere non posse dubium non est.

PP. X k. Iun. ipsis IIII et III AA. conss.

[9] *Idem AA. et CC. Iuliae.* Extraneum etiam cum morietur heredem scribi placuit.

PP. XVI k. Nov. Sirmi AA. conss.

[10] *Idem AA. et CC. Asclepiadae.* Neque per se heredes institutos, quibus hoc concessum non est, neque per servos proprios hereditatem posse quaerere dictat iuris ratio.

S. XVI k. Sept. Sirmii CC. conss.

[11] *Impp. Theodosius et Valentinianus AA. Hierio pp.* Extraneum etiam penitus ignotum heredem quis instituere potest.

D. X k. Mart. Constantinopoli Felice et Tauro conss.

[12] *Imp. Leo A. Erythrio pp.* Hereditatis vel legati seu fideicommissi aut donationis titulo domus aut annonae civiles aut quaelibet aedificia vel mancipia ad ius inclitae urbis vel alterius cuiuslibet civitatis pervenire possunt.

[7] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Zizo.* Not even among non-Roman citizens (*peregrini*) could anyone use adoption to obtain a brother for himself. Therefore, since what you say your father wished to do is void, the provincial governor will see to it that there is restored to you the portion of the inheritance (now) held by the target of your complaint, "an heir designated by virtue of being an adopted brother."

Posted December 3, in the consulship of Diocletian, for the second time, and Aristobulus (285).

[8][167] *The same Augusti to Hadrian.* There is no doubt that a guild (*collegium*) cannot take an inheritance if it is not supported by any special legal privilege.

Posted May 23, in the consulship of the Augusti themselves, for the fourth and third time, respectively (290).

[9] *The same Augusti and the Caesars to Julia.* The prevailing view is that a third party (*extraneus*; a non-family member) can also be named heir "when he will die."[168]

Posted October 17, at Sirmium, in the consulship of the Augusti (293).

[10] *The same Augusti and Caesars to Asclepiades.* Legal reason dictates that those designated heirs, if not granted this right (by law), can seek an inheritance neither through themselves nor through their own slaves.

Written August 17, at Sirmium, in the consulship of the Caesars (294).

[11][169] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Hierius, Praetorian Prefect.* One can designate as heir even a wholly unknown non-family member (*extraneus*).

Given February 20, at Constantinople, in the consulship of Felix and Taurus (428).

[12][170] *Emperor* LEO *Augustus to Erythrius, Praetorian Prefect.* By right of inheritance or legacy or trust or gift, houses or rights to municipal food distribution or any buildings or slaves can come to belong to this Illustrious City (Constantinople) or any other city.

[167] Combine with C. 6.26.5.

[168] Blume: "The general rule was than an event certain to come but indefinite as to time was not a condition, but fixed the time … C. 4.11.1. Now an heir could not be appointed from a certain day, any more than after a certain day, and the day was struck out. D. 28.5.34. An appointment commencing when the appointee was dying, so that his heirs would get the benefit, was certain to come, though the time was uncertain. Hence the rule here stated was an exception, and the appointment was considered either as under a condition precedent, or the rule as to time was relaxed." This rule applied only to non-family members.

[169] = C.Th. 5.1.9; combine with C. 2.57.2, 5.3.17, 5.4.22, 5.11.6, 6.18.1, 6.61.2.

[170] = C. 11.32.3.

D. v k. Mart. Marciano et Zenone conss.

[13] *Imp. Iustinianus A. Menae pp.* Quotiens certi quidem ex certa re scripti sunt heredes vel certis rebus pro sua institutione contenti esse iussi sunt, quos legatariorum loco haberi certum est, alii vero ex certa parte vel sine parte, qui pro veterum legum tenore ad certam unciarum institutionem referuntur, eos tantummodo omnibus hereditariis actionibus uti vel conveniri decernimus, qui ex certa parte vel sine parte scripti fuerint, nec aliquam deminutionem earundem actionum occasione heredum ex certa re scriptorum fieri.

D. VIII id. April. Constantinopoli Decio vc. cons.

[14] *Idem A. Iohanni pp.* **pr.** Cum in libris Ulpiani, quos ad Massurium Sabinum scripsit, talis species relata est, hanc apertius expedire nobis visum est. **1.** Quidam testamentum faciens ita instituit: 'Sempronius Plotii heres esto'. veteres quidem existimabant, errorem nominis esse et sic institutionem valere, quasi testator Plotius nominaretur, et Sempronium sibi scripsisset heredem.

2. Sed huiusmodi sententiam crassiorem esse existimamus: neque enim sic homo supinus, immo magis stultus invenitur, ut suum nomen ignoret. sed si quidem ipse testator Plotio cuidam heres extitit, manifestissimum esse sibi Sempronium heredem instituisse, ut per mediam ipsius personam Plotii heres efficiatur: et hoc argumentamur ex antiqua regula, quae voluit heredem heredis testatoris esse heredem. **3.** Sin autem nihil tale factum est, supervacuam esse et inanem huiusmodi institutionem, nisi prius herede Plotio sibi instituto sic adiecit: 'Sempronius Plotii heres esto'. tunc etenim existimandum est eum dixisse, si non Plotius heres sibi fuerit, tunc Sempronium in locum partemve Plotii ex substitutione vocari, ut ita ex consequentia verborum Plotius quidem institutus, Sempronius autem substitutus inveniatur. **4.** Sin autem neque ipse testator Plotio heres extitit neque Plotium heredem antea scripsit et sic Sempronium Plotio heredem voluit esse, nullius esse

Given February 25, in the consulship of Marcianus and Zeno (469).[171]

[13] *Emperor Justinian Augustus to Menas, Praetorian Prefect.* Whenever specific persons were named "heirs" to specific property, or were ordered to be content with specific property in place of their designation (as heirs), it is clear they are considered legatees (and not heirs). But others (were appointed heirs) to a specific share or with no (specified) a share, who in accord with the content of ancient laws were directed (as heirs) to the specific designation of twelfths (*unciae*). We decree that the only persons who shall sue or be sued by all inheritance actions are those who are named to a specified share or with no (specified) share, and those named heirs to specific property receive no loss by reason of these same actions.[172]

Given April 6, at Constantinople, in the consulship of vir clarissimus *Decius (529).*

[14] *The same Augustus to John, Praetorian Prefect.* pr. In the books that Ulpian wrote commenting on Massurius Sabinus, the following case is given; We thought it best to resolve it more clearly. 1. A person (not named Plotius), in making his will, designated thus: "Let Sempronius be the heir of Plotius." The ancient jurists, to be sure, thought that this is a mistake as to a name and that the designation is valid, as though the testator were named Plotius and named Sempronius as his heir.

2. But we deem such a view too coarse, since there is no person so dull, or rather so dumb, that he does not know his own name. Still, if the testator himself were heir to some Plotius, quite obviously he designated Sempronius as heir to himself in order that he (Sempronius) be made the heir of Plotius through himself as intermediary; and We reason this from the ancient rule of law that wanted the heir of an heir to be the heir of the testator. 3. But if nothing of that sort happened, such a designation is useless and void, except if he (the testator), having first designated Plotius as his heir, added: "Let Sempronius be the heir of Plotius." For this should be construed as him having said that, if Plotius should not be his heir, then Sempronius is summoned through a substitution into Plotius' place and share, such that, owing to the logical impact of words, Plotius is indeed found to be designated, but Sempronius substituted. 4. But if the testator is not an heir to Plotius, nor did he first name Plotius his heir

[171] Krüger suggests 472 as the likelier date. Seeck gives February 26, 472.

[172] Blume: "the meaning of the term 'heir' under the Roman law was not quite the same as we generally understand that term, and … ordinarily, an 'heir' was a person who represented the estate as successor and who received the whole or a certain undivided portion of an inheritance, these portions being, according to custom, generally given in the amount of a twelfth or multiples *thereof* … A person who received a definite piece of property under a will was, generally, not an 'heir,' but a legatee without right to represent the estate." See Inst. 2.14.6–8.

momenti talem institutionem, cum non est verisimile in suum nomen quendam errasse.

D. III k. Aug. post consulatum Lampadii et Orestis vv. cc.

XXV De Institutionibus vel Substitutionibus seu Restitutionibus sub Condicione Factis

[1] *Impp. Severus et Antoninus AA. Alexandro.* Cum avum maternum ea condicione filiam tuam heredem instituisse proponas, si Anthylli filio nupsisset, non prius eam heredem existere, quam condicioni paruerit aut Anthylli filio recusante matrimonium impeditum fuerit, manifestum est.

PP. k. Oct. Anullino et Frontone conss.

[2] *Imp. Antoninus A. Cassiae.* pr. Condicioni, sub qua testamento matris tuae heres instituta es, si non paruisti, substitutio locum habet. nec enim videri potest sub specie turpium nuptiarum viduitatem tibi indixisse, cum te filio sororis suae consobrino tuo probabili consilio matrimonio iungere voluerit. 1. Nec extraordinario auxilio indiges, cum ex his quae libello complexa es declaretur non per eum stetisse, quominus supremae voluntati matris tuae testatricis satisfieret.

PP. VIII id. Mart. Romae Antonino A. IIII et Balbino conss.

[3] *Idem A. Maxentio et aliis.* Si mater vos sub condicione emancipationis heredes instituit et, priusquam voluntati defunctae pareretur, sententiam pater meruit vel aliter defunctus est, morte eius vel alio modo patria potestate liberati ius adeundae hereditatis cum sua causa quaesistis.

S. prid. k. Mai. Sabino et Anullino conss.

and thereby wanted Sempronius to be an heir to Plotius, such a designation is of no validity, it being unlikely that anyone errs as to his own name.

Given July 30, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*[173]

Twenty-Fifth Title Designations or Substitutions (of Heirs), or Restitutions Made under a Condition (in a Trust)[174]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Alexander.* Since you state that her maternal grandfather designated your daughter as heir on the condition that she had married the son of Anthyllus, it is obvious that she does not become heir before she fulfills the condition or the son of Anthylus refuses and the marriage is obstructed.

Posted October 1, in the consulship of Anullinus and Fronto (199).

[2] *Emperor* ANTONINUS *Augustus to Cassia.* pr. If you did not fulfill the condition under which you were designated heir by your mother's will, substitution occurs. For it does not appear that she imposed unmarried status (*viduitas*) on you through the pretense of a dishonorable marriage, since she wished, with commendable planning, to join you in marriage to her sister's son, your first cousin. 1. Nor do you merit special relief, since, from what you stated in your petition, it is not declared that he was responsible for not satisfying the last wish of your mother the testator.

Posted March 8, at Rome, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[3] *The same Augustus to Maxentius and others.* If your mother designated all of you as heirs under condition of your emancipation (from your father), and, before the decedent's wish was fulfilled, your father earned a (capital) sentence or otherwise died, by his death or in another manner you were freed from your father's power and acquired the right to take the inheritance with its burdens and benefits (*cum sua causa*).

Written April 30, in the consulship of Sabinus and Anullinus (216).

[173] Krüger argues for July 29; accepted by Lounghis *et al.*

[174] See D. 28.7. Blume: "While a resolutive condition was ... ordinarily void, yet it was provided by C. 6.41.1, that a testator had the right to penalize an heir and take an inheritance away from him in case the heir should fail to comply with the requirements in the testament. And then, too, under the system of trusts, dealt with at C. 6.42, a testator might require an heir to surrender the property received, at least up to three-fourths thereof, and he might further entail his property by requiring surrender thereof to successive transferees." See Inst. 2.23.11.

[4] *Imp. Alexander A. Aemilio.* **pr.** Si pater filium quem in potestate habebat sub condicione, quae in ipsius potestate non erat, heredem scripsit nec in defectum eius exheredavit, iure testatus non videtur. **1.** Cum autem trans mare et longe te agentem sub hac condicione heredem scriptum esse dicas, si in patriam, quae in provincia Mauritaniae erat, regressus fuisses, nec exheredatum te adleges, si in eum locum non redisses, manifestum est multis casibus non voluntariis sed fortuitis evenire potuisse, ut eam implere non posses: et ideo adire non prohiberis hereditatem.

PP. VI k. April. Iuliano et *Crispino conss.*

[5] *Impp. Valerianus et Gallienus AA. Maximae.* **pr.** Reprehendenda tu magis es quam mater tua. illa enim si[vii] heredem te sibi esse vellet, id quod est inutile, matrimonium te dirimere cum viro non iuberet. **1.** Tu porro voluntatem eius divortio comprobasti: oportuerat autem, etsi condicio huiusmodi admitteretur, praeferre lucro concordiam maritalem. enimvero cum boni mores haec observari vetent, sine ullo damno coniunctionem retinere potuisti. **2.** Redi igitur ad maritum sciens hereditatem matris, etiamsi redieris, retenturam, quippe quam retineres, licet prorsus ab eo non recessisses.

PP. XII k. Dec. Valeriano IIII et Gallieno III AA. conss.

[6] [Αὐτοκράτωρ Ἰουσιτινιανὸς Α.]. Ἐάν τις ὑπὸ αἵρεσιν τοῦ παιδοποιῆσαι τὴν θυγατέρα ἐκ τοῦ νῦν ὄντος ἀνδρὸς καταλείψῃ τι αὐτῇ, ἡ δὲ ἐξ ἐκείνου μὲν μὴ παιδοποιήσῃ, ἑτέρῳ δὲ γαμηθεῖσα παῖδας σχοίη, μηδὲν ἧττον τὸ καταλελειμμένον ἐχέτω, κἂν ἰδικῶς ὁ πατὴρ τῶν τηνικαῦτα γάμων ἐμνήσθη.

[7] *Imp. Iustinianus A. ad senatum.* **pr.** Generaliter sancimus, si quis ita verba sua composuerit, ut edicat: 'si filius vel filia intestatus vel intestata' vel etiam 'sine liberis' aut 'sine nuptiis decesserit', et ipse vel ipsa vel liberos sustulerit vel nuptias contraxerit sive testamentum fecerit, firmiter res possideri et non esse locum substitutioni vel restitutioni: si enim nihil ex his fuerit subsecutum, tunc valere condicionem et res secundum verba testamenti restitui, ut incertus successionis morientis

[vii] nisi

[4] *Emperor* ALEXANDER *Augustus to Aemilius.* **pr.** If a father designated as heir a son whom he had in his power under a condition his son was unable to fulfill, and he did not disinherit him for a fault, he is not deemed to have made a valid will. **1.** Since you say that, while you were across the (Mediterranean) Sea and far off, you were named heir on the condition that (when the will was published) you should have returned to your homeland in the province of Mauretania, nor do you state you were disinherited if you had not returned to that place, it could obviously occur through many involuntary, chance circumstances that you could not fulfill it; and so you will not be forbidden to enter into the inheritance.

Posted March 27, in the consulship of Julian and Crispinus (224).

[5] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Maxima.* **pr.** You are more to blame than your (deceased) mother. For if she did not wish you to be her heir, she would not order you to break off your marriage with your husband, something that is void (as a condition). **1.** Moreover, you approved her wish by divorcing him. Even if such a condition were allowed, your proper course was to prefer marital harmony over financial gain. But since, indeed, moral decency prevents this being enforced, you could have preserved your marital union without loss. **2.** Therefore return to your husband knowing you will keep your mother's estate even if you return, which indeed you would keep although you had not separated from him at all.

Posted November 20, in the consulship of Valerian, for the fourth time, and Gallienus, for the third time, Augusti (257).

[6][175] <*Emperor Justinian Augustus.*> If a man left something to his daughter under condition of her bearing children by her then husband, and she did not bear children from him but married another and had children, let her nonetheless have what was left her even if her father specifically mentioned the previous marriage.

[7][176] *Emperor Justinian Augustus to the Senate.* **pr.** We ordain generally that if someone composes his words so as to say: "(let X be substituted) if my son or daughter die intestate," or "without children," or "unmarried," and he or she either bears children or contracts a marriage or makes a will, the property is securely possessed (by the child), and a substitution or turnover does not take place. For if none of these ensued, then the condition is valid and the property is turned over (to the substitute) according to the will's words in order that the

[175] From Bas. 35.12.34. Lounghis *et al.* date to between 527 and 530

[176] Combine with C. 2.44.4, 3.38.12, 5.20.2, 5.4.24.

exitus videatur certo substitutionis vel restitutionis fine concludi. cui enim ferendus est intellectus, si forsitan testamentum quidem non fecerit, posteritatem autem habuerit, propter huiusmodi verborum angustias liberos eius omni paene fructu paterno defraudari? viam itaque impiam obstruentes, ut ne quis et alius deviaverit, huiusmodi facimus sanctionem et hanc legem in perpetuum valituram inducimus tam patribus quam liberis gratam: quo exemplo etiam aliis personis, licet extraneae sunt, de quibus huiusmodi aliquod scriptum fuerit, medemur.

1. Cum autem invenimus excelsi ingenii Papinianum in huiusmodi casu, in quo pater filio suo substituit nulla liberorum ex his procreandorum adiectione habita, ex optimo intellectu disposuisse evanescere substitutionem, si is qui substitutione praegravatus est pater efficiatur et liberos sustulerit, intellegentem non esse verisimile patrem, si de nepotibus cogitaverit, talem fecisse substitutionem: humanitatis intuitu hoc et latius et pinguius interpretandum esse credidimus. 2. Et si quis naturales habuerit filios et partem eis reliquerit vel dederit usque ad modum quem nos statuimus et substitutioni eos subiugaverit nulla liberorum eorum mentione facta, et hic intellegi evanescere substitutionem, liberis eam excludentibus et intellectu optimo his qui ad substitutionem vocantur obsistente et non concedente ad eos eam partem venire, sed ad filios vel filias, nepotes vel neptes, pronepotes vel proneptes morientis transmittente, et non aliter substitutione locum accipiente, nisi ipsi liberi sine iusta subole decesserint: ut, quod inter iustos liberos sanctum est, hoc et in naturales filios extendatur.

3. Quae omnia et in legatis vel fideicommissis specialibus locum habere sancimus.

D. XI k. Aug. Constantinopoli Lampadio et Oreste vv. cc. conss.

[8] *Idem A. Iohanni pp.* **pr.** Si quis heredem scripserit sub tali condicione: 'si ille consul fuerit factus' vel 'praetor', vel ita filiam suam heredem instituerit: 'si nupta erit', vivo autem testatore vel ille consul processerit vel praetor fuerit factus vel filia eius nupta fuerit et adhuc vivo testatore consulatum quidem vel praeturam illi deposuerint, filia autem eius diverterit, omni dubitatione veterum explosa sancimus, quandocumque impleta fuerit condicio, sive vivo eo sive mortis tempore sive

uncertain outcome of succession to the decedent seem ended in the definite result of a substitution or turnover. For who could bear the view, supposing he does not make a will but has children, that his children be almost cheated of all benefit from their father owing to such narrow construction of words? Therefore We block this unholy path so that not one more person go astray; We enact this ordinance and introduce this ever-enduring law, pleasing alike to fathers and children, and by this example We minister also to other persons, even non-family members, for whose benefit some such thing is written.

1. Since we learn that Papinian, a man of highest talent, in a similar case where the father substituted for his son while adding nothing about children born from them, on the basis of his high intelligence determined that the substitution is voided if the one who was burdened with the substitution becomes a father and bears children, thinking it unlikely that the father, if he thought about grandchildren, had made such a substitution,[177] We believe, for reasons of humanity, this should be applied quite widely and extensively. **2.** Also if someone has natural children (out of wedlock) and leaves or gives a share to them up to the limit that We have set,[178] and subjects them to a substitution with no mention of their children, here too the substitution is understood to be voided, with their children excluding it; the best interpretation obstructs those called to the substitution and does not allow that share to come to them, but transmits it to the decedent's sons or daughters, grandsons or granddaughters, great-grandsons or -granddaughters, and the substitution does not otherwise take place unless the children themselves die without legal issue, so that what is ordained for legitimate children be extended also to natural children.

3. We ordain that all these things apply also for legacies or specific trusts.

Given July 22,[179] *at Constantinople, in the consulship of the* viri clarissimi *Lampadius and Orestes (530).*

[8][180] *The same Augustus to John, Praetorian Prefect.* **pr.** If anyone names an heir under a condition like: "if he will become Consul," or "Praetor," or designates his daughter heir "if she will have married," and while the testator is alive either he proceeds to become Consul or Praetor, or his daughter is married, and while the testator is still alive they lay down the consulate or Praetorship, or his daughter divorces, then, driving away all the doubt of the ancient jurists, We ordain that whenever the condition will have been fulfilled, either while he lives or at his death or after his death, the condition is deemed to be fulfilled.

[177] See C. 6.42.30; D. 35.1.102 (Papinian).
[178] C. 5.27.8.
[179] Krüger argues for July 27.
[180] Combine with C. 6.25.9 and 10, 6.26.10 and 11.

post mortem, condicionem videri esse completam. 1. Quod et in legatis et in fideicommissis et in libertatibus obtinendum esse censemus, ne, dum nimia utimur circa huiusmodi sensus subtilitate, iudicia testantium defraudentur.

D. VIIII k. Aug. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[9] *Idem A. Iohanni pp.* pr. Si testamentum ita scriptum inveniatur: 'ille heres esto secundum condiciones infra scriptas', si quidem nihil est adiectum neque aliqua condicio in testamento posita est, supervacuam esse condicionum pollicitationem sancimus et testamentum puram habere institutionem. 1. Et argumento utimur, quod Papinianus respondit vicos rei publicae relictos, qui proprios fines habebant, non ideo ex fideicommisso minus deberi, quod testator fines eorum et certaminis formam, quam celebrari singulis annis voluit, alia scriptura se declaraturum promisit ac postea morte praeventus non fecit. 2. Sin autem condiciones quasdam in quavis parte testamenti posuit, tum videri ab initio condicionalem esse institutionem et sic omnia compleri, tamquam si testator ipsas institutiones eisdem condicionibus copulasset, quae infra scriptae sunt.

D. VI k. Aug. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[10] *Idem A. Iohanni pp.* pr. Cum quidam praegnantem habens coniugem scripsit heredem ipsam quidem uxorem suam ex parte, ventrem vero ex alia parte, et adiecit, si non postumus natus fuerit, alium sibi esse heredem, postumus autem natus impubes decessit, dubitabatur, quid iuris sit, tam Ulpiano quam Papiniano viris disertissimis voluntatis esse quaestionem scribentibus, cum opinabatur Papinianus ideo testatorem voluisse postumo nato et impubere defuncto matrem magis ad eius venire successionem quam substitutum. si enim et suae substantiae partem uxori dereliquit, multo magis et luctuosam hereditatem ad matrem venire curavit. 1. Nos itaque in hac specie Papiniani dubitationem resecantes substitutionem quidem in huiusmodi casu, ubi postumus natus adhuc impubes viva matre decesserit, respuendam esse censemus. tunc autem tantummodo substitutionem admittimus, cum postumus minime editus fuerit vel post eius partum mater prior decesserit.

D. III k. Aug. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

1. We hold this also to apply both for legacies and for trusts and for grants of freedom, lest, while we are employing excessive technicality in such interpretations, the judgments of testators are cheated.

Given July 24,[181] *at Constantinople, in the post-consulate of the* viri clarissimi *Lampadius and Orestes (531).*

[9] [182] *The same Augustus to John, Praetorian Prefect.* **pr.** If a will is found to state: "Let him be heir according to the conditions written below," but nothing was added nor was any condition placed in the will, We ordain that the promise of conditions is void and the will has an unrestricted designation. **1.** And We use as argument what Papinian responded:[183] that certain villages with definite borders, left by a trust to a municipality, were not any the less owed because the testator promised (in his will) that he would declare in a different writing their boundaries and the form of the game that he wanted celebrated each year, but was afterward prevented by death from doing so. **2.** But if he placed some conditions in any part of his will, then the designation is deemed to be conditional from the start, and so all is fulfilled as if the testator had joined these designations to the same conditions that were written below.

Given July 27, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[10][184] *The same Augustus to John, Praetorian Prefect.* **pr.** A man with a pregnant wife made his wife heir to a share (of his estate), but the unborn child to the other share, and added that, if there was no posthumous child, another was his heir (to that share); the posthumous child died before puberty (i.e., adulthood). Doubt arose as to what the law was, with both Ulpian and Papinian, most learned men, writing that it was a question of (the testator's) intent; Papinian thought the testator wished that, when the posthumous child was born and died before puberty, the mother come to succeed him, rather than the substitute. For if he also left part of his estate to his wife, much more he saw to it that this grievous inheritance also come to the mother. **1.** Cutting through Papinian's hesitation in this matter, We hold that a substitution in such a case, where a posthumous child is born and dies before puberty and while the mother lives, should be rejected. We permit the substitution only then, when the posthumous child is not born or the mother dies first after its birth.

Given July 30, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[181] Krüger argues that this and the following two constitutions date to July 29, 531; followed by Lounghis *et al.*
[182] Combine with C. 6.25.8 and 10, 6.26.10 and 11.
[183] D. 31.77.33 (Papinian).
[184] Combine with C. 6.25.8 and 9, 6.26.10 and 11.

XXVI De Impuberum et De Aliis Substitutionibus

[1] *Imp. Titus Aelius Antoninus A. Secundo.* Cum heredes ex disparibus partibus instituti et invicem substituti sunt nec in substitutione facta est ullarum partium mentio, verum est non alias partes testatorem substitutioni tacite inseruisse, quam quae manifeste in institutione expressae sunt.

D. Claro II et Severo conss.

[2] *Impp. Severus et Antoninus AA. Phronimae.* Hereditatem quidem intestati filii delatam tibi dubitari non oportet. substitutio enim testamento patris facta ad pubertatis tempora porrigi non potest, quia ipso et aliis non eiusdem condicionis heredibus institutis et invicem substitutis propter eorum personam, quibus in unum casum dumtaxat substitui potest, etiam in filio idem debere servari et ratio suadet et divus Marcus pater constituit.

PP. VI k. Aug. Cilone et Libone conss.

[3] *Imp. Alexander A. Achillae.* **pr.** Heres instituta matris testamento si successionem ex testamento omisisti et ab intestato bonorum possessionis ius habere voluisti, substituto locum quin feceris, in dubium non venit. **1.** Proinde si substitutus hereditatem amplexus est, actionibus quae adversus matrem competebant ipsum convenire, non successionem ab intestato potes vindicare.

PP. XI k. Sept. Maximo II et Aeliano conss.

[4] *Idem A. Firmiano.* Quamvis placuerat substitutionem impuberis, qui in potestate testatoris fuerit, a parente factam ita: 'si heres non erit' porrigi ad eum casum, quo, posteaquam heres extitit, impubes decessit, si modo non contrariam defuncti voluntatem extitisse probetur: cum tamen proponas ita substitutionem factam esse: 'si mihi Firmianus filius et Aelia uxor mea (quod abominor) heredes non erunt, in locum eorum

Twenty-Sixth Title Substitutions for Minors[185] and Other Substitutions

[1][186] *Emperor* Titus Aelius Antoninus *Augustus to Secundus.* When heirs were designated to unequal shares and substituted for each other, and no mention was made of other parties in the substitution, it is correct that the testator did not impliedly insert into the substitution any other shares than those he clearly stated in the designation.

Given in the consulship of Clarus, for the second time, and Severus (146).

[2] *Emperors* Severus *and* Antoninus *Augusti to Phronima.* It must not be doubted that the inheritance from your intestate son falls to you. For a substitution made in a father's will cannot be extended up to the age of puberty, since reason dictates and the deified Marcus determined that, even when he (the son) and others not of the same status (i.e., not *filiifamilias* for whom pupillary substitution was possible) were designated heirs and substituted for one another, on account of the others' legal position, to whom there can be only one substitution, the same rule should also apply also for the son.[187]

Posted July 27, in the consulship of Cilo and Libo (204).

[3] *Emperor* Alexander *Augustus to Achilla.* **pr.** If you were designated heir in your mother's will and you refused the testamentary succession and wished to have the right to possess the estate on intestacy, there is no doubt that you opened the way for the substitute (to take the estate). **1.** Hence, if the substitute took the inheritance, you can sue him by the actions that were available against your mother, but cannot claim succession on intestacy.

Posted August 22, in the consulship of Maximus, for the second time, and Aelianus (223).

[4] *The same Augustus to Firmianus.* The accepted view was that a substitution for a minor (*impubes*) in the testator's power, made by a parent as follows: "If he will not be the heir," is extended to the case in which, after he became heir, the minor died, assuming the decedent's contrary wish is not shown.

[185] *Impuberes,* below the age of adulthood (conventionally, 14 for boys, 12 for girls). A *paterfamilias* who appointed his child as heir could appoint a substitute heir for the child if he or she died before reaching adulthood (pupillary substitution). This differs from ordinary ("direct") substitution, where a named heir fails to take the inheritance and the substitute is named in his place. See D. 28.6; Inst. 2.15–16.

[186] = Inst. 2.15.2. Blume: "Supposing that A was appointed as heir to 6/12th, B to 4/12ths, and C to 2/12ths of the estate, and supposing A died. Inasmuch as B received twice as much of the estate in the first place as C, he received, under the reciprocal substitution, without mention to the contrary, twice as much of the property of A as a substitute."

[187] This decision is cited at D. 28.6.4.2.

Publius Firmianus heres esto', manifestum est in eum casum factam substitutionem, quo utrique heredum substitui potuit.

PP. IIII k. Iul. Fusco II et Dextro conss.

[5] *Impp. Diocletianus et Maximianus AA. Hadriano.* Post aditam hereditatem directae substitutiones non impuberibus filiis factae expirare solent.

PP. X k. Iun. ipsis IIII et III AA. conss.

[6] *Idem AA. et CC. Quintiano.* Testamento iure facto multis institutis heredibus et invicem substitutis, adeuntibus suam portionem coheredum etiam invitis repudiantium adcrescit portio.

Sine die et consule.

[7] *Idem AA. et CC. Feliciano.* Si testamento facto intra pupillarem aetatem et in sua potestate constitutae filiae, si intra pubertatem decesserit, directis verbis pater substituit, heredem te factum ex testamento post eventum condicionis intestati successionem exclusisse constitit.

S. k. Ian. Sirmi AA. conss.

[8] *Idem AA. et CC. Petroniae.* **pr.** Precibus tuis manifestius exprimere debueras, maritus quondam tuus miles defunctus, quem testamento facto heredem communem vestrum filium instituisse proponis et secundum heredem scripsisse, utrumne in primum casum an filio suo, quem habuit in potestate mortis tempore, si intra quartum decimum aetatis suae annum an postea decesserit. **1.** Nam non est incerti iuris, quod, si quidem in patris militis positus potestate primo casu tantum habuit substitutum et patri heres extitit, eo defuncto ad te omnimodo eius pertineat successio. **2.** Si vero substitutio in secundum casum vel expressa vel compendio non usque ad certam aetatem facta reperiatur, si quidem infra pubertatem decessit, eos habeat heredes, quos pater ei constituit et adierunt hereditatem: si vero post pubertatem, te eius

Nevertheless, since you posit that the substitution was made as follows: "If Firmianus my son and Aelia my wife – heaven forbid! – will not be my heirs, let Publius Firmianus be heir in their place," it is clear that the substitution was made for the case in which there could be substitution for both heirs (i.e., no pupillary substitution).

Posted June 28, in the consulship of Fuscus, for the second time, and Dexter (225).

[5][188] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Hadrian.* After entry to the inheritance, direct substitutions normally expire unless made for minor children.

Posted May 23, in the consulship of the Augusti themselves, for the fourth and third times, respectively (290).

[6][189] *The same Augusti and the Caesars to Quintianus.* When a will is legally made and many heirs are designated and substituted for each other, the portion of those refusing (the inheritance) accrues to those co-heirs accepting their share, even unwillingly.

Without date and consul.

[7] *The same Augusti and Caesars to Felicianus.* If in his will a father made a direct substitution (*directis verbis*) for his daughter who was still a minor and in his power, should she die before puberty, it is settled that you, who were made a heir by will after the condition occurred (because the daughter died before reaching 12), have excluded succession by the intestate heir.

Written January 1, at Sirmium, in the consulship of the Augusti (293).

[8] *The same Augusti and Caesars to Petronia.* **pr.** In your petition you ought to have stated more clearly – as to your former husband, a deceased soldier, who you say designated your son as "a common heir" and named a second heir – whether he did this (only) for the first instance (*in primum casum*), or (rather) for his son, whom he had in his power at his death, should he die before age 14 or afterwards. **1.** For it is not contested law that, if he was placed in the power of his soldier father and had a substitute only in the first instance, and he became his father's heir, on his death his succession would go entirely to you. **2.** But if substitution is discovered to be for the second instance (*in secundum casum*) either expressly or in short form not up to a fixed age, if indeed he died before puberty, he would have the heirs whom his father appointed for him, and they would take the inheritance; but if after puberty, and you are holding

[188] Combine with C. 6.54.8.

[189] Combine with C. 6.49.4, where the subscription says: "Written July 10, at Philippopolis, in the consulship of the Augusti (293)." This constitution refers to an estate burdened with debts.

successionem obtinente velut ex causa fideicommissi bona, quae cum moreretur patris eius fuerunt, a te possunt petere.

S. v id. April. AA. conss.

[9] *Imp. Iustinianus A. Menae pp.* **pr.** Humanitatis intuitu parentibus indulgemus, ut, si filium vel nepotem vel pronepotem cuiuscumque sexus habeant nec alia proles descendentium eis sit, iste tamen filius vel filia vel nepos vel neptis vel pronepos vel proneptis mente captus vel mente capta perpetuo sit, vel si duo vel plures isti fuerint, nullus vero eorum saperet, liceat isdem parentibus legitima portione ei vel eis relicta quos voluerint his substituere, ut occasione huiusmodi substitutionis ad exemplum pupillaris nulla querella contra testamentum eorum oriatur, ita tamen, ut, si postea resipuerit vel resipuerint, talis substitutio cesset, vel si filii aut alii descendentes ex huiusmodi mente capta persona sapientes sint, non liceat parenti qui vel quae testatur alios quam ex eo descendentes unum vel certos vel omnes substituere. **1.** Sin vero etiam alii liberi testatori vel testatrici sint sapientes, ex his vero personis quae mente captae sunt nullus descendat, ad fratres eorum unum vel certos vel omnes eandem fieri substitutionem oportet.

D. III id. Dec. Constantinopoli dn. Iustiniano A. pp. II cons.

[10] *Idem A. Iohanni pp.* **pr.** Cum quidam duobus impuberibus filiis suis heredibus institutis adiecit, si uterque impubes decesserit, illum sibi esse heredem, et dubitabatur apud antiquos legum auctores, utrumne tunc voluit substitutum admitti, cum uterque filius eius in prima aetate decesserit, an alterutro decedente ilico substitutus in eius partem succedat, placuit Sabino substitutionem tunc locum habere, cum uterque decesserit: cogitasse enim patrem primo decedente fratrem suum in eius portionem succedere. **1.** Nos eiusdem Sabini veriorem sententiam existimantes non aliter substitutionem admittendam esse censemus, nisi uterque eorum in prima aetate decesserit.

D. VI k. Aug. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

the succession, they can seek from you, as on the basis of a trust, the property that was his father's when he died.[190]

Written April 9, in the consulship of the Augusti (293).

[9] *Emperor* Justinian *Augustus to Menas, Praetorian Prefect.* **pr.** For motives of humanity We grant to parents that, if they have a child or grandchild or great-grandchild of either sex and they have no other descendants, but this son or daughter or grandson or granddaughter or great-grandson or great-granddaughter is permanently insane, or if there are two or more but none of them is sane, these same parents are allowed to provide such substitutes as they wish to him, her, or them as to the statutory share left them, so that no complaint (of undutifulness) arise against their will because of such a substitution on analogy with a pupillary one; but in such a way that, if he, she, or they afterwards become sane, such a substitution shall fail, or if there are sane children or other descendants from such an insane person, a male or female testator parent may not substitute any except one or a few or all of those descended from him. **1.** But if there are other sane offspring to the male or female testator, but no one descends from those insane persons, the same substitution ought to be made in favor of one or a few or all of their siblings.

Given December 11, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, for the second time (528).

[10][191] *The same Augustus to John, Praetorian Prefect.* **pr.** When someone, having designated his two minor sons as heirs, added that, if either dies as a minor, that man is his heir, it was disputed among the ancient writers of laws (the jurists) whether he wanted the substitute to be admitted when both of his sons died at an early age (before adulthood), or (instead), if either died, he succeeded at once into his share. Sabinus held that the substitution took place (only) when both died; for the father thought that when the first died his brother succeeded into his share. **1.** We think the view of this same Sabinus more correct, and hold that substitution is not otherwise allowed except if both of them die at an early age.

Given July 27,[192] *at Constantinople, in the post-consulate of the* viri clarissimi *Lampadius and Orestes (531).*

[190] This rescript concerns a soldier's will, not bound by normal rules. The "first instance" is just a normal direct substitution in the event the son did not become heir; the "second instance" is a pupillary substitution.

[191] Combine with C. 6.25.8–10, 6.26.11.

[192] Krüger argues for July 29, as in the following constitution.

[11] *Idem A. Iohanni pp.* **pr.** Si quis duobus heredibus institutis filio suo impuberi eos una cum alio tertio substituit et verba testamenti ita composuerit: 'quisquis mihi heres erit, et Titius filio meo heres esto' secundum quod apud Ulpianum invenimus, mortuo impubere filio quaerebatur, quomodo ad substitutionem vocentur tres substituti: utrumne duo priores, qui et patri heredes fuerant scripti, in dimidiam vocantur et Titius in reliquam dimidiam, an tres substituti unusquisque ex triente ad substitutionem vocantur? alia applicata dubitatione, si quis ita heredem scripserit: 'Titius una cum filiis suis et Sempronius heredes mihi sunto'. et in praesente etenim specie quaerebatur secundum Ulpianum voluntas testantis: utrumne Titium una cum suis filiis in dimidiam vocat et Sempronium in aliam dimidiam, an omnes in virilem portionem? **1.** Nobis autem in prima quidem specie videtur tres substitutos unumquemque in trientem vocari, in secunda autem specie, cum et natura pater et filius eadem persona paene intelleguntur, dimidiam quidem partem Titio cum filiis, alteram autem partem Sempronio adsignari.

D. IIII k. Aug. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

XXVII De Necessariis et Servis Heredibus Instituendis vel Substituendis

[1] *Imp. Pertinax A. Lucretio.* Is, qui solvendo non est, heredem necessarium etiam in fraudem creditorum relinquere potest. sed si pignori datus fuisti et in eadem causa permansisti, nec ab eo quidem debitore qui solvendo non fuit liber et heres necessarius existere potuisti.

PP. XI k. April. Falcone et Claro conss.

[2] *Imp. Antoninus A. Aufidio.* Cum vos servi constituti sub appellatione libertorum heredes scripti essetis, ea scriptura benigna interpretatione perinde habenda est, ac si liberi et heredes instituti fuissetis. quod in legato locum non habet.

Accepta VII k. Mart. Prisco et Apollinari conss.

[3] *Idem AA. et CC. Felici.* Si tutor ancillam tuam contubernio suo coniunxit ac post heredem instituit, neque dominium ex huiusmodi facto

[11] [193] *The same Augustus to John, Praetorian Prefect.* **pr.** Someone, having designated two heirs, substituted them along with a third party to his minor son, and worded his will as follows: "Let whoever will be my heir and Titius (the third party) be heir to my son." According to what We found in Ulpian, it was asked, when the minor son died, in what proportion the three substitutes were called to the substitution: whether the first two, who were also named heirs to the father, are called to half and Titius to the remaining half, or the three substitutes are each called to a third of the substitution. Another doubt occurred if someone named an heir thus: "Let Titius along with his sons and let Sempronius be my heirs." In this present case a question of the testator's wish arose, according to Ulpian: whether he calls Titius along with his sons into half and Sempronius into the other half, or all to equal portions. **1.** To Us it appears, in the first case, that the three substitutes are called each to a third, but in the second case, since also by nature father and son are understood as almost the same person, a half is assigned to Titius with the sons, the other half to Sempronius.

Given July 29, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

Twenty-Seventh Title Designating or Substituting Compulsory Heirs or Slaves[194]

[1] *Emperor* PERTINAX *Augustus to Lucretius.* An insolvent person can leave a compulsory heir (*heres necessarius*) even to defraud creditors. But if you (a slave) had been given as a pledge and so remained, you were unable to be made free and a compulsory heir by an insolvent debtor.

Posted March 22, in the consulship of Falco and Clarus (193).

[2] *Emperor* ANTONINUS *Augustus to Aufidius.* When you (plural), although you had the position of slaves, were (nonetheless) called freedmen when named as heirs, this writing should be given a liberal interpretation, as if you were (both) made free and designated heirs. This rule does not apply to a legacy.

Accepted February 23, in the consulship of Priscus and Apollinaris (169).[195]

[3] *The same Augusti and the Caesars to Felix.*[196] If your *tutor* took your slave woman as his domestic partner (*contubernalis*) and later designated her his

[193] Combine with C. 6.25.8, 9, and 10, 6.26.10.

[194] Blume: "A slave appointed as heir could not refuse to accept the inheritance. He was a compulsory heir – heres necessarius. This is a principle unknown to our law. The Romans adopted such principle perhaps because of their repugnance to intestacy, but mainly in case of the insolvency of the testator." Mommsen considered *et servis* a superfluous Justinianic addition.

[195] The compilers apparently assumed the emperor was Caracalla.

[196] The heading should have read: *Emperors* DIOCLETIAN *and* MAXIMIAN *to Felix.*

tibi auferri potuit et, ut eius aditione iussu tuo tibi per hanc successio quaeratur, iure concessam habes facultatem.

S. XVI k. Ian. Sirmi AA. conss.

[4] *Imp. Iustinianus A. Iuliano pp.* **pr.** Cum quidam suum pupillum heredem instituit et servo directis verbis libertatem reliquit et in secundo gradu, in quo pupillarem substitutionem faciebat, ipsum servum sine libertate pupillo suo substituit, quaerebatur inter prudentes, si ex huiusmodi substitutione heres necessarius pupillo existat. **1.** Causa etenim altercationis ex vetere regula orta est, quia omnibus placuerat hunc servum necessarium heredem domino fieri, cui in eodem gradu et hereditas et libertas relinquebatur, in praesenti autem non in unum tam libertas quam substitutio congregata est, sed in alium et alium gradum.

2. Nobis itaque eandem altercationem decidentibus mirabile visum est, si quis putet ex huiusmodi scrupulositate impediri testatoris voluntatem, et maxime domini, et existimet non fieri servum heredem necessarium, sed ei licentiam praestet et libertatem consequi et hereditatem respuere et domini voluntati reclamare: qui si hoc differre[viii] temptaverit, etiam puniendus est. sit itaque et vivo pupillo liber, quia testator hoc voluit, et mortuo pupillo necessarius heres, quia et hoc testator voluit.

D. XV k. Dec. Constantinopoli Lampadio et Oreste vv. cc. conss.

[5] *Idem A. Iohanni pp.* **pr.** Quidam, cum testamentum conderet, duobus heredibus scriptis unum quidem ex parte instituit, servum autem suum, cuius et nomen addidit, ex reliqua parte sine libertate scripsit heredem et postea eundem servum alii legavit, vel post institutionem heredis servum per legatum alii adsignavit et tunc heredem eum sine libertate instituit: et dubitabatur, si huiusmodi legatum vel institutio aliquas vires potest habere et cui adquiritur legatum vel institutio. **1.** Dubitationis autem materia erat, quod adhuc servum suum constitutum heredem sine libertate scripserat, et tanta inter veteres exorta est contentio, ut vix possibile sit videri eandem decidere.

1a. Sed antiquitatem quidem haec altercantem relinquendum est. nobis autem alius modus huiusmodi decisionis inventus est, quia semper

[viii] inferre

heir, by such an act he could not deprive you of ownership, and you have a legally granted power to acquire the inheritance for yourself through her, by her acceptance on your order.

Written December 17, at Sirmium, in the consulship of the Augusti (293).

[4] *Emperor* JUSTINIAN *Augustus to Julian, Praetorian Prefect.* **pr.** A man designated his minor son (*pupillus*) as heir and gave freedom to his slave in imperative language, and in the second grade (of the will),[197] where he made a pupillary substitution, he substituted this very slave for his minor son, (but) without giving him freedom. A question arose among the jurists if such a substitution resulted in a compulsory heir to the minor. **1.** The reason for the dispute arose from an ancient rule of law, because all were agreed that a slave becomes a compulsory heir to his master if he was left both freedom and the inheritance in the same grade, but in the present case freedom was not joined with substitution in a single grade, but in different grades.

2. In deciding this dispute, We regarded it as it remarkable if anyone thinks that a testator's wish, and especially an owner's, can be impeded by such a technicality, and believes that a slave does not become a compulsory heir, but (instead) gives him the opportunity both to obtain freedom and to decline the inheritance, and (so) to thwart his master's wish. If anyone tries to advance this (argument), he must also be punished. And so he (the slave) shall both be free while the minor lives, because the testator wished it so, and a compulsory heir when the minor dies, because the testator wanted this as well.

Given November 17, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[5][198] *The same Augustus to John, Praetorian Prefect.* **pr.** A certain man composed a will in which he named two heirs: one he designated for a share, but (the other,) his slave whose name he mentioned, he named as heir to the remaining part without (giving him) freedom; and later (in the will) he bequeathed the same slave to a third party. Alternatively, after naming an heir he assigned the slave by legacy to a third party and then designated him heir without (giving) freedom. Doubt arose if such a legacy or designation can have some strength, and (in any case) for whom the legacy or designation is acquired. **1.** The substance of the doubt was that he named as heir, without (giving) freedom, a person till then in the position of his slave, and such great strife arose among the ancients that it seemed scarcely possible to resolve it.

1a. But we must abandon antiquity's debate over this. We found another way of deciding this, because We always follow the traces of testators' wishes. **1b.**

[197] The designated heirs are in the first grade; the second grade is "fallback."

[198] Combine with C. 6.46.6.

vestigia voluntatis sequimur testatorum. **1b.** Cum igitur invenimus a nostro iure hoc esse inductum, ut, si quis servum suum tutorem filiis suis reliquerit sine libertate, ex ipsa tutelae datione praesumatur etiam libertatem ei favore pupillorum imposuisse, quare non hoc et in hereditate et humanius et favore libertatis inducimus, ut, si quis servum suum scripserit heredem sine libertate, omnimodo civis Romanus efficiatur? **1c.** Quo inducto neque adquisitio neque tam effusus veterum atque inextricabilis tractatus locum habeat. neque enim ferendum est supponere quosdam ita esse supinos, ut eundem servum et heredem instituant sine libertate et item alii per legatum eundem servum adsignent.

1d. Sed cum veteres et aliam proposuerunt ambiguitatem dicentes, si quis servum suum in testamento quidem heredem ex parte sine libertate scripsisset, in codicillis autem libertatem ei reliquisset, si possit institutio valere et ille tam heres quam liber fieri, ne videatur per codicillos hereditas confirmari, in quibus hereditas dari secundum veterem regulam non potest: nos in tali dispositione, licet in codicillis fuerit scripta, et libertatem et hereditatem simul servis per nostram liberalitatem et benignam interpretationem indulgemus, ut gratulentur, cum non servi remaneant, sed et liberti et heredes efficiantur, cum tanta in eos nostri numinis benivolentia effusa est, ut, etsi libertas eis neque testamento neque codicillis data est, tamen hereditate servis relicta quasi iniunctam et libertatem esse videri.

2. Illo videlicet observando, ut, si legatum vel fideicommissum eis sine libertate relinquatur, maneant in servitute. **2a.** Non tamen ita impii heredes existant, ut liberalitatem testatoris servilis laboris debita remuneratione defraudare conentur et non derelictum, licet adhuc servis constitutis, donent.

3. Quae iuris nostri definitio etiam ad aliam speciem dubitatam benigne extendatur. si quis etenim in principali testamento servum suum cuidam legaverit, in pupillari autem substitutione eundem servum filio suo sine libertate substituerit, quaerebatur, sive utilis esset talis substitutio et per servum legatum substitutio post mortem pupilli legatario adquiritur, sive inutilis est huiusmodi substitutio, quia sine libertate in servum proprium facta est. **3a.** Melius itaque nobis videtur legatario eum non statim adquiri sancire, sed expectandum esse substitutionis eventum. et si quidem pupillo mortuo locus fuerit substitutioni, et liber et

Inasmuch as We found this rule introduced through Our law,[199] that, if anyone leaves his slave as *tutor* to his children without (giving) freedom, from the giving of tutelage it is presumed, out of consideration for the wards (*pupilli*), that he also imposed freedom on him (the slave), why do We not, in a more humane spirit and out of consideration for freedom (of slaves), introduce this rule also for inheritances, so that, if someone names his slave as heir without (giving) freedom, he is nonetheless made a Roman citizen? **1c.** After this is introduced, neither acquisition (of property by anyone through such a slave) nor the extravagant and intricate handling by the ancients is relevant. For it is unbearable to suppose that persons are so thoughtless as both to designate the same slave as heir without freedom and also to assign the same slave to a third party by legacy.

1d. But when the ancients proposed another uncertainty, asking if, should anyone in his will name his slave as heir to a portion without (giving) freedom, but in codicils leave him freedom, the designation can be valid and that person become both heir and free; (and if so whether) it would not seem that the inheritance is confirmed through codicils in which an inheritance cannot be given according to an old rule of law. For such a disposition, although it was written in codicils, through Our generosity and kind interpretation We grant both freedom and the inheritance at once to slaves, that they rejoice when they do not remain slaves but become both freedmen and heirs. Indeed so great is the benevolence of Our Divine Majesty lavished upon them that, even if freedom is not given to them either in the will or in codicils, nevertheless freedom also seems, as it were, inseparable when an inheritance is left to slaves.

2. Clearly this rule must (also) be observed: if a legacy or trust is left to them without freedom, they remain in servitude. **2a.** Still, heirs should not be so wicked as to try to defraud the testator's generosity of the repayment owed for servile labor, and not give what is left (to them) although they are still in the position of slaves.

3. This provision of Our law shall also be extended for reasons of benevolence to another doubtful case. For if someone in the beginning of his will legates his slave to someone, but in a pupillary substitution substitutes the same slave for his son without (giving the slave) freedom, it was questioned whether such a substitution would be effective and (so) through the bequeathed slave the substitution would be acquired for the legatee after the ward's death, or such a substitution is ineffective because made for his own slave without (giving) freedom. **3a.** It seems best to Us to ordain that he is not immediately acquired for the legatee, but (rather) the outcome of the substitution must be awaited.

[199] See Valerian and Gallienus in C. 7.4.9, a decision evidently adopted in the First Codex of 529; also D. 26.2.10.4 and 32.2.

heres efficiatur: sin autem substitutio minime locum habuerit, forsitan pupillo iam in pubertatem perveniente, tunc ad legatarii dominium transeat. **3b.** Quemadmodum enim veteres, si cum libertate substitutio fuisset, hoc inducebant quatenus in suspenso fiat libertas et statuliber intellegatur, ita et ex nostra interpretatione et sine adiectione libertatis in substitutione et liber et heres pupillo existat.

D. II k. Mai. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[**6**] *Idem A. Iohanni pp.* Decisione nostra, quam fecimus sancientes eum, qui a domino suo sine libertate heres instituitur, videri libertatem accepisse, in propria firmitate durante, si quis servum suum pure quidem heredem instituit, libertatem autem sub condicione ei donavit, si quidem condicio talis sit, quae in potestate servi posita est: ille autem eam neglexerit minimeque compleverit, et libertate eum et hereditate sua culpa defraudari. sin autem casualis est condicio et ex fortunae insidiis defecerit, tunc humanitatis intuitu libertatem quidem ei omnimodo competere, hereditatem autem, si quidem solvendo sit, ad alios venire, quos leges vocabant, si non aliquis fuisset substitutus. sin autem solvendo non sit, ut necessarius heres constitutus simul et libertatem et hereditatem obtineat. tunc enim secundum definitionem tam veteris quam nostrae decisionis et liber et heres existat necessarius.

D. II k. Aug. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

XXVIII De Liberis Praeteritis vel Exheredatis

[**1**] *Impp. Severus et Antoninus AA. Fabio.* **pr.** Cum post omnes heredum gradus exheredatio scribatur, si adiciat testator ab omnibus se gradibus exheredare, non dubitatur iuri satisfactum. et ideo, etiamsi id non adiciatur, appareat tamen eum cum eo consilio scripsisse, ut ab omnibus exheredaret, recte factum testamentum videtur. **1.** Proinde cum pater familias filiis institutis et invicem substitutis filiam exheredaverit, intellegendus est exheredationem ab utroque gradu fecisse. nam

And if indeed by the ward's death the substitution takes place, he becomes both free and an heir; but if the substitution does not take place, perhaps because the ward has now reached adulthood, then he passes into the legatee's ownership. **3b.** For just as the ancients, when substitution was made with (a grant of) freedom, introduced this rule that as long as freedom remains in suspense and he is considered a conditional freedman (*statuliber*), so by Our interpretation he becomes both free and an heir to the ward even without the addition of freedom in the substitution.

Given April 30, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[6][200] *The same Augustus to John, Praetorian Prefect.* Leaving in force the decision We made ordaining that a person who is designated heir by his master without (being given) freedom is deemed to have received freedom,[201] (We further provide:) if someone designated his slave as an unconditional heir, but gave him liberty under a condition, then if the condition is such that it is in the slave's power (to fulfill), but he disregards it and does not fulfill it, by his fault he is deprived of both freedom and the inheritance. But if the condition is a matter of chance and fails due to fortune's snares, then for humane considerations he receives freedom in any case, but the inheritance, if solvent, goes to others whom the law calls (the intestate heirs), unless someone was substituted. But if the estate is not solvent, in the position of a compulsory heir he simultaneously obtains both freedom and the inheritance. For then, by the determination of both the ancient and Our decision, he becomes both free and a compulsory heir.

Given July 31,[202] at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

Twenty-Eighth Title Offspring Who Are Passed Over or Disinherited[203]

[1] *Emperors* Severus *and* Antoninus *Augusti to Fabius.* **pr.** When a disinheritance (*exheredatio*) is written after all the grades of heirs, if the testator adds that he disinherits (someone) from all grades, there is no doubt the law is satisfied (and the disinheritance is absolute). And even if this is not added, but it appears that he wrote with the aim that he disinherit from all (grades), the will is considered correctly made. **1.** Hence, since your *paterfamilias*, after having designated his sons and substituted them for one another, disinherited his daughter,

[200] Combine with C. 6.25.8–10 and 6.26.10.
[201] C. 6.27.5 just above.
[202] Krüger argues for July 29.
[203] See D. 28.2; Inst. 2.13.

cum idem heredes instituti sunt, nulla ratio reddi potest, quare videatur in posteriore tantum casu exheredare voluisse.

PP. VI k. Iul. Cilone et Libone conss.

[2] *Imp. Alexander A. Heraclidae.* Si avus tuus, qui patrem tuum et novercam aequis portionibus heredes instituit, cum te quoque haberet in potestate, testamento nominatim non exheredavit, mortuo patre tuo vivo avo sine impedimento legis Vellaeae succedendo in patris tui locum rupisti avi testamentum et ad te hereditas eius tota pertinuit.

PP. VI id. April. Fusco II et Dextro conss.

[3] *Imp. Iustinianus A. Iuliano pp.* Si quis filium proprium ita exheredaverit: 'ille filius meus alienus meae substantiae fiat', talis filius ab huiusmodi verborum conceptione non praeteritus, sed exheredatus intellegatur. cum enim manifestissimus est sensus testatoris, verborum interpretatio nusquam tantum valeat, ut melior sensu existat.

D. X k. Mart. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[4] *Idem A. Iohanni pp.* **pr.** Maximum vitium antiquae subtilitatis praesenti lege corrigimus, quae putavit alia esse iura observanda in successione parentum, si ex testamento veniant, in masculis et in feminis, cum ab intestato simile ius utrique sexui servaverunt, et aliis verbis exheredari debere filium sanxerunt, aliis filiam, et inter nepotes exheredandos alia iura civilia, alia praetoris introduxerunt. **1.** Et si praeteritus fuerat filius, vel ipso iure testamentum evertebat vel contra tabulas bonorum possessionem in totum accipiebat, filia autem praeterita ius adcrescendi ex iure vetere accipiebat, ut eodem momento et testamentum patris quodammodo ex parte iure adcrescendi evertat et ipsa quasi scripta legatis supponeretur, ex praetore autem habebat contra tabulas bonorum possessionem in totum, constitutio autem Magni Antonini

he should be interpreted as having disinherited her from both grades. For when the same heirs have been designated (in both grades), no reason can be given why he seems to have wished to disinherit her only in the second case.

Posted June 26, in the consulship of Cilo and Libo (204).

[2] *Emperor* ALEXANDER *Augustus to Heraclidas.* If your grandfather, who designated your father and stepmother as heirs to equal shares while he also had you in his power, by his will did not disinherit you (his grandson) by name, and your father died while the grandfather was alive, by succeeding into your father's place without hindrance from the lex Vellaea[204] you have broken your grandfather's will, and (so) his entire inheritance belonged to you.

Posted April 8, in the consulship of Fuscus, for the second time, and Dexter (235).

[3] *Emperor* JUSTINIAN *Augustus to Julian, Praetorian Prefect.* If anyone disinherits his own son as follows: "Let that son of mine have no part of my estate," by this sort of verbal formulation such a son is understood as not passed over but disinherited. For when the testator's intent is very clear, interpretation of words should never be so strong as to prevail over intent.

Given February 20, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[4][205] *The same Augustus to John, Praetorian Prefect.* **pr.** By this law We correct the greatest fault of ancient technicality, which held that – despite their observing a similar rule for both sexes upon intestacy – different rules should be followed for males and females in succession to (the estates of) parents if they come through a will: they decreed that a son ought to be disinherited by one set of words, a daughter by another, and in disinheriting grandchildren they introduced some civil law provisions, and others of Praetorian origin. **1.** And if a son was passed over, either he overturned the will by operation of law (if he was in his father's power) or he received complete possession of the estate contrary to the will (if emancipated). But through ancient law (the *ius civile*) a passed-over daughter received (only) the right of sharing (alongside the named heirs), so that at the same time she both in part overturns her father's will, in a sense, through the right of sharing, and is herself burdened with the legacies like a named heir. From the Praetor she had

[204] The lex Junia Vellaea (probably 26 CE) contained rules on designating and disinheriting posthumous children; some wording at D. 28.2.29.11–14. The point is that Heraclidas, like a child born between the writing of the will and the testator's demise, broke the will by becoming a *suus heres* not accounted for by the testator.

[205] Combine with 3.28.35 and 36.

eam in tantum coartabat, in quantum ius adcrescendi competebat. qui enim tales differentias inducunt, quasi naturae accusatores existunt, cur non totos masculos generavit, ut, unde generentur, non fiant.

2. Nam haec corrigentes et maiorum nostrorum sequimur vestigia, qui eandem observationem colere manifestissimi sunt. scimus etenim antea simili modo et filium et alios omnes inter ceteros exheredatos scribere esse concessum, cum etiam centumviri aliam differentiam introduxerunt. 3. Et ex hac iniquitate vitium emersit, quale ex libris Ulpiani, quos ad edictum fecit praetoris, inventum a Triboniano viro gloriosissimo nostro quaestore ceterisque viris facundissimis compositoribus iuris enucleati ad nostras aures relatum est.

4. Nam cum ultimum adiutorium de inofficiosi querella positum est et nemo ex alio ortus praesidio ad hanc decurrere possit, inventa fuerat filia praeterita minus habens quam filia exheredata. cum enim per contra tabulas bonorum possessionem vel ius adcrescendi semissem substantiae filia praeterita accipiebat et omnibus legata praestare compellebatur, scilicet usque ad dodrantem suae portionis, remanebat ei sescuncia tantummodo in sua successione. 5. Quod si fuisset exheredata, quarta pars omnimodo totius substantiae ei relinqui debebat, et quam iniuria dignam pater existimabat, amplius habebat ea, quam taciturnitate in institutione praeteriit: et si secundum nostrae constitutionis definitionem, quam de supplemento quadrantis posuimus, repletio fuerat introducta, simili modo exheredatae in quarta repletio accedebat et ita vitium permansit, ut nec ex nostra constitutione emendationem aliquam sentiret.

complete possession of the estate contrary to the will, but a constitution of Antoninus (Pius) the Great[206] restricted her to as much as the right to share extended. Those who introduce such distinctions accuse nature, as it were, for not producing males alone, so that those (females) from whom they are born might not exist.

2. In correcting these things, We also follow the traces of Our predecessors, who quite clearly desired equal treatment. For We know that previously it was allowed to name both a son and all others along with the rest who were disinherited, when the centumviral court also introduced another distinction. 3. And from this unfairness a defect arose of the sort that was discovered, in the books Ulpian wrote on the Praetor's Edict, by *vir gloriosissimus* Tribonian Our Quaestor, and brought to Our attention by other most learned compilers of the condensed law.

4. For when the complaint over an undutiful will has been established as a last resort and no one possessing another remedy can resort to it, a passed-over daughter was found to have less than a disinherited daughter, since a passed-over daughter, through possession of the estate contrary to the will or the right of sharing, received half of the estate and was compelled to pay legacies to everyone up to three-fourths of her portion; there remained to her just three-twenty-fourths in her inheritance.[207] 5. But if she were disinherited, in any case a fourth part of the entire estate had to be left to her, and she whom her father considered worthy of insult had more than the one he passed over in silence in designating (an heir). And if a supplement occurred in accord with the provision of Our constitution which We laid down on making up the deficiency in the fourth, the complement accrued similarly to the disinherited (daughter) in her fourth, and thus the defect persisted, so that it found no correction even from Our constitution.[208]

[206] Actually probably Caracalla, see Gaius, *Inst.* 2.126.

[207] Blume: "This upon the theory that there would be only one daughter, and the heirs were outsiders. In such event, she received one-half of the whole or 12/24ths, leaving her only 3/24ths, if she was compelled to pay out three-fourths of what she received, in legacies etc. The proportion would be different if there were more than one daughter, for in such event all of the daughters passed over together received only the half of the whole. "

[208] The constitution is C. 3.28.30. On the calculation, Blume: "This again upon the theory that the heirs were outsiders and there was only one daughter. A child, unless good cause to the contrary existed, was entitled to receive a fourth of what she would have received if the testator had died intestate. That was the birthright portion. If there was only one daughter – one child – she would have received 12/12th of the inheritance, if the testator had died intestate. Her birthright portion therefore would have been 3/12ths, or a fourth. But if there were more children, they were all of them together entitled to the fourth of the whole property, and if, e.g. there were four children, each of them was entitled to 1/16th. The illustration, however, given in this law would have held good throughout, on the assumption that all the daughters would have been required to pay out three-fourths of what they received, in case they were passed over. We would always start out with 3/24ths in one case and 1/4th or 6/24ths in the other." The birthright portion was later increased by Nov. 18.1.

6. Sancimus itaque, quemadmodum in successionibus parentium, quae ab intestato deferuntur, aequa lance et mares et feminae vocantur, ita et in scriptura testamentorum eas honorari et similibus verbis exheredationes nominatim procedere et contra tabulas possessionem talem habere, qualem filius suus vel emancipatus, ut et ipsa, si fuerit praeterita, ad instar filii emancipati vel sui vel testamentum ipso iure evertat vel per contra tabulas bonorum possessionem stare hoc non patiatur.

7. Et haec non solum in filiabus obtinere, sed etiam in nepotibus et in neptibus et deinceps observari censemus, si tamen ex masculis progeniti sunt.

8. Sed quia et aliud vitium fuerat sub obtentu differentiae introductum et alia iura exheredationis in postumis, alia in iam natis observabantur, cum necesse fuerat postumam inter ceteros exheredatam etiam legato honorari, filiam autem iam progenitam et sine datione, et hoc brevissimo incremento verborum ad plenissimam definitionem deduximus sancientes eadem iura obtinere et in postumis exheredandis, sive masculini sive feminini sexus sint, quae in filiis et filiabus iam statuimus, ut etiam ipsi vel ipsae nominatim exheredentur, id est postumi vel postumae facta mentione.

D. k. Sept Constantinopoli post consulatum Lampadii et Orestis vv. cc.

XXVIIII De Postumis Heredibus Instituendis vel Exheredandis vel Praeteritis

[1] *Imp. Antoninus A. Brittiano.* Si post testamentum factum, quo postumorum suorum nullam mentionem testator fecit, filiam suscepit, intestato vita functus est, cum agnatione postumae cuius non meminit testamentum ruptum sit: ex rupto autem testamento nihil deberi neque peti posse explorati iuris est.

D. et pp. IIII k. Iul. Antonino A. IIII et Balbino conss.

6. Therefore We ordain that, just as both males and females are summoned in equal measure to inheritances from ascendants that are conferred through intestacy, so shall women be treated in written wills as well, and with similar words disinheritances by name shall proceed, and they have possession contrary to the will just as his son whether in his father's power or emancipated, so that a daughter, if she is passed over, on the example of a son whether in power or emancipated may either overturn the will by operation of law or through possession of the estate contrary to the will not allow it to stand.

7. And We determine that these rules be observed not only for daughters, but also for grandsons and granddaughters and so on, provided they are born through males (agnates).

8. But because in consideration of the difference (between the sexes) yet another defect was introduced, and different rules of disinheritance were observed for posthumous daughters than for those already born, it being required also to bestow a legacy on a posthumous child disinherited in a general clause (*inter ceteros*) while a daughter already born (could be disinherited) without a gift, We have in the very briefest of phrases brought this practice to a quite definite end by ordaining that the same rules apply both in disinheriting posthumous children, whether male or female, as We have now established for sons and daughters, (namely) that children of either sex be disinherited by name, that is, with express mention of a posthumous son or daughter.

Given September 1, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

Twenty-Ninth Title Designating Posthumous Children as Heirs, or Disinheriting or Passing Over Them[209]

[1] *Emperor* ANTONINUS *Augustus to Brittianus.* If a daughter was born to him after a testator made a will in which he made no mention of his posthumous children, he died intestate, since a will is broken by the entry into the agnatic kin-group of a posthumous daughter whom he does not mention. It is recognized law that from a broken will nothing is owed or can be sought.

Given and posted June 28,[210] in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[209] See D. 28.2.
[210] Some manuscripts have June 26.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Sotericho.* Uxoris abortu testamentum mariti non solvi, postumo vero praeterito, quamvis natus ilico decesserit, non restitui ruptum iuris evidentissimi est.

S. XII k. Mart. Sirmi CC. conss.

[3] *Imp. Iustinianus A. Iuliano pp.* **pr.** Quod certatum est apud veteres, nos decidimus. cum igitur is qui in ventre portabatur praeteritus fuerat, qui, si ad lucem fuisset redactus, suus heres patri existeret, si non alius eum antecederet, et nascendo ruptum testamentum faciebat, si postumus in hunc quidem orbem devolutus est, voce autem non emissa ab hac luce subtractus est, dubitabatur, si is postumus ruptum facere testamentum potest. **1.** Veteres animi turbati sunt, quid de paterno elogio statuendum sit. cumque Sabiniani existimabant, si vivus natus est, etsi vocem non emisit, ruptum testamentum, apparet,[ix] quod, etsi mutus fuerat, hoc ipsum faciebat, eorum etiam nos laudamus sententiam et sancimus, si vivus perfecte natus est, licet ilico postquam in terram cecidit vel in manibus obstetricis decessit, nihilo minus testamentum corrumpi, hoc tantummodo requirendo, si vivus ad orbem totus processit ad nullum declinans monstrum vel prodigium.

D. XV k. Dec. Constantinopoli Lampadio et Oreste vv. cc. conss.

[4] *Idem A. Iuliano pp.* **pr.** Quidam, cum testamentum faciebat, his verbis usus est: 'si filius vel filia intra decem mensuum spatium post mortem meam fuerint editi, heredes sunto', vel ita dixit: 'filius vel filia, qui intra decem menses proximos mortis meae nascentur, heredes sunto'. iurgium antiquis interpretatoribus legum exortum est, an videantur[x] non contineri testamento et hoc ruptum facere. **1.** Nobis itaque eorum sententias decidentibus, cum frequentissimas leges posuimus testatorum voluntates adiuvantes, ex neutra huiusmodi verborum positione ruptum fieri testamentum videtur, sed sive vivo testatore sive post mortem eius intra decem menses a morte testatoris numerandos filius vel filia fuerint progeniti, maneat testatoris voluntas immutilata, ne poenam patiatur praeteritionis, qui suos filios non praeteriit.

D. XII k. Dec. Constantinopoli Lampadio et Oreste vv. cc. conss.

[ix] [apparet,]

[x] videantur <qui vivo testatore nascuntur>

[2] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Soterichus.* It is quite clear law that the will of a husband is not broken by his wife's miscarriage, but when a posthumous child is passed over, although it dies immediately after birth, (the will once) broken is not reinstated.

Written February 18, at Sirmium, in the consulship of the Caesars (294).

[3] *Emperor* Justinian *Augustus to Julian, Praetorian Prefect.* **pr.** We determine an issue contested among the ancients. When a child carried in the womb was passed over, who, if he had seen the light (of life), would have been a *suus heres* to his father if no one other (such as his father) preceded him, and by its birth it (potentially) caused the will to be broken, (then) if the posthumous child had entered the world but departed from this light without uttering a sound, question arose if this posthumous child can break the will. **1.** Ancient opinions were confused about what should be decided about the father's will. When the Sabinians thought that the will was broken if it was born alive even if it did not utter a sound, because it (also) did this even if it was mute, We too praise their view and ordain that if it is born entirely alive, although it died immediately after falling to earth or in the midwife's hands, nevertheless the will is broken, provided it comes entirely alive to this world and does not deviate toward the monstrous or prodigious.

Given November 17, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[4] *The same Augustus to Julian, Praetorian Prefect.* **pr.** Someone, in making a will, used these words: "If a son or daughter are born within ten months after my death, let them be my heirs," or said this: "Let a son or daughter who are born within the next ten months from my death be my heirs." A quarrel arose among the ancient interpreters of the law as to whether children born while the testator lived seem not to be included in the will and (thus) break it. **1.** To Us in settling their views, granted that We have enacted numerous laws supporting the wishes of testators, it is deemed best that the will be broken by neither of these verbal formulations, but no matter whether a son or daughter are born while the testator lives or after his death within ten months counting from the testator's death, the testator's wishes shall remain unscathed, so that a person who does not pass over his own children does not suffer the penalty for passing over them.

Given November 20,[211] *at Constantinople, in the consulship of the* viri clarissimi *Lampadius and Orestes (530).*

[211] Krüger prefers November 17; so, too, Lounghis *et al.*

XXX De Iure Deliberandi et de Adeunda vel Adquirenda Hereditate

[1] *Imp. Antoninus A. Titiae.* Si a patre emancipata eo defuncto bonorum possessionem non agnovisti, frustra vereris, ne hereditati paternae sis obligata, quod servum eius nullo iure manumisisti resque et mancipia quaedam propter funeris impensas distraxisti.

PP. k. Iul. Messala et Sabino conss.

[2] *Imp. Alexander A. Florentino militi.* Cum debitum paternum te exsolvisse adlegas, pro portione hereditaria agnovisse te hereditatem defuncti non ambigitur.

PP. VI id. Febr. Maximo II et Aeliano conss.

[3] *Imp. Gordianus A. Florentino militi.* **pr.** Si fratris tui filius mortis tempore in patris sui fuit potestate, sive ex asse heres institutus est, etiam clausis tabulis heres potuit existere, sive ex parte, nihilo minus statim suus heres ei extitit nec eapropter, quod intra paucos dies mortis patris sui concessit in fatum, tu ad eiusdem fratris tui potes accedere successionem. **1.** Quod si, cum sui iuris esset, ante aditam hereditatem decessit tuque fratri tuo legitimus heres extitisti seu intra tempora edicto praefinita bonorum possessionem agnovisti: quae facultatum sunt vel quae ab alio iniuria detinentur, praesidis diligentia tibi restituentur.

PP. XV k. Sept. Gordiano A. II et Pompeiano conss.

[4] *Imp. Decius A. Athenaidi.* Filio familias delata hereditate si pater pro herede voluntate filii gessit, sollemnitati iuris satisfactum videri saepe rescriptum est.

PP. X k. Mart. Decio A. et Grato conss.

Thirtieth Title The Right to Consider (Whether to Enter into an Inheritance), and Accepting or Acquiring an Inheritance[212]

[1] *Emperor* ANTONINUS *Augustus to Titia.* If you, after being emancipated by your father, did not claim possession of the estate (*agnoscere bonorum possessionem*) following his death, you needlessly fear that you are liable on your father's inheritance because you manumitted a slave without the right to do so and sold some slaves to pay funeral expenses.[213]

Posted July 1, in the consulship of Messala and Sabinus (214).

[2][214] *Emperor* ALEXANDER *Augustus to Florentinus, a soldier.* Since you state that you paid a debt of your (dead) father in proportion to your inherited share, there is no doubt that you have claimed the decedent's inheritance.

Posted February 8, in the consulship of Maximus, for the second time, and Aelianus (223).

[3] *Emperor* GORDIAN *Augustus to Florentinus, a soldier.* **pr.** If your brother's son was, at the time of (your brother's) death, in the power of his father, (then) if he was designated sole heir, even before opening the will he could become heir; or if (only) to a part, nonetheless he immediately became a *suus heres* to him. And (so) you cannot enter upon your brother's succession (as intestate heir) on the ground that he (the nephew) yielded to fate (died) a few days after your brother's death. **1.** But if he was *sui iuris* (because emancipated) and died before accepting the inheritance, and you were the statutory heir to your brother or, within the time fixed by the Edict, you claimed possession of the estate, what resources there were (in the estate), or wrongfully held by a third party, shall be restored to you through the governor's thoroughness.

Posted August 18, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

[4] *Emperor* DECIUS *Augustus to Athenais.* Rescripts have often held that, if an inheritance falls to a son in his father's power and the father acts as heir by the son's wish, the formal legal requirement (for acceptance) is satisfied.

Posted February 20, in the consulship of Decius Augustus and Gratus (250).

[212] See D. 28.8, 29.2.

[213] Titia meddled with the estate after her father's death, but, because she was emancipated, could accept the inheritance on intestacy only by applying to the Praetor for possession of it. The issue in this and many subsequent constitutions is whether meddling amounts to acceptance of an estate.

[214] Combine with C. 3.28.8 (February 7).

[5] *Impp. Valerianus et Gallienus AA. Paulo.* Potuit pupillus pro herede tutore auctore gerendo consequi successionem, sed ipsius actus et voluntas fuit necessaria. nam si quid nesciente eo tutor egit, illi hereditatem non potuit adquirere.

PP. XVI k. Iul. ipsis IIII et III AA. conss.

[6] *Impp. Diocletianus et Maximianus AA. Philippae.* Si avia tua patrem tuum ex duabus unciis scripsit heredem, et sola animi destinatione pater tuus heres fieri poterat. igitur si testamento suo easdem uncias ad te pertinere decrevit, apud rectorem provinciae duarum unciarum ius persequi poteris.

PP. XVI k. Aug. Sirmi ipsis IIII et III AA. conss.

[7] *Idem AA. et CC. Eusebio.* Quoniam sororem tuam prius defunctam esse proponis, quam cognosceret, an a fratre sibi aliquid hereditatis fuisset relictum, manifestum atque evidens est, antequam pro herede gereret vel bonorum possessionem admiserit, defunctam successionem eam non potuisse ad heredes suos transmittere.

PP. k. Mai. Thiralli AA. conss.

[8] *Idem AA. et CC. Claudio.* Licet in continenti sui heredes se paternis non miscuerint bonis, tamen ignorantes delatam sibi esse hereditatem longi temporis praescriptione, quominus hanc recte vindicent, excludi non possunt.

S. XVII k. Ian. Sirmi AA. conss.

[9] *Idem AA. et CC. Platoni.* Si curatoris tui quondam testamento iure facto vel ab intestato legitima delata successio est, hoc casu ei qui non repudiavit hereditatem eam licet adire. rector igitur aditus provinciae, si hereditati necdum sunt obligati, eos an heredes sint interrogare debebit ac, si tempus ad deliberandum petierint, moderatum statuet.

S. XVI k. Ian. Sirmi AA. conss.

[5] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Paul.* A minor (*pupillus*) could accept succession by acting as heir with his *tutor*'s consent, but (both) an act and his wish were required. For if the *tutor* did something without his (the ward's) knowledge, he could not acquire the inheritance for him.

Posted June 16, in the consulship of the Augusti, for the fourth and third time, respectively (257).

[6] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Philippa.* If your grandmother named your father as heir to two-twelfths (of her estate), your father could become heir even by mere intent (to accept). If, therefore, in his will he ordered the same share to go to you, before the provincial governor you can sue for your right to the two-twelfths.

Posted July 17, at Sirmium, in the consulship of the Augusti themselves, for the fourth and third time, respectively (290).

[7][215] *The same Augusti and the Caesars to Eusebius.* Since you posit that your sister died before she knew whether her brother had left her any inheritance, it is clear and apparent that on her death she could not transmit this succession to her heirs before she acted as an heir or took possession of the estate (of her brother).

Posted May 1, at Thirallum (Tzouroulon), in the consulship of the Augusti (293).

[8] *The same Augusti and Caesars to Claudius.* Although the *sui heredes* did not immediately become involved with their father's property, still they, (despite) being unaware that the inheritance came to them, cannot be excluded through the (current holder's) long-time prescription from rightly claiming its ownership.

Written December 16,[216] at Sirmium, in the consulship of the Augusti (293).

[9] *The same Augusti and Caesars to Plato.* If a succession came (to you and others) through the legally made will of your former *curator* or by statutory right upon intestacy, in this situation a person who has not rejected the inheritance may (still) accept it. So, upon being approached, the provincial governor should ask them, if they were not yet bound to the inheritance, whether or not they are heirs, and, if they ask for time to consider, grant a reasonable time.

Written December 17, at Sirmium, in the consulship of the Augusti (293).

[215] = Consultatio 6.19 (April 22); combine with C. 2.3.21, 6.53.6.

[216] December 24 in one manuscript.

[10] *Idem AA. et CC. Sabinae.* Si te bonis paternis maior quinque et viginti annis miscuisti, neque inopia patris te excusat neque vis fratris portionem tuam vel testamentum eripientis arcere te exactione creditorum, qui iure civili pro hereditaria te portione conveniunt, potest.

S. XVI k. Ian. Sirmi CC. conss.

[11] *Idem AA. et CC. Philumenae.* Renitente te pater tuus, in cuius fuisti potestate, neque spem delatae tibi legitimae quaerendae successionis absumere neque hereditarios manumittendo servos his praestare libertatem potuit.

S. VI id. Febr. Sirmi CC. conss.

[12] *Idem AA. et CC. Antonio.* Puberem agnoscentem bonorum possessionem, posteaquam ei fuit hereditas delata, pro herede gerere non ambigitur.

S. III k. Dec. CC. conss.

[13] *Idem AA. et CC. Archepolidi.* Suum heredem omissa bonorum possessione paternam successionem obtinere potuisse certi iuris est.

S. III id. Dec. Nicomediae CC. conss.

[14] *Idem AA. et CC. Flaviae.* Si sorori suae frater tuus civili vel honorario successit iure, licet res ex eius descendentes bonis non probetur tenuisse, heres tamen effectus contra possidentes experiri potest.

S. d. XVIIII k. Ian. Nicomediae CC. conss.

[15] *Imp. Constantius A. ad Leontium comitem Orientis.* Non est dubium, si, priusquam filius iussu patris adierit hereditatem, propriae potestatis effectus est, arbitrio suo eundem hanc sibi potuisse quaerere.

D. VIII id. April. Limenio et Catulino conss.

[16] *Impp. Arcadius et Honorius AA. Ennodio.* Nec emere nec donatum adsequi nec damnosam quisque hereditatem adire compellitur.

[10] *The same Augusti and Caesars to Sabina.* If you are older than 25 and involved yourself in your father's estate, neither your father's poverty, nor the force that your brother used in wresting away your portion or the (whole) will, can protect you from the demands of creditors who sue you under civil law in proportion to your inheritance (*pro portione hereditaria*).

Written December 17, at Sirmium, in the consulship of the Caesars (294).[217]

[11] *The same Augusti and Caesars to Philumena.* Your father, in whose power you were, could not against your will take away your expectation of acquiring a statutory inheritance that had come to you, nor give freedom to the slaves in the inheritance by manumitting them.

Written February 8, at Sirmium, in the consulship of the Caesars (294).

[12] *The same Augusti and Caesars to Antonius.* There is no doubt that an adult male (*pubes*) acts as heir by claiming possession of the estate after an inheritance came to him.

Written November 29, in the consulship of the Caesars (294).

[13] *The same Augusti and Caesars to Archepolis.* It is settled law that a *suus heres* could obtain succession to a father without resorting to (a claim of) possession of the estate.

Written December 11, at Nicomedia, in the consulship of the Caesars (294).

[14] *The same Augusti and Caesars to Flavia.* If your brother succeeded to your sister by Civil or Praetorian law, he became heir and can sue the possessors even if it is not shown that he held the property deriving from her estate.

Written and given December 14,[218] *at Nicomedia, in the consulship of the Caesars (294).*

[15][219] *Emperor* Constantius *Augustus to Leontius, Count of the East.* There is no doubt that if, before he (a son in his father's power) accepted an inheritance on his father's order, he became his own master (*sui iuris*), he could claim it for himself at his own discretion.

Given April 6, in the consulship of Limenius and Catulinus (349).

[16][220] *Emperors* Arcadius *and* Honorius *Augusti to Ennodius.* No one is compelled to make a purchase, or to take a gift, or to accept an insolvent inheritance.

[217] More probably written 293, in the consulship of the Augusti.
[218] Haloander gives December 21.
[219] = C.Th. 8.18.5; combine with C. 6.14.3.
[220] = C.Th. 12.1.149; combine with C.Th. 11.1.24, 3.5.25.

D. VII k. Ian. Olybrio et Probino conss.

[17] *Idem AA. et Theodosius A. Anthemio pp.* Cretionum scrupulosam sollemnitatem hac lege penitus amputari decernimus.

D. XVI k. April. Constantinopoli Honorio VII et Theodosio II AA. conss.

[18] *Impp. Theodosius et Valentinianus AA. ad senatum.* **pr.** Si infanti, id est minori septem annis, in potestate patris vel avi vel proavi constituto vel constitutae hereditas sit derelicta vel ab intestato delata a matre vel linea ex qua mater descendit vel aliis quibuscumque personis, licebit parentibus eius sub quorum potestate est adire eius nomine hereditatem vel bonorum possessionem petere. **1.** Sed si hoc parens neglexerit et in memorata aetate infans decesserit, tunc parentem quidem superstitem omnia ex quacumque successione ad eundem infantem devoluta iure patrio quasi iam infanti quaesita capere.

2. Parente vero non subsistente, si quidem post eius obitum tutor infanti sit vel datus fuerit, posse eum etiam adhuc infante pupillo constituto nomine eius adire hereditatem sive vivo parente sive post mortem eius ad eum devolutam vel bonorum possessionem petere et eo modo eidem infanti hereditatem quaerere. **3.** Sin vero vel non sit tutor vel, cum sit, ea facere neglexerit, tunc eodem infante in ea aetate defuncto omnes hereditates ad eum devolutas et non agnitas ita intellegi, quasi ab initio non essent ad eum delatae, et eo modo ad illas personas perveniant, quae vocabantur, si minime hereditas infanti fuisset delata. ea vero, quae de infante in potestate parentium constituto statuimus, locum habebunt et si quacumque causa sui iuris idem infans inveniatur.

4. Sin autem septem annos aetatis pupillus excesserit et priore parente mortuo in pupillari aetate fati munus impleverit, ea obtinere praecipimus, quae veteribus legibus continentur, nulla dubietate relicta, quin pupillus post impletos septem annos suae aetatis ipse adire hereditatem vel possessionem bonorum petere consentiente parente, si sub eius potestate sit, vel cum tutoris auctoritate, si sui iuris sit, poterit vel, si non habeat tutorem, adire praetorem et eius decreto hoc ius consequi.

D. VIII id. Nov. Ravennae Theodosio XII et Valentiniano II AA. conss.

Given December 26, in the consulship of Olybrius and Probinus (395).

[17][221] *The same Augusti and* THEODOSIUS *Augustus to Anthemius, Praetorian Prefect.* We order that the scrupulous technicalities of formal acceptances (*cretiones*) be altogether abolished by this law.

Given March 17,[222] at Constantinople, in the consulship of Honorius, for the seventh time, and Theodosius, for the second time, Augusti (407).

[18][223] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to the Senate.* **pr.** If an inheritance is left to an infant, that is, a child of either sex less than 7 years old, in the power of a father or grandfather or great-grandfather, or comes by intestacy, from a mother or the line from which the mother descends or from any other persons, its male ascendants (*parentes*), under whose power it is, may accept the inheritance in its name or seek possession of the estate. **1.** But if the male ascendant neglects this and the infant dies within the mentioned age, then by the right of a father the surviving ascendant takes all that fell to the same infant from whatever succession, as if it were already acquired by the infant.

2. But when the ascendant does not survive, if indeed after his death a *tutor* has been or will be given to the infant, he can, while the ward remains an infant, in his name accept the inheritance that came to him either while his ascendant was alive or after his death, or seek possession of the estate and in this manner claim the inheritance for this infant. **3.** But if there is no *tutor*, or if there is but he neglects to do this, then, when this infant dies within that age (age 7), all the inheritances that fell to him (the infant) and were not accepted are construed as if they had not originally fallen to him, and in this way they come to those persons who were summoned if the inheritance had not fallen to the infant. But these things that We ordain about an infant in the power of its ascendants will apply also if for any reason the same infant is found to be *sui iuris*.

4. If the ward has passed the age of 7 and after its father's death, while still a ward, fulfills the burden of destiny (dies), We order application of the rules contained in ancient laws; but no doubt remains that the ward, after age 7, can accept the inheritance or claim possession of the estate with his ascendant's consent, if he is in power, or with a tutor's authorization, if he is *sui iuris*, or, if he does not have a tutor, (can) approach the Praetor and by his decree receive this right.

Given November 6, at Ravenna, in the consulship of Theodosius, for the twelfth time, and Valentinian, for the second time, Augusti (426).

[221] = C.Th. 8.18.8.1.

[222] Haloander has March 28. Seeck gives Krüger's date.

[223] Combine with C. 6.55.11 and the texts cited there.

[19] *Imp. Iustinianus A. Demostheni pp.* **pr.** Cum antiquioribus legibus et praecipue in quaestionibus Iulii Pauli invenimus filios familias paternam hereditatem deliberantes posse et in suam posteritatem hanc transmittere, et aliis quibusdam adiectis, quae in huiusmodi persona praecipua sunt: eam deliberationem et in omnes successores sive cognatos sive extraneos duximus esse protelandam. **1.** Ideoque sancimus: si quis vel ex testamento vel ab intestato vocatus deliberationem meruerit vel hoc quidem non fecerit, non tamen successioni renuntiaverit, ut ex hac causa deliberare videatur, sed nec aliquid gesserit, quod aditionem vel pro herede gestionem inducit, praedictum arbitrium in successionem suam transmittat, ita tamen, ut unius anni spatiis eadem transmissio fuerit conclusa. **2.** Et si quidem is, qui sciens hereditatem sibi esse vel ab intestato vel ex testamento delatam deliberatione minime petita intra annale tempus decesserit, hoc ius ad suam successionem intra annale tempus extendat. **3.** Si enim ipse, postquam testamentum fuerit insinuatum, vel ab intestato vel ex testamento vel aliter ei cognitum sit heredem eum vocatum fuisse, annali tempore translapso nihil fecerit, ex quo vel adeundam vel renuntiandam hereditatem manifestaverit, is cum successione sua ab huiusmodi beneficio excludatur. **4.** Sin autem instante annali tempore decesserit, reliquum tempus pro adeunda hereditate suis successoribus sine aliqua dubietate relinquat, quo completo nec heredibus eius alius regressus in hereditatem habendam servabitur.

Recitata septimo in novo consistorio palatii Iustiniani. d. III k. Nov. Decio vc. cons.

[20] *Idem A. Iohanni pp.* **pr.** Quidam elogio condito heredem scripsit in certas uncias et post certa verba testamenti eundem in alias uncias vel tantas vel quantascumque et tertio vel in aliam partem hereditatis vel quendam unciarum modum, ille autem unam institutionem vel duas admittens unam vel duas vel quantascumque respuendas esse censuit: quaerebatur apud veteres, si hoc ei facere permittitur. **1.** Similique modo dubitabatur, si impuberem quis filium suum heredem ex parte instituit et quendam extraneum in aliam partem, quem pupillariter substituit, et postquam testator decessit, pupillus quidem patri heres extitit, extraneus autem hereditatem adiit, et postea adhuc in prima aetate pupillus constitutus ab hac luce subtractus est et pupillaris substitutio locum sibi vindicavit: cumque substitutus eandem partem admittere noluit,

[19] *Emperor* JUSTINIAN *Augustus to Demosthenes, Praetorian Prefect.* **pr.** After We found, in the more ancient statutes and especially in the *Questions* of (the jurist) Julius Paulus, that sons in their father's power, while (still) considering (whether to accept) a paternal inheritance, can also convey it, along with some other things specific to such a person, to their descendants, We have determined that this time for consideration should be extended also to all successors, whether related (*cognati*) or non-kin (*extranei*). **1.** And so We ordain: If anyone, by being summoned (to inherit) either by a will or on intestacy, gains a time for consideration, or does not do so but nevertheless does not repudiate the succession such that he may seem to be considering for this reason, but he does nothing that amounts to acceptance or acting as an heir (and thus accepting tacitly), (then) he shall convey this (right of) choice to his successors, though in such a way that this transmission (of the estate) is completed within one year. **2.** And if a person, knowing the inheritance has fallen to him either on intestacy or by a will, does not seek a time for consideration and dies within the year, this right shall extend to his successors within the year. **3.** For, after the will is opened or he is made aware that he is summoned as heir either upon intestacy or by will or otherwise, if a year has passed and he does nothing whereby he signals either accepting or repudiating the inheritance, (then) he with his successors shall be excluded from (receiving) such benefit. **4.** But if he dies within the year, beyond any doubt he leaves to his successors the remaining time for accepting the inheritance; when this (time) ends, no other recourse remains to his heirs for holding the inheritance.

Recited at the seventh (milepost) in the New Consistory of the Palace of Justinian. Given October 30, in the consulship of the vir clarissimus *Decius (529).*

[20] *The same Augustus to John, Praetorian Prefect.* **pr.** In writing his will someone named an heir to specified twelfths (of the estate); and, further along in the will, (again named) the same man to different (additional) twelfths, either as much or as many; and in a third place, either to a different share of the inheritance or some measure of twelfths. That person (the heir), while accepting one or two of these designations, thought that one or two or more should be rejected. The ancients questioned if he is allowed to do this. **1.** And a similar question arose if someone named his minor son as heir to a share and some non-kinsman to a different share while making him the pupillary substitute (for his son); and, after the testator died, the ward (*pupillus*) became his father's heir and the non-kinsman accepted the inheritance; and afterwards, while still a young ward, he (the son) passed from this light (died), and

quaesitum est, si potest iam heres ex principali testamento factus pupillarem substitutionem repudiare.

2. Utramque igitur dubitationem simul decidendam esse censemus: placuit etenim nobis sive in institutionibus sive in pupillari substitutione, ut vel omnia admittantur vel omnia repudientur et necessitas imponatur heredi particulari facto vel aliam aut alias partes hereditatis admittere vel etiam substitutionem pupillarem.

D. prid. k. Mai. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[21] *Idem A. Iohanni pp.* **pr.** Cum aliquis scripsit heredem eum, qui de sua condicione ei qui dominium eius vindicabat in iudicio adversabatur, is autem qui dominum sese dicebat adire eum hereditatem imperabat, ut adquisitio hereditatis per eum celebretur, indignatus est quasi domino ei parere. dubitatio veteribus exorta est, si qua poena ei imponitur huiusmodi insolentiae. 1. Veteres in multas retrahuntur sententias, sed nos eorum discordiam sic esse decidendam censemus, ut distinctio subtilis causae imponatur.

2. Et si quidem ita scripta est institutio: 'illum servum illius heredem instituo', quia apertissimum est intuitu domini esse institutionem conscriptam, necesse est omnimodo per competentem iudicem eum compelli adire quidem hereditatem et eam adquirere, nulli autem ex postfacto subici gravamini, si liber pronuntietur, sed omne sive lucrum sive damnum ad eum redundare qui in servitutem eum trahebat et denegari ei et adversus eum omnes hereditarias actiones, nullo ex hoc ei praeiudicio generando.

3. Sin autem quasi liber institutus est nulla domini vel servi mentione in institutione habita, tunc nullo compelli modo eum adire hereditatem nec denegari ei liberale iudicium, sed et hereditatem per suum ius decurrere et liberale iudicium suam expectare sententiam sive agente eo sive pulsato, ut, si quidem servus pronuntietur, tunc domino suo hereditatem adquirat, sin autem liber, eam adipiscatur, si adire maluerit.

D. II k. Mai. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[22] *Idem A. ad senatum.* Scimus iam duas esse promulgatas a nostra clementia constitutiones, unam quidem de his, qui deliberandum pro hereditate sibi delata existimaverunt, aliam autem de improvisis debitis

a pupillary substitution was claimed for him. The question was if he, having already become an heir under the first part of the will, can reject the pupillary substitution.

2. We think that both uncertainties should be decided. Our determination is that, whether for designations (of heirs) or for pupillary substitution, either all are accepted or all are repudiated; and on a person who becomes a partial heir the requirement shall be imposed to accept either another or other parts of the inheritance, or even a pupillary substitution.

Given April 30, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[21] *The same Augustus to John, Praetorian Prefect.* **pr.** When someone named as heir a person who was defending a lawsuit over his legal status against a person who claimed ownership of him, the claimant of ownership ordered him to accept the inheritance so that the estate's acquisition would be memorialized through him; but he protested against obeying that man as if he were his master. Hesitation arose among the ancients about imposing some penalty on him for such insolence. 1. The ancients were divided in their views, but We hold that their dispute must be decided by imposing a fine distinction on the case.

2. If the designation is written as follows: "I designate that slave of that person as my heir," because it is quite clear that the designation is written to benefit the master, he (the named heir and alleged slave) must necessarily be compelled by the appropriate judge to accept the inheritance and acquire it, but be subjected to no loss after the fact if he is found to be free; all gain or loss accrue to the person who was dragging him into slavery, and all actions on the inheritance are denied both to him and against him (the named heir); and no prejudice to his case shall arise from this decision.

3. But if he was designated as if free, with no mention of "master" or "slave" made in the designation, then in no way is he compelled to accept the inheritance, nor is the trial on his freedom denied to him, but (rather) the inheritance devolves through his right to it and, whether he is the plaintiff or defendant, the decision (as to accepting it) awaits (follows on) the trial over freedom, so that, if he is found to be a slave, then he acquires the inheritance for his owner, but if free, he obtains it if he wishes to accept it.

Given April 30, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[22] *The same Augustus to the Senate.* **pr.** We are aware that two constitutions have been promulgated by Our Clemency: one about persons who thought

et incerto exitu per diversas species eis imposito. sed etiam veterem constitutionem non ignoramus, quam divus Gordianus ad Platonem scripsit de militibus, qui per ignorantiam hereditatem adierint, quatenus pro his tantummodo rebus conveniantur, quas in hereditate defuncti invenerint, ipsorum autem bona a creditoribus hereditariis non inquietentur: cuius sensus ad unam praefatarum constitutionum a nobis redactus est. arma etenim magis quam iura scire milites sacratissimus legislator existimavit.

1. Ex omnibus itaque istis unam legem colligere nobis apparuit esse humanum et non solum milites adiuvare huiusmodi beneficio, sed etiam ad omnes hoc extendere, non tantum si improvisum emerserit debitum, sed etiam si onerosam quis inveniat esse quam adierit hereditatem. ita enim nec satis necessarium deliberationis erit auxilium, nisi hominibus formidolosis, qui et ea timent, quae nulla digna sunt suspicione.

1a. Cum igitur hereditas ad quendam sive ex testamento sive ab intestato fuerit delata, sive ex asse sive ex parte, si quidem recta via adire maluerit hereditatem et spe certissima hoc fecerit vel sese immiscuerit, ut non postea eam repudiet, nullo indiget inventario, cum omnibus creditoribus suppositus est, utpote hereditate ei ex sua voluntate infixa. **1b.** Similique modo, si non titubante animo respuendam vel abstinendam esse crediderit hereditatem, ei apertissime intra trium mensuum spatium, ex quo ei cognitum fuerit scriptum se esse vel vocatum heredem, renuntiet nullo nec inventario faciendo nec alio circuitu expectando, et sit alienus huiusmodi hereditate, sive onerosa sive lucrosa sit.

2. Sin autem dubius est, utrumne admittenda sit nec ne defuncti hereditas, non putet sibi esse necessariam deliberationem, sed adeat hereditatem vel sese immisceat, omni tamen modo inventarium ab ipso conficiatur, ut intra triginta dies post apertas tabulas vel postquam nota ei fuerit apertura tabularum vel delatam sibi ab intestato hereditatem cognoverit numerandos exordium capiat inventarium super his rebus, quas defunctus mortis tempore habebat. **2a.** Et hoc inventarium intra alios sexaginta dies modis omnibus impleatur sub praesentia tabulariorum ceterorumque, qui ad huiusmodi confectionem necessarii sunt. **2b.** Subscriptionem tamen supponere heredem necesse est, significantem et quantitatem rerum et quod nulla malignitate circa eas ab eo facta vel facienda res apud eum remanent, vel si ignarus sit litterarum vel scribere praepeditur, speciali tabulario ad hoc solum adhibendo, ut pro eo litteras supponat, venerabili signo antea manu heredis praeposito, testibus videlicet adsumendis, qui heredem cognoscunt et iubenti ei tabularium pro se subscribere interfuerint. **3.** Sin autem locis, in quibus

they needed to consider an inheritance that came to them,[214] the other about unforeseen debts (of estates) and the uncertain outcome imposed on them (the heirs) in various cases. But We also are not unaware of the ancient constitution which the deified Gordian wrote to Plato about soldiers who accept an estate in ignorance: they are sued only for those things that they find in the decedent's estate, but their own goods are not reached by the estate's creditors. The content of this (law) was embodied by us in one of the constitutions mentioned above, for this most imperial lawgiver thought that soldiers knew arms better than laws.

1. It seemed to Us benevolent to gather all these into one law, and not just to aid soldiers by such a benefit, but to extend it to all, not only if an unforeseen debt arose, but also if someone found an accepted estate to be burdened (with debt). Thus the aid of a time for consideration will not be much needed, except for timorous men who fear even those things unworthy of suspicion.

1a. So when an inheritance comes to someone either by will or on intestacy, either the entirety or a part, if he prefers to accept it directly and does so with very high hopes, or he meddles in it so he cannot afterwards refuse it, he needs no (advance) inventory when he is liable to all (the estate's) creditors since the estate is attached to him by his wish. **1b.** Similarly, if he unhesitatingly believes the inheritance should be rejected or refrained from, within a period of three months from when it becomes known to him that he was named or called as an heir he shall openly renounce it without (need of) making an inventory or awaiting other inspection; and he shall be a stranger to such an inheritance whether debt-ridden or profitable.

2. But if he is unsure whether the decedent's inheritance should be taken or not, he shall not think deliberation is required, but should accept the inheritance or meddle with it, but in any case he shall make an inventory so that, within thirty days counting from the opening of the document (the will) or from when the opening of the document is made known to him or he learns that the inheritance falls to him on intestacy, an inventory is begun of those things that the decedent had at his death. **2a.** And this inventory shall by all means be completed within another sixty days in the presence of notaries and others required for completing such a task. **2b.** But the heir must affix his signature stating both the quantity of property and that the property remains with him, with no bad conduct having occurred or to occur on his part toward it; or if he is illiterate or hindered in writing, a special notary should be summoned for the sole purpose of signing on his behalf after the venerable sign (of the cross) is affixed by the heir's hand. Obviously, witnesses must be gathered who know the heir and are present as he orders the notary to sign for him. **3.** But if it happens that the heirs are not in the place where the inheritance property

[214] C. 6.30.19 above. The other two constitutions mentioned below are not preserved.

res hereditariae vel maxima pars earum posita est, heredes abesse contigerit, tunc eis unius anni spatium a morte testatoris numerandum damus ad huiusmodi inventarii consummationem: sufficit enim praefatum tempus, etsi longissimo spatio distant, tamen dare eis facultatem inventarii conscribendi vel per se vel per instructos procuratores in locis ubi res positae sunt mittendos. **4.** Et si praefatam observationem inventarii faciendi solidaverint, et hereditatem sine periculo habeant et legis Falcidiae adversus legatarios utantur beneficio, ut in tantum hereditariis creditoribus teneantur, in quantum res substantiae ad eos devolutae valeant. **4a.** Et eis satisfaciant, qui primi veniant creditores, et, si nihil reliquum est, posteriores venientes repellantur et nihil ex sua substantia penitus heredes amittant, ne, dum lucrum facere sperant, in damnum incidant. sed si legatarii interea venerint, et eis satisfaciant ex hereditate defuncti vel ex ipsis rebus vel ex earum forsitan venditione.

5. Sin vero creditores, qui ex post emensum patrimonium necdum completi sunt, superveniant, neque ipsum heredem inquietare concedantur neque eos qui ab eo comparaverunt res, quarum pretia in legata vel fideicommissa vel alios creditores processerunt: licentia creditoribus non deneganda adversus legatarios venire et vel hypothecis vel indebiti condictione uti et haec quae acceperint recuperare, cum satis absurdum est creditoribus quidem suum ius persequentibus legitimum auxilium denegari, legatariis vero, qui pro lucro certant, suas partes legem accommodare. **6.** Sin vero heredes res hereditarias creditoribus hereditariis pro debito dederint in solutum vel per dationem pecuniarum satis eis fecerint, liceat aliis creditoribus, qui ex anterioribus veniunt hypothecis, adversus eos venire et a posterioribus creditoribus secundum leges eas abstrahere vel per hypothecariam actionem vel per condictionem ex lege, nisi voluerint debitum eis offerre. **7.** Contra ipsum tamen heredem, secundum quod saepius dictum est, qui quantitatem rerum hereditariarum expenderit, nulla actio extendatur.

8. Sed nec adversus emptores rerum hereditariarum, quas ipse vendidit pro solvendis debitis vel legatis, venire alii concedatur, cum satis anterioribus creditoribus a nobis provisum est vel ad posteriores creditores vel ad legatarios pervenientibus et suum ius persequentibus.

9. In computatione autem patrimonii damus ei excipere et retinere, quidquid in funus expendit vel in testamenti insinuationem vel inventarii confectionem vel in alias necessarias causas hereditatis

or the bulk of it is located, then We give them one year, counting from the testator's death, to complete such an inventory; for such a time is enough, even if they are very far distant, nonetheless to give them the opportunity to write out the inventory either on their own or through procurators to be sent with instructions in the places where the property is located. **4.** If they fully execute the foregoing procedure for making an inventory, they will both have the inheritance at no risk and use the benefit of the lex Falcidia against legatees, so that they are liable to the estate's creditors for only the value of the assets of the estate they receive. **4a.** And they shall satisfy the first creditors to arrive, and, if there is nothing left, those who come later shall be repelled; the heirs shall lose nothing at all from their own property, lest, while they (the heirs) hope to acquire a gain, they incur a loss. But if in the meantime legatees turn up, they (the heirs) shall satisfy them from the decedent's inheritance, either from the property itself or perhaps from its sale.[225]

5. But if there remain creditors not yet fully paid after the estate is dispersed, they are not allowed to trouble the heir himself nor those who purchased property from him, the proceeds of which he applied to legacies or trusts or other creditors. Permission shall not be denied to creditors to move against legatees, and to use either (the action on) hypothecs (real securities) or the claim for restitution of an unowed payment (*condictio indebiti*) and (so) to recover what they received, for it would be incongruous enough to deny lawful aid to creditors who pursue their rights, but have law assist legatees who contest (only) for gain. **6.** But if the heirs gave property in the estate to creditors of the estate for payment of a debt, or they satisfied them through paying money, other creditors who act on the basis of prior hypothecs may move against them and in accord with contract terms (*leges*) remove it (the property) either through the action on hypothec or by the statutory claim for restitution, unless they voluntarily pay the debt. **7.** Nonetheless, as has often been stated, no action shall lie against the heir himself who disperses the amount of the estate's property.

8. Nor shall a third party be allowed to move against the buyers of the estate's property that he himself (the heir) sold to pay debts or legacies, since We have sufficiently provided for prior creditors to obtain their rights by approaching subsequent creditors or legatees and pursuing their right.

9. In computing the patrimony, we allow him (the heir) to set aside and retain whatever he spends on the funeral or what he shows he paid for publication of

[225] Blume: "Prior to the right to make an inventory given in the present law, the question of priority among creditors could not well arise, since the heir who accepted was liable for all the debts in proportion as he inherited ... Thus if a man was given an undivided one-third of the inheritance – and that was the general method of appointment – he was liable for one-third of the debts, and the other heirs who received the two-thirds of the inheritance were liable for that proportion of the debts. After the introduction of the inventory, it became important in which priority debts were to be paid." This is detailed in subsequent sections; see also C. 4.16. Justinian's reform undoes one of the core doctrines of the classical law of succession.

approbaverit sese persolvisse. sin vero et ipse aliquas contra defunctum habebat actiones, non eae confundantur, sed similem aliis creditoribus per omnia habeat fortunam, temporum tamen praerogativa inter creditores servanda.

10. Licentia danda creditoribus seu legatariis vel fideicommissariis, si maiorem putaverint esse substantiam a defuncto derelictam, quam heres in inventario scripsit, quibus voluerint legitimis modis quod superfluum est approbare, vel per tormenta forsitan servorum hereditariorum secundum anteriorem nostram legem, quae de quaestione servorum loquitur, vel per sacramentum illius, si aliae probationes defecerint, ut undique veritate exquisita neque lucrum neque damnum aliquod heres ex huiusmodi sentiat hereditate: illo videlicet observando, ut, si ex hereditate aliquid heredes subripuerint vel celaverint vel amovendum curaverint, postquam fuerint convicti, in duplum hoc restituere vel hereditatis quantitati computare compellantur.

11. Donec tamen inventarium conscribitur, vel si res praesto sint, intra tres menses, vel si afuerint, intra annale spatium secundum anteriorem distinctionem, nulla erit licentia neque creditoribus neque legatariis vel fideicommissariis eos inquietare vel ad iudicium vocare vel res hereditarias quasi ex hypothecarum auctoritate vindicare, sed sit hoc spatium ipso iure pro deliberatione heredibus concessum, nullo scilicet ex hoc intervallo creditoribus hereditariis circa temporalem praescriptionem praeiudicio generando. **12.** Sin vero, postquam adierint vel sese immiscuerint, praesentes vel absentes inventarium facere distulerint, et datum iam a nobis tempus ad inventarii confectionem effluxerit, tunc ex eo ipso, quod inventarium secundum formam praesentis constitutionis non fecerunt, et heredes esse omnimodo intellegantur et debitis hereditariis in solidum teneantur nec legis nostrae beneficio perfruantur, quam contemnendam esse censuerunt.

13. Et haec quidem de his sancimus, qui deliberationem nullam petendam curaverint, quam putamus quidem penitus post hanc legem esse supervacuam et debere ei derogari: cum enim liceat et adire hereditatem et sine damno ab ea discedere ex praesentis legis auctoritate, quis locus deliberationi relinquitur? **13a.** Sed quia quidam vel vana formidine vel callida machinatione pro deliberando nobis supplicandum esse necessarium existimant, quatenus eis liceat annale tempus tergiversari et hereditatem inspicere et alias contra eam machinationes excogitare et

the will or making the inventory or other urgent needs for the estate. But if he too had some rights of action against the decedent, they shall not be intermingled (with these expenses); in every regard his condition shall resemble that of other creditors, though priority of time (*temporum praerogativa*) is preserved among creditors for him.

10. If creditors or legatees or trust beneficiaries think that the estate left by the decedent is greater than the heir wrote in the inventory, they shall have permission to prove the surplus by whatever legal means they wish, either perchance by torture of the slaves in the inheritance in accord with Our earlier law on the questioning of slaves,[226] or by that person's (the heir's) oath if other proofs are lacking, so that, after the truth has been thoroughly investigated, the heir receive neither any gain nor loss through such inheritance. Obviously let this be enforced, that, if heirs pilfer or conceal or see to the removal of anything from the estate, after being convicted they be forced to restore, or add to the estate's amount, double that amount.

11. But until the inventory is made – either within three months if the property is near or within a year if it is distant, according to the foregoing distinction – neither creditors nor legatees nor trust beneficiaries will be permitted to disturb them (the heirs) or summon them to court or claim ownership of the estate's property as if on the basis of hypothec; that time shall be conceded to heirs by operation of law for consideration. Certainly, the estate's creditors suffer no prejudice, because of this interlude, as to long-time prescription (*praescriptio temporalis*). 12. But if, after they accept or they meddle in it, whether they are present or are in a different location, they fail to make an inventory, and the time that We now give for making an inventory has passed, then, for the very reason that they did not make an inventory in accord with the model of the present law, they shall be construed unequivocally as heirs and as liable for the whole (*in solidum*) of the estate's debts, nor shall they enjoy the benefit of Our law, which they thought it proper to scorn.

13. We ordain these provisions for those who do not see to claiming any time for consideration, something We consider is entirely needless after this statute and ought to be abolished; for since, under the present law, one may both accept an inheritance and walk away from it without loss, what place is left for considering (the estate)? 13a. But because some persons, either through empty fear or by sly trickery, thought it necessary to ask from Us a time for consideration so that they can shift back and forth during the yearlong period and inspect the inheritance and think up other plots against it,

[226] C. 2.58.1.

eandem deliberationem flebilibus adsertionibus repetita prece saepius accipere: ne quis nos putaverit antiquitatis penitus esse contemptores, indulgemus quidem eis petere deliberationem vel a nobis vel a nostris iudicibus, non tamen amplius ab imperiali quidem culmine uno anno, a nostris vero iudicibus novem mensibus, ut neque ex imperiali largitate aliud tempus eis indulgeatur, sed et, si fuerit datum, pro nihilo habeatur: semel enim et non saepius eam peti concedimus.

14. Sin autem hoc aliquis fecerit et inventarium conscripserit (necesse enim est omnimodo deliberantes inventarium cum omni subtilitate facere), non liceat ei post tempus praestitutum, si non recusaverit hereditatem, sed adire maluerit, nostrae legis uti beneficio, sed in solidum secundum antiqua iura omnibus creditoribus teneatur. **14a.** Cum enim gemini tramites inventi sunt, unus quidem ex anterioribus, qui deliberationem dederunt, alter autem rudis et novus a nostro numine repertus, per quem et adeuntes sine damno conservantur, electionem ei damus vel nostram constitutionem eligere et beneficium eius sentire vel, si eam aspernandam existimaverit et ad deliberationis auxilium convolaverit, eius effectum habere: et si non intra datum tempus recusaverit hereditatem, omnibus in solidum debitis hereditariis teneatur et non secundum modum patrimonii, sed etsi exiguus sit census hereditatis, tamen quasi heredem eum in totum obligari, et sibi imputet, qui pro novo beneficio vetus elegit gravamen.

14b. Et ideo et in ipsam deliberationis dationem et divinum rescriptum super hoc promulgandum hoc adici volumus, ut sciant omnes, quod omnimodo post petitam deliberationem, si adierint vel pro herede gesserint vel non recusaverint hereditatem, omnibus in solidum hereditariis oneribus teneantur. **14c.** Si quis autem temerario proposito deliberationem quidem petierit, inventarium autem minime conscripserit et vel adierit hereditatem vel minime eam repudiaverit, non solum creditoribus in solidum teneatur, sed etiam legis Falcidiae beneficio minime utatur. **14d.** Quod si post deliberandum recusaverit inventario minime conscripto, tunc res hereditatis creditoribus vel his qui ad hereditatem vocantur legibus reddere compelletur, quantitate earum sacramento res accipientium manifestanda, cum taxatione tamen ab iudice statuenda.

15. Notissimum autem est ex hac constitutione, quae omnes casus continet, nostris constitutionibus iam pro eisdem capitulis promulgatis esse derogatum, quarum alteri et Gordianae constitutionis sensus

and by tearful declarations and a repeated petition to receive more than once the same time for consideration: so that no one think We are completely contemptuous of antiquity, We will allow them to seek a time for consideration either from Us or from Our judges, but not for longer than a year from the Imperial Highness, but (only) nine months from Our judges, such that no further time be conceded to them through imperial generosity, but also, if it shall be given, it be void. For We allow it to be sought (only) once and no more.

14. But if someone does this (seeks time for consideration) and makes an inventory – for those considering must in any case make a fully detailed inventory – if he does not refuse the inheritance but prefers to accept it, after the prescribed time he may not use the benefit of Our law, but is liable for the whole (*in solidum*) to all creditors, in accord with ancient law. **14a.** For when two ways have been found, one from earlier law that gave time for deliberation, the other raw and new, discovered by Our Divine Majesty, whereby those accepting are held harmless, We give him (the heir) a choice either to choose Our constitution and to feel its benefit, or, if he thinks it best to disregard this and he resorts to the aid of a time for consideration, to abide by its consequence. And if he does not refuse the inheritance within the given time, he is liable for the whole on all the estate's debts, and not according to the measure of the inheritance; but even if the value of the inheritance is small, nevertheless as heir he is obligated for all, and he shall have himself to blame who chooses an ancient burden over a new benefit.

14b. And so, both regarding the very conferral of a time of consideration and the imperial rescript to be promulgated on this subject, We want this provision added, that all persons know that if, after a time for deliberation is sought, they accept an inheritance or act as heir or do not refuse it, they are liable in any case for the whole on all the estate's debts. **14c.** Further, if anyone rashly seeks a time for consideration, but does not make an inventory and either accepts the inheritance or does not reject it, not only shall he be liable to the creditors for the whole, but also he shall not use the benefit of the lex Falcidia. **14d.** But if he refuses (the estate) after considering, and no inventory is made, then he shall be forced to return the estate's property to the creditors or to those called by statutes to the inheritance, the amount thereof to be determined by the oath of those accepting the property, within a limit to be set by the judge.

15. It is quite evident that this constitution, which covers all circumstances, abolishes Our constitutions previously promulgated on the same legal subjects,

continebatur. **16.** Cum enim ampliore tractatu habito melior exitus inventus est et tribus constitutionibus in unum congregatis unus apparet et in milites et in alios omnes iuris probabilis articulus, quapropter ex anterioribus inquietari nostro subiectos imperio patimur? scilicet ut milites, etsi propter simplicitatem praesentis legis subtilitatem non observaverint, in tantum tamen teneantur, quantum in hereditate invenerint.

Quam, patres conscripti, in huiusmodi casibus in posterum obtinere sancimus.

D. v k. Dec. post consulatum Lampadii et Orestis vv. cc.

XXXI De Repudianda vel Abstinenda Hereditate

[1] *Imp. Antoninus A. Muciano.* Si paterna hereditate te abstinuisse constiterit et non ut heredem in domo, sed ut inquilinum vel custodem vel ex alia iusta ratione habitasse liquido fuerit probatum, ex persona patris conveniri te procurator meus prohibebit.

PP. id. Iul. Messala et Sabino conss.

[2] *Idem A. Severo.* Si paterna hereditate abstinuisti, non ideo, quod a creditoribus fundos comparasti, si modo id bona fide fecisti, a posterioribus, qui sub isdem obligationibus pecuniam patri crediderint, iure conveniris.

PP. v k. Iul. Laeto II et Cereale conss.

[3] *Impp. Diocletianus et Maximianus AA. et CC. Theodotiano.* Suus heres exceptione pacti, qui testamentum iniustum adseverans postea nihil se de paterna successione petiturum non ex causa donationis, sed transigendi animo in iure professus est, cum respuere quaesitam nequiret hereditatem et transactio nullo dato vel retento seu promisso minime procedat, submoveri non potest.

Sine die CC. conss.

one of which also contains the content of a constitution of Gordian.[227] **16.** For since a better solution has been found through a fuller treatment, and, with three constitutions amalgamated into one, the one appears a credible article of law both for soldiers and for all others, why do We allow those subject to Our rule to be harassed through prior (constitutions)? Provided, indeed, that soldiers, even if, because of their naiveté, they do not observe the precise requirements of the present law, still are liable only for as much as they find in the inheritance.

We ordain, Senators, that this (constitution) apply in such cases hereafter.

Given November 27, in the post-consulate of viri clarissimi *Lampadius and Orestes (531).*

Thirty-First Title Rejecting or Refusing an Inheritance[228]

[1] *Emperor Antoninus Augustus to Mucianus.* If it is established that you refused your father's inheritance and it is demonstrated by manifest proof that you lived not as an heir in (his) house, but as a tenant or a watchman or for some other appropriate reason, my procurator will prevent you from being sued in connection with your father's estate.

Posted July 15,[229] in the consulship of Messala and Sabinus (214).

[2] *The same Augustus to Severus.* If you refused your father's inheritance you cannot, because you bought (back) farms from his creditors, provided you did this in good faith (*bona fides*), lawfully be sued by subsequent creditors who lent money to your father on the basis of the same encumbrances.

Posted June 27,[230] in the consulship of Laetus, for the second time, and Cerealis (215).

[3] [231] *Emperors Diocletian and Maximian Augusti and the Caesars to Theodotianus.* **pr.** A privileged heir (*suus heres*), who claimed that the terms of a will were unjust and then later stated in court that he would claim nothing from his father's estate, not for the purpose of making a gift but with the intention of reaching a settlement, cannot be defeated by raising the affirmative defense of an existing agreement (*exceptio pacti*), since he cannot reject the inheritance once he has accepted it and the settlement has no validity at all when nothing has been given, kept back, or promised.

[227] C. 6.30.22 pr.
[228] See D. 29.2.
[229] The precise day is uncertain: possibly June 29.
[230] The precise day is uncertain: possibly June 29.
[231] Combine with C. 2.6.4; 6.19.1. The end is repeated in C. 2.4.38.

[4] *Idem AA. et CC. Modestino militi.* Sicut maior quinque et viginti annis, antequam adeat, delatam repudians successionem post quaerere non potest, ita quaesitam renuntiando nihil agit, sed ius quod habuit retinet nec, quod confessos pro iudicatis haberi placuit, ad vocem repudiantis hereditatem, sed ad certam quantitatem deberi confitentem pertinet.

S. V k. Ian. Sirmi AA. conss.

[5] *Idem AA. et CC. Claudianae.* Pupillorum repudiatio delatae hereditatis sine tutore auctore facta nihil eis nocet.

S. prid. k. Ian. Sirmi AA. conss.

[6] *Imp. Iustinianus A. Iohanni pp.* **pr.** Si quis suus recusaverit paternam hereditatem, deinde maluerit eam adire, cum fuerat indistincte ei permissum, donec res paternae in eodem statu manent, hoc facere et post multum tempus licebat ei ad eandem hereditatem redire, hoc corrigentes sancimus, si quidem res iam venumdatae sint, ut nullus aditus ei ad hereditatem reservetur: quod et antiquitas observabat. **1.** Sin autem res alienatae non sint, si quidem maior annis constitutus est et tempora restitutionis nulla ei supersint, intra trium annorum spatium tantummodo huiusmodi ei detur licentia. **2.** Sin autem vel minor est vel in utili tempore constitutus, tunc post completum quadriennium, quod spatium pro utili anno qui restitutionibus dabatur praestitum est, aliud triennium ei indulgeri, intra quod potest rebus in suo statu manentibus adire hereditatem et suam abdicationem revocare. **3.** Quo tempore transacto nullus aditus penitus ad paternam hereditatem ei reservetur, nisi forte adhuc in minore aetate eo constituto res venditae sunt. tunc etenim per in integrum restitutionem non denegatur ei adire hereditatem et res recuperare et creditoribus paternis satisfacere.

D. XV k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc. anno secundo.

Written December 25, at Nicomedia, in the consulship of the Caesars (294).[232]

[4] *The same Augusti and Caesars to Modestinus, a soldier.* Just as once a person more than 25 years of age rejects an inheritance made available to him before entering upon it he cannot later claim it, so rejecting it once accepted has no legal effect. Instead he (the heir) retains the rights he or she already had, and the rule that an acknowledgment is deemed equivalent to a judgment does not apply to a statement rejecting an inheritance, but to someone admitting that a certain sum is owed.

Written December 28, at Sirmium, in the consulship of the Augusti (293).

[5][233] *The same Augusti and Caesars to Claudiana.* When the rejection of an inheritance made available is accomplished by minor wards without the authorization of their *tutor*, this does not prejudice their interests.

Written December 31, at Sirmium, in the consulship of the Augusti (293).

[6] *Emperor* JUSTINIAN *Augustus to John, Praetorian Prefect.* pr. If any *suus heres* has refused his father's inheritance and then wished instead to enter upon it, he was indiscriminately permitted to do this, as long as the father's property remained in the same situation (of ownership), and he used to be allowed to enter upon said inheritance even after a long period of time had passed. In correcting this, then, We lay down that if, certainly, the property has already been sold, no right of entry shall be preserved for him – which also used to be the rule in antiquity. 1. But if, however, the property has not been alienated, provided he, to be sure, is older than 25 and the period for restoration of rights has elapsed, permission (to enter) shall be granted to him only for a period no longer than three years. 2. But if, however, he is less than 25 or still enjoys the grace period for restoration of rights, then, after four years, which is the period established in place of the continuous year that used to be granted for restoration of rights,[234] another three years shall be given, in which, as long as the property remains in the same situation (of ownership), he can revoke the refusal and enter upon the inheritance. 3. When this period of time has passed no entry at all upon a father's inheritance shall be preserved for such a person, unless it happens that the property was sold while he or she was still less than 25. For then by means of a restoration of rights he is not rebuffed from entering upon the inheritance, recovering the property, and satisfying the father's creditors.

Given October 18, at Constantinople, in the second post-consulate of viri clarissimi *Lampadius and Orestes (532).*

[232] Most of the information in the *subscriptio* derives from the *lex gemina*. The date places this constitution after C. 6.31.5.

[233] Combine with C. 6.58.6.

[234] See C. 2.52.7.

XXXII Quemadmodum Aperiantur Testamenta et Inspiciantur et Describantur

[1] *Imp. Alexander A. Proculae.* Ut testamentum, quod dicis factum, proferatur et publice recitetur, competens iudex iubebit.
PP. II k. April. Maximo II et Aeliano conss.

[2] *Impp. Valerianus et Gallienus AA. Alexandro.* Testamenti tabulas ad hoc tibi a patre datas, ut in patria proferantur, adfirmans potes illic proferre, ut secundum leges moresque locorum insinuentur, ita scilicet, ut testibus non praesentibus adire prius vel pro tribunali vel per libellum rectorem provinciae procures ac permittente eo honestos viros adesse facias, quibus praesentibus aperiantur et ab his rursum obsignentur.
PP. XII k. Ian. Maximo II et Glabrione conss.

[3] *Impp. Diocletianus et Maximianus AA. et CC. Aristoteli.* Eius, quod ad causam novissimi patris vestri iudicii pertinet, de calumnia tibi iuranti praeter partem, quam aperiri defunctus vetuit vel ad ignominiam alicuius pertinere dicitur, inspiciendi ac describendi praeter diem et consulem tibi rector provinciae facultatem fieri iubebit.
D. VI k. Mai. CC. conss.

[4] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad Hesperium pp.* Codicillos seu scripturam quolibet tenore formatam ea oportebit observatione in publicum proferri, qua testamenta panduntur.
D. III k. Aug. Mediolano Ausonio et Olybrio conss.

XXXIII De Edicto Divi Hadriani Tollendo Et Quemadmodum Scriptus Heres In Possessionem Mittatur

[1] *Impp. Severus et Antoninus AA. Lucillo.* Cum inter institutum et substitutum controversia moveatur, eum, qui primo loco institutus est, induci in possessionem oportet.
PP. XII k. Dec. Dextro et Prisco conss.

Thirty-Second Title How Wills Are Opened, Inspected, and Copied[235]

[1] *Emperor* ALEXANDER *Augustus to Procula.* The appropriate judge will order that the will, which you claim was made, be brought forth and read (aloud) in public.

Posted March 31, in the consulship of Maximus, for the second time, and Aelianus (223).

[2] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Alexander.* You claim that your father gave you the text of his will to make public in his hometown. You may do so, so that it be communicated in accordance with the local laws (*leges*) and customs (*mores*), with this proviso, clearly, that, if the witnesses (to the will) are not present you manage first to approach the provincial governor either in his court or by means of a petition, and with his permission you (then) arrange for men of good reputation and high standing (*honesti viri*) to appear, in whose presence the will shall be opened and sealed up again by them.

Posted December 21, in the consulship of Maximus, for the second time, and Glabrio (256).

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Aristotle.* After you swear an oath that your intentions are not malicious, the provincial governor will order that you be given the opportunity of inspecting and copying, aside from the day and year (of its making), the document that reflects the last wishes of your father, with the exception of the portion that the decedent forbade to be opened or that is said to impugn someone's reputation.

Given April 26, in the consulship of the Caesars (294).

[4][236] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Hesperius, Praetorian Prefect.* Codicils or texts composed with any content at all (of a testamentary nature) ought to be brought forth in public using the same procedure by which wills are made public.

Given July 30,[237] at Milan, in the consulship of Ausonius and Olybrius (379).

Thirty-Third Title Repealing the Edict of the Deified Hadrian, and How a Named Heir is Placed in Possession

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Lucillus.* When a dispute arises between an appointed heir and a substitute, the one who was appointed in the first place ought to be placed in possession (of the estate).

Posted November 20, in the consulship of Dexter and Priscus (196).

[235] See D. 29.3.

[236] Perhaps combine with C. Th. 8.18.6.

[237] The precise day is uncertain: the alternative is July 31, and the constitution is "Received" August 29 in C. Th. 8.18.6. Seeck gives July 31, 379.

[2] *Imp. Alexander A. Eutacto.* Quamvis quis se filium defuncti praeteritum esse adleget aut falsum vel inofficiosum testamentum seu alio vitio subiectum vel servus defunctus esse dicatur, tamen scriptus heres in possessionem mitti solet.

PP. VI k. Nov. Maximo II et Aeliano conss.

[3] *Imp. Iustinianus A. Iuliano pp.* **pr.** Edicto divi Hadriani, quod sub occasione vicesimae hereditatum introductum est, cum multis ambagibus et difficultatibus et indiscretis narrationibus penitus quiescente, quia et vicesima hereditatis a nostra recessit re publica, antiquatis nihilo minus et aliis omnibus, quae circa repletionem vel interpretationem eiusdem edicti promulgata sunt, sancimus, ut, si quis ex asse vel ex parte competenti iudici testamentum ostenderit non cancellatum neque abolitum neque ex quacumque suae formae parte vitiatum, sed quod prima figura sine omni vituperatione appareat et depositionibus testium legitimi numeri vallatum sit, mittatur quidem in possessionem earum rerum, quae testatoris mortis tempore fuerunt, non autem legitimo modo ab alio detinentur, et eam cum testificatione publicarum personarum accipiat. **1.** Sin autem aliquis contradictor extiterit, tunc in iudicio competenti causae in possessionem missionis et subsecutae contradictionis ventilentur et ei possessio adquiratur, qui potiora ex legitimis modis iura ostenderit, sive qui missus est sive qui antea detinens contradicendum putavit.

2. Nullis angustiis temporum huiusmodi missione coartanda, sed sive tardius sive praemature aliquis missus est, legis tantummodo arbitrium requiratur et causa, unde vel missio vel contradictio exoritur. **3.** Sive enim post annale tempus sive post maioris aeui curricula aliquis fuerit missus, si tantum ex legitime formato testamento missio procedat, nullum ei temporis obiciatur obstaculum, nisi tantum temporis effluxerit, quod possit vel possessori plenissime securitatem et super dominio praestare, vel ipsi qui missus est omnem intentionem excludere. **4.** Si enim vel ex una parte vel ex utroque latere temporis prolixitas occurrit, manifestissimum est non solum missionem, sed etiam ipsam principalem causam esse sopitam.

D. XII k. April. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[2] *Emperor* ALEXANDER *Augustus to Eutactus.* Even if someone claims that he or she as the child of the decedent has been passed over in his will, or that the will is forged, undutiful, or laboring under some other defect, or the decedent is said to have been a slave, nevertheless the named heir is usually placed in possession (of the estate).

Posted October 27, in the consulship of Maximus, for the second time, and Aelianus (223).

[3][238] *Emperor* JUSTINIAN *Augustus to Julian, Praetorian Prefect.* **pr.** The edict of the deified Hadrian that was introduced regarding the 5 percent tax on inheritances (*vicesima hereditatum*), with its many ambiguities, difficulties, and jumbled provisions, is completely obsolete, as are all other ancient measures concerning the supplementation or interpretation of said edict, because the 5 percent tax itself is no longer collected by Our commonwealth. So We ordain that if someone has been (named heir) in whole or in part and shows the will to the appropriate judge and this is not scratched out, effaced, or defective in any part of its text, but on its face is without any flaw and is supported by the attestations of the legally required number of witnesses, he or she shall assuredly be placed in possession of the property that belonged to the testator at the time of death, but not that which is being physically held by someone else in a legally recognized manner, and he or she shall receive possession of this property with public officials bearing witness to it. **1.** But if, however, someone comes forth to challenge (this arrangement), then the arguments for and against the grant of possession (*missio in possessionem*) shall be aired in the appropriate court and possession shall be acquired by the person who shows the stronger right in legal terms, either the one who has been granted possession or the one who, having previously had physical control of the property, thought that this grant should be contested.

2. No time-limitations shall apply to this type of *missio in possessionem*, but, whether someone has been placed in possession very early or rather late, only the authority of the law (*legis arbitrium*) and a ground for the *missio* or the objection to it are necessary. **3.** For whether someone is placed in possession after a year or a greater length of time, provided that the *missio* follows pursuant to a lawfully executed will, no lapse of time shall be an impediment, unless the full period of time passes which can give a complete guarantee even of ownership to the possessor or shut out every recourse for the person granted *missio*. **4.** For if sufficient time has run in one or both cases, it is very clear that not only the right to *missio* but also the very argument for this has been silenced.

Given March 21, at Constantinople, after the consulship of the viri clarissimi *Lampadius and Orestes (531).*[239]

[238] Combine with C. 6.23.27.
[239] See C. 6.23.27 for a variant on the date. Lounghis *et al.* give March 18, 530.

[4] …

XXXIIII Si Quis Aliquem Testari Prohibuerit vel Coegerit

[1] *Imp. Alexander A. Severae.* Civili disceptationi crimen adiungitur, si testator non sua sponte testamentum fecit, sed compulsus ab eo qui heres est institutus, vel quoslibet alios quos noluerit scripserit.
S. xv k. Ian. Alexandro A. III et Dione conss.

[2] *Impp. Diocletianus et Maximianus AA. Nicagorae.* Eos, qui, ne testamentum ordinetur, impedimento fuisse monstrantur, velut indignas personas a successionis compendio removeri celeberrimi iuris est.
PP. k. Ian. Diocletiano II et Aristobulo conss.

[3] *Idem AA. et CC. Eutychidi.* Iudicium uxoris postremum in se provocare maritali sermone non est criminosum.
D. v k. Ian. CC. conss.

[4] [Αὐτοκράτωρ Ζήνων Α.]. … Ἐάν τις κωλύσῃ τινὰ διαθέσθαι ἢ ἀρξάμενον αὐτὸν διατίθεσθαι κωλύσῃ πληρῶσαι τὴν διαθήκην, κατέχεται μὲν καὶ τῷ ζημιωθέντι προφάσει τῆς κωλύσεως, καὶ εἴ τι δὲ ἄλλο περισσεύσει, δημόσιον ἔσται καὶ αὐτὸς ἐν ἐξορίᾳ τὸν λοιπὸν βίον διατελέσει.
D. III k. Iun. Constantinopoli Zenone A. cons.

XXXV De His Quibus Ut Indignis Auferuntur et ad Senatus Consultum Silanianum

[1] *Impp. Severus et Antoninus AA. Celeri.* **pr.** Heredes, quos necem testatoris inultam omisisse constitit, fructus integros cogantur reddere. neque enim bonae fidei possessores ante controversiam illatam

[4][240]

Thirty-Fourth Title If Someone Prevents or Compels Another's Writing a Will[241]

[1][242] *Emperor* ALEXANDER *Augustus to Severa.* A criminal charge is added to a dispute at private law, if a testator did not make a will of his own accord, but did so compelled by the person who has been appointed heir, or has named (as heirs) any others whom he did not wish.

Written December 18, in the consulship of Alexander Augustus, for the third time, and Dio (229).

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Nicagoras.* It is a very well-known point of law (*celeberrimum ius*) that those who are shown to have prevented a will from being written shall be removed from the benefits of (intestate) succession, on the ground that they are unworthy persons.

Posted January 1, in the consulship of Diocletian, for the second time, and Aristobulus (285).

[3] *The same Augusti and the Caesars to Eutychis.* It is not a criminal act to induce a wife to make a will in one's favor through husbandly small-talk.

Given December 28, in the consulship of the Caesars (294).

[4][243] *Emperor* ZENO *Augustus.*[244] If someone prevents another from writing a will or, when it has been started, prevents the testator from finishing it, he or she shall be certainly liable to the party harmed by the act of prevention, and if anything else remains it shall be forfeit to the Treasury and the offender shall spend the rest of his or her life in exile.

Given May 30, at Constantinople, in the consulship of Zeno Augustus (479).

Thirty-Fifth Title Those Ineligible to Succeed on the Ground of Unworthiness, and the *Senatus Consultum Silanianum*[245]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Celer.* pr. Heirs shown to have left the murder of a testator unavenged shall be compelled to return the benefits (*fructus*, i.e., of the inheritance) in their entirety. For those who have

[240] A constitution written in Greek is missing.
[241] See D. 29.6.
[242] Combine with C. 7.45.4.
[243] Derived from Basilika 35.4.7.
[244] This information derives from the *subscriptio*. Lounghis *et al.* date to May 28 or 30, 479.
[245] The *SC Silanianum*, passed in 10 CE, in essence punished with death all of the slaves found under the same roof as a master murdered with violence.

videntur fuisse, qui debitum officium pietatis scientes omiserint. **1.** Ex hereditate autem rerum distractarum vel a debitoribus acceptae pecuniae post motam litem bonorum usuras inferant. **2.** Quod in fructibus quoque locum habere, quos in praediis hereditariis inventos aut exinde perceptos vendiderint, procul dubio est. **3.** Usuras autem semisses dependere satis est.

D. XV k. April. Cilone et Libone conss.

[2] *Idem AA. Vero.* **pr.** Polla quidem liberam habuit administrandi patrimonii sui potestatem nec idcirco, quod pupillus illi heres extitit, ea quae ab ipsa finita sunt revocari in disceptationem oportet. **1.** Sed si pupilli nomine falsum dicere vis testamentum, de quo per Pollam transactum est, potes experiri, dum memineris, si in causa non obtinueris, et portionem, quam ex eo testamento pupillus habet, te ei salvam facturum, quam adimi pupillo necesse erit secundum iuris formam, et de calumnia tua praesidem deliberaturum, quamvis pupilli nomine agere videaris, cum retractas ea quae finita sunt per coheredem.

PP. VII k. Mai. Antonino A. III et Geta III conss.

[3] *Imp. Alexander A. Antiochiano.* Si ea quaestio infertur filiis eius, quam consobrinam tuam dicis, quod tabulae testamenti patris eorum, qui a familia interfectus dicebatur, priusquam quaestio de servis haberetur, apertae et recitatae sunt, propter amplissimi ordinis consultum hereditas a fisco vindicatur et ideo agi causa apud procuratorem meum debet, quia non eo tempore pupilli fuerunt.

PP. II non. April. Alexandro A. cons.

[4] *Idem A. Philomuso.* Hereditas in testamento data per epistulam vel codicillos adimi non potuit. quia tamen testatrix voluntatem suam non

knowingly neglected to fulfill the duty of loyalty (*officium pietatis*) that they owed are not deemed to have been possessors in good faith (*bona fides*) before the commencement of a lawsuit (to dislodge them from the inheritance). 1. Once the suit over the estate has begun, moreover, they shall pay interest on the property from the inheritance they have sold or on money they have collected from debtors. 2. It is far from doubtful that this also applies to fruits which they found on the land they inherited or harvested there and (in either case) sold. 3. It is enough, however, for them to pay interest at the rate of 6 percent a year.

Given March 18, in the consulship of Cilo and Libo (204).

[2] *The same Augusti to Verus.* pr. Polla, admittedly, had free capacity to manage her property, and it is not the case that, because a minor ward became her (co-)heir,[246] the matters she disposed of ought to be called into question (in the context of a lawsuit). 1. But if you wish to claim in the name of the minor ward that the will, about which Polla made a settlement, was forged, you can sue, provided you keep in mind, if you do not win your case, both that you are going to indemnify the ward for that portion which he enjoys under the will, which of necessity will be taken from him according to the legal rules (*iuris forma*),[247] and that the governor is going to consider the issue of whether your suit was malicious, since, although you appear to be suing in the name of the ward, you are rehashing matters that were put to rest by a co-heir.

Posted April 25, in the consulship of Antoninus Augustus, for the third time, and Geta, for the second time (208).[248]

[3] *Emperor* ALEXANDER *Augustus to Antiochianus.* If the objection is raised against the children of the woman you claim to be your cousin, that the will of their father, who was said to have been murdered by his slave-household, was opened and read out loud before a judicial examination of the slaves under torture was conducted, then, pursuant to the decree of the most respectable order (the Senate; i.e., the *SC Silanianum*), the estate is forfeit to the Treasury and on that account the case ought to be tried before my procurator because the children were not at that time minor wards.

Posted April 4, in the consulship of Alexander Augustus (222).

[4] *The same Augustus to Philomusus.* An inheritance bestowed in a will was not able to be withdrawn by a letter or by codicils. Because nonetheless the testator had stated her view (*voluntas*) that one of her heirs was undeserving, it is

[246] Literally "illi heres" = "heir to that one", i.e., not to Polla.

[247] Blume: "In general, anyone, who attacked a will, prosecuted the suit to the finish and lost, also lost any benefit under the will, and all his rights thereunder inured to the benefit of the fisc."

[248] Geta's second consulship was in 208 (he did not enjoy a third, despite the manuscript reading "III").

mereri unum ex heredibus declaraverat, merito eius portio non iure ad alium translata fisco vindicata est. libertates autem in eadem epistula datae peti poterunt.

PP. II k. Dec. Maximo II et Aeliano conss.

[5] *Idem A. Tyranno.* Non oportet ut indignis heredibus successiones auferri praetextu, quod in sepultura supremis defunctorum obtemperatum non fuisset.

PP. VII id. Mart. Iuliano et *Crispino conss.*

[6] *Idem A. Venusto et Clementino.* **pr.** Minoribus quinque et viginti annis heredibus non obesse crimen inultae mortis placuit. **1.** Cum autem vos etiam accusationem pertulisse et quosdam ex reis punitos proponatis, licet is qui mandasse caedem dicitur provocaverit, vereri non debetis, ne quam hereditatis paternae a fisco meo quaestionem patiamini. convenit enim pietati vestrae respondere causam appellationis reddenti. **2.** Quod si maioris aetatis fuissetis, etiam ex necessitate provocationis certamen implere deberetis, ut possitis adire hereditatem.

PP. XV k. Iul. Alexandro A. III et Dione conss.

[7] *Idem A. Vitaliae.* Si ideo ultio necis testatoris non est desiderata, quia caedis auctores reperiri non potuerunt, obesse heredibus, in quo nulla eorum culpa detegitur, non oportet.

PP. id. Mart. Lupo et Maximo conss.

[8] *Imp. Gordianus A. Tatiae.* Alia causa est eius, qui falsi instituta accusatione ad finem usque quod insimulabat perduxit et contrariam sententiam meruit, alia eius, qui inchoatam accusationem non pertulit, cum in illius quidem partem succedat fiscus, hic autem, qui contrariam iudicis sententiam non sustinuit, suae partis non perdat persecutionem.

PP. XV k. Febr. Gordiano A. et Aviola conss.

right that that person's portion has by operation of law not been made over to another (heir) but claimed by the Treasury. Manumissions granted in the same letter, however, can be petitioned for.

Posted November 30, in the consulship of Maximus, for the second time, and Aelianus (223).

[5] *The same Augustus to Tyrannus.* The rights to succession ought not to be taken from heirs as though (they are) unworthy on the claim that the last wishes of decedents regarding burial had not been respected.

Posted March 9, in the consulship of Julian and Crispinus (224).

[6] *The same Augustus to Venustus and Clementinus.* **pr.** It is a settled rule that those less than 25 years of age cannot be charged with failure to avenge a death. **1.** Since you state, moreover, that you have even concluded a prosecution and that some of the defendants have been punished, you ought not to fear that you will be subjected to any objection from my Treasury about your inheriting from your father, even though he who is said to have commissioned the murder has launched an appeal. For it is consistent with your sense of family loyalty (*pietas*) to respond to the person making the case for an appeal. **2.** But if you had been of full legal majority (i.e., 25 or older), you would have even been compelled to contest the appeal in order to be able to enter upon the inheritance.

Posted June 17,[249] *in the consulship of Alexander Augustus, for the third time, and Dio (229).*

[7] *The same Augustus to Vitalia.* If avenging the testator's murder was not felt to be necessary because the murderers could not be found, this ought not to present a problem for the heirs, inasmuch as they have not been found to be at fault (*culpa*).

Posted March 15, in the consulship of Lupus and Maximus (232).

[8] *Emperor* G*ORDIAN* *Augustus to Tatia.* The situation of one who launched an accusation that a will was forged, carried his allegations through to the end, and lost his case is different from that of a person who began one and did not finish it. This is because the Treasury claims the portion (granted under the will) in the former case, certainly, while in the latter the person who has not received an adverse judicial decision (on the charge of forgery) does not lose his claim to the portion (granted in the will).

Posted January 18, in the consulship of Gordianus Augustus and Aviola (239).

[249] The precise day is uncertain: the alternative is June 20.

[9] *Impp. Diocletianus et Maximianus AA. Aelianae.* Cum fratrem tuum veneno peremptum esse adseveras, ut effectus successionis eius tibi non auferatur, mortem eius ulcisci te necesse est. licet enim hereditatem eorum, qui clandestinis insidiis perimuntur, hi qui iure vocantur adire non vetantur, tamen, si interitum non fuerint ulti, successionem obtinere non possunt.

PP. Tiberiano et Dione conss.

[10] *Idem AA. et CC. Silvanae.* **pr.** Sororem fratris necem iure licito vindicantem evincere ab uxore scripta recte successionem non convenit. **1.** Secundum quae, si fiduciam innocentiae geris et neque dolo malo tuo maritum necatum neque alias indignam te successione posse probari confidis, adversus omnem calumniam maximam habes securitatem.

D. XII k. Mai. Sirmi CC. conss.

[11] *Imp. Iustinianus A. Iohanni pp.* **pr.** Cum Silanianum senatus consultum et a nobis tam laudandum quam corroborandum est nec non divi Marci oratio, quae circa id facta est, invenimus autem in ea nullam mentionem libertatis factam et veteres movit quaedam de libertatibus relictis in testamento necati testatoris quaestio, necessarium nobis visum est etiam haec dirimere. **1.** Ii enim, qui libertate fuerant in hoc testamento donati, et si eam accepissent, lucrum, quod eis in medio accidit, poterant sibi adquirere, interea autem procrastinatione propter necis vindictam habita hoc minime ad eos pervenit et postea in libertatem deducti periclitabantur.

2. Ne medium tempus fuerit eis damnosum, et maxime si ancillae in medio pepererint et postea hereditas adita sit, bellissimum nobis videtur divi Marci prudentissimi principis orationem et in libertatibus producere, ne princeps philosophiae plenus aliquid videatur imperfectum sanxisse: sed ita in hereditatibus et in legatis et in fideicommissis et maxime in libertatibus, quas semper philosophia amplectitur, extendatur

[9] *Emperors* Diocletian *and* Maximian *Augusti to Aeliana.* Since you assert that your brother was killed by poison, it is necessary that you avenge his death in order that the benefits of your succeeding to him not be taken away from you. For although those who are eligible under the law are not forbidden to enter upon the inheritance of those who perish through hidden snares, nevertheless, if they do not avenge the death, they cannot retain it.

Posted (without day), in the consulship of Tiberianus and Dio (291).

[10] *The same Augusti and the Caesars to Silvana.* **pr.** It is not appropriate that a sister avenging the death of her brother, as she has the right to do, evict from an inheritance a wife properly named as heir. **1.** If, accordingly, you are confident of your innocence and you are convinced that it can be proved that your husband was not murdered through your malicious intent (*dolus malus*) and that you are not otherwise unworthy of succeeding to him, you are perfectly secure against every malicious claim.

Given April 20, at Sirmium, in the consulship of the Caesars (294).

[11] *Emperor* Justinian *Augustus to John, Praetorian Prefect.* **pr.** We must praise as much as strengthen the SC *Silanianum*, as well as the legislative proposal (*oratio*) of the deified Marcus (Aurelius) passed pursuant to it, but we have found no mention in it of manumissions, and (yet) a certain controversy stirred the ancient jurists (*veteres*) concerning the issue of manumissions left in the will of the murdered testator. So it seemed necessary to Us to remove even this (uncertainty).[250] **1.** For those (slaves) had been granted freedom in that will and, if they had actually received it, were able to keep for themselves the income (*lucrum*) which in the meantime accumulated for them; but when a delay occurred owing to a murder investigation, it (the profit) did not become theirs in the meantime, and even once they gained freedom, they bore this risk.

2. So that this interval not cause them loss, and especially if female slaves give birth in the meantime and the inheritance is entered upon afterwards, it seems most agreeable to Us to extend the legislative proposal (*oratio*) of the deified Marcus, that wisest of emperors, even to encompass manumissions, so that an emperor filled with the love of wisdom (*philosophia*) not seem to have legislated something that was incomplete. So just as with inheritances, legacies, and trusts, his *oratio* shall be applied especially to manumissions,

[250] Blume: "Marcus had provided that inheritances, legacies and trusts granted to slaves should be preserved for them – if they would ultimately have received them, that is to say, would not be found guilty of complicity in the crime or guilty of not having prevented it – but he had not said anything as to the earnings of the slaves in the meantime, and he had not said anything about manumissions; that is to say, as to the time from which they should be considered effective."

eius oratio, ut et lucrum quod in medio accidit eis post libertatem acceptam restituatur et partus liber et ingenuus esse intellegatur nullaque machinatione huiusmodi praepeditio damnum aliquod inrogare concedatur et libera eorum posteritas, si in medio fuerint ab hac luce subtracti, suorum genitorum commodum consequatur. **3.** Merito enim nobis sanctissimi Marci per omnia constitutionem replere placuit: nihil etenim actum esse credimus, dum aliquid addendum superest.

D. II k. Mai. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[12] *Idem A. Iohanni pp.* **pr.** Talis de antiquo iure dubietas nostrae serenitati suggesta est propter senatus consultum silanianum et servos, qui supplicio adficiuntur sub eodem tecto commorantes et non suum auxilium domino per insidias occiso praebentes. veteres enim certum non faciunt, qui intellectus de verbis 'sub eodem tecto' significatur, sive in eodem cubiculo sive in triclinio vel porticu vel in aula haec appellatio accipi debeat, adicientes, si dominus in via vel in agro fuerit interfectus, eos servos puniri, qui praesto erant et non auxilium ad prohibendum periculum praebuerunt, nulla distinctione super qualitate praesentiae utentes.

1. Nos igitur omnem eis occasionem ad declinanda supplicia super neglegentia salutis domini sui amputantes sancimus omnes servos, ex quocumque loco sive in domo sive in via sive in agro possint clamorem exaudire vel insidias sentire et non auxilium tulerint, supplicio senatus consulti subiacere. oportet enim eos, ubicumque senserint dominum periclitantem, ad prohibendas insidias concurrere.

D. XV k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc. anno secundo.

XXXVI De Codicillis

[1] *Imp. Alexander A. Mocimo et aliis.* **pr.** Rupto quidem testamento postumi agnatione codicillos quoque ad testamentum pertinentes

which *philosophia* always embraces, so that even the income that accumulates for them in the meantime be restored to them after they receive their freedom; their offspring shall be deemed free and free-born; by no contrivance shall such impediment be allowed to cause any loss for them; and if they die in the meantime their free offspring shall obtain the material resources of their parents. 3. Certainly We have rightly decided to complete in every respect the constitution of the most blessed Marcus. For We believe that nothing has been accomplished as long as there remains something to be added.

Given April 30, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[12] *Emperor* JUSTINIAN *Augustus to John, Praetorian Prefect.* **pr.** The following uncertainty concerning the ancient law (*antiquum ius*) has been brought to the notice of Our Serenity concerning the *SC Silanianum* and the slaves who are punished with death if they are situated under the same roof and do not offer their assistance to the master when he is treacherously slain. For the ancient jurists (*veteres*) do not make clear what is meant by the term "under the same roof" (*sub eodem tecto*) – whether this phrase ought to be understood either as in the same sleeping quarters, or in a dining facility, portico, or reception hall, and they add that if the master is killed in the street or on an open piece of land those slaves shall be punished who were present and did not offer assistance in order to prevent the danger, making no discrimination over the nature of their presence.

1. Therefore, by way of eliminating every opportunity to evade the death penalty in connection with negligence over the safety of their master We ordain that all slaves, in whatever place they may be, whether in the house, in the street, or on an open piece of land, who can hear the cry for help or who are aware of the act of treachery and do not offer assistance, shall be liable to the capital punishment established by the decree of the Senate. For wherever they perceive the master to be in difficulty they ought to run in order to prevent treachery.

Given October 18, at Constantinople, in the second post-consulate of the viri clarissimi *Lampadius and Orestes (532).*

Thirty-Sixth Title Codicils[251]

[1] *Emperor* ALEXANDER *Augustus to Mocimus and others.* **pr.** When, for example, a will is broken because of the birth of a posthumous child, it does

[251] See D. 29.7; Inst. 2.25.

non valere in dubium non venit. 1. Sed cum post ruptum testamentum patrem pupillorum vestrorum litteras emisisse proponatis, quibus praecedens iudicium confirmavit, praetor nihil contra ius fecit, si novissimam eius voluntatem secutus relictum testamento rei publicae fideicommissum ut ex codicillis relictum praestandum esse pronuntiavit.

PP. III k. Iul. Maximo et *Paterno conss.*

[2] *Impp. Philippus A. et Philippus C. Asclepiodotae.* **pr.** Hereditatem quidem neque dari neque adimi codicillis posse manifestum est: verbis tamen precariis per huiuscemodi etiam novissimi iudicii ordinationem iura non faciunt irritas voluntates. 1. Unde inefficaciter te codicillis rogatam esse, ut quibusdam rebus contenta portionem quam testamento fueras consecuta aliis restitueres, falso tibi persuasum est.

PP. id. Oct. Peregrino et Aemiliano conss.

[3] *Impp. Diocletianus et Maximianus AA. Hyacintho et aliis.* Cum proponatis pupillorum vestrorum matrem diversis temporibus ac dissonis voluntatibus duos codicillos ordinasse, in dubium non venit id, quod priori codicillo inscripserat, per eum in quem postea secreta voluntatis suae contulerat, si a prioris tenore discrepat et contrariam voluntatem continet, revocatum esse.

PP. VI id. Sept. ipsis IIII et III AA. conss.

[4] *Idem AA. et CC. Stratonico.* Non idcirco minus, quod intestato te absente codicillos mater tua fecit, ii, quibus precariis verbis adscripta sunt, relicta capiunt.

Sine die et consule.

[5] *Idem AA. et CC. Flaviae.* Nec codicillos quidem furentem posse facere certissimi iuris est. si igitur scriptura velut codicillorum patris tui

not enter into doubt that the codicils related to the will are also invalid. 1. But since you state that after the will was broken the father of your minor wards sent a letter in which he confirmed his prior dispositions, the Praetor has done nothing contrary to the law, if, having followed the most recent expression of the decedent's wishes, he declared that a trust left in the will to a town is to be paid as though it were left in codicils.[252]

Posted June 29, in the consulship of Maximus and Paternus (233).

[2] *Emperor* PHILIP *Augustus and* PHILIP *Caesar to Asclepiodota.* **pr.** It is clear that an inheritance, to be sure, can neither be given nor taken away by codicils. All the same, the laws do not render invalid last wishes when expressed in supplicatory language even in this sort of last-minute manner of composition. 1. For this reason you have been wrongly persuaded that the request made to you in codicils is invalid, that you be content with certain things and turn over to others a portion that you received under the will.[253]

Posted October 15, in the consulship of Peregrinus and Aemilianus (244).

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Hyacinthus and others.* Since you allege that the mother of your minor wards composed two codicils at different times and with contradictory provisions, it does not enter into doubt that what she wrote in the first codicil has been revoked by that in which she later conveyed the private contents of her last wishes, if the latter differs from the substance of the first and expresses a contrary sentiment.

Posted September 8, in the consulship of the Augusti, for the fourth, and third time, respectively (290).

[4] *The same Augusti and the Caesars to Stratonicus.* The parties do not any the less receive a bequest left to them by a trust directive (*precariis verbis*; a *fideicomissum*) simply because your mother, without a will and in your absence, drew up codicils.

Without day and year.

[5] *The same Augusti and Caesars to Flavia.* It is a very certain point of law (*certissimum ius*) that a lunatic cannot even draw up codicils. If, therefore, a

[252] Blume: "Now the codicil that was made, was made after the will had become void – when there was no will; hence the codicil did not depend on the will, and hence the trust left in it for the benefit of the municipality was perfectly valid, even though the reference for identification had to be made to the will."

[253] Blume: "The appointment of an heir was required to be made by a will. Nor could a condition be imposed on an appointed heir, or direct substitution be effected except by a will … But property given to an heir or to anyone else in a will, could be taken away indirectly by a trust, that is to say, as stated in the present law, by precatory words."

fuit prolata, ut aliquid ex hac peti possit, adseverationi tuae mentis eum compotem fuisse negantis fidem adesse probari convenit.

D. VI k. Dec. Divelli CC. conss.

[6] *Idem AA. et CC. Demostheni.* Sive initio quae fuerat codicillis relicturus generaliter, sive novissime relicta servari mandaverit, confirmatione munitus nullam iustam gerere sollicitudinem potes.

D. III id. Dec. Nicomediae CC. conss.

[7] *Imp. Constantinus A. ad Maximum pp.* Si idem codicilli quod testamenta possent, cur diversum his instrumentis vocabulum mandaretur, quae vis ac potestas una sociasset? igitur specialiter codicillis instituendi ac substituendi potestas iuris auctoritate data non est.

D. III. ... Iun. Pacatiano et Hilariano conss.

[8] *Imp. Theodosius A. Asclepiodoto pp.* **pr.** Si quis agere ex testamento quolibet modo sive scripto sive sine scriptura confecto de hereditate voluerit, ad fideicommissi persecutionem adspirare cupiens, minime permittatur. **1.** Tantum enim abest, ut aditum cuiquam pro suo migrandi desiderio concedamus, ut etiam illud sanciamus, ut, si testator faciens testamentum in eodem pro codicillis etiam id valere complexus sit, qui hereditatem petit, ab ipsis intentionis exordiis utrum velit eligendi habeat potestatem, sciens se unius electione alterius sibi aditum praeclusisse: ita ut, sive bonorum possessionem secundum tabulas aut secundum nuncupationem ceterasque similes postulaverit, aut certe mitti se ad possessionem ex more petierit, statim inter ipsa huius iuris auspicia propositum suae intentionis explanet.

1a. Illud quoque pari ratione servandum est, ut testator, qui decreverit facere testamentum, si id implere nequiverit, intestatus videatur esse defunctus nec traducere liceat ad fideicommissi interpretationem velut ex codicillis ultimam voluntatem, nisi id ille complexus sit, ut vim etiam codicillorum scriptura debeat obtinere: illo iure electionis

document of your father's has been produced as though in the form of codicils so that something can be claimed from it, it befits your allegations that the credibility be demonstrated of your denial that your father was of sound mind.

Given November 26, at Divellium, in the consulship of the Caesars (294).[254]

[6] *The same Augusti and Caesars to Demosthenes.* You cannot have any justified concern, since you are supported by a confirmation (in either case), whether (the testator) ordained generally at the outset what he was going to bequeath in codicils should be maintained or at the very end what he had bequeathed (should be maintained).

Given December 11, at Nicomedia, in the consulship of the Caesars (294).

[7] *Emperor* CONSTANTINE *Augustus to Maximus, Praetorian Prefect.* If codicils could accomplish the same thing as wills, why would a different name have been given to these documents, if they had been united by one force and effect? Hence the capacity to appoint and substitute (heirs) has not been specially granted to codicils by the authority of the law (*auctoritas iuris*).

Given May or June ??, in the consulship of Pacatianus and Hilarianus (332).[255]

[8] *Emperor* THEODOSIUS *Augustus to Asclepiodotus, Praetorian Prefect.* **pr.**[256] If anyone wishes to sue for an inheritance from a will composed in any manner at all, whether written or oral, though he desire (also) to make a claim for a trust, this shall not at all be allowed. **1.** For so far are We from allowing anyone an opening to shift the ground for a claim that We also lay down that, if a testator when making a will has stated therein that it also shall be valid as to codicils, a claimant of the inheritance from the very beginning of his suit shall have the opportunity of choosing which he wishes, knowing that by choosing one he has forgone access to the other. As a result, whether he claims *bonorum possessio* according to the terms of a written will or an oral declaration (*nuncupatio*) and the other similar forms or at any rate he asks to be put in possession in the customary manner the claimant shall immediately, at the very beginning of the lawsuit, set forth the motive behind his claim.

1a. This point too shall be preserved with equal reason, that the testator who decides to make a will but fails to complete it shall be deemed to have died intestate, nor shall it be permitted to translate the expression of last wishes into a trust as though it derived from codicils, unless the testator has stated that the incipient will ought to preserve the force even of codicils. (Even so,) that right

[254] Both the day and place are uncertain: Mommsen prefers October 30, 294, at Develtum.
[255] Seeck and the Projet Volterra have May 30, 332.
[256] Pr.-2 = (in part, with changes) C Th. 4.4.7. Combine with C. 6.13.2.

videlicet perdurante, ut, qui ex testamento agere voluerit, ad fideicommissum migrare non possit.

2. Si quis vero ex parentibus utriusque sexus ac liberis usque ad gradum quartum agnationis vinculis adligatus vel cognationis nexu constrictus ad tertium scriptus heres fuerit vel nuncupatus, in eo videlicet testamento, quod testator vicem quoque codicillorum voluit obtinere, licebit ei, si de hereditate ex testamento secundum mortui voluntatem agens fuerit forte superatus vel certe ipse sponte voluerit, ad fideicommissi subsidium convolare. non enim par eademque ratio videtur amittere debita et lucra non capere.

3. In omni autem ultima voluntate excepto testamento quinque testes vel rogati vel qui fortuitu venerint in uno eodemque tempore debent adhiberi, sive in scriptis sive sine scriptis voluntas conficiatur: testibus videlicet, quando scriptura voluntas componitur, subnotationem suam accommodantibus.

D. x k. Mart. Constantinopoli Victore vc. cons.

XXXVII De Legatis

[1] *Imp. Antoninus A. Pius libertis Sextiae Basiliae.* Quamvis verbis his: 'ut quoad cum Claudio Iusto morati essetis', alimenta vobis et vestiarium legatum sit, tamen hanc fuisse defuncti[xi] cogitationem interpretor, ut et post mortem Iusti eadem vobis praestari voluerit.

Sine die et consule.

[2] *Impp. Severus et Antoninus AA. Sabiniano.* Quamvis heres institutus hereditatem vendiderit, tamen legata et fideicommissa ab eo peti possunt et, quod eo nomine datum fuerit, venditor ab emptore vel fideiussoribus eius petere poterit.

PP. x k. Sept. Laterano et Rufino conss.

[3] *Idem AA. Victorino.* Qui post testamentum factum praedia quae legavit pignori vel hypothecae dedit, mutasse voluntatem circa

[xi] defunctae (D.)

of election clearly remains valid, so that he or she who wishes to sue under the will cannot shift to (a claim for) a trust.

2. If, however, anyone of the ascendants of either sex and the descendants to the fourth degree, if bound by an agnatic tie, or the third, if connected by a link of cognate (blood) relationship, is named heir in a written or oral will, in that will, clearly, which the testator wished to have the force of codicils, it will be permitted for him or her to have recourse to a trust as a fallback, if while suing under the will over the inheritance in accordance with the decedent's wishes he happens to lose or at any rate wishes this of his own accord. For there does not seem to be the same justification in failing to reap a benefit as in losing what is properly owed.

3. Moreover, in every expression of one's last wishes, with the exception of a will, five witnesses, either summoned for the purpose or having shown up by chance, ought at one and the same time to be employed, whether the expression of last wishes is accomplished in writing or without it. When the last wishes are put in writing, obviously, the witnesses shall sign underneath.

Given February 14, at Constantinople, in the consulship of the vir clarissimus *Victor (424).*

Thirty-Seventh Title Legacies[257]

[1][258] *Emperor* ANTONINUS PIUS *Augustus to the freedpersons of Sextia Basilia.* Although in this wording (of the will): "As long as you reside with Claudius Justus," the means of subsistence (*alimenta*) and clothing have been left as a legacy to you, nevertheless I interpret the thinking of the decedent to be as follows: even after the death of Justus she wanted the same things to be provided to you.

Without date and year.

[2] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Sabinianus.* Although the person appointed heir sells the inheritance, the legacies and trusts can nevertheless be claimed from him and whatever was given under that title the seller will be able to claim from the buyer or his sureties.

Posted August 23, in the consulship of Lateranus and Rufinus (197).

[3] [259] *The same Augusti to Victorinus.* Whoever, after making a will, has given as a pledge or hypothec (*hypotheca*) properties that he or she granted as a legacy is not deemed to have changed his or her wishes concerning the legatees.

[257] See D. 30–32; Inst. 2.29.
[258] = (in part, with changes) Scaev. D. 34.1.13.1.
[259] See Inst. 2.20.12.

legatariorum personam non videtur: et ideo, etiam si in personam actio electa est, recte placuit ab herede praedia liberari.

PP. VI k. Mai. Gentiano et Basso conss.

[4] *Imp. Antoninus A. Sulpicio.* Servis testamento dominorum non data libertate legatum seu fideicommissum relictum non valet nec convalescere potest, licet post mortem testatoris libertatem aliqua ratione consecuti sunt.

PP. V k. Iul. Antonino A. IIII et Balbino conss.

[5] *Idem A. Donato.* Non est dubium denegari actionem legatorum ei pro portione competenti in his rebus, quas subtraxisse eum de hereditate apparuerit.

PP. V id. Sept. Antonino A. IIII et Balbino conss.

[6] *Idem A. Iulio.* Si legata relicta primus legatarius agnovit, substitutio eorum in personam Pontianae facta evanuit.

PP. VIII k. Mai. Romae Laeto II et Cereale conss.

[7] *Idem A. Fausto.* **pr.** Si Fortidianum fundum primo pater tuus fratribus per praeceptionem ac mox tibi legavit, concursu dominium eius tibi quoque quaeritur. **1.** Error autem nominum in scriptura factus, si modo de mancipiis vel de possessionibus legatis non ambigitur, ius legati dati non minuit.

PP. V id. Iul. Laeto II et Cereale conss.

[8] *Idem A. Demetrio.* Ab administratione tutelae religio sacramenti Marcellum, quem vobis a patre tutorem datum testamento proponitis, eripit. quae res, quominus legatum consequatur, non impedit: nec enim iuste ab ea petitione repellitur, cum, etiam si vellet, tutelam administrare prohibeatur.

PP. VIII id. Mart. Romae Sabino II et Anullino conss.

[9] *Imp. Alexander A. Antiocho.* Si in fraudem eorum quae testamento relicta sunt admissus est accusator, qui testamentum falsum diceret, praeses provinciae secundum iurisdictionis formam solvi legata

And for this reason too if an action *in personam* has been raised (against the heir), it has been correctly decided that the properties shall be freed from encumbrances by the heir.

Posted April 26, in the consulship of Gentianus and Bassus (211).

[4] *Emperor* ANTONINUS *Augustus to Sulpicius.* A legacy or a trust left to slaves in the will of their master without a grant of freedom is invalid. Nor can they become valid even if after the death of the testator they have acquired freedom in some way.

Posted June 27, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[5] *The same Augustus to Donatus.* There is no doubt that an action on recovering a legacy shall be denied to someone for the appropriate share of the property that, it has emerged, he has made off with from the estate.

Posted September 9, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[6] *The same Augustus to Julius.* If the primary legatee has accepted the legacies bequeathed (to him or her), the fact that Pontiana had been named a substitute regarding them has lost its significance.

Posted April 24, in the consulship of Laetus, for the second time, and Cerealis (215).

[7] *The same Augustus to Faustus.* **pr.** If your father made a legacy of the Fortidian farm first to your brothers as a preferential legacy (*per praeceptionem*) and then to you, its ownership also accrues jointly to you. **1.** Moreover, a mistake made over names in the documentation, provided that there is no ambiguity over the slaves and rural property bequeathed, does not diminish your right over the legacy that has been made.

Posted July 11, in the consulship of Laetus, for the second time, and Cerealis (215).

[8] *The same Augustus to Demetrius.* Respect for his oath (as a soldier) keeps Marcellus, whom, you allege, your father appointed as your *tutor* in his will, from managing the tutelage. This fact does not prevent him from receiving a legacy (given in the will). For it is not right that his suit be denied since he would be prevented from managing the tutelage even if he wished to do so.

Posted March 8, at Rome, in the consulship of Sabinus, for the second time, and Anullinus (216).

[9] *Emperor* ALEXANDER *Augustus to Antiochus.* If a plaintiff who declares that a will has been forged is allowed to proceed with fraudulent designs on legacies left in it, the governor of the province will order, in accordance with

iubebit, interposita cautione, si evicta fuerit hereditas, ea restituturum, quamvis alias cautioni tunc locus sit, cum sine controversia legata solvantur.

PP. VII id. Febr. Maximo II et Aeliano conss.

[10] *Idem A. Ingenuae.* Cum alienam rem quis reliquerit, si quidem sciens, tam ex legato quam ex fideicommisso ab eo qui legatum seu fideicommissum meruit peti potest. quod si suam esse putavit, non aliter valet relictum, nisi proximae personae vel uxori vel alii tali personae datum sit, cui legaturus esset, et si scisset rem alienam esse.

PP. V k. Febr. Albino et Maximo conss.

[11] *Idem A. Albiniano.* Filia legatorum non habet actionem, si ea, quae ei testamento reliquit, pater vivus postea in dotem dedit.

PP. V non. Mart. Pompeiano et Peligno conss.

[12] *Idem A. Muciano.* **pr.** Cum responso viri prudentissimi Papiniani, quod precibus insertum est, praeceptionis legatum et omissa parte hereditatis vindicari posse declaratur, intellegis desiderio tuo iuxta iuris formam esse consultum. **1.** Verba vero responsi haec sunt: Filiae mater praedium ita legavit: 'praecipito sumito extra partem hereditatis': cum hereditati matris filia renuntiasset, nihilo minus eam recte legatum vindicare visum est.

PP. constitutio V id. Iul. Sabino II et Venusto conss.

[13] *Impp. Diocletianus et Maximianus AA. Severae.* Proprias tuas res legari vel fideicommitti tibi non potuisse manifestum est.

PP. XV k. Mai. Maximo II et Aquilino conss.

the rules of his jurisdiction (*iurisdictionis forma*), the legacies to be paid out, with a guarantee (*cautio*) given that he or she (the legatee) is going to refund them if the heir is evicted from the estate, even though in other situations there is a place for a *cautio* when legacies are paid out in the absence of a dispute.

Posted February 7, in the consulship of Maximus, for the second time, and Aelianus (223).

[10] *The same Augustus to Ingenua.* When someone has bequeathed someone else's property, whether as a legacy or trust, if, certainly, he did so knowingly, it can be claimed by the person granted the legacy or trust. But if the giver thought it was his or her own property, the bequest is valid only if it was given to a person closely related, such as a wife or other such person, to whom the giver would leave a legacy, even in the knowledge that the property was not his or her own.[260]

Posted January 28, in the consulship of Albinus and Maximus (227).

[11] *The same Augustus to Albinianus.* A daughter does not have an action on legacy if her father later, while still living, gave her as dowry those items he had left to her in his will.

Posted March 3, in the consulship of Pompeianus and Pelignus (231).

[12] *Emperor* G*ORDIAN* *Augustus to Mucianus.*[261] **pr.** Since the response (*responsum*) of the most learned man Papinian, which is cited in your petition, states that a preferential legacy (*per praeceptionem*) can be claimed even when the legatee does not enter upon his or her share of the inheritance, you understand that your request is provided for consistently with the legal rules (*iuris forma*). 1. The wording of the *responsum* is in fact as follows: "A mother left a property as a legacy to her daughter in the following way: 'Go ahead and take [the property] as a preferential legacy apart from your share of the inheritance.' Although the daughter rejected the mother's inheritance it was nonetheless decided that she rightly claimed the legacy."

The constitution was posted July 11, in the consulship of Sabinus, for the second time, and Venustus (240).

[13] *Emperors* D*IOCLETIAN and* M*AXIMIAN Augusti to Severa.* It is clear that your own property could not be bequeathed to you as a legacy or as a trust.

Posted April 17, in the consulship of Maximus, for the second time, and Aquilinus (286).

260 Blume: "Another's property might be given as a legacy. In such event, the heir was compelled to purchase the property and deliver it, or pay the legatee the value thereof."

261 On the basis of the date, Haloander assigns the text to Gordian instead of Alexander, as the manuscripts prefer.

[14] *Idem AA. Tatiano.* Monumenta quidem legari non posse manifestum est, ius autem mortuum inferendi legare nemo prohibetur.
PP. II k. Sept. Maximo II et Aquilino conss.

[15] *Idem AA. Terentio.* **pr.** Si universae facultates, quas pater vester reliquit, debito fiscali aut privato absumuntur, nihil ex his, quae testamento eius adscripta sunt, valere potest. **1.** Quod si deducto debito in relictis bonis superfluum est, libertates impediri iuris ratio non permittit, quando etiam legata nec non fideicommissa salva lege Falcidia praestanda sunt.
PP. III k. Oct. ipsis IIII et III AA. conss.

[16] *Idem AA. et CC. Scyllae.* Creditor, si a debitore suo rem, quam pignoris nomine susceperat, legatum sibi contendit, etiam debito ab heredibus eius oblato, quominus restituat, defendi potest.
S. XVIII k. Febr. Sirmi CC. conss.

[17] *Idem AA. et CC. Eutychiano.* Datum legatum adimi tam pure quam sub condicione, non libertis tantum, sed etiam ingenuis placuit.
D. III non. Mart. CC. conss.

[18] *Idem AA. et CC. Iustino.* Ex legato nominis, actionibus ab his qui successerunt non mandatis, directas quidem actiones legatarius habere non potest, utilibus autem suo nomine experietur.
D. VI id. Dec. CC. conss.

[19] *Idem AA. et CC. Niconi.* Non tantum duum mensuum, sed etiam minoris temporis maritus uxori testamento scriptus succedit, nec legata vel fideicommissa seu donationes temporis huius angustia capi prohibet.
D. V id. Dec. Nicomediae CC. conss.

[20] *Idem AA. et CC. Eutychiano.* Uxor patrui tui si testata decesserit, res tuas tantum usum fructum earum habens legare non potuit.
D. VII k. Ian. CC. conss.

[14] *The same Augusti to Tatianus.* It is clear that tombs, in fact, cannot be bequeathed as legacies, but no one is prevented from bequeathing as a legacy the right of burying a dead person therein.

Posted August 31, in the consulship of Maximus, for the second time, and Aquilinus (286).

[15] *The same Augusti to Terentius.* **pr.** If all of the material resources that your father left to you are consumed by debts to the Treasury or to private persons, none of those things he wrote in his will can be valid. **1.** But if after the deduction of debts something is left over in the property that remains, legal principles (*iuris ratio*) do not allow manumissions to be hindered, since even legacies and trusts are to be paid out, provided the lex Falcidia is respected (with one-quarter reserved for the heir).

Posted September 29, in the consulship of the Augusti, for the fourth and third times, respectively (290).

[16] *The same Augusti and the Caesars to Scylla.* If a creditor claims that an item which he had received as a pledge from his debtor was given to him as a legacy by the same, even if the latter's heirs pay off the debt, he can defend a suit against restitution.

Written January 15, at Sirmium, in the consulship of the Caesars (294).

[17] *The same Augusti and Caesars to Eutychianus.* It is an accepted principle that a legacy, whether made unconditionally or conditionally, can be withdrawn, not only from freedpersons but also from the free-born.

Given March 5, in the consulship of the Caesars (294).

[18] *The same Augusti and Caesars to Justin.* In connection with the legacy of a debt, when the heirs have not mandated (i.e., assigned) the actions, the legatee cannot sue on direct actions, certainly, but will proceed under his own name on the basis of analogous (*utiles*) ones.

Given December 8, in the consulship of the Caesars (294).

[19] *The same Augusti and Caesars to Nico.* A husband who has been married not quite two months, or even less time, succeeds to his wife when he has been named heir in her will. Nor does the brevity of this period of time (i.e., of the marriage) prevent him from taking legacies, trusts, or gifts.

Given December 9, at Nicomedia, in the consulship of the Caesars (294).

[20] *The same Augusti and Caesars to Eutychianus.* The wife of your paternal uncle, if she dies having made a will, could not give your property as a legacy since she had only a usufruct over it.

Given December 26, in the consulship of the Caesars (294).

[21] *Imp. Constantinus A. ad populum.* In legatis vel fideicommissis verborum necessaria non sit observantia, ita ut nihil prorsus intersit, quis talem voluntatem verborum casus exceperit aut quis loquendi usus effuderit.

D. k. Febr. Constantio II et Constante conss.

[22] *Imp. Iustinianus A. Menae pp.* In annalibus legatis vel fideicommissis, quae testator non solum certae personae, sed etiam eius heredibus praestari voluit, eorum exactionem omnibus heredibus et heredum heredibus conservari pro voluntate testatoris praecipimus.

D. III id. Dec. Constantinopoli dn. Iustiniano A. pp. II cons.

[23] *Idem A. Iuliano pp.* **pr.** Cum quaestio talis de significatione verborum animos veterum movit, si quis cuidam agrum puta Cornelianum vel alium quendam in solidum legaverit, deinde alii partem eius dimidiam, quantam portionem primus, quantam secundus legatarius consequitur (simili dubitatione et in hereditate et in fideicommissis habita), cumque computationes multae introducebantur et multis ratiocinatoribus dignae: nos huiusmodi computationes quasi superfluas et contrarias voluntati testatorum omnes esse sopiendas censemus.

1. Cum enim manifestissimum est eum, qui ab initio duodecim uncias rei cuidam reliquit, alii autem postea sex, recessisse quidem a priore voluntate, voluisse autem minui eam sex unciis, cum alii eas obtulit, et praesens casus exitum apertissimum inveniet. **1a.** Si quis itaque vel agrum vel hereditatem reliquerit, primo quidem in totum, secundo autem in partem dimidiam, utrumque in sex uncias esse vel dominum rei legatae vel heredem. **1b.** Et si primo re tota relicta tertiam partem secundo reliquerit, secundum praedictum modum octo quidem uncias vel agri vel hereditatis apud primum remanere, tertiam autem partem vel quattuor uncias ad secundum migrare.

1c. Et sic in omnibus statuendum est, id est in hereditatibus vel legatis vel fideicommissis: vestigia enim voluntatis testatoris non aliter nisi per huiusmodi viam aestimanda sunt.

[21][262] *Emperor* Constantine *Augustus to the people.* In making legacies or trusts respect for the usage of words shall not be necessary, so that it makes absolutely no difference what verbal contingency expresses the wish or what style of language sets this forth.

Given February 1, in the consulship of Constantius, for the second time, and Constans (339).[263]

[22] *Emperor* Justinian *Augustus to Menas, Praetorian Prefect.* We instruct regarding annuities linked to legacies or trusts that what the testator wished be paid not only to a certain person, but also to his or her heirs shall so be paid, according to the wishes of the testator, to all heirs and the heirs of the heirs.

Given December 11, in the consulship of Our Lord Justinian, Ever Augustus, for the second time (528).

[23] *The same Augustus to Julian, Praetorian Prefect.* **pr.** Such a controversy stirred the spirits of the ancient jurists (*veteres*) over the meaning of words: if someone left as a legacy to one person an entire farm, for example, the Cornelian or some other, and leaves to another person half of it, how much does the first legatee receive and how much the second? A similar hesitation arose with both inheritances and trusts. Many calculations were brought to bear worthy of numerous accountants. We lay down that all such calculations shall be extinguished on the ground that they are all unnecessary and contrary to the wishes of the testator.

1. For since it is very clear that he who has from the beginning left all (twelve-twelfths) of the property to one person, but has left half (six-twelfths) later to another, has, in fact, changed his mind and instead wants the whole to be diminished by one-half (six-twelfths) because he has offered as much to another person, even the present situation will find a very clear solution. **1a.** So if someone leaves a farm or an inheritance as a whole to the first person, for example, but to the second (only) half, he shall leave each party one-half as an owner of the property bequeathed in the form of a legacy or as an heir. **1b.** And if having left the whole to the first person, the testator then leaves one-third to the second, according to the method just explained two-thirds, to be sure, of the farm or inheritance shall remain with the first party but a third – or four-twelfths – shall pass over to the second.

1c. And this is how it shall be decided in all (such) matters, that is, in regard to inheritances, legacies, and trusts. For the traces of the testator's wishes are not to be appraised except in such a way as this.

[262] Combine with C. 6.9.9 (Laodicea) and the constitutions mentioned there.

[263] The constitutions cited in the previous note give the more persuasive date of 320 (Seeck has January 31, 320); in 339 Constantius would be the issuing emperor. The Projet Volterra has January 31, 320, for the date and the location as Serdica. See the note on C. 6.9.9.

2. Sed et aliam disceptationem iuris antiqui non absimilem constitutam decidere nobis humanum esse apparuit. agitabatur enim, si quis agrum Cornelianum vel forte alium vel quandam rem cuidam legaverit et postea iterum vel saepius ei eandem rem per legatum vel fideicommissum dederit, post talia autem verba testamenti Sempronio eundem agrum vel aliam rem legaverit, ut saepius quidem Titii fuisset mentio, semel autem Sempronii, quid statuendum est, et quid iuris sit, si coniunctim an separatim eis relinquatur, sive in legato hoc consistat sive in hereditate?

2a. Huiusmodi igitur decidentes antiquam controversiam sancimus, cuicumque fuerit vel hereditas vel ager in memoratis casibus sive coniunctim sive soli sive saepius eidem relictus, aequa lance et hereditatem et agrum et aliam quamcumque rem dividi et ad dimidiam partem unumquemque vocari, nisi specialiter expresserit et dixerit testator tantas quidem partes velle unum, tantas autem alterum habere. in omnibus etenim testatoris voluntatem, quae legitima est, dominari censemus.

D. xv k. Dec. Lampadio et Oreste vv. cc. conss.

[24] *Idem A. Iohanni pp.* pr. Cum quidam suum filium familias impuberem exheredatum fecit aliis heredibus scriptis, eidem autem pupillo alium substitutum reliquit, maximam scilicet ostendens ad filium suum adfectionem, cui nihil quidem emolumenti reliquit, sed post exheredationis iniuriam etiam substitutionem ei addidit et a substituto legatum reliquit, quaerebatur, si huiusmodi legatum vel fideicommissum potest valere.

1. Sed et si legatum eidem exheredato filio pater reliquerit et substituerit ei exheredato facto aliquem extraneum, iterum certabatur, si saltem per eundem modum fideicommissum potest relinquere.

2. Cum igitur antiquitas quidem haec diverse tractare maluit, nobis autem huiusmodi iurgia supervacua esse videntur, sancimus nullo legato nullo fideicommisso huiusmodi substitutum qui exheredato

2. But it also seemed to us consistent with humane sympathy (*humanum*) to put an end to another, not dissimilar, controversy of the ancient law (*ius antiquum*). For it used to be debated, if someone left the Cornelian farm, or perhaps some other farm or any given object to a certain person as a legacy and later (i.e., in the same will) gave the same thing once or several times as a legacy or a trust to the same person, but following such wording in the will the testator bequeathed as legacy to Sempronius the farm or other item, so that several times, in fact, there was mention of Titius, but (only) once of Sempronius – what shall be decided? And what is the operative legal principle: was it left to them jointly or separately, and was it left as a legacy or as an inheritance?

2a. Therefore, settling this ancient debate, We order that to whomever the inheritance or farm in the aforementioned cases has been left, whether jointly or to (each) person alone (i.e., separately) or to the same person several times, the inheritance, farm, or whatever item it is shall be divided equally and each party shall be eligible for one-half, unless the testator has particularly set forth and declared that he wished one party to have, to be sure, such a proportion and the other party to have such a proportion. For in all things We lay down that the wishes of the testator, insofar as they are lawful, shall rule.

Given November 17, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[24][264] *The same Augustus to John, Praetorian Prefect.* **pr.** A certain man disinherited his minor son-in-power, naming others as heirs. But he appointed a substitute for the same minor ward, showing, of course, the greatest affection for his own son, to whom he left no material benefits at all, but hard upon the insult of the disinheritance he added a substitution into the bargain and ordered the substitute to pay a legacy. It used to be debated whether such a legacy or trust could be valid.

1. But even if the father disinherited his son, left him a legacy, and appointed some non-relative as a substitute, again it used to be disputed if even in this way he could leave (i.e. order the substitute to pay) a trust.

2. So, although the ancients, to be sure, preferred to differ in treating this matter, such quarrels seem to Us, however, beside the point. We ordain that a such a substitute appointed in place of a disinherited minor ward shall not be

[264] Combine with C. 6.42.31.

pupillo datus est praegravari, nec si ipsam rem quam pupillo legavit a substituto eius vel legare vel fideicommittere voluit.

D. 11 k. Mai. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[25] *Idem A. Iohanni pp.* **pr.** Si legatarius celaverit testamentum et postea hoc in lucem emerserit, an possit legatum sibi derelictum is qui celaverit ex eo testamento vindicare, dubitabatur. **1.** Quod omnimodo inhibendum esse censemus, ut non accipiat fructum suae calliditatis, qui heredem voluit hereditate defraudare: sed huiusmodi legatum illi quidem auferatur, maneat autem quasi pro non scripto apud heredem, ut, qui alii nocendum esse existimavit, ipse suam sentiat iacturam, quemadmodum, si legatarius, cui propter tutelam gerendam aliquid derelictum sit, non subierit tutelam, ei quidem legatum aufertur, pupillo autem adsignatur, cui ille utilis esse noluit.

D. k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[26] *Idem A. Iohanni pp.* **pr.** Illud, quod de legatis vel fideicommissis temporalibus utpote irritis a legum conditoribus definitum est, emendare prospeximus sancientes et talem legatorum vel fideicommissorum speciem valere et firmitatem habere. **1.** Cum enim iam constitutum est fieri posse temporales donationes et contractus, consequens est etiam legata vel fideicommissa, quae ad tempus relicta sunt, ad eandem similitudinem confirmari: post completum videlicet tempus ad heredem isdem legatis vel fideicommissis remeantibus, necessitatem habente legatario vel fideicommissario cautionem in personam heredis exponere, ut post transactum tempus res non culpa eius deterior facta restituatur.

burdened by any legacy or by any trust, not even if the testator wished that the substitute pay as a legacy or trust the very thing which he gave as a legacy to the minor ward.[265]

Given April 30, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[25] *The same Augustus to John, Praetorian Prefect.* **pr.** If a legatee conceals a will and this afterwards comes to light, there used to be hesitation over whether a person can claim a legacy left to him in a will that he had hidden. **1.** We ordain that this shall be completely prevented, so that the person who wished to cheat the heir of his inheritance shall not reap the fruits of his craftiness. Instead such a legacy shall, assuredly, be taken from him, while it shall remain with the heir as though not written into the will, so that the person who thought some harm should befall another shall himself feel his own loss, just as if a legatee to whom something has been left to manage a tutelage does not take up the tutelage, the legacy is taken from him of course, but assigned to the minor ward, to whom he did not wish to be of service.

Given November 1, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[26] *The same Augustus to John, Praetorian Prefect.* **pr.** That holding laid down by the founders of the laws (*conditores legum*; the jurists) concerning temporary legacies and trusts, namely, that they were invalid, We have contemplated improving by ordaining that even such a category of legacies and trusts shall be valid and have force. **1.** For since it has already been held (in a constitution) that temporary gifts and contracts can be made,[266] it is logical that also legacies or trusts that have been left for a period of time be confirmed on the basis of analogy. Obviously after the time-period has finished the same legacies and trusts shall pass back to the heir, and the legatee or trust-beneficiary shall have the obligation of offering a guarantee (*cautio*) to the heir to the effect that after the time-period has passed the property shall be returned without suffering material damage through his fault (*culpa*).

[265] Blume: "The father made a pupillary substitution. This was in effect making a will for the minor, providing that should the minor die before the age of puberty, some other person should be his heir, so as to inherit all the property which such minor should have. This as we have seen was permissible. But the further question arose whether the testator could also provide that such substitute (if the minor died) should pay a legacy or trust to someone else. This right was denied under the rule that he could not provide for a legacy or trust out of property which he did not give himself ... And the same rule is here applied even in case the testator gave a legacy to the son, because disinherisons [sic] were not favored or aided in any way, although such requirement might have been made in case of legacy left to a stranger."

[266] See perhaps C. 8.54.2.

D. xv k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc. anno secundo.

XXXVIII De Verborum Et Rerum Significatione

[1] *Imp. Antoninus A. Antipatrae.* **pr.** Praediis instructis legatis, quamvis ex fructibus oleum et vinum in eodem fundo habuerit, tamen si id venale fuit, item ea, quae ad tempus propter incursionem latronum tutelae causa in praedium translata sunt, legato non cedere iuris auctoribus placuit. **1.** Vinum vero, quod in apothecis fuit, si ideo illic habuit, ut, cum in praedium venisset mater familias, eo uteretur, legato cedere ignorare non debes.

PP. vi id. Aug. Antonino A. iiii et Balbino conss.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Rufino.* **pr.** Fundo 'sicut instructus est' legato sive per fideicommissum relicto vilicum hominesque et omnia, quae vel, ut ipse pater familias, cum ibi ageret, vel fundus esset instructus, non temporis causa habuit in eo, relicta esse iuris auctoritate definitum est: ea etiam, quae tam fructuum colligendorum quam servandorum. **1.** Item pecora stercorandi vel pascendi causa ibi constituta, ut fructus de his capiantur vel ut fundus sit instructior, fideicommisso cedere certi iuris est.

D. non. Oct. Sirmi AA. conss.

[3] *Imp. Iustinianus A. Iuliano pp.* Sancimus cautionis nomine vel ἀσφαλείας non esse fideiussoris dationem interpretandam, nisi hoc specialiter vel in Graecis vel in Latinis verbis scriptum fuerit: nisi enim vel generaliter de satisdatione vel de fideiussione specialiter sit nominatum, cautione vel cautela vel ἀσφαλείᾳ minime fideiussionem, sed nudam promissionem significari.

D. k. Mart. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

Given October 18, at Constantinople, in the second post-consulate of viri clarissimi *Lampadius and Orestes (532).*

Thirty-Eighth Title The Meaning of Words and Things[267]

[1] *Emperor* ANTONINUS *Augustus to Antipatra.* **pr.** It has been a principle accepted by the jurists (*iuris auctores*) that when properties equipped for cultivation (*praedia instructa*) are bequeathed as legacies, although (the testator) had oil and wine among the fruits on that same farm, nevertheless, if these items were for sale, they, as well as those things that were temporarily brought onto the property for safekeeping against the depredations of bandits, did not form part of the legacy. **1.** But if he had wine in storage there so that when the lady of the household (*mater familias*) came to the farm she might make use of it, you ought not to be unaware that this forms part of the legacy.

Posted August 8, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Rufinus.* **pr.** When a farm has been left "just as it is equipped" as a legacy or trust it is established by the authority of law (*iuris auctoritas*) that included in the bequest are the farm manager (*vilicus*), the slave staff, and everything which either the owner (*paterfamilias*) when he was on-site had (for his personal use) or (what) he had so that the farm was (suitably) equipped, not what he had there on a temporary basis – also those things which serve the purpose of gathering as well as preserving its fruits. **1.** Likewise, it is a fixed principle of law (*certum ius*) that herd animals introduced there for the purpose of providing manure or grazing the pastures, in order that income (*fructus*) be realized from them or that the farm be better equipped (for cultivation), form part of the trust.

Given October 7, at Sirmium, in the consulship of the Augusti (293).

[3] *Emperor* JUSTINIAN *Augustus to Julian, Praetorian Prefect.* We lay down that the words "*cautio*" and "*asphaleia*" shall not be understood to mean the giving of a surety, unless that (meaning) is specifically stated in Greek or in Latin. For unless there is either a general or a specific mention of a guarantee (*satisdatio*) or a surety (*fideiussio*), "*cautio*," "*cautela*," and "*asphaleia*" shall not at all mean "surety" but "simple promise."

Given March 1,[268] *at Constantinople, in the post-consulate of the* viri clarissimi *Lampadius and Orestes (531).*

[267] See D. 50.16.

[268] The precise day is disputed: possibly February 20, 531; so Lounghis *et al.*

[4] *Idem A. Iohanni pp.* **pr.** Cum quidam sic vel institutionem vel legatum vel fideicommissum vel libertatem vel tutelam scripsisset: 'ille vel ille heres mihi esto' vel 'illi aut illi do lego' vel 'dari volo', vel 'illum aut illum liberum' vel 'tutorem esse volo' vel 'iubeo', dubitabatur, utrumne inutilis sit huiusmodi institutio et legatum et fideicommissum et libertas et tutoris datio, an occupantis melior condicio sit, an ambo in huiusmodi lucra vel munia vocentur et an secundum aliquem ordinem admittantur, an uterque omnimodo, cum alii primum in institutionibus quasi institutum admitti, secundum quasi substitutum, alii in fideicommissis posteriorem solum accepturum fideicommissum existimaverunt, quasi recentiore voluntate testatoris utentem. **1.** Et si quis eorum altercationes singillatim exponere maluerit, nihil prohibet non leve libri volumen extendere, ut sic explicari possit tanta auctorum varietas, cum non solum iuris auctores, sed etiam ipsae principales constitutiones, quas ipsi auctores rettulerunt, inter se variasse videntur.

1a. Melius itaque nobis visum est omni huiusmodi verbositate explosa coniunctionem 'aut' pro 'et' accipi, ut videatur copulativo modo esse prolata et magis sit παραδιάζευξις, ut et primam personam inducat et secundam non repellat. **1b.** Quemadmodum enim verbi gratia in interdicto quod vi aut clam 'aut' coniunctio pro 'et' apertissime posita est, ita et in omnibus huiusmodi casibus sive institutionum sive legatorum sive fideicommissorum vel libertatum seu tutelarum hoc esse intellegendum, et ambo veniant aequa lance ad hereditatem, ambo legata similiter accipiant, fideicommissum in utrumque dividatur, libertas utrumque capiat, tutoris ambo fungantur officio.

1c. Sic nemo defraudetur a commodo testatoris, sic maior providentia pupillis inferatur, ne, dum dubitatur, apud quem debet esse tutela, in medio res pupillorum depereant. sed haec quidem sancimus, cum in personas huiusmodi proferatur scriptura.

2. Sin autem una quidem est persona, res autem ita derelictae: 'illam aut illam rem illi do lego', vel 'per fideicommissum relinquo', tunc secundum veteres regulas et antiquas definitiones vetustatis iura

[4] *The same Augustus to John, Praetorian Prefect.* **pr.** When a certain testator had appointed an heir, given a legacy or a trust, or provided for a manumission or a guardianship in the following (disjunctive) manner: "This or that person shall be my heir," "I give and bequeath as a legacy to this or that person" – or "I wish to be given" – "to this or that person," or "I wish this or that person to be free" or "to be *tutor*," there used to be hesitation over whether such an appointment of an heir, bequest of a legacy or trust, grant of manumission, or appointment of a *tutor* was invalid, whether the claim of the (prior) occupant was superior, whether both were eligible for such benefits and duties and whether they were admitted according to some order, or both enjoyed an absolutely equal claim. Some (jurists) thought that regarding appointments of heirs the first person named should be eligible as the appointed heir, and the second as his or her substitute, while others thought that regarding trusts only the last named would receive the trust on the ground that this reflected a more recent expression of wishes on the part of the testator. **1.** And if someone preferred to set forth their disputes (on this subject) separately, nothing would prevent him from composing a book of no small size, so that in this way such a great diversity of expert opinions could be set forth, since not only the jurists (*iuris auctores*) but also the very imperial constitutions which the jurists themselves report seem to differ from one another.

1a. It seemed better to Us, therefore, to eliminate all such excess verbiage and to understand the conjunction "or" (*aut*) as "and" (*et*) so that it be deemed to have been extended in a copulative manner and act more as a conjunctive disjunctive (*paradiazeuxis*), with the result that it both validates the first person and does not exclude the second. **1b.** For just as, for example, in the interdict "by force or stealth" (*quod vi aut clam*) the conjunction "or" (*aut*) has been very clearly substituted for "and" (*et*), so also in all such cases of appointments of heirs, legacies, trusts, manumissions, and tutelages, this shall be understood, and both parties shall come on an equal basis to the inheritance, both shall accept legacies on a similar basis, a trust shall be divided between the two, both shall be manumitted, and both shall discharge the duty of *tutor*.

1c. In this way, no one shall be wrongly deprived of the benefaction of the testator; in this way, greater oversight shall be provided for minor wards, so that the property of minor wards not suffer in the meantime, while there is hesitation over who ought to be assigned the tutelage. But We ordain these things, certainly, (only) when such a document is brought forth regarding multiple persons.

2. But if, however, there is, to be sure, (only) one person, but property has been left in the following way: "I give and bequeath as a legacy this or that thing to that person" or "I bequeath through a trust (this or that thing)," then,

maneant incorrupta, nulla innovatione eis ex hac constitutione introducenda. 3. Quod etiam in contractibus locum habere censemus.

D. prid. k. Mai. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[5] *Idem A. Iohanni pp.* **pr.** Suggestioni Illyricianae advocationis respondentes decernimus familiae nomen talem habere vigorem: parentes et liberos omnesque propinquos et substantiam, libertos etiam et patronos nec non servos per hanc appellationem significari.

1. Et si quis per suum elogium fideicommissum familiae suae reliquerit, nulla speciali adiectione super quibusdam certis personis facta, non solum propinquos, sed etiam his deficientibus generum et nurum. et hos enim nobis humanum esse videtur ad fideicommissum vocari, ita videlicet, si matrimonium morte filii vel filiae fuerit dissolutum. nullo etenim modo possint gener vel nurus filiis viventibus ad tale fideicommissum vocari, cum hi procul dubio eos antecedant: et hoc videlicet gradatim fieri, ut post eos liberti veniant.

2. Hoc eodem valente, et si quis rem immobilem cuidam legaverit vel fideicommiserit eamque alienari prohibuerit adiciens, ut, si hoc fideicommissarius praeterierit, familiae suae res adquiratur.

3. In aliis autem casibus nomen familiae pro substantia oportet intellegi, quia et servi et aliae res in patrimonio uniuscuiusque esse putantur.

D. xv k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc. anno secundo.

XXXVIIII Si Omissa Sit Causa Testamenti

[1] *Impp. Severus et Antoninus AA. Ianuariae.* Si in fraudem legatorum transmissam hereditatem ad substitutum probatura es, utilis actio adversus eum, cum quo fraudis consilium participatum est, competit. plane si pecunia accepta omisit aditionem, legata et fideicommissa praestare cogitur.

in accordance with ancient principles and long-standing rules, the legal principles of antiquity (*vetustatis iura*) shall remain intact, and no change shall be introduced for them from this constitution. 3. We ordain that this also shall apply for contracts.

Given April 30, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[5] *The same Augustus to John, Praetorian Prefect.* pr. By way of response to the policy proposal (*suggestio*) of the Society of Advocates of Illyricum, We decree that the word "*familia*" shall have the following force: by this term shall be meant ascendants, descendants, all close relatives, (household) property, freedpersons, patrons, as well as slaves.

1. And if someone leaves a trust in his will to his "*familia*," making no particular mention of certain stated persons, (it embraces) not only close relatives but also, in the absence of these, a son- and daughter-in-law. For We deem it consistent with humane sympathy (*humanum*) that even these shall be eligible for the trust, under the condition, obviously, that the marriage is ended by the death of the son or daughter (to whom they were married). For in no way can a son- or daughter-in-law be eligible for such a trust while (biological) children are still living, since it is far from doubtful that the latter take priority over them. And clearly this shall occur in degrees, so that after them freedpersons shall have a claim.

2. This same rule holds, even if someone bequeaths immovable property to a certain person as a legacy or trust, forbidding its alienation and adding that if the trust-beneficiary violates this prohibition the property accrues to his *familia*.

3. In other situations, however, the word *familia* ought to be understood as "(household) property," because both slaves and other property are considered to be in each person's estate.

Given October 18, at Constantinople, in the second post-consulate of the viri clarissimi *Lampadius and Orestes (532).*

Thirty-Ninth Title If a Will's Purpose Was Not Heeded[269]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Januaria.* If you are going to show that an inheritance has been made over to a substitute heir in order to defraud (those eligible for) legacies, you have an analogous (*utilis*) action against the person (the substitute) who colluded in the scam (*fraus*). Plainly, if the heir took money and neglected to enter upon the inheritance, he is compelled to pay out the legacies and trusts.

[269] See D. 29.4.

Accepta k. Oct. Dextro II et Prisco conss.

[2] *Imp. Philippus A. et Philippus C. Victoriae.* **pr.** Eum, qui, cum testamento posset obtinere hereditatem, ab intestato ius successionis voluit amplecti, libertatibus eodem testamento datis obesse non posse iam pridem placuit. 1. Quod si, cum neque adiri ex testamento hereditas neque bonorum possessio peti possit, iudicium defuncti non usurpabitur, sed ad irritum iuris ratione vocatum est, petitio relictorum nullo iure procedit. 2. Sin vero iure facto testamento cessante herede scripto alter ab intestato adiit hereditatem, neque libertates neque legata ex testamento posse praestari manifestum est.

PP. k. Ian. Philippo A. et Titiano conss.

[3] *Impp. Diocletianus et Maximianus AA. et CC. Apro et Piae.* Si Proculina patri vestro, cuius estis heredes, testamento quid reliquit et scripti iure secundum eius iudicium vel omissa causa testamenti successerunt ab intestato, aditus competens iudex, quatenus legis Falcidiae modus patitur, vobis relicta restitui iubebit.

D. XV k. Ian. Sirmi AA. conss.

XXXX De Indicta Viduitate et de Lege Iulia Miscella Tollenda

[1] *Imp. Gordianus A. Bono.* Legatum alii sub condicione sic relictum, si uxor nuptui se post mortem mariti non collocaverit, contractis nuptiis condicione deficit ideoque peti legatum nequaquam potest.

PP. XIII k. Aug. Gordiano A. II et Pompeiano conss.

[2] *Imp. Iustinianus A. Iuliano pp.* **pr.** Ambiguitates legis Iuliae miscellae generali lege tollentes nullum concedimus fieri iuramentum

Received October 1, in the consulship of Dexter, for the second time, and Priscus (196).[270]

[2] *Emperor* PHILIP *Augustus and* PHILIP *Caesar to Victoria.* **pr.** It has for a long time been settled law that the person who could have inherited under a will but preferred to embrace his right of intestate succession cannot block the manumissions granted in the same will. **1.** But if, when (the heir) can neither enter upon the inheritance nor apply for *bonorum possessio* (from the Praetor), the decedent's will is not being disrespected but has been declared invalid on a legal principle (*iuris ratio*), a claim for bequests has no basis in law to go forward. **2.** But if, however, the will was properly made from a legal perspective, (and) the named heir fails to take the inheritance and another person has entered upon the inheritance on intestacy, it is clear that neither can the manumissions be performed nor the legacies paid in accordance with the terms of the will.

Posted January 1, in the consulship of Philip Augustus and Titianus (245).

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Aper and Pia.* If Proculina left something in a will to your father, whose heirs you are, and her lawfully named heirs either inherited in accordance with the terms of the will or on intestacy, having disregarded the will's purpose, the appropriate judge, once approached, will order, insofar as the calculation of the lex Falcidia permits, what has been bequeathed to you to be turned over to you.

Given December 18, at Sirmium, in the consulship of the Augusti (293).

Fortieth Title Coerced Widowhood and the Repeal of the Lex Julia Miscella[271]

[1] *Emperor* GORDIAN *Augustus to Bonus.* When a legacy was left to another person on condition that the testator's wife not remarry after the death of her husband, if she should remarry the condition fails and on that account the legacy can in no way be claimed.

Posted July 20, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

[2] *Emperor* JUSTINIAN *Augustus to Julian, Praetorian Prefect.* **pr.** By way of removing the obscurities of the lex Iulia Miscella with a general law (*generalis*

[270] The year is uncertain: possibly 225.

[271] The "Lex Julia of Varied Content" is Justinian's way of referring here to the Augustan marriage legislation, in particular, the lex Julia *de maritandis ordinibus*, which (among other things) allowed a spouse, typically a wife, to take a legacy left to her by a husband on condition that she did not remarry, provided that she did in fact remarry within a year and swore an oath that her motive for doing so was to bear children. If she did not marry within a year she could receive the legacy by offering the *cautio Muciana* (next note).

secundum praedictam legem, sed penitus ea cum Muciana cautione super hac causa quiescente licere mulieribus, etiam maritorum suorum interminatione spreta, quae viduitatem eis indicit, et non dato sacramento procreandae subolis gratia, tamen ad secundas migrare nuptias, poena huiusmodi cessante, sive habeat liberos, sive non, et percipere ea, quae maritus dereliquit (quorum omnium manifestissimum est dominium minime eas liberis existentibus habere usu fructu tantummodo apud eas manente et ad liberos prioris tori proprietate eorum deferenda secundum ea, quae de secundis nuptiis lucrisque ex his mulieribus statuta sunt), ne ex necessitate legis et sacramento colorato periurium committatur.

1. Cum enim mulieres ad hoc natura progenuit, ut partus ederent, et maxima eis cupiditas in hoc constituta est, quare scientes prudentesque periurium committi patimur? 2. Tale igitur iuramentum conquiescat et lex Iulia miscella cedat cum Muciana cautione super hoc introducta, a re publica separata. augeri etenim magis nostram rem publicam et multis hominibus progenitis frequentari quam impiis periuriis adfici volumus, cum satis esse inhumanum videtur per leges, quae periuria puniunt, viam periuriis aperiri.

D. x k. Mart. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[3] *Idem A. Iohanni pp.* pr. Legem Iuliam miscellam quemadmodum in feminis sustulimus, ita et in masculis esse sublatam pertinere quidem ad sensum nostrae legis, quam super hoc promulgavimus, non est incertum. 1. Ne tamen quaedam ambiguitas simplices animos moveat, etiam expressim sancimus legem Iuliam miscellam et senatus consulta, quae circa eam facta sunt, nec non Mucianam cautionem, quae super talibus nuptiis introducta est, non solum in feminis, sed etiam in masculis cessare.

2. Sed quia apud Ulpianum in libris Sabinianis invenimus quaedam verba, quae effugiunt legis miscellae observationem, ne quis et

lex), We allow no oath to take place in accordance with the aforesaid statute, but (declare) utterly invalid this law together with the *cautio Muciana* related to it.[272] We permit women to move on all the same to a subsequent marriage, even as they scorn the threat, which enjoins widowhood upon them, leveled by their husbands, and refuse the oath about their purpose being to bear children. Such a penalty shall be without force whether they have children or not. They shall also be permitted to take the property their husbands bequeathed to them, so that they do not commit perjury under the compulsion of the statute and through a specious oath. If there are surviving children it is very clear that (the women) shall not at all have the ownership of all this property, but only the usufruct of it, while ownership shall devolve to the children of the prior marriage, according to what has been enacted concerning subsequent marriages and the benefits connected with these accruing to women.

1. For since nature has produced women for the purpose of giving birth to children and they have been instilled with a very great desire to this end, why should We knowingly and advisedly permit perjury to be committed? 2. So let such an oath fall silent, and let the lex Julia Miscella together with the *cautio Muciana* devised in connection with it give way, banished from Our community. For We have a greater wish that Our community be increased by and filled with many persons born here than that it be afflicted with wicked perjuries, since it seems fairly inconsistent with humane sympathy that the road to perjury be paved with laws that (ostensibly) punish acts of perjury.

Given February 20, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[3] *The same Augustus to John, Praetorian Prefect.* **pr.** It is not uncertain that, just as We have abolished the lex Julia Miscella regarding women, so its repeal also assuredly concerns men with respect to the intent of the law that We passed on this subject.[273] 1. All the same, so that a certain confusion not overtake the minds of the simple, We even expressly ordain that the lex Julia Miscella, the senatorial decrees passed pursuant to it, as well as the *cautio Muciana*, which was introduced in connection with such marriages, shall be void not only for females, but also for males.

2. But in Ulpian's commentary on Sabinus We find certain phrases that evade compliance (*observatio*) with the lex Miscella. For this reason, so that no one

[272] The *cautio Muciana* ("Mucian guarantee") was introduced by the late Republican jurist Q. Mucius Scaevola as a means of allowing a legatee to receive a bequest on a negative condition, that is, that she not do something. Predating the Augustan marriage legislation (a point evidently misunderstood by Justinian), it was adapted to its purpose so that by offering the *cautio* a widow who did not remarry within a year (see previous note) could still receive a bequest from her husband conditioned on her remaining a widow.

[273] C. 6.40.2.

ea sublata esse putaverit, sancimus, cum huiusmodi verbis mulieribus aliquid relinquatur: 'si vidua erit' vel 'cum vidua erit' vel 'quotiens vidua erit', vel e contrario maribus: 'si amiserint uxores' vel 'quando ad caelibatum pervenerint', non vetari ea vindicare vel legitimo modo sumere, quae eis derelicta sunt. neque enim ut permaneant vel feminae in viduitate vel masculi in caelibatu relictum esse videtur, ut locum vel ante nostram legem habeat lex Iulia miscella, quae iam perempta est: sed cum primum hoc evenerit, ilico competat talibus personis eius quod relictum est persecutio, quia sub condicione relictum esse videtur, sive semel sive in annos singulos haec liberalitas fuerit conscripta, quasi pro solacio suae tristitiae.

D. k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

XXXXI De His Quae Poenae Nomine in Testamento vel Codicillis Relinquuntur

[1] *Imp. Iustinianus A. Menae pp.* **pr.** Supervacuam observationem veterum legum, per quam voluntates testatorum ad effectum duci impediebantur, amputamus praecipientes nullum valere, dicendo poenae nomine quaedam esse relicta vel adempta in supremis testantium voluntatibus, ea infirmare, sed licere testanti pro implenda sua voluntate vel pecunias dari praecipere vel aliam pecuniariam poenam inferre quibus voluerit, tam in adimendis hereditatibus vel legatis vel fideicommissis vel libertatibus quam in praecipiendo ad alias personas ea transferri ab eo, cui relicta ab initio sunt, vel aliquid aliis ab eo dari, si minus dispositionibus suis heres vel legatarius vel libertate donatus paruerit. **1.** Quod si aliquid facere vel legibus interdictum vel alias probrosum vel etiam impossibile iussus aliquis eorum fuerit, tunc sine ullo damno etiam neglecto testatoris praecepto servabitur.

D. k. Ian. Constantinopoli dn. Iustiniano A. pp. II cons.

thinks that these holdings too have been abolished, We lay down that when something is left to women with such words as "if she will be a widow," "when she will be a widow," or "whenever she will be a widow," or, on the other hand, to men, "if they lose their wives" or "when they become single," it shall not be forbidden to them to claim as their own or to take in a lawful manner that which has been left to them. For the bequest is deemed to have been made not so that women remain widows or men remain unmarried, nor did the lex Julia Miscella, which is now utterly abolished, apply here even before the passage of Our law. Instead, as soon as (the condition) is fulfilled, a claim shall immediately lie for such persons for what was left as a bequest to them. This is (precisely) because it is construed to have been left under a condition, whether the act of generosity in question was written in the form of a single payout or as an annuity, as though it were left as a consolation for the (recipient's) loss.

Given November 1, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

Forty-First Title Bequests Made in a Will or Codicils as Punishment[274]

[1][275] *Emperor JUSTINIAN Augustus to Menas, Praetorian Prefect.* **pr.** We abolish the useless rule of the old laws (*veteres leges*) through which the wishes of testators were being hindered from being rendered effective, by laying down that the rule disallowing things that have been left or taken away in wills as a form of penalty shall be invalid.[276] Instead, it shall be permitted for a testator in pursuance of his or her wishes either to instruct that money be given or to impose another monetary penalty on whomever he or she wishes, taking away inheritances, legacies, trusts, or manumissions as much as directing that such things be transferred to others from the initial recipient, or that, if the heir, the legatee, or the manumitted slave fails to live up to the testator's instructions, something be given by that person to others. **1.** But if any one of these persons is ordered to do something forbidden by the laws (*leges*), otherwise disgraceful, or even impossible, then without any loss (the bequest) will be preserved for the recipient even if he or she ignores the instruction of the testator.

Given January 1,[277] in the consulship of Our Lord Justinian, Ever Augustus, for the second time (528).

[274] See D. 34.6.

[275] Combine with C. 3.28.30, 6.23.24.

[276] Blume: "A legacy, trust or gift of an inheritance was considered as having been given for the benefit and the honor of the donee. If not so given it was considered contrary to the nature thereof, and therefore void. Hence formerly the gift, revocation and transference of legacies by way of penalty was void."

[277] The month is uncertain: either January or June. Lounghis *et al.* prefer June 1, 528.

XXXXII De Fideicommissis

[1] *Imp. Antoninus A. Demetrio.* Si probaveris Demetrium petisse de matre heredeque sua, ut tibi alimenta menstrua et vestiarium annuum praestaret, eamque secutam voluntatem filii sui per multum temporis, id est non minus in tali causa triennio, ea praestitisse: ut in futurum quoque ea praestentur et, si qua in praeteritum praestita non sunt, exsolvantur, impetrabis.

PP. XVII k. Sept. duobus Aspris conss.

[2] *Idem A. Eupatrio.* Etsi inutiliter fideicommissum relictum est, tamen si heredes comperta voluntate defuncti praedia ex causa fideicommissi avo tuo praestiterunt, frustra ab heredibus de ea re quaestio tibi movetur, cum non ex ea sola scriptura, sed ex conscientia relicti fideicommissi satis defuncti voluntati factum esse videatur.

PP. VI k. Aug. Laeto II et Cereale conss.

[3] *Idem A. Rufino.* Cum secundum voluntatem defunctae Chrysidem puellam ab heredibus manumissam eamque, priusquam ei restitueretur hereditas, intestatam vita functam proponas, ad manumissores eius successio pertinet. qui si adierint eius hereditatem, confusis actionibus fideicommisso sunt liberati.

PP. V id. Dec. Laeto II et Cereale conss.

[4] *Imp. Alexander A. Victorino.* Voluntas patris prohibentis liberos fundos extra familiam vendere vel pignori dare fratrem sorori donare prohibuisse non videtur.

PP. V k. Iul. Maximo II et Aeliano conss.

[5] *Idem A. Reginae.* Si frater tuus, posteaquam patri heres extitit, pubes iam sine liberis decessit, ex pupillari substitutione tibi hereditas eius delata non est. sed si verbis fideicommissi aliqua parte testamenti confirmata est, fideicommissum ab heredibus petere non prohiberis.

PP. XV k. Febr. Iuliano et *Crispino conss.*

Forty-Second Title Testamentary Trusts (*Fideicommissa*)[278]

[1]*Emperor* Antoninus *Augustus to Demetrius.* If you show that Demetrius asked his mother and heir that she provide you with support (*alimenta*) on a monthly basis and a yearly allowance for clothing, and that she, in respecting her son's last wishes for a lengthy period of time, that is, in this case not less than three years, did provide these things, you will succeed both in being provided with such also in the future and in being paid for anything not provided in the past.

Posted August 16, in the consulship of the two Aspri (212).

[2] *The same Augustus to Eupatrius.* Even if a trust was bequeathed invalidly, all the same, if the heirs, upon learning of the decedent's wishes, have turned over properties to your grandfather in line with the terms of the trust, it is useless for them to sue you over this, since the wishes of the decedent seem to have been fairly well complied with in a manner not pursuant to the document alone but to a recognition that a trust had been bequeathed.

Posted July 27, in the consulship of Laetus, for the second time, and Cerealis (215).

[3] *The same Augustus to Rufinus.* Since you allege that the girl Chrysis has been manumitted by the heirs of the decedent according to the latter's wishes and that she, before the inheritance was turned over to her, died intestate, the rights of succession belong to her manumitters. If they enter upon it, they are freed from the obligation imposed by the trust through a merger of rights of action (i.e., those they held as patrons of the decedent and executors of the trust).

Posted December 9, in the consulship of Laetus, for the second time, and Cerealis (215).

[4] *Emperor* Alexander *Augustus to Victorinus.* The last wishes of the father forbidding his children from selling farms outside the agnatic kin (*familia*) or giving them as a pledge is not deemed as having forbidden a brother from giving them to his sister as a gift.

Posted June 27, in the consulship of Maximus, for the second time, and Aelianus (223).

[5] *The same Augustus to Regina.* If your brother, after he became heir to your father, died as an adult at law without children, the inheritance has not passed to you as his pupillary substitute (substitute to a minor ward). But if in some part of the will this arrangement was confirmed by the words of a trust, you are not prevented from claiming the trust from the heirs.

Posted January 18, in the consulship of Julian and Crispinus (224).

[278] See D. 30–32; Inst. 2.23 and 24.

[6] *Idem A. Nilo.* **pr.** Praedia obligata per legatum vel fideicommissum relicta heres luere debet, maxime cum testator condicionem eorum non ignoravit aut, si scisset, legaturus tibi aliud, quod non minus esset, fuisset. **1.** Sin vero a creditore distracta sunt, pretium heres exsolvere cogetur, nisi contraria defuncti voluntas ab herede ostendatur.

PP. XVI k. Mart. Iuliano et *Crispino conss.*

[7] *Idem A. Septimo.* Voluntatis defuncti quaestio in aestimatione iudicis est.

PP. XV k. Mart. Fusco II et Dextro conss.

[8] *Idem A. Mascello.* Qui fideicommissariam libertatem meruit, legata seu fideicommissa a defuncto sibi data suo iure persequitur.

PP. XV k. Iun. Fusco II et Dextro conss.

[9] *Imp. Gordianus A. Paulinae.* Ab eo, qui neque legatum neque fideicommissum neque hereditatem vel mortis causa donationem accepit, nihil per fideicommissum relinqui potest.

PP. XVII k. Oct. Pio et Pontiano conss.

[10] *Idem A. Firmo.* Verbum 'volo' licet desit, tamen quia additum perfectum sensum facit, pro adiecto habendum est.

PP. III id. Dec. Gordiano A. et Aviola conss.

[11] *Idem A. Papiniano.* Quotiens ab omnibus, qui alienatione facta ad fideicommissi petitionem adspirare possint, venditio celebratur aut quibusdam vendentibus alii consenserint, auctoritas contractus convelli nequaquam potest.

PP. II k. Ian. Gordiano A. II et Pompeiano conss.

[12] *Imp. Philippus A. et Philippus C. Rufino.* Post mortem suam rogatam restituere hereditatem defuncti iudicio et antequam fati munus

[6] *The same Augustus to Nilus.* pr. The heir ought to pay the lien against encumbered properties when these are bequeathed by legacy or trust, especially when the testator was not unaware of their status or, if he had known about it, he would have given you something else of no lesser value as a legacy. 1. But if, however, they have been alienated by the creditor, the heir will be compelled to pay their value, unless a contrary wish of the decedent is shown by the heir.

Posted February 14, in the consulship of Julian and Crispinus (224).

[7] *The same Augustus to Septimus.* A dispute over the wishes of a decedent lies in the discretion of the judge.

Posted February 15, in the consulship of Fuscus, for the second time, and Dexter (225).

[8] *The same Augustus to Mascellus.* Someone who has gained manumission through a trust claims by his own right legacies or trusts left to him by the decedent.

Posted May 18,[279] *in the consulship of Fuscus, for the second time, and Dexter (225).*

[9] *Emperor* Gordian *Augustus to Paulina.* No one can be charged with a trust who has received neither a legacy, trust, inheritance, or gift in contemplation of death (*mortis causa*).

Posted September 15, in the consulship of Pius and Pontianus (238).

[10] *The same Augustus to Firmus.* Although the verb "I wish" (*volo*) is missing, nevertheless, since once added it makes perfect sense (of the words in the will), it must be considered as though it had been included.

Posted December 11, in the consulship of Gordianus Augustus and Aviola (239).

[11] *The same Augustus to Papinianus.* Whenever a sale is made by all those who, once the property is alienated, are able to entertain the prospect of a claim to a trust, or others have given their consent to certain persons selling (the property), the validity of the (sale) contract cannot at all be broken.

Posted December 31, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

[12] *Emperor* Philip *Augustus and* Philip *Caesar to Rufinus.* It is an accepted point of law (*exploratum ius*) that when one is required, by the will of a

[279] The precise date is uncertain: the alternative is June 15.

impleat posse satisfacere (id est restituere hereditatem) quarta parte vel retenta vel omissa, si voluerit, explorati iuris est.

PP. id. Oct. Peregrino et Aemiliano conss.

[13] *Idem A. et C. Sempronio.* Quotiens principali loco heres institutus testatori succedit, legata seu fideicommissa a substituto data posci iure non possunt.

PP. VIII *k. Mart. Praesente et Albino conss.*

[14] *Impp. Valerianus et Gallienus AA. Falconi.* **pr.** Ea, quam frater tuus instituerat, sive quaesita sive non quaesita hereditate decesserit, cum tamen simpliciter, antequam duodecimum annum aetatis implesset, verbis precativis testamento facto nonnullos ei voluerit substitutos, nihil prohibet fideicommissum peti vel ab ipsius heredibus, qui bona intestati tenent. **1.** Tunc enim locum habet, quod regulariter traditur ea quae in testamento relinquuntur, si ex testamento non adeatur hereditas, non valere, cum verbis relicta directis adiri potuit hereditas, non cum illa ipsa sic data est, ut esset etiam ab intestato successoribus postulanda. **2.** Quod rescripsimus sequentes adseverationem tuam, quasi scripta heres non fuerit iure adoptata. alioquin si in familia relicta heres facta decessit, et consequenter ipsius heredes petitioni fideicommissi respondere coguntur.

PP. XIIII *k. Sept. Valeriano* III *et Gallieno* II *AA. conss.*

[15] *Idem AA. Philocrati.* Quamvis simpliciter te ac fratrem tuum aliquis instituerit heredes eiusque hereditatis commodum pater ex tua fratrisque persona pro portionibus vestris potestatis ratione quaesierit, tamen quia inferioribus verbis testamenti vos sui iuris facere testator curavit, intellegi potest restituendi hereditatis commodi fideicommisso patrem obstrictum esse.

PP. VI *id. Oct. Romae Maximo* II *et Glabrione conss.*

decedent, to turn over an inheritance after one's death, this (i.e., turning over one's inheritance) can, even before one's death, be accomplished either with or without subtraction of the (Falcidian) fourth, as one wishes.

Posted October 15, in the consulship of Peregrinus and Aemilianus (244).

[13] *The same Augustus and Caesar to Sempronius.* Whenever an heir appointed in the first degree succeeds to a testator, legacies and trusts assigned to be given by a substitute heir cannot be legally claimed.

Posted February 22, in the consulship of Praesens and Albinus (246).

[14] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Falco.* **pr.** She whom your brother had appointed as heir died after either having claimed or not claimed the inheritance. But he (your brother), having made his will, expressed the wish unconditionally, by a trust directive (*precariis verbis*) that some persons be substituted for her (as heirs) before she turned 12. Nothing prevents the trust from being claimed even from those heirs of his who hold the property on intestacy.[280] **1.** For the general rule that what is bequeathed in a will is not valid if the inheritance is not entered upon in accordance with the terms of the will holds then, when the inheritance, bequeathed with straightforward language, could have been entered upon, not when it was given in such a way that it is to be claimed even from the heirs on intestacy. **2.** But We composed this reply assuming the truth of your assertion that the named heir had not been legally adopted. Otherwise, if having been made an heir she died as a member of your brother's agnatic kinship group (*familia*), as a logical consequence her own heirs also (in this case) are compelled to respond to a claim for the trust.

Posted August 19, in the consulship of Valerian, for the third time, and Gallienus, for the second time, Augusti (255).

[15] *The same Augusti to Philocrates.* Although someone appointed you and your brother unconditionally as heirs, and your father acquired the benefit of that inheritance through the two of you, in full measure, by reason of his paternal power (*potestas*), nevertheless, because the testator in a later part of the will provided that you both should be rendered *sui iuris* (i.e., emancipated), it can be understood that your father was bound by a trust to turn over the benefit of the inheritance (to you).

Posted October 10, at Rome, in the consulship of Maximus, for the second time, and Glabrio (256).

[280] It seems preferable to understand the word *ipsius* to refer to Falco's brother, so that his heirs on intestacy are meant. This assumes that the girl had not accepted the inheritance. If she had, presumably this would be a reference to her heirs on intestacy. To avoid the ambiguity, Krüger proposes the reading *vel ab his*.

[16] *Imppp. Carus Carinus et Numerianus AAA. Isidorae.* **pr.** Cum virum prudentissimum Papinianum respondisse non ignoramus etiam legata huiusmodi fideicommisso contineri, id est ubi heres rogatus fuerat, quidquid ex hereditate pervenerit, post mortem restituere, animadvertis etiam praeceptionis compendium testatoris verbis comprehensum esse. **1.** Sane quoniam in fideicommissis voluntas magis quam verba plerumque intuenda sunt, si quas pro rei veritate praeterea probationes habes ad commendandam hanc patris voluntatem, quam fuisse adseveras, apud praesidem experiri non vetaris.

PP. prid. id. Nov. Caro et Carino AA. conss.

[17] *Impp. Diocletianus et Maximianus AA. Fortunato.* Si creditoris voluntas iure subnixa liberari te debito volentis doceri potest, et antequam sollemniter tibi liberatio a successore praestetur, exceptionem tibi ex voluntate descendentem competere manifestum est.

PP. XII k. Mai. Maximo II et Aquilino conss.

[18] *Idem AA. Apolausto.* Cum necessitatem reddendae rationis defunctus remittendam tibi esse petierit, manifesti iuris est voluntatem defuncti immotam esse debere.

PP. id. Mart. ipsis IIII et III AA. conss.

[19] *Idem AA. Ampliato.* Clari et aperti iuris est in fideicommissis posteriores voluntates esse firmiores.

PP. VIII id. Sept. ipsis IIII et III AA. conss.

[20] *Idem AA. Iuliano.* Etiam a pupillorum tutoribus velut ab ipsis relicta fideicommissa debentur.

[16] *Emperors* CARUS, CARINUS, *and* NUMERIANUS *Augusti to Isidora.* **pr.** Since We are not unaware that the very learned man Papinian in a response to a legal enquiry stated that even legacies were included in a trust of this kind, that is, when the heir is required to turn over whatever he or she receives from an inheritance after his or her death, you see that the benefit also of a preferential legacy is embraced by the words of the testator. **1.** Indeed, because as a general principle in the case of trusts the wishes of the testator are to be given greater weight than his words, if you have any further evidence as to the truth of the matter, for the purpose of establishing your father's intentions, as you allege them to have been, you are not forbidden from putting the matter before the provincial governor.

Posted November 12, in the consulship of Carus and Carinus, Augusti (283).

[17] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Fortunatus.* It is clear that if a legally valid expression of the last wishes of your (decedent) creditor can be shown to have intended that you be freed from your debt, even before his heir provides you with a formal release an affirmative defense (*exceptio*) lies for you in accordance with testator's wishes.

Posted April 20, in the consulship of Maximus, for the second time, and Aquilinus (286).

[18] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Apolaustus.* Since the decedent requested that you be freed from the necessity of providing an accounting, it is a clear point of law (*manifestum ius*) that the wishes of the decedent must be maintained.

Posted March 15, in the consulship of the Augusti, for the fourth and the third time, respectively (290).

[19] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Ampliatus.* It is a clear and transparent point of law (*clarum et apertum ius*) that in trusts subsequent expressions of (decedent's) wishes are more valid (than earlier ones).

Posted September 6,[281] *in the consulship of the Augusti, for the fourth and the third time, respectively (290).*

[20][282] *The same Augusti to Julian.* Trusts ought to be paid that have been bequeathed also by the *tutores* of minor wards, just as by the wards themselves.

[281] The precise day is uncertain: the alternative is September 11.
[282] = (in part, with minor changes) C. 4.1.5.

PP. III non. Dec. ipsis IIII et III AA. conss.

[21] *Idem AA. et CC. Tiberio.* Si in persona patris tui, cui te successisse proponis, fideicommissi dies utiliter cessit, licet tempore quo fuerat datum necdum te natum probetur, uxorem patrui, quem contendis patri tuo rogatum, si sine liberis decesserit, ab avo relicta restituere, si ei successit, de fideicommisso convenire debes. nam si patrui etiam hereditas tibi quaesita est, non de fideicommisso quaerendum, sed hereditas ab ea vindicanda est.

D. VI id. Febr. AA. conss.

[22] *Idem AA. et CC. Planciano.* Et in epistula vel brevi libello vel sine scriptura, immo etiam nutu fideicommissum relinqui posse adhibitis testibus nulla dubitatio est.

D. id. April. Byzantii AA. conss.

[23] *Idem AA. et CC. Stratonico.* Si veritas vel sollemnitas iuris deest nec amplexus parentis voluntatem relicta dedisti vel transactionis causa stipulantibus promisisti negotiumque integrum est, ad solutionem urgueri non potes.

D. V k. Febr. AA. conss.

[24] *Idem AA. et CC. Menestrato.* Instrumenta praediorum per fideicommissum relictorum, quae ad probationem originis eorum pertinent, heredes praestare necesse non habent: tamen cautionem praestare debent, quod, si opus fuerit legatario seu fideicommissario, ipsa, si habent, proferant.

D. k. Dec. Sirmi AA. conss.

[25] *Idem AA. et CC. Iulianae.* Heredum etiam res proprias per fideicommissum relinqui posse non ambigitur.

D. II k. Mart. CC. conss.

Posted December 3, in the consulship of the Augusti, for the fourth and the third time, respectively (290).

[21] *The same Augusti and the Caesars to Tiberius.* If the time for a trust-payment has effectively arrived in the person of your father, whose heir you claim to be, although it is shown that at the time the trust was given you were not yet born, you ought to sue the wife of your paternal uncle over the trust, if she became his heir, since you claim (the uncle) was required by your grandfather to turn over the bequest in question to your father if he died without children. For if you are also heir to your uncle, no claim is to be made on the trust, but the inheritance shall be claimed from her.

Given February 8, in the consulship of the Augusti (293).

[22] *The same Augusti and Caesars to Plancianus.* There is no doubt that by enlisting witnesses a trust can be bequeathed in a letter, in a brief memorandum, or without a document, or rather even with (just) a nod.

Given April 13, at Byzantium, in the consulship of the Augusti (293).

[23] *The same Augusti and Caesars to Stratonicus.* If the truth and the formalities required by law are lacking, and having embraced the declared wishes of your ascendant male relative (*parens*) you have not paid the bequests or for the sake of a settlement made stipulations, and the matter stands as it was, you cannot be pressed to make payment.[283]

Given January 28,[284] in the consulship of the Augusti (293).

[24] *The same Augusti and Caesars to Menestratus.* Heirs are not obligated to furnish documents showing the title of properties left as a trust, but they ought to provide a guaranty (*cautio*) to the effect that, if they have such documents, they shall produce them should the legatee or trust-beneficiary have need of them.

Given December 1 (?), at Sirmium, in the consulship of the Augusti (293).

[25] *The same Augusti and Caesars to Juliana.* There is no doubt that even the property of the heirs can be given as a trust.

Given February 28, in the consulship of the Caesars (294).

[283] Blume: "If the reason therefor was absent – that is to say, if the document under which a bequest was claimed was forged, or did not in fact contain the bequests, none were owing thereunder. It was somewhat different if the proper solemnity in the execution of the document was absent; for if, in such case, recognition to the bequests was given by the party charged therewith, he was thereafter bound to carry out the bequests."

[284] The precise month is uncertain: January or August.

[26] *Idem AA. et CC. Gaiano.* Ex repudiatione fideicommissi doli mali exceptio iusta causa intercedente tunc opponitur, quando ipse, cui fideicommissum relictum est, repudiatione usus fuerit. unde cum hoc non te, sed patrem fecisse adseveras, qui tibi nocere non potuit, nihil tibi obesse potest.

D. II id. April. Sirmi CC. conss.

[27] *Idem AA. et CC. Olympiadi.* Fideicommissum eius qui reliquerat paenitentia probata successores numquam praestare compelluntur.

D. V k. Oct. Viminacii CC. conss.

[28] *Idem AA. et CC. Gaio.* Ex fideicommisso sub condicione sine libertate servis propriis inutiliter dato libertas peti non potest.

D. XV k. Nov. trans mare[xii] *CC. conss.*

[29] *Idem AA. et CC. Achilleo.* Ex testamento, quod iure non valet, nec fideicommissum quidem, si non intestato quoque succedentes rogati probentur, peti potest.

D. VIII id. Dec. CC. conss.

[30] *Imp. Iustinianus A. Demostheni pp.* Cum acutissimi ingenii vir et merito ante alios excellens Papinianus in suis statuit responsis, si quis filium suum heredem instituit et restitutionis post mortem oneri subegit, non aliter hoc videri disposuisse, nisi cum filius eius sine subole vitam reliquerit: nos huiusmodi sensum merito mirati plenissimum ei donamus eventum, ut, si quis haec disposuerit, non tantum filium heredem instituens, sed etiam filiam, vel ab initio nepotem vel neptem, pronepotem vel proneptem vel aliam deinceps posteritatem, et eam restitutionis post obitum gravamini subiugaverit, non aliter hoc sensisse videatur, nisi hi qui restitutione onerati sunt sine filiis vel filiabus vel nepotibus vel pronepotibus fuerint defuncti, ne videatur testator alienas successiones propriis anteponere.

Recitata septimo in novo consistorio palatii Iustiniani. d. III k. Nov. Decio vc. cons.

[xii] Transmariscae

[26] *The same Augusti and Caesars to Gaianus.* Rejection of a trust is countered with an affirmative defense of fraud (*exceptio doli mali*) for a good reason when the party to whom the trust was left is the one who rejects it. So since you claim that not you but your father did this, and since his action could not harm you, it cannot at all be held against you.

Given April 12, at Sirmium, in the consulship of the Caesars (294).

[27][285] *The same Augusti and Caesars to Olympias.* When the person who left a trust is shown to have changed his or her mind, the heirs are never compelled to pay it.

Given September 27, at Viminacium, in the consulship of the Caesars (294).

[28] *The same Augusti and Caesars to Gaius.* Manumission cannot be claimed pursuant to a trust ineffectually given to one's own slaves upon the condition "without manumission."

Given October 18, at Transmarisca, in the consulship of the Caesars (294).

[29][286] *The same Augusti and Caesars to Achilleus.* Not even a trust can be claimed pursuant to a will that is legally invalid, unless also the heirs on intestacy are shown to have been required to pay it.

Given December 6, in the consulship of the Caesars (294).

[30] *Emperor JUSTINIAN Augustus to Demosthenes, Praetorian Prefect.* Since Papinian, a man of the sharpest intellect who rightly surpasses all others, held in his work on *Replies*[287] that if someone appointed his own son as heir and imposed on him the burden of turning over the inheritance after his death, he is deemed as having made this disposition only for the case that his son died without offspring. We, in just admiration of such an opinion, give it a very full application, so that if anyone makes these dispositions appointing not only a son as heir, but also a daughter or a grandson or granddaughter in the first degree, a great-grandson or great-granddaughter and so on with other descendants, and he imposes on them the burden of turning over the inheritance after death, he shall be deemed as having made this disposition only for the case that those burdened with the obligation to turn over the property die without sons, daughters, grandchildren, or great-grandchildren, so that the testator not be considered as preferring the rights of strangers to succeed to him over those of his own descendants.

Recited seven times October 30, in the New Consistory of the Palace of Justinian, in the consulship of the vir clarissimus *Decius (529).*

[285] Combine with C. 8.53.23.
[286] Combine with C. 2.4.36(?), 6.23.14.
[287] See C. 6.25.7.1; Pap. D. 35.1.102.

[31] *Idem A. Iohanni pp.* **pr.** Quidam filium suum a sacris paternis remisit et postea testamento condito eum praeteriit nullo ei penitus relicto, aliis heredibus derelictis, ipsum autem, quem neque heredem neque exheredatum fecit, fideicommisso praegravavit. quaerebatur, si utile est huiusmodi fideicommissum. **1.** Tota igitur antiqua dubietate super hoc explosa nobis in hoc casu placuit, ut emancipatus utpote iniuria a patre adflictus non compellatur fideicommissum a sua persona relictum praestare. **2.** Quod etiam in aliis personis, quas exheredari necesse est, locum habere censemus.

D. prid. k. Mart. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[32] *Idem A. Iohanni pp.* **pr.** Quaestionem ex facto emergentem resecantes et voluntati defunctorum prospicientes sancimus, si sine scriptura et praesentia testium fideicommisso derelicto fideicommissarius elegerit iuramentum heredis vel forsitan legatarii vel fideicommissarii, quotiens ab eo relictum est fideicommissum, sive universitatis sive speciale, necesse habere heredem vel legatarium vel fideicommissarium prius iureiurando de calumnia praestito vel sacramentum subire et omni inquietudine sese relaxare vel, si recusandum existimaverit sacramentum aut certam quantitatem manifestare fideicommissario derelictam noluerit, si forsitan maiorem fideicommissarius expetat, omnimodo exactioni fideicommissi subiacere et eum ad satisfactionem compelli, cum ipse sibi iudex et testis invenitur, cuius religio et fides a fideicommissario electa est, nullis testibus nullisque aliis adventiciis probationibus requisitis, sed sive quinque sint testes vel minores vel nemo, causam per illius sacramentum vel dandum vel recusandum suam habere tam firmitatem quam exactionem, sive pater sit, qui fideicommissum dederit, sive extraneus, ut aequitatis ratio communiter in omnes procedat.

1. Cum enim res per testium sollemnitatem ostenditur, tunc et numerus testium et nimia subtilitas requirenda est. lex etenim, ne quid falsitatis incurrat per duos forte testes compositum, maiorem

[31][288] *The same Augustus to John, Praetorian Prefect.* **pr.** A certain person emancipated his son and afterwards when making his will passed him over, leaving nothing at all to him. Though he left others as his heirs, the son himself, however, whom he had neither named as heir nor disinherited, he burdened with a trust. It used to be debated whether such a trust was valid. **1.** So by eliminating all ancient hesitation over this matter We have decided in this case that the emancipated son, inasmuch as he has been afflicted with an affront by his father, shall not be compelled to pay the trust that has been left to him to pay. **2.** We lay down that this rule also applies in the case of other persons whom it is necessary to disinherit (in order to exclude them under a will).

Given February 28, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[32] *The same Augustus to John, Praetorian Prefect.* **pr.** In resolving a dispute arising out of a situation of fact and looking out for the last wishes of decedents, We lay down that if a trust has been left in the absence of documents and witnesses and the beneficiary chooses to request an oath of the heir or perhaps of a legatee or of (another) trust beneficiary, whenever the trust has been left to (one of) the latter to pay out, whether it is for the entire inheritance or a particular thing, it shall be necessary for the heir, legatee, or trust-beneficiary, after an oath on malicious prosecution shall first be sworn (by the complainant), to take the oath (that there is no trust) and free himself from all anxiety or, if he thinks the oath should be refused or declines to inform the beneficiary as to the precise amount that was left in the trust, should the latter happen to claim a higher amount, he shall be entirely liable to pay the trust and shall be compelled to satisfy the claim. This is because he is discovered to be his own judge and witness whose scruples and honesty were appealed to by the beneficiary. No witnesses and no other, extraordinary evidence are required, but whether there are five witnesses, fewer, or none at all, whether his father was the one who gave the trust or an outsider, (We decree) that the case shall have – through the swearing or declining to swear an oath on the part of that one (under accusation) – its own foundation as much as a basis for payment, so that the principle of fairness shall operate in common for everyone.

1. For when the matter (i.e., the existence of the trust) is shown through the formality of witnesses, then both the number of witnesses and an extraordinary level of complexity (of procedure) is to be required. For the law, in order that

[288] Combine with C. 6.37.24. Lounghis *et al.* date to April 30, 531.

numerum testium expostulat, ut per ampliores homines perfectissima veritas reveletur.

2. Cum autem is, qui quid ex voluntate defuncti lucratur, et maxime ipse heres, cui summa auctoritas totius causae commissa est, dicere compellitur veritatem per sacramenti religionem, qualis locus testibus relinquatur vel quemadmodum ad extraneam fidem decurratur, propria et indubitata relicta? cum et in leges respeximus, quae iustis dispositionibus testatorum omnimodo heredes oboedire compellunt et sic strictius causam exigunt, ut etiam amittere lucrum hereditatis sanciant eos, qui testatoribus suis minime paruerunt.

D. v k. Dec. Constantinopoli post consulatum Lampadii et Orestis. vv. cc.

XXXXIII Communia de Legatis et Fideicommissis et de in Rem Missione Tollenda

[1] *Imp. Iustinianus A. Demostheni pp.* **pr.** Cum ii, qui legatis vel fideicommissis honorati sunt, personalem plerumque actionem habere noscuntur, quis vel vindicationis vel sinendi modo aliorumque generum legatorum subtilitatem prono animo admittet, quam posteritas optimis rationibus usa nec facile suscepit nec inextricabiles circuitus laudavit? quis in rem missionis scrupulosis utatur ambagibus?

1. Rectius igitur esse censemus in rem quidem missionem penitus aboleri, omnibus vero tam legatariis quam fideicommissariis unam naturam imponere et non solum personalem actionem praestare, sed etiam in rem, quatenus eis liceat easdem res, vel per quodcumque genus legati vel per fideicommissum fuerint derelictae, vindicare in rem actione instituenda, et insuper utilem Servianam (id est hypothecariam) super his quae fuerint derelicta in res mortui praestare. 2. Cum enim hoc iam iure nostro increbuit licere testatori hypothecam rerum suarum in testamento quibus voluerit dare, et iterum novellae constitutiones in multis casibus et tacitas hypothecas induxerunt, non ab re est etiam nos in

something false is not contrived by two casual witnesses, demands a greater number of them, so that through a greater number of persons the most consummate truth shall be brought to light.

2. But when a party who benefits in some way from the last wishes of the decedent and especially the heir himself, to whom supreme authority in the entire matter has been entrusted, is compelled to speak the truth through reverence for an oath, what place shall be left for witnesses, or how shall recourse be had to external proof, when his (the testator's) own undoubted proof was left behind? This is because We have also had regard for the laws which compel heirs to respect in every way the proper dispositions of testators, and so demand this outcome in a rather narrow fashion, so that they even ordain that those who have not at all complied with their testators' wishes shall lose the benefit of their inheritance.

Given November 27,[289] *at Constantinople, in the post-consulate of the* viri clarissimi *Lampadius and Orestes (531).*

Forty-Third Title Common Rules on Legacies and Trusts, and the Abolition of the Authorization to Seize Property

[1] *Emperor* JUSTINIAN *Augustus to Demosthenes, Praetorian Prefect.* **pr.** Since those who have been honored with legacies and trusts are generally recognized to have the right of a personal action (i.e., an action *in personam*), who will embrace with an eager spirit the complexities of the legacies *per vindicationem* or *sinendi modo* and the other kinds,[290] which more recent times have, for excellent reasons, neither easily adopted nor praised for their impenetrable entanglements? Who shall make use of the oversubtle circumlocutions of the authorization to seize property (*missio in rem*)?

1. Therefore We ordain that it is more correct entirely to abolish the authorization to seize property, to be sure, to impose one form on all, in fact, legatees and trust-beneficiaries alike, and not only to provide a personal action, but also one *in rem*, to the extent that it shall be permitted for them to claim ownership of the same items, no matter in what form of legacy or trust they were bequeathed, by bringing an action *in rem*, and to provide moreover an analogous *actio Serviana* (that is, an action on a hypothec) regarding those things that were bequeathed to them by the decedent. **2.** For since it has already become common in Our law (*ius nostrum*) to allow a testator to give a hypothec (*hypotheca*) of his property in his will to those whom he wishes, and again, recent constitutions (*novellae constitutiones*) have introduced even implied

[289] The precise day is uncertain: possibly November 17.

[290] Classical law knew several different types of legacies, of which two are named here; for a fuller list, see Gaius, 2.192–223. Blume: "Justinian, by the present law, not only abolished the distinctions between the different kinds of legacy known to the former law, but he also provided that there should be no difference between legacies and trusts of single things."

praesenti casu hypothecariam donare, quae et nullo verbo praecedente possit ab ipsa lege induci. 3. Si enim testator ideo legata vel fideicommissa dereliquit, ut omnimodo personae ab eo honoratae ea percipiant, apparet ex eius voluntate etiam praefatas actiones contra res testatoris esse instituendas, ut omnibus modis voluntati eius satisfiat, et praecipue cum talia sint legata vel fideicommissa, quae piis actibus sunt deputata.

4. Et haec disponimus, non tantum si ab herede fuerit legatum derelictum vel fideicommissum, sed et si a legatario vel fideicommissario vel alia persona, quam gravare fideicommisso possumus, fideicommissum cuidam relinquatur. cum enim non aliter valeat, nisi aliquid lucri offerat ei a quo derelictum est, nihil est grave etiam adversus eum non tantum personalem, sed etiam in rem et hypothecariam extendere actionem in rebus, quas a testatore consecutus est.

5. In omnibus autem huiusmodi casibus in tantum et hypothecaria unumquemque conveniri volumus, in quantum personalis actio adversus eum competit, et hypothecam esse non ipsius heredis vel alterius personae quae gravata est fideicommisso rerum, sed tantummodo earum, quae a testatore ad eum pervenerint.

D. XV k. Oct. Chalcedone Decio vc. cons.

[2] *Idem A. Iuliano pp.* **pr.** Omne verbum significans testatoris legitimum sensum legare vel fideicommittere volentis utile atque validum est, sive directis verbis, quale est 'iubeo' forte, sive precariis utetur testator, quale est 'rogo' 'volo' 'mando' 'fideicommitto', sive iuramentum posuerit, cum et hoc nobis audientibus ventilatum est, testatore quidem dicente 'ἐνορκῶ', partibus autem huiusmodi verbum huc atque illuc lacerantibus. **1.** Sit igitur secundum quod diximus ex omni parte verborum non inefficax voluntas secundum verba legantis vel fideicommittentis et omnia, quae naturaliter insunt legatis, ea et fideicommissis inhaerere intellegantur et e contrario, quidquid fideicommittitur, hoc intellegatur esse legatum, et si quid tale est, quod non habet natura legatorum, hoc ei ex fideicommissis accommodetur, et sit omnibus perfectus eventus, ex omnibus nascantur in rem actiones, ex omnibus hypothecariae, ex omnibus personales.

hypothecs in many situations, it is not beside the point that We too in the instant case grant an action on the hypothec, since this too can be introduced by the statute itself, with no word (that is, agreement) preceding (between individuals). **3.** For if the testator bequeathed legacies or trusts for this reason, that the persons honored by them actually receive them, it seems consonant with his wishes that even the aforesaid actions against the property of the testator ought to be granted, so that in every way his wishes be met, and this particularly when there are legacies or trusts of such a nature as to be devoted to projects of a religious nature.

4. And We make these dispositions not only in case an heir has been left a legacy or a trust to pay out, but also in case a trust has been bequeathed to a certain person to be paid by a legatee or a trust-beneficiary, or by another person on whom We can impose the duty to pay out a trust. For since that can only be valid when some benefit is offered to him by the person making the bequest, it is not a heavy burden to extend even against him not only the personal action, but also the actions *in rem* and on the hypothec regarding that property he obtained from the testator.

5. But in all such situations We wish each person to be sued for as much under the action on the hypothec as he is liable on the personal action, and that the hypothec falls not on the property of the heir himself or another person burdened with a trust, but only on the property which comes to him from the testator.

Given September 17, at Chalcedon, in the consulship of the vir clarissimus *Decius (529).*

[2] *The same Augustus to Julian, Praetorian Prefect.* **pr.** Every word giving a lawful meaning used by a testator wishing to leave a legacy or a trust is effective and valid, whether he employs straightforward terms, such as perhaps "I order," or a trust directive such as "I ask," "I wish," "I commend," or "I entrust," or he inserts an oath, since even this has been aired in Our hearing, when a testator says, for example, "I swear" (*enorkō*) but the parties involved distort such a term in every direction. **1.** Let the wishes of the testator, then, pursuant to what We have said, not be rendered without effect in every part of the language he uses, consistent with the wording employed by a person making a legacy or a trust, and all those things that are naturally found in legacies shall be understood also to form part of trusts, and vice-versa, whatever is given as a trust shall be understood to be have been given as a legacy. And if there is any such thing that a legacy by its nature does not contain, this shall be appropriated for it from trusts, and there shall be for all an exquisite outcome, as from all of them actions *in rem* shall arise, from all of them actions on the hypothec, from all of them personal actions.

2. Ubi autem aliquid contrarium in legatis et fideicommissis eveniat, hoc fideicommisso quasi humaniori adgregetur et secundum eius dirimatur naturam.

3. Et nemo moriens putet suam legitimam voluntatem reprobari, sed nostro semper utetur adiutorio, et quemadmodum viventibus providimus, ita et morientibus prospiciatur: et si specialiter legati tantummodo faciat testator mentionem, hoc et legatum et fideicommissum intellegatur, et si fidei heredis vel legatarii aliquid committatur, hoc et legatum esse videatur. nos enim non verbis, sed ipsis rebus leges imponimus.

D. x k. Mart. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[3] *Idem A. Iohanni pp.* **pr.** Si duobus vel tribus hominibus vel pluribus forte optio servi vel alterius rei relicta fuerit, vel si uni quidem legatario optio servi vel alterius rei relicta est, ipse autem moriens plures sibi reliquerit heredes, dubitabatur inter veteres, si inter legatarios vel heredes legatarii fuerit certatum et alter alterum servum vel aliam rem eligere velit, quid sit statuendum. **1.** Sancimus itaque in omnibus huiusmodi casibus rei iudicem fortunam esse, sortem etenim inter altercantes adhibendam, ut, quem sors praetulerit, is quidem habeat potestatem eligendi, ceteris autem aestimationem praestet contingentium eis partium: id est in servis quidem et ancillis maioribus decem annis, si sine arte sint, viginti solidis aestimandis, minoribus videlicet decem annis non amplius quam decem solidis computandis: sin autem artifices sunt, usque ad triginta solidos aestimatione eorum procedente, sive masculi sive feminae sunt, exceptis notariis et medicis utriusque sexus, cum notarios quinquaginta solidis aestimari volumus, medicos autem et obstetrices sexaginta: eunuchis minoribus quidem decem annis usque ad triginta solidos valentibus, maioribus vero usque ad quinquaginta, sin autem artifices sint, usque ad septuaginta.

1a. Sed et si quis optionem servi vel alterius rei reliquerit non ipsi legatario, sed quem Titius forte elegerit, Titius autem vel noluerit eligere vel morte fuerit praeventus, et in hac specie dubitabatur apud veteres, quid statuendum sit, utrumne legatum expirat, an aliquid inducitur ei adiutorium, ut viri boni arbitratu procedat electio. **1b.** Censemus itaque, si intra annale tempus ille qui eligere iussus est hoc facere supersederit vel

2. When however some contradiction occurs in legacies or trusts, it shall be assimilated to (the rules for) trust, on the ground that this is more consistent with humane sympathy and it shall be resolved according to its nature.

3. And let no dying person imagine that his lawful last wishes shall be rejected, but will always make use of Our assistance. And just as We have provided for the living, so there shall also be a concern for the interests of the dying. And if a testator makes particular mention only of a legacy, this shall be understood as both a legacy and a trust, while if he entrusts something to an heir or a legatee this shall be regarded as a legacy as well. For We impose laws not on words, but on reality itself.

Given February 20, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[3] *The same Augustus to John, Praetorian Prefect.* **pr.** If the choice of a slave or of other property happened to be left to two, three, or more persons, or if the election of a slave or of other property was left just to a single legatee, but he died and left behind several heirs, it was debated among the ancients (*veteres*), if a dispute arose among the legatees or the heirs of the legatee and each wished to choose a different slave or different property, what should be decided. **1.** We therefore lay down that in all such situations chance shall be the judge of the matter. For lots shall be drawn among the disputants and whoever the lot selects shall have, to be sure, the power of choosing, but he shall pay the others the value of the proportions of the property accruing to them. That is, in the case of male slaves, certainly, and female slaves older than 10 years, if unskilled, they shall be appraised at 20 solidi, while for those less than 10 years old clearly not more than 10 solidi shall be calculated. But if, however, they possess a skill, the appraisal of their worth shall extend up to 30 solidi, whether they are male or female, with the exception of notaries and physicians of either sex. This is because We wish notaries to be appraised at 50 solidi, but physicians and midwives at 60. As for eunuchs, if they are less than 10 years old, indeed, they shall be worth up to 30 solidi, older ones in fact up to 50; but if, however, they possess a skill, up to 70.

1a. But even if someone bequeaths the election of a slave or some other property not to the legatee himself, but (leaves) the choice to Titius, and Titius either declines to choose or is prevented from doing so by death, in this kind of situation there also was hesitation among the ancients (*veteres*) as to what should be decided: whether the legacy was extinguished or some form of assistance was provided to it, (i.e.) that the election might go ahead by the standards of an upright man (*bonus vir*). **1b.** We therefore ordain that if within the space of a year the one who was ordered to make the election has failed to do so,

minime potuerit vel quandocumque decesserit, ipsi legatario videri esse datam electionem, ita tamen, ut non optimum ex servis vel aliis rebus quicquam eligat, sed mediae aestimationis, ne, dum legatarium satis esse fovendum existimamus, heredis commoda defraudentur.

2. Sed quia nostra maiestas per multos casus legatariis et fideicommissariis prospexit et actiones tam personales quam in rem et hypothecarias dedimus et in rem missionis tenebrosissimus error abolitus est, et ad hanc legem pervenimus. **2a.** Nemo itaque ea, quae per legatum vel pure vel sub certo die relicta sunt vel quae restitui aliis disposita sunt vel substitutione posita, secundum veterem dispositionem putet esse in posterum alienanda vel pignoris vel hypothecae titulo adsignanda vel mancipia manumittenda, sed sciat, quod hoc quod alienum est non ei liceat utpote sui patrimonii existens alieno iuri applicare, quia satis absurdum est et inrationabile rem, quam in suis bonis pure non possidet, eam ad alios posse transferre vel hypothecae pignorisve nomine obligare vel manumittere et alienam spem decipere.

3. Sin autem sub condicione vel sub incerta die fuerit relictum legatum vel fideicommissum universitatis vel speciale vel substitutione vel restitutione, melius quidem faciat, et si in his casibus caveat ab omni venditione vel hypotheca, ne se gravioribus oneribus evictionis nomine supponat. **3a.** Sin autem avaritiae cupidine propter spem condicionis minime implendae ad venditionem vel hypothecam prosiluerit, sciat, quod condicione impleta ab initio causa in irritum devocetur et sic intellegenda est, quasi nec scripta nec penitus fuerat celebrata, ut nec usucapio nec longi temporis praescriptio contra legatarium vel fideicommissarium procedat. **3b.** Quod similiter censemus in huiusmodi legatis, quae sive pure sive sub die certo sive sub condicione sive sub incerta die relicta sint: sed in his omnibus casibus legatario quidem vel fideicommissario omnis licentia pateat rem vindicare et sibi adsignare, nullo obstaculo ei a detentatoribus opponendo.

4. Emptor autem sciens rei gravamen adversus venditorem actionem habeat tantummodo ad restitutionem pretii, neque dupli stipulatione

could not at all do so, or has at some point passed away, that the choice shall be deemed to have been given to the legatee himself, with this proviso all the same, that he not choose the best slave or the best property, but that of medium value, so that, although We believe that the legatee is to be sufficiently provided for, the heirs not be cheated of their benefits.

2. And because Our Majesty has in many situations looked out for the interests of legatees and trust beneficiaries and We have provided them with personal actions as well as actions *in rem* and on the hypothec – and the very shady folly of the authorization to seize property (*missio in possessionem*) has been abolished – We arrive even at this law. 2a. So let no heir think that in the future property which has been bequeathed unconditionally, at a specified date, under orders to be turned over to others, or subject to a substitution (of himself), is to be alienated, encumbered by a pledge or hypothec, or – if slaves – manumitted, pursuant to the old rules (*vetus dispositio*). Let him know instead that he shall not be permitted to convert to the legally protected uses of another that which does not belong to him, as though it were his own property. This is because it would be fairly absurd and unreasonable that he be able to transfer, encumber by hypothec or pledge, or manumit property that he does not own unconditionally, and so cheat others of their hopes.

3. But if, however, a legacy or a trust either of the entire inheritance or of a particular item has been left under a condition or at an uncertain point in time, or under an arrangement for a substitute or under an instruction to turn it over to another, he would do better, to be sure, even in these situations to avoid every possibility of sale or hypothec, so as not to subject himself to even heavier burdens under the heading of eviction. 3a. But if, however, out of the passion of greed he leaps forward to a sale or a hypothec, in the hope that the condition would not at all be fulfilled, let him know that once the condition is fulfilled his action shall be counted as invalid from the start and that it must be understood as not having been put into writing and not at all having been done, so that neither usucapion nor long-time prescription shall be effective against the legatee or the trust-beneficiary. 3b. We lay down that this shall apply in a similar fashion to such legacies which are left either unconditionally, (or) subject to a specified date, a condition, or an uncertain period of time. But in all of these situations every possibility shall lie for the legatee, to be sure, or the trust-beneficiary to claim ownership of the property and to have it made over to him, and no obstacle shall be opposed to him by those with physical control over it.

4. A purchaser, moreover, who knows of the burden on the property shall have an action for restitution of the price only against the seller, and neither the stipulation for double the price (in case of eviction) nor a claim for the

neque melioratione locum habente, cum sufficiat ei saltem pro pretio, quod sciens dedit pro aliena re, sibi satisfieri: creditori nihilo minus pigneraticia contraria actione adversus debitorem competente, ut ex omni parte omnique studio id, quod semper properamus, ad effectum perducatur, ut ultima elogia defunctorum legitimum finem sortiantur: bonae fidei procul dubio emptoribus integra iura et nullo modo ex hac constitutione deminuta contra venditores habentibus.

D. k. Sept. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

XXXXIIII De Falsa Causa Adiecta Legato vel Fideicommisso

[1] *Imp. Antoninus A Septimio.* Verba testamenti, quae inseruisti, aut solutam pecuniam debitam testatori declarant aut voluntatem eius liberare volentis debitorem manifeste ostendunt. et ideo aut peti quod solutum est non potest aut ex causa fideicommissi, ut debitor liberaretur, agendum est, nisi liquido probari possit eum non liberari debitorem voluisse, sed errore lapsum solutam sibi pecuniam existimasse.

PP. VII k. Mart. Antonino A. IIII et Balbino conss.

[2] *Imp. Alexander A. Faustinae.* Etiam si veritas debiti non subest, falsa demonstratio non perimit legatum et ex testamento eius quoque nomine competit actio.

PP. VII id. Nov. Alexandro A. cons.

[3] *Idem A. Verinae.* **pr.** Si non designata certa quantitate dotem tibi legavit maritus, sed quodcumque ad eum dotis nomine pervenisset perventurumve esset, et id ex testamento petis, necessaria probatio est numeratae pecuniae. **1.** Quod si quantitatem expressit, debetur et si in dotem datum non est, quasi aliud legatum, non eo iure, quo dos fungitur.

PP. non. Mai. Maximo II et Aeliano conss.

value of improvements shall be operative, since it shall be enough for him to be satisfied just with the price that he knowingly tendered for property belonging to a third party. The reverse action on the pledge shall nonetheless lie for the creditor against his debtor, so that, with all zeal and in every particular, that which We are ever quick in implementing be brought to its (desired) effect, so that the last wishes of decedents shall achieve their ends as a matter of law. It is far from doubtful that the rights of purchasers in good faith against their sellers shall remain unimpaired and in no way be diminished by this constitution.

Given September 1, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

Forty-Fourth Title An Untrue Reason Cited for a Legacy or Trust[291]

[1] *Emperor* ANTONINUS *Augustus to Septimius.* The wording of the will, which you have included (in your petition), either states that money owed to the testator had been paid or shows clearly his wish to be that of a person wanting to release the debtor. And on that account either what has been paid cannot be claimed or the suit must be on the trust, in order that the debtor be released, unless it can be clearly proved that the testator did not want the debtor to be released, but having fallen into a mistake thought that the money had been paid to him.

Posted February 23, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[2] *Emperor* ALEXANDER *Augustus to Faustina.* Even if a debt does not in fact exist, a false statement that it does exist does not invalidate a legacy and an action lies also under this heading in accordance with the terms of the will.

Posted November 7, in the consulship of Alexander Augustus (222).

[3] *The same Augustus to Verina.* **pr.** If your husband left your dowry as a legacy to you without having indicated a precise value for it, and instead (bequeathed) whatever had come or was going to come to him under the title of dowry, and you claim this in accordance with the terms of the will, it is necessary to show the amount of the money paid out to him. **1.** But if he articulated a precise amount, this is owed (to you) even if it was not given as dowry, just as any other legacy and not with the rights that attach to the dowry.

Posted May 7, in the consulship of Maximus, for the second time, and Aelianus (223).

[291] See D. 35.1.

[4] *Imp. Gordianus A. Alexandro.* Si dotem, ut proponis, defuncta in matrimonio uxore tua patri eius reddidisti, vel etiam ea non reddita testamenti verbis, ut adseveras, munitus es, quibus recepisse dotem universam quondam socer tuus significavit, ne hoc nomine conveniaris, sollicite agere non debes, cum aut soluta dote nulla supersit actio aut non reddita adversus petentem iuxta defuncti voluntatem parata sit exceptio.

PP. XV k. Iun. Sabino II et Venusto conss.

[5] *Impp. Diocletianus et Maximianus AA. et CC. Severae.* Refert largiter, dotem reddi maritus tibi, an quae instrumento dotali conscripta sunt, legati seu precariis verbis statuit, quippe superiore quidem casu datum probanti repeti tantum, posteriore vero nihil nocente falsa demonstratione significatum instrumento postulari possit.

S. XIIII k. Dec. CC. conss.

XXXXV De His Quae Sub Modo Legata vel Fideicommissa Relinquuntur

[1] *Imp. Antoninus A. Saturninae.* In legatis quidem et fideicommissis etiam modus adscriptus pro condicione observatur. sed si per te non stat, quominus voluntati testatoris pareas, sed per eum, cui nubere iussa es, quominus id quod tibi relictum est retineas, non oberit.

PP. V k. Ian. Gentiano et Basso conss.

[2] *Imp. Gordianus A. Ammonio.* **pr.** Ex his verbis: 'Titio decem millia vel insulam relinquo, ita ut quinque millia ex his vel eandem insulam Mevio restituat', licet antea neque legati neque fideicommissi petitio nascebatur, tamen in libertate a divo Severo hoc admissum est. **1.** Sed in pecuniariis causis voluntatis tuendae gratia non immerito recipiendum est, ut etiam ex huiusmodi verbis, sive ad condicionem sive ad modum respiciunt, sive ad dandum vel faciendum aliquid, fideicommissi actio

[4] *Emperor* GORDIAN *Augustus to Alexander.* If, as you allege, your wife died during the marriage and you returned the dowry to her father, or even if you did not return it and you are, as you assert, protected by the words of the will in which your father-in-law indicated that he had at one point received back the entire dowry, you ought not to be concerned that you will be sued in this connection. This is because, if the dowry has been returned, no action remains, and, if it has not been returned, you have an affirmative defense (*exceptio*) against the claimant pursuant to the wishes of the decedent

Posted May 18, in the consulship of Sabinus, for the second time, and Venustus (240).

[5][292] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Severa.* It makes a great deal of difference whether your husband decided that you be left, as a legacy or by trust directive (*precariis verbis*), the actual amount received as dowry or the amount written in the dowry document, since in the former situation, to be sure, you can only recover what you show to have been given, while in the latter, on the other hand, since an erroneous description (*falsa demonstratio*) is no obstacle, you can make a judicial request for the amount indicated in the document.

Written November 18, in the consulship of the Caesars (294).

Forty-Fifth Title Property Bequeathed as a Legacy or a Trust Subject to a Duty (*Sub Modo*)[293]

[1] *Emperor* ANTONINUS *Augustus to Saturnina.* Even the duty (*modus*) written into legacies, to be sure, and trusts is treated like a condition. But if it is not your fault that you do not comply with the testator's wishes, but that of the man you were instructed to marry, this will not prevent you from keeping that which was bequeathed to you.

Posted December 28, in the consulship of Gentianus and Bassus (211).

[2] *Emperor* GORDIAN *Augustus to Ammonius.* pr. Through these words "I leave to Titius ten thousand or an apartment block (*insula*) provided that he turn over five thousand or the same apartment block to Maevius," although previously a claim used to arise neither on a legacy nor a trust, nevertheless one was allowed by the deified Severus in the case of a manumission.[294] **1.** But in civil cases, for the sake of safeguarding the last wishes (of the decedent), the rule not unjustly must be accepted that even from such wording, whether it is

[292] Cf. C. 4.30.12
[293] See D. 35.1.
[294] This law, evidently in the form of a *decretum*, is not preserved.

omnifariam nascatur, videlicet in condicionibus post exitum earum. 2. Sin vero legato aut fideicommisso relicto testator legatarium seu fideicommissarium prohibuerit heredem suum vel alium quendam debitum exigere, habet debitor adversus legatarium seu fideicommissarium agentem usque ad quantitatem relicti fideicommissi sive legati exceptionem.

PP. VI id. Aug. Sabino II et Venusto conss.

XXXXVI De Condicionibus Insertis Tam Legatis Quam Fideicommissis et Libertatibus

[1] *Impp. Severus et Antoninus AA. Claudiae.* Cum testatorem fideicommissum Trallianis ab eo, quem pro parte heredem instituerat, ita reliquisse proponas, si sine liberis institutus diem obisset, isque nepotem, quem ex filia susceperat, heredem instituerat, condicionem adscriptam fideicommisso defecisse manifestum est, nisi alia defuncti voluntas evidenter probabitur.

PP. non. Dec. Laterano et Rufino conss.

[2] *Idem AA. Gallicano.* **pr.** Cum patrem familias fideicommissi nomine, quod in diem certam reliquit, ita cavere praecepisse proponas, si a marito non divertisset, iurisdictionis originem perinde servari aequum est, ac si nihil super ea re scriptum fuisset. 1. Nec exemplum legati vel hereditatis, in quibus condicio divortii nonnumquam remitti solet, huic rei comparandum est, cum absurdum sit ideo perpetui edicti neglegi formam, quia patris sui voluntati non obtemperatur.

PP. Antiochiae XI k. Aug. Antonino A. II et Geta II conss.

related to a condition or a duty (*modus*), whether this is for giving or for doing something, the action on the trust shall arise in all circumstances, obviously in the case of conditions upon their fulfillment. **2.** But if, however, a testator, after leaving a legacy or a trust, forbids the legatee or the beneficiary of the trust to claim a debt from the heir or from anyone else, the debtor has an affirmative defense (*exceptio*) against a legatee or trust-beneficiary suing for this up to the value of the legacy or trust.

Posted August 8, in the consulship of Sabinus, for the second time, and Venustus (240).

Forty-Sixth Title Conditions Placed on Legacies, Trusts, and Manumissions[295]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Claudia.* Since you state the testator left a trust which the person whom he had appointed heir to part of the estate was to pay to the town of Tralles "if the appointed person died without children," and the latter appointed as heir his grandson through his daughter, it is clear that the condition written into the trust has failed, unless the wishes of the decedent are shown clearly to have been otherwise.

Posted December 5, in the consulship of Lateranus and Rufinus (197).

[2] *The same Augusti to Gallicanus.* **pr.** Since you state that a *pater familias* had instructed that under a trust designed to be effective on a certain date his daughter shall provide a guarantee (*cautio*) if she had not (already) divorced her husband, it is fair that the Praetorian Edict (*iurisdictionis origo*) be respected as though nothing had been written about this matter (i.e., the divorce). **1.** Nor is to be compared to this situation the parallel of a legacy or a trust in which the fulfillment of a condition regarding a divorce is sometimes accustomed to be remitted, since it would be absurd that the rules of the Perpetual Edict (*perpetui edicti forma*) be neglected on this account, because she does not comply with her father's wishes.[296]

Posted July 22, at Antioch, in the consulship of Antoninus Augustus, for the second time, and Geta, for the second time (205).[297]

[295] See D. 35.1.

[296] Blume: "A condition affixed to inheritances etc. which required the beneficiary to get a divorce was deemed to be against good morals and void ... In the case above, [the daughter] did not comply with her father's desire as to the divorce and still wanted to be relieved from giving the bond. The law, however, required such bond, and hence the situation was as though the father had not mentioned the subject at all."

[297] So Krüger, but Geta's first consulship was in 205, his second in 208, while Caracalla's second was in 205, his third in 208.

[3] *Imp. Antoninus A. Aurelio militi.* Si ea condicione Auluzanus legata testamento praestari voluit, si cum focaria sua matreque eius moraretur, et per eum stetit, quominus voluntati testatoris pareret, cum sponte scripturae testamenti non obtemperaverit, ad petitionem non admittitur.

PP. VI id. Iul. Laeto II et Cereale conss.

[4] *Imp. Alexander A. Liciniae.* Legatum sive fideicommissum a patruo tuo relictum tibi sub condicione, si filio eius nupsisses, cum mortuo filio, priusquam matrimonium cum eo contraheres, condicio defecerit, nulla ratione tibi deberi existimas.

PP. k. Dec. Alexandro A. II et Marcello conss.

[5] *Impp. Diocletianus et Maximianus AA. et CC. Faustino.* **pr.** Si uxorem tuam tempore nuptiarum in patria potestate fuisse monstretur, fideicommissi commodum ei relicti, cum nupserit, nullo alio diem eius cedere prohibente patri quaesitum non ambigitur. **1.** Quod si a patre ante nuptias emancipata fuerit ac postea decesserit, superstite patre et marito ac liberis actionem fideicommissi sibi competentem ad heredes suos transmisit.

S. VI k. Febr. Sirmi CC. conss.

[6] *Imp. Iustinianus A. Iohanni pp.* **pr.** Cum quidam testamento condito libertatem suo servo dereliquit sub condicione, si suo heredi certum numerum solidorum praestet vel aliam quandam speciem vel vicarium servum, ille autem servus non in eodem loco constitutus, ubi etiam heres fuerat, herili testamento cognito properabat ad heredem cum ipso, quod iussus erat dare heredi, sed in medio latronum vel hostium incursione peremptum est quod portabat: quaerebatur inter antiquos, si praepeditur libertas, quia hoc dare servus non potest propter memoratum fortuitum casum. **1.** Itaque veterum dubietate quiescente nobis placuit, ut et libertas omnimodo competat et commodum, quod heredi

[3] *Emperor* ANTONINUS *Augustus to Aurelius, a soldier.* If Auluzanus wished that the legacies bequeathed in his will be paid on condition that he (the recipient) reside with his concubine and her mother, and it was his doing that he did not respect the wishes of the testator, since he did not comply with the wording of the will of his own accord, he is not permitted to make a claim.

Posted July 10, in the consulship of Laetus, for the second time, and Cerealis (215).

[4] *Emperor* ALEXANDER *Augustus to Licinia.* When a legacy or a trust was left to you by your paternal uncle on the condition that you marry his son, since the son died before you married him, the condition has failed, and you have no reason to think that legacy or trust is owed to you.

Posted December 1, in the consulship of Alexander Augustus and Marcellus (226).[298]

[5] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Faustinus.* **pr.** There is no doubt that, if it should be shown that your wife was in a father's power (*patria potestas*) at the time of your marriage, the benefit of a trust left to her "when she married" accrued to her father if no other reason prevented its becoming due at that time. **1.** But if she had been emancipated by her father before marriage and subsequently died, leaving as survivors a father, husband, and children, she has passed on to her heirs the action on the trust for which she was eligible.

Written January 27, at Sirmium, in the consulship of the Caesars (294).

[6][299] *Emperor* JUSTINIAN *Augustus to John, Praetorian Prefect.* **pr.** A certain person in writing his will bequeathed manumission for his slave on the condition that he pay a fixed number of gold coins (*solidi*) to his heir, or (that he pay) some other specific item or a slave of a slave (*vicarius*). But since the slave was not in the same place as the heir, upon learning of the contents of his master's will he was hastening to the heir with the very thing he had been ordered to give to him, but en route what he was carrying was lost during an attack by bandits or enemies. It was debated among the ancients (*antiqui*) whether the manumission was blocked, because the slave was unable to give this thing (to the heir) owing to the aforementioned chance circumstances. **1.** And so, as the hesitation of the ancients (*veteres*) subsides, We have decided both that the

[298] Blume: "A supervening impossibility, as in this rescript, made the gift void, except in case of manumission and except when the fulfillment of the condition was defeated by the want of cooperation of another, whose cooperation was necessary – as where such other refused to marry the legatee."

[299] Combine with C. 6.27.5.

vel extraneo relinquitur, non abstrahatur. **2.** Ex quacumque igitur causa impediatur, sive per heredem sive per eum, cui dare aliquid iussus est, sive per fortuitos casus, in libertatem quidem ipse omnimodo perveniat, nisi ipse servus noluit adimplere condicionem: obnoxius tamen constituatur post libertatem heredi vel ei cui dare iussus est, nisi et ipse oblatas pecunias non suscepit (quod enim semel repudiatum est ab eo, redintegrari minime concedimus), quatenus hoc quod dare iussus est omnimodo adimplere compellatur vel in ipso mancipio, si extat, vel in aestimatione eius non amplius quam in quindecim solidos imputanda, vel in alia re, si et ipsa appareat, vel si non existat, vera eius aestimatione praestanda.

D. prid. k. Mai. Constantinopoli post consulatum Lampadii et Orestis vv. cc. anno secundo.

[7] *Idem A. Iohanni pp.* **pr.** Si plures personae unam condicionem implere fuerint iussae, apud Ulpianum dubitabatur, utrumne omnes simul eandem facere debent, an singuli quasi soli implere eam compelluntur. **1.** Videtur autem nobis unumquemque necessitatem habere condicionem implere et pro portione sibi contingente accipere, quidquid ex hoc commodum est, ut hi quidem, qui compleverint iussa, ad lucrum vocentur, qui autem neglexerint, sibi imputent, si ab huiusmodi commodo repellentur.

D. III k. Aug. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[8] …

XXXXVII De Usuris et Fructibus Legatorum vel Fideicommissorum

[1] *Impp. Severus et Antoninus AA. Maximo.* Legatorum seu fideicommissorum usuras ex eo tempore, quo lis contestata est, exigi posse manifestum est. sed et fructus rerum et mercedes servorum, qui ex testamento debentur, similiter praestari solent.

Proposita prid. k. Aug. Anullino et Frontone conss.

manumission shall be entirely valid and that the benefit which was bequeathed to the heir or to an outsider shall not be taken away. **2.** For whatever reason, then, the (slave) was blocked, whether by the heir, by someone (else) to whom he was ordered to give something, or by chance circumstances, he himself, to be sure, shall absolutely arrive at manumission, except if the slave himself refused to fulfill the condition. Nevertheless, after manumission he shall be made liable to the heir or to the person to whom he was ordered to give something, unless even the latter himself did not accept the money when it was offered to him – for once he has rejected this We do not allow it to be claimed anew – to the extent that he shall be compelled to fulfill entirely that which he was ordered to give, either in terms of the slave (of a slave), if he is alive, or in terms of monetary value, which is not to be reckoned as more than 15 solidi, or in terms of the other object, if that is available, or, if not, by having to pay its true value.

Given April 30, at Constantinople, in the second post-consulate of the viri clarissimi *Lampadius and Orestes (532).*[300]

[7] *The same Augustus to John, Praetorian Prefect.* **pr.** If more than one person has been ordered to fulfill a single condition, Ulpian hesitated as to whether all of them ought to do the same thing at the same time, or individuals are compelled to do this as though acting on their own (i.e., as though each was the only one obligated by the condition). **1.** But it seems to Us that each is obliged to fulfill the condition and receive the share of the benefit due respectively to him. So those, at any rate, who carry out the instructions shall be eligible for this gain, but those who neglect them shall have only themselves to blame for being denied such a benefit.

Given July 30,[301] *at Constantinople, in the post-consulate of the* viri clarissimi *Lampadius and Oreste (531).*

[8] *<A Greek constitution appears to have fallen out.>*

Forty-Seventh Title Interest and Income from Legacies and Trusts

[1] *Emperors* S*EVERUS and* A*NTONINUS Augusti to Maximus.* It is clear that interest on legacies or trusts can be claimed from the time of joinder of issue (*litis contestatio*). But income (*fructus*) from property and the earnings of slaves that are owed in accordance with the terms of a will are also usually paid in a similar fashion.

Posted July 31, in the consulship of Anullinus and Fronto (199).

[300] The date is in fact 531, as Haloander and Krüger have shown.
[301] The precise day is uncertain: the alternative is July 29 (preferred by Lounghis *et al.*).

[2] *Imp. Antoninus A. libertis Cassiani.* **pr.** Adversus eos, qui sub obtentu legis Falcidiae legata morantur, notissimum est iuris auxilium. **1.** Si igitur proposita stipulatione cavere cum satisdatione potestis vos restituturos, quanto amplius quam per eam legem licet acceperitis, iudex qui fideicommissis ius dicit solida vobis legata praestari iubebit. **2.** Quod si satisdationem implere non poteritis, arbitro dato diem vobis praefiniet, intra quem altera parte cessante partibus suis fungetur. et si constiterit legi Falcidiae locum non esse, et usuras et fructus post litem contestatam percipietis.

PP. XVI k. Iun. duobus Aspris conss.

[3] *Imp. Alexander A. Paterno.* Si homines certi per fideicommissum tibi relicti fuerunt, post moram periculo debitoris fideicommissi fuerunt.

Proposita XII k. April. Iuliano et Crispino conss.

[4] *Imp. Gordianus A. Dionysio.* In legatis et fideicommissis fructus post litis contestationem, non ex die mortis sequuntur, sive in rem sive in personam agatur.

PP. non. Sept. Gordiano A. et Aviola conss.

XXXXVIII De Incertis Personis

[1] [Αὐτοκράτωρ Ἰουστινιανὸς Α.]. **pr.** ... Incertus ... **1.** Καὶ ὅτι καλῶς γράφει ὁ θέλων οἱονδήποτε πόστουμον κληρονόμον· οὐ μὴν ἀλλὰ καὶ ληγάτον καὶ φιδικόμμισσον αὐτῷ καταλιμπάνει, ἐὰν δηλονότι οὐκ ἐκωλύετο αὐτοῦ κληρονομεῖν ἢ εἰ ἦν ἐν φύσει.

2. Καὶ ὅτι οὐ συγχωρεῖ κληρονόμους γράφεσθαι ἀφανεῖς, εἰ μὴ ἄρα κυοφορούμενος εἴη· ἐπὶ γὰρ τούτου τὴν τοῦ ὀνόματος αὐτοῦ χρείαν ἀναπληροῖ ἡ γαστὴρ ἡ τοῦτον φέρουσα καὶ ὁ πατήρ.

3. Καὶ περὶ τῶν πρὸς ἅπαξ τοῖς συγγενέσι καταλιμπανομένων καθ' ὁμάδα φιδικομμίσσων ἢ ληγάτων, εἰ μὴ ἐν ἑκατέρῳ καιρῷ (τυχὸν τῆς τελευτῆς) εὑρεθείη τις συγγενής, ἀλλὰ ἐν μόνῳ τῷ καιρῷ τῆς τελευτῆς ἐπιτεχθῇ

[2] *Emperor* ANTONINUS *Augustus to the freedpersons of Cassianus.* **pr.** The legal remedy (*iuris auxilium*) against those who delay paying legacies on the pretext of respecting the lex Falcidia is very well known.[302] **1.** If, then, you are able to furnish a guarantee in the form of a stipulation together with a surety to the effect that you will return any amount that you receive in excess of what this statute permits, the judge with jurisdiction over trusts will order that the legacies be paid to you in their entirety. **2.** But if you are not able to provide a surety, an arbitrator will be appointed who will set a date for you at whose expiry, if your opponents fail to comply, he will discharge his responsibility. And if it is determined that the lex Falcidia does not apply, you will receive both income and interest accruing in the wake of joinder of issue.

Posted May 17, in the consulship of the two Aspri (212).

[3] *Emperor* ALEXANDER *Augustus to Paternus.* If certain slaves were left to you as a trust, and their delivery is delayed, they are held at the risk of the one who owes the trust.

Posted March 21, in the consulship of Julian and Crispinus (224).

[4] *Emperor* GORDIAN *Augustus to Dionysius.* The income from legacies and trusts is paid from the time of joinder of issue, not from that of death, whether the suit is *in rem* or *in personam*.

Posted September 5, in the consulship of Gordianus Augustus and Aviola (239).

Forty-Eighth Title Uncertain Persons

[1][303] *[Emperor* JUSTINIAN *Augustus]* ... **pr.** An uncertain person ...[304] **1.** (The constitution) also (states) that he is entitled to name whomever he wishes as a posthumous heir.[305] There is absolutely no doubt that he can also leave him either a legacy or a trust, unless it is plain that he was forbidden to inherit from him whether he was conceived or is already born.

2. And (it says) that it is not permitted to name uncertain heirs unless, after all, such heir is in the womb. For in this case the womb that bears him – as does his father – fills the need for a name.

3. And (it) concerns trusts and legacies that have been left, in a lump sum, to cognates (blood relatives) as a group, when at neither time – for example, at the time of the testator's death[306] – a blood relative is among the living, but just at

[302] The lex Falcidia (40 BCE) ordained that one-quarter of an inheritance had to be reserved for the heir(s).

[303] 1–9, 11–14, 17–29 derive from Basilika 44.18.29. Krüger shows that this law of Justinian was in fact the only constitution in this title: see Nomoc. 2.1; Inst. 2.20.27.

[304] See Parat. ad Const. 2 and 3. A summary of this constitution is restored from a number of sources, including the sixth-century *Nomocanon XIV Titulorum* and Bas. 44.18.29.

[305] See Inst. 2.20.28; 3.9 pr.

[306] Blume: "Or ... at the time of executing the testament."

ἢ ἐγκυμονῆται. **4.** Ἢ ἐὰν τοῖς ἐν καιρῷ διαθήκης συγγενέσι καταλείψῃ, ἐπιτεχθῶσι δὲ ἕτεροι, περὶ ὧν ἐν τῷ διατίθεσθαι οὐκ ἐνεθυμήθη. **5.** Καὶ εἰ ὁ διαθέμενος πᾶσι τοῖς συγγενέσιν αὐτοῦ καταλείψει, πῶς οὐ κατὰ βαθμὸν οὐδὲ κατὰ τάξιν δεῖ καλεῖσθαι τοὺς συγγενεῖς, ἀλλὰ πάντας. **6.** Καὶ εἰ εἴποι τοῖς ἐξ ἀδιαθέτου καλουμένοις συγγενέσι δοθῆναι, τίνες καλοῦνται.

7. Καὶ περὶ τοῦ, ἐάν τις τοῖς ἰδίοις ἀπελευθέροις ληγατεύσῃ, τίνες τὰ ληγάτα λαμβάνουσι. **8.** Καὶ εἰ γενικῶς ληγατεύσας πᾶσι τοῖς ἀπελευθέροις ἐν τῇ διαθήκῃ ἰδικὸν ἕτερόν τι καταλείψῃ πρεσβεῖον τοῖς ἐν τῇ διαθήκῃ αὐτοῦ ἐλευθερωθεῖσιν ἢ ἐν κωδικέλλοις ἢ καὶ ἀγράφως, τι γίνεται.

9. Καὶ περὶ τοῦ, εἰ τῇ φαμιλίᾳ καταλειφθῇ πρεσβεῖον, μὴ ὑπόντων συγγενῶν ἢ γαμβροῦ ἢ νύμφης, πῶς καλοῦνται οἱ ἀπελεύθεροι.

10. Ἐάν τις ἢ τῇ ἱερᾷ συγκλήτῳ ἢ βουλευτηρίῳ πόλεως ἢ τάξει ὑπηρετουμένῃ ταῖς μεγάλαις ἀρχαῖς ἢ ταῖς ἐν ἐπαρχίαις ἢ τῷ τῶν ἰατρῶν ἢ διδασκάλων ἢ συνηγόρων σωματείῳ ἢ τοῖς στρατιώταις ἢ ὁμοτέχνοις ἢ τοῖς κληρικοῖς ἢ ἁπλῶς οἱῳδήποτε μὴ ἀπηγορευμένῳ σωματείῳ καταλείψῃ τι, ἔρρωται τὸ καταλειφθέν· καὶ εἰ μὲν ἁπλῶς τοῦ συστήματος ἢ τάγματος μνημονεύσει, πάντες ἀπαιτοῦσιν οἱ ἐν τῷ καιρῷ τῆς τελευτῆς αὐτοῦ εὑρισκόμενοι ἐν τῷ συλλόγῳ καὶ πρὸς τὸν ἀριθμὸν τῶν ποσώπων αὐτὸ διαιροῦνται, εἰ μὴ ἄρα ὁ διαθέμενος ἕκαστον αὐτῶν ῥητόν τι λαβεῖν διετάξατο, μηδενὸς περιεργαζομένου κατὰ τὴν παλαιὰν διάταξιν, εἰ ἀπὸ κέρτας ἀδμινιστρατίονος ἦν τὸ πρόσωπον ἢ μή.

11. Καὶ περὶ διαθεμένου κελεύσαντος ἐκ προτελευτῆς τοῦ τιμηθέντος τοῖς παισὶν αὐτοῦ ἢ ἐγγόνοις ἢ προεγγόνοις ἢ καὶ συγγενέσι δοθῆναι τὸ καταλειφθέν.

12. Καὶ εἰ μόνων υἱῶν μνημονεύσειε, πῶς αἱ θυγατέρες οὐδὲν ὠφελοῦνται. καὶ περὶ τοῦ, εἰ γενικῶς ὁ διατιθέμενος εἴποι προτελευτῶντος αὐτοῦ τοὺς ἐξ αὐτοῦ λαμβάνειν τὸ καταλειφθέν, πῶς τότε καὶ υἱοὺς καὶ θυγατέρας καὶ ἐγγόνους, καὶ ἐγγόνας καὶ προεγγόνους καὶ προεγγόνας καλεῖσθαι.

13. Καὶ εἰ ῥητῶς ἐπαγάγῃ τοὺς ἐξ αὐτοῦ προελθόντας καὶ τοὺς ἐφεξῆς λαμβάνειν, τίνες ἀπαιτεῖν δύνανται τὸ καταλειφθέν. **14.** Τὸ αὐτὸ καὶ περὶ συγγενῶν. καὶ ταῦτα μὲν περὶ τῶν πρὸς ἅπαξ καταλιμπανομένων.

the point of his death was either on the cusp of being born or still in the womb. **4.** Or if, at the time of the writing of the will, something is left to the blood relatives, but then others are born, of whom the testator has not taken account in his writing of the will. **5.** And if the testator leaves something to all of his blood relatives they ought to be eligible not according to degree of relationship or in any particular order, but all of them equally. **6.** And if he states that the inheritance should be given to those blood relatives eligible on intestacy (the constitution lays down) which ones are in fact eligible.

7. And concerning the situation in which someone leaves legacies to his freed-persons (it determines) which ones receive the legacies. **8.** And if someone has made a general legacy to all of his freed-persons in his will but then leaves some other particular item as a bequest to those manumitted in the will, in codicils or even orally (it determines) what happens.

9. And concerning the situation in which a bequest is left to the household (*familia*) and there are no blood relatives, son-in-law, or daughter-in-law, the freedpersons shall be eligible.

10.[307] If someone bequeaths something to the Blessed Senate, to the council of his hometown, to an administrative staff which serves high-ranking officials (in the capital) or in the provinces, to an association of physicians, instructors, or trial attorneys, to soldiers, to workmen in the same trade, to clergy, or simply to any association that is not prohibited, the bequest shall be valid. And if anyone simply mentions a professional association or a legion, all those who are found to be in its number at the time of the testator's death shall make a claim and divide it up in proportion to the number of persons, unless perhaps the testator has assigned each one of them to take something fixed. Nor shall anyone be concerned, pursuant to the ancient constitution (*palaia diataxis*), if a person hails from a certain administrative staff or not.

11. And (the constitution provides for the situation) concerning the testator who, if his beneficiary predeceases him, orders what was bequeathed to him to be turned over to his surviving children, grandchildren, great-grandchildren, or blood relatives.

12. If mention is made only of sons, this does not benefit daughters. And concerning the situation in which the testator orders generally that if the beneficiary predeceases him his surviving offspring shall receive the bequest, (it ordains that) then sons, daughters, grandsons, granddaughters, great-grandsons and great-granddaughters shall be eligible.

13. And if he adds in particular that his offspring and their descendants shall receive something, (it provides as to) who can claim the bequest. **14.** The same

[307] §10 is found in Nomoc. 2.1.

15. Ἐὰν δὲ ἐνιαυσιαῖα ἢ κατὰ μῆνα ἢ καθ' ἡμέραν καταλείψῃ τοῖς ἰδίοις συγγενέσιν ὁ διαθέμενος, εἰ μὲν μηδὲν πλέον εἴπῃ, μόνοις τοῖς ἐν τῷ καιρῷ τῆς τελευτῆς αὐτοῦ συγγενέσιν ἕως ὅτε περίεισι δίδοσθαι τὸ καταλελειμμένον, ὥσπερ εἰ καὶ μὴ συγγενέσιν, ἀλλὰ τοῖς ἔκ τινος συστήματος ἢ τάγματος ἢ σωματείου κατέλειψε ταῦτα τὰ ἐνιαυσιαῖα ἢ μηνιαῖα ἢ ἡμερήσια ληγάτα· καὶ τότε γὰρ οἱ περιόντες μόνοι κατὰ τὸν καιρὸν τῆς τελευτῆς αὐτοῦ καλοῦνται καὶ ἐξ ἰσότητος διαιροῦνται τὸ καταλελειμμένον. **16.** Εἰ δὲ συγγενέσι τις καταλιμπάνων ἐνιαυσιαῖα ἢ μηνιαῖα ἢ ἡμερήσια ληγάτα ἐπάγει καὶ τοῖς ἐξ αὐτῶν ταῦτα δίδοσθαι, εἰ προσθείη εἰς τὸ διηνεκές, διηνεκῆ τὴν δόσιν εἶναι καὶ μηδέποτε παύεσθαι. **17.** Τὸ αὐτὸ καὶ ἐπὶ συνηγόροις κρατεῖ καὶ διδασκάλοις καὶ στρατιώταις.

18. Καὶ εἰ μηδαμοῦ τὸ διηνεκῶς εἴπῃ, ἀλλὰ τοῖς αὐτῶν βουληθείη δίδοσθαι. **19.** Καὶ πότε μέχρι τρίτης διαδοχῆς τὸ γένος ἢ τάγμα καλεῖται πρὸς τὴν τοῦ καταλειφθέντος ἀπαίτησιν. **20.** Καὶ εἰ ἀπελευθέροις ληγατεύσει, μὴ προσθήσει δὲ καὶ τοῖς ἐξ αὐτῶν ἢ προσθήσει. **21.** Καὶ περὶ τοῦ, εἰ τελευτήσει ἐπὶ πάντων τῶν θεμάτων εἷς ἐξ αὐτῶν, τί γίνεται. **22.** Κἂν διορίσηται, τί χρὴ λαμβάνειν ἕκαστον, ἢ μή, ἀλλὰ πᾶσιν ἅμα μίαν ποσότητα καταλείψῃ κελεύσας διηνεκῶς δίδοσθαι τὸ καταλειφθέν. **23.** Καὶ εἰ μὴ προσθήσει τὸ διηνεκῶς δίδοσθαι.

24. Καὶ ὅτι ἀπελεύθερος ἀπελευθέρου οὐδέποτε πρὸς τὸ τοιοῦτον καλεῖται ληγάτον, εἰ μὴ ῥητῶς ὁ διαθέμενος τοῦτο παρεκελεύσατο.

25. Καὶ εἰ ἑκάστῳ τῶν πολιτῶν ῥητὴν ποσότητα κελεύσει διανέμεσθαι, τί γίνεται καὶ πῶς ῥυθμίζεται.

26. Καὶ περὶ τῶν διηνεκῶς ἀπαιτουμένων, καταλιμπανομένων δὲ ἐκκλησίαις, ξενῶσι ἢ πτωχείοις ἢ εὐαγέσιν οἴκοις ἢ τῷ κοινῷ τοῦ κλήρου παντὸς ἢ εἰς αἰχμαλώτων λύσιν ἢ αὐτοῖς τοῖς πτωχοῖς ἢ αἰχμαλώτοις.

27. Καὶ περὶ τοῦ, ἐάν τις εἴπῃ κληρονόμον αὐτοῦ γενέσθαι τὸν πρῶτον γινόμενον ὕπατον μετὰ τελευτὴν αὐτοῦ ἢ τὸν ἐρχόμενον εἰς τὸν τάφον αὐτοῦ ἢ τὸν ἐκδιδόντα τὴν θυγατέρα αὐτοῦ τῷ ἰδίῳ υἱῷ ἢ τὸν ἐπιγαμβρεύοντα αὐτῷ ἢ ἕτερόν τι τούτοις παραπλήσιον, πῶς ἀνυπόστατός ἐστι πανταχόθεν ἡ τοιαύτη ἔνστασις διὰ τὸ μὴ φέρεσθαι

also holds for blood relatives. And the same for property that has been left in a lump sum.

15.[308] But if the testator leaves to his own blood relatives legacies to be paid on a yearly, monthly, or daily basis, if he says nothing more, the bequest shall be given only to those blood relatives who are living at the time of his death, in the same manner if he leaves legacies to be paid out on a yearly, monthly, or daily basis not to his blood relatives, but to the members of a professional association, legion, or (any other) association. For then too only those living at the time of his death shall be eligible and shall share in the bequest on an equal basis. **16.** But if someone, in leaving to his blood relatives legacies to be paid on a yearly, monthly, or daily basis, orders that they shall be given also to their offspring, and adds that this shall be in perpetuity, the bequest shall be valid in perpetuity and shall never end. **17.** The same point holds also for trial attorneys, instructors, and soldiers.

18. (The same is true) even if the testator at no point specifies "in perpetuity," but wishes (the bequest) to be given to their offspring. **19.** And (the constitution lays down) when the blood-line or legion is eligible up to the third generation to claim the bequest. **20.** (The same holds) also if he leaves a legacy to his freed-persons, whether or not he adds "also to their offspring." **21.** The constitution lays down) concerning the situation in which, in all of these cases, what happens regarding "the offspring" if one of them dies. **22.** And (it lays down what happens) if he determines what each one ought to take, or not, but he leaves one amount to all together, ordering the bequest to be given in perpetuity. **23.** And (it lays down what happens) if he does not add that the bequest is to be given in perpetuity.

24. And (it lays down) that a freed-person of a freed-person shall never be eligible for such a legacy, unless the testator specially ordered this.

25. And if he orders a specific amount to be distributed to each of the citizens, (it lays down) what happens and how it is counted out.

26.[309] And (it lays down what happens) concerning claims made about property left in perpetuity to churches, guest-houses for pilgrims, poor-houses, religious institutions, the whole of a clerical order, for the ransoming of captives, or to the poor or captives themselves.

27. And (the constitution lays down) concerning the situation in which someone declares that his heir shall be the first person to become Consul after his death, the first to come to his tomb, the first who gives his daughter in marriage to the testator's son, the first who becomes the testator's son-in-law, or something else similar to these, that such an appointment of an heir shall be

[308] §§15 and 16 are found in Nomoc. 2.1.
[309] See Nomoc. 2.1.

κύριον ὄνομα τοῦ κληρονόμου. ἀλλ' οὐδὲ ληγάτον τοιούτοις προσώποις καταλιμπανόμενον ἰσχύει.

28. Καὶ ὅτι ἐπίτροπος ἀφανέσιν οὐ δύναται δοθῆναι.

29. Καὶ ὅτι τὸ τοῖς πτωχοῖς καταλιμπανόμενον μὴ νομιζέσθω ἄδηλον.

XXXXVIIII Ad Senatus Consultum Trebellianum

[1] *Impp. Severus et Antoninus AA. Probo.* Si ex senatus consulto partem quartam hereditatis retinuisti et dodrantem fideicommissi restituisti, quod creditoribus hereditariis pro novem unciis praestiteris, a fideicommissario petere potes.

PP. xv k. April. Laterano et Rufino conss.

[2] *Imp. Philippus A. et Philippus C. Iuliano.* Ad eum, cui ex Trebelliano senatus consulto pars hereditatis restituitur, successionis onera seu legatorum praestationem pro competenti portione spectare indubitati iuris est.

PP. XVIII k. Nov. Peregrino et Aemiliano conss.

[3] *Imppp. Carus Carinus et Numerianus AAA. Zotico.* Si per fideicommissum hereditas rei publicae relicta est, ex Trebelliano senatus consulto, quod ab intestato quoque locum habet, quartae partis et fructus eius vobis restitutio competit.

Sine die et consule.

[4] *Impp. Diocletianus et Maximianus AA. et CC. Quintiano.* Non iustam te gerere sollicitudinem per fideicommissum relictae portionis hereditatis perspicimus verentem, ne fructum amittas relicti fideicommissi, quoniam avia testatoris ex parte scripta heres et tibi rogata restituere calliditate ac fraude repudiavit, ut ad alium nepotem eundemque coheredem devolvatur portio, a quo tibi nominatim non fuerat fideicommissum relictum, et coacta suspectam hereditatem adire, priusquam pro herede gereret, rebus sit humanis exempta: cum

invalid in every way because the actual name of the heir is not given. But not even a legacy left to such persons shall be valid.

28.[310] And (the constitution lays down) that a *tutor* cannot be given to uncertain persons.

29. And (the constitution lays down) that what is left to the poor shall not be deemed uncertain (i.e., as left to uncertain persons).

(528–529).

Forty-Ninth Title The *Senatus Consultum Trebellianum*[311]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Probus.* If you kept a fourth part of the inheritance in accordance with the decree of the Senate and turned over three-quarters as a trust, you can claim from the trust-beneficiary what you paid to the creditors of the estate that was due on that three-fourths.

Posted March 18, in the consulship of Lateranus and Rufinus (197).

[2] *Emperor* PHILIP *Augustus and* PHILIP *Caesar to Julian.* It is undoubted law (*indubitatum ius*) that payment of the debts and legacies associated with an inheritance is the responsibility, in line with the appropriate share, of the person to whom a part of this is turned over, pursuant to the *SC Trebellianum.*

Posted October 15,[312] *in the consulship of Peregrinus and Aemilianus (244).*

[3] *Emperors* CARUS, CARINUS, *and* NUMERIAN *Augusti to Zoticus.* If an inheritance has been left to a town in the form of a trust, you have a claim that a one-quarter share, as well as the income (*fructus*) deriving from it, be turned over to you pursuant to the *SC Trebellianum*, which applies even on intestacy.

Without day and year.

[4][313] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Quintianus.* We discern that you are needlessly concerned over the portion of an inheritance left to you as a trust, since you are worried that you will lose the benefit (*fructus*) from the trust bequeathed to you, because the grandmother of the testator, having been named part-heir and having been requested to turn over (the trust) to you, craftily and fraudulently rejected (her portion) so that it would pass to another grandson, her co-heir, who had not been specifically ordered to pay the trust to you: and when compelled to enter upon

[310] See Inst. 2.2.0.27.

[311] See D. 36.1. The *SC Trebellianum*, passed in 56 CE, regulated trusts requiring an heir to turn over an estate to a third party.

[312] The precise day is uncertain: the alternative is October 20.

[313] Combine with C. 6.26.6.

divo Antonino parenti nostro deberi etiam a substitutis fideicommissum contemplatione iudicii testatoris quasi tacite ab his repetitum iam dudum placuerit. neque enim quartae retentionem, quam illa quae repudiaverit hereditatem, adire coacta suspectam retinere non potuit, timere debes.

S. VI id. Iul. Philippopoli AA. conss.

[5] *Idem AA. et CC. Verissimo.* **pr.** Et sine scriptura per fideicommissum hereditas recte relinquitur. **1.** Igitur si te uxor tua et privignum suum in discrimine mortis constituta designavit velle successionem obtinere, usque ad dodrantem eius voluntatem ratam servari convenit, cum intestato ei succedentes de restituendo fideicommisso conventos ultra quartam (aere alieno deducto), quam penes eos sententia senatus consulti relinqui praecepit, tantum obtinere posse praestiterit.

S. V k. Mai. Sirmi CC. conss.

[6] *Imp. Zeno A. Dioscuro pp.* **pr.** Iubemus, quotiens pater vel mater, filio seu filiis, filia seu filiabus ex aequis partibus vel inaequis heredibus institutis, invicem seu simpliciter quosdam ex his aut quendam rogaverit, qui prior sine liberis decesserit, portionem hereditatis suae superstiti seu superstitibus restituere, ut modis omnibus retenta quarta pro auctoritate Trebelliani senatus consulti, non per imputationem redituum, licet hoc testator rogaverit vel iusserit, sed in ipsis rebus hereditariis, dodrans restituatur. **1.** Idemque in retinenda legis Falcidiae portione obtinere iubemus, et si pater vel mater filio seu filia institutis (sicut supra dictum est) heredibus rogaverit eos easve nepotibus vel neptibus, pronepotibus vel proneptibus suis ac deinceps restituere hereditatem.

1a. In supra dictis autem casibus fideicommissorum servandorum satisdationem cessare iubemus, si non specialiter eandem satisdationem testator exigi disposuerit et cum pater vel mater secundis existimant nuptiis non abstinendum: in his etenim duobus casibus, id est

the inheritance (she claimed was) suspect (of insolvency), but before she took action as heir, she died. (Your concerns are groundless) because Our predecessor (*parens*) the deified Antoninus (Septimius Severus) long ago decided that a trust was owed even by substitute heirs because out of regard for the wishes of the testator it was claimed from them as if implicitly ordered.[314] Nor ought you to be concerned over the retention of the one-fourth share, which she who had rejected the inheritance, once compelled to enter upon it could not retain, since (she claimed it was) suspect.

Written July 10, at Philippopolis, in the consulship of the Augusti (293).

[5] *The same Augusti and Caesars to Verissimus.* **pr.** Even without a written document an inheritance is validly bequeathed in the form of a trust. **1.** Therefore if your wife indicated at the time of her death that she wanted you and her stepson to receive the inheritance, it is a settled principle that her wishes shall be confirmed and respected up to the limit of three-quarters, since she brought it about that her intestate successors, responsible for turning over the trust beyond the one-quarter, after deduction of debts, that the rule of the senatorial decree instructs shall be left to them, could only retain so much.

Written April 27, at Sirmium, in the consulship of the Caesars (294).

[6] *Emperor* Zeno *Augustus to Dioscurus, Praetorian Prefect.* **pr.** We ordain that, whenever a father or mother has appointed a son or sons, a daughter or daughters heirs for equal or unequal shares and asks certain ones or one among them in turn or unconditionally, should they predecease the others without children of their own, to turn over his or her share of the inheritance to the surviving sibling(s), the one-quarter shall be in every way held back in accordance with authoritative the rule of the *SC Trebellianum* without the accrual of income, even if the testator asked or ordered this, but regarding the very property of the inheritance three-quarters shall be turned over. **1.** We order the same to hold in keeping back the portion (i.e., one-fourth) of the lex Falcidia, also if the father or mother has appointed a son or daughter as heir (just as is said above) and asks them to turn over the inheritance to their grandsons or granddaughters, great-grandsons or great-granddaughters, and so on.

1a. In the above-mentioned situations however We order that no security (*satisdatio*) need be given for the purpose of preserving the trusts,[315] unless the testator has specifically instructed that said security be demanded and when the father or mother believes that they should not refrain from a new marriage.

[314] This law, actually a rescript of Severus and Caracalla, does not survive, but is cited at Ulp. D. 30.74.

[315] Blume: "Security was ordinarily required in such cases to insure the fulfillment of the trust, unless the testator directed the contrary."

cum testator specialiter satisdari voluerit vel cum secundis se pater vel mater matrimoniis iunxerint, necesse est, ut eadem satisdatio pro legum ordine praebeatur.

2. Sin autem is, qui fideicommissaria restitutione gravatus est, uno filio superstite vel nepote ex filio seu ex filia nato vel pronepote vel postumo relicto decesserit, non videtur extitisse condicio et ideo deficit fideicommissi petitio.

3. Illud etiam admonemus ea, quae de Falcidiae portione non per reditus, sed per ipsas res hereditarias retinenda et de satisdatione fideicommissorum (sicut supra dictum est) concedenda diximus, non ulterius quam in his personis et casibus, quorum superius mentio facta est, oportere produci.

PP. k. Sept. Constantinopoli Eusebio cons.

[7] *Imp. Iustinianus A. Iohanni pp.* **pr.** Sancimus licentiam esse etiam soli tutori recte fieri fideicommissi nomine universitatis restitutionem, quod pupillo relictum est, et sine onere fideiussionis, ubi tamen pupillus fari non possit vel abesse noscitur, ne, dum nimia subtilitate circa res utimur pupillares, ipsa subtilitas ad perniciem eorum revertatur.

1. Idemque iuris esse oportet, et si furioso fideicommissaria debeatur hereditas, ut restitutio curatori eius soli, nomine scilicet furiosi, celebretur. quis enim sensus, quae vox certa furioso esse intellegitur, cum in utroque casu restituentes plenissimam consequantur ex nostra lege securitatem? **1a.** Hoc eodem observando, et si ipsi pupilli vel furiosi restitutione gravati sunt.

1b. Cum autem aliquis hereditatem restituere iussus est et dolo malo vel post litem contestatam vel antea sese contumaciter celaverit, vel si suppositus fideicommissariae restitutioni, antequam restitueret hereditatem, ab hac luce subtractus est nullo herede vel successore existente, vel si fideicommissarius, cui restituta est ex Trebelliano hereditas, alii per fideicommissum restituere iussus fuerit res hereditarias: quemadmodum actionum translatio celebretur in tribus istis casibus, apud veteres dubitabatur: et Domitius Ulpianus constituendum esse super his putavit. **1c.** Sancimus itaque, ut, sive per contumaciam afuerit is, cui restitutio imposita est, sive morte praeventus nullo relicto successore

For in these two situations, that is, when the testator specifically wishes security be given or when the father or mother enters a subsequent marriage, it is necessary that this security be given in accordance with statutory rules.

2. But if, however, he who has become burdened with the responsibility of turning over the trust dies leaving behind a surviving child, grandchild through a son or a daughter, a great-grandchild, or a posthumous child, the condition is deemed to remain unfulfilled and so the claim on the trust fails.

3. We also make the point that what We have said as to the need to retain for the Falcidian portion not the income but only the property of the inheritance itself, and the need to disallow the giving of security for trusts (as is said above), ought not to be applied any further than in regard to those persons and situations of which mention is made above.

Posted September 1, at Constantinople, in the consulship of Eusebius (489).

[7] *Emperor Justinian Augustus to John, Praetorian Prefect.* **pr.** We ordain that it shall be permitted lawfully to turn over even to a *tutor* alone an entire inheritance left in the form of a trust, which has been bequeathed to a minor ward, even without the burden of a surety (*fideiussio*), provided nevertheless the ward is not (yet) capable of speech or is known to be abroad. The point is that, while we make too much use of complex rules regarding the property of minor wards, this very complexity not redound to their detriment.

1. And the same rule ought to hold even if the inheritance in the form of a trust is left to a lunatic (*furiosus*), that it be turned over to his *curator* alone, obviously in the name of the lunatic. For what form of comprehension, what sure sense is to be ascribed to a lunatic, when in both situations those making the transfer enjoy a very full protection under Our law? **1a.** This same rule shall be observed, even if the minor wards or lunatics have themselves been burdened with the (obligation to make the) transfer.

1b. When, moreover, anyone who has been ordered to turn over an inheritance either after or before joinder of issue obstinately, or through deceit (*dolus malus*), conceals himself, if he who was obligated to turn over the trust, before he transferred the inheritance, has died, leaving no heir or successor on intestacy, or if the trust-beneficiary to whom the inheritance has been turned over pursuant to the *SC Trebellianum* has himself been ordered to turn over to another person as a trust the property in the inheritance, in what way the transfer of actions would take place in these three situations was the object of discussion among the ancients (*veteres*). And Domitius Ulpianus thought that imperial legislation was required on these subjects. **1c.** So We lay down that whether the person under an obligation to make the transfer is absent through

fuerit, sive a primo fideicommissario in secundum translatio celebrari iussa est, ipso iure utiles actiones transferantur.

D. x k. Nov. Constantinopoli Lampadio et Oreste vv. cc. conss.

[8] *Idem A. Iohanni pp.* **pr.** Quidam testamento condito iussit heredem omnem hereditatem quam ei dereliquit alii restituere, speciale autem fideicommissum alteri adscripsit. et quaerebatur, specialis fideicommissarius id quod ei derelictum est a quo consequi debeat, utrumne ab herede, ut post retentionem eius alias res universitatis fideicommissarius accipiat, an una cum aliis rebus oporteat et hoc generali fideicommissario adgregari, ut ipse speciali fideicommissario hoc tradat, sive in rebus sive in pecuniis sit fideicommissum. **1.** Sancimus itaque totam quidem substantiam secundum senatus consulti Trebelliani auctoritatem restitui generali fideicommissario, illum autem speciali fideicommissario id quod ei derelictum est dependere.

D. xv k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc. anno secundo.

L Ad Legem Falcidiam

[1] *Impp. Severus et Antoninus AA. Prisco.* Scire debes omissa Falcidia, quo pleniorem fidem portionis restituendae exhiberes, non videri plus debito solutum esse.

obstinacy, has died with no successor surviving, or a transfer has been ordered to take place from one trust-beneficiary to another, by the very operation of law analogous actions (*utiles actiones*) shall be transferred.[316]

Given October 23, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*[317]

[8] *Emperor* JUSTINIAN *Augustus to John, Praetorian Prefect.* **pr.** A certain person made a will and ordered that his heir turn over to another the entire inheritance that he had left to him, but added a particular provision for a trust for yet another person. And it used to be asked from whom the beneficiary of the particular trust ought to receive that which had been bequeathed to him, whether from the heir, so that after its deduction the beneficiary of the general trust receive the other property, or, no matter if the particular trust should consist of property or of cash, this too ought to be bundled together with that other property for the beneficiary of the general trust, so that he himself hand it over to the beneficiary of the particular trust. **1.** So We ordain that the entire estate, in fact, in accordance with the authoritative rule of the *SC Trebellianum*, shall be turned over to the beneficiary of the general trust, but that he shall pay out to the beneficiary of the particular trust that which has been bequeathed to the latter.

Given October 18, at Constantinople, in the second post-consulate of the viri clarissimi *Lampadius and Orestes (532).*

Fiftieth Title On the Lex Falcidia[318]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Priscus.* You ought to know that, having omitted (your claim to) the (one-fourth share provided by the lex) Falcidia, to the extent that you display a fuller faith in restoring the portion

[316] Blume: "A trust might at times be detrimental rather than beneficial for the cestui que trust [i.e., the beneficiary], because of the debts that might be against it. It was therefore doubted whether the guardian of a child unable to speak or absent, or a curator for an insane person, was able to accept the trust for such child or insane person. The doubt was resolved in favor of the proposition, for the reason, as Justinian says, not to give such power would often be detrimental to the ward. The parties required to deliver such trust were accordingly authorized in such cases to turn it over to the guardian or curator, and were, upon such delivery, lawfully released from their obligation."

[317] The date is uncertain: possibly October 18, 531 (or 532). Lounghis *et al.* give October 18, 531.

[318] See D. 35.2; Inst. 2.22. The lex Falcidia, enacted in 40 BCE, required that the heirs receive at least one-fourth of the estate of the testator, or that each individual heir receive one-fourth of his or her share. If more was bequeathed in legacies and trusts, such bequests were reduced proportionally so that the heirs would still receive the quarter share of the estate.

PP. III id. Mai. Laterano et Rufino conss.

[2] *Idem AA. Sanctiano.* Falcidiae rationem adversus omnes pro modo legatorum et fideicommissorum locum habere certi et explorati iuris est.

PP. k. Iul. Laterano et Rufino conss.

[3] *Imp. Alexander A. Hermagorae.* Etiamsi tacitum fideicommissum heredem administrasse apparuerit, legata tamen seu fideicommissa, quae testamento relicta sunt, praestanda esse ambigi non oportet, ad eum videlicet modum, quem lex Falcidia patitur, cum quartam, quae aufertur heredi, qui contra legem fidem suam obtulit, legatariis proficere non placuit.

PP. id. Oct. Alexandro A. cons.

[4] *Idem A. Philetiano.* Et in legatis principi datis legem Falcidiam locum habere merito divo Hadriano placuit.

PP. V k. Ian. Alexandro A. cons.

[5] *Idem A. Samosatae.* Si mortis causa immodicas donationes in sororem tuam matrem contulisse probare potes, legis Falcidiae ratione secundum constitutionem divi Severi avi mei uti potes.

PP. XV k. Nov. Maximo II et Aeliano conss.

[6] *Idem A. Secundinae.* In ponenda ratione legis Falcidiae omne aes alienum deducitur, etiam quod ipsi heredi mortis tempore debitum fuerit, quamvis aditione hereditatis confusae sint actiones. **1.** Omnia autem legata, quamvis in operibus publicis conficiendis statuisque ponendis data sint, ad contributionem dodrantis pro rata suae cuiusque quantitatis revocantur. **2.** Nec si quid ultro solidum heres praestiterit aut perfecerit, legitimae computationi praeiudicatur.

(bequeathed as legacies), no more than what was owed is deemed to have been paid.[319]

Posted March 13, in the consulship of Lateranus and Rufinus (197).

[2] *The same Augusti to Sanctianus.* It is certain and established law that the Falcidian portion applies against everyone in proportion to their legacies and trusts (*fideicommissa*).

Posted July 1, in the consulship of Lateranus and Rufinus (197).

[3] *Emperor* ALEXANDER *Augustus to Hermagoras.* Even if it appears that the heir has paid out a tacit trust,[320] still it must not be doubted that the legacies or trusts that have been left in the will must be provided, but up to the amount that the lex Falcidia allows, since it has been decided that the fourth share, which is taken away from the heir who offered his faith in violation of the law, does not benefit the legatees.[321]

Posted October 15, in the consulship of Alexander Augustus (222).

[4] *The same Augustus to Philetianus.* It has been rightly decided by the deified Hadrian that the lex Falcidia applies even for legacies given to the Emperor.

Posted December 28, in the consulship of Alexander Augustus (222).

[5] *The same Augustus to Samosata.* If you can prove that your mother provided your sister excessive gifts in contemplation of her death, you can use the rule of the lex Falcidia in accordance with a constitution of the deified Severus, my grandfather.

Posted October 18, in the consulship of Maximus, for the second time, and Aelianus (223).

[6] *The same Augustus to Secundina.* **pr.** In applying the rule of the lex Falcidia, all debt is deducted, even what is owed to the heir himself at the time of death, although the rights of action when the inheritance is entered are merged. **1.** All legacies, however, although they may have been given for building public works or erecting statues, are recalled for the three-fourths limit in proportion to each one's amount. **2.** Nor is the lawful computation prejudiced if the heir has offered or performed anything completely of his own accord.

[319] As Blume points out, the heir has followed the instructions of the will and paid legacies in excess of three-fourths of the estate, or of his or her share of the estate. This payment cannot be called back. The mechanism for reducing the legacies came when the heir was sued for the legacies: the heir could oppose a defense, the *exceptio legis Falcidiae.*

[320] A tacit trust was an agreement between the testator and the heir to provide a legacy to a person not capable of receiving it; such a trust was legally void.

[321] In some circumstances, as Blume points out, the portion taken from the heir was confiscated by the Treasury.

S. v k. Ian. Maximo II et Aeliano conss.

[7] *Idem A. Pomponio.* In testamento quidem militis ius legis Falcidiae cessat. sed ea, quae ad vos pertinentia defunctus tenuit, bonorum eius videri minime possunt et ideo recte rationem eorum ut aeris alieni haberi desiderabitis.

PP. k. Mai. Alexandro II et Marcello conss.

[8] *Idem A. Aurelio.* pr. Irritum quidem propterea testamentum fratris tui esse non potest, quod ex causa fideicommissi obligatus fuit, ut, si sine liberis prior decederet, paternam tibi hereditatem redderet. 1. Sed licet te heredem scripserit, in ponenda tamen legatorum ratione, quibus te oneratum esse suggeris, fideicommissum debitum aeris alieni loco deduci oportet insuperque in residuo legis Falcidiae beneficium vindicabis.

PP. id. Sept. Maximo II et Paterno conss.

[9] *Imp. Gordianus A. Mestriano.* Error facti quartae ex causa fideicommissi non retentae repetitionem non impedit. is autem, qui sciens se posse retinere universum restituit, condictionem non habet: quin etiam, si ius ignoraverit, cessat repetitio.

PP. XV k. Nov. Pio et Pontiano conss.

[10] *Idem A. Diogenio.* Quamquam pater tuus fratrem tuum rogaverit, ut, si sine liberis diem suum fungeretur, portionem hereditatis tibi restitueret, tamen intestato eodem diem suum functo id, quod beneficio legis Falcidiae habere potuit, ad successorem intestati pertinere ideoque non immerito sororem tuam, quae simul tecum ab intestato ei successit, emolumenti quod retineri potuit portionem sibi vindicare manifestum est.

PP. V id. Nov. Gordiano A. II et Pompeiano conss.

[11] *Idem A. Maximae.* Si, ut adlegas, pater tuus eam portionem, ex qua te fecit heredem, fratribus tuis restituere iussit certisque speciebus pro Falcidia praecepit esse contentam, auxilium legis Falcidiae, quod imploras, apud suum iudicem non prohiberis flagitare.

PP. VII k. Nov. Arriano et Papo conss.

Written December 28, in the consulship of Maximus, for the second time, and Aelianus (223).

[7] *The same Augustus to Pomponius.* In a soldier's will the principle of the lex Falcidia is inapplicable. But those things belonging to you (plural) that the decedent held cannot be seen as his part of his estate, and for that reason you will correctly desire that they be reckoned as a debt.

Posted May 1, in the consulship of Alexander, for the second time, and Marcellus (226).

[8] *The same Augustus to Aurelius.* **pr.** Your brother's will cannot be invalid for the reason that he was obligated on the basis of a trust to restore his inheritance from his father to you if he died first without children. **1.** But although he named you as heir, in the calculation of the legacies with which you state that you have been burdened, a trust that he owed must be deducted as a debt, and in addition you will claim the benefit of the lex Falcidia for the rest.

Posted September 13, in the consulship of Maximus, for the second time, and Paternus (233).

[9] *Emperor Gordian Augustus to Mestrianus.* An error of fact does not impede seeking back the fourth not retained on the basis of a trust. However, a person who turned over the whole property although knowing he could retain it does not have a claim for restitution. Indeed, if he did not know the law, his (right to) reclaim is not applicable.

Posted October 18, in the consulship of Pius and Pontianus (238).

[10] *The same Augustus to Diogenius.* Although your father asked your brother to restore his share of the inheritance to you if he should finish his days without children, nevertheless, when the same person died intestate, it is manifest that what he could have had by the benefit of the lex Falcidia goes to his successor on intestacy, and that for that reason your sister, who along with you has succeeded him on intestacy, does not wrongly claim for herself the portion of the gain that could have been retained.

Posted November 9, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

[11] *The same Augustus to Maxima.* If, as you allege, your father ordered you to turn over to your brothers the share of which he made you heir and instructed that you be content with certain items (*species*) as the Falcidian share, you are not prohibited from demanding before their (*suum*) judge the aid that you implore from the lex Falcidia.

Posted October 26, in the consulship of Arrianus and Papus (243).

[12] *Impp. Diocletianus et Maximianus AA. Iustino.* In donationibus inter virum et uxorem factis legem Falcidiam habere locum, quando fideicommissi partibus funguntur, nonnullis iuris placitis comprehensum est.

PP. XVI k. Iul. ipsis AA. IIII et III conss.

[13] *Idem AA. et CC. Zetho.* **pr.** Si ea, cuius filium tuum servum significas, ex iudicio defuncti, quem dicis fideicommissariam libertatem ei reliquisse, aliquid consecuta est, ad restituendam fideicommissariam libertatem non immerito obnoxia constituta debet urgueri. **1.** Nam fideicommissum ei relictum usque ad eum modum potest petere, quod deducto pretio servorum, quos fuerat rogata manumittere, relictorum substantia patitur.

S. V k. Mai. Heracliae AA. conss.

[14] *Idem AA. et CC. Faustinae.* Licet adieris patris hereditatem et confusione pro parte qua eidem successeris extinguatur actio, quam tibi competere eo, quod ex administratione tutelae multa eum debuisse contendis, pro residuis tamen partibus coheredes convenire non prohiberis et fundum a te relictum eatenus, quod deducta quarta residui substantia patitur, praestare necesse habes.

D. VI k. Oct. Viminacii AA. conss.

[15] *Idem AA. et CC. Pomponio.* Si praediorum dotis apud te iure remanentis instrumenta verbis precariis vel testamento vel codicillis uxor tibi dari mandavit, eius iudicium successores implere compellentur, cum instrumentis praediorum domino relictis Falcidiae nulla potest intervenire quaestio.

Supposita XVI k. Febr. Sirmi CC. conss.

[16] *Idem AA. et CC. Diomedi.* Successores legata vel fideicommissa, si aes alienum hereditarium defuncti substantiae fines occupaverit, Falcidiae legis iussio peti, item Trebelliani senatus consulti praeceptum exigi non concedit.

[12] *Emperors* Diocletian *and* Maximian *to Justin.* It has been understood in several legal decisions that the lex Falcidia applies in gifts made between a husband and wife, when they fulfill the function of a trust.

Posted June 16, in the consulship of the Augusti themselves, for the fourth time and for the third time, respectively (290).

[13] *The same Augusti and the Caesars to Zethus.* **pr.** If that woman, of whom you indicate your son is a slave, has gained something as a result of the judgment of the deceased, who you say left him liberty in a trust (*fideicomissaria libertas*), not incorrectly should she, having been established as liable to do this, be urged to provide the liberty requested in the trust. **1.** For he can seek the trust left to her to the extent that the value of the remaining property allows it after deducting the price for the slaves whom she was asked to manumit (consistent with the lex Falcidia).

Written May 11, at Heraclea, in the consulship of the Augusti (293).

[14] *The same Augusti and Caesars to Faustina.* Although you have entered upon your share of your father's inheritance and the right of action, which you contend is available to you for the reason that he owed you a great deal as the result of his administration of your tutorship, is extinguished as a result of its merging with the share for which you have succeeded that person, even so you are not prohibited from suing the co-heirs for the remaining shares, and you are required to turn over the farm you were charged to provide to the extent that the value of the remaining inheritance allows after deducting the (Falcidian) fourth part.

Given September 27,[322] *at Viminacium, in the consulship of the Augusti (293).*

[15] *The same Augusti and Caesars to Pomponius.* If your wife ordered the documents of estates belonging to a dowry lawfully remaining with you to be given to you by a trust directive (*precariis verbis*), or in a will or codicil, her successors will be compelled to implement her decision, since no question of the lex Falcidia can intervene when the documents of estates have been left to their owner.

Submitted[323] *January 17, at Sirmium, in the consulship of the Caesars (294).*

[16] *The same Augusti and Caesars to Diomedes.* An order based on the lex Falcidia does not allow heirs to be petitioned for legacies or trusts, if debt has occupied the limits of the deceased's property, nor does the precept of the SC *Trebellianum*[324] allow them to be exacted.

[322] Mommsen emends the date to August 27, 293. Connolly suggests 294 instead.

[323] In this and other texts, Krüger replaces *supposita* in the manuscripts with *scripta*, "written."

[324] The *SC Trebellianum* of 56 CE applied the same rules as applied under the civil law to enforce obligations connected with inheritances received through trusts.

S. XVI *k. Febr. Sirmi CC. conss.*

[17] *Idem AA. et CC. Gaio.* A coheredibus relicta legata, quatenus modus lege Falcidia praestitutus patitur, posse petere certissimi iuris est.
Supposita v k. Nov. Anchiali CC. conss.

[18] *Imp. Iustinianus A. Iohanni pp.* **pr.** Si quis quadringentorum forte solidorum habens substantiam iusserit heredem non aliter adire hereditatem, nisi prius trecentos octuaginta solidos cuidam persolvat vel aliam quantitatem, quae diminuere Falcidiae rationem potest, sancimus heredem, si adierit, legis Falcidiae beneficio sustentatum repleri quidem quod ad Falcidiam deest, et prius eo dato vel retento (sive una datio est, quae celebrari disposita fuerit, sive in multas dividitur personas) praefatae legis immutilatum habere beneficium. **1.** Si enim, cum mortis causa donatio procedat et haec modum legis Falcidiae excedat, heres post aditionem repetit eam pecuniam, quae ultra modum Falcidiae corporaliter quidem data est, lege autem in patrimonio testatoris permansit, quare non in praesenti casu et viventibus et morientibus providemus, et eorum ultima elogia conservantes et commodum hereditarium non minuentes?
D. k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[19] *Idem A. Iohanni pp.* Cum certum sit heredem, qui plenam fidem testatori exhibet, in solidum legata dependentem non posse postea rationem legis praetendentem Falcidiae repetitione uti, quia videtur voluntatem testatoris sequi, iubemus hoc simili modo firmum haberi, et si cautionem super integra legatorum solutione fecerit: quod veteribus legibus in ambiguitatem deductum est. in utroque etenim casu, id est sive solverit sive super hoc cautionem fecerit, aequitatis ratio similia suadere videtur.
D. XV *k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc. anno secundo.*

Submitted January 17, at Sirmium, in the consulship of the Caesars (294).

[17] *The same Augusti and Caesars to Gaius.* It is most certainly the law that one can seek legacies left to be paid by co-heirs to the extent that the limit established by the lex Falcidia allows.

Submitted October 28, at Anchialus, in the consulship of the Caesars (294).

[18] *Emperor Justinian Augustus to John, Praetorian Prefect.* **pr.** If anyone having property of say 400 solidi orders that the heir enter the inheritance only if he previously pays 380 solidi to some person, or another amount that can reduce the calculation of the Falcidian share, We ordain that the heir, if he enters upon the inheritance, being sustained by the benefit of the lex Falcidia, be recompensed as to what is missing for the Falcidian share, and, when this amount has been first given or retained – whether it is one transfer that has been ordered to be performed, or whether it is divided among many persons – he have the benefit of the aforementioned law undiminished. **1.** For if, when a gift in anticipation of death should proceed and this exceed the limit of the lex Falcidia, the heir, after entering upon the inheritance, seeks the money back that has been physically given in excess of the limit of the lex Falcidia but has by law remained in the testator's patrimony, why do We not in the present case provide for both the living and the dead, both preserving the latter group's last pronouncements and not diminishing the advantage of the inheritance?

Given November 1, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[19] *The same Augustus to John, Praetorian Prefect.* Because it is certain that the heir who exhibits complete faithfulness to the testator by paying out the legacies in their entirety is not afterwards able to use the right in the lex Falcidia to seek them back by asserting the principle of the law, since he is seen as following the will of the testator, We order that this be considered firm in a similar manner if he has provided a written promise (*cautio*) for the entire payment of the legacies; in the old laws this has been ambiguous. For in each case, that is, whether he pays or provides a promise for this, a consideration of fairness seems to persuade similar solutions.

Given November 1, at Constantinople, in the second post-consulate of the viri clarissimi *Lampadius and Orestes (532).*

LI De Caducis Tollendis

[1] *Imp. Iustinianus A. senatui urbis Constantinopolitanae et urbis Romae.* **pr.** Et nomen et materiam caducorum ex bellis ortam et auctam civilibus, quae in se populus Romanus movebat, necessarium duximus, patres conscripti, in pacificis nostri imperii temporibus ab orbe Romano recludere, ut, quod belli calamitas introduxit, hoc pacis lenitas sopiret. **1.** Et quemadmodum in multis capitulis lex Papia ab anterioribus principibus emendata fuit et per desuetudinem abolita, ita et a nobis circa caducorum observationem invidiosum suum amittat vigorem, qui et ipsis prudentissimis viris displicuit, multas invenientibus vias, per quas caducum ne fieret. **1a.** Sed et ipsis testamentorum conditoribus sic gravissima caducorum observatio visa est, ut et substitutiones introducerent, ne fiant caduca et, si facta sint, apud certas personas recurrere disponerent, vias recludentes, quas lex Papia posuit in caducis: quod et nos fieri concedimus. **1b.** Et cum lex Papia ius antiquum, quod ante eam in omnibus simpliciter versabatur, suis machinationibus et angustiis circumcludens solis parentibus et liberis testatoris usque ad tertium gradum, si scripti fuerant heredes, suum imponere iugum erubuit ius antiquum intactum eis conservans, nos omnibus nostris subiectis sine differentia personarum concedimus. **1c.** Cum igitur materiam et exordium caducorum lex Papia ab aditionibus, quae circa defunctorum hereditates procedebant, sumpsit et ideo non a morte testatoris, sed ab apertura tabularum dies cedere legatorum senatus consulta, quae circa legem Papiam introducta sunt, concesserunt, ut, quod in medio deficiat, hoc caducum fiat, primum hoc corrigentes et antiquum statum renovantes sancimus omnes habere licentiam a morte testatoris adire hereditates similique modo legatorum vel fideicommissorum pure vel in diem relictorum diem a morte testatoris cedere.

2. Et cum triplici modo ea, quae in ultimis elogiis relinquuntur, contingebat deficere, consentaneum est et tempora eorum et nomina

Fifty-First Title Abolishing Escheated Property[325]

[1] *Emperor* JUSTINIAN *Augustus to the Senate of the City of Constantinople and of the City of Rome.* **pr.** We have considered it necessary, Conscript Fathers, to close off from the Roman world, in the peaceful times of Our empire, both the name and the substance of escheated property, which has arisen and been increased as a result of the civil wars that the Roman people waged against itself, so that the gentleness of peace might assuage what the calamity of war has introduced. **1.** And just as the lex Papia[326] was amended in many chapters by previous emperors and abolished from desuetude, in the same way, in connection with the procedure for escheated property (*caduca*) it should, as a result of Our efforts, lose its invidious vigor, which was not approved of by even the wisest men themselves, who found many ways to avoid property becoming (or being classified as) escheated. **1a.** But even to the very writers of wills the procedure for escheated property has been seen to be so profoundly severe that they both include substitutions (for heirs), so that property not become escheated, and, if it has became so, make dispositions for it to return to certain persons, closing off the paths that the lex Papia established in the case of escheated property, which We also allow to happen. **1b.** And since the lex Papia, though hemming in with its technicalities (*machinationes*) and restrictions the ancient law, which before it functioned simply in all matters, blushed to impose its yoke only regarding the ascendants and descendants of the testator up to the third degree, if they had been named as heirs, preserving the ancient law intact for them, We concede it (i.e., the ancient law) to all Our subjects without distinguishing among persons. **1c.** Therefore since the lex Papia took its material and beginning of escheated property from the entering that proceeded in connection with the inheritances of the deceased, and, for that reason, the decrees of the Senate, which were introduced concerning the lex Papia, allowed (the time for) legacies to become due (to be calculated) not from the death of the testator, but from the opening of the will, so that, what might be flawed in the meantime might become escheated, first to correct this and to renew the ancient legal regime We ordain that everyone have permission to enter inheritances from (the time of) the death of the testator, and in a similar fashion that legacies or trusts left unconditionally (*pure*) or for a definite date (*in diem*) become due from the death of the testator.

2. And since it happened that what is left in final dispositions failed in three ways, it is proper (*consentaneum*) to make manifest their times and names, so

[325] This law concerns the status of property bequeathed to people who either were no longer alive at the time of the opening of the will or were not legally entitled to receive it, such as unmarried men and women, who, under the lex Papia Poppaea of 9 CE were prohibited from receiving bequests unless they married within 100 days; see Ulpian, *Tit.* 17.1.

[326] The lex Iulia *de maritandis ordinibus* (18 BCE), later emended by the lex Papia Poppaea, established penalties in inheritance rights for people who did not marry and/or have children.

manifeste exponere, ut, quod vel tollitur vel reformatur, non sit incognitum. **2a.** Ea enim vel his relinquebantur, qui in rerum natura tunc temporis, cum condebantur extrema elogia, non fuerant, forte hoc ignorantibus testatoribus, et ea pro non scripto esse leges existimabant: vel vivo testatore is, qui aliquid ex testamento habuit, post testamentum ab hac luce subtrahebatur, vel ipsum relictum expirabat, forte quadam condicione, sub qua relictum erat, deficiente, quod veteres appellabant in causa caduci: vel mortuo iam testatore hoc quod relictum est deficiebat, quod aperta voce caducum nuncupabatur.

3. In primo itaque ordine, ubi pro non scriptis efficiebantur ea, quae personis iam ante testamentum mortuis testator donasset, statutum fuerat, ut ea omnia maneant apud eos, a quibus fuerant derelicta, nisi vacuatis vel substitutus suppositus vel coniunctus fuerat adgregatus: tunc enim non deficiebant, sed ad illos perveniebant, nullo gravamine nisi perraro in hoc pro non scripto superveniente. **3a.** Quod et nostra maiestas quasi antiquae benevolentiae consentaneum et naturali ratione subnixum intactum atque illibatum praecipit custodiri in omne aevum valiturum.

4. Pro secundo vero ordine, in quo ea vertuntur, quae in causa caduci fieri contingebat, vetus ius corrigentes sancimus ea, quae ita evenerint, simili quidem modo manere apud eos, a quibus sunt derelicta, heredes forte vel legatarios vel alios, qui fideicommisso gravari possunt, nisi et in hunc casum vel substitutus vel coniunctus eos antecedat: sed omnes personas, quibus lucrum per hunc ordinem defertur, eas etiam gravamen quod ab initio fuerat complexum omnimodo sentire, sive in dando sit constitutum sive in quibusdam faciendis vel in modo vel condicionis implendae gratia vel alia quacumque via excogitatum. neque enim ferendus est is, qui lucrum quidem amplectitur, onus autem ei adnexum contemnit.

5. In novissimo autem articulo, ubi proprie caduca fiebant, secundum quod praediximus, et clausis tabulis tam existere heredes quam posse adire, sive ex parte sint sive ex asse instituti, censemus et dies legatorum et fideicommissorum secundum quod praediximus a morte defuncti cedere: hereditatem etenim, nisi fuerit adita, transmitti nec veteres concedebant nec nos patimur, exceptis videlicet liberorum personis, de quibus Theodosiana lex super huiusmodi causis inducta loquitur: his

that what is removed or reformulated not be unknown. **2a.** The laws deemed that those things be treated as not written that were left to those persons who had not been in the nature of things (alive) at that time when the final dispositions were being established, without the testators' perhaps knowing this; or that person, who, when the testator was alive, had something from the will, but after the will (was written), was withdrawn from the light; or the very thing that had been left became invalid, perhaps with some condition failing under which it had been left, which the ancient jurists termed "in the category of escheated property" (*in causa caduci*); or, when the testator was already dead, what was left was invalid (i.e., there were no eligible recipients), which was called escheated in plain terms (*aperta voce*).

3. And so in the first category, when those things were treated as if not written that the testator had given to persons dead before the will (was written), it had been established that all these things remain with those people who had been directed to pay them (*a quibus fuerant derelicta*), unless a substitute had been provided for the persons who were missing (*vacuatis*) or a co-recipient had been joined; for then they were not failing, but were passing to those people, with only a quite rare impediment arising to treat this as not written. **3a.** Our Majesty instructs that this too be maintained intact and uncompromised, as it is consistent with ancient benevolence and supported by natural reason, to remain valid into every age.

4. But for the second category, in which those things are involved that happened to be in the category of escheated property, to correct the old law We ordain that what winds up in this situation remain similarly with those people directed to pay them, whether perhaps heirs, legatees, or others who can be burdened with a trust, unless either a substitute or co-recipient should have precedence over them in this circumstance. But all persons to whom a gain (*lucrum*) is brought through this category should perceive in every way the burden that had been included from the beginning, whether this was constituted in giving, performing some actions, in a duty (*modus*), or devised to fulfill some purpose (*condicio*) or in any other way. Nor is the person to be tolerated who embraces the gain but scorns the burden connected with it.

5. However, in the last case, in which property actually becomes escheated, We decree that while the wills remain closed the heirs can exist and be able to enter the inheritance, whether they have been appointed to part of it or to the entire estate, and that the due date for legacies and trusts proceed from the death of the deceased, in accordance with what We have pronounced. But neither the ancient jurists permitted nor do We allow the inheritance, unless it has been entered, to be transmitted, except clearly in the case of the persons of

nihilo minus, quae super his, qui deliberantes ab hac luce migrant, a nobis constituta sunt, in suo robore mansuris.

6. Libertatibus procul dubio et post praesentem sanctionem propter sui naturam, quae aditionem heredis expectat, ab adita hereditate una cum aliis, quae servis in testamento manumissis vel aliis legatis relicta sunt, competentibus. **6a.** Excepto etiam usu fructu, qui sui natura ad heredes legatarii transmitti non patitur et neque a morte testatoris neque ab adita hereditate, quantum ad transmissionem, dies eius cedit. 6b. Sed haec quidem omnia in his observari sancimus secundum praefatam dispositionem, quae pure vel in diem certum relicta fuerint.

7. Sin autem aliquid sub condicione relinquatur vel casuali vel potestativa vel mixta, quarum eventus ex fortuna vel ex honoratae personae voluntate vel ex utroque pendeat, vel sub incerta die, expectare oportet condicionis eventum, sub qua fuerit derelictum, vel diem, ut tunc cedat, cum vel condicio impleatur vel dies incertus extiterit. quod si in medio is, qui ex testamento lucrum sortitus est, decedat vel eo superstite condicio defecerit, hoc, quod ideo non praevaluit, manere disponimus simili modo apud eos, a quibus relictum est, nisi et hic vel substitutus relictum accipiat vel coniunctus sive heres sive legatarius hoc sibi adquirat, cum certi iuris sit et in institutionibus et legatis et fideicommissis et mortis causa donationibus posse substitui.

8. Sed ut manifestetur, pro qua parte manere oportet hoc, quod fuerit defectum, apud eos, ex quibus sit derelictum, sancimus, si quidem ad heredes lucrum perveniat, pro parte hereditaria fieri eius distributionem, cum et ab ipsis simili modo, si valuisset, praestaretur, nisi nominatim ab uno vel ex certis heredibus fuerat relictum: tunc enim, quemadmodum solus vel soli praestabant, ita et lucrum sentiant. **8a.** Sin autem legatarii vel fideicommissarii sint vel mortis causa donatione honorati vel alia forte persona, quae fideicommisso praegravari potest, et hoc evanescat, manere hoc apud enumeratas personas sancimus pro virili omnimodo portione, id est pro numero personarum.

children, about whom the Theodosian law,[327] which was introduced concerning such cases, speaks. The measures that have been established by Us concerning those persons who migrate from this light while deliberating (whether or not to accept an inheritance), will no less remain in force.

6. Awards of liberty become valid without doubt even after the present ordinance on account of their nature, which awaits entering (of the inheritance) by the heir, together with, from the time of the entering upon the inheritance, the other things that have been left to slaves manumitted in the will or left as legacies to others. **6a.** An exception is made for usufruct, which by its own nature does not allow itself to be transmitted to the heirs of the legatee and becomes due (*dies eius cedit*), as far as its transmittal is concerned, neither from the testator's death nor from the entering into of the inheritance. **6b.** But We ordain that all of these provisions be observed in accordance with the aforesaid disposition in those things that have been bequeathed unconditionally or for a definite time.

7. If, however, something should be left under a condition, either one depending on chance or power (*potestativa*) or a mixture of both, the outcome of which depends on fortune or on the will of the person honored or on both, or to become due on an uncertain day, one must await the outcome of the condition under which the bequest was made or the day, that it might then become due when either the condition should be fulfilled or the uncertain day should emerge. But if in the mean time the person should die who has acquired a gain from the will, or if while he is alive the condition fails, We dispose that what for that reason did not prevail shall remain in a similar manner with those who were charged to pay it, unless indeed this person or the substitute should accept the bequest, or a joint beneficiary (*coniunctus*), whether heir or a legatee, should acquire this for himself, since it is certain law that substitutions can be made in the appointment of heirs, in legacies, in trusts, and in gifts in anticipation of death.

8. But so that it might be made clear in what portion what had failed must remain with those who were charged to pay, We ordain, if indeed gain should accrue to the heirs, its distribution should take place in accordance with shares of the inheritance, since it was to be provided in a similar manner, if it had been valid, by these very people, unless it had been charged specifically to one or to certain heirs; for in that situation, an individual or individuals would feel the gain in the same measure as they used to provide it by themselves. **8a.** But if there are legatees or trustees or people honored by a gift in anticipation of death or perhaps another person who can be burdened by a trust, and this disappears, We ordain that this remain with the enumerated persons completely in accordance with their full portion (*pro virili omnimodo portione*), that is, in accordance with the number of the persons.

[327] C. 6.52.1.

9. Ne autem hoc, quod non ineleganter summi ingenii vir Ulpianus in hac parte cum omni subtilitate disposuit, praetereatur, nostra sanctione hoc apertius inducimus. **9a.** Cum enim iam statuimus haec cum suis oneribus ad eum qui lucretur pervenire, sancimus, si quidem condicio vel aliud gravamen in dando sit constitutum, hoc omnimodo lucrantes pro modo lucri agnoscere. **9b.** Sin autem in faciendo aliquid impositum est, si quidem hoc et per alium impleri possit, simili modo et a lucrante agnosci, puta si honorata persona iubeatur insulam vel monumentum vel aliud tale suis sumptibus facere vel heredi vel legatario vel alii forte, quem testator voluerit, vel rem ab herede testatoris emere vel locationem vel fideiussionem subire, et si quid huiusmodi facti simile sit: nihil etenim refert, sive per eum, de quo testator locutus est, sive per alium eiusdem lucri successorem adimpleatur. **9c.** Sin vero talis est verborum conceptio et facti natura, ut quod relictum est ab alio adimpleri non possit, tunc, etsi lucrum ad aliquem pervenerit, non tamen et gravamen sequi, quia hoc neque ipsa natura concedit neque testator voluerit. quid enim, si iusserit eum in locum certum abire vel liberalibus studiis imbui vel domum suis manibus extruere vel pingere vel uxorem ducere? Quae omnia testatoris voluntas in ipsius solius persona intellegitur conclusisse, cui et suam munificentiam relinquebat. **9d.** In omnibus videlicet hoc obtinente, ut pro simili parte et lucrum sentiant et gravamen, ubi hoc possit procedere, subeant. **9e.** Et hoc locum habere omni quidem modo in his, quae in causa caduci vel caduca secundum quod supra dictum est fiebant: in pro non scriptis autem non omnibus, sed quibusdam, quia eorum quaedam, etsi talia sunt, tamen cum suo onere veniebant, quae et nos in novi iuris compositione specialiter enumerari iussimus, ne quis veteris iuris prolixitatem quasi rebus necessariam vel pro eorum revolvat scientia.

10. His ita definitis, cum in superiore parte nostrae sanctionis in plurimis locis coniuncti fecimus mentionem, necessarium esse duximus omnem inspectionem huiusmodi articuli latius et cum subtiliore tractatu dirimere, ut sit omnibus et hoc apertissime constitutum. **10a.** Non enim tantum coniunctivo modo quaedam relinquuntur, sed etiam disiunctivo. in his itaque, si quidem coheredes sunt omnes coniunctim vel omnes disiunctim et vel instituti vel substituti, hoc, quod fuerit quoquo modo vacuatum, si in parte hereditatis vel partibus consistat,

9. Lest, however, something be passed over which Ulpian, a man of the highest genius, not inelegantly arranged with all subtlety in this connection, by Our sanction We introduce this more openly. **9a.** For since We have already established that these things with their burdens pass to the person who gains, We ordain, that if there is a condition or another obligation (*gravamen*) has been constituted in giving, those who gain must acknowledge this in proportion to their gain. **9b.** If, however, something has been imposed in performing, if this can also be fulfilled through another, it shall be acknowledged by the one who gains, say if the person honored should be ordered to build a block of apartments (*insula*) or a tomb or some other such thing at his own expense for the heir or a legatee or perhaps another person whom the testator wishes, or to purchase an item from the heir of the testator or to undertake a lease or a suretyship, or if there should be anything similar to such an act; for it does not make any difference whether it should be fulfilled through the person about whom the testator spoke or another who is successor to the same gain. **9c.** But if the composition of the words and the nature of the fact are of such a kind that what has been charged cannot be fulfilled by another, then, even if the gain passes to someone, even so the burden does not also follow, since the nature (of the matter) itself does not allow this and the testator did not wish it. For what if he ordered him to go away to a certain place or to be imbued with liberal studies or to build a house with his own hands or to paint or to take a wife? The testator's will is understood to have confined all of these things solely in the person of the very one to whom he also was bequeathing his munificence. **9d.** But in all situations the specific rule obtains that they both feel the gain and undergo the burden in similar proportions, when this should be able to proceed. **9e.** And this applies in every way in these cases that become the equivalent of escheated property or escheated property proper in accordance with what was said above: however, (this does) not (apply) in all those situations treated as if they had not been written, but in some, since certain of them, even if they are of such a kind, nevertheless would come with their own burden. We have ordered these to be enumerated specifically in the new arrangement of the law, lest anyone reintroduce the prolixity of the old law as though necessary in practice or consistent with his knowledge of these things.

10. Having made such definitions, since in the earlier part of Our sanction We have made mention in several places of a joint beneficiary (*coniunctus*), We have considered it necessary to distinguish more broadly and with a subtler treatment every theory of this category, so that this be as openly established as possible for everyone. **10a.** For some things are bequeathed not only in a joint manner, but also in a divided one (*disiunctivo*). Thus in these cases, if the co-heirs have all been appointed or substituted jointly or separately, what has lapsed (*vacuatum*) in any way, if it should consist in a share or shares of the

aliis coheredibus cum suo gravamine pro hereditaria parte, etiamsi iam defuncti sunt, adquiratur. **10b.** Et hoc et nolentibus ipso iure adcrescat, si suas portiones iam agnoverint, cum sit absurdum eiusdem hereditatis partem quidem agnoscere, partem vero respuere, secundum quod et in divinis nostri numinis decisionibus statutum est. **10c.** Sin vero quidam ex heredibus institutis vel substitutis permixti sunt et alii coniunctim alii disiunctim nuncupati sunt, si quidem ex coniunctis aliquis deficiat, hoc omnimodo ad solos coniunctos cum suo veniat onere, id est pro parte hereditatis, quae ad eos pervenit. **10d.** Sin autem ex his, qui disiunctim scripti sunt, aliquis evanescat, hoc non ad solos disiunctos, sed ad omnes tam coniunctos quam disiunctos similiter cum suo onere pro portione hereditatis perveniat. **10e.** Haec ita tam varie, quia coniuncti quidem propter unitatem sermonis quasi in unum corpus redacti sunt et partem coniunctorum sibi heredum quasi suam praeoccupant, disiuncti vero ab ipso testatoris sermone apertissime sunt discreti et suum quidem habent, alienum autem non soli appetunt, sed cum omnibus suis coheredibus accipiunt. et haec in heredibus tantummodo statuenda sunt.

11. Ubi autem legatarii vel fideicommissarii duo forte vel plures sunt, quibus aliquid relictum sit, si quidem coniunctim hoc relinquatur et omnes veniant ad legatum, pro sua portione quisque hoc habeat. **11a.** Sin vero pars quaedam ex his deficiat, eam omnibus, si habere maluerint, pro virili portione cum omni suo onere adcrescere vel, si omnes noluerint, tunc apud eos remanere, a quibus derelictum est: cum vero quidam voluerint, quidam noluerint, volentibus solummodo id totum accedere. **11b.** Sin autem disiunctim fuerit relictum, si quidem omnes hoc accipere et potuerint et maluerint, suam quisque partem pro virili portione accipiat et non sibi blandiantur, ut unus quidem rem, alii autem singuli solidam eius rei aestimationem accipere desiderent, cum huiusmodi legatariorum avaritiam antiquitas varia mente suscepit, in uno tantummodo genere legati eam accipiens, in aliis respuendam esse existimans, nos autem omnimodo repellimus, unam omnibus naturam legatis et fideicommissis imponentes et antiquam dissonantiam in unam trahentes concordiam. **11c.** Haec autem ita fieri sancimus, nisi testator apertissime et expressim disposuerit, ut uni quidem res solida, aliis autem aestimatio rei singulis in solidum praestetur. **11d.** Sin vero non omnes legatarii, quibus separatim res relicta sit, in eius adquisitionem concurrant, sed unus forte eam accipiat, haec solida eius sit, quia sermo testatoris omnibus prima facie solidum adsignare videtur, aliis

inheritance, shall be acquired for the other co-heirs with its burden in proportion to their share of the inheritance, even if they are already deceased. **10b.** And by operation of law this shall accrue to them even if they are unwilling, if they have already acknowledged their portions, since it is absurd to acknowledge one part of an inheritance but to scorn another, in accordance with what also is established in the divine decisions of Our Divine Majesty.[328] **10c.** But if some of those who are appointed or substituted as heirs are mixed and some have been named jointly and others separately (*disiunctim*), if someone from the joint heirs should be lacking, this (i.e., this person's share) shall in every case come with its burden only to the other joint heirs, that is, in proportion to the share of the inheritance that passes to them. **10d.** But if someone of those who have been named separately should disappear, this shall pass not only to the heirs named separately, but to all the heirs, both the joint ones as well as the separate ones in a similar manner along with its burden in proportion to the share of the inheritance. **10e.** These quite varying dispositions exist, since the joint heirs have been brought together as if into one body on account of the unity of language and they take up the share of their joint heirs as if it were their own, while the separate heirs have been most openly distinguished by the testator's very words and have their own property but do not by themselves seek the property belonging to others, but they receive it with all their co-heirs. And these measures are to be established only for heirs.

11. When, however, there are by chance two or more legatees or trust beneficiaries to whom something has been bequeathed, if this should be bequeathed jointly and all come to the legacy, each one shall have this in accordance with his share. **11a.** But if some share from these should lapse, it accrues to all, if they prefer to have it, in a full share with its burden, or, if all of them refuse it, then it remains with those who have been directed to pay it. But if some want it and others do not, the entire thing passes only to those wanting it. **11b.** But if the bequest has been made separately, if all are able to and prefer to accept this, each one shall accept his share in a full portion and not fancy that one might desire to receive the property, but others individually its entire appraised value, since antiquity treated the avarice of such legatees with varying attitudes, accepting it in just one type of legacy, but in others judging that it is to be scorned. We, however, reject it altogether, imposing one nature on all legacies and trusts and bringing the ancient dissonance into a single concord. **11c.** We ordain that these rules abide, unless the testator most openly and expressly provides that one person be provided the property in its entirety and the others individually (their share of the) full appraised value of the property. **11d.** But if not all the legatees to whom property has been bequeathed individually concur in acquiring it

[328] C. 6.30.20.

supervenientibus partem a priore abstrahentibus, ut ex aliorum quidem concursu prioris legatum minuatur, sin vero nemo alius veniat vel venire potuerit, tunc non vacuatur pars quae defecit nec alii adcrescit, ut eius qui primus accepit legatum augere videatur, sed apud ipsum qui habet solida res maneat nullius concursu deminuta. **11e.** Et ideo si onus fuerit in personam eius, apud quem remanet legatum, adscriptum, hoc omnimodo adimpleat, ut voluntati testatoris pareatur. **11f.** Sin autem ad deficientis personam onus fuerit collatum, hoc non sentiat is, qui non alienum, sed suum legatum imminutum habet. **11g.** Et varietatis non in occulto sit ratio, cum ideo videtur testator disiunctim haec reliquisse, ut unusquisque suum onus, non alienum agnoscat. nam si contrarium volebat, nulla erat difficultas coniunctim ea disponere.

12. Quae autem antiquis legibus dicta sunt de his quae ut indignis auferuntur, et nos simili modo intacta servamus, sive in nostrum fiscum sive in alias personas perveniant. **13.** Cum autem in superiore parte legis non aditam hereditatem minime quibusdam personis[xiii] ad heredes transmitti disposuimus, necesse est, si quis solidam hereditatem non adierit, hanc, si quidem habeat substitutum, ad eum, si voluerit et potuerit, pervenire. quod si hoc non sit, vel ab intestato successores eam accipiant vel, si nulli sint vel accipere nolunt vel aliquo modo non capiant, tunc ad nostrum aerarium devolvatur.

14. Haec autem omnia locum habere censemus tam in testamentis sive scriptis sive sine scriptis habitis quam in codicillis et omni ultimo elogio vel si quid ab intestato fuerit derelictum nec non in mortis causa donationibus. **14a.** Tantum etenim nobis superest clementiae, quod scientes etiam fiscum nostrum ultimum ad caducorum vindicationem vocari, tamen nec illi pepercimus nec Augustum privilegium exercemus, sed quod communiter omnibus prodest, hoc rei privatae nostrae utilitati praeferendum esse censemus, nostrum esse proprium subiectorum commodum imperialiter existimantes.

15. Locum autem huic legi constituimus in his defunctorum elogiis, quae posthac composita fuerint: anteriores etenim casus suo Marte

xiii <exceptis>

(i.e., the lapsed portion), but one perhaps should accept it, the entire property shall be his, since the testator's words are seen, prima facie, to assign it in its entirety to everyone, as others supervene and take part from a previous legatee, so that the legacy of a prior legatee is diminished by the addition (*concursus*) of others. But if no one else should come or can come (to accept the lapsed portion of the legacy or trust), then the share that has lapsed is not vacated, nor does it accrue to another, so that the portion of the person who first accepted the legacy increase, but the property in its entirety should remain with the very person who has it undiminished by the introduction of anyone else. **11e.** And for that reason if the burden is ascribed to the person of the one with whom the legacy remains, he shall fulfill this completely so that the wish of the testator be obeyed. **11f.** But if the burden has passed to the person of one whose right has lapsed, that person shall not feel it who does not have another's legacy, but his own undiminished. **11g.** And the reason for the variation should not be hidden, since the testator is seen to have bequeathed these things separately for this reason, that each one acknowledge his own burden and not that of another. For if he wanted the contrary, there was no difficulty in making joint dispositions.

12. As to those provisions that are mentioned in the ancient laws concerning those things that are taken away from beneficiaries because they are deemed unworthy, We also maintain them untouched in a similar fashion, whether they should come to Our Treasury or to other persons. **13.** Since, however, in an earlier part of the law (section 5) We have disposed that an inheritance not entered is not transmitted to the heirs, with the exception of certain persons, it is necessary, if someone does not enter an inheritance in its entirety, that this pass to a substitute, if he indeed has one, if he wishes and is able (to enter the inheritance). But if this should not be the case, either the heirs on intestacy shall receive it, or, if there should be no heirs or if they are unwilling to accept it or in some way should not receive, then it shall devolve to Our Treasury (*aerarium*).

14. We decree that these measures apply both in the case of wills, whether written or produced without writing, and in codicils and in every final expression (*elogium*), or if something has been bequeathed by an intestate person, as well as in gifts in anticipation of death. **14a.** For We have such an abundance of clemency, because, although We know that Our Treasury is in the final instance called to claim escheated property, even so We have not spared it and do not exercise Our August privilege, but We decree that what benefits everyone in common is preferable to the interest of Our Privy Purse, judging, in Our imperial power, that the benefit of Our subjects is Our own affair.

15. However, We establish a place for this law in those expressions (*elogia*) of deceased persons that are composed henceforth; We allow earlier cases to be disposed on their own strength. **16.** We have considered that all these

discurrere concedimus. 16. Haec omnia ad vos, patres conscripti, duximus esse sancienda, ut nemini maneat incognitus nostrae benivolentiae labor, sed edictis ex sollemnitate a nostris magistratibus propositis omnibus innotescat.

D. k. Iun. Constantinopoli dn. Iustiniano pp. A. IIII et Paulino vc. conss.

LII De His Qui Ante Apertas Tabulas Hereditates Transmittunt

[1] *Impp. Theodosius et Valentinianus AA. Hormisdae pp.* Per hanc iubemus sanctionem in posterum filios seu filias, nepotes aut neptes, pronepotes aut proneptes a patre vel a matre, avo vel avia, proavo vel proavia scriptos heredes, licet non sint invicem substituti, seu cum extraneis seu soli sint instituti et ante apertas tabulas defuncti, sive se noverint scriptos heredes sive ignoraverint, in liberos suos, cuiuscumque sint sexus vel gradus, derelictam sibi hereditariam portionem posse transmittere memoratasque personas, si tamen hereditatem non recusant, nulla huiusmodi praescriptione obstante sibi tamquam debitam vindicare: quod scilicet etiam super legatis seu fideicommissis a patre vel matre, avo vel avia, proavo vel proavia derelictis locum habet: si quidem perindignum est fortuitas ob causas vel casus humanos nepotes aut neptes, pronepotes aut proneptes avita vel proavita successione fraudari aliosque adversus avitum vel proavitum desiderium vel institutum insperato legati commodo vel hereditatis gaudere. habeant vero solacium tristitiae suae, quibus est merito consulendum.

D. III non. April. post consulatum Protogenis et Asterii.

LIII Quando Dies Legati vel Fideicommissi Cedit

[1] *Impp. Severus et Antoninus AA. Agrippae.* Si competenti iudici annua legata vel fideicommissa tibi relicta probaveris, ab initio cuiusque anni exigendi ea habebis facultatem.

things must be ordained before you, Conscript Fathers, so that the labor of Our benevolence not be unknown to anyone, but so that it become known to everyone in the edicts formally published by Our magistrates.

Given June 1, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, (Consul) for the fourth time, and the vir clarissimus *Paulinus (534).*

Fifty-Second Title Those Who Transmit Inheritances before the Opening of the Will

[1] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Hormisdas, Praetorian Prefect.* Through this ordinance We command that, in the future, sons or daughters, grandsons or granddaughters, or great-grandsons or great-granddaughters, by the father or mother, the grandfather or grandmother, or the great-grandfather or great-grandmother, who have been named as heirs, although they have not been substituted for one another, whether they have been appointed either with external heirs or by themselves, can, even before the opening of the will of the deceased, whether or not they know that they were named as heirs, transmit the portion of an inheritance left to themselves to their children, of whichever sex or degree they are, and that the aforementioned persons, as long as they do not refuse the inheritance — no prescription preventing them — shall claim it for themselves as if owed. This measure also applies to legacies and trusts left by the father or mother, grandfather or grandmother, or the great-grandfather or great-grandmother, if indeed (*si quidem*) it is quite unworthy that grandsons or granddaughters, or great-grandsons or great-granddaughters be deprived of their succession to the estate of a grandparent or great-grandparent because of chance causes or human tragedies, and that others against the wishes or arrangement of the grandparent or great-grandparent rejoice in the unexpected benefit of a legacy or inheritance. Indeed those whose interests deservedly are to be consulted should have a solace for their sadness.

Given April 3, in the post-consulate of Protogenes and Asterius (450).

Fifty-Third Title When a Legacy or Trust Falls Due[329]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Agrippa.* If you prove to the appropriate judge that annuities have been left to you as legacies or trusts (*fideicommissa*), you will have the right (*facultas*) to exact them at the beginning of each year.

[329] See D. 36.2.

Supposita III k. Iun. Saturnino et Gallo conss.

[2] *Idem AA. Prisco.* Agrum pluribus relictum nominatim animadvertimus et cautum, ut ad eum qui supervixisset res pertineret. quicumque igitur is fuit, ad heredem suum dominium transmisit nec tali fideicommisso adstringitur.

PP. XV k. Aug. Cilone et Libone conss.

[3] *Idem AA. Aeliae.* Si Pontianilla pervenit ad eam aetatem, cui legatum aut fideicommissum delatum erat, petitionem ad heredes transmisit, licet ante decesserit, quam consequeretur legatum vel fideicommissum.

PP. V k. Aug. Cilone et Libone conss.

[4] *Idem AA. Ammiae.* Cum uxori usus fructus fundi legatur et eius proprietas, cum liberos habuerit, nato filio statim proprietatis legati dies cedit nec quicquam obest, si is decedat.

PP. k. Aug. Antonino A. III et Geta item IIII conss.

[5] *Imp. Alexander A. Maximo.* **pr.** Ex his verbis: 'do lego Aeliae Severinae filiae et Secundae decem, quae legata accipere debebit, cum ad legitimum statum pervenerit', non condicio fideicommisso vel legato inserta, sed petitio in tempus legitimae aetatis dilata videtur. **1.** Et ideo si Aelia Severina filia testatoris, cui legatum relictum est, die legati cedente vita functa est, ad heredem suum actionem transmisit, scilicet ut eo tempore solutio fiat, quo Severina, si rebus humanis subtracta non fuisset, vicesimum quintum annum aetatis impleret. **2.** Non coeptum enim annum, sed impletum, si de emolumento relicti fideicommissi tractetur, expectandum esse prudentibus placuit.

PP. XIII k. Ian. Alexandro A. II et Marcello conss.

[6] *Impp. Diocletianus et Maximianus AA. et CC. Eusebio.* Si fideicommissum ab intestato fuerit sorori tuae relictum codicillis et, posteaquam dies fideicommissi cessit, ignorans fideicommissum decessit, actionem

Submitted[330] *May 30, in the consulship of Saturninus and Gallus (198).*

[2] *The same Augusti to Priscus.* We note that a farm was left to several people by name and that it was promised that the property go to the one who had survived (i.e., the last survivor). Therefore whoever this was has transmitted ownership to his heir and is not bound by such a trust.

Posted July 18, in the consulship of Cilo and Libo (204).

[3] *The same Augusti to Aelia.* If Pontianilla has reached that age at which a legacy or trust had been provided, she has transmitted the claim to her heirs, although she died before she gained the legacy or trust.

Posted July 28, in the consulship of Cilo and Libo (204).

[4] *The same Augusti to Ammia.* Since the usufruct of a farm is bequeathed in legacy to a wife as well as its ownership, when she has children, the legacy of its ownership becomes due immediately when a son is born and there is no obstacle if he should die.

Posted August 1, in the consulship of Antoninus Augustus, for the third time, and also Geta, for the third time (208).[331]

[5] *Emperor* ALEXANDER *Augustus to Maximus.* **pr.** From these words, "I give and bequeath to Aelia Severina my daughter and to Secunda[332] ten, which legacy she will be obliged to accept when she reaches lawful status," a condition is not deemed to be inserted into the trust or legacy, but the claim to be delayed until the time of her lawful age. **1.** And for that reason if Aelia Severina, the testator's daughter, to whom the legacy was left, has died on the day when the legacy falls due, she has transmitted her claim to her heir, that is to say, that the payment occur at that time when Severina, if she had not been removed from human affairs, would complete her twenty-fifth year of life. **2.** It was decided by the authorities (*prudentes*) that the beginning of the year was not to be awaited, but its completion, if it was a question of a payment for a trust that has been left.

Posted December 20, in the consulship of Alexander Augustus, for the second time, and Marcellus (226).

[6][333] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Eusebius.* If a trust was left on intestacy to your sister in codicils and, after the

[330] Krüger: "Written."
[331] In 208 Geta was Consul for the second time.
[332] Mommsen conjectures "... my daughter from Secunda" (*filiae e Secunda*).
[333] Combine with C. 2.3.21, 6.30.7, which have the place as Thirallus.

huiusmodi adquiri potuisse dissimulare non potueris, salva scilicet ab intestato succedenti quarta portione.

Supposita k. Mai. Trallis AA. conss.

LIIII Ut in Possessionem Legatorum vel Fideicommissorum Servandorum Causa Mittatur et Quando Satisdari Debet

[1] *Divus Pius Salvio.* Quoniam nihil actor amplius postulat, quam ut fideicommissi nomine satisdetur, non debet is qui iuri dicendo praeest subtiliter cognoscere, debetur nec ne fideicommissum, sed tantum decernere, ut satisdetur.

Sine die et consule.

[2] *Divus Marcus Stratonicae.* Ipsis rerum experimentis cognovimus ad publicam utilitatem pertinere, ut satisdationes, quae voluntatis defunctorum tuendae gratia in legatis, item fideicommissis inductae sunt, eorundem voluntate remitti possint. quocumque enim indicio voluntatis cautio legati seu fideicommissi remitti potest.

Sine die et consule.

[3] *Impp. Severus et Antoninus AA. Symphoro.* Si, postquam servandi legati seu fideicommissi gratia in possessionem inductus es, pignoris obligatio aut venditio ab herede intervenit, praecedere causam tuam, quam iure praetorio velut pignus habuisti, manifestum est.

PP. XI k. Dec. Dextro et Prisco conss.

[4] *Idem AA. Protagorae.* **pr.** Cum Artemidoram patri pupillorum tuorum heredem extitisse proponas, quamvis, ut fideicommissam hereditatem his cum moreretur restitueret, petita sit, nullam tamen adversus debitores hereditarios habent pupilli tui actionem. **1.** Plane ut satis fideicommissorum Artemidora det, si modo testator id fieri non prohibuerit, apud suum iudicem conveni.

PP. III k. Iul. Laeto II et Cereale conss.

[5] *Imp. Alexander A. Paulinae.* Qui legati sive fideicommissi causa in possessionem mittuntur, non proprietatem nanciscuntur, sed ius

trust fell due, she died unaware of it, you could not hide that a claim for such (a trust) could have been acquired, of course without prejudice to the fourth share for the one succeeding on intestacy.

Submitted May 1, at Tralles, in the consulship of the Augusti (293).

Fifty-Fourth Title That One Be Sent in Possession To Preserve Legacies or Trusts, and When Security Should be Given[334]

[1] *The Deified (ANTONINUS) PIUS to Salvius.* Since the plaintiff is not asking anything more than that security be given for a trust, the person who is in charge of pronouncing judgment should not investigate subtly whether a trust is owed or not, but simply determine that security be given.

Without day and consul.

[2] *The Deified MARCUS to Stratonica.* We have learned by our very experience of affairs that it is a matter of public utility that security that has been provided in legacies as well as in trusts in order to protect the wish of the deceased can be remitted by the wish of the same persons. For by any indication of a wish the guarantee (*cautio*) for a legacy or a trust can be remitted.

Without day and consul.

[3] *Emperors SEVERUS and ANTONINUS Augusti to Symphorus.* If, after you have been brought into possession (of the inherited property) in order to preserve a legacy or a trust, the obligating of a pledge or a sale by the heir intervenes, it is manifest that your claim takes precedence, which under Praetorian law you have as a sort of pledge.

Posted November 21, in the consulship of Dexter and Priscus (196).

[4] *The same Augusti*[335] *to Protagoras.* **pr.** Since you propose that Artemidora is the heir of the father of your wards, although she has been asked in a trust to restore the inheritance to them when she dies, even so your wards have no claim against debtors of the estate. **1.** Of course, sue Artemidora before her judge so that she provide security for the trusts, as long as the testator did not prohibit this from happening.

Posted June 29, in the consulship of Laetus, for the second time, and Cerealis (215).

[5] *Emperor ALEXANDER Augustus to Paulina.* Those who are sent in possession for the sake of a legacy or trust do not acquire ownership but a right of pledge.

[334] See D. 36.3.4. Under certain circumstances the beneficiary of a legacy or trust could be put into possession of the inherited property to enforce payment (Blume).

[335] The emperor should be Antoninus Augustus (Caracalla).

pignoris. ut autem et post acceptum pignus satisfiat defuncti voluntati, competens iudex te adeunte providebit.

PP. III id. Aug. Iuliano et *Crispino conss.*

[6] *Idem A. Donato.* Certa est forma iurisdictionis, qua fideicommissi servandi causa in possessionem rerum, quae in causa hereditaria sunt aut dolo malo esse desierint, is, cui legati vel fideicommissi nomine satis non datur, mittitur vel in proprias res heredis, si fideicommisso satis non fit post sex menses, quam peti coeperit, secundum divi Antonini patris mei constitutionem.

PP. VI id. Ian. Fusco II et Dextro conss.

[7] *Idem A. Proculiano.* Scire debetis fideicommissi quidem et legati satisdationem remitti posse divum Marcum et divum Commodum constituisse: ut autem boni viri arbitratu is, cui usus fructus relictus est, utatur fruatur, minime satisdationem remitti testamento posse.

PP. X k. Mart. Fusco II et Dextro conss.

[8] *Idem AA. et CC. Iulio et Zenodoro.* Contra eos sive successores eorum, qui rem publicam administrantes per officii necessitatem civitati sub condicione relicti fideicommissi satis accipere debuerunt, quanti rei publicae interest satis acceptum non esse, dirigendam certum est actionem.

Supposita VII k. Mart. CC. conss.

LV De Suis et Legitimis Liberis et ex Filia Nepotibus ab Intestato Venientibus

[1] *Impp. Severus et Antoninus AA. Crispinae.* Si fratri tuo legitima heres esse potes, centum dierum praefinitione non excluderis ad adquirendam hereditatem.

However, the appropriate judge will, when you approach him, see to it that the wish of the deceased be complied with after the acceptance of the pledge.

Posted August 11, in the consulship of Julian and Crispinus (224).

[6] *The same Augustus to Donatus.* There is a certain rule of jurisdiction by which the person to whom security is not provided for a legacy or trust is sent, in order to preserve a trust, into possession of items of property that are part of the estate or have ceased to exist because of deliberate misconduct, or into the property belonging to the heir, if security is not provided for a trust six months after it was initially sought, in accordance with the constitution[336] of the deified Antoninus (Caracalla) my father.

Posted January 8, in the consulship of Fuscus, for the second time, and Dexter (225).

[7] *The same Augustus to Proculianus.* You (plural) ought to know that the deified Marcus[337] and the deified Commodus ruled in constitutions that the security for a trust and a legacy can be remitted. However, you should also know that the provision of security so that the person to whom a usufruct has been bequeathed use and enjoy (the property) by the standards of an upright man cannot be remitted in a will.

Posted February 20, in the consulship of Fuscus, for the second time, and Dexter (225).

[8][338] *The same Augusti and Caesars to Julius and Zenodorus.* It is certain that an action for the municipality's interest that the sureties were not taken should be directed against those who, while administering the municipality through the requirement of their office, ought to have accepted security to guarantee a trust left (to the municipality), or against their successors.

Submitted February 23, in the consulship of the Caesars (294).

Fifty-Fifth Title *Sui Heredes*, Legitimate Children, and Grandchildren from a Daughter Succeeding on Intestacy[339]

[1][340] *Emperors Severus and Antoninus Augusti to Crispina.* If you can be the statutory heir (by the civil law) to your brother, you are not excluded by the prescription of 100 days to acquire the inheritance.[341]

[336] D. 36.4.5.16.
[337] 2 above.
[338] = C. 11.31.2, where the emperors are Diocletian and Maximian, and the addressees are Julius and Zenodorus, and where the action against the administrators' successors is omitted. The date in that text is November 25.
[339] See D. 38.16.
[340] Combine with C. 6.9.2, where the addressee is Crispinus.
[341] As Blume points out, a prescription of 100 days to acquire an inheritance was established for heirs granted succession under Praetorian law.

PP. III non. Nov. Antonino A. II et Geta II conss.

[2] *Impp. Diocletianus et Maximianus AA. Aviae.* Nepotes ex diversis filiis varii numeri avo succedentes ab intestato non virilibus portionibus, sed ex stirpibus succedunt.

S. III k. Mart. Hadrianopoli ipsis AA. IIII et III conss.

[3] *Idem AA. et CC. Frontoni.* Ut intestato defuncto filius ac nepos ex alio, qui mortis eius tempore in rebus humanis non invenitur, manentes in sacris pariter succedant, evidenter lege duodecim tabularum cavetur. quod et honorarii iuris observatio sequitur.

S. XV k. Iul. AA. conss.

[4] *Idem AA. et CC. Marcellae.* Intestato defuncto postumum suum heredem quam sororem licet consanguineam haberi potiorem ordo successionum lege duodecim tabularum factus nimis evidenter demonstrat.

S. VI id. Dec. AA. conss.

[5] *Idem AA. et CC. Appiano.* Si te parens, in cuius fuisti potestate, sollemniter in adoptionem dedit, cum filiis naturalibus adoptivi patris ante vel post quaesitis defuncto intestato succedere potes.

D. VI k. Ian. Sirmi AA. conss.

[6] *Idem AA. et CC. Posidonio.* Ex libera conceptus et servo velut spurius habetur nec ut decurionis filius, quamvis pater eius naturalis manumissus et natalibus suis restitutus hunc fuit adeptus honorem, defendi potest.

Supposita VI id. Febr. CC. conss.

Posted November 3, in the consulship of Antoninus Augustus, for the second time, and Geta, for the second time (205).

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Avia.* Grandchildren from different sons succeeding their grandfather on intestacy in varying numbers do not succeed with equal portions, but in accordance with the shares due their fathers (*ex stirpibus*).[342]

Written February 27, at Adrianople, in the consulship of the Augusti themselves, for the fourth time and for the third time, respectively (290).

[3] *The same Augusti and the Caesars to Fronto.* It is clearly provided for in the law of the Twelve Tables that a son of the deceased and a grandson from another son, who at the time of his (the father's) death is not found in human affairs (i.e., is no longer alive), when they remain in the household (*manentes in sacris*, i.e., under the power of the *paterfamilias*), succeed equally on intestacy. The observance of Praetorian law (*ius honorarium*) follows this rule.

Written June 17, in the consulship of the Augusti (293).

[4] *The same Augusti and Caesars to Marcella.* The order of succession provided for in the law of the Twelve Tables quite obviously demonstrates that, when a man dies intestate, a posthumous *suus heres* is considered to have a stronger claim (to the inheritance) than a sister, even though she is from the same blood.

Written December 8, in the consulship of the Augusti (293).

[5] *The same Augusti and Caesars to Appianus.* If your male ascendant, in whose power you were, has formally given you in adoption, you can succeed with the natural children of your adoptive father, born either before or after (your adoption), when he dies intestate.

Given December 27, at Sirmium, in the consulship of the Augusti (293).[343]

[6] *The same Augusti and Caesars to Posidonius.* A son conceived from a free woman and a slave man is considered illegitimate and cannot be defended as the son of a decurion, even though his natural father, having been manumitted and restored to his birth rights (*natalibus suis restitutus*), has gained this office.

Submitted February 8, in the consulship of the Caesars (294).[344]

[342] Thus, a son would gain an entire share, whereas the children of a deceased son would divide that son's hypothetical share.

[343] An alternative date is February 24, 294.

[344] An alternative dating formula reads "given February 10."

[7] *Idem AA. et CC. Aemilianae.* Filium habere suum libertus in potestate non prohibetur, cum ob praeteritum statum ex legitimis nuptiis ingenuorum exemplo filios habere liberto non sit interdictum.

S. XVI k. Mart. Sirmi CC. conss.

[8] *Idem AA. et CC. Catoniae.* Apud hostes patre defuncto filia communis vobis, quo casu scientia mortis non postulatur, heres extitit sua et ad te transmisit successionem.

S. XII k. Dec. Nicomediae CC. conss.

[9] *Imppp. Valentinianus Theodosius et Arcadius AAA. Constantiano pp. Galliarum.* **pr.** Si defunctus cuiuscumque sexus aut numeri reliquerit filios et ex filia diem functa cuiuscumque sexus aut numeri nepotes, eius partis, quam defuncta filia superstes patri inter fratres suos fuisset habitura, duas partes consequantur nepotes ex eadem filia, tertia pars fratribus sororibusve eius quae defuncta est, id est filiis filiabusque eius, de cuius bonis agitur, avunculis scilicet sive materteris eorum, quorum commodo legem sancimus, adcrescat. **1.** Haec eadem, quae de avi materni bonis constituimus, de aviae maternae sive etiam paternae simili aequitate sancimus: nisi forte avi ad elogia inurenda impiis nepotibus iusta se motos ratione dixerint et hoc fuerit legibus approbatum. **2.** Non solum autem si intestatus avus aviave defecerit, haec nepotibus quae sancimus iura servamus, sed et si avus vel avia, quibus huiusmodi nepotes erunt, testati obierint et praeterierint nepotes aut exheredaverint, easdem et de iniusto avorum testamento et si quae filiae poterant vel de re vel de lite competere actiones nepotibus deferimus secundum iustum nostrae legis modum, quae de parentum inofficiosis testamentis competunt filiis.

D. V k. Mart. Mediolani Timasio et Promoto conss.

[7][345] *The same Augusti and Caesars to Aemiliana.* A freedman is not prohibited from having a son in his power, since a freedman is not forbidden because of his previous status to have children from lawful marriages on the analogy of free-born persons.

Written February 14, at Sirmium, in the consulship of the Caesars (294).

[8] *The same Augusti and Caesars to Catonia.* Your common daughter, when her father has died among the enemy, in which case (actual) knowledge of the death is not demanded, is a *sua heres* and has transmitted the succession to you (upon her death).

Written November 20, at Nicomedia, in the consulship of the Caesars (294).

[9][346] *Emperors VALENTINIAN, THEODOSIUS, and ARCADIUS Augusti to Constantianus, Praetorian Prefect of the Gauls.* **pr.** If a deceased person left children of either sex or any number and grandchildren from a deceased daughter of either sex or any number, the grandchildren of that same daughter shall gain two-thirds of the share that the deceased daughter would have gained as a survivor of her father along with her siblings (*inter fratres*), and the third part shall accrue to the brothers or sisters of the one who has died, that is, the sons and the daughters of the man whose property is at issue, namely, the maternal uncles and aunts of those in whose interest We ordain the law. 1. We ordain these same measures that We have established for the property of a maternal grandfather with similar fairness (for the estate) of a maternal grandmother or even a paternal one, unless perhaps the grandfathers say that they were moved by a just reason to burn up their expressions (*ad elogia inurenda*, to disinherit them) for undutiful grandchildren and this is approved by the laws. 2. We maintain the rights that We have ordained for grandchildren not only if the grandfather or grandmother dies intestate, but also if the grandfather or grandmother who will have such grandchildren dies with a will and passes over the grandchildren or disinherits them. We offer grandchildren the same claims both about an unjust will of the grandparents and if any actions could be available to a daughter either from the property (*res*) or from a lawsuit, in accordance with the just method of Our law, which is available concerning the undutiful wills of parents.[347]

Given February 25, at Milan, in the consulship of Timasius and Promotus (389).

[345] = C. 8.46.8 (differently worded), where the date is April 16; Mommsen prefers this for the present constitution.

[346] = C.Th. 5.1.4, with some variations of wording, from which some of this text has been restored.

[347] The *querella inofficiosi testamenti*, or the complaint of an undutiful will, was available to certain heirs if they received less than one-fourth of what they would have received on intestacy.

[10] *Impp. Honorius et Theodosius AA. Maximo. pp.* Ubi aviarum successio morte interveniente discutitur, capitis deminutio materna quaerenda non est. tunc enim in huiusmodi hereditatibus filiorum status aut persona spectatur, quotiens de eius bonis, qui potestatem familiae potuit habere, tractatur.

D. v k. Oct. Ravennae Theodosio A. VIIII et Constantio III conss.

[11] *Impp. Theodosius et Valentinianus AA. ad senatum urbis Romae.* Si matre superstite filius vel filia, qui moritur, filios dereliquerit, omnimodo patri suo matrive ipso iure succedant. quod sine dubio et de pronepotibus observandum esse censemus.

D. VIII id. Nov. Ravennae Theodosio XII et Valentiniano II AA. conss.

[12] *Imp. Iustinianus A. Menae pp.* Quotiens aliquis vel aliqua intestatus vel intestata mortuus vel mortua fuerit nepotibus vel pronepotibus cuiuscumque sexus vel deinceps aliis descendentibus derelictis, quibus unde liberi bonorum possessio minime competit, et insuper ex latere quibuscumque agnatis, minime possint idem agnati quartam partem hereditatis mortuae personae sibi vindicare, sed soli descendentes ad mortui successionem vocentur. quod tantum in futuris, non etiam praeteritis negotiis servari decernimus.

D. k. Iul. Constantinopoli dn. Iustiniano A. pp. II cons.

LVI Ad Senatus Consultum Tertullianum

[1] *Impp. Diocletianus et Maximianus AA. Vivianae.* Licet liberi matribus ab intestato ita demum per se heredes existant, si fari possint, tamen

[10][348] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Maximus, Praetorian Prefect.* When the succession to grandmothers is audited after a death has occurred, the change of status (*capitis deminutio*) of the mother is not to be investigated. For in such inheritances the status or person of the children is examined only when question arises about the property of a person who could have had power over the family.

Given September 27, at Ravenna, in the consulship of Theodosius Augustus, for the ninth time, and Constantius, for the third time (420).

[11][349] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to the Senate of the City of Rome.* If a son or daughter who dies with a surviving mother leaves behind children, by the very operation of the law they shall by all means succeed their father or mother. We decree that this is to be observed without doubt also in the case of great-grandchildren.

Given November 7, at Ravenna, in the consulship of Theodosius, for the twelfth time, and Valentinian, for the second time, Augusti (426).[350]

[12][351] *Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect.* Whenever some man or woman dies intestate leaving behind grandchildren or great-grandchildren of either sex, or other descendants in turn to whom possession of the estate (*bonorum possessio*) under the (Praetorian) category "whence children" (*unde liberi*) does not apply,[352] and in addition collateral agnatic relatives, the same agnates shall not be able to claim for themselves the fourth part of the inheritance of the dead person, but only the descendants shall be called to the succession of the decedent. We determine that this be maintained only in future cases, but not in past ones.

Given July 1, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, (Consul) for the second time (528).

Fifty-Sixth Title On the *Senatus Consultum Tertullianum*[353]

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Viviana.* Although children by themselves may be heirs to their mother on intestacy only if they are

[348] = C.Th. 5.1.6, in which the recipient is the City Prefect. Seeck gives September 27, 420.

[349] = C.Th. 5.1.8, with some differences in wording; combine with C. 6.30.18, 6.56.5, 6.60.3, 6.61.1, 8.55.9; C.Th. 4.1.1, 8.18.10; and perhaps also C. 1.14.2 and 3, 1.19.7, 1.22.5; C.Th. 1.4.3.

[350] The date is restored from C. Th. 5.1.8, instead of November 6 in the edition of Haloander.

[351] Combine with C. 6.56.7, 8.58.2, which have June 1 as the date; this is preferred here by Lounghis *et al.*

[352] On the Praetorian edict *Unde liberi*, see C. 6.14.

[353] See D. 38.17; Inst. 3.3. The Hadrianic *SC Tertullianum* provided that a woman with the *ius liberorum* (a free woman with three children or a freedwoman with four children) could inherit from her children on intestacy after the children's *sui heredes*, their father, and their brothers and sisters from the same father.

matres liberis, etiamsi infantes naturae concesserint, posse succedere nulla dubitatio est.

PP. x k. April. Tiberiano et Dione conss.

[2] *Idem AA. et CC. Rhesae.* In successionem filii vel filiae communis sine liberis et fratribus vel sororibus morientis pater manumissor, quia ei sit vetus ius servatum, matri praefertur.

S. VI id. Dec. CC. conss.

[3] *Imp. Constantinus A. Catullino proconsuli Africae.* Matres, quae puberes amiserunt filios, licet impuberibus eis tutores non petierunt, praescriptione non petiti tutoris ad excludendam eorum successionem minime debere praescribi certum est.

D. VI k. Aug. Constantino A. IIII et Licinio IIII conss.

[4] *Imppp. Gratianus Valentinianus et Theodosius AAA. Eutropio pp.* **pr.** Si qua mulier nequaquam religionem priori viro, ex quo filios seu filias non habet, nuptiarum festinatione praestiterit, ex iure quidem notissimo sit infamis, nisi huiusmodi maculam imperiale beneficium ei remittat. **1.** Sin autem ei filii erunt seu filiae et impetraverit indulgentiam, infamiae abolitionem permittimus et ceterarum poenarum antiquationem, si facultatum omnium, quae fuerint tempore nuptiarum, medietatem filio filiaeve, filiis seu filiabus donaverit, quos habebat ex viro priore susceptos, pure scilicet et omni donationis sollemnitate completa nec retento quidem usu fructu. **2.** Quem quidem semissem si duobus filiis seu filiabus pluribusve donaverit et sorte fatali unus vel una, seu alius vel alia ex isdem intestatus vel intestata obierit, semper ad superstites fratres vel sorores volumus pertinere. **3.** Sin autem universae vel universi intestati diem obierint durae fortunae ad matrem solacia ex integro revertantur, ita scilicet, ut hunc semissem, quem filiis seu

able to talk,[354] nevertheless there is no doubt that mothers can succeed their children, even if they have yielded to nature (i.e., died) while infants.

Posted March 23, in the consulship of Tiberianus and Dio (291).

[2][355] *The same Augusti to Rhesa.* In the succession to a common son or daughter dying without children and brothers or sisters, the father who manumitted (i.e., emancipated the child), since the ancient right has been maintained for him, is preferred to the mother.

Written December 8, in the consulship of the Caesars (294).

[3] *Emperor CONSTANTINE Augustus to Catullinus Proconsul of Africa.*[356] It is certain that mothers, who have lost children over the age of puberty, although they did not seek *tutores* for them when they were under age, ought not to be prevented (from inheriting from them), under the prescription for excluding their succession for not seeking a *tutor.*

Given July 27, in the consulship of Constantine Augustus, for the fourth time, and Licinius, for the fourth time (315).[357]

[4][358] *Emperors GRATIAN, VALENTINIAN, AND THEODOSIUS Augusti to Eutropius, Praetorian Prefect.* **pr.** If, in her haste to remarry, any woman utterly fails to provide proper respect (*religio*) for her previous husband, from whom she does not have sons or daughters, she shall be infamous[359] in accordance with most well-known law, unless an imperial benefit should remit this stain for her. **1.** If, however, she has sons or daughters and gains an indulgence, We permit the abolition of her infamy and the annulment of the other punishments if she gives half of all the property that she had at the time of her marriage to her son or daughter or her sons or daughters that she had born from her previous husband, that is to say, unconditionally and having completed every formality of a donation, and not even retaining a usufruct. **2.** If she gives this half to two or more sons or daughters and one son or another or one daughter or another from these passes away intestate, We want it always to go to the surviving brothers or sisters. **3.** If, however, all of the sons or daughters pass away intestate, the solace of her harsh fortune shall revert to the mother in its entirety in such a way that she herself take again separately this half, which

[354] Blume: "if the children were infants, the inheritance had to be accepted by a father or guardian."

[355] Perhaps combine with C. 8.44.29, whose addressee is Rhesus.

[356] Catullinus, attested in other laws, was proconsul of Africa 315–318.

[357] The consular date is restored by Krüger; Haloander's edition has 354. Seeck gives July 27, 318.

[358] pr. = C. 5.9.2; perhaps combine with C. 5.1.3, and other texts, which would have the date as June 17.

[359] The term *infamis* designates persons involved in disgraced professions as well as certain people who have suffered legal disabilities as a result of criminal convictions.

filiabus donaverat, intestato diem filiis seu filiabus obeuntibus rursus ipsa separatim ab ultimi filii vel filiae hereditate praesumat.

PP. xv k. Ian. Gratiano v et Theodosio AA. conss.

[5] *Impp. Theodosius et Valentinianus AA. ad senatum urbis Romae.* **pr.** Mater, quae defuncto filio filiave sine liberis ex testamento vel ab intestato succedit, si matrimonium secundum post mortem filii vel filiae non contraxerit, omnia filii morte delata pleno iure conquirat. **1.** Sin vero alterius elegerit coniugium mariti, extrinsecus quidem quaesita filio filiaeve simili firmitate possideat, rerum vero paternarum defuncti solo usu fructu humanitatis contemplatione potiatur, proprietatem sorori et fratribus transmissura defuncti.

D. VIII id. Nov. Ravennae Theodosio XII et Valentiniano II AA. conss.

[6] *Idem AA. Florentio pp.* Omnem matri sive ab intestato sive iure substitutionis, si filius impubes moritur, denegandam volumus successionem, si ea legitima liberorum tutela suscepta ad secundas contra sacramentum praestitum adspiraverit nuptias, antequam ei tutorem alium fecerit ordinari eique quod debetur ex ratione tutelae gestae persolverit.

D. VI id. Iul. Constantinopoli Theodosio A. XVII et Festo conss.

[7] *Imp. Iustinianus A. Menae pp.* **pr.** Si quis vel si qua matre superstite et fratre vel legitimo vel sola cognationis iura habente intestatus vel intestata decesserit, non excludi a filii successione matrem, sed una cum fratre mortui vel mortuae, si superstes vel filius vel privignus ipsius sit, ad eam pervenire ad similitudinem sororum mortui vel mortuae: ita tamen, ut, si quidem solae sorores agnatae vel cognatae et mater defuncti vel defunctae supersint, pro veterum legum tenore dimidiam quidem mater, alteram vero dimidiam partem omnes sorores habeant: sin vero matre superstite et fratre vel fratribus solis vel etiam cum sororibus

she had given to her sons or daughters, from the inheritance of the last son or daughter, when her sons or daughters pass away intestate.

Posted December 18, in the consulship of Gratian, for the fifth time, and Theodosius, Augusti (380).

[5][360] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to the Senate of the City of Rome.* **pr.** A mother who, in accordance with a will or on intestacy, succeeds a deceased son or daughter without children, if she has not contracted a second marriage after the death of her son or daughter, should claim everything acquired at the death of her child in full right. **1.** But if she chooses a marriage with another husband, she should possess property gained independently by her son or daughter with a similar firmness, but she should, in the contemplation of the human lot, only gain possession of a usufruct over the decedent's property inherited from the father, so as to transmit the ownership to the sister and brothers of the decedent.

Given November 7, at Ravenna, in the consulship of Theodosius, for the twelfth time, and Valentinian, for the second time, Augusti (426).

[6] [361] *The same Augusti to Florentius, Praetorian Prefect.* We wish all succession to be denied to a mother, whether on intestacy or by right of substitution, if her minor (*impubes*) son dies, if she, after undertaking the tutelage by law of her children, aspires to a second marriage against the oath she has given,[362] before she has provided for the appointment of another *tutor* for him (the son) and pays him what he is owed on the basis of the performance of the tutelage.

Given July 10, at Constantinople, in the consulship of Theodosius Augustus, for the seventeenth time, and Festus (439).

[7][363] *Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect.* **pr.** If some man or woman dies intestate with a surviving mother and brother, either a successor under the (civil) law or only having the rights of a cognate relationship, the mother is not excluded from the succession to her child, but, along with the brother of the dead man or woman, if the survivor is either her son or stepson, she comes to this like the sisters of the dead man or woman, but under the condition that, if only agnatic or cognate sisters and the mother of the decedent man or woman survive, in accordance with the provision of the old law

[360] = C.Th. 5.1.8 (with some differences in wording), from which the address to the Senate of the City of Rome is restored; combine with C. 6.55.11 and other passages mentioned in the note that text.

[361] = Nov. Theod. 11 and C. 8.14.6; combine with C. 6.58.10.

[362] Blume: see C. 6.35.2.

[363] Combine with C. 6.55.12 (with the date July 1), 8.58.2.

intestatus quis vel intestata moriatur, in capita distribuatur eius hereditas nec liceat matri occasione sororum mortui vel mortuae ampliorem partem sibi vindicare, quam rata portio capitum exigit: patruo scilicet mortui vel mortuae eius[xiv] filio vel nepote nullum ius ad eius hereditatem matre herede existente habentibus nec ex veteribus legibus vel ex constitutionibus partem matris minui. **1.** Sin autem defuncta persona non solum matrem et fratres et sorores superstites habeat, sed etiam patrem, si quidem sui iuris decessit, quia patris persona interveniens matris iura superare videtur, omnibus pio animo providentes sancimus fratres quidem et sorores mortuae personae ad successionem proprietatis solos pro virili parte vocari, patri autem et matri usus fructus totius successionis besse*m* competere aequa lance inter patrem et matrem dividendum, reliqua parte usus fructus apud fratres et sorores remanente. **2.** Sin vero defuncta persona in sacris patris constituta decesserit, pater quidem usum fructum, quem et vivente filio habebat, detineat donec vivat incorruptum, mater autem, quia hunc usum fructum habere vivente patre non potest totum apud patrem constitutum, una cum fratribus defunctae personae ad proprietatem vocetur, scilicet cum sororibus sola in dimidiam, cum fratribus vel promiscui generis secundum supra scriptam distributionem in virilem portionem. **3.** Omnibus videlicet, quae de mulieribus ad secundas nuptias migrantibus sancita sunt, in suo statu durantibus.

D. k. Iun. Constantinopoli dn. Iustiniano A. pp. II cons.

LVII Ad Senatus Consultum Orfitianum

[1] *Imp. Alexander A. Evangelo.* Si intestatae mulieris consanguinei existant et mater et filia, ad solam filiam ex senatus consulto Orfitiano hereditas pertinet.

PP. XV k. Febr. Fusco II et Dextro conss.

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the mother have one-half, and all the sisters the other half. But if some man or woman should die intestate with a surviving mother and only a brother or brothers or even with sisters, his (or her) inheritance is to be distributed by persons (*in capita*), nor is the mother to be permitted, on the opportunity of there being sisters of the deceased man or woman, to claim a larger share for herself than the proportional share of the persons demands. Certainly neither the paternal uncle of the dead man or woman nor his son or grandson have any right to the inheritance of that person when there is a surviving mother who is heir, nor is the mother's share diminished either in accordance with the old law or the constitutions (of emperors). 1. If, however, the deceased person should have not only a mother, brothers, and sisters as survivors, but also a father, if he (or she) has died while *sui iuris*, since the intervention of the person of the father is deemed to prevail over the rights of the mother, to provide for everyone with a pious spirit We ordain that the brothers and sisters of the deceased person are alone called to the succession of ownership with full shares, but that the father and mother gain the usufruct of two-thirds of the entire succession, to be divided equally between the father and mother, while the remaining part of the usufruct remains with the brothers and sisters. 2. But if the deceased person has died while established in the father's power (*in sacris*), the father shall hold onto the usufruct undiminished that he had while the son was alive as long as he should live, while the mother, since she cannot have the usufruct while the father is alive as it is entirely established with him, shall be called along with the brothers of the deceased person to ownership, that is to say, with the sisters alone into a one-half share (of the ownership), and if the siblings are of both genders in accordance with the distribution written above into a full share. 3. All the measures that have been ordained concerning women migrating to second marriages remain in effect.

Given June 1, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, (Consul) for the second time (528).

Fifty-Seventh Title On the *Senatus Consultum Orfitianum*[364]

[1] *Emperor* Alexander *Augustus to Evangelus.* If an intestate woman has siblings from the same father as well as a mother and a daughter, in accordance with the *SC Orfitianum* the inheritance goes to the daughter alone.

Posted January 18, in the consulship of Fuscus, for the second time, and Dexter (225).

[364] See D. 38.17, Just. Inst. 3.4. The *SC Orfitianum* of 178 CE gave children the right to succeed their mother in preference to her other relations, including her brothers and sisters.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Metrodorae.* **pr.** Non pro numero superstitum mortis matris tempore, sed succedentium materna scinditur hereditas. **1.** Quapropter si mater vestra te et uno fratre emancipatis, duobus autem aliis in patria positis potestate superstitibus diem functa est et hi, qui in potestate patris fuerant, priusquam maternam hereditatem sibi quaererent, rebus humanis exempti sunt, inter duos tantum viriles non ambigitur factas portiones.

S. VII k. April. Sirmi AA. conss.

[3] *Idem AA. et CC. Iulianae.* Matri intestatae defunctae secundum Orfitianum senatus consultum citra bonorum possessionem filia pro herede gerendo succedere non prohibetur.

S. XII k. Nov. AA. conss.

[4] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad Hilarianum pp.* Quotiens de emancipati filii filiaeve successione tractatur, filiis ex his genitis deferatur intacta pro solido successio neque ulla defunctae patri matrique concedatur intestatae successionis hereditas.

D. XI k. Mart. Mediolani Merobaude II et Saturnino conss.

[5] *Imp. Iustinianus A. Demostheni pp.* **pr.** Si qua illustris mulier filium ex iustis nuptiis procreaverit et alterum spurium habuerit, cui pater incertus sit, quemadmodum res maternae ad eos perveniant, sive tantummodo ad liberos iustos sive et ad spurios, dubitabatur. **1.** Sancimus itaque, ut neque ex testamento neque ab intestato neque a liberalitate inter vivos habita iustis liberis existentibus aliquid penitus ab illustribus matribus ad spurios perveniat, cum in mulieribus ingenuis et illustribus, quibus castitatis observatio praecipuum debitum est, et nominari spurios satis iniuriosum, satis acerbum et nostris temporibus indignum esse iudicamus et hanc legem ipsi pudicitiae, quam semper colendam

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Metrodora.* **pr.** The mother's inheritance is divided not in accordance with the number of survivors at the time of her death, but the number of successors. **1.** For this reason, if your (plural) mother passed away with you and one brother emancipated, but two other survivors under the father's power, and the ones who had been in the father's power, before they sought the mother's inheritance for themselves, had been removed from human affairs, there is no doubt that there are only two whole portions (to be divided) between two persons.

Written March 26, at Sirmium, in the consulship of the Augusti (293).[365]

[3] *The same Augusti and Caesars to Juliana.* In accordance with the *SC Orfitianum* a daughter acting as heir (*pro herede gerendo*) without possession of the property[366] is not prohibited from succeeding a deceased intestate mother.

Written October 21, in the consulship of the Augusti (293).

[4][367] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Hilarianus, Praetorian Prefect.* Whenever it is a question of the succession to an emancipated son or daughter, the succession is to be provided to the children born from them intact and in its entirety, and no inheritance to an intestate succession is to be granted to the deceased person's father or mother.

Given February 19, at Milan, in the consulship of Merobaudes, for the second time, and Saturninus (383).[368]

[5][369] *Emperor* JUSTINIAN *Augustus to Demosthenes, Praetorian Prefect.* **pr.** If any woman of *illustris* rank procreates a son from a proper marriage and has another, illegitimate one, the identity of whose father is uncertain, there was doubt as to the way in which the mother's property would pass to them, whether only to the legitimate children or also to the illegitimate ones. **1.** Therefore We ordain that nothing at all should pass from mothers of *illustris* rank to illegitimate children when there are legitimate children surviving, either by a will or on intestacy, or by generosity carried out between living persons (gifts *mortis causa*), since in the case of women who are free born and of *illustris* rank, for

[365] Mommsen suggests "in the consulship of the Caesars (294)" for this and the next constitution.
[366] Blume: a child could inherit from a mother by civil law (as modified by the *SC Orfitianum*), but the possession of the property was something granted by Praetorian law.
[367] = C.Th. 5.1.3, with somewhat different wording, and from which Hilarius as Urban Prefect is restored as addressee. Gothofredus suggests Hypatius as the addressee. Moreover, the C.Th. version, which Krüger prefers, refers to the succession of an emancipated daughter and her children.
[368] The date is restored from the C.Th. version. Haloander's edition has February 15.
[369] Combine with C. 5.27.10.

censemus, merito dedicamus. 2. Sin autem concubina liberae condicionis constituta filium vel filiam ex licita consuetudine ad hominem liberum habita procreaverit, eos etiam cum legitimis liberis ad materna venire bona, quae ea iure legitimo et in suo patrimonio possidet, nulla invidia est.

D. XV k. Oct. Chalcedone Decio vc. cons.

[6] *Idem A. Iuliano pp.* **pr.** Quidam ancillae suae per fideicommissum libertatem reliquit, eo autem, a quo libertas relicta est, moram in libertate praestanda faciente peperit ancilla. et esse quidem ingenuum puerum vel puellam, qui post moram nati sunt, omnes veteris iuris auctores consentiunt, dubitabatur autem inter eos, si matri morienti potest succedere. **1.** Huiusmodi itaque dubitationem eorum decidentes ulterius eam procedere non patimur, sed sancimus eandem matris progeniem heredem ab intestato posse ei existere, salvo iure legitimo ex auctoritate senatus consulti Orfitiani proli servando et tam matre ex senatus consulto Tertulliano quam prole ex Orfitiano senatus consulto invicem ad suas hereditates venientibus.

D. k. Oct. Constantinopoli Lampadio et Oreste vv. cc. conss.

LVIII De Legitimis Heredibus

[1] *Imp. Alexander A. Cassio et Hermionae.* In successione titulo consanguinitatis vel in bonorum possessione, quae proximitatis nomine competit, tam fratres quam sorores pari iure esse, licet non eadem matre susceptae sunt, ius certum est. nec huic derogatur, quod amitas vestras ab avo vestro dotatas fuisse proponitis.

PP. non. Mai. Maximo II et Aeliano conss.

whom the observation of chastity is a special obligation, We judge that it is quite injurious for illegitimate children to be named, and also quite bitter and unworthy of Our times, and We justly dedicate this law to that very chastity that We decree is always to be cultivated. **2.** If, however, a concubine of free status maintaining a licit relationship with a free man produces a son or daughter, there is no begrudging that they approach the mother's property that she possesses by lawful right and in her patrimony, along with the legitimate children.

Given September 17, at Chalcedon, in the consulship of the vir clarissimus *Decius (529).*

[6][370] *The same Augustus to Julian, Praetorian Prefect.* **pr.** Someone left liberty to his slave woman through a trust, but the slave woman gave birth while the person who was directed to grant liberty delayed in providing it. All the authors of the ancient law agree that the boy or girl who was born after the delay is free-born, but there was doubt among them whether he or she can succeed the mother when she dies. **1.** And so cutting out such doubt We do not allow it to proceed any further, but We ordain that the same progeny of the mother can be her heir on intestacy, while maintaining for offspring without compromise the statutory right based on the *SC Orfitianum*, and with both the mother and the offspring coming in turn to their inheritances on the basis of the *SC Tertullianum* and the *SC Orfitianum*, respectively.

Given October 1, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

Fifty-Eighth Title Heirs under the Civil Law[371]

[1] *Emperor* ALEXANDER *Augustus to Cassius and Hermione.* It is certain law that in succession based on consanguinity (a relationship between siblings with the same father) or on the possession of property, which accrues on the basis of proximity (to the decedent), both brothers and sisters have an equal right, although they have not been born of the same mother. Nor does the fact that you allege that your (plural) paternal aunts received dowries from your grandfather modify this rule.

Posted May 7, in the consulship of Maximus, for the second time, and Aelianus (223).

[370] Combine with C. 7.4.14–16.

[371] See D. 38.16. This section deals with heirs whose rights to succeed were established by the *ius civile*, going back to the Twelve Tables, as opposed to the modifications in succession rights created by Praetorian law, or *ius honorarium*. At the end of C. 6, there is a text generally attributed to a Lombard king: "Book 6, Heirs under the Civil Law. The same Augustus and Caesars. Among those who have been born from an illicit or uncertain union, there is no succession or seeking of an inheritance, unless it should be shown by the same people that it was bequeathed or conceded in some way among them."

[2] *Idem A. Tatianae et aliis.* Si eius, quae vos heredes instituit, patri non quaesistis hereditatem posteaque mortuo patre ac repudiata eius hereditate defunctae successionem agnovistis, ea, quae bonorum sunt defunctae, ab his separari, quae patris vestri fuerunt, praeses provinciae non ignorabit.

PP. VI id. April. Gordiano A. et Aviola conss.

[3] *Imp. Decius A. Asclepiodotae.* **pr.** Consanguinitatis iure et feminas ad intestatorum successionem admitti posse explorati iuris est. **1.** Proinde cum fratris tui intestato mortui ad te consanguinitatis iure hereditas pertineat, nulla ratione alterius fratris tui filii ad eandem successionem adspirare desiderant: nam et cessante iure agnationis in persona omnium praetorii iuris beneficio ad te potius, quae secundum gradum obtines, hereditas pertinet quam ad fratris tui filios, qui tertio gradu constituti sunt.

PP. II non. Dec. Decio A. et Grato conss.

[4] *Impp. Diocletianus et Maximianus AA. Caecilio.* Si aut nullum testamentum nepos patrui tui ordinavit aut intra quattuordecim annos constitutus fecit et agnationis iure successio eius tibi delata est, etiam citra bonorum possessionis subsidium legitimo iure subnixus es.

PP. id. Iul. ipsis AA. IIII et III conss.

[5] *Idem AA. et CC. Cyrillae.* Ad intestati successionem agnationis iure quam proximitatis venientes haberi potiores certum est.

Supposita XVI k. Iul. Sirmi AA. conss.

[6] *Idem AA. et CC. Claudianae.* Defuncto, suis extantibus heredibus et abstinentibus vel repudiantibus hereditatem, frater iure consanguinitatis succedere potest.

S. prid. k. Ian. AA. conss.

[2] *The same Augustus*[372] *to Tatiana and others.* If you (plural) did not acquire the inheritance of the woman who established you as heirs for the benefit of your father, and afterwards, when the father died and you repudiated his inheritance, you acknowledged the succession to the deceased woman, the provincial governor will not be unaware that the property that belonged to the deceased woman is to be separated from the property that belonged to your father.

Posted April 8, in the consulship of Gordian Augustus and Aviola (239).

[3] *Emperor* DECIUS *Augustus to Asclepiodata.* **pr.** It is established law that under the right of consanguinity women too can be admitted to succession to the intestate. **1.** Accordingly since by right of consanguinity the inheritance of your intestate deceased brother belongs to you, by no reason do the sons of your other brother desire to aspire to this same succession. For also since the right of agnatic relationship fails as to everyone's person, by the benefit of Praetorian law the inheritance belongs to you, who are in the second degree (*gradus*), rather than to the sons of your brother, who have been established in the third degree.

Given December 4, in the consulship of Decius Augustus and Gratus (250).

[4] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Caecilius.* If the grandson of your paternal uncle did not write a will or did so when he was less than 14 years old, and by right of agnatic relationship his succession has passed to you, you are protected by a lawful right even without the aid of possession of the inheritance (*bonorum possessio*).[373]

Posted July 15, in the consulship of the Augusti themselves, for the fourth time and for the third time, respectively (290).

[5] *The same Augusti and the Caesars to Cyrilla.* It is certain that those coming to the succession of an intestate person by right of agnatic relationship are considered ahead of those by cognate relationship (*proximitas*).

Submitted June 16,[374] *at Sirmium, in the consulship of the Augusti (293).*

[6] [375] *The same Augusti and Caesars to Claudiana.* A brother can succeed a decedent by right of consanguinity although he has *sui heredes* when they abstain from or repudiate the inheritance.

Written December 31, in the consulship of the Augusti (293).

[372] The emperor should be Gordian.

[373] *Bonorum possessio* was a remedy under Praetorian law that granted an estate to heirs not provided for in the *ius civile*.

[374] Mommsen writes December 17, 293; Krüger substitutes "written" for "submitted."

[375] Combine with C. 6.31.5.

[7] *Idem AA. et CC. Ammiano.* Patruo ac materterae tertio constitutis gradu non pariter intestati successio defertur, sed patris frater agnationis iure sorori matris anteponitur.

S. XVII *k. Mart. Sirmi CC. conss.*

[8] *Idem AA. et CC. Silano.* Si his, de quorum successione agitur, apud hostes defunctis secundum legis Corneliae beneficium iure agnationis adita hereditate vel petita bonorum possessione successisti, substantiam eorum vindicare non prohiberis.

S. non. Iul. Sirmi AA. conss.

[9] *Idem AA. et CC. Damagorae.* In successione intestatae sororem quam avum maternum haberi potiorem non ambigitur.

S. VI *k. Iul. Nicomediae CC. conss.*

[10] *Impp. Theodosius et Valentinianus AA. Florentio pp.* Sciant qui ad successionem vocantur pupilli mortui, si defuncto eius patre tutorem ei secundum leges non petierint intra annum, omnem eis sive ab intestato sive iure substitutionis successionem eius, si impubes moritur, denegandam.

D. VI *id. Iul. Constantinopoli Theodosio A.* XVII *et Festo conss.*

[11] *Imp. Anastasius A. Constantino pp.* Si ab eo, qui ex sacro rescripto secundum nostram constitutionem fieri postulaverit emancipationem liberorum, petitum sit, quatenus ei, qui emancipandus emancipandave est, minime legitima iura per emancipationem extinguantur, eadem iura tam emancipato vel emancipatae contra personas alias hoc modo sibi coniunctas quam aliis itidem contra eum vel eam in hereditatibus vel successionibus et tutelis nec non ceteris serventur intacta.

[7] *The same Augusti and Caesars to Ammianus.* Succession on intestacy is not passed equally to a paternal uncle and a maternal aunt although both are related in the third degree, but the father's brother is preferred to the mother's sister by right of agnatic relationship.

Given February 13,[376] *at Sirmium, in the consulship of the Caesars (294).*

[8] *The same Augusti and Caesars to Silanus.* If you have succeeded those whose succession is at issue when they have died among the enemy, in accordance with the benefit of the lex Cornelia[377] by right of agnatic relationship, either by entering into the inheritance or by seeking possession of the inheritance, you are not prohibited from claiming their property (*substantia*).

Written July 7, at Sirmium, in the consulship of the Augusti (293).[378]

[9] *The same Augusti to Damagora.* There is no doubt that a sister is preferred to a maternal grandfather in the succession to an intestate woman.

Written June 26,[379] *at Nicomedia, in the consulship of the Caesars (294).*

[10][380] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Florentius, Praetorian Prefect.* Those who are called to the succession of a deceased minor ward shall know that, if they had not sought a *tutor* for him within a year of the father's death in accordance with the laws, they are to be denied all succession to him, whether on intestacy or by right of substitution, if the minor child dies.

Given July 10, at Constantinople, in the consulship of Theodosius Augustus, for the seventeenth time, and Festus (439).

[11][381] *Emperor* ANASTASIUS *Augustus to Constantine, Praetorian Prefect.* If a person, on the basis of a sacred rescript in accord with Our constitution,[382] has asked for emancipation of his children, and has (further) sought that this emancipation not extinguish the civil law rights of the male or female to be emancipated, (then) the same rights both for the emancipated man or woman are to be maintained intact against other persons related to them in this way as well as for others in turn against him or her in inheritances or successions, and in tutelage as well as in other matters.[383]

[376] Mommsen writes February 14, 294.

[377] The lex *Cornelia de captivis* (82–79 BCE) treated as valid wills made when prisoners of war died in captivity (Blume: D. 49.15.22.3).

[378] Mommsen writes "in the consulship of the Caesars" (294).

[379] Mommsen writes "December 27, 294" to suit the location.

[380] = Nov. Theod. 11; combine with C. 6.56.6, 8.14.6.

[381] Combine with C. 6.20.18, 8.48.5.

[382] C. 8.48.5.

[383] Some editors have added, apparently based on C. 6.20.18, "tax payments are to be made, however, by these persons in accordance with the provisions made for emancipated persons, whenever such a case emerges, that is to say, when an emancipation has been completed."

D. xv k. Aug. Constantinopoli Probo et Avieno iuniore conss.

[12] *Imp. Iustinianus A. Iohanni pp.* **pr.** Si maior quinquagenaria partum ediderit, si debet huiusmodi suboles suo patri sua constitui et hereditatem eius nancisci, a Caesariana advocatione interrogati sumus. **1.** Et sancimus, licet mirabilis huiusmodi partus invenitur et raro contingit, nihil tamen eorum, quae probabiliter a natura noscuntur esse producta, respui, sed omne ius, quod ex quacumque lege liberis praestitum est, hoc merum atque immutilatum huiusmodi filiis vel filiabus servari in omnibus successionibus sive ex testamento sive ab intestato. **2.** Et summatim non absimiles aliis fiant, quos similes natura effecit, maxime cum et anteriore nostra lege huiusmodi nuptias permisimus, impares eas videri minime concedentes.

D. IIX k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc. anno secundo.

[13] *Idem A. Iohanni pp.* **pr.** De emancipatis filiis, qui sacro rescripto patribus impertito hoc a suis genitoribus meruerunt, dubitatum est. cum enim Anastasiana lex iura fratribus legitima noscitur servare, si quis ex his sine testamento et liberis decesserit, utrumne ad fratrem vel sororem eius successio devolvatur an ad superstitem patrem, dubitabatur. **1.** Huiusmodi dubitationem compendioso responso duximus esse finiendam ideoque sancimus ad similitudinem maternarum rerum aliarumque, de quibus a nobis iam lex posita est, et huiusmodi hereditatem iure quidem dominii ad fratres vel sorores pervenire in totum, usum fructum autem eius patri totum, sive torum priorem servaverit sive ad secundas migraverit nuptias, adquiri, sive per sacrum oraculum emancipatio procedat sive alio legitimo modo a sacris paternis fuerint absoluti. **2.** Cum enim et pater utitur usu fructu et votum eius est ad alios filios suas res pervenire, quapropter, cum ex lege Anastasiana in alium articulum fratribus prospectum est, non a nobis in hac specie plenius eis subvenitur, ut pater habeat usum fructum, fratres autem

Given July 18, at Constantinople, in the consulship of Probus and Avienus the Younger (502).

[12] *Emperor* JUSTINIAN *Augustus to John, Praetorian Prefect.* **pr.** We have been asked by the Society of Advocates (*advocatio*) of Caesarea whether, if a woman older than fifty has given birth, such an offspring ought to be established as a *suus heres* to his or her father and gain his inheritance. **1.** And We ordain that, although such a birth is found to be miraculous and happens rarely, even so, none of those things that are plausibly known to be produced by nature be scorned, but every right that has been provided for children by any law be maintained unchanged and undiminished for sons or daughters of this type in all successions, whether in accordance with a will or on intestacy. **2.** And in sum they should not be dissimilar from others whom nature has made similar, especially since We have permitted such marriages also in Our earlier law,[384] not allowing them to be seen as unequal (to other marriages).

Given October 18, at Constantinople, in the second post-consulate of the viri clarissimi *Lampadius and Orestes (532).*[385]

[13][386] *The same Augustus to John, Praetorian Prefect.* **pr.** Doubt has been expressed about emancipated children, who have gained this status from their parents on the basis of rescripts imparted to their fathers. For since the law of Anastasius[387] is known to maintain rights by civil law for siblings, if any of these passes away without a will and children, it was doubted whether his (or her) succession should pass to a brother or sister or to a surviving father. **1.** We have considered that such doubt must be curtailed with a succinct response, and for that reason We ordain that, on the analogy of maternal and other property, about which a law has already been promulgated by Us,[388] an inheritance of this sort with right of ownership pass in its entirety to brothers or sisters, but that its usufruct is acquired in its entirety by the father, whether he maintains his earlier marriage bed or migrates to a new marriage, whether the emancipation should proceed through a sacred imperial enactment (*oraculum*) or whether they are released from the father's power (*sacris paternis*) by another lawful means. **2.** For since the father uses the usufruct and also his wish is that his property reach his other children, for what reason, since on the basis of the law of Anastasius provision has been made for siblings in another rule, are they not more fully helped by Us in this respect, that the father have the usufruct, while the brothers or sisters have ownership over the property

[384] C. 5.4.27.
[385] Krüger writes the date as October 18, 531. The day of the month is corrupt in the manuscripts.
[386] Combine with C. 8.47.11, 8.48.6.
[387] See C. 5.70.5; Inst. 3.5.1
[388] C. 6.59.11.

vel sorores dominium rerum relictarum? 3. Exceptis maternis rebus, in quibus, si ex eadem matre fratres vel sorores sunt, eos solos vocari oportet: sin autem non supersint, tunc ad similitudinem aliarum rerum in totam fraternitatem dominium earum cedere, ut sit apertissimus in omnibus tractatus et non per differentiam personarum vel rerum vacillare noscatur.

D. k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[14] *Idem A. Iohanni pp.* pr. Lege duodecim tabularum bene Romano generi prospectum est, quae unam consonantiam tam in maribus quam in feminis legitimis et in eorum successionibus nec non libertis observandam esse existimavit, nullo discrimine in successionibus habito, cum natura utrumque corpus edidit, ut maneat suis vicibus immortale et alterum alterius auxilio egeat, ut uno semoto et alterum corrumpatur. 1. Sed posteritas, dum nimia utitur subtilitate, non piam induxit differentiam, sicut Iulius Paulus in ipso principio libri singularis, quem ad senatus consultum Tertullianum fecit, apertissime docuit. 2. Qui enim ferendum est ab intestato successionibus suas quidem filias ad similitudinem masculae subolis in parentis vocari successionem et iterum germanas iure consanguinitatis eandem sibi vindicare praerogativam, deinceps autem legitimas feminarum personas, si iura consanguinitatis non possident, a successione legitima repelli, cum maribus eadem successio pateat? 3. Quare enim patris soror non ad successionem filii fratris sui una cum masculis vocatur, sed aliud ius in amita, aliud in patruis observatur? vel qua ratione fratris filius ad successionem patrui vocatur, germana autem eius ab eadem successione recluditur?

4. Huiusmodi itaque legis antiquae reverentiam et nos anteponi novitati legis censemus et sancimus omnes legitimas personas, id est per virilem sexum descendentes, sive masculini sive feminini generis sint, simili modo ad iura successionis legitimae ad successionem intestatorum vocari secundum gradus sui praerogativam non ideo excludendas, quia consanguinitatis iura secundum germanae observationem non

left behind? 3. An exception is made for maternal property, in which, if there are brothers or sisters from the same mother, they alone must be called (to the inheritance). If, however, they should not survive, on the analogy of other property, ownership of it (the maternal property) must pass into the entire fraternity, so that its treatment be completely open in everything and it not be known to vary depending on differences of persons or property.

Given November 1, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*[389]

[14] *The same Augustus to John, Praetorian Prefect.* **pr.** The Roman race was well provided for in the law of the Twelve Tables, which judged that a single rule (*consonantia*) was to be observed both in the case of lawful (agnatic) males and females and in their succession, as well as in the case of freed-persons,[390] with no discrimination maintained in succession, since nature produced each body, so that it remain immortal in its fortunes and one require the aid of the other, so that when one is removed the other is also ruined. **1.** But posterity, while it has recourse to excessive subtlety, has not introduced a pious differentiation, as Julius Paulus most clearly showed in the very beginning of the single book that he wrote on the *SC Tertullianum.* **2.** For how is it to be tolerated that in intestate succession one's own daughters (daughters who are *sui heredes*) are called to succession of their parent on the analogy (*in similitudinem*) of male offspring and again that sisters, by the right of having the same father (*consanguinitas*), claim for themselves the same prerogative, but then agnatic female persons (*legitimas feminarum personas*), if they do not possess the rights from having the same father, are repelled from statutory succession, when the same succession is open to males? 3. For why is the sister of the father not called along with the males to the succession of her brother's son, but one right is observed in the case of a paternal aunt, and another in paternal uncles? Or by what reason is the son of a brother called to the succession of a paternal uncle, but his sister from the same father (*germana*) is excluded from the same succession?[391]

4. Thus We both decree that the reverence of such an ancient law be preferred to a novel law and ordain that all agnatic (*legitimae*) persons, that is descendants through the male sex, whether they are of the masculine or feminine gender, be called in a similar fashion to the rights of succession regarding the succession to intestate persons[392] in accordance with the privilege of their degree, not to be excluded for the reason that they do not have the rights of being from the same father (*consanguinitas*) pursuant to the rule for a sister

[389] Haloander's edition has 532.
[390] Blume translates as "children," emending the manuscripts' *libertis* with *liberis.*
[391] The point is that males and females were treated equally as descendants, but not as collaterals.
[392] Krüger deletes "regarding the succession to intestate persons."

habent. 5. Cum enim unius sanguinis iura remanent per virilem sexum incorrupta, quare naturae offendimus et legitimo iuri derogamus? cum et aliam maximam iniuriam res in se continet plerisque quasi vulnus intestinum incognitum. cum enim ad earum mulierum successionem masculi iure agnationis vocantur, quis patiatur earum quidem hereditatem ad eos legitimo iure deferri, ipsas vero neque invicem sibi neque masculis posse eodem iure succedere, sed propter hoc solum puniri, quod feminae natae sunt, et paterno vitio (si hoc vitium est) prolem innocentem gravari?

6. In his igitur casibus legem duodecim tabularum sequentes et novum ius novissimo iure corrigentes etiam unum gradum pietatis intuitu transferri ab iure cognationis in legitimam volumus successionem, ut non solum fratris filius et filia secundum quod iam definivimus ad successionem patrui sui vocentur, sed etiam germanae consanguineae vel sororis uterinae filius et filia soli et non deinceps personae una cum his ad iura avunculi sui perveniant, et mortuo eo, qui patruus quidem est fratris sui filiis, avunculus autem sororis suae suboli, simili modo ab utroque latere succedatur, tamquam si omnes legitimo iure veniant, scilicet ubi frater et soror superstites non sunt. his etenim personis praecedentibus et hereditatem admittentibus ceteri gradus remanent penitus semoti. 7. Illo procul dubio observando, ut successio non ad stirpes, sed in capita dividatur et is gradus in ordinem legitimum transferatur: ceteris omnibus successionibus secundum ius usque ad praesens tempus observatum in suo statu manentibus. **8.** Si qui autem casus iam evenerunt, secundum quod pristina iura volebant, eorum fiat distributio.

D. v k. Dec. post consulatum Lampadii et Orestis vv. cc.

[15] *Idem A. Iohanni pp.* **pr.** Meminimus antea divinam promulgasse constitutionem, per quam ad vestigia legis duodecim tabularum totam progeniem ex legitima subole descendentem sive masculinam sive femininam legitimo iure hereditatem adipisci sanximus, ut, quemadmodum ipsis a legitimis succeditur, ita et ipsae legitimarum personarum amplectantur successionem. **1.** In qua constitutione unum gradum ex cognatis in ius legitimum reduximus, id est germanae filios

from the same father. 5. For since the rights of a single blood remain uncorrupted through the male sex, why do We offend nature and compromise an agnatic right? Since the matter contains another very great wrong in itself, the internal wound, as it were, is unknown to most. For when males are called by right of agnatic relationship to the succession of these women, what person would allow their inheritance to pass to them by lawful right, but the women themselves for their part not be able to succeed to the males in turn by the same right, but to be punished for this reason alone, that they were born women, and the innocent offspring to be burdened by their paternal flaw, if this is a flaw?

6. Therefore in these cases, following the law of the Twelve Tables and correcting new law with the newest law, We want, out of regard to piety, one degree to be transferred from the right of cognate relationship to agnatic succession, so that not only the son and daughter of a brother, in accordance with what We have already defined, be called to the succession of their paternal uncle, but also the son and daughter of a sister from the same father or one from the same mother (uterine sister) alone and not their descendants come to the rights of their maternal uncle, and when the one has died who is a paternal uncle to the children of his brother, but a maternal uncle to the offspring of his sister, he be succeeded from each side in a similar manner, as if they all came (to the inheritance) by agnatic right, that is to say, when a brother and sister do not survive. For when these persons take precedence and accept the inheritance, the other degrees remain completely removed. 7. Without doubt this is to be observed, that the succession be divided not by equal shares by generations (*ad stirpes*), but by persons (*in capita*) and that this degree be transferred into the order established by law. All other successions remain as they are in accordance with the law observed up to the present time. 8. If, however, any situations have arisen in accordance with what the ancient laws wanted, their distribution should take place.

Given November 27, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[15] *The same Augustus to John, Praetorian Prefect.* We remember that we have previously promulgated a divine constitution,[393] through which We have ordained that, in accordance with the footsteps of the law of the Twelve Tables, the entire progeny descending from agnatic (*legitima*) offspring, whether male or female, acquire the inheritance by agnatic right (*legitimo iure*), so that, in whatever way they themselves are succeeded by agnatic relatives, so too should they themselves embrace the succession of agnatic persons (*legitimarum personarum*). 1. In that constitution We restored one degree from the cognate

[393] 14 above.

et filias et sororis uterinae filios ac filias: quam constitutionem in suo robore permanere censemus, cum et in nostris institutionibus tenor eius a nobis relatus est. **1a.** Sed subtiliore tractatu habito necessarium duximus, et si quid ex praetoria iurisdictione frugi inventum est, et hoc cum perfectissima definitione posito nostras leges ampliari. **1b.** Cum igitur praetor filium emancipatum, licet subtili iure capite fuerat deminutus, attamen in patris successione sine ulla deminutione vocare manifestissimus est, non eodem autem iure ad fratrum suorum successionem ab eo vocabatur, sed nec filii eius iure legitimo suis patruis succedebant, necessarium duximus hoc primum corrigere et legem Anastasianam iusto incremento perfectam ostendere, ut emancipatus filius et filia non solum in paternis bonis ad suorum similitudinem succedant, sed etiam in fratrum vel sororum suarum successione, sive omnes emancipati sint sive permixti sui cum emancipatis, aequo iure invicem sibi succedant et non secundum legem Anastasianam parte aliqua deminuta. et haec quidem de filiis emancipatis sancire bellissimum nobis visum est.

2. Sed nec fratrem vel sororem uterinos concedimus in cognationis loco relinqui. cum enim tam proximo gradu sunt, merito eos sine ulla differentia, tamquam si consanguinei fuerant, cum legitimis fratribus et sororibus vocandos esse sancimus, ut secundo gradu constituti et legitima successione digni reperti aliis omnibus, qui sunt ulterioris gradus, licet legitimi sint, praecellant. et haec quidem de secundi gradus successione satis abundeque nobis cum summa utilitate disposita sunt.

3. Cum autem tertio gradui ex transversa linea fuerit locus, ubi patruis et filiis fratrum et sororum locum antiquitas dedicavit, una cum illis tam emancipati fratris quam emancipatae sororis filium tantummodo et filiam, sive emancipatos sive suos patribus constitutos, et neminem alium ulterius, nec non fratris uterini et sororis germanae vel uterinae filium et filiam tantummodo ex legitima linea invicem vocari censemus, sicut iam sanximus, ut omnes, qui vel ab antiquo iure vel a nostra liberalitate in legitimorum quidem positi sunt praerogativa, eodem autem

relatives into the agnatic right (*ius legitimum*), that is, the sons and daughters of a sister from the same father, and the sons and daughters of a sister from the same mother. We decree that this constitution remain in its force, since its provisions have been related in Our Institutes.[394] 1a. But upon a more careful consideration, We have deemed it necessary that Our laws be improved with a most perfect definition of anything useful (*frugi*) that has been found from the Praetorian Edict. 1b. Since, therefore, although an emancipated child had been changed in status by a subtle legal principle, the Praetor nevertheless is most manifest in calling him in the father's succession without any change in status, still he was not called by him with the same right to the succession of his brothers, but his children (*filii*) by statutory right did not succeed their paternal uncles, We have considered it necessary to correct this first and to show the law of Anastasius[395] brought to completion by a just amplification, so that an emancipated son and daughter not only succeed in the father's property on an analogy with *sui heredes*, but that they also succeed one another in turn with equal right in the succession of their brothers or sisters, whether all are emancipated or *sui heredes* are mixed in with emancipated children, without some part diminished in accordance with the law of Anastasius. It has seemed to Us most seemly to make these ordinances in connection with emancipated children (*filii*).

2. But We do not allow a brother and sister born from the same mother to be left in the place of cognates. For since they are in the same degree of proximity, We ordain that they rightly must be called, without any difference, with agnate (*legitimi*) brothers and sisters, as if they had been from the same father, so that, established in the second degree and found worthy of statutory succession, they precede all others who are of a remoter degree, although they might be statutory heirs. These dispositions have been made quite generously (*abunde*) and with the highest utility by Us about succession in the second degree.

3. Since, however, there is a place for the third degree from a collateral line, where antiquity dedicated a place for paternal uncles and children of brothers and sisters, We decree that along with them only the son and daughter of an emancipated brother and of an emancipated sister be called reciprocally, whether they themselves have been established as emancipated or are *sui heredes* to their fathers, and no other person further, as well as only the son and daughter of a brother from the same mother and a sister from the same father or mother as long as they are from the agnatic line, just as we have already ordained,[396] so that all who by ancient law or by Our generosity have been placed in the privileged category of statutory heirs (*in legitimorum*

[394] Just., Inst. 3.2.4.
[395] See C. 5.70.5.
[396] C. 6.48.14.6.

tertio gradu sunt, simili iure vocentur. **3a.** Successionis videlicet iure et in hac parte servando, ut, si qui ex secundo gradu vocati renuntiaverint hereditati et noluerint eam adire nullusque alius sit in secundo gradu, qui succedere et potest et vult, tunc hi, quos praesenti lege enumeravimus ex tertio gradu, in locum recusantium succedant. **3b.** Illo etiam observando, ut successio non ad stirpes, sed in capita dividatur: ceteris omnibus successionibus secundum ius usque ad praesens tempus observatum procedentibus et nullo ex cognatis supra memoratos gradus ad iuris agnaticii formam redigendo, sed suum ordinem suamque proximitatem tenente incorruptam.

4. Quas autem personas ex iure cognationis in legitimas successiones transveximus, eas et tutelae gravamini vicissim supponimus, scilicet si et masculi sint et perfectae aetatis secundum nostrae constitutionis tenorem, ut non solum lucrum sentiant, sed etiam gravamini subiugentur. 5. Si qui autem casus iam evenerunt et per iudicialem sententiam vel amicalem transactionem sopiti sunt, nullam sentiant ex hac lege retractationem.

D. id. Oct. Constantinopoli dn. Iustiniano A. pp. IIII et Paulino vc. conss.

LVIIII Communia de Successionibus

[1] *Impp. Diocletianus et Maximianus AA. et CC. Varianae.* Scire debuisti fratre emancipato potiorem eam quae in familia mansit in alterius emancipati bonis non haberi, sed eos pariter, si sollemniter petierint bonorum possessionem, succedere.

S. xv k. Iun. Sirmi CC. conss.

[2] *Idem AA. et CC. Apollinario.* Si pater tuus propiori sobrino tuo agnato constituto et intestato defuncto iure civili adita hereditate, vel hoc ab initio non interveniente sive capitis deminutione perempto sollemniter bonorum possessione admissa successit ac tibi patris tui

... *praerogativa*), but are in the same third degree, be called by a similar right. **3a.** Of course the right of succession is to be maintained in this respect, that, if any from the second degree should be called and renounce the inheritance and be unwilling to enter it, and there should be no one else in the second degree who is both able and willing to succeed, then those whom We have enumerated in the present law from the third degree shall succeed in the place of those refusing. **3b.** This is also to be observed, that the succession be divided not by generations but by persons; all other successions proceed in accordance with the law observed up to the present time, and no one from the cognate relatives beyond the degrees listed above is to be admitted (*redigendo*) to the rule of agnatic right, but holds onto his own rank and his own proximity unchanged.

4. We also subject to the burden of tutelage for their part the persons whom We have transferred from the right of cognate relationship into statutory successions, that is to say if they are males and are of full age in accordance with the provisions of Our constitution, so that they not only realize the gain, but that they also be subjected to the burden. **5.** If, however, cases have even already arisen and have been put to rest through the verdict of a judge or a friendly settlement, they shall not undergo any reconsideration as a result of this law.

Given October 15, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, (Consul) for the fourth time, and the vir clarissimus *Paulinus (534).*

Fifty-Ninth Title Common Issues Concerning Successions

[1][397] *Emperors Diocletian and Maximian Augusti and the Caesars to Variana.* You ought to have known that the woman (*eam*) who remained in the agnatic kinship group (*familia*) is not considered to have a stronger claim than an emancipated brother to the property of another emancipated brother, but that both succeed equally, if they formally seek the possession of the property (*bonorum possessio*).

Written May 18, at Sirmium, in the consulship of the Caesars (294).

[2] *The same Augusti and Caesars to Apollinarius.* If your father succeeded your first cousin once removed, established as an agnate and dying intestate, having approached the inheritance on the basis of the civil law, or when this

[397] From the date, c. 1 should be placed after c. 5 in this title.

quaesita hereditas est, adire praesidem provinciae debes ac tutorem eius de tutela convenire.

D. XIIII k. Iun. Veronae AA. conss.

[3] *Idem AA. et CC. Ulpianae.* Vitrico privigni successionem intestati civili vel honorario iure non deberi certissimum est.

S. XV k. Mart. Sirmi CC. conss.

[4] *Idem AA. et CC. Aurelio Asterio.* Servus successores habere non potest.

D. non. April. CC. conss.

[5] *Idem AA. et CC. Iustinae.* **pr.** Amitae, cui successisse filios suos proponis, hereditatem tuo nomine non recte petis. **1.** Sed quoniam hos etiam intestatos diem functos adseveras, si quidem hi, quos privignos eiusdem amitae dicis, eorum consanguinei fuerint fratres, tam agnationis quam cognationis iure secundo gradu constitutos tibi praeferri non ambigitur. nam si amitini tui alio etiam patre nati numquam eorum matri privigni sunt, admisisse te bonorum possessionem probans eorum vindica successionem.

S. XII k. Mart. CC. conss.

[6] *Idem AA. et CC. Publiciano.* Avunculo priori, qui est in tertio gradu, quam consobrino, qui sequentem occupat, deferri successionem intestati certi iuris est.

Suppos. k. Oct. CC. conss.

[7] *Idem AA. et CC. Nicolao.* Adfinitatis iure nulla successio promittitur.

D. prid. non. Oct. CC. conss.

from the beginning did not happen or was prevented by a change in status (emancipation of the cousin), after gaining possession of the property in the customary way (by being admitted to the inheritance through Praetorian law), and your father's inheritance has been acquired for you, you ought to approach the provincial governor and sue his (the cousin's) *tutor* on his tutelage.

Given May 19, at Verona,[398] *in the consulship of the Augusti (293).*

[3] *The same Augusti and Caesars to Ulpiana.* It is most certain that succession is not owed to a stepfather of an intestate stepson either by civil law or Praetorian law (*ius honorarium*).

Written February 15, at Sirmium, in the consulship of the Caesars (294).

[4][399] *The same Augusti and Caesars to Aurelius Asterius.* A slave cannot have successors.

Given April 5, in the consulship of the Caesars (294).

[5] *The same Augusti and Caesars to Justina.* **pr.** You are not correct in seeking in your own name the inheritance of your paternal aunt, to whom you claim her children succeeded. **1.** But since you aver that they also have passed away intestate, if indeed those ones who you say are the stepsons of the same aunt were their brothers by the same father, there is no doubt that they, established in the second degree, are preferred to you both by right of agnatic and cognate relationship. For if your cousins were born from another father and are never[400] stepsons of their mother, by proving that you have gained possession of the property, claim their succession.

Written February 18,[401] *in the consulship of the Caesars (294).*

[6] *The same Augusti and Caesars to Publicianus.* It is certain law that intestate succession is passed (*deferri*) to a maternal uncle, who is in the third degree, before a cousin, who occupies the following one.

Submitted[402] *October 1, in the consulship of the Caesars (294).*

[7] *The same Augusti and Caesars to Nicolaus.* No succession is promised by right of a relationship by marriage (*adfinitas*).

Given October 6, in the consulship of the Caesars (294).

[398] More plausibly Beroea (Mommsen). The date is probably June 15, 293; compare C. 5.24.1.

[399] Combine with C. 3.31.8 and 7.16.27, which have March 30, 294, as the date (so Mommsen for this constitution), as well as Consultatio 6.18, from which Aurelius is restored, and which also includes Sirmium as the place.

[400] Mommsen writes "and these are not stepsons ..."

[401] Mommsen writes April 20, 294.

[402] Krüger writes "written."

[8] *Idem AA. et CC. Iustae.* Antequam scriptus cuiuscumque portionis capax repudiet hereditatem vel alia ratione quaerendae facultatem amittat, ei qui testamentum reliquit intestato nemo succedit. igitur perspicis, quod testamentariae successionis spe durante intestati bona defuncti non recte vindicentur.

S. VI id. Mart. Retiariae CC. conss.

[9] *Idem AA. et CC. Sopatro.* Ancillae dominus liberi hominis, cum quo contubernium haec habuit, per hanc commixtionem successionem vindicare non potest.

S. XV k. Ian. Nicomediae CC. conss.

[10] *Idem AA. et CC. Danuvio.* Nutritoribus hoc nomine nec civili nec honorario iure defertur hereditas.

S. VI k. Ian. CC. conss.

[11] *Imp. Iustinianus A. Demostheni pp.* **pr.** Sancimus, quemadmodum de his rebus, quae liberis in sacris constitutis ex occasione maritali adquisitae sunt, certus ordo destinatus est, ut, si quis ex his ab hac luce fuerit subtractus, pars eius, quam lucratus est, ad eius liberos vel nepotes vel pronepotes concedat, quibus non extantibus ad fratres suos ex eodem matrimonio progenitos vel, si etiam non supersint, ad fratres ex aliis nuptiis procreatos, cumque nemo eorum fuerit relictus, tunc ad patrem perveniat: ita et de his, quae materna linea per quascumque occasiones vel inter vivos vel per ultimas dispositiones vel ab intestato descendunt, similis ordo servetur, primo in filii vel filiae successione posteritate eius vocanda eaque non inventa fraterno consortio eiusdem vel alieni matrimonii secundum praedictum ordinem arcessito, tunc ad ultimum locum pater a legibus conclametur et sui filii non gratam hereditatem relictam, sed triste lucrum sibi lugeat adquisitum. **1.** In omnibus videlicet casibus, in superstite subole liberorum et fratribus adhuc viventibus, qui ad hereditatem defuncti patrem antecedunt, usu fructu rerum, quarum dominium ad eos pervenit, apud parentes remansuro.

D. XVI k. Oct. Chalcedone Decio vc. cons.

[8] *The same Augusti and Caesars to Justa.* Before a person capable (of receiving the inheritance) who is named as heir to any portion refuses the inheritance or loses the right to gain it by another means, no one succeeds on intestacy to the person who left the will. Therefore you see that while a hope for succession on the basis of the will endures, the property of the intestate decedent will not rightly be claimed.

Written March 10,[403] at Retiaria, in the consulship of the Caesars (294).

[9][404] *The same Augusti and Caesars to Sopater.* The owner of a slave woman cannot claim succession to a free man with whom she maintained a domestic partnership (*contubernium*) on the basis of this relationship (*commixtio*).

Written December 18, at Nicomedia, in the consulship of the Caesars (294).

[10] *The same Augusti and Caesars to Danuvius.* Neither by civil law nor by Praetorian law does an inheritance pass (*defertur*) to childminders on this account.

Written December 27, in the consulship of the Caesars (294).

[11] *Emperor JUSTINIAN Augustus to Demosthenes, Praetorian Prefect.* pr. In whatever way a certain order has been established about the property that has been acquired for children in power (*in sacris*, under the father's power) on the occasion of a marriage, We ordain that, if any of these (children) is withdrawn from this light, his part that he has gained is to pass to his children, grandchildren, or great-grandchildren, and if there are not any of these, to his siblings (*fratres*) born from the same marriage, but if there are not any of these, to siblings born from other marriages. And when none of these is left, then it is to come to the father, so that a similar order be maintained as with that property that passes on the mother's line through any occasions, either (through gifts) between the living, or through final dispositions, or on intestacy: first, that one's posterity is to be called in the succession of a son or daughter; and if this is not found, the collective brothers and sisters are summoned, whether of the same or a different marriage, according to the aforementioned order; then the father is to be called by the laws in the final place, and he might mourn that a welcome inheritance of his child has not been left him, but that he has acquired a doleful gain. 1. Certainly in all cases, when there are surviving offspring of the children and (also) siblings still living, who come to the inheritance of the deceased earlier than the father, the usufruct over the property, the ownership of which passes to them, will remain with their male ascendants (*parentes*).

Given September 17, at Chalcedon, in the consulship of the vir clarissimus *Decius (529).*

[403] Mommsen writes October 10, 294.
[404] Combine with C. 3.32.28.

LX De Bonis Maternis et Materni Generis

[1] *Imp. Constantinus A. consulibus tribunis plebis senatui salutem.* **pr.** Res, quae ex matris successione fuerint ad filios devolutae, ita sint in parentum potestate, ut fruendi dumtaxat habeant facultatem, dominio videlicet earum ad liberos pertinente. **1.** Parentes autem, penes quos maternarum rerum utendi fruendique tantum potestas est, omnem debent tuendae rei diligentiam adhibere et quod iure filiis debetur in examine per se vel per procuratorem poscere et sumptus ex fructibus impigre facere et litem inferentibus resistere atque ita omnia agere, tamquam solidum perfectumque dominium et personam gerant legitimam, ita ut, si quando rem alienare voluerint, emptor vel is cui res donatur observet, ne quam partem earum rerum, quas alienari prohibitum est, sciens accipiat vel ignorans.

2. Docere enim pater debet proprii iuris eam rem esse, quam donat aut distrahit: et emptori, si velit, fideiussorem licebit accipere, quia nullam poterit praescriptionem opponere filiis quandoque rem suam vindicantibus.

D. XV k. Aug. Aquileia. recitata apud Vettium Rufinum pu. in senatu non. Sept. Constantino A. V et Licinio C. conss.

[2] *Impp. Arcadius et Honorius AA. Florentino pu.* Quidquid avus avia, proavus proavia ex materna linea venientes nepoti nepti pronepoti pronepti testamento fideicommisso legato donatione vel alio quolibet titulo largitionis vel etiam intestati successione contulerint, pater filio filiaeve integra illibataque custodiat, ut vendere donare relinquere alteri obligare, sicut nec materna bona, non possit usu fructu dumtaxat ad eum pertinente, ita ut, quemadmodum ipse super his licentiam totius potestatis amittit, defuncto eo filio filiaeve praecipua computentur nec ab illis, qui ex patre sunt coheredes, vindicentur.

D. id. Oct. Mediolani Olybrio et Probino conss.

Sixtieth Title Property of the Mother and of the Mother's Family

[1][405] *Emperor* CONSTANTINE *Augustus sends greetings to the Consuls, Praetors, Tribunes of the Plebs, and the Senate.* **pr.** Property that has devolved to children from succession to their mother should remain in the power of male ascendants (*parentes*), such that they only have the right (*facultas*) of enjoying it, with the ownership over it belonging to the children. **1.** However, the male ascendants, who only have the power to use and enjoy maternal property, are obliged to apply every care in maintaining it, and, either themselves or through a procurator, demand at a trial what by law is owed to the children and defray expenses diligently from the fruits, resist those bringing lawsuits, and take every action as if they wielded undivided and complete ownership and represented a lawful person (*personam legitimam*), so that, if they ever want to alienate property, the buyer or the person to whom the property is being given as a gift take care that he not knowingly or unknowingly accept a part of that property the alienation of which has been prohibited.

2. For the father is obliged to indicate that the property that he is donating or alienating is in his own private right. The buyer, for his part, if he should wish, will be allowed to accept a guarantor, since he will be able to oppose no prescription (of time) to children at any time claiming their property.

Given July 18, at Aquileia, and recited before Vettius Rufinus, City Prefect, in the Senate, September 5, in the consulship of Constantine Augustus, for the fifth time, and Licinius Caesar (319).[406]

[2][407] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Florentius, Praetorian Prefect.* Whatever a grandfather or a grandmother, and great-grandfather or great-grandmother coming from the mother's side has provided a grandson or a granddaughter, or a great-grandson or great-granddaughter in a will, trust, legacy, gift, or any other category of generosity, or even by succession on intestacy, the father shall maintain it whole and uncompromised for his son or daughter, such that he not be able to sell, give as a gift, bequeath, or obligate it to another, just as with property not from the mother's side, with the usufruct alone belonging to him, so that, just as he himself loses discretion for his entire power over this property), when he dies, it should accrue to the son or daughter and it is not to be claimed by those who are co-heirs of the father (*ex patre*).

Given October 15, at Milan, in the consulship of Olybrius and Probinus (395).

[405] = C.Th. 8.18.1, with different wording.

[406] Seeck, following Krüger, gives July 18, 315 (*Const. A.* IIII *et Licinio* IIII).

[407] = C.Th. 8.18.7.

[3] *Impp. Theodosius et Valentinianus AA. ad senatum urbis Romae.* **pr.** Si viva matre emancipati sunt filii et postea mater decesserit, quoniam omni commodo destituitur pater nec retinet usum fructum, viriles ei inter filios, sive unus seu plures sunt, usus fructus tribuimus portiones. **1.** Si vero mulier moriens alios ex filiis emancipatos a patre, alios in patria potestate dimiserit, in casu dispari utitur maritus defunctae beneficio, quod casui utrique praescripsimus, id est circa eorum quidem portionem, quos adhuc in sacris retinet, usum fructum ex legum auctoritate retinebit et praemium delatae, cum volet, emancipationis accipiet, in eorum vero parte, quos exisse de potestate viva matre constiterit, usum fructum virilis inter eos portionis secundum praescripta percipiet.

2. In nepotibus etiam vel neptibus hoc observandum esse censemus, ut maritus, qui uxore mortua, non extantibus filiis, cum solis nepotibus vel neptibus ex hac lege ad emolumentum vocandus est, si unus vel una pluresve nepotes ex filio uno vel pluribus, qui in potestate defecerunt, procreati sunt, hoc iure utatur, quod de filiis constitutum est. **2a.** Nam licet hoc novum praesens lex constituat in nepotes, non est tamen ab re, ut in hoc casu deteriores esse nepotibus filii non sinantur. **2b.** Habeat igitur avus veniens cum nepotibus in potestate durantibus usum fructum bonorum omnium, quae ex defunctae aviae successione delata sunt. **2c.** Cum vero his quoque libertatem emancipatione largitur, similiter et ab ipsis, sicut de filiis constitutum est, praemium manumissionis accipiat, vel si ex pluribus alteros manumittit alteros retinet, ex parte manumissorum legitimum praemium, ex parte vero in potestate manentium retineat usum fructum.

3. Quod si nepotes sint neptesve aut ex emancipato filio aut ex filia procreati aut ab ipso avia vivente sacris dimissi, idem avus virilis cum ipsis portionis habeat usum fructum. si vero ex nepotibus neptibusve tempore, quo in aviae successionem vocantur, alii in avi sunt potestate,

[3] [408] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to the Senate of the City of Rome.* **pr.** If children have been emancipated while their mother is alive and afterwards the mother dies, since the father is deprived of every advantage and does not retain the usufruct, We grant him the usufruct over a portion equal to the shares of his children, whether there is one or several. **1.** But if a woman when dying leaves behind (*dimiserit*) some of her children emancipated by their father and others in their father's power, the father uses the benefit of the deceased woman in the disparate case(s) that We have prescribed for each situation, that is, in connection with the portion of the ones whom he still retains in his household (*in sacris*, in his power), he will retain the usufruct in accordance with the authority of the laws, and, when he wishes, he will receive the reward for providing emancipation, but in the case of the share of those who it is established have departed from his power while the mother is alive, he will gain the usufruct of a portion equal to what they have received in accordance with what has been prescribed.

2. In the case of grandsons or granddaughters, We decree that this be observed, that the husband, who, when his wife has died and there are not any children surviving, is to be called to the gain (*emolumentum*) with the grandsons and granddaughters alone in accordance with this law, if one or more grandsons or granddaughters, born of one son or more, have died while in (their grandfather's) power,[409] use the rule that was established concerning children. **2a.** For although the present law should establish this new provision for grandchildren, it is still not irrelevant that in this case children not be allowed to be worse off than grandchildren. **2b.** Therefore the grandfather coming with grandchildren remaining in his power is to have the usufruct over all the property that has been passed (*delata*) from the succession of the deceased grandmother. **2c.** When indeed (he) bestows liberty on these too by emancipation, he should receive the reward for manumission similarly from those very people, just as it has been established concerning children, or, if out of a larger group he manumits some and retains others, from the group of those manumitted he should retain the statutory reward, but from those remaining in his power he should retain the usufruct.

3. But if grandsons or granddaughters have been produced either from an emancipated son or a daughter or have been dismissed by himself from his household (i.e., emancipated) while the grandmother is living, the same

[408] = C.Th. 8.18.9, with some additional wording; combine with C. 6.55.11 (check passages listed there).

[409] It is possible to imagine a situation in which they died in their father's power, if the grandfather had emancipated the father and the children predeceased the father; but this seems a bit of a stretch. See the *principium*.

id est mariti defunctae, alii sui iuris sint, circa personam quidem eorum, qui in potestate consistunt, et in usu fructu consequendo et in emancipationis praemio conquirendo ratio supra dicta servetur: in his vero, qui sui iuris sunt, facultas capiendi usus fructus virilis inter eos portionis habeatur.

4. Eadem autem et de pronepotibus sexus utriusque sancimus, manente definitione, quae de singulis sancita est, si filii sint pariter ac nepotes.

D. VIII id. Nov. Ravennae Theodosio XII et Valentiniano II AA. conss.

[4] *Imp. Leo A. Callicrati pp. per Illyricum.* **pr.** Omnem ambiguitatis confusionem amputantes hac liquida et compendiosa lege sancimus circa usum fructum maternarum rerum nullam esse differentiam, sive in priore matrimonio pater, ex quo filios habuit, permanere voluerit sive novercam filiis superduxerit: legibus, quae de maternis bonis latae sunt, suam habentibus firmitatem. **1.** Patres igitur usum fructum maternarum rerum, etiamsi ad secundas migraverint nuptias, sine dubio habere debebunt: nec ullam filiis vel quibuslibet ex persona eorum contra patres improbam vocem accusationemque posse competere.

D. k. Sept. Anthemio A. II cons.

LXI De Bonis, Quae Liberis in Potestate Constitutis ex Matrimonio vel Aliter Adquiruntur, et Eorum Administratione

[1] *Impp. Theodosius et Valentinianus AA. ad senatum.* Cum venerandae leges vetuerint patribus iure potestatis adquiri, quidquid eorum filiis avus avia proavus proavia a linea materna venientes quocumque titulo contulissent, hoc quoque convenit observari, ut, quidquid vel uxor marito non emancipato vel maritus uxori in potestate positae quocumque

grandfather should have the usufruct over a portion equal to what they have received. But if from among the grandsons and granddaughters, at the time in which they are called to the succession of the grandmother, some are in the power of the grandfather, that is of the husband of the deceased woman, and others are *sui iuris*, the plan described above shall be maintained in connection with the person of those who are in power, both in gaining the usufruct and in acquiring the reward for the emancipation. But as to those who are *sui iuris*, the right to take the usufruct of a portion equal to what they have received is to be maintained.

4. We make the same ordinance concerning great-grandchildren of either sex, with the definition remaining that has been ordained for each group, if there are children and grandchildren at the same time.

Given November 6, at Ravenna, in the consulship of Theodosius, for the twelfth time, and Valentinian, for the second time, Augusti (426).

[4] *Emperor* LEO *Augustus to Callicrates, Praetorian Prefect for Illyricum.* **pr.** Chopping off every confusion of ambiguity We ordain by this pellucid and concise law that, in regard to the usufruct of maternal property, there is no difference whether the father wanted to remain in the prior marriage (i.e., not remarry) from which he had children, or whether he brought a stepmother for his children; the laws that have been passed concerning maternal property remain in effect. **1.** Therefore fathers without doubt ought[410] to have the usufruct over maternal property even if they migrate to second marriages; nor can children or anyone else representing them (*ex persona eorum*) avail themselves of any wicked words or accusations against their fathers.

Given September 1, in the consulship of Anthemius Augustus, for the second time (468).

Sixty-First Title Property That Is Acquired for Children in Power from Marriage or Otherwise, and Its Management

[1][411] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to the Senate.* Since the venerable laws forbade that whatever a grandfather, grandmother, great-grandfather, or great-grandmother who come from the maternal line have conferred on their children under any title, be acquired for the (children's) fathers by the right of their power, it is appropriate that this rule also be observed, that

[410] Mommsen deletes *debebunt.*

[411] = C.Th. 8.19.1; combine with C. 6.55.11 (and other passages listed there). This constitution extends earlier rules that permit inheritance to proceed despite the recipient being under a father's *potestas.*

titulo vel iure contulerit seu transmiserit, hoc patri nullatenus adquiratur: atque ideo in eius tantum, cui delatum est, iure durabit.

D. VII id. Nov. Ravennae Theodosio XII et Valentiniano II AA. conss.

[2] *Idem AA. Hierio pp.* Constitutionis novae capitulum clariore interpretatione sancimus, ut, quae per filios nepotes pronepotes itemque filias neptes proneptes, quamvis in potestate sint, minime adquiri decrevimus a marito vel uxore quocumque titulo collata sive ultima voluntate transmissa, nullus ad id quoque pertinere existimet, quod ab ipso parente datum vel ante nuptias donationis causa pro una ex memoratis personis praestitum fuerat, ut minime ad eum, si casus tulerit, revertatur (prospiciendum est enim, ne hac iniecta formidine parentum circa liberos munificentia retardetur): sed ut his potestatis iure ad parentes reversis cetera, quae ex substantia speciali coniugis ad superstitem devenerunt, quamvis idem in sacris sit, fructu tamen solo atque usu parentibus deputato, dominium ei qui a coniuge vel quae meruit reservetur, parente pro emancipationis etiam beneficio, si voluerit, sicut in maternis rebus vel quae per eandem lineam veniunt, praemium habituro.

D. X k. Mart. Felice et Tauro conss.

[3] *Idem AA. Florentio pp.* pr. Quod scitis prioribus continetur nec a filia quae in potestate est donationem ante nuptias patri nec a filio dotem adquiri, eo addito confirmamus, ut, defunctis his adhuc in potestate patris, si liberis extantibus moriantur, ad liberos eorum eaedem res iure hereditatis, non ad patres iure peculii transmittantur nec per

whatever either a wife has provided or transmitted to an unemancipated husband under any right or title, or a husband has provided to a wife positioned in her father's power, is not at all to be acquired for the father; and for that reason it will remain only in the right of that person upon whom it was conferred.

Given November 7, at Ravenna, in the consulship of Theodosius, for the twelfth time, and Valentinian, for the second time, Augusti (426).

[2][412] *The same Augusti to Hierius, Praetorian Prefect.* We establish a chapter of a new constitution with a clearer interpretation, that no one should judge as belonging to what We have decreed is not acquired by a husband or wife through sons, grandsons, or great-grandsons, as well as daughters, granddaughters, or great-granddaughters, although they are in (the father's) power, under whatever title it was conferred or transmitted by a final will, that which had been given by the parent himself (as dowry) or as a gift before marriage provided for one of the persons mentioned, so that it not revert to him if a chance (*casus*) brings it – for care must be taken lest, as a result of the introduction of this fear, parents' munificence toward their children might be thwarted – but that, when this property has reverted to the male ascendants (*parentes*) by the right of their power, ownership over the other property that has passed to a survivor from the specific property of the spouse be reserved for the man or woman who has gained ownership of it from the spouse, although this same person is in power (*in sacris*), albeit with the enjoyment and use (usufruct) alone assigned to the male ascendants, while the father will have the reward for the benefit of emancipation, if he wishes, just as in the case of maternal property or what comes through the same line.

Given February 20, in the consulship of Felix and Taurus (428).

[3][413] *The same Augusti to Florentius, Praetorian Prefect.* **pr.** We confirm what is contained in previous decrees, that neither a gift before marriage is acquired for the father from a daughter in power nor a dowry from a son, with this addition, that when these persons are deceased while still in the father's power, if they should die with surviving children, the same property should pass to their children by right of inheritance, not to the fathers by right of the *peculium*, nor of course are they to be acquired for the grandfather through grandchildren. **1.** If, however, the same grandson meets his day without children but with both

[412] Combine with C. 2.57.2, 5.3.17, 5.4.22, 5.11.6, 6.18.1, 6.24.11, which include Constantinople as the place of promulgation.

nepotes avo videlicet adquirendae. **1.** Sin autem idem nepos superstitibus tam patre quam avo paterno diem suum sine liberis obierit, eorum dominium, quae ad ipsum ex matre vel ab eius linea pervenerunt, non ad avum, sed ad patrem eius perveniat: usu fructu videlicet et in huiusmodi casibus avo, dum supererit, servando.

D. VII id. Sept. Constantinopoli Theodosio A. XVII et Festo conss.

[4] *Impp. Leo et Anthemius AA. Erythrio pp.* **pr.** Quaecumque res ad filium vel filiam, nepotes sive pronepotes utriusque sexus in potestate constitutos ex priore vel secundo aut tertio seu coniugio numerosiore pervenerint ex dote vel quacumque donatione seu hereditate legato vel fideicommisso, earum usque in diem vitae suae pater vel avus vel proavus usum fructum habeant: easdem res quocumque modo alienandi vel pignoris seu hypothecae iure obligandi facultate eis penitus interdicta, dominio videlicet earum ad filios et nepotes sive pronepotes utriusque sexus permanente, etiamsi ex eodem matrimonio procreati non sint, ex quo eaedem res ad parentes eorum, qui quaeve in potestate sunt, fuerint devolutae. **1.** Eo videlicet observando, ut morientium fratrum sororumve portiones, qui quaeve ex eodem matrimonio progeniti vel progenitae sunt, primo quidem ad liberos eorum, ut dictum est, si tamen fuerint, deinde his non extantibus ad superstites tantummodo fratres vel sorores eorum perveniant aut ad superstitem, si ex isdem fratribus sive sororibus unus unave remanserit. **2.** Omnibus autem, qui ex eodem coniugio fuerint procreati, defunctis tunc demum ad eos, qui ex alio matrimonio sunt editi, easdem res pro virili parte venire statuimus: nullo autem ex memoratis personis existente parentes eorum eas percipere. **3.** Parentibus vero, quorum sub potestate sunt, usum fructum dumtaxat habituris memoratas res iure potestatis alienandi vel obligandi licentiam denegamus, non prohibendis isdem liberis, quandoque sui iuris fuerint, nulla temporali praescriptione obsistente easdem res omnibus modis vindicare, nisi forte, postquam potestate parentium eos contigerit liberari, tantum temporis effluxerit, ut ex continua et inconcussa tenentis possessione eorum excludatur intentio.

D. V k. Mart. Marciano cons.

a surviving father and paternal grandfather, ownership of that property that came to him from the mother or her line should pass not to his grandfather, but to his father. Of course the usufruct in such cases is to be maintained for the grandfather while he survives.

Given September 7, at Constantinople, in the consulship of Theodosius Augustus, for the seventeenth time, and Festus (439).

[4][414] Emperors *LEO and ANTHEMIUS Augusti to Erythrius, Praetorian Prefect.* **pr.** Whatever property has passed to a son or daughter, or to grandchildren or great-grandchildren of either sex in power from a first, second, third, or even later marriage, from a dowry or any type of gift, inheritance, legacy, or trust, the father, grandfather, or great-grandfather shall have the usufruct over it until the (last) day of life; but they are completely forbidden the right (*facultas*) to alienate the same property in any way or to obligate it by right of pledge or hypothec, while the ownership of it plainly remains with the children, grandchildren, or great-grandchildren of either sex, even if they have not been produced from the same marriage from which the same property had passed to the fathers of the persons of either sex who are in power. **1.** Certainly this is to be observed, that the portions of dying brothers or sisters who have been produced from the same marriage should first pass to their children, as has been said, but only if there are any; then, if there are not, only to their surviving brothers or sisters, or to the survivor, if one remains from the same brothers or sisters. **2.** However, when all who have been produced from the same marriage have deceased, We establish that only then does the same property in a full share (*pro virili parte*) come to those who have been born from a different marriage, but that, if none of the persons mentioned exists, their fathers take it. **3.** But We deny male ascendants under whose power they are, since they will have only the usufruct, permission to alienate or obligate the property mentioned by right of their (the father's) power, while the same children, whenever they are *sui iuris*, are not to be prohibited from claiming the same property in every way, with no prescription of time blocking them, unless perhaps, after it has befallen them to be freed from the power of their fathers, so much time has flowed by that their assertion (*intentio*) is excluded by the continuous and unshaken possession of the one holding it (for thirty years).

Given February 26, in the consulship of Marcianus (472).

[413] Pr. = Nov. Theod. 14.1.8; combine with C. 5.9.5.
[414] Combine with C. 5.9.6, 6.20.17.

[5] *Idem AA. Nepoti magistro militum Dalmatiae.* **pr.** Non sine ratione de negotio, quod inter matrem familias, cuius vestra suggestio meminit, et germanum eius vertitur, magnitudo tua diversis legibus ex utraque parte prolatis nostram credidit consulendam esse clementiam, cum mulier diversis iuris lectionibus idem intellegi maritum et sponsum niteretur probare, germanus mariti nomen illi soli, qui nuptias contraxerit, recitatione constitutionis divorum retro principum Theodosii et Valentiniani, qua cavetur, quidquid maritus vel uxor in potestate constituti invicem sibi reliquerint, non patri adquiri, sed ad eorum ius pertinere, imponere. **1.** Quamvis ergo significatione nominis maritus vel uxor post coeptum matrimonium intellegatur, ex quo videlicet inducta est dubietas, attamen, quia consequens est ambiguas atque legum diversis interpretationibus titubantes causas benigne atque naturalis iuris moderamine temperare, non piget nos in praesenti quoque negotio, de quo sublimitas tua suggessit, aequitati convenientem Iuliani tantae existimationis viri atque disertissimi iuris periti opinionem sequi. qui cum de dotali praedio tractatu proposito idem ius tam de uxore quam de sponsa observare arbitratus sit, licet lex Iulia de uxore tantum loquatur: qua ratione tam sponsaliciam donationem quam hereditatem, quam memoratus sponsus suam sponsam lucrari voluit, non adquiri patri, sed ad eam pervenire benignum esse perspeximus.
D. k. Iun. Leone A. v cons.

[6] *Imp. Iustinianus A. Demostheni pp.* **pr.** Cum oportet similem providentiam tam patribus quam liberis deferri, invenimus autem in veteris iuris observatione multas esse res, quae extrinsecus ad filios familias veniunt et minime patribus adquiruntur, quemadmodum in maternis bonis vel quae ex maritali lucro ad eos perveniunt, ita et in his, quae ex aliis causis filiis familias adquiruntur, certam introducimus definitionem. **1.** Si quis itaque filius familias vel patris sui vel avi vel proavi

[5] *The same Augusti to Nepos, Master of Soldiers in Dalmatia.* **pr.** Not without reason has Your Greatness believed, concerning the business involving the mother of the family (*materfamilias*) whom Your report (*suggestio*) mentions and her brother (from the same father), after diverse laws have been cited by either side, that Our Clemency should be consulted, since the woman was attempting to prove that "husband" (*maritus*) and "fiancé" (*sponsus*) are understood as the same in different readings of the law, whereas the brother applied[415] the name of husband only to that person who has contracted a marriage, on the basis of the recitation of the constitution of the earlier deified Emperors Theodosius and Valentinian,[416] in which it was provided that whatever a husband or wife in power have left one another reciprocally is not acquired for the father but belongs to their right. **1.** Therefore although by the (strict) meaning of the term, a husband or wife is understood after the marriage has begun, as a result of which, apparently, doubt has been introduced, even so, since it is logical to temper in a kindly fashion and with the guidance of natural law cases that are ambiguous and wavering because of different interpretations of the laws, We do not regret also in the present business, about which Your Sublimity has reported, to follow the opinion of Julian, a man of such a great reputation and a most eloquent expert in the law, which is consistent with fairness. Since he decided to observe the same rule concerning a dotal property, when the question was proposed, for both a wife and a fiancée, although the lex Julia only speaks about the wife, We have seen that, by this reasoning, it is kind that both a gift to a fiancée and an inheritance, which the aforementioned husband wanted his fiancée to gain, is not acquired for her father, but belongs to her.

Given June 1, in the consulship of Leo, for the fifth time (473).

[6] *Emperor* JUSTINIAN *Augustus to Demosthenes, Praetorian Prefect.* **pr.** Although similar foresight must be taken for both fathers and children, We find all the same in Our observation of the ancient law that there are many things that come from outside to children in the father's power and are not acquired for fathers, as in maternal property or what comes to them from a marital benefit[417] (*lucrum maritale*), as well as with those things that are acquired for children in power from other causes, We introduce a precise definition. **1.** If any child in power, whether in the power of his father, grandfather,

[415] The mansucripts' *imponere* probably requires emendation.

[416] 1 above.

[417] *Materna bona* is property inherited from the child's mother. This exception, introduced by Constantine, was gradually extended to other property of non-paternal origin (*bona adventicia*), including dowry from the child's wife (cf. 4 and 5 above), the *maritale lucrum*.

in potestate constitutus aliquid sibi adquisierit non ex eius substantia, cuius in potestate sit, sed ab aliis quibuscumque causis, quae ex liberalitate fortunae vel laboribus suis ad eum perveniant, ea suis parentibus non in plenum, sicut antea erat sancitum, sed usque ad solum usum fructum adquirat, et eorum usus fructus quidem apud patrem vel avum vel proavum, quorum in sacris sit constitutus, permaneat, dominium autem filiis familias inhaereat ad exemplum tam maternarum quam ex nuptialibus causis filiis familias adquisitarum rerum. **1a.** Sic etenim et parenti nihil derogabitur usum fructum rerum possidenti et filii non lugebunt, quae ex suis laboribus sibi possessa sunt, ad alios transferenda adspicientes vel extraneos vel ad fratres suos, quod etiam gravius multis esse videtur. **1b.** Exceptis castrensibus peculiis, quorum nec usum fructum patrem vel avum vel proavum habere veteres leges concedunt: in his enim nihil novamus, sed vetera iura intacta servamus. eodem observando etiam in his peculiis, quae quasi castrensia peculia ad instar castrensis peculii accesserunt. **1c.** Sub hac tamen definitione hunc legis articulum inducimus, ut in successione quidem earum rerum, quae extrinsecus filiis familias adquiruntur, iura eadem observentur, quae in maternis et nuptialibus rebus statuta sunt.

2. Non autem hypothecam filii familias adversus res patris viventis adhuc seu iam mortui sperare audeant nec ratiocinia eis super administratione inferre, sed tantummodo alienatione vel hypotheca suo nomine patribus denegata rerum, habeat parens plenissimam potestatem uti fruique his rebus, quae per filios familias secundum praedictum modum adquiruntur. **2a.** Et gubernatio earum sit penitus impunita et nullo modo audeat filius familias vel filia vel deinceps personae vetare eum, cuius in potestate sunt, easdem res tenere aut quomodo voluerit gubernare, vel si hoc fecerint, patria potestas in eos exercenda est: sed habeat pater vel aliae personae, quae superius enumeratae sunt, plenissimam potestatem uti frui gubernareque res praedicto modo adquisitas.

2b. Et si quid ex usu earum pater avus vel proavus collegerit, habeat licentiam quemadmodum cupit hoc disponere et in alios heredes transmittere, vel si ex earum rerum fructibus res mobiles vel immobiles vel se moventes comparaverit, eas etiam quomodo voluerit habeat

or great-grandfather, acquires something for himself not from the property of the one in whose power he is, but from any other causes, that passes to him as a result of the generosity of fortune or his own labors, he shall acquire these things for his male ascendants not in full, as had been previously ordained, but only up to the usufruct, and the usufruct over these shall remain with the father, grandfather, or great-grandfather in whose power (*sacris*) he is, but the ownership shall accrue to the children in power, on the analogy of maternal property and property acquired for children in their father's power in connection with marriage. **1a.** For in this way nothing will be diminished for the father possessing the usufruct over the property, and children will not grieve from seeing that things that are possessed by them as a result of their own labors are to be transferred to others, either outsiders or their own siblings, which is seen by many as even more burdensome. **1b.** An exception is made for military *peculia*, whose usufruct the ancient laws do not allow the father, grandfather, or great-grandfather to have; for We make no innovation with respect to these, but We maintain the old rights intact. The same is to be observed also in these *peculia* that have come (to the child) as quasi military *peculia* on the analogy of a military *peculium*. **1c.** Nevertheless, under this definition We introduce this provision of the law, that, in the succession to that property that is acquired from outside for children in their father's power, the same rights be observed that have been established for maternal and marriage property.

2. Children in their father's power should not dare to hope for a hypothec against the property of the father, whether still living or already dead, nor to subject their management to accounting, with only the alienation of the property or imposing an hypothec on it in their own name denied to fathers. The parent shall have the fullest power to use and enjoy that property that is acquired through children in power in accordance with the aforementioned means. **2a.** And their management of it shall be altogether unpunished and in no way shall the son or daughter in the father's power or their successors (*deinceps personae*) dare to forbid that person, in whose power they are, to hold the same property or to manage it in whatever way he wants, or, if they do this, the father's power is to be exercised against them. But the father or other persons who have been listed above shall have the fullest power to use, enjoy, and manage that property acquired in the aforementioned way.

2b. And if the father, grandfather, or great-grandfather gains something from the use of this property, he shall have the license to dispose of this howsoever he desires and to transmit it to other heirs, or if from the fruits of this property he purchases movable, immovable, or self-moving property, he shall

et transmittat et in alios transferat sive extraneos sive liberos suos seu quamlibet personam. 2c. Sin autem res sibi memorato modo adquisitas parens noluerit tenere, sed apud filium vel filiam vel deinceps personas reliquerit, nullam post obitum eius licentiam habeant heredes alii patris avi vel proavi eundem usum vel quod ex hoc ad filios familias pervenit utpote patri debitum sibi vindicare, sed quasi diurna donatione in filium celebranda, qui usum fructum detinuit, quem patrem habere oportuerat, ita causa intellegatur et eundem usum fructum post obitum patris ipse lucretur, parente ius exactionis quasi sibi debitae a filio, qui usum fructum consensu eius possidebat, suae posteritati vel successioni minime transmittente, quatenus in omni pace inter se successio eius permaneat nec altercationis cuiusdam maxime inter fratres oriatur occasio.

3. Cum autem Constantiniana lege cautum erat, si filii familias ab his, qui eos in potestate habent, nexu paterno per emancipationem liberentur, debere patrem tertiam partem bonorum, quae adquiri non solent, quasi remunerationis gratia a filio accipere vel retinere, et ex hac causa iterum pars non minima substantiae liberorum adimebatur, sancimus huiusmodi casu interveniente et emancipatione liberis imposita non tertiam partem dominii rerum minime adquisitarum, sed dimidiam usus fructus apud maiores qui emancipationem donant residere: exceptis et in hoc casu castrensibus et quasi castrensibus tantummodo peculiis, quibus nihil nec ex hac causa diminuitur. sic enim nec liberis cuiuscumque sexus aliquid dominii auferetur et patribus amplioris patrimonii usus fructus adsignabitur. 3a. Hoc obtinente et si in emancipatione sibi parentes hoc minime servaverint: sed nisi specialiter vel in emancipatione huic praemio renuntiaverint vel donatione facta sese et ab huiusmodi beneficio alienaverint et in liberos hoc transtulerint, manere ad eos etiam tacentes ius et beneficium usus fructus retinendi, ut post obitum eorum et usus fructus in omnibus memoratis causis ad eos perveniat, quorum dominium est, scilicet secundum, quod iam diximus, in successionibus eorum omnibus servandis, quae de maternis et nuptialibus bonis consultissimis legibus definita sunt.

4. Sed cum tacitas hypothecas tam veteres leges in quibusdam certis casibus introduxerunt quam nos in maternis ceterisque, quas servare necesse est, et dubitabatur, ex quo hypothecas competere oportet,

also have it in whatever way he wants and he shall transmit it and transfer it to others, whether outsiders, or his own children, or any person. **2c.** But if the father does not wish to hold property acquired for himself in the manner mentioned, but leaves it with his son or daughter or their successors, other heirs of the father, grandfather, or great-grandfather shall have no license after his death to claim for themselves its use or what has accrued from it to the children in power, like it was owed to the father, but, as if a long-lasting gift were to be conferred on the child who retained the usufruct that the father was supposed to have had, the situation is to be understood in this way and he himself shall gain the same usufruct after the death of the father, with the father not transferring to his posterity or successors the right to exact the usufruct as if owed to himself by the child who on his consent possessed it, to the extent that his successors remain in complete peace among themselves and no occasion for any altercation at all arise among the siblings.

3. Since, however, it had been provided in the law of Constantine[418] that, if children in power (*filii familias*) should be freed by emancipation from the paternal bond by those who have them in their power, the father ought to receive from the child or retain one-third of the property, which is not customarily acquired (i.e., pass into ownership), as if for remuneration, and as a result of this reason a not insignificant part of the property belonging to the children was taken away a second time (*iterum*), We ordain that, when such a case occurs and emancipation has been imposed on the children, one-third of the ownership of the property not acquired not remain with the male ascendants who bestow emancipation, but half the usufruct; the only exception is made for military and quasi-military *peculia*, which are not even diminished on this basis. For in this way no ownership will be taken away from children of either sex and the usufruct of a larger patrimony will be assigned to fathers. **3a.** This rule obtains even if in the emancipation the male ascendants have not reserved this for themselves; but unless they either have specifically renounced this reward in the emancipation or when making a gift have alienated themselves from such a benefit and have transferred it to their children, the right and benefit of retaining the usufruct remains with them even when they are silent, so that after their passing the usufruct in all the aforementioned situations accrues to those persons who have the ownership, that is to say, in accordance with what We have already said, in maintaining all the successions to those things that have been defined as maternal and marriage property by the most carefully considered laws.

4. But since the ancient laws have introduced tacit hypothecs in certain specific cases, just as We have in maternal and other property,[419] which must be maintained, and there was doubt from what time the hypothecs must apply,

[418] C. 6.60.1.

utrumne ab initio an ex eo tempore, ex quo male aliquid gestum est, compendiosa narratione interpretamur initium gerendae vel deserendae administrationis vel observationis esse spectandum et non tempus, ex quo male aliquid fuerit gestum.

Recitata septimo miliario in novo consistorio palatii dn. Iustiniani. d. III k. Nov. Decio vc. cons.

[7] *Idem A. Iuliano pp.* **pr.** Cum multa privilegia imperialibus donationibus iam praestita sunt, dignum incrementum et his offerre nostra dignata est clementia. **1.** Si quis igitur a serenissimo principe vel a piissima Augusta sive masculus sive femina donationem sit consecutus vel consecuta sive mobilium sive immobilium seu se moventium rerum, in filiis familias tamen constitutus vel constituta, habeat huiusmodi res omni adquisitione absolutas et nemini eas adquirat neque earum usum fructum pater vel avus vel proavus sibi vindicet, sed ad similitudinem castrensis peculii omnem facultatem in eas filii vel filiae familias habeant. **2.** Ut enim imperialis fortuna omnes supereminet alias, ita oportet et principales liberalitates culmen habere praecipuum.

D. proposit. XII k. April. Constantinopoli Lampadio et Oreste vv. cc. conss.

[8] *Idem A. Iohanni pp.* **pr.** Cum non solum in maternis rebus, quae filiis familias deferuntur, sed etiam de aliis omnibus, quae adquisitionem effugiunt, et maxime post novellam nostri numinis legem, quae omnia, quae extrinsecus ad filios familias perveniunt et non ex paterna substantia, non esse adquirenda patribus statuit, nisi tantummodo ad usum fructum, variae altercationes exortae sunt et varios eventus variosque continent tractatus et semper in iudiciis versantur, necesse est utiliter et apertissime omnia dirimere.

1. Sancimus itaque in omnibus rebus, quae fugiunt quidem dominii adquisitionem, sed usus fructus tantummodo patri offertur vel aliis parentibus a filio familias cuiuscumque gradus vel sexus, sive pater adire filium familias integrae aetatis compellit et ille reclamandum

whether from the outset or from that time when something has been improperly administered, We decide, to explain it in brief, that one must look at the beginning of managing or deserting an administration or supervision, and not at the time when it was administered improperly.

Recited at the seventh milestone in the New Consistory of the Palace of Our Lord Justinian. Given October 30, in the consulship of vir clarissimus *Decius (529).*

[7] *The same Augustus to Julian, Praetorian Prefect.* **pr.** Although many privileges have already been bestowed by means of imperial donations, Our Clemency has deigned to offer an increase even to these. **1.** Therefore if anyone, whether male or female, has gained a gift from the Most Serene Emperor or from the Most Pious Augusta, whether of movable, immovable, or self-moving property, but while children in power, he or she shall have such property free from every acquisition (by the *paterfamilias*) and not acquire it for anyone, and the father, grandfather, or great-grandfather shall not claim the usufruct over it for himself, but, similarly to a military *peculium* the sons or daughters in power shall have every right (*facultas*) over it. **2.** For as the imperial fortune looms over all other ones, in the same way imperial generosity must have a lofty height.

Given and posted March 21,[420] *at Constantinople, in the post-consulate of the* viri clarissimi *Lampadius and Orestes (530).*

[8][421] *The same Augustus to John, Praetorian Prefect.* **pr.** Since various disputes have arisen not only in connection with maternal property that is conferred on children in (a father's) power, but also with all other property that escapes acquisition (by the *paterfamilias*), and especially after the new law of Our Imperial Majesty,[422] which established that everything that comes to children in power from outside and not from the father's power is not to be acquired for the father except as to the usufruct alone, and (further since) various disputes have arisen involving differing outcomes and differing considerations, and they are always before the courts, it is necessary to sort everything out usefully and most openly.

1. And so We ordain that in all property that escapes acquisition of ownership (by the *paterfamilias*), but whose usufruct alone is offered to the father or other male ascendants by the child in power of any degree or sex, whether the father compels the child in power of full age to enter the property and that one

[419] Blume: see C. 5.9.8.
[420] Krüger writes "given March 18." This is adopted by Lounghis *et al.*
[421] Combine with C. 6.22.11.
[422] 6 above.

existimat, sive filius familias adire cupit et pater in contrarium inclinat, liberam habere licentiam et patrem ipsum sibi adire hereditatem recusante filio et omne sive damnum sive lucrum in suam habere fortunam, nullo ex hoc praeiudicio filio generando: sive e contrario patre recusante filius adire hereditatem voluerit, nullam adquisitionem nec usum fructum patri offerri, sed ipsum filium sibi imputare, si quid ex hoc contigerit: nulla actione neque contra patrem danda, ubi adversus eius voluntatem filius hereditatem vel legatum vel fideicommissum vel aliud quidquid ex quocumque titulo sive donationis sive contractus sibi adquirere maluerit, neque adversus filium simili modo actione extendenda, ubi recusante eo pater sua auctoritate haec sibi vindicet, huiusmodi aditionis tramite ex praesenti lege patri competente. **1a.** Sed habeat et pater omnem licentiam et actiones movere et ab aliis pulsari, ubi ad eum totum commodum pervenit, et filius simili modo in agendo et pulsando solus habeat et detrimentum et commodum, necessitate per officium patri imponenda tantummodo filio consentire vel agenti vel fugienti, ne iudicium sine patria voluntate videatur consistere. et haec quidem, si plenae aetatis filius est, qui paternam voluntatem sequi non patitur.

1b. Sin autem in secunda aetate adhuc filius est et hereditate ei delata pater consentire adeunti hereditatem noluerit vel patre volente ipse reclamaverit, si quidem recusaverit filius, licentiam damus patri simili modo hereditatem adire et eam pleno iure habere, his omnibus quae superius diximus locum habentibus. **1c.** Sin autem patre recusante filius adire maluerit, damus quidem licentiam ei hoc facere, patre autem nolente res filii gubernare propter causae necessitatem habeat facultatem filius adire competentem iudicem et ex eo petere curatorem hereditati dari, per quem gubernatio rerum in eum delatarum procedat: in utroque casu in integrum restitutionis auxilio minime ei denegando.

2. Similique modo et in milite filio familias, qui recusaverit aditionem hereditatis, quae ei ex castrensibus occasionibus perveniat, patri danda licentia adire hereditatem, ut ad ipsum perveniat pleno iure tam per usum fructum quam per dominium eandem hereditatem possessurum, quasi ipse pater ab initio fuisset heres institutus: eo videlicet subiacente omnibus oneribus hereditariis et omnia commoda habituro et ad filium

judges that he should refuse, or whether the child in power desires to enter it and the father inclines in the opposite direction, the father have full permission to enter the inheritance for himself when the child refuses and to have the entire loss or gain as part of his own fortune, and no prejudice is to be created as a result of this for the child. If, by contrast, the child wishes to enter the inheritance while the father refuses, no acquisition (of ownership) or usufruct is offered to the father, but the child himself counts it for his own if anything befalls him from this. No right of action is to be given against the father, when against his will a child prefers to acquire for himself an inheritance, a legacy, a trust, or any other thing from any title, whether a gift or a contract, nor in a similar manner is any action to be extended against the child, when, despite his refusal, the father claims these things for himself on his own authority, since a path for entering upon (the bequest etc.) is available to the father from the present law. **1a.** But the father shall have all permission both to bring actions and to defend himself against others when the entire benefit comes to him, and the child in a similar fashion shall alone have both the loss and gain in bringing an action and in defending against one, with the necessity to be imposed on the father through his duty only to consent to the child's either bringing an action or defending himself against one, so that the judgment not be seen to exist without the father's wish. These rules apply if the child who does not bear following the father's wish is of full age.

1b. If, however, the child is still in the second age (from 14 to 25 for males), and, when an inheritance has been conferred on him, the father is unwilling to consent to his entering it, or, at the father's wish, he himself protests, if indeed the child refuses, We give permission to the father in a similar manner to enter the inheritance and to have it in full right, with all these provisions that We have mentioned above applying. **1c.** If, however, despite the father's refusal the child prefers to enter (the inheritance), We certainly give him permission to do this, but when the father is unwilling to manage the property of the child, because of the necessity of the case the son shall have the right to approach a competent judge and ask him that a *curator* be appointed for the inheritance, through whom the management of the property that has been conferred on him might proceed; in either case the aid of a restoration of rights is not to be denied to him.

2. In a similar manner, in the case of a son in power serving as a soldier who refuses entering into an inheritance that comes to him from his military activities, the father is to be given permission to enter the inheritance, so that it might pass to him in full right, and he will possess the same inheritance, both through the usufruct and through ownership, as if the father himself had been designated as heir from the beginning. Certainly he is subject to all burdens associated with the inheritance, and he will have all the benefits, with no

nullo periculo redundante. et haec quidem in his casibus observanda sunt, quibus discordia inter patrem et filium vertitur.

3. Ubi autem in unum voluntas eorum concurrit, et pater usum fructum et filius habeat proprietatem, et in agentibus et in fugientibus pater quidem suscipiat actiones et moveat, cuiuscumque aetatis filius inveniatur, adhibeatur autem etiam filiorum consensus, nisi adhuc in prima sunt aetate constituti vel longe absunt, sumptibus videlicet a patre propter rerum incrementa faciendis. cum enim nuda proprietas apud filium invenitur, ex qua substantia possibile est eum sumptus litis dependere?

4. Sin autem aes alienum ex defuncti persona descendit, cum etiam apud veteres haec esse substantia intellegitur, quae post detractum aes alienum supersederit, habeat pater licentiam ex rebus hereditariis primum quidem mobilibus, sin autem non sufficiunt, et immobilibus sufficientem partem filii nomine venumdare, ut ilico reddatur aes alienum et non usurarum onere praegravetur. **4a.** Quod si pater hoc facere supersederit, ipse usuras vel ex reditibus vel ex sua substantia omnimodo dare compelletur.

4b. Sin autem legata vel fideicommissa sive annalia sive semel relicta imminent huiusmodi personis, si quidem tales reditus sunt, qui sufficiunt ad annalia legata, pater ex huiusmodi reditibus haec dependere compelletur. **4c.** Sin autem non habet substantia sufficientem reditum ad legatorum vel fideicommissorum praestationem vel minime reditus vel alias accessiones contineat, sint tamen res mobiles vel immobiles, steriles quidem, non tamen inutiles, veluti domus in provinciis pretiosae vel ubicumque posita suburbana, ex quibus huiusmodi legata possunt explicari, licentia dabitur patri sufficientem partem eorum similiter filii nomine vendere et satisfacere legatis.

4d. Hoc procul dubio observando, ut et mancipia ipse usufructuarius aleret et omnia circa usum fructum faceret, quae nullo modo proprietatem possint deteriorem facere, paterna reverentia eum excusante et a ratiociniis et a cautionibus et ab aliis omnibus, quae usufructuarii extranei a legibus exiguntur, secundum nostrae constitutionis tenorem,

risk redounding to the son. And these measures are to be observed in cases in which discord between the father and son is involved.

3. When, however, their wishes concur, the father shall have the usufruct and the child the ownership, and in bringing actions and defending against them the father shall take up actions and set them in motion, whatever age the child should be found to be; but the consent of the children should be sought, unless they are in the first age (below puberty) or are far away, with the expenses to be covered by the father on account of (his receiving) the income from the property. For since (only) the bare ownership is located with the child, from what resources is it possible for him to defray the expenses of a lawsuit?

4. If, however, debt passes from the person of the deceased, since even among the ancients what remains after subtracting the debt is understood to be the property (of the inheritance), the father shall have permission to sell in the name of the son a sufficient share from the inherited property, first from the movable property, but if this is not sufficient, also from the immovable property, so that the debt be paid back straightway and not be made heavier with the burden of interest. **4a.** But if the father fails to do this, he will in every case be compelled to pay the interest, either from the revenues or from his own property.

4b. If, however, legacies or trusts, whether paid on an annual basis or left once and for all, loom over such persons, if the revenues are of such as kind as to suffice for annual payment of the legacies, the father will be compelled to pay these from such revenues. **4c.** If, however, the property does not have sufficient income to provide the legacies or trusts or should not include income or other accretions (*accessiones*), but there should be movable or immovable property, infertile (*steriles*, i.e., not providing any income) to be sure, but not unuseful, such as expensive houses in the provinces or suburban estates situated anywhere, from which such legacies can be resolved (*explicari*), permission will be given to the father to sell a sufficient part of them in the name of the child in a similar manner and satisfy the legacies.

4d. Without doubt this is to be observed, that the usufructuary himself is to provide support for the slaves and to do everything in connection with the usufruct that in no way can make the property worse, while the reverence owed to a father excuses him from rendering accounts and providing written promises, as well as from all other things that are demanded from external usufructuaries by the laws, in accordance with the provisions of Our constitution, which we have already issued concerning such cases.[423] **4e.** However, the father must henceforth support the son himself or sons, or daughters, not on account of

[423] C. 6. 61.6.2.

quam iam super huiusmodi casibus tulimus. **4e.** Ipsum autem filium vel filios vel filias et deinceps alere patri necesse est non propter hereditates, sed propter ipsam naturam et leges, quae et parentibus alendos esse liberos imperaverunt et ipsis liberis parentes, si inopia ex utraque parte vertitur.

5. Sed pater quidem in praedictis tantummodo causis habeat licentiam recte res filiorum familias vendere filii nomine vel, si emptorem non invenerit, supponere, nullo modo licentia concedenda filiis easdem venditiones vel hypothecas retractare: non item licentia parentibus danda extra memoratas causas res, quarum dominium apud eorum posteritatem est, alienare vel pignori vel hypothecae titulo dare, sed si hoc fecerint, scituris, quod necesse est eos in legum laqueos incidere, quibus huiusmodi venditiones vel hypothecae sunt interdictae, exceptis videlicet rebus mobilibus vel immobilibus illis, quae onerosae hereditati sunt vel quocumque modo damnosae, quas sine periculo vendere patri cum paterna pietate licet, ut pretium earum vel in res et causas hereditarias procedat vel filio servetur. **5a.** Filiis autem familias in his dumtaxat casibus, in quibus usus fructus apud parentes constitutus est, donec parentes vivunt, nec testari de isdem rebus permittimus, nec citra voluntatem eorum, quorum in potestate sunt, ulla licentia concedenda dominium rei ad eos pertinentis alienare vel hypothecae titulo dare vel pignori adsignare. melius enim est coartare iuveniles calores, ne cupidini dediti tristem exitum sentiant, qui eos post dispersum expectat patrimonium. cum enim, sicut dictum est, parentes alere eos secundum leges compelluntur, quare ad venditionem rerum suarum prosilire desiderant?

6. Ubi autem puerilis aetas patri licentiam praestat etiam sine consensu filii hereditatem nomine eius adire, si hoc fecerit, damus quidem filio in integrum restitutionem, postquam patria fuerit potestate liberatus vel adoleverit, patrem autem oneribus hereditariis, licet nomine filii adiit, modis omnibus illigamus: quare enim talem hereditatem adiit, qualem nec ipse nunc nec filius idoneam sibi esse existimat? **6a.** Non autem filio damus licentiam, si in integrum restitutionem petat respuendam esse credens hereditatem, adhuc minoribus curriculis instantibus iterum per aliam restitutionem adire praefatam hereditatem, ne ludibrio leges ei fiant saepius eandem et amplecti et respuere cupienti. si enim quod pater fecit ratum non habuit et propter hoc restitutus est, quomodo ferendus videatur iterum iudicium amplectens, quod et post patris voluntatem contraria adfectione aspernandum esse existimavit?

the inheritances, but on account of nature itself and the laws that have ordered children to be fed by parents and parents by their very children, if poverty is an issue (*vertitur*) from either side.

5. But the father shall have permission only in the cases named above to sell licitly the property of children in power in the name of the child, or, if he does not find a buyer, to obligate it (*supponere*, for a loan), while in no way is permission to be conceded to children to rescind the same sales or hypothecs; likewise permission is not to be given to parents outside the aforementioned causes to alienate or give as a pledge or under title of a hypothec property whose ownership is with their posterity. But they will know that, if they do this, they must fall into the snares of the laws by which such sales and hypothecs have been forbidden, except, that is to say, for that movable or immovable property that is burdensome to the inheritance or in any way harmful, which the father is permitted to sell with paternal piety, so that the price for it might become part of the inherited property and interests (*in res et causas hereditarias procedat*) or be preserved for the child. **5a.** We do not permit children in power only in those cases in which the usufruct has been established for male ascendants, to dispute (*testari*) about the same property, as long as the parents live, nor, against the will of those in whose power they are, is any permission to be conceded them to alienate the ownership of property belonging to them, to give it under the title of a hypothec, or to assign it as a pledge. For it is better to restrict youthful passions, lest surrendering to their desire they feel the sad result that awaits them after the dispersal of their patrimony. For since, as has been said, parents are compelled to support them in accordance with the laws, why do they long to jump headfirst to the sale of their property?

6. When, however, a childish age offers permission to the father even without the child's consent to enter an inheritance in his name, if he does this, We give the child (the right to) restoration of rights, after he is freed from his father's power or grows up, but we bind the father in all ways with the burdens of the inheritance, although he entered into it in the name of the child; for why did he enter an inheritance of such a kind that neither he himself now nor his son judges it suitable for themselves? **6a.** We do not, however, give the child permission, if he, believing that the inheritance is to be scorned, should seek a restoration of rights when a lesser passage of years is still present (i.e., while he is still a minor), to enter the aforementioned inheritance through another restoration of rights, lest the laws become a mockery to him who again and again desires to embrace and scorn the same inheritance. For in what way does he seem to be tolerable, when he at a later time embraces the decision which he thought ought to be rejected even in opposition to his father's wishes?

6b. Sin vero pater quidem hereditatem repudiaverit infante filio constituto, ipse autem filius postea vel adhuc in sacris constitutus vel patria potestate liberatus adeundam esse crediderit eandem hereditatem, licentiam damus ei vel, si sui iuris efficiatur, tutoribus vel curatoribus eius hereditatem adire, nullo praeiudicio ex recusatione paterna ei generando: simili modo et in hac parte nulla ei vel tutoribus eius vel curatoribus licentia concedenda contra priorem suam voluntatem in integrum restitutionem petere. **6c.** Quae et in legatis et fideicommissis tam specialibus quam per universitatem relictis et in aliis causis, quas supra enumeravimus, similibusque eis observanda sunt.

7. In servis autem, qui filiis familias donantur, sive in constante matrimonio sive ab extraneis sub ea condicione, ut statim eos in libertatem producant, nullum impedimentum paterna faciat auctoritas. qualis enim usus fructus potest ei adquiri, qui momentarius esse ostenditur? si enim in ipso momento necesse habet eum et possidere et libertate donare, in talem hominem qualis usus fructus patri potest adquiri?

D. IIII k. Aug. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

9–11. …

LXII De Hereditatibus Decurionum Naviculariorum Cohortalium Militum et Fabricensium

[**1**] *Imp. Constantinus A. Mastichiano praefecto annonae.* Si quis navicularius sine testamento et liberis vel successoribus defunctus sit, hereditatem eius non ad fiscum, sed ad corpus naviculariorum, ex quo fatali sorte subtractus est, deferri praecipimus.

PP. XV k. … Lastronae Constantino A. VII et Constantio C. conss.

6b. But if the father repudiates the inheritance while the child is still an infant, but the child himself afterwards, while still in the household (*sacris*, the father's power) or after being freed from the father's power, believes he should enter the same inheritance, We give permission to him, or, if he should be made *sui iuris*, to his *tutors* or *curators*, to enter the inheritance, and no prejudice is to be created for him from his father's refusal. In a similar manner, in this connection, no permission is to be conceded to him or to his *tutors* or *curatores* to seek a restoration of rights contrary to his earlier wish. **6c.** These provisions are also to be observed in legacies and trusts, both those bequeathed specifically and those bequeathed universally (*tam specialibus quam per universitatem relictis*), as well as in other cases that We have enumerated above.

7. In the case of slaves, however, that are given as gifts to children in power, whether in a continuing marriage or from outsiders under the condition that they (the children in power) bring them immediately into liberty, the father's authority shall create no impediment. For what sort of usufruct can be acquired for him that is shown to be momentary? For what kind of usufruct can be acquired for the father over such a person if in the very instant he must both possess him and bestow liberty on him?

Given July 29, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*[424]

Sixty-Second Title Inheritances of Decurions, Shipowners, Officials Serving the Praetorian Prefecture, and Workers in State Arms Factories

[1] *Emperor* Constantine *Augustus to Mastichianus, Prefect of the Food Supply.* If any shipowner has died without a will and without children or successors, We instruct that his inheritance not pass to the Treasury, but to the association of shipowners (*corpus naviculariorum*), from which he was removed by fatal lot.

Posted on the fifteenth day before the Kalends ... at Lastrona,[425] *in the consulship of Constantine Augustus, for the seventh time, and Constantius Caesar (326).*[426]

[424] Theodorus, *Epitome Novellarum* 22.36, cites ch. 11 of this title, indicating the loss of at least three constitutions.

[425] Mommsen emends "June 17, at Verona."

[426] The first Consul may be Constantius. Haloander restored the date as "in the consulship of Constantius Augustus, for the seventh time, and Constan(tiu)s Caesar (for the third)" (354). Seeck gives June 17, 326.

[2] *Imp. Constantius A. Bonoso magistro equitum.* Universis tam legionibus quam vexillationibus comitatensibus seu cuneis insinuare debebis, ut cognoscant, cum aliquis fuerit rebus humanis exemptus atque intestatus sine legitimo herede decesserit, ad vexillationem, in qua militaverit, res eiusdem necessario pervenire.

D. v id. Mai. Hierapoli Rufino et Eusebio conss.

[3] *Idem A. Rufino pp.* Si quis cohortali condicione gravatus sine testamento vel quolibet successore ultimum diem obierit, successionem eius non ad fiscum, sed ad ceteros cohortales eiusdem provinciae pertinere iubemus.

D. v k. Ian. Limenio et Catulino conss.

[4] *Impp. Theodosius et Valentinianus AA. Florentio pp.* Intestatorum curialium bona, si sine herede moriantur, ordinibus patriae eorum adipisci[xv] praecipimus.

D. v id. Mart. Florentio et Dionysio conss.

[5] *Idem AA. Aureliano comiti rerum privatarum.* **pr.** Si quis fabricensis sine liberis vel legitimo herede decesserit non condito testamento, eius bona, cuiuscumque summae sint, ad eos pertinere, qui velut creatores decedentium attinentur, qui fisco pro intercepto respondere coguntur. **1.** Hoc enim facto contingit, ut et rei publicae ratio salva permaneat et fabricenses collegarum suorum solaciis perfruantur, qui damnis ac detrimentis tenentur obnoxii.

D. prid. non. Nov. Constantinopoli Theodosio A. XVII et Festo conss.

[xv] adscisci

[2] [427] *Emperor* CONSTANTIUS *Augustus to Bonosus, Master of the Cavalry.* You will be obliged to communicate to all the legions as well as to all the border detachments and cavalry units (*cunei*) so that they know, when someone is taken away from human affairs and dies intestate without a lawful heir, that his property must pass to the detachment in which he served

Given May 11, at Hierapolis, in the consulship of Rufinus and Eusebius (347).

[3] *The same Augustus to Rufinus, Praetorian Prefect.* If someone burdened by the condition of serving on the staff of a Praetorian Prefect (*cohortali condicione gravatus*) meets his final day without a will and without any successor, We order that his succession belong not to the Treasury, but to the other prefecture officials of the same province.

Given December 28, in the consulship of Limenius and Catulinus (349).

[4] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Florentius, Praetorian Prefect.* We instruct that the property of intestate decurions, if they should die without an heir, be acquired by the orders (councils) of their hometown.

Given March 11, in the consulship of Florentius and Dionysius (429).

[5][428] *The same Augusti to Aurelianus, Count of the Privy Purse.* **pr.** If any arms maker dies without children or a legitimate heir without writing a will, his property, of whatever amount it might be, belongs to those persons who are bound as if the electors of the deceased, as they are compelled to respond to the Treasury on behalf of the one taken away. **1.** For when this is done it happens both that the interests of the state remain unimpaired and that the arms makers, who are held liable for losses and shortfalls, enjoy the solaces provided by their colleagues.

Given November 4, at Constantinople, in the consulship of Theodosius Augustus, for the sixteenth time, and Festus (439).

[427] = C.Th. 5.6.1.
[428] = Nov. Theod. 6 (with some additional wording), which dates the law to 438; combine with C. 11.11.5.

Liber Septimus

I De Vindicta Libertate et apud Consilium Manumissione

[1] *Imp. Antoninus A. Tertio.* Eorum, qui apud consilium manumittuntur, post causam ab iudicibus probatam et manumissionem secutam non solet status in dubium vocari, si dicantur falsa demonstratione liberati.

PP. non. Oct. Gentiano et Basso conss.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Sallustio.* Nihil civitati Romanae semel praestitae vel addere vel detrahere secundam manumissionem potuisse certissimum est.

D. prid. k. Mai. AA. conss.

[3] *Idem AA. et CC. Attiae.* Nec mulierem per maritum nec alium per procuratorem vindicta manumittere posse non est ambigui iuris.

[4] *Imp. Constantinus A. ad Maximum pu.* Apud consilium nostrum vel apud consules praetores praesides magistratusve earum civitatum, quibus huiusmodi ius est, adipisci potest patronorum iudicio sedula servitus libertatem.

II De Testamentaria Manumissione

[1] *Impp. Severus et Antoninus AA. Primo.* Si codicillos maior viginti annis fecisset, confirmationis tempus libertati non nocere certum est: nec enim potestas iuris, sed iudicii consideratur.

Seventh Book

edited by Noel Lenski

First Title Manumission by Rod and before a Council[1]

[1] *Emperor Antoninus to Tertius.* The status of those who are manumitted before a council (*apud consilium*), after the case has been approved by the judges and the manumission has taken place, is not usually called into question should they (later) be said to have been freed upon false grounds.
Posted October 7, in the consulship of Gentianus and Bassus (211).

[2] *Emperors Diocletian and Maximian Augusti and the Caesars to Sallustius.* It is most certain that a second manumission could not have either added to or subtracted from Roman citizenship once it has been granted.
Given April 30, in the consulship of the Augusti (293).

[3] *The same Augusti and Caesars to Attia.* The law is not in doubt that no woman can manumit by the rod (*vindicta*) through a husband, nor anyone else through a procurator.

[4] *Emperor Constantine Augustus to Maximus, City Prefect.* A diligent slave may, with the consent of the patron, obtain liberty before Our council or before the Consuls, Praetors, governors or magistrates of those cities that have a right of that kind.
<*Without subscription (319–323).*[2]>

Second Title Testamentary Manumission[3]

[1] *Emperors Severus and Antoninus Augusti to Primus.* If a person more than 20 years old should have written codicils, it is certain that the time of

[1] This title deals with manumission through an ancient judicial fiction involving application of a *vindicta*, and its late classical replacement taking place before a magistral *consilium*.
[2] Valerius Maximus Basilius was Urban Prefect of Rome between 319 and 323. This law was dated by Seeck to January 30, 320.
[3] See D. 40.4.

Proposita.

[2] *Idem AA. Phileto.* Ex testamento defuncti libertates praestari non possunt hereditate non adita, vel si rei memoria propter crimen quod morte non intercidit damnata est.

[3] *Idem AA. Euphrosynae.* Libertas testamento data adita hereditate contingit, et si heres scriptus per in integrum restitutionem abstinuerit hereditate, nihil ea res libertati obest.

S. XVII k. Mai. Apro et Maximo conss.

[4] *Idem AA. Anchilao.* **pr.** Cum testamento directam libertatem pater tuus sit consecutus, quamvis ei heres extiteris, frustra tamen, rationes quas tempore servitutis gessit ut reddas, compelleris, cum non ea condicione acceperit libertatem. **1.** Is autem, cui libertas sive fideicommissaria sive directa, si rationes reddidisset, relicta est, ante reliqua illata et ea, quae malo consilio amota sunt, ad libertatem non potest pervenire: sin autem non debitor ex rationibus fuerit repertus, post aditam hereditatem quasi puram libertatem consequitur.

Proposita VII k. Dec. Laeto II et Cereale conss.

[5] *Imp. Alexander A. Quintiano.* In fraudem creditorum testamento datae libertates, quamvis debitori heres qui solvendo est extiterit, per legem Aeliam Sentiam non valent.

[6] *Imp. Gordianus A. Pisistrato.* Si hereditas eius, a quo testamento dicis te esse manumissum, ob aes alienum spernitur ab heredibus, conservandae libertatis gratia non iniusta ratione creditoribus hereditariis satis offerens iudicium testatoris servari tibi postulabis, maxime cum id etiam a divo Marco consultissimo principe sit constitutum: quod in extranea quoque persona observari oportet.

confirmation cannot prejudice the manumission (*libertati*); for it is not so much the force of the law as it is that of his decision that is considered.

Posted.

[2] *The same Augusti to Philetus.* Manumissions cannot be granted by the will of a decedent if the inheritance is not entered upon or if the memory of an accused person is condemned because of a criminal charge that did not pass away with his death.

[3] *The same Augusti to Euphrosyna.* When an inheritance has been entered into, a manumission granted in the testament takes immediate effect; even if the appointed heir subsequently gives up the inheritance through restoration of his rights (*restitutio in integrum*), that fact does not stand in the way of the manumission.

Written April 15, in the consulship of Aper and Maximus (207).

[4] *The same Augusti*[4] *to Anchilaus.* **pr.** Since your father obtained direct manumission in a testament, although you are his heir, you cannot be compelled to render accounts of the transactions which he managed at the time of his slavery, since he was not granted his liberty upon that condition. **1.** But a person to whom manumission is granted, either by way of a trust (*fideicommissum*) or directly, upon condition that he should render accounts cannot obtain such liberty until he has paid any arrears and has returned anything that has been removed by fraud. But if from an examination of the accounts he is not found to be a debtor, he receives unconditional manumission (*pura libertas*) after the inheritance has been entered upon.

Posted November 25, in the consulship of Laetus, for the second time, and Cerealis (215).

[5] *Emperor* ALEXANDER *Augustus to Quintianus.* If manumissions are made in a testament in defraud of creditors, they are invalid under the Lex Aelia Sentia even if the heir of the debtor is solvent.

[6] *Emperor* GORDIAN *Augustus to Pisistratus.* If the inheritance of the testator by whom you say you were testamentarily manumitted is refused by the heirs on account of debts, you ask with just reason, for the sake of preserving liberty, that the will of the testator be executed for your benefit provided you offer satisfaction to the creditors of the inheritance, especially since that was also provided for by the Deified Marcus, wisest of Emperors.[5] This rule should be applied also in case of an external heir.

[4] This ought to read Antoninus (Caracalla) only.

[5] See Inst. 3.11.1.

[7] *Idem A. Iustae.* Contra voluntatem matris tuae libertatem in eum conferre, quem illa liberum fieri prohibuit, non debes, ne videaris iura pietatis violare.

PP. x k. Febr. Sabino II et Venusto conss.

[8] *Imp. Philippus A. et Philippus C. Gemello.* Cum testator libertatem tempore nuptiarum filii sui vel filiae servo dari iussit, non tempus praestandae libertati praestituit, sed potius condicioni locum fecit, ut non insecutis nuptiis libertas iure posci non possit.

[9] *Imppp. Carus Carinus et Numerianus AAA. Mauro.* Servo tuo defunctus, licet te heredem scripsisse proponatur, tamen directam libertatem dare non potuit: iure enim directo libertatem servis alienis dare nemo potest.

PP. VI id. Nov. Caro et Carino conss.

[10] *Impp. Diocletianus et Maximianus AA. et CC. Germano.* Directis verbis iure data libertate non sola impositione pilei, sed adita hereditate, si nulla iuris impediat constitutio, liberti constituuntur.

[11] *Idem AA. et CC. Laurinae.* Si iure non substitit testamentum, in hoc nec libertates (cum non fuisse additum, ut pro codicillis scriptum valeret, proponas) recte datas constabit.

PP. sub die XVI k. April. Sirmi AA. conss.

[12] *Idem AA. et CC. Rhizo.* **pr.** Si heredes iure facto testamento sollemniter adierint hereditatem, ex testamento tibi libertas quaesita post colludentibus tam scriptis heredibus quam ab intestato vindicantibus successionem adimi non potuit. **1.** Quod si sponte repudiaverunt sibi delatam successionem, omnia quae testamento fuerant scripta defecisse convenit. **2.** Si vero, ut vos fraudarent libertate, collusisse eos praeses animadverterit, secundum haec quae divus Pius Antoninus constituit libertatibus consuli providebit.

S. k. Dec. Sirmi AA. conss.

[7] *The same Augustus to Justa.* You should not, contrary to your mother's wish, confer manumission upon him whom she forbade to be made free, lest you should appear to violate the laws of familial loyalty (*pietatis iura*).

Posted January 23, in the consulship of Sabinus, for the second time, and Venustus (240).

[8] *Emperor* PHILIP *Augustus and Caesar* PHILIP *to Gemellus.* When the testator ordered manumission to be granted to the slave on the occasion of his son's or daughter's wedding, he did not fix a time for the grant of manumission, but rather established the condition for it; thus, if no marriage takes place, manumission cannot be rightfully demanded.

[9] *Emperors* CARUS, CARINUS, *and* NUMERIAN *Augusti to Maurus.* Though it is stated that he appointed you heir, the decedent could not confer direct manumission on your slave. For no one can give direct manumission to another's slaves.

Posted November 8, in the consulship of Carus and Carinus (283).

[10] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Germanus.* By law slaves become freedmen through a grant of manumission in direct words not only through the imposition of the cap of liberty (*pileus*), but also by an acceptance of the inheritance, provided no constitution forbids this.

[11][6] *The same Augusti and Caesars to Laurina.* It is clear that, if the testament is not in conformity with law, no bequests of liberty made in it will stand even if made properly – for you state that the will contains no provision that it should be valid as a codicil.

Posted under date March 17, at Sirmium, in the consulship of the Augusti (293).

[12] *The same Augusti and Caesars to Rhizus.* **pr.** If heirs under a legally executed testament have entered on the inheritance in the usual form, the manumission granted you under the testament cannot subsequently be taken away by collusion between the appointed heirs and those claiming the estate by intestacy. **1.** But if the heirs voluntarily repudiated the estate offered them, then, it is agreed, all written provisions of the testament have failed. **2.** But if the governor should learn that they have colluded so as to defraud you of your manumission, he will, according to the decision of the deified Antoninus Pius, take care that your liberty is protected.

Written December 1, at Sirmium, in the consulship of the Augusti (293).

[6] Combine with C. 2.32.2, which is dated "in the consulship of the Augusti" (294), likely the correct year given that Diocletian is known to have been in Heraclea in March 293.

[13] *Idem AA. et CC. Martiali.* Statuliberis datam libertatem adimi ab herede non posse certum est: nec alienatio nec usucapio statulibero, quominus existente condicione libertatem consequatur, nocere potest.

[14] *Impp. Theodosius et Valentinianus AA. Florentio pp.* Directas libertates Graecis verbis liceat in testamentis relinquere, ut ita libertates directae datae videantur, ac si legitimis verbis eas testator dari iussisset.

D. prid. id. Sept. Constantinopoli Theodosio A. XVII et Festo conss.

[15] *Imp. Iustinianus A. Iohanni pp.* **pr.** Cum constitutio divi Marci declarat, si quis testamento condito vel sine testamento moriens, ut locus fiat ab intestato successioni, libertates reliquerit, nemo autem adire vult defuncti hereditatem eo, quod suspecta esse videtur, et si fuerint libertates forsitan et sine scriptis fideicommissariae relictae, licere vel cuilibet extraneo vel uni ex servis, qui et ipse libertate donatus est et pro sua periclitatur condicione, adire hereditatem sub hac condicione et satisdatione, quod et creditoribus omnibus satisfaciat et libertates imponat his, quibus voluerit testator, variae dubitationes ex hac constitutione emerserunt.

1. Nam si res hereditariae herede minime invento venierint, an et post venditionem earundem rerum possibile est vel servum vel quemlibet alium adire et recuperare quidem ab emptoribus res, satisfacere autem creditoribus et libertatibus, quaerebatur. **1a.** Et licet divus Severus semel rebus venditis hoc non admisit, nobis tamen Ulpiani sententia admonente placuit maxime propter libertates, ne depereant, et post venditionem rerum annale remedium dare divi Marci constitutioni, intra quod et creditoribus omnibus satisfiat et emptores nihil novi patiantur, qui annalem saepe sentiebant rescissionem, et licere servo, qui libertate donatus est, vel alii cuidam extraneo vel ante venditionem rerum vel post venditionem, intra annale tamen tempus, adire hereditatem et res recuperare, prius satisdatione danda, ut tam creditoribus quam libertatibus satisfaciat.

[13] *The same Augusti and Caesars to Martialis.* It is certain that manumission granted to conditionally freed slaves (*statuliberi*) cannot be taken away by the heir. Neither alienation nor usucapion are able to prejudice any conditionally manumitted freedman from obtaining manumission as long as the condition is met.

[14][7] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Florentius, Praetorian Prefect.* It is permitted to leave direct manumissions in testaments in the Greek language, such that such bequests shall be considered as direct manumissions just as if the testator had ordered them in legal (Latin) words.

Given September 12, at Constantinople, in the Consulship of Theodosius Augustus, for the seventeenth time, and Festus (439).

[15] *Emperor* JUSTINIAN *Augustus to John, Praetorian Prefect.* **pr.** A constitution of the deified Marcus[8] declares that if a man dies leaving an official testament or dies without one in such a way that intestate succession takes place, and if he should grant manumissions, but no one wants to accept the inheritance of the deceased because it appears to be suspect, and if manumissions have perchance been willed in trust (*libertates fideicommissariae*) even without any writing, any external heir, or one of the slaves who was himself granted freedom and is in jeopardy now as far as his condition is concerned, is permitted to accept the inheritance upon the condition and upon giving security that he will satisfy all creditors and will grant manumission to those to whom the testator wanted it granted. Nevertheless, various doubts have arisen out of this constitution.

1. For it was asked whether, if the property of the estate were sold upon finding no heir, it is possible for a slave or someone else to enter on the inheritance after such sale, and recover the property sold from the purchasers, upon satisfying creditors and granting manumissions. **1a.** And though the deified Severus held that this could not be done after the property had once been sold, We have decided, following the opinion of Ulpian, especially in order that manumissions may not be lost, to order that a remedy of a year after the sale should be added to the provisions of the constitution of the deified Marcus, during which time all the creditors may be satisfied. No new burden is thereby imposed on purchasers, who are often obliged to submit to a rescission within the year. The slave to whom manumission had been granted, or any external heir, may, before the sale or within a year afterward, accept the inheritance and recover the property, first giving security that he will satisfy all creditors as well as complete all manumissions.

[7] = *Nov. Theod.* 16.1.8. Combine with C. 5.28.8, 6.23.21.
[8] See Inst. 3.11.1.

1b. Sin autem libertatibus quidem omnibus satisfacere quis polliceatur, creditoribus autem non in solidum, sed in partem solvere creditum, illi autem huiusmodi pactionem admiserint, sancimus et in huiusmodi casu consultissimi principis locum habere constitutionem et eum modis omnibus admittendum censemus, maxime cum ex voluntate creditorum hoc interponitur: nolentibus etenim creditoribus admitti talem petitionem nullo concedimus modo.

2. Si vero quidam ex servis libertatem amplexi fuerint, alii autem censuerint esse respuendam, et in hunc casum extendenda est divi Marci oratio et procul dubio et in hac specie audiendus est petitor hereditatis et maneat liberum arbitrium servorum, sive ad libertatem venire volunt sive in servitutem remanere. **2a.** Licet enim Romanam civitatem recusare nemini servorum licet, tamen in hoc casu, ne propter quorundam indevotionem alii maneant in servitute, volentibus quidem omnibus servis licere in libertatem pervenire, nolentibus autem quibusdam vel recusantibus spontaneam servitutem imminere oportet et, quem patronum habere noluerint, dominum suum, forsitan et acerbum, sentiant.

3. Sin vero non omnes libertates adimplere pollicitus fuerit, sed certum numerum servorum ex his, qui ad libertatem venire iussi sunt, melius est, si quidem res hereditariae sufficiunt ad implendos creditores, etiam omnibus servis dare libertatem, etsi hoc non pollicitus est. si autem deest in exsolvendis creditoribus, humanius est, ut saltim pauci veniant ad libertatem.

4. Sed hoc quidem antiquis dubitationibus remedium invenimus. bellissimam autem repletionem praefatae constitutioni donantes sancimus: si non unus veniat hereditatis petitor, sed plures, si quidem uno momento uterque vel ampliores, omnibus detur licentia communiter hereditatem adire, prius satisdatione ab omnibus danda, ut creditoribus et libertatibus satisfaciant. **4a.** Sin autem per intervalla temporum hoc fiat, qui primus veniat habeat praerogativam, si etiam satisdationem praestare potest: illo enim cessante hoc facere alii gradatim secundum tempora petitionis succedant. et hoc intra annale tempus observetur.

5. Sin autem uno pollicente quosdam liberos facere, non autem totos, alius emerserit satisdationem paratus idoneam praestare, quod omnibus creditoribus et omnibus libertatibus satisfaciat, aequissimum est eum admitti, ut omnes libertates indistincte celebrentur. quod privilegium damus non solum servo, qui libertate donatus est, sed etiam ei, cui nulla libertas relicta est, ut aliquid venustum eveniat, ut per eum,

1b. But if anyone promises to complete all the manumissions and to pay the debts not in full but in part and the creditors consent to this agreement, We ordain that even in such case the constitution of the most wise emperor should apply, and We direct that by all means he should be admitted to the inheritance, especially since that is done by the consent of the creditors; but We permit no such claim to be made if the creditors are unwilling.

2. But if some of the slaves should accept manumission while others think it should be rejected, the legal proposal (*oratio*) of the deified Marcus shall certainly be extended to this case also, and in such a case the one who claims the inheritance must be heard, but the slaves shall have free choice to accept manumission or remain in servitude. **2a.** For although no slave is permitted to reject Roman citizenship, still in such a case, in order that some of the slaves may not remain in servitude on account of the irreverence of others, all of those who are willing may obtain manumission, but those who are unwilling or refuse it shall remain in voluntary slavery, and learn to know the one whom they refused to have as patron as their master, and that perhaps a harsh one.

3. And even if he does not promise to complete all of the manumissions but (only for) a certain number of the slaves from those who were ordered to receive manumission, it is better, if the property of the inheritance suffices to satisfy the creditors, to grant manumission even to all the slaves, although he has not promised this. But if the property is insufficient to pay the creditors, it is more humane that at least a few receive manumission.

4. So far a settlement of ancient doubts. And perfecting the aforesaid constitution still more, We ordain that if there should be not one but several claimants of the inheritance, since two or more may claim it at the same moment, all shall have the right to accept the inheritance jointly, though first they must all give security that they will satisfy creditors and make the manumissions provided for. **4a.** But if they claim it at different times, the first one making the claim shall have the first right, provided he can furnish the security; if he fails to do so, the others follow him in right successively, according to the time in which they respectively make their claim. And this shall be done within a year.

5. Moreover, if one of them promises to manumit some of the slaves but not all of them, but another appears ready to give the proper security to satisfy all creditors and make all the required manumissions, the latter should, in justice, receive the inheritance, so that all the manumissions may be granted without distinction. This privilege is extended not only to a slave to whom a bequest of manumission was made, but also to one to whom manumission was not bequeathed, so that the desirable thing may happen when manumission is

cui libertas relicta non est, aliis libertas imponatur. **6.** Sed si quidem, antequam prior hereditarias res et libertatem accipiat, hoc eveniat, secundo petitori vel tertio vel deinceps ampliores libertates pollicentibus fieri locum censemus. **7.** Sin autem iam rebus servo, qui primus petiit hereditatem, datis et libertatibus ab eo quibusdam servis hereditariis impositis quidam alius servus hereditarius vel liber extraneus hoc facere maluerit, licebit quidem ei hoc impetrare et sub maioribus pollicitationibus et satisdationibus hereditatem accipere: sed prior in libertate petitor maneat, licet res ab eo abstrahantur. his omnibus intra annum secundum quod dictum est celebrandis, ex quo prior petitor iudicem adierit.

III De Lege Fufia Caninia Tollenda

[1] *Imp. Iustinianus A. Menae pp.* Servorum libertates in testamento relictas tam directas quam fideicommissarias ad exemplum inter vivos libertatum indistincte valere censemus, lege Fufia Caninia de cetero cessante nec impediente testantium pro suis servis clementes dispositiones effectui mancipari.

D. k. Iun. Constantinopoli dn. Iustiniano pp. A. II *cons.*

IIII De Fideicommissariis Libertatibus

[1] *Impp. Severus et Antoninus AA.* **pr.** Cum proponas hereditatem eius aditam non esse, a quo tibi fideicommissariam libertatem relictam dicis, et ab intestato alium quam qui scriptus erat hereditatem possedisse, si non a legitimo quoque herede fideicommissaria libertas repetita est, nullo iure praestari eam ab eo qui rogatus non est desideras. **1.** Plane si pecunia accepta heredem institutum omisisse hereditatem docueris, libertatem tibi praestare cogetur.

PP. XIII *k. Mart. Laterano et Rufino conss.*

granted to others through him who did not receive it himself. **6.** If these different claims are made before the first claimant receives the property of the inheritance and his manumission, We ordain that preference must be given to the second, third, or other claimant who promises the most manumissions. **7.** And even if the property has already been turned over to the first claimant of the estate and he has completed the manumission of some of the estate slaves, but another of the estate slaves or some free external heir prefers to implement this, he shall be permitted to do so and receive the inheritance on the condition that he give promise and guarantee of even more manumissions; but the first claimant shall retain his liberty, although the property is taken from him. All this shall be done within a year from the time that the earlier claimant makes application to the judge.

<*Without subscription (531–532).*>[9]

Third Title Repeal of the Lex Fufia Caninia[10]

[1] *Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect.* We ordain that a bequest of manumissions made in a testament, either directly or indirectly by way of trust, shall be just as valid as a manumission bestowed among the living, and the Lex Fufia Caninia shall cease to be valid in the future and shall not prevent indulgent orders by testators, in favor of their slaves, to be carried into effect.

Given June 1, at Constantinople, in the consulship of Our Lord Justinian, Father of his Country, Augustus, for the second time (528).

Fourth Title Manumissions Granted by Trust[11]

[1] *Emperors* SEVERUS and ANTONINUS *Augusti.* **pr.** Since you state that the inheritance of the man who you say left you manumission in a trust (*fideicommissum*) was not accepted and that someone other than the appointed heir has taken possession of the estate on intestacy, then, if the manumission granted in trust was also not sought from the statutory (*legitimus*) heir, you ask without right that it should be granted by one who was not directed to give it. **1.** Of course, if you prove that the appointed (*institutus*) heir refrained from accepting the inheritance in exchange for money, he will be compelled to give you freedom.

Posted February 17, in the consulship of Lateranus and Rufinus (197).

[9] Lounghis *et al.* date to between 531 and 534.
[10] See Inst. 1.7.
[11] See D. 40.5.

[2] *Imp. Antoninus A. Valerio.* Quamvis codicilli, quibus avunculo defunctae legatus esse videaris, falsi pronuntiati sunt, tamen si ante motam criminis quaestionem iustam libertatem es a legatario consecutus, posterior eventus non infirmat ita datam libertatem. plane secundum divi Hadriani constitutionem datur heredi viginti aureorum repetitio.

D. XVIII k. Aug. eodem Antonino A. ... conss.

[3] *Imp. Alexander A. Lucio.* Cum libertatem mulieribus sub condicione datam proponas, quid dubium est eos, qui ex his ante impletam eam eduntur, servos nasci et pertinere ad heredes iure dominii? his enim demum succursum est, qui post moram praestandae libertatis progeniti sunt, ut liberi et ingenui viderentur.

[4] *Idem A. Arriano.* Si voluntate domini in libertate morata est, cui fideicommissaria libertas debita fuerit, secundum senatus consultum et constitutiones ad id pertinentes civis Romana facta ingenuos peperit. sed si numquam ab ea libertas petita est, sibimet imputare debet, cum interea ex ea progeniti servi sint.

[5] *Idem A. Dionysio.* Minor annis lege definitis nec per fideicommissum libertatem supremis suis relinquere potest nisi his, quorum causam probare potest.

[6] *Idem A. Maximo.* Deberi etiam alienae ancillae fideicommissariam libertatem placuit: nec deficit hoc debitum, si interim domina, si modo nihil ex iudicio eius, qui quaeve reliquit libertatem, percepit, noluit vendere, quia possit tempore procedente, ubicumque occasio redimendae ancillae fuerit, praestari libertas.

[2] *Emperor* A*NTONINUS* *Augustus to Valerius.* Although the codicils in which you appear to have been bequeathed to the uncle of the deceased have been pronounced forged, still if you acquired just freedom from the legatee therein before investigation of this charge was commenced, the subsequent event does not invalidate a manumission thus given. But of course, according to the constitution of the deified Hadrian, the heir has the right to recover 20 gold pieces (*aurei*).

Given July 15, in the consulship of the same Antoninus Augustus ... (213).[12]

[3] *Emperor* A*LEXANDER* *Augustus to Lucius.* Since you state that conditional manumission was given to certain female slaves, can there be any doubt that the offspring born to them before the fulfillment of the condition are born slaves and belong to the heirs by right of ownership (*iure dominii*)? Relief is granted only to those who are born following delay (*mora*) in the granting of freedom, making such offspring free and free-born.

<*Without subscription (222?).*>[13]

[4] *The same Augustus to Arrianus.* If a female slave, to whom liberty was owed in trust (but was not formally conveyed), lived (*morata est*) in freedom with the consent of the master, according to the pertinent decree of the senate and constitutions, she became a Roman citizen and bore free-born children. But if she never claimed her liberty, it is her fault that the offspring born in the meantime are slaves.

<*Without subscription (222?).*>

[5][14] *The same Augustus to Dionysius.* A minor under the age fixed by law cannot grant through his will a manumission even in a trust except to those toward whom he can be proven to have just cause.

<*Without subscription (222?).*>

[6] *The same Augustus to Maximus.* It is agreed that a manumission in trust may be owed even to another person's slave girl. Nor does this obligation lapse if her female owner (*domina*) refused in the meantime to sell her provided she received nothing under the will of the testator who bequeathed the manumission in trust, since the manumission may be granted in the course of time whenever the occasion for redeeming the slave girl may arise.[15]

[12] The consular date is uncertain; 205 or 208 are also possible. The calendar date is also problematic since *xviii k. Aug.* calculates to July 15, a date properly rendered *id. Iul.*

[13] This constitution is subscribed "*pp. III k. mai lamp. et horest. vv. cc. ss.*" (posted April 29 in the consulship of *viri clarissimi* Lampadius and Orestes = 531) in Vercelli, Bibl. Cap. 127. Krüger speculates that the consular date may be in error given the rarity with which Justinianic constitutions are subscribed "posted," and thus that the calendar date may be correct, in which case the consular date may follow that of law 5 from this title.

[14] This constitution seems to combine with C. 2.3.8, which is addressed to *Aurelio Dionysio* and has the subscription *pp. prid. Id. Sept. Alexandro A. Cons.*, i.e., September 12, 222.

[15] = Inst. 2.24.2.

[7] *Idem A. Nicomedi.* Hi, quibus per fideicommissum libertas supremis iudiciis relinquitur, eorum liberti efficiuntur, a quibus manumittuntur.
PP. k. April. Fusco et Dextro conss.

[8] *Idem A. Eutycheti.* Cum proponas fideicommissariam libertatem ita tibi datam, si uxori testatoris placuisset, licet non adeunte[1] hereditatem ad filium solida hereditas pertinere coepit, non refragante tamen uxore testatoris potes petere libertatem.
PP. XV k. Sept. Fusco et Dextro conss.

[9] *Idem A. Mercuriali.* Fideicommissaria quidem libertas ita tibi relicta, cum testatoris filius ad annum vigensimum quintum pervenisset, non intercidit, licet heredem intra praestitutam aetatem decessisse proponas: tempore quippe, quo, si viveret, praefinitam aetatem impleturus foret, spem libertatis non intercidere vetus placitum est.
PP. k. April. Pompeiano et Peligno conss.

[10] *Impp. Valerianus et Gallienus AA. Daphno.* **pr.** Etsi non adscripta libertate testator servum suum tutorem filiis suis dederit, receptum est et libertatis et pupillorum favore, ut per fideicommissum manumisisse eum videatur. **1.** Et si non suum proprium, sed alienum servum condicionem eius sciens tutorem adscripserit, aeque fideicommissariam libertatem datam, nisi aliud evidenter defunctum sensisse appareat, prudentibus placuit.
PP. III k. Mart. Saeculare et Donato conss.

[11] *Impp. Diocletianus et Maximianus AA. et CC. Flaviano.* **pr.** Si servus fuisti ac tibi per fideicommissum libertas relicta fuerit, pervides sine manumissione te ad libertatem pervenire non potuisse. **1.** Quapropter si verbis precariis constitutus servus libertatem accepisti, adiri praeses provinciae oportet, ut causa cognita, si tibi deberi libertatem perspexerit, ad manumittendum eum qui debet urgueat vel, si latitet, contra latitantem interposito decreto tibi prospiciat.
Sine die et conss.

[12] *Idem AA. et CC. Irenaeo.* Ex verbo 'commendo' testamento vel codicillis non videri fideicommissariam libertatem relictam auctoritate iuris declaratur.
S. XVII k. Mai. Sirmi CC. conss.

[1] <ea>

[7] *The same Augustus to Nicomedes.* Those to whom manumission in trust is bequeathed in a last will become the freedmen of those by whom they are manumitted.

Posted April 1, in the consulship of Fuscus and Dexter (225).

[8] *The same Augustus to Eutychetes.* Since you state that manumission in trust was granted you upon condition that this should meet the approval of the wife of the testator, you may claim your freedom if the wife of the testator does not object, even if she does not accept her part of the inheritance and it all falls entirely to the son.

Posted August 18, in the consulship of Fuscus and Dexter (225).

[9] *The same Augustus to Mercurialis.* If manumission in trust was left you in such a way that it would take effect when the testator's son reached his twenty-fifth year, such bequest did not fail, though you state that the son died before the time fixed. It was long ago decided that the hope for freedom should not be cut off during the time that, had he lived, he would have arrived at the age fixed.

Posted April 1, in the consulship of Pompeianus and Pelignus (231).

[10][16] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Daphnus.* **pr.** Although a grant of liberty was not added when the testator appointed his slave as *tutor* for his sons, it is the accepted opinion that, through partiality for freedom and for minors (*et libertatis et pupillorum favore*), the testator is considered as having granted manumission in trust. **1.** Even if fully aware of his status he appointed not his own slave but another's as guardian, it has been accepted by jurists that he equally granted manumission in trust, unless the deceased would appear clearly to have felt otherwise.

Posted February 27, in the consulship of Saecularis and Donatus (260).

[11] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Flavianus.* **pr.** If you were a slave, and manumission was bequeathed to you by way of a trust, you can see that you cannot have attained freedom without manumission. **1.** Hence if, while you were a slave, you received manumission by a request in trust (*verbis precariis*), you should go before the provincial governor, so that he can hold a hearing and, if he finds that freedom is due you, he may compel the party whose duty it is to grant it, or if that person hides, look after your interests by issuing a decree against him.

Without date or consuls.

[12] *The same Augusti and Caesars to Irenaeus.* It is declared by the authority of law that no manumission in trust is bequeathed by the words "I commend" (*commendo*) contained in a testament or codicils.

Written April 15, at Sirmium, in the consulship of the Caesars (294).

[16] Combine with C. 5.28.5.

[13] *Idem AA. et CC. Pythagoridae.* Si te, donatam ante matrimonium uxori suae, post ei legato relicto manumitti testamento seu codicillis verbis precariis a successoribus voluit, tam hos ad redemptionem et manumissionem quam eam, quae in capiendis relictis defuncti consensit iudicio, teneri tibique fideicommissariam debere libertatem non ambigitur.

S. VII id. Dec. CC. conss.

[14] *Imp. Iustinianus A. Iuliano pp.* **pr.** Cum inter veteres dubitabatur, si fideicommissariam libertatem possibile esset relinqui servo, qui adhuc in ventre portaretur et homo fieri speraretur, nos vetus iurgium decidentes libertatis favore censemus et fideicommissariam nec non directam libertatem suam firmitatem habere sive in masculo sive in femina, quae adhuc in ventre vehatur materno, ut cum libertate solem respiciat, etsi mater sua adhuc in servitute constans eum vel eam ediderit. **1.** Sin autem plures creati vel creatae sint, sive unius fecit mentionem sive pluraliter nuncupavit, nihilo minus omnes ad libertatem ad prima veniant cunabula, cum in ambiguis sensibus melius est, et maxime in libertate, favore eius humaniorem amplecti sententiam.

D. k. Oct. Constantinopoli Lampadio et Oreste vv. cc. conss.

[15] *Idem A. Iuliano pp.* Ancillam seu servum, cum fideicommissaria libertas eis relicta sit, sancimus, si mora a debitore libertatis facta fuerit, sententia praesidis eripi ad libertatem et nullo facto aut voluntate ab herede expectanda, sed talem habere eos libertatem, quasi ab ipso testatore directis verbis fuerint libertatem consecuti, cum satis impium atque absurdum est heredes testatoris differre voluntates, maxime cum ad libertatem respiciant.

D. k. Oct. Constantinopoli Lampadio et Oreste vv. cc. conss.

[16] *Idem A. Iuliano pp.* **pr.** Si quis in suo testamento rogaverit suum heredem ex liberis ancillae suae quam nominaverit unum quem elegerit ad libertatem perducere et, cum ancilla unum vel plures enixa est, heres neque dum superest in libertatem aliquem adduxerit vel, cum deliberat, quis ad libertatem producendus est, ab hac luce fuerit subtractus: dubitabatur ab antiquis, utrumne omnes an quidam aut nemo ex his

[13] *The same Augusti and Caesars to Pythagorides.* If the testator made a gift of you to his wife before his marriage, and afterwards left a legacy to his wife and also expressed a desire by request in a trust in his testament or codicils that you should be manumitted by his successors, there is no doubt both that the successors are bound to purchase and manumit you and that his wife, who after all consented to his will by accepting what was left to her from the deceased, is also bound and owes you manumission in trust.

Written December 7, in the consulship of the Caesars (294).

[14][17] *Emperor* JUSTINIAN *Augustus to Julian, Praetorian Prefect.* Since it was disputed among the ancients whether manumission in trust could be left to a slave who was still being carried in the mother's womb and was expected to be born, in deciding the ancient dispute We decree, through partiality for liberty (*libertatis favore*), that manumission in trust and direct manumission granted to a male or female still in the mother's womb shall be valid, so that the child may see the light of day as a free person, although its mother is still in bondage when she gives birth to him or her. **1.** And in case birth is given to several children, male or female, then whether mention is made of one child or of more than one, all shall alike be free when entering their first cradle, since it is better in a doubtful case to adopt the most humane construction of the intention, especially when liberty is involved, through partiality for it.

Given October 1, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[15][18] *The same Augustus to Julian, Praetorian Prefect.* When manumission in trust is bequeathed to a male or female slave and the grant of manumission is delayed by the one who owes it, such slave shall be snatched away into liberty by the order of a judge without waiting for any action or any desire of the heir. These slaves shall have freedom the same as though they received a direct grant of manumission from the testator, since it is impious and absurd that heirs should delay to comply with the testator's wish, particularly in a case involving liberty.

Given October 1, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[16][19] *The same Augustus to Julian, Praetorian Prefect.* **pr.** In case a testator in his testament asked his heir to manumit one of the children of a certain female slave, to be selected by the heir, and once the female slave had given birth to one or more children, the heir did not manumit one of them while he still lived, or, while deliberating which child to manumit, he died, it was much disputed among the ancients whether all the children or one or none of them should

[17] Combine with C. 6.57.6 and 7.4.15.
[18] Combine with C. 6.57.6 and 7.4.14.
[19] Combine with C. 7.4.17 and 7.7.2.

ad libertatem perveniant. sed veteris quidem iuris altercatio multa sibi super huiusmodi casibus resonavit.

1. Nos autem heredis malignitatem coercentes, si non voluntatem testatoris adimpleverit et mox, cum potuerit, non elegerit unum ex liberis ancillae et eum libertate donaverit, sancimus compelli non solum eum, sed etiam heredes vel successores eius omnes ancillae liberos in libertatem producere. 2. Neque enim hoc contrarium est sententiae testatoris: cum enim omnimodo quendam ex his liberum esse disposuit et non ad certum corpus, sed ad omnes respexit, si non paretur eius voluntati, sine dubio ex sententia testatoris omnes ad libertatem perveniunt.

3. Similemque esse definitionem censemus, et si non ab herede, sed a legatario vel fideicommissario testator rogaverit libertatem imponi. 4. Sic etenim iusto timore heredes vel legatarii vel fideicommissarii perterriti et voluntatem testatoris adimplere procurent et sibi non ex omnium libertate quandam adferri patiantur iacturam. quod si reclamaverint, sibi tale dispendium imputent, non ex nostra lege, sed ex sua lugentes instantia.

D. XV k. Dec. Constantinopoli Lampadio et Oreste vv. cc. conss.

[17] *Idem A. Iuliano pp.* pr. Cum quidam servum suum ita legavit, ut legatarius libertatem ei imponat, et heres ad huiusmodi legatum improbe versatus servum dare legatario dedignatus est, ut etiam lite pulsetur, et iudex non in ipsum servum, sed in aestimationem litis condemnationem proferat: veteris iuris interpretes dubitabant, ne quid obstaculum libertati ex hac causa procedat et, si placuerit eandem deberi libertatem, a quo danda est utrumne ab herede an a legatario, et si heres imponat libertatem, an legatarius, quod ex pecuniaria condemnatione accepit, firmiter detinet sive totum sive ex parte sive etiam nihil.

1. Talem itaque altercationem resecantes miramur, quare iudex, qui praepositus est in praedicta causa, non omnimodo condemnationem in servum, sed in aestimationem eius fecerat, cum ipsius vitium etiam huiusmodi altercationi praebuit occasionem. 2. Unde si talis quaestio emerserit, nullum quidem iudicem ita esse stultum putamus, ut huiusmodi proferat condemnationem, sed si legatarius immineat, quatenus ei servus restituatur, et post litem contestatam duorum mensum

receive freedom. But this ancient legal dispute has had considerable resonance beyond cases of this sort.

1. We, however, in order to keep any evil intention of the heir in check, ordain that if he fails to carry out the testator's wish, and fails as soon as possible to choose one of the children of the female slave and to manumit him or her, he as well as his heirs and successors shall be compelled to give manumission to all the female slave's children. 2. Nor is this contrary to the testator's intention. For since he provided, in a general way, that one of the children should be free, and he made no reference to a particular one but had them all in mind, then if his wish is not carried out, all without a doubt receive freedom in accordance with the testator's will.

3. The same rule shall apply if the testator asked freedom to be given not by the heir but by a legatee or trustee. 4. For thus the heirs, legatees, or trustees will be induced by fear to see to it that the testator's wish is carried out in order not to suffer loss through the manumission of all the slaves. But if they refuse, they may blame themselves for the loss, grieving not because of Our law but because of their own stubbornness.

Given November 17, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[17][20] *The same Augustus to Julian, Praetorian Prefect.* **pr.** In case someone bequeathed his slave upon condition that the legatee should manumit him, and the heir acted dishonestly in connection with this legacy and refused to give the slave to the legatee so that he was sued, and the judge gave judgment not for the slave himself but for his value, it was disputed among interpreters of the ancient law whether any obstacle was thereby put in the way of manumission; and if it were determined that he should be manumitted, it was disputed by whom that was to be done, whether by the heir or the legatee; and if by the heir, whether the legatee would retain all or part or none of the money he received through the judgment.

1. In settling such a dispute We are puzzled why a judge presiding in such a case should give judgment for the value instead of directly for the slave, for his failing gave rise to the dispute. 2. Hence if any such case arises, We think no judge will be so stupid as to give a judgment of that kind, but if the legatee insists that the slave be rendered to him and two months elapse after joinder of issue, We ordain that the slave shall immediately be confiscated into liberty

[20] Combine with C. 7.4.16 and 7.7.2.

spatium effluxerit, censemus ilico ad libertatem eripi servum, et illum quidem liberum esse, heredem autem pro sua indevotione omnes expensas, quas legatarius in litem fecit, in quadruplum ei condemnari, iure patronatus integro legatario servando.

D. Constantinopoli XV *k. Dec. Lampadio et Oreste vv. cc. conss.*

V De Dediticia Libertate Tollenda

[1] *Imp. Iustinianus A. Iuliano pp.* Dediticia condicio nullo modo in posterum nostram rem publicam molestare concedatur, sed sit penitus deleta, quia nec in usu esse reperimus, sed vanum nomen huiusmodi libertatis circumducitur. nos enim, qui veritatem colimus, ea tantummodo volumus in nostris esse legibus, quae re ipsa obtinent.

D. ... Lampadio et Oreste conss.

VI De Latina Libertate Tollenda et per Certos Modos in Civitatem Romanam Transfusa

[1] *Imp. Iustinianus A. Iohanni pp.* **pr.** Cum dediticii liberti iam sublati sunt, quapropter imperfecta Latinorum libertas incertis vestigiis titubans et quasi per saturam inducta adhuc remanet et non inutilis

and shall become free, but also that the heir on account of his disrespect shall in addition be condemned to pay fourfold the amount of the expenses incurred by the legatee in the litigation, and that the legatee shall retain the right of patronage unimpaired.

Given November 17, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

Fifth Title The Abrogation of Manumission as a Prisoner of War[21]

[1] *Emperor* JUSTINIAN *Augustus to Julian, Pretorian Prefect.* The condition of prisoner of war (*dediticia condicio*) shall not be permitted to trouble Our state in any manner in the future but shall be entirely abolished, because We find it no longer in use, and the empty name of this kind of freedom is used deceptively. We who cultivate the truth want only those things that really exist to be in Our laws.

Given ... in the consulship of Lampadius and Orestes (530).[22]

Sixth Title The Abrogation of Latin Freedom and Its Transformation into Roman Citizenship through Certain Methods[23]

[1] *Emperor* JUSTINIAN *Augustus to John, Praetorian Prefect.* **pr.** Since the condition of freedmen with the status of prisoners of war (*dediticii liberti*) has already been abolished, why should imperfect Latin liberty remain, faltering

[21] Blume: "There were three classes of freedmen under the ancient Roman law, reduced, as shown by the next two titles, to one by Justinian. The lowest class, having what was called the *dediticia libertas*, was composed of liberated slaves that had been punished by their proprietors by chains, or had been branded, or had been convicted on a criminal charge, or had been committed to prison or a gladiatorial school or had been delivered to fight. Such slaves, when manumitted, never became either Latins or Roman citizens, and were merely considered as enemies who had surrendered at discretion. They could not take under a will in any form, or make a will, and they were forbidden, under penalty of being again reduced to slavery, to reside in Rome or within the hundredth milestone from Rome. Gaius 1.13; 15; 25; 27."

[22] Lounghis *et al.* date to between late February and December 31, 530.

[23] Blume: "The second class of freedmen, that frequently referred to in title 6 herein, was composed of those who had what was called the Latin right, and were called Latini Juniani – Latini, because they were assimilated in status to Latin colonists; Juniani, because they owed their freedom to the Junian law, before the enactment of which they were slaves. Gaius 1.22. This condition arose in a number of ways, some of which are enumerated in C. 7.6, infra. ....They could not dispose of their property by will, or take by direct devise or bequest, or be appointed testamentary guardian, although they could take property under a trust. Gaius 1.23–24; Ulpian 20.14. All of their property belonged, at death, to their patron, just as peculium – special property – of a slave. Gaius 3.56. Men of this class, though during life they lived as free persons, yet as they drew their last breath they were considered as losing their liberty along with their life, Inst. 3.7.4; which meant that they could make no testament, but all their property went to their patrons."

quidem pars eius deminuitur, quod autem ex ipsa rationabile est, hoc in ius perfectum deducitur? **1.** Cum enim Latini liberti ad similitudinem antiquae Latinitatis, quae in coloniis missa est, videntur esse introducti, ex qua nihil aliud rei publicae nisi bellum accessit civile, satis absurdum est ipsa origine rei sublata imaginem eius derelinqui. **1a.** Cum igitur multis modis et paene innumerabilibus Latinorum introducta est condicio et leges diversae et senatus consulta introducta sunt et ex his difficultates maximae emergebant tam ex lege Iunia quam ex Largiano senatus consulto nec non ex edicto divi Traiani, quorum plenae quidem fuerant nostrae leges, non autem in rebus fuerat eorum experimentum: studiosissimum nobis visum est haec quidem omnia et Latinam libertatem resecare, certos autem modos eligere, ex quibus antea quidem Latina competebat libertas, in praesenti autem Romana defertur condicio, ut his praesenti lege enumeratis et cives Romanos nascentibus ceteri omnes modi, per quos Latinorum nomen inducebatur, penitus conquiescant et non Latinos pariant, sed ut pro nullis habeantur. **1b.** Quis enim patiatur talem esse libertatem, ex qua in ipso tempore mortis in eandem personam simul et libertas et servitium concurrunt et, qui quasi liber moratus est, eripitur non tantum in mortem, sed etiam in servitutem?

1c. Sancimus itaque, si quis per epistulam servum suum in libertatem producere maluerit, licere ei hoc facere quinque testibus adhibitis, qui post eius litteras sive in subscriptione positas sive per totum textum effusas suas litteras supponentes fidem perpetuam possint chartulae praebere. et si hoc fecerit, sive per se scribendo sive per tabularium, libertas servo competat quasi ex imitatione codicilli delata, ita tamen, ut et ipso patrono vivente et libertatem et civitatem habeat Romanam.

2. Sed et si quis inter amicos libertatem dare suo servo maluerit, licebit ei quinque similiter testibus adhibitis suam explanare voluntatem et quod liberum eum esse voluit dicere: et hoc sive inter acta fuerit testificatus sive testium voces attestationem sunt amplexae et litteras tam publicarum personarum quam testium habeant, simili modo servi ad

with uncertain footsteps and brought on all jumbled up, as it were? Why should not the useless part thereof be dismantled and the rational part brought into a state of legal perfection? 1. For since Latin freedmen appear to have been created on the model of the ancient Latin status, which was conferred on colonies and out of which the state experienced nothing but civil war, it would be absurd that when the origin of such an institution had been removed, its image should persist. **1a.** Since, therefore, Latin status arose in many, almost innumerable ways, and different statutes and decrees of the Senate were enacted out of which many difficulties have emerged – out of the lex Junia, as well as the *SC Largianum*, and the edict of the deified Trajan[24] – Our laws were full of these, yet there was no real experience of them in the real world. It therefore seemed to Us extremely important to eliminate all of these as well as Latin liberty itself, but to select certain means which formerly gave rise to Latin liberty but which at present give Roman status, so that, by enumerating these in the present law as producing Roman citizens, all remaining means, through which the Latin name used to be imposed, may be laid entirely to rest and may no longer give rise to Latins but be held as nullities. **1b.** For who could tolerate liberty to be such that a man should be both free and slave at the moment of death, and that one who lived as a free man should not only be snatched into death, but into slavery as well?

1c. We therefore ordain that if anyone prefers to manumit his slave by letter (*per epistulam*), he may do so in the presence of five witnesses who can verify the document by adding their signatures to it below the writing of the author, whether he has merely signed the document or has written out the whole thing. And if he does so through a letter, written by himself or by a secretary (*tabularius*), the slave's manumission is valid as if he received it through a codicil, but he shall be both free and a Roman citizen even while his patron is still alive.

2. But if anyone prefers to give liberty to his slave in the presence of friends (*inter amicos*), he may make his wish known likewise in the presence of five witnesses and state that he wants the slave to be free. And whether he attested this on the public records or whether the witnesses' declarations contained its attestation, provided they have the signature of public secretaries and

[24] The *SC Largianum*, passed in the consulship of Lupus and Largus (42 CE), regulated the order of succession to Junian Latins in three degrees: the manumissor; the manumissor's children, provided they had not been disinherited; the manumissor's external heirs, see Gaius 3.63–65. The net effect was to render the Junian Latin intestate, as if he had reverted to slavery upon death. The Edict of Trajan further stipulated that any Junian Latin who attained full freedom unbeknownst to his master by grant of the Emperor nevertheless reverted to Junian status at death, see Inst. 3.7.4.

civitatem producantur Romanam quasi ex codicillis similiter libertatem adipiscentes.

3. Sed scimus etiam hoc esse in antiqua Latinitate ex edicto divi Claudii introductum, quod, si quis servum suum aegritudine periclitantem sua domo publice eiecerit neque ipse eum procurans neque alii eum commendans, cum erat ei libera facultas, si non ipse ad eius curam sufficeret, in xenonem eum mittere vel quo poterat modo eum adiuvare, huiusmodi servus in libertate Latina antea morabatur et, quem ille moriendum dereliquit, eius bona iterum, cum moreretur, accipiebat. 3a. Talis itaque servus libertate necessaria a domino et nolente re ipsa donatus fiat ilico civis Romanus nec aditus in iura patronatus quondam domino reservetur. quem enim a sua domo suaque familia publice reppulit neque ipse eum procurans neque alii commendans neque in venerabilem xenonem eum mittens neque consueta ei praebens salaria, maneat ab eo eiusque substantia undique segregatus tam in omni tempore vitae liberti quam cum moriatur nec non postquam iam fuerit in fata sua concessus.

4. Similique modo si quis ancillam suam sub hac condicione alienaverit, ne prostituatur, novus autem dominus impia mercatione eam prostituendam esse temptaverit, vel si pristinus dominus manus iniectionem in tali alienatione sibi servaverit et, cum ad eum fuerit reversa, ipse ancillam prostituerit, ilico in libertatem Romanam eripiatur et, qui eam prostituerit, ab omni patronatus iure repellatur. qui enim ita degener et impius constitutus est, ut talem exerceret mercationem, quomodo dignus est vel ancillam vel libertam eam habere?

5. Sed et qui domini funus pileati antecedunt vel in ipso lectulo stantes cadaver ventilare videntur, si hoc ex voluntate fiat vel testatoris vel heredis, fiant ilico cives Romani. et ne quis vana liberalitate iactare se concedatur, ut populus quidem eum quasi humanum respiciat multos pileatos in funus procedentes adspiciens, omnibus autem deceptis maneant illi in pristina servitute publico testimonio defraudati: fiant itaque et hi cives Romani, iure tamen patronatus patronis integro servando.

said witnesses, these slaves shall receive Roman citizenship in like manner as though they received manumission by codicil.

3. We also know that this too was introduced by the edict of the deified Claudius in connection with the ancient Latin status, that if a man should publicly expel his mortally ill slave from his house, neither caring for him nor entrusting him to another, even though he could have sent him to a hospital (*xenonem*) or helped him in some other way in the absence of sufficient means to care for him personally, a slave in this situation used to remain in Latin liberty in an earlier age, and when he died, the master used to receive his property, though he had abandoned the slave to die. **3a.** Therefore, such a slave, who has been endowed with liberty of necessity with an unwilling master but by the situation itself, shall by this very act immediately become a Roman citizen; and the former master shall retain no rights as patron. When such former master throws him publicly out of his house and family, neither caring for him, nor entrusting him to another, nor sending him to a venerable hospital, nor furnishing him the customary allowance, the slave shall remain entirely independent from his former master and his property both for the remainder of his life as a freedman, and upon his death, and after he has yielded to his fate.[25]

4. So, too, if a man transfers his female slave upon condition that she shall not be prostituted, but the new master attempts through impious dealing to give her over to prostitution, or if the former owner has reserved the right to her recovery in such case, and he, upon her return to him, himself prostitutes the slave, she shall immediately gain her freedom as a Roman citizen, and he who prostituted her shall lose all rights as patron. For how could a man who is so degenerate and impious as to engage in such dealing be worthy to have her either as his slave or his freedwoman?

5. And if any slaves wearing a cap of liberty (*pileati*) march in front of a funeral procession of their master or are seen fanning the corpse standing at his bier, whether this be by the wish of the testator or of his heir, they shall immediately become Roman citizens. Indeed, it shall not be permitted that any person can boast about granting empty manumissions so that people might respect him as humane when they see how many liberty-cap wearers process in his funeral, but then, once everyone has been deceived, those who were cheated in a public spectacle remain in their former servitude. Therefore these too shall become Roman citizens, but patronal rights shall be fully preserved for the patrons.

[25] For Claudius' ruling, see D. 40.8.2; Justinian repeats the same in the context of his long Novel on second marriages, Nov. 22.12.

6. Illo procul dubio observando, ut, si quis sive in testamento sive vindicta quendam manumiserit, licet hoc dixerit vel scripserit, quod voluerit esse Latinum, supervacua adiectio Latinitatis aboleatur et fiat civis Romanus, ne modi, qui ab antiqua observatione in civitatem Romanam homines producebant, per privatorum voluntates deminui videantur.

7. Sed et si sub condicione quidam libertatem suo servo reliquerit et adhuc pendente condicione extraneus heres libertatem ei imposuerit, non ut antea Latinus, sed civis fiat Romanus. et si quidem condicio defecerit, ipsius heredis, qui libertatem imposuit, maneat libertus. sin autem fuerit adimpleta, ne eripiatur forsitan liberis et cognatis ius patronatus, orcinus libertus videatur et ad eum iura patronatus perveniant, cui leges concedunt.

8. Illud etiam satis acerbum nobis visum est, quod putabat antiquitas, si in liberali iudicio superatus fuerat servus a domino, deinde servi pretium ab aliquo ei solutum est, in Latinitate eum remorari. quemadmodum enim rationabile est et pretio eum perfrui et mortis liberti tempore denuo eum in servitutem deducere, cum non sint ambo casus sibi consentanei? et in praesenti igitur casu libertas Romana ei accedat iure patronatus minime subnixa, quia ipse quodammodo sibi libertus invenitur.

9. Sed et si quis homini libero suam ancillam in matrimonio collocaverit et dotem pro ea conscripserit, quod solitum est in liberis personis solis procedere, ancilla non Latina, sed civis efficiatur Romana. si enim hoc, quod frequentissime in cives Romanas et maxime in nobiles personas fieri solet, id est dotalis instrumenti conscriptio, et in hac persona adhibita est, necessarium est consentaneum effectum huiusmodi scripturae observari. **10.** Similique modo si dominus inter acta quendam servum filium suum nominaverit, voci eius quantum ad liberam condicionem credendum est. si enim ipse tali adfectione fuerat accensus, ut etiam filium servum suum nominare non indignetur, et hoc non secreto neque inter solos amicos, sed etiam actis intervenientibus et quasi in iudicii figura nominaverit, quomodo potest eum servum iterum saltem morientem habere? sed producatur et ipse in civitatem Romanam, vera liberalitate et non falso sermone domini sui sustentatus.

11. Ille etiam novissimus antiquae Latinitatis modus in civitatem Romanam translatus eligendus est, si quis instrumenta, ex quibus servus ostendebatur, vel dederit servo vel corruperit. **11a.** Sed ne

6. Further, let it be observed that, if anyone manumits a slave in his will or by the staff and he says or writes that he wants the slave to be a Latin, the fruitless addition of Latinity shall be expunged and the slave shall become a Roman citizen, lest the methods which, according to ancient rules led to Roman citizenship, might be impaired by the wishes of private individuals.

7. And if a man bequeaths freedom to his slave upon some condition, and before the condition has been fulfilled an external heir grants him freedom, the latter shall not become a Latin, as formerly happened, but a Roman citizen. And if the condition fails, he shall remain the freedman of the heir who gave him his freedom. But if the condition is fulfilled, lest the right of patronage be removed from the children and relatives, the slave shall be regarded as a freedman of the testator (*libertus orcinus*), and the rights of patronage shall accrue to the person to whom the laws grant them.

8. This, too, seems harsh to Us: The ancients used to think that if a slave was defeated by his master in an action for his freedom, and someone subsequently paid the price of the slave to the master, that the slave should remain a Latin. For how can it be reasonable that the master should enjoy the price and at the time of the death of the freedman again reduce the latter to the condition of servitude? These matters are not in harmony. In this case too, therefore, the slave shall receive Roman freedom, which rests on no right of patronage, since the freedman is found to be like a freedman of himself.

9. And if anyone gives his female slave in marriage to a free man and underwrites a dowry for her – which is a custom only among free persons – the female slave shall become not a Latin but a Roman citizen. For because the act of underwriting a dowry, which frequently occurs among Roman citizens and particularly among persons of nobility, is also employed in the case of this female slave, it is necessary that a suitable effect be given to this document.[26] **10.** Similarly, if a master gives to his slave the title of son in official records, such statement must be credited as meaning that the slave is free. For if the master is moved by such feelings of affection as not to consider it unworthy to call his slave his son, and does so not secretly and among friends only, but in official records, as though expressing his last wish, how may he again have him as a slave when he dies? So such slave shall become a Roman citizen, buoyed up by the true liberality of his maser rather than by false speech.[27]

11. And the last method too which gave rise to Latin freedom shall be adopted as a method to confer Roman citizenship, namely when a master gives the documents which prove a man to be a slave, to his slave or when he destroys them.

[26] At Nov. 22.11 Justinian also grants that masters who collude in the marriage of their female slaves passively consent to their manumission.

[27] See Inst. 1.11.12.

furandi occasio servis forsitan detur et sua malignitate in libertatem perveniant, talis modus certa et indubitata probatione manifestetur, ut testibus praesentibus non minus quinque dominus instrumenta vel det famulo suo vel deleat aut alio modo corrumpat. et ex eo igitur modo civitatem Romanam ei competere censemus, salvo iure patronatus tam in hac specie quam in ceteris, nisi ubi specialiter hoc patronis denegavimus.

12. His tantummodo casibus ex omni iure antiquae Latinitatis electis ceteri omnes, qui in libris prudentium vel constitutionibus enumerati sunt, penitus conquiescant nec Latini ab eis procedant, sed maneant, ut dictum est, servi in sua condicione nec tali remedio abuti concedantur. 12a. Et ne in posterum aliquod ius Latinae libertatis nostris legibus incurrat, lex Iunia taceat Largiano senatus consulto cessante, sileat edictum divi Traiani, quod ea sequebatur, et si qua alia lex vel senatus consultum vel etiam constitutio loquitur de Latinis, ea inefficax quantum in eam partem remaneat et triplex antea via libertatis, quae multiplices introducebat ambages, uno directo tramite discat ambulare. quod si aliqua lex vel constitutio libertatis faciet mentionem, non autem Latinitatis, ea pro civitate Romana loqui intellegatur. 13. Sed si quidem liberti iam mortui sunt, et bona eorum quasi Latinorum his quorum intererat adgregata sunt, vel adhuc vivunt, nihil ex hac lege innovetur, sed maneant apud eos iure antiquo firmiter detenta et vindicanda. in futuris autem libertis praesens constitutio locum sibi vindicet.

D. k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

VII De Servo Communi Manumisso

[1] *Imp. Iustinianus A. Iuliano pp.* **pr.** In communes servos eorumque libertatem et quando cuidam domino pars libertatem imponentis adcrescit nec ne, et maxime inter milites, qui huiusmodi imponunt libertatem, multa ambiguitas exorta est apud veteres iuris auctores. 1. Et inventa est constitutio apud Marcianum in institutionibus divi Severi, per quam idem imperator disposuit necessitatem imponi heredi militis comparare partem socii et servum libertate donare. 1a. Sed et alia

11a. But lest an opportunity for theft be given to slaves and they receive liberty through wickedness, this method must be made manifest through certain and undoubted evidence, so that the master must give the documents to his slave or erase or otherwise destroy them in the presence of not less than five witnesses. Therefore, also by this method Roman citizenship may be acquired, leaving the right of patronage unimpaired in this case as well as in all other cases, unless We have specially denied such right to patrons.

12. Having singled out these instances only from among the methods which formerly conferred Latin status, all others enumerated in books of jurists or in constitutions shall be entirely obsolete. No Latins shall be created thereby, but slaves shall, as stated, retain their status as such, and the misuse of such methods shall not be permitted. 12a. And lest hereafter anything relating to Latin liberty come up in Our laws, the lex Junia shall be silent, the *SC Largianum* shall cease to have validity, the edict of the deified Trajan which followed these shall be quiescent, and if any other statute or decree of the Senate or constitution speaks of Latins, they shall have no effect as to such provision, and the former threefold road to liberty which introduced manifold detours, shall learn to proceed along a single direct path. But if any statute or constitution makes mention of liberty without specifying anything about Latinity, it shall be understood to speak in favor of Roman citizenship. 13. If, however, there are freedmen who have already died and their property has been turned over as that belonging to Latins to those who had claims, or if they happen still to be alive, let nothing be altered in accordance with this law, but let such goods continue to be detained and recovered by these same according to ancient right. But the present constitution shall apply to all future freedmen.

Given November 1, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

Seventh Title A Manumitted Slave Owned in Common

[1] *Emperor* JUSTINIAN *Augustus to Julian, Praetorian Prefect.* **pr.** A great dispute arose among the ancient authorities of law concerning slaves owned in common and their manumission: when does the share of the owner-in-common who alone grants manumission accrue to another owner who does not grant it, and when not? And particularly what about soldiers who grant liberty in such cases? 1. A constitution of the deified Severus was found in the *Institutes* of Marcian by which that emperor ordained that it was necessary for an heir of a soldier[28] to purchase the portion of the other co-owner and grant liberty to the slave. 1a. But another constitution of the Emperors Severus

[28] That is, a soldier who was co-owner of a slave and manumitted him in his will.

constitutio Severi et Antonini principum reperta est, ex qua generaliter necessitas imponebatur socio partem suam socio vendere, quatenus libertas servo imponatur, licet nihil lucri ex substantia socii morientis alii socio accedat, pretio videlicet arbitrio praetoris constituendo, secundum ea, quae et Ulpianus libro sexto fideicommissorum et Paulus libro tertio fideicommissorum refert, ubi et hoc relatum est, quod Sextus Caecilius iuris antiqui conditor definivit socium per praetorem compelli suam partem vendere, quatenus liber servus efficiatur: quod et Marcellus apud Iulianum in eius digestis notat: hocque et Marcellum, cum Iulianum notaret, rettulisse palam est.

1b. His itaque apud veteres iuris auctores inventis decidentes tales altercationes generaliter sancimus, ut nulla inducatur differentia militis seu privati in servis communibus, sed in omnibus communibus famulis, sive inter vivos sive in ultima dispositione libertatem quis legitimam imponere communi servo voluerit, hoc faciat, necessitatem habente socio vendere partem suam, quantam in servo possidet, sive dimidiam sive tertiam sive quantamcunque, et si plures sint socii, uno ex his libertatem imponere cupiente alios omnes necessitatem habere partes suas, quas in servo possident, vendere ipsi, qui libertatem servo imponere desiderat, vel heredi eius (licet ipse communis servus institutus sit), si hoc moriturus dixerit, ita tamen, ut omnimodo ipse qui partes alias comparavit vel heredes eius libertatem imponant.

2. Sin autem socius vel socii recusaverint pretium accipere, licentiam ei damus offerre hoc per publicas personas et sigillo impresso in aedem sacram deponere et sic habere facultatem servum libertate donare et eum habere plenissimam libertatem et civitate Romana perfrui et nullum timere ex sociis. sibi etenim imputent, si, cum liceret lucrari pretium, hoc accipere differunt.

3. Sed ne circa peculium servi aliqua fuerit dubitatio, peculium eius in omnes socios pertinere iubemus ex partibus, pro quibus quisque et dominium servi possidet: licentia concedenda ei, qui libertatem moriens imponit, etiam eius peculium quod ei attingit liberto concedere. iura autem patronatus procul dubio pro suo ordine ad eum venire qui libertatem donavit.

4. Sin autem servus ratiociniis suppositus sit, ne ratiocinia pereant vel libertas impediatur, praesidem provinciae vel competentem iudicem tempus statuere, intra quod debet ratiociniis ante factis et debitis, quae ex his apparuerint, redditis ita ad libertatem venire.

5. Ne autem quantitas servilis pretii sit incerta, sed manifesta, sancimus servi pretium sive ancillae, si nulla arte sunt imbuti, viginti solidis

and Antoninus has been found which, in general terms, imposed on one partner the necessity to sell his share to his co-partner if manumission is granted to the slave, even though no profit accrues to the one partner from the estate of the other who is dying – in which case the price must be determined at the discretion of the Praetor, according to what Ulpian says in his sixth book *On Trusts* and Paulus in his third book *On Trusts*. There it is also reported what Sextus Caecilius (Africanus), a founder of ancient law, stated, that a partner is compelled by the Praetor to sell his share if a slave is set free, as Marcellus also notes on Julian in his *Digests*. And evidently Marcellus also reported this when he annotated Julian.

1b. Finding these statements in the books of the ancient founders of law, and settling such disputes, We ordain generally that there shall be no difference between slaves owned in common by soldiers and those owned by private persons, but in all cases involving slaves owned in common, if one partner wants to manumit the slave in a lawful manner, either among the living or by a last will, he may do so, and the co-partner is required to sell the share in however much of the slave he owns, whether a half, a third, or any other amount. And if there are several partners, and one of them desires to grant liberty, all the others are required to sell the shares which they own in the slave to the co-owner who desires to grant such liberty or to his heir, if a co-owner expressed that wish as he lay dying, even if the slave owned in common is made the heir. A co-owner who has (thus) purchased the other shares, or his heirs, must grant liberty.

2. Nevertheless, if one or more co-owners refuse to receive the price, the one who desires to grant liberty may tender it through public secretaries (*per publicas personas*) and deposit it, sealed, in a sacred building (*in aedem sacram*, presumably a church), and thus he has power to manumit the slave who thereupon shall have complete freedom, enjoy Roman citizenship, and fear nothing from the other co-owners. For the latter may blame themselves if they delay in accepting the price, from which they might have benefited.

3. And that no doubt may exist as to the *peculium* of the slave, We order that it shall belong to all the partners in proportion to the shares according to which each holds ownership of the slave. Permission must be given to the partner who bequeaths such liberty upon his death to give his share of the *peculium* to the freedman. The rights of patrons belong without question to the party who grants the manumission, as is normal.

4. If the slave was engaged in managing accounts, then, in order that these may not be lost or his manumission delayed, the governor or pertinent judge shall fix a time within which he shall be manumitted, provided an account has been rendered and the amounts shown to be due have been paid.

5. In order, moreover, that the price of a slave not be left uncertain and that it may be definitely known, We ordain that male or female slaves, shall be valued

taxari, his videlicet, qui usque ad decimum annum suae venerunt aetatis, in decem tantummodo solidis ponendis: sin autem aliqua arte praediti sunt exceptis notariis et medicis, usque ad triginta solidos pretium eorum redigi sive in masculis sive in feminis. **5a.** Sin autem notarius sit vel medicus sive masculus sive femina, notarius quidem usque ad quinquaginta, medicus autem usque ad sexaginta taxetur. **5b.** Sin vero eunuchi sint servi communes maiores decem annis, si quidem sine arte sint, in quinquaginta solidos computentur, sin autem artifices, usque ad septuaginta: minores etenim decem annis eunuchos non amplius triginta solidis aestimari volumus. **5c.** Et eorum partem competentem socii accipientes libertatem eis per competentes iudices imponere compellentur.

6. Sin autem, uno ex sociis libertatem sive imponere sive relinquere servo cupiente et pretium dante alter vel alteri ex his ipsi velle dixerint libertatem imponere et pretium dare, melior quidem causa erit eius, qui primus ad hanc rationem pietatis perveniet. **6a.** Si tamen sub obtentu libertatis et ipsi ad haec prosiluerint, tunc iudicem competentem omnes compellere sine pretio ei libertatem imponere: peculio quidem in omnes secundum partem dominii distribuendo, iura autem patronatus secundum sui naturam omnibus qui libertatem imposuerunt aequaliter habentibus. **7.** Ius enim adcrescendi, quod antiqua iura in communibus servis manumittendis introducebant, nullius esse momenti nec in posterum frequentari penitus concedimus.

D. k. Aug. Lampadio et Oreste vv. cc. *conss.*

[2] *Idem A. Iuliano pp.* **pr.** Cum apud omnes iuris peritos hoc placitum est, ut servus communis apud unumquemque dominum partim sit proprius partim alienus, ut ex hac causa possit et ipse legato honorari et ipse legari, huiusmodi incidit quaestio. **1.** Duo vel plures domini communem servum habebant, sed unus ex his ipsi servo suam partem quam in eo habebat legavit. et semel accepta dubitationis occasione hoc vetustas in magnum extollit certamen.

2. Cum igitur nos sensum huiusmodi legati crebra indagatione adgredientes duplicem esse eum opinamur: aut enim putavit testator liberum fieri posse ex parte servum, qui huiusmodi legatum ei reliquit, aut, si hoc minime cogitavit, adfectu socii fecit, ut ei adquiratur, heredes autem suos eundem servum possidere minime voluit, ut sit manifestum a suo patrimonio penitus esse eum alienatum: in tali itaque comparatione nos,

at 20 solidi if they have not been trained in a trade, provided that those who have only reached their tenth year shall only be valued at 10 solidi; if they have learned a trade, they shall, except in case of notaries and physicians, be valued up to 30 solidi, whether they are male or female. **5a.** If they happen to be a notary or a doctor, whether they are male or female, the notary shall be valued up to 50 solidi, but the doctor up to 60 solidi. **5b.** But if such slaves owned in common happen to be eunuchs, they shall, if older than 10 years and without a trade, be valued at 50 solidi; if they have a trade up to 70 solidi; eunuchs less than 10 years old shall be valued at not more than 30 solidi. **5c.** And co-owners upon receiving their proper proportion will be compelled by the appropriate judges to grant liberty.

6. Moreover, if one of the co-owners wants to give or bequeath liberty to a slave and pay the price, and another or others of the co-owners want to do the same, the one who first undertakes this act of piety (*rationem pietatis*) shall have preference. **6a.** If they all are eager to do so only on the pretence of granting liberty, the appropriate judge will compel them all to grant liberty without receiving the price. The *peculium* of the slave should be divided among all in proportion to their ownership, but the rights of patronage shall, according to the natural principle, be enjoyed equally by all who granted manumission. **7.** The right of accrual (*ius adcrescendi*), which the ancient laws introduced in connection with the manumission of slaves owned in common, shall no longer exist and have no further application in the future.[29]

Given August 1, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[2] *The same Augustus to Julian Praetorian Prefect.* **pr.** Since it was agreed by all jurists that a slave owned in common partially belonged and partially did not belong to each owner, and that hence the slave could be gifted with a legacy as well as himself being given as a legacy, the following question arose: **1.** Two or more owners had a slave in common, but one of them bequeathed the part he owned to the slave himself. Once this matter had given occasion for doubt, a mighty dispute arose among the ancients.

2. We have repeatedly looked into the intent involved in such a legacy and think that it may be construed in two ways: the testator who left this legacy either thought that the slave could be made free in part, or, if he did not think that, through affection for his co-owner, he wanted him to have his share. He did not, in any event, want his heirs to have the slave, as it is clear that the

[29] As Blume notes: "A man cannot be partly free and partly slave. But an owner of half cannot free the other half. Hence, under the ancient law, if a co-owner purported to free the slave, the manumission did not take effect. The act was not always void; if the purported manumission was formal, i.e. by the rod or by testament, the effect was simply to vest the share of the freeing owner in the other owner by way of accrual."

qui fautores libertatis sumus, sic ambiguam testatoris interpretamur voluntatem, tamquam si voluit eum libertate in suam partem donare. 3. Et cum iam de communibus servis manumittendis statuimus, quid in huiusmodi casibus fieri oportet, ex illius sanctionis tenore et huiusmodi species sit definita. fiat itaque liber, ex parte quidem testatoris secundum eius voluntatem, ex altera autem parte ex nostra definitione, pretio secundum praedictae constitutionis tenorem vel sociis ab herede praestando vel, si accipere noluerint, tam offerendo quam signando et periculo eorum deponendo, cum sat abundeque imperiale est humaniorem sententiam pro durioribus sequi.

D. Constantinopoli XV k. Dec. Lampadio et Oreste vv. cc. conss.

VIII De Servo Pignori Dato Manumisso

[1] *Impp. Severus et Antoninus AA. Proculo.* Licet dotale mancipium vir qui solvendo est possit manumittere, tamen si te pignori quoque datum mulieri apparuerit, invita ea non posse libertatem adsequi non ambigitur.

PP. XII k. Mai. Antonino A. II et Geta II conss.

[2] *Idem AA. Abascanto.* Libertas a debitore fisci servo data, qui pignori non est ex conventione speciali, sed tantum privilegio fisci obligatus, non aliter infirmatur, quam si hoc fraudis consilio effectum detegatur.

[3] *Idem AA. Antonio.* Ab eo, qui bona sua pignori obligavit, quae habet quaeque habiturus esset, posse servis libertatem dari certum est. non idem iuris est in his servis, qui pignoris iure specialiter traditi vel obligati sunt.

PP. III k. Ian. Pompeiano et Avito conss.

[4] *Imp. Alexander A. Sabiniano.* Si, ut proponis, consentiente creditore, cui pignoris iure cum aliis mancipiis obligatus fuisti, a debitore manumissus es, potuisti ad libertatem pervenire.

slave was effectually severed from the testator's other property. Sponsors of liberty as We are, We have weighed the matter and interpret the ambiguous wish of the testator to mean that he wanted to give the slave liberty as to his share. 3. And since We have already decided what should be done in case of the manumission of slaves owned in common, cases like the present shall be governed according to the tenor of that law. Let the slave, therefore, be free as to the share of the testator, according to the latter's wish. As regards the other share, according to Our pronouncement, the price must be paid by the heir to the co-owners following the arrangement in said constitution, and if they refuse to receive it, it shall be tendered, sealed, and deposited at their risk, since it is the proper thing for an Emperor to prefer a humane interpretation to one that is harsh.

Given November 17, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

Eighth Title The Manumission of a Slave Tendered as a Pledge

[1] *Emperors Severus and Antoninus, Augusti to Proculus.* Although a solvent husband may manumit a slave given to him as a dowry, there is no doubt that, if it appears that you were also tendered (by the husband) as a pledge (*pignus*) to the wife, you cannot obtain liberty without her consent.

Posted April 20, in the consulship of Antoninus Augustus and Geta, for the second time (205).

[2] *The same Augusti to Abascantus.* Liberty bestowed by a debtor of the Treasury upon a slave, who is not pledged to the Treasury by special agreement, but upon whom it has only a general lien by reason of its privileges,[30] is not invalid unless it is shown that such liberty was granted with intent to defraud.

[3] *The same Augusti to Antonius.* It is certain that liberty can be given to slaves by a master who obligates his current and future property as a pledge. The law is not the same regarding those slaves who were specifically delivered or obligated by way of pledge.

Posted December 30, in the consulship of Pompeianus and Avitus (209).

[4] *Emperor Alexander Augustus to Sabinianus.* If, as you state, you were manumitted by the debtor with the consent of the creditor to whom you were pledged along with other slaves, you were able to obtain your liberty.

[30] The Fiscus had a general lien on the property of its debtor, but the present rescript shows that manumissions were favored over its claims.

PP. VI id. Mai. Alexandro A. cons.

[5] *Idem A. Extricatiano.* Si creditoribus satisfactum fuerit, ancillae, quae pignori obligatae a debitore manumissae erant, liberae fiunt. nam ipse manumissor si fraudem se fecisse creditoribus, ut revocet libertates, audeat dicere, audiri non debet nec heredes eius.

PP. III k. Iun. Maximo II et Aeliano conss.

[6] *Idem A. Auctori.* Si tutor tuus de pecunia tua servos emptos manumisit, quoniam huiusmodi servi sicut ceterae res pupillaribus pecuniis emptae iure pignoris ex constitutione divorum parentium meorum obligati sunt favore pupillorum, liberi facti non sunt.

[7] *Imp. Gordianus A. Iulianae.* Sive cum nupsisses mancipia in dotem dedisti, sive post datam dotem de pecunia dotis maritus tuus quaedam comparavit, iuris rationibus dominia eorum ad eum pervenerunt. ideoque frustra quaestionem super statu manumissorum conaris inferre, qui eius facti, qui comparavit vel in dotem accepit, ab eo iure potuerunt manumitti.

VIIII De Servis Rei Publicae Manumittendis

[1] *Imp. Gordianus A. Epigono.* Si ita, ut lege municipali constitutionibusque principum comprehenditur, cum servus publicus esses, ab ordine consentiente etiam praeside provinciae manumissus es, non ex eo, quod is quem dederas vicarium in fugam se convertit, iugo servitutis, quod manumissione evasisti, iterato cogeris succedere.

[2] *Idem A. Hadrianae.* Si decretum ordinis auctoritas rectoris provinciae comprobavit, quo is libertatem acceperat, cui postea fueras, ut proponis, matrimonio copulata, natam ex huiusmodi matrimonio et civem Romanam esse et in patris potestate non est incertae opinionis.

Posted May 10, in the consulship of Alexander Augustus (222).

[5] *The same Augustus to Extricatianus.* If the creditors have been paid, the female slaves who were manumitted by the debtor became free even though pledged to such creditors. For neither the manumitter nor his heirs should be heard if, in order to revoke the manumissions, he presumes to say that he defrauded the creditors.

Posted May 30, in the consulship of Maximus, for the second time, and Aelianus (223).

[6] *The same Augustus to Auctor.* If your guardian manumitted slaves who had been bought with your money, such slaves did not become free, since they, just as other property bought with the money of minors, are bound by a (tacit) right of pledge in favor of the minors, according to the constitution of my deified parents.

[7] *Emperor GORDIAN Augustus to Juliana.* Whether you gave slaves as a dowry when you were married, or, after the dowry was given, your husband purchased some with the money given as dowry, he was owner of them according to the rules of law. Therefore you are striving in vain to bring an inquest about the status of the slaves who were manumitted; these became the property of him who purchased them or received them as a dowry and could legally be manumitted by him.

Ninth Title The Manumission of Municipal Slaves[31]

[1] *Emperor GORDIAN Augustus to Epigonus.* If you were manumitted by the municipal order with the consent of the provincial governor in accordance with municipal law and imperial constitutions, you will not be again compelled to submit to the yoke of servitude, from which you escaped by manumission, because the slave whom you gave as a substitute fled.

[2] *The same Augustus to Hadriana.* If the governor (*rector*) of the province approved the decree of the municipal order by which the man, whom, as you state, you afterwards married, received his liberty, there is no room for doubt that the girl born of this marriage is a Roman citizen and under paternal power.

[31] See D. 40.3.

[3] *Impp. Diocletianus et Maximianus AA. et CC. Philadelpho.* **pr.** Titulo non praecedente, quibus dominia servorum quaeri solent, municipum libertus servus non efficitur. **1.** Si itaque secundum legem vetti libici,[ii] cuius potestatem senatus consulto Iuventio Celso iterum et Neratio Marcello consulibus facto ad provincias porrectam constitit, manumissus civitatem Romanam consecutus es, post vero ut libertus tabularium administrando libertatem quam fueras consecutus non amisisti, nec actus tuus filio ex liberis ingenuo suscepto, quominus decurio esse possit, obfuit.

D. XV k. April. Ravennae AA. conss.

X De His Qui a Non Domino Manumissi Sunt

[1] *Imp. Antoninus A. Corneliano.* Eum, qui servos alienos ac si suos manumittit, ut pretium eorum dominis, si hoc elegerint, dependat, quanti sua interest, saepe rescriptum est.

PP. k. Mart. Antonino A. IIII et Balbino conss.

[2] *Imp. Alexander A. Mercuriali.* Felicissima, quam mandante te servos emisse dicis, si dominium servi quem manumisit nondum ad te transtulerat, frustra petis, ut denegata libertate eius quem manumissum dicis possessio tibi tradatur.

[3] *Idem A. Pompeio militi.* Qui tibi hereditatem vendidit, antequam res hereditarias traderet, dominus earum perseveravit et ideo manumittendo libertatem servo hereditario praestitit.

PP. VI k. Aug. Agricola et Clemente conss.

[4] *Impp. Valerianus et Gallienus AA. Zoilo.* Si non proprietatem donaveras, sed ministerium ancillae dederas, libertatem mancipio dando ea, quae precarium usum haberet, dominio tuo nihil praeiudicavit. nemo enim alienum servum, quamvis ut proprium manumittat, ad libertatem producere potest.

[ii] veteris rei publicae

[3][32] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti, and the Caesars to Philadelphus.* **pr.** In the absence of a preceding title by which ownership claims over slaves are normally asserted,[33] a freedman of municipal citizens does not become a slave. **1.** And so, if you were manumitted and gained Roman citizenship according to the law of the old municipality, the authority of which was extended to the provinces by a decree of the Senate under the consulship of Juventus Celsus, for the second time, and Neratius Marcellus,[34] but subsequently you managed the public archive (*tabularium*) while a freedman, you did not lose the freedom which you had secured. Moreover, your occupation did not prevent your son, who was born free of free parents, from becoming a decurion.

Given March 18, at Ravenna, in the consulship of the Augusti (290 or 293).

Tenth Title Those Manumitted by One Who Is Not their Owner

[1] *Emperor* ANTONINUS *Augustus to Cornelianus.* It has often been stated in rescripts that a man who manumits the slaves of others as if they were his own could pay to the owners the value of the slave, or of the interest which they have therein if they (the owners) should choose this.

Posted March 1, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[2] *Emperor* ALEXANDER *Augustus to Mercurialis.* If Felicissima, who you say purchased slaves pursuant to your mandate, did not deliver to you ownership of the slave whom she manumitted, it is useless for you to ask that this manumission should be revoked and that possession of the man who you say was manumitted be transferred to you.

[3][35] *The same Augustus to Pompeius, a soldier.* The man who sold you an inheritance remained its owner until he delivered it to you, and accordingly he conferred freedom on the slave in the inheritance by manumitting him.

Posted July 27, in the consulship of Agricola and Clement (230).

[4] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Zoilus.* If you did not transfer ownership, but simply loaned the service of a female slave, the woman (i.e., the borrower), who merely had use by sufferance (*precarium usum*), could not prejudice your right to the slave by manumitting her. For no one can give liberty to the slave of another, even if he manumits him as if he were his own.

[32] Combine with C. 6.8.1, whence the subscription is restored.
[33] See C. 7.14.6 for almost the same phrase.
[34] 129 CE, see D. 40.3.1.
[35] = C. 4.39.6, whence Pompeius' occupation is restored; that constitution concerns alienation by sale.

PP. x k. Aug. Saeculare et Donato conss.

[5] *Impp. Diocletianus et Maximianus AA. Marcellinae.* Si tradita sunt ex donatione mancipia, ius manumittendi donatrix non habuit.

PP. v k. Mai. Maximo et Aquilino conss.

[6] *Idem AA. et CC. Mido.* Si pater servum vestrum, licet vobis minoribus viginti annis consentientibus, manumisit, ei libertatem praestare non potuit.

S. non. Mart. CC. conss.

[7] *Imp. Constantinus A. ad Bassum.* **pr.** Si non a dominis libertas detur mancipio alieno, si quidem ab his iudicibus impetrabitur, quibus dandi ius est, sine ulla trepidatione poenae facilis dissolutio est. **1.** Si vero iubentibus nobis quicquam lege actum esse doceatur et non dominus, ut alienum mancipium manumitteretur, petisse probetur, tunc eodem, qui in conspectu nostro libertatem monstrabitur consecutus, ei protinus ad cuius proprietatem pertinet restituto is, qui mancipium alienum fallendo principis conscientiam manumisit, mancipia duo cogatur domino eius dare, cuiusmodi sexus aetatis atque artis constiterit esse manumissum, et alia tria fisco eadem ratione similia. **2.** Quae multa non semper imponitur, sed potius conquiescit, si forte manumissus inferentem sibi quaestionem status obiecta legitima praescriptione potuerit excludere, cum sibi amissi mancipii damna debeat imputare, qui in perniciem suam gesta taciturnitate firmaverit.

PP. id. Iul. Constantino A. v et Licinio C. conss.

XI Qui Manumittere Non Possunt et Ne in Fraudem Creditorum Manumittatur

[1] *Imp. Alexander A. Antiocho.* Certum ius est non alias directas libertates per legem Aeliam Sentiam, quae sunt in fraudem creditorum manumissorum, revocari, nisi et consilium fraudis hoc animo manumittentis

Posted July 23, in the consulship of Saecularis and Donatus (260).

[5] *Emperors* Diocletian *and* Maximian *Augusti to Marcellina.* If the slaves were delivered as a gift, the woman who donated them had no right to manumit them (thereafter).

Posted April 27, in the consulship of Maximus and Aquilinus (286).

[6] *The same Augusti and the Caesars to Midus.* If your father manumitted your slave, he was not able to grant him liberty even though you gave your consent while you were less than 20 years old.[36]

Signed March 7, in the consulship of the Caesars (294).

[7][37] *Emperor* Constantine *Augustus to Bassus.* **pr.** If liberty is given to another's slave by a non-owner, even if this is done pursuant to the authority of judges who had the right to grant permission to do so, this act is easily cancelled without any fear of penalty. **1.** If, however, it is made to appear that this was done legally through Our order, and a non-owner is proven to have petitioned Us to manumit another's slave, then the slave who appears to have received liberty through Our court will be restored to his proper owner immediately, and he who by obfuscating the Emperor's understanding of the situation manumitted another's slave shall be compelled to give to the slave's owner two slaves of the same sex, age, and trade as the one manumitted, and to give three additional, similar slaves to the Treasury according to the same principle. **2.** This penalty is not always imposed, indeed it does not obtain if perchance the manumitted person can show that the owner's right to question his status is barred by the legal period of prescription, for a man who ratifies the loss of his slave by his silence has no one but himself to blame.

Posted July 15, in the consulship of Constantine Augustus, for the fifth time, and Licinius Caesar (319).

Eleventh Title Those Who Cannot Manumit, and That No Manumission Be Made in Fraud of Creditors[38]

[1] *Emperor* Alexander *Augustus to Antiochus.* The law is certain that direct manumissions made in fraud of the manumitter's creditors are not to be revoked by the Lex Aelia Sentia unless the manumitter had the intent to defraud and loss results to creditors who want to recover their property. It has

[36] The constitution appears to presume that the manumitter's children had been emancipated.
[37] = C.Th. 4.9.1.
[38] See D. 40.9.

et eventus damni suum recipere volentium sequatur. inter creditores autem etiam eos numerandos esse, quibus fideicommissum debetur, olim placuit.

PP. III id. Nov. Maximo II et Aeliano conss.

[2] *Idem A. Nataliano.* Servos meos nec per interpositam personam ad libertatem producere homines peculii sui posse mandatis comprehenditur.

[3] *Idem A. Iustinae.* Divo Marco auctore amplissimus ordo censuit, ne quis spectaculo, quod edatur, actorem suum alienumve servum manumitteret et, si factum esset, pro infecto haberetur.

[4] *Idem A. Felicissimo.* Si minor annis viginti ad libertatem praestandam homines tradidisti, senatus consulto quod gestum est irritum constituitur.

PP. III id. Mai. Iuliano et Crispino conss.

[5] *Idem A. Prisco.* Si in fraudem eorum quae fisco debebantur probari potest libertas data, non valet. sed si pecuniam is, quem patrem tuum appellas, emptori dederit et ab eo redemptus ad libertatem productus est, nihil videtur bonis defuisse eius, qui fisci debitor dicitur.

[6] *Impp. Diocletianus et Maximianus AA. et CC. Olympio.* Nec fideicommissariam libertatem a pupilla sua servis debitam tutorem posse praestare certi iuris est. unde si hos, quos tu rogata manumittere fueras certo aetatis tuae tempore, ad libertatem non produxisti, sed tutor manumisit, remanserunt in servitute.

[7] *Idem AA. et CC. Zotico.* Si debitor ex administratione curae dominus tuus non solvendo constitutus fideicommissariam tibi reliquit libertatem, cum in fideicommissariis libertatibus eventum inspici tantum obtinuerit, nihil eius voluntas tibi prodesse potest.

long been agreed that the term "creditors" also includes those to whom a trust (*fideicommissum*) is due.

Posted November 11, in the consulship of Maximus, for the second time, and Aelianus (223).

[2] *The same Augustus to Natalianus.* It is understood from Our mandates that My slaves (i.e., *servi Caesaris*) cannot, even by the mediation of other persons, manumit slaves that are part of their own *peculium*.

[3] *The same Augustus to Justina.* On motion of the deified Marcus, the exalted Senate decreed that no one should manumit his manager or another's slave during a spectacle being given, and, if done, the act should be considered invalid.[39]

[4] *The same Augustus to Felicissimus.* If you, while less than 20 years old, delivered slaves in order that they might be manumitted, the transaction is declared invalid by decree of the Senate.

Posted May 13, in the consulship of Julian and Crispinus (224).

[5] *The same Augustus to Priscus.* If a manumission can be shown to have been made in fraud of debts due to the Treasury, it is invalid. But if the man, whom you call your father, gave money to the purchaser and was purchased by him and manumitted, the property of the man who is said to be a debtor of the Treasury does not appear to have been diminished.

[6] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Olympius.* The law is certain that a *tutor* cannot grant liberty to slaves even when it is owed them in trust from his minor female ward. Hence, if you did not give freedom to those slaves whom you had been requested to manumit at a certain time of your life, the slaves remain in servitude, notwithstanding the manumission made by your *tutor*.

[7] *The same Augusti and Caesars to Zoticus.* If your master, who owed a debt as a result of his acting as *curator* and became insolvent, left you a bequest of freedom in trust, his bequest can be of no advantage to you, since in cases of manumission in trust only the final accounting is considered.

[39] Blume: "If such slave, participating at a spectacle, should be asked to be manumitted by the multitude on account of approval of his conduct, it would be hard to resist, and if done would, in a manner, be done under compulsion."

XII Qui Non Possunt ad Libertatem Pervenire

[1] *Impp. Severus et Antoninus AA. Torquato.* **pr.** Cum divus pater meus constituerit a praesidibus provinciarum vel qui coercendorum maleficiorum potestatem habent in perpetua vincula damnatos ad libertatem produci non posse, hi, qui intra tempora poenae liberi et heredes esse iussi sunt aut legatum fideicommissumve acceperunt, neque libertatem adipisci nec quicquam eorum quae his data sunt capere possunt. **1.** Quod si poenae tempus compleverint, iam omni vinculo exsoluti et quasi ad pristinam vel simplicem servitutis condicionem redacti et libertatem et si qua testamentis dominorum illo tempore defunctorum acceperunt, sine ulla quaestione praeteritae poenae consequantur.

D. XVI k. Iul. ipsis Antonino et Vero AA. conss.

[2] *Impp. Valerianus et Gallienus AA. Theodoro.* **pr.** Is quidem, qui testamento vetitus est manumitti, ad libertatem non potest pervenire. **1.** Sed in proposito interest, utrumne eos, quos cum filio educatos esse testator expresserit, propter familiare ministerium et usum filiorum necessarium et venire et manumitti noluerit, an quasi male meritis poenam inrogaverit. **2.** Nam priore casu, morte eius cui consulebatur obsequii necessitate finita, libertas potest pervenire, posteriore id, quod poenae causa in servos statutum est, necesse est vires suas obtinere, quando divis parentibus meis placuerit eiusmodi testamentorum leges perpetuam servitutem male meritis servis inrogare, ut nec per suppositum emptorem ad libertatem produci possint.

XIII Pro Quibus Causis Servi Praemium Accipiunt Libertatem

[1] *Impp. Diocletianus et Maximianus AA. Firmino.* Quoniam religiosa sollicitudo ad augendam provocandamque fidei observationem iuris

Twelfth Title Those Who Cannot Receive Freedom[40]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Torquatus.* **pr.** Since my deified father decided[41] that those (slaves) condemned to perpetual chains by provincial governors or by others who have the power to punish malefactors cannot be given liberty, those who are ordered to be manumitted and become heirs or who receive a legacy or trust while still undergoing punishment cannot obtain liberty or receive anything bequeathed to them. **1.** But if they have served out the time of punishment and are entirely freed from bonds and restored to what can be called their former or simple status of slavery, they may receive both liberty as well as any property left them at that time in the testament of their deceased masters, without any reference as to past punishment.

Given June 16, in the consulship of the same Antoninus and Verus (161?).[42]

[2] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Theodorus.* **pr.** A slave forbidden by a testament to be manumitted cannot receive liberty. **1.** But it is important to distinguish here whether the testator did not want the slaves, whom he stated to have been brought up with his sons, to be sold or manumitted because of household service and necessary use for his sons, or because he wanted to inflict deserved punishment on them. **2.** For in the former case, if the party whose interests were consulted has died and the need of service is ended, liberty may be given. But in the latter, the punishment fixed for the slaves must be carried out, since my deified parents decided that orders of this sort given in wills should be able to impose perpetual slavery on ill-deserving slaves, so that they cannot obtain liberty even through a suppositious purchaser.[43]

Thirteenth Title For What Reasons Slaves Receive Liberty as a Reward

[1][44] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Firminus.* Since scrupulous solicitude for increasing and stimulating the observance of fidelity should be rewarded by law, if you persisted with uncorrupted efforts and

[40] See D. 40.9.

[41] The decision attributed here to "my deified father" may be a rescript issued by the "*fratres imperatores*," i.e., Marcus Aurelius Antoninus and Lucius Verus (see Papinian, D. 48.19.33).

[42] The heading and subscription of this law are inconsistent. Krüger believed that the subscription was devised by Cuiacius, lacked ancient authority, and should be considered inauthentic; hence the rescript would date to 193–211. Other scholars have resolved the conflict differently.

[43] A third party commissioned by the slave, with the consent of the master, to buy the slave with the slave's own money and free him or her immediately, see D. 40.1.4–5.

[44] Combine with C. 1.19.1, where the recipient is named "Firmina."

praemio adfici debet, si ad ulciscendam caedem domini incorruptis probationibus ac strenuo nisu constiteris, libertatem, quam his qui dominorum caedem vindicant iam pridem senatus consulto et statutis principum praestari sancitum est, etiam tu pro tam ingentibus meritis non ex ipso facto, sed aditione et sententia praesidis reportabis.

PP. VII id. Dec. Diocletiano IIII et Maximiano III AA. conss.

[2] *Imp. Constantinus A. ad Ianuarinum.* Servi, qui monetarios adulterinam monetam clandestinis sceleribus exercentes detulerint, civitate Romana donantur, ut eorum domini pretium a fisco percipiant.

D. XII k. Dec. Romae Crispo et Constantino CC. II conss.

[3] *Idem A. ad populum.* Si quis servus raptus virginis facinus dissimulatione praeteritum aut pactione transmissum detulerit in publicum, libertate donetur.

D. prid. k. April. Aquileia Constantino A. VI et Constantino C. conss.

[4] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad Syagrium pp.* Si desertorem servus prodiderit, libertate donetur.

PP. id. Iul. Romae Gratiano V et Theodosio AA. conss.

XIIII De Ingenuis Manumissis

[1] *Imp. Alexander A. Phileto.* Si ingenuum te et testamento manumissum esse dicas, apud suos iudices causam agere debes, si tamen iustum contradictorem habes, id est eum, qui se patronum tuum esse dicit, memor senatum censuisse, ut, qui post manumissionem originem

persistent striving to avenge the murder of your master, you will be rewarded with liberty for such prodigious services, for long ago a decree of the Senate and the statutes of emperors provided that freedom should be given to those who avenge the murder of their masters. You will not receive liberty (automatically) through the performance of this deed, but by approaching the governor and obtaining his judgment.

Posted December 7, in the consulship of the Augusti Diocletian, for the fourth time, and Maximian, for the third time (290).[45]

[2][46] *Emperor* CONSTANTINE *Augustus to Januarinus.* Slaves who report coiners engaged in producing counterfeit money through secret crimes are rewarded with Roman citizenship, and their masters shall receive the value of such slaves from the Treasury.

Given November 20, at Rome, in the consulship of the Caesars Crispus and Constantine, for the second time (321).

[3][47] *The same Augustus to the people.* If a slave reports in public the crime of capturing a virgin which has been passed over through deceit or let slip through an agreement, he shall be rewarded with liberty.

Given March 31, at Aquileia, in the consulship of Constantine Augustus, for the sixth time, and Constantine Caesar (320).[48]

[4][49] Emperors GRATIAN, VALENTINIAN, and THEODOSIUS Augusti to Syagrius, Praetorian Prefect. If a slave reports a (military) deserter, he shall be given liberty.

Posted July 15, at Rome, in the consulship of the Augusti Gratian, for the fifth time, and Theodosius (380).

Fourteenth Title Free-born Persons Who Are Manumitted[50]

[1] *Emperor* ALEXANDER *Augustus to Philetus.* Since you say that you are free-born and also manumitted by a testament, you should bring action before a judge having jurisdiction. But if you have a legal opponent, that is, a person who claims to be your patron, remember that the Senate has decreed that, whoever claims his original status after manumission, must leave at the house

[45] C. 1.19.1 reveals that the law was given on October 8, the date given by Mommsen.
[46] = C.Th. 9.21.2; combine with C. 9.24.1. C. epitomates C.Th. Seeck dates to November 20, 318.
[47] = C.Th. 9.24.1.4. C. epitomates C.Th. and alters the wording to grant unencumbered liberty rather than Latin status, which C. 7.6.1 had abolished.
[48] Seeck dates this law to April 1, 326.
[49] = C.Th. 7.18.4.1; combine with C. 12.45.1. C. epitomates C.Th. Seeck dates to June 18, 380.
[50] See D. 40.14.

repetierint, ea quae de domo manumissoris habent ibi relinquant. in qua causa etiam legata ut liberto data esse iuris prudentibus placuit.

[2] *Imp. Gordianus A. Pompeiae.* Ingenuam natam neque nutrimentorum sumptus neque servitutis obsequium faciunt ancillam neque manumissio libertinam.

PP. V id. Mai. Sabino II et Venusto conss.

[3] *Imp. Philippus A. Felicissimo.* Si aviam tuam manumissam postea ingenuam sollemniter constitit statumque eius iustae sententiae tuetur auctoritas, filios eius quamvis ante sententiam susceptos ingenuam libertatem non immerito flagitare, si cum peritioribus tractatum habuisses, facile cognosceres.

[4] *Impp. Diocletianus et Maximianus AA. et CC. Agrippae.* Cum cognatum tuum ingenuum, factum Palmyrenae factionis dominatione velut captivum, distractum esse dicas, praeses provinciae ingenuitati suae reddi eum efficiet.

S. IIII id. *Ian. AA. conss.*

[5] *Idem AA. et CC. Crescenti.* **pr.** Defamari statum ingenuorum seu errore seu malignitate quorundam periniquum est, praesertim cum adfirmes diu praesidem unum atque alterum interpellatum a te vocitasse diversam partem, ut contradictionem faceret, si defensionibus suis confideret. **1.** Unde constat merito rectorem provinciae commotum adlegationibus tuis sententiam dedisse, ne de cetero inquietudinem sustineres. **2.** Si igitur adhuc diversa pars perseverat in eadem obstinatione, aditus praeses provinciae ab iniuria temperari praecipiet.

D. prid. non. April. AA. conss.

of his manumitter whatever he received from it. Those learned in the law (*iuris prudentes*) agree that legacies left to a man as a freedman are of that nature.[51]

[2] *Emperor* GORDIAN *Augustus to Pompeia.* A free-born woman becomes a slave neither by the expenses on her support nor by her service as a slave, nor does she become a freedwoman by manumission.

Posted May 11, in the consulship of Sabinus, for the second time, and Venustus (240).

[3] *Emperor* PHILIP *Augustus to Felicissimus.* If, after your grandmother was manumitted, she was solemnly declared to be a free-born woman, and her status is protected by the authority of a legal verdict, you may easily come to know, if you consult those learned in the law, that her children, though born prior to the verdict, justly demand the right of free-born persons.

[4] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Agrippa.* Since you say that your free-born relative was in effect made captive by the rule of the Palmyrene faction[52] and was sold, the provincial governor will take care that he is restored to his free-born status.

Written January 10, in the consulshp of the Augusti (293).

[5] *The same Augusti and Caesars to Crescens.* **pr.** It is very wicked to defame the status of free-born persons, whether through the error or the ill will of others, especially since, according to your statement, you have solicited one governor and then another, who have summoned your opponent for some time to make objection if he was confident of his claims. **1.** Hence it is clear that the provincial governor, moved by your allegations, justly decided that you should no longer suffer disturbance in the future. **2.** If, therefore, your opponent still perseveres in his obstinacy, when you approach the provincial governor, he will compel him to abstain from his outrageous conduct (*iniuria*).

Given April 4, in the consulship of the Augusti (293).

[51] Blume: "A man who was manumitted was not barred to claim that he was in fact free-born. He was, under a former law, limited to a period of five years after the manumission to make such claim, unless he did not discover his proofs until after that period, and he could then appeal directly to the emperor (D. 40.14.2 and 4). But that law was repealed by Justinian, C. 3.22.6 … Such person, however, must return to the manumitter all that he received from or through him, D. 40.14.2.1; D. 40.14.3–5."

[52] In the 260s Palmyra became a virtual regent over Rome's eastern territories under its rulers Odenathus and later his wife Zenobia and son Vaballathus until they were suppressed under Aurelian in 273.

[6] *Idem AA. et CC. Dionysio.* Scientis condicionem liberum non posse fieri servum evidentissimi iuris est. cum igitur proponas patrem pupillorum, quorum precibus fecisti mentionem, velut liberum te penes se habuisse, ministerium, licet in actu longi temporis, non praecedente vero titulo, quibus dominia quaeri solent, mutare tuam condicionem minime potuit.

S. VII k. Mai. AA. conss.

[7] *Idem AA. et CC. Matronae.* Si te ac filios tuos ingenuos esse constat, natalium veritas vos tuetur. nam qui servitutis moverat quaestionem, apud acta causae renuntiando ad ingenuitatis probationem nec nocere quicquam nec prodesse potest.

S. XV k. Iul. AA. conss.

[8] *Idem AA. et CC. Callimorpho.* Ingenui nascuntur, libertini manumissione tantum constituuntur: pactum autem nec servis nec libertinis ingenuitatem adsignat nec his, qui transactioni non consenserunt, quicquam praeiudicare potest.

S. IIII k. Ian. AA. conss.

[9] *Idem AA. et CC. Potamoni.* pr. Libertina matre procreatam ingenuis nasci natalibus evidentis ac manifesti iuris est. 1. Cum igitur te matre libertina editam, dehinc ab hostibus captam postliminio reversam proponas et nunc tibi servitutis moveri quaestionem, consequens est adiri praesidem provinciae, qui de causa liberali cognoscet iure laturus sententiam, sciens neque huiusmodi matris condicionem neque captivitatem reversis de statu pristino quicquam posse detrahere.

[10] *Idem AA. et CC. Athenodorae.* Ad recognoscendos singulos nomina comparata publico consensu, ob celandos natales ingenuis si mutentur, minime nocet, natosque, licet in ministerio servitutis, liberae condicionis non servos possessio, sed status ingenuos edi perficit.

[11] *Idem AA. et CC. Maximae.* Si vestram possessionem nullus praecessit titulus, sed ingenui constituti operas mercede placita locastis, nec

[6] *The same Augusti and Caesars to Dionysius.* The law is very plain that a free man cannot become the slave of a man who knows his status. Since therefore you state that the father of the minors whom you mention in your petition retained you as a free man (*velut liberum*) at his house, your service (*ministerium*) in no way alters your condition even if it was performed over a long period (*in actu longi temporis*) but with no previous title by which ownership claims are normally asserted.

Written April 25, in the consulship of the Augusti (293).

[7] *The same Augusti and Caesars to Matrona.* If it is clear that you and your sons were free-born, the true facts of your birth protect you. For whoever initiates an inquest into servile status can neither prejudice nor benefit your proof of free birth by making a denunciation in the records of the case.

Written June 17, in the consulship of the Augusti (293).

[8] *The same Augusti and Caesars to Callimorphus.* Freeborn persons are so by reason of birth; freedmen become such only by manumission. But a pact cannot give free-born status, either to slaves or to freedmen, nor can a pact prejudice those who did not consent to the settlement.

Written December 29, in the consulship of the Augusti (293).

[9] *The same Augusti and Caesars to Potamo.* **pr.** It is plain and clear law that the (female) offspring of a mother who is a freedwoman is born with free-born rights. **1.** Since, therefore, you state that you were borne by a mother who was a freedwoman, and that thereafter you were captured by the enemy and subsequently returned with the resumption of your civil rights (*postliminium*), but that now an inquest into servile status is raised against you, it is proper to go before the provincial governor, who will try the case for freedom and who will give judgment according to law in full knowledge of the fact that neither the status of a mother like yours nor captivity can detract from the original status of those who return.

[10] *The same Augusti and Caesars to Athenodora.* If names obtained for the recognition of individuals through public consent should be changed for purposes of concealing the birth status of free-born people, this in no way prejudices them, and those born of free status (*liberae condicionis*), even if they are in the service of slavery, are rendered free-born by virtue of their status, rather than slaves by virtue of their being in possession.

[11] *The same Augusti and Caesars to Maxima.* If no title underlies the fact that you are in possession, but as established free-born persons you hired out your

statui quicquam vestro derogatum est nec ad conventionis implendam fidem sollemniter agere prohibemini.

S. non. Mart. CC. conss.

[12] *Idem AA. et CC. Quietae.* Ad mutandum liberae statum commissum plagii nihil promovet, sed abductam natales, quibus nata est, post hunc etiam casum obtinere convenit.

S. III k. Dec. CC. conss.

[13] *Idem AA. et CC. Menandro.* Ingenuum se contendendo nec probando non amittit libertinitatem.

S. VII id. Dec. CC. conss.

[14] *Idem AA. et CC. Aristoteli.* Status ingenuae ex eo solo, quod velut ancilla sponsaliorum nomine data proponitur, praeiudicari nulla ratione potest.

S. VII k. Ian. CC. conss.

XV Communia de Manumissionibus

[1] *Imp. Iustinianus A. Iuliano pp.* **pr.** Sancimus, si proprietarius servo, cuius usus fructus ad alium pertinebat, libertatem imposuit, non secundum antiquam observationem et libertatem cadere et eum sine domino intellegi esse, sed nec inveniri personam, cui res ad se venientes adquirat: sed si tam proprietarius quam usufructuarius libertatem ei consentientes imposuerant, pleno iure liberum eum effici et, si quid postea sibi adquisierit, hoc in bonis suis habere.

1. Sin autem proprietarius solus libertatem imposuerit usufructuario minime consentiente, sit quidem ille, qui libertatem a proprietario accepit, inter libertos proprietarii connumeratus et, si quid in medio possedit, hoc sibi adquirat, sibi habeat, suae posteritati relinquat, salvo patronatus iure per omnia custodiendo, nisi et hoc ei legibus fuerit remissum. **1a.** Ipse tamen libertus quasi servus apud usufructuarium permaneat, donec usufructuarius vivit vel usus fructus non legitimo modo peremptus est. etenim si finem usus fructus quocumque modo

work for an agreed price, your status is not prejudiced, nor are you prohibited from suing in the usual manner to have the agreement made with you fulfilled.

Written March 7, in the consulship of the Caesars (294).

[12] *The same Augusti and Caesars to Quieta.* Kidnapping does not change the status of a free woman, but it is right that, even after this incident, the abducted woman retains the rights with which she was born.

Written November 29, in the consulship of the Caesars (294).

[13] *The same Augusti and Caesars to Menander.* A freedman who contends that he is free-born but fails to prove it does not thereby lose his status as freedman.

Written December 7, in the consulship of the Caesars (294).

[14] *The same Augusti and Caesars to Aristoteles.* The status of a free-born woman can in no manner be prejudiced by the sole fact that she is stated to have been given as a slave in an engagement gift.[53]

Written December 26, in the consulship of the Caesars (294).

Fifteenth Title General Rules Concerning Manumissions

[1][54] *Emperor Justinian Augustus to Julian, Praetorian Prefect.* pr. We ordain that if an owner (*proprietarius*) gives liberty to a slave over whom another has a usufruct, the grant shall not, according to the old regulation, be void and the slave be considered to be without a master,[55] so that there would be no one for whose benefit he may acquire any property he might receive. Rather, if both the owner and the usufructuary agree to give him liberty, he will become completely free, and any property acquired by him thereafter shall be his own.

1. But if the owner alone gives liberty without the consent of the usufructuary, the slave who receives liberty from the owner will be the owner's freedman, and any property of which he later gains possession he acquires for himself, holds for himself, and may leave to his own posterity, while preserving all rights of the patron intact, unless these also were legally ceded to him. **1a.** Such a freedman shall, however, remain like a slave (*quasi servus*) in the household of the usufructuary while the latter lives or until the usufruct is lost in some lawful manner. For if the usufruct ends in some way, the freedman may

[53] See C. 7.16.16.

[54] Combine with C. 7.7.1.

[55] Blume: "'A slave in whom a usufruct exists, if freed by the proprietor, does not become free, but is a slave without a master. Ulpian [*Tituli*] 1.19. It is this rule that Justinian corrects."

accipiat, tunc facultas ei tribuitur quo maluerit degere modo. si vero adhuc superstite usufructuario ab hac luce fuerit libertus exemptus, hereditas eius legitimum tramitem sequatur.

2. Sin autem usufructuarius tantummodo libertatem imposuerit, si quidem hoc modo, ut cedat usu fructu proprietario, plenissimum ius habeat in servo proprietarius et omnia ei servus adquirat secundum ea, quae generaliter in servos et dominos constituta sunt. **2a.** Sin vero gratias agendo usufructuarius eum ab usu fructu liberaverit et libertate donaverit, tunc maneat quidem servus proprietario suo adnexus, sed non necessitas ei imponatur, donec vivit usufructuarius vel usus fructus constare potest, observare proprietarium et quaedam ministeria ei adimplere, sed iudices nostri eum in quiete tueantur. post usufructuarii autem mortem vel usus fructus quocumque modo interemptionem tunc serviat quidem domino et omnia, quae in medio ad eum perveniant, haec suo domino adquirat. **2b.** Et sit ex nostra constitutione haec separatio inter servos et liberos et non secundum ius antiquum idem servus remaneat et nullum respiciat dominum.

3. Illud quoque huic legi adicimus, ut explosa antiqua personarum differentia liceat parentibus tam feminis quam masculis, filiis filiabus sive in sacris constitutis sive emancipatis cuiuscumque gradus, mandatum imponere, quatenus servos in libertatem producant sive apud iudicem sive in sacris ecclesiis sive secundum alium quem mandator voluerit legitimum modum. cum enim et in successionibus et in aliis paene omnibus nulla est inter liberos discretio, oportet hoc observari et in praesenti casu maxime pro libertate, quam et fovere et tueri Romanis legibus et praecipue nostro numini peculiare est.

D. xv k. April. Lampadio et Oreste vv. cc. conss.

[2] *Idem A. Iuliano pp.* Si quis servo suo libertatem imponat sive in ecclesia sive ad qualecumque tribunal vel apud eum, qui libertatem imponere legibus habet licentiam, sive in testamento vel alio ultimo elogio directam vel fideicommissariam, nullo coartetur modo eorum qui ad libertatem veniunt aetatem requirere. neque enim eum tantummodo civitatem Romanam adipisci volumus, qui maior triginta annis extitit, sed quemadmodum in ecclesiasticis libertatibus non est huiusmodi

live in whatever manner he wishes. If the freedman dies while the usufructuary is still alive, his estate goes the path provided for it by law.

2. If, on the other hand, only the usufructuary gives liberty and in a manner merely to yield the usufruct to the owner, the owner acquires complete right over the slave and any property acquired by the slave is acquired for the owner according to the general provisions made for slaves and masters. **2a.** If the usufructuary, however, frees the slave from the usufruct through gratitude and gives him liberty, the slave remains bound to his owner, but he need not attend on the owner or perform services for him during the life of the usufructuary or during the time that the right to the usufruct is in force; Our judges shall protect the slave from being disturbed. But after the death of the usufructuary or after the usufruct ceases in any manner, he must serve his master, and all property which he acquires during that time is acquired for the benefit of his master. **2b.** Let this then be the distinction between slaves and freedmen according to Our constitution, and let the same man not, according to the ancient law, be a slave but have no master.

3. We also make the following addition to this law: now that We have rejected the old differences between persons, We permit parents, male or female, to impose a mandate on sons and daughters of all degrees, both those still in the household and those emancipated, to give liberty to slaves, whether before a judge, in sacred churches, or in any other legal mode, as the author of the order wishes.[56] For since no distinction exists between children in connection with successions and in almost all other things, that should be true also in the present instance, especially because it involves liberty, which it is the mission of Roman laws and especially of Our Divine Majesty to foster and protect.

Given March 18, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[2] *The same Augustus to Julian, Praetorian Prefect.* If a man manumits his slave in church, before any tribunal, before a magistrate who has power to grant liberty, or by testament or other last will, whether he does so directly or by way of trust, he shall in no way be compelled to look into the age of those who are manumitted. For We wish that not only a slave who is more than 30 years should attain Roman citizenship, but We also ordain that, just as no

[56] Blume: "It was a general rule that a man could not manumit a slave through someone else, not even an agent. A father, however, could manumit through a son in his power, since in that case the manumission by such son was the same as though it had been done by the father himself. But the latter could not manumit through an emancipated son, since the latter was no longer a member of his family. And since a mother did not have her children in her 'power,' she could not manumit through them. The present law changes these rules entirely; either parent is permitted to manumit through children emancipated or unemancipated."

aetatis differentia, ita in omnibus libertatibus, quae a dominis imponuntur sive in extremis dispositionibus sive per iudices vel alio legitimo modo, hoc observari sancimus, ut sint omnes cives Romani constituti: ampliandam enim magis civitatem nostram quam minuendam esse censemus.

D. k. Aug. Lampadio et Oreste vv. cc. conss.

[3] *Idem A. Iohanni pp.* **pr.** Si quis sine uxore constitutus ancillam suam nomine habeat concubinae et in eadem usque ad mortem consuetudine permanserit et forsitan liberos ex ea sustulerit, sancimus omnimodo non concedi heredibus defuncti eandem vel liberos eius, si etiam liberos habuerit, in servitutem deducere, sed post mortem domini sub certo modo eripiatur in libertatem una cum subole sua, si etiam eam forsitan habuerit. **1.** Ipsi etenim domino, dum superest, damus licentiam quomodo voluerit uti tam ancilla sua quam etiam ex ea progenita subole et in suo ultimo elogio quidquid voluerit contra eos disponere, id est sive quasi servos eos aliis legare sive in servitute heredum nominatim relinquere. sin autem taciturnitate eos praeterierit, tunc post mortem eius ad libertatem eripiantur, ut sit domini mors libertatis eorum exordium. **2.** Omnibus etenim uxores habentibus concubinas vel liberas vel ancillas habere nec antiqua iura nec nostra concedunt.

D. k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

XVI De Liberali Causa

[1] *Imp. Antoninus A. Saturninae.* Rem quidem illicitam et inhonestam admisisse confiteris, quia proponis filios ingenuos a te venumdatos. sed quia factum tuum filiis obesse non debet, adi competentem iudicem, si vis, ut causa agatur secundum ordinem iuris.

PP. v id. Febr.

[2] *Idem A. Vereniano.* Si hi, quos servos tuos esse dicis, liberi esse a diversa parte dicuntur, de statu eorum more solito quaeri oportet: nec enim res iudicata, qua de proprietate eorum pronuntiatum est, opponi causae liberali potest.

D. non. Febr. Romae Messala et Sabino conss.

[3] *Imp. Alexander A. Quirino.* Si liber homo alienae ancillae contubernium sequatur, licet ei fuerit denuntiatum, ut se abstineret, servus domini mulieris non fit.

difference as to age exists in ecclesiastical manumissions, so no difference as to age shall exist in any manumissions made by owners, whether by last will or by judges, or in any other legal manner, and all alike shall become Roman citizens. For We think that We should increase rather than diminish Our state.

Given August 1, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[3] *The same Augustus to John, Praetorian Prefect.* **pr.** If a man who is without a wife keeps his female slave as a concubine and continues in this habit up to his death, and if perchance he has children by her, We ordain that the heirs of the deceased shall have no right to reduce her, or whatever children she has, to slavery. But she and whatever offspring she has shall under a certain condition be taken into freedom after the master's death. **1.** We permit the master while living to put both his female slave and any offspring born to her to any employment he wishes and to dispose of them in his last will as he desires. He may bequeath them as slaves to others or leave them as slaves to the heirs individually. But if he has passed them over in silence, they shall be taken into freedom after he dies, so that the death of the master becomes the beginning of their liberty. **2.** Nevertheless, men who have wives are not permitted either by the ancient or the present laws to have concubines, whether free or slave.

Given November 1, at Constantinople in the post-consulate of Lampadius and Orestes (531).

Sixteenth Title Cases for Freedom[57]

[1] *Emperor* ANTONINUS *Augustus to Saturnina.* By stating that you sold your free-born sons, you acknowledge having committed an illegal and dishonorable act. But because your act ought not to prejudice the sons, please go before the pertinent judge so that the case may be tried according to the rule of law.

Posted February 9.

[2] *The same Augustus to Verenianus.* If the men who you say are your slaves are claimed by your opponent to be free, an inquest into their status should be held in the usual manner; for an adjudication as to who owns them cannot be set up as a defense in an action for their freedom.

Given February 5, at Rome, in the consulship of Messala and Sabinus (214).

[3] *Emperor* ALEXANDER *Augustus to Quirinus.* If a free man takes up a domestic partnership (*contubernium*) with another's female slave, he does not become the slave of the owner of the woman, even if he was warned to keep away from her.

[57] See D. 40.12.

PP. non. Febr. Fusco et Dextro conss.

[4] *Idem A. Iucundo.* Si is, quem in servitutem petebas, liber quamvis absente te causa cognita pronuntiatus est, secunda in servitutem petitio eius dari tibi non debet. sed si, posteaquam cognovisti de sententia iudicis, appellasti, an iure lata sit, in auditorio quaeretur.

[5] *Idem A. Sabino.* **pr.** Non ideo minus in libertatem proclamare potest ea, quam ancillam tuam esse dicis, quia eam vendente fisco comparasti. **1.** Sed nec hoc ad praescriptionem operatur, quod venditionis tempore maior viginti annis fuit, cum aetatis adlegatio non alias possit praescriptionem adversus civem Romanum accommodare, quam si participandi pretii gratia consensum servituti dedisse probetur. **2.** Probationis sane onus, cum ex servitute in libertatem adseritur, ad se recipit. qui si adfirmationem suam non impleat, inconcussum possessionis ius obtinebis.

[6] *Impp. Valerianus et Gallienus AA. et Valerianus nobilissimus Caesar Vausumetio.* Nec si volens scripsisses servum te esse, non liberum, praeiudicium iuri tuo aliquid comparasses: quanto nunc magis, cum eam scripturam dare compulsum te esse testaris?

P.

[7] *Imp. Aurelianus A. Secundo.* Si ab eo cuius servus fuisti manumissus es, frustra libertatis controversiam sustines, maxime ab herede eius qui manumisit, cum, etsi iure libertas non processit, respectu tamen aditae hereditatis voluntatem defuncti suo consensu firmare debuit.

[8] *Impp. Diocletianus et Maximianus AA. Veneriae.* Cum adfirmes placuisse quondam domino tuo, ut pro te et filia tua dato nummo certae quantitatis vos manumitteret, et te tantummodo liberavit, aditus rector provinciae hortabitur eum salva reverentia, quam patrono liberti solent exhibere, placito suo stare.

Posted February 5, in the consulship of Fuscus and Dexter (225).

[4] *The same Augustus to Jucundus.* Even if it was during your absence that the man whom you claim as your slave was pronounced free in a trial, you should not be granted a second action to have him declared a slave.[58] But if you appealed after you learned the decision of the judge, the question will be investigated in court (*in auditorio*) as to whether the decision was made according to law.

[5] *The same Augustus to Sabinus.* pr. The woman who you say is your slave has no less right to defend her liberty simply because you bought her at a sale held by the Treasury. 1. Nor is her claim barred because she was more than 20 years old at the time of the sale. Such an allegation as to age is no defense against Roman citizenship unless it is shown that she sold herself into servitude for the purpose of sharing in the price. 2. Of course the burden of proof, since she asserts her liberty while in servitude, falls on her. And if she does not prove her allegation, you will retain the undisturbed right of possession.

[6] *Emperors* VALERIAN *and* GALLIENUS *Augusti, and Valerian the Most Noble Caesar to Vausumetius.* Not even if you had voluntarily stated in writing that you were a slave and not free would you have prejudiced your right. This holds all the more since you testify that you made such a statement under compulsion.

Posted ...

[7] *Emperor* AURELIAN *Augustus to Secundus.* If you were manumitted by the man whose slave you were, the suit you face calling your liberty into question is useless, especially as it is lodged by the heir of the manumitter. For although liberty was not given in a prescribed fashion (*iure*),[59] he is still bound to uphold the will of the decedent by his consent since he accepted the inheritance.

[8] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Veneria.* Since you state that your former master agreed to manumit you and your daughter for a fixed sum of money that was given to him, and he has only liberated you, if you go before the provincial governor, he will exhort the man to abide by his agreement provided you demonstrate the reverence that freedmen ought to show their patrons.

[58] See C. 7.16.27.

[59] Rather, it was granted only informally.

PP. prid. ... Sept. Maximo II et Aquilino conss.

[9] *Idem AA. et CC. Proculo.* Cum precum tuarum conceptio, licet eum contra quem supplicas ex ancilla natum esse expresserit, tamen nomini cognomen, quo liberi dumtaxat nuncupantur, addiderit et non servum esse, sed servili macula adspersum comprehenderit, contra eum qui servus non est supplicasse te intellegitur.

[10] *Idem AA. et CC. Stratio.* Liberos privatis pactis vel actus quacumque administrati ratione non posse mutata condicione servos fieri certi iuris est.

D. IIII non.

[11] *Idem AA. et CC. Faustino.* Non mutant servi statum, si ad civiles honores illicite atque improbe adspiraverint. unde si status moveatur quaestio, intellegere vobis licet nihil prodesse posse, quod pater vester honores civiles gessit. sollemnibus itaque ordinatis apud praesidem provinciae de statu vestro cognoscetur.

[12] *Idem AA. et CC. Secundo.* Si liberum te natum aliquis comparavit, statum retines, quem antea habuisti. si vero ex ancilla editum naturalis pater idemque dominus distraxit ac post emptori pretium solvisti, non idcirco libertatem consecutus es.

PP. XVIII k. Mart. AA. conss.

[13] *Idem AA. et CC. Antistiae.* Principaliter de statu defuncti agi non potest. si vero ex peculio quondam eius, quem tibi bona reliquisse commemoras, res vindicentur vel eius filiis moveatur status quaestio, haec omnia sollemniter praesidali notione decidi debent.

Posted August (or September) ...,[60] *in the consulship of Maximus, for the second time, and Aquilinus (286).*

[9] *The same Augusti and the Caesars to Proculus.* Although your petition states that the one against whom you are appealing was born of a slave-woman, its very formation adds a personal name (*cognomen*) to a family name (*nomen*), which is precisely what identifies free people, and includes the statement that he is not a slave but is tainted with the mark of slavery (*macula servitutis*; i.e., his ancestor was a freed slave). It is therefore understood that you have appealed against a man who is not a slave.

[10] *The same Augusti and Caesars to Stratius.* The law is certain that free persons cannot be made slaves, with a change in their legal condition, by private pacts or by virtue of any transaction for the administration of business.[61]

Given the 2nd (or 4th) of ...[62] *(293).*

[11] *The same Augusti and Caesars to Faustinus.* Slaves do not change their status by unlawfully and dishonestly aspiring to civic office. Hence you must know that if the question of status is raised, you gain no advantage from the fact that your father held civic office. Trial as to your status will, accordingly, be held before the provincial governor after the usual preliminaries are arranged.

<Without subscription (293).>

[12] *The same Augusti and Caesars to Secundus.* If you are free-born, but someone bought you, you retain the status which you had before. But if you were born of a female slave, and your natural father, who was also your master, sold you, you did not acquire your liberty by later paying the purchaser the price.

Posted February 14, in the consulship of the Augusti (293).

[13] *The same Augusti and Caesars to Antistia.* When a person is dead, a suit cannot be brought in which the principal issue is to determine his status. But if a suit is lodged to recover property from the former *peculium* of the man whom you allege to have bequeathed you his estate, or if an inquest is made into the status of his sons, these matters must be decided through an investigation by the governor in the usual way.

[60] The transmitted subscription reads, "PP prid ... Sept."; i.e., either September 4 (non.) or 12 (id.) or August 31 (kal.).

[61] See C. 2.4.26, 7.14.8.

[62] The transmitted subscription reads, "D. IIII non."

D. v k. Mai. AA. conss.

[14] *Idem AA. et CC. Quintianae.* Lite ordinata in possessione libertatis is, de cuius libertate quaeritur, constituitur et interim pro libero habetur.

D. IIII k. Mai. Heracleae AA. conss.

[15] *Idem AA. et CC. Palladio.* Nec omissa professio probationem generis excludit nec falsa simulata veritatem minuit. cum itaque ad examinationem veri omnis iure prodita debeat admitti probatio, aditus praeses provinciae sollemnibus ordinatis, prout iuris ratio patitur, causam liberalem inter vos decidi providebit.

[16] *Idem AA. et CC. Diogeniae.* Si ministerium quasi libera exhibuisti ac te nesciente quasi ancilla in dotem data conscriptum instrumentum est, nihil haec libertati tuae nocere potuerunt, maxime cum te minorem aetate fuisse commemores et placuerit minores viginti annis nulla ratione mutare statum ac pro liberis servos fieri, ne ante libertatem inconsulte amittant, quam aliis propter aetatis rationem sine consilio praestare non possunt.

PP. VI id. Mai. Hadrianopoli AA. conss.

[17] *Idem AA. et CC. Regino.* **pr.** Multis rationibus, natalibus ingenuis fratribus natis, post delictis vel casibus intervenientibus singulorum causae status separantur. **1.** Nihil itaque prohibet eundem et tibi non movere quaestionem et eos, quos fratres tuos adseveras, in servitutem vindicare sive retinere. **2.** Igitur ad demonstrandam fratrum tuorum libertatem aliae sunt probationes necessariae: nam quod tibi non movetur quaestio libertatis, eorum non idoneam constat habere probationem.

S. x k. Iun. AA. conss.

[18] *Idem AA. et CC. Zotico.* Ad probationem ingenuitatis ab eo, contra cuius successores postulas, facta tibi locatio non sufficit, nec tamen hoc solum ad servitutis vinculum argumentum est idoneum.

S. id. Iul. Philippopoli AA. conss.

Given April 27, in the consulship of the Augusti (293).

[14] *The same Augusti and Caesars to Quintiana.* After a preliminary surety has been given (*lite ordinata*), the person whose liberty is under inquest is in possession of liberty and is in the meanwhile treated as a free man.

Given April 28, at Heraclea, in the consulship of the Augusti (293).

[15] *The same Augusti and Caesars to Palladius.* Neither does a failure to declare a birth exclude proof of origin, nor does a false declaration diminish the truth. Since, accordingly, all proof offered legally should be admitted for investigation into the truth, the provincial governor will, when you go before him, see that, after the usual preliminary arrangements as the rule of law demands, the case for freedom is decided between you.[63]

<Without subscription (293).>

[16] *The same Augusti and Caesars to Diogenia.* If you performed service as a free person and a document was executed giving you in dowry as a female slave without your knowledge, these things cannot prejudice your liberty. This is especially so since you state that you were a minor, and it is agreed that minors under 20 years cannot in any manner change their status from free persons to slaves, in order that they may not inconsiderately lose the freedom that they cannot, on account of their age, even give to others without consent.

Posted May 10, at Adrianople, in the consulship of the Augusti (293).

[17] *The same Augusti and Casears to Reginus.* **pr.** When there are several free-born brothers, the status of one may thereafter be entirely different from that of the others for any number of reasons, as for example crimes they commit or intervening circumstances. **1.** Hence nothing prevents one and the same man from not bringing an inquest against you even while he attempts to recover or retain in slavery persons who you claim are your brothers. **2.** Therefore other proofs are necessary to show the freedom of your brothers, since the fact that no inquest into freedom is brought against you does not offer suitable proof in their instances.

Written May 23, in the consulship of the Augusti (293).

[18] *The same Augusti and Caesars to Zoticus.* The fact that the man against whose heirs you direct your petition leased you some property is not sufficient proof that you are free-born, but it alone is also not suitable evidence to reduce you to slavery.

Written July 15, at Philippopolis, in the consulship of the Augusti (293).

[63] Compare P. Tebtynis 285.

[19] *Idem AA. et CC. Paulo.* Principaliter causam eius de quo supplicas esse quam tuam perspicimus. nam cum te eum ad libertatem produxisse profitearis, illius interest magis sollemniter suum tueri statum et consequenter tua etiam agetur causa: nam si ab eo, contra quem fundis preces, servus dicatur eique libertas ex manumissione tua vindicetur, probatio servitutis originis et beneficium manumissionis libertatem illi adsignans tuum etiam ius patronatus tuetur. si vero consentiat servituti, tunc iure concesso adito praeside provinciae eum invitum etiam defendere poteris.

[20] *Idem AA. et CC. Aeternali.* Sicut semel praestitam libertatem revocari non licet, sic per ea, quae non manumittendi causa domini cum servis propriis agunt, nihil sibi detrahunt.

S. VI k. Sept. AA. conss.

[21] *Idem AA. et CC. Thallusae.* Eam, quae in possessione libertatis non sine dolo malo reperitur, in servitutem constitutae simile habere praeiudicium edicto perpetuo 'si controversia erit, utrum ex servitute in libertatem petatur an ex libertate in servitutem' sui conceptione manifeste probatur, nec quicquam ancillae dolus proprii iuris dominis aufert.

S. non. Oct. Sirmi AA. conss.

[22] *Idem AA. et CC. Pardaleae.* Parentes natales, non confessio adsignat. quapropter si ex ancilla nata post ad libertatem manumissa pervenisti, te velut ex altera natam ancilla servam professa quaesitam manumissione libertatem huiusmodi simulatione vel errore amittere minime potuisti, cum servi nascantur ratione certa, non confessione constituantur.

D. V k. Dec. AA. conss.

[23] *Idem AA. et CC. Musciae.* Si tibi testamento directa libertas a domino relicta est et ex eo successerunt scriptae filiae, non idcirco, quod secundum eius voluntatem vel contra de filiis uni praestas obsequium, ceterae filiae tuam rescindere possunt libertatem.

[19] *The same Augusti and Caesars to Paulus.* We think that the man concerning whom you appeal had the main interest in the case rather than you. For since you acknowledge that you set him free, it is more in his interest to protect his status in the usual manner. Your case, too, will thereby be litigated suitably. For if the man against whom you lodge your petitions says he is a slave, and if your grant of liberty through manumission is upheld for him (i.e., the former slave), the proof of his origin as a slave and of the gift of manumission assign liberty to him and protect your right of patronage. But if he consents to slavery, you have a right under the law to go before the provincial governor and defend him even against his wish.

<Without subscription (293).>

[20] *The same Augusti and Caesars to Aeternalis.* Just as liberty once granted cannot be revoked, so masters lose nothing through transactions with their own slaves not entered into for the purpose of manumission.

Written August 27, in the consulship of the Augusti (293).

[21] *The same Augusti and Caesars to Thallusa.* By the working of the Perpetual Edict: "If there is a controversy whether a slave is claimed from slavery into liberty or from liberty into slavery," it is clearly shown that, in a case where it appears that a woman is in possession of liberty through fraud, the same preliminary order (as to burden of proof) will be made as in a case where a party is in actual slavery. Furthermore, the fraud of the female slave in no way diminishes the rights of the master.

Written October 7, at Sirmium, in the consulship of the Augusti (293).

[22] *The same Augusti and Caesars to Pardalea.* Your parents, not your confession, determine your birth. Thus if you were born of a female slave but became free through manumission, you could not lose the freedom you obtained in manumission through deception or error by professing that you were a slave born of some other female slave. For slaves are created by birth according to certain rules, not made such by confession.

Given November 27, in the consulship of the Augusti (293).

[23] *The same Augusti and Caesars to Muscia.* If direct liberty was left you in the testament of your master, and the daughters appointed heirs therein succeeded to his estate, the fact that you offer service (*obsequium*) to one of the daughters, whether in accordance with the master's wish or not, gives the others no right to rescind your liberty.

[24] *Idem AA. et CC. Sebastiano.* Interrogatam et professam apud acta se esse ancillam huiusmodi factum defensionem libertatis non excludit.

S. IIII k. Ian. AA. conss.

[25] *Idem AA. et CC. Licentiano.* Sicut praetermissa instrumenta manumissionis recte factae nullum adferunt praestitae libertati vitium, ita si servum ad libertatem produxisti, instrumentorum amissio nihil ei nocere potest.

S. V id. Febr. CC. conss.

[26] *Idem AA. et CC. Molento.* Sicut datam libertatem manumissis adimere patronus non potest, ita manumissionis instrumentum praestare cogitur.

S. VII id. Mart. CC. conss.

[27] *Idem AA. et CC. Aurelio Asterio.* **pr.** Arrianus si mota quaestione a Leonide liber fuit pronuntiatus, in servitutem a victo iterum non recte petitus est. **1.** Coheres etiam tibi ab Arriano datus colludens cum eo sive heredibus ipsius, qui status moverat quaestionem, nihil tibi obfuit, nec quae in confessionem inter eos venerunt, statum veritatis vel nomen substantiae defuncti mutare potuerunt.

D. III k. April. Sirmio CC. conss.

[28] *Idem AA. et CC. Eurymedonti.* Avi paterni magistratu functi dignitas ad libertatis probationem nihil nepoti prodest, si quidem in liberali causa matris, non patris inspiciatur condicio. sed nec materni avi sola sufficit, cum, licet avia quoque libera probari possit, multis tamen ex causis status mutari consueverit.

Sirmi IIII id. April. AA. conss.

[29] *Idem AA. et CC. Troilae.* De ancilla matre natam et ab eo redemptam, in cuius fuit contubernio, si non manumittitur, in servitute permanere non ambigitur.

<Without subscription (293).>

[24] *The same Augusti and Caesars to Sebastianus.* If a woman was asked whether she was a female slave and in the public records professed that she was, this fact does not bar a defense of her liberty.

Subscribed December 29, in the consulship of the Augusti (293).

[25] *The same Augusti and Caesars to Licentianus.* Just as the omission to execute documents showing a properly performed manumission does not vitiate the grant of liberty, so if you gave freedom to a slave, the loss of the documents cannot injure him.

Written February 9, in the consulship of the Caesars (294).

[26] *The same Augusti and Caesars to Molentus.* Just as a patron cannot deprive those whom he manumitted of liberty, so he must furnish a document of manumission.

Written March 9, in the consulship of the Caesars (294).

[27][64] *The same Augusti and Caesars to Aurelius Asterius.* **pr.** If Leonides brought an inquest and Arrianus was pronounced free, the defeated party could not legally bring action against him as a slave a second time.[65] **1.** And if the man appointed by Arrianus as your co-heir conspired with him (Leonides) who had brought the inquest or with his heirs, that did not prejudice you. Also the agreement between them could not change the truth or the legal nature of the property of the decedent.

Given March 30,[66] at Sirmium, in the consulship of the Caesars (294).

[28] *The same Augusti and Caesars to Eurymedon.* The fact that his paternal grandfather had the honor of holding a magistracy cannot aid a grandson in proving his liberty since in an action involving liberty the status of the mother, not of the father, is considered. Not even the status of the maternal grandfather will alone suffice since, though the maternal grandmother may be shown to have been free, still, status is accustomed to be changed for many reasons.

Given April 10, at Sirmium, in the consulship of the Augusti (294?).

[29] *The same Augusti and Caesars to Troila.* A woman born of a female slave mother who was purchased by the man with whom she lives in a domestic partnership still remains a slave, unless she is manumitted.

<Without subscription (294).>

[64] Combine with C. 3.31.8, 6.59.4; *Consultatio* 6.18.

[65] See C. 7.16.4.

[66] C. 6.59.4 reports March 7.

[30] *Idem AA. et CC. Eutychio.* Solo obsequii non praestiti velamento data libertas rescindi non potest.

[31] *Idem AA. et CC. Corsianae.* Si tibi servitutis improbe moveatur quaestio, sollemnibus ordinatis de calumnia vel iniuria, prout vindictae viam elegeris, habita contestatione, posteaquam servus non esse fueris pronuntiatus, adversus eam sententiam postulare potes, tunc demum de his etiam quae direpta probaveris restitutionem, cum pro libertate fuerit pronuntiatum, petiturus.

S. v id. Oct. CC. Conss.

[32] *Idem AA. et CC. Athenaidi.* Subscriptio filii domini manumittentis nec addere secuta nec omissa detrahere libertati quicquam potest.

D. non. Nov. CC. conss.

[33] *Idem AA. et CC. Melitianae.* Licet accepta pecunia dominus te manumisit, tamen tributa libertas rescindi non potuit.

S. IIII id. Nov. CC. conss.

[34] *Idem AA. et CC. Hermionae.* Libera concubinatus ratione non constituitur ancilla.

D. id. Nov. CC. conss.

[35] *Idem AA. et CC. Atellio.* Non idcirco minus, quod pupilli res velut tutor administrasse dicitur, ex eius persona servitutis pati quaestionem potest.

Sirmi non. Dec. CC. conss.

[36] *Idem AA. et CC. Theodorae.* Post certi temporis ministerium ancillae liberam eam esse cum ea paciscendo conventionis obtemperandi legi domina nullam habet necessitatem. utque hoc verum est, ita e contrario si filios suos constituta cum his libera in ministerium tibi tradere promisisse probetur, parere placitis non compellitur.

[30] *The same Augusti and Caesars to Eutychius.* Liberty once granted cannot be revoked under the sole pretense that obedient service (*obsequium*) was not rendered.

<Without subscription (294).>

[31] *The same Augusti and Caesars to Corsiana.* If an inquest into servile status was dishonestly begun against you, after you have been pronounced to be no slave you may duly offer surety and commence an action for vexatious litigation or outrage (*de calumnia vel iniuria*), whichever path for vengeance you choose, and bring suit against this verdict. At that point, when a decision in favor of liberty has been rendered, you may also demand restitution of any property which you can prove was seized.

Written October 11, in the consulship of the Caesars (294).

[32] *The same Augusti and Caesars to Athenais.* The signature of the son of a master who is granting manumission cannot add anything to the grant of freedom by being subjoined, nor detract from it by being omitted.[67]

Given November 5, in the consulship of the Caesars (294).

[33] *The same Augusti and Caesars to Melitiana.* Although your master manumitted you for the money he received, liberty once granted could not be rescinded.

Written November 10, in the consulship of the Caesars (294).

[34] *The same Augusti and Caesars to Hermione.* A female slave is not made free by reason of concubinage.

Given November 13, in the consulship of the Caesars (294).

[35] *The same Augusti and Caesars to Atellius.* An inquest into servile status is by no means precluded against a person because he as *tutor* is said to have managed the property of a minor ward (*pupillus*).

December 5, at Sirmium, in the consulship of the Caesars (294).

[36] *The same Augusti and Caesars to Theodora.* A female slaveowner who makes an agreement (*paciscendo*) with a female slave that the latter should be free after a certain time of service has no legal obligation to comply with the agreement. And just as that is true, so, on the contrary, if it is proven that a woman and her sons are free, and she promised to put them into your service, she is not compelled to comply with the agreement.

<Without subscription (294).>

[67] Blume: "The practice in Greek law was for the heir to sign the documents. Hence the question arose whether that was necessary also under Roman law."

[37] *Idem AA. et CC. Olympio.* Si filium tuum liberum genero vendidisti, qui tam proxima necessitudine coniunctus condicionis ignorantiam simulare non potest, utrisque sociis criminis accusator deest.

[38] *Idem AA. et CC. Philoserapi.* Non idcirco minus, quod te limenarcha creato nemo contradixit, rei publicae nomine moveri tibi status quaestio potest.

D. XVI k. Ian. Nicomediae CC. conss.

[39] *Idem AA. et CC. Eutychio.* Liberos velut servos profitentes statum eorum mutare non posse constat.

S. VII k. Ian. Sirmi CC. conss.

[40] *Exemplum sacrarum litterarum ad Verinum.* Iuxta edicti nostri continentiam in liberalibus quoque negotiis, sive de libertinitate sive de ingenuitate moventur, absente nihilo minus una parte causam discuti et pro iustitiae ratione sententiam proferri nihil prohibet.

[41] *Impp. Constantinus et Licinius AA. ad Titianum praesidem Cappadociae.* Iubemus omnes epistulas actricis, quas ad Aelium tamquam principalem fecerat, inanes et vacuas esse atque in irritum devocari ac de ingenuitate eiusdem Aelii requiri nec mulieri id obesse, quod ad eum tamquam decurionem ac principalem scripserit, vel id, quod idem se finxerit decurionem vel principalem, maxime cum non solum testium professione et cognationis eius, quae iugum servile agnoscit, verum etiam voce propria eiusdem Aelii apud aliud iudicium patuerat, quod condicionis servilis videretur.

[42] *Imp. Constantinus A. ad Maximum pu.* Placuit eos qui nascuntur matrum condicionibus uti, quarum mox visceribus exponuntur. ante litem vero nati suo omnes nomine in quaestionem vocentur, quoniam hos solos, qui in lite nati erunt, omnem fortunam matrum

[37] *The same Augusti and Caesars to Olympius.* If you sold your free son to your son-in-law, who is connected by such close family ties that he cannot pretend ignorance of the son's status, neither partner in the crime can accuse the other.

<Without subscription (294).>

[38] *The same Augusti and Caesars to Philoserapis.* An inquest into your status cannot be impeded simply because no one objected when you were made overseer of the harbor (*limenarches*).

Given December 17, at Nicomedia, in the consulship of the Caesars (294).

[39] *The same Augusti and Caesars to Eutychius.* It is clear that those representing free persons as slaves cannot change their status.

Written December 26, at Sirmium, in the consulship of the Caesars (294).[68]

[40] *A copy of an imperial letter to Verinus.* According to the contents of Our edict, if a case involving freedom is brought, whether by reason of manumission or free birth, there is nothing to hinder the full investigation of it and the rendition of a judgment according to the rule of justice, even if one of the parties is absent.

[41] *Emperors* CONSTANTINE *and* LICINIUS *Augusti to Titianus, Governor of Cappadocia.* We order that all letters of the female plaintiff which she addressed to Aelius as chief civic magistrate (*principalis*) shall be null and void and considered of no effect, and inquiry must be made whether the same Aelius is freeborn. Nor shall it be an objection against the woman that she wrote to him as decurion and chief civic magistrate, or that the latter pretended to be decurion or chief civic magistrate. This is especially so because it was revealed that he appears to be of servile status not only from the confession of witnesses and of his own relations, who acknowledge his servile status, but also through Aelius' very own report in a different suit.[69]

[42][70] *Emperor* CONSTANTINE *Augustus to Maximus, City Prefect.* It is agreed that children have the status of their mother who gave them birth. But all those born before the commencement of a suit (against the mother) must be summoned to an inquest in their own name, for only those who were born during the suit ought to have the same fate as their mother and either be handed over

[68] Sirmium seems wrong, since the court was then at Nicomedia; but the origin of the mistake is uncertain. Mommsen relocates the constitution to Nicomedia. On the constitution's content, see D. 1.5.8.

[69] Seeck dates this constitution to May 14, 316.

[70] = C.Th. 4.8.4. C. epitomates C.Th.

complecti oportet et aut iustis tradi dominis aut libertate cum lucis auctoribus frui.

D. prid. id. Iun. Sirmio Probiano et Iuliano conss.

XVII De Adsertione Tollenda

[1] *Imp. Iustinianus A. Menae pp.* **pr.** Lites super servili condicione movendas ad clementiorem tam examinationem quam terminum transferimus iubentes, si quis vel adhuc serviens liberum se esse dixerit vel in libertate commorans ad servitutem vocatus fuerit, adsertoris difficultatem in utroque casu cessare ipsumque per se ad intentiones eius qui dominum sese adserit respondere et, si ex possessione libertatis ad servitutem ducitur, etiam procuratorem dare minime prohiberi, quod his, qui ex servitute ad libertatem prosiluerint, penitus interdicimus: illis legibus, quae dudum et secunda et tertia vice adsertorias lites examinari praecipiebant, in posterum conquiescentibus, cum sit iustum primam definitionem in suis manere viribus, cum provocatio nulla oblata fuerit: qua porrecta, ad similitudinem aliorum negotiorum iudex, ad quem res ex provocatione ducitur, eam examinabit, cuius et ipsius iudicium ad secundam exquisitionem minime deducetur occasione legum, quae super adsertoriis litibus positae sunt.

1. Super peculio etiam eorum vel aliis rebus aut causis veterem defensoris observationem tollimus, praecipientes illorum tantummodo peculia, qui ex possessione servitutis super libera condicione litigant, aliasque res quae vindicantur in tuto pro dispositione iudicis collocari.

2. Omnes vero, qui pro libertate periclitantur, si quidem possint fideiussorem dare, eum exigi: sin vero re vera datio eius impossibilis eis sit hocque iudici manifeste ostendatur, iuratoriae cautioni committi: scientes quod, si post huiusmodi expositionem afuerint et edictis citati in absentia nihilo minus per unum annum duraverint, omnimodo servituti obnoxii erunt et eius dominio, qui litem eis intulit, sine ulla dubitatione adsignabuntur. **3.** Scire vero eos volumus, qui aliquem ad servitutem vocant, quod, si post primam accusationem in quocumque

to their rightful masters or allowed to enjoy liberty together with those who brought them into the world.

Given June 12, at Sirmium, in the consulship of Probianus et Julian (322).

Seventeenth Title Abolishing the Sponsorship of Liberty

[1] *Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect.* **pr.** We alter the conduct of suits concerning servile status to a milder method of proof and termination by ordering that, if a person still in slavery claims to be free, or a person enjoying freedom is claimed as a slave, the difficulty of (needing) a sponsor (*adsertor*) in either case is eliminated, and he may himself defend against the assertions of the party who claims to be the master. And if he is in possession of liberty and is claimed into slavery, he may even appoint a procurator (to conduct the suit for him), which We entirely forbid for a man in slavery who claims liberty.[71] The laws which formerly directed suits of sponsors to be examined a second and a third time shall hereafter lose force since it is just that the first judgment can stand on its own merits when no appeal is offered.[72] If one is offered, then, as in other cases, the judge to whom the appeal is taken shall look into it, but his judgment shall in no way be brought to a second investigation by the prompting of the laws passed on sponsorship suits.

1. We also abolish the ancient rule for defendants (*defensores*) concerning their *peculium* and other property and suits, directing that the *peculium* of those – and of those only – who are in slavery and sue for their freedom and other property claimed shall be put in safekeeping to await the final decision of the judge.

2. All, however, whose liberty is called into question shall furnish a surety (*fideiussor*) if they are able. If, however, it is truly impossible for them to furnish one and this is clearly shown to the judge, they shall give their own written promise under oath, knowing that, if after this investigation they absent themselves and remain absent for a year even after being cited in edicts, they shall be subject to servitude and shall be assigned to the ownership of the one who brought the suit. **3.** Nevertheless, We want those who claim anyone into slavery to know that, after the first accusation has been made in any court or through

[71] Blume: "A *procurator* differed from an *assertor* (sponsor or defender) in that the former carried on a suit at the risk of the principal, the latter at his own risk."

[72] Blume: "The statement in the law of this title about a second and third investigation of a cause involving liberty needs some comment, since the general rule was that a judgment once closed and not appealed from was *res judicata*. Reference to a second investigation is made in Quintil. *Inst.* 5.21; 11.1.78. Buckland, *Roman Law of Slavery*, 668–9, after referring to the various sources touching on this subject, states it as his opinion that they point to a conjecture that there was a rule, of which the source is now lost, requiring all such suits to be gone through twice or oftener, before different triers, before a final decision was reached. The law as to security, in force prior to Justinian, is not clear."

iudicio vel ex divali iussione factam et admonitionem ei oblatam, qui servus esse dicitur, in alio iudicio eum accusaverint (praeterquam si eius occasionem ipse qui servus esse dicitur praestiterit), etsi domini sint, suo iure privabuntur.

D. III id. Dec. dn. Iustiniano pp. A. II cons.

[2] *Idem A. Iohanni pp.* **pr.** Expeditam antea quaestionem, in praesenti autem ex nostra lege, quam de adsertione tollenda posuimus, in quandam difficultatem incidere periclitantem, compendioso remedio fulciendam esse censemus. **1.** Cum enim per adsertores super libertate iudicium agitabatur, si in medio adsertore litem agente adsertus ab hac luce fuerit subtractus, necessitas imponebatur nihilo minus adsertori litem implere, ut emptor, si victus erat et pro libertate fuerat pronuntiatum, habeat regressum adversus venditorem, ut ei quasi liberae personae venditor reddat id, quod emptionali instrumento continebatur vel natura contractus exigebat.

2. In praesenti autem, quia adsertorum vana nomina reiecta sunt, si persona, pro cuius condicione lis agitur, mortua fuerit, quemadmodum iudicium potest adimpleri una tantummodo persona in iudicium veniente? **3.** Sancimus itaque in praesenti casu licentiam esse emptori adversus suum auctorem venire, quatenus vel ostendat venditor servum se vendidisse vel, si non potuerit, quasi libera persona vendita evictionis periculum ad eum revertatur.

D. k. Sept.

XVIII Quibus ad Libertatem Proclamare Non Licet et de Rebus Eorum, Qui ad Libertatem Proclamare Non Prohibentur

[1] *Imp. Gordianus A. Proculo.* **pr.** Dispar causa est eius, qui dissimulata condicione sua distrahi se passus est, et eius, qui pretium participatus est. nam superiori quidem non denegatur libertatis defensio, posteriori autem, et si civis Romanus sit et participatus est pretia,[iii] libertas denegatur. **1.** Eandemque et in eo distinctionem adhibendam, cui fideicommissaria libertas debetur, meritissimo iuris auctores responderunt.

PP. k. Mai. Gordiano A. et Aviola conss.

[iii] [et participatus est pretia]

an imperial order and after the one who is said to be a slave has been notified, if they accuse him in another court, they shall be deprived of their right even if they should be the owners, except in case the person said to be a slave is the one who occasioned this.

Given December 11, in the consulship of Our Lord Justinian, Ever Augustus, for the second time (528).

[2] *The same Augustus to John, Praetorian Prefect.* **pr.** We have decided to use a brief remedy to shore up a question that used to be simple but has now run into a certain difficulty because of the law which We issued to abolish sponsorship. **1.** When a suit concerning liberty was prosecuted by a sponsor, if the person who was claimed as a slave died while the sponsor was conducting his suit, the sponsor was nevertheless required to finish the suit so that the buyer of the slave, if he was defeated and judgment was given in favor of liberty, might have recourse against the seller. This way the seller, as a vendor of a free person, might be compelled to return to the buyer whatever was specified in the deed of purchase and whatever else the nature of the contract demanded.

2. But, since the very name of sponsor is at present abolished as superfluous, if the person on account of whose status a suit is prosecuted should die, how can a trial be finished when only one person is able to be present at the trial? **3.** Hence, We ordain that, in such case, the buyer may have immediate recourse against the vendor, and the latter must either show that he sold a slave, or, if he cannot do so, he must stand the loss as the seller of a free person.

Given September 1 (531).

Eighteenth Title Those Who Are Not Permitted to Claim Liberty and the Property of Those Who Are Not Forbidden to Claim Liberty[73]

[1] *Emperor* Gordian *Augustus to Proculus.* **pr.** The case of a man who allows himself to be sold by concealing his status is different from that of a man who shares in the price. For the right to defend his liberty is not denied to the former, but freedom is denied to the latter even if he is a Roman citizen. **1.** And the jurisconsults have quite rightly responded that the same distinction is to be observed in the case of one who is owed fiduciary (*fideicommissaria*) liberty.

Posted May 1, in the consulship of Gordian and Aviola (239).

[73] See D. 40.13.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Melanae.* De latronum familia descendentibus ex largitione principali vel auctoritate fiscali servis factis retro principes libertatem denegari decreverunt.

[3] *Imp. Constantinus A. ad Maximum pu.* **pr.** Si quis in libertatem proclamaverit, id, quod apud se esse eius qui se dominum dicit profitebitur, quoniam de eo non dubitatur, reddi ac referri iudex protinus pronuntiabit.

1. Quod vero petitur, si fuerit negatione dubium, per cautionem conservabitur ac petitio differetur, ut, si fuerit approbata libertas, (quoniam et ipsis, qui his rem commiserunt, medendum est) gestarum rerum ab eodem ratio atque omne quod debebitur reposcatur, ut servitute depulsa qui pro domino quondam fuerat habeat, quod ut servo dominii iure largitus est et quae ex earum rerum quaestu ac fructibus conciliata sunt et quae de furtivis compendiis obscure capta ac parata sunt, cum liberum esse non oporteat, quod apud servum dominus peculii nomine collocaverat.

2. Ea vero, quae testamento vel donatione quaesita sunt aut quae ex earum rerum emolumentis empta confectaque sunt, eidem ingenuo deputentur. quae tamen universa exacto libertatis iudicio, quae a supra dictis rebus discernantur, in sequestro esse oportet, ut his ab utroque deductis atque in medio iure collocatis ad eorum proprietatem uterque contendat.

D. XV k. Iun. Thessalonica Severo et Rufino conss.

XVIIII De Ordine Cognitionum

[1] *Imp. Alexander A. Vitalio.* Cum et ipse confessus es status controversiam pati, qua ratione postulas, priusquam de condicione constaret tua, accusandi tibi tribui potestatem contra eum, qui te servum esse contendit? cum igitur, sicut adlegas, statu generis fretus es, iuxta ius

[2] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Melana.* Emperors decreed formerly that those who descend from a family of brigands (*latrones*) who were made slaves through the imperial exchequer (*ex largitione principali*) or the authority of the Treasury (*auctoritate fiscali*) cannot be freed.

[3][74] *Emperor* Constantine *Augustus to Maximus, City Prefect.* **pr.** If a person claims liberty but he acknowledges that property in his possession belongs to the party who claims to be his master, the judge must order such property to be immediately returned and restored since it is not in dispute.

1. But if the status of the property stands in doubt by reason of denial, it shall be protected through a written promise (*per cautionem*), and the claim thereto deferred. If the finding shall be in favor of liberty for the claimant, an account of his doings can be demanded from him, and whatever he owes can be reclaimed – since the interests of those who entrust things to slaves must be protected. Once the claim to enslavement has been rejected, the one who formerly occupied the position of master may receive back what he gave as master to one supposedly his slave together with what was acquired through the profits and fruits of that property, and whatever furtive profits he (the supposed slave) secretly took; for whatever a man lent his slave as *peculium* should not also be "freed."

2. But whatever property was obtained (by the supposed slave) under a testament or gift, and whatever was bought or produced with the income therefrom, must be turned over to the free man (*ingenuus*).[75] But once the trial for liberty is concluded, all the property which had been separated out from the above-mentioned items should be sequestered so that, now that it has been taken out of the hands of both parties and placed in the possession of the court, both parties can contend for its ownership.

Given May 18, at Thessalonica, in the consulship of Severus and Rufinus (323).[76]

Nineteenth Title The Order of Trials

[1] *Emperor* Alexander *Augustus to Vitalius.* Since you yourself have acknowledged that a dispute as to your status has been raised, how can you ask, before your status has become clear, that you should be given permission to make an accusation against the party who contends that you are his slave? Inasmuch as you rely, as you say, on the status of your progenitors, you should follow ordinary law and go before the governor, who can first try the case for

[74] = C.Th. 4.8.6.4–7; combine with C. 8.46.10.
[75] From Constantine onward, *ingenuus* could be used both of free-born individuals and of freedmen.
[76] Seeck dates to February 15, 323.

ordinarium praesidem pete, qui cognita prius liberali causa ex eventu iudicii, quid de crimine statuere debeat, non dubitabit.

PP. V id. M. ... Maximo II et Aeliano conss.

[2] *Idem A. Galliae.* Si de hereditate et libertate controversia est, prius agi causa libertatis debet. sed si de hereditate agetur, ordinanda quidem est causa libertatis, sed sufficit ei, qui libertate utitur, ad victoriam de hereditate secundum se pronuntiatum.

PP. V id. Aug. Maximo II et Aeliano conss.

[3] *Idem A. Valeriano.* Si crimen aliquod inferatur ei, quam ingenuam esse dicis, ante liberalis causa suo ordine agi debet, cognitionem suam praeside praebente, quoniam necesse est ante sciri, si delictum probatum fuerit, ut in liberam et ingenuam an ut in ancillam constitui oportet.

PP. VI k. Dec. Maximo II et Aeliano conss.

[4] *Imp. Gordianus A. Menedemo.* **pr.** Si status controversiam pateris, lite prius liberali terminata, si pro te fuerit pronuntiatum, agere etiam adversus eum, qui se dominum tuum esse contendit, non prohiberis. 1. Quod si ideo te ab accusatione elidet, quasi servum non proprium sed alienum, liberale quidem iudicium cessat, causae autem examinatio apud eum qui iudicat ostendet, utrumne accusatio induci debeat propter statum personae, an evanescat.

D. X k. Dec. Gordiano A. et Aviola conss.

[5] *Impp. Diocletianus et Maximianus AA. et CC. Alpheo.* Cum status quaestionem tibi moveri et te debita velle petere commemores, ordinarium est prius sollemnibus interpositis, si hoc iuris admiserit ratio, causam liberalem apud praesidem provinciae decidi, ut, si liber fueris vel servus non esse pronuntiatus, tunc tibi iure debita restitui iubeat, cum hoc incerto, utrumne tibi libero constituto an domino tuo, si servum te sententia declaraverit, debeatur, ad solutionem debitorem tuum urgueri non oporteat.

S. prid. k. Mai. Beraci AA. conss.

freedom and, based on the result of the trial, will not be in doubt as to how he should decide regarding the accusation.

Posted M[arch] (or M[ay]) 11, in the consulship of Maximus, for the second time, and Aelianus (223).

[2] *The same Augustus to Gallia.* If there is a dispute as to liberty and as to an inheritance, the issue as to liberty should be tried first. But if an action for an inheritance shall be brought, the case in favor of freedom is to be presupposed,[77] but the plaintiff who is in enjoyment of liberty wins a sufficient victory if he receives a favorable decision as to the inheritance.

Posted August 9, in the consulship of Maximus, for the second time, and Aelianus (223).

[3] *The same Augustus to Valerianus.* If a criminal accusation is brought against the woman who you say is free-born, the issue as to her liberty should be tried first in proper order by the governor granting a hearing; for if a delict is proven, it is necessary to know first of all whether the charge should go against a free and free-born person or against a female slave.

Posted November 26, in the consulship of Maximus, for the second time, and Aelianus (223).

[4] *Emperor* G*ORDIAN* *Augustus to Menedemus.* If you are undergoing a trial regarding your status, once the suit has been settled, provided the decision is in your favor, you are not forbidden to sue the man who claimed to be your master. If, however, he opposes to your accusation the fact that you are not his, but another's slave, the suit as to your liberty fails of course, but an examination of the case by the judge will show whether an accusation (against him) should be introduced or dismissed based on (your) personal status.

Given November 22, in the consulship of Gordian Augustus and Aviola (239).

[5] *Emperors* D*IOCLETIAN* *and* M*AXIMIAN* *Augusti and the Caesars to Alpheus.* Since you state that an inquest into your status has been raised but that you want to sue for what is owed to you, it is customary, after arranging the usual preliminaries – if the law permits that – to first try the issue of liberty before the governor. This way he may order payment of the amount owed to you only if you have been pronounced free or not to be a slave. For your debtor should not be compelled to pay while it is uncertain whether the debt is due to you as a free man or to your master, in case the decision should pronounce you to be slave.

Written April 30, at Beracis,[78] in the consulship of the Augusti (293).

[77] After *litis ordinatio*, the person whose liberty was in question was to be considered free for purposes of the trial. The wording of this constitution is obscure and possibly corrupt.

[78] Berancis. Or Heraclea?

[6] *Idem AA. et CC. Alexandriae.* Si res tuas raptas vel amotas esse dicis ab his, quos servos tuos esse contendis, hique in libertatem proclamaverunt, causa liberalis prius adversus eos et tunc damni dati rerumque amotarum lis apud praesidem provinciae contestanda est, ut, si quidem liberi vel servi non esse pronuntientur, tunc demum damni dati et amotarum rerum procedere possit adhibita probatione condemnatio, si vero secus, quaestio rerum amotarum evanescat.

D. III k. Ian. Sirmi AA. conss.

[7] *Imp. Constantinus A. ad Bassum.* **pr.** Si quando negotium status fuerit exortum, si ab eius parte qui dicitur servus aliquid dicatur dominus abripuisse, prius considerari placet, utrum de possessione servitutis in libertatem reclamandum putet an vero ex possessione libertatis in servitutem vocatur.

1. Ac si eum de obsequiis servilibus libertatem constiterit flagitare, ante decidi status convenit causam atque ita praeberi direptorum negotiorum, si res exegerit, audientiam.

2. Quod si ei qui ad servitutem vocatur quicquam direptum esse memoretur, universa quae constiterit ablata ita demum reddi convenit ei, qui servus esse contenditur, si modo salvam rem futuram per idoneos fideiussores promiserit. **3.** Nam si tales non potuerit dare, tunc ea convenit, de quibus in iudicio tractabitur, sequestrari in eum diem, in quo controversia sopietur, ita ut ex isdem, si alia facultas esse non poterit, tantum litis sumptibus et alimoniae hominis subministretur, quantum moderato iudicis arbitrio fuerit aestimatum. **4.** Cum autem necdum lite de statu mota res ab aliquo direptae sint et sententia de restituenda possessione rerum lata ille, ne sententiae satisfieret, de statu controversiam movit, necessitatem habebit et sine satisdatione easdem res reddere et tunc causam liberalem secundum iuris ordinem exercere.

XX De Collusione Detegenda

[1] *Impp. Diocletianus et Maximianus AA. Theodorae.* Cum servum matris tuae et stupro violasse dominam suam et turpis coniunctionis maculam excogitandae ingenuitatis collusione ac falsae captivitatis velamento apud competentem iudicem obtegere voluisse proponas nec

[6] *The same Augusti and Caesars to Alexandria.* Since you state that your things were robbed or removed by those whom you contend to be your slaves, but these claim that they are free, a case as to their freedom must be held first before the provincial governor, and the issue as to damages and the removal of the goods only later. In this way, if they are pronounced free or not to be slaves, judgment may be rendered for damage done and for things taken after proof has been supplied. But if they are not so pronounced, the inquest into the removal of the property must disappear.

Given December 30, at Sirmium, in the consulship of the Augusti (293).

[7] *Emperor* C*ONSTANTINE* *Augustus to Bassus.* **pr.** If a suit as to status is commenced and the party claimed to be a slave asserts that the party claiming to be his master has taken something from him, it should be first considered whether the alleged slave thinks he is possessed as a slave and is attempting to reclaim liberty, or whether he is in enjoyment of liberty and is being claimed into servitude.

1. Indeed, if it is evident that he is in a state of servile subordination and claims liberty, the question as to his status should be decided first, and a hearing as to the property taken should be offered only if required.

2. If, on the other hand, something has been taken from a man who is claimed into servitude, everything that has been taken from him will be returned to him only provided he promises, with sufficient sureties, that the property will be kept safely. 3. For if he cannot give sureties, the property in controversy must be sequestered until the day when the dispute is settled, but in such a way that, if there are no other resources, the expenses of the litigation and the support of the man must be paid from that property in an amount equitably fixed by the judge. 4. But if things are taken from a man when no question as to his status has yet been raised and the property has been ordered returned, but the defeated party then raises the question as to status so as to escape satisfying the judgment, it will be necessary to restore the property without receiving any surety, and thereafter to try the question as to liberty according to law.

<*Without subscription (317–319).*>[79]

Twentieth Title Detection of Collusion[80]

[1] *Emperors* D*IOCLETIAN and* M*AXIMIAN* *Augusti to Theodora.* Since you state that a slave of your mother violated his mistress through criminal fornication (*stuprum*) and then attempted to cover up this disgraceful connection before the appropriate judge by colluding (with her) to pretend he was

[79] Seeck dates this constitution to July 15, 319.
[80] See D. 40.16.

libertatem ei matrem tuam dedisse, sed in solam ingenuitatem eum nudae voluntatis mendacio producere enisam adseveres, servum esse palam est, quando etiam divi Pii rescriptum super captivitate emissum, quam non intercessisse significas, ingenuum fecisse non videatur, nec adseveratio consensus tui ingenuitatis ius tribuere potuit.

PP. XIIII k. Iul. Diocletiano IIII et Maximiano III AA. conss.

[2] *Idem AA. et CC. Milesio.* Libertinae condicionis constitutis privatis pactis mutare statum non licere Ninniano senatus consulto contra collusorem poena statuta praemioque detegenti promisso manifeste declaratur.

D. V k. Dec. CC. conss.

XXI Ne De Statu Defunctorum Post Quinquennium Quaeratur

[1] *Impp. Severus et Antoninus AA. Niconi.* Aditus competens iudex causam praescriptionis examinabit et, si Domitiae patronum, qui civis Romanus in diem mortis vixit, ante quinque annos, quam lis bonorum mulieris inchoaretur, vita decessisse constiterit, libertae status ex persona manumissoris non retractabitur.

[2] *Idem AA. Maximo.* Si is, qui te heredem fecit, propter matris condicionem servus dicitur et mater ante quinque annos litis motae vita decessit, praescriptioni locus erit, cum quaeri de statu non possit, nisi

free-born and fabricating a false story that he had been in captivity, and since you allege that your mother did not give him freedom but only endeavored to support him in his claim to free-born status by a pure and willing lie, it is plain that he is a slave. For the rescript the deified Pius issued concerning captivity – which you say did not occur – does not make him free-born, and the allegation (by him) that you too gave your consent could not grant him the right of free-born status.

Posted June 18, in the consulship of Diocletian, for the fourth time, and Maximian, for the third time, Augusti (290).

[2] *The same Augusti and the Caesars to Milesius.* It is plainly declared by the *SC Ninnianum* that it is not permitted for freedman status to be changed through private pacts, and a penalty is established against anyone who colludes to do so and a reward promised to those who report them.[81]

Given November 27, in the consulship of the Caesars (294).

Twenty-First Title The Status of Decedents Shall Not be Questioned after Five Years[82]

[1] *Emperors* Severus *and* Antoninus *Augusti to Nicon.* The appropriate judge, when appeal is made to him, will examine the matter of prescription (loss of a claim through statutory limitation), and if it is evident that the patron of Domitia, who lived as a Roman citizen at the time of his death, departed this life more than five years before the suit over the property of his wife was begun, her status as a freedwoman cannot be reinvestigated by inquiring into the status of her manumitter.[83]

[2] *The same Augusti to Maximus.* If he who appointed you as heir is said to be a slave on account of the status of his mother, and the mother departed this life more than five years before the commencement of suit, such suit is barred by

[81] Blume: "The Ninnianian senate decree, mentioned in the second law of this title, is probably the law passed in the time of Domitian, mentioned in D. 40.16.1. It is there stated that if any one proved that a slave had been made free and declared free-born by collusion, he had the right to claim the man as his slave. Some reward is referred to in C. 7.20.2, in case of collusion to have a freedman declared a free-born person. The character of the reward is not stated. In the note to this law in the Basilica (48.23.2), the reward is stated to be that the detector of such collusion has the rights of patronage as to such freedman. That this was formerly true appears from D. 2.4.8.1. But under C. 6.4.4.26, the right was confined to that of reverence."

[82] See D. 40.15.

[83] Blume: "Death did not of itself terminate inquiry into a man's status, where that was not the principal issue. C. 7.16.13. But it was early made the general rule that a man's status should not be attacked after he had been dead five years. The rule seems to have first been laid down by an edict of the Emperor Nerva. D. 40.15.4. But there was evidently a subsequent senate decree to the same effect, such decree being referred to in C. 7.21.4.7 and 8."

de condicione matris retractaretur. haec ita, si, quamdiu vixit, sine interpellatione ut civis Romana egit.

PP. id. Sept. Antonino A. II et Geta C. II conss.

[3] *Imp. Alexander A. Olympiadi.* Quamvis defunctus sit maritus quondam tuus, cui status quaestio inferebatur, causa tamen etiam post obitum eius propter emolumentum successionis durat eamque apud eum, qui de hereditate vel de singulis rebus iudicaturus est, decidi oportet.

[4] *Idem A. Marciano.* **pr.** Si is, quem servum tuum fuisse et a fratre tuo manumissum atque heredem scriptum proponis, ut civis Romanus vixit nec intra quinquennium post mortem eius status quaestionem movere coepisti, intellegis neque heredibus ab eo scriptis neque his, quos liberos esse voluit, controversiam te contra formam senatus consulti facere posse. **1.** Quod si prius, quam id spatium temporis excederet, agere coepisti, et peculium eius more iudiciorum persequi et cum manumissis ordinata lite secundum formam edicti experiri non prohiberis.

PP. V id. Iun. Modesto et Probo conss.

[5] *Imp. Gordianus A. Severo.* Quod est constitutum post quinquennium de statu defunctorum quaestionem incipere non posse, ad speciem emancipationis, iure nec ne perfecta sit, minime pertinet.

[6] *Impp. Valerianus et Gallienus AA. Pollae.* **pr.** Si mater tua quasi ingenua communi opinione vixit et quinquennium a die mortis eius excessit, potes rem publicam et pupillos, si tibi status quaestionem movere temptaverint, nota praescriptione repellere. **1.** An autem pro ingenua in diem mortis egerit, in iudicio requiretur. quod si varietas interveniat, posteriora tempora spectari convenit.

PP. VI id. Iun. Saeculare II et Donato conss.

prescription, since inquiry into his status cannot be made except by reexamining the status of his mother. This is true, however, only if the latter lived her life as a Roman citizen without interruption.

Posted September 13, in the consulship of Antoninus Augustus, for the second time, and Geta Caesar, for the second time (205).

[3] *Emperor* ALEXANDER *Augustus to Olympias.* Although your former husband is deceased, an inquest into his status was being conducted, and the action against him survives even after his death because the benefit of his inheritance is at stake. It should be decided by the judge, who will adjudicate concerning the estate or the individual property therein.

[4] *The same Augustus to Marcianus.* **pr.** If the man whom you state to have been your slave and who was manumitted by your brother and appointed by him as his heir lived as a Roman citizen, and you did not begin to bring an inquest into his status within five years of his death, you must know that you cannot raise a dispute either against his appointed heirs or against (slaves) whom he wanted to be free, which would be contrary to the rule of the decree of the Senate. **1.** But if you commenced suit before that period of time expired, you are not forbidden to go after his *peculium* and to try an action, properly instituted, against those manumitted by him in accordance with the rule of the edict.

Posted June 9, in the consulship of Modestus and Probus (228).

[5] *Emperor* GORDIAN *Augustus to Severus.* The provision that an inquest as to the status of decedents may not be commenced after five years does not apply to an instance of emancipation and whether it was carried out legally or not completed.

[6] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Polla.* **pr.** If your mother was widely believed to have lived as a free-born person and five years have passed since the day of her death, you may, by the well-known prescription, defeat the municipality as well as minor wards if they attempt to bring any inquest into status against you. **1.** But it will be investigated in court whether she lived as a free-born person at the time of her death. But if that differed at various times, the later time governs.

Posted June 8, in the consulship of Saecularis, for the second time, and Donatus (260).

[7] *Impp. Diocletianus et Maximianus AA. Heliodoro.* Si pater tuus veluti ingenuus vixit nec status controversiam, quasi fisci servus esset, apud praesidem provinciae, qui super huiusmodi quaestionibus iudicare solet, sed apud curatorem rei publicae non competentem iudicem passus est, postque mortem eius quinquennium fluxit, status tuus ex praescriptione, quae ex senatus consulto emanat, protectus est.

[8] *Idem AA. et CC. Theodoro.* Repetitio peculii rerum servi tui, si nullo iusto titulo intercedente corpora ab aliquo possideantur, nulla temporis praescriptione mutilabitur. nec enim senatus consultum, quo super non retractandis defunctorum statibus sancitum est, intervenit, si defunctus in fuga conversatus atque latitans decessit.

D. x k. Dec. Mel. Diocletiano et Maximiano AA. conss.

XXII De Longi Temporis Praescriptione, Quae pro Libertate et Non Adversus Libertatem Opponitur

[1] *Impp. Diocletianus et Maximianus AA. et CC. Muciano.* Mala fide morato in libertate diu prodesse non potest temporis praescriptio. unde cum confitearis fuga te ab eo cuius meministi recessisse, intellegis ex hoc solo sine dolo malo in possessione te libertatis non esse.

D. x k. Sept. AA. conss.

[2] *Idem AA. et CC. Carterio.* Praestat firmam defensionem libertatis ex iusto initio longo tempore obtenta possessio. favor enim libertatibus debitus et salubris iam pridem ratio suasit, ut his, qui bona fide in possessione libertatis per viginti annorum spatium sine interpellatione morati essent, praescriptio adversus inquietudinem status eorum prodesse deberet, ut et liberi et cives fiant Romani.

D. VII k. Iul. Antiochiae Constantio III et Maximiano III *CC. conss.*

[3] *Exemplum sacrarum litterarum Constantini et Licinii AA. ad Dionysium vice praefectorum agentem.* Solam temporis longinquitatem,

[7] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Heliodorus.* If your father lived as a free person, and he experienced a dispute over his status and whether he was a fiscal slave not in the court of the provincial governor, who usually judges this sort of inquest, but only before the curator of the municipality, who is not an appropriate judge, and now five years have elapsed since his death, your status is protected by reason of the bar prescribed by the decree of the Senate.

[8] *The same Augusti and the Caesars to Theodorus.* The right to reclaim property which was part of the *peculium* of your slave will not be barred by lapse of time if the several articles thereof are in the possession of anyone without lawful ground of title. Nor does the decree of the Senate forbidding the reexamination of the status of decedents apply if the decedent was a fugitive and died while in hiding.

Given November 22, at Mel.,[84] *in the consulship of Diocletian and Maximian Augusti (299?).*

Twenty-Second Title Long-Time Prescription, Which May Be Used in Favor of but Not Opposed to Liberty

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Mucianus.* Prescription of time is no defense for a man who has for a long time remained in liberty in bad faith. Hence, since you acknowledge that through flight you left the man whom you mention, you understand that by that alone you are not in possession of liberty without fraud.

Given August 23, in the consulship of the Augusti (293).

[2] *The same Augusti and Caesars to Carterius.* Possession of liberty which began legally and continued for a long time furnishes a full defense. For partiality for freedom and sound reasoning led to the conclusion long ago that those who should remain in possession of liberty for twenty years in good faith without interruption should be protected against disturbance as to their status by that period of prescription and should become free and be Roman citizens.

Given June 25, at Antioch, in the consulship of Constantius and Maximianus, for the third time, Caesars (300).

[3] *Copy of an imperial letter of the Emperors* CONSTANTINE *and* LICINIUS *Augusti to Dionysius, Vice Prefect.*[85] It is in accordance with justice that no

[84] Perhaps Melitene, but Med(iolanum) has also been conjectured.
[85] That is, Vicar. Seeck gives May 13, 314, for the date.

etiamsi sexaginta annorum curricula excesserunt, libertatis iura minime mutilare oportere congruit aequitati.

D. III k. Mai. Volusiano et Anniano conss.

XXIII De Peculio Eius Qui Libertatem Meruit

[1] *Impp. Diocletianus et Maximianus AA. et CC. Rufino.* Longe diversam causam eorum, qui a superstitibus manumittuntur, item illorum, quibus testamento libertas relinquitur, esse dissimulare non debueras, cum superiore quidem casu concessum tacite peculium, si non adimatur, posteriore vero, nisi specialiter fuerit datum, penes successorem remanere sit iuris evidentis.

S. V non. Oct. CC. conss.

XXIIII De Senatus Consulto Claudiano Tollendo

[1] *Imp. Iustinianus A. Hermogeni magistro officiorum.* **pr.** Cum in nostris temporibus, in quibus multos labores pro libertate subiectorum sustinuimus, satis esse impium credidimus quasdam mulieres libertate sua fraudari et, quod ab hostium ferocitate contra naturalem libertatem inductum est, hoc a libidine nequissimorum hominum inferri, Claudianum senatus consultum et omnem eius observationem circa denuntiationes et iudicum sententias conquiescere in posterum volumus, ne, quae libera constituta est, vel semel decepta vel infelici cupidine capta vel alio quocumque modo contra natalium suorum ingenuitatem deducatur in servitutem et sit pessimum dedecus cognationis suae fulgori, ut, quae forsitan decoratos dignitatibus habeat cognatos, haec in alienum cadat dominium et dominum pertimescat forsitan cognatis suis inferiorem. quod et in libertis observari oportet: semel etenim libertate potitam per tale dedecus in servitutem reduci religio temporum meorum nullo patitur modo.

1. Sed ne servi vel adscripticii putent sibi impunitum esse tale conamen, quod maxime in adscripticios verendum est, ne liberarum mulierum nuptiis ab his excogitatis paulatim huiusmodi hominum condicio

length of time, even though a period of sixty years has passed, should alone bar a claim of liberty.

Given April 29, in the consulship of Volusianus and Annianus (314).

Twenty-Third Title The *Peculium* of One Who Has Gained Liberty

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Rufinus.* You should not overlook the fact that the situation of those who are manumitted by living persons is very different from that of those to whom liberty is left by testament, for in the case of the former there is an implied grant of the *peculium*, provided it is not taken from them (expressly), but the law is plain that in the case of the latter, the *peculium* remains the property of the decedent's successor, unless it has been specially granted (to the freedman).

Written October 3, in the consulship of the Caesars (294).

Twenty-Fourth Title Abolishing the *Senatus Consultum Claudianum*[86]

[1] *Emperor* JUSTINIAN *Augustus to Hermogenes, Master of the Offices.* **pr.** Since We have in Our times gone to much trouble to further the liberty of Our subjects, We thought it quite impious that some women should be deprived of their liberty, and that a practice introduced by the ferocity of enemies, contrary to natural liberty, should also be the result of the caprice of worthless men. Therefore, We wish the *SC Claudianum*, and all its regulations regarding notices and judicial sentences, hereafter to be void, in order that a free woman, whether she was deceived or overpowered by an unfortunate passion or however else, might not be led into slavery contrary to her birthright and thus bring the worst disgrace upon her honored relatives, with the result that she who might have relatives decorated with titles might become the property of another and fear a master who may be inferior to her own relatives. This shall also apply to freedwomen, for the spirit of Our time does not tolerate that a woman who has once had freedom should be reduced to slavery by such disgrace.

1.[87] But in order that slaves and enrolled tenants (*adscripticii*) may not think that such efforts (to marry free women) will go unpunished – which is especially to be feared in the case of *adscripticii* – and in order that the number of

[86] The *SC Claudianum* of 52 CE had permitted the master of a male slave to enslave any free woman who continued to have sexual relations with his slave even after thrice being ordered to desist. See Tac. *Ann.* 12.53; Gaius 1.84, 91, 160; Inst. 3.12.1; C. Th. 4.12.2–5, 7.

[87] = C. 11.48.24. Possibly to be combined with C. 1.3.53, 5.17.11, 9.13.1

decrescat, sancimus, si quid tale fuerit vel a servo vel adscripticio perpetratum, liberam habere potestatem dominum eius sive per se sive per praesidem provinciae talem servum vel adscripticium castigatione competenti corrigere et abstrahere a tali muliere. quod si neglexerit, sciat in suum damnum huiusmodi desidiam reversuram.

XXV De Nudo ex Iure Quiritium Tollendo

[1] *Imp. Iustinianus A. Iuliano pp.* Antiquae subtilitatis ludibrium per hanc decisionem expellentes nullam esse differentiam patimur inter dominos, apud quos vel nudum ex iure Quiritum vel tantummodo in bonis reperitur, quia nec huiusmodi esse volumus distinctionem nec ex iure Quiritum nomen, quod nihil aenigmate discrepat nec umquam videtur neque in rebus apparet, sed est vacuum et superfluum verbum, per quod animi iuvenum, qui ad primam veniunt legum audientiam, perterriti ex primis eorum cunabulis inutiles legis antiquae dispositiones accipiunt. sed sit plenissimus et legitimus quisque dominus sive servi sui sive aliarum rerum ad se pertinentium.

XXVI De Usucapione pro Emptore vel Transactione

[1] *Imp. Antoninus A. Flaviano.* Mancipia tua si ab eis distracta sunt, qui ius vendendi non habuerunt, vindicare ea potes. nec enim usucapi ab emptoribus potuerunt, cum illicita venditione furtum contractum sit.

PP. id. Aug. Antonino A. IIII et Balbino conss.

[2] *Imp. Alexander A. Marcellino.* Si contra defuncti voluntatem servos, quos propter perfectae artis peritiam heredibus suis defunctus servari testamento praecepit, tutores vendiderunt, usucapi non potuerunt.

D. V non. Mart. Iuliano et Crispino conss.

this class of men may not gradually decrease by their intermarriage with free women, We ordain that if anything of that kind is done by a slave or *adscripticius,* his owner shall have the free power, either personally or through the provincial governor, to correct such a slave or *adscripticius* by proper chastisement and to take him away from such a woman. If he neglects this, he may know that such laziness will redound to his own loss.

<*Without subscription (531–534).*>

Twenty-Fifth Title Abolishing Naked Ownership through Quiritary Right[88]

[1] *Emperor* Justinian *Augustus to Julian, Praetorian Prefect.* By this judgment We eliminate a trifling ancient nicety and allow for no difference between owners who have either naked ownership through Quiritary right or rights over property (*in bonis*), since We wish no such distinction to exist. The term "through Quiritary right" (*ex iure Quiritum*) does not differ from a riddle and is nowhere seen in the real world, but it is an empty and superfluous term by which the minds of young men who come to their first lecture on law are terrified as they receive useless provisions of ancient laws during their elementary classes. But let each owner be a complete legal owner whether of a slave or of other property belonging to him.

<*Without subscription (530–531).*>

Twenty-Sixth Title Usucapion by the Buyer or through Settlement[89]

[1] *Emperor* Antoninus *Augustus to Flavianus.* If your slaves were sold by those who had no right to sell, you may reclaim them. Nor could they be usucapted by the purchasers, since the unlawful sale constituted a theft.

Posted August 13, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[2] *Emperor* Alexander *Augstus to Marcellinus.* If *tutores* sold slaves contrary to the wish of the deceased, who in his testament directed them to be kept for his heirs because of their special skill, title to them could not be acquired by usucapion.

Given March 3, in the consulship of Julian and Crispinus (224).

[88] This constitution allows transfer of ownership of *res mancipi* by simple handover, *traditio.*

[89] See D. 41.4.

[3] *Idem A. Nepotillae.* Si matrem eius, cuius nomine quaestionem pati dicis, bona fide emptam possidere coepisti, etiamsi ipsa in causam furtivam incidit, tamen postea conceptum apud te partum usucapere potuisti.

[4] *Idem A. Achilleo.* Venditioni ancillae consensum dedisse diversam partem si probaveris, retractando contractum, quem ipsa ratum habuit, non audietur. sed et hac probatione cessante si bona fide emptam ancillam venditore bona fide distrahente temporis spatio usuceperis, intentio proprietatem vindicantis tenere non potest.

PP. III id. April.

[5] *Imp. Gordianus A. Marino.* **pr.** Si partem possessionis mala fide possessor venumdedit, id quidem, quod ab ipso tenetur, omnimodo cum fructibus recipi potest, portio autem, quae distracta est, ita demum recte petitur a possidente, si sciens alienam comparavit vel bona fide emptor nondum complevit usucapionem. **1.** Violenter autem possessione amissa, priusquam in domini potestatem perveniat, usucapio emptori, etsi bona fide mercatus est, non competit.

PP. XII k. April. Pio et Pontiano conss.

[6] *Imp. Philippus A. cum consilio collocutus dixit:* Cum sit probatum rem pignori fuisse obligatam et postea a debitore distractam, palam est non potuisse eam quasi furtivam usucapi.

Sine die et consule.

[7] *Impp. Diocletianus et Maximianus AA. et CC. Pecudi.* Sciens servum alienum citra domini voluntatem venumdans furtum committit. quod rei vitium, priusquam ad dominum eius revertatur possessio, non permittit usucapionem fieri, licet bona fide possideatur.

D. V id. Febr. CC. conss.

[8] *Idem AA. et CC. Severo.* Ex causa transactionis habentes iustam causam possessionis usucapere possunt.

[3] *The same Augustus to Nepotilla.* If you purchased and began in good faith to possess the mother of the boy concerning whom a suit is brought against you, even if she herself became part of the case for theft, you could usucapt a child she conceived afterward while with you.

[4] *The same Augustus to Achilleus.* If you prove that your opponent gave his consent to the sale of the female slave, he will not be heard when he rescinds an agreement which he ratified. Nevertheless, even if that proof is lacking, but the female slave was bought in good faith, and the seller sold her in good faith, and if you have usucapted her by the passage of time, the claim of ownership on the part of your opponent cannot hold.

Posted April 11.

[5] *Emperor Gordian Augustus to Marinus.* **pr.** If a bad faith possessor has sold part of his possession, the portion retained by him together with its fruits may indeed be recovered, but the portion sold by him may legally be reclaimed from the possessor only if he bought it knowing it belonged to someone other than the seller, or if the good faith buyer had not yet finished usucapting it. **1.** But if possession is lost by force, the period of usucapion does not begin for the buyer, even though he bought it in good faith, before the property has come back into the power of the owner.

Posted March 21, in the consulship of Pius and Pontianus (238).

[6] *Emperor Philip Augustus speaking in council said:* Since it has been proven that the property was pledged and was thereafter sold by the debtor (contrary to the terms of the pledge), it is plain that, as stolen property, it could not thereafter be usucapted.

Without date or consul.

[7] *Emperors Diocletian and Maximian Augusti and the Caesars to Pecudes.* One who knowingly sells another's slave without the consent of the owner commits theft. That defect in the property, even though it was possessed in good faith, prevents usucapion before possession returns to the owner.

Given February 9, in the consulship of the Caesars (294).

[8][90] *The same Augusti and Caesars to Severus.* Those who have just cause for possession by reason of a settlement (*transactio*) are able to usucapt.

[90] Possibly to be combined with C. 4.38.9, given March 25, 294, at Sirmium.

[9] *Idem AA. et CC. Gaio.* Eum, qui a pupillo sine tutoris auctoritate distrahente comparavit, nullum temporis spatium defendit. sed si locupletior factus emptoris pecunia post pubertatem occasionem iuris ad iniquum trahat compendium, doli mali submovebitur exceptione.
S. VIII id. Dec. CC. conss.

XXVII De Usucapione pro Donato

[1] *Imp. Alexander A. Macedonio.* Sive fuit dominus, qui tibi loca de quibus supplicasti donavit, sive a non domino bona fide donata suscepisti eaque usucepisti, auferri tibi quod iure quaesitum est non potest.
PP. V id. Mart.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Capitoni.* Donantem ancillam alienam nihil domino deminuere non est ambigui iuris: furtum etiam contrahere citra voluntatem domini contractantem, ut eius rei nec usucapio possit procedere.
S. V id. April. AA. conss.

[3] *Idem AA. et CC. Rhodano.* Irritam facere donationem perfectam nemini licet. utque hoc verum est, sic error falsae causae ratione fidei bonae non defenditur. quod et in dominio pro usucapione quaerendo servatur.

XXVIII De Usucapione pro Dote

[1] *Imp. Alexander A. Taurino.* Res mobiles in dotem datae, quamvis alienae, si sine vitio tamen fuerunt, a bona fide accipiente pro dote usucapiuntur.

[9][91] *The same Augusti and Caesars to Gaius.* No passage of time protects a person who has purchased something from a minor ward who was alienating (the property) without the authorization of a *tutor*. But if, upon reaching puberty, the youth has been enriched by the money of the buyer and turns the legal situation into a chance for unjust enrichment, he will be defeated by the defense of malicious intent (*exceptio doli mali*).

Subscribed December 6, in the consulship of the Caesars (294).

Twenty-Seventh Title Usucapion Pursuant to a Gift[92]

[1] *Emperor* ALEXANDER *Augustus to Macedonius.* Whether it was the owner who gave you the places about which you petitioned, or you received them as a donation in good faith from a non-owner and usucapted them, they cannot be taken from you because they were lawfully acquired.

Posted March 11.

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Capito.* The law is clear that one who gives away another's female slave takes nothing from the rights of the owner. In fact, a man who handles property to make contracts without the owner's consent commits theft, and no prescription (of lapse of time) can apply thereto.

Written April 9, in the consulship of the Augusti (293).

[3] *The same Augusti and Caesars to Rhodanus.* No one has power to annul a completed gift. And just as that is true, so, too, a mistake caused by a false cause (for obtaining possession) is not cured by good faith. This applies to acquisition of ownership by usucapion.

Twenty-Eighth Title Usucapion Pursuant to a Dowry[93]

[1] *Emperor* ALEXANDER *Augustus to Taurinus.* Movable property given in a dowry may be usucapted by one who receives it in good faith as a dowry, even if it belongs to someone else, provided there was no defect otherwise.

[91] = C. 5.59.3, which omits the second sentence.
[92] See D. 41.6.
[93] See D. 41.9.

XXVIIII De Usucapione pro Herede

[1] *Imp. Antoninus A. Zoilo.* Cum pro herede usucapio locum non habeat, intellegis neque matrem tuam, cui heres extitisti, neque te usu mancipia ex ea causa capere posse.
PP. VII k. Iul. Romae Laeto et Cereale conss.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Marinae.* Nihil pro herede posse usucapi suis existentibus heredibus obtinuit.
PP. V k. Febr. AA. conss.

[3] *Idem AA. et CC. Diocletiano.* Opinione falsa mortis pro herede possessio rerum absentis procedere non potest.

[4] *Idem AA. et CC. Serapioni.* Usucapio non praecedente vero titulo procedere non potest nec prodesse neque tenenti neque heredi eius potest, nec obtentu velut ex hereditate, quod alienum fuit, domini intentio ullo longi temporis spatio absumitur.
D. VII k. Ian. CC. conss.

XXX Communia de Usucapionibus

[1] *Imp. Alexander A. Sabino.* Qui ex conducto possidet, quamvis corporaliter teneat, non tamen sibi, sed domino rei creditur possidere. neque enim colono vel conductori praediorum longae possessionis praescriptio quaeritur.
PP. VII k. April. Alexandro A. II et Marcello conss.

Twenty-Ninth Title Usucapion by One Acting in Place of the Heir[94]

[1] *Emperor* ANTONINUS *Augustus to Zoilus.* Since usucapion by one acting in place of the heir (*pro herede usucapio*) is not permissible, neither your mother, whose heir you are, nor you yourself can acquire slaves by such method.

Posted June 25, at Rome, in the consulship of Laetus and Cerealis (215).

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Marina.* The law is that when there are heirs, nothing can be usucapted by one acting in place of the heir.

Posted January 28, in the consulship of the Augusti (293).

[3] *The same Augusti and Caesars to Diocletianus.* Possession as heir of the property of an owner who is absent and falsely believed dead cannot be valid.

[4] *The same Augusti and Caesars to Serapio.* In the absence of good title usucapion cannot occur, nor can it benefit either the possessor or his heir. Furthermore, the pretense that another's property was part of an inheritance does not bar the owner's claim regardless of how long a span of time it was held.

Given December 26, in the consulship of the Caesars (294).

Thirtieth Title General Rules of Usucapion[95]

[1] *Emperor* ALEXANDER *Augustus to Sabinus.* If someone holds possession under a lease, although he has physical control of the thing, he is thought to possess it not for himself but for its owner. Therefore a tenant farmer (*colonus*) or lessee of real properties (*conductor praediorum*) may not sue for prescriptive acquisition through long-term possession.

Posted March 26, in the consulship of Alexander Augustus, for the second time, and Marcellus (226).

[94] See D. 41.5. Blume: "Formerly any person might take possession of an inheritance when no heir had done so and acquire title by prescription within one year. Gaius 2.52–3. Neither good faith nor color of title was required. The reason for such speedy acquisition of title in this manner was, as Gaius 2.55 tells us, that the ancients wished heirs to enter on an inheritance with all speed, so that they might perform the sacred rites for the deceased, and so that creditors might have someone who would satisfy their claims. But a senate decree was passed under Hadrian prohibiting the acquisition of a prescriptive title in this manner against the true heir. Gaius 2.57. A person might, however, take possession as heir and acquire a prescriptive title against persons who were not in fact heirs."

[95] See D. 41.3; Inst. 2.6.

[2] *Idem A. Onesimae.* Iam pridem quidem mancipium, de quo supplicas, comparasse te dicis: sed si cogitaveris fisci mei rem usucapi non posse, respondere te actionibus fisci mei intellegis nec alias posse proprietatem obtinere, quam si non ex ancilla fiscali natum fuisse constiterit.

PP. non. Mart. Pompeiano et Peligno conss.

[3] *Imp. Alexander A. Pantherio.* Si mala fide servum tuum sciens Antiochus tenuit, intentionem tuam contra successorem eius, licet bona fide possidet, propter initii vitium usucapio non absumpsit.

XXXI De Usucapione Transformanda et de Sublata Differentia Rerum Mancipi et Nec Mancipi

[1] *Imp. Iustinianus A. Iohanni pp.* **pr.** Cum nostri animi vigilantia ex iure Quiritum nomen et substantiam sustulerit et communes exceptiones in omni loco valeant, id est decem vel viginti vel triginta annorum vel si quae sunt aliae maioris aevi continentes prolixitatem, satis inutile est usucapionem in Italicis quidem solis rebus admittere, in provincialibus autem recludere. sed et si quis res alienas, Italicas tamen, bona fide possidebat per biennium, miseri rerum domini excludebantur et nullus eis ad eas reservabatur regressus. quae et nescientibus dominis procedebant: quo nihil inhumanius erat, si homo absens et nesciens tam angusto tempore suis cadebat possessionibus.

1. Ideo per praesentem legem et in Italicis solis rebus, quae immobiles sunt vel esse intelleguntur, sicut annalem exceptionem, ita et usucapionem transformandam esse censemus, ut tantummodo et hic decem vel viginti annorum vel triginta et aliarum exceptionum tempora currant, huiusmodi angustiis penitus semotis.

2. Cum autem antiqui et in rebus mobilibus vel se moventibus, quae fuerant alienatae vel quocumque modo, bona fide tamen, detentae, usucapionem extendebant, non in Italico solo nexu, sed in omnem orbem terrarum, et hanc annali tempore concludebant, et eam duximus esse

[2] *The same Augustus to Onesima.* You say that you bought the slave mentioned in your petition a long time ago. But if you stop to think that no property belonging to my Treasury (*fisci mei res*) can be usucapted, you will realize that you must answer in the action brought by the Treasury, and that you could not gain ownership unless it happens that he was not born of a female slave belonging to the Treasury.

Posted March 7, in the consulship of Pompeianus and Pelignus (231).

[3] *The same Augustus to Pantherius.* If Antiochus knowingly had possession of your slave in bad faith, your claim against his heir is not barred by usucapion even if he possessed the slave in good faith, for the beginning (of his possession) was flawed.

Thirty-First Title The Transformation of Usucapion, and Eliminating the Distinction between *Res Mancipi* and *Res Nec Mancipi*

[1][96] *Emperor Justinian Augustus to John, Praetorian Prefect.* **pr.** Since the vigilance of Our Mind abolished the name and substance of Quiritary right,[97] and the common defenses (*exceptiones*) are valid in every place – that is to say those relating to the lapse of ten, twenty, and thirty years, and those relating to the lapse of a still greater period – it is not beneficial that usucapion should exist as to Italic land but should be precluded from provincial land. Moreover, if a man in good faith had possession of another's property that was Italic for a period of two years, the unfortunate owners of the property were barred without any right to reclaim it. And this used to happen to owners even without their knowledge. There was nothing more cruel than that a man who was absent and without knowledge should lose his possessions by the lapse of such a short period of time.

1. We therefore ordain through this present law that both the one-year defense and also usucapion should be transformed for property on Italic land which is either immovable or interpreted as such. In this way here too the time period of ten or twenty or thirty years or of other defenses must lapse, and the brief period should be entirely abolished.

2. But the ancients also used to extend the application of usucapion to things movable and self-moving that were transferred or held (*detentae*) in some fashion, provided it was in good faith, and they used to fix the period for such usucapion at one year not just in connection with Italic land but anywhere in the world. We have thought it best to correct this too, so that, if a man in good

[96] Combine with C. 3.34.13.
[97] C. 7.25.1.

corrigendam, ut, si quis alienam rem mobilem seu se moventem in quacumque terra sive Italica sive provinciali bona fide per continuum triennium detinuerit, is firmo iure eam possideat, quasi per usucapionem ei adquisitam.

3. Hoc tantummodo observando, ut in his omnibus casibus ab initio bona fide eam capiat, secundum quod exigit longi temporis praescriptio, et ut continuetur ei possessio etiam anterioris iusti possessoris et connumeretur in decennium vel viginti annorum spatium vel triennium, quod in rebus mobilibus observandum esse censemus, ut in omnibus iusto titulo possessionis antecessoris iusta detentio, quam in re habuit, non interrumpatur ex posteriore forsitan alienae rei scientia, licet ex titulo lucrativo ea coepta est. 4. Ita etenim ampliatur quidem longi temporis materia, quae ei subdita est, minuitur autem usucapionum compendiosa dominis iactura et eius iura nocentia. 5. Cum etiam res dividi mancipi et nec mancipi sane antiquum est et merito antiquari oportet, sit et rebus et locis omnibus similis ordo, inutilibus ambiguitatibus et differentiis sublatis.

D. xv k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

XXXII De Adquirenda et Retinenda Possessione

[1] *Impp. Severus et Antoninus AA. Attico.* Per liberam personam ignoranti quoque adquiri possessionem et, postquam scientia intervenerit, usucapionis condicionem inchoari posse tam ratione utilitatis quam iuris pridem receptum est.

PP. vi k. Dec. Dextro ii et Prisco conss.

[2] *Imp. Alexander A. Gauro.* Minus instructus est, qui te sollicitum reddidit, quasi in vacuam possessionem eius, quod per procuratorem emisti, non sis inductus, cum ipse proponas diu te in possessione fuisse omniaque ut dominum gessisse. licet enim instrumento non sit comprehensum, quod tibi tradita sit possessio, ipsa tamen rei veritate id consecutus es, si sciente venditore in possessione fuisti.

faith holds another's movable or self-moving property on any land, whether Italic or provincial, for a continuous period of three years, he shall have it in his own right as having been acquired by usucapion.

3. This only must be complied with, namely, that in all cases he takes possession in good faith from the beginning in keeping with the requirement of long time prescription, and that his possession follow immediately upon that of a previous just possessor, and that it be counted in a ten- or twenty-year period, or alternatively a three-year period – which We ordain should be observed in connection with movable property – so that in all cases the just holding (*detentio*) of property which a predecessor had based on a just title shall not be interrupted by the later knowledge that the property might belong to another, even if the possession initially arose as a result of a gift. 4. In this manner, the subject matter of long time (prescription) and that which is subject to it is increased, while the many losses to owners from short term usucapion and its pernicious rights are diminished. 5. Likewise, since the division of property into *res mancipi* and *res nec mancipi* is ancient and should justly be superannuated, the same rule should apply both to things and to all places, and useless ambiguities and distinctions should cease.

Given October 18, at Constantinople, in the consulship of Lampadius and Orestes (531).

Thirty-Second Title Acquiring and Retaining Possession[98]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Atticus.* Expediency (*utilitas*) dictates, and the law has long permitted, that possession may be acquired through a free person even for a man who has no knowledge thereof, and that the condition for usucapion may start after knowledge (of such possession) is obtained.

Posted November 26, in the consulship of Dexter, for the second time, and Priscus (196).

[2] *Emperor* ALEXANDER *Augustus to Gaurus.* The man who made you fearful that you were not brought into quiet possession of the property which you bought through a procurator is not well informed. For you yourself state that you have long been in possession and have been managing everything as owner. Although the document of purchase did not state that possession was delivered to you, still you obtained it by the truth of the matter if you were in possession and the seller knew this.

[98] See D. 41.2.

[3] *Imp. Decius A. Rufo.* Donatarum rerum a quacumque persona infanti vacua possessio tradita corpore quaeritur. quamvis enim sint auctorum sententiae dissentientes, tamen consultius videtur interim, licet animi plenus non fuisset adfectus, possessionem per traditionem esse quaesitam: alioquin, sicuti viri consultissimi Papiniani responso continetur, ne quidem per tutorem possessio infanti poterit adquiri.

PP. v k. April. Decio A. II et Grato conss.

[4] *Impp. Diocletianus et Maximianus AA. Nepotianae.* Licet possessio nudo animo adquiri non possit, tamen solo animo retineri potest. si igitur desertam praediorum possessionem non derelinquendi adfectione transacto tempore non coluisti, sed ex metus necessitate culturam eorum distulisti, praeiudicium tibi ex transmissi temporis iniuria generari non potest.

PP. k. Aug. ipsis IIII et III AA. conss.

[5] *Idem AA. Mennoni.* Cum nemo causam sibi possessionis mutare possit proponasque colonum nulla extrinsecus accedente causa ex colendi occasione ad iniquae venditionis vitium esse prolapsum, praeses provinciae inquisita fide veri dominii tui ius convelli non sinet.

[6] *Idem AA. et CC. Valerio.* Si nulla iusta ex causa ingressum agrum sive vineas eum cuius meministi praeses reppererit nec ulla praescriptione vestra interpellatur petitio, restituere te possessioni cum omni causa non dubitabit.

S. id. April. AA. conss.

[7] *Idem AA. et CC. Asyncrito.* Improba possessio firmum titulum possidendi nullum praestare potest. unde ingredientem in vacuam possessionem alieni fundi non consentiente domino vel actore, qui eius rei concedendi potestatem habuit, causam iustam possessionis adipisci non potuisse certum est.

PP. v id. Dec. AA. conss.

[3] *Emperor* Decius *Augustus to Rufus.* Quiet possession of property gifted to a small child (*infans*) by any person is acquired when it is transferred physically (*corpore*). Indeed, although the opinions of authorities differ, it nevertheless seems preferable that possession is obtained through transfer even if there was no fully formed sentiment of intent (*animi plenus adfectus*). Otherwise, as stated in the response of the learned Papinian, legal possession could not be acquired for a small child even through a *tutor*.

Posted March 28, in the consulship of Decius Augustus, for the second time, and Gratus (250).

[4] *Emperors* Diocletian *and* Maximian *Augusti to Nepotiana.* Although possession as owner cannot be acquired by mere intent (*nudo animo*), it may nevertheless be retained by intention alone (*solo animo*). Therefore, if you failed to cultivate estates, which you left deserted for a period now passed, without any intention to abandon them, but you simply deferred their cultivation through the compulsion of some fear (*necessitate metus*), no prejudice can arise against you because of the injustice of a bygone time (*ex transmissi temporis iniuria*).

Posted August 1, in the consulship of the same Augusti, for the fourth and third time (290).

[5] *The same Augusti to Mennon.* Since no one by himself can change the legal basis upon which he holds possession, and you state that your tenant (*colonus*), without any intervening title but through the mere occasion of his cultivation of the property, committed the wrongful act of selling it, the provincial governor, after inquiry into the true facts, will not permit you to be deprived of ownership of the property.

[6][99] *The same Augusti and the Caesars to Valerius.* When the governor learns that the man you mention invaded your field or vineyards without lawful title, and your claim is not interrupted by prescription, he will not hesitate to restore its possession and all its belongings to you.

Written April 13, in the consulship of the Augusti (293).

[7] *The same Augusti and Caesars to Asyncritus.* Dishonest possession gives no firm title for possession. Hence it is certain that, if someone invaded the quiet possession of another's farm without the consent of the owner or manager who had the power to grant rights over it, he was not able to acquire just cause for his possession.

Posted December 9, in the consulship of the Augusti (293).

[99] Possibly to be combined with C. 6.2.10.

[8] *Idem AA. et CC. Cyrillo.* Per procuratorem utilitatis causa possessionem et, si proprietas ab hac separari non possit, dominium etiam quaeri placuit.

PP. XVIII k. Mart.[iv] *Sirmi CC. conss.*

[9] *Idem AA. et CC. Sergio.* Nec ex vera venditione possessionem, quam non fuerat emptor adeptus, improbe retinere potest: ac multo minus is, qui adseveratione falsa velut emptor, cum sine obligatione pignoris pecuniam mutuo dedisset, fundum inrumpens alienum retinendi iustam habet causam.

P.P. III non. April. Sirmi CC. conss.

[10] *Imp. Constantinus A. ad Maternum.* Nemo ambigit possessionis duplicem esse rationem, aliam quae iure consistit, aliam quae corpore, utramque autem ita demum esse legitimam, cum omnium adversariorum silentio ac taciturnitate firmetur: interpellatione vero et controversia progressa non posse eum intellegi possessorem, qui, licet corpore teneat, tamen ex interposita contestatione et causa in iudicium deducta super iure possessionis vacillet ac dubitet.

PP. XI k. Febr. Triveris Volusiano et Anniano conss.

[11] *Impp. Arcadius et Honorius AA. Petronio vicario Hispaniarum.* Vitia possessionum a maioribus contracta perdurant et successorem auctoris sui culpa comitatur.

D. XV k. Ian. Mediolano Caesario et Attico conss.

[12] *Imp. Iustinianus A. Iohanni pp.* **pr.** Ex libris Sabinianis quaestionem in divinas nostri numinis aures relatam tollentes definimus, ut, sive servus sive procurator vel colonus vel inquilinus vel quispiam alius, per quem licentia est nobis possidere, corporaliter nactam possessionem cuiuscumque rei eam dereliquerit vel alii prodiderit, desidia forte vel dolo, ut locus aperiatur alii eandem possessionem detinere, nihil penitus domino praeiudicium generetur, ne ex aliena malignitate alienum damnum emergat, sed et ipse, si liberae condicionis est, competentibus actionibus subiugetur, omni iactura ab eo restituenda domino rei vel ei, circa quem neglegenter vel dolose versatus est.

1. Sin autem necdum sub manibus procuratoris vel coloni vel inquilini vel servi possessio facta est, sed ipse eam accipere desidia vel dolo

[iv] XVI k. Mart. (Mommsen)

[8] *The same Augusti and Caesars to Cyrillus.* For the sake of expediency, it is agreed that possession may be acquired through a procurator, and if ownership cannot be separated from possession, it too may be acquired thus.[100]

Posted February 14, at Sirmium, in the consulship of the Caesars (294).

[9] *The same Augusti and Caesars to Sergius.* Even pursuant to a true sale, a buyer cannot dishonestly retain possession which he never obtained. But so much the less does someone have a lawful cause of detention if he invaded someone else's farm after pretending to be a buyer under a false claim, when he lent money without demanding (the farm as) a pledge.

Posted April 3, at Sirmium, in the consulship of the Caesars (294).

[10] *Emperor* CONSTANTINE *Augustus to Maternus.* No one doubts that the basis of possession is twofold: the first aspect exists through law, the second through physical occupation; both are ultimately legal only when confirmed by the silence and muteness of all adversaries. Hence, while a suit and controversy is pending, a man cannot be considered to have possession who, though he has physical control, is uncertain and doubtful as to his right of possession by reason of the suit and the joinder of issue.

Posted January 22, at Trier, in the consulship of Volusianus and Annianus (314).

[11] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Petronius, Vicar of the Spanish diocese.* Defects in possession initiated by predecessors continue, and fault follows the successor of the person who initiated it.

Given December 18, at Milan, in the consulship of Caesarius and Atticus (397).

[12] *Emperor* JUSTINIAN *Augustus to John, Praetorian Prefect.* **pr.** Settling a dispute contained in the books of Sabinus and brought to the ears of Our Divine Majesty, We order that if a slave, procurator, bound or resident tenant (*colonus vel inquilinus*), or anyone else through whom possession may be acquired, either abandons the physical possession of any property or turns it over to someone else, whether negligently or deceitfully, so that opportunity is given to another to take possession, no prejudice shall result to the owner. Damages should not be inflicted on one man through the evil intention of another, but he himself will, if free, be subject to proper actions, and must make good all loss to the owner or to him toward whom he acted negligently or deceitfully.

1. But if possession has not yet come into the hands of the procurator, bound or resident tenant, or slave, but he neglects to accept it, whether through sloth

[100] See C. 4.27.1.

supersedit, tunc ipse qui eum transmisit ex mala sua electione praeiudicium circa possessionem patiatur, ex memoratarum personarum vel machinatione vel neglegentia accedens. 2. Hoc etenim tantummodo sancimus, ut dominus nullo modo aliquod discrimen sustineat ab his quos transmiserit, non ut etiam lucrum sibi per eos adquirat, cum et antiqua regula, quae definivit deteriorem condicionem per servum domini nullo fieri modo, tunc locum habet, cum de damno dominus periclitetur, non cum sibi lucrum per servum adquiri desiderat: salva videlicet et in hoc casu domino rei vel ei, qui ad eam detinendam praefatas transmiserit personas, adversus eas omni actione, si qua ex legibus ei competit servata.

XXXIII De Praescriptione Longi Temporis Decem vel Viginti Annorum

[1] *Impp. Severus et Antoninus AA. Iuliano pp.* **pr.** Cum post motam et omissam quaestionem res ad nova dominia bona fide transierint et exinde novi viginti anni intercesserint sine interpellatione, non est inquietanda quae nunc possidet persona, quae sicut accessione prioris domini non utitur, qui est inquietatus, ita nec impedienda est, quod ei mota controversia sit. 1. Quod si prior possessor inquietatus est, etsi postea per longum tempus sine aliqua interpellatione in possessione remansit, tamen non potest uti longi temporis praescriptione. 2. Quod etiam in re publica servari oportet.

D. III et Antonino AA. conss.

[2] *Impp. Diocletianus et Maximianus AA.* Longi temporis praescriptio his, qui bona fide coeptam possessionem continuatam nec interruptam inquietudine litis tenuerunt, solet patrocinari.

PP. V k. Dec. Maximo II et Aquilino conss.

[3] *Idem AA. et CC. Antonio.* Si vineae, quas mater tua vitrico in dotem dedit, tuae proprietatis sunt nec ulla praescriptio ex transacti temporis prolixitate adolevit, praeses provinciae restitui tibi eas efficiet.

or deceit, then the man who sent him to take possession must suffer the loss as to his possession as the result of his bad selection (of an agent) and thus yield to the trickery or negligence of the previously listed persons. 2. For We ordain only that an owner shall suffer no loss through the agents whom he has sent, not that he may also make a profit through them. Indeed, the ancient rule which holds that the condition of the master shall not be made worse by a slave also applies only when the master is in danger of loss, not when he seeks to make a profit through his slave. But, even in this case, every action permissible by the laws is to be preserved for the owner of the property or for the one who sent the previously listed persons with the purpose of gaining possession.

<*Without subscription (531–533).*>

Thirty-Third Title Long-Time Prescription of Ten or Twenty Years

[1] *Emperors* Severus *and* Antoninus *Augusti to Julian, Praetorian Prefect.* **pr.** When, after a dispute has been raised and abandoned, the property passes to a new owner in good faith, and from then on a new period of twenty years elapses without interruption, the person who now possesses it should not be disturbed. Just as he does not seek to join his possession to that of the prior owner who was disturbed, so also he should not be prejudiced because a dispute was raised against his predecessor. 1. But if the prior possessor is disturbed, although he thereafter remains in possession for a long time without interruption, he cannot benefit from long-time prescription. 2. This rule applies to a municipality as well.

Given in the consulship of [Severus], for the third time, and Antoninus, Augusti (202).

[2] *Emperors* Diocletian *and* Maximian *Augusti.* Long-time prescription usually protects those who have held possession that was begun in good faith and that continued and was not interrupted by the disturbance of a suit.

Posted November 27, in the consulship of Maximus, for the second time, and Aquilinus (286).

[3] *The same Augusti and the Caesars to Antonius.* If the vineyards which your mother gave to your stepfather as a dowry belong to you, and the time elapsed has not ripened into completed prescription, the provincial governor will cause them to be restored to you.

<*Without subscription (293).*>

[4] *Idem AA. et CC. Hermo.* Diutina possessio iure tantum successionis sine iusto titulo obtenta prodesse ad praescriptionem hac sola ratione non potest.

PP. IIII id. April. AA. conss.

[5] *Idem AA. et CC. Sotericho.* Nec petentem dominium ab eo, cui petentis solus error causam possessionis sine vero titulo praestitit, silentii longi praescriptione depelli, iuris evidentissimi est.

S. Sirmi XI k. Mai. AA. conss.

[6] *Pars epistulae Diocletiani et Maximiani AA. et CC. ad Primosum praesidem Syriae.* Si fraude et dolo, licet inter maiores annis, facta venditio est, hanc confirmare non potuit consequens tempus, cum longi temporis praescriptio in malae fidei contractibus locum non habeat.

Accepta.

[7] *Idem AA. et CC. Antheae.* Longi temporis praescriptione munitis instrumentorum amissio nihil iuris aufert nec diuturnitate possessionis partam securitatem maleficium alterius turbare potest.

D. prid. k. Ian. AA. conss.

[8] *Idem AA. et CC. Celso.* pr. Si is contra quem supplicas matris tuae quondam mancipia quasi filius ex causa tantum adoptionis defendit, adfectio destinatae illicitae adoptionis ad horum dominium ei quaerendum sola non sufficit. 1. Quapropter mancipia petere non prohiberis nullam timens temporis praescriptionem, si hoc tantum initio procedente is contra quem supplicas horum possessionem adeptus est.

[9] *Idem AA. et CC. Demostheni.* Emptor bona fide contra praesentem decennii praescriptione, cuius initio contestationem haberi sufficit,

[4] *The same Augusti and Caesars to Hermus.* Lasting possession alleged only pursuant to the right of succession as heir without any just title (*sine iusto titulo*) cannot alone serve as a basis for prescription.

Posted April 10, in the consulship of the Augusti (293).

[5] *The same Augusti and Caesars to Soterichus.* The law is very plain that one who claims ownership from another, to whom without just title only an error of the claimant gave any ground for his possession, cannot be defeated by prescription of a long quietude.

Written April 21, at Sirmium, in the consulship of the Augusti (293).

[6] *Part of a letter of* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Primosus, Governor of Syria.* If a sale was made through fraud and deceit, even though among persons of the age of legal majority, the subsequent time could not confirm it since long-time prescription does not apply to contracts made in bad faith.

Received (293).

[7] *The same Augusti and Caesars to Anthea.* Loss of documentation does not prejudice the right of parties who are protected by long-time prescription, nor can the wicked act of another disturb the security acquired by length of possession.

Given December 31, in the consulship of the Augusti (293).

[8] *The same Augusti and Caesars to Celsus.* pr. If the man against whom you complain lays claim to the former slaves of your mother as if he were her son, but only on the grounds of adoption, her desire to effect an intended but illegal[101] adoption does not of itself suffice for him to claim ownership of them. **1.** Therefore you are not prohibited from suing for the slaves by fear of any prescription of time, provided that the man against whom you complain gained possession of them through this starting point alone.

<Without subscription (294).>

[9] *The same Augusti and Caesars to Demosthenes.* Against a person present (in the province, as a plaintiff), a buyer in good faith rightly demands to win his suit by using a defense of prescription of ten years. After the claimant has satisfied the premise of his claim, it is sufficient for there to be a declaration

[101] In general women were prohibited from adopting, the exception being if they had lost their children, Inst. 1.11.10; C. 8.47.5; Gaius 1.104. Because the woman in question had a son, her intent to adopt another was barred.

posteaquam suam impleverit intentionem petitor, adhibita probatione iustae possessionis defensus[v] absolvi recte postulat.

[10] *Idem AA. et CC. Regino.* Nec bona fide possessionem adeptis longi temporis praescriptio post moram litis contestatae completa proficit, cum post motam controversiam in praeteritum aestimetur.

PP. v id. Dec. CC. conss.

[11] *Imp. Iustinianus A. Menae pp.* Super longi temporis praescriptione, quae ex decem vel viginti annis introducitur, perspicuo iure sancimus, ut, sive ex donatione sive ex alia lucrativa causa bona fide quis per decem vel viginti annos rem detinuisse probetur, adiecto scilicet etiam tempore prioris possessoris, memorata longi temporis exceptio sine dubio ei competat nec occasione lucrativae causae repellatur.

D. k. Iun. dn. Iustiniano PP. A. II cons.

[12] *Idem A. Iohanni pp.* pr. Cum in longi temporis praescriptione tres emergebant veteribus ambiguitates, prima propter res, ubi positae sunt, secunda propter personas, sive utriusque sive alterutrius praesentiam exigimus, et tertiae, si in eadem provincia vel si in eadem civitate debent esse personae tam petentis quam possidentis et res, pro quibus certatur: omnes praesentis legis amplectimur definitione, ut nihil citra eam relinquatur.

1. Sancimus itaque debere in huiusmodi specie utriusque personae tam petentis quam possidentis spectari domicilium, ut tam is qui dominii vel hypothecae quaestionem inducit quam is qui res possidet domicilium in uno habeant loco, id est in una provincia. hoc etenim nobis magis eligendum videtur, ut non civitate concludatur domicilium, sed magis provincia, et si uterque domicilium in eadem habet provincia, causam inter praesentes esse videri et decennio agentem excludi. 2. De rebus autem, de quibus dubitatio est, nulla erit differentia, sive in

[v] <defensus> posteaquam … [defensus]

(*contestatio*) of the beginning of the prescriptive period along with proof of his just possession.[102]

<Without subscription (294).>

[10] *The same Augusti and Caesars to Reginus.* Long-time prescription does not benefit those that acquire possession in good faith if it was completed after a delay in the joinder of issues, since it is reckoned backward from the commencement of a suit.[103]

Posted December 9, in the consulship of the Caesars (294).

[11] *Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect.* As to long-time prescription which applies after ten or twenty years, We ordain clearly by this enactment that, if it is proven that someone has held property in good faith for ten or twenty years pursuant to a donation or any kind of gift, and moreover the time of possession of any prior occupant is also joined to his own, the above-mentioned defense of prescription should suffice for him, nor shall he be defeated because the title is based on a gift.

Given June 1, in the consulship of Our Lord Justinian, Ever Augustus, for the second time (528).

[12] *The same Augustus to John, Praetorian Prefect.* **pr.** Three doubts arose among the ancients in connection with long-time prescription: the first as to the property and its location, the second as to the persons and whether the presence of one or both is required, the third whether the claimant and the possessor should personally be in the same province or in the same city territory as the property in dispute. We shall consider all of these questions in the present law, so that nothing will be left outside of its scope.

1. Therefore, We ordain that in a matter of this kind the domicile of both parties, both of the claimant and of the possessor, must be considered in order to establish whether the man who claims ownership or hypothecation as well as the man who is in possession of the property have their domicile in one place, that is to say, in the same province. And indeed it appears to Us preferable that the domicile to be considered should be circumscribed not by a city territory but by a province, and if both have their domicile in the same province, the case shall be considered as between persons who are present, and the claimant will be defeated by a prescription of ten years. 2. But in the case of properties concerning which there is some doubt, there shall be no

[102] Blume: "This law appears to contemplate that the defense of prescription should be set up in the beginning of the suit. But, as appears from C. 8.35.9, that does not appear to have been absolutely necessary, since it was a defense in bar."

[103] See C. 3.32.26.

eadem provincia sint sive in vicina vel trans mare positae et longo spatio separatae.

3. Sin autem non in eadem provincia uterque domicilium habeat, sed alter in alia, alius in altera, tunc ut inter absentes causam disceptari et locum esse viginti annorum exceptioni. nihil enim prohibet, sive in eadem provincia res constitutae sint sive in alia, super his controversiam in iudicio provinciali moveri et multo magis in hac florentissima civitate. **3a.** Quid enim prodest in ipsa provincia esse possessionem an in alia, cum ius vindicationis incorporale est et, ubicumque res positae sunt, et dominium earum et vinculum ad dominum vel creditorem possit reverti? ideo enim nostri maiores subtilissimo animo et divino quodam motu ad actiones et earum iura pervenerunt, ut incorporales constitutae possint ubicumque ius suum et effectum corporalem extendere.

3b. Sit igitur secundum hanc definitionem causa perfectissime composita et nemo posthac dubitet, neque inter praesentes neque inter absentes quid statuendum sit, ut bono initio et possessione tenentis et utriusque partis domicilio requisito sit expedita quaestio pro rebus ubicumque positis, nulla scientia vel ignorantia expectanda, ne altera dubitationis inextricabilis oriatur occasio. **4.** Eodem observando et si res non soli sint, sed incorporales, quae in iure consistunt, veluti usus fructus et ceterae servitutes.

D. v k. Dec. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

XXXIIII In Quibus Causis Cessat Longi Temporis Praescriptio

[1] *Impp. Diocletianus et Maximianus AA. Marcellinae.* Si is, cui colendum fundum dedisti, post instrumenta, quibus dominium ad te pertinere probari posset, per novercam tuam subtraxit, hoc solo praescriptione temporis defendi non potest.

[2] *Idem AA. et CC. Dionysio.* In servorum proprietatis negotio cum usucapio locum habeat, ad quaestionem longi temporis praescriptionis superfluo pervenitur.

differentiation whether they are in the same province, or in a neighboring one, or in places across the sea and separated by long distance.

3. If, however, both parties do not have their domicile in the same province, but one is in one, the other in another, the case shall be decided as one between absent persons, and the prescriptive period of twenty years applies. But there is nothing to prevent the parties from bringing an action as to the property in the provincial courts, let alone in this flourishing city, whether such property is located in the same province or not. **3a.** For of what advantage would it be for the property to be in one province rather than in another when the right to sue for its ownership is incorporeal and its ownership or a lien on it may be returned to the owner or creditor wherever it may be located? In fact, for this reason Our forebears created actions and laws governing them with a logical and almost divinely inspired mind, so that these incorporeal rights might extend their power everywhere with corporeal effect.

3b. Let the matter, therefore, be definitely settled according to this provision, and let no one hereafter doubt as to how this question of presence or absence is to be decided, so that when the points of a good beginning of title, of the possession of the holder, and of the domicile of both parties have been examined, the suit may be settled as to property wherever situated, without further inquiry into knowledge or ignorance (of adverse possession), lest further occasion for inextricable doubt arise. **4.** The same rules shall apply even if the property is not landed but is incorporeal, consisting of a right, such as usufructs and the other servitudes.

Given November 27, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

Thirty-Fourth Title In What Cases Long Time Prescription Does Not Apply

[1] *Emperors* Diocletian *and* Maximian *Augusti to Marcellina.* If the man to whom you gave a farm for cultivation later stole, with the help of your stepmother, the documents that could prove ownership vested in you, through that alone he cannot be protected by the prescription of time.

[2][104] *The same Augusti and the Caesars to Dionysius.* When usucapion is applied in a matter involving the ownership of slaves, inquiry into long-time prescription is superfluous.

[104] See C. 7.14.6, dated to April 25, 293.

[3] *Idem AA. et CC. Apollinario.* Unus individuum commune pro solido possidens intervallo temporis, quominus socius portionem vindicare vel eum communi dividundo iudicio provocare possit, non defenditur, cum neque familiae erciscundae iudicium neque communi dividundo actio excluditur longi temporis praescriptione.

III k. April. Sirmi CC. conss.

[4] *Idem AA. et CC. Liviae.* Hereditatem quidem petentibus longi temporis praescriptio nocere non potest. verum his, qui nec pro herede nec pro possessore, sed pro emptore vel donato seu alio titulo res quae hereditariae sunt vel fuerunt possident, cum ab his successio vindicari non possit, nihil haec iuris definitio noceat.

III id. Sept.

[5] *Idem AA. et CC. Zosimo.* Si puerum non pro derelicto habitum, sed ab hostibus vulneratum sumptibus tuis, sicut adseveras, liberum existimans curasti, longi temporis praescriptione, quominus dominus eius offerens erogata recte vindicet, defendi non potes.

XXXV Quibus Non Obiciatur Longi Temporis Praescriptio

[1] *Imp. Alexander A. Venuleio veterano.* Tempus expeditionis adversus petitiones, si quae competisse iuste probari possunt, praescriptionem non parit.

PP. VI non. Iul. Iuliano et Crispino conss.

[2] *Impp. Diocletianus et Maximianus AA. Aurelio archiatro.* **pr.** Cum per absentiam tuam eos, de quibus quereris, in res iuris tui inruisse adseveres teque ob medendi curam comitatu nostro discedere non posse palam sit, praefectus praetorio nostro accitis his quos causa contingit inter vos cognoscet. **1.** Non necessario autem petis ex longi temporis diuturnitate praescriptionem tibi non opponi, quando iustae absentiae ratio et necessitatis publicae obsequium ab huiusmodi praeiudicio te defendat.

PP. XII k. Mart. Nicomediae Maximo II et Aquilino conss.

[3] *The same Augusti and Caesars to Apollinarius.* One who is in exclusive possession of property owned in common is not protected by lapse of time so as to prevent his co-owner from claiming his portion or suing him in an action of partition (*communi dividundo iudicium*), since neither an action to divide an inheritance (*familiae erciscundae iudicium*) nor the action to partition is barred by long-time prescription.

Given May 29, at Sirmium, in the consulship of the Caesars (294).

[4] *The same Augusti and Caesars to Livia.* Long-time prescription cannot injure those claiming an inheritance. But this provision of the law should not injure those who claim not as heir or as possessor, but are in possession of property, which belongs or belonged to an inheritance, as its purchaser, donee, or pursuant to another title, since an inheritance cannot be reclaimed from these.

September 11.

[5] *The same Augusti and Caesars to Zosimus.* If, as you assert, you cured at your expense a slave-boy who had not been abandoned but was wounded by the enemy, while you thought he was free, you cannot set up the defense of long-time prescription against his owner who reclaims him and offers you the amount paid out.

Thirty-Fifth Title Those Against Whom Long-Time Prescription Cannot Be Used as a Defense

[1] *Emperor* Alexander *Augustus to Venuleius, a veteran.* The time during which a soldier is engaged in an expedition does not give rise to prescription against a claim of his that can be shown to be just.

Posted July 2, in the consulship of Julian and Crispus (224).

[2] *Emperors* Diocletian *and* Maximian *Augusti to Aurelius, Chief Physician.* **pr.** Since you assert that the men against whom you complain forcibly invaded property belonging to you during your absence, and since it is plain that you could not depart from Our (imperial) court on account of your duties as physician, Our Praetorian Prefect will summon the men in question and will try the dispute between you. 1. But you unnecessarily ask that the plea of long time prescription not be permitted to be set up against you, for justifiable absence and the performance of public duty protects you against any prejudice of this sort.

Posted February 18, at Nicomedia, in the consulship of Maximus, for the second time, and Aquilinus (286).

[3] *Idem AA. Numidio correctori Italiae.* Non est incognitum id temporis, quod in minore aetate transmissum est, in longi temporis praescriptione non computari. ea enim tunc currere incipit, quando ad maiorem aetatem dominus rei pervenerit.
PP. III id. Sept. ipsis IIII et III AA. conss.

[4] *Idem AA. et CC. Crispino.* Si possessio inconcussa sine controversia perseveraverit, firmitatem suam teneat obiecta praescriptio: quam contra absentes vel rei publicae causa vel maxime fortuito casu nequaquam valere decernimus.
PP. IIII k. Mart. Hannibaliano et Asclepiodoto conss.

[5] *Idem AA. et CC. Ianuario.* Neque mutui neque commodati aut depositi seu legati vel fideicommissi vel tutelae seu alii cuilibet personali actioni longi temporis praescriptionem obici posse certi iuris est.
S. k. Febr. AA. conss.

[6] *Idem AA. et CC. Doleo.* Ab hostibus captus ac postliminio reversus actione in rem directa vel qualibet alia dominium vindicando temporis adversarii possessionem frustra times, cum adversus eos, qui restitutionis auxilio quacumque ratione iuvantur, huiusmodi factum non opituletur.
VI id. Nov. Heracleae CC. conss.

[7] *Idem AA. et CC. Cassandro.* Praescriptione bona fide possidentes adversus praesentem annorum decem, absentem autem viginti muniuntur. quod tempus, si ex alicuius persona de petitorum parte restitutionis praetendatur auxilium, deducto eo, quo, si quid fuerit gestum, succurri solet, residuum computari rationis est.

[8] *Imp. Iustinianus A. Menae pp.* Sancimus his solis militibus, qui expeditionibus occupati sunt, ea tantummodo tempora, quae in eadem expeditione percurrunt, in exceptionibus declinandis opitulari: illis temporibus, per quae citra expeditionum necessitatem in aliis locis vel

[3] *The same Augusti to Numidius, Corrector of Italy.* It is not unknown that the time passed while one is a minor does not count toward long-time prescription. For the latter begins to run when the owner of the property comes of age.

Posted September 11, in the consulship of the same Augusti, for the fourth and third time (290).

[4] *The same Augusti and the Caesars to Crispinus.* If undisturbed possession has continued without controversy, a plea of prescription is valid. But We decree that it has no force against persons absent on public business or especially by reason of an act of chance (*fortuitus casus*).

Posted February 26, in the consulship of Hannibalianus and Asclepiodotus (292).

[5] *The same Augusti and Caesars to Januarius.* The law is certain that long-time prescription cannot be set up in an action on a loan (*mutuum*), loan for use (*commodatum*), deposit, legacy, trust, guardianship, or any other personal action (*actio personalis*).

Written February 1, in the consulship of the Augusti (293).

[6] *The same Augusti and the Caesars to Doleus.* Having been captured by the enemy and returned with the resumption of civil rights (*postliminium*), it is unnecessary for you to fear the long-time possession of your opponent when you bring a direct action *in rem* or some other action to recover ownership. For this fact offers no support against those who for some reason are benefited by the aid of restoration of rights (*restitutionis auxilio*).

Given November 8, at Heraclea, in the consulship of the Caesars (294).

[7] *The same Augusti and the Caesars to Cassander.* Good faith possessors are protected against those present in the province by a prescription of ten years and against those absent from the province by prescription of twenty years. If the claimant invokes the aid of restitution, the rule is that you deduct the time for which such aid is usually extended because of business done (for the public), then the remainder is counted (to make up the prescriptive period).

[8][105] *Emperor JUSTINIAN to Menas, Praetorian Prefect.* We ordain that only soldiers engaged in an expedition may be aided by the time occupied in the expedition, and by that time alone, to defeat a defense (of prescription). The time during which they are not on expedition and while they live in other

[105] = C. 2.50.8 (April 8); combine with C. 6.21.17.

in suis aedibus degunt, minime eos ad vindicandum hoc privilegium adiuvantibus.

D. k. April. Constantinopoli Decio vc. cons.

XXXVI Adversus Creditorem

[1] *Imp. Gordianus A. Veneriae.* Diuturnum silentium longi temporis praescriptione corroboratum creditoribus pignus persequentibus inefficacem actionem constituit, praeterquam si debitores vel qui in iura eorum successerunt obligatae rei possessioni incumbant. ubi autem creditori a possessore longi temporis praescriptio obicitur, personalis actio adversus debitorem salva ei competit.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Marcellae.* Si debitori heres non extitisti, sed iusta viginti annorum possessione collata in te donatio roborata est, neque personali actione, quia debitori non successisti, conveniri te iuris ratio permittit nec data pignori praedia post intervallum longi temporis tibi auferenda sunt, quando etiam praesentibus creditoribus decem annorum praescriptionem opponi posse tam rescriptis nostris quam priorum principum statutis probatum sit.

XXXVII De Quadriennii Praescriptione

[1] *Imp. Constantinus A. ad Orfitum.* Notum est a fisco quaestionem post quadriennium continuum super bonis vacantibus inchoandam non esse. additum etiam est et eos, qui nostra largitate nituntur, nulla inquietudine lacessendos nec his a fisco nostro controversiam commovendam, qui quoquo modo aut titulo easdem res possederint.

[2] *Imp. Zeno A. Aeneae comiti rerum privatarum.* **pr.** Omnes, qui quascumque res mobiles vel immobiles seu se moventes vel in actionibus aut quocumque iure constitutas a sacratissimo aerario comparaverint,

places or in their own houses, without being constrained by an expedition, will not avail them in claiming that privilege.

Given April 1, at Constantinople, in the consulship of Decius (529).

Thirty-Sixth Title (Prescription) Against a Creditor

[1] *Emperor* Gordian *Augustus to Veneria.* Extended silence, fortified by long-time prescription, renders an action by creditors suing for a pledge inefficacious, except when possession of the pledged property inheres in the debtors themselves or their heirs. But when the defense of long-time prescription is set up against the creditor by (an outside) possessor, a personal action against the debtor (on the debt) remains available.

[2] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Marcella.* If you were not the debtor's heir, but a gift (of the property) to you is fortified by lawful possession of twenty years, neither does the rule of law permit suit against you in a personal action, since you did not succeed to the debtor as heir, nor are properties that were offered as a pledge to be taken from you after the lapse of this long time period, for it has been demonstrated both in Our rescripts and the statutes of former emperors that prescription of just ten years may be set up against creditors who are present in the province.[106]

Thirty-Seventh Title Prescription of Four Years

[1] *Emperor* Constantine *Augustus to Orfitus.* It is known that no inquest can be initiated by Our Treasury concerning ownerless property (*bona vacantia*) after a continuous period of (possession of) four years.[107] It may also be added that those who base their case on a gift from Us must not be disturbed, nor must a dispute be raised by Our Treasury against those who hold such property in any manner or by any title.

[2] *Emperor* Zeno *Augustus to Aeneas, Count of the Privy Purse.* **pr.** All who acquired from the imperial treasury any movable, immovable, or self-moving

[106] Blume: "The statement in the two preceding laws that a hypothecary action, that is to say, an action by a pledgee or mortgagee of property to recover the pledged or mortgaged property in the hands of a third person may be barred in ten or twenty years, is confirmed by other laws in the Code, as C. 7.39.8 pr; C. 4.10.7; C. 8.13.7; C. 8.40.25; C. 8.44.19."

[107] Inst. 2.6.14 claims that Marcus set the period of prescription at five years and that Zeno (in the constitution that follows) set it at four. It is likely, then, that this constitution originally read "five" years, but was altered to "four" by the Justinianic editors. Seeck dates the constitution to March 28, 355.

eos quin etiam, quibus quaecumque res mobiles seu immobiles seu se moventes aut in actionibus vel quocumque iure constitutae munificentiae principalis nomine datae fuerint, omnibus pariter privilegiis, quae ex divinis sanctionibus inclitae recordationis Leonis et nostrae pietatis super certis patrimoniis antea emptores consecuti sunt, perpotiri et ita cunctos huiusmodi beneficiis seu privilegiis perfrui, tamquam si super singulis substantiis seu patrimoniis etiam nunc vel postea data fuisset huiusmodi dispositio: nec posse contra emptores praedictarum rerum factos iam vel futuros, vel contra eos, quibus super huiusmodi rebus largitas nostra delata est vel fuerit, aliquas actiones in rem dominii vel hypothecae gratia vel in personam, civiles seu praetorias, vel ex legibus aut sacratissimis constitutionibus descendentes vel quaslibet alias, licet nominatim praesenti sanctione non sint comprehensae, moveri: data volentibus licentia intra quadriennium contra sacratissimum aerarium, si quas sibi competere actiones existimant, exercere, ita tamen, ut post elapsum quadriennium nec sacratissimum fiscum licere sibimet quibuslibet actionibus pulsare cognoscant.

1. Ad haec fiscalium rerum emptoribus cum ratione iustitiae consulentes iubemus, quotiens competens scrinium gestis intervenientibus distractarum rerum pretia sese deposuerit suscepisse, minime post huiusmodi solutae pecuniae depositionem emptores quasi non numeratis pecuniis molestari vel necessitatem isdem emptoribus imponi, licet non sollemnem consecuti fuerint securitatem, soluta fuisse pretia probare. sed cum sit in arbitrio pretia suscipientis minime deponere sese quod non accepit suscepisse, ita convenit nec emptores plenissimam ex huiusmodi depositione super pretii solutione securitatem consecutos ullum (sicut dictum est) ulterius probatione gravamen penitus formidare.

[3] *Imp. Iustinianus A. Floro comiti rerum privatarum et curatori dominicae domus et Petro viro illustri curatori divinae domus serenissimae Augustae et Macedonio viro illustri curatori et ipsi dominicae domus.* **pr.** Bene a Zenone divae memoriae fiscalibus alienationibus prospectum est, ne homines, qui ex nostro aerario donationis vel emptionis vel cuiuslibet alienationis titulo quicquam accipiunt, si quid circa contractum contrarium emerserit vel evictionis vel alterius inquietudinis gratia ad dominium vel hypothecam respiciens, aliquid sustineant

property, or property constituted in legal actions or by whatever right, as well as those who were gifted in the name of Our imperial munificence with whatever movable, immovable, or self moving property or property constituted in legal actions or by whatever right, shall hold it with all attendant privileges which buyers gained previously over certain patrimonies by the imperial sanctions of Leo of famous memory and of Our Own Piety. And all shall enjoy the benefits and privileges of that kind, the same as if such provision had been made now or in future as to individual properties or patrimonies. And no action *in rem*, claiming ownership or hypothecation, and no action *in personam*, civil or Praetorian, and no action stemming from any law or imperial constitution, and no other action, even if it might not be mentioned explicitly in this ordinance, shall be brought against any purchasers, past or future, of the aforesaid property, or against those who have benefited or shall benefit from Our largess in respect to such properties. To those who wish, We grant permission to sue the imperial treasury within four years, if they think that they have any right of action, but they should know that they will not be permitted to sue the imperial treasury after the lapse of four years in any form of action.

1. In addition, in looking after the interests of purchasers of Treasury property by the rule of justice, We order that whenever the relevant bureau records in its paid accounts that it has received the price of the properties sold, after this manner of recording payment, the buyers are in no way to be bothered as if the money had not been paid or to be imposed with the necessity of proving that the price was paid, even if they did not obtain the customary receipt. For as it is hardly good judgment for the one who receives the price to record that he has received what he did not, so too it is proper that the buyers should fear no further burden of proof, as We said, when they obtained the fullest guarantee of having paid the price from the record itself.[108]

[3] *Emperor* JUSTINIAN *Augustus to Florus, Count of the Privy Purse and Curator of the Imperial Patrimony, and to the* vir illustris *Petrus, Curator of the Patrimony of the Most Serene Augusta, and to the* vir illustris *Macedonius, also Curator of the Imperial Patrimony.* pr. Alienations by the Treasury (*fiscales alienationes*) were well protected by Zeno of sacred memory, so that men who received any property from Our Treasury by gift, purchase, or other conveyance should not sustain any loss if any adverse claims should be made against such contracts, looking either toward the eviction of such men or otherwise disturbing them under a claim of ownership or hypothecation: no actions should be brought against the parties who purchased,

[108] Lounghis *et al.* date to between 474 and 491.

detrimentum: sed adversus emptores quidem vel donationem accipientes vel per alios titulos alienationis quicquam detinentes minime quaecumque actiones moveantur, sed tantummodo contra aerarium usque ad quadriennium tantum, quo translapso neque adversus fiscum remaneat aliqua actio.

1. Sed scimus hoc quidem in fiscalibus alienationibus naviter observari, sed non simili modo rem fuisse observatam circa eas res, quae a sacratissimis imperatoribus non a fiscalibus rebus, sed ex privata eorum substantia procedunt. **1a.** Quod satis inrationabile est. quae enim differentia introducitur, cum omnia principis esse intellegantur, sive a sua substantia sive ex fiscali fuerit aliquid alienatum? eodemque modo et si a serenissima Augusta aliquid alienetur, quare non eadem utatur praerogativa? sed curatores nostri, per quos solemus substantiam nostram gubernare, necesse habeant in venditionibus rerum et evictionem et alia quae sunt privatae utilitatis pacta emptionalibus instrumentis addere vel quasdam tales obligationes in alienationum instrumentis agnoscere vel in permutationibus vel in transactionibus, si et hoc fuerit celebratum? **1b.** Hoc enim est eorum, qui nec maiestatem imperialem agnoscunt et quantum inter privatam fortunam et regale culmen medium est, et nostros curatores, per quos res divinarum domuum aguntur, aliquibus iniuriis vel damnis adficere conantur.

1c. Quae omnia resecantes per hanc generalem et in perpetuum valituram legem sancimus omnes alienationes de aula procedentes, sive a nostra clementia sive a serenissima Augusta coniuge nostra sive ab his, qui postea digni fuerint nomine imperiali, sive iam alienatum quid est sive postea fuerit, sine omni inquietudine permanere, sive res eis per nosmet ipsos sive procuratores, ex epistalmate tamen nostro, fuerint adsignatae. **1d.** Et nemo audeat eos, qui res accipiunt per quemcumque titulum alienationis sive mobiles sive immobiles seu se moventes vel iura incorporalia vel panes civiles, iudiciis adficere vel sperare aliquam contra eos esse sibi viam apertam, sed omnis aditus excludatur, omnis motus et spes huiusmodi petulantiae.

2. Sed adversus domos nostras habeant, intra quadriennium tamen, secundum imitationem fisci, quas existimant posse sibi competere actiones in rem vel hypothecariam, ut ex nostra iussione causa moveatur et competentem mereatur effectum. quod si quadriennium fuerit emensum, nec adversus nostram domum habeat quis quamcumque actionem.

received as a gift, or held such property under any other title of alienation, but (such actions might be brought) only against the Treasury, and only during a period of four years, beyond which no action remains even against the Treasury.

1. We know that this is zealously observed in alienations by the Treasury, but it has not been observed in like fashion in connection with property that originates with the most Sacred Emperors coming from their own private patrimony rather than Treasury property. **1a.** That is surely irrational. For since all of it is understood to belong to the Emperor, what is the difference whether the property alienated is part of his private patrimony or belongs to the Treasury? Similarly, if something is alienated by the Most Serene Augusta, why should it not enjoy the same prerogative? And why should it be necessary for Our curators, through whom We are accustomed to manage Our property, in cases of property sales to add warranties against eviction and other agreements useful in connection with private contracts, or to acknowledge such obligations in documents of alienations, exchange or compromise, should such transactions occur? **1b.** This is the mark of those who do not acknowledge the Imperial Majesty or the contrast between private fortune and Imperial Greatness, and who attempt to inflict injury and damage upon Our curators by whom the property of the imperial patrimony is managed.

1c. Correcting all these things, We ordain by this general and perpetually valid law, that all alienations coming from the imperial court – either from Our Clemency, or from the Most Serene Augusta, Our Consort, or from those who hereafter shall be worthy of the imperial name – shall remain valid and free of any disturbance regardless of whether the alienation has already been made or shall be made in future and of whether it was made by ourselves or by Our procurators, provided it is pursuant to an imperial commission. **1d.** And no one shall dare to sue those who receive movable, immovable, or self-moving property, or any incorporeal rights, or civil bread rights (*panes civiles*) pursuant to any title of alienation, or to hope that any method to defeat them is open to them. Rather, may every approach be barred, as also every motion and expectation of such petulance.

2. But against Our Patrimony (*domos nostras*) let them have actions *in rem* or hypothecary actions, whichever they think pertinent to their cases, but only for up to four years, in keeping with the rules of the Treasury, in order that the case may be initiated according to Our command and may obtain an appropriate outcome. But if four years are permitted to pass, no one shall have any right of action against Our Patrimony.

3. Quia igitur multa scimus tam nosmet ipsos quam serenissimam Augustam coniugem nostram variis personis iam donasse et vendidisse et per alios titulos adsignasse, et maxime sacrosanctis ecclesiis et xenonibus et ptochotrophiis et episcopis et monachis et aliis innumerabilibus personis, et eandem liberalitatem ex nostra substantia sive serenissimae coniugis nostrae esse confectam, sancimus etiam eos firmo iure habere quod consecuti sunt, ita ut contra illos quidem nulla moveatur actio, intra quadriennium autem ex praesenti die numerandum pateat omnibus aditus contra nostras divinas domos suas actiones super isdem rebus movere, scituris, quod praefato quadriennio finito neque adversus nostras domos aliquis eis reservetur regressus. 4. Cum enim multa privilegia Augusta fortuna meruit et in donationibus sine insinuatione gestorum omnem firmitatem habentibus et super rebus, quas pro tempore serenissimus princeps divinae Augustae constante matrimonio donaverit vel ipse a serenissima Augusta per donationis titulum consequatur, ut maneat ilico donatio plena, nullo alio adfirmationis tempore expectando, ita et hoc videatur imperiale esse privilegium. qui enim suis consiliis suisque laboribus pro toto orbe terrarum die noctuque laborant, quare non habeant dignam sua praerogativam fortuna?

5. Quae igitur pro Augusto honore et cautela res accipientium nostra statuit aeternitas, haec tam sublimitas tua quam ceteri omnes iudices nostri observare festinent, ex eo tempore valitura, ex quo nutu divino imperiales suscepimus infulas.

D. v k. Dec. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

XXXVIII Ne Rei Dominicae vel Templorum Vindicatio Temporis Exceptione Submoveatur

[1] *Impp. Valentinianus et Valens AA. ad Probum pp. Galliarum.* Saepenumero praeceptum est, ut servi atque liberti, colonique praeterea rei nostrae nec non etiam eorum suboles ac nepotes, quicumque de nostris possessionibus recessissent ac se ad diversa militiae genera contulissent, cingulo, in quo obrepserant fraudulenter, exuti, si ad aliquas fortasse transcenderint dignitates, omni temporis definitione submota nostro patrimonio redderentur.

D. xi k. Dec. Valentiniano et Valenta AA. conss.

3. And because We know that We ourselves and the Most Serene Augusta, Our Consort, have already given, sold or transferred by some other title much property, especially to the holy churches, guest-houses (*xenones*), almshouses (*ptochotrophia*), bishops, monks and innumerable other persons, and that such bounty came from Our Own Patrimony or that of Our Serene Consort, We ordain that such parties shall firmly hold what they obtained in such a way that no action may be brought against them. But within a four-year period to be reckoned from the present day, all shall have the opportunity to bring their actions against Our Imperial Patrimony, but should know that, once this four-year period has ended, no one has the right to recourse (even) against Our Patrimony. 4. For as the Imperial Fortune enjoys many privileges, both in regard to gifts which are valid without record of the transaction and in regard to property which the then Serene Emperor (*princeps*) gave during marriage to the deified Augusta, or which he himself received as a gift from the Most Serene Augusta, such gift being immediately valid without waiting to receive confirmation through any further lapse of time,[109] this too is part of the imperial privilege. For why should they who by their counsel and work labor day and night for the people of the whole earth not have a prerogative worthy of their fortune?

5. Your Sublimity, therefore, and all other judges shall hasten to observe what Our Eternity has decided for the Imperial Dignity and for the protection of the recipients of property, which shall be valid from the time that We, with God's approval, took the imperial crown.

Given November 27, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

Thirty-Eighth Title Suits of Ownership for Imperial or Temple Property May Not be Barred through a Defense of Prescription[110]

[1] *Emperors* VALENTINIAN *and* VALENS, *Augusti, to Probus, Praetorian Prefect of the Gauls.* It has been often ordered that slaves and freedmen and bound tenants (*coloni*) belonging to imperial property, and their offspring and grandchildren, who have left Our possessions and have entered different kinds of public service shall be deprived of the rank (*cingulum*) into which they fraudulently crept, should they happen to have obtained any offices, and be returned to Our property, with any claims to prescription of time debarred.

Given November 21, in the consulship of Valentinian and Valens Augusti (365).[111]

[109] See C. 5.16.26 (529 CE).

[110] Blume: "The property of the temples referred to in the title was probably the property formerly belonging to the heathen temples, and confiscated for the benefit of the crown domain. See Gothofredus ad C.Th. 10.1.15."

[111] Seeck dates to October 13, 367.

[2] *Imppp. Valentinianus Theodosius et Arcadius AAA. Dextro comiti rerum pivatarum.* Universas terras, quae a colonis dominicis iuris rei publicae vel iuris templorum in qualibet provincia venditae vel ullo alio pacto alienatae sunt, ab his, qui perperam atque contra leges eas detinent, nulla longi temporis praescriptione officiente iubemus restitui, ita ut nec pretium quidem iniquis comparatoribus reposcere liceat.

D. v non. Iul. Constantinopoli Valentiniano A. III et Eutropio conss.

[3] *Impp. Arcadius et Honorius AA. ad Paulum comitem domorum.* **pr.** Si qua usquam loca ad sacrum dominium pertinentia cuiuslibet temeritas occupavit, secundum veteris census fidem in sua iura retrahentur. **1.** Rescripta igitur obreptionibus impetrata cum praescriptione longi temporis et novi census praeiudicio submovebit auctoritas tua, atque ita omnia suo corpori quae sunt avulsa restituet. neque enim incubatio diuturna aut novella professio proprietatis nostrae privilegium abolere poterit.

D. v k. April. Constantinopoli Arcadio IIII et Honorio III AA. conss.

XXXVIIII De Praescriptione XXX vel XL Annorum

[1] *Impp. Diocletianus et Maximianus AA. Arrianae.* **pr.** Cum adseveras te absente eos, qui oculos praediis tuis imposuerant, operam dedisse, ut annonariae collationis praetextu vili pretio ab officio praesidali praedia tua distraherentur, si legitimi temporis spatium ex venditionis die fluxit, qui provinciam regit inter vos cognoscet et, quod publico iure praescriptum est, statuet. **1.** Si autem nondum ex die publicae venditionis legitimum tempus transmissum sit, iudex examinatis adlegationibus tuis quod rei qualitas dictaverit sequetur, non ignarus, si iniustam esse emptionem perspexerit, pretium, quod pro vitioso contractu datum est, secundum principalium statutorum tenorem mala fide emptoribus restitui non oportere.

[2] *Impp. Valentinianus et Valens AA. ad Volusianum pu.* **pr.** Male agitur cum dominis praediorum, si tanta precario possidentibus praerogativa

[2] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Dexter, Count of the Privy Purse.* We order that all municipal or temple lands in any province which have been sold or in any manner alienated by bound tenants (*coloni*) of the Emperor shall be restored by those who detain them wrongfully and contrary to law, without bar of long-time prescription, and fraudulent purchasers shall not even have the right to demand back the price.

Given July 3, at Constantinople, in the consulship of Valentinian Augustus, for the third time, and Eutropius (387).

[3][112] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Paulus, Count of the Private Estate.* **pr.** If anyone has rashly occupied any places belonging to the Sacred Imperial Property (*sacrum dominium*), they will be drawn back to their proper status in accord with reliance on the former census. **1.** Your Authority, therefore, will declare void any rescripts fraudulently obtained, disregard long time prescription and any new inscription on the census roll, and restore all parts which have been severed to the body to which they belong. For neither squatting over the long term nor a new census declaration (*professio*) could destroy the privilege of Our ownership.

Given March 28, at Constantinople, in the consulship of Arcadius, for the fourth time, and Honorius, for the third time, Augusti (396).

Thirty-Ninth Title Prescription of Thirty or Forty Years[113]

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Arriana.* **pr.** Since you allege that those who had their eye on your land had brought it to pass in your absence that your lands were sold (to them) for a very small price by the governor's office under the pretext of the grain tax (due from you), if the legal time since the day of the sale has lapsed, the provincial governor will examine the matter between you and will decide what is prescribed in the public law. **1.** If, however, the legal time since the day of the sale has not yet lapsed, the judge will examine your allegations and will do what the situation demands, knowing that, if he finds that the purchase was illegal, the price paid under a void contract should not be returned to bad faith purchasers, in keeping with the tenor of imperial statutes.

[2] *Emperors* VALENTINIAN *and* VALENS, *Augusti, to Volusianus, City Prefect.* **pr.** It would be bad for owners of lands if the privileges of those who hold land

[112] = C. 11.67.2 (where Theodosius is added as originator); C.Th. 10.1.15.
[113] This title deals with two long-term bars on bringing legal actions; both are of late imperial origin.

defertur, ut eos post quadraginta annorum spatia qualibet ratione decursa inquietare non liceat, cum lex Constantiniana iubeat ab his possessionis initium non requiri, qui sibi potius quam alteri possederunt, eos autem possessores non convenit appellari, qui ita tenent, ut ob hoc ipsum solitam debeant praestare mercedem. 1. Nemo igitur, qui ad possessionem conductor accedit, diu alienas res tenendo ius sibi proprietatis usurpet, ne cogantur domini aut amittere quod locaverunt aut conductores utiles sibi fortassis excludere aut annis omnibus super dominio suo publice protestari.

D. VIIII k. Aug. Valentiniano et Valente AA. conss.

[3] *Impp. Honorius et Theodosius AA. Asclepiodoto pp.* **pr.** Sicut in rem speciales, ita de universitate ac personales actiones ultra triginta annorum spatium minime protendantur. sed si qua res vel ius aliquod postuletur vel persona qualicumque actione vel persecutione pulsetur, nihilo minus erit agenti triginta annorum praescriptio metuenda: eodem etiam in eius valente persona, qui pignus vel hypothecam non a suo debitore, sed ab alio per longum tempus possidente nititur vindicare. 1. Quae ergo ante non motae sunt actiones, triginta annorum iugi silentio, ex quo competere iure coeperunt, vivendi ulterius non habeant facultatem.

nec sufficiat precibus oblatis speciale quoddam, licet per adnotationem, promeruisse responsum, vel etiam iudiciis adlegasse, nisi adlegato sacro rescripto aut in iudicio postulatione deposita fuerit subsecuta per exsecutorem conventio. 1a. Non sexus fragilitate, non absentia, non militia contra hanc legem defendenda, sed pupillari aetate dumtaxat, quamvis sub tutoris defensione consistit, huic eximenda sanctioni. nam cum ad eos annos pervenerit, qui ad sollicitudinem pertinent curatoris, necessario eis similiter ut aliis annorum triginta intervalla servanda sunt.

2. Hae autem actiones annis triginta continuis extinguantur, quae perpetuae videbantur, non illae, quae antiquitus temporibus limitantur. 3. Post hanc vero temporis definitionem nulli movendi ulterius facultatem patere censemus, etiamsi se legis ignorantia excusare temptaverit.

D. XVIII k. Dec. Constantinopoli Victore cons.

on sufferance (*precario possidentes*) were extended to the point that they could not be disturbed (in their possession) after forty years had lapsed, regardless of the terms (of the grant). The Constantinian law[114] orders that the beginning of possession shall not be questioned in the case of those who are in possession for themselves and not for another, but it is not proper to call those people possessors who hold anything upon the condition that they pay the customary rent. 1. No one, therefore, who receives possession as tenant (*conductor*) may usurp the right of ownership by holding another's property over a long time. Otherwise owners will be compelled either to lose what they had leased, or perhaps to evict tenants who are useful to them, or to publicly proclaim their ownership every year.

Given July 24, in the consulship of Valentinian and Valens Augusti (365).

[3][115] *Emperors* Honorius *and* Theodosius *Augusti to Asclepiodotus, Praetorian Prefect.* pr. As with individual (*speciales*) actions *in rem*, so also with corporate (*de universitate*) and personal actions, these may not be extended beyond thirty years. But if some thing or some right is sought or if a person is sued through any action or prosecution, the plaintiff must nevertheless beware the thirty-year prescription. The same is true as to a plaintiff who attempts to recover a pledge or hypothec not from his debtor, but from another who has had long-term possession. 1. Therefore any actions not commenced earlier shall have no further life after a continuous silence of thirty years from the time when they accrued.

Nor shall it suffice that, after making a petition, someone has obtained a special rescript, even one with an imperial dispensation (*per adnotationem*), not even if it has been adduced in court, unless, once the imperial rescript was adduced or the initial pleading has been filed in court, a summons has followed through a court clerk. 1a. Weakness of sex, absence, or public office (*militia*) shall be no defense against this law; only minors under the age of puberty – although protected by a guardian – are excepted from these provisions. And once minors have arrived at the age when they come under the care of a *curator*, the prescriptive period of thirty years applies to them the same as to others.

2. The bar of thirty years' prescription is applicable, however, to those actions that have been considered perpetual, not to those which were since ancient times limited in time. 3. After the time mentioned, no further right to commence an action exists, even if a claimant attempts to excuse himself by ignorance of the law.

Given November 14, at Constantinople, in the consulship of Victor (424).

[114] C. 3.1.8 and 7.22.3 may be fragments of this law, which is no longer extant.
[115] = C.Th. 4.14.1; combine with C.Th. 2.12.7.

[4] *Imp. Anastasius A. Matroniano pp.* **pr.** Omnes nocendi quibuslibet modis artes omnibus amputantes cunctas quidem temporales exceptiones, quae ex vetere iure vel principalibus decretis descendunt, tamquam si per hanc legem specialiter ac nominatim fuissent enumeratae, cum suo robore durare et suum cunctis, quibus competunt vel in posterum competere valuerint, pro suo videlicet tenore praesidium in perpetuum deferre decernimus.

1. Quidquid autem praeteritarum praescriptionum vel verbis vel sensibus minus continetur, implentes per hanc in perpetuum valituram legem sancimus, ut, si quis contractus, si qua actio, quae, cum non esset expressim saepe dictis temporalibus praescriptionibus concepta, quorundam tamen vel fortuita vel excogitata interpretatione saepe dictarum exceptionum laqueos evadere posse videatur, huic saluberrimae nostrae sanctioni succumbat et quadraginta curriculis annorum procul dubio sopiatur, nullumque ius privatum vel publicum in quacumque causa in quacumque persona, quod praedictorum quadraginta annorum extinctum est iugi silentio, moveatur. **2.** Sed quicumque super quolibet iure, quod per memoratum tempus inconcussum et sine ulla re ipsa illata iudiciaria conventione possedit, superque sua condicione, qua per idem tempus absque ulla iudiciali sententia simili munitione potitus est, sit liber et praesentis saluberrimae legis plenissima munitione securus.

D. IIII *k.* Aug. *Constantinopoli Olybrio cons.*

[5] *Idem A. ad Thomam pp. per Illyricum.* Praescriptionem quadraginta annorum ab his, qui ad curialem condicionem vocantur, opponi non patimur, sed genitalem statum semper eos agnoscere compelli sancimus. sacra etenim nostrae pietatis lex de aliis loquitur condicionibus nec anterioribus constitutionibus per eandem novellam legem derogatur, quae manifestissime curiales et liberos eorum explosis temporalibus praescriptionibus patriis suis reddi praecipiunt.

[6] *Idem A. Leontio pp.* **pr.** Comperit nostra serenitas quosdam sacratissima*m* nostrae pietatis constitutionem, quae de annorum quadraginta loquitur praescriptione, ad praeiudicium etiam publicarum functionum solutionis trahere conari et, si quid per tanti vel amplioris temporis lapsum minime vel minus quam oportuerat tributorum nomine

[4] *Emperor* ANASTASIUS *Augustus to Matronianus, Praetorian Prefect.*[116] **pr.** Intent on curtailing every method of doing harm for everyone, We decree that all defenses limiting the time for bringing actions that derive from ancient law or imperial decrees shall remain in full force, as if specially enumerated by name in this law, and shall be a perpetual protection to all to whom they are or shall be available in accordance with the tenor of each.

1. In order to supply whatever is not clearly contained within the words or meaning of previous enactments providing for limitation of actions, We ordain by this perpetually valid law that any contract or action, even if not expressly contained within the regularly cited defenses as to limitation of action, shall be subject to this most salutary enactment of Ours, although it may seem possible for it to escape the bonds of the regularly cited defenses either through accidental or deliberate interpretation. It shall be void and barred after a period of forty years, and no right, private or public, which has become extinct by the silence of these forty years, shall be deployed in any cause or in relation to any person. **2.** But with regard to any right that someone has possessed undisturbed for the cited time period without any judicial summons being brought as to the main subject matter, and with regard to a person's status (*sua condicione*) that he has maintained during the same time without any contrary judgment,[117] he shall be free and fully protected by the full force of the present, most salutary law.

Given July 29, at Constantinople, in the consulship of Olybrius (491).

[5][118] *The same Augustus to Thomas, Praetorian Prefect for Illyricum.* We do not permit the period of limitation of forty years to be used as a defense by those called to curial status (*curialem condicionem*), but We ordain that they must acknowledge their birth status forever. For the law of Our Piety[119] speaks of other statuses (*de aliis condicionibus*), nor does the same new law detract from former constitutions which plainly direct that curials and their children be returned to their native cities without reference to any prescriptive period.

[6] *The same Augustus to Leontius, Praetorian Prefect.* **pr.** Our Serenity has learned that some parties attempt to apply the imperial constitution of Our Piety which speaks of forty years prescription to avoid the fulfillment of public obligations (*publicae functiones*). These contend that if tribute or a portion

[116] Combine with C. 10.27.1, 11.62.14. Lounghis *et al.* date to July 30, 491.

[117] Blume: "By C. 7.22.2, a man in good faith in possession of liberty for twenty years was protected. The difference, evidently is, that no possession in good faith was necessary in the limitation of forty years. Under this law, every sort of action is barred in forty years."

[118] Combine with C. 2.4.43, 2.7.21. Lounghis *et al.* give November 17, 500.

[119] C. 7.39.4.2.

solutum est, non posse requiri seu profligari contendere, cum huiusmodi conamen manifestissime sensui propositoque nostrae legis obviare noscatur. 1. Ideoque iubemus eos, qui rem aliquam per continuum annorum quadraginta curriculum sine quadam legitima interpellatione possederunt, de possessione quidem rei seu dominio nequaquam removeri, functiones autem seu civilem canonem vel aliam quandam publicam collationem impositam ei dependere compelli nec huic parti cuiuscumque temporis praescriptionem oppositam admitti.

[7] *Imp. Iustinus A. Archelao pp.* **pr.** Cum notissimi iuris sit actionem hypothecariam in extraneos quidem suppositae rei detentores annorum triginta finiri spatiis, si non interruptum erit silentium, ut lege cautum est, id est etiam per solam conventionem, aut si aetas impubes excipienda monstretur, in ipsos vero debitores aut heredes eorum primos vel ulteriores nullis expirare lustrorum cursibus: nostrae provisionis esse perspeximus hoc quoque emendare, ne possessores eiusmodi prope immortali timore teneantur.

1. Quamobrem iubemus hypothecarum persecutionem, quae rerum movetur gratia vel apud debitores consistentium vel apud debitorum heredes, non ultra quadraginta annos, ex quo competere coepit, prorogari, nisi conventio aut aetas, sicut dictum est, intercesserit, ut diversitas utriusque rerum persecutionis, quae in debitorem aut heredes eius quaeque movetur in extraneos, in solo sit annorum numero, verum in aliis omnibus ambo similes sint: in actione scilicet personali his custodiendis, quae prisca constitutionum sanxit iustitia.

2. Sed cum illud etiam in forensibus controversiis ventilabatur, an creditor anteriora iura praetendens potest posteriorem creditorem hypothecam tenentem et ultra triginta annos inquietare utpote imaginem debitoris obtinentem eique possidentem, necessarium duximus et hoc dirimere. **2a.** Et sancimus, donec communis debitor vivit, non posse creditori anteriori triginta annorum exceptionem opponi, sed locum esse quadraginta annorum praescriptioni, quia, dum ille vivit, merito anterior creditor confidit, utpote apud debitorem eius possessione per posteriorem creditorem constituta.

2b. Ex quo autem in fata sua debitor decesserit, ex eo quasi suo nomine possidentem posteriorem creditorem merito posse triginta annorum opponere praescriptionem. et secundum hanc distinctionem computationem temporum adhibendam, ut ex persona quidem sua

thereof is not paid and the time mentioned or a greater time has elapsed, the arrears cannot be demanded or collected. Yet it is known that such attempts are clearly contrary to the intent and purpose of Our law. **1.** Therefore We order that those who are in possession of any property through a continuous period of forty years without legal interruption cannot be deprived of the possession or ownership of that property, but with regard to public obligations, whether municipal dues (*civilis canon*) or any other public contribution imposed on someone, these must be paid and no limitation of any time period can be set up as a defense to them.[120]

[7] *Emperor Justin Augustus to Archelaus, Praetorian Prefect.* **pr.** It is well-known law that an action on a hypothec against third parties who hold the hypothecated property as occupants (*detentores*) is barred by the lapse of thirty years, provided the time is not interrupted as provided by law, including interruption by summons alone, or if the age of a prepubescent minor (*impubes*) is shown to require an exception. But claims against debtors themselves or their heirs, whether of the first degree or of further degrees, are not barred by the lapse of years. We have deemed it to be part of Our watchfulness to correct that situation also, lest possessors of that kind be held in almost endless fear.

1. We order, accordingly, that actions on hypothecs brought to recover property which is in the hands either of debtors or their heirs shall not be extended beyond forty years from the time that the right accrued, unless, as mentioned, a lawsuit or age intervenes, so that the only difference as to the right to recover the property from the debtor and his heirs or from third parties shall be in the number of years. In all other respects they shall be alike. That is to say, in a personal action the rights which the justice of older constitutions safeguarded ought to be preserved.

2. And since it has also been disputed in the courts whether, even after thirty years, a creditor having superior rights can disturb a creditor with inferior right who holds a hypothec, as though he took the place of the debtor and was in possession for him, We have thought it necessary to clarify that point too. **2a.** And We ordain that, while the common debtor lives, the prescriptive period of thirty years cannot be set up against the creditor with superior right, but the prescriptive period of forty years applies because, while the former lives, the creditor with superior right justly has confidence knowing that his debtor's possession is confirmed through the creditor with inferior right.

2b. But from the time that the debtor dies, the creditor with inferior right may, as possessor in his own right, set up the prescription of thirty years, and time shall be computed according to the following distinction: the creditor

[120] Lounghis *et al.* date to between late 500 and 518.

posterior creditor triginta annos, quos ipse post mortem debitoris possedit, opponat: sin autem coniungere voluerit suae possessioni quam post mortem debitoris habuit, etiam tempus, quo vivente debitore vel ipse creditor vel communis debitor detinuit, tunc quadraginta annorum exceptionis iura tractari et, quantum deest ad quadraginta annorum possessionem, per quam et ipse debitor creditorem repellere potuerat, hoc se possedisse ostendat. **3.** Eodem iure pro temporum computatione observando et si posterior creditor anteriori creditori offerre debitum paratus est et is creditor longaevam possessionis praescriptionem ei opponere conatur.

4. Illud autem plus quam manifestum est, quod in omnibus contractibus, in quibus sub aliqua condicione vel sub die certa vel incerta stipulationes et promissiones vel pacta ponuntur, post condicionis exitum vel post institutae diei certae vel incertae lapsum praescriptiones triginta aut quadraginta annorum, quae personalibus vel hypothecariis actionibus opponuntur, initium accipiunt. **4a.** Unde evenit, ut in matrimoniis, in quibus redhibitio dotis vel ante nuptias donationis in diem incertam mortis vel repudii differri adsolet, post coniugii dissolutionem earundem curricula praescriptionum personalibus itidem actionibus vel hypothecariis opponendarum incipiant.

5. Immo et illud procul dubio est, quod, si quis eorum, quibus aliquid debetur, res sibi suppositas sine violentia tenuerit, per hanc detentionem interruptio fit praeteriti temporis, si minus effluxit triginta vel quadraginta annis, et multo magis, quam si esset interruptio per conventionem introducta, cum litis contestationem imitatur ea detentio. **5a.** Sed et si quis debitorum ad agnoscendum suum debitum secundam cautionem in creditorem exposuerit, tempora memoratarum praescriptionum interrupta esse videbuntur, quantum ad priorem cautionem pertinet, quae scilicet innovata permansit, tam in personalibus quam in hypothecariis actionibus. namque improbum est debitorem contradicere, qui, ne sub accusatione creditoris fiat, secundam in eum super eo debito cautionem exposuit.

6. In his etiam promissionibus vel legatis vel aliis obligationibus, quae dationem per singulos annos vel menses aut aliquod singulare tempus continent, tempora memoratarum praescriptionum non ab exordio talis obligationis, sed ab initio cuiusque anni vel mensis vel alterius singularis temporis computari manifestum est.

7. Nulla scilicet danda licentia vel ei, qui iure emphyteutico rem aliquam per quadraginta vel quoscumque alios annos detinuerit, dicendi ex transacto tempore dominium sibi in isdem rebus quaesitum esse,

with inferior right acting on his own behalf may oppose the limitation of thirty years during which he was in possession after the debtor's death; but if he also wants to tack that time when he himself as creditor or as joint debtor was in possession during the original debtor's lifetime onto his own possession which followed the death of the debtor, then the rights of the forty years defense obtain, and he must show that he has been in possession for however much time was remaining for the fulfillment of forty years' possession by which even the original debtor would have been able to defend against the creditor. **3.** The same rule about the computation of time shall be followed even if the creditor of inferior right is ready to offer the debt due to the earlier creditor, and the latter attempts to set up against him long time prescription.

4. But it is more than evident that in all contracts in which stipulations, promises, or pacts are imposed in connection with some condition or some certain or uncertain date (*sub die certa vel incerta*), the prescriptive period of thirty or forty years operative against personal or hypothecary actions begins to run after the condition occurs or after the date arrives. **4a.** Whence it occurs that in the case of marriages, where the repayment of a dowry or prenuptial gift is usually put off to the uncertain date of a death or divorce, the prescriptive period to be set up against personal actions or actions on a hypothec likewise commences to run after the dissolution of the marriage.

5. And it is also unquestioned that if a man to whom a debt is due peaceably holds the property pledged to him, the prescriptive period is interrupted by this occupation (*detentionem*), if less than thirty or forty years respectively have run. In fact this is all the more true than if the period had been interrupted by summons, since such occupation is likened to joinder of issue. **5a.** And if a debtor gives a creditor a new promise (*cautio*) for the purpose of acknowledging the debt, the prescriptive period as it relates to the first promise – which of course is renewed but continues in force – will seem to have been interrupted, both in personal and hypothecary actions. For it is dishonest for a debtor to object who gives a second promise for that debt in order to avoid a suit by the creditor.

6. So also, where promises, legacies or other obligations require the giving of something each year, month or other particular time, it is clear that the prescriptive period mentioned is not computed from the beginning of such obligation, but from the beginning of each year, month or other particular time (in which something is due).

7. Absolutely no permission must be given to the person who holds property under *emphyteusis* and has detained it for forty years or any other period of years to claim that he has acquired ownership in such property by reason of the

cum in eodem statu semper manere datas iure emphyteutico res oporteat, vel conductori seu procuratori rerum alienarum dicendi ex quocumque temporum curriculo non debere se domino volenti post completa conductionis tempora possessionem recipere eam reddere.

D. k. Dec. Constantinopoli Philoxeno et Probo conss.

[8] *Imp. Iustinianus A. Menae pp. II.* **pr.** Si quis emptionis vel donationis vel alterius cuiuscumque contractus titulo rem aliquam bona fide per decem vel viginti annos possederit et longi temporis exceptionem contra dominos eius vel creditores hypothecam eius praetendentes sibi adquisierit posteaque fortuito casu possessionem eius rei perdiderit, posse eum etiam actionem ad vindicandam eandem rem habere sancimus. hoc enim et veteres leges, si quis eas recte inspexerit, sanciebant.

1. Quod si quis eam rem desierit possidere, cuius dominus vel is qui suppositam eam habebat exceptione triginta vel quadraginta annorum expulsus est, praedictum auxilium non indiscrete, sed cum moderata divisione ei praestare censemus, ut, si quidem bona fide ab initio eam rem tenuit, simili possit uti praesidio, sin vero mala fide eam adeptus est, indignus eo videatur, ita tamen, ut novus possessor, si quidem ipse rei dominus ab initio fuit vel suppositam eam habebat et memoratae exceptionis necessitate expulsus est, commodum detentionis sibi adquirat. **1a.** Sin vero nullum ius in eadem re quocumque tempore habuit, tunc licentia sit priori domino vel creditori, qui nomine hypothecae rem obligatam habuit, et heredibus eorum ab iniusto detentore eam vindicare, non obsistente ei, quod prior possessor triginta vel quadraginta annorum exceptione eum removerat, nisi ipse iniustus possessor triginta vel quadraginta annorum ex eo tempore computandorum, ex quo prior possessor, qui et vicit, ea possessione cecidit, exceptione munitus sit.

2. Sed haec super illis detentoribus censemus, qui sine violentia eandem rem nancti sunt. nam si quis violenter eam abstulit, omnimodo licebit priori possessori sine ulla distinctione eam vindicare. **3.** Sed et si quis non per vim, sed sententia iudicis eam detinuit, ea tamen occasione, quod absens prior possessor et ad litem vocatus minime respondit, licebit ei ad similitudinem ceterorum, qui rei dominium habent, intra annum se offerenti cautionemque suscipiendae litis danti eandem rem

lapse of time, since property held by right of *emphyteusis* should always remain in the same state. Nor must opportunity be given to a lessee (*conductor*) or procurator of another's property to say, by reason of the lapse of any period of time whatever, that he ought not to restore it to the owner who wants to retake possession after the time of the lease has expired.

Given December 1, at Constantinople, in the consulship of Philoxenus and Probus (525).

[8] *Emperor Justinian Augustus to Menas, Praetorian Prefect for the second time.* **pr.** If a man has been in good faith possession of any property for ten or twenty years by title of purchase, gift or any other contract and has acquired the right to the defense of long-time prescription against the owners or against creditors claiming a hypothec over it, and afterwards he loses possession of the property by a fortuitous circumstance, We ordain that he is able to have a suit on ownership to recover the property. The ancient laws, if correctly considered, also made provision for that.

1. But if a person ceases to possess that property, whose owner or whose mortgagee has lost it through the defense of thirty or forty years, We decree that the aforementioned remedy should not be applied indiscriminately but should follow a moderate distinction: if the person held the property in good faith from the beginning, he shall enjoy that right, but if he acquired it in bad faith, he seems unworthy of it; thus if the new possessor was the original owner or mortgagee of the property and lost it by reason of the aforesaid defense (of prescription), he acquires the benefit of the occupation. **1a.** But if (the new possessor) had no right to the property at any time, then the former owner or the creditor to whom the property was bound under a hypothec, as well as to their heirs, are given the right to reclaim it from the unlawful occupant. And it shall be no defense that a prior possessor had blocked (the original owner) by the defense of the prescriptive period of thirty or forty years, unless the unlawful possessor himself was fortified by the defense of thirty or forty years computed from the time when the prior possessor, who had also evicted (the original owner), fell out of possession.

2. These provisions apply, however, only to occupants (*detentores*) who acquired the property without violence. For if a person takes possession violently, the prior possessor is permitted to recover it in all cases. **3.** And if a person detains it not by violence but pursuant to a judicial verdict rendered when the prior possessor was absent and did not respond to a summons to court, the latter may, as other owners of property, appear within a year, give a guarantee (*cautio*) to defend the suit, and receive the property back subject to

recipere superque ea cognitionalia subire certamina. **4.** Exceptionem etiam triginta vel quadraginta annorum in illis contractibus, in quibus usurae promissae sunt, ex illo tempore initium capere sancimus, ex quo debitor usuras minime persolvit.

D. III id. Dec. Constantinopoli dn. Iustiniano A. II cons.

[9] *Idem A. Demostheni pp.* **pr.** Saepe quidam suos obnoxios in iudicium vocantes et iudiciariis certaminibus ventilatis non ad certum finem lites producebant, sed taciturnitate in medio tempore adhibita, propter potentiam forte fugientium vel suam imbecillitatem vel alios quoscumque casus (cum sortis humanae multa sunt, quae nec dici nec enumerari possint), deinde iure suo lapsi esse videbantur eo, quod post cognitionem novissimam triginta annorum spatium effluxerit, et huiusmodi exceptione opposita suas fortunas ad alios translatas videntes merito quidem, sine remedio autem lugebant.

1. Quod nos corrigentes eandem exceptionem, quae ex triginta annis oritur, in huiusmodi casu opponi minime patimur, sed licet personalis actio ab initio fuerit instituta, tamen eam in quadragesimum annum extendimus, cum non sit similis, qui penitus ab initio tacuit, ei, qui et postulationem deposuit et in iudicium venit et subiit certamina, litem autem implere per quosdam casus praepeditus est. **2.** Sed licet ipse actor defecerit, suae posteritati huiusmodi causae cursum eum relinquere posse definimus, ut eius heredibus vel successoribus liceat eam adimplere, nullo modo triginta annorum exceptione sublatam. **3.** Quod tempus, id est quadraginta annorum spatium, ex eo numerari decernimus, ex quo novissima processit cognitio, post quam utraque pars cessavit.

XXXX De Annali Exceptione Italici Contractus Tollenda et de Diversis Temporibus et Exceptionibus et Praescriptionibus et Interruptionibus Earum

[1] *Imp. Iustinianus A. Iuliano pp.* **pr.** Super annali exceptione, quae ex Italicis contractibus oritur, tantae moles altercationum in omnibus iudiciis exortae sunt, quantas et enumerari difficile et explanari impossibile est. **1.** Primum etenim naturae eius observatio cum omni scrupulositate et difficultate composita est, cum multa concurrere debent, ut ea nascatur. **1a.** Deinde illud spatium annale alii quidem ita effuse

the result of the suit. 4. In case of contracts which draw interest, the defense of the prescriptive period of thirty or forty years shall accrue from the time that the debtor fails to pay the interest.

Given December 11, at Constantinople, in the consulship of Our Lord Justinian Augustus, for the second time (528).

[9] *The same Augustus to Demosthenes, Praetorian Prefect.* **pr.** Plaintiffs who have cited into court defendants liable to them and have put the suit in motion have frequently failed to end it definitely, but thereafter remained inactive on account of the influence of the defendants or on account of their own weakness or for other causes – since people's fates are too many to describe or enumerate. Afterwards they seem to have lost their right since a span of thirty years had passed after they last brought suit, and that defense was set up so that they have grieved, justly but without remedy, as they watched their fortunes transferred to others.

1. Correcting this, We do not permit the defense arising from the passage of thirty years to be set up in a case of this kind, but extend the period to forty years, even if the action was instituted from the beginning as a personal action, since a case where a party remains entirely silent from the beginning is not like one where he offers a summons, comes into court, and commences litigation, but is prevented from finishing the suit through some chance. 2. And though the plaintiff himself dies, We determine that he may transmit his right to his posterity, and his heirs and successors may assert it, for it cannot be defeated by the defense of the lapse of thirty years. 3. The period of forty years shall be computed from the time the most recent suit was brought after which both parties became inactive.

<*Without subscription (529).*>[121]

Fortieth Title Repeal of the One-Year Prescription of an Italic Contract, Various Grace Periods, Exceptions, Prescriptions, and their Interruption[122]

[1][123] *Emperor* JUSTINIAN *Augustus to Julian, Praetorian Prefect.* **pr.** Such great mountains of disputes over the one-year prescription arising from Italic contracts have arisen that it is difficult to enumerate them and impossible to explain them. 1. In the first place the observance of the nature of the rule is wrapped in much technicality and difficulty, since many things must concur in order that it may apply. 1a. Next, some have interpreted that period of a year so broadly that it may be extended to ten years; others think that it should not

[121] Lounghis *et al.* date to September or October 529.
[122] See D. 44.3.
[123] Combine with C. 1.2.23.

interpretabantur, ut possit usque ad decennium extendi, alii iudicantes usque ad quinquennium standum esse putaverunt. et in nostris temporibus saepius super huiusmodi calculo a iudicibus variatum est, unde nec facile suum effectum in litigiis ostendere huiusmodi exceptio valuit.

1b. Cum itaque nobis aliae temporales exceptiones vel praescriptiones sufficiant, huiusmodi difficultatibus illigari nostro subiectos imperio minime patimur. ideoque memorata annali exceptione penitus quiescente aliae omnes legitimae exceptiones vel praescriptiones in iudiciis suum vigorem ostendant, sive quae super decennio vel viginti vel triginta vel quadraginta annis introductae sunt, sive quae minoribus spatiis concluduntur. **1c.** Ad haec cum nihil prohibet etiam ea, quae aliquam dubitationem acceperunt, clarioribus et compendiosis sanctionibus renovare, iubemus omnes personales actiones, quas verbosa quorundam interpretatio iactare extra metas triginta annorum conabatur, triginta annorum spatiis concludi, nisi legitimus modus, qui et veteribus et nostris legibus enumeratus est, interruptionem temporis introduxerit: sola hypothecaria actione quadraginta annorum utente curriculis. **1d.** Nemo itaque audeat neque actionis familiae erciscundae neque communi dividundo neque finium regundorum neque pro socio neque furti neque vi bonorum raptorum neque alterius cuiuscumque personalis actionis vitam longiorem esse triginta annis interpretari: sed ex quo ab initio competit et semel nata est et non iteratis fabulis saepe recreata, quemadmodum in furti dicebatur, post memoratum tempus finiri. **1e.** Exceptis omnibus actionibus, licet personales sint, quae in iudicium deductae sunt et cognitionalia acceperunt certamina et postea silentio traditae sunt, in quibus non triginta, sed quadraginta annos esse expectandos, ex quo novissimum litigatores tacuerunt, nostra lex antea promulgavit.

2. Ne autem imperfecta sanctio videatur, cum in maternis quidem rebus filiis familias tempore exceptionum currere dispositum erat, ex quo sacris paternis absoluti sunt, in aliis autem, quae minime adquiri possunt, hoc non fuerat specialiter constitutum, apertissima definitione sancimus filiis familias omnibus in his casibus, in quibus habent res minime patribus suis adquisitas, nullam temporalem exceptionem opponi, nisi ex quo actionem movere poterint, id est postquam manu paterna vel eius in cuius potestate erant constituti fuerint liberati. quis enim incusare eos poterit, si hoc non fecerint, quod et si maluerint, minime adimplere lege obviante valebant?

D. xv k. April. Constantinopoli Lampadio et Oreste vv. cc. conss.

exceed five years. Even in Our own times judges have often varied over this calculation, on account of which this type of defense has scarcely been able to be effective in litigation.

1b. So, since We find other defenses as to limitation of actions or prescription sufficient, We cannot permit Our subjects to be enmeshed in these sorts of difficulties. Therefore, the defense of one year's prescription shall no longer be in force, but all other legal defenses or prescriptions shall remain in effect for lawsuits, namely, those limiting them to ten, twenty, thirty or forty years, or those that conclude in briefer periods. **1c.** Furthermore, since nothing prevents the revision of laws which are ambiguous by clearer and succinct provisions, We order that all personal actions, which the verbose interpretation of some has attempted to extend beyond the bounds of thirty years, must be concluded within a span of thirty years, unless that period is interrupted by one of the legal methods set forth in ancient laws and in statutes enacted by Us. The limitation of forty years shall apply only to hypothecary actions. **1d.** So no one must dare to argue that an action has validity for more than thirty years, whether it is an action to divide an inheritance, to partition common property, to fix boundaries, an action on partnership, theft, robbery, or any other personal action; but from the period when it first comes into existence it is born once and for all and ends after the stated time period, without having been recreated again and again through repeated stories, as is said of actions on theft. **1e.** An exception is made where actions, even when personal, are brought and proceedings in court have been commenced and the parties become inactive thereafter. In such cases one must wait not thirty but forty years from the last time when the litigants became inactive, as provided in Our recently promulgated law.[124]

2. It had been provided by former laws that prescription against unemancipated sons (*filiifamilias*) as regards maternal property runs only from the time that they were released from paternal power, but this provision was not specially made as to other property, which they cannot acquire. So, in order that this law may not seem incomplete, We ordain by this plain provision that no prescription shall run against unemancipated sons in any case when they have property not acquired by them for the benefit of their father, except from the time that they could bring an action, that is to say, after they have been liberated from their father's power or that of some other person in whose power they were. In fact, who could accuse them of not having done what they would have chosen to do had they not been unable because the law prevented them.

Given March 18, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[124] C. 7.39.9.

[2] *Idem A. Iohanni pp.* **pr.** Ut perfectius omnibus consulamus et nemini absentia vel potentia vel infantia penitus adversarii sui noceat, sed sit aliqua inter desides et vigilantes differentia, sancimus: si quando afuerit is, qui res alienas vel creditori obnoxias detinet, et desiderat dominus rei vel creditor suam intentionem proponere et non ei licentia sit, absente suo adversario qui rem detinet, vel infantia vel furore laborante et neminem tutorem vel curatorem habente, vel in magna potestate constituto, licentia ei detur adire praesidem vel libellum ei porrigere et hoc in querimoniam deducere intra constituta tempora et interruptionem temporis facere: et sufficere hoc ad plenissimam interruptionem. **1.** Sin autem nullo poterit modo praesidem adire, saltem ad episcopum locorum eat vel defensorem civitatis et suam manifestare voluntatem in scriptis deproperet. sin autem afuerit vel praeses vel episcopus vel defensor, liceat ei et proponere publice, ubi domicilium habet possessor, seu cum tabulariorum subscriptione vel, si civitas tabularios non habeat, cum trium testium subscriptione: et hoc sufficere ad omnem temporalem interruptionem sive triennii sive longi temporis sive triginta vel quadraginta annorum sit. **2.** Omnibus aliis, quae de longi temporis praescriptione vel triginta vel quadraginta annorum curriculis constituta sunt sive ab antiquis legum conditoribus sive a nostra maiestate, in suo robore duraturis.

D. xv k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[3] *Idem A. Iohanni pp.* **pr.** Si ex multis causis quendam obnoxium habens, et maxime ex similibus quantitatibus, in unius quidem causae summam libellum conventionis composuerit, causam tamen non expresserit, apud veteres agitabatur, an videatur omnes causas in iudicium deduxisse aut vetustissimam earum aut nihil fecisse, cum eius sensus incertus esse apparebat. **1.** Sed et in iudiciis in multis casibus tales altercationes ventilatas invenimus, et maxime propter longi temporis interruptionem. si enim personalis forte fuerat mota actio, hypothecariae autem actionis nulla mentio procedebat, quidam putabant personalem quidem esse temporis interruptione perpetuatam, hypothecariam autem evanescere taciturnitate sopitam. **2.** Et si quis generaliter dixerat obnoxium sibi aliquem constitutum, aliae dubitationes emergebant, si omnes ei competentes actiones huiusmodi narratione contineri credantur, an vero quasi silentio circa eas habito tempore expirare, nullo ex incerta libelli confectione adminiculo eis adquisito.

[2] *The same Augustus to John, Praetorian Prefect.* **pr.** In order that We may more perfectly look after the interests of all, and that the absence, power, or infancy of an adversary may harm no one, and yet that there may remain a distinction between those who are negligent and those who are vigilant, We[125] ordain that if he who detains property owned by another or under obligation to a creditor should be absent, and the owner or creditor wishes to bring suit but is not permitted because his opponent, who detains the property, is absent or is impeded by inability to speak (*infantia*) or insanity and has no *tutor* or *curator*, or is in a position of great power, permission shall be given to the owner or creditor to go before the governor or to present him with a petition and make this a matter of complaint within the allotted period, and thus interrupt the time. **1.** But if he cannot in any way go before the governor, he shall go at least before the bishop of the place or the Defender of the City, and hasten to make known his desire in writing. If the governor or bishop or Defender are absent, he may make a public statement where the possessor has his domicile, in writing, witnessed by secretaries (*tabularii*), or by three other witnesses if the city has no secretaries; and this shall suffice for interrupting any prescriptive period, either of three years, of a long time (ten or twenty years), or of thirty or forty years. **2.** All other provisions made concerning long-time prescription and prescription of thirty and forty years shall remain in force, whether made by the ancient founders of the laws or by Our Majesty.

Given October 18, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[3] *The same Augustus to John, Praetorian Prefect.* **pr.** If a plaintiff to whom a defendant was liable on many causes of action, and particularly for similar sums, claimed in the summons the sum involved in one of these causes of action without expressing the cause, it was debated among the ancients whether he should be considered to have brought action on all of the causes, or the oldest one, or on none, since the premise of his claim appeared uncertain. **1.** And We find that such dispute frequently arose in trials, especially in connection with the interruption of long-time prescription. If, for instance, a personal action was commenced and no mention was made of a hypothecary action, some thought that the personal action was extended by the interruption but that the hypothecary action was extinguished by silence. **2.** And if someone stated generally that the defendant was liable to him, other doubts arose as to whether all actions available to him should be considered as embraced in the statement, or whether all should be held to expire during the prescriptive time, as though he had been silent as to all of them, the uncertain statement in his petition being of no benefit to him.

[125] The text is repeated from this point down to "make his desire known in writing" at C. 1.4.31 (incorrectly dated to October 1).

3. Sancimus itaque nullam in iudiciis in posterum locum habere talem confusionem, sed qui obnoxium suum in iudicium clamaverit et libellum conventionis ei transmiserit, licet generaliter nullius causae mentionem habentem vel unius quidem specialiter, tantummodo autem personales actiones vel hypothecarias continentem, nihilo minus videri ius suum omne eum in iudicium deduxisse et esse interrupta temporum curricula, cum contra desides homines et sui iuris contemptores odiosae exceptiones oppositae sunt.

D. xv k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

XXXXI De Adluvionibus et Paludibus et de Pascuis ad Alium Statum Translatis

[1] *Imp. Gordianus A. Marco.* Quamvis fluminis naturalem cursum opere manu facto alio non liceat avertere, tamen ripam suam adversus rapidi amnis impetum munire prohibitum non est. et cum fluvius priore alveo derelicto alium sibi facit, ager quem circumivit, prioris domini manet. quod si paulatim ita auferat aliique parti applicet, id adluvionis iure ei quaeritur, cuius fundus crescit.

PP. III k. Dec. Gordiano A. et Aviola conss.

[2] *Imppp. Arcadius Honorius et Theodosius AAA. Caesario pp.* Hi, quos inundatio Nili fluminis reddidit ditiores, pro terris quas possident tributorum praestationem agnoscant. et qui suum deplorant patrimonium imminutum, alieno saltem functionis onere liberentur et nostrae serenitatis largitate defensi, locorum etiam possessione contenti, pro agitandi census examine respondeant devotioni.

D. III id. Iun. Theodosio A. et Rumorido conss.

[3] *Impp. Theodosius et Valentinianus AA. Cyro pp.* **pr.** Ea, quae per adluvionem sive in Aegypto per Nilum sive in al*iis* provinci*is* per diversa flumina possessoribus adquiruntur, neque ab aerario vendi neque a quolibet peti nec separatim censeri vel functiones exigi hac

3. Therefore, We ordain that such confusion shall no longer have any place in the courts, but whoever cites into court anyone liable to him and sends him a petition of summons, whether he has not mentioned a general cause of action, or has stated only a specific one, or has brought only a personal or a hypothecary action, he shall nevertheless be considered to have commenced an action as to every right which he has and to have interrupted the prescriptive period. Indeed, odious defenses should be set up only against men who are negligent and contemptuous of their rights.

Given October 18, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

Forty-First Title Alluvium and Swamps and Pastures Transferred to Another Status

[1] *Emperor* GORDIAN *Augustus to Marcus.* Although it is not permitted to divert the natural course of a river through any man-made work, nevertheless it is not forbidden to strengthen its banks against the assault of a rapid stream. And when a river abandons its former channel and makes another for itself, the field round which it flows remains the property of the former owner. But if it carries the soil off gradually, adding it to another field, such added soil is acquired by the man whose farm is increased through the right of alluvium (*alluvio*).

Posted November 29, in the consulship of Gordian Augustus and Aviola (239).

[2] *Emperors* ARCADIUS, HONORIUS, *and* THEODOSIUS *Augusti to Caesarius, Praetorian Prefect.* Persons whom the inundation of the river Nile makes richer must pay tribute for the land which they possess. But those who lament the diminution of their property should at least be relieved from the burden of an obligation owed by another, and, protected by the bounty of Our Serenity and content with the land they possess, they should devotedly pay their tribute according to the adjustment made.[126]

Given June 11, in the consulship of Theodosius Augustus and Rumoridus (403).

[3][127] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Cyrus, Praetorian Prefect.* pr. We ordain by this perpetually valid law that property which is acquired by possessors through alluvium, whether in Egypt because of the Nile

[126] The last sentence is awkward. This translation reflects its sense more than its exact wording. Seeck dates this constitution to June 11, 397.

[127] = Nov. Theod. 20.

perpetuo lege valitura sancimus, ne vel adluvionum ignorare vitia vel rem noxiam possessoribus videamur indicere. 1. Similiter ne ea quidem, quae paludibus antea vel pascuis videbantur adscripta, si sumptibus possessorum nunc ad frugum fertilitatem translata sunt, vel vendi vel peti vel quasi fertilia separatim censeri vel functiones exigi concedimus, ne doleant diligentes operam suam agri dedisse culturae nec diligentiam suam sibi damnosam intellegant. 2. Cuius legis temeratores quinquaginta librarum auri condemnatione coerceri decernimus: inter quos habendum est officium quoque tuae sedis excelsae, si aliquid eiusmodi suggesserit disponendum vel si preces instruxerit petitoris.

D. XI k. Oct. Constantinopoli Valentiniano A. V et Anatolio conss.

XXXXII De Sententiis Praefectorum Praetorio

[1] *Impp. Theodosius et Valentinianus AA. Thalassio pp. Illyrici.* Litigantibus in amplissimo praetorianae praefecturae iudicio, si contra ius se laesos adfirment, non provocandi, sed supplicandi licentiam ministramus, licet pro curia vel qualibet publica utilitate seu alia causa dicatur prolata sententia (nec enim publice prodest singulis legum adminicula denegari): ita videlicet, ut intra biennium tantum nostro numini contra cognitionales sedis praetorianae praefecturae sententias, post successionem iudicis numerandum, supplicandi eis tribuatur facultas.

D. III id. Aug. Constantinopoli Theodosio A. XVII et Festo conss.

XXXXIII Quomodo et Quando Iudex Sententiam Proferre Debet Praesentibus Partibus vel Una Absente

[1] *Imp. Titus Aelius Antoninus Publicio.* Non semper compelleris, ut adversus absentem pronunties, propter subscriptionem patris mei, qua significavit etiam contra absentes sententiam dari solere. id enim eo pertinet, ut absentem damnare possis, non ut omnimodo necesse habeas.

Sine die et conss.

or in other provinces because of various rivers, shall not be sold by the Treasury (*aerarium*) nor claimed by anyone, nor shall it be separately assessed or compelled to obligations. In this way We will not seem to overlook the defects of alluvial lands or to impose something injurious on possessors. 1. Similarly, We do not permit even those lands formerly assigned to swamp or pasture but which have been made agriculturally productive through the outlays[128] of possessors to be sold or claimed or separately assessed or compelled to obligations as fertile lands, lest the diligent lament the efforts they expended in cultivating them and witness their diligence turned into loss. 2. We decree that violators of this law shall be punished by a fine of 50 pounds of gold. Among them are to be considered the members of your official staff if they suggest any such disposition or prepare a petition of a claimant.

Given on September 21, at Constantinople, in the consulship of Valentinian Augustus, for the fifth time, and Anatolius (440).

Forty-Second Title The Verdicts of Praetorian Prefects

[1][129] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Thalassius, Praetorian Prefect of Illyricum.* If litigants in the most high court of the Praetorian Prefecture allege that they have been injured contrary to law, We offer them the right not of appeal but of supplication, even if a decision was given in favor of a (municipal) council, or for the public interest, or for the benefit of any other matter. For it is not in the interest of the public to deny the aid of the law to individuals. Nevertheless, this right of supplicating Our Majesty against the judicial decisions of the court of the Praetorian Prefecture exists only for two years beginning from the time when the judge is succeeded.

Given August 11, at Constantinople, in the consulship of Theodosius Augustus, for the seventeenth time, and Festus (439).

Forty-Third Title How and When a Judge Should Give His Verdict When Both Parties Are Present or One Is Absent[130]

[1] *Emperor* TITUS AELIUS ANTONINUS *to Publicius.* You are not always compelled to give judgment against an absent party on account of the signed rescript (*subscriptio*) of my father in which he stated that decisions are regularly given even against parties that are absent. For that means that you may condemn a party that is absent, not that you are always required to do so.

Without date or consul.

[128] Nov. Theod. 20 adds "and labors" (*ac laboribus*).
[129] = Nov. Theod. 13, with minor variations.
[130] See Paul, *Sent.* 5.5a.

[2] *Imp. Gordianus A. Severo.* Cessante quoque causa peremptorii edicti adversus eos, qui admoniti iudicio adesse noluerunt, sententiam ab iudice posse ferri certum est.

S. IIII k. Aug. Pio et Pontiano conss.

[3] *Idem A. Antistio.* Ab eo iudicato recedi non potest, quod vobis absentibus et ignorantibus atque indefensis dicitis esse prolatum, si, ubi primum cognovistis, non ilico de statutis querellam detulistis. ita enim firmitatem sententia, quae ita prolata est, non habebit, si ei non sit commodatus adsensus.

PP. IIII id. Iun. Gordiano A. et Aviola conss.

[4] *Imp. Philippus A. Domitio.* Si, ut proponis, pars diversa die feriato absente et ignorante te ab iudice dato sententiam pro partibus suis, quasi contumaciter deesses, impetravit, non immerito praeses denuo negotium alterius iudicis notioni terminandum commisit.

PP. V id. Oct. Peregrino et Aemiliano conss.

[5] *Idem A. et Philippus C. Longino.* Si, ut proponis, praeses provinciae, cum certum locum causae cognoscendae dedisset, alibi per obreptionem aditus sententiam adversus te absentem protulit, quod ita gestum est, ad effectum iuris spectare minime oportet.

[6] *Impp. Valerianus et Gallienus AA. Domitio.* Si praeses quasi desertam ab adultis tuis causam appellationis, quae ab adiutore suo facta fuerat, circumduxit eo tempore, quo adulti curatores non habebant, repetitus notionem suam exhibebit. neque enim debet adultis nocere, quidquid eo tempore statutum est, quo defensione iusta et curatoris auxilio fuerant destituti.

[7] *Impp. Diocletianus et Maximianus AA. Marino.* Ea, quae statuuntur adversus absentes non per contumaciam, scilicet denuntiationibus nequaquam ex more conventos, iudicatae rei firmitatem non obtinere certum est.

PP. III k. April. ipsis IIII et III AA. conss.

[8] *Idem AA. Claudiae.* Consentaneum iuri fuit temporibus ad praesentiam partis adversae praescriptis praesidem provinciae impleta iuris sollemnitate et adversario tuo trinis litteris vel uno pro omnibus peremptorio edicto, ut praesentiam sui faceret, commonefacto, si in eadem

[2] *Emperor* Gordian *Augustus to Severus.* It is certain that a decision may be given by a judge against those who were cited but refused to appear, even if the grounds for the issuance of a peremptory edict fail.

Written July 29, in the consulship of Pius and Pontianus (239).

[3] *The same Augustus to Antistius.* A judgment which you say was pronounced in your absence, without your knowledge, and while undefended, cannot be vacated if you did not petition against the decision immediately after learning of it. For a decision thus given is only invalid if it is not acquiesced in.

Posted June 10, in the consulship of Gordian Augustus and Aviola (239).

[4] *Emperor* Philip *Augustus to Domitius.* If, as you state, your opponent obtained a decision in his favor from the judge appointed for the case, but it was on a holiday, in your absence, and without your knowledge, as though your absence was contumacious, the governor was right to refer the matter to another judge for investigation and determination.

Posted October 11, in the consulship of Peregrinus and Aemilianus (244).

[5] *The same Augustus and Caesar* Philip *to Longinus.* Although the provincial governor had appointed a certain place for the trial of a case, if, as you state, he was approached clandestinely and gave judgment elsewhere against you while you were absent, such action should have no legal effect.

[6] *Emperors* Valerian *and* Gallienus, *Augusti, to Domitius.* If the governor treated an appeal that his assistant had prepared as abandoned by your pubescent minors (*adulti*) in a period when the minors had no *curator*, he will take up the matter again if you go before him. For the minors cannot be prejudiced by a decision made when they were without proper defense and the assistance of a *curator.*

[7] *Emperors* Diocletian *and* Maximian *Augusti to Marinus.* It is certain that a decision given against parties who are absent without contumacy, not having been summoned by the usual notices (*denuntiationes*), is invalid.

Posted March 30, in the consulship of the same Augusti, for the fourth and third time (290).

[8] *The same Augusti to Claudia.* When the time for the appearance of your opponent had been fixed, and the usual formality of law had been observed, and your opponent had been admonished to appear by three written notices (*litterae*) or by one peremptory edict serving in place of all, if he persevered in

contumacia perseveravit, praesentis adlegationes audire. quod vel successor eius facere curabit. a quo ter citatus si contumaciter praesentiam sui facere neglexerit, non abs re erit vel ad cogendum eum, ut se repraesentaret, possessionem bonorum cui incumbit ad te transferre et adversarium petitorem constituere, vel auditis defensionibus tuis id quod iuris ratio exegerit iudicare.

PP. III k. Oct. ipsis IIII et III AA. conss.

[9] *Idem AA. Leontio.* Tres denuntiationes ad peremptorii edicti vicem adversus contumaces convalescere salubriter statutum est.

PP. XI k. Nov. ipsis IIII et III AA. conss.

[10] *Idem AA. Blaesio.* Cum non voluntatis tuae arbitrio, sed necessitate profectus sis, quidquid contra absentem statutum fuerit, quando absentiae necessaria causa sit, officere tibi iuris ratio non permittit.

PP. III id. Mai. Tiberiano et Dione conss.

[11] *Idem AA. et CC. Valerio.* Cum praesentibus partibus litem inchoatam proponas, si, posteaquam contra te licet absentem pronuntiatum est, intra praefinitum diem non appellasti, latam sententiam rescindi postulanti multae sacrae constitutiones refragantur.

XXXXIIII De Sententiis ex Periculo Recitandis

[1] *Impp. Valerianus et Gallienus AA. Quinto.* Arbitri nulla sententia est, quam scriptam edidit litigatoribus, non ipse recitavit. si igitur nihil fallis, omissa provocationis mora ex integro iudicari impetrabis a rectore provinciae.

[2] *Imppp. Valentinianus Valens et Gratianus AAA. ad Probum pp.* **pr.** Hac lege perpetua credimus ordinandum, ut iudices, quos cognoscendi et pronuntiandi necessitas teneret, non subitas, sed deliberatione habita post negotium sententias ponderatas sibi ante formarent et emendatas statim in libellum secuta fidelitate conferrent scriptasque ex libello

the same contumacy, it was in harmony with the law for the provincial governor to hear the allegations of the party present. Now his successor will see to the matter. If your opponent has been cited by him three times but contumaciously refuses to appear, it will be proper either to compel him to defend himself by transferring to you possession of the property over which he disposes and thus putting him in the position of claimant, or simply to hear your claims and give judgment according to the law.

Posted September 29, in the consulship of the same Augusti, for the fourth and third time (290).

[9] *The same Augusti to Leontius.* It is a salutary provision that three notices (*denuntiationes*) to contumacious parties are sufficient to take the place of a peremptory edict.

Posted October 22, in the consulship of the same Augusti, for the fourth and third time (290).

[10] *The same Augusti to Blaesius.* Since you did not leave (the jurisdiction) voluntarily but through necessity, the rule of law does not permit the decision rendered against you while absent to prejudice you, for your absence was necessary.

Posted May 13, in the consulship of Tiberianus and Dio (291).

[11] *The same Augusti and the Caesars to Valerius.* Since, as you state, the dispute was commenced while the parties were all present, and judgment was later given against you while absent, if you did not appeal within the date fixed, many imperial constitutions oppose your demand to have the decision vacated.

Forty-Fourth Title Reading Draft Trial Verdicts

[1] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Quintus.* The verdict of the judge arbitrator given to the litigants in writing but not read by him is void. Therefore, if you have stated the truth, the governor (*rector*) of the province will grant you a new trial, without the delay of an appeal.

[2] *Emperors* VALENTINIAN, VALENS, *and* GRATIAN *Augusti to Probus, Praetorian Prefect.* **pr.** We believe it best to provide by this perpetually valid law that judges, whose duty it is to try to decide cases, must first formulate verdicts that are not hasty but well considered in deliberations held after the trial

partibus legerent, sed ne sit eis posthac copia corrigendi vel mutandi. 1. Exceptis tam viris eminentissimis praefectis praetorio quam aliis illustrem administrationem gerentibus ceterisque illustribus iudicibus, quibus licentia conceditur etiam per officium suum et eos, qui ministerium suum eis accommodant, sententias definitivas recitare.

D. XII k. Febr. Gratiano A. II et Probo conss.

[3] *Idem AAA. ad Probum pp.* **pr.** Statutis generalibus iussimus, ut universi iudices, quibus reddendi iuris in provinciis permisimus facultatem, cognitis causis ultimas definitiones de scripti recitatione proferant. 1. Huic adicimus sanctioni, ut sententia, quae dicta fuerit, cum scripta non esset, nec nomen quidem sententiae habere mereatur nec ad rescissionem perperam decretorum appellationis sollemnitas requiratur.

D. III non. Dec. Triveris Gratiano A. III et Equitio conss.

XXXXV · De Sententiis et Interlocutionibus Omnium Iudicum

[1] *Impp. Severus et Antoninus AA. Quintiliano.* Non videtur nobis rationem habere sententia decessoris tui, qui cum cognovisset inter petitorem et procuratorem, non procuratorem, sed ipsam dominam litis condemnavit, cuius persona in iudicio non fuit. potes igitur ut re integra de causa cognoscere.

D. IIII k. Iun. Antonino A. III et Geta conss.

[2] *Imp. Antoninus A. Sextilio.* Si arbiter datus a magistratibus, cum sententiam dixit, in libertate morabatur, quamvis postea in servitutem depulsus sit, sententia ab eo dicta habet rei iudicatae auctoritatem.

[3] *Imp. Alexander A. Vettio.* Praeses provinciae non ignorat definitivam sententiam, quae condemnationem vel absolutionem non continet, pro iusta non haberi.

PP. k. Oct. Maximo II et Aeliano conss.

and, once these have been corrected, they must transfer them to the protocol (*in libellum*) immediately and accurately, and, once they have been written, the judges must read them from the protocol to the parties, and they are to have no opportunity to correct or change them afterward. **1.** Excepted from this rule are the most eminent Praetorian Prefects, and others who occupy illustrious offices, and all other judges of illustrious rank. They are permitted to have their final decisions read by members of their official staff or other persons who serve in their office.

Given January 21, in the consulship of Gratian Augustus, for the second time, and Probus (371).

[3][131] *The same Augusti to Probus, Praetorian Prefect.* **pr.** We have ordered by general provisions that all judges to whom We give power to render justice in the provinces shall, after cases have been tried, give final judgment by reading their written decisions. **1.** And We add to this provision that a verdict that is spoken but not written does not deserve to have even the name of a verdict, nor is the customary appeal required to rescind such faulty decisions.

Given December 3, at Trier, in the consulship of Gratian Augustus, for the third time, and Equitius (374).

Forty-Fifth Title Verdicts and Interim Orders of All Judges

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Quintilianus.* We do not see the reason behind the verdict of your predecessor, who tried a case between a claimant and a (female owner's) procurator and rendered judgment against the female owner even though she was not legally involved. You can, therefore, retry the case anew.

Given May 29, in the consulship of Antoninus Augustus, for the third time, and Geta (208).

[2] *Emperor* ANTONINUS *Augustus to Sextilius.* If a judge arbitrator appointed by magistrates was living as a free man when he rendered his decision, it has the force of a judgment, even if he was later forced into servitude.

[3] *Emperor* ALEXANDER *Augustus to Vettius.* The provincial governor is aware that a final verdict which does not contain a condemnation or absolution is not considered legal.

Posted October 1, in the consulship of Maximus, for the second time, and Aelianus (223).

[131] = C.Th. 4.17.1.

[4] *Idem A. Severae.* Prolatam a praeside sententiam contra solitum iudiciorum ordinem auctoritatem rei iudicatae non obtinere certum est.

PP. XV k. Ian. Alexandro A. III et Dione conss.

[5] *Imp. Philippus A. et Philippus C. Montano.* Cum eorum, qui principaliter fisco tenebantur, bona ea lege fideiussoribus procurator tradi iusserit, ut ipsi indemnitatem fisco praestarent, nec a sententia eius intercesserit provocatio, consequens est datae formae obtemperari.

[6] *Imppp. Carus Carinus et Numerianus AAA. Zoilo.* Cum sententiam praesidis irritam esse dicis, quod non publice, sed in secreto loco officio eius non praesente sententiam suam dixit, nullum tibi ex his quae ab eo decreta sunt praeiudicium generandum esse constat.

PP. V k. Dec. Caro et Carino conss.

[7] *Impp. Diocletianus et Maximianus AA. et CC. Isidorae.* **pr.** Ex stipulatione parta actione pacisci proximis personis suadendo praeses provinciae verborum obligationem, quam certo iure tolli tantum licet, extinguere non potest, nec vox omnis iudicis iudicati continet auctoritatem, cum potestatem sententiae certis finibus concludi saepe sit constitutum. **1.** Quapropter si nihil causa cognita secundum iuris rationem pronuntiatum est, vox pacisci suadentis praesidis actionem tuam perimere, si quam habuisti, minime potuit.

[8] *Idem AA. et CC. Licinio.* **pr.** Libera quidem Theodota, quam ex emptionis causa vel in solutum creditori traditam proponis, pronuntiata citra provocationis auxilium sententia rescindi non potest. **1.** Verum si mota quaestione, praemissa denuntiatione ei, qui auctor huius mulieris fuit, iudicatum processit, quanti tua interest, empti, si emisti, vel ob debitum reddendum, si in solutum data est, repetere non prohiberis.

[9] *Idem AA. et CC. Domno.* Post sententiam, quae finibus certis concluditur, ab eo qui pronuntiaverat vel eius successore de quaestione, quae iam decisa est, statuta rei iudicatae non obtinent auctoritatem:

[4][132] *The same Augustus to Severa.* It is certain that a verdict rendered by the governor in violation of the usual rules in administering justice does not have the force of a judgment.

Posted December 18, in the consulship of Alexander Augustus, for the third time, and Dio (229).

[5] *Emperors* PHILIP *Augustus and Caesar* PHILIP *to Montanus.* Since the Procurator ordered that the property of those who are liable to the Treasury as principals should be turned over to sureties upon the condition that these indemnify the Treasury, and an appeal on his verdict has not been lodged, it follows that this order should be obeyed.

[6] *Emperors* CARUS, CARINUS, *and* NUMERIAN *Augusti to Zoilus.* Since you state that the verdict of the governor is void because he did not pronounce his verdict publicly but in a secret place without the presence of his official staff, it is clear that his decisions create no prejudice for you.

Posted November 27, in the consulship of Carus and Carinus (283).

[7][133] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Isidora.* **pr.** If a right of action was acquired by a stipulation, the provincial governor could not extinguish such a verbal obligation by persuading persons who were close relations to settle, for it can only be eliminated in a set legal manner. Nor does every pronouncement of a judge have the force of an adjudication, since it has often been held that the force of a verdict is limited within definite bounds. **1.** Hence, if no pronouncement is made after the trial of a case according to the principle of law, the pronouncement of the governor persuading a settlement could in no way destroy your cause of action, if you had any.

[8] *The same Augusti and Caesars to Licinius.* **pr.** If Theodota, who you say was delivered to you pursuant to a purchase or in payment of a debt, was judicially pronounced to be a free woman, the verdict cannot be vacated without appealing. **1.** But if the suit was started and notice was given to the one who sold this woman and he proceeded to trial, you are not forbidden to recover your interest in an action on purchase, if you bought her, or an action on recovery of debt, if she was given to you in payment of debt.

[9] *The same Augusti and Caesars to Domnus.* After a verdict, which is confined by definite limits, is rendered, a subsequent decision of the same question, made either by the judge who gave the first one or by his successor, does not have the force of an adjudication. But a judgment as to possession does not

[132] Combine with C. 6.34.1.
[133] See C. 8.37.5, dated November 27, 293.

nam nec de possessione pronuntiata proprietati ullum praeiudicium adferunt nec interlocutiones ullam causam plerumque perimunt.

S. III non. April. CC. conss.

[10] *Idem AA. et CC. Menodoro.* Nulli, qui statuendi non habet facultatem, interdicere patriae cuiquam permittitur.

[11] *Idem AA. et CC. Titiano.* Cum iudex in definitiva sententia iusiurandum solummodo praestari praecipiat, non tamen addat, quid ex recusatione vel praestatione sacramenti fieri oportet, huiusmodi sententiam nullam vim obtinere palam est.

[12] *Impp. Arcadius et Honorius AA. Iuliano proconsuli Africae.* Iudices tam Latina quam Graeca lingua sententias proferre possunt.

D. v id. Ian. Mediolani Caesario et Attico conss.

[13] *Imp. Iustinianus A. Demostheni pp.* Nemo iudex vel arbiter existimet neque consultationes, quas non rite iudicatas esse putaverit, sequendum, et multo magis sententias eminentissimorum praefectorum vel aliorum procerum (non enim, si quid non bene dirimatur, hoc et in aliorum iudicum vitium extendi oportet, cum non exemplis, sed legibus iudicandum est), nec si cognitionales sint amplissimae praefecturae vel alicuius maximi magistratus prolatae sententiae: sed omnes iudices nostros veritatem et legum et iustitiae sequi vestigia sancimus.

D. III k. Nov.[vi]

[14] *Idem A. Demostheni pp.* Cum Papinianus summi ingenii vir in quaestionibus suis rite disposuit non solum iudicem de absolutione rei iudicare, sed ipsum actorem, si e contrario obnoxius fuerit inventus, condemnare, huiusmodi sententiam non solum roborandam, sed etiam augendam esse sancimus, ut liceat iudici vel contra actorem ferre sententiam et aliquid eum daturum vel facturum pronuntiare, nulla ei opponenda exceptione, quod non competens iudex agentis esse cognoscitur. cuius enim in agendo observavit arbitrium, eum habere et contra se iudicem in eodem negotio non dedignetur.

[vi] *<Recitata septimo miliario in novo consistorio palatii Iustiniani>* d. III k. Nov. *<Decio vc. cons.>* (Corcoran).

prejudice the question of ownership, nor do interim orders (*interlocutiones*) generally destroy a cause of action.

Written April 3, in the consulship of the Caesars (294).

[10] *The same Augusti and Caesars to Menodorus.* No one who lacks the power of rendering judgment can banish anyone from his native land.

[11] *The same Augusti and Caesars to Titianus.* When a judge merely directs in his final verdict that an oath shall be taken, but does not add what the consequences of either refusing the oath or taking it should be, it is clear that his verdict has no validity.

[12] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Julian, Proconsul of Africa.* Judges may give verdicts in the Latin as well as the Greek language.

Given January 9, at Milan, in the consulship of Caesarius and Atticus (397).

[13][134] *Emperor* JUSTINIAN *Augustus to Demosthenes, Praetorian Prefect.* No judge or judge arbitrator needs to follow answers to a consultation (*consultatio*) which he does not believe to be correct, much less the opinions of the most eminent Prefects or other high officials, nor even the judicial decisions of the most high Prefecture or of any other of the highest officials. For if a case has been improperly resolved, it should not be extended so as to vitiate other judges, since judgments should be made based on laws not examples. We ordain that all Our judges must follow the truth and the path of both law and justice.

Read at the seventh milestone in the New Consistory of Justinian's Palace. Given October 30, in the consulship of the vir clarissimus *Decius (529).*

[14][135] *The same Augustus to Demosthenes, Praetorian Prefect.* Since Papinian, a man of great genius, rightly held in his *Questions* that a judge may not only decide to absolve a defendant, but may also condemn the plaintiff if he should be found to be liable, We ordain that this opinion should not only be confirmed but also extended. Therefore let it be permitted for a judge to give judgment against the plaintiff and order him to give or do something, and there can be no objection that the judge was not competent to give judgment against the plaintiff. For if a person, while acting as plaintiff, respected this man's judgment, he may not deem him unworthy to serve as judge against himself in the same matter.[136]

[134] Possibly to combine with 14.

[135] Possibly to combine with 13.

[136] MS P reports the subscription: "Given November 17 in the consulship of Lampadius and (H) Orestes (530)." This cannot be reconciled with the known dates for Demosthenes' (second) Praetorian Prefecture, which ended after October 30, 529; see *PLRE* II Fl. Theodorus Petrus Demosthenes 4. The subscription is thus to be transferred to §16.

[15] [*Ὁ αὐτὸς βασιλεὺς Ἰουλιανῷ ἐπάρχῳ πραιτωρίων.*] Ἡ διάταξις κελεύει πολλῶν ὄντων ἐν τῇ δίκῃ κεφαλαίων δύνασθαι τὸν δικαστὴν ἐπὶ τισιν αὐτῶν ἐξαγαγεῖν ἀπόφασιν τελείαν καὶ τότε πάλιν ζητῆσαι περὶ τῶν ἄλλων καὶ πάλιν ἐξενεγκεῖν τὴν δοκοῦσαν αὐτῷ ἀπόφασιν καὶ μὴ ἀναγκάζεσθαι μίαν ἀπόφασιν περὶ πάντων ἅμα λέγειν τῶν κεφαλαίων.

[16] *Idem A. Iuliano pp.* Cum solitum est in sententiis iudicum sic interlocutionem proferri, ut non liceat partibus ante definitivam sententiam ad appellationis vel recusationis venire auxilium, quidam putabant non licere ante litem contestatam nec iudicem recusare, quemadmodum nec ab eo appellare. cum enim simul utrumque vocabulum ponitur tam appellationis quam recusationis, provocatio autem ante litem contestatam non potest porrigi, putabant, quod nec recusare quidem iudicem cuidam conceditur ante litem contestatam. quod minime vetitum est. caveant itaque iudices huiusmodi sermonem simul et sine certa distinctione proferre.

D. xv k. Dec. Lampadio et Oresta vv. cc. conss.

XXXXVI De Sententia, Quae sine Certa Quantitate Prolata Est

[1] *Impp. Severus et Antoninus AA. Aelianae.* Cum iudicem, quoad pecunia condemnationis soluta fuisset, pendendis usuris legem dixisse profitearis, non contra iuris formam sententiam datam palam est.

[2] *Imp. Alexander A. Marcellino.* Quamquam pecuniae quantitas sententia curatoris rei publicae non continetur, sententia tamen eius rata est, quoniam indemnitatem rei publicae praestari iussit.

[3] *Imp. Gordianus A. Aemilio.* Haec sententia: 'omnem debiti quantitatem cum usuris competentibus solve' iudicati actionem parere non potest, cum apud iudices ita demum sine certa quantitate facta condemnatio auctoritate rei iudicatae censeatur, si parte aliqua actorum certa sit quantitas comprehensa.

[15][137] [*The same Emperor to Julian, Praetorian Prefect.*] The constitution orders that if many points are involved in a suit, the judge may give a final decision on some of them and then proceed to investigate others and again give a decision on them, and he shall not be compelled to pronounce his decision on all the points at once.

[16] *The same Augustus to Julian, Praetorian Prefect.* As it has been customary in judicial sentences to frame an interim order (*interlocutio*) in such a way that the parties could not have recourse to an appeal or an objection to the judge (*recusatio*) before the final decision, some have thought that the parties could not object to the judge (*recusare*) before joinder of issue just as they could not appeal from him. For as both expressions, "appeal" and "objection to the judge," are used together, and as no appeal can be made before joinder of issue, they thought that the judge could not be objected to before joinder of issue. But that is not forbidden. Judges, therefore, must be careful not to use these expressions at the same time and without definite distinction.

Given November 17, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

Forty-Sixth Title A Verdict Rendered Without Naming a Definite Sum

[1] *Emperors Severus and Antoninus Augusti to Aeliana.* Since you state that the judge fixed the conditions for paying interest until the monetary amount of the judgment could be satisfied, it is clear that the verdict was not given contrary to the legal norm.

[2] *Emperor Alexander Augustus to Marcellinus.* Although no sum of money is mentioned in the verdict of the curator of the municipality, his verdict is nevertheless valid since he ordered indemnity to be furnished to the municipality.

[3] *Emperor Gordian Augustus to Aemilius.* The verdict: "Pay the whole sum of the debt with corresponding interest," cannot give rise to an action on the judgment (*actio iudicati*), since a condemnation made at the trial stage without fixing an amount is in fact considered an adjudicated matter (only) if a definite sum is named somewhere in the record (*acta*).

[137] Possibly to combine with C. 3.2.5, whence the inscription is restored; it also has the subscription: "Given June 24, at Chalcedon, in the consulship of Lampadius and Orestes (530)." Lounghis *et al.* accept this date. The preserved text is a Greek synopsis of the original constitution found at Basilika 9.1.81.

[4] *Idem A. Saturninae.* Haec sententia: 'quae bona fide accepisti, solve,' cum incertum esset quid accepisset quantumque ab eo peteretur, praesertim cum ipse qui extra ordinem iudicabat interlocutus sit dotem datam quae repeteretur non liquidam esse, iudicati auctoritate non nititur. cum igitur is qui postea iudicabat contra te certam sententiam protulit neque ab statutis provocaveris, ipsa tuo facto confirmasti iudicatum.

XXXXVII De Sententiis, Quae pro Eo Quod Interest Proferuntur

[1] *Imp. Iustinianus A. Johanni pp.* **pr.** Cum pro eo quod interest dubitationes antiquae in infinitum productae sunt, melius nobis visum est huiusmodi prolixitatem prout possibile est in angustum coartare. **1.** Sancimus itaque in omnibus casibus, qui certam habent quantitatem vel naturam, veluti in venditionibus et locationibus et omnibus contractibus, hoc quod interest dupli quantitatem minime excedere: in aliis autem casibus, qui incerti esse videntur, iudices, qui causas dirimendas suscipiunt, per suam subtilitatem requirere, ut, quod re vera inducitur damnum, hoc reddatur et non ex quibusdam machinationibus et immodicis perversionibus in circuitus inextricabiles redigatur, ne, dum in infinitum computatio reducitur, pro sua impossibilitate cadat, cum scimus esse naturae congruum eas tantummodo poenas exigi, quae cum competenti moderatione proferuntur vel a legibus certo fine conclusae statuuntur. **2.** Et hoc non solum in damno, sed etiam in lucro nostra amplectitur constitutio, quia et ex eo veteres quod interest statuerunt: et sit omnibus, secundum quod dictum est, finis antiquae prolixitatis huius constitutionis recitatio.

D. k. Sept. Constantinopoli post consulatum Lampadii et Orestae vv. cc.

XXXXVIII Si Non a Competenti Iudice Iudicatum Esse Dicatur

[1] *Imp. Alexander A. Sabiniano.* Iudex ad certam rem datus, si de aliis pronuntiavit, quam quod ad eam speciem pertinet, nihil egit.

III non. Ian. Maximo II et Aeliano conss.

[4] *The same Augustus to Saturnina.* The verdict: "Pay what you received in good faith," does not have the authority of an adjudication since it was uncertain what he had received and how much was claimed from him. This is especially true because the judge himself who tried the case, under the extraordinary procedure, stated in an interim order that the amount of the dowry which was claimed was not clear. Since, therefore, the judge who later gave judgment against you reported a definite amount and you did not appeal from his decision, you ratified the judgment by your own act.

Forty-Seventh Title Verdicts Given for Indemnification of One's Interest

[1] *Emperor* JUSTINIAN *Augustus to John, Praetorian Prefect.* **pr.** Since the ancient ambiguities as to indemnification of one's interest (*id quod interest*) are innumerable, We thought it best to confine such immoderation as narrowly as possible. **1.** Therefore, We ordain that in all cases which involve a definite sum or which are definite in their nature, like sales, leases and all contracts, no one's interest shall exceed double the amount stated. But in other cases, where the amount is uncertain, the judges who try the cases must deploy their attentiveness to detail in order that the actual damage might be recompensed and that it not be pulled into inextricable complications through certain machinations and immoderate perversions, lest the computation be extended endlessly and thus fail because of its own impossibility. Indeed, We know it to be consonant with the law of nature that only those penalties can be extracted which are doled out with appropriate moderation and regulated so as to be bounded by a definite end. **2.** This is applicable not only to damage proper but also to loss of profits, since the ancients also considered that in fixing the amount of indemnification. May the recitation of this constitution set an end to the ancient immoderation for all, according to what has been said.

Given September 1, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

Forty-Eighth Title When Judgment Is Said to Have Been Given by One Who Is Not the Appropriate Judge

[1] *Emperor* ALEXANDER *Augustus to Sabinianus.* If a judge appointed for a definite matter gives judgment on some other matter, he acted without effect.

January 3, in the consulship of Maximus, for the second time, and Aelianus (223).

[2] *Imp. Gordianus A. Liciniae.* Si militaris iudex super ea causa, de qua civilibus actionibus disceptandum fuit, non datus, a quo dari poterat, cognovit, etiam remota appellatione id quod ab eo statutum est firmitatem non habet iudicati.

[3] *Impp. Diocletianus et Maximianus AA. et CC. Philetae.* Si de proprietate datus iudex adversus te nihil super hac statuit, rector aditus provinciae causam hanc cognoscere suaque decidere sententia curabit, cum et si quid de possessione pronuntiatum probetur, hoc causae proprietatis minime noceat.

S. non. Nov. Heracleae CC. conss.

[4] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad Potitum vicarium.* Et in privatorum causis huiusmodi forma servetur, ne quemquam litigatorum sententia non a suo iudice dicta constringat.

D. x k. Oct. Romae Ausonio et Olybrio conss.

XXXXVIIII De Poena Iudicis, Qui Male Iudicavit, vel Eius, Qui Iudicem vel Adversarium Corrumpere Curavit

[1] *Imp. Antoninus A. ad Gaudium.* Constitit in quacumque causa sive privata sive publica sive fiscali, ut, cuicumque data fuerit pecunia, vel iudici vel adversario, amittat actionem is, qui diffidentia iustae sententiae in pecuniae corruptela spem negotii reposuerit.

D. XIIII k. Ian. duobus Aspris conss.

[2] *Imp. Constantinus A. ad Felicem praesidem Corsicae.* De eo, qui pretio depravatus aut gratia perperam iudicaverit, ei vindicta quem laeserit non solum existimationis dispendiis, sed etiam litis discrimine praebeatur.

D. VIII k. Nov. Sirmi Constantino A. V et Licinio C. conss.

[2] *Emperor* G*ORDIAN* *Augustus to Licinia.* If a military judge tries a case which should be tried in civil court without having been appointed by someone with the authority to appoint him, his decision does not have the force of a judgment and even the possibility of appeal is removed (as superfluous).

[3] *Emperors* D*IOCLETIAN and* M*AXIMIAN Augusti and the Caesars to Philetas.* If a judge appointed to try a question of ownership decided nothing against you on that point, the provincial governor (*rector*) will, when you go before him, try to decide that question himself, since even if a judgment is proven to have been rendered concerning possession, this in no way harms your case for ownership

Written November 5, at Heraclea, in the consulship of the Caesars (294).

[4][138] *Emperors* G*RATIAN,* V*ALENTINIAN, and* T*HEODOSIUS Augusti to Politus, Vicar.* This rule is observed in cases between private individuals as well, lest a verdict given by an inappropriate judge bind any of the litigants.

Given[139] *September 22, at Rome, in the consulship of Ausonius and Olybrius (379).*

Forty-Ninth Title Punishment of a Judge Who Adjudicated Corruptly or of Someone Who Caused a Judge or Opponent to be Corrupted

[1][140] *Emperor* A*NTONINUS Augustus to Gaudius.* It is well known that if any money should be given in any case, whether private, public, or Treasury-related, regardless of whether the money is given to a judge or an opponent, anyone who, from lack of confidence in a just decision, placed his hope in the corruption of money should lose his right of action.

Given December 19, in the consulship of the two Aspri (212).

[2][141] *Emperor* C*ONSTANTINE Augustus to Felix, Governor of Corsica.* A judge who gives a wrong decision distorted by bribery or favoritism shall be punished not only by the loss of his good name, but he will also be liable to the party whom he injured for the value of the suit.

Given October 25, at Sirmium, in the consulship of Constantine Augustus, for the fifth time, and Licinius Caesar (319).

[138] = C.Th. 4.16.2.

[139] Gothofredus emended to "posted" since no emperor is known to have been at Rome to have issued this constitution in September 379.

[140] See D. 3.6.1.3.

[141] = C.Th. 1.16.3; combine with C.Th. 2.6.2. C. epitomates C.Th. Seeck dates to October 24, 318.

L Sententiam Rescindi Non Posse

[1] *Imp. Gordianus A. Secundo.* Neque suam neque decessoris sui sententiam quemquam posse revocare in dubium non venit: nec necesse esse ab eiusmodi decreto interponere provocationem explorati iuris est.
PP. k. Mart.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Alexandrae.* **pr.** Peremptorias exceptiones omissas initio, antequam sententia feratur, opponi posse perpetuum edictum manifeste declarat. **1.** Quod si aliter actum fuerit, in integrum restitutio permittitur. nam iudicatum contra maiores annis viginti quinque non oppositae praescriptionis velamento citra remedium appellationis rescindi non potest.
VII k. Ian. Nicomediae CC. conss.

[3] *Imp. Constantinus A. ad Proculum.* Impetrata rescripta non placet admitti, si decisae semel causae fuerint iudiciali sententia, quam provocatio nulla suspendit: sed eos, qui tale rescriptum meruerint, etiam limine iudiciorum expelli.
D. VII k. Ian. Constantino A. V et Licinio conss.

LI De Fructibus et Litis Expensis

[1] *Impp. Diocletianus et Maximianus AA. et CC. Actae.* Hoc fructuum nomine continetur, quod iustis sumptibus deductis superest.
III non. April. CC. conss.

[2] *Impp. Valentinianus et Valens AA. Olybrio pu.* Litigator victus, qui post conventionem rei incubarit alienae, non in sola rei redhibitione teneatur nec tantum fructuum praestationem aut eorum quos ipse percepit agnoscat, sed eos, quos percipi oportuisse, non quos eum redegisse constabit, exsolvat ex eo, ex quo re in iudicium deducta scientiam malae

Fiftieth Title A Verdict May Not be Rescinded

[1] *Emperor* GORDIAN *Augustus to Secundus.* It is beyond doubt that no one (acting as a judge) may revoke his own decision or that of his predecessor in office. It is also settled law that it is unnecessary to appeal from a (substitute) decision of this sort.

Posted March 1.

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Alexandra.* **pr.** The Perpetual Edict clearly declares that when peremptory defenses are omitted in the beginning, they may be set up (at any time) before the decision is given.[142] **1.** But if that is not done, restoration of rights is permitted (to minors under 25 years). For without the remedy of appeal, a judgment against a man who is more than 25 years old cannot be rescinded under the pretense that such a defense was not set up.

December 26, at Nicomedia, in the consulship of the Caesars (294).

[3] *Emperor* CONSTANTINE *Augustus to Proculus.*[143] It is not permitted to admit rescripts obtained once cases have been disposed of through a judicial verdict that has not been suspended by an appeal. But those who have obtained such a rescript shall be expelled from the very threshold of the courts.

Given December 26, in the consulship of Constantine Augustus, for the fifth time, and Licinius (319).

Fifty-First Title Fruits and the Expenses of Litigation

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Acta.* The term "fruits" means: what remains after just expenses have been deducted.

April 3, in the consulship of the Caesars (294).

[2][144] *Emperors* VALENTINIAN *and* VALENS *Augusti to Olybrius, City Prefect.* A litigant who was defeated and who after summons remained in possession of another's property is bound to restore not only the property, nor just the fruits which he acknowledges he collected, but he must pay the fruits which he ought to have collected and not those which he is acknowledged to have received, beginning from the period when he came to know that he was in wrongful

[142] *Exceptiones peremptoriae* are defenses that can be interposed at any point in the trial and, if proved, render the plaintiff's claim void. Most common defenses are peremptory.

[143] = C.Th. 4.16.1, which reports "petitions (*preces*) and rescripts."

[144] = C.Th. 4.18.1, with considerable changes affecting the substance. Seeck dates to April 25, 369.

possessionis accepit. heredis quoque succedentis in vitium par habenda fortuna est.

D. VII k. Mart. Treviris Valentiniano np. et Victore conss.

[3] *Impp. Honorius et Theodosius AA. Asclepiodoto pp.* Terminato transactoque negotio posthac nulli actio neque ex rescripto super sumptuum repetitione praestetur, nisi iudex, qui de principali negotio sententiam promulgavit, cominus partibus constitutis iuridica pronuntiatione signaverit victori causae restitui debere expensas aut super his querellam iure competere. post absolutum enim dimissumque iudicium nefas est litem alteram consurgere ex litis primae materia.

D. III k. April. Constantinopoli Asclepiodoto et Mariniano conss.

[4] *Impp. Valentiniani et Marciani AA. edictum ad populum.* Non ignoret is, cuius ex interpellatione aliquis secundum datam formam in longinqua fuerit protractus examina, quod, si culpa sui fuerit dilata cognitio vel minime actioni suae adfuerit vel delata probaverit, pro calumnia quidem poenam luat legibus constitutam, pro vero pecuniaria causa post dispendia, post sumptus considerata quantitate postulatorum vel medii itineris intervallo condemnationem pro aestimatione iudicis sustinebit.

D. V id. Oct. Constantinopoli Valentiniano A. VII et Avieno conss.

[5] [*Αὐτοκράτωρ Ζήνων Α.*] **pr.** Ἡ διάταξις κελεύει, ὥστε πάντα δικαστὴν ἐν τῇ ἀποφάσει αὐτοῦ κελεύειν τὸν ἡττηθέντα διδόναι τὰ δαπανήματα πάντα τὰ ἐν τῷ δικαστηρίῳ γενόμενα. ἔχοντος ἐξουσίαν αὐτοῦ τοῦ δικαστοῦ καὶ ὑπερβαίνειν τὴν δαπάνην ἕως τῆς δεκάτης μοίρας τῶν δαπανηθέντων, ἐὰν αὐτὸν ἡ ἀναισχυντία τοῦ ἡττηθέντος μέρους πρὸς τοῦτο παρακινήσῃ, ὥστε τὸ ὑπὲρ τὰ δαπανήματα τῷ δημοσίῳ λόγῳ διαφέρειν, εἰ μή τι ἄρα ὁ δικαστὴς τὴν τριβὴν τοῦ νενικηκότος μέρους βουληθεὶς θεραπεῦσαι μέρος τί ποτε ἐκ τούτων αὐτῷ ἀφορίσει. **1.** Καταδικαζομένου μὴ μόνον τοῦ ἐνάγοντος καὶ τοῦ ἐναγομένου, ὅτε πρόσφορος ἑκατέρῳ ἐστὶν ὁ δικαστής, ἀλλὰ κἂν τοῦ ἐνάγοντος ἀπρόσφορός ἐστιν, ἡττηθῇ δὲ ἐξ ἀντεναγωγῆς, μὴ δυνάμενος ἐκεῖνον τὸν δικαστὴν παραιτήσασθαι, εἴτε ἄρχοντες εἴησαν δικασταὶ εἴτε θεῖοι διαιτηταί· ἔχουσι γὰρ καὶ οὗτοι ἐκβιβαστὰς καὶ

possession due to the lawsuit being brought. An heir who succeeds to a bad title is subject to the same fate.

Given February 23, at Trier, in the consulship of Valentinian, Most Noble Boy, and Victor (369).

[3][145] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Asclepiodotus, Praetorian Prefect.* Once a suit has been terminated and completed, no action shall lie to recover expenses even pursuant to an imperial rescript, unless the judge who rendered the verdict in the main suit has declared, by judicial pronouncement while the parties were still present, that the expenses should be repaid to the winner of the case or that a complaint to recover them has legal force. For it is wrong that after a judgment is resolved and dismissed, a second suit should arise out of the substance of the first.

Given March 30, at Constantinople, in the consulship of Asclepiodotus and Marinianus (423).

[4][146] *An Edict of Emperors* VALENTINIAN *and* MARCIAN *Augusti to the People.* Anyone at whose instigation another is dragged to a distant court pursuant to law should not forget that, if the case is protracted through his fault, or if he fails to be present or fails to prove his allegations, he must pay a penalty fixed by law for vexatious litigation (*calumnia*); he will, in a civil case, aside from costs and expenses incur a penalty fixed at the discretion of the judge taking into consideration the sum demanded by his adversary or the distance of the average journey.

Given October 11, at Constantinople, in the consulship of Valentinian Augustus, for the third time, and Avienus (450).

[5][147] [*The Emperor* ZENO *Augustus*... **pr.** The constitution orders that every judge shall in his verdict order the loser to pay all expenses of litigation. The judge has the authority to exceed the expenses up to one-tenth of the value of what was spent if the insolence of the losing party moves him to this, in such a way that the excess over the expenses shall accrue to the Treasury, unless the judge wishes to make good the losses of the winning party and sets aside some part of the sum for him. **1.** Not only may the plaintiff and defendant be condemned thus when the judge has authority to give judgment against either party, but also when he has no such power over the plaintiff, but the latter is defeated by a counter claim, since he cannot refuse that judge, whether the

[145] = C.Th. 4.18.2; combine with C. 7.62.31; C.Th. 11.31.9.

[146] = Nov. Marc. 1.1.7.

[147] Possibly to combine with C. 1.51.13 (dated June 26, 487), 2.7.18–19 (dated December 27, 487), 3.3.6, 3.10.1. The preserved text is a Greek synopsis of the original constitution found at Bas. 9.3.69.

ἐπείκτας. **2.** Εἰ δὲ μὴ τοῦτο ποιήσει ὁ δικαστής, αὐτὸς τὴν ζημίαν ταύτην ἀναγκάζεται θεραπεῦσαι τῷ νενικηκότι μέρει. **3.** Ἐὰν δέ τις ἐναγόμενος εὐγνωμόνως ἀποδώσει ἢ ἐνάγων ἀποστῇ τῆς δίκης ἢ καὶ ὁ δικαστὴς εὕρῃ αὐτὸν τῇ ἀληθείᾳ οὐχὶ συκοφάντην, ἀλλὰ ἐπὶ ἀμφιβόλῳ πράγματι δικαζόμενον, ὁ τοιοῦτος ἐκφεύγει τὴν τῶν δαπανημάτων καταδίκην. **4.** Δῆλον δέ, ὅτι ἐπὶ τῶν χαμαιδικαστῶν ὁ ἄρχων ἐστὶν ὁ ὀφείλων αὐτοῖς ἀφορίσαι ταξεώτην τὸν ταῦτα μεθοδεύοντα.

D. VII k. April. post consulatum Longini.

[6] *Imp. Anastasius A. Stephano magistro militum.* Cum quidam per leges sacrasque constitutiones, alii per speciales largitates sibi praestituta privilegia praetendunt tam super sportulis pro conventionibus usque ad certam quantitatem praebendis quam super expensis litium vel minuendis vel penitus non agnoscendis, per hanc legem decernimus, ut, quicumque huiusmodi privilegio munitus est vel postea talem praerogativam quolibet modo meruerit, sciat, et si quos ipse utpote obnoxius sibi pro quacumque criminali vel civili causa constitutos in accusationem deduxerit, hos nihilo minus isdem privilegiis potituros, quoniam non est ferendum eos, qui praefatas praerogativas, ut ante latum est, praetendunt, aliquid plus ab adversariis suis quaerere concedi, quam ipsi ab aliis pulsati facere patiantur: ita scilicet, ut haec forma modis omnibus observetur super privilegiis per liberalitates vel generaliter quibusdam officiis aut scholis seu dignitatibus vel specialiter certis personis praestitis vel postea praebendis, sive hoc ipsum expressim principalibus dispositionibus vel adfatibus insertum sive praetermissum sit vel fuerit.

LII De Re Iudicata

[1] *Imp. Antoninus A. Stellatori.* Rebus quidem iudicatis standum est. sed si probare poteris eum cui condemnatus es id quod furto amisisse videbatur recepisse, adversus iudicati agentem doli exceptione opposita tueri te poteris.

XII k. Mart. Antonino A. IIII et Balbino conss.

[2] *Idem A. Pacatiano.* Res iudicatae si sub praetextu computationis instaurentur, nullus erit litium finis.

PP. prid. non. ... Romae Laeto et Cereale conss.

judges are magistrates or imperial arbitrators: for these also have subordinates and court clerks (*apparitores exsecutoresque, ἐκβιβαστὰς καὶ ἐπείκτας*). **2.** If the judge fails to do so, he must himself make good the damage to the winning party. **3.** But if a defendant shows his good faith by paying, or if the plaintiff abandons the suit, or the judge truly finds that he is not a malicious litigant but that the case was over a contentious matter, he will escape condemnation to pay the costs. **4.** It is proper in the instance of petty judges for the magistrate to be the one who assigns a subordinate that can manage these affairs.

Given March 26, in the post-consulate of Longinus (487).

[6] *Emperor* ANASTASIUS *Augustus to Stephanus, Master of the Soldiers.* Some persons claim that, under laws and imperial constitutions or through special munificence, they have obtained privileges of having to pay only a certain amount as fees before a summons, and less than the usual amount of the expenses of suit or none at all. Therefore We decree by this law that, whoever has now obtained or hereafter obtains such privilege in any manner, should know that, if he himself sues anyone as liable to him in a criminal or civil case, the defendant shall have the same privileges. For it is not to be tolerated that those who, as stated before, claim the aforesaid prerogatives should be permitted to seek from their opponents anything more than they would pay if sued by others. And this rule shall be followed in every respect in connection with privileges already given or hereafter to be given by special munificence, or generally to any officials, departments (*scholis*), ranks, or to individuals by special grant, whether this is expressly stated in imperial orders or rescripts or it happens to have been omitted.[148]

Fifty-Second Title An Adjudicated Matter[149]

[1] *Emperor* ANTONINUS *Augustus to Stellator.* Once matters have been adjudicated, they must remain so. But if you can prove that the man who obtained judgment against you received back (from some other source) what he seemed to have lost by theft, you can protect yourself using the defense of fraud (*exceptio doli*) against him when he sues you on adjudicated matters.

February 18, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[2] *The same Augustus to Pacatianus.* If an adjudicated matter were reopened under the pretext of (an error in) computation, there could be no end to law-suits.

Posted on the day before the nones of ..., at Rome, in the consulship of Laetus and Cerealis (215).

[148] Lounghis *et al.* date to between 491 and 518.
[149] See D. 42.1.

[3] *Idem A. Demetrio.* Si pecuniam, quam mala ratione intercepisse vos apparuit, iussi sitis inferre cum poena et comperto praecepto praesidis non provocaveritis, universam quantitatem debetis inferre.

[4] *Imp. Gordianus A. Antonino.* Sub specie novorum instrumentorum postea repertorum res iudicatas restaurari exemplo grave est.
D. VII id. Mart.

[5] *Impp. Diocletianus et Maximianus AA. et CC. Valentino.* Ad solutionem dilationem petentem adquievisse sententiae manifeste probatur, sicut eum, qui quolibet modo sententiae adquieverit. nec enim instaurari finita rerum iudicatarum patitur auctoritas.
S. prid. id. Febr. Sirmi CC. conss.

[6] *Impp. Honorius et Theodosius AA. Iuliano proconsuli Africae.* Gesta, quae sunt translata in publica monumenta, habere volumus perpetuam firmitatem. neque enim morte cognitoris perire debet publica fides.
D. III k. Sept. Romae Constantio et Constante conss.

LIII De Exsecutione Rei Iudicatae

[1] *Impp. Severus et Antoninus AA. Iustino.* Nimis propere iudex pignora Marcellae capi ac distrahi iussit ante rem iudicatam. prius est ergo, ut servato ordine actionem adversus eam dirigas et causa cognita sententiam accipias.
PP. III k. Febr. Albino et Aemiliano conss.

[2] *Imp. Antoninus A. Maximo.* Si causam iudicati non novasti, rem iudicatam praeses provinciae etiam pignoribus captis ac distractis ad emolumentum perduci iubebit. quod si novata causa est, ex stipulatu tibi actio competit et iudice accepto secundum iuris formam experire.

[3] *The same Augustus to Demetrius.* If you were ordered to pay the money which you were shown to have embezzled by false accounting, together with a penalty, and you did not appeal when you learned of the governor's order, you must pay the full amount.

[4] *Emperor* Gordian *Augustus to Antoninus.* It sets an unseemly example to reopen an adjudicated matter on the pretense of the subsequent discovery of new documents.

Given March 9.

[5] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Valentinus.* A man who asks time for payment is clearly proven to have acquiesced in the verdict, just like one who acquiesces in a verdict in any other manner. And the law of adjudicated matters does not permit completed cases to be reopened.

Written February 12, at Sirmium, in the consulship of the Caesars (294).

[6][150] *Emperors* Honorius *and* Theodosius *Augusti to Julian, Proconsul of Africa.* We want transactions that are transferred into public records to have perpetual force. Public trust should not perish with the death of the trial judge.

Given August 30, at Rome, in the consulship of Constantius and Constans (414).

Fifty-Third Title Execution of a Judgment[151]

[1] *Emperors* Severus *and* Antoninus *Augusti to Justinus.* The (trial) judge was too hasty in ordering the pledges of Marcella to be seized and sold before the matter was adjudicated. You should, accordingly, first, by observing the regular order, commence an action (for execution) against her, and obtain judgment after the trial of the case.

Posted January 30, in the consulship of Albinus and Aemilianus (206).

[2] *Emperor* Antoninus *Augustus to Maximus.* If you did not seek novation of the judgment, the provincial governor will order the adjudicated matter to be satisfied by the seizure and sale of pledges. But if there was a novation of the case (through stipulation), you have an action on stipulation, and once a judge is appointed, you should try the case according to law.

[150] = C.Th. 16.5.55. C. epitomizes C.Th., which applied quite specifically to trials against Donatists.
[151] See D. 42.1.

[3] *Idem A. Agrippae.* Ordo rei gestae et mora solutionis, quae intercessit, constantius desiderat remedium. si itaque praesidem provinciae, qui rem iudicatam exsequi debet, adieris et adlegaveris res soli, quae pignori datae sunt, diu subhastatas ex compacto sive ambitione diversae partis emptorem non invenire, in possessionem earum te mittet, ut vel hoc remedio res tam diu tracta ad effectum perducatur.

D. XI k. Iul. Messala et Sabino conss.

[4] *Idem A. Marcello militi.* Stipendia retineri propterea, quod condemnatus es, non patietur praeses provinciae, cum rem iudicatam possit aliis rationibus exsequi.

PP. III non. Iun. Sabino II et Anullino conss.

[5] *Imp. Gordianus A. Amando.* Etiam nomen debitoris in causa iudicati capi posse ignotum non est.

PP. III id. Oct. Attico et Praetextato conss.

[6] *Imp. Philippus A. et Philippus C. Titiano.* Si, ut proponis, rerum iudicatarum executor datus partes sibi iudicis vindicavit et contra ea, quae pridem pro partibus tuis fuerunt statuta, aliquid pronuntiandum putavit, sententia ab eo dicta vim rei iudicatae obtinere nequaquam potest.

[7] *Impp. Diocletianus et Maximianus AA. Theodoro.* Si longis apertisque frustrationibus partis adversae restitutio remorata est, etiam servis rebus humanis exemptis a frustratore aestimatio eorum restituenda est. animalia quoque cum fetubus tibi intercessu praesidis repraesentabuntur.

[8] *Idem AA. et CC.* Exsecutorem eum solum esse manifestum sit, qui post sententiam, inter partes audita omni et discussa lite, prolatam iudicatae rei vigorem ad effectum videtur adducere.

Sine die et consule.

[3] *The same Augustus to Agrippa.* The order in which things were done and the delay in payment which intervened call for a more steadfast remedy. If, accordingly, you go before the provincial governor who ought to be executing the judgment and show that the land (*res soli*) that was given in pledge has long been up for auction but has not found a buyer, whether through an agreement or through the corrupt solicitation of the opposite party, he will put you in possession of it, so that a matter that has been dragged out for so long may be brought to a close through this remedy.

Given June 21, in the consulship of Messala and Sabinus (214).

[4] *The same Augustus to Marcellus, a soldier.* The provincial governor will not allow your salary (*stipendia*) to be distrained to satisfy a judgment against you, since he is able to compel the adjudicated matter to be satisfied by other methods.

Posted June 3, in the consulship of Sabinus, for the second time, and Anullinus (216).

[5] *Emperor* Gordian *Augustus to Amandus.* It is not unknown that a claim due from a debtor may be taken to satisfy a judgment.

Posted October 13, in the consulship of Atticus and Praetextatus (242).

[6] *Emperors* Philip *Augustus and Caesar* Philip *to Titianus.* If, as you state, the court officer (*exsecutor*) appointed to enforce the adjudicated matter arrogated to himself the office of judge and undertook to render a decision contrary to what was previously decided in your favor, the verdict which he pronounced cannot obtain the force of an adjudicated matter.

[7] *Emperors* Diocletian *and* Maximian *Augusti to Theodorus.* If restitution was delayed by the long and open evasion of your opponent, even if the slaves have died in the meantime, an estimate of their value must be restored by the evader. So, too, any animals along with their offspring are to be given back to you by the intercession of the governor.

[8][152] *The same Augusti and the Caesars.* Let it be clear that he alone is an enforcement officer (*exsecutor*) who, after a verdict and after the entire suit between the parties has been heard and discussed, brings the adjudicated matter into effect.

Without date or consul

[152] Possibly to combine with C. 3.3.2 and 3.11.1 (implying a date of March or July 18); 7.62.6, which add *dicunt* to the inscription.

[9] *Idem AA. et CC. Glyconi.* Eos, quos debitores tuos esse contendis, apud rectorem conveni provinciae, qui sive confessi debitum sive negantes et convicti fuerint condemnati nec intra statutum spatium solutioni satisfecerint, cum latae sententiae pignoribus etiam captis ac distractis secundum ea quae saepe constituta sunt meruerunt exsecutionem, iuris formam tibi custodiet.

S. non. Nov. CC. conss.

LIIII De Usuris Rei Iudicatae

[1] *Imp. Antoninus A. procuratoribus hereditatium.* Fiscus, qui bona secundum se dicta sententia persequitur, eas quoque rationes habiturus est, ut, qui post legitimum tempus placitis non obtemperavit, usuram centesimam temporis quod postea fluxerit solvat.

[2] *Imp. Iustinianus A. Menae pp.* Eos, qui condemnati solutionem pecuniarum, quas dependere iussi sunt, ultra quattuor menses a die condemnationis vel, si provocatio fuerit oblata, a die confirmationis sententiae connumerandos distulerint, centesimas usuras exigi praecipimus: nec priscis legibus, quae duas centesimas eis inferebant, nec nostra sanctione, quae dimidiam centesimae statuit, locum in eorum personam habentibus.

D. VII id. April. Constantinopoli Decio cons.

[3] *Idem A. Iohanni pp.* **pr.** Sancimus, ut si quis condemnatus fuerit, post datas a nobis quadrimenstres indutias centesimas quidem usuras secundum naturam iudicati eum compelli solvere, sed tantummodo sortis et non usurarum, quae ex pristino contractu in condemnationem deductae sunt. cum enim iam constituimus usurarum usuras penitus esse delendas, nullum casum relinquimus, ex quo huiusmodi machinatio possit induci. **1.** Si enim sine emendatione relinquatur, aliquid absurdum atque inelegans necesse est evenire, cum utiliter ex contractibus descendentes plerumque minores centesimae ex nostra lege factae sunt et necesse est minoribus usuris graviores supponi. si enim ex iudicati actione centesimae omnimodo currunt usurae, ex contractibus autem hoc raro contingit in capitulis lege nostra tantummodo exceptis, huiusmodi iniquitatem ipsa necessitas rerum introducebat.

[9] *The same Augusti and the Caesars to Glyco.* Sue the men who you contend are your debtors before the provincial governor. He will safeguard the substance of the law on your behalf, whether they confess the debt or, having denied it, are defeated and condemned but fail to make payment within the time fixed. Once verdicts were rendered and pledges seized and sold according to oft-repeated provisions, they deserved enforcement.

Written November 5, in the consulship of the Caesars (294).

Fifty-Fourth Title Interest on an Adjudicated Matter

[1] *Emperor* Antoninus *Augsustus to the Procurators of Inheritances.* The Treasury, which pursues property adjudicated to it, will also take into account that anyone who failed to comply with the order of the court must pay interest at 1 percent per month for the period that runs after the legal time fixed for such compliance.

[2] *Emperor* Justinian *Augustus to Menas, Praetorian Prefect.* We order those condemned to pay a money judgment to pay interest at a rate of 1 percent per month on the judgment beginning after four months from the day on which they were condemned or, if an appeal was made, four months beyond the date of confirmation of the verdict. Neither the old laws, which imposed interest at 2 percent per month, nor Our own sanction,[153] which established a 0.5 percent per month, are to apply to such persons.

Given April 7, at Constantinople, in the consulship of Decius (529).[154]

[3] *The same Augustus to John, Praetorian Prefect.* **pr.** We ordain that a judgment debtor must, after a period of four months' grace, pay interest at the rate of 1 percent per month, according to the nature of the matter adjudged, but only on the principal and not on interest, which, arising out of a prior contract, was included in the judgment. Since We have already established[155] that interest payments on interest are to be eliminated, We leave no chance for this sort of contrivance to be introduced. **1.** If left without correction, an absurd and inconsistent situation would necessarily arise. For inasmuch as interest on contracts is, under Our law,[156] generally less than 1 percent per month, it is necessary to replace a heavier interest with a lesser one. Indeed, if interest rates of 1 percent per month always result from an action on judgment, but arise only rarely from contracts, with the lone exception of chapters from Our law, this sort of inequality was perforce naturally introduced.

[153] C. 4.32.26.2.
[154] Lounghis *et al.* date to April 6, 529.
[155] C. 4.32.28.
[156] C. 4.32.26.2.

2. Et ideo pio remedio causam corrigentes sancimus sortis tantummodo usuras usque ad centesimam currentes ex iudicati actione profligari, non autem usurarum quantascumque usuras. si enim novatur iudicati actione prior contractus, necesse est usurarum quidem, quae anterioris contractus sunt, cursum post sententias inhiberi, alias autem usuras ex iudicati actione tantummodo sortis procedere, et non ideo, quod forsitan consummata est quantitas sortis et usurarum, totius summae usuras postea colligi, sed sortis tantummodo. 3. Et cum antiquitas pessimo exemplo reis quidem condemnatis laxamentum duorum mensum praestabat, fideiussores autem eorum eodem uti beneficio non concedebat, ut liceret victoribus relictis propter legem condemnatis personis a fideiussoribus eorum vel mandatoribus statim pecunias vel res in condemnatione positas exigere, huiusmodi acerbitatem resecantes sancimus quadrimenstres indutias, quas dedimus condemnatis, etiam ad fideiussores eorum et mandatores extendi, ne legi fiat derogatum. cum enim interventor solvere compellatur et ipse reum coerceat ad invitam solutionem, nullum condemnatus habebat nostrae sensum humanitatis, quia per medium fideiussorem statim pecunias persolvere compellebatur.

D. v k. Dec. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

LV Si Plures Una Sententia Condemnati Sunt

[1] *Imp. Alexander A. Victori.* Si non singuli in solidum, sed generaliter tu et collega tuus una et certa quantitate condemnati estis nec additum, ut, quod ab altero servari non possit, alter suppleret, effectus sententiae virilibus portionibus discretus est. ideoque parens pro tua portione sententiae ob cessationem alterius ex causa iudicati conveniri non potes.

PP. k. Iul. Alexandro A. III et Dione conss.

[2] *Imp. Gordianus A. Anniano.* Quotiens a tutoribus singulis procuratoribus datis insequitur in omnium persona condemnatio, periculum sententiae videri esse divisum. ideoque quod ab uno servari non potuerit, a ceteris exigi non posse explorati iuris est.

PP. XV k. April. Attico et Praetextato conss.

2. Correcting the matter, therefore, by this pious remedy, We ordain that interest on the principal shall be demanded only up to 1 percent per month under an action on judgment, but no interest whatever on interest. For if a novation of the prior contract occurs through the action on judgment, the accrual of interest on the previous contract must necessarily cease after the verdict, but any other interest arising from the action on judgment must necessarily arise from the principal only. Therefore, because the amount of the principal and of the interest may have been added together, interest on the entire sum must not then be collected, but only interest on the principal. 3. And since antiquity set a bad example by giving convicted defendants two months' grace without permitting their sureties to enjoy the same benefit, plaintiffs who won their suit could ignore the principal defendant, who had been convicted at law, and immediately demand the money or property mentioned in the judgment from their sureties or mandators (*mandatores*). Correcting such harshness, We ordain that the four-month grace We have given to defendants condemned in judgment shall be extended to their sureties and mandators lest anything be detracted from the law. Since the surety-guarantor (*intentor*) is compelled to pay and he in turn coerces the principal defendant to involuntary payment, the condemned defendant did not use to receive the benefit of Our kindness, because through the surety or guarantor he was compelled to pay immediately.

Given November 27, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

Fifty-Fifth Title If Several Persons are Condemned by One Verdict

[1] *Emperor* ALEXANDER *Augustus to Victor.* If you and your associate together were, in general terms, condemned to pay a single and certain sum of money, and each was not condemned to pay the whole, and it was not added that the amount not collected from one should be paid by the other, each will be compelled to pay only his portion of the judgment. If, accordingly, you complied with the verdict as to your portion, you cannot be sued on the judgment on account of the default of the other party.

Posted July 1, in the consulship of Alexander Augustus, for the third time, and Dio (229).

[2] *Emperor* GORDIAN *Augustus to Annianus.* Whenever a group of procurators severally appointed by *tutores* is condemned on a person-by-person basis, the risk of the verdict is divided. Accordingly, it is settled law that the amount that cannot be collected from one cannot be extracted from the others.

Posted March 18, in the consulship of Atticus and Praetextatus (242).

LVI Quibus Res Iudicata Non Nocet

[1] *Imp. Alexander A. Masculino.* Si neque mandasti fratri tuo defensionem rei tuae neque quod gestum est ratum habuisti, praescriptio rei iudicatae tibi non oberit. et ideo non prohiberis causam tuam agere sine praeiudicio rerum iudicatarum.
PP. non. Mai. Alexandro A. cons.

[2] *Imp. Gordianus A. Athenio.* Res inter alios iudicatae neque emolumentum adferre his, qui iudicio non interfuerunt, neque praeiudicium solent inrogare. ideoque nepti tuae praeiudicare non potest, quod adversus coheredem eius iudicatum est, si nihil adversus ipsam statutum est.
PP. v id. Iul. Gordiano A. et Aviola conss.

[3] *Impp. Diocletianus et Maximianus AA. Honorato.* Iuris manifestissimi est et in accusationibus his, qui congressi iudicio non sunt, officere non posse, si quid forte praeiudicii videatur oblatum.
PP. xiiii k. Sept. Basso et Quintiano conss.

[4] *Idem AA. et CC. Soteriano.* Nec in simili negotio res inter alios actas absenti praeiudicare saepe constitutum est.
S. iii k. Dec. CC. conss.

LVII Comminationes Epistulas Programmata Subscriptiones Auctoritatem Rei Iudicatae Non Habere

[1] *Imp. Antoninus A. Rogatiano.* Nec vim stipulationis obtinere potest comminatio iudicis, qui certas usuras praestaturos eos dixit, qui intra certum diem debitum non exsolvissent.
PP. prid. id. Ian. Antonino A. iiii et Balbino conss.

[2] *Imp. Alexander A. Maximiano.* Rei iudicatae effectum non habet, quod per epistulam rector provinciae solvere vos pecuniam rei publicae iussit.

Fifty-Sixth Title Those Not Harmed by an Adjudicated Matter

[1] *Emperor* Alexander *Augustus to Masculinus.* If you gave no mandate to your brother to defend your property and did not ratify what was done, a defense that the matter has been adjudicated does not stand in your way. Accordingly, you are permitted to prosecute your cause without prejudice from the claim that the matter was adjudicated.

Posted May 7, in the consulship of Alexander Augustus (222).

[2] *Emperor* Gordian *Augustus to Athenius.* The fact that matters were adjudicated between others gives no benefit to parties not involved in the case, nor can it ordinarily harm their case. Accordingly, it cannot prejudice your granddaughter that a judgment was rendered against her co-heir if there was no decision against herself.

Posted July 11, in the consulship of Gordian Augustus and Aviola (239).

[3][157] *Emperors* Diocletian *and* Maximian *Augusti to Honoratus.* The law is very clear that even in criminal actions, nothing can injure parties who are not in court, even though something is brought forth that seems prejudicial to them.

Posted August 19, in the consulship of Bassus and Quintianus (289).

[4] *The same Augusti and the Caesars to Soterianus.* It has often been established that litigation among third parties cannot prejudice an absent person even in a similar affair.

Written November 29, in the consulship of the Caesars (294).

Fifty-Seventh Title Warnings, Letters, Proclamations, and Signed Responses Do Not Have the Force of an Adjudicated Matter

[1] *Emperor* Antoninus *Augustus to Rogatianus.* A judge's warning (*comminatio*) that those who fail to pay a debt within a certain date should pay a certain interest does not have the force of a stipulation.

Posted January 12, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[2] *Emperor* Alexander *Augustus to Maximianus.* A letter of the provincial governor ordering you to pay money to a municipality does not have the force of an adjudicated matter.

[157] Combine with C. 9.2.9.

PP. IIII id. Mart. Maximo II et Aeliano conss.

[3] *Idem A. Zotico.* Ea, quae causa cognita statuuntur, subscriptionibus revocari non posse saepe rescriptum est.

PP. VI id. Sept. Albino et Maximo conss.

[4] *Imp. Gordianus A. Asclepiadi.* Interlocutio praesidis apud acta signata: 'nisi solutioni debiti is qui convenitur obsequium praestitisset, duplum seu quadruplum inferat' voluntas potius comminantis quam sententia iudicantis est, cum placitum eiusmodi ne rei iudicatae auctoritatem obtineat, iuris ratio declaret.

PP. III id. Dec. Gordiano A. et Aviola conss.

[5] *Idem A. Iucundo.* Iudex, qui disceptationi locum dederat, partium adlegationes audire et examinare debuit. nam subscriptionem ad libellum datam talem, quae diversam partem in possessionem fundi mitteret, vicem rei iudicatae non obtinere non ambigitur.

PP. XII k. Febr. Gordiano A. II et Pompeiano conss.

[6] *Imp. Philippus A. et Philippus C. Cassiano.* Programma, si quod a praeside propositum est, vim rei iudicatae nequaquam potest obtinere. nec comminationem vim rei iudicatae continere manifestum est.

PP. X k. April. ... conss.

[7] *Imp. Constantinus A. ad Bassum pp.* Quod magno conflictu sententia decerni solet, id paucis litteris temere adscriptis definiri fas non est.

D. XV k. April. Constantino A. VI et Constantino C. conss.

Posted March 12, in the consulship of Maximus, for the second time, and Aelianus (223).

[3] *The same Augustus to Zoticus.* It has often been stated by rescript that decisions made after a hearing cannot be reopened because of signed responses (*subscriptiones*).

Posted September 8, in the consulship of Albinus and Maximus (223).

[4] *Emperor* Gordian *Augustus to Asclepiades.* An interim order (*interlocutio*) of the governor from the signed records (*acta signata*), "unless the party that is being sued has obeyed the order to pay the debt, he must pay twofold or fourfold," is more the expression of a wish by someone giving a warning than the verdict of someone offering a judgment. Indeed, the law declares that an order of that sort does not have the force of an adjudicated matter.

Posted December 11, in the consulship of Gordian Augustus and Aviola (239).

[5] *The same Augustus to Jucundus.* The judge, who had provided the forum for a legal dispute, should have heard and examined the allegations of the parties. For there is no doubt that a notation made on a petition designed to put the opposing party in possession of a farm does not obtain the force of an adjudicated matter.

Posted January 21, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

[6] *Emperor* Philip *Augustus and Caesar* Philip *to Cassianus.* A petition (*programma*), if such was posted by the governor, is in no way able to obtain the force of an adjudicated matter. Nor, it is clear, does a warning have the force of an adjudicated matter.

Posted March 23, in the consulship of ...[158]

[7] *Emperor* Constantine *Augustus to Bassus, Praetorian Prefect.* It is not right that a decision in a great conflict, usually rendered through a verdict, be issued with a bit of hastily added writing.[159]

Given March 18, in the consulship of Constantine Augustus, for the sixth time, and Constantine Caesar (320).

158 The names of the Consuls have fallen out. Krüger suggests emending to "in the consulship of Praesens and Albinus" (246) based on MS V, which appears to read: "apr. ... a ... et dione conss."

159 Blume: "Reference is not made to the shortness of a decision, but to the manner in which the words thereof are written. The decision, in other words, should not be by signs or a few abbreviated words." Junius Bassus was Praetorian Prefect (*pp*) 318–321. Following an alternate manuscript tradition, Seeck dated this constitution to March 18, 318, when Septimius Bassus was City Prefect (*pu*) in Rome.

LVIII Si ex Falsis Instrumentis vel Testimoniis Iudicatum Erit

[1] *Impp. Severus et Antoninus AA. Vipsaniae.* Si tabulas testamenti, quas secutus proconsul vir clarissimus sententiam dixit, falsas dicere vis, praebebit notionem suam non obstante praescriptione rei iudicatae, quia nondum de falso quaesitum est.

PP. v ... conss.

[2] *Imp. Alexander A. Optato.* Et qui non provocaverunt, si instrumentis falsis se victos esse probare possunt, cum de crimine docuerint, ex integro de causa audiuntur.

PP. xvi k. Oct. Iuliano et Crispino conss.

[3] *Idem A. Clementi.* Falsam quidem testationem, qua diversa pars in iudicio adversus te usa est, ut proponis, solito more arguere non prohiberis. sed causa iudicati in irritum non devocatur, nisi si probare poteris eum qui iudicaverat secutum eius instrumenti fidem, quod falsum esse constiterit, adversus te pronuntiasse.

PP. vii k. Sept.

[4] *Imp. Gordianus A. Herennio.* Iudicati exsecutio solet suspendi et soluti dari repetitio, si falsis instrumentis circumventam esse religionem iudicantis crimine postea falsi illato manifestis probationibus fuerit ostensum.

PP. v id. Sept.

LVIIII De Confessis

[1] *Imp. Antoninus A. Iuliano.* Confessos in iure pro iudicatis haberi placet. quare sine causa desideras recedi a confessione tua, cum et solvere cogeris.

Accepta prid. k. Oct. Gentiano et Basso conss.

Fifty-Eighth Title If a Decision was Given as a Result of False Documents or Testimony

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Vipsania.* If you want to raise the claim that the testament which the Proconsul, a *vir clarissimus*, followed in rendering his decision is in fact forged, he will give you a hearing without reference to any defense that the matter has been adjudicated, for the question of forgery has not yet been tried.

Posted on the 5th ..., in the consulship of ...

[2] *Emperor* ALEXANDER *Augustus to Optatus.* Even if they never made an appeal, their case will be heard again from the beginning if they are able to prove that they were defeated by forged documents, for they will have made demonstration of a crime.

Posted September 16, in the consulship of Julian and Crispinus (224).

[3] *The same Augustus to Clemens.* You are not forbidden to argue, in the usual manner, that, as you allege, the evidence which your opponent used against you in the trial was false. But the judgment does not become void unless you can prove that the person who gave judgment had decided against you while relying on the validity of the document that is shown to be forged.

Posted August 26.

[4] *Emperor* GORDIAN *Augustus to Herennius.* Execution of the judgment is usually suspended, and a right granted to recover money already paid, if it should be shown by clear proofs that the scrupulousness of the judge was misled by forged documents, and a charge of forgery is later brought.

Posted September 9.

Fifty-Ninth Title Those who Confess[160]

[1] *Emperor* ANTONINUS *Augustus to Julian.* It is agreed that those who confess their liability in court are considered the same as adjudged debtors. Hence it is pointless for you to ask to rescind your confession, since even so you will be compelled to pay.

Received September 30, in the consulship of Gentianus and Bassus (211).

[160] See D. 42.2.

LX Inter Alios Acta vel Iudicata Aliis Non Nocere

[1] *Impp. Diocletianus et Maximianus AA. et CC. Epagatho.* Inter alios res gestas aliis non posse facere praeiudicium saepe constitutum est. unde licet quosdam de heredibus eius, quem debitorem tuum fuisse significas, solvisse commemores, tamen ceteri non alias ad solutionem urguentur, nisi debitum fuerit probatum.
v k. April. Byzantio AA. conss.

[2] *Idem AA. et CC. Severae.* Inter alios factam transactionem absenti non posse facere praeiudicium notissimi iuris est. quapropter adito praeside provinciae aviam tuam mancipium tibi donasse proba ac, si hoc iure ad te pertinere perspexerit, restitui tibi providebit. neque enim, si te absente divisionem eius fecerint, aliquid iuri tuo derogari poterit.
S. id. April. Byzantio AA. conss.

[3] *Idem AA. et CC. Fortunatae.* Si cum fratre tuo matri successisti, frater pro portione tua cum debitoribus hereditariis paciscendo vel agendo, non ex tua voluntate, pro hereditaria parte tibi quaesitam obligationem extinguere non potuit.
v id. Oct. Retiariae CC. conss.

LXI De Relationibus

[1] *Imp. Constantinus A. Profuturo praefecto annonae.* **pr.** Si quis iudicum duxerit esse referendum, nihil inter partes pronuntiet, sed magis super quo haesitandum putaverit, nostram consulat scientiam aut, si tulerit sententiam, minime postea, ne a se provocetur, relatione promissa terreat litigantes, sciens, quod, si hoc fecerit, nihilo minus iure appellationum res agitabitur. **1.** Sed nec ad nos mittatur aliquid, quod plena instructionem indigeat. **2.** Quotiens autem ad nostram scientiam

Sixtieth Title Transactions and Adjudications between Third Parties Do Not Harm Anyone Else

[1] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Epagathus.* It has often been established that transactions between third parties cannot injure others. Hence, although you say that some of the heirs of the decedent, who you state to have been your debtor, have paid (the decedent's alleged debt), the others will not be forced to pay unless the debt is proven.

March 28, at Byzantium, in the consulship of the Augusti (293).[161]

[2] *The same Augusti and Caesars to Severa.* It is well known law that a settlement (*transactio*) made between third parties cannot prejudice an absent party. Go, therefore, before the provincial governor and prove that your grandmother gave you the slave, and if he finds that such slave legally belongs to you, he will see to it that he is restored to you. For even if, in your absence, they made an agreement dividing the interest in the slave among themselves, that could not detract from your rights.

Written April 13, at Byzantium, in the consulship of the Augusti (293).

[3] *The same Augusti and Caesars to Fortunata.* If you and your brother succeeded your mother as heirs, your brother could not without your consent deprive you of your proportionate right in an obligation due to the decedent by making an agreement with or bringing suit against the debtors to the estate.

October 11, at Retiaria, in the consulship of the Caesars (294).[162]

Sixty-First Title Legal Referrals (to the Emperor)[163]

[1][164] *Emperor* Constantine *Augustus to Profuturus, Prefect of the Food Supply.* **pr.** If any judge believes that a matter ought to be referred to the Emperor, he must render no decision between the parties, but should consult Our wisdom as to the point that he believes to be questionable. Or, if he has given a decision, he must not afterwards deter litigants from making an appeal by promising to refer the matter to us,[165] knowing that, even if he does so, the matter will nevertheless be handled according to the right of appeal. **1.** Nothing must be sent to Us which lacks a complete case report. **2.** Whenever the judge promises to refer a matter to us, he must order that a copy of the consultation

[161] Mommsen dates to April 9, 293.

[162] Mommsen dates to October 10, 294.

[163] See D. 49.1. A *relatio* or *consultatio* is the referral of a legal question by a lower-level judge to a higher one or to the Emperor.

[164] = C.Th. 11.29.2, C.Th. 11.30.1. §1 = C.Th. 2.18.1 (ending).

[165] C.Th. 11.29.2 breaks off here. The Justinianic compilers added down to "complete case report" beyond which C. follows C.Th. 11.30.1, in epitomated form.

iudex se polliceatur relaturum, consultationis exemplum litigatoribus ilico edi apud acta iubeat, ut, si cui forte relatio minus plena vel contraria videatur, is refutatorias preces similiter apud acta sine aliqua frustratoria dilatione offerat.

D. IIII id. Febr. Sirmio Constantino A. V et Licinio C. conss.

[2] *Impp. Valentinianus et Valens AA. ad Viventium pp.* Super delictis provincialium numquam rectores provinciarum ad scientiam principum putent esse referendum, nisi ediderint prius consultationis exemplum. quippe tunc demum relationibus plena maturitas est, cum vel adlegationibus refelluntur vel probantur adsensu.

D. III k. Ian. Treviris Valentiniano et Valente AA. conss.

[3] *Idem AA. ad Apodemium.* Si quando ratio aut necessitas est in negotiis nostra iudicia requirendi expectandique responsa, omnem omnino causam relationis series comprehendat, ut recitata consultatione, quae ita est dirigenda, propemodum actorum recensione non opus sit: actis etiam necessario sociandis.

D. VI id. Mai. Treviris Valentiniano np. et Victore conss.

LXII De Appellationibus et Consultationibus

[1] *Sententia divi Severi data in persona Marci Prisci idibus Ian. Pompeiano et Avito conss. Severus A. dixit:* Prius de possessione pronuntiare et ita crimen violentiae excutere praeses provinciae debuit. quod cum non fecerit, iuste provocatum est.

[2] *Imp. Alexander A. Plariano.* Novum quod postulas non est, quod, etsi rescripti mei auctoritas intercesserit, provocandi tamen facultas tibi non denegetur.

[3] *Imp. Gordianus A. Victori.* Appellatione interposita, licet ab iudice repudiata sit, in praeiudicium deliberationis nihil fieri debere et in eo

(*consultatio*) be immediately furnished of record to the litigants, so that if the report appears to anyone not to be complete or to be wrong, that person may, without evasive delay, offer refutatory statements of record.[166]

Given February 10, at Sirmium, in the consulship of Constantine Augustus, for the fifth time, and Licinius Caesar (319).

[2][167] *Emperors VALENTINIAN and VALENS Augusti to Viventius, Praetorian Prefect.* Provincial governors should never think that they can refer cases involving the delicts of provincials to the wisdom of the Emperors unless they first issue a copy of the consultation. For referrals (*relationes*) are only made complete when they are either refuted by allegations or proven by consent.

Given December 30, at Trier, in the consulship of Valentinian and Valens Augusti (368).

[3][168] *The same Augusti to Apodemius.* If it should appear reasonable or necessary in suits that Our advice be sought and Our response awaited, the report of reference must include the entire dossier of the case, so that, after reading the consultation, which needs to be sent thus, a reexamination of the records is almost unnecessary. It is also necessary to attach the records.

Given May 10, at Trier, in the consulship of Valentinian, Most Noble Boy, and Victor (369).

Sixty-Second Title Appeals and Consultations[169]

[1] *Verdict of the deified SEVERUS, given through Marcus Priscus, January 13, in the consulship of Pompeianus and Avitus. Severus Augustus said:* The provincial governor ought to have pronounced on the question of possession first, and thus to have disposed of the charge of violence (against a possessor). Because he failed to do so, it was right to appeal.

(209).

[2] *Emperor ALEXANDER Augustus to Plarianus.* What you demand is nothing strange, for even if the authority of my rescript was interposed, nevertheless you are not denied the opportunity to appeal.

[3] *Emperor GORDIAN Augustus to Victor.* Quite often it has been established that, when an appeal is demanded, although the judge may refuse it, nothing

[166] Blume: "According to C.Th. 11.30.1, the copy of the inquiry was to be given and placed of record within ten days; anyone dissatisfied might furnish for the record refutatory statements within five days thereafter." Seeck dates this constitution to February 7, 318.

[167] = C.Th. 11.29.3. Seeck dates to December 30, 368 or 370.

[168] = C.Th. 11.29.4, including also Gratian among the authors.

[169] See D. 49.1.

statu omnia esse, quo tempore pronuntiationis fuerint, saepissime constitutum est.

PP. IIII …

[4] *Imp. Philippus A. et Philippus C. Probo.* Si ad scribatum nominatus non provocasti, convelli statuta non possunt.

[5] *Impp. Diocletianus et Maximianus AA. Valerio.* Praeses provinciae, ad quem appellasti, si non vitio neglegentiae vestrae tempus, quod ad reddendos apostolos praescriptum est, exemptum esse animadverterit, sed ex fatalis casus necessitate, diem functo eo qui eos perferebat, id accidisse cognoverit, iuxta perpetui iuris formam desiderio vestro medebitur.

[6] *Idem AA. et CC. dicunt:* **pr.** Eos, qui de appellationibus cognoscent ac iudicabunt, ita iudicium suum praebere conveniet, ut intellegant, quod, cum appellatio post decisam per sententiam litem interposita fuerit, non ex occasione aliqua remittere negotium ad iudicem suum fas sit, sed omnem causam propria sententia determinare conveniat, cum salubritas legis constitutae ad id spectare videatur, ut post sententiam ab eo qui de appellatione cognoscit recursus fieri non possit ad iudicem, a quo fuerit provocatum. quapropter remittendi litigatores ad provincias remotam occasionem atque exclusam penitus intellegant, cum super omni causa interpositam provocationem vel iniustam tantum liceat pronuntiare vel iustam.

1. Si quid autem in agendo negotio minus se adlegasse litigator crediderit, quod in iudicio acto fuerit omissum, apud eum qui de appellatione cognoscit persequatur, cum votum gerentibus nobis aliud nihil in iudiciis quam iustitiam locum habere debere necessaria res forte transmissa non excludenda videatur. **2.** Si quis autem post interpositam appellationem necessarias sibi putaverit poscendas esse personas, quo apud iudicem qui super appellatione cognoscet veritatem possit ostendere, quam existimabit occultam, hocque iudex fieri prospexerit, sumptus isdem ad faciendi itineris expeditionem praebere debebit, cum id iustitia ipsa persuadeat ab eo haec recognosci, qui evocandi personas sua interesse crediderit.

3. Super his vero, qui in capitalibus causis constituti appellaverint (quos tamen et ipsos vel qui pro his provocabunt non nisi audita omni causa atque discussa post sententiam dictam appellare conveniet), id observandum esse sancimus, ut inopia idonei fideiussoris retentis in

must be done to prejudice the deliberation, and everything must remain in the situation in which it was at the time of the decision.

Posted on the 4th.[170]

[4] *Emperor* PHILIP *Augustus and Caesar* PHILIP *to Probus.* If you were appointed to the post of secretary (*ad scribatum*) and you did not appeal, the appointment cannot be annulled.[171]

[5] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Valerius.* If the provincial governor to whom you appealed noted that the time fixed for filing the report on appeal (*apostoli*) expired not through any fault of your negligence, but he learned that this occurred because of the accidental fact that the man who was carrying it had died, he will grant your request in accordance with the usual rule.

[6][172] *The same Augusti and the Caesars say:* **pr.** Those who will hear and decide appeals ought to formulate their own judgment in such a way as to reflect their understanding that, when an appeal is interposed after a suit has been decided through a verdict, the matter may under no circumstances be sent back to its original judge, but it is proper that they decide the whole case with their own verdict. For the benefit of established law seems to require that, after a verdict from the appellate judge, there can be no recourse to the judge from whom the case was appealed. Because of this, litigants should know that any occasion for sending it back to the provinces is removed and entirely excluded, since in every case it should be permissible only to decide whether the appeal that was interposed is unjust or just.

1. If a litigant thinks that he omitted an allegation in the process of trial, whatever he omitted in the previous trial must be investigated before the judge who hears the appeal. For We wish nothing else than that justice find its place in courtrooms and thus think that a related matter which might have been reported should not be excluded. **2.** But if someone thinks after making an appeal that essential witnesses should be produced on his behalf in order that he could demonstrate to the appellate judge a truth that he thinks has been hidden, and the judge thinks this advisable, he should pay the traveling expenses, since justice requires that they be paid by the party who thinks that summoning such persons will be in his interest.

3. As to those who appeal in capital cases – which may not be done by themselves or others for them until the whole case has been heard and tried and a verdict rendered – We ordain the following: appellants are detained in custody in the absence of a proper surety (*idoneus fideiussor*); judges shall issue to the

[170] Subscript partially preserved as *PP.* XII *K.* in *Fragmenta Londiniensia Anteiustiniana* (*FLA*), see Corcoran and Salway.

[171] Consular date restored from *FLA* to 245.

[172] Possibly combine with C. 3.3.2, 3.11.1, 7.53.8.

custodia reis opiniones suas iudices exemplo appellatoribus edito ac refutatorios eorum ad scrinia quorum interest transmittant, quibus gestarum rerum fides manifesta relatione pandatur, ut meritis eorum consideratis pro fortuna singulorum sententia proferatur. **4.** Ne temere autem ac passim provocandi omnibus facultas praeberetur, arbitramur eum, qui malam litem fuerit persecutus, mediocriter poenam a competenti iudice sustinere. **5.** Sin autem in iudicio propriam causam quis fuerit persecutus atque superatus voluerit provocare, eodem die vel altero libellos appellatorios offerre debebit. is vero, qui negotium tuetur alienum, supra dicta condicione etiam tertio die provocabit.

6. Apostolos post interpositam provocationem etiam non petente appellatore sine aliqua dilatione iudicem dare oportet, cautione videlicet de exercenda provocatione in posterum minime praebenda.

Sine die et consule.

[7] *Idem AA. et CC. Neoni.* Qui ad civilia munera vel decurionatum vel honores devocantur, licet vacationem a principibus acceperint, si appellationis auxilio non utantur, consensu suo nominationem confirmant. cum igitur ad munus vocatus appellaveris a praeside provinciae, iuste te appellasse ostende.

[8] *Idem AA. et CC. Oppiano.* Si contra maiorem quinque et viginti annis sententia lata provocationis secutae tempore praefinito causas non esse repraesentatas nec appellatione pendente transactione finitum negotium rector animadverterit, res iudicatas exsequi curabit.

[9] *Idem AA. et CC. have Heraclida carissime nobis.* Dominus litis causam appellationis, quam procurator suus litigando interposuit, etiam absente procuratore exsequi potest.

[10] *Idem AA. et CC. Titiano.* **pr.** Si actor a curatore ordinatus deteriorem calculum reportaverit, tam ipse quam curator ad provocationis auxilium possunt pervenire, curator vero solus provocationis litem exercebit. **1.** Sin autem interim adulescens veniam aetatis impetraverit vel ad legitimam aetatem pervenerit, potest suo nomine appellationem exercere.

S. prid. k. Oct. Viminacii CC. conss.

appellants a copy of their decisions and send these and any refutatory statements to the relevant bureau. Through these an accurate representation of the matters transacted should be laid out in a clear report so that, after considering their merits, a verdict may be rendered according to the circumstances of each individual. 4. In order that appeals may not be made inconsiderately and indiscriminately, We judge that anyone who pursues an appeal without merit shall suffer a moderate penalty at the hands of the appropriate judge. 5. But if someone prosecutes his own case in court and loses, and he wishes to appeal, he should offer his petition for appeal on the same day or the day following. But whoever oversees another's affair shall appeal by the third day also following the condition stated above.

6. After an appeal is made, the judge must offer reports on appeal (*apostoli*) even if the appellant does not ask for them and without any delay, and no bond shall hereafter be required to lodge the appeal.

Without date or consul.[173]

[7] *The same Augusti and Caesars to Neo.* Persons appointed to public services (*civilia munera*) or the decurionate or magistracies (*honores*), if they do not make use of an appeal, ratify the appointment by acquiescence even though they have been granted exemption by the Emperors. Therefore, since you were called to a public service by the provincial governor but appealed, show that your appeal is just.

[8] *The same Augusti and Caesars to Oppianus.* If a decision was given against a man over 25 years old, and the governor learns that the grounds of the appeal subsequently taken were not presented within the fixed time, and that the affair was not concluded by a settlement while an appeal was pending, he will see to it that the judgment is executed.

[9] *The same Augusti and Caesars: Hail, Heraclides, very dear to us.* The principal of a suit, even in the absence of his procurator, may prosecute an appeal which his procurator made in the litigation.

[10] *The same Augusti and Caesars to Titianus.* **pr.** If an agent (*actor*) appointed by a *curator* lost his case, both he and the *curator* can have recourse to the aid of an appeal, but only the *curator* can conduct the suit on appeal. 1. But if the minor has in the meantime received the rights of majority (*venia aetatis*) or has arrived at legal age, he may prosecute the appeal in his own name.

Written September 30, at Viminacium, in the consulship of the Caesars (294).

[173] This constitution may be dated March 18, 294, based on the subscription of C. 3.11.1 and 7.53.8, or July 18, 294, based on the subscription of C. 3.3.2.

[11] *Idem AA. et CC. Aurelio.* Cives et incolae, manifestas etiam excusationes habentes, si sub iusta nominatione non appellaverint, ad probationem earum non admittuntur.

xvii k. Ian.

[12] *Imp. Constantinus A. ad Catullinum.* Minime fas est, ut in civili negotio libellis appellatoriis oblatis aut carceris cruciatus aut cuiuslibet iniuriae genus seu tormenta vel etiam contumelias perferat appellator, absque his criminalibus causis, in quibus, etiamsi possunt provocare, eum tamen statum debent obtinere, ut post provocationem in custodia, si fideiussoris idonei copiam non habeant, perseverent.

D. III non. Nov. Treviris. acc. XV k. Mai. Hadrumeto Volusiano et Anniano conss.

[13] *Idem A. Petronio Probiano suo salutem.* Ex illo tempore, quo in civilibus causis, quae inter privatos moventur, consultaturum vel relaturum te esse promiseris vel appellationis a te interpositae sollemnia completa fuerint, nihil posthac tibi quodlibet speciale ac requisitum vel quibuscumque modis favoris gratiam praeferens audiendum est, sed observandum, ut iuxta priora statuta sollemnitatis more expleto gesta ad comitatum omnia dirigantur.

D. id. Aug. Arelato. pp. id. Oct. Theveste Sabino et Rufino conss.

[14] *Idem A. ad Bassum pu.* Litigatoribus copia est etiam non conscriptis libellis ilico appellare voce, cum res poposcerit iudicata, tam in civilibus quam in criminalibus causis.

D. VIII id. Iun. Sirmio Gallicano et Basso conss.

[15] *Idem A. ad Severum vicarium.* Ne causas, quae in nostram venerint scientiam, rursus transferri ad iudicia necesse sit, instructiones necessarias plene actis inseri praecipimus. nam cogimur a proferenda sententia temperare, quoniam verendum est, ne lis incognito negotio dirimatur, adempta copia conquerendi. quare perennibus inuretur

[11][174] *The same Augusti and Caesars to Aurelius.* Citizens and inhabitants who do not appeal when lawfully appointed to a civic position will not, even though they have clear excuses (to avoid service), be permitted to prove them.

December 16 (294?).

[12][175] *Emperor* CONSTANTINE *Augustus to Catullinus.* It is not right that, if petitions for appeal in a civil affair have been filed, an appellant should have to endure the hardships of imprisonment or any sort of outrage or tortures or even insults, with the exception of those criminal cases in which, even if they are able to appeal, they would nevertheless remain in a state requiring them to abide in prison following the appeal should a suitable surety (*fideiussor*) be lacking.

Given November 3, at Trier, received April 17, at Hadrumetum, in the consulship of Volusianus and Annianus (314).

[13][176] *The same Augustus to his friend Petronius Probianus, greetings:* From the time when you have promised that you would consult Us or report to Us on civil cases litigated between private persons, or when the formalities for an appeal interposed from your decision have been completed, you should no longer hear any special request or offer the benefit of your favor in any other way. Rather you must observe that all matters be directed to Our court in the customary fashion according to previous statutes.[177]

Given August 13, at Arles, posted October 15, at Theveste, in the consulship of Sabinus and Rufinus (316).

[14][178] *The same Augustus to Bassus, City Prefect.* Litigants in civil as well as criminal cases may, when the adjudicated matter demands it, immediately appeal orally even without any written petition.

Given June 6, at Sirmium, in the consulship of Gallicanus and Bassus (317).

[15][179] *The same Augustus to Severus, Vicar.* In order that it may not be necessary to refer cases that have come into Our knowledge back for trial, We direct that the necessary documents shall be attached fully to the records. For We shall feel compelled to abstain from rendering a verdict,[180] since there is cause to fear that a suit might be decided without complete knowledge and the

[174] Possibly to combine with C. 10.40.7.
[175] = C.Th. 11.30.2. C. epitomizes C.Th. Combine with C. 9.47.16; C.Th. 11.36.1. Seeck dates this constitution to November 3, 313.
[176] = C.Th. 11.30.5. Combine with C. 1.21.2.
[177] Apparently C.Th. 11.30.1.
[178] = C.Th. 11.30.7.
[179] = C.Th. 11.30.9. Seeck dates to June 22, 318.
[180] C.Th. adds here: "We who have sanctioned that the rescripts We have granted to the opinions or even reports of judges ought not to be revised."

iudex notis, si cuncta, quae litigatores instructionis probationisque causa recitaverint, indita actis vel subiecta non potuerint inveniri.
D. x k. Iul. Aquileiae Constantino A. v et Licinio C. conss.

[16] *Idem A. ad Maximum.* Etiam eos, qui imaginem principalis disceptationis accipiunt, appellationum adminicula necesse est accipere.
D. prid. id. Ian. Sirmio Crispo II et Constantino II CC. conss.

[17] *Idem A. ad Iulianum pu.* Si apud utrumque praetorem, dum quaestio ventilatur, ab aliqua parte auxilium provocationis fuerit obiectum, praefecturae urbis iudicium sacrum appellator observet.

[18] *Idem A. Victori rationali urbis Romae.* Quoniam nonnulli fisci debitores, cum iussi fuerint debitam summam exsolvere, interposito provocationis auxilio vim exsecutionis eludunt nec iam opinionis exemplum nec refutatorias preces curant petere vel offerre, placuit, ut, si intra dies sollemnitatibus praestitutos ad facienda haec appellatoris cura defuerit, deserta ab eo provocatio aestimetur moxque debitum exigatur.
D. prid. k. Aug. Constantino et Maximo conss.

[19] *Idem A. ad universos provinciales.* **pr.** A proconsulibus et comitibus et his qui vice praefectorum cognoscunt, sive ex appellatione sive ex delegato sive ex ordine iudicaverint, provocari permittimus, ita ut appellanti iudex praebeat opinionis exemplum et acta cum refutatoriis partium suisque litteris ad nos dirigat. a praefectis autem praetorio provocare non sinimus. **1.** Quod si victus oblatam nec receptam ab iudice appellationem adfirmet, praefectos adeat, ut apud eos de integro litiget tamquam appellatione suscepta. superatus enim si iniuste

opportunity of protest removed. Hence a judge will be branded with eternal infamy, if everything which the litigants cited for elucidation and as proof cannot be found embodied in or attached to the records.

Given June 22, at Aquileia, in the consulship of Constantine Augustus, for the fifth time, and Licinius Caesar (319).

[16][181] *The same Augustus to Maximus.* Even judges who represent the Emperor in trial must permit the right of appeal.

Given January 12, at Sirmium, in the consulship of Crispus, for the second time, and Constantine, for the second time, Caesars (321).

[17][182] *The same Augustus to Julian, City Prefect.* If, while a case is being aired before the two Praetors,[183] the aid of an appeal is interposed by either party, the appellant must observe the imperial judgment of the City Prefecture.

[18][184] *The same Augustus to Victor, Comptroller of the City of Rome.* Since some debtors of the Treasury, when they have been ordered to pay a sum due, elude the execution of the judgment by making an appeal and do not bother to seek or offer a copy of the report or any refutatory statements, We have decided that, if the appellant fails to see that the formalities attendant upon an appeal are complied with in the time fixed for that purpose, the appeal shall be considered to have been abandoned and thereafter the debt shall be collected.

Given July 31, in the consulship of Constantius and Maximus (327).

[19][185] *The same Augustus to all provincials.* **pr.** We permit an appeal to be made from Proconsuls, Counts, and Vicars, whether they offer judgment on appeal or by assignment or in their ordinary jurisdiction (*ex ordine*), in such a way that the judge must furnish a copy of the report to the appellant and must send Us the records together with refutatory statements of the parties as well as his own report. But We do not permit an appeal from the Praetorian Prefects. **1.** And if the defeated party alleges that an appeal was made but not accepted

[181] = C.Th. 11.30.11. Combine with C. 3.1.9. C. epitomates C.Th. and alters the wording dramatically. Seeck dates to June 12, 321.

[182] = C.Th. 3.32.2. Combine with C. 5.71.18. C. epitomates C.Th. and alters the wording dramatically. The constitution is dated by Krüger to 322, but Seeck is surely right to argue for December 31, 326.

[183] Clearly the Praetors of the newly founded city of Constantinople, one called the "Constantinian" and the other either the "Flavialis" or "Triumphalis," see C.Th. 3.32.2, 6.4.5; and Joh. Lyd. *Mag.* 2.30.2.

[184] = C.Th. 11.30.14.

[185] = C.Th. 11.30.16. Combine with C. 1.21.3.

appellare videbitur, lite perdita notatus abscedet: aut si vicerit, contra eum iudicem, qui appellationem non receperit, ad nos referre necesse est, ut digno supplicio puniatur.

D. k. Aug. pp. k. Sept. Constantinopoli Basso et Ablabio conss.

[20] *Imp. Constantius A. Albino.* Et in maioribus et in minoribus negotiis appellandi facultas est. nec enim iudicem oportet iniuriam sibi fieri existimare eo, quod litigator ad provocationis auxilium convolavit.

D. VII id. April. Marcellino et Probino conss.

[21] *Idem A. ad Lollianum pp.* Quoniam iudices ordinarii provocationes aestimant respuendas, placet, ut, si quis appellationem suscipere recusaverit, quae non contra exsecutionem, sed adversus sententiam iurgium terminantem fuerit interposita, triginta auri pondo cogatur largitionibus nostris inferre: triginta alia officio eius itidem soluturo, nisi ei pertinaciter restiterit atque actis contradixerit et, quid iure sit constitutum, ostenderit.

D. VIII k. Aug. Messadensi. PP. Capuae Arbitione et Lolliano conss.

[22] *Idem A. ad Volusianum pp.* Lata sententia, quae pertinet ad bona vacantia et ad ea, quae indignis legibus cogentibus auferuntur, si quis putaverit provocandum, vox eius debebit admitti.

D. III k. Aug. Arbitione et Lolliano conss.

[23] *Idem A. ad senatum.* Cum appellatio interposita fuerit per Bithyniam Paphlagoniam Lydiam Hellespontum, insulas etiam ac Phrygiam salutarem, Europam ac Rhodopam et Haemimontum, praefecturae urbis iudicium sacrum appellator observet.

D. V non. Mai. Tauro et Florentio conss.

by the judge, he may go before the Prefects in order to litigate the matter anew before them as though the appeal had been accepted. If he is defeated and appears to have appealed unjustifiably, he will lose his suit and be branded with infamy as he departs. But if he prevails, it is necessary to report to Us the case against the judge who refused to receive the appeal, so that he may be visited with proper punishment.

Given August 1, and posted September 1, at Constantinople in the consulship of Bassus and Ablabius (331).

[20][186] *Emperor CONSTANTIUS Augustus to Albinus.* The opportunity for appeal exists in large and small cases. For a judge should not think that he is insulted because a litigant resorts to the aid of an appeal.

Given April 7, in the consulship of Marcellinus and Probinus (341).

[21][187] *The same Augustus to Lollianus, Praetorian Prefect.* Since ordinary judges suppose that appeals are to be rejected, We have decided that if any judge refuses to take up an appeal which is not interposed against the execution of a judgment but from a verdict that terminates a dispute, he must pay 30 pounds of gold into Our treasury; and his official staff must pay another 30 pounds if it does not strenuously resist and oppose him on the records and show him what is established in the law.

Given July 25, at Messadensis, posted at Capua in the consulship of Arbitio and Lollianus (355).

[22][188] *The same Augustus to Volusianus, Praetorian Prefect.* When a decision is given which relates to ownerless property (*bona vacantia*) and to property which is taken from unworthy heirs under legal compulsion, if anyone thinks he should appeal, his plea must be admitted.

Given July 30, in the consulship of Arbitio and Lollianus (355).

[23][189] *The same Augustus to the Senate.* When an appeal is interposed from Bithynia, Paphlagonia, Lydia, Hellespontus, the Islands, and Phrygia Salutaris, Europa, and Rhodope, and Haeminontus, the appellant should look to the imperial court of the City Prefect (at Constantinople).

Given May 3, in the consulship of Taurus and Florentius (361).

[186] Combine with C.Th. 11.36.5. The inscription of C.Th. reports "the same Augusti," i.e., Constantius II and Constans.

[187] = C.Th. 11.30.25. Combine with C.Th. 11.36.11. The final phrase, beginning "if it does not ..." is borrowed from C.Th. 11.30.58. Seeck dates to July 25, 356.

[188] = C.Th. 11.30.26. Combine with C.Th. 11.36.12. Seeck dates to July 29, 355.

[189] = C.Th. 1.6.1. Combine with C. 12.1.7; C.Th. 6.4.12 and 13, 7.8.1, 11.1.7, 11.15.1, 11.23.1, 12.1.48, 13.1.3. These laws indicate that the constitution was given at "Gyfyra," i.e., Gephyra in Syria.

[24] *Impp. Valentinianus et Valens AA. salutem dicunt ordini civitatis Carthaginensium.* Iudicibus non solum appellationis suscipiendae necessitas videtur imposita, verum etiam triginta dierum spatia ex die sententiae definita sunt, intra quae gesta una cum relatione litigatoribus convenit praestari: iudice et officio eius, si statuta fuerint aliqua parte mutilata, multae subiacentibus.

D. prid. non. Febr. Mediolani divo Ioviano et Varroniano conss.

[25] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad Syagrium pp.* Et in multis ab iudicibus inferendis appellationes iubemus admitti.

D. XIIII k. Iul. Gratiano V et Theodosio AA. conss.

[26] *Idem AAA. et Arcadius A. ad Pelagium comitem rerum privatarum.* Cum post sententiam discussoris vel rationalis fuerit provocatum, ad sinceritatem tuam negotium transferatur, ut, si mediocritas negotii aut longinquitas regionis ad iudicium tuum litigatores venire non patitur, iudicio rectoris provinciae, quem ipse probaveris, negotium deleges.

D. XV k. Mart. Mediolano Arcadio A. et Bautone conss.

[27] *Impp. Arcadius et Honorius AA. Ennodio proconsuli Africae.* Nominationes libellis vel edictis factae citra consilium publicum non valent: de quibus nec appellare necesse est, si sollemnitas deest.

D. XVII k. Iun. Mediolani Olybrio et Probino conss.

[28] *Idem AA. Nebridio proconsuli Asiae.* Si quis libellos appellatorios ingesserit, sciat se habere licentiam arbitrium commutandi et suos libellos recuperandi, ne iustae paenitudinis humanitas amputetur.

D. XI k. Aug. Constantinopoli Arcadio IIII et Honorio III AA. conss.

[24][190] *Emperors* VALENTINIAN *and* VALENS, *Augusti, greet the Senate of the City of Carthage.* Not only does the necessity of accepting an appeal seem to be imposed on judges, but a period of thirty days from the date of the decision is also fixed within which the records together with the report should be furnished to the litigants. The judge and his official staff will be subject to a fine if the requirements are violated in any respect.

Given February 4, at Milan, in the consulship of the deified Jovian and Varronian (364).

[25][191] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Syagrius, Praetorian Prefect.* We order that appeals shall also be permitted from fines imposed by judges.

Given June 18, in the consulship of Gratian and Theodosius Augusti (380).

[26][192] *The same Augusti and* ARCADIUS *Augustus to Pelagius, Count of the Privy Purse.* Since an appeal was lodged after the verdict of an Auditor (*discussor*) or Comptroller (*rationalis*), the affair should be referred to Your Uprightness, so that if the unimportance of the affair or the remoteness of the region does not permit the litigants to come to your court, you may delegate the affair to the judgment of the provincial governor whom you yourself approve.

Given February 15, at Milan, in the consulship of Arcadius Augustus and Bauto (385).

[27][193] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Ennodius, Proconsul of Africa.* Appointments (of councilors) made by petitions or edicts outside a public meeting are not valid. Nor is it necessary to appeal them if the customary formality is lacking.

Given May 16, at Milan, in the consulship of Olybrius and Probinus (395).

[28][194] *The same Augusti to* NEBRIDIUS, *Proconsul of Asia.* If anyone has filed a petition of appeal, he should know that he has the right to change his mind and withdraw the petition, lest the benefit of a just repentance be curtailed.

Given July 22, at Constantinople, in the consulship of Arcadius, for the fourth time, and Honorius, for the third time (396).

190 = C.Th. 11.30.32, with some additional provisions. Combine with C.Th. 11.36.15. Seeck gives February 4, 365.

191 = C.Th. 11.30.38.

192 = C.Th. 11.30.45. Combine with C. 7.65.7. The Justinianic compilers have omitted the final sentence of the C.Th. text, which continues "but overseas appeals should be tried in your court within the space of a year; appeals from provinces that are contiguous or not far removed should be completed within the legally constituted time period."

193 = C.Th. 11.30.53. Combine with C.10.32.45; C.Th. 12.1.141–5.

194 = C.Th. 11.30.56. C. epitomates C.Th. and alters the wording dramatically.

[29] *Idem AA. ad Eutychianum pp.* **pr.** Addictos supplicio et pro criminum immanitate damnatos nulli clericorum vel monachorum, eorum etiam quos synoditas vocant, per vim atque usurpationem vindicare liceat ac tenere. **1.** Quibus in causa criminali humanitatis consideratione, si tempora suffragantur, interponendae provocationis copiam non negamus, ut ibi diligentius examinetur, ubi contra hominis salutem per errorem vel gratia cognitoris oppressa putatur esse iustitia: ea condicione, ut, si proconsules vel comes Orientis, Augustalis, vicarii fuerint cognitores, non tam ad clementiam nostram quam ad amplissimas potestates sciant esse referendum. eorum enim de his plenum volumus esse iudicium, qui, si ita res est et crimen exegerit, rectius possint punire damnatos.

D. VI k. Aug. Mnizo Honorio A. IIII et Eutychiano conss.

[30] *Idem AA. Theodoro pp.* Si quis provocatione interposita suspecti iudicis velit prolatam evitare sententiam, in hac voce liberam habeat potestatem nec timeat contumeliam iudiciorum, cum et ab ipsa iniuria possit facile provocare, maxime cum a solo tantum praefecto praetorio non sine dispendio causae provocare permissum sit. sciant igitur cuncti sibi ab iniuriis et suspectis iudicibus et in capitali supplicio ac fortunarum dispendio provocationem esse concessam.

D. VII id. Iun. Mediolani Theodoro cons.

[31] *Impp. Honorius et Theodosius AA. Asclepiodoto pp.* **pr.** Si appellationem oblatam, in qua vel tuae amplitudinis vel urbanae praefecturae sacrum auditorium postulatur, iudex non susceperit vel suscepta appellatione apostolorum copiam denegaverit, ad deponendam super hac iniquitate querimoniam nec non etiam conveniendum adversarium ex sententia prolata iuxta antiquum ius anni metas habeat litigator: vel si huiusmodi appellatio suscepta non fuerit, in qua inferiorum iudicum sacra desideratur auditio, ad haec eadem facienda sex menses habeat litigator. **1.** Si vero arbiter appellationem suscipere aut relationem dare contempserit, quattuor mensum tempora observentur: ut his quae

[29][195] *The same Augusti to Eutychianus, Praetorian Prefect.* **pr.** No clergymen or monks, or yet those called "fellow travelers,"[196] may by force or unlawful seizure protect and detain men sentenced to punishment and condemned for the enormity of their crimes. 1. We do not deny them the opportunity to interpose an appeal out of humanitarian consideration if time permits, in order that a more careful investigation can be made in those instances where justice is thought to have been suppressed contrary to human welfare either through error or the partiality of the judge. But this condition must be observed, that if Proconsuls, the Count of the East, the Augustal Prefect, or Vicars were the judges, the case must be referred not to Our Clemency, but to the Most High Office (of the Praetorian Prefect). We wish their jurisdiction to be plenary in order that, if the matter is such that the crime demands it, they can better punish the condemned.

Given July 27, at Mnizus, in the consulship of Honorius Augustus, for the fourth time, and Eutychianus (398).

[30][197] *The same Augusti to Theodorus Praetorian Prefect.* If anyone, by interposing an appeal, wants to avoid a verdict rendered by a judge suspected (of bias?), he shall have full freedom to do so in his plea, nor need he fear contumely from the court since it is easy to appeal even from an outrage, and especially since it is permitted to appeal without the penalty of losing one's case, with the lone exception of cases from the Praetorian Prefect. Therefore, let all know that they are permitted to appeal from outrages, and suspected judges, and in capital cases as well as those involving the loss of their property.

Given January 7, at Milan, in the consulship of Theodorus (399).

[31][198] *Emperors* Honorius *and* Theodosius *Augusti to Asclepiodotus, Praetorian Prefect.* **pr.** If an appeal is offered requiring an imperial hearing either by Your Amplitude or by the City Prefect but the judge below should not accept it, or if after accepting it he should refuse to make available the reports on an appeal (*apostoli*), the litigant may according to ancient law have one year after the verdict is rendered in which to make complaint of this iniquity and notify the opponent. Or if an appeal of this nature should not be accepted in cases in which an imperial hearing by lower judges is sought, the litigant shall have six months in which to do these things. 1. But if a judge arbitrator refuses to accept an appeal or make his report, the period granted is four months.

[195] = C.Th. 11.30.57, which is an abbreviated *lex geminata* of C.Th. 9.40.16. The beginning of §29 is repeated at C. 1.4.6. Combine with 1.3.11 and 12, 1.4.7; C.Th. 16.2.32.

[196] The text uses the Greek term *synoditae*, an alternative designation for cenoebitic monks in the fourth and fifth century CE.

[197] = C.Th. 11.30.58.

[198] = C.Th. 11.30.67. Combine with C. 7.51.3; C.Th. 11.31.9.

statuimus actitatis pareat appellator temporibus, quae de appellationibus definita noscuntur.

D. III k. April. Constantinopoli Asclepiodoto et Mariniano conss.

[32] *Impp. Theodosius et Valentinianus AA. Cyro pp.* **pr.** Praecipimus ex appellationibus spectabilium iudicum, quae per consultationes nostri numinis disceptationem implorant, non nostram ulterius audientiam expectari, ne nostris occupationibus, quibus pro utilitate mundi a singulorum nonnumquam negotiis avocamur, aliena fraudari commoda videantur.

1. Sed si a proconsulibus vel Augustali vel comite Orientis vel vicariis fuerit appellatum, virum illustrem praefectum praetorio, qui in nostro est comitatu, virum etiam illustrem quaestorem nostri palatii sacris iudiciis praesidentes disceptationem iubemus adripere eo ordine, ea observatione, isdem temporibus, quibus ceterae quoque lites fatali die post appellationem in sacris auditoriis terminantur. et hoc, licet quidam praedictorum spectabilium iudicum iure concesso ut sacri iudices appellationes acceperint. **1a.** Quod si a duce fuerit appellatum, si idem et praeses sit, praefectura necessario tantum iure ordinario in sacro auditorio iudicabit.

2. In his autem omnibus iudiciis, quae consultationum introduximus loco, vel apostolos vel ea quae apud eum gesta sunt, contra cuius sententiam dicitur appellatum, suscipere ab appellatoribus et cognitiones inducere apud viros illustres praedictos iudices et ea quae geruntur excipere scribere scriptaque litigatoribus edere nostros epistulares praecipimus: officiis videlicet eorum, cum quibus vir illustris quaestor iudicat, exsequentibus iudicata.

3. Haec, si appellatio fuerit oblata iudici, qui non ex delegatione cognoscit. eorum enim sententiis appellatione suspensis, qui ex delegatione cognoscunt, necesse est eos aestimare, iuste nec ne fuerit appellatum, qui causas delegaverint iudicandas.

4. Huic saluberrimae legi illud etiam consultissime credidimus inserendum, ut, si privato, non illustri, uni pluribusve, ut adsolet, nostra serenitas adita delegaverit causam et eius eorumve definitio fuerit appellatione suspensa, vir quidem magnificus praefectus praetorio, qui in nostro est comitatu, cum viro illustri quaestore temporali iudicet

As you have been acting according to the measures We have established, the appellant must abide by the times that are recognized as applying to appeals.

Given March 30, at Constantinople, in the consulship of Asclepiodotus and Marinianus (423).

[32][199] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Cyrus, Praetorian Prefect.* **pr.** We direct that appeals from judges of *spectabilis* rank which seek a decision of Our Divine Majesty by the method of consultation must no longer expect Our hearing, in order that the benefit of others may not seem to suffer because of the preoccupations to which We are often summoned for the good of the world through the affairs of individuals.

1. Nevertheless, if an appeal is lodged from Proconsuls, or the Augustal Prefect, or the Count of the East, or Vicars, We order that the *vir illustris* Praetorian Prefect, who is in Our court, and the *vir illustris* Quaestor of Our Palace, both of whom preside over imperial courts, shall assume jurisdiction in the dispute in the same order, in the same form, and at the same times as other disputes are terminated within the normal time limit in imperial hearings on appeal. And this shall apply although the right has been granted to some of the aforesaid judges of *spectabilis* rank to accept appeals as imperial judges. **1a.** But if an appeal is made from a Duke who is also a Provincial governor, the Prefect alone will of necessity give judgment in an imperial audience in the ordinary way.

2. Nevertheless, in all these appeals introduced in place of consultations, We order Our clerks of the correspondence bureau (*epistulares*) to accept from the appellants either the reports on appeal (*apostoli*) or the record of the proceedings held before the judge from whom the appeal is made, and to lay the case before the aforesaid judges of illustrious rank, and to take down, write out, and issue to the litigants their transcripts. Then the official staff of those with whom the *vir illustris* Quaestor adjudicates are to execute the judgment.

3. These provisions apply when an appeal is taken from a judge who did not try the case pursuant to special assignment. For if decisions of judges who tried a case pursuant to special assignment are suspended by appeal, the judges who assigned the cases to be tried must decide upon review, whether the appeal is justly or unjustly interposed.

4. We have deemed it expedient to add also to this salutary law, that if Our Serenity has been approached and has assigned a case for trial to a private, and not an *illustris* person, or to more than one, as is usual, and his or their finding is suspended by appeal, the *vir magnificus* Praetorian Prefect, who is in Our court, together with the *vir illustris* Quaestor, shall give judgment within the date for

[199] Combine with C. 3.4.1, 7.63.2, reporting a date of May 20 or 21, 440. Seeck gives May 20, 440.

die. **4a.** Nostri vero libellenses quae apud arbitros gesta sunt suscipiant, cognitiones inducant et ea quae geruntur excipiant scribant scriptaque litigatoribus edant: qui etiam apud arbitros, licet illustres sint, ex delegatione nostra cognoscentes excipiunt, si in sacratissimo nostri numinis comitatu causae dicantur.

5. Sane si illustrium ac magnificorum iudicum sententiae fuerint appellatione suspensae, eorum videlicet, quorum sententias licet appellatione suspendi, per consultationem nostram volumus audientiam expectari, licet antea privato homini, id est non illustri, lite a nobis delegata is postea tempore definitionis illustri decoratus dignitate reperiatur: eodem observando et si alter ei coniunctus sit arbiter, qui non illustrem meruit dignitatem. **6.** Quidquid autem hac lege specialiter non videtur expressum, id veterum legum constitutionumque regulis omnes relictum intellegant.

[33] *Idem AA. Cyro pp.* Eo casu, quo apparitor magisteriae potestatis a curia vel officio cohortali de statu in provincia patiatur controversiam vel ut tributa vel functiones debens in provincia detinetur, si sententia rectoris provinciae fuerit appellatione suspensa, cum tua sublimitate viro quoque magnifico magistro militum cognoscente causae iubemus merita ponderari, licet magister militum rectori provinciae causam delegaverit perorandam.

D. prid. non. Mart. Constantinopoli Cyro vc. cons.

[34] *Imp. Iustinus A. Demostheni pp.* **pr.** Iubemus, si qua suggestio maioris vel minoris iudicis ad nostram referatur clementiam de negotio, quod iudicandum ei tradidimus vel de quo pro sua iurisdictione iudicaverit, petentis a nostro numine finem eidem imponi negotio, quod ab eo disceptatum est, sive additum sit eidem suggestioni, quid referenti placeat (dum id partibus per sententiae recitationem manifestum non fecit) sive nihil huiusmodi adiectum sit, sed simpliciter nostri numinis responsum expectat, non prius eam discerni, quam per sacram pragmaticam nostri numinis iussionem duo magnifici viri vel patricii vel consulares vel praefectorii, quos pro tempore nos elegerimus, iubeantur adiungi viro illustri pro tempore quaestori nostri palatii et una cum eo in scriptis relationem discernere (sive praesentibus partibus, si hoc

appeal (*temporali die*). **4a.** But Our clerks of the petition bureau (*libellenses*) shall receive the record of the proceedings before judge arbitrators, lay out the case, take down and write out the proceedings, and issue their transcripts to the litigants. They shall also take down the proceedings before judge arbitrators, though of *illustris* rank, who try a case upon special assignment by us, if the cases are heard in the court of Our Divine Majesty.

5. Of course, if verdicts by judges of *illustris* or *magnificus* rank shall have been suspended by appeal, that is to say the decisions of those whose sentences are allowed to be suspended by appeal, We wish to hear the case ourselves by consultation, although the case was originally assigned to a private and not to an *illustris* person, who, however, later had the *illustris* rank conferred upon him by the time of his decision. The same rule is to be applied if some other man who has not attained the *illustris* dignity, is associated with him in the trial of the case. **6.** Anything that does not appear to be specifically mentioned in this law must be understood as still governed by the regulations of former laws and constitutions.

[33][200] *The same Augusti to Cyrus, Praetorian Prefect.* In case a subordinate official (*apparitor*) of the Master of the Soldiers (*magisteriae potestates*) endures a suit concerning his status in a province brought by a curia or the office staff of the governor (*officium cohortale*) or is detained in a province because he owes tribute or obligations, if the decision of the provincial governor is suspended by appeal, We order that the merits of the case must be reviewed by Your Sublimity together with the *vir magnificus* Master of the Soldiers, even if the Master of the Soldiers assigned the case to be heard by the provincial governor.

Given March 6, at Constantinople, in the consulship of the vir clarissimus *Cyrus (441).*

[34] *Emperor Justin Augustus to Demosthenes, Praetorian Prefect.* **pr.** If a query (*suggestio*) from a higher or inferior judge is referred to Our Clemency concerning a matter which We assigned to him for trial or which he tried pursuant to his inherent jurisdiction, and he is asking that a conclusion be imposed by Our Divine Majesty on that same matter that he tried, whether the judge referring the matter adds his decision to the query – if he did not make it known to the parties by reading it out – or adds nothing of the sort but simply awaits a response from Our Divine Majesty, We order that the query shall not be decided until, through a pragmatic order of Our Divine Majesty, We have elected for the occasion two men of magnificent rank –

[200] = Nov. Theod. 7.4.8 (giving Areobindus, Master of the Soldiers, as the recipient). Combine with C. 12.54.3. C. alters the Theodosian original significantly.

prospexerint, sive absentibus) et responsum relationi dandum sua sententia manifestare: ut tamen dispositio huiusmodi excellentissimorum iudicum omnimodo rata sit, nulli danda licentia provocationem contra eorum offerre sententiam vel aliam quamcumque dubitationem introducere. 1. Quam observationem non solum, si unus iudex suggestione vel relatione usus fuerit, tenere censemus, sed etiam si duobus vel amplioribus datis iudicibus in unam sententiam minime omnes convenerint, sed diversas suas sententias unusquisque nostrae mansuetudini rettulerit vel omnes nos consuluerint, quid decernendum sit.

[35] Ἤδη τῆς τριακοστῆς διατάξεως εἰπούσης ἐπὶ πάντων τῶν ἀρχόντων τῶν ἰλλουστρίων, ἀφ᾽ ὧν ἐστιν ἔκκλητος, τὸν βασιλέα τῆς ἐκκλήτου ἀκροᾶσθαι, ἡ παροῦσα διάταξις εὑροῦσα νόμιμον ἐγνωσμένον, ὅτι κατὰ τῆς ἀποφάσεως τῶν ἐπάρχων ἔκκλητος μὲν οὐκ ἔστιν, ἀναψηλάφησις δὲ ἔστι, καὶ εἰ μὲν ἕτερός ἐστιν ἔπαρχος, πιθανόν ἐστιν, ὅτι ἀνατρέπει τὰ παρ᾽ ἑτέρῳ κριθέντα, ἐὰν δὲ ὁ αὐτὸς γένηται ἔπαρχος πάλιν ὁ ἤδη ψηφισάμενος, οὗτινος κατὰ τῆς ψήφου καὶ αἱ δεήσεις προσηνέχθησαν, ἐπειδὴ προείληπται ὑπὲρ τῆς παλαιᾶς αὐτοῦ ἀποφάσεως λέγειν, κελεύει ἡ διάταξις, ὥστε τὸν κοιαίστωρα συνακροᾶσθαι αὐτῷ δεύτερον ἢ τρίτον γενομένῳ ἐπάρχῳ καὶ ἐξετάζοντι τὰς ἐπὶ τῆς προτέρας αὐτοῦ ἀρχῆς γενομένας ἀποφάσεις, θεσπίζουσα, ὥστε μηδεμίαν εἶναι κατὰ τῶν τοιούτων ἀποφάσεων ἀναψηλάφησιν.

[36] Χρὴ μετὰ πᾶσαν τὴν δίκην τότε τὴν ἔκκλητον ἐπιδοθῆναι (οὐδὲ γὰρ βλάπτεταί τις, ἐὰν ἐν τῷ μεταξὺ ἐγένετο διαλαλιὰ ἀπαρνουμένη αὐτῷ δίκαιον ἁρμόζον αὐτῷ, τουτέστιν ἢ μαρτύρων παραγωγὴν ἢ ἀνάγνωσιν συμβολαίου. δύναται γὰρ ἐν τῇ ἐκκλήτῳ πάντα γυμνάσαι), ἵνα μὴ κατὰ τῆς μέσης διαλαλιᾶς ἐπιδεδομένης ἐκκλήτου μῆκος διδῶται ταῖς ὑπερθέσεσι, πολλάκις ἐν τῇ αὐτῇ ὑποθέσει ἐπιδεδομένης ἐκκλήτου καὶ ἐξεταζομένης, πάλιν ἄλλου κεφαλαίου γυμναζομένου καὶ πάλιν καὶ κατ᾽

patricians, consulars, or ex-prefects. And We order that these be joined to the *vir illustris* Quaestor of Our Palace at the time, and that together with him they examine the written report – either in the presence of the parties, if they think fit, or in their absence – and offer the response which in their judgment should be given to the report (*relatio*). Nevertheless, the disposition of the case made by these most excellent judges shall be final, and no one shall have the right to offer an appeal against their verdict or to raise any other doubts. 1. We determine that this rule shall be observed not only if one judge refers a matter to Us by query or report (*suggestio vel relatio*), but also when two or more judges specially appointed for a case cannot agree on a verdict, and each has referred his own different verdict to Our Mildness, or when all have asked Us what the decision should be.

<*Without subscription (a. 520–524).*>[201]

[35][202] The thirtieth[203] constitution already provides that appeals from all magistrates of *illustris* rank from whom an appeal is permitted will be heard by the Emperor. The present constitution finds it to be established law that no appeal can be made from the verdict of Prefects, but a retrial is possible. And if there is a new Prefect, it is plausible that he might overturn the judgment of his predecessor. But if the prefect is again the same as the one who gave judgment already and against whose verdict the appeals have been lodged, since it is assumed he will pronounce in favor of his earlier judgment, the constitution orders that the Quaestor hear the case together with the one who is Prefect for the second or third time and who is reviewing the judgments rendered under his earlier term of office. It ordains that there can be no retrial against such verdicts.

[36][204] It is necessary for an appeal to be lodged only after the entire case has been finished – for no one is harmed if in the middle of his case an interim order is given that denies him his due rights, like the summoning of witnesses or the recitation of a document, for it is possible to treat everything in the appeal – in order that the length of the proceedings may not be extended through postponements if appeals are interposed against interim reports,

[201] Lounghis *et al.* date to between June 521 and July 522.

[202] The preserved text is a Greek synopsis of the original constitution found at Bas. 9.1.125. Lounghis *et al.* date to between 522 and 527.

[203] Read "thirty-second."

[204] The preserved text is a Greek synopsis of the original constitution found at Bas. 9.1.126. Possibly to combine with C. 3.1.12; see 3.1.16. At C. 3.1.16 Justinian claims the provisions of this constitution as his own. Because, however, the inscription of the following constitution (37) does not identify Justinian as "the same," Krüger believes the instant constitution was issued under the joint rule of Justin and Justinian in 527. Lounghis *et al.* date to between April 4 and August 1, 527.

αὐτοῦ παρεχομένης ἐκκλήτου. Ἐὰν δὲ διαιτητής ἐστιν ὁ ἐν μέσῃ διαλαλιᾷ δίκαιόν τι αὐτοῖς ἀρνησάμενος, κελεύει ἐγγράφως τούτῳ ἐπισκήπτειν, ὥστε ἐν τῇ ἐκκλήτῳ φυλάττεσθαι αὐτοῖς τὴν περὶ τούτου δικαιολογίαν ἀπρόκριτον. εἰ δὲ παρὰ ταῦτα γένηται, μήτε δεχέσθω τὴν ἔκκληπτον ὁ δικαστὴς καὶ αὐτὸς ὁ ἐκκαλεσάμενος ὑπὲρ παραβάσεως πεντήκοντα λίτρας ἀργύρου παρεχέτω.

[37] *Imp. Iustinianus A. Menae pp.* **pr.** In offerendis provocationibus, ex quibus consultationum more negotium in nostrum sacrum palatium introduci solebat, hoc addendum esse censemus, ut, si quidem non excedat litis aestimatio decem librarum auri quantitatem, ex ipsa scilicet sententia iudicis discernenda, non duobus, sicut antea, magnificis iudicibus, sed uni tantummodo disceptatio negotii deputetur. **1.** Sin vero memoratam excedens quantitatem viginti libris auri terminetur, duobus tradatur magnificis iudicibus, viris scilicet devotis epistularibus cognitionalia certamina excipientibus, ita tamen ut, si dissentirent, virum illustrem pro tempore quaestorem adhibeant, ut eo dubietatem dirimente finiatur negotium: **2.** His videlicet litibus, quarum aestimatio viginti librarum auri quantitatem excedit, in commune auditorium florentissimorum sacri nostri palatii procerum introducendis: **3.** Ut tamen secundum iam statuta liceat quidem non solum victo, sed etiam victori consultationem ad unum vel duos iudices mittendam intra biennii tempus ei vel eis intimare: post excessum enim memorati temporis huiusmodi licentiam amputamus. **4.** Quae vero fuerint ab eo vel eis decreta, nulla provocatione suspendantur. **5.** Novas etiam adsertiones a partibus apud eundem vel eosdem iudices addi ad exemplum consultationis ad sacrum nostrum palatium introducendae permittimus.

D. VIII id. April. Constantinopoli Decio cons.

[38] *Idem A. Demostheni pp.* Si quando duciano iudicio appellatio fuerit oblata, sive ab ipsa qualitate iudicis sive ex divina delegatione viro spectabili duci destinata, sive inter spectabiles idem dux connummeretur sive illustri dignitate decoratur sive etiam maiore, cum etiam magisteriae potestatis homines nec non consulares saepe utilitate publica poscente ad huiusmodi curam perveniunt, nullo discrimine habito non dignitatem, sed ducatus magistratum spectari et appellationem ex quocumque duce venientem non ut antea erat dispositum, sed apud

since often in the same case an appeal is interposed and investigated, but then, when a new heading is treated, another appeal is offered in turn against it. If it is a judge arbitrator who denies someone his right in an interim report, it orders him to object to this in writing so that he safeguards his defense against this in his appeal. If the contrary occurs, the judge must not accept the appeal and the appellant himself must pay 50 pounds of silver because of his transgression.

<*Without subscription (527?).*>

[37][205] *Emperor* JUSTINIAN *to Menas, Praetorian Prefect.* **pr.** In offering appeals, through which an affair was customarily introduced into Our Imperial Palace in the manner of a consultation, We think the following additional provision should be made. If the estimated amount of the suit, to be determined by the decision of the judge, does not exceed 10 pounds of gold, the adjudication of the affair shall not be referred, as it used to be, to two judges of *magnificus* rank but only to one. **1.** If, however, the amount involved exceeds that sum but not 20 pounds of gold, the matter shall be referred to two judges of *magnificus* rank, and Our devoted clerks of the correspondence bureau (*epistulares*) will take down the court proceedings. If, however, the two judges cannot agree, they shall summon the current *vir illustris* Quaestor, so that the he may settle any doubt and bring the affair to a close. **2.** Suits in which the estimated amount involved exceeds 20 pounds of gold shall be heard in the collective court of most flourishing highest officials of Our imperial palace. **3.** Nevertheless, in accord with previous statutes, with respect to a consultation that would need to be sent to one or two judges, not only the loser but also the winner is permitted to present it to him or them within two years' time. But We curtail this right after that time has lapsed. **4.** The decision rendered by any such judge or judges shall not be suspended by any appeal. We also permit new allegations to be added by the parties before the judge or judges, after the example of a consultation introduced to Our imperial palace.

Given April 6, at Constantinople, in the consulship of Decius (529).

[38] *The same Augustus to Demosthenes, Praetorian Prefect.* If an appeal is at any time made from the decision of a Duke, whether it was rendered by him in his role as judge or from imperial assignment to a Duke of *spectabilis* rank, and with no distinction made as to whether the same Duke numbered among the *spectabiles* or was honored with the *illustris* rank or even higher – for even men of the rank of a magistrate and even consulars attain responsibilities of this sort when public utility demands – you must look not to his rank but to the magistracy of Dukedom and to the name itself no matter what level of Duke it

[205] Combine with C. 7.64.10.

virum sublimissimum magistrum officiorum nec non virum excellentissimum nostri palatii quaestorem communi audientia praeposita in sacro auditorio more consultationum, viris devotis epistularibus excipientibus ventilari: nulla veteris legis in hac causa observatione custodienda, sed apud eosdem tantummodo excellentissimos iudices causa trutinanda.

[39] *Idem A. Iuliano pp.* **pr.** Ampliorem providentiam subiectis conferentes, quam forsitan ipsi vigilantes non inveniunt, antiquam observationem emendamus, cum in appellationum auditoriis is solus post sententiam iudicis emendationem meruerat, qui ad provocationis convolasset auxilium, altera parte, quae hoc non fecisset, sententiam sequi, qualiscumque fuisset, compellenda.

1. Sancimus itaque, si appellator semel in iudicium venerit et causas appellationis suae proposuerit, habere licentiam et adversarium eius, si quid iudicatis opponere maluerit, si praesto fuerit, hoc facere et iudiciale mereri praesidium: sin autem absens fuerit, nihilo minus iudicem per suum vigorem eius partes adimplere. **1a.** In refutatoriis autem libellis, qui solent maxime in sacro auditorio prudentissimorum nostrorum procerum recitari, caveant tam litigatores quam libellorum dictatores verbosis uti adsertionibus et ea quae iam perorata sunt iterum resuscitare, sed haec sola eis inscribere, quae compendiosa narratione causas provocationis possunt explanare vel aliquid novi continent vel addere quod derelictum est: scituri, quod si hoc fuerit praetermissum, non deerit adversus libellorum conditores amplissimi iudicii competens indignatio, quod sufficiant gestorum volumina introducta et virorum spectabilium magistrorum scriniorum breves omnia apertissime ostendere.

2. Sed cum scimus legem nostram esse promulgatam, per quam more consultationum in causis quidem, quae usque ad decem libras auri extenduntur, unum iudicem sanximus superponi, viginti autem duos sublimissimos iudices, sed cum prima quidem facie lis videbatur non tantam summam excedere, in definitiva autem sententia apparebat iudici vel iudicibus etiam maiorem quantitatem debere imponere, non erat eis possibile formam qua erant conclusi excedere. **2a.** Sed nos definimus et omnem eis damus facultatem, si hoc ita fuerit subsecutum, licere eis et ampliorem summam praefata quantitate in qua dati sunt iudices

comes from, and you must air the case not as had been previously required, but before the most sublime Master of the Offices and the most excellent Quaestor of Our Palace in a collective hearing held in the imperial chamber after the fashion of consultations, with the devoted clerks of the correspondence bureau taking down the proceedings. In this case no observation of the old law is to be preserved, but the case must be weighed only before these same most excellent judges.

[39] *The same Augustus to Julian, Praetorian Prefect.* **pr.** Bestowing a fuller providence on Our subjects than perhaps even they themselves, if vigilant, will discover, We correct an ancient rule, since in the hearing of appeals only the one who sought the aid of the appeal had merited reparation following the verdict of a judge, while the party who did not appeal was compelled to abide by the decision, whatever it was.

1. We therefore ordain that when the appellant has come into court and has stated his reasons for the appeal, his opponent, if he wishes to object to any part of the decision, may do so if present, and shall receive legal recourse. But if he is absent, the judge shall, nevertheless, on his own motion, defend his side of the case. **1a.** In connection with refutatory petitions which are customarily read chiefly in the imperial court of Our most prudent highest officials, both the litigants and those who draft such statements must be careful not to make use of verbose allegations or repeat what has already been stated. But they should take care to write in them only those things which can explain the reasons for the appeal in a succinct narrative or which contain something new or add something that was left out. They should know that, if they neglect to do this, the corresponding indignation of the most high court against the composers of such documents will not be lacking, because the books containing the record of the proceedings and the short abstract made by the *viri spectabiles* Masters of the Bureaus ought to be sufficient to show everything clearly.

2. Further, We know that We promulgated a law[206] in which We ordained that cases appealed in the manner of consultations which involve an amount up to 10 pounds of gold should be heard by one judge, and cases involving as high as 20 pounds by two most sublime judges. But if prima facie the suit did not seem to exceed the respective amounts mentioned, but the judge or judges in reaching a final verdict came to the conclusion that a judgment for a greater amount should be rendered, it was impossible for them to go outside of the format by which they were bound. **2a.** But We direct and give them full power, if this should occur, to exceed the sum with one even greater than the amount they were originally assigned to judge, and to give a verdict not within the

[206] C. 7.62.37.

excedere, et non ad modum suae rationis, sed ad veritatis indaginem ferre sententiam, ne tanti iudices quasi vinculis praepediti non possint legum veritati et iudiciali vigori per omnia satisfacere.

D. VI k. April. Constantinopoli Lampadio et Oreste vv. cc. conss.

LXIII De Temporibus et Reparationibus Appellationum seu Consultationum

[1] *Imp. Constantinus A. ad Crispinum.* Si quis per absentiam nominatus vel ad duumviratus aliorumque honorum infulas vel munus aliquod evocatus ad provocationis auxilium cucurrerit, ex eo die interponendae appellationis duorum mensum tempora ei computanda sunt, ex quo contra se celebratam nominationem didicisse monstraverit. nam praesenti, qui factam nominationem cognovit et appellare voluerit, statim debet duorum mensum spatium computari.

D. VIII id. Iul. Constantino A. VI et Constantio C. conss.

[2] *Impp. Theodosius et Valentinianus AA. Cyro pp.* **pr.** Tempora fatalium dierum pro saeculi nostri beatitudine credidimus emendanda ubique dilationum materias amputantes. et primi quidem fatalis diei tempora post appellationem, sive a viro clarissimo rectore provinciae sive a spectabili iudice fuerit appellatum, sex mensuum esse iubemus.
1. Quod si primo fatali die lapsus est appellator, tricesimum primum diem alterum volumus esse fatalem. quod si eo quoque appellator exciderit, tertium similiter totidem diebus intermissis fatalem observari decernimus. quod si tertius quoque lapsus fuerit temporalis, quartum etiam fatalem post tricesimum primum diem similiter observari decernimus.

2. Quod si ita contigerit, ut quattuor fatalibus diebus qui appellavit exciderit, tunc intra trium alium mensum spatium a nostro numine reparationem peti praecipimus: qua petita nec adversarium decernimus admoneri nec temporalem diem a petitione reparationis numerari, sed trium mensum spatio ex quarto fatali numerando causam induci praecipimus, licet ante unum diem reparatio fuerit impetrata,

measure of their remit, but as the facts truly require, lest judges of this magnitude be fettered, as it were, by chains, and not be able to satisfy the truth of the law and judicial power in all respects.

Given March 27, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

Sixty-Third Title Time Periods and Their Reinstatements for Appeals and Consultations[207]

[1][208] *Emperor* CONSTANTINE *Augustus to Crispinus.* If anyone is appointed in his absence either to the duumvirate or to the badges of some other honor or called to some public service, and he has recourse to the aid of an appeal, the period of two months for interposing an appeal must be computed from the day on which he shows that he learned his appointment was announced. For if he was present and knew of his appointment and wanted to appeal, the period of two months ought to be computed beginning immediately.

Given July 8, in the consulship of Constantine Augustus, for the sixth time, and Constantius Caesar (320).

[2][209] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Cyrus, Praetorian Prefect.* **pr.** In keeping with the happiness of Our times, We believed that the deadlines for appeal (*tempora fatalium dierum*) should be corrected so as to curtail opportunities for delay. And We order that the first deadline after the appeal is taken shall be six months, whether the appeal is made from a *vir clarissimus* provincial governor or from a judge of *spectabilis* rank. **1.** But if the appellant lets the first deadline lapse, then We want the thirty-first day thereafter to be the second deadline. But if the appellant also exceeds that, We decree that the third deadline shall be after the same number of days has passed. But if the third period has also lapsed, We decree that the fourth deadline shall likewise fall on the thirty-first day.

2. But if it happens that the appellant has exceeded four deadlines, We direct that he seek reinstatement (*reparatio*) of his right of appeal from Our Divine Majesty within the period of three additional months. We decree that the opponent need not be notified when a reinstatement is sought, nor need the deadline be computed from the date of the petition for reinstatement, but We instruct that the case be introduced within a space of three months to be calculated from the fourth deadline, even if the reinstatement was obtained one day

[207] See D. 49.4.
[208] = C.Th. 11.30.10. Seeck dates to July 8, 353.
[209] Combine with C. 3.4.1; 7.62.32.

licet adlegata in iudicio virorum illustrium praefectorum non fuerit. 3. Nec hoc parti nocebit adversae, cum non dubius, sed notus omnibus dies fatalis appareat. haec, si adversus viri clarissimi rectoris provinciae vel spectabilium iudicum sententias fuerit appellatum.

4. Quod si arbitro in provincia ex delegatione sacra disceptante appellatio subsequatur, post priorem fatalem lapsum tres alii tantum fatales dies similiter ut supra dictum est servabuntur, nulla reparatione a nostro numine postulanda, ita ut nonaginta tribus diebus elapsis iudicata congruae exsecutioni mandentur. 5. Sin autem ex sententia praetorianae praefecturae vel magistri officiorum vel alio illustri dignitate decorato arbiter in hac sacratissima civitate fuerit delegatus et appellatio contra definitionem vel sententiam eius subsecuta fuerit, primus quidem fatalis dies duorum mensum, alii vero tres ad similitudinem supra dictorum fatalium numerentur. 6. Qui vero delegatum vel a spectabili iudice seu praeside provinciae arbitrum appellaverit, primum quidem fatalem diem duorum mensum, tres vero alios ad similitudinem praedictorum fatalium dierum habeat.

7. Illud etiam circa observationem fatalium dierum custodiri decernimus, ut, si forte temporales in feriatos quoquo modo inciderint, praecedentes eos dies ut temporales a litigantibus observentur. quod si quis secus, ac iura praecipiunt, lapsus die fuerit temporali et hoc primo loco vel a praesente adversario vel etiam a iudice, si solus litigat, appellatori fuerit oppositum probatumque, pro eo habebitur appellator, ac si sententiam quoquo modo non coactus susceperit.

D. XII k. Iun. Valentiniano A. V et Anatolio conss.

[3] *Imp. Iustinus A. Apioni pp.* Nemo arbitretur in posterum licentiam futuram consultationibus ultra statuti temporis vivendi spatia neque per oblationem precum neque per sacrum rescriptum super reparatione temporum indulgendum neque sub praetextu quodam altero: sed omnibus incumbendum esse vigilanti diligentia, quo provocationes eorum intra statutum tempus introducantur, ita ut etiam gesta in iudicio, contra quod provocatum est, non prope finem temporis tradantur scrinio sacrarum epistularum, ne praepediatur per astutias fatalis rei terminus, sed aut statim, postquam appellatum sit, aut non minus

earlier and even if it was not adduced in the court of the *viri illustres* Prefects. 3. Nor will this harm the adverse party, since the deadline is not in doubt but is known to all. These provisions apply in case of an appeal made from the verdicts of a *vir clarissimus* provincial governor or judges of *spectabilis* rank.

4. But if an appeal arises from a judge arbitrator who gave judgment in a province pursuant to an imperial assignment, only three additional deadlines shall be kept in the same manner as mentioned above, and no reinstatement can be demanded from Our Divine Majesty. In this way once ninety-three days have passed, the judgment should be ordered to be properly executed. 5. Nevertheless, if a judge arbitrator was appointed in this imperial city by orders of the Praetorian Prefect or of the Master of the Offices or of any other person of illustrious rank, and an appeal followed against his decision or verdict, the first deadline shall consist of two months, but the other three should be counted the same as the deadlines mentioned above. 6. And whoever appeals from a judge arbitrator appointed by a judge of *spectabilis* rank or by a provincial governor should have a first deadline of two months and three others the same as mentioned above.

7. We decree that this too must be complied with in connection with deadlines, that if the trial day falls on a holiday, the days immediately preceding shall be considered the trial days by the litigants. But if, contrary to what the laws direct, someone misses the trial day, and this is set up against the appellant in the first instance and proven, whether by the adversary, if present, or by the judge, if the person is litigating alone, the appellant shall be considered as having accepted the verdict without having been coerced in any way.

Given May 21, in the consulship of Valentinian Augustus, for the fifth time, and Anatolius (440).[210]

[3] *Emperor* J*USTIN* *Augustus to Apion, Praetorian Prefect.* No one need think that in future there will be a right to appeals by consultation beyond the period of time currently established, whether through the offering of petitions or through an imperial rescript granting indulgence for the reinstatement of periods of appeal or upon any other pretext. But it is incumbent on everyone to be vigilant that their appeals are introduced within the established time. And they should do it in such a way that the proceedings in the case from which an appeal is made should not be delivered to the imperial bureau for correspondence toward the end of the time fixed, which might cause the final deadline to lapse through trickery, but should deliver them immediately after an appeal is taken, or not later than when half of the period has expired, so that a tardy

[210] Seeck dates this constitution to May 20, 440.

quam ante dimidiam partem temporis praebeantur scrinio, ne, quod per angustias contingit temporum, tardus appellationis fautor suo dispendio refutetur.

D. k. Dec. Constantinopoli Magno cons.

[4] *Idem A. Tatiano magistro officiorum.* **pr.** Per hanc divinam sanctionem decernimus, ut licentia quidem pateat in exercendis consultationibus tam appellatori quam adversae parti novis etiam adsertionibus utendi vel exceptionibus, quae non ad novum capitulum pertinent, sed ex illis oriuntur et illis coniunctae sunt, quae apud anteriorem iudicem noscuntur propositae. **1.** Sed et si qua dicta quidem adlegatio monstrabitur vel instrumentum prolatum aliquod, probationes tamen illo quidem defuerunt tempore, verum apud sacros cognitores sine procrastinatione praeberi poterunt, id quoque eos admittere, quo exercitatis iam negotiis pleniore subveniatur veritatis lumine.

D. v k. Iun. Constantinopoli Rusticio cons.

[5] *Imp. Iustinianus A. Triboniano quaestori sacri palatii.* **pr.** Cum anterioribus legibus ex omni provincia ad hunc nostrum sacratissimum comitatum similis cursus ad appellationes exercendas impertitus est, necessarium nobis visum est huiusmodi spatiis iustum imponere libramentum.

1. Sancimus itaque, si quidem ab Aegyptiaco vel Libyco limite vel Orientali tractu usque ad utrasque Cilicias numerando vel Armeniis et gentibus et omni Illyrico causa fuerit more appellationum transmissa, primum semestre spatium in antiqua definitione permanere et nihil penitus neque deminui neque adcrescere. **1a.** Sin autem ex aliis nostri imperii partibus sive Asianae sive Ponticae sive Thraciae dioeceseos lis provocatione suspensa in hanc regiam urbem perveniat, pro semestri spatio trium tantummodo mensum spatium eis indulgeri: aliis trium mensum spatiis, id est nonaginta tribus diebus simili modo sequentibus sive semestre tempus sive tres priores menses secundum locorum definitionem, quam designavimus. **1b.** Sed et aliis tribus mensibus, qui ex reparatione ab aula concedi solent, in suo robore duraturis et prioribus accedentibus, ut partim annale numeretur, partim novem mensum spatium consequatur.

1c. Et cum antea in fine cuiusque temporis unus fatalis dies ex antiquis legibus constitutus est et saepe eveniebat (cum multae sunt occasiones mortales appellationum) vel aegritudine vel spatii prolixitate vel per alias causas, quas nec dici nec enumerari facile sit, eundem diem

appellant will not be refuted at his own loss because of what happens when time runs short.

Given December 1, at Constantinople, in the consulship of Magnus (518).

[4] *The same Augustus to Tatianus, Master of the Offices.* We decree by this imperial sanction, that in appeals by consultation, both appellants and their opponents have the right to set up new claims or defenses which do not pertain to a new heading but arise out of or are connected to matters known to have been brought before the previous judge. 1. But even if some assertion is shown to have been made or a document to have been offered, yet proof for it was previously lacking, and if it can be furnished to the imperial judges without delay, they shall also admit this so that fuller light may be shed on affairs previously investigated.

Given May 28, at Constantinople, in the consulship of Rusticius (520).

[5] *Emperor* JUSTINIAN *Augustus to Tribonianus, Quaestor of the Imperial Palace.* **pr.** Since in previous laws a similar course was allotted for making appeals from all the provinces to this Our Imperial Court, it seemed necessary to Us to give proper measure to the time periods necessary for this.

1. We therefore ordain that, if a case should be sent on appeal from the Egyptian or Libyan frontier or the eastern reaches up to both Cilicias or from the Armenians and the Nations (*gentes*) and all of Illyricum, the first period of six months shall remain as in the old regulation[211] and shall in no way be increased or diminished. **1a.** But if a suit suspended by appeal should reach this imperial city from other parts of Our empire, whether from the dioceses of Asiana, Pontica, or Thracia, instead of a six-month period, only a three-month span will be permitted for it. The other periods of three months, that is to say the ninety-three days, shall follow in similar fashion the six-month or three-month period according to the distinction We have assigned to the various places. **1b.** The other period of three months, which is usually granted by the Emperor for reinstatement of the right of appeal shall, continue in force and be added to the prior ones. And so a one-year period is calculated in some places and a nine-month period occurs in others.

1c. And formerly a single deadline was established at the end of each time period following ancient laws, and it used to happen often – since men have many occasions for appeal – that, either through sickness or through great distance or for other reasons difficult to relate or recount, that same deadline was not observed, and suits expired, and people's property was endangered

[211] C. 7.63.2. As to "the Nations," see C. 1.29.5.

fatalem non observari et lites expirare et huiusmodi luctuosis infelicitatibus patrimonia hominum titubare: propter hoc fortunae relevantes insidias sancimus non in unum diem fatalem standum esse in posterum, sed sive ante quartum diem fatalis luminis et ipsum fatalem sive post quinque dies, ex quo ortus fatalis effluxerit, appellator venerit et litem instituendam curaverit et eam in competens iudicium deduxerit, legi videri satisfactum, ne ingemiscat mortuae causae dispendium, sed nostro gaudeat beneficio, cum nobis cognitum sit etiam ex errore calculi dierum quem officium habuit saepe esse causas periclitatas: quod in posterum non fieri ex remedio legis praesentis sperandum est. **1d.** Eodem beneficio et in aliis omnibus fatalibus qui vel a pedaneis iudicibus vel ab aliis, quos leges suis sanctionibus enumeraverunt, custodiendo seu observando, ut decem fatales pro uno ubique instituantur.

2. In his autem casibus, in quibus biennium constitutum est, quatenus more consultationum in regia urbe sub communi audientia florentissimorum nostri palatii procerum ventilentur, biennii metas unius anni terminis coartamus, ut intra eum et gesta colligere et ea viris devotis epistularibus tradere et refutatorios libellos, si voluerint, offerre et litem in sacrum nostrum consistorium introducere cogantur: nulli licentia deneganda victrici parti, si voluerit, secundum quod iam constitutum est, et praemature causam inducere neque annali spatio expectato. **3.** Si tamen in sacro nostro consistorio lis exordium ceperit, etsi non fuerit in eodem die completa, tamen perpetuari eam concedimus, cum iniquum sit propter occupationes florentissimi ordinis, quas circa nostrae pietatis ministeria habere noscitur, causas hominum deperire.

4. Illud etiam merito addendum huic legi censemus, ut si qui fatali die apud appellationis iudicem introductus, sive ex una parte sive cognitionaliter causae appellationis imponat exordium, deinde relicta ea discedat et in desidia reliquum tempus permaneat et annale tempus post inchoatam litem praeterierit, victore neque sententiam ad effectum perducere valente propter litem iam inchoatam neque iam terminum accipere inveniente, cum appellatoris absentia eam finiri non facile concedit, huiusmodi iniquitatem amputantes (cum adversarius potest et minime praesente appellatore litem exercere, quia hoc speciale privilegium eius est, qui appellationi examinandae praesidet, posse ex una parte causam dirimere) iubemus eundem appellatorem, nisi observaverit iudicium et causam usque ad finem peregerit, sed per eum steterit, quominus omnia litis certamina impleantur, appellatione defraudari et sententiam contra

by grievous misfortunes of this sort. For this reason We relieve the snares of fortune and ordain that in future there is no need to abide by a single deadline, but the law will be satisfied if the appellant approaches, sees to the establishment of his suit, and brings it before the appropriate court either up to four days before the deadline day, or on that day itself, or for the five days following sunset on the deadline. Thus he will not groan at the loss of an expired case, but will rejoice in Our beneficence, for it has come to Our attention that cases have often been threatened even by calculation errors committed by the official staff. It is hoped this will not happen in future because of the remedy of the present law. **1d.** This benefit should also be kept and observed in all other deadlines both by delegated judges and others whom the laws enumerate in their sanctions, so that ten-day deadlines shall be established everywhere instead of one-day.

2. But in cases in which a period of two years is now established for airing an appeal by consultation in the Imperial City before a collective hearing of the most flourishing highest officials of Our palace, We restrict the boundary from two years to one year, so that appellants are compelled within this span to collect the proceedings and deliver these to the devoted clerks of the correspondence bureau, and to offer refutatory petitions, if they wish, and to introduce their suit into Our Imperial Court. Nor must the right be denied to the winning party, if he so desires, to introduce his case very early without waiting a year's time, in accordance with what has long been established.[212] **3.** Nevertheless, if a suit is begun before Our Imperial Council, even if it should not be finished on the same day, We permit it to be continued, since it would be unjust if people's cases failed because of the preoccupations of the Most Flourishing Order while it is engaged in the service of Our Piety.

4. We think that the following should also be added to this law: if an appellant is brought before an appeals judge on the deadline day, whether he began the case for appeal as a single party or in the manner of an inquest, and if he then abandons it and departs and remains inactive for the time to come, and a year's time passes after the suit was begun, the winner will not be able to bring the verdict into effect on account of the suit having been begun but not yet finished, since the absence of the appellant hardly permits it to be concluded; curtailing such injustice We command that, if the appellant is not observant of the court and does not pursue his case to its end, and if because of him every dispute is not concluded in the suit, that same appellant will be deprived of his appeal and the verdict rendered against him will remain in force and be brought into effect as if he had never appealed in the first place; for his adversary is able to conduct his suit even if the appellant is not present, since it is the

[212] See C. 7.62.37.2, 7.64.10.1.

eum latam in suo robore durare et ad effectum perduci, tamquam si ab initio minime fuerit provocatum: nisi ipse appellator evidentissime probationibus possit ostendere se quidem summa ope nisum voluisse litem exercere, per iudicem autem stetisse vel aliam inexorabilem causam subsecutam, propter quam hoc facere minime valuit. tunc etenim aliud ei annale tempus indulgemus, quo effluente et lite minime finem accipiente cadere eum de appellatorio iuvamine disponimus, cum sit ei apertissima facultas et nostram adire maiestatem et tarditatem iudicis in querellam deducere et nostro beneficio perpotiri.

5. Cui consentaneum est, ut et in sententiis omnium amplissimorum praefectorum praetorio ex divino oraculo retractandis eadem observatio, quae supra dicta est, post ingressum unius vel utriusque partis tam propter absentiam personarum quam propter statuta tempora teneat. **6.** Sin autem partes inter se scriptura interveniente paciscendum esse crediderint nemini parti licere ad provocationis auxilium pervenire vel ullum fatalem observare, eorum pactionem firmam esse censemus. legum etenim austeritatem in hoc casu volumus pactis litigantium mitigari.

D. XV k. Dec. Chalcedone Decio vc. cons.

LXIIII Quando Provocare Necesse Non Est

[1] *Imp. Alexander A. Apollinario et aliis.* Datam sententiam dicitis, quam ideo vires non habere contenditis, quod contra res prius iudicatas, a quibus provocatum non est, lata sit. cuius rei probationem si promptam habetis, et citra provocationis adminiculum quod ita pronuntiatum est sententiae auctoritatem non obtinebit.

PP. VIII k. April. Alexandro A. cons.

[2] *Idem A. Capitoni.* **pr.** Si, cum inter te et aviam defuncti quaestio de successione esset, iudex datus a praeside provinciae pronuntiavit potuisse defunctum et minorem quattuordecim annis testamentum facere ac per hoc aviam potiorem esse, sententiam eius contra tam manifesti iuris formam datam nullas habere vires palam est et ideo in hac specie nec provocationis auxilium necessarium fuit. **1.** Quod si, cum de aetate quaereretur, implesse defunctum quartum decimum annum ac per hoc iure factum testamentum pronuntiavit, nec provocasti aut post appellationem impletam causa destitisti, rem iudicatam retractare non debes.

<PP. XVI k. Apr. Alexandro A. II et Marcello? conss.>

special privilege of the person who presides over appeals courts to be able to adjudicate cases with only one party present; unless the appellant can clearly show that he wanted to use every effort to carry on the suit but was halted because of the judge or some other unavoidable cause through which he was unable to do so; for in that case We grant him one more year's time; but if that, too, passes and the suit is not terminated, We order that he should lose any relief from an appeal, since he has the fullest opportunity to come before Our Majesty, complain of the tardiness of the judge, and obtain Our beneficence.

5. It is proper that the above-stated rule should also be applied by all of Our Most High Praetorian Prefects when reviewing cases by imperial order after the appearance of one or both of the parties, both with regard to the absence of persons as well as to the times established. 6. If the parties deem it best, however, to make a pact in writing that neither party shall resort to the help of an appeal or pay attention to any deadline, We determine that their pact shall be valid. For We want the severity of the law to be mitigated in this case by the pacts of the litigants.

Given November 17, at Chalcedon, in the consulship of the vir clarissimus *Decius (529).*

Sixty-Fourth Title When It Is Not Necessary to Appeal[213]

[1] *Emperor* ALEXANDER *Augustus to Apollinarius and others.* You say that a decision was rendered which you contend to be without force because it was rendered contrary to matters previously adjudicated from which no appeal was taken. If you have the proof of that at hand, the pronouncement made in this way will not obtain the force of a verdict, even leaving aside the support of an appeal.

Posted March 25, in the consulship of Alexander Augustus (222).

[2] *The same Augustus to Capito.* pr. If, in a suit between you and the grandmother of the deceased about an inheritance, the judge appointed for the case by the provincial governor held that the decedent, though less than 14 years old, was capable of making a testament, and because of this the grandmother prevailed, his verdict was so clearly rendered contrary to the existing law that it obviously has no force and no appeal was necessary in such case. 1. But if, when the question of age was raised, he held that the deceased had passed his fourteenth year and that the testament was therefore valid, and you did not appeal or you abandoned the case after the appeal had been made, you must not reopen the matter once adjudicated.

Posted March 17, in the consulship of Alexander Augustus, for the second time <and Marcellus> (226).[214]

213 See D. 49.8.

214 The subscripts of this and the two following constitutions have been restored from the Vallicelliana fragments. See Corcoran, "New Subscripts."

[3] *Imp. Gordianus A. Ingenuo.* Si, ut proponis, suspensa apud amplissimos iudices cognitione provocationis, quam te ob id interposuisse dicis, quod decurio nominatus esses, ad duumviratum vocatus es, manifestum est praeiudicium futurae notioni memoratorum iudicum fieri non potuisse.

<PP. k. Mar. Sabino et Venusto? conss.>

[4] *Impp. Valerianus et Gallienus AA. et Valerianus nob. C. Iuliano.* Cum magistratus datos iudices et unum ex his pronuntiasse proponas, non videtur appellandi necessitas fuisse, cum sententia iure non teneat.

<PP. k. Iul. Aemiliano et Basso conss.>

[5] *Imppp. Carus Carinus et Numerianus AAA. Domitiano.* Certa ratione et fine multare praesides possunt. quod si aliter et contra legis statutum modum provinciae praeses multam vobis inrogaverit, dubium non est id, quod contra ius gestum videtur, firmitatem non tenere et sine appellatione posse rescindi.

PP. id. Ian. Caro et Carino conss.

[6] *Idem AAA. Germano.* Cum non eo die, quo praeses provinciae praecepit, iudex ab eodem datus pronuntiaverit, sed ductis diebus alieniore tempore sententiam dedisse proponatur, ne ambages frustra interpositae provocationis ulterius negotium protrahant, praeses provinciae superstitiosa appellatione submota ex integro inter vos cognoscet.

<PP. k. Dec. Carino et Numeriano conss.>

[7] *Impp. Diocletianus et Maximianus AA. Nicagorae.* Venales sententias, quae in mercedem a corruptis iudicibus proferuntur, et citra interpositae provocationis auxilium iam pridem a divis principibus infirmas esse decretum est.

[3] *Emperor* GORDIAN *Augustus to Ingenuus.* If, as you state, the inquest into an appeal that you had interposed because you had been nominated as a decurion was pending before the most high judges, and you were then called to serve as duumvir, it is clear that this could not have prejudiced the upcoming trial by the above-mentioned judges.

Posted March 1, in the consulship of Sabinus <and Venustus> (240?).

[4] *Emperors* VALERIAN *and* GALLIENUS *Augusti and Valerian the Most Noble Caesar to Julian.* Since you state that the magistrates were appointed as judges and from these just one gave judgment, no appeal appears to have been necessary, since the verdict does not legally hold.

Posted July 1, in the consulship of Aemilianus and Bassus (259).

[5] *Emperors* CARUS, CARINUS, *and* NUMERIAN *Augusti to Domitianus.* Governors may impose fines under certain circumstances and within definite limits. But if the provincial governor has imposed a fine on you under other circumstances and beyond the limit fixed by law, there is no doubt that an act which appears to have been done contrary to law has no validity and can be annulled without appeal.

Posted January 13, in the consulship of Carus and Carinus (283).

[6] *The same Augusti*[215] *to Germanus.* Since the judge appointed by the provincial governor did not give his decision on the day when the governor ordered, but is said to have rendered his verdict after that date had been postponed and at a quite inappropriate time, the provincial governor should try the case between you anew, having set aside any superfluous appeal, lest the delays of an appeal interposed in vain should draw out the affair any further.

Posted December 1, in the consulship of Carinus and Numerian (284).

[7][216] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Nicogoras.* Purchased verdicts given by corrupt judges for a price have long ago been declared by the deified emperors to be invalid, even without the assistance of an interposed appeal.

[215] The subscript of this constitution, which has been restored from the Vallicelliana fragments, dates it after the accession of Diocletian on November 20, 284. The heading is thus inaccurate, and this becomes the earliest known rescript of Diocletian.

[216] Possibly to combine with C. 6.34.2, with Corcoran, "New Subscripts" p. 417 on the date.

PP. v k. Ian. Diocletiano A. et Aristobulo conss.

[8] *Idem AA. Constantio.* Si pater tuus, cum decurio creareris, non consensit et quindecim annos aetatis agis, aditus praeses provinciae, si inhabilem te ad obeundum decurionatus honorem esse perspexerit, quando huiusmodi aetati etiam praetermissa appellatione subveniatur, iniquam nominationem removebit.

<*PP. IIII k. Oct. ipsis IIII et III AA. conss.*>

[9] *Idem AA. et CC. Rufino.* Veteranis, qui in legione vel vexillatione militantes post vicesima stipendia honestam vel causariam missionem consecuti sunt, onerum[vii] et munerum personalium vacationem concessimus. huius autem indulgentiae nostrae tenore remunerantes fidam devotionem militum nostrorum etiam provocandi necessitatem remisimus.

[10] *Imp. Iustinianus A. Menae pp.* **pr.** Omnem honorem salvum iudicibus reservantes, si quando una pars quasi laesa per definitivam eorum sententiam provocatione usa fuerit, interdicimus alteri parti quae vicit pro hoc tantummodo, quod nihil capere pro sumptibus litis et detrimentis vel minus quam oportuerat iussa est, provocationem offerre, cum ipsam decisionem litis recte factam esse confiteatur: iudicibus scilicet sive florentissimis proceribus sacri nostri palatii sive his, quibus pro minore litium aestimatione consultationes delegantur, si perspexerint adiuvandum esse victorem sumptuum perceptione, etiam sine provocatione eius hoc statuentibus et iustam eorundem sumptuum quantitatem definientibus. **1.** Sed nec occasione consultationis introducendae victori provocare concedimus, cum et priscis legibus liceat ei et sine provocationis auxilio eandem consultationem differente suo adversario introducere et nos ei nihilo minus hoc permittimus, iniuriam ex supervacua provocatione iudicibus fieri prohibentes.

D. VIII id. April. Constantinopoli Decio vc. cons.

[vii] honorum, Vall.

Posted December 28, in the consulship of Diocletian Augustus and Aristobulus (285).[217]

[8] *The same Augusti to Constantius.* If your father did not give his consent when you were appointed as decurion and you are 15 years of age, and if, when you go before the provincial governor, he finds that you are incapable of assuming the office of the decurionate, he will annul the unfair appointment since persons of that age obtain relief even in the absence of an appeal.

Posted September 28, in the consulship of the same Augusti, for the fourth and third time (290).

[9] *The same Augusti and the Caesars to Rufinus.* We have granted veterans, if they have served in a legion or a cavalry squadron (*vexillatio*) and have obtained an honorable discharge or discharge for disability after twenty years of service, exemption from offices and personal services. But by this ruling of this Our Indulgence and in reward for the faithful devotion of Our soldiers We have also released them from the necessity of an appeal.

[10][218] *Emperor* J*ustinian Augustus to Menas, Praetorian Prefect.* **pr.** Preserving every honor due to judges, if one of the parties to a suit, feeling himself aggrieved by a final decision, resorted to an appeal, We forbid the other party, who was victorious, to make an appeal merely on the ground that he was ordered to receive nothing for the costs and damages of his suit or less than he ought to have, even though he acknowledges that the judgment of the suit is correct. In fact, the judges, whether they are the most flourishing highest officials of Our Imperial Palace or the sort to whom consultations are delegated for judgment of lesser suits, can establish this without an appeal and can delimit a fair amount for these same expenses if they foresee that the winner should be aided through the collection of his expenses. **1.** Nor, however, do We permit the winner to appeal on the pretext of introducing a consultation, since it is permitted even in the previous laws to introduce a consultation without the aid of an appeal when his opponent is delaying, and We do permit him the same right, even as We forbid that any outrage be done to judges through a superfluous appeal.

Given April 6, at Constantinople, in the consulship of the vir clarissimus *Decius (529).*

[217] This subscript, as well as that for the next constitution, has been restored from the Vallicelliana fragments.

[218] Combine with C. 7.62.37.

LXV Quorum Appellationes Non Recipiantur

[1] *Imp. Antoninus A. Sabino.* Eius, qui per contumaciam absens, cum ad agendam causam vocatus esset, condemnatus est negotio prius summatim perscrutato, appellatio recipi non potest.

PP. non. Iul. Antonino A. IIII et Balbino conss.

[2] *Imp. Constantius A. ad Hieroclem.* **pr.** Observare curabis, ne quis homicidarum veneficorum maleficorum adulterorum itemque eorum, qui manifestam violentiam commiserunt, argumentis convictus, testibus superatus, voce etiam propria vitium scelusque confessus audiatu appellans. **1.** Sicut enim haec ita observari disposuimus, ita aequum es testibus productis, instrumentis prolatis aliisque argumentis praestitis si sententia contra eum lata sit et ipse, qui condemnatus est aut minim voce sua confessus sit aut formidine tormentorum tentus contra se aliq uid dixerit, provocandi licentiam ei non denegari.

D. V id. Dec. Leontio et Sallustio conss.

[3] *Impp. Valentinianus et Valens AA. ad Modestum pp.* Nulli officia lium a sententia proprii iudicis provocatio tribuatur nisi in eo tantu negotio, quod ratione civili, super patrimonio forte, apud propriu iudicem inchoarit, scilicet ut in eo tantum negotio a sententia eius, c paret iudici, quisquis velit officialis appellet, quod per procuratore persequi iure tribuitur.

D. IIII id. Iun. Cyzico Valentiniano et Valente AA. conss.

[4] *Idem et Gratianus AAA. ad Olybrium pu.* Abstinendum prors appellatione sancimus, quotiens fiscalis calculi satisfactio postulatur a tributariae functionis sollemne munus exposcitur aut publici vel etia privati, dummodo evidentis atque convicti redhibitio debiti flagitat ut necessario in contumacem vigor iudiciarius excitetur.

Sixty-Fifth Title Whose Appeals May Not Be Accepted[219]

[1] *Emperor* ANTONINUS *Augustus to Sabinus.* If someone remained contumaciously absent when he was called to conduct his case and, after the affair was summarily investigated, he was condemned, his appeal cannot be accepted.

Posted July 7, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[2][220] *Emperor* CONSTANTIUS *Augustus to Hierocles.* **pr.** You will take care that no murderers, poisoners (*venefici*), magicians (*malefici*), adulterers, and persons committing open violence[221] shall be heard as an appellant when they have been convicted by proofs, have been proven guilty by witnesses, and have by their own testimony confessed their vice and wickedness. **1.** Just as We order that rule to be followed, it is also fair that the right of appeal should not be denied to someone who, even after witnesses were produced, documents proffered, other proofs brought to bear, and a verdict rendered against him so that he was condemned, yet never confessed by his own testimony nor said anything against himself even when tested with the frightfulness of tortures.

Given December 9, in the consulship of Leontius and Sallustius (344).

[3][222] *Emperors* VALENTINIAN *and* VALENS *Augusti to Modestus, Praetorian Prefect.* No staff member has the right to appeal from the decision of his own judge, with the lone exception of a suit which he initiated before his own judge in a civil case, as for example concerning his property. That is to say, any given staff member (*officialis*) may appeal from a judge whom he serves only in a suit that can be legally prosecuted through a procurator.

Given June 10, at Cyzicus, in the consulship of Valentinian and Valens Augusti (373).

[4][223] *The same and* GRATIAN *Augusti to Olybrius, City Prefect.* We ordain that no appeal whatever shall be permitted when satisfaction of a Treasury account or of the customary obligation of a tributary service or when repayment of public or even private debt is demanded, provided it is clear and proven, in order that necessary judicial force can be brought to bear against contumacy.

[219] See D. 49.5.

[220] = C.Th. 11.36.7, attributing the constitution to Constantius II and Constans; Seeck dates it to April 24, 348. C. epitomates C.Th. and alters the wording dramatically; frag. 1 is probably interpolated.

[221] For *qui manifestam violentiam commmiserunt*, C.Th. 11.36.7 has *raptorum argumento convictus*, i.e., convicted for rape.

[222] = C.Th. 11.36.17. Seeck dates to June 10, 371; Schmidt-Hofner: posted June 10, 370 or 373.

[223] = C.Th. 11.36.19. Combine with C. 2.6.6. Seeck dates to August 18, 370.

PP. Romae xv k. Sept. Valentiniano et Valente II AA. conss.

[4a] *Idem AAA. ad Claudium pu.* Si clericus ante definitivam sententiam frustratoriae dilationis causa ad appellationis auxilium convolaverit, multam quinquaginta librarum argenti, quam contra huiusmodi appellatores sanctio generalis imponit, cogatur expendere. hoc autem non fisco nostro volumus accedere, sed pauperibus fideliter erogari.

D. VIII id. Iul. Valentiniano np. et Victore conss.

[5] *Imppp. Valens Gratianus et Valentinianus AAA. ad Thalassium proconsulem Africae.* **pr.** Ab exsecutione appellari non posse satis et iure et constitutionibus cautum est, nisi forte exsecutor sententiae modum iudicationis excedat. **1.** A quo si fuerit appellatum, exsecutione suspensa decernendum putamus, ut, si res mobilis est, ad quam restituendam exsecutoris opera fuerit indulta, appellatione suscepta possessori res eadem detrahatur et idoneo collocetur reddenda ei parti, pro qua sacer cognitor iudicaverit. **2.** Quod si de possessione vel de fundis exsecutio concessa erit et eam suspenderit provocatio, fructus omnes, qui tempore interpositae provocationis capti vel postea nati erunt, in deposito collocentur, iure fundi penes eum qui appellaverit constituto.

3. Sciant autem se provocatores vel ab exsecutione appellantes vel ab articulo, si eos perperam intentionem cognitoris suspendisse claruerit, quinquaginta librarum argenti animadversione multandos.

D. III k. Febr. Treviris Valente VI et Valentiniano II AA. conss.

[6] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad Hypatium pu.* Quisquis, ne voluntas diem functi testamento scripta reseretur, vel ne hi, quos scriptos patuerit heredes, in possessionem mittantur, ausus fuerit provocare interpositamque appellationem is cuius de ea re notio

Posted August 18, at Rome, in the consulship of Valentinian and Valens, for the second time, Augusti (368).

[4a][224] *The same Augusti to Claudius, City Prefect.* If a clergyman resorts to appeal for the purpose of delaying proceedings before a final ruling,[225] he shall be compelled to pay a fine of 50 pounds of silver, which the general decree[226] imposes on appellants of this kind. We desire that this sum not go to the Treasury but be faithfully spent on the poor.

Given July 8, in the consulship of Valentinian, Most Noble Boy, and Victor (369).

[5][227] *Emperors* VALENS, GRATIAN, *and* VALENTINIAN *Augusti to Thalassius, Proconsul of Africa.* **pr.** It is clearly enough provided by both the law and constitutions that no appeal may be taken from execution (of a judgment), unless the enforcement officer exceeds the bounds of the decision. **1.** If an appeal is taken from him and the execution has been suspended, We think it right to direct that, if it is movable property that the execution officer was assigned to restore, that same property should be removed from the possessor once the appeal has been accepted and placed with a suitable person only to be restored later to that party in favor of whom the imperial judge (*cognitor*) decides. **2.** But if the execution was issued against a landholding or farm and the appeal suspended it, all the fruits which have been captured at the time when the appeal was made and all that are produced subsequently should be placed in deposit, but the right to the farm should remain in the control of the appellant.

3. But appellants should know that if they appeal either from an execution or on a special point (*articulus*),[228] and it is clear that they have wrongly held up the intent of the judge, they shall be punished by a fine of 50 pounds of silver.

Given January 30, at Trier, in the consulship of Valens, for the sixth time, and Valentinian, for the second time, Augusti (378).

[6][229] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Hypatius, City Prefect.* If anyone ventures to appeal to prevent the opening of a will written as the testament of a deceased person, or to prevent those who appear to have been appointed as heirs from being put in possession, and if any

[224] = C. 1.4.2; see C.Th. 11.36.20. Restored here on the authority of the *Paratitla* to Const. 3. Claudius was actually Proconsul of Africa; see *PLRE* I Petronius Claudius 10.

[225] That is, if he makes an *appellatio frustratoria* or *moratoria*.

[226] C.Th. 11.36.15–16.

[227] = C.Th. 11.36.25. Combine with C.Th. 11.30.37, 11.36.23, 24.

[228] C. has omitted a phrase from C.Th. 11.36.25 which clarifies: "appeal either from an execution or on a special point only from those cases from which we have ordered appeals to be accepted."

[229] = C.Th. 11.36.26.

erit recipiendam esse crediderit, viginti librarum argenti multa et litigatorem, qui tam importune appellaverit, et iudicem, qui tam ignave coniventiam adhibuerit, involvat.

D. non. April. Triveris Ausonio et Olybrio conss.

[7] *Idem AA. et Arcadius A. ad Pelagium comitem rerum privatarum.* Ante sententiae tempus et ordinem eventus nec a discussore nec a rationali appellare liceat.

D. XV k. Mart. Mediolani Arcadio A. et Bautone conss.

[8] *Impp. Arcadius et Honorius AA. Apollodoro comiti rerum privatarum.* Et publicarum necessitatum et privati aerarii deposcit utilitas, ne commoda, quae domui nostrae debentur, callidis debitorum artibus differantur. quamobrem eorum appellatione reiecta, qui aperte manifesteque convicti sunt, hoc observari praecepti huius auctoritate censemus, ut ei, quem constiterit esse publicum debitorem, appellationis beneficium denegetur.

D. IIII id. Aug. Mediolani Arcadio IIII et Honorio III AA. conss.

LXVI Si Pendente Appellatione Mors Intervenerit

[1] *Imp. Alexander A. Iuliano.* Etiam post mortem eius qui appellavit necesse est heredibus eius vel reddi causas provocationis vel statutis adquiescere.

PP. VI k. Nov. Alexandro A. cons.

[2] *Idem A. Marcellinae.* Eius, qui requirendus adnotatus appellaverat et ante actam causam mortuus est, bona ad successorem pertinere parentibus meis placuit.

PP. III non. Dec. Alexandro cons.

[3] *Idem A. Ulpio.* Si is, qui ademptis bonis in exilium datus appellaverit ac pendente provocatione defunctus est, quamvis crimen in persona eius evanuerit, tamen causam bonorum agi oportet. nam multum

judge has jurisdiction over the matter and believes that such an appeal, once interposed, should be accepted, a fine of 20 pounds of silver shall ensnare both the litigant, who appealed so inappropriately, and the judge, who connived so indolently.

Given April 5, at Trier, in the consulship of Ausonius and Olybrius (379).

[7][230] *The same Augusti and* ARCADIUS *Augustus to Pelagius, Count of the Privy Purse.* Before the time of the decision and regular order of events, it is not permitted to appeal either from an Auditor (*discussor*) or a Comptroller.

Given February 15, at Milan, in the consulship of Arcadius Augustus and Bauto (385).

[8][231] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Apollodorus, Count of the Privy Purse.* The utility of public needs and of Our private treasury demand that payment of debts due to Our Household should not be put off by the clever tricks of debtors. Hence, forbidding appeals on the part of those who are openly and clearly convicted, We direct by the authority of this order that the benefit of an appeal shall be denied to anyone who has clearly been established to be a public debtor.

Given August 10, at Milan, in the consulship of Arcadius, for the fourth time, and Honorius, for the third time, Augusti (396).

Sixty-Sixth Title If Death Intervenes While an Appeal is Pending[232]

[1] *Emperor* ALEXANDER *Augustus to Julian.* Even if an appellant has died, his heirs must either prove the grounds of appeal or acquiesce in what has been established.

Posted October 27, in the consulship of Alexander Augustus (222).

[2] *The same Augustus to Marcellina.* Our parents decided that the property of someone who had been branded as a fugitive from the court, but who had appealed and then died before the case was tried, belongs to his heir.

Posted December 3, in the consulship of Alexander (222).

[3] *The same Augustus to Ulpius.* If a person whose property was confiscated and who was sent into exile appealed and died with the appeal pending, although the charge becomes extinct insofar as it relates to his person, the case

[230] = C.Th. 11.36.29. Combine with 7.62.26.
[231] = C.Th. 11.36.32.
[232] See D. 49.13.

interest, utrum capitalis poena inrogata bona quoque rei adimat, quo casu morte eius extincto crimine nulla quaestio superesse potest, an vero non ex damnatione capitis, sed speciali praesidis sententia bona auferantur: tunc enim subducto reo sola capitis causa perimitur bonorum remanente quaestione.

PP. v id. Mart. Modesto et Probo conss.

[4] *Imp. Gordianus A. Alexandro.* Si pater tuus ad decurionatum devocatus appellationem interposuit eaque pendente concessit in fatum, honoris eius quaestio morte finita est.

PP. prid. non. Oct. Pio et Pontiano conss.

[5] *Idem A. Felici.* Quamvis ancilla, de cuius dominio disceptabatur et a rectore provinciae contra te iudicatum fuerat, in fatum concesserit, tamen cum appellationem super ea interpositam fuisse et in numero cognitionum pendere proponas, ea provocatio suo ordine propter peculium ancillae audiri debet.

PP. vii k. Dec. Pio et Pontiano conss.

[6] *Imp. Constantinus A. ad Bassum pu.* Si unus ex litigatoribus adhuc pendente appellatione defunctus sit, non residuum tantum temporis heredes eius habent, sed etiam alios quattuor menses. sin autem ad deliberationem hereditatis certum tempus indulgetur, post elapsum eius idem tempus quattuor mensum numerabitur, ne ignorantes negotium vel etiam super adeunda hereditate dubitantes, priusquam aliquod commodum sentiant, damnis adfici compellantur.

D. xiii k. Iun. Sirmi Crispo ii et Constantino ii CC. conss.

LXVII De His Qui per Metum Iudicis Non Appellaverunt

[1] *Impp. Diocletianus et Maximianus AA. et CC. Diophani.* Si contra te iure pronuntiatum est nec appellationis imploratum auxilium, intellegis adquiescere te statutis oportere. in sacro enim comitatu nostro timere nihil potuisti.

over his property ought still to be tried. For there is a great difference whether the capital penalty that was imposed also causes confiscation of the property of the accused – in which case, since the accusation becomes extinct by death, no further question remains – or whether the property is confiscated not as the result of the capital condemnation but by the special verdict of the governor. In the latter instance, only the capital case is extinguished with the death of the accused, while the question about his property remains.

Posted March 11, in the consulship of Modestus and Probus (228).

[4] *Emperor* GORDIAN *Augustus to Alexander.* If your father interposed an appeal after having been appointed to the decurionate and then died while it was pending, the question of his office is ended.

Posted October 6, in the consulship of Pius and Pontianus (238).

[5] *The same Augustus to Felix.* Although a female slave died, whose ownership was disputed in litigation in which the provincial governor gave judgment against you, still, since you state that an appeal concerning her was interposed and was pending on the court calendar, the appeal should be heard in proper order because of the *peculium* of the female slave.

Posted November 25, in the consulship of Pius and Pontianus (238).

[6][233] *Emperor* CONSTANTINE *Augustus to Bassus, City Prefect.* If one of the litigants dies with an appeal still pending, his heirs have not only the remainder of the legal time (for completing the appeal), but also four additional months. But if a certain time is granted for deliberation as to whether to accept an inheritance, the same period of four months shall be added after the time previously fixed has lapsed, lest they (the heirs) be compelled to suffer losses through ignorance of the affair or even hesitation about whether to enter on the inheritance before they know whether it will be of benefit.

Given May 20, at Sirmium, in the consulship of Crispus, for the second time, and Constantine, for the second time, Caesars (321).

Sixty-Seventh Title Those Who Did Not Appeal through Fear of the Judge

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Diophanes.* If a legal decision was given against you and you did not appeal, you understand that you must acquiesce in the decision. For you could not have feared anything in Our imperial court.

[233] = C.Th. 11.35.1. Combine with C.Th. 2.6.3. C. has entirely rewritten the Theodosian original. Seeck dates to May 19, 318.

S. xv k. Iul. Philippopoli AA. conss.

[2] *Impp. Iulianus A. Germaniano pp.* **pr.** His, qui tempore competenti non appellant, redintegrandae audientiae facultas denegetur. omnes igitur, qui contra praefectos urbi, magistros officiorum, magistros militum seu proconsules seu comites Orientis seu vicarios seu praefectos Augustales vel alium iudicem sub specie formidinis provocationem non arbitrantur interponendam, a revocanda lite pellantur. 1. Qui vero vim sustinuerunt contestatione publice proposita, intra dies videlicet legitimos, quibus appellare licet, causas appellationis evidenti adfirmatione distinguant, ut hoc facto tamquam interposita appellatione isdem aequitatis adminicula tribuantur.

Emissa xv k. Iul. Mamertino et Nevitta conss.

LXVIII Si Unus ex Pluribus Appellaverit

[1] *Imp. Alexander A. Licinio.* Si iudici probatum fuerit unam eandemque condemnationem eorum quoque, quorum appellatio iusta pronuntiata est, fuisse nec diversitate factorum separationem accipere, emolumentum victoriae secundum ea quae constituta sunt ad te quoque pertinere non ignorabit.

PP. xiii k. Sept. Maximo ii et Aeliano conss.

[2] *Idem A. Sereno.* Si in una eademque causa unus appellaverit eiusque iusta appellatio pronuntiata est, ei quoque prodest qui non appellaverit. quod si aetatis auxilio unus contra sententiam restitutionem impetravit, maiori, qui suo iure non appellaverit, hoc rescriptum non prodest.

S. iii id. Sept. Iuliano et Crispino conss.

LXVIIII Si de Momentaria Possessione Fuerit Appellatum

[1] *Imppp. Valentinianus Theodosius et Arcadius AAA. ad Eusignium pp.* Cum de possessione et eius momento causa dicatur, etsi appellatio

Written June 17, at Philippopolis, in the consulship of the Augusti (293).

[2][234] *Emperor* JULIAN *Augustus to Germanianus, Praetorian Prefect.* **pr.** Persons who do not appeal within the appropriate time will be denied the opportunity of renewing a hearing. Therefore, all who under the pretense of fear do not think they should interpose an appeal against the Prefects of the City, Masters of the Offices, Masters of the Soldiers, or Proconsuls, Counts of the East, Vicars, Augustal Prefects, or any other judge will be refused renewal of the suit. 1. Those who in truth suffered force may post an attestation (*contestatio*) publicly, within the time fixed for taking an appeal of course, and set forth the grounds for appeal with clear proof, so that, by having done so, they may gain the benefits of equity as if an appeal had been interposed.

Issued (emissa) *June 17, in the consulship of Mamertinus and Nevitta (362).*

Sixty-Eighth Title If One Out of Many (Co-Litigants) Appeals

[1] *Emperor* ALEXANDER *Augustus to Licinius.* If it is proven to the judge that those whose appeal was pronounced just had (with you) one and the same judgment which did not undergo separation through any diversity of the facts, he will not ignore the fact that the benefit of victory applies to you as well according to previously established precedent.

Posted August 20, in the consulship of Maximus, for the second time, and Aelianus (223).

[2] *The same Augustus to Serenus.* If, in one and the same case, only one has appealed, and his appeal was pronounced just, it will also benefit the party who did not appeal. But if one person obtained a restoration of rights contrary to the verdict by reason of his age, this rescript will not benefit a person of legal age who did not appeal in his own right.

Written September 11, in the consulship of Julian and Crispinus (224).

Sixty-Ninth Title If Appeal Is Made from Provisional Possession

[1][235] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Eusignius, Praetorian Prefect.* When a case involving possession and its

[234] = C.Th. 11.30.30, but C. extends the list of magistrates.
[235] = C.Th. 11.37.1.

interposita fuerit, tamen lata sententia sortiatur effectum. ita tamen possessionis reformationem fieri oportet, ut integra omnis proprietatis causa servetur.

D. XIIII k. Dec. Mediolano Honorio np. et Euodio conss.

LXX Ne Liceat in Una Eademque Causa Tertio Provocare vel Post Duas Sententias Iudicum, Quas Definitio Praefectorum Roboraverit, Eas Retractare

[1] *Imp. Iustinianus A. Menae pp.* Si quis in quacumque lite iterum provocaverit, non licebit ei tertio in eadem lite super isdem capitulis provocatione uti vel sententias excellentissimorum praefectorum praetorio retractare: licentia danda litigatoribus arbitro dato ipsius audientiam qui eum dedit ante litis contestationem invocare et huiusmodi petitione minime provocationis vim obtinente.

D. k. Iul. Constantinopoli dn. Iustiniano A. II cons.

LXXI Qui Bonis Cedere Possunt

[1] *Imp. Alexander A. Irenaeo.* Qui bonis cesserint, nisi solidum creditor receperit, non sint liberati. in eo enim tantum hoc beneficium eis prodest, ne iudicati detrahantur in carcerem.

PP. X k. Dec. Maximo II et Aeliano conss.

[2] *Imp. Philippus A. et Philippus C. Abascanto.* Si quantitatem, quam (licet rei publicae) condemnatus debebas, inferre paratus es, frustra vereris, ne verbum bonorum cessionis temere a te prolatum privare te necdum distractis facultatibus iuris rationibus possit.

PP. XVI k. Febr. Philippo A. et Titiano conss.

[3] *Impp. Valerianus et Gallienus AA. et Valerianus nobilissimus C. Lenillae.* Si pater tuus bonis cessit propter onera civilia, ipsius facultates

provisional grant is tried, even if an appeal should be interposed, a verdict once rendered should still be executed. But the restoration of possession ought to occur in such a way that the entire case for ownership should be kept whole.

Given November 18, at Milan, in the consulship of the Most Noble Boy Honorius and Euodius (386).

Seventieth Title It Is Not Permitted to Appeal a Third Time in One and the Same Case or to Reconsider Cases after Two Verdicts of Judges Which a Decision of the Prefects has Confirmed

[1] *Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect.* If anyone has appealed a case for the second time, he shall not be permitted to appeal a third time on the same points or to reopen the verdicts of the most excellent Praetorian Prefects. But if a judge arbitrator was appointed, litigants should be given the right to seek a hearing from the judge who appointed him before joinder of issue, for in no way does a petition of this sort have the force of an appeal.

Given July 1, at Constantinople, in the consulship of Justinian Augustus, for the second time (528).

Seventy-First Title Who Can Surrender Property to Creditors[236]

[1] *Emperor* ALEXANDER *Augustus to Irenaeus.* Persons who have surrendered their property to creditors (*cessio bonorum*) are not released unless the creditor received his debt in full. Indeed, this benefits them only in as far as they are not carried to jail as judgment debtors.

Posted November 22, in the consulship of Maximus, for the second time, and Aelianus (223).

[2] *Emperor* PHILIP *Augustus and Caesar* PHILIP *to Abascantus.* If you are ready to pay the amount which you were condemned to pay and you owed – albeit to a municipality – you need not fear that the declaration you made hastily that you would surrender your property to creditors can by any rules of law deprive you of such property when it has not yet been sold.

Posted January 17, in the consulship of Philip Augustus and Titianus (245).

[3] *Emperors* VALERIAN *and* GALLIENUS *Augusti and the Most Noble Caesar Valerianus to Lenilla.* If your father surrendered his property to creditors because

[236] See D. 42.3.

oportet inquiri, non patrimonium, quod tibi emancipatae quaesitum dicis, inquietari. quod ut fiat, implorare aequitatem praesidis debes.

PP. XIII k. Dec. Aemiliano et Basso conss.

[4] *Impp. Diocletianus et Maximianus AA. et CC. Chiloni.* **pr.** Legis Iuliae de bonis cedendis beneficium constitutionibus divorum nostrorum parentium ad provincias porrectum esse, ut cessio bonorum admittatur, notum est: non tamen creditoribus sua auctoritate dividere haec bona et iure dominii tenere, sed venditionis remedio, quatenus substantia patitur, indemnitati suae consulere permissum est. **1.** Cum itaque contra iuris rationem res iure dominii teneas eius qui bonis cessit creditorem te dicens, longi temporis praescriptione petitorem submoveri non posse manifestum est. quod si non bonis eum cessisse, sed res suas in solutum tibi dedisse monstretur, praeses provinciae poterit de proprietate tibi accommodare notionem.

[5] *Idem AA. et CC. Myroni.* Propter honorem municipalem vel munus bonis cedentium invidiosam admitti cessionem minime convenit, sed his obnoxios pro modo substantiae fungi.

[6] *Apud acta imp. Theodosius A. dixit:* In omni cessione bonorum ex qualibet causa facienda scrupulositate priorum legum explosa professio sola quaerenda est. *Idem dixit:* In omni cessione sufficit voluntatis sola professio.

D. k. Mai. Honorio np. et Euodio conss.

[7] *Imp. Iustinianus A. Iuliano pp.* Cum et filii familias possint habere substantias, quae patribus adquiri vetitae sunt, nec non peculium vel castrense vel quod patre volente possident, quare cessio bonorum eis deneganda sit? cum, etsi nihil in suo censu hi qui in potestate sunt parentum habeant, tamen, ne patiantur iniuriam, debet bonorum cessio

of what he owed the city, an inquest into his finances should be made, but the property which you say you acquired after emancipation must not be disturbed. To ensure that this happens, you should implore the equity of the governor.

Posted November 19, in the consulship of Aemilianus and Bassus (259).

[4] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Chilo.* **pr.** It is well known that the benefit of the Julian law on the surrender of property has been extended to the provinces by the constitutions of Our deified parents, so that surrender of property (to creditors) is permitted. It is not permitted, however, for creditors to divide that property on their own authority and to hold it by right of ownership, but they are permitted to indemnify themselves only through the remedy of a sale and up to the amount that the fortune permits. **1.** Since, therefore, contrary to law you hold by right of ownership the property of the man who surrendered his property and whose creditor you say you are, it is clear that a claimant cannot be defeated by long-time prescription. But if it should be shown that the owner did not surrender his property to creditors but gave it to you in lieu of payment (*in solutum*), the provincial governor will be able to grant an inquest into the property for you.

[5] *The same Augusti and the Caesars to Myron.* It is right not to permit an odious surrender by those who surrender their property in order to avoid a municipal office or obligation, but rather for those subject to these (offices) to perform them in keeping with the size of their fortune.

[6][237] *Emperor* THEODOSIUS *Augustus stated* (dixit) *among the records* (apud acta): The technical requirements of former laws are abolished in connection with the surrender of property to creditors, regardless of the reason it is made, and a declaration alone is necessary. *The same emperor stated*: In every surrender of property to creditors, a declaration of intention alone suffices.

Given May 1, in the consulship of the Most Noble Boy Honorius and Euodius (386).

[7] *Emperor* JUSTINIAN *Augustus to Julian, Praetorian Prefect.* Since unemancipated sons (*filiifamilias*) may also have wealth which is forbidden to be acquired by their fathers, and they may also have a military *peculium* or a *peculium* that they possess by consent of their father, why should the right to make a surrender of property to creditors be denied them? Even if those in the power of their parents have nothing registered to them (*nihil in suo censu habeant*), the surrender of property to creditors should still be permitted them in order

[237] = C.Th. 4.20.3, which omits the first clause (through "abolished").

admitti. si enim et pater familias admittendus est propter iniuriarum timorem ad cessionis flebile veniens adiutorium, quare filiis familias utriusque sexus hoc ius denegamus? cum apertissimi iuris est et inter patres familias et alieno iuri subiectos, si quid postea eis pinguius accesserit, hoc iterum usque ad modum debiti posse a creditoribus legitimo modo avelli.

D. x k. Mart. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[8] *Idem A. Iohanni pp.* **pr.** Cum solito more a nostra maiestate petitur, ut ad miserabilis cessionis bonorum homines veniant auxilium et electio detur creditoribus vel quinquennale spatium eis indulgere vel bonorum accipere cessionem, salva eorum videlicet existimatione et omni corporali cruciatu semoto: quotidie dubitabatur, si quidam ex creditoribus voluerint quinquennales dare indutias, alii autem iam nunc cessionem accipere velint, qui audiendi sunt.

1. In tali itaque dubitatione minime putamus esse ambiguum, quod sentimus et quod humaniorem sententiam pro duriore elegimus. et sancimus, ut vel ex cumulo debiti vel ex numero creditorum causa iudicetur. 2. Et si quidem unus creditor aliis omnibus gravior in summa debiti inveniatur, ut omnibus in unum coadunatis et debitis eorum computatis ipse alios antecellat, ipsius sententia obtineat, sive indulgere tempus sive cessionem accipere desiderat. 3. Si vero plures quidem sint creditores, ex diversis autem quantitatibus, et nunc amplior debiti cumulus minori summae praeferatur, sive par sive discrepans numerus est creditorum, cum non ex frequentissimo ordine feneratorum, sed ex quantitate debiti causa trutinatur. 4. Pari autem quantitate debiti invenienda, dispari vero creditorum numero, tunc amplior pars creditorum obtineat, ut, quod pluribus placeat, hoc statueretur. 5. Sin vero undique aequalitas emergat tam debiti quam numeri creditorum, tunc eos anteponi, qui ad humaniorem declinant sententiam non cessionem exigentes, sed indutias. 6. Nulla quidem differentia inter hypothecarios et alios creditores quantum ad hanc electionem observanda: in rebus autem officio iudicis partiendis suam vim singulis creditoribus habentibus, quam eis legum praestabit regula. 7. Nullo praeiudicio creditorum cuidam ex quinquennii dilatione circa temporalem praescriptionem generando.

that they may not suffer any outrage (*iniuria*). Indeed, if a *paterfamilias* in fear of outrages is permitted to resort to the lamentable aid of a surrender of property, why should We deny that right to unemancipated children of either sex. This is particularly true since the law is clear, both in the case of a *paterfamilias* and in that of persons subject to another's power, that if additional wealth later falls to them, this can be confiscated by the creditors in a lawful manner up to the extent of the debt.

Given February 20, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[8] *The same Augustus to John, Praetorian Prefect.* pr. Since in the usual way it is often sought from Our Majesty that people might resort to the aid of a pitiable surrender of property to creditors, and a choice is given to the creditors whether to grant a five-year respite to these or to accept the surrender of their property, while of course keeping their good name intact and preventing any corporal punishment, there used to be daily disputes about who should be given preference if some of the creditors wanted to grant the five-year respite but others wished to receive the surrender of property immediately.

1. In such a dispute there is no ambiguity in what We feel and which decision We hold to be more humane and less harsh. And We ordain that the case be decided according to the amount of the debt or the number of creditors. 2. If one creditor is found to be owed more than all others from the total of the debt, so that, once all of these are assembled together and their share in the debt calculated, he exceeds the others, let his decision prevail, whether he decides to grant the respite or to accept the surrender of property. 3. But if there are many creditors each with a different amount, here too the greater portion of the debt shall have preference over the lesser sum, whether the number of creditors is equal or unequal, since the case shall be weighed out not by the number of lenders but by the amount of debt. 4. If the amount of the debt (on each side) is found to be equal but the number of creditors unequal, then the greater number of creditors shall prevail, and whatever the majority decides shall be done. 5. If equality emerges on all sides, both in point of debts as well as in the number of creditors, the parties who are more merciful and are in favor of giving respite instead of demanding an immediate surrender of property shall prevail. 6. There shall be no difference in making the choice, between secured and other creditors. But every creditor shall have his own right to divide property through the official staff of the judge as the regulations of the law permit. 7. The five-year respite shall not prejudice any creditor in connection with the period of prescription.

(531–532).[238]

[238] Lounghis *et al.* date to between 531 and 534.

LXXII De Bonis Auctoritate Iudicis Possidendis seu Venumdandis et de Separationibus

[1] *Imp. Antoninus A. Atticae.* In bonis mortui potiorem esse causam legatariorum, qui eum utpote heredem convenire potuerunt, quam eorum, quibus ipse legavit, manifestum est, cum prius legatum quasi aes alienum exigitur, legatum autem a mortuo relictum post debiti detractionem inducitur.

<PP. xv k. Iul. G(entiano?) et Basso conss.>

[2] *Imp. Gordianus A. Aristoni.* Est iurisdictionis tenor promptissimus indemnitatisque remedium edicto praetoris creditoribus hereditariis demonstratum, ut quotiens separationem bonorum postulant, causa cognita impetrent. praeoptabis igitur convenientem desiderii tui fructum, si te non heredum fidem secutum, sed ex necessitate ad iudicium eos provocare demonstraveris.

<PP. iii k. Feb. Gor. A. et Aviola conss.>

[3] *Idem A. Claudianae.* Ex contractu, qui cessionem rerum antecessit, debitorem contra iuris rationem conveniens, cum eum aequitas auxilio exceptionis muniat ac tunc demum iteratam possis desiderare conventionem, cum tantum postea quaesiit, quod praesidem ad eius rei licentiam debeat promovere.

<PP.? k. Mai. Gor. A. et ... conss.>

[4] *Impp. Diocletianus et Maximianus AA. et CC. Clearchianae.* Incivile est, quod postulas, ut unus ex chirographariis creditoribus debitoris bona compellatur suscipere, satis ceteris eius creditoribus facturus.

<S. id. Apr. Biza. AA. conss.>

[5] *Idem AA. et CC. Abydonio.* Si bona debitoris tui vacare constet et haec a fisco non agnoscantur, in possessionem eorum mitti te a competenti iudice recte postulabis.

xvii k. Ian. AA. conss.

Seventy-Second Title The Possession and Sale of Property by the Authority of a Judge and Separations of Property[239]

[1] *Emperor* Antoninus *Augustus to Attica.* With the property of a decedent, it is clear that those legatees who could have sued the decedent as heir have a stronger case than those to whom he himself left a legacy. For the former of these legacies can be collected as a debt, though the legacy left by the decedent is met only after the deduction for debts.

Posted June 17, in the consulship of G(entianus?) and Bassus (211).[240]

[2] *Emperor* Gordian *Augustus to Aristo.* The promptest rendering of a decision and remedy for indemnification have been accorded to creditors of an inheritance by the Praetor's Edict, so that, whenever they demand separation of property (*separatio bonorum*), following a hearing they obtain it. Therefore you will choose an outcome suited to your wish if you should show that you did not rely on the good faith of the heirs, but of necessity summoned them to court.

Posted January 30, in the consulship of Gordian Augustus and Aviola (239).

[3] *The same Augustus to Claudiana.* You are suing the debtor contrary to the rule of law on a contract that preceded the surrender of property (*cessio rerum*), since equity protects him through the aid of a defense. But ultimately you can request that your suit be reintroduced after he has acquired so much property that the governor should be moved to grant you permission to sue.

... May 1, in the consulship of Gordian Augustus ... (239 or 241).

[4] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Clearchiana.* What you ask is not lawful, namely that one of the promissory-note creditors (*chirographarii creditores*) should be forced to take over the property of the debtor and then pay his other creditors.

Written April 13, at Byzantium, in the consulship of the Augusti (293).

[5] *The same Augusti and the Caesars to Abydonius.*[241] If it appears that the property of your debtor is ownerless and is not claimed by the treasury, you will be right to ask that you be put in possession of it by the appropriate judge.

Written December 16, in the consulship of the Augusti (294).

[239] See D. 42.5–6.

[240] This subscript and those of the three following rescripts are restored from the Valicelliana Fragments, see Corcoran, "New Subscripts."

[241] This is the likeliest reading of the recipient's name. Corcoran, 420–422.

[6] *Idem AA. et CC. Agathemero.* **pr.** Pro debito creditores addici sibi bona debitoris non iure postulant. unde si quidem debitoris tui ceteri creditores pignori res acceperunt, potiores eos quam te chirographarium creditorem haberi non ambigitur. **1.** Quod si specialiter vel generaliter nemini probentur obligatae ac sine successore communis debitor vel heres eius decessit, non dominii rerum vindicatione, sed possessione bonorum itemque venditione aequali portione pro rata debiti quantitate omnibus creditoribus consuli potest.

[7] *Idem AA. et CC. Domno.* Si uxor tua pro triente patruo suo heres extitit nec ab eo quicquam exigere prohibita est, debitum a coheredibus pro besse petere non prohibetur, cum ultra eam portionem qua successit actio non confundatur. sin autem coheredes solvendo non sint, separatio postulata nullum ei damnum fieri patiatur.

D. k. Dec. CC. conss.

[8] *Idem AA. et CC. Aelidae.* In possessionem rei servandae uxor defuncti vel alii creditores missi dominium ex hac causa tenentes adipisci minime possunt.

Sub die VI k. Ian. Nicomediae CC. conss.

[9] *Idem AA. et CC. Aurelio Gerontio.* Cum proponas eum contra quem supplicas ex administratione tibi negotiorum obligatum, hunc secundum iuris rationem adito rectore provinciae potes convenire. nam si ad circumscriptionem tui iuris latitat nec defendatur et eum tuum esse debitorem constat, ad exemplum edicti bonorum eius possessionem poteris impetrare. tempore autem transacto etiam venditionem eorum a competenti iudice postulare non prohiberis.

D. XIIII k. Sept. Diocletiano VII et Maximiano VI AA. conss.

[10] *Imp. Iustinianus A. Iohanni pp.* **pr.** Cum apud veteres quaestionem ortam invenimus super pecuniis debitis, pro quibus hypothecae non sunt constitutae, propter res ad debitorem pertinentes, dum is severiores

[6] *The same Augusti and Caesars to Agathemerus.* **pr.** Creditors cannot legally ask that the property of their debtor be adjudged to them for their debt. Hence if other creditors of your debtor had received property in pledge, there is no doubt that they have stronger claims than you, who are only an unsecured creditor. 1. But if it is shown that no property was specially or generally mortgaged to anyone and the common debtor or his heir died without a successor, the interests of all of the creditors can be equally protected in proportion to the amount of their debt, not by a suit on ownership of the property, but by an order for possession of the property (*possessio bonorum*) and its sale.

[7][242] *The same Augusti and the Caesars to Domnus.* If your wife is heir to one-third of the estate of her paternal uncle, and she was not forbidden to extract payment from him (of an independent debt he owed her), she is not prohibited from seeking two-thirds of the (uncle's) debt (to her) from her co-heirs, since beyond that portion by which she succeeded her right of action is not merged. But if they are insolvent, a requested separation (of property) will not allow any loss to accrue to her.

Given December 1, in the consulship of the Caesars (294).

[8] *The same Augusti and the Caesars to Aelis.* The wife of a decedent or other creditors who are put in possession of property to preserve it cannot acquire ownership by holding it for this reason.

Under the date December 27, at Nicomedia, in the consulship of the Caesars (294).

[9][243] *The same Augusti and the Caesars to Aurelius Gerontius.* Since you state that the man against whom you complain is indebted to you on account of management of affairs (*administratio negotiorum*), according to law you may go before the provincial governor and sue him. If he is hiding to defraud you of your rights, he shall not be defended and he is clearly your debtor; you may, according to the edict, obtain an order for possession of his property. And after the legal time has passed, you are not forbidden to demand from the appropriate judge an order for its sale.

Given August 19, in the consulship of Diocletian, for the seventh time, and Maximianus, for the sixth time, Augusti (299).

[10] *Emperor JUSTINIAN Augustus to John, Praetorian Prefect.* **pr.** We find that a dispute existed among the ancients as to debts for which no security arrangements (*hypothecae*) had been given: as regards the property belonging to the

[242] = C. 4.16.6, with significant difference in the hypothetical ("wife" is the recipient's ward).
[243] Combine with C. 3.21.1, 4.50.7.

creditores formidans sese celaverit, et illi de rebus ad eum pertinentibus competentia ingrediantur iudicia postulentque in possessionem rerum sese transmitti, si etiam alii creditores, quibus obnoxius esse videtur, possint quandam habere communionem in rerum possessione:

huiusmodi dubitationem amputantes censemus per praesentem generalem divinam constitutionem, ut, si non omnes huiusmodi debita praetendentes, sed ex his certi ab iudiciali sententia in possessionem rerum mittantur, non solum hi, sed etiam alii omnes talia debita praetendentes eadem commoditate potiantur et possint cum prioribus rerum detentatoribus communionem habere in rebus, de quibus (sicut superius declaratur) prolata fuit sententia. quid enim iustius est, quam omnes, qui ad res debitoris mitti debent, esse participes huiusmodi commoditatis?

1. Ut autem non in perpetuum aliorum neglegentia illi, qui pro suis debitis alacriores creditoribus aliis ostenduntur fuisse, praegraventur, rectum nobis esse videtur tunc communionem habere in possessionem rerum alios creditores, qui non hoc peregisse noscuntur, cum praesentes quidem in una eademque degentes provincia, in qua et possessores rerum commorantur, intra duorum annorum spatia, absentes autem intra quadriennium creditoribus possessionem antelato modo detinentibus suum debitum certum faciant et expensas secundum quantitatem debitorum persolvant eis, qui sententias consecuti sunt, per sacramentum manifestandas eorum, qui eas adipiscendae gratia possessionis rerum sustinuerunt, quia et secundum debita satis eis fieri explorati iuris est. 1a. Post completum autem memoratum tempus nullam eis esse licentiam eos qui possessionem adepti sunt molestare vel quibusdam damnis adficere: actiones autem, quas ex legibus sibi competere putaverint, contra suos exercere debitores.

2. Sin autem hi qui detinent possessiones vel ex sententia iudicis res vendiderint vel alio quocumque legitimo modo omne ius, quod in isdem rebus habere noscuntur, in alias personas post definitum a nobis tempus transtulerint et certas pecunias acceperint, quidquid superfluum inventum fuerit vel amplius quam eis debetur, hoc modis omnibus necesse est eos praesentibus tabulariis signare et in cimeliarchio sanctae ecclesiae illius civitatis, in qua huiusmodi contractus celebratur, deponere: attestatione videlicet prius per memoratos tabularios conscribenda, praesente etiam eo qui res vendiderit vel in alias

debtor, if he, in fear of harsh creditors, should conceal himself, and they should go before the appropriate tribunal concerning his property and ask to be put in possession of it, could the other creditors to whom the debtor was liable have any share in the possession of the property?

Curtailing any doubt on this matter, We decree by the present imperial constitution that, if all those who claim debts of this sort are not put in possession of the property by judicial verdict, but only certain ones of them, not only these latter but also all others claiming such debts shall gain the same benefit and can have a share in it with the earlier occupants of the property over which a verdict was rendered as mentioned above. For what could be more just than that all who are put into possession of the property of the debtor are sharers in this benefit?

1. Nevertheless, in order that those who are more diligent than other creditors in pursuit of debts owed to them may not in perpetuity be handicapped by the negligence of others, it seems right to Us that the other creditors who are not known to have pursued this matter can have a share in the possession of the property only when they have given notice of the debt they are owed to the creditors who are holding possession in the previously mentioned way within a period of two years – if they are present and reside in one and the same province in which the possessors of the property also reside – or within four years, if they are absent. They must also pay expenses to those who obtained verdicts according to their percentage of the debt, and these are to be made clear in an oath by those who sustained them in order to obtain possession of the property, since it is settled law that they must be satisfied according to the size of the debt. **1a.** However, after the completion of the above-mentioned period, they will have no right to bother those who obtained possession or to afflict them with any damages. But actions which they think are legally valid for them must be brought against their own debtors.

2. Nevertheless, if those who occupy the possessions should either sell the property following a judicial verdict or should convey all rights they are known to have in this property to other persons in any other legal manner after the period defined by Us, and they shall have received a certain price (*certae pecuniae*), whatever is found to be residual or greater than what was owed to them, they must of utmost necessity seal up in the presence of secretaries and deposit in the treasury of the holy church of this city where this sort of contract is known to be kept. And of course a certificate must be written by the above-mentioned secretaries in the presence of the one who sold the property or conveyed it to other persons, in order that through this may be shown both the amount of money which was offered for the sale or conveyance of the property, as well as the sum of money that was found to be residual after the payment

personas transtulerit, ut per eam manifestetur tam quantitas pecuniarum, quae pro venditione rerum vel translatione praestitae sunt, quam earum, quae superfluae post dissolutum debitum inveniantur, ut, si quis postea creditor apparuerit et debiti cautionem ostenderit, possit ex his satis sibi facere, prius scilicet rectore provinciae sine aliquo damno causae faciente examinationem et non concedente nec viros reverentissimos oeconomos vel cimeliarcham sanctae ecclesiae, in qua pecuniae deponuntur, aliquod detrimentum vel dispendium sustinere, per suam autem interlocutionem creditorem praecipiente secundum modum debiti ex depositis pecuniis suum accipere debitum.

3. Ut autem non liceat creditori in venditione vel translatione rerum dolum vel aliquam machinationem vel circumscriptionem facere, iubemus attestatione super hoc celebranda apud defensorem locorum gestis intervenientibus insinuari, sive tantum ex pretio, quantum debetur, sive plus sive minus colligitur, et praesentibus non tantum, sicut dictum est, tabulariis, sed etiam viro reverentissimo cimeliarcha, apud quem, si ita contigerit, superfluae pecuniae signatae deponendae sunt, iusiurandum sacrosanctis evangeliis propositis venditorem vel translatorem rerum praestare, quod neque per gratiam emptoris vel eius, ad quem res iure cessionis transferuntur, nec dolo aliquo interveniente minorem iusto rerum pretio quantitatem acceperit, sed eam, quam re vera cum omni studio potuerit invenire.

D. xv k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc. anno secundo.

LXXIII De Privilegio Fisci

[1] *Imp. Antoninus A. Eutropiae.* Bona mariti tui si ob reliqua administrationis primipili a fisco occupata sunt, res, quas tuas esse liquido probaveris, ab aliis separatae tibi restituuntur.

[2] *Idem A. Valerianae.* Quamvis ex causa dotis vir quondam tuus tibi sit condemnatus, tamen si prius, quam res eius tibi obligarentur, cum fisco contraxit, ius fisci causam tuam praevenit. quod si post bonorum eius obligationem rationibus meis coepit esse obligatus, in eius bona cessat privilegium fisci.

PP. xiiii k. Nov. Antonino A. iiii et Balbino conss.

of the debt. In this way, if some creditor later appears and shows a written promise (*cautio*) of debt, what is owed can be satisfied from this money. But first, of course, the provincial governor must conduct an examination that the case happens with no loss, and he must not allow either the most reverend stewards (*oeconomi*) or the treasurer (*cimeliarcha*) of the holy church in which the money was placed to sustain any loss or expense, but he must instruct the creditor through his interim order to accept what is owed in the manner of a debt paid from money on deposit.

3. But in order that the creditor not be allowed to perpetrate some deceit, trick, or fraud in the sale or conveyance of the property, We order that the certificate concerning this be made known before the defender of the place (*defensor*) and inserted into the public records detailing whether just as much was collected from the sale price as was owed, or whether more or less was collected. And not only should the secretaries be present, as We said, but also the most reverend treasurer before whom, if relevant, the residual money is sealed and deposited. And before these the seller or conveyor of the property must swear an oath on the Holy Gospel that neither through favoritism of the buyer or the one to whom the property was conveyed in a legal cession nor through some intervening deceit did he receive an amount less than the fair price of the property, but that it was the price that he was able to obtain with all true earnestness.

Given October 18, at Constantinople, in the second post-consulate of the viri clarissimi *Lampadius and Orestes (532).*

Seventy-Third Title The Privilege of the Treasury

[1] *Emperor* ANTONINUS *Augustus to Eutropia.* If the property of your husband was seized by the Treasury on account of arrears in his account as chief centurion (*primipilus*), whatever property you clearly prove to be yours will be separated from the rest and restored to you.

[2] *The same Augustus to Valeriana.* Although judgment was rendered in your favor against your former husband in a case for recovery of dowry, still if he made a contract with the Treasury before his property became obligated to you, the right of the Treasury is superior to yours. But if he began to be obligated to My coffers subsequent to your lien on his property, the privilege of the Treasury in his property ceases.

Posted October 19, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[3] *Idem A. Iulianae.* Si, cum pecuniam pro marito solveres, neque ius fisci in te transferri impetrasti neque pignoris causa domum vel aliud quid ab eo accepisti, habes personalem actionem nec potes praeferri fisci rationibus, a quo dicis ei vectigal denuo locatum esse, cum eo pacto universa, quae habet habuitve eo tempore, quo ad conductionem accessit, pignoris iure fisco teneantur. salva igitur indemnitate fisci debitorem tuum pro pecunia, quam pro eo fisco solvisti, more solito convenire non prohiberis.

PP. III k. Ian. Antonino A. IIII et Balbino conss.

[4] *Idem A. Quinto.* Si debitor, cuius fundum fuisse et ipse confiteris, prius eum distraxit, quam fisco aliquid debuit, inquietandum te non esse procurator meus cognoscet. nam etsi postea debitor extitit, non ideo tamen ea, quae de dominio eius excesserunt, pignoris iure fisco potuerunt obligari.

PP. III k. Iul. Laeto II et Cereale conss.

[5] *Imp. Alexander A. Magnae.* Pecunia, quam creditor a debitore suo recepit, si postea ex iusta causa fisco restituenda erit, sine usuris debetur, quia non fenus contractum, sed suum recuperatum extraordinario iure aufertur.

PP. XV k. Iun. Fusco et Dextro conss.

[6] *Imp. Gordianus A. Severianae.* Cum patrem tuum fisci debitorem fuisse demonstres eumque nubenti tibi possessionem dedisse adleges, procuratorem ius fisci exsequentem eam iure pignoris revocare potuisse intellegis.

PP. non. Iul. Sabino et Venusto conss.

[7] *Impp. Valerianus et Gallienus AA. et Valerianus C. Diodoro.* Si in te ius fisci, cum reliqua debitoris, pro quo satisfaciebas, tibi competens iudex adscripsit et transtulit, ab his creditoribus, quibus fiscus potior habetur, res quas eo nomine tenes non possunt inquietari.

PP. XV k. Iun. Aemiliano et Basso conss.

[3] *The same Augustus to Juliana.* If you did not have the right of the Treasury transferred to you when you paid it money on behalf of your husband, and you received no lien on his house or other property, you have a personal action against him, but no preference over the accounts of the Treasury, which you say farmed the collection of customs duties (*vectigal*) out to him again, since under that contract all the property which he has or which he had at the time when he took on its lease is subject to a lien of the Treasury. But with the Treasury kept harmless from loss, you are not forbidden to sue him in the usual way as your debtor for the money which you paid for him to the Treasury.

Posted December 30, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[4] *The same Augustus to Quintus.* If the debtor whose farm it was, as even you admit, sold it (to you) before he owed anything to the Treasury, My procurator will find that you should not be disturbed. For although he became its debtor subsequently, that is no reason why things that had passed from his ownership should have been subject to a lien by the Treasury.

Posted June 29, in the consulship of Laetus, for the second time, and Cerealis (215).

[5] *Emperor* ALEXANDER *Augustus to Magna.* If money which a creditor received from a debtor must later be restored to the Treasury for some lawful reason, it is owing without interest, since it is not the contracted interest but the repayment of its debt which the Treasury confiscates through extraordinary law.

Posted May 18, in the consulship of Fuscus and Dexter (225).

[6] *Emperor* GORDIAN *Augustus to Severiana.* Since you show that your father was a debtor of the Treasury and that when you married he gave you the property, you understand that the procurator can confiscate it by a lien in pursing the right of the Treasury.

Posted July 7, in the consulship of Sabinus and Venustus (240).

[7] *Emperors* VALERIAN *and* GALLIENUS *Augusti and Valerianus Caesar to Diodorus.* If the appropriate judge assigned and transferred to you the right of the Treasury along with the balance of the debtor whose debt you paid, the property that you hold by that title cannot be disturbed by any creditors, over whom the Treasury has a superior right.

Posted May 18, in the consulship of Aemilianus and Bassus (259).

LXXIIII De Privilegio Dotis

[1] *Impp. Severus et Antoninus AA. Firmo.* Scire debes privilegium dotis, quo mulieres utuntur in actione de dote, ad heredes non transire.

PP. k. Mai. Pompeiano et Avito conss.

LXXV De Revocandis His Quae Per Fraudem Alienata Sunt

[1] *Imp. Antoninus A. Caesiae.* Si heres post aditam hereditatem ad eum cui cessit corpora hereditaria transtulit, creditoribus permansit obligatus. si igitur in fraudem tuam id fecit, bonis eius excussis usitatis actionibus, si tibi negotium fuerit[viii] gestum, ea quae in fraudem alienata probabuntur revocabis.

PP. II id. Oct. Antonino A. IIII et Balbino conss.

[2] *Imp. Alexander A. Symphorianae.* Si successione patris abstenta fuisti, ob ea quae in dotem data sunt convenire te creditores nequeunt, quibus pignerata in dotem data non docentur, nisi bonis defuncti non sufficientibus in fraudem creditorum dotem constitutam probabitur.

PP. x k. Iul. Probo et Maximo conss.

[3] *Impp. Diocletianus et Maximianus AA. Acyndino.* Si paterna hereditate abstinuisti nec quicquam in fraudem creditorum ex bonis eius in te donationis iure transscriptum est, a privatis creditoribus praeses provinciae conveniri te non patietur.

PP. x k. Iul. ipsis IIII et III AA. conss.

[4] *Idem AA. et CC. Epagatho.* Filios debitoris ei succedentes velut in creditorum fraudem alienatorum facultatem revocandi non habere notissimi iuris est.

Subscripta x k. Mai. AA. conss.

[viii] offuerit (Krüger)

Seventy-Fourth Title The Privilege of Dowry

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Firmus.* You should know that the privilege of dowry, which wives enjoy in an action for recovery of dowry, does not pass to (a woman's) heirs.[244]

Posted May 1, in the consulship of Pompeianus and Avitus (209).

Seventy-Fifth Title The Recovery of Property Fraudulently Alienated[245]

[1] *Emperor* ANTONINUS *Augustus to Caesia.* If an heir, after accepting an inheritance, transferred its whole substance to a creditor to whom he surrendered his property (*cui cessit*), he remains obligated to its creditors. Therefore, if he did this to defraud you after his property had already been sued for (by the creditors) through the usual actions, (and) if (as a result) the transaction harmed you, you will recover whatever is proven to have been alienated fraudulently.

Posted October 14, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[2] *Emperor* ALEXANDER *Augustus to Symphoriana.* If you abstained from accepting your father's inheritance, the creditors cannot sue you because of the property given you as a dowry. They are not shown to have a lien on the property in the dowry, unless it shall be proven that the property of the deceased is insufficient to pay the debts and that the dowry was given to defraud creditors.

Posted June 22, in the consulship of Probus and Maximus (232?).

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Acyndinus.* If you refrained from accepting your father's inheritance, and none of his property was signed over to you as a gift to defraud creditors, the provincial governor will not permit you to be sued by his private creditors.

Posted June 22, in the consulship of the Augusti themselves, for the fourth and third time (290).

[4] *The same Augusti and the Caesars to Epagathus.* It is well known law that the sons of a debtor who succeed him have no right to reclaim property alienated to defraud creditors.

Subscribed April 22, in the consulship of the Augusti (293).

[244] This classical privilege, available against her husband's unsecured creditors, was substantially strengthened by Justinian: C. 5.13.1, 8.17.12; Nov. 97.3.

[245] See D. 42.8.

[5] *Idem AA. et CC. Crescentino.* Ignoti iuris non est adversus eum, qui sententia condemnatus intra statutum tempus satis non fecit nec defenditur, bonis possessis itemque distractis per actionem in factum contra emptorem, qui sciens fraudem comparavit, et eum, qui ex lucrativo titulo possidet, scientiae mentione detracta creditoribus esse consultum.

S. x k. Nov. AA. conss.

[6] *Idem AA. et CC. Menandrae.* Si actu sollemni praecedentem obligationem peremisti, perspicis adversus fraudatorem intra annum in quantum facere potest vel dolo malo fecit, quo minus possit, edicto perpetuo tantum actionem permitti.

[5] *The same Augusti and Caesars to Crescentinus.* It is not unknown law that, against someone who is condemned by a verdict but fails to pay within the legal time and has no defense, but sells the property that he possessed, the interests of his creditors are consulted through an *actio in factum* against any buyer who made the purchase knowing it was fraudulent, and (indeed) against anyone else who is in possession under a title that is profitable (*ex lucrativo titulo*), regardless of his knowledge.

Written October 23, in the consulship of the Augusti (293).

[6] *The same Augusti and Caesars to Menandra.* If you eliminated a previous obligation by using a solemn form, an action against the defrauder lies, according to the Perpetual Edict, only within a year for so much as he can pay, or used deceit (*dolo malo*) to make it so he could not pay.

THE CODEX OF JUSTINIAN

A New Annotated Translation, with Parallel Latin and Greek Text

BASED ON A TRANSLATION BY
JUSTICE FRED H. BLUME

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Justice Fred H. Blume, circa 1921, the year he acceded to the Wyoming Supreme Court and shortly after he had begun his translation of the Codex of Justinian.

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[1] *Imp. Alexander A. Apro evocato.* Cum proponas radicibus arborum in vicina Agathangeli area positis crescentibus fundamentis domus tuae periculum adferri, praeses ad exemplum interdictorum, quae in albo proposita habet: 'si arbor in alienas aedes impendebit', item: 'si arbor in alienum agrum impendebit', quibus ostenditur ne per arboris quidem occasionem vicino nocere oportere, rem ad suam aequitatem rediget.
PP. VII k. April. Iuliano et Crispino conss.

[2] *Impp. Valerianus et Gallienus AA. Messiae.* Praeses provinciae in eum, qui eiusdem provinciae non est, nec ex interdicto potest cognoscere.
PP. VII k. Mai. Saeculare et Donato conss.

[3] *Impp. Diocletianus et Maximianus AA. et CC. Pompeiano.* Incerti iuris non est orta proprietatis et possessionis lite prius possessionis decidi oportere quaestionem competentibus actionibus, ut ex hoc ordine facto de dominii disceptatione probationes ab eo qui de possessione victus est exigantur. interdicta autem licet in extraordinariis iudiciis proprie locum non habent, tamen ad exemplum eorum res agitur.
Subscripta V k. Ian. Sirmi AA. conss.

[4] *Impp. Arcadius et Honorius AA. Aemiliano pu.* Si quis quodlibet interdictum efflagitet, ruptis veteribus ambagibus inter ipsa

Eighth Book

edited by Bruce W. Frier

First Title Interdicts[1]

[1][2] *Emperor* ALEXANDER *Augustus to Aper, a veteran.* You claim that tree roots, which are situated and growing in the yard of your neighbor Agathangelus, threaten the foundations of your house. The governor will settle the matter equitably, on the pattern of the interdicts he has written in his album: "If a tree hangs over another's house" and "If a tree hangs over another's field."[3] These show that a neighbor should not be harmed even by the contingency of a tree.

Posted March 26, in the consulship of Julian and Crispinus (224).

[2][4] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Messia.* A provincial governor cannot exercise jurisdiction against someone not of the same province, even pursuant to an interdict.

Posted April 25, in the consulship of Saecularis and Donatus (260).

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Pompeianus.* It is not doubtful law that when a lawsuit arises as to (both) ownership and (legal) possession (of property), the question of possession should be decided first by the relevant actions, so that thereafter, in regular order, proofs in the suit on ownership are demanded from the party who lost over possession.[5] For although interdicts have no formal place in extraordinary trials, procedure is nonetheless patterned after them.

Signed December 28, at Sirmium, in the consulship of the Augusti (293).

[4][6] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Aemilianus, City Prefect.* If anyone demands any interdict whatsoever, the antiquated evasions (associated with Praetorian procedure) have been eliminated. He should be ordered

[1] See D. 43.1.
[2] Combine with C. 8.10.3, 8.52.1. The veteran's name only at 8.52.1.
[3] See D. 43.27.1 pr., 7.
[4] Combine with C. 3.20.1. As Blume observes, the rule in this text is too broadly stated.
[5] Blume: "i.e., the burden of proof is on him." See C. 3.32.13, 3.39.3, 7.62.1; D. 5.1.37.
[6] = C.Th. 2.4.6, which notes that the evasions concern *denuntiationes*, "notices."

cognitionum auspicia rationem exprimere ac suas adlegationes iubeatur proponere.

D. XIII k. Aug. Constantinopoli Arcadio A. VI et Probo conss.

II Quorum Bonorum

[1] *Impp. Severus et Antoninus AA. Iusto.* Hereditatem eius, quem patrem tuum fuisse dicis, petiturus iudicibus qui super ea re cognituri erunt de fide intentionis adlega. quamvis enim bonorum possessionem ut praeteritus agnovisti, tamen interdicto quorum bonorum non aliter possessor constitui poteris, quam si te defuncti filium esse et ad hereditatem vel bonorum possessionem admissum probaveris.

PP. VIII k. Ian. Laterano et Rufino conss.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Marco.* Si ex edicto sororis patruelis intestato sine liberis defunctae recte petita bonorum possessione quaesisti successionem ac negotium integrum est, quae cum moreretur eius fuerunt, secundum edicti[1] quorum bonorum tenorem ab his, qui pro herede vel pro possessore possident dolove malo fecerint, quo magis desierint possidere, tibi rector provinciae restitui efficiet.

S. VI k. April. CC. conss.

[3] *Impp. Arcadius et Honorius AA. Petronio vicario.* **pr.** Constat virum a bonis intestatae uxoris superstitibus consanguineis esse extraneum, cum prudentium omnium responsa et lex ipsa naturae successores eos faciat. **1.** Ergo iubemus, ut omnibus frustrationibus amputatis per interdictum quorum bonorum in petitorem corpora transferantur, secundaria actione proprietatis non exclusa.

D. VI k. Aug. Mediolani Olybrio et Probino conss.

[1] interdicti

to state his claim (*rationem exprimere*) and make his allegations at the very outset of hearings.

Given July 20, at Constantinople, in the consulship of Arcadius Augustus, for the sixth time, and Probus (406).

Second Title The Interdict Granting Possession of Property (*Bonorum Possessio*)[7]

[1] *Emperors Severus and Antoninus Augusti to Justus.* When you come to seek your inheritance from the man you say was your father, provide (your evidence on) the truth of your claim to the judges who hear this matter. For although you accepted possession of the estate as (a son) passed over (in your father's will), nevertheless through the interdict *quorum bonorum* you cannot be constituted the (legal) possessor unless you prove that you are (in fact) the decedent's son and that you were admitted to the inheritance or possession of the estate.

Posted December 25, in the consulship of Lateranus and Rufinus (197).

[2] *Emperors Diocletian and Maximian Augusti and the Caesars to Marcus.* The daughter of your paternal uncle died intestate and without children. If, in accord with the Edict, you sought succession to her by properly claiming possession of the estate, and the matter is still unadjudicated, then, in accord with the tenor of the interdict *quorum bonorum*, the provincial governor will cause the property belonging to her at her death to be turned over to you by those who (now) hold possession as heirs or as possessors or who have deceitfully brought about their loss of possession.

Written March 27, in the consulship of the Caesars (294).

[3][8] *Emperors Arcadius and Honorius Augusti to Petronius, Vicar.* **pr.** It is clear that a husband is excluded from the estate of his intestate wife if she has surviving blood-relatives, since the responses of all jurists, along with the law of nature itself, make them her successors. **1.** We order, therefore, that all hindrances be curtailed and that the property be transferred by the interdict *quorum bonorum* to the claimant, (although) without excluding a secondary action on ownership.

Given July 27, at Milan, in the consulship of Olybrius and Probinus (395).

[7] Blume: "The present interdictal action was given where the right of possession of an inheritance had been granted [by the Praetor], in order to make that right effective." The interdict is named from its opening words (*quorum bonorum ... possessio data est*, "For property the possession of which has been granted"). See D. 43.2.

[8] = C.Th. 4.21.1 (describing Petronius as *Vicarius* in Spain).

III Quod Legatorum

[1] *Impp. Diocletianus et Maximianus AA. et CC. Latinae.* **pr.** Heredi scripto satis idonee lege Falcidia, si exhausta legatis successio probetur, per quartae retentionem prospectum est. **1.** Unde si legatarius vel fideicommissarius non consentiente patre tuo, quem adseveras testatori successisse et bonorum possessionem accepisse, relicta sibi legata vel fideicommissa detinuit, secundum sententiam interdicti, quod adversus legatarios scriptis heredibus propositum est, oblata satisdatione, quam praestari oportet, in possessione constitui, ut ita retentione competenti utaris, experiri potes.

D. XVI k. Ian. AA. conss.

IIII Unde Vi

[1] *Impp. Diocletianus et Maximianus AA. Theodoro.* Recte possidenti ad defendendam possessionem, quam sine vitio tenebat, inculpatae tutelae moderatione illatam vim propulsare licet.

PP. XV k. Dec. ipsis IIII et III AA. conss.

[2] *Idem AA. et CC. Alexandro.* Vi pulsos restituendos esse interdicti exemplo, si necdum annus excessit, certissimi iuris est, et heredes teneri in tantum, quantum ad eos pervenit.

S. AA. conss.

[3] *Idem AA. et CC. Ulpiae et Proclinae.* Auctoritatem vobis rescripti nostri tenendae possessionis, quam vos per violentiam adeptas profitemini, commodari nimis improbe postulatis.

S. VIII id. April. CC. conss.

[4] *Idem AA. et CC. Hygino.* Si de possessione vi deiectus es, eum et legis Iuliae vis privatae reum postulare et ad instar interdicti unde vi convenire potes, quo reum causam omnem praestare, in qua fructus etiam,

Third Title The Interdict on Legatees[9]

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Latina.* **pr.** The lex Falcidia made suitable provision for a person instituted heir by (allowing him) retention of a quarter if the succession is shown to be depleted by legacies. **1.** So if, as you say, your father succeeded to the testator and took possession of the estate, and without his consent a legatee or trust beneficiary held a legacy or trust left to him, once you furnish the required security you may, in accord with the intent of the interdict provided for instituted heirs against legatees, sue to be placed in possession so that you may thus exercise the relevant retention (of the Falcidian quarter).

Given December 17, in the consulship of the Augusti (293).

Fourth Title The Interdict on Dispossession by Force (*Unde Vi*)[10]

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Theodorus.* A person rightfully in possession is permitted to defend his possession, if it is held without fault, by repelling force brought to bear against it, (but only) under the constraint that his care is blameless (i.e., not excessive).[11]

Posted November 17, in the consulship of the Augusti themselves, Consuls for the fourth and third times, respectively (290).

[2] *The same Augusti and the Caesars to Alexander.* The law is quite settled that those driven out by force must, on the pattern of the interdict, be restored if a year has not yet passed; and the (disposessor's) heirs are liable to the extent that it (the property in question) comes to them.

Written in the consulship of the Augusti (293).

[3] *The same Augusti and Caesars to Ulpia and Proclina.* The request you make, to use the authority of Our rescript in order to hold a possession which you admit having taken by force, is most unworthy (and hence denied).

Written April 6, in the consulship of the Caesars (294).

[4] *The same Augusti and Caesars to Hyginus.* If you were forcibly ejected from possession, you can accuse him (criminally) under the lex Julia on private violence, and also sue him on the pattern of the interdict *unde vi*, in which there is no doubt the defendant (must) proffer the entire case (i.e., make complete

[9] See D. 43.3. This interdict assisted the heir in distributing legacies under a will.
[10] See D. 43.3. This interdict (actually, three separate interdicts) applied only to land.
[11] Compare D. 43.16.1.2.7, 43.16.3.9; C. 8.4.7.

quos vetus possessor percipere potuit, non quos praedo percepit, venire non ambigitur.

S. IIII id. April. Sirmi CC. conss.

[5] *Imp. Constantinus A. ad Tertullianum.* Invasor locorum poena teneatur legitima, si tamen vi loca eundem invasisse constiterit. nam si per errorem aut incuriam domini loca ab aliis possessa sunt, sine poena possessio restitui debet.

D. VI k. Mart. Gallicano et Symmacho conss.

[6] *Imppp. Gratianus Valentinianus et Theodosius AAA. Pancratio pu.* **pr.** Meminerint cuncti, sive vulgato rescripto mansuetudinis nostrae sive sententia cuiuslibet iudicis utantur in causis, conveniendos dominos locorum esse aut, si forte defuerint, actores eorum ad insinuandas sententias procuratoresque quaerendos, ne inde iniuriarum nascatur occasio, unde iura nascuntur. quod si praecepta nostra implere neglexerint, omni negotio, de quo iurgare coeperant, privabuntur. **1.** Sin autem habito plerumque colludio curatores vel tutores minorum his rem debitam ea occasione pervadant, ut pupillis vel adultis iurgandi copia et fructus adimatur, his eatenus subvenimus, ut eosdem non atterat damno culpa temeritatis alienae, sed ilico quidem possessio ei a quo est ablata reddatur, curatores autem vel tutores aeterna deportatione punitos bonorum quoque publicatio persequatur.

D. prid. non. April. Antonio et Syagrio conss.

[7] *Imppp. Valentinianus Theodosius et Arcadius AAA. ad Messianum comitem rerum privatarum.* Si quis in tantam furoris pervenit audaciam, ut possessionem rerum apud fiscum vel apud homines quoslibet constitutarum ante eventum iudicialis arbitrii violenter invaserit, dominus quidem constitutus possessionem quam abstulit restituat possessori et dominium eiusdem rei amittat: sin vero alienarum rerum possessionem invasit, non solum eam possidentibus reddat, verum etiam aestimationem earundem rerum restituere compellatur.

D. XVII k. Iul. Treviris Timasio et Promoto conss.

restitution), including the fruits (*fructus*) which the former possessor could have received (but did not), but not those which a robber (actually) received.

Written April 10, at Sirmium, in the consulship of the Caesars (294).

[5][12] *Emperor* CONSTANTINE *Augustus to Tertullian.* A person intruding on property shall be liable to the legal penalty, provided it is established he intruded forcibly. For if property was possessed by third parties through mistake or the owner's carelessness, possession should be restored (to the prior possessor, but) without penalty.

Given February 24, in the consulship of Gallicanus and Symmachus (330).

[6][13] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Pancratius, City Prefect.* **pr.** Everyone should remember that, whether they make use of a published rescript of Our Clemency or the verdict of any judge in (particular) cases, property owners must (first) be approached, or, if they happen to be absent, their managers (*actores*) and procurators must be found in order to report the decisions, to prevent the source of a right from providing the occasion for a wrong. If they neglect to carry out Our ordinances, they shall lose the entire business that they began to litigate over. **1.** But if the *curatores* or *tutores* of minors, usually by collusion, at this opportunity enter forcibly on property owed to them (the minors), with the consequence that minor or adult wards are deprived of the opportunity and fruits of a lawsuit, We aid them to the extent that they not be afflicted with loss through the fault of another's impudence; rather, possession shall be immediately restored to the person from whom it was taken, and the *curators* and *tutores* shall be punished with permanent deportation and confiscation of their property.

Given April 4, in the consulship of Antonius and Syagrius (382).

[7][14] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Messianus, Count of the Privy Purse.* If anyone reaches a point of such insane audacity that before the outcome of a judicial trial (is announced,) he violently enters property held by the Treasury or by any individuals, if he is established (in the trial) as owner he shall restore to the possessor the possession that he took and lose ownership of this property. But if indeed he forcibly entered on possession of another's property, he shall not only restore this to the possessors, but be also compelled to pay the assessed value of this property.

Given June 15, at Trier, in the consulship of Timasius and Promotus (389).

[12] = C.Th. 2.26.1; combine with C. 3.39.3. Seeck dates to February 22, 330.

[13] With the *principium*, combine C. 2.12.24. Section 1 = C.Th. 4.22.2 (but abbreviated and heavily rewritten).

[14] = C.Th. 4.22.3. Seeck dates to June 14, 389.

[8] *Impp. Arcadius et Honorius AA. Pasiphilo.* Momentariae possessionis interdictum, quod non semper ad vim publicam pertinet vel privatam, mox audiri, interdum etiam sine inscriptione, meretur.

D. VIII *k. Ian. Mediolani Olybrio et Probino conss.*

[9] *Imp. Zeno A. Sebastiano pp.* Si quando vis iudicio fuerit patefacta, dein super rebus abreptis vel invasis vel damno tempore impetus quaestio proponatur, si non potuerit qui vim sustinuit quae perdidit singula comprobare, taxatione ab iudice facta pro personarum atque negotii qualitate, sacramento aestimationem rerum quas perdidit manifestet nec ei liceat ultra taxationem ab iudice factam iurare: et quod huiusmodi iureiurando dato fuerit declaratum, iudicem condemnare oportet.

D. id. Dec. Constantinopoli post consulatum Armati vc.

[10] *Idem A. Sebastiano* pp. **pr.** Non ab re est, quemadmodum possessionis alienae invasores tam vetus quam praesens sacra constitutio censuit puniendos, nec conductoribus et possessionis alienae detentoribus impune procedere, si locatoribus forte vel possessionem rerum suarum, quam apud alios precario modo esse concesserant, recuperare secundum leges volentibus, cum nulla sibimet cognita legibus adlegatio competeret, duxerint resistendum, et non protinus, id est non expectato iudiciorum ordine, alienam possessionem recte eam recuperantibus cedere patiantur. **1.** Eos namque iubemus pro tanta suae iniquitatis impudentia, si cognitionis iudiciariae eventu fuerint condemnati, rei, cuius possessionem sponte restituere usque ad definitivam sententiam minime passi sunt, aestimationem victrici parti una cum ipsa re praebere compelli.

D. v *k. April. Constantinopoli Theodorico cons.*

[11] *Imp. Iustinianus A. Iohanni pp.* **pr.** Cum quaerebatur inter Illyricianam advocationem, quid fieri oporteret propter eos, qui vacuam

[8][15] *Emperors* Arcadius *and* Honorius *Augusti to Pasiphilus.* The interdict (for recovery) of interim possession (*momentaria possessio*) is not always concerned with public or private force; (a request for) it merits being heard immediately, at times even without a written complaint (*inscriptio*).

Given December 25, at Milan, in the consulship of Olybrius and Probinus (395).

[9] *Emperor* Zeno *Augustus to Sebastianus, Praetorian Prefect.* Whenever in a trial the use of force is clear, and question then arises concerning property carried off or forcibly entered, or concerning damage at the time of the attack, if the victim of the force cannot prove (the value of) each particular thing he lost, the judge shall fix a maximum value (*taxatio*) depending on the nature of the individuals and of the incident. He (the victim) shall then under oath declare the estimated value (*aestimatio*) of the property he lost, not exceeding the maximum fixed by the judge. The judge shall then enter a condemnation for what was declared by such an oath.

Given December 13, at Constantinople, after the consulship of the vir clarissimus *Armatus (477).*

[10][16] *The same Augustus to Sebastianus, Praetorian Prefect.* **pr.** Just as both old and contemporary imperial constitutions have provided punishment for intruders on another's possession, so it is not inappropriate that lessees and the holders (*detentores*) of another's possession also not go unpunished if – when they have no legally recognized claim – they offer resistance to lessors, say, or to those wishing, in accord with law, to recover possession of their own property that they have allowed to be with third parties on sufferance (*precario*), and they do not immediately – that is, without waiting for judicial procedure – allow surrender of possession to those lawfully seeking to recover it. **1.** We order that if they are condemned after a judicial hearing, they shall, in proportion to such reckless injustice of theirs, be compelled to hand over to the winning party the property itself as well as the estimated value of the property, the possession of which they refused to restore voluntarily until the final judgment (was rendered).

Given March 28, at Constantinople, in the consulship of Theodoric (484).

[11] *Emperor* Justinian *Augustus to John, Praetorian Prefect.* **pr.** A dispute has arisen among the Society of Advocates (*advocatio*) of Illyria concerning what ought to be done about those who, without judicial verdict, hold vacant

[15] = C.Th. 2.1.8; combine with C. 9.2.16, 9.37.1. *Momentaria possessio* is granted to one litigant until final judgment is rendered in a lawsuit. Seeck dates to January 6, 395.

[16] = C. 4.65.33, entirely reworded.

possessionem absentium sine iudiciali sententia detinuerunt, quia veteres leges nec unde vi interdictum nec quod vi aut clam vel aliam quandam actionem ad recipiendam talem possessionem definiebant, violentia in ablatam possessionem minime praecedente, nisi domino tantummodo in rem actionem exercere permittentes: nos non concedentes aliquem alienas res vel possessiones per suam auctoritatem usurpare sancimus talem possessorem ut praedonem intellegi et generali iurisdictione ea teneri, quae pro restituenda possessione contra huiusmodi personas veteribus declarata est legibus. ridiculum etenim est dicere vel audire, quod per ignorantiam alienam rem aliquis quasi propriam occupaverit. **1.** Omnes autem scire debent, quod non suum est, hoc ad alios modis omnibus pertinere, cum talis dispositio in furti actione iam dudum veteribus legibus definita est dicentibus: si quis alienam rem adversus domini voluntatem attigerit, furti actione tenetur. **2.** His videlicet, quae super recipienda possessione a nobis disposita sunt, locum habentibus, si non ex die, ex quo possessio detenta est, triginta annorum excesserunt curricula.

D. XV k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc. anno secundo.

V Si per Vim vel Alio Modo Absentis Perturbata Sit Possessio

[1] *Imp. Constantinus A. Severo.* **pr.** Iudices absentium, qui cuiuslibet rei possessione privati sunt, suscipiant in iure personam et auctoritatis suae formidabile ministerium obiciant atque ita tueantur absentes, ut id solum diligenter inquirant, an eius, qui quolibet modo peregrinatur, possessio ablata est, quam propinquus vel parens vel proximus vel amicus vel colonus vel libertus seu servus quolibet titulo retinebat, nec eos, qui deiecti sunt absentium nomine possidentes, quia minime ipsis dictio causae mandata sit, ab experiunda re secludant, nec, si servi sint, eorum reiciant in iure personas, quia huiusmodi condicionis hominibus causas orare fas non sit: sed post elapsa quoque spatia recuperandae possessionis legibus praestituta litigium eis inferentibus largiri convenit, ut eos momentariae perinde possessioni sine ulla cunctatione restituant, ac si reversus dominus litigasset.

1. Cui tamen quolibet tempore reverso actionem recuperandae possessionis indulgemus, quia fieri potest, ut restitutio propter servulos

possession (*vacua possessio*) of (the property of) absent persons, in view of the fact that ancient law affords neither the interdict *unde vi* nor that *quod vi aut clam* nor any other action to recover such possession in the absence of (at least) slight preceding force against the property taken away. They (these remedies) only permitted the owner an action for property (i.e., a *vindicatio*). But We, not permitting anyone on his own authority to seize another's property or possessions, ordain that such a possessor be construed as a robber, and be liable under that general jurisdiction (*iurisdictio generalis*) which was declared in the old laws against such persons for restoration of possession. For it is outrageous to say or hear that someone through ignorance occupies another's property as his own. **1.** On the contrary, all should know that what is not their own belongs in all cases to others, since in the action on theft this outcome was long ago defined by the old laws, as follows: if anyone takes another's property contrary to the owner's wish, he is liable in the action on theft. **2.** These means that We have provided for recovery of possession shall apply, obviously, (only) if the course of thirty years from the day that possession was taken (i.e., long-time prescription) has not run.

Given October 18, at Constantinople, in the second post-consulate of the viri clarissimi *Lampadius and Orestes (532).*

Fifth Title If the Possession of an Absent Person Was Disturbed Through Force or Otherwise

[1][17] *Emperor Constantine Augustus to Severus.* **pr.** Judges shall assume in court the role of absent persons who have been deprived of possession of any property, and by interposing the powerful assistance of their authority they shall protect the absent thus, by carefully inquiring about this alone, whether a person who for some reason is abroad lost possession that a relative or parent or neighbor or friend or tenant (*colonus*) or freedman or slave was retaining by any (color of) title. Nor, on the ground that they have no mandate to bring a lawsuit, shall they (the judges) bar those who were ejected while possessing in the name of absent persons from litigating the matter; nor, if they are slaves, reject them in court because it is improper (*non fas*) for persons of such station to plead cases. Indeed, even after the statutorily set time limit for recovering possession has elapsed, it is appropriate to be amenable to their bringing suit, (with the result) that they restore them to interim possession (*momentaria possessio*) with no delay, just as if the returned owner had sued.

1. Nevertheless, to the latter (i.e., the absent person), upon his return at any time, We grant the action for recovering possession, since it can happen that

[17] = C.Th. 4.22.1.

infideles vel neglegentes propinquos vel parentes vel proximos vel amicos et colonos vel libertos interea differatur. absentibus enim officere non debet tempus emensum, quod recuperandae possessioni legibus praestitutum est, sed reformato statu, qui per iniuriam sublatus est, omnia quae supererunt ad disceptationem litigii immutilata permaneant: iudicio servato iustis legitimisque personis, cum valde sufficiat possessionem tenentibus absentium nomine contra praesentium violentiam subveniri.

D. x k. Nov. Mediolani Constantino A. VII et Constantio C. conss.

[2] *Impp. Arcadius et Honorius AA. Petronio vicario Hispaniarum.* Nec imperiale responsum, quod supplicatio litigatoris obtinuit, nec interlocutio cognitoris ex quacumque parte innovare possessionis statum eo qui rem tenet absente permittitur, quia negotiorum merita partium adsertione panduntur.

D. XV k. Ian. Mediolano Caesario et Attico conss.

VI Uti Possidetis

[1] *Impp. Diocletianus et Maximianus AA. et CC. Cyrillo.* Uti possidetis fundum de quo agitur, cum ab altero nec vi nec clam nec precario possidetis, rector provinciae vim fieri prohibebit ac satisdationis vel transferendae possessionis edicti perpetui forma servata de proprietate cognoscet.

Subscripta III id. Oct. Nicomediae CC. conss.

VII De Tabulis Exhibendis

[1] *Impp. Valerianus et Gallienus AA. Germano.* Si in potestate patris fuerunt impuberes filii et vos eis estis substituti atque ita ad vos intra pubertatem illis decedentibus coepit hereditas pertinere, de exhibendis testamenti tabulis interdicto uti potestis.

PP. VII k. Mai. Saeculari et Donato conss.

in the meantime restitution (to him) is delayed because of faithless slaves or careless relatives or parents or neighbors or friends and tenants (*coloni*) or freedmen. For expiration of the time legally fixed for recovering possession should not prejudice absent persons. But after restoration of the state that was wrongfully disturbed, all other issues shall remain unaffected for trying the dispute (over ownership); a trial is preserved for the proper and lawful persons, since this fully suffices to assist those holding possession in the name of absent persons against the violence of those present.

Given October 23, at Milan, in the consulship of Constantine Augustus, for the seventh time, and the Caesar Constantius (326).

[2][18] *Emperors* Arcadius *and* Honorius *Augusti to Petronius, Vicar in Spain.* Neither an imperial response obtained at a litigant's request, nor a judge's interim order (*interlocutio*), is allowed to alter in any way the status of possession of an absent person who holds it, since the merits of the case are (best) revealed by the assertions of the parties (themselves).

Given December 18, at Milan, in the consulship of Caesarius and Atticus (397).

Sixth Title The Interdict *Uti Possidetis*[19]

[1] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Cyrillus.* The provincial governor will forbid any force being used against your possession of the farm in question if you possess it neither by force nor stealth nor sufferance from another; after observing the Perpetual Edict's procedure on giving surety or transferring possession (to the other party), he will hear the case on ownership.

Signed October 13, at Nicomedia, in the consulship of the Caesars (294).[20]

Seventh Title Production of Documents[21]

[1] *Emperors* Valerian *and* Gallienus *Augusti to Germanus.* If minor children (*impuberes filii*) were in their father's power and you were their substitute heir, and thus, when they died before puberty, the inheritance came to belong to you, you can use the interdict to get production of the will documents.

Posted April 25, in the consulship of Saecularis and Donatus (260).

[18] = C.Th. 4.22.5; combine with C. 7.32.11.

[19] See D. 43.17. This interdict (named from its opening words) concerned retaining possession of real property, usually in dispute where it was uncertain which party had a superior claim to possession.

[20] Mommsen dates to December 11, 294.

[21] See D. 43.5. This is the interdict *de tabulis exhibendis*.

VIII De Liberis Exhibendis seu de Ducendis et de Homine Libero Exhibendo

[1] *Imp. Antoninus A. Iustino.* Si, ut proponis, cum tuae potestatis esses, super rebus matris obtinuisti, potes eos qui tibi condemnati sunt convenire. quod si extitit, qui te filium et in sua potestate esse contendit, interdicto in eam rem proposito de fide intentionis eius quaeretur.

PP. VI id. April. duobus Aspris conss.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Cyrillae.* Adi praesidem provinciae ac postula filios tuos exhiberi.

Subscripta V id. April. Byzantii AA. conss.

[3] *Idem AA. et CC. Euodiae.* Si ad instar interdicti de exhibenda filia Philippi eum conveniendum putaveris, rector aditus provinciae suam vobis accomodabit notionem.

S. XII k. Dec. Nicomediae AA. conss.

VIIII De Precario et de Salviano Interdicto

[1] *Imp. Gordianus A. Aristoni.* Si te non remittente pignus debitor tuus ea quae tibi obnoxia sunt venumdedit, integrum tibi ius est ea persequi, non interdicto Salviano (id enim tantummodo adversus conductorem debitoremve competit), sed Serviana actione vel quae ad exemplum eius instituitur utilis adversus emptorem exercenda.

PP. VI id. Sept. Pio et Pontiano conss.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Fabricio.* Habitantis precario heredes ad restituendum habitaculum teneri contra eos interdicto proposito manifeste declaratur.

S. k. Dec. Sirmi AA. conss.

Eighth Title Producing or Leading Away Children or Producing a Free Person[22]

[1] *Emperor* ANTONINUS *Augustus to Justin.* If, as you state, while you were in your own power (i.e., *sui iuris*), you prevailed (in a trial over succession) concerning your mother's property, you can sue those against whom you obtained judgment (to obtain execution of this judgment). But if someone appears who contends that you are his son and in his power, through an interdict on this matter a trial is (first) held concerning the truth of his claim.
Posted April 8, in the consulship of the two Aspri (212).

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Cyrilla.* Go before the province's governor and ask that your sons be produced (by the party who is holding them).
Signed April 9, at Byzantium, in the consulship of the Augusti (293).

[3] *The same Augusti and Caesars to Euodia.* If, on the pattern of the interdict, you think you should sue Philip over producing his daughter (your wife), the provincial governor, if approached, will adapt his jurisdiction to (assist) you.
Written November 20, at Nicomedia, in the consulship of the Augusti (293).

Ninth Title Sufferance (*Precarium*) and the Salvian Interdict[23]

[1] *Emperor* GORDIAN *Augustus to Aristo.* If your debtor sold property that was obligated to you (as security) and you did not release this pledge (*pignus*), you have an unaltered right to pursue it, not by the Salvian interdict – for this lies only against a lessee or debtor – but by using the Servian action or the analogous action (*utilis actio*) established on its model against the buyer.
Posted September 8, in the consulship of Pius and Pontianus (238).

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Fabricius.* In the interdict that is provided against them, it is explicitly stated that the heirs of someone residing on sufferance (*precario*) are bound to restore the dwelling (to its owner).
Written December 1, at Sirmium, in the consulship of the Augusti (293).

[22] See D. 43.29 and 30. These are the interdicts *de homine libero exhibendo* and *de libero exhibendo.*
[23] See D. 43.26 and 33. *Precarium* is a legal arrangement in which one party holds (usually real) property without a contract, on its owner's mere sufferance. The Salvian interdict was adapted to assist an owner in recovering obligated property.

X De Aedificiis Privatis

[1] *Impp. Antoninus et Verus AA. Tauro.* Et balneum, ut desideras, instruere et aedificium ei superponere potes, observata tamen forma, qua ceteri super balnea aedificare permittuntur, id est ut concameratis superinstruas et ipsa concameres nec modum usitatum altitudinis excedas.

PP. sine die et consule.

[2] *Imp. Alexander A. Diogeni.* Negotiandi causa aedificia demoliri et marmora detrahere edicto divi Vespasiani et senatus consulto vetitum est. ceterum de alia domo in aliam transferre quaedam licere exceptum est: sed nec dominis ita transferre licet, ut integris aedificiis depositis publicus deformetur adspectus.

PP. XI k. Ian. Alexandro A. cons.

[3] *Idem A. Apro evocato.* An in totum ex ruina domus licuerit non eandem faciem in civitate restituere, sed in hortum convertere, et an hoc consensu tunc magistratuum non prohibentium, item vicinorum factum sit, praeses, probatis his quae in oppido frequenter in eodem genere controversiarum servata sunt, causa cognita statuet.

PP. VII k. April. Iuliano et *Crispino conss.*

[4] *Imp. Philippus A. et Philippus C. Victori.* Si, ut proponis, socius aedificii ad refectionem eius sumptus conferre detractat, non necessarie extra ordinem tibi subveniri desideras. etenim si solus aedificaveris nec intra quattuor mensuum tempora cum centesimis nummus pro portione socii erogatus restitutus fuerit vel, quo minus id fieret, per socium id stetisse constiterit, ius dominii pro solido vindicare vel obtinere iuxta placitum antiquitus poteris.

P. IIII k. April. Philippo A. et Titiano conss.

[5] *Impp. Diocletianus et Maximianus AA. Octavio.* Si is, contra quem precem fundis, sciens prudensque soli partem ad te pertinere, non quasi socius vel collega communis operis sollicitudine solidam balneorum

Tenth Title Private Buildings

[1] *Emperors* ANTONINUS *and* VERUS *Augusti to Taurus.* Just as you wish, you can both construct a bath and put a building above it, provided you observe the regulation under which everyone else is permitted to build over baths, that is, that you use vaults for the superstructure and for it (the bath), and do not exceed the customary limit on height.

Posted without date and consul (161–169).

[2] *Emperor* ALEXANDER *Augustus to Diogenes.* By an edict of the deified Vespasian and a (prior) decree of the Senate,[24] it was forbidden to demolish buildings and strip off marble for speculation. But there is an exception permitting transfer of some things from one home to another (of the same owner); still, not even owners are allowed to transfer (materials) if the public vista is marred by entire buildings being torn down.

Posted December 22, in the consulship of Alexander Augustus (222).

[3][25] *The same Augustus to Aper, a veteran.* Whether, after a house collapses, it is permitted not entirely to restore the same urban exterior but to change it to a garden, and whether this was done with the consent of magistrates who did not prohibit it and (with that) of neighbors, after it is shown what has often been done in a city in this sort of dispute, the provincial governor will hear the case and decide.

Posted March 26, in the consulship of Julian and Crispinus (224).

[4] *Emperor* PHILIP *Augustus and the Caesar* PHILIP *to Victor.* If, as you state, your partner in a building refuses to contribute to its repair, you unnecessarily seek assistance through extraordinary procedure (*extra ordinem*). For if you build alone and (then) within four months the amount expended by you for your partner's portion is not repaid to you with 12 percent interest, or it is clear that this non-performance is the partner's fault, you can, by ancient doctrine, vindicate or acquire the right of ownership of the whole.[26]

Posted March 29, in the consulship of Philip Augustus and Titianus (245).

[5][27] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Octavius.* If the person against whom you direct your petition knew and understood that part of the land belongs to you, and he undertook full reconstruction of baths not

[24] The *SC Hosidianum* of 45 CE, largely repeated in the *SC Volusianum* of 56: see *CIL* 10.1.1401 (*FIRA* 1.45).

[25] = C. 8.52.1 (in part); combine with 8.1.1.

[26] Compare D. 17.2.52.10, 20.2.1: *SC* under Marcus Aurelius.

[27] Compare C. 5.16.4. With the holding, compare D. 3.5.5.5; C. 3.32.5.

extructionem ea mente, ut sumptus pro portione tua reciperet, adgressus est, sed totius loci dominium usurpare et collapsum balneum refabricare enisus est, cum aedificia quae alieno loco imponuntur solo cedant nec impensae his qui improbe id fecerint restitui debeant, antiquato divi Hadriani edicto praeses provinciae memor iuris publici in dirimenda disceptatione legum placita custodiet.

PP. VI non. Oct. ipsis IIII et III AA. conss.

[6] *Imp. Constantinus A. Helpidio agenti vicem pp.* **pr.** Si quis post hanc legem civitate spoliata ornatum, hoc est marmora vel columnas, ad rura transtulerit, privetur ea possessione, quam ita ornaverit. **1.** Si quis autem ex alia in aliam civitatem labentium parietum marmora vel columnas de propriis domibus in proprias transferre voluerit, quoniam utrobique haec esse publicum decus est, licenter hoc faciat: data similiter facultate etiam de possessione ornatum huiusmodi ad possessionem aliam transferendi, quamvis per muros vel etiam per mediam civitatem ea transferri necesse sit, ita ut ea solummodo quae illata fuerint civitatibus exportentur.

D. VI k. Iun. Viminacii Crispo II et Constantino II conss.

[7] *Imp. Iulianus A. ad Avitianum vicarium Africae.* Nemini columnas vel statuas cuiuscumque materiae ex alia eademque provincia vel auferre liceat vel movere.

D. VI k. Nov. Iuliano A. IIII et Sallustio conss.

[8] *Imppp. Valens Gratianus et Valentinianus AAA. ad Modestum pp.* **pr.** Singularum urbium curiales etiam inviti vel reparare intra civitates quas olim habuerint domus vel ex novo aedificare cogantur, illic semper muniis inservituri et aucturi propriarum frequentiam civitatum. **1.** Possessores vero, qui non erunt curiales, in urbibus, in quibus domus possident, easdem domos dirutas neglectasque reparent, iudiciaria ad conservandum hoc praeceptum auctoritate retinendi.

D. XIII k. Nov. Gratiano A. IIII et Merobaude conss.

as a partner or co-owner caring for jointly owned property (who was acting) with the intent to recover the expenses for your share, but (instead) he sought to take over ownership of the whole property and restore the collapsed bath, (then,) since buildings constructed on another's land become part of it and the expense (of such buildings) should not be repaid to those who incurred them dishonestly, the edict of deified Hadrian (granting reimbursement to the builder) is inapplicable and the provincial governor, mindful of public law, will apply the statutory provisions in ending the dispute.

Posted October 2, in the consulship of the Augusti themselves, Consuls for the fourth and third times, respectively (290).

[6] *Emperor* CONSTANTINE *Augustus to Helpidius, Acting Praetorian Prefect.* **pr.** If, after this law, anyone despoils a city by removing decoration, i.e., marble or columns, to the countryside, he shall be deprived of the possession he thus decorated. **1.** But if anyone wishes to convey the marble or columns of shaky walls from his property in one city to that in another, he shall do so lawfully, since it is a public ornament that these be in one place or the other. Permission is similarly granted to convey such decoration from one possession to another, even if it must be conveyed through the (city) walls or even through the middle of the city, but only those things that are brought in may be removed from cities.

Given May 27, at Viminacium, in the consulship of Crispus, Consul for the second time, and Constantine, for the second time (321).

[7][28] *Emperor* JULIAN *Augustus to Avitianus, Vicar of Africa.* No one is permitted either to carry off or to move columns or statues of whatever material from another province or the same one.

Given October 27, in the consulship of Julian Augustus, for the fourth time, and Sallust (362).

[8] *Emperors* VALENS, GRATIAN, *and* VALENTINIAN *Augusti to Modestus, Praetorian Prefect.* **pr.** The decurions of every city, constantly focused on their duties there and endeavoring to increase the population of their own cities, are compelled, even against their will, either to repair or construct anew the homes that they have long had within these cities. **1.** But in the cities where they have houses, possessors who are not decurions shall repair them (when) collapsed and neglected, being bound by judicial authority to act in accord with this ordinance.

Given October 20, in the consulship of Gratian Augustus, for the fourth time, and Merobaudes (377).

[28] Combine with C.Th. 8.5.15, 11.28.1 (with the correct and fullest subscription), 15.3.2. The apparent contradiction with the preceding constitution is variously explained. Seeck dates to October 26, 362.

[9] *Imppp. Arcadius Honorius et Theodosius AAA. Aemiliano pu.* Si cui loci proprietas aedificandi iuxta publicas aedes animum dederit, quindecim pedum spatio interiecto inter publica ac privata aedificia ita sibi noverit fabricandum, ut tali intervallo et publicae aedes a periculo vindicentur et privatus aedificator velut perperam fabricato loco destructionis quandoque futurae non timeat detrimentum.

D. XI k. Nov. Constantinopoli Arcadio A VI et Probo conss.

[10] *Impp. Honorius et Theodosius AA. Monaxio pp.* Per provincias Mesopotamiam Osroenam Euphratensem Syriam secundam Phoenicen Libanensem Ciliciam secundam utramque Armeniam utramque Cappadociam Pontum Polemoniacum atque Hellenopontum, ubi magis hoc desideratur, ceterasque provincias cunctis volentibus permittatur murali ambitu fundos proprios seu loca sui dominii constituta vallare.

D. III non. Mai. Constantinopoli Theodosio A. VIIII et Constantio III conss.

[11] *Idem AA. Severino pp.* **pr.** Maeniana, quae Graece ἐξώστας appellant, sive olim constructa sive in posterum in provinciis construenda, nisi spatium inter se per decem pedes liberi aeris habuerint, modis omnibus detruncentur. 1. In his vero locis, in quibus aedificia privatorum horreis publicis videntur obiecta, obstructione maenianorum quindecim pedum intervalla serventur. 2. Quem intercapedinis modum aedificaturis quoque proponimus, ita ut, si quis intra definitum spatium, id est decem pedum mensuram, aedificare vel intra quindecim pedum maenianum possidere temptaverit, sciat non solum fabricam demoliendam, sed etiam ipsam domum fisco nostro adscribendam.

D. III k. Oct. Asclepiodoto et Mariniano conss.

[12] *Αὐτοκράτωρ Καῖσαρ Ζήνων εὐσεβὴς νικητὴς τροπαιοῦχος ἀεὶ μέγιστος ἀεὶ σεβαστὸς Αὔγουστος Ἀδαμαντίῳ ἐπάρχῳ πόλεως.* **pr.** Καὶ δικῶν εἰρήνης ἀπολαύειν καὶ τῶν ἔξωθεν πολέμων ἀπαλλάττεσθαι τοὺς ὑπηκόους βουλόμενοι νουθετεῖν ἑκάστοτε προθυμούμεθα. διὸ καὶ τὸν παρόντα φέρομεν

[9][29] *Emperors* ARCADIUS, HONORIUS, *and* THEODOSIUS *Augusti to Aemilianus, City Prefect.* If anyone owning property next to a public building intends to build, he knows that it must be constructed with a space of 15 feet between public and private buildings, such that both the public building is protected from danger by such an interval and the private builder (if he complies) need not fear loss from some future demolition owing to the lot being improperly built up.

Given October 22, at Constantinople, in the consulship of Arcadius Augustus, for the sixth time, and Probus (406).

[10] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Monaxius, Praetorian Prefect.* Throughout the provinces of Mesopotamia, Osroena, Euphratensis, second Syria, Phoenicia Libanensis, second Cilicia, both Armenias, both Cappadocias, Pontus Polemoniacus, and Hellenopontus, where this is especially needed, and the other provinces: all persons who wish are permitted to surround their own farms or places they own with a wall circuit.

Given May 5, at Constantinople, in the consulship of Theodosius Augustus, for the ninth time, and Constantius, for the third time (420).

[11] *The same Augusti*[30] *to Severinus, Praetorian Prefect.* **pr.** Projecting balconies (*maeniana*), which the Greeks call *exostai*, whether constructed previously or hereafter in the provinces, will be lopped off in every case unless they have a free-air space of 10 feet between them. **1.** But in those places where private structures appear to be built up against public granaries, 15-foot intervals shall be kept free from obstruction by balconies. **2.** This measure of interruption We ordain also for future builders, such that if anyone attempts to build within the defined space, i.e., a measure of 10 feet, or to possess a balcony within 15 feet, he may know not just that his structure will be demolished, but that the house itself will be forfeit to the Treasury.

Given September 29, in the consulship of Asclepiodotus and Marinianus (423).

[12][31] *Emperor Caesar* ZENO, *Pious Victor and Triumpher, Always Greatest and Always Venerable, Augustus, to Adamantius, City Prefect.* **pr.** Wishing Our subjects both to enjoy respite from lawsuits and to be free of foreign wars, We always undertake to alert them in advance. We accordingly enact the present law,

[29] = C.Th. 15.1.46; combine with C.Th. 15.1.45. Seeck dates to October 27, 406.

[30] Honorius had actually died on August 27, 423.

[31] This constitution (reconstituted from several Byzantine manuscripts of Greco-Roman law) appears to be a direct transcription of the original Greek text, rather than an abbreviation in the usual Codex form. Lounghis *et al.* date it to between 474 and 479. Leo's law, referred to in 1a, is not otherwise known.

νόμον ἱκανῶς ἀποδεικνύντα, ὡς καὶ ἡ σὴ μεγαλοπρέπεια δικαίως ἐδίδαξεν καὶ ἡμεῖς προνοητικῶς τὰ τὴν δυσχέρειαν λύοντα διορίζομεν. **1.** Καὶ μικρὸν ἀποστάντες τῶν πρεπωδεστέρων τῇ πολιτείᾳ ῥημάτων τοῖς τῷ πλήθει γνωριμωτέροις χρησόμεθα, ὅπως ἂν ἕκαστος αὐτῶν ἐντυγχάνων τῷ νόμῳ μὴ δέοιτο ἑτέρου βοηθοῦ πρὸς τὴν οἰκείαν χρείαν.

1a. Ἔγνωμεν τοίνυν ἐκ τῶν ἐνεχθέντων παρὰ τοῦ σοῦ μεγέθους, ὡς ὁ θεῖος νόμος τοῦ τῆς ἀθανάτου μνήμης πατρὸς ἡμετέρου Λέοντος, ὃν ἔθετο περὶ τῶν ἐν τῇδε τῇ ἐνδόξῳ πόλει κτίζειν βουλομένων, ἀμφίβολος εἶναι κατά τινα μέρη δοκεῖ διὰ τὰς τῶν φαύλως ἑρμηνευόντων ἐπινοίας. προστάττομεν τοὺς τὰς ἰδίας οἰκίας ἀνανεοῦντας τὸ ἀρχαῖον σχῆμα μηδαμῶς παρεξιέναι, ὥστε μὴ τοὺς οἰκοδομοῦντας ἀφαιρεῖσθαι φῶτα ἢ ἄποψιν τῶν γειτόνων παρὰ τὸ πάλαι καθεστηκός. οὐ μὴν προσθήσω, ὅ τι δήποτε δέοι κρατεῖν, οἷον ὁ τῇ οἰκοδομίᾳ χρώμενος δίκαιον ἔχοι προσῆκον αὐτῷ ἐκ συμφώνου ἢ ἐπερωτήσεως, ἐπιτρέπον ἀμείνειν, εἰ βουληθείη, τὸ παλαιὸν σχῆμα. **1b.** Διὸ θεσπίζομεν, εἰ σύμφωνον ἢ ἐπερώτησις βοηθοῖ τῷ κτίζοντι, ἐξεῖναι αὐτῷ κατὰ τὴν δύναμιν τοῦ συμφώνου ἢ τῆς ἐπερωτήσεως οἰκοδομεῖν, εἰ καὶ τοὺς γείτονας, οἷς ἐναντιοῦται τὸ σύμφωνον, ἐντεῦθεν βλάπτειν δοκοίη.

2. Τῆς δέ μου τῆς[ii] διατάξεως εἰπούσης καὶ δώδεκα ποδῶν χρῆναι καταλιμπάνειν μέσον τῆς τε ἰδίας καὶ τῆς τοῦ γείτονος οἰκίας τὸν οἰκοδομεῖν μέλλοντα καὶ τὸ πλέον ἢ ἔλαττον προσθείσης, ὃ μεγίστην ἀσφάλειαν[iii] εἰκότως ποιεῖ (τὸ γὰρ ἐνδοιάζον οὐκ ἐπιτήδειον εἰς ἀμφιβολίας ἀναίρεσιν), περιφανῶς κελεύομεν δυοκαίδεκα πόδας εἶναι μέσους ἑκατέρας οἰκίας, ἀρχομένους μὲν ἀπὸ τοῦ ἐπικειμένου τοῖς θεμελίοις οἰκοδομήματος, παραφυλαττομένους δὲ μέχρι πέρατος τοῦ ὕψους. καὶ τῷ τοῦτο τοῦ λοιποῦ παραφυλάττοντι ἐξεῖναι τὴν οἰκίαν ἐγείρειν ἐφ' ὅσον θελήσειεν ὕψος καὶ θυρίδας κατασκευάζειν τὰς καλουμένας παρακυπτικὰς καὶ φωταγωγοὺς κατὰ τὴν θείαν νομοθεσίαν, εἴτε νέαν οἰκίαν βούλοιτο κτίζειν εἴτε παλαιὰν ἀνανεοῦν εἴτε διαφθαρεῖσαν ἐκ πυρὸς οἰκοδομεῖν. **2a.** Μηδανῶς ἐκ τούτου τοῦ διαστήματος συγχωρεῖσθαι ἀφαιρεῖν τοῦ γείτονος ἄποψιν θαλάσσης εὐθεῖαν καὶ οὐ βεβιασμένην ἐξ οἱουδήποτε πλευροῦ τῆς οἰκίας, ἣν ὁ γείτων ἑστὼς ἔνδον ἐν τοῖς ἰδίος ἢ καὶ καθήμενος ἔχει, μὴ παρατρέπων ἑαυτὸν ἐν τῷ παρακύπτειν εἰς τὸ πλάγιον καὶ βιαζόμενος, ὥσπερ ἰδεῖν θάλασσαν. **2b.** Τὸ γὰρ τῶν κήπων τε καὶ τῶν δένδρων οὔτε περιείληπται τῇ προτέρᾳ νομοθεσίᾳ οὔτε τῇ παρούσῃ προστεθήσεται. οὔτε γὰρ προσήκει τοιαύτην δουλείαν κρατεῖν.

3. Μηδενὶ δὲ ἐξέστω κτίζοντι οἰκίαν, ἐν μέσῳ ὄντος στενωποῦ ἢ πλατείας ὑπὲρ τοὺς δεκαδύο πόδας, διὰ τοῦτο παραιρεῖσθαι μέρος τῆς πλατείας ἢ τοῦ στενωποῦ καὶ τῷ οἰκείῳ προσνέμειν οἰκοδομήματι. οὐ γὰρ τὰ τῷ δημοσίῳ προσήκοντα βλάπτειν βουλόμενοι καὶ τοῖς κτίζουσιν ἀπονέμειν δεκαδύο ποδῶν εἶναι διάστημα ἐν μέσῳ τῶν οἰκιῶν διωρίσαμεν, ἀλλ' ὥστε μὴ στενότερα εἶναι τὰ μεταξὺ τῶν οἰκιῶν διαστήματα, καὶ τὸ πλέον περιόν τι ἐῶντες ἔχειν ὡς ἔχει καὶ τοῦτο μειοῦσθαι μὴ συγχωροῦντες, ἵνα τῇ πόλει τὰ οἰκεῖα περισώζηται δίκαια. **3a.** Εἰ δὲ τὸ παλαιὸν οἰκοδόμημα

[ii] τῆς δὲ αὐτῆς
[iii] ἀσάφειαν

which sufficiently shows both how Your Magnificence rightly advises, and how We prudently establish, the solution to a problem. **1.** And departing a bit from the more common (Latin) words used in government, We employ those more broadly familiar (Greek words), so that no one coming in contact with this law requires someone else's help (as an interpreter) for his own domestic needs.

1a. From the report made to Us by Your Magnificence, We have learned that the imperial law of Our father Leo of undying memory, which he enacted for those wishing to build in this renowned city (Constantinople), seems ambiguous in several particulars because of the inventions of bad interpreters, (as when it says:) "We prescribe that those restoring their own buildings exceed in no respect their former external appearance, to prevent builders depriving neighbors of their light or view contrary to the former situation" – without adding what should be done if the builder had a right accruing to him from a pact or stipulation to change the structure if he wishes. **1b.** We therefore ordain that if the builder has a pact or stipulation, he may build in accord with the terms of the pact or stipulation even if he thereby appears to harm the neighbors against whom the pact is opposed.

2. The same constitution provides that a would-be builder should leave a space of 12 feet between his house and his neighbors, adding "more or less," which indeed causes the greatest obscurity – for an ambiguity is unsuited to removing doubt. We clearly order that there be 12 feet between each house, beginning from the structure overlying the foundations and maintained to the highest point (of the structure). A person who observes this hereafter can erect his house to whatever height he wishes and provide windows, both those they term "for view" and those "for light" in accord with imperial legislation, whether he wishes to build a new house or repair an old one or construct one destroyed by fire. **2a.** Still, from this space it is not permitted to cut off the neighbor's direct and unobstructed view of the sea from any part of his house, whether the neighbor is standing or sitting in his house, and not twisting himself to view obliquely and, as if contorted, to observe the sea. **2b.** The prior legislation makes no mention of gardens and trees, nor does this one; for it is agreed there should be no such servitude.

3. If a man builds a house and between (his property and his neighbor's) there is an alleyway or street wider than 12 feet, he is not on this account permitted to occupy part of the street or alleyway and annex it to his own property. For We provided for 12 feet of space between houses not out of a desire to prejudice public property and assign it to builders, but in order that spaces not be narrower between houses, thereby preserving space which exceeds the measure and not allowing it to be diminished, so that their rights are protected for cities. **3a.** If the old building and the former plan is such that the space between

καὶ τὸ ἀρχαῖον σχῆμα τοιοῦτον ἦν, ὥστε ἔλαττον εἶναι τῶν δεκαδύο ποδῶν μεταξὺ ἑκατέρας οἰκίας διάστημα, μὴ ἐξέστω παρὰ τὸ παλαιὸν σχῆμα ἢ ὑψοῦν τὸ οἰκοδόμημα ἢ θυρίδας ποιεῖν· εἰ μὴ δέκα πόδες εἶεν ἐν μέσῳ· τηνικαῦτα γὰρ παρακυπτικὰς μὲν ὁ κτίζων οὐ δυνήσεται ποιεῖν οὐκ οὔσας πάλαι, ὡς εἴρηται, φωταγωγοὺς δὲ ποιήσει ἀπὸ ἓξ ποδῶν τοῦ πάτου εἰς ὕψος, μηδαμῶς τὸ καλούμενον ψευδόπατον ποιεῖν ἐν τῷ ἑαυτοῦ οἰκήματι τολμῶντος, φωταγωγοῦ θυρίδος κατασκευασθείσης κατὰ τὸ εἰρημένον τῶν ἓξ ποδῶν ὕψος, καὶ σοφίζεσθαι τὸν νόμον. **3b.** Εἰ γὰρ τοῦτο ἐξείη, πάλιν αἱ φωταγωγοὶ διὰ τοῦ ψευδοπάτου παρακυπτικῶν πληρώσουσι χρείαν καὶ τὸν γείτονα βλάψουσιν. ὅπερ γίνεσθαι κωλύομεν, οὐδαμοῦ τὴν ἐκ τῶν συμφώνων ἤτοι ἐπερωτημάτων ἁρμόζουσαν βοήθειαν, εἴπερ ὅλως ὑπάρχει τοιαύτη τις, ἀναιροῦντες.

4. Ἔτι δὲ τοῦ προτέρου νόμου κελεύοντος ἑκατὸν πόδας ἐξεῖναι τὰς οἰκίας εἰς ὕψος αἴρειν τὰς ὑπὸ τοῦ πυρὸς πρῴην διαφθαρείσας, εἰ καὶ περὶ θαλάσσης ἄποψιν ἕτερος βλάπτοιτο, καὶ ταύτην ἀναιροῦντες τὴν ἀμφιβολίαν θεσπίζομεν τοῦτο αὐτὸ κρατεῖν ἐπί τε τῶν ἐμπρησθεισῶν οἰκιῶν εἴτε[iv] τῶν ἀνανεουμένων καὶ ἐπὶ τῶν οὐκ οὐσῶν μὲν πρότερον, κτιζομένων δὲ νῦν, μετὰ τούτων καὶ ἐπὶ τῶν πυρὸς μὲν βλάβην μὴ δεξαμένων, διὰ παλαιότητα δὲ ἢ καὶ τινα οὖν ἄλλην αἰτίαν σαθρῶν γενομένων, ἵνα ἐπὶ πάσης οἰκίας οἰκοδομουμένης[v] ἑκατὸν ποδῶν εἴη διάστημα ἐν μέσῳ τῶν ἀμφιβαλλομένων τόπων, κωλύματος χωρὶς γένηται οἰκοδόμημα, εἰ καὶ τῆς ἄλλῳ διαφερούσης οἰκίας τὴν ἐπὶ θάλασσαν ἄποψιν λυμαίνηται. **4a.** Τὰς δὲ ἀπὸ μόνων μαγειρείων ἢ τῶν καλουμένων ἀποπάτων ἢ ἀφεδρώνων ἢ κλιμάκων ἢ διαβάσεων πρὸς πάροδον μόνην χρησίμων ἢ καὶ τούτων, ἃ καλοῦσιν οἱ πολλοὶ βαστέρνια, ἀπόψεις εἰς θάλασσαν βλάπτειν ἐξέστω, κἂν ἐντὸς ἑκατὸν ποδῶν βούλοιτό τις οἰκοδομεῖν, δώδεκα μέντοι πόδες ἐν μέσῳ τυγχάνοιεν ὄντες. **4b.** Ταῦτα δὲ παραφυλαχθῆναι θεσπίζομεν, ὅτε μὴ ὑπάρχει τινὶ σύμφωνον ἐπιτρέπον οἰκοδομεῖν· τηνικαῦτα γὰρ καὶ μὴ παραφυλαχθέντος διαστήματος κατὰ τὸ σύμφωνον ἐπιτρέπομεν ἐγείρεσθαι τὰς οἰκοδομάς, εἰ καὶ βλάπτοιεν περὶ θαλάσσης ἄποψιν τοὺς συμφωνήσαντας ἢ τοὺς τὰς ἐκείνων οἰκίας διαδεξαμένους, ἐπειδὴ τὰ ἤδη τισὶν ὑπάρχοντα ἐκ συμφώνων δίκαια οὐ προσήκει διὰ τῶν γενικῶν ἀναιρεῖσθαι νόμων.

5. Ἔτι δὲ θεσπίζομεν τὰ καλούμενα σωλάρια μετὰ τὸν παρόντα νόμον μὴ ἐκ μόνων ξύλων τε καὶ σανίδων γίνεσθαι, ἀλλὰ τῷ τῶν λεγομένων Ῥωμανισίων οἰκοδομεῖσθαι σχήματι, δέκα δὲ ποδῶν εἶναι διάστημα μετξὺ δύο σωλαρίων ἀντικρὺ ὄντων ἀλλήλων. **5a.** Εἰ δὲ τοῦτο μὴ δυνατὸν εἴη διὰ στενοχωρίαν τοῦ τόπου, ἐκ παραλλαγῆς γίνεσθαι τὰ σωλάρια. **5b.** Εἰ δὲ αὐτὸς ὁ στενωπὸς μὴ περαιτέρω δέκα ποδῶν εἴη, μηδ' ἐπιχειρεῖν ἐκ μηδετέρου μέρους σωλάρια ἤτοι ἐξώστας κατασκευάζειν. **5c.** Καὶ τὰ γενόμενα δὲ ὃν εἴρηται τρόπον κελεύομεν ἀφεστάναι τοῦ ἐδάφους εἰς ὕψος ποδῶν δεκαπέντε διάστημα, καὶ μηδαμῶς κατὰ κάθετον αὐτῶν κίονας

[iv] ἐπί τε
[v] οἰκοδομουμένης εἰ

(it and) the other building is less than 12 feet, its height shall not be raised, nor shall windows be opened, unless there is 10 feet between. Even then the builder cannot make (windows) "for view" that were not there before, as stated; but he will make those "for light" 6 feet above the floor. But no one, after opening a window at the specified height of 6 feet, shall then dare to construct a so-called false floor in his home and (so) circumvent the law. **3b.** For if this were permitted, because of the false floor those (windows) "for light" would serve for purposes of view and harm the neighbor (by intruding on his privacy). We forbid this to happen, but in no respect take away any right stemming from pacts or stipulations, should any such lie (in particular cases).

4. Further, since the earlier statute provided that houses previously consumed by fire might be reconstructed to a height of 100 feet even if another person is harmed in his view of the sea, We eliminate this ambiguity and order that this right exist both as to houses burned down and for those being repaired, and for houses not previously existing but now erected, and as well for those not damaged by fire but in ruins through age or some other cause. In constructing every house, if there is a distance of 100 feet from surrounding properties, building may proceed without stoppage even if the sea view is harmed from a house belonging to a third party. **4a.** But it is permitted to obstruct sea views only from kitchens, so-called water closets, privies, staircases, from corridors useful only for passage, and from what they commonly call "enclosed litters" (*basternia*; internal hallways?), even if someone wishes to build within 100 feet, as long as there are 12 feet between. **4b.** We ordain that these rules be observed as long as there is no agreement allowing (such) construction; for then We provide that the building may be constructed according to the terms even if no interval is left, and even if it harms the sea view of those who made the pact or their successors in the house, since rights acquired by pacts ought not to be nullified by general laws.

5. We likewise ordain that the so-called *solaria* (balconies exposed to sun) not hereafter be constructed from wooden beams and posts alone, but rather in the manner of those called "Roman"; and an interval of 10 feet shall be left between two juxtaposed *solaria*. **5a.** If this is impossible owing to the narrowness of the space, the *solaria* shall be constructed alternately. **5b.** But if the alleyway itself is not wider than 10 feet, from neither side shall they attempt to build *solaria* or projecting balconies. **5c.** And We order that structures built according to this specification be 15 feet high from the ground, and in no way (in order to support them) shall stone or wooden columns be set vertically on the ground, or walls constructed, so that the air not be shut off under the

λιθίνους ἢ ξυλίνους ἐπὶ τῷ ἐδάφει ἵστασθαι ἢ τοίχους κατασκευάζεσθαι, ὥστε μήτε τὸν ἀέρα τὸν ὑπὸ τοῖς ἐν τῷ ὕψει γινομένοις, ὡς εἴρηται, σωλαρίοις ἀποφράττεσθαι, μήτε ἐντεῦθεν στενότερον γίνεσθαι τὸν στενωπὸν καὶ τὴν δημοσίαν πάροδον. **5d.** Κωλύομεν δὲ καὶ κλίμακας ἀπὸ τοῦ ἐδάφους ἀρχομένας τοῦ στενωποῦ γίνεσθαι, ἀναγούσας ἐπὶ τὰ σωλάρια, ὥστε ἔκ τε τῆς ἀσφαλεστέρας κατασκευῆς καὶ ἐκ τοῦ μὴ σφόδρα πλησιάζειν ἀλλήλοις τὰ σωλάρια κουφοτέρους καὶ σπανιωτέρους συμβαίνειν (ὃ μὴ συμβαίη ποτέ) καὶ εὐκολώτερον παύεσθαι τοὺς ἐκ τοῦ πυρὸς κινδύνους τῇ πόλει καὶ τοῖς ἔχουσιν τὰς οἰκίας. **5e.** Εἰ δὲ καὶ παρὰ τὸν ἡμέτερον νόμον γένηται σωλάριον ἢ κλίμαξ, οὐ τὰ γενόμενα ἐκκοπήσεται μόνον, ἀλλὰ καὶ ὁ τῆς οἰκίας κύριος δέκα χρυσίου λιτρῶν ζημίαν ὑπομενεῖ, καὶ ὁ διατυπώσας ἀρχιτέκτων ἢ ἐργόλαβος ἑτέρας δέκα λίτρας καταθήσει, καὶ ὁ ἐργασάμενος τεχνίτης οὐχ οἷός τε ὢν διὰ πενίαν ζημιοῦσθαι τὸ σῶμα αἰκισθεὶς τῆς πόλεως ἐξελαθήσεται.

6. Πρὸς τούτοις παρακελευόμεθα μηδενὶ ἐξεῖναι πολλοὺς ἐφεξῆς κίονας ἐν ταῖς δημοσίαις στοαῖς ταῖς ἀπὸ τοῦ καλουμένου Μιλίου ἄχρι τοῦ Καπετωλίου ἀποφράττειν οἰκήμασιν ἐκ σανίδων μόνων ἢ καὶ ἄλλως ἐν μέσῳ τῶν κιόνων κατασκευαζομένοις. **6a.** Ἀλλὰ μὴν τὰ τοιαῦτα οἰκήματα μὴ ὑπερβαίνειν πλάτους μὲν ποδῶν ἓξ σὺν τοῖς τοίχοις ἐπὶ τὴν πλατεῖαν, ὕψους δὲ ποδῶν ἑπτά, ἐκ παντὸς δὲ τρόπου διὰ τεσσάρων κιόνων τὰς παρόδους ἐλευθέρας καταλιμάνεσθαι τὰς ἀπὸ τῶν στοῶν ἐπὶ τὰς πλατείας. **6b.** Καλλωπίζεσθαι δὲ τὰ τοιαῦτα οἰκήματα ἤτοι ἐργαστήρια μαρμάροις ἔξωθεν, ὥστε κάλλος μὲν διδόναι τῇ πόλει, ψυχαγωγὴν δὲ τοῖς βαδίζουσι. **6c.** Τὰ δὲ ἐν τοῖς ἄλλοις μέρεσι τῆς πόλεως ἐν τοῖς μέσοις τῶν κιόνων τόποις κατασκευαζόμενα ἐργαστήρια, καθάπερ ἂν δοκιμάσειε τῇ πόλει συμφέρειν ἡ σὴ μεγαλοπρέπεια καὶ τοῦ μέτρου ἕνεκα καὶ τοῦ τρόπου, κατασκευάζεσθαι θεσπίζομεν· τῆς ἰσότητος δηλαδὴ πᾶσι φυλαττομένης, ὥστε μὴ ἐπί τινων γειτόνων ἐπιτραπὲν ἐφ' ἑτέρων κωλύεσθαι.

7. Κἀκεῖνο δὲ νομοθετοῦμεν, ὥστε μὴ τὰς τῶν συκοφαντῶν κακοτεχνίας τοῖς ἐπιεικέσι λυμαίνεσθαι. πολλοὶ γὰρ φθόνῳ δίκας οὐκ ἀδικήματός τινος τοῖς οἰκοδομεῖν βουλομένοις ὑφαίνοντες ἀναβολῶν αἴτιοι αὐτοῖς γίνονται, ὥστε τὸν οἰκοδομεῖν ἀρξάμενον, εἶτα κωλυθέντα καὶ τὸ ἔργον ἀτελὲς καταλιπεῖν ἠναφρασμένον καὶ πρὸς τὸ δικαστήφιον ἀφελκόμενον τὸ χρῆμα, ἐξ οὗ τὴν οἰκίαν ἐγείρειν ἤλπισεν, ἀναλίσκειν περὶ τὴν δικην, καὶ τὸ πάντων ἀτοπώτατον, μετὰ τὸ ψήφου νικώσης ἐπιτυχεῖν ἔτι καθάπερ ἀλύτοις τισὶ συμπεπλέχθαι δεσμοῖς, τοῦ κωλύσαντος τὸ ἔργον προσχήματι μὲν ἐφέσεως τὰς κυρίας ἀναμένοντος, τῷ δὲ ἐμποδὼν γίνεσθαι τῇ οἰκοδομίᾳ ἐπὶ ταῖς τοῦ γείτονος συμφοραῖς εὐφραινομένου. **7a.** Προστάττομεν τοίνυν, ἐπὶ τῶν τοιούτων ὑποθέσεων εἰ ἔφεσις ἐπιδοθείη κατὰ τῶν τυπωθέντων παρὰ τοῦ διαγνώμονος, ἅμα τῷ δοθῆναι παρὰ τοῦ δικαστοῦ τὴν ἀναφορὰν ἤτοι τύπον ἔγγραφον καὶ μὴ παραφυλαχθείσης κυρίας ἐξεῖναι τῷ νενικηκότι

solaria built at the specified height, and the alleyway or public passage not thereby be narrower. **5d.** We also forbid making staircases starting from the alleyway's surface and leading to the *solaria*, so that both as a result of this safer structure and of *solaria* not being so close to each other, the dangers of fire, which threaten both the city and its householders, occur less severely and frequently – (although) they do sometimes occur – and end more easily. **5e.** If a *solarium* or staircase is built contrary to Our law, not only shall it be torn out, but the householder shall be fined 10 pounds of gold, and the architect or contractor who started the project shall pay another 10 pounds, and if owing to poverty the builder cannot pay the fine, he shall be beaten with rods and expelled from the city.

6. Additionally, We order that, in the public porticoes from the so-called Mile-Marker (*Milio*) up to the Capitolium, no one hereafter be allowed to close off several columns (in a row) with booths constructed from posts alone or otherwise between the columns. **6a.** But such booths shall not exceed 6 feet in width on their walls toward the street, and 7 feet in height, and passage through four columns from the portico to the street shall in any case be left free. **6b.** Such booths or shops shall also be externally adorned with marble, so that they lend both beauty to the city and pleasure to passersby. **6c.** We ordain that shops erected between columns in other parts of the city be constructed as Your Magnificence thinks suitable for the city in their size and form, preserving equality for all, obviously, so that what is allowed to some neighbors is not denied to others.

7. We also include in Our law that honest men not be harmed by the deceits of false accusers (*calumniatores*). For many persons, out of resentment despite suffering no harm, raise lawsuits against those who wish to build and (so) cause delay, with the result that the person starting construction is then enjoined and forced to leave the work unfinished, and by being dragged into court he also spends on litigation the money he hoped to use on constructing his house; and, the most absurd of all, having won a favorable decision, he is still enmeshed in, as it were, unbreakable chains, while the person who forbade the work through an appeal takes the time allowed for this and is glad to have obstructed the project with great injury to his neighbor. **7a.** We therefore order that in such instances, if appeal is taken from the trial judge's decision, as soon as the report or a written draft is provided by the judge, the winner or loser, together with his adversary or alone, may approach the tribunal of Your Magnificence without waiting the prescribed time, and having summoned his adversary in the customary way,

καὶ τῷ ἡττηθέντι ἅμα ἢ καταμόνας εἰς τὸ δικαστήριον τῆς σῆς εἰσιέναι μεγαλοπρεπείας, καὶ τοῦ ἀντιδίκου κληθέντος κατὰ τὸ συνηθές, εἰ ἄπεστι, τὸν ὅρον τοῦ διαιτητοῦ φανερὸν ποιεῖν, ἵνα πάσης ἀναβολῆς ἐκκοπείσης νόμιμον ἐπιτεθείη πέρας τῇ ὑποθέσει, καὶ μὴ χειμῶνος, εἰ τύχοι, παρόντος ἢ πλησιάζοντος, ἕως περιμένουσι τοὺς μακροὺς τῶν ἐμπροθέσμων χρόνους, τὸν οἰκοδομεῖν βουληθέντα καὶ μὴ δικαίως κωλυθέντα ζημίας ἀφορήτους ὑπομένιεν. **7b.** Παραπλήσιον δέ, εἰ καί τις ὑποθέσει τοιαύτῃ ἐφεῖναι βουληθείη μεμφόμενος τοῖς παρὰ τῆς σῆς μεγαλοπρεπείας ἐψηφισμένοις, παραχρῆμα τὴν καλουμένην consultationa γίνεσθαι καὶ δίδοσθαι καὶ αὐτῷ καὶ τῷ νενικηκότι σκοπεῖσθαι κατὰ τὸ εἰωθὸς τὴν ψῆφον ἐν τῷ θείῳ ἡμῶν παλατίῳ, μηδεμιᾶς ἀναβολῆς γινομένης. **7c.** Γινωσκέτωσαν δὲ πάντες, ὅσοι κωλύειν ἐπιχειροῦσι τοὺς οἰκοδομοῦντας, ὡς ἡττηθέντες καὶ τὰς ζημίας αὐτοῖς πάσας τὰς συμβάσας καταθήσουσι καὶ τὴν τῶν ὑλῶν τιμήν, ἃς εἰκὸς διαφθαρῆναι ἢ χείρους γίνεσθαι ἐν τῷ τῆς δίκης χρόνῳ· καὶ τῶν οὐ δικαίως ἐπιχειρησάντων οἰκοδομεῖν, εἰ ἡττηθεῖεν, καὶ τὰς ζημίας τῷ κεκωλυκότι τὸ οἰκοδόμημα καὶ δίκην εἰπεῖν περὶ τούτων ἠναγκασμένῳ κατατιθέντων.

8. *Πᾶσαν μέντοι τοιαύτην δίκην ἐξ ἀποφάσεως* μόνου τοῦ δικαστηρίου τοῦ σοῦ μεγέθους κρίνεσθαι κελεύομεν, καὶ μήτε ἄλλον τινὰ τῶν ἐνδόξων ἀρχόντων ἀκροάσασθαι τοιαύτης ὑποθέσεως μήτε τινὰς τῶν ἀγωνιζομένων τοιαύτην ὑπόθεσιν στρατείας ἢ φόρου χρῆσθαι παραγραφῇ ἕνεκα τοῦ μὴ δικάσασθαι ἢ μὴ καταθεῖναι τὰς ζημίας, ὅσας δοῦναι τῇ ψήφῳ τοῦ ἐνδοξοτάτου ἐπάργου τῆς πόλεως ἢ τοῦ παρ' αὐτοῦ δοθέντος διαιτητοῦ προσταχθείη, ἀλλὰ τὴν ἀπαίτησιν ὑπομένειν τὸν ἡττηθέντα διὰ τῆς τάξεως τῆς σῆς μεγαλοπρεπείας, μηδενὸς ἐπὶ τούτῳ χρωμένου φόρου παραγραφῇ.

9. Προνοείτω δὲ ἡ σὴ μεγαλοπρέπεια τοῦ μή τινας τῶν ἐργολάβων ἢ τεχνιτῶν ἀρξαμένους ἔργου τοῦτο καταλιμπάνειν ἀτελές, ἀλλ' αὐτὸν μὲν τὸν ἀρξάμενον λαμβάνοντα τὸν μισθὸν ἀναγκαζέτω πληροῦν τὸ ἔργον[vi] ἢ διδόναι τὴν ἐντεῦθεν συμβαίνουσαν ζημίαν τῷ οἰκοδομοῦντι καὶ πᾶσαν τὴν ἐκ τοῦ μὴ τὸ ἔργον γινομένην βλάβην, εἰ δὲ πένης τε εἴη τυχὸν ὁ τοῦτο ἁμαρτών, πληγάς τε λαμβανέτω καὶ ἐκβαλλέσθω τῆς πόλεως. **9a.** Μὴ κωλυέσθω δὲ ἕτερος τῆς αὐτῆς τέχνης τὸ παρ' ἑτέρου ἀρχθὲν ἐκκληροῦν, ὅπερ ἔγνωμεν τολμᾶσθαι κατὰ τῶν οἰκοδομούντων οἰκίας παρὰ τῶν ἐργολάβων ἢ τεχνιτῶν, οὔτε αὐτῶν τὸ τέλειον ἐπιτιθέντων οἷς ἤρξαντο ἐργάζεσθαι, οὐδὲ ἑτέρους τὰ αὐτὰ ἔργα ἀναπληροῦν συγχωρούντων, ἀλλὰ ἐνεγκεῖν ἀφόρητον ζημίαν ἐντεῦθεν τοῖς τὰς οἰκίας κατασκευάζουσι μηχανωμένων. **9b.** Ὁ δὲ παραιτούμενος τὸ παρ' ἑτέρου ἀρχθὲν ἐκκληρῶσαι δι' αὐτὸ τοῦτο, ὅτι ἕτερος ἤρξατο, καὶ αὐτὸς παραπλησίαν τῷ καταλιπόντι τὸ ἔργον ὑπεχέτω δίκην.

[13] *Imp. Iustinianus A. Iohanni pp.* Cum dubitabatur, utrum constitutio Zenonis divae memoriae ad Adamantium praefectum urbis scripta, quae de servitutibus loquitur, localis est et huic florentissimae urbi

[vi] ἔργον ⟨τελεσθῆναι⟩

if he (the adversary) is absent, he may lay the judge's decision before you so that the cause may be lawfully ended without delay, and, if winter is at hand or near, he who wished to build and was illegally forbidden does not sustain unbearable loss while waiting the long period allocated for appeals. **7b.** Similarly, if someone in such a dispute objects to Your Magnificence's decree and wishes to appeal, let the so-called consultation (*consultatio*)[32] take place at once; and with no delay both winner and loser may debate the verdict in Our imperial palace in the usual manner. **7c.** And all attempting to stop those who build should know that if defeated, they must make good to them all consequential loss, including the cost of materials that in all probability deteriorated or became worse during the course of the trial. But those who attempt to build illegally, if they lose, must make good the losses of the person who forbade construction and was forced to go to trial about this matter.

8. We further direct that every such suit be determined by the verdict of the court of Your Greatness alone, and that no other of the illustrious magistrates hear such a case; nor shall any of those who engage in such litigation employ a defense based on imperial service or jurisdiction (*praescriptio militiae aut fori*) to avoid trial or not pay the damages ordered by the verdict of the most glorious City Prefect or the judge he appointed. The defeated party shall be forced by Your Magnificence's staff to pay, without the right to object to jurisdiction (*praescriptio fori*).

9. Your Magnificence shall see to it that none of the contractors or artisans leave unfinished a project they began after receiving their fee, but compel anyone who begins a project to complete it or pay damages the builder thereby incurs, plus all the loss from the work not (being completed); and if the defaulting (contractor) is a pauper, let him be whipped and expelled from the city. **9a.** Another man of the same trade shall not be prevented from completing the project begun by someone else – something that, We have learned, contractors or artisans have attempted against those building when they themselves did not finish work they began and did not allow the same project to be completed by others, but contrived to inflict intolerable loss on owners who prepared to build. **9b.** And a person who refuses to complete a project begun by another, on the ground that another began it, shall himself undergo a trial like that of the one who abandoned the project.

[13] *Emperor* Justinian *Augustus to John, Praetorian Prefect.* Doubt has arisen as to whether the constitution of Zeno of blessed memory addressed to Adamantius the City Prefect,[33] which discusses servitudes, is local and confined to this most flourishing city (Constantinople) where alone its rules ought to be

[32] See C. 7.62.
[33] See 12 above.

dedicata et debent illius quidem iura in hac observari, antiqua vero, quae contraria sunt, locum habere in provinciis: indignum esse nostro tempore putantes aliud ius in hac regia civitate de huiusmodi observari, aliud apud nostros esse provinciales, sancimus eandem constitutionem in omnibus urbibus Romani imperii obtinere et secundum eius definitionem omnia procedere et, si quid ius ex ea lege innovatum est a vetere dispositione, et hoc in provinciis a praesidibus earum observari: ceteris videlicet omnibus, quae non per Zenonianam legem innovata sunt, sed veteribus legibus comprehensa, in sua firmitate in omni loco manentibus.

D. k. Sept. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[14] *Idem A. Iohanni pp.* **pr.** De operis novi nuntiatione quandam antiquis ortam fuisse dubitationem nostra cognovit tranquillitas, dicentibus, si quis denuntiationem ad inhibendum opus miserit, non posse eum post annum elapsum, ex quo denuntiatio missa est, iterum aedificationem prohibere. **1.** Quod dupliciter iniquum nobis esse videtur. sive etenim non recte opus prohibuerit, decet non per totum annum hoc impediri, sive recte denuntiationem emiserit, etiam post annum licentiam habere aedificationem prohibere. **2.** Talem igitur iniquitatem inhibentes sancimus, si quis denuntiationem emiserit, in hac quidem regia urbe praefectum urbi festinare, in provincia vero rectorem eius, intra trium mensum spatium causam dirimere: sin vero aliquid fuerit quocumque modo ad decisionem ambiguitatis impedimentum, licentiam habere eum, qui aedificationem deproperat, opus de quo agitur efficere, prius fideiussore ab eo dato officio urbicariae praefecturae vel provinciali, ut, si non recte aedificaverit, omne opus, quod post denuntiationem fecerit, suis sumptibus destruet. sic enim et opera non per inanes denuntiationes prohibebuntur et recte denuntiantibus consuletur.

D. XII k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc. anno secundo.

XI De Operibus Publicis

[1] *Impp. Constantinus et Constans AA. ad Catullinum.* Plurimi immunitates operum publicorum concessione iudicum adepti sunt: et ideo iubemus in posterum illicitas immunitates nullius esse momenti.

D. VI k. Aug. Sirmi Urso et Polemio conss.

observed, while the old rules, where they differ, are in force in the provinces. Deeming it unworthy of Our time that one rule on such matters be observed in this Imperial City and another among the provincials, We ordain that this same constitution is valid in all cities of the Roman empire and that all proceed according to its ruling. If any rule from this law is a change from the old law, let it also be enforced in the provinces by their governors. All other things, which are not changed through Zeno's law but included in the ancient laws, shall remain in full force everywhere.

Given September 1, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[14] *The same Augustus to John, Praetorian Prefect.* **pr.** Concerning the protest against new construction (*operis novi nuntiatio*), Our Tranquility has learned that some doubt arose among the ancients, to the effect that if someone sent a protest to stop a project, he could not again stop construction even after a year had elapsed from when the protest was sent. **1.** This appears to Us doubly iniquitous. For if he improperly obstructed the project, it ought not to be stopped for an entire year; and if he rightly sent the protest, even after a year he should have permission to prohibit the building. **2.** Therefore, to restrain such unfairness, We ordain that if anyone sends a protest, in this Imperial City the Urban Prefect shall decide the case within three months, and in a province, its governor. But if there arises an ambiguity that somehow hinders decision, the person who hastens to build has permission to complete the project in question after he first provides a surety to the City Prefecture or the provincial (court) that, if he does not build lawfully, everything he does after the notice he will tear down at his own expense. In this way, construction will not be stopped through foolish complaints but attention is also duly paid to those making protests.

Given October 18,[34] *at Constantinople, in the second post-consulate of the* viri clarissimi *Lampadius and Orestis (532).*

Eleventh Title Public Works

[1][35] *Emperors* Constantine *and* Constans *Augusti to Catullinus.* By judicial grant, many have received exemption from (making contributions to) public works. We therefore order that unlawful exemptions hereafter have no force.

Given July 27, at Sirmium, in the consulship of Ursus and Polemius (338).

[34] So Lenel, followed by Lounghis *et al.*; the manuscripts have October 21.

[35] = C.Th. 15,1,5; combine, probably, with C. 10.48.7 (of Constantius).

[2] *Idem AA. ad Marcellinum comitem Orientis.* Quae operibus publicis impensa constiterit, accepto ferri oportere cognoscas.

D. v non. Oct. Constantinopoli Limenio et Catullino conss.

[3] *[Αὐτοκράτωρ Ἰουλιανὸς Α.]* Ὁ εἰς τόπον τῆς πόλεως κτίσας οἰκείοις ἀναλώμασιν, ἐν ᾧ μὴ βλάπτῃ τὴν πόλιν, ἴδιον αὐτοῦ ἐχέτω τὸ κτισθὲν καὶ μᾶλλον εὐχαριστείσθω ὡς τὴν πόλιν κοσμιῶν.

[4] *Idem A. Ecdicio praefecto Aegypti.* Praetoria iudicum et domos publicas oportet publico iuri atque usui semper vindicari.

PP. IIII non. Dec. Antiochiae Mamertino et Nevitta conss.

[5] *Impp. Valentinianus et Valens AA. ad Symmachum pu.* **pr.** Intra urbem Romam veterem et novam nullus iudicum novum opus informet, quotiens serenitatis nostrae arbitria cessabunt, nisi ex suis pecuniis huiusmodi opus construere voluerit. 1. Ea tamen instaurandi, quae iam deformibus ruinis intercidisse dicuntur, universis licentiam damus.

D. VIII k. Iun. Philippis divo Ioviano et Varroniano conss.

[6] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad Proculum.* Praescriptio temporis iuri publico non debet obsistere, sed nec rescripta quidem. atque ideo diruenda sunt omnia, quae per diversas urbes vel in foro vel in quocumque publico loco contra ornatum et commodum ac decoram faciem civitatis extructa noscuntur.

D. III id. Iun. Constantinopoli Merobaude II et Saturnino conss.

[7] *Idem AAA. Cynegio pp.* Ad portus et aquae ductus et murorum instaurationem sive extructionem omnes certatim facta operarum

[2][36] *The same Augusti to Marcellinus, Count of the East.* You should know that amounts demonstrably spent on public works ought to be credited (to the officials who have properly expended them).

Given October 3, at Constantinople, in the consulship of Limenius and Catullinus (349).

[3][37] <*Emperor* JULIAN *Augustus.*> Anyone building on city property with his own funds, if he does not harm the city thereby, may have the building as his own, and public thanks should be given to him for adorning the city.

(362).

[4][38] *The same Augustus to Ecdicius, Prefect of Egypt.* The quarters of judges (i.e., officials) and public guest-houses ought always to be reserved for public authority and use.

Posted December 2, at Antioch, in the consulship of Mamertinus and Nevitta (362).

[5][39] *Emperors* VALENTINIAN *and* VALENS *Augusti to Symmachus, Urban Prefect.* **pr.** Within the old and the new city of Rome, no judge (i.e., official) shall construct a new project if an order (therefor) from Our Serenity is lacking, unless he wishes to build such a project with his own money. **1.** But We give all the freedom to restore those which now are said to have fallen down in unsightly ruins.

Given May 25, at Philippi, in the consulship of Jovian of blessed memory and Varronianus (464).

[6][40] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Proculus.* Long-time prescription (*praescriptio longi temporis*) should be no defense to a public right, nor should even rescripts. Therefore all structures in the various cities either in the forum or in other public places, if found to spoil the city's adornment and convenience and proper appearance, should be torn down.

Given June 11, at Constantinople, in the consulship of Merobaudes, for the second time, and Saturninus (383).

[7][41] *The same Augusti to Cynegius, Praetorian Prefect.* In repairing or constructing a port, aqueduct, or walls, all should zealously participate in the

[36] = C.Th. 15.1.6; combine with C. 10.37.1. On the content, see C.Th. 15.1.27–28.

[37] This constitution comes from the Basilika; see C.Th. 15.1.9, probably the Latin version of the law. The inscription and date are restored from the following constitution. Seeck dates to December 2, 362.

[38] = C.Th. 15.1.8; combine with C.Th. 15.1.9.

[39] = C.Th. 15.1.11; combine with C.Th. 8.5.19.

[40] = C.Th. 15.1.22.

[41] = C.Th. 15.1.23; combine with C. 10.76.1.

collatione instare debent neque aliquis ab huiusmodi consortio dignitatis privilegiis excusari.

D. XV k. Febr. Constantinopoli Ricomere et Clearcho conss.

[8] *Idem AAA. et Arcadius A. Cynegio pp.* Omnes, quibus vel cura mandata fuerit operum publicorum vel pecunia ad extructionem solito more credita, usque ad annos quindecim ab opere perfecto cum suis heredibus teneantur obnoxii, ita ut, si quid vitii in aedificatione intra praestitutum tempus provenerit, de eorum patrimonio (exceptis tamen his casibus, qui sunt fortuiti) reformetur.

D. III non. Febr. Constantinopoli Arcadio A. et Bautone conss.

[9] *Imppp. Theodosius Arcadius et Honorius AAA. Aureliano pu.* pr. Si quando concessa a nobis licentia fuerit extruendi, id sublimis magnificentia tua sciat esse servandum, ut nulla domus inchoandae publicae fabricae gratia diruatur, nisi usque ad quinquaginta libras argenti pretii aestimatione taxabitur. 1. De aedificiis vero maioris pretii ad nostram scientiam referatur, ut, ubi amplior poscitur quantitas, imperialis extet auctoritas.

D. III k. Mart. Constantinopoli Theodosio A. III et Abundantio conss.

[10] *Idem AAA. Rufino pp.* Si qui iudices perfecto publicis pecuniis operi suum nomen sine nostri numinis mentione scripserint, maiestatis teneantur obnoxii.

D. III non. Iul. Constantinopoli Arcadio III et Honorio II AA. conss.

[11] *Impp. Arcadius et Honorius AA. Eusebio comiti sacrarum largitionum.* Ne splendidissimae urbes vel oppida vetustate labantur, de reditibus fundorum iuris rei publicae tertiam partem reparationi publicorum moenium et thermarum subustioni deputamus.

D. XI k. Iul. Mediolani Olybrio et Probino conss.

sharing of services, nor should anyone be excused from this common duty by privileges of rank.

Given January 18, at Constantinople, in the consulship of Richomer and Clearchus (384).

[8][42] *The same Augusti and* Arcadius *Augustus to Cynegius, Praetorian Prefect.* All who are entrusted with the care of public works (as *curatores*) or who are decreed money in the usual way for their construction, are liable, with their heirs, for fifteen years from the completion of the project, such that, if any defect in construction appears within the stated time, it shall be repaired from their estates, except for unavoidable accidents.

Given February 3, at Constantinople, in the consulship of Arcadius Augustus and Bauto (385).

[9][43] *Emperors* Theodosius, Arcadius, *and* Honorius *Augusti to Aurelian, City Prefect.* **pr.** If at any time permission to build (new public works) is granted by Us, Your Sublime Magnificence should see to it that this rule is observed: let no house be torn down to begin construction of a public work unless its assessed value is less than 50 pounds of silver. **1.** But as for buildings of greater value, bring it to Our knowledge so that when a higher amount is asked, there is imperial authorization.

Given February 27, at Constantinople, in the consulship of Theodosius Augustus, for the third time, and Abundantius (393).

[10][44] *The same Augusti to Rufinus, Praetorian Prefect.* If any judges (i.e., governors) inscribe their own name on works completed with public money, without mention of Our Divine Majesty, they are held guilty of high treason (*maiestas*).

Given July 5, at Constantinople, in the consulship of Arcadius, for the third time, and Honorius, for the second time, Augusti (394).

[11][45] *Emperors* Arcadius *and* Honorius *Augusti to Eusebius, Count of Imperial Finances.* To prevent Our splendid cities and towns from falling into ruin through age, from the revenues of farms belonging to municipalities We assign one-third to the repair of public walls and to the heating of baths.

Given June 21, at Milan, in the consulship of Olybrius and Probinus (395).

[42] = C.Th. 15.1.24.
[43] = C.Th. 15.1.30; combine with C.Th. 1.1.3, 1.28.4, 6.3.1, 6.4.26, 12.1.130–132, 14.17.11(?), 15.1.29–30.
[44] = C.Th. 15.1.31 pr.
[45] = C.Th. 15.1.32.

[12] *Idem AA. Caesario pp.* Omnes provinciarum rectores litteris moneantur, ut sciant ordines atque incolas urbium singularum muros vel novos debere facere vel veteres firmius renovare: scilicet hoc pacto impendiis ordinandis, ut adscriptio currat pro viribus singulorum, deinde adscribantur pro aestimatione futuri operis territoria civium, ne plus poscatur aliquid, quam necessitas imperaverit, neve minus, ne instans impediatur effectus: oportet namque per singula non sterilia iuga certa quaeque distribui, ut par cunctis praebendorum sumptuum necessitas imponatur: nemini excusatione vel alia praesumptione ab huiusmodi immunitate praebenda.

D. VIIII k. April. Arcadio IIII et Honorio III AA. conss.

[13] *Idem AA. Theodoro pp.* **pr.** Nemo iudicum in id temeritatis erumpat, ut inconsulta pietate nostra novi aliquid operis existimet inchoandum, vel ex diversis operibus ornamenta aut marmora vel quamlibet speciem, quae fuisse in usu vel ornatu probabitur civitatis, eripere vel alio transferre sine iussu tuae sublimitatis audeat. etenim si quis contra fecerit, sex libris auri multabitur. **1.** Similis etiam condemnatio ordines civitatum manebit, nisi ornamentum genitalis patriae decreti huius auctoritate defenderint. **2.** Horreorum autem vel stabulorum fabricas arbitratu proprio provinciarum iudices studio laudandae devotionis adripiant.

D. k. Ian. Mediolani Honorio A. IIII et Eutychiano conss.

[14] *Idem AA. Severo pu.* Aedificia, quae vulgo parapessia nuncupantur, vel si qua alia opera moenibus vel publicis operibus sociata cohaerent, ut ex his incendium vel insidias vicinitas reformidet aut angustentur spatia platearum vel minuatur porticibus latitudo, dirui ac prosterni praecipimus.

D. V id. Oct. Constantinopoli Honorio A. IIII et Eutychiano conss.

[15] *Idem AA. Eutychiano pp.* Si aliquando homines emergant, qui a nostra clementia opus publicum sibi praeberi postulaverint, non nisi diruta penitusque destructa et quae parum sunt in usu civitatium

[12][46] *The same Augusti to Caesarius, Praetorian Prefect.* All provincial governors should be cautioned by letters to know that the senates and inhabitants of each city ought either to build new walls or make the old ones stronger. The expenses (for this) should of course be apportioned (among landowners) according to the resources of each. In proportion to the estimate of future work, the lands of citizens shall be apportioned such that no more is demanded than is necessary, nor less than their urgent completion requires. A definite sum should be assessed against each tax unit (*iugum*) that is not barren, so that the burden of defraying expenses is imposed equally on all, with no one being afforded excuse or other defense arising from such exemption.

Given March 24, in the consulship of Arcadius, for the fourth time, and Honorius, for the third time, Augusti (396).

[13][47] *The same Augusti to Theodorus, Praetorian Prefect.* **pr.** Let no judge (i.e., governor) have the temerity to commence any new work without consulting Our Piety, or dare to rip out from various structures adornments or marbles or any other material which is shown to be useful or ornamental to the city, or transfer it elsewhere, without the order of Your Sublimity. If anyone violates (this regulation), he will be fined 6 pounds of gold. **1.** A like penalty will befall the senates of cities unless they defend the adornment of their native city through the authority of this decree. **2.** But at their own discretion, in their zeal of praiseworthy devotion to duty, provincial judges may seize the opportunity to construct granaries and stables.

Given January 1, at Milan, in the consulship of Honorius Augustus, for the fourth time, and Eutychianus (398).

[14][48] *The same Augusti to Severus, City Prefect.* If buildings commonly called *parapessia* (abutments) or any other structures are so joined and attached to walls or public buildings that the neighborhood fears fire or ambush, or the street space is narrowed or the width diminished for porticoes, We order them to be torn down and destroyed.

Given October 11, at Constantinople, in the consulship of Honorius Augustus, for the fourth time, and Eutychianus (398).

[15][49] *The same Augusti to Eutychianus, Praetorian Prefect.* If at any time persons appear who ask from Our Clemency that a public building be furnished to them, they should receive only those which are torn down and completely

[46] = C.Th. 15.1.34.
[47] = C.Th. 15.1.37; combine with C. 1.24.1. Seeck dates to December 21, 398.
[48] = C.Th. 15.1.39.
[49] = C.Th. 15.1.40.

percipiant: intimandis huiusmodi rescriptis iudicio amplissimae tuae sedis.

D. id. Dec. Honorio A. IIII *et Eutychiano conss.*

[16] *Idem AA. et Theodosius A. Aemiliano pu.* Si quando usus exegerit vel porticus vel quaslibet aedes aetatis senio seu fortuitis concussas casibus reparari, liceat etiam inconsulta clementia nostra cum reverentia sui imaginem deponere vel nostram vel retro principum, reportatamque post refecta aedificia loco proprio denuo collocare.

D. V *k. Iul. Constantinopoli Arcadio A.* VI *et Probo conss.*

[17] *Impp. Honorius et Theodosius AA. Monaxio pu.* Quicumque locus in palatio huius urbis privatis aedificiis incommode occupatus est, is quam primum subrutis omnibus quae in eo sunt aedificiis palatio reformetur, quod privatorum non est parietibus coartandum (nam imperio magna ab universis secreta debentur), ut hi tantum locum habeant habitandi, quos legitimus maiestatis nostrae usus et rei publicae disciplina delegit: in futurum etiam universis ab huiusmodi usurpatione prohibendis.

D. VIIII *k. Mart. Constantinopoli Honorio* VIII *et Theodosio* III *AA. conss.*

[18] *Idem AA. Anthemio pp.* **pr.** Turres novi muri, qui ad munitionem splendidissimae urbis extructus est, completo opere praecipimus eorum usui deputari, per quorum terras idem murus studio ac provisione tuae magnitudinis ex nostrae serenitatis arbitrio celebratur. **1.** Eadem lege in perpetuum et condicione servanda, ut annis singulis hi vel ad quorum iura terrulae demigraverint, proprio sumptu eorum instaurationem sibimet intellegant procurandam, eorumque usu publico beneficio potientes curam reparationis ac sollicitudinem ad se non ambigant pertinere. **2.** Ita enim et splendor operis et civitatis munitio cum privatorum usu et utilitate servabitur.

D. prid. non. April. Lucio vc. cons.

razed and of little use to cities. Such rescripts (making these grants) should be registered in the court of your magnificent office.

Given December 13, in the consulship of Honorius Augustus, for the fourth time, and Eutychianus (398).

[16][50] *The same Augusti and* THEODOSIUS *Augustus to Aemilianus, City Prefect.* If at any time there is need to repair either porticoes or any buildings that are in bad condition from age or unavoidable accidents, it is permitted, even without consulting Our Clemency, to reverently remove Our likeness or that of earlier emperors, and after the building's repair to restore it back to its proper place.

Given June 27, at Constantinople, in the consulship of Arcadius Augustus, for the sixth time, and Probus (406).

[17][51] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Monaxius, City Prefect.* If any place within this city's palace is inconveniently occupied by private buildings, let it be restored to the palace as soon as possible after destroying all the buildings thereon. It is not to be encroached upon by the walls of private persons, for places important for the Empire should be segregated from others; so that the only persons having this dwelling place are those whom the lawful needs of Our Majesty and the custom of the state have chosen. In the future as well, everyone shall be prohibited from such usurpation.

Given February 21, at Constantinople, in the consulship of Honorius, for the eighth time, and Theodosius, for the third time, Augusti (409).

[18][52] *The same Augusti to Anthemius, Praetorian Prefect.* **pr.** We order that the towers of the new wall, which was constructed to fortify this splendid city (Constantinople), after completion of the project be assigned for the use of those through whose land this wall was run through the zeal and foresight of Your Greatness and by the decision of Our Serenity. **1.** This regulation and condition shall be preserved in perpetuity, in order that they, along with those to whom title to these lands may pass, understand that repair must be undertaken by them each year at their own expense, and that in taking on the use of them by public grant, they are not in doubt that the care and concern for repair (also) falls to them. **2.** For in this way both the splendor of the work and the fortification of the city will be preserved simultaneously with the use and benefit of private persons.

Given April 4, in the consulship of the vir clarissimus *Lucius (413).*

[50] = C.Th. 15.1.44.
[51] = C.Th. 15.1.47.
[52] = C.Th. 15.1.51. On the content, see C. 12.40.7.

[19] *Imp. Theodosius A. Severino pu.* Quia plurimae domus cum officinis suis in porticibus Zeuxippi esse memorantur, reditus memoratorum locorum pro quantitate, quae placuit, ad praebenda luminaria et aedificia ac tecta reparanda regiae huius urbis lavacro sine aliqua iubemus excusatione conferri.

D. v id. Ian. Victore vc. cons.

[20] *Impp. Theodosius et Valentinianus AA. Cyro pu.* Qui sine auctoritate divini rescripti ad iudicium tuae celsitudinis destinandi angiportus integros vel partes suis domibus incluserint seu porticus usurparint, procul dubio iura pristina sacratissimae reddere civitati iubemus: multa auri quinquaginta librarum non defutura, si quis posthac in similem audaciam prodire temptaverit.

D. k. Nov. Theodosio A. XVII et Festo conss.

[21] *Idem AA. Cyro pu.* **pr.** Basilicam inauratam et marmoribus decoratam liberam in perpetuum manere neque alicuius imaginis pictarum cuiuslibet honoris tabularum adumbratione fuscari iubemus, neque in aliqua parte eiusdem basilicae tabulato quicquam[vii] opere stationes ergasteriave constitui sancimus. **1.** Illud quoque decernimus, ne in eam equos liceat intromitti vel nuptias celebrari.

D. XI k. Febr. Constantinopoli Valentiniano A. V et Anatolio conss.

[22] *Imp. Leo A. Erythrio pp.* Nemini iudicum liceat in hac inclita urbe vel in provinciis nova opera inchoare, priusquam ea, quae coepta invenerit a decessore vel praedecessoribus suis, vetustate diruta aut desidia derelicta diligenti studio instantiaque compleverit, cum ex hoc plurimum laudis adquirat, si ea culta et perfecta reddiderit, quae vetusta sunt et instaurationem requirunt quaeque ab aliis initiata et imperfecta resederant.

D. II k. Mart. Constantinopoli Marciano cons.

[vii] cuiquam

[19][53] *Emperor* Theodosius *Augustus to Severinus, City Prefect.* Because a great many homes with their shops are said to be in the porticoes of Zeuxippus, We order that the income from the aforementioned places, in the amount that was determined, be devoted, with no exemption (on the part of the rate payers), to furnishing lamps and repairing buildings and roofs for the bath of this Imperial City.

Given January 9, in the consulship of the vir clarissimus *Victor (424).*

[20] *Emperors* Theodosius *and* Valentinian *Augusti to Cyrus, City Prefect.* We order that those who, without the authorization of an imperial rescript addressed to the court of Your Highness, shut off entire alleyways or parts of them with their houses, or usurped porticoes, must without question restore to this Imperial City its ancient rights. A fine of 50 pounds of gold will not be lacking if anyone hereafter rashly tries something similar.

Given November 1, in the consulship of Theodosius Augustus, for the seventeenth time, and Festus (439).

[21] *The same Augusti to Cyrus, City Prefect.* **pr.** We order that the basilica, gilded and adorned with marble,[54] remain free and clear in perpetuity and not be darkened by the outline of an image of some official's painted tablets, and that in some part of the same basilica no quarters or workshops be erected from any boards. **1.** We also decree that it not be permitted to bring in horses or to celebrate weddings there.

Given January 22, at Constantinople, in the consulship of Valentinian Augustus, for the fifth time, and Anatolius (440).

[22][55] *Emperor* Leo *Augustus to Erythrius, Praetorian Prefect.* No judge (i.e., governor) is permitted to begin new works in this famous city (Constantinople) or in the provinces before he has, with strenuous zeal and perseverance, completed the structures that were begun by his predecessor or predecessors, which have collapsed through age or been abandoned through neglect; for he acquires the greatest praise from restoring structures that are old and in need of repair, as well as those begun by others but left incomplete, to a state of care and completion.

Given February 29, at Constantinople, in the consulship of Marcian (472).

[53] = C.Th. 15.1.52.

[54] Presumably Constantine's Curia, in a basilica on the east side of Augustaeum Square.

[55] Combine with C. 11.32.3. After this one, a Greek constitution (numbered as 23) has been entirely lost, but may have been related to C. 1.4.26.

XII De Ratiociniis Operum Publicorum et de Patribus Civitatum

[1] *Imp. Zeno A. Arcadio pp.* **pr.** Iubemus provinciarum quidem rectores et singulae dioeceseos viros spectabiles iudices, id est praefectum Augustalem et comitem Orientis et utrosque proconsules et vicarios una cum suis apparitoribus pro tenore generalium magnificae tuae sedis dispositionum discutiendis publicis operibus vel aquae ductibus, qui ex civilibus reditibus vel a quolibet spontanea munificentia facti sunt vel fuerint, modis omnibus abstinere, nec aliquid quolibet modo quolibet tempore in discutiendo civiles reditus vel facta opera vel quae fieri adsolent, unam siliquam sibi ex singulis erogandis solidis vindicando aut quodcumque lucrum captando, cum huiusmodi rebus habere commune, utpote patribus civitatium et curae eorum deputatis. **1.** Qui vero opus aliquod pro sua liberalitate se facturos promiserint, licet certum sit eos ex sola pollicitatione ad implendum suae munificentiae opus necessitate iuris teneri, nullam tamen eos vel heredes eorum super facto opere ratiocinium vel discussionem aut aliquam (utpote non in integrum promissa quantitate in id opus erogata vel inutiliter facto opere, aut *alia* qua ratione) quocumque modo quocumque tempore inquietudinem sustinere concedimus. **2.** Quod si vir clarissimus provinciae moderator vel eius officium reditus publicos vel opera publica contra vetitum discutiendo vel unam siliquam aut quodlibet ex isdem reditibus vel operibus vindicando sacratissimae nostrae legis praecepta transierint, quinque quidem officii primates exilio damnati perpetuo bona sua civitati quam laeserint non dubitent vindicanda, rector vero provinciae quinquaginta librarum auri ferietur dispendio: hac eadem poena spectabilibus quoque iudicibus, licet illustri dignitate fuerint decorati, et eorum officiis, sicut superius distinctum est, imminenda.

D. …

XIII De Pignoribus

[1] *Impp. Severus et Antoninus AA. Timotheo.* Debitor, qui pignoribus profitetur se creditoribus cedere, nihilo magis liberabitur.

Twelfth Title Accounts for Public Buildings and the Leaders of Cities

[1] *Emperor Zeno Augustus to Arcadius, Praetorian Prefect.* **pr.** In accord with the tenor of the general orders of your magnificent office, We order that the provincial governors and the *viri spectabiles* judges of each diocese, i.e., the Augustal Prefect, the Count of the Orient, and both of the Proconsuls and deputies, together with their subordinates, refrain in every way from auditing (the accounts of) public buildings or aqueducts that are or will be erected from municipal funds or by anyone's spontaneous generosity, and keep away from such matters altogether and always when auditing municipal income or existing structures or customary works, by claiming for themselves a *siliqua* from each gold *solidus* paid (i.e., a tax of one-twenty-fourth), or by taking any profit at all, since these matters are delegated to the leaders of cities (*patres civitatium*) and their care. **1.** But although it is certain that those who, in accord with their generosity, promise to make some construction, are through force of law bound just by their promise (*pollicitatio*) to complete the project of their munificence, still We permit them and their heirs to undergo no accounting or audit or (even) some anxiety over their construction – as that the quantity promised for this work was not entirely expended, or that the work was badly made, or some such reason – altogether and always. **2.** If the *vir clarissimus* governor of the province or his staff disobey the precepts of this Our imperial law by auditing public accounts or public works contrary to what is forbidden, or by claiming one *siliqua* or anything from these same accounts or works, the five ranking staff officials, condemned to permanent exile, should not doubt that their property will be claimed for the city they harmed; but the provincial governor will be punished with the loss of 50 pounds of gold. This same penalty should be visited also on the *spectabiles* judges even if they are adorned with illustrious rank, and on their staffs, as determined above.

Given ... (485–486?).[56]

Thirteenth Title Pledges (*Pignora*)[57]

[1] *Emperors Severus and Antoninus Augusti to Timotheus.* A debtor who declares, as to his pledges, that he cedes (ownership of them) to his creditors, nonetheless will not be released (from the underlying debt).

[56] Lounghis *et al.* date to 490.

[57] See D. 20.1. This and the ensuing titles deal with real security for payment of debt. The Latin terminology is confusing. In some texts, *pignus* (translated "pledge") refers to debtor's property given to secure a debt but held by the creditor, while *hypotheca* ("hypothec") refers to property that remains in the debtor's control. But in the sources as preserved, these terms are at times used interchangeably, and the exact property arrangement must therefore be deduced from the context of each source. (The term "mortgage" should be avoided.)

PP. v k. Mart. Severo A. II et Albino conss.

[2] *Idem AA. Lucio.* **pr.** Quamvis constet specialiter quaedam et universa bona generaliter adversarium tuum pignori accepisse et aequale ius in omnibus habere, iurisdictio tamen temperanda est. **1.** Ideoque si certum est posse eum ex his, quae nominatim ei pignori obligata sunt, universum redigere debitum, ea, quae postea ex isdem bonis pignori accepisti, interim non auferri praeses iubebit.

PP. II k. Iun. Cilone et Libone conss.

[3] *Idem AA. Maximo.* Creditores, qui non reddita sibi pecunia conventionis legem ingressi possessionem exercent, vim quidem facere non videntur, attamen auctoritate praesidis possessionem adipisci debent.

PP. k. Mai Antonino A. II et Geta II conss.

[4] *Idem AA. Bellio.* Cum te pecuniam accepisse et agros tuos obligasse fateris, non habet rationem, quod quereris vi te coactum pignori dare. si igitur recipere vis rem tuam, solve creditori pecuniam debitam.

D. III k. Iun. Antonino A. III et Geta III conss.

[5] *Imp. Antoninus A. Domitio.* Praeses provinciae vir clarissimus ius pignoris tui exsequentem te audiet. nec tibi oberit sententia adversus debitorem tuum dicta, si eum collusisse cum adversario suo aut, ut dicis, non causa cognita, sed praescriptione superatum esse constiterit.

PP. id. Mai. Romae duobus Aspris conss.

[6] *Idem A. Quinto.* In summa debiti computabitur etiam id, quod propter possessiones pignori datas ad collationem viarum muniendarum vel quod aliud necessarium obsequium praestitisse creditorem constiterit.

Posted February 25, in the consulship of Severus Augustus, for the second time, and Albinus (194).

[2] *The same Augusti to Lucius.* **pr.** Although it is clear that your adversary (in a trial) accepted as a pledge (from a third party debtor) some property specifically as well as all his goods generally, and he has an equal right to all of it, nevertheless the law should be applied with restraint. **1.** So if it is certain that he can collect the entire debt from property pledged to him specifically, the governor will order that the property you afterwards received as a pledge from the same goods not be taken from you in the meantime.[58]

Posted May 31, in the consulship of Cilo and Libo (204).

[3] *The same Augusti to Maximus.* Creditors who, when money is not paid to them, take possession (of pledged property) according to the agreement (with their debtors), are not deemed to use force; still, they ought to acquire possession with a governor's authorization.[59]

Posted May 1, in the consulship of Antoninus Augustus, for the second time, and Geta, for the second time (205).

[4] *The same Augusti to Bellius.* Since you acknowledge that you received money (from a creditor) and obligated your lands (as a pledge to him), your complaint that you were forcibly compelled to give the pledge is unreasonable. So if you wish to recover your property, pay your creditor the money owed.

Given May 30, in the consulship of Antoninus Augustus, for the third time, and Geta, for the third time (208).

[5] *Emperor* ANTONINUS *Augustus to Domitius.* The *vir clarissimus* provincial governor will hear you when you demand your right to (obtain) a pledge. Nor are you prejudiced by the (previous) decision given against your debtor if it is clear (either) that he colluded with your adversary or, as you say, the case was not fully heard and he was defeated by a defense (*praescriptio*).[60]

Posted May 15, at Rome, in the consulship of the two Aspri (212).

[6] *The same Augustus to Quintus.* Included in the amount of the debt will also be what the creditor is shown to have paid, on possessions given as pledges, for the road-building assessment or any other necessary service.

[58] To creditor A, the third party debtor pledged first some specific property, and then his entire estate generally. He then pledged other property in his estate to Lucius. A sues to recover this property from Lucius.

[59] The final clause reflects later law; see C. 4.24.11.

[60] As it seems, a third party (the "adversary") sued Domitius' debtor over the ownership of the pledged property and won. This decision, if improperly obtained, is not decisive as to Domitius' pledge rights.

PP. III k. Aug. Antonino A. IIII et Balbino conss.

[7] *Imp. Gordianus A. Marciano.* Usucapio pignoris conventionem non extinguit.

PP. non. Sept. Pio et Pontiano conss.

[8] *Idem A. Festo.* Quamvis personali actione expertus adversus reum vel fideiussores seu mandatores eius feceris condemnationem, pignoris tamen adhuc habes persecutionem.

PP. id. Mart. Gordiano A. et Aviola conss.

[9] *Idem A. Attico.* Si dominium eius possessionis, quae cum[viii] pignori data esset, a debitrice donatu ad te translatum est, eamque postea creditor vel eius heredes detinere coeperunt, vindica eam, praeside provinciae curante, ut, fructuum deducta ratione residuoque a te oblato si fuerit satisfactum, ea possessio tibi reddatur.

PP. III k. Oct. Gordiano A. et Aviola conss.

[10] *Impp. Diocletianus et Maximianus AA. Alexandro.* Debitores praesentes prius denuntiationibus conveniendi sunt. igitur si conventi debito satis non fecerint, persequenti tibi pignora seu hypothecas, quas instrumento specialiter comprehensas esse dicis, competentibus actionibus rector provinciae auctoritatis suae auxilium impertire non dubitabit.

D. XVIII k. Febr. ipsis IIII et III AA. conss.

[11] *Idem AA. et CC. Euphrosyno.* Nominatori pignori capere sine praesidis auctoritate res nominati non licet.

S. III k. Mart. AA. conss.

[12] *Idem AA. et CC. Eusebio.* Si uxor tua pro pecunia quam accepit mutuo res proprias obligavit pignori eique tu successisti, licet in instrumentum

[viii] cui

Posted July 30, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[7] *Emperor* GORDIAN *Augustus to Marcianus.* Usucapion (by a third party) does not extinguish a pledge agreement (i.e., the creditor still has a pledge right).

Posted September 5, in the consulship of Pius and Pontianus (238).

[8][61] *The same Augustus to Festus.* Although you obtained judgment in an action *in personam* against the defendant (debtor) or his sureties or mandators, you still can pursue the pledge (itself) as well.

Posted March 15, in the consulship of Gordian Augustus and Aviola (239).

[9] *The same Augustus to Atticus.* If ownership of real estate, which had been given as a pledge to someone, was transferred to you by the female debtor as a gift, and the creditor or his heirs afterwards began to hold it, bring a suit on ownership (*vindicatio*) and the provincial governor will see to it that the property is restored to you after taking account of its produce and after you pay any balance, (thereby) satisfying the debt in full.

Posted September 29, in the consulship of Gordian Augustus and Aviola (239).

[10] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Alexander.* Debtors who are available should first be presented with notices (to pay, prior to the creditor seizing or selling a pledge). If they are presented (with notice) and do not satisfy the debt, the provincial governor will not hesitate to lend you the aid of his authority, through relevant remedies, as you pursue the pledges or hypothecs that you say were specially provided for in a document.

Given January 15, in the consulship of the Augusti themselves, Consuls for the fourth and third times (290).

[11] *The same Augusti and the Caesars to Euphrosynus.* Without the governor's authorization, a sponsor (*nominator*, of another for an office) is not permitted to seize as a pledge the property of the person he sponsored.

Written February 27, in the consulship of the Augusti (293).

[12] *The same Augusti and Caesars to Eusebius.* If your wife pledged her own property for money which she received on loan, and you are her heir, then even

[61] = C. 8.26.1.

eius facti testimonium collatum non sit, soluto debito creditorem de his tibi reddendis sollemni iure conveni.

S. v k. April. AA. conss.

[13] *Idem AA. et CC. Matronae.* Cum dominam non minorem viginti et quinque annis ea quae obligaverat tibi iure dominii possidere permisisse et in solutum dedisse precibus significes, dominae contractus et voluntas ad firmitatem tibi sufficit.

S. III k. Mai. Heracliae AA. conss.

[14] *Idem AA. et CC. Appiano.* Distractis a debitore pignoribus creditores in potestate habere, utrumne personali obligatos sibi, an pignora possidentes in rem actione convenire velint, non est incerti iuris.

S. k. Mai. Heracliae AA. conss.

[15] *Idem AA. et CC. Basilidae.* Debitorem neque vendentem neque donantem neque legantem vel per fideicommissum relinquentem posse deteriorem facere creditoris condicionem certissimum est. unde si tibi obligatam rem probare posse confidis, pignora persequi debes.

S. V non. Mai. Heracliae AA. conss.

[16] *Idem AA. et CC. Heraidi.* Etsi frater tuus non suam, sed ad te pertinentem pecuniam mutuam suo nomine dedit ac pignus accepit, tamen tibi pignoris obligationem quaerere non potuit.

S. IIII id. Mai Hadrianopoli AA. conss.

[17] *Idem AA. et CC. Pontiae.* Quamvis ea pecunia, quam a te mutuo frater tuus accepit, comparavit praedium, tamen nisi specialiter vel generaliter hoc obligavit, tuae pecuniae numeratio in causam pignoris non deduxit. sane personali actione debitum apud praesidem petere non prohiberis.

S. XV k. Iun. AA. conss.

[18] *Idem AA. et CC. Euodio.* Pignoris vel hypothecae persecutio in rem est.

S. k. Dec. Sirmi AA. conss.

though in the pledge document no reference to this fact was made, after the debt is paid sue the creditor formally for return of this property to you.

Written March 28, in the consulship of the Augusti (293).

[13] *The same Augusti and Caesars to Matrona.* Since you indicate in your petition that a *sui iuris* woman over age 25 allowed you to possess as owner the property that she had pledged to you, and she gave it (to you) as payment, the owner's contract and wish provides sufficient confirmation (of your right to the property).

Written April 29, at Heraclea, in the consulship of the Augusti (293).

[14] *The same Augusti and Caesars to Appianus.* When the debtor has sold pledged property (to third parties), the law is undisputed that the creditors have the option to sue either their debtors through an action *in personam* or the persons who possess the pledges by an action *in rem.*

Written May 1, at Heraclea, in the consulship of the Augusti (293).

[15] *The same Augusti and Caesars to Basilidas.* It is quite certain that a debtor cannot make his creditor's (legal) position worse by the sale or gift or legacy or testamentary trust (of a pledged object). So if you are sure you can prove that the property is obligated to you, you should pursue the pledges (against a third party recipient).

Written May 3, at Heraclea, in the consulship of the Augusti (293).[62]

[16] *The same Augusti and Caesars to Herais.* Although your brother loaned in his own name money belonging not to him but to you, and took a pledge (from the borrower for its repayment), still he could not acquire for you the pledge obligation.

Written May 12, at Hadrianopolis, in the consulship of the Augusti (293).

[17] *The same Augusti and Caesars to Pontia.* Although your brother bought land with money he took on loan from you, still unless he obligated it (as a pledge) specifically or generally, the fact that your money was paid (by him to the seller) does not provide a basis for pledge. Of course, you are not prevented from claiming the debt by an action *in personam* before the governor.

Written May 18, in the consulship of the Augusti (293).

[18] *The same Augusti and Caesars to Euodius.* Suit (by a creditor) to recover a pledge or hypothec is *in rem* (and so can be brought against any current possessor).

Written December 1, at Sirmium, in the consulship of the Augusti.

[62] More likely issued at Adrianople (Connolly).

[19] *Idem AA. et CC. Maximo.* Sicut vim maiorem pignorum creditor praestare necesse non habet, ita dolum et culpam, sed et custodiam exhibere cogitur.
S. XVII k. Ian. AA. conss.

[20] *Idem AA. et CC. Alexandro.* Creditor ad petitionem urgueri iure minime potest. quapropter eo, quod vos heredibus Euodiani debere confiditis, oblato et, si nolint accipere, consignato atque deposito de reddendo pignore hos praesidali notione convenite.
PP. XVIII k. Febr. CC. conss.

[21] *Idem AA. et CC. Vito.* Res obligatas exterus debito soluto liberando datum petere, non earum dominium adipisci potest.
S. III k. Nov. Retiariae CC. conss.

[22] *Idem AA. et CC. Antiochiano.* Secundus creditor offerendo priori debitum confirmat sibi pignus et a debitore sortem eiusque tantum usuras, quae fuissent praestandae, non etiam usurarum usuras accipit.
S. III id. Dec. Nicomediae CC. conss.

[23] *Idem AA. et CC. Macedonio.* Maior annis viginti quinque pignoris conventione remissa, cum hoc solum pactum vel iurisdictio secundum ipsius voluntatem tueatur, persequi non potest.
S. XVII k. Ian. Nicomediae CC. conss.

[24] *Idem AA. et CC. Marco.* Persecutione pignoris omissa debitores actione personali convenire creditor urgueri non potest.
S. XV k. Ian. Nicomediae CC. conss.

[25] *Idem AA. et CC. Dracontio.* Servo, qui fuerat pignori obligatus, defuncto debiti permanet integra petitio.
S. VII k. Ian. Nicomediae CC. conss.

[19] *The same Augusti and Caesars to Maximus.* Just as a pledge creditor (in possession) is not responsible for (damage caused by) higher force (*vis maior*), so he must assume responsibility for malice and fault (*dolus et culpa*), but also safekeeping (*custodia*).

Posted December 16, in the consulship of the Augusti (293).

[20] *The same Augusti and Caesars to Alexander.* A creditor can hardly be legally pressed to sue (for payment of the debt). So when what you are sure you owe to the heirs of Euodianus has been tendered and, if they decline to accept it, been sealed and deposited, sue them in the governor's court for return of the pledge.

Posted January 15, in the consulship of the Caesars (294).

[21] *The same Augusti and Caesars to Vitus.* A third party (*exterus*), by paying an owed debt, can claim obligated property, but cannot acquire ownership of it.

Written October 30,[63] *at Ratiaria, in the consulship of the Caesars (294).*

[22] *The same Augusti and Caesars to Antiochianus.* A subsequent creditor, by offering (repayment of) the debt to a prior one, strengthens his (claim to a) pledge (given to the prior creditor and then to him); and he receives from the debtor the principal and interest only on what should have been paid, not also interest on the interest (i.e., compound interest).

Written December 11, at Nicomedia, in the consulship of the Caesars (294).

[23] *The same Augusti and Caesars to Macedonius.* A person over age 25 who releases a pledge agreement cannot pursue (the pledge later), since the Edict (*iurisdictio*) upholds this pact alone, in accord with his wish.

Written December 16, at Nicomedia, in the consulship of the Caesars (294).

[24] *The same Augusti and Caesars to Marcus.* A creditor cannot be pressed to drop a claim for a pledge and (instead) sue the debtors by an action *in personam* (for the debt).

Written December 18, at Nicomedia, in the consulship of the Caesars (294).

[25] *The same Augusti and Caesars to Dracontius.* When a slave who was obligated as a pledge then dies, the claim for the debt remains unimpaired.

Written December 26, at Nicomedia, in the consulship of the Caesars (294).

[63] More probably around October 10, 294 (so Mommsen), compare C. 3.32.21, 4.33.5, 6.59.8, 7.60.3.

[26] *Idem AA. et CC. Mauricio.* Si tibi notarium pignoris titulo debitor tuus obligavit, eum, a quo mancipium abreptum proponis, apud rectorem provinciae conveni.

S. VI k. Ian. Sirmi CC. conss.

[27] *Imp. Iustinianus A. Menae pp.* **pr.** Super hypothecis, quas argenti distractores vel metaxarii vel alii quarumcumque specierum negotiatores pecunias sibi credentibus dare solent, hoc specialiter super amputanda omni machinatione sancimus, ut, si post huiusmodi contractum liberis suis vel alio modo cognatis quamcumque militiam idem negotiatores adquisierint, ea tamen[ix] vendi vel ad heredes sub certa definitione transmitti potest, liceat creditoribus eorum, etiam non probantibus ex pecuniis eorundem negotiatorum liberos eorum vel cognatos militasse (dum tamen contrarium non probetur alios e suo patrimonio dedisse pecunias), creditum ab his qui militarunt exigere vel tantum eos efflagitare, quanti vendi eadem militia possit.

1. Quod ita obtinere sancimus, et si extraneis quibusdam idem negotiatores de suis pecuniis huiusmodi militiam adquisisse probentur, ut, quod generaliter in ipsis debitoribus militantibus talem militiam, quae vendi vel ad heredes transmitti potest, permissum est, ut liceat creditoribus et adhuc viventium debitorum iure hypothecae vindicare militias, nisi satis sibi fiat, et post mortem eorum exigere, quod pro isdem militiis pro tenore communis militantium placiti vel divinae sanctionis tale praestantis beneficium dari solet, hoc in negotiatorum personis, licet ipsi militantes minime debito obnoxii sint, integrum creditoribus eorum servetur.

2. Quod scilicet in futuris militiis, non etiam in his, quas liberi vel cognati eorundem negotiatorum vel extranei pecuniis eorum meruerunt, tenere sancimus.

D. k. Iun. dn. Iustiniano A. pp. II cons.

XIIII In Quibus Causis Pignus Tacite Contrahitur

[1] *Imp. Antoninus A. Sperato.* Universa bona eorum qui censentur vice pignorum tributis obligata sunt.

[ix] eam tamen quae

[26][64] *The same Augusti and Caesars to Mauricius.* If a debtor obligated to you a stenographer (*notarius*) as a pledge, bring suit before the provincial governor against the person who you assert stole the slave.

Written December 27, at Sirmium, in the consulship of the Caesars (294).

[27] *Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect.* **pr.** As to the hypothecs that the moneychangers, silk dealers, and other tradesmen in various wares commonly give to those lending money to them, We specially ordain, in order to end all fraud, that if, after making such a contract, the same tradesmen acquire for their own children or other relatives some imperial office (*militia*) – one which, however, under specific rules can be sold or transmitted to heirs – then even if their creditors do not prove that their children or relatives took office by means of the money of such traders, and as long as the opposite is not proved, (namely,) that others had given the money from their patrimonies, they (the creditors) are allowed to demand their debt from those holding the office, or press them, (but) only for as much as that same office can be sold.

1. We ordain that this rule similarly applies also if the traders are proven to have acquired such a post for any third parties from their own money, so that what is generally permitted in the case of debtors themselves when buying such an office that can be sold or transmitted to heirs, (namely) that even from living debtors creditors can claim the offices by the law of hypothec unless they are satisfied (as to the debt), and that after their death (they can) demand the benefit usually granted in connection with such offices pursuant to the tenor of the general legal policy for office-holders and the imperial sanction granting such a benefit – this (right) is preserved intact for their creditors, although those actually serving are scarcely liable for the debt.

2. We ordain that this (order) holds, obviously, for future state offices, not also for those which the children or relatives of these traders or third parties have (previously) acquired with their own money.[65]

Given June 1, in the consulship of Our Lord Justinian, Ever Augustus, for the second time (528).

Fourteenth Title Cases in Which an Implied Pledge Is Contracted[66]

[1] *Emperor* ANTONINUS *Augustus to Speratus.* The entire estate (*bona*) of persons who are assessed (for taxation) is obligated as a pledge for taxes (*tributa*).

[64] Possibly to be combined with C. 4.10.6 (December 24, 293), the preferable date.

[65] Blume: "Ordinarily property acquired by any one – as by the children etc. here – though acquired with another's money, belonged to him, and no one else had a right thereto, or a lien thereon, but Justinian made an exception here, as he did in some other cases."

[66] See D. 10.2.

PP. k. Iun. Antonino A. IIII et Balbino conss.

[2] *Idem A. Proculo.* Certum est eius qui cum fisco contrahit bona veluti pignoris titulo obligari, quamvis specialiter id non exprimitur.

D. VI k. Mart. Messala et Sabino conss.

[3] *Pars ex rescripto imp. Alexandri A.* Quamvis fructus pignori datorum praediorum, etsi id aperte non sit expressum, et ipsi pignori credantur tacita pactione esse, praedia tamen, quae emuntur ex fructuum pretio, ad eandem causam venire nulli prudentium placuit.

PP. id. Oct. Maximo II et Aeliano conss.

[4] *Imppp. Carus Carinus et Numerianus AAA.* Satis notum est et idem constitutum bona earum in dotem data, quae nuptae sunt his qui primipili sarcinam subeunt, obnoxia necessitati ei teneri: verum certo ordine, ut scilicet tunc demum ad hoc mulieris patrimonium periculum respiciat, si universis viri ac nominatorum facultatibus exhaustis nihil residuum inveniatur.

D. V id. Aug. Caro et Carino AA. conss.

[5] *Impp. Diocletianus et Maximianus AA. et CC. Corinthiae.* Si non in inductis et illatis in fundum, quae pignoris teneri causa placuerat, mancipia fuissent nec haec specialiter obligata monstrentur, rector provinciae ea restitui iubebit. nec enim praetextu debiti pensionum restitutionem horum morari potest, cum, si quid sibi deberi domina fundi ex pensionibus vel quacumque ratione probare possit, huius solutionem sollemniter fieri conveniat.

Subscr. XII k. Febr. CC. conss.

[6] *Impp. Theodosius et Valentinianus AA. ad Florentium pp.* Si mater legitima liberorum tutela suscepta ad secundas contra sacramentum praestitum adspiraverit nuptias, antequam ei tutorem alium fecerit

Posted June 1, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[2] *The same Augustus to Proculus.* It is settled that the estate of a person who contracts with the Treasury is obligated as if it were a pledge, even if this is not specifically stated.

Given February 24, in the consulship of Messala and Sabinus (214).

[3] *Part of a rescript of Emperor* ALEXANDER *Augustus.* Although the produce (*fructus*) of pledged land, even when this is not expressly stated, is also considered as impliedly included in this pledge, nevertheless no jurist has held that land purchased with the money derived from such produce is also included for the same purpose.

Posted October 15, in the consulship of Maximus, for the second time, and Aelianus (223).

[4] *The Emperors* CARUS, CARINUS, *and* NUMERIANUS *Augusti.* It is sufficiently known and established that the dowry property of women who are married to men undertaking the burden of Chief Centurion (*primipili sarcina*) is held bound (as a pledge) for (conduct of) this official duty, but with the fixed rule that this risk obviously applies to the woman's patrimony only if nothing is found to remain when all the resources of the husband and his sponsors (*nominatores*) have (first) been exhausted.

Given August 9, in the consulship of Carus and Carinus Augusti (283).

[5] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Corinthia.* If the slaves were not among the property brought and moved (*invecta et illata*) onto a farm – (i.e.,) property long held to be subject to (tacit) pledge – nor are they shown to have been specially obligated, the provincial governor will order them restored (to the tenant). Nor can she (the owner and landlord) delay their restitution on the pretext of unpaid rent, since, if the farm's owner can prove that anything is owed to her as rent or otherwise, it is proper that the payment be made through legal processes.

Signed January 21, in the consulship of the Caesars (294).

[6][67] *Emperors* THEODOSIUS *and* VALENTIAN *Augusti to Florentius, Praetorian Prefect.* If a mother, after undertaking the statutory guardianship of her children, entered into a second marriage in violation of her proffered oath (not to

[67] = C. 6.56.6 and Nov. Theod. 11.1.2; combine with C. 6.58.10. On the oath not to remarry, see C. Th. 3.17.4. The final ruling seems unlikely law.

ordinari eique quod debetur ex ratione tutelae gestae persolverit, mariti quoque eius praeteritae tutelae ratiociniis bona iure pignoris tenebuntur obnoxia.

D. VI id. Iul. Constantinopoli Theodosio A. XVII et Festo conss.

[7] *Imp. Iustinianus A. Iohanni pp.* Sancimus de invectis a conductore rebus et illatis, quae domino pro pensionibus tacite obligantur, non solum in utraque Roma et territorio earum hoc ius locum habere, sed etiam in nostris provinciis. tali enim iusta praesumptione etiam omnes nostros provinciales perpotiri desideramus.

D. XV k. Nov. post consulatum Lampadii et Orestis vv. cc. anno secundo.

XV Si Aliena Res Pignori Data Sit

[1] *Impp. Severus et Antoninus AA. Carpo.* Procurator citra domini voluntatem domum pignori frustra dedit. si tamen pecuniam creditoris in rem domini versam constabit, non inutilis erit exceptio dumtaxat quod numeratum est exsolvi desideranti.

PP. XI k. Nov. Severo A. II et Albino conss.

[2] *Idem AA. Latinae.* Si probaveris praesidi hortos de quibus agebatur tuos esse, intellegis obligari eos creditori ab alio non potuisse, si non sciens hoc agi in fraudem creditoris ignorantis dissimulasti.

PP. prid. id. Oct. Antonino A. II et Geta II conss.

[3] *Imp. Antoninus A. Marciae.* Curator adulti vel tutor pupilli propriam rem mobilem eius, cuius negotia tuetur, pignoris iure obligare non potest, nisi in rem eius pecuniam mutuam accipiat.

PP. VI k. Febr. duobus Aspris conss.

[4] *Imp. Alexander A. Secundo.* Nec si maior annis viginti quinque fuisset filius tuus, qui in potestate tua erat, te invito rem tuam obligare potuit.

PP. V k. Nov. Maximo II et Aeliano conss.

remarry) and before she got another *tutor* appointed for him (her child) and paid to him the amount due from her management of the guardianship, the property also of her husband is held as a pledge for the accounting on this prior guardianship.

Given July 10, at Constantinople, in the consulship of Theodosius Augustus, for the seventeenth time, and Festus (439).

[7] *Emperor* JUSTINIAN *Augustus to John, Praetorian Prefect.* Concerning property brought and moved in *(invecta et illata)* by an (urban) tenant, which is impliedly obligated to the landlord for rent, We ordain that this rule shall prevail not only in both Romes and their territories, but also in Our provinces. For We wish that all Our provincials gain the advantage of such a just presumption.

Given October 18, in the second post-consulate of the viri clarissimi *Lampadius and Orestes (532).*

Fifteenth Title If Another Person's Property Is Pledged

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Carpus.* Without the owner's consent, a pledge of his house made by his procurator is ineffective. But if it becomes clear that the creditor's money benefited the owner, a defense (against the owner seeking to recover the pledge) will not be useless to the person (creditor) seeking payment up to the amount he paid out.

Posted October 22, in the consulship of Severus Augustus, for the second time, and Albinus (194).

[2] *The same Augusti to Latina.* If you prove to the governor that the gardens in question are yours, you are aware that they could not be obligated to a creditor by a third party unless you knew this was being done and feigned ignorance in order to deceive an innocent creditor.

Posted October 14, in the consulship of Antoninus Augustus, for the second time, and Geta, for the second time (205).

[3] *Emperor* ANTONINUS *Augustus to Marcia.* The *curator* of an adult ward or the *tutor* of a minor ward cannot obligate as a pledge the movable property of the person whose affairs he manages, except if he receives a loan for his (the ward's) benefit.

Posted January 27, in the consulship of the two Aspri (212).

[4] *Emperor* ALEXANDER *Augustus to Secundus.* Even if your son was over age 25 and in your power, he could not obligate your property without your consent.

Posted October 28, in the Consulship of Maximus, for the second time and Aelianus (223).

[5] *Impp. Diocletianus et Maximianus AA. Eutycho.* Cum res, quae necdum in bonis debitoris est, pignori data ab eo postea in bonis eius esse incipiat, ordinariam quidem actionem super pignore non competere manifestum est, sed tamen aequitatem facere, ut facile utilis persecutio exemplo pignoraticiae daretur.

PP. XIII k. Iun. Maximo II et Aquilino conss.

[6] *Idem AA. et CC. Zosimo.* Quae praedium in filios a se titulo donationis translatum creditori suo dat pignori, se magis contrario pigneraticio obligavit iudicio, quam quicquam dominis nocet, cum Serviana etiam actio declarat evidenter iure pignoris teneri non posse, nisi quae obligantis in bonis fuerint, et per alium alienam rem invito domino pignori obligari non posse certissimum est.

S. V id. Iul. Philippopoli AA. conss.

[7] *Idem AA. et CC. Corneliae.* Si in rem suam accepta pecunia mutua tutor mancipium tuum pignori dedit nec huic post perfectam aetatem consensum accommodasti, pignori res obligari non potuit.

S. VI k. Ian. AA. conss.

[8] *Impp. Honorius et Theodosius AA. Iohanni pp.* Nexum non facit praediorum nisi persona, quae iure potuit obligare. per servum aut procuratorem[x] colonum vel actorem seu conductorem praeiudicium possessioni invito vel inscio domino imponi non posse et iure et legum auctoritatibus decantatur.

D. V id. Iul. Ravennae Honorio XIII et Theodosio X AA. conss.

XVI Quae Res Pignori Obligari Possunt vel Non et Qualiter Pignus Contrahatur

[1] *Impp. Severus et Antoninus AA. Optato.* Alumnos tuos et ceteras res, quas neminem credibile est pignori specialiter daturum fuisse, generali

[x] procuratorem vel

[5] *Emperors* Diocletian *and* Maximian *Augusti to Eutychus.* When a debtor gives as a pledge property not yet in his estate (*bona*) and it afterwards begins to be in his estate, it is obvious the ordinary action on pledge does not lie, but fairness still brings it about that a claim analogous to that on pledge is readily granted.

Posted May 20, in the consulship of Maximus, for the second time, and Aquilinus (286).

[6] *The same Augusti and the Caesars to Zosimus.* A woman who gave land to her sons as a gift and then gave it as a pledge to her creditor obligates herself in a counteraction on pledge (brought by the creditor), but causes no (legal) harm to the owners (her sons), since also the Servian action on pledge states that nothing can be held as pledged property except what is in the estate (*bona*) of the person obligating it, and it is quite certain that another's property cannot be obligated as a pledge by a third party without the owner's consent.

Written July 11, at Philippopolis, in the consulship of the Augusti (293).

[7] *The same Augusti and Caesars to Cornelia.* If your *tutor* borrowed money for his own benefit and gave your slave as a pledge (for its repayment), and you did not give your consent (to this arrangement) after you came of age, the property cannot be obligated as a pledge.

Written December 27, in the consulship of the Augusti (293).

[8][68] *Emperors* Honorius *and* Theodosius *Augusti to John, Praetorian Prefect.* No one creates a lien (*nexus*) on land except a person who could legally obligate it. It is often repeated both in law and by statutory authority that a slave or procurator or tenant (*colonus*) or manager or lessee cannot impose a prejudice on possession by an owner who is unwilling or unaware.

Given July 15, at Ravenna, in the consulship of Honorius, for the thirteenth time, and Theodosius, for the tenth time, Augusti (422).

Sixteenth Title What Property Can and Cannot Be Pledged, and How a Pledge Is Contracted[69]

[1] *Emperors* Severus *and* Antoninus *Augusti to Optatus.* It accords with reason that your foster-children (*alumni*), along with other property that it

[68] = C.Th. 2.30.2 (July 11), C. 11.48.17 (in part); combine with C. 2.13.2, 4.4.1, 4.26.13, 12.60.4. Seeck gives July 11, 422.

[69] See D. 20.3.

pacti conventione, quae de bonis tuis facta est, in causam pignoris non fuisse rationis est.

PP. XII k. April. Laterano et Rufino conss.

[2] *Idem AA. Rogato.* Cum constet pignus consensu contrahi, non dubitamus eum, qui emptiones agrorum suorum pignori posuit, de ipsis agris obligandis cogitasse.

PP. V k. Iul. Apro et Maximo conss.

[3] *Imp. Antoninus A. Restituto.* Si monumento corpus filiae tuae intulisti, religiosum id fecisti: quo facto obligari a quoquam prohibente iuris religione non posse in dubium non venit.

PP. III k. April. Laeto II et Cereale conss.

[4] *Imp. Alexander A. ... evocato.* Nomen quoque debitoris pignerari et generaliter et specialiter posse pridem placuit. quare si debitor is satis non facit, cui tu credidisti, ille, cuius nomen tibi pignori datum est, nisi ei cui debuit solvit nondum certior a te de obligatione tua factus, utilibus actionibus satis tibi facere usque ad id, quod tibi deberi a creditore eius probaveris, compelletur, quatenus tamen ipse debet.

PP. prid. k. Mart. Fusco et Dextro conss.

[5] *Idem A. Septimio.* Spem eorum praemiorum, quae pro coronis athletis pensitanda sunt, privata pactione pignerare minime admittendum est: et ideo nec si generale pactum de omnibus bonis pignori obligandis intervenerit, tenet.

PP. III k. Mai. Maximo II et Paterno conss.

[6] *Impp. Diocletianus et Maximianus AA. et CC. Rufo.* Qui filios vestros vel liberos homines pro pecunia quam vobis credebat pignoris titulo accepit, dissimulatione iuris se circumvenit, cum sit manifestum

not credible anyone would specifically pledge, are not included as pledges in a general agreement made about your estate (*bona*).

Posted March 21, in the consulship of Lateranus and Rufinus (197).

[2] *The same Augusti to Rogatus.* Since it is clear that a pledge is contracted by agreement, We do not doubt that a person who pledged the "purchases" (*emptiones*) of his land had intended to obligate the land itself.

Posted June 27, in the consulship of Aper and Maximus (207).

[3] *Emperor* ANTONINUS *Augustus to Restitutus.* If you interred the body of your daughter in a sepulcher, you consecrated it. There arises no doubt that when this is done, it cannot be obligated (as a pledge) by anyone, since the sanctity of law forbids this.

Posted March 30, in the consulship of Laetus, for the second time, and Cerealis (215).

[4] *Emperor* ALEXANDER *Augustus to a veteran.* It has long been considered the law that an account (owed to him) can be pledged by a debtor both generally and specifically. So if a debtor to whom you extended credit does not give satisfaction (to you), the person whose account was given to you as a pledge, unless he paid his creditor before learning from you of your obligation (that you had acquired against him), is compelled by analogous actions to give satisfaction to you up to the amount that you prove was owed to you by his creditor, but within the amount he himself owes.[70]

Posted February 28, in the consulship of Fuscus and Dexter (225).

[5][71] *The same Augustus to Septimius.* It should hardly be allowed that a person pledges by private arrangement his expectation of (receiving) the prizes that are paid to athletes for (winning) crowns. And so it (a pledge of such an expectation) does not hold (also) if a general pact was made about obligating all one's property as a pledge.

Posted April 29, in the consulship of Maximus, for the second time, and Paternus (233).

[6] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Rufus.* A person who took as a pledge your children or free men for money which he loaned to you, deceived himself by disregarding the law, since it is obvious that

[70] You are owed money by debtor A, who gave you security in the form of a debt owed to him by B. If A fails to pay, you can proceed against B within the indicated limits.

[71] Combine with C. 8.17.5.

obligationem pignoris non consistere nisi in his, quae quis de bonis suis facit obnoxia.

S. k. Mai. Heracliae AA. conss.

[7] *Imp. Constantinus A. ad universos provinciales.* **pr.** Exsecutores a quocumque iudice dati ad exigenda debita ea, quae civiliter poscuntur, servos aratores aut boves aratorios aut instrumentum aratorium pignoris causa de possessionibus abstrahunt, ex quo tributorum illatio retardatur. **1.** Si quis igitur intercessor aut creditor vel praefectus pagi vel vici vel decurio in hac re fuerit detectus, aestimando a iudice supplicio subiugetur.

D. III non. Iun. Sirmi Constantino A. IIII et Licinio IIII conss.

[8] *Impp. Honorius et Theodosius AA. Probo comiti sacrarum largitionum.* Pignorum gratia aliquid quod ad culturam agri pertinet auferri non convenit.

D. III id. Iun. Constante et Constantio conss.

[9] *Imp. Iustinianus A. Menae pp.* **pr.** Si quis in cuiuscumque contractus instrumento ea verba posuerit: 'fide et periculo rerum ad me pertinentium' vel 'per earum exactionem satisfieri tibi permitto', sufficere ea verba ad rerum tam earum quas in praesenti debitor habet quam futurarum hypothecam, nec ex prioribus sanctionibus minus habere speciali hypothecae memoria videri, cum sit iustum voluntates contrahentium magis quam verborum conceptionem inspicere. **1.** Super qua generali hypotheca illud quoque ad conservandam contrahentium voluntatem sancimus, ut et, si 'res suas' supponere debitor dixerit, non adiecto 'tam praesentes quam futuras', ius tamen generalis hypothecae etiam ad futuras res producatur.

D. III id. Dec. Constantinopoli dn. Iustiniano A. pp. II cons.

XVII Qui Potiores in Pignore Habeantur

[1] *Impp. Severus et Antoninus AA. Secundo.* Qui pignus secundo loco accepit, ita ius suum confirmare potest, si priori creditori debitam

a pledge obligation does not arise except as to property which a person obligates from his (actual) estate (*bona*).

Written May 1, at Heraclea, in the consulship of the Augusti (293).

[7][72] *Emperor* Constantine *Augustus to all provincials.* pr. Bailiffs (*exsecutores*), given by any judge (i.e., governor) to collect debts demanded in civil proceedings, are dragging away from possessions the slave farmers, plough oxen, and farming equipment as pledges, and in consequence tax collection is being hindered. 1. So if some mediator or creditor or a district or village prefect or a decurion is found to be doing this, he shall be subjected to a punishment fixed by the judge.

Given June 3, at Sirmium, in the consulship of Constantine Augustus, for the fourth time, and Licinius, for the fourth time (315).

[8][73] *Emperors* Honorius *and* Theodosius *Augusti to Probus, Count of Imperial Finances.* It is improper that anything which is used for cultivating land be taken away as a pledge.

Given June 11, in the consulship of Constans and Constantius (414).

[9] *Emperor* Justinian *to Menas, Praetorian Prefect.* pr. If in any contract document someone uses these words: "On the faith and risk of the property belonging to me," or "I permit you to satisfy yourself by seizing these things," (We hold that) these words suffice for a hypothec both of property the debtor has at present and of future things; nor, as in earlier ordinances, does it seem less forceful than the special record of a hypothec, since it is right to consider the intent of the contracting parties more significant than their verbal formulation. 1. Concerning this general hypothec, in order to preserve the intent of the contracting parties We additionally ordain this, that even if the debtor says he pledges "his property," without adding "both present and future," a right of general hypothec is created also for future property.

Given December 11, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, for the second time (528).

Seventeenth Title Those Whose Rights in a Pledge Are Superior[74]

[1] *Emperors* Severus *and* Antoninus *Augusti to Secundus.* A person who takes a pledge in second place can strengthen his own right (to it) if he paid

[72] = C.Th. 2.30.1.
[73] Combine with C. 11.48.15, 11.59.13 (both slightly differently dated). Seeck dates to January 10, 414.
[74] See D. 20.4. The same piece of property could be pledged successively to multiple creditors. This title deals with legal problems stemming from the priority of creditors' claims to the pledge.

pecuniam solverit aut, cum obtulisset isque accipere noluisset, eam obsignavit et deposuit nec in usus suos convertit.

PP. k. Febr. Laterano et Rufino conss.

[2] *Imp. Antoninus A. Chresto.* Si decreto praetoris, qui de fideicommisso ius dixit, in possessionem fundi hereditarii fideicommissi condicionalis servandi gratia prius inducti estis, quam adversarius vester in causa iudicati eiusdem fundi pignus occupavit iussu eius, qui iure sententiam exsequebatur, tempore potiores estis. nam cum de pignore utraque pars contendat, praevalet iure, qui praevenit tempore.

PP. v id. Mai. duobus Aspris conss.

[3] *Idem A. Varo.* Si fundum pignori accepisti, antequam rei publicae obligaretur, sicut prior es tempore, ita potior iure.

PP. v id. Oct. Antonino A. IIII et Balbino conss.

[4] *Idem A. Silvano.* Cum rem publicam Heliopolitanorum propter emolumentum sententiae in rerum tam heredis quam hereditariarum possessionem missam esse proponas, intellegis, quamvis pater tuus cum Sossiano contraxerit, tamen, si personali actione eum habuit obligatum, praeponi rem publicam iure pignoris, quae ex auctoritate eius qui iubere potuit servandi iudicati causa occupavit.

PP. v id. Dec. Laeto II et Cereale conss.

[5] *Imp. Alexander A. Septimio.* Prior quidem creditor compelli non potest tibi, qui posteriore loco pignus accepisti, debitum offerre: sed si tu ei omne quod debetur solveris, pignoris tui causa firmabitur.

PP. III k. Mai. Maximo II et Paterno conss.

the money owed to the prior creditor, or, when he tendered it and that person declined to accept, he sealed and deposited it without turning it to his own use.

Posted February 1, in the consulship of Lateranus and Rufinus (197).

[2] *Emperor* ANTONINUS *Augustus to Chrestus.* If, by decree of the Praetor who handles the law of trusts (*fideicommissa*), you were put into possession of a farm, which was in an inheritance, for the purpose of preserving a trust left to you upon a condition, (and this happened) before your adversary, in order to satisfy a judgment (against the heir), seized the pledge of this same farm by order of a person who was rightfully executing a judgment (i.e., a judge), you are prior (to your opponent) by reason of time. For when two parties contest a pledge, the one who is prior in time has the stronger right.[75]

Posted May 11, in the consulship of the two Aspri (212).

[3] *The same Augustus to Varus.* If you received a farm as a pledge before it became obligated to a municipality, since you are prior in time, you are superior in right.

Posted October 11, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[4] *The same Augustus to Silvanus.* Since you state that the municipality of Heliopolis was, through benefit of a verdict, given possession both of the heir's property and of the inheritance (that came to this heir), you realize that, although your father had a contract with Sossianus (the decedent), still, if he (Sossianus) was obligated (only) through an action *in personam*, the municipality, which seized (the property) to enforce the judgment (against the heir) on the authorization of one entitled to order this, is preferred (over you) by the law of pledge.

Posted December 9, in the consulship of Laetus, for the second time, and Cerealis (215).

[5][76] *Emperor* ALEXANDER *Augustus to Septimius.* You received the pledge in a subordinate position, and the prior creditor (with the same pledge) cannot be forced to pay you your debt. But if you pay him all that is owed (to him), the case for your (right to the) pledge will be strengthened.

Posted April 29, in the consulship of Maximus, Consul for the second time, and Paternus (233).

[75] In this case, the judgment creditor, Chrestus' opponent, through an order of execution obtained a general lien on the decedent's property. But Chrestus beat him to this specific farm, which Chrestus is permitted to hold until the decedent's condition on the trust is fulfilled.

[76] Combine with C. 8.16.5.

[6] *Impp. Valerianus et Gallienus AA. Philoxeno.* Si generaliter bona sint obligata et postea res alii specialiter pignori dentur, quoniam ex generali obligatione potior habetur creditor qui ante contraxit, si ab illo tu comparasti, non oportet te ab eo qui postea credidit inquietari.

PP. prid. id. Mai. Saeculare II et Donato conss.

[7] *Impp. Diocletianus et Maximianus AA. et CC. Iuliano.* Licet isdem pignoribus multis creditoribus diversis temporibus datis priores habeantur potiores, tamen eum, cuius pecunia praedium comparatum probatur, quod ei pignori esse specialiter statim convenit, omnibus anteferri iuris auctoritate declaratur.

Subscripta XVII k. Febr. AA. conss.

[8] *Idem AA. et CC. Fabricio.* Diversis temporibus eadem re duobus iure pignoris obligata eum, qui prior data mutua pecunia pignus accepit, potiorem haberi certi ac manifesti iuris est, nec alias secundum distrahendi potestatem huius pignoris consequi, nisi superiori creditori debita fuerit soluta quantitas.

S. prid. k. Mai Heracliae AA. conss.

[9] *Idem AA. et CC. Asclepiodoto.* Eos qui acceperunt pignora, cum in rem habeant actionem, privilegiis omnibus, quae personalibus actionibus competunt, praeferri constitit.

S. IIII non. Dec. CC. conss.

[10] *Idem AA. et CC. Polydeucae.* Cum tibi pro dote quam acceperat res maritus obligavit, eo mortuo hi, quibus easdem pignori dederat, non offerentes debitum nulla possunt persequi ratione. nam chirographarios creditores nec in rem nec in personam eos, qui debitori non probantur successisse, ulla ratione convenire posse manifestum est.

PP. non. Dec. CC. conss.

[11] *Imp. Leo A. Erythrio pp.* **pr.** Scripturas, quae saepe adsolent a quibusdam secrete fieri, intervenientibus amicis nec ne, transigendi vel

[6] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Philoxenus.* If property is generally obligated, and subsequently (particular) items are specifically given as pledges to a third party, since the creditor who contracted first with a general obligation (of pledge) is considered stronger, if you purchased from him you must not be disturbed (in possession) by the subsequent creditor.

Posted May 14, in the consulship of Saecularis, for the second time, and Donatus (260).

[7] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Julian.* When the same pledges are given to many creditors at different times, although those earlier in time are considered stronger, still the authority of law declares that if land that is shown to have been purchased with a person's money was at the same time specially pledged to him (for repayment of the loaned sale price), he is preferred over all others (as to this land).

Signed January 16, in the consulship of the Augusti (293).

[8] *The same Augusti and Caesars to Fabricius.* The law is settled and obvious that when the same property is obligated as a pledge at different times to two persons, the one who first received the pledge when lending money is considered superior, nor otherwise does the second person acquire the power of selling this pledge (*distractio*) unless the amount owed is (first) paid to the prior creditor.

Written April 30, at Heraclea, in the consulship of the Augusti (293).

[9] *The same Augusti and Caesars to Asclepiodotus.* It is clear that those who took pledges, when they have an action *in rem*, are preferred to all privileges which lie through actions *in personam*.

Written December 2, in the consulship of the Caesars (294).

[10] *The same Augusti and Caesars to Polydeuca.* Since your husband obligated property in return for the dowry he had received, and he is dead, those to whom he pledged this same property cannot in any way claim it if they do not (first) pay the debt (to you). For it is obvious that creditors with (only) a written bond can in no manner sue *in rem* or *in personam* those who are not shown to be the debtor's heirs.[77]

Posted December 5, in the consulship of the Caesars (294).

[11][78] *Emperor* LEO *Augustus to Erythrius, Praetorian Prefect.* pr. We decree that the writings that some persons customarily draw up secretly, in the

[77] The husband pledged property for return of the dowry to Polydeuca. Although evidently she was not his heir, her claim to the pledged property defeats creditors of the estate to whom the same property is pledged.

[78] Combine with C. 2.4.42.

paciscendi seu fenerandi vel societatis coeundae gratia seu de aliis quibuscumque causis vel contractibus conficiuntur, quae idiochira Graece appellantur, sive tota series eorum manu contrahentium vel notarii aut alterius cuiuslibet scripta fuerit, ipsorum tamen habeant subscriptiones, sive testibus adhibitis sive non, licet condicionales sint, quos vulgo tabularios appellant, sive non, quasi publice scriptas, si personalis actio exerceatur, suum robur habere decernimus. **1.** Sin autem ius pignoris vel hypothecae ex huiusmodi instrumentis vindicare quis sibi contenderit, eum qui instrumentis publice confectis nititur praeponi, etiamsi posterior dies his contineatur, nisi forte probatae atque integrae opinionis trium vel amplius virorum subscriptiones isdem idiochiris contineantur: tunc enim quasi publice confecta accipiuntur.

D. k. Iul. Constantinopoli Marciano cons.

[12] *Imp. Iustinianus A. Iohanni pp.* **pr.** Adsiduis aditionibus mulierum inquietati sumus, per quas suas dotes deperditas esse lugebant et ab anterioribus creditoribus substantias maritorum detentas. **1.** Nos itaque ad antiquas leges perspeximus[xi] in personalibus actionibus rei uxoriae actioni, quam in praesenti sustulimus, magnam praerogativam praestantes, ut contra omnes paene personales actiones habeat privilegia et creditores alios antecedat, licet fuerant anteriores. **2.** Et haec cum in personalibus statuerant actionibus, si hypothecam respiciebant, ilico iustitiae vigorem relaxabant et senioribus hypothecis novas mulieris hypothecas, si habebat actiones, expellebant, nec ad fragilitatem muliebrem respicientes nec quod et corpore et substantia et omni vita sua marito fungitur, cum paene mulieribus tota substantia in dote constituta est. **3.** Oportebat enim disponi maritos creditoribus suis ex sua substantia satisfacere, non dote muliebri, quam ad suos victus suasque alimonias mulier possidet, vel a semet ipsa data vel pro ea ab alio.

4. Ad haec omnia respicientes et reminiscentes, quod et alias duas constitutiones fecimus pro dotibus mulieribus subvenientes, et omnia in unum colligentes sancimus ex stipulatu actionem, quam mulieribus iam pro dote instituendam dedimus cuique etiam tacitam donavimus inesse hypothecam, potiora iura contra omnes habere mariti creditors,

[xi] respeximus

presence of friends or not, in order to settle controversies, make pacts, lend money, form partnerships, or for any other causes, or that are drafted for contracts, what in Greek are called *idiochira* (handwritten documents) – whether the entire series of them was written in the hand of the contracting parties or in that of a notary or anyone else as long as they have the signatures of the (contracting parties), and whether witnesses were summoned or not, although they are the bound slaves (*condicionales*) commonly called bookkeepers or not – (these writings) have the legal force of publicly executed documents in any action *in personam*. 1. But if anyone seeks to claim for himself the right of pledge or hypothec under such documents, the one who uses publicly executed documents is preferred even if there is a later date on them, except perhaps if the signatures of three or more men of approved high reputation are on the same *idiochira*; for then they are accepted as if publicly executed documents.

Given July 1, at Constantinople, in the consulship of Marcianus (472).

[12] Emperor JUSTINIAN Augustus to John, Praetorian Prefect. **pr.** We have been disturbed by the continual complaints of women, in which they decry the loss of their dowries and the seizure of their husband's property by prior creditors. 1. So We have looked into the ancient statutes giving great preference, among actions *in personam*, to the action for recovering dowry (*actio rei uxoriae*) – recently abolished by Us[79] – that she (an ex-wife) had a preferred position against almost all actions *in personam* and preceded other creditors even though prior in time. 2. And while they established this for actions in personam, they relaxed the force of justice when it came to hypothec, and in favor of earlier hypothecs they excluded the woman's (more) recent hypothecs, if she had a right of action, neither looking to the frailty of women nor that she expends her body and estate and all her life for her husband, since almost all that women have consists of their dowry. 3. It should be provided that husbands satisfy their creditors from their own estate, not from their wives' dowry, which a wife possesses for her own nourishment and maintenance, whether it is given by her herself or for her by another.

4. Considering all these things and remembering that We have also ordained two other constitutions protecting the dowries of women,[80] and embracing all these into one, We ordain that the action on stipulation, which We now gave to be brought by women for their dowry[81] and to which We accorded the presence of an implicit hypothec, has legal priority against all the creditors of a husband, even if they are defended by the privilege of temporal priority. 5. For since, as

[79] C. 5.13.1.
[80] C. 5.12.30–31.
[81] C. 5.13.1.1.

licet anterioris sint temporis privilegio vallati. **5.** Cum enim in personalibus actionibus secundum quod diximus tali privilegio utebatur res uxoria, quapropter non et in hypothecam hoc mulieri et nunc indulgemus beneficium, licet res dotales vel ex his aliae comparatae non extent, sed quocumque modo vel dissipatae vel consumptae sunt, si tamen re ipsa fuerint parti mariti datae? quis enim eas non miseretur propter obsequia, quae maritis praestant, propter partus periculum et ipsam liberorum creationem, pro qua multa nostris legibus inventa sunt privilegia? **6.** Ideo quod antiquitas quidem dare incepit, ad effectum autem non pertulit, nos pleno legis articulo consummavimus et, sive liberos habet mulier sive ab initio non habuit sive progenitos amisit, hoc ei privilegium indulgemus.

7. Exceptis videlicet contra novercas anterioris matrimonii filiis, quibus pro dote matris suae iam quidem dedimus hypothecas contra paternas res vel eius creditores, in praesenti autem similem praerogativam servamus, ne, quod posteriori datum est uxori, hoc anteriori denegetur, sed sic maneat eis ius incorruptum, quasi adhuc vivente matre eorum: duabus enim dotibus ab eadem substantia debitis ex tempore praerogativam manere volumus.

8. Haec autem tantum ad dotem sancimus, non ad ante nuptias donationem, quam suo tempori servire disponimus et habere inter creditores sui temporis ordinem. non enim pro lucro fovemus mulieres, sed ne damnum patiantur suisque rebus defraudentur curamus. **9.** Quam legem ex praesenti tempore locum habere sancimus et non retrorsus referimus.

D. v k. Dec. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

XVIII De His Qui in Priorum Creditorum Locum Succedunt

[1] *Impp. Severus et Antoninus AA. Marcellinae.* **pr.** Non omnimodo succedunt in locum hypothecarii creditoris hi, quorum pecunia ad creditorem transit. hoc enim tunc observatur, cum is, qui pecuniam postea dat, sub hoc pacto credat, ut idem pignus ei obligetur et in locum eius succedat. **1.** Quod cum in tua persona factum non sit (iudicatum est enim te pignora non accepisse), frustra putas tibi auxilio opus esse constitutionis nostrae ad eam rem pertinentis.

PP. id. Iul. Pompeiano et Avito conss.

We have said, return of the dowry enjoyed such preference in actions *in personam*, why should We not also now grant to a woman this benefit also against a hypothec, even though the dowry property or other things purchased from it no longer exist, but are somehow either dispersed or consumed, provided that in fact it (the dowry) was given to the husband's side? For who does not have compassion for them on account of the services rendered to their husbands, the risk of childbirth and the very creation of children, on behalf of which many privileges have been found in Our laws? **6.** Accordingly, what antiquity indeed commenced but did not bring to conclusion, We complete through the full provision of this law, and grant her this privilege whether the wife has children or did not have them from the beginning (of her marriage) or lost the ones she bore.

7. Excepted, obviously, are the children of a prior marriage against their stepmothers; to these (children) We have already given[82] hypothecs for their (natural) mother's dowry against their father's property and his creditors. Now We preserve a similar preference, lest what was given to the former wife be denied to the later one; but let this rule thus remain unaltered for them (the children), as if their mother still lived: if two dowries are owed from the same estate, We wish the temporal preference to remain.

8. We ordain these rules only for dowry, not for a gift before marriage (*donatio ante nuptias*), which We arranged to preserve its own time and to have the order of its time among creditors. For We do not favor women for the purpose of (their) gain, but We take care lest that they not suffer damage and be defrauded of their property. **9.** We ordain that this law apply from now on, but do not extend it retroactively.

Given November 27, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

Eighteenth Title Those Who Succeed to the Position of Prior Creditors

[1] *Emperors* Severus *and* Antoninus *Augusti to Marcellina.* **pr.** Those whose money goes to a (pledge) creditor do not always succeed into the position of the creditor holding a hypothec. For this occurs when a person who subsequently gives money (to the first creditor) extends credit under a pact (with the first creditor) that the same pledge is obligated to him and he succeeds into his (the first creditor's) place. **1.** Since this did not take place in your case – for it was adjudged that you had not accepted the pledges – you think in vain that Our constitution concerning that matter is of help to you.

Posted July 15, in the consulship of Pompeianus and Avitus (209).

[82] C. 5.9.8.4.

[2] *Imp. Antoninus A. Felici.* **pr.** Cum pro patre, in cuius potestate non eras, pecuniam fisco intuleris, et iure privilegio eius successisti et eius locum cui pecuniam numerasti consecutus es, nec hi creditores patris tui, qui personalem habuerunt actionem vel cum eo postea sub pignoribus contraxerunt, pignora tua te ignorante distrahendo iuri tuo aliquid derogaverunt. **1.** Unde intellegis, si quid tuo nomine te absente ab actoribus tuis solutum est, ut indebitum numeratum restitui pignoraque tibi nexa persequi te posse.

PP. k. Oct. Romae Sabino II et Anullino conss.

[3] *Imp. Alexander A. Valenti.* Si potiores creditores pecunia tua dimissi sunt, quibus obligata fuit possessio, quam emisse te dicis, ita ut pretium perveniret ad eosdem priores creditores, in ius eorum successisti et contra eos, qui infirmiores illis fuerunt, iusta defensione te tueri potes.

PP. k. Febr. Iuliano et Crispino conss.

[4] *Impp. Diocletianus et Maximianus AA. Carpophoro.* Si prior res publica contraxit fundusque ei est obligatus, tibi secundo creditori offerendi pecuniam potestas est, ut succedas etiam in ius rei publicae.

PP. XV k. Iun. Maximo II et Aquilino conss.

XVIIII Si Antiquior Creditor Pignus Vendiderit

[1] *Imp. Alexander A. Athenioni.* **pr.** Si vendidit is qui ante pignus accepit, persecutio tibi hypothecaria superesse non potest. **1.** Cum autem debitor ipsi priori creditori eadem pignora in solutum dederit vel vendiderit, non magis tibi persecutio adempta est, quam si aliis easdem res debitor venumdedisset: sed ita persequens res obligatas audieris, si, quod eidem possessori propter praecedentis contractus auctoritatem debitum est, obtuleris.

PP. V id. Mai. Agricola et Clemente conss.

[2] *Emperor* ANTONINUS *Augustus to Felix.* **pr.** When you paid money to the Treasury on behalf of your father who did not have you in his power, you (thereby) simultaneously succeeded legally to its privilege and obtained the position of the one to whom you paid the money. Nor do those creditors of your father, whether they (previously) had an action *in personam* or subsequently contracted with him under pledges, prejudice your rights in any way by selling your pledges without your knowledge. **1.** Hence, you know that if on your account anything was paid by your managers (*actores*) in your absence (for redemption of the property), you can sue for restitution of an unowed payment and to get the pledges that are bound to you.[83]

Posted October 1, at Rome, in the consulship of Sabinus, for the second time, and Anullinus (216).

[3] *Emperor* ALEXANDER *Augustus to Valens.* If stronger creditors were paid with your money, and a possession was obligated to them (as a pledge) which you say you bought in such a way that the price came to these same prior creditors, you succeeded into their right and you can protect yourself by a legal defense against those who were weaker than they.

Posted February 1, in the consulship of Julian and Crispinus (224).

[4] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Carpophorus.* If a municipality had a prior contract and a farm was obligated to it, you as a subsequent creditor have the power of offering the money (due to the municipality) in order to step into the municipality's right.[84]

Posted May 18, in the consulship of Maximus, for the second time, and Aquilinus (286).

Nineteenth Title If a Prior Creditor Sells a Pledge

[1] *Emperor* ALEXANDER *Augustus to Athenio.* **pr.** If a prior pledgee sold the pledge, there survives to you (as a subsequent pledgee) no claim for the hypothec. **1.** But since the debtor gave the prior creditor these same pledges as payment, or sold them (to him), you are not barred from claiming them, any more than if the debtor sold the same things to third parties. But if you claim the obligated property, you will be heard only if you offer what was owed to the same possessor by virtue of his prior contract.

Posted May 11, in the consulship of Agricola and Clemens (230).

[83] The emancipated son, by paying off his father's debt to the Treasury, thereby acquires the Treasury's lien on his father's property; and this lien has priority over pledges the father had made, or will make, with private creditors.

[84] Blume: "See C. 11.30.2. It is probably assumed that the subsequent creditor had a lien."

[2] *Impp. Diocletianus et Maximianus AA. et CC. Endemiae.* Obligata pignoris iure creditore recte distrahente post debitor emptori pretium offerens vel creditori quod debuit evincere non potest.

S. XVI k. Ian. AA. conss.

[3] *Idem AA. et CC. Theophilo.* Quominus creditor, qui ante pignus accepit, distrahat, non offerendo secundus priori debitum interpellare non potest.

D. VI k. April. CC. conss.

XX Si Communis Res Pignorata Sit

[1] *Imp. Antoninus A. Venusto.* Frater tuus, sicut vobis invitis portionem vobis competentem obligare non potuit, ita suam dando obligationem creditori quaesiit. unde intellegis nullum praeiudicium dominio vestro contractum eius facere potuisse.

Accepta XIIII k. Dec. Messalla et Sabino conss.

XXI De Praetorio Pignore et Ut in Actionibus Etiam Debitorum Missio Praetorii Pignoris Procedat

[1] *Imp. Iustinianus A. Menae pp.* Si praetorium pignus quicumque iudices dandum alicui perspexerint, non solum super rebus mobilibus et immobilibus et se moventibus, sed etiam super actionibus quae debitori competunt praecipimus hoc eis licere decernere.

D. k. April. Constantinopoli Decio vc. cons.

[2] *Idem A. Iuliano pp.* **pr.** Veteris iuris dubitationem decidentes ad duplum genus hypothecarum respeximus, unum quidem, quod ex conventionibus et pactis hominum nascitur, aliud, quod a iudicibus datur et praetorium nuncupatur. **1.** Et cum invenimus in conventionalibus pignoribus vel hypothecis non solum tenentem creditorem adiuvari, sed etiam si ab eo cadat, sive sua culpa sive non sive fortuito casu, humanius esse perspeximus et in praetorio pignore dare

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Endemia.* When a creditor lawfully sells property obligated as a pledge, the debtor cannot (legally) recover it afterwards by offering its price to the buyer or what he owed to the creditor.

Written December 17, in the consulship of the Augusti (293).

[3] *The same Augusti and Caesars to Theophilus.* A subsequent creditor who does not tender the debt to a prior one cannot prevent the creditor who received the earlier pledge from selling it.

Given March 27, in the consulship of the Caesars (294).

Twentieth Title If Property Held in Common Is Pledged

[1] *Emperor* ANTONINUS *Augustus to Venustus.* Just as your brother could not obligate the portion (of jointly owned property) belonging to you without your consent, so by giving his own (portion as a pledge) he acquired an obligation to the creditor (for his portion alone). So you understand that his contract could not prejudice your ownership.

Accepted November 18, in the consulship of Messalla and Sabinus (214).

Twenty-First Title The Praetorian Pledge, and That Also in the Actions of Debtors the Grant of a Praetorian Pledge May Occur[85]

[1] *Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect.* If any judges perceive that a Praetorian pledge should be given to someone, We direct that they may decree it not only for movable and immovable and self-moving (animate) property, but also for actions that belong to the debtor.

Given April 1, at Constantinople, in the consulship of the vir clarissimus *Decius (529).*

[2] *The same Augustus to Julian, Praetorian Prefect.* **pr.** Dispelling the uncertainty in the old law, We have considered two types of hypothec, one which arises from agreements and pacts between persons, the other which is given by judges and is called Praetorian. 1. And since We found, in connection with agreed pledges or hypothecs, that a creditor is aided not only when in possession, but also if it slips away from him whether or not by his own fault or by unavoidable accident, We deemed it more generous to give the creditor recovery also in the case of a Praetorian pledge, no matter how he loses possession

[85] A *pignus praetorium* is a judicial order authorizing a judgment creditor to seize a debtor's property as a pledge.

recuperationem creditori, quocumque modo possessionem amittat, sive culpa sua sive non sive fortuito casu. **2.** Licet enim debuerat incumbere suo pignori, ne aliquam patiatur iacturam, tamen, ne quid amarum in creditoribus consequatur, benignius causam interpretamur et ei recuperationem donamus.

D. k. Aug. Constantinopoli Lampadio et Oreste vv. cc. conss.

XXII Si in Causa Iudicati Pignus Captum Sit

[1] *Imp. Antoninus A. Gabinio.* Res ob causam iudicati eius iussu, cui ius iubendi fuit, pignoris iure teneri ac distrahi posse saepe rescriptum est. nam in vicem iustae obligationis succedit ex causa contractus auctoritas iubentis.

PP. v k. Aug. Romae Antonino A. IIII et Balbino conss.

[2] *Imp. Alexander A. Valeriano.* **pr.** Cum in causa iudicati aliqua res pignori capitur, per officium eius qui ita decrevit venumdari solet, non per eum, qui iudicatum fieri postulavit. **1.** Et si alio emptore non existente, vel existente quidem, sed non dignum pretium offerente is cui iudicatus satis non fecit ad licitationem secundum constituta fuerit admissus, cuiuslibet alterius vice ex officio emere debet.

PP. VI k. Mai. Maximo II et Aeliano conss.

[3] *Imp. Gordianus A. Antigono.* In causa iudicati pignora ex auctoritate praesidis capta potius distrahi quam iure dominii possideri consuerunt. si tamen per calliditatem condemnati emptor inveniri non potest, tunc auctoritate principis dominium creditori addici solet.

PP. id. Aug. Gordiano A. et Aviola conss.

XXIII Si Pignus Pignori Datum Sit

[1] *Imp. Gordianus A. Lamponi.* **pr.** Etiam id quod pignori obligatum est a creditore pignori obstringi posse iam dudum placuit, scilicet ut sequenti creditori utilis actio detur tamdiuque eum is qui ius repraesentat tueatur, quamdiu in causa pignoris manet eius qui dedit. **1.** Sed si vos usum fructum possessionis tantummodo pignori dedistis, isque qui

whether or not by his own fault or by unavoidable accident. 2. For although he ought to take care to avoid any loss to his own pledge, still, in order to prevent a harsh result for creditors, We interpret the matter more generously and give him the right of recovery.

Given August 1, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

Twenty-Second Title If Property Is Seized to Enforce a Judgment

[1] *Emperor* ANTONINUS *Augustus to Gabinius.* Rescripts have often held that, upon the order of one having the right to order, property can be seized and sold as a pledge to enforce a judgment.

Posted July 28, at Rome, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[2] *Emperor* ALEXANDER *Augustus to Valerianus.* pr. When something is taken as a pledge to execute a judgment, it is usually sold through the staff of the person who gives the order, not through the person who sought enforcement. 1. If there is no other buyer (than the judgment creditor), or there is one who does not offer a satisfactory price, the judgment creditor will, in accord with rules, be admitted to the bidding and should buy from the staff like anyone else.

Posted April 26, in the consulship of Maximus, for the second time, and Aelianus (223).

[3] *Emperor* GORDIAN *Augustus to Antigonus.* Pledges seized on a governor's authorization to execute a judgment are usually sold rather than possessed by right of ownership. But if no buyer can be found owing to the judgment debtor's guile, then on the Emperor's authorization ownership is usually assigned to the creditor.

Posted August 13, in the consulship of Gordian Augustus and Aviola (239).

Twenty-Third Title If a Pledge is Given as a Pledge

[1] *Emperor* GORDIAN *Augustus to Lampo.* pr. It has long been accepted that pledged property can be bound by a creditor as a pledge (for his own debt), obviously in order that an analogous action (on the pledge) be given to the subsequent creditor; and the one giving the right (the earlier creditor) should protect him (the subsequent creditor) as long as it remains as a pledge of the (original) giver. 1. But if you gave as a pledge only the usufruct of property, and

accepit alii eam possessionem, cuius usum fructum nexum habebat, sine vestra voluntate pigneravit, creditor eius in id, quo[xii] pignoris vinculum non constitit, distrahens dominio vos privare nequivit. 2. Quod si non fuit vestro creditori usus fructus, sed ipsa possessio pignerata, et ante exsolutam a domino pecuniam creditor secundus pignus acceptum vendidit, non posse venditionem post soluta pecunia rescindi divorum principum placitis continetur.

PP. id. Sept. Pio et Pontiano conss.

[2] *Impp. Diocletianus et Maximianus AA. Gemello.* Si creditor possessionem, quae a parentibus tuis pignoris iure fuerat obligata, non vendidit, sed alii creditori pignori dedit, examinata fide veri poteris eam soluto eo, quod ex hac causa creditori debetur, intercessu praesidis provinciae recuperare.

PP. XIII k. Ian. ipsis IIII et III AA. conss.

XXIIII De Partu Pignoris et Omni Causa

[1] *Imp. Alexander A. Mestriano.* Partus pigneratae ancillae in pari causa qua mater esse olim placuit.

PP. id. Mai. Agricola et Clemente conss.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Nonnoso et Antonino.* Cum pignoris titulo mancipia vos obligasse pro mutua quam accepistis pecunia proponatis, horum mancipiorum operis, quas creditor accepit vel quas percipere potuit, in usuras computatis et post in sortem, extenuato debito residuum offerentibus vel, si non accipiat, consignatum deponentibus mancipia vobis praeses provinciae restitui iubebit.

S. V k. Ian. AA. conss.

XXV De Remissione Pignoris

[1] *Impp. Severus et Antoninus AA. Proculo.* Si te manumissum et in libertate moratum sciente ea, cui pignoris nomine obligatus diceris, praesidi probaveris, ex consensu creditricis remissam pignoris obligationem

[xii] in id in quo

without your consent the recipient pledged possession to a third party when he (only) had the obligated usufruct, his creditor, by (later) selling what was not covered by the bond of the (original) pledge, cannot deprive you of its ownership. 2. However, if not the usufruct but the property itself was pledged to your creditor, and before the money was paid by the owner (i.e., you), the second pledgee sold the pledge he received, it is established through the constitutions of deified emperors that the sale cannot be set aside when money is paid.

Posted September 13, in the consulship of Pius and Pontianus (238).

[2] *Emperors* Diocletian *and* Maximian *Augusti to Gemellus.* If a creditor did not sell the possession that was obligated as a pledge by your parents, but (instead) gave it as a pledge to another creditor, you can, after the truth of the matter is examined (in court), pay what is owed on this account to the creditor and recover it (the pledge) through the intervention of the provincial governor.

Posted December 20, in the consulship of the Augusti themselves, Consuls for the fourth and third times, respectively (290).

Twenty-Fourth Title Offspring to a Pledge, and Accessions Generally

[1] *Emperor* Alexander *to Mestrianus.* It has long been held that the offspring of a pledged female slave has the same (legal) position as the mother.

Posted May 15, in the consulship of Agricola and Clemens (230).

[2] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Nonnosus and Antoninus.* Since you state that you obligated your slaves as a pledge for a loan of money you received, the earnings (*operae*) of these slaves which the creditor received or could have received are applied first to the interest and then to the principal; and if you, after making these deductions, offer him the remainder or deposit it under seal if he does not accept it, the provincial governor will order their restoration to you.

Written December 28, in the consulship of the Augusti (293).

Twenty-Fifth Title Release of a Pledge

[1][86] *Emperors* Severus *and* Antoninus *to Proculus.* If you prove to the governor that you were manumitted (by the debtor) and lived in freedom with the knowledge of the woman to whom you were said to have been pledged, the

[86] Combine with C. 7.8.1.

apparebit, et per hoc iure te manumissum nec ab herede debitricis[xiii] in servitutem peti posse certum est.

PP. XII k. Mai. Antonino A. II et Geta II conss.

[2] *Imp. Antoninus A. Materno.* Si probaveris te fundum mercatum possessionemque eius tibi traditam sciente et consentiente ea, quae sibi eum a venditore obligatum dicit, eam exceptione removebis. nam obligatio pignoris consensu et contrahitur et dissolvitur.

PP. II id. Febr. Antonino A. III et Geta III conss.

[3] *Imp. Alexander A. Tauro.* Si ignorante vel invito te debitor tuus, qui universa bona sua ob pecuniam debitam tibi obligaverat, etsi cum re publica, postea contraxit, ius tuum non laesit.

PP. III id. April. Albino et Maximo conss.

[4] *Imp. Gordianus A. Aquilino.* Cum te a debitore mercatum proponas eam rem, quae alii pignerata erat, si sciente eo ac pignus suum remittente eam mercatus es, cum eius consensu nexus pignoris evanuerit, si non nova voluntas intercessit, quae denuo obligationem pignoris constitueret, ea res veluti obstricta non potest vindicari.

PP. XI k. Mai. Gordiano A. et Aviola conss.

[5] *Idem A. Asclepiadi.* Debitum, cuius meministi, quod per pacti conventionem inutiliter factam remisisti, etiam nunc petere non vetaris et usitato more pignora vindicare.

PP. VI id. Sept. Gordiano A. II et Pompeiano conss.

[6] *Impp. Diocletianus et Maximianus AA. Argio.* Si eo tempore, quo praedium distrahebatur, programmate admoniti creditores, cum praesentes essent, ius suum exsecuti non sunt, possunt videri obligationem pignoris amisisse.

PP. III id. Febr. Maximo II et Aquilino conss.

[xiii] [debitricis] <creditoris>

pledge obligation will apparently have been released with the creditor's consent, and thereby it is assured that you were legally manumitted and cannot be reclaimed into servitude by the creditor's heir.

Posted April 20, in the consulship of Antoninus Augustus, for the second time, and Geta, for the second time (205).

[2] *Emperor* ANTONINUS *Augustus to Maternus.* If you prove that a farm was sold and its possession handed over to you with the knowledge and consent of the woman who says that it was pledged to her by the seller, you will defeat her by using a defense. For the pledge obligation is both contracted and dissolved by agreement.

Posted February 12, in the consulship of Antoninus Augustus, for the third time, and Geta, for the third time (208).

[3] *Emperor* ALEXANDER *Augustus to Taurus.* If your debtor obligated his entire estate to you as a pledge for money owed, and without your knowledge or consent afterwards made a contract even with a municipality, he did not harm your right (to the pledge).

Posted April 11, in the consulship of Albinus and Maximus (227).

[4] *Emperor* GORDIAN *Augustus to Aquilinus.* Since you state that you bought from a debtor this property which had been pledged to a third party, if you bought it with his (the pledgee's) knowledge and release of his pledge, the pledge bond disappeared with his consent. If no new agreement intervened that established afresh the pledge obligation, a claim to ownership cannot be brought on the pledge.

Posted April 21, in the consulship of Gordian Augustus and Aviola (239).

[5] *The same Augustus to Asclepiades.* You are not fordidden from still seeking the debt you mention, which you released through an invalidly formed agreement, and you can claim ownership of the pledges in the usual manner.

Posted August 27, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

[6] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Argius.* If, at the time the (pledged) land was being sold, the creditors were notified by an edictal announcement (*programma*) when they were present and did not pursue their rights, they can be held to have lost the pledge obligation (by consent).

Posted February 11, in the consulship of Maximus, for the second time, and Aquilinus (286).

[7] *Idem AA. Paulo.* Creditricem patrui tui sub obligatione fundi, qui per chirographum nexus pignori fuerat, iubentem eandem cautionem reddi pignoris etiam ius remisisse videri manifestum est.

PP. v id. Sept. Diocletiano III et Maximiano AA. conss.

[8] *Idem AA. Apollonio.* Si hypothecas fisco distrahente creditores silentio tradiderunt negotium, palam est actionem suam amisisse eos, quam in rem habebant. nam fiscalis hastae fides facile convelli non debet.

PP. XIII k. Sept. ipsis IIII et III AA. conss.

[9] *Idem AA. Hermiano.* **pr.** Cum ex causa mandati pro socero tuo te fenebrem pecuniam exsolvisse proponas, curabit praeses provinciae in restituenda pecunia, quam pro eo exsolvisti, nec non etiam usuris eius indemnitati tuae prospicere. **1.** Nam si recepta a creditore mancipia, quae pignori fuerant data, hac mente socero tuo tradidisti, ut pignoris vinculum dissolvatur, obligatio semel extincta instaurari non potest.

PP. X k. Oct. ipsis IIII et III AA. conss.

[10] *Idem AA. et CC. Quintillae.* Res pignoris hypothecaeve iure creditoribus obnoxias citra consensum eorum debitores alienantes praecedentem non dissolvunt obligationem.

D. k. Dec. AA. conss.

[11] *Imp. Iustinianus A. Iohanni pp.* **pr.** Solita providentia utimur etiam de pignoribus vel hypothecis rerum, quae quibusdam creditoribus suppositae postea a debitoribus venduntur vel alio modo transferuntur creditore suum consensum contractui praebente et quodam legitimo postea modo ad priorem dominum revertuntur. **1.** In hoc etenim casu diversae sententiae legum prudentibus habitae sunt, quibusdam dicentibus ius pignoris creditori renovari propter verbum 'futurarum rerum', quod in generalibus hypothecis poni solitum est, aliis penitus extingui. **2.** Nobis autem visum est eum, qui semel consensit alienationi

[7] *The same Augusti to Paulus.* Your paternal uncle's female creditor, who had an encumbrance on a farm bound as a pledge through a promissory note (*chirographum*), ordered the same document returned (to him). It is evident that she is also held to have released her pledge right.

Posted September 9, in the consulship of Diocletian, for the third time, and Maximian, Augusti (287).

[8] *The same Augusti to Apollonius.* If the Treasury sold hypothecs and the (other) creditors let this event pass in silence, clearly they have lost any right of action they had *in rem*. For (a buyer's) reliance on a Treasury sale should not lightly be overturned.

Posted August 20, in the consulship of the Augusti themselves, Consuls for the fourth and third times, respectively (290).

[9] *The same Augusti to Hermianus.* **pr.** Since you state that acting on a mandate you repaid an interest-bearing loan for your father-in-law, the provincial governor will take care to look to your indemnification through recovery of the money you paid for him, as well as the interest on it. **1.** For if slaves given as pledges (by your father-in-law) were received (by you) from the creditor, and you handed them over to your father-in-law with the intention that the pledge bond be released, the obligation once extinguished cannot be revived (and so your claim to the slaves is lost).

Posted September 22, in the consulship of the Augusti themselves, Consuls for the fourth and third times, respectively (290).

[10] *The same Augusti and the Caesars to Quintilla.* Debtors who alienate property legally bound to creditors as a pledge or hypothec, without their consent, do not release the preceding obligation.

Given December 1, in the consulship of the Augusti (293).

[11] *Emperor Justinian Augustus to John, Praetorian Prefect.* **pr.** We exercise Our usual watchfulness in connection with pledges and hypothecs that are encumbered to some creditors and afterwards sold or otherwise transferred by debtors with the creditor providing his consent to the contract, should they thereafter in some lawful manner return to their prior owner (the original debtor). **1.** For in this case the jurists had different opinions, some saying that the creditor's pledge right is renewed on account of the phrase "of future property" that is usually placed in general hypothecs, and others, that it (the lien) is entirely extinguished (for this particular property).[87] **2.** It appears best to Us that when a creditor has once agreed to alienation of a hypothec and thereby

[87] For the former view, see Paul, D. 20.6.10.

hypothecae et hoc modo suum ius respuit, indignum esse eandem rem utpote ab initio ei suppositam vindicare vel tenentem inquietare.

D. xv k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc. anno secundo.

XXVI Etiam ob Chirographariam Pecuniam Pignus Teneri

[1] *Imp. Gordianus A. Festo.* **pr.** Pignus intercidit, si novatione facta in alium ius obligationis transtulisti nec, ut ea res pignoris nomine teneretur, cautum est. **1.** Quod si pactum inter te eumque, qui postea dominus fundi constitutus novam obligationem susceperat, intercessit, ut idem fundus tibi pignoris nomine teneatur, quamvis personali actione expertus feceris condemnationem, pignoris tamen habes persecutionem. **2.** Ac si in possessione fueris constitutus, nisi ea quoque pecunia tibi a debitore reddatur vel offeratur, quae sine pignore debetur, eam restituere propter exceptionem doli mali non cogeris. iure enim contendis debitores eam solam pecuniam, cuius nomine pignora obligaverunt, offerentes audiri non oportere, nisi pro illa etiam satisfecerint, quam mutuam simpliciter acceperint. **3.** Quod in secundo creditore locum non habet: nec enim necessitas ei imponitur chirographarium etiam debitum priori creditori offerre.

PP. id. Mart. Gordiano A. et Aviola conss.

XXVII De Distractione Pignorum

[1] *Imp. Alexander A. Pacatae.* Fundum pignori obligatum, si creditor ex fructibus debitum persecutus est, cum ipso iure pignus obligatione liberatum sit, distrahere minime potest.

PP. id. Ian. Maximo II et Aeliano conss.

spurned his own right to it, it is inappropriate that he claim ownership of the same property as pledged to him from the outset, or disturb its holder.

Given October 18, at Constantinople, in the second post-consulate of the viri clarissimi *Lampadius and Orestes (532).*

Twenty-Sixth Title A Pledge Is Also Held for a Debt by Promissory Note (*Chirographum*)

[1][88] *Emperor* G*ORDIAN Augustus to Festus.* **pr.** A (right to a) pledge is lost if by novation (*novatio*) you transferred to a third party a right from an obligation, but it was not (also) provided that this property be held as a pledge (for the obligation). **1.** But if the person who afterwards became owner of the farm and (through a novation) undertook a new obligation (to pay you), made a pact that the same farm be bound to you as a pledge, then although you obtained a judgment in an action *in personam* (against this person), you can still pursue the pledge. **2.** And if you were put into possession (of the farm), (then) unless the debtor returns or tenders to you the money that is owed without a pledge, on the basis of the defense of deceit you are not compelled to restore it. For you rightly contend that when debtors tender only the money for which they have obligated pledges, they should not be heard (by the judge) unless they give satisfaction also for that which they take on a simple loan (without security). **3.** This rule does not apply to a subsequent creditor; for he is also not obligated to tender to the prior creditor a debt based on a promissory note (*chirographum*).

Posted March 15, in the consulship of Gordian Augustus and Aviola (239).

Twenty-Seventh Title Sale of Pledges[89]

[1] *Emperor* A*LEXANDER Augustus to Pacata.* If a creditor recoups his debt from the fruits of a farm pledged to him, since the pledge is (thereby) freed by operation of law from the obligation, he can hardly sell it.

Posted January 13, in the consulship of Maximus, for the second time, and Aelianus (223).

[88] = C. 8.13.8 (in part). Blume: "The case supposed [in the *principium*] is as follows: A, debtor of B and owner of property pledged to the latter, sold the land to C and the agreement was made [through a novation] that C should be held for the debt. Here was a new debtor, and in order to keep the lien alive, agreement to that effect was required to be made with C. See also D. 20.4.3 pr." The remainder of the fragment explores variations on this scenario. In section 3, *chirographaria pecunia* is an unsecured debt, evidenced only by a duebill without security. Blume: "Not only was the property bound for the debt expressly secured thereby, but it was also bound, in case the property was delivered into the possession of the creditor, for an unsecured debt, as against a demand made by the debtor."

[89] *Distractio pignorum*; see D. 20.5. Upon the debtor's default, the seller is frequently allowed to dispose of the pledge by selling it.

[2] *Idem A. Maximo.* Creditor, qui hypothecae seu pignori rem sibi nexam vendiderit, rem litigiosam non videtur vendere, quia precario debitor possidet.

PP. XII k. Oct. Maximo II et Aeliano conss.

[3] *Idem A. Luciano.* Hypothecis vel pignoribus a creditore venumdatis in id quod deest adversus reum vel fideiussorem actio competit.

PP. III non. Nov. Maximo II et Aeliano conss.

[4] *Idem A. Crescenti.* Creditor hypothecas sive pignus cum proscribit, notum debitori facere, si bona fide rem gerit et quando licet testato dicere debet. si quid itaque per fraudem in pignore villae venditae commissum probare potes, ut inferatur actio, quae eo nomine competit, adi eum cuius de ea re notio est.

PP. k. Iun. Fusco et Dextro conss.

[5] *Idem A. Sossiano.* Si residuum debiti paratus es solvere, praeses provinciae dabit arbitrum, apud quem, quantum sit quod superest ex debito, examinabitur: et sive ad iudicem venire diversa pars cessaverit sive oblato superfluo ad venditionem prosiluerit, improba alienatio proprietatis tuae ius non auferet.

PP. XII k. Aug. Pompeiano et Peligno conss.

[6] *Imp. Gordianus A. Rogato.* Quamdiu non est integra pecunia creditori numerata, etiamsi pro parte maiore eam consecutus sit, distrahendi rem obligatam non amittit facultatem.

PP. XIII k. Sept. Pio et Pontiano conss.

[7] *Idem A. Caro.* Si cessante solutione creditor non reluctante lege contractus ea quae pignori sibi nexa erant distraxit, revocari venditionem iniquum est, cum, si quid in ea re fraudulenter fecerit, non emptor a te, sed creditor conveniendus sit.

PP. V k. Nov. Pio et Pontiano conss.

[8] *Idem A. Maximo.* Si prius, quam distraheretur pignorata possessio, pecuniam creditori obtulisti, eoque non accipiente contestatione facta eam deposuisti et hodieque in eadem causa permanet, pignoris

[2] *The same Augustus to Maximus.* A creditor who sells property that is bound to him as a hypothec or pledge is not held to sell property in litigation, since the debtor (only) possesses it on sufferance (*precario*).

Posted September 20, in the consulship of Maximus, for the second time, and Aelianus (223).

[3] *The same Augustus to Lucianus.* When hypothecs or pledges are sold by a creditor, an action lies against the debtor or his surety for the amount that remains due.

Posted November 3, in the consulship of Maximus, for the second time, and Aelianus (223)

[4] *The same Augustus to Crescens.* When a creditor advertises (the sale of) hypothecs or pledges, if he acts in good faith he should make this known to the debtor, and, if possible, in the presence of witnesses. So if you can prove that anything fraudulent occurred in the pledge of the villa that was sold, go before the person with jurisdiction in order to bring the action that lies on this account.

Posted June 1, in the consulship of Fuscus and Dexter (225).

[5] *The same Augustus to Sossianus.* If you are prepared to pay the remainder of the debt, the provincial governor will appoint an arbitrator before whom an examination will be held as to the remainder due. And whether your adversary failed to come before the judge or proceeded to sell after tender of the remainder, this improper alienation of your property does not take away your right.

Posted July 21, in the consulship of Pompeianus and Pelignus (231).

[6] *Emperor* Gordian *Augustus to Rogatus.* As long as the entire amount due has not been paid to the creditor, even if he has obtained the larger part of it, he does not lose the right to sell the obligated property.

Posted August 20, in the consulship of Pius and Pontianus (238).

[7] *The same Augustus to Carus.* If a debt remained unpaid and the creditor, without violating the contract's terms, sold the property obligated as a pledge, it is unjust that the sale be rescinded, since, if he (the creditor) acted at all fraudulently in this matter, you (as the debtor) must sue not the buyer but the creditor.

Posted October 28, in the consulship of Pius and Pontianus (238).

[8] *The same Augustus to Maximus.* If you tendered the money to the creditor before the pledged possession was sold, and when he refused (to take it) you deposited it in the presence of witnesses (*contestatio*) and it also remains today in the same condition, the sale of the pledge is invalid. But if he exercised the

distractio non valet. quod si prius, quam offerres, legem venditionis exercuit, quod iure subsistit revocari non debet.

PP. III non. April. Gordiano A. et Aviola conss.

[9] *Impp. Diocletianus et Maximianus AA. Cyrillo.* Quae specialiter vobis obligata sunt, debitoribus detractantibus solutionem bona fide debetis et sollemniter vendere: ita enim parebit, an ex pretio pignoris debito satisfieri potest. quod si quid deerit, non prohibemini etiam cetera bona iure conventionis consequi.

PP. XIII k. Iun. Diocletiano III et Maximiano AA. conss.

[10] *Idem AA. Rufino.* **pr.** Et qui sub imagine alterius personae, quam supposuerat, iugiter tenet, cum sibi negotium gerat, alienasse non videtur. iure enim pignoris obligatum praedium neque si per subiectam personam creditor comparaverit neque si sibi addixerit, debitori adfert praeiudicium, *sed in eadem causa permanet, in qua fuit ante huiusmodi* collusionem. **1.** Sane si debitore distrahente comparaverit, consensu emptionem perfectam, si neque dolus adversarii neque metus causa gesta arguentur, revocari exemplo grave est. **2.** Si igitur poteris evidentibus probationibus monstrare creditorem per suppositam imaginarii emptoris personam semper possessionem tenuisse nec vendita bona fide praedia postea sinceriter comparasse, potes oblata pecunia cum usuris ad restitutionem creditorem compellere.

PP. III non. Oct. ipsis IIII et III AA. conss.

[11] *Idem AA. et CC. Rufinae.* Mulier licet res specialiter pignori dederit pro alio, creditor eas distrahendi non habet facultatem, nisi dissimulatione, marito obligante velut proprias, creditoris ignorantiam circumscripserit.

PP. V k. Mai. Heracliae AA. conss.

[12] *Idem AA. et CC. Zotico.* Si debitor rem tibi iure pignoris obligatam te non consentiente distraxit, dominium cum sua causa transtulit ad emptorem.

S. prid. k. Mai. Heracliae AA. conss.

(right of) sale of the pledge before you tendered (repayment), what took place legally should not be rescinded.

Posted April 3, in the consulship of Gordian Augustus and Aviola (239).

[9] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Cyrillus.* As to property specially obligated to you, if debtors refuse to pay you should sell it in good faith and with due process; for in this way it will appear whether the debt can be satisfied from the price of the pledge. But if anything remains due, you are not prevented by the agreement's terms from pursuing the remaining property.[90]

Posted May 20, in the consulship of Diocletian, for the third time, and Maximian, Augusti (287).

[10] *The same Augusti to Rufinus.* **pr.** A person who (pretends to sell a pledge but) continues to hold it under the name of another person whom he has substituted (for himself), is not held to have alienated since he only negotiated with himself. So if through a suppositious person a creditor purchases property obligated as a pledge, or if he knocks it down to himself (in an auction), he does not prejudice the debtor; it remains in the same condition as it was before such collusion. **1.** Of course, if he bought it when the debtor was seller, and if the sale was made by agreement and without allegations of the other party's deceit or duress, it is a bad example to rescind it. **2.** If, therefore, you can show by clear evidence that the creditor, through the suppositious person of an imaginary buyer, had held continuous possession and had not later truthfully bought the property in good faith, you can force restitution from the creditor by tendering the money with interest.

Posted October 5, in the consulship of the Augusti themselves, Consuls for the fourth and third times, respectively (290).

[11] *The same Augusti and the Caesars to Rufina.* Although on behalf of a third party a woman gives a specific item as a pledge, the creditor lacks the right to sell it unless she cheated an innocent creditor through a pretense, (e.g.,) when her husband pledged the property as if he was his own.

Posted April 27, at Heraclea, in the consulship of the Augusti (293).

[12] *The same Augusti and Caesars to Zoticus.* If without your consent a debtor sold property obligated as a pledge to you, he transferred ownership to the buyer with this lien against it (*cum sua causa*).

Written April 30, at Heraclea, in the consulship of the Augusti (293).

[90] Reference is to a process called *distractio bonorum*, available to creditors against defaulting debtors. The pledge agreement does not protect the debtor's other property from possible subsequent seizure.

[13] *Idem AA. et CC. Theodotae.* Qui praedium obligatum a creditore comparavit, si in vacuam possessionem inductus non est, nullam in rem actionem habet.

[14] *Idem AA. et CC. Modesto.* Si in hoc quod iure debetur tibi satisfactum non fuit, et debitoribus res obligatas tenentibus aditus praeses provinciae tibi distrahendi iubebit fieri facultatem.

PP. XVI k. Dec. Sirmi AA. conss.

[15] *Idem AA. et CC. Avianae.* Obligatis pignori mancipiis a creditore distractis ac traditis si post debitor quondam haec sollicitaverit, non venditori, sed emptori contra possidentem in rem competit actio.

D. k. Mart. Sirmi CC. conss.

[16] *Idem AA. et CC. Silvano.* Unus ex multis debitoris qui pignora tradiderat heredibus, quod ab eo personali actione peti potuit, solvendo res obligatas distrahendi creditori facultatem non ademit.

S. III non. April. CC. conss.

[17] *Idem AA. et CC. Agapae.* Rei creditor obligatae generali sive speciali conventione per creditorem alium, cui non fuerat nexa, venumdatae non amittit persecutionem.

D. prid. non. April. CC. conss.

[18] *Idem AA. et CC. Gaiano.* Qui a creditore pignori obligatum iure emit, de proprietate vinci non potest.

Subscripta VI k. Mai. CC. conss.

[19] *Idem AA. et CC. Liviae.* Si maritus tuus mutuam, licet tuam, dedit pecuniam, eorum, quae pignoris titulo accepit, si ei non successisti, distrahendi nomine tuo nullam habes facultatem.

S. VI id. Nov. Heracliae CC. *conss.*

[20] *Idem AA. et CC. Sabino.* Secundum placiti fidem, si nihil convenit specialiter, pignoribus a creditore maiore quam ei debebatur pretio distractis, licet ex eo fundus comparatus sit, non super hoc in rem, sed in personam, id est pigneraticia, de superfluo competit actio.

S. IIII *id. Nov. Byzantio CC. conss.*

[13] *The same Augusti and Caesars to Theodota.* A person who bought obligated property from a creditor, if he is not put into quiet possession, has no action *in rem*.

[14] *The same Augusti and Caesars to Modestus.* If you had not been satisfied as to the amount lawfully due you, and the debtors hold the obligated property, the provincial governor will direct that you have the legal opportunity to sell it.
Posted November 16, at Sirmium, in the consulship of the Augusti (293).

[15] *The same Augusti and Caesars to Aviana.* When slaves obligated as pledges were sold and handed over by the creditor, if the debtor then incites them (to run away), the action *in rem* against the possessor falls not to the seller but to the buyer.
Given March 1, at Sirmium, in the consulship of the Caesars (294).

[16] *The same Augusti and Caesars to Silvanus.* One from among many heirs of a debtor who had handed over pledges (to a creditor) does not remove the creditor's right to sell the obligated property by paying what could be claimed from him in an action *in personam*.
Written April 3, in the consulship of the Caesars (294).

[17] *The same Augusti and Caesars to Agapa.* A creditor to whom a thing is obligated by a general or specific agreement does not lose the right to pursue it when it is sold by another creditor to whom it had not been bound.
Given April 4, in the consulship of the Caesars (294).

[18] *The same Augusti and Caesars to Gaianus.* A person who lawfully buys pledged property from a creditor cannot be defeated as to ownership.
Signed April 26, in the consulship of the Caesars (294).

[19] *The same Augusti and Caesars to Livia.* If your husband made a loan of money although it was yours, unless you are his heir you have no right to sell in your own name the property he received as a pledge.
Written November 8, at Heraclea, in the consulship of the Caesars (294).

[20] *The same Augusti and Caesars to Sabinus.* If, pursuant to an agreement, pledges were sold by the creditor for a larger amount than was owed, and there was no special agreement (on this point), no action *in rem* lies on this even though a farm was purchased from it (the surplus); but there is an action *in personam*, i.e., on the pledge, for the surplus.
Written November 10, at Byzantium, in the consulship of the Caesars (294).

XXVIII Debitorem Venditionem Pignorum Impedire Non Posse

[1] *Impp. Severus et Antoninus AA. Marcello.* Si sunt, qui emere praedia tibi obligata velint, non impediuntur scriptura testamenti, qua complexus est debitor nulla a se praedia venumdari et poenam addidit, ut fisci fierent. nec enim potuisse eum huiusmodi lege ius creditoris facere deterius manifestum est.

D. VI k. Mai. Apro et Maximo conss.

[2] *Imp. Gordianus A. Nepoti.* **pr.** Debitoris denuntiatio, qui creditori suo, ne sibi rem pignori obligatam distrahat, vel his qui ab eo volunt comparare denuntiat, ita demum efficax est, si universum tam sortis quam usurarum offerat debitum creditori eoque non accipiente idonea fide probationis ita ut oportet depositum ostendat. **1.** Nam si vel modicum de sorte vel usuris in debito perseveret, distractio rei obligatae non potest impediri, neque ea ratione emptor, tametsi sciat interpositam a debitore creditori denuntiationem, mala fide fit possessor.

PP. III non. Aug. Gordiano A. et Aviola conss.

XXVIIII Si Vendito Pignore Agatur

[1] *Imp. Alexander A. Agrippae.* **pr.** Praeses provinciae aditus, si probatum fuerit tuum creditorem, cui ius distrahendi pignora fuit, dolo malo fundum vendidisse, quanti tua interest restituere tibi eundem creditorem iubebit. **1.** Quod si de bonis creditoris condemnati solvi pecunia non potuerit et probatum fuerit emptorem mala fide emisse, offerenti pecuniam cum usuris, quanti fundus veniit, restituere tibi fundum cum fructibus malae fidei emptorem iubebit.

PP. k. Sept. Alexandro A. cons.

[2] *Idem A. Aemilio.* Servos, quos nullo iure a creditore venisse dicis, pater tuus vel tu, si hereditas eius ad te pertinet, a possessoribus petere potes. quod si usucapti sunt, petat pater tuus pretium eorum a creditore, qui non iure eos servos vendidit.

PP. III k. Ian. Alexandro A. cons.

Twenty-Eighth Title A Debtor Cannot Prevent the Sale of Pledges

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Marcellus.* If there are parties wishing to buy the land obligated to you, they are not prevented (from doing so) by a provision in the debtor's will stating that no land be sold by him (the creditor) and adding as a penalty that (if this condition is violated) it becomes the Treasury's. For it is obvious that he could not diminish the creditor's right by such a directive.

Given April 26, in the consulship of Aper and Maximus (207).

[2] *Emperor* GORDIAN *Augustus to Nepos.* pr. A notice from a debtor warning his creditor not to sell property obligated as a pledge, or those who wish to buy from him (not to do so), is effective only if he offers his creditor the entire debt, both principal and interest, or, if he (the creditor) does not accept, he shows with sufficiently convincing proof that it was properly deposited (in escrow). 1. For if even a small amount of debt remains from the principal or interest, sale of the obligated property cannot be prevented, nor does the buyer become for this reason a possessor in bad faith even if he knows of the notice given to the creditor by the debtor.

Posted August 3, in the consulship of Gordian Augustus and Aviola (239).

Twenty-Ninth Title If Suit Is Brought After a Pledge Is Sold

[1] *Emperor* ALEXANDER *Augustus to Agrippa.* pr. If it is proven that your creditor, who had a right to sell pledges, fraudulently sold a (pledged) farm, the provincial governor, if approached, will order the same creditor to restore your interest (*quanti tua interest*) to you (as damages). 1. But if the money (damages) cannot be (fully) paid from the condemned creditor's estate, (then) if you offer (to the buyer) as much money as the farm was sold for along with with interest on it, he will order a buyer in bad faith to restore to you the farm along with the fruits (from it).

Posted September 1, in the consulship of Alexander Augustus (222).

[2] *The same Augustus to Aemilius.* Your father, or you if his inheritance comes to you, can claim from their possessors the slaves that you say were sold by a creditor without any right. But if they were usucapted, your father should claim their price from the creditor who unrightfully sold these slaves.

Posted December 30, in the consulship of Alexander Augustus (222).

[3] *Idem A. Claudio.* Si uxor tua praesidi probaverit, cum aureos triginta deberet, servos suos amplioris pretii per gratiam aureis viginti creditorem venumdedisse eumque solvendo non fuisse, iubebit emptores recepto pretio restituere servos.
PP. XVI k. *Oct. Maximo II et Aeliano conss.*

[4] *Imp. Gordianus A. Eudemo.* Cum contra bonam fidem venditionem obligatae possessionis a creditore factam adleges, non observatis, quae in distrahendis pignoribus celebrari consueverunt, adito praeside provinciae experire actione competenti non tantum adversus creditorem, verum etiam adversus possessorem, si fraudem eum participasse cum creditore potueris docere, ut revocatis, quae mala fide gesta constiterit, et fructuum ratio et damni quod inrogatum apparuerit haberi possit.
PP. k. April. Sabino II et Venusto conss.

[5] *Impp. Diocletianus et Maximianus AA. et CC. Nonnae.* Si creditore pignus priusquam ei satisfieret distrahente non per collusionem emptor comparavit, successor eius de superfluo, non emptoris heres, qui rem possidet, conveniendus est.
S. XVI k. Ian. Nicomediae CC. conss.

XXX De Luitione Pignoris

[1] *Impp. Severus et Antoninus AA. Antiochiae.* Qui pro parte heres extitit, nisi totum debitum exsolvat, suam portionem ex pignoribus recipere non potest.
PP. III k. April. Albino et Aemiliano conss.

[2] *Imp. Gordianus A. Domitio.* Intellegere debes vincula pignoris durare personali actione submota.
PP. XII k. Iun. Sabino II et Venusto conss.

[3] *The same Augustus to Claudius.* If your wife proves to the governor that when she owed 30 gold pieces, her creditor through favoritism sold her (pledged) slaves, worth more, for 20 gold pieces, and that he is (now) insolvent, he (the governor) will order the buyers to restore the slaves when they receive their price.

Posted September 16, in the consulship of Maximus, for the second time, and Aelianus (223).

[4] *Emperor* GORDIAN *Augustus to Eudemus.* Since you allege that obligated property was sold by your creditor contrary to good faith, the customary practices in selling pledges having been ignored, go before the provincial governor to bring the proper action not just against the creditor, but also against the possessor if you can show that he conspired with the creditor in the fraud, in order that whatever it is established was done in bad faith can be revoked, and an accounting be made both of the fruits *(fructus)* and of the loss apparently inflicted.

Posted April 1, in the consulship of Sabinus, for the second time, and Venustus (240).

[5] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Nonna.* If a seller sold a pledge before he was satisfied (as to the debt) and a buyer purchased it without collusion, his (the creditor's) successor, and not the buyer's heir who possesses the property, should be sued concerning a surplus (from the sale).

Written December 17, at Nicomedia, in the consulship of the Caesars (294)

Thirtieth Title Redemption of a Pledge[91]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Antiochia.* An heir to a portion (of an estate) cannot recover his portion of the pledges (held by the decedent's creditor) unless he pays off the entire debt.

Posted March 30, in the consulship of Albinus and Aemilianus (206).

[2] *Emperor* GORDIAN *Augustus to Domitius.* You should realize that the lien of a pledge remains in force when an action *in personam* (for the debt) is barred (by limitation).

Posted May 21, in the consulship of Sabinus, for the second time, and Venustus (240).

[91] See D. 20.5.

[3] *Impp. Diocletianus et Maximianus AA. et CC. Floro.* Si reddita debita quantitate vel rebus in solutum datis sive distractis compensato pretio satis ei contra quem supplicas factum adito praeside probaveris, vel, si quod residuum debetur, obtuleris ac, si non acceperit, deposueris consignatum, restitui tibi res pacto pignoris obligatas providebit, cum etiam edicto perpetuo, actione proposita pecunia soluta creditori vel si per eum factum sit, quominus solveretur, ad reddenda quae pignoris acceperat iure eum satis evidenter urgueri manifestum sit.

S. VI id. Oct. AA. conss.

XXXI Si Unus ex Pluribus Heredibus Creditoris vel Debitoris Partem Suam Debiti Solverit vel Acceperit

[1] *Impp. Valerianus et Gallienus AA. Tauro.* Manifesti et indubitati iuris est defuncto creditore multis relictis heredibus actionem quidem personalem inter eos ex lege duodecim tabularum dividi, pignus vero in solidum unicuique teneri.

D. XV k. Mai. ipsis IIII et III AA. conss.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Claudiae.* Actio quidem personalis inter heredes pro singulis portionibus quaesita scinditur, pignoris autem iure multis obligatis rebus, quas diversi possident, cum eius vindicatio non personam obliget, sed rem sequitur qui possident, tenentes non pro modo singularum substantiae conveniuntur, sed in solidum, ut vel totum debitum reddant vel eo quod detinent cedant.

S. V k. Nov. Anchiali CC. conss.

XXXII Si Pignoris Conventionem Numeratio Secuta Non Sit

[1] *Impp. Severus et Antoninus AA. Hilaro.* Si pecuniam tibi non esse numeratam atque ideo frustra cautionem emissam et pignus datum probaturus es, in rem experiri potes: nam intentio dati pignoris neque

[3] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Florus.* If you approach the governor and prove that you satisfied the party against whom you petition (i.e., your creditor) by paying the amount owed or by giving property in payment or by selling it for an offsetting price, or if you tender the remainder due and, if he does not accept it, deposit it under seal, he (the governor) will see to it that the property obligated by the pledge pact is restored to you, since also under the Perpetual Edict it is clear that if money has been paid to the creditor or if he is at fault for its non-payment, he may, through the promised action, quite manifestly be compelled at law to return what he took as a pledge.

Written October 10, in the consulship of the Augusti (293).

Thirty-First Title If One or More Heirs of a Creditor or Debtor Pays or Receives His Share of a Debt

[1] *Emperors* Valerian *and* Gallienus *to Taurus.* The law is clear and undisputed that when a creditor dies leaving many heirs, an action *in personam* is indeed apportioned among them by the law of the Twelve Tables,[92] but a pledge is held jointly (*in solidum*) for each of them.

Given April 17, in the consulship of the Augusti themselves, Consuls for the fourth and third times, respectively (257).

[2] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Claudia.* An action *in personam* brought among the heirs is apportioned according to their individual shares, but when many things, possessed by various persons, are obligated as pledges, since an ownership claim (*vindicatio*) does not bind the person (i.e., is not *in personam*) but follows the object, the possessing holders are sued not proportionately to their individual assets, but jointly (*in solidum*), that they either pay the entire debt or surrender what they hold.

Written October 28, at Anchialus, in the consulship of the Caesars (294).

Thirty-Second Title If Payment Does Not Follow a Pledge Agreement

[1][93] *Emperors* Severus *and* Antoninus *Augusti to Hilarus.* If you will have shown that the money (that a third party agreed to lend you) was not paid and that therefore your written promise (of repayment; *cautio*) and a pledge were

[92] *XII Tab.* 5.9.
[93] = C. 4.30.1.

redditae pecuniae non aliter tenebit, quam si de fide debiti constiterit. eademque ratione veritas servetur, si te possidente pignus adversarius tuus agere coeperit.

PP. k. Sept. Laterano et Rufino conss.

[2] *Imp. Alexander A. Peregrino.* Si, ut nunc adseveras, nihil creditor numeravit uxori tuae quae pignus dedit, sed inanem extorsit cautionem, mendaci scriptura contra fidem veritatis obligari eius res non potest.

S. sine die et conss.

XXXIII De Iure Dominii Impetrando

[1] *Imp. Alexander A. Nicolaae.* Dominii iure pignora possidere desiderans nomina debitorum, quos in solutione cessare dicis, exprimere et, an sollemnia peregisti, significare debuisti, dummodo scias omnia bona debitoris, qui pignori dedit, ut universa dominio tuo generaliter addicantur, impetrare te non posse.

PP. XIII k. Dec. Alexandro A. III et Dione conss.

[2] *Imp. Gordianus A. Iustae.* Si creditor pignus iure dominii a nostra serenitate possidere petiit et post formam praescripti alio anno usuras a vobis accepit, a beneficio impetrato recessisse videtur.

PP. prid. non. Dec. Pio et Pontiano conss.

[3] *Imp. Iustinianus A. Demostheni pp.* **pr.** Vetustissimam observationem, quae nullatenus in ipsis rerum claruit documentis, penitus esse duximus amputandam, immo magis clarioribus remediis corrigendam. igitur in pignoribus, quae iure dominii possidere aliquis cupiebat,

given (to him) without a basis, you can sue *in rem* (to recover the pledge). For a claim that a pledge was given but the money not repaid (by the debtor) is only effective if there is no doubt as to the debt. For the same reason the truth will be upheld if your adversary commences an action against you while you possess the pledge.

Posted September 1, in the consulship of Lateranus and Rufinus (197).

[2] *Emperor* ALEXANDER *Augustus to Peregrinus.* If, as you now allege, a creditor paid nothing to your wife after she gave him a pledge, but extracted a written promise (*cautio*) without legal foundation, her property cannot be obligated by a deceitful writing that is contrary to the truth.[94]

Written without day and year (222–235).

Thirty-Third Title Acquiring Ownership (of a Pledge)

[1] *Emperor* ALEXANDER *Augustus to Nicolaa.* Since you want to possess pledges as their owner, you should write out the names of the debtors who you claim have defaulted on payment, and indicate whether you have fulfilled the legal requirements – as long as you realize that you cannot (in fact) acquire the entire estate of a debtor who gave a pledge that it all be generally assigned to your ownership.[95]

Posted November 19, in the consulship of Alexander Augustus, for the third time, and Dio (229).

[2] *Emperor* GORDIAN *Augustus to Justa.* If a creditor sought from Our Serenity to possess a pledge as its owner and he (then) received interest from you for another year after issuance of a ruling,[96] he seems to have abandoned the privilege that he obtained.

Posted December 4, in the consulship of Pius and Pontianus (238).

[3] *Emperor* JUSTINIAN *Augustus to Demosthenes, Praetorian Prefect.*[97] **pr.** An ancient observance, which was nowhere patent in the documentary evidence, We hold should be thoroughly abolished, or rather corrected through clearer remedies. So in the case of pledges that someone wanted to possess as owner, public advertisement and the obsolete year for redemption were introduced

[94] On this subject, see more fully C. 4.30.

[95] Blume: "The right of the emperor to give the ownership of pledged property to a pledgee or mortgagee, if no purchaser could be found, was one of the peculiar provisions of the Roman law ... The emperor would not ... set over all of the property of a debtor if a lien had been given thereon, but he would assign only a specific portion, which would equal the debt."

[96] Meaning uncertain; possibly *post formam rescripti* should be read.

[97] If the date in the subscription is correct, the addressee should be Julian, not Demosthenes.

ipsi debitori servatum. **4c.** Et ne ex communicatione fiat aliqua difficultas, licentia dabitur creditori seu domino aestimationem superflui debitori vel creditori debitoris cum competenti cautela in eum exponenda offerre.

5. Sin vero creditor, postquam iure dominii hoc possideat, vendere hoc maluerit, liceat quidem ei hoc facere, si quid autem superfluum sit, debitori servare. **5a.** Sin autem dubitatio exorta fuerit pro venditione utpote viliore pretio facta, sacramenti religionem creditor praestare compellatur, quod nulla machinatione vel circumscriptione usus est, sed tanti vendidit rem, quanti potuerit venire: et hoc tantummodo reddi, quod ex iuramento superfluum fuerit visum. **5b.** Sin autem ex iureiurando etiam minus habuisse creditor inveniatur, in residuo habeat integram actionem. **6.** Aestimationem autem pignoris, donec apud creditorem eundemque dominum permaneat, sive amplioris sive minoris quantum ad debitum quantitatis est, iudicialis esse volumus disceptationis, ut, quod iudex super hoc statuerit, hoc in aestimatione pignoris obtineat.

D. xv k. April. Constantinopoli Lampadio et Oreste vv. cc. conss.

XXXIIII De Pactis Pignorum et de Commissoria Lege in Pignoribus Rescindenda

[1] *Imp. Alexander A. Victorino.* Qui pactus est, nisi intra certum tempus pecuniam quam mutuam accepit solveret, cessurum creditoribus, hypothecae venditionem non contraxit, sed id comprehendit, quod iure suo creditor in adipiscendo pignore habiturus erat. communi itaque iure creditor hypothecam vendere debet.

PP. id. Oct. Alexandro A. cons.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Dionysio.* Si fundi nomine, quem vendideras, emptori ab alio mota proprietatis quaestione alterum fundum pro eius evictione pignoris hypothecaeve titulo emptionis instrumentis ea lege dedisti, ut, quem secundo tradideras, si is quem vendideras evictus non fuerit, obtineas, de hoc contra eum qui moverat quaestionem lata sententia emptori parata securitate, circa eum quem obligaveras restituendum conventionis fidem impleri, si negotium integrum est, praeses iubebit.

S. k. Dec. Sirmi AA. conss.

debtor or the debtor himself. 4c. And to prevent some difficulty arising from their shared interest (in the value of the pledge), the creditor or owner will have permission to tender (to the debtor) an assessment of the excess, or (else) to the debtor's creditor with an adequate guarantee given to him (the debtor).

5. But if the creditor, after he possesses it as owner, prefers to sell it, he may do so while preserving to the debtor any excess. **5a.** But if question is raised about a sale being for a cheaper price (than the pledge was worth), the creditor shall be forced to take an oath that he employed no ruse or fraud, but sold the object for as much as it was possible to get; and what is returned is only that which appears from his oath to be excess. **5b.** But if from his oath the creditor is found to have less (than the debt), he has his full right of action as to the remainder. **6.** As long as the property remains with the creditor and simultaneous owner, We wish the assessment of its value, whether at an amount more or less than the debt, to be a matter for judicial determination, so that what the judge fixes as to it shall be considered the value of the pledge.

Given March 18, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes.*

Thirty-Fourth Title Pledge Agreements and Abolition of the Forfeiture Clause for Pledges[98]

[1] *Emperor* ALEXANDER *Augustus to Victorinus.* A person who agreed that unless within a fixed time he repaid a loan he received, he would yield (pledges) to his creditors, did not contract the sale of a hypothec, but achieved (only) what the creditor would rightfully have (anyway) in getting the pledge. The creditor, accordingly, should sell the hypothec by the general law (for pledges).

Posted October 15, in the consulship of Alexander Augustus (222).

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Dionysius.* You sold a farm and a third party then raised a dispute over its ownership with the buyer. To provide against eviction, you gave (the buyer) a second farm as a pledge or hypothec, (as stated) in the sale documents, on this condition: that if the farm you sold was not evicted, you would recover the second one you had handed over. If a decision on this went against the person who raised the dispute, with security (thereby) having been provided to the buyer, the governor will order, regarding restoration of the farm you had obligated, that the agreement be fulfilled if the matter remains (still) in the status quo.

Written December 1, at Sirmium, in the consulship of the Augusti (293).

[98] A *lex commissoria* was a condition allowing the pledge's forfeiture to the creditor if payment was not made within the time set. It is abolished by 3 below. See D. 20.1.

[3] *Imp. Constantinus A. ad populum.* **pr.** Quoniam inter alias captiones praecipue commissoriae pignorum legis crescit asperitas, placet infirmari eam et in posterum omnem eius memoriam aboleri. **1.** Si quis igitur tali contractu laborat, hac sanctione respiret, quae cum praeteritis praesentia quoque depellit et futura prohibet. creditores enim re amissa iubemus recuperare quod dederunt.

D. II k. Febr. Serdicae Constantino A. VII et Constantio C. conss.

XXXV De Exceptionibus sive Praescriptionibus

[1] *Imp. Antoninus A. Claudio.* Debitores quidem hereditarii unicuique heredum pro portione hereditaria antiqua lege obligati sunt. sed si eis heredibus omnem pecuniam exsolvisti, quibus nomen patris tui testator in divisione adscripserat, doli mali exceptione adversus alios agentes tueri te potes.

PP. XV k. Aug. duobus Aspris conss.

[2] *Idem A. Iulio.* Pro portione tua, qua domum ad te pertinere dicis, si iudicatum non est, actiones dirigere potes. nam exceptio rei iudicatae ei demum obstat vel successoribus eius, inter quos cognitum super ea re et pronuntiatum est.

PP. XV k. Mart. Antonino A. IIII et Balbino conss.

[3] *Idem A. Vitali.* Adversus fratrem tuum quondam tutorem legitimum tutelae iudicio si expertus non es, proposita actione consiste. nec timueris exceptionem pacti, si in eo fraudem dolumque admissum probare potes: nam replicatio doli opposita bonae fidei iudicium facit et commentum fraudis repellit.

[4] *Imp. Alexander A. Iunio et aliis.* Cum nondum finitam sententia causam, sed dilatam adlegetis, non est dubium omnes integras defensiones vobis esse.

[3][99] *Emperor* Constantine *Augustus to the people.* **pr.** Since, among other frauds, the harshness of the forfeiture clause (*lex commissoria*) for pledges has grown conspicuously, it is held that it is void and that all remembrance of it is permanently abolished. **1.** If, therefore, anyone is burdened with such a contract, he may recover his breath through the present enactment which invalidates both current and past (agreements) and prohibits future ones. For We order that creditors lose the (obligated) property while recovering what they gave.

Given January 31, at Serdica, in the consulship of Constantine Augustus, for the seventh time, and Constantius Caesar (326).

Thirty-Fifth Title Defenses or Prescriptions[100]

[1] *Emperor* Antoninus *Augustus to Claudius.* By ancient law, debtors of an inheritance are obligated to each of the heirs proportionally to their share. But if you have paid all the money (that is due) to those heirs to whom the testator bequeathed your father's account in his division (of the estate), by the defense of deceit (*exceptio doli mali*) you can protect yourself against a suit by third parties (i.e., other heirs).

Posted July 18, in the consulship of the two Aspri (212).

[2] *The same Augustus to Julius.* If this has not been (specifically) adjudicated, you can bring actions for your share in the home that you say belongs to you. For the defense of previous adjudication (*exceptio rei iudicatae*) is good only against a man and his heirs among whom a case has been tried and a decision rendered on this matter.

Posted February 15, in the consulship of Antoninus, for the fourth time, and Balbinus (213).

[3] *The same Augustus to Vitalis.* If you have not previously brought suit against your brother and your former statutory *tutor*, then persist in the pending action. Nor need you fear the defense of a pact (*exceptio pacti*) if you can prove it was made through fraud and deceit, for juxtaposing the counterdefense of deceit (*replicatio doli*) makes the action one of good faith and defeats the fraudulent invention.[101]

[4] *Emperor* Alexander *Augustus to Junius and others.* Since you allege that your case is not yet ended with a judgment, but is (only) continued, there is no doubt that you have all defenses unimpaired.

[99] = C.Th. 3.2.1; combine with C. 8.57.1 and 10.19.2, C.Th. 4.11.3 (but the subscriptions vary).

[100] "Defenses" (*exceptiones*) are often mingled, in later Roman civil procedure, with "prescriptions" (*praescriptiones*) limiting the scope of judicial formulas. "Counterdefenses" (*replicationes*) are plaintiff responses to defenses. See D. 44.1; Inst. 4.13.

[101] Blume: "This law deals with the defense of a pact not to sue, and the replication of fraud."

PP. II non. Oct. Maximo II et Aeliano conss.

[5] *Impp. Diocletianus et Maximianus AA. et CC. Basilio.* Licet unde vi interdictum intra annum locum habet, tamen exceptione perpetua ei succurri, qui per vim expulsus post retinuit possessionem, auctoritate iuris manifestatur.

S. k. Mai. Trallis AA. conss.

[6] *Idem AA. et CC. Helenae.* Si pactum intercessit, in exceptione sine temporis praefinitione de dolo replicari potest.

S. k. Sept. Viminacii AA. conss.

[7] *Idem AA. et CC. Menandrae.* Si ex maiore debiti quantitate minor tibi soluta est nec liberationem debitori tuo praestitisti, petere quod non probatur redditum, contra exceptionem pacti replicatione tuam adiuvans intentionem, minime prohiberis.

S. II k. Mart. CC. conss.

[8] *Idem AA. et CC. Aurelio.* Praescriptionem peremptoriam, quam ante contestari sufficit, vel omissam, priusquam sententia feratur, obicere quandoque licet.

S. XV k. Nov. CC. conss.

[9] *Idem AA. et CC. Muciano.* Si quidem intentionem actoris probatione deficere confidis, nulla tibi defensio necessaria est. si vero de hac confitendo exceptione te munitum adseveres, de hac tantum agi convenit. nam si etiam de intentione dubitas, habita de exceptione contestatione tunc demum, cum intentionem secundum adseverationem suam petitor probaverit, huic esse locum monstrari convenit.

S. III non. Nov. Burtudizi CC. conss.

[10] *Idem AA. et CC. Aquilinae.* Non exceptionibus actores, quibus reis auxilium tribuitur certis ex causis, sed replicationibus suam intentionem, si quam habent, muniunt.

S. k. Dec. Nicomediae CC. conss.

Posted October 6, in the consulship of Maximus, for the second time, and Aelianus (223).

[5] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Basilius.* Although the interdict *unde vi* (on violent dispossession) lies within one year, still the authority of law plainly shows that a person who was expelled by force but then regained possession is protected by a permanent defense (based on the interdict).

Written May 1, at Tralles, in the consulship of the Augusti (293).

[6] *The same Augusti and Caesars to Helena.* If there was a pact (not to reclaim property), then against a defense (based on the pact; *exceptio pacti*) the counterdefense of deceit (*replicatio doli*) is available without time limit.

Written September 1, at Viminacium, in the consulship of the Augusti (293).

[7] *The same Augusti and Caesars to Menandra.* If less than half of a debt was paid to you and you did not give a release to your debtor, you are hardly prevented from suing for the amount shown not to have been paid, assisting your claim with the counterdefense (of deceit) against the defense of a pact.

Written February 28, in the consulship of the Caesars (294).

[8] *The same Augusti and Caesars to Aurelius.* An absolute defense (*praescriptio peremptoria*), which it suffices to introduce before (a trial begins), may also, if it is omitted, be (subsequently) raised at any time before the judgment.

Written October 18, in the consulship of the Caesars (294).

[9] *The same Augusti and Caesars to Mucianus.* If indeed you are confident that the plaintiff's claim lacks proof, you need set up no defense. But if you admit it (the plaintiff's claim) and allege that you are protected by a defense, it is proper that the trial concerns it alone. For even if you are uncertain about the (plaintiff's) claim, and you declare your defense only when the plaintiff proves his claim according to his affirmation, it is properly ruled that there is room for this (procedure).

Written November 3, at Burtudizum, in the consulship of the Caesars (294).

[10] *The same Augusti and Caesars to Aquilina.* Plaintiffs protect their claim, if they have one, not through defenses (*exceptiones*), which in particular cases assist defendants, but through counterdefenses (*replicationes*).

Written December 1, at Nicomedia, in the consulship of the Caesars (294).

[11] *Idem AA. et CC. Neoni.* Defensiones sive exceptiones ad intercessores extendi, quibus reus principalis integro manente statu munitus est, constat.

Sub die XV k. Ian.

[12] *Imp. Iulianus A. ad Iulianum comitem Orientis.* Si quis advocatus inter exordia litis praetermissam dilatoriam praescriptionem postea voluerit exercere et ab huiusmodi opitulatione submotus nihilo minus perseveret atque praeposterae defensioni institerit, unius librae auri condemnatione multetur.

D. VII id. Mart. Antiochiae Iuliano A. IIII et Sallustio conss.

[13] *Impp. Honorius et Theodosius AA. Symmacho proconsuli Africae.* Praescriptiones fori in principio a litigatoribus opponendas esse legum decrevit auctoritas.

D. V k. Sept. Ravennae Honorio X et Theodosio VI AA. conss.

XXXVI De Litigiosis

[1] *Impp. Severus et Antoninus AA. Paulinae.* Cum creditor pignus vendit, non potest videri litigiosae rei emptio contrahi, etsi debitor interdicat, ne venditio perficiatur.

PP. k. Mai. Apro et Maximo conss.

[2] *Imp. Constantinus A. ad provinciales.* Lite pendente actiones, quae in iudicium deductae sunt, vel res, pro quibus actor a reo detentis intendit, in coniunctam personam vel extraneam donationibus vel emptionibus vel quibuslibet aliis contractibus minime transferri ab eodem actore liceat, tamquam si nihil factum sit, lite nihilo minus peragenda.

D. k. Aug. Basso et Ablabio conss.

[11] *The same Augusti and Caesars to Neo.* It is settled that the defenses or exceptions, by which the principal defendant was protected, are available also to those backing his debt (*intercessores*) as long as his legal position is unchanged.

On December 18 (294).

[12] *Emperor* JULIAN *Augustus to Julian, Count of the East.* If any advocate, after failing at the outset of a trial to raise a delaying defense (*praescriptio dilatoria*),[102] wishes to do this subsequently, and, when deprived of such assistance, he nonetheless continues insisting on his tardily asserted defense, he shall be punished with a fine of one pound of gold.

Given March 9, at Antioch, in the consulship of Julian Augustus, for the fourth time, and Sallustius (363).[103]

[13][104] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Symmachus, Proconsul of Africa.* The authority of the laws has decreed that litigators must set up defenses of (lack of) jurisdiction (*praescriptiones fori*) at the outset (of litigation).

Given August 28, at Ravenna, in the consulship of Honorius, for the tenth time, and Theodosius, for the sixth time (415).

Thirty-Sixth Title Property in a Pending Lawsuit[105]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Paulina.* When a creditor sells a pledge, this cannot be deemed the sale of property in a pending suit even if the debtor brings an interdict against the sale's completion.

Posted May 1, in the consulship of Aper and Maximus (207).

[2][106] *Emperor* CONSTANTINE *Augustus to the provincials.* While a lawsuit is pending, rights of action that have been made part of the trial, or property that the plaintiff claims and that is held by the defendant, may in no way be transferred by this plaintiff to anyone whether acquainted with him or not, (either) by gifts or sales or any other contracts, and the suit shall nevertheless be prosecuted to conclusion as if nothing had happened.

Given August 1, in the consulship of Bassus and Ablabius (331).

[102] A dilatory defense (*exceptio dilatoria*) is one that is good only for a set period of time.
[103] Seeck dates to February 23, 363.
[104] = C.Th. 11.30.65.
[105] *Res litigiosae.* See D. 44.6.
[106] = C.Th. 4.5.1; combine with C. 1.21.3, 1.40.3, 3.13.4 (?), 3.19.2, 7.62.19, 8.36.2, and C.Th. 2.26.3, 3.30.4, 11.30.17, 11.34.1.

[3] *Imppp. Gratianus Valentinianus et Theodosius AAA. Tatiano pp.* **pr.** Quicumque rem litigiosam vel ambiguum chirographum, quodlibet denique mobile vel immobile fisco nostro vel potentiori seu aliis personis in testamento sive codicillo legaverit fideive commiserit aut per hereditatem reliquerit, nullam fiscus noster vel alia persona licentiam habeat iurgiorum, nec iudicium subeat, sed aestimatio eius litis ineatur praestanda his, quibus actiones vel res litigiosae relictae sunt. **1.** Eandem litem ipsi heredes peragant, suarum actionum periculo ea quae litigiosa relicta fuerant vindicantes. **2.** Quod et de chirographis placet, ut heredes relictorum fisco vel aliis personis praesentem pecuniam numerent et iudicio eos, quos obnoxios existimant, persequantur.

D. XV *k. Iul. Thessalonicae Gratiano* V *et Theodosio AA. conss.*

[4] ...

XIII *k. Ian. Constantinopoli Pompeio et Avieno conss.*

[5] *Imp. Iustinianus A. Iohanni pp.* **pr.** Censemus, ut, si quis lite pendente vel actiones vel res quas possidet ad alium quendam transtulerit sive scientem sive ignorantem, vitio litigiosi contractus subiacere: distinctione quadam inter contrahentes observanda, ut, si quis sciens vel ad venditiones vel donationes seu ad alios contractus accesserit, cognoscat se compellendum non tantum rem redhibere, sed etiam pretio eius privari, non ut lucro cedat ei qui rem alienavit, sed ut etiam alia tanta quantitas ab eo fisci viribus inferatur. **1.** Sin autem ignorans rem litigiosam emerit vel per aliam speciem contractus eam acceperit, tunc irrita rei alienatione facta pretium cum alia tertia parte recipiat. iustum est etenim propter dolosam mentem et absconditam machinationem, cum non emptori manifestaverit rem in iudicium deductam fuisse, tertia parte pretii, sicut iam disposuimus, eum puniri. **2.** Tali videlicet poena non solum in aliis contractibus, verum etiam in donationibus porrigenda, ut vera aestimatione facta, cum pretii datio non

[3][107] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Tatianus, Praetorian Prefect.* **pr.** If anyone in his will or a codicil, through a legacy or a testamentary trust or an inheritance, leaves property in litigation – whether movable or immovable – or a contested promissory note (*chirographum*) to Our Treasury or to a powerful man or other persons, Our Treasury and anyone else shall have no license to dispute or enter a (resulting) lawsuit. Instead, an appraisal of the suit's value shall be made and presented to those to whom the rights of action or property in litigation were left. **1.** The heirs themselves shall carry the suit to conclusion, claiming the property in litigation through actions at their own risk. **2.** Also as to promissory notes, it is held that the heirs shall pay to the Treasury or other persons the present money value of those left to them, and (then) pursue in court the persons they consider obligated.

Given June 17, at Thessalonica, in the Consulship of Gratian, for the fifth time, and Theodosius, Augusti (380).

[4] <The substance is lost.>[108]

December 20, at Constantinople, in the consulship of Pompeius and Avienus (501).

[5] *Emperor* JUSTINIAN *Augustus to John, Praetorian Prefect.* **pr.** We hold that if, during the pendency of a suit, a man transfers either claims or things he possesses to any third party whether the latter is knowing or not, (such) contracts on matters in litigation are defective. A distinction among contracting parties should be observed, (however,) that if someone knowingly enters on sales or gifts or other contracts, he shall know that he will be compelled not just to return the property, but also to lose its price, not that it accrue to the profit of the person who alienated the property, but that a sum equal to it also be paid by him to the Treasury. **1.** But if he unknowingly purchases property in litigation or receives it through some other form of contract, then the thing's alienation is void and he shall recover the price with an additional third (as penalty). For it is just that the seller, because of his fraudulent intent and underhanded trickery when he fails to reveal to the buyer that the property was subject to litigation, be punished by a third part of the price, as We have ordered. **2.** And, obviously, such a penalty shall be exacted not only in other contracts, but also for gifts, so that the person transferring it to another is punished with its true

[107] On other portions of this constitution, see C. 5.1.3. Seeck dates to June 17, 379; but *PLRE* 1, p. 877 Fl. Eutolmius Tatianus 5 dates to June 17, 380.

[108] The content of the missing constitution is probably summarized by the Basilika (27.1.3): "If a person who possesses an immoveable is sued by someone and defeated, let him surrender it in the interim. If he has alienated it, the plaintiff may be placed in possession of it. If the current possessor wishes to answer, let him speak before the same judge, with no defense on the basis of jurisdiction or his dignity or rank." A recently discovered Codex fragment dates this constitution to XVI k. Ian. (= 17, Dec. 501). (Information from Simon Corcoran.)

est, rem ad alium transferens multetur: omnibus instrumentis, quae super hoc constituuntur, nullam vim obtinentibus. **3.** Exceptis videlicet huius sanctionis dispositione his, qui vel dotis nomine vel ante nuptias donationis vel transactionis aut divisionis rerum hereditariarum factae vel per legati vel fideicommissi causam tales res vel actiones dederint vel acceperint.

D. xv k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc. anno secundo.

XXXVII De Contrahenda et Committenda Stipulatione

[1] *Impp. Severus et Antoninus AA. Secundo.* Licet epistulae, quam libello inseruisti, additum non sit stipulatum esse eum cui cavebatur, tamen si res inter praesentes gesta est, credendum est praecedente stipulatione vocem spondentis secutam.

Accepta xvii k. Mai. Severo iii[xv] *et Victorino conss.*

[2] *Idem AA. Diocleti.* Si filiae tuae, quam in potestate habebas, pecuniam dari stipulatus es, paratam obligationem exercere non prohiberis.

PP. prid. non. Nov. Faustino et Rufino conss.

[3] *Imp. Antoninus A. Hadriano.* **pr.** Si, cum tuam pecuniam crederes accommodato nomine Iuliani, stipulatio in personam eius absentis directa est, cum nihil sit actum ea verborum conceptione, intellegis superfuisse tibi rei contractae obligationem. **1.** Ac propterea si pecuniam a debitore tuo Iulianus exegit eamque solutionem ratam habuisti, habes adversus eum negotiorum gestorum actionem.

PP. vi k. Mart. Praesente et Extricato conss.

[4] *Imp. Alexander A. Sabinae.* Secundum responsum Domitii Ulpiani praefecti annonae iuris consulti amici mei ea, quae stipulata est, cum

[xv] ii

appraised value when no price was paid; and the documents made in this connection have no force. 3. Excepted, however, from the provisions of this law are those who gave or accepted such property or rights of actions either as dowry or a pre-nuptial gift (*donatio ante nuptias*) or a settlement or a division of an inheritance or on the basis of a legacy or trust.

Given October 18, at Constantinople, in the second post-consulate of the viri clarissimi *Lampadius and Orestes (532).*

Thirty-Seventh Title Contracting a Stipulation and Bringing It into Effect[109]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Secundus.* Although it was not added to the letter you inserted into your petition that the stipulation was exacted by the promisee, nevertheless, if the transaction took place in the parties' presence, it should be assumed that the voice of the promisor followed a preceding question (*stipulatio*).

Accepted April 15, in the consulship of Severus, for the second time, and Victorinus (200).

[2] *The same Augusti to Diocles.* If you exacted a stipulation that money be paid to your daughter whom you have in your power, you are not prevented from enforcing the obligation you acquired (through her).

Posted November 4, in the consulship of Faustinus and Rufinus (210).

[3][110] *Emperor* ANTONINUS *Augustus to Hadrian.* **pr.** If, when you loaned your money, you used the name of Julian and the stipulation (for repayment) was directed towards him in his absence, although nothing is achieved (as to Julian) by this verbal formulation, you do realize that the obligation in this matter has remained valid for you. 1. And therefore if Julian collected money from your debtor and you ratified this payment, you have an action on management of affairs (*negotiorum gestio*) against him.

Posted February 24, in the consulship of Praesens and Extricatus (217).

[4] *Emperor* ALEXANDER *Augustus to Sabina.* According to the response of Domitius Ulpianus – Prefect of the Food Supply, a jurist, and my friend – a woman who exacted (from her husband) a stipulation that she leave half of her dowry to whom she wishes when she dies, is understood (only) to have been

[109] See D. 45.1. A stipulation concluded under a condition becomes effective when the condition occurs (*stipulatio committitur*). In this title, *stipulator* is at times translated "promisee" to avoid confusion.

[110] §1 = C. 2.18.9, addressed to Sallustius.

moreretur, partem dimidiam dotis cui velit relinquere, reddi sibi, cum moreretur, eam partem dotis stipulata videtur.
PP. II k. April. Alexandro A. cons.

[5] *Impp. Diocletianus et Maximianus AA. et CC. Isidorae.* **pr.** Nuda pollicitatione secundum ea, quae saepe constituta sunt, ad praestanda quae promiserat urgueri quemquam non semper iura permittunt. 1. Verum quoniam praeterea, si contra pactum fecerit, quanti ea res est, tibi dari stipulanti adversarium tuum promisisse proponas, huius etiam obligationis post motam litem extitisse condicionem et eius summae, quae in hac quoque stipulatione continetur, petitioni locum factum convenit.
S. V k. Dec. AA. conss.

[6] *Idem AA. et CC. Erotio.* Scire debuisti, quae sub transactione dari placita sunt, certi vel incerti stipulatione subsecuta peti posse.
S. XVI k. Ian. Sirmi AA. conss.

[7] *Idem AA. et CC. Antonino.* Neque tutoris neque curatoris absentia quicquam stipulationi nocet, cum et feminam minorem viginti quinque annis absente curatore stipulari posse non ambigitur.
S. XVII k. Febr. CC. conss.

[8] *Idem AA. et CC. Posidonio.* Non moriturum praestari servum impossibilis promissio est. post mortem autem eius stipulatus recte solutionem postulat.
S. XII k. Mart. CC. conss.

[9] *Idem AA. et CC. Capitoni.* Si quidem Zenoni stipulanti mortis vel cruciatus corporis territus timore spopondisti, adversus experientem exceptione proposita defendi potes. 1. Si vero nihil tale probetur, accusationis institutae vel futurae praetextu non ob turpem, sed probabilem causam habita stipulatione promissio non infirmatur. 2. Sin autem ob non instituendam accusationem criminis pecunia promissa sit, cum de huiusmodi causis pacisci non liceat, petitio negatur.
S. III id. Oct. Varianae CC. conss.

promised that this portion of her dowry be returned to her upon her death (and therefore the stipulation is valid).

Posted March 31, in the consulship of Alexander Augustus (222).

[5] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Isidora.* **pr.** As has often been stated, the laws do not always permit anyone to be forced to fulfill what he undertook by a bare donative promise (*pollicitatio*). **1.** But since you state that your adversary also entered into a stipulation that, if he did anything contrary to his pact (not to sue), he would give you what this matter was worth (as damages), it is clear that the condition on this obligation occurred once a lawsuit began, and (so) there is room for a suit for the amount in this stipulation as well.

Written November 27, in the consulship of the Augusti (293).

[6] *The same Augusti and Caesars to Erotius.* You should have known that what was agreed be given in a settlement (*transactio*) can be claimed (in court) when a stipulation for a definite or indefinite amount followed.

Written December 17, at Sirmium, in the consulship of the Augusti (293).

[7][m] *The same Augusti and Caesars to Antoninus.* The absence of a *tutor* or *curator* does not prejudice in any way a stipulation, since there is no doubt that also a woman less than age 25 may receive a stipulation when her *curator* is absent.

Written January 16, in the consulship of the Caesars (294).

[8] *The same Augusti and Caesars to Posidonius.* A promise to provide that a slave will not die is impossible. But a person who extracted this stipulation after his (the slave's) death rightly demands payment (under a penalty clause).

Written February 18, in the consulship of the Caesars (294).

[9] *The same Augusti and Caesars to Capito.* **pr.** If, while terrified by your fear of death or great bodily injury, you made a solemn promise to Zeno by stipulation, you can defend against his lawsuit by raising the defense (of duress; *exceptio metus*). **1.** But if nothing of this sort is proven, a promise is not weakened if the stipulation rests only on the pretext of a pending or intended lawsuit, a consideration not disgraceful but worthy. **2.** But if the money was promised (as a bribe) for not bringing a criminal accusation, the claim (to recover it) is denied because pacts on such matters are impermissible.

Written October 13, at Variana, in the consulship of the Caesars (294).

[m] = C. 5.59.1 (addressed to Antonianus, without date and year), which adds that the stipulation must be "given on the ward's behalf."

[10] *Imp. Leo A. Erythrio pp.* Omnes stipulationes, etiamsi non sollemnibus vel directis, sed quibuscumque verbis pro consensu contrahentium compositae sint, legibus cognitae suam habeant firmitatem.
D. k. Ian. Constantinopoli Marciano cons.

[11] *Imp. Iustinianus A. Menae pp.* Scrupulosam inquisitionem, utrum post mortem an cum morietur vel pridie quam morietur stipulatus sit aliquis vel in testamento legati vel fideicommissi nomine aliquid dereliquerit, penitus amputantes omnia, quae vel in quocumque contractu stipulati vel pacti sunt contrahentes, vel testator in suo testamento disposuit, etiamsi post mortem vel pridie quam morietur scripta esse noscuntur, nihilo minus pro tenore contractus vel testamenti valere praecipimus.
D. III id. Dec. Constantinopoli dn. Iustiniano pp. A. II cons.

[12] *Idem A. Menae pp.* Magnam legum veterum obscuritatem, quae protrahendarum litium maximam occasionem usque adhuc praebebat, amputantes sancimus, ut, si quis certo tempore facturum se aliquid vel daturum se stipuletur vel[xvi] quae stipulator voluit promiserit et addiderit, quod, si statuto tempore minime haec perfecta fuerint, certam poenam dabit, sciat, minime posse ad evitandam poenam adicere, quod nullus eum admonuit: sed etiam citra ullam admonitionem eidem poenae pro tenore stipulationis fiet obnoxius, cum ea quae promisit ipse in memoria sua servare, non ab aliis sibi manifestari poscere debeat.
D. VIIII [xvii] id. April. Constantinopoli Decio vc. cons.

[13] *Idem A. Iuliano pp.* pr. Veteris iuris altercationes decidentes generaliter sancimus omnem stipulationem, sive in dando sive in faciendo sive mixta ex dando et faciendo inveniatur, et ad heredes et contra heredes transmitti, sive specialis heredum fiat mentio sive non: cur enim, quod in principalibus personis iustum est, non ad heredes et adversus eos transmittatur? 1. Et sic existimentur huiusmodi stipulationes, quasi tantummodo in dandum fuerant conceptae, cum nihilo minus et heredes factum possint adimplere: illa subtili et supervacua scrupulositate

[xvi] [stipuletur vel]
[xvii] VIII

[10] *Emperor* Leo *Augustus to Erythrius, Praetorian Prefect.* All stipulations recognized by law have their own validity even if they are composed not in formal or unambiguous words, but in any words whatsoever that express theagreement of the contracting parties.

Given January 1, at Constantinople, in the consulship of Marcianus (472).

[11][112] *Emperor* Justinian *Augustus to Menas, Praetorian Prefect.* Completely dispensing with subtle inquiry as to whether a person may extract a stipulation (to take effect) "after his (the promisor's) death," or "when he dies," or "the day before he dies," or leave something in a will as a legacy or trust (in this manner), We direct that whatever the contracting parties have arranged in any contract of stipulation or pact, or a testator has ordered in his will, nevertheless is valid according to the tenor of the contract or will, even if "after death" or "the day before he dies" appears to have been written.

Given December 11, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, for the second time (528).

[12] *The same Augustus to Menas, Praetorian Prefect.* Dispensing with a great obscurity of the ancient law, which until now provided a large opportunity for prolonging lawsuits, We ordain that if anyone promises under a stipulation to do or give something definite within a fixed time, or what the promisee wishes, and adds that, if these things are not at least done within a set time, he will pay a fixed penalty, let him know that he can hardly add, in order to avoid the penalty (should he later be sued), that no one reminded him (of his obligation). Rather, in accord with the tenor of the stipulation, he shall be subject to this penalty despite lack of reminder, since he ought to keep in mind what he promised, not ask that he be apprised of it by others.

Given April 6, at Constantinople, in the consulship of the vir clarissimus *Decius (529).*

[13] *The same Augustus to Julian, Praetorian Prefect.* **pr.** Deciding a dispute in the ancient law, We generally ordain that every stipulation, whether it consists in giving or in doing or in a mixture of giving and doing, is transmitted both to heirs and against heirs, whether special mention (is made) of heirs or not. For why should what is just in the case of principals not be transmitted to and against heirs? **1.** And such stipulations (to do something) shall be evaluated as if they had been framed only for giving, since heirs can just as well fulfill an act; disapproved (thereby) is the technical and useless quibbling according

[112] Combine with C. 6.23.25. Blume: "A promise for performance so many days before the death of either party was void. See C. 4.44.1 ... "

explosa, per quam putabant non esse possibile factum ab alio compleri, quod alii impositum est. 2. Et quare, cum paene similis omnium natura est, non et facta omnes vel plus vel paulo minus adimplere possint, ne ex huiusmodi subtilitate cadant hominum voluntates?

D. k. Aug. Constantinopoli Lampadio et Oreste vv. cc. conss.

[14] *Idem A. Iohanni pp.* **pr.** Optimam quaestionem et frequenter in iudiciis versatam satis humanum est saltem in praesenti dirimere, ne diutius nostram rem publicam molestare concedatur. in multis etenim contractibus et maxime in feneraticiis cautionibus solitum est adscribi, stipulationes per certos servos celebrari. sed quidam indevotione tenti ex hoc materiam altercationis acceperunt: et alii quidem non esse servum adhibitum contendebant, alii vero non eius esse servum, ad quem pertinere scriptura protestabatur: et si non per servum, sed inter praesentes celebratam esse rem fuerit scriptum, et hoc iterum dubitabatur, debere ostendi partes esse praesentes.

1. Cum itaque satis utile est in contractibus et servos adhiberi et praesentes esse personas adscribi, forte propter personas dignitate excelsas vel mulieres, quas naturalis pudor non omnibus perperam sese manifestare concedit, sancimus tales scripturas omnifariam esse credendas et, sive adscriptus fuerit servus et ad quandam personam dicitur pertinere, credi omnimodo et servum adesse et fecisse stipulationem et eam esse scripto domino adquisitam et non dubitari, si servus ipse praesto fuerit vel eius domini fuit is, pro quo scriptus est fecisse stipulationem: 2. Et si inter praesentes partes res acta esse dicitur, et hoc esse credendum, si tamen in eadem civitate utraque persona in eo die commanet, in quo huiusmodi instrumentum scriptum est, nisi is, qui dicit sese vel adversarium abesse, liquidis ac manifestissimis probationibus et melius quidem, si per scripturam, sed saltem per testes undique idoneos et omni exceptione maiores ostenderit sese vel adversarium suum eo die civitate afuisse: sed huiusmodi scripturas propter utilitatem contrahentium esse credendas.

D. k. Nov. post consulatum Lampadii et Orestis vv. cc.

to which it is impossible that an act imposed on one person be carried out by another. 2. Since the nature of all humans is quite similar, why should not all be able more or less to carry out acts, so that human intentions not fail because of such a technicality?

Given August 1, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[14][113] *The same Augustus to John, Praetorian Prefect.* **pr.** At least now it is humane to decide an important question, one often arising in courts, so that it not be permitted to disturb our State further. For in many contracts, especially in promissory notes for loans at interest (*cautiones feneraticiae*), it is customary to add that the stipulations were executed through specified slaves. But certain persons, motivated by lack of respect, have used this as fuel for disputes, some contending that no slave was present (in making the stipulation), others that the slave did not belong to the person to whom the writing states he belongs. And if it is written that the business was conducted not through a slave but in the presence of the principals, this too is again disputed (by claiming) that the parties ought to be shown to be present.

1. So since it is quite useful in contracts both that slaves be called in and that persons be mentioned as present – e.g., on account of persons of high status, or women whom natural modesty forbids to display themselves improperly to everyone – We ordain that such writings should be universally valid; and if a slave is mentioned and is stated to belong to some person, it is always accepted as true that the slave was present and made the stipulation and it was acquired by the master mentioned, and it is not questioned if the slave himself was present or belonged to the master for whom he is described as making the stipulation. 2. And if the transaction is said to have taken place in the presence of the parties, this too is to be believed, provided that both persons were in the same city on that day on which this document was composed, unless the party who says that he or his opponent was away shows by clear and evident proofs – and best of all through writing, but at least through entirely credible witnesses to whom no exception can be taken – that he or his adversary were away from the city on that day. But such documents should (as a rule) be given credence because of their usefulness to contracting parties.

Given November 1, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[113] See also Inst. 3.19.12, which says this was written to the Society of Advocates at Caesarea.

[15] *Idem A. Iohanni pp.* **pr.** Si quis spoponderat insulam, cum moriebatur, aedificare stipulatori, impossibilis veteribus videbatur huiusmodi stipulatio. sed nobis sensum contrahentium discutientibus veri simile esse videtur hoc inter eos actum, ut incipiat quidem contra morientem obligatio, immineat autem heredibus eius, donec ad effectum perducatur. nemo enim ita stultus invenitur, ut tali animo faceret stipulationem, ut putaret posse tantum aedificium in uno momento horae extollere, vel eum qui moritur talem habere sensum, quod ipse sufficiet ad huiusmodi operis completionem. **1.** Sancimus itaque, si quid tale evenerit, heredes teneri, ut factum, quod mortis tempore facere promisit, hoc heredes eius adimpleant quasi speciali heredis mentione habita, licet hoc minime fuerit expressum. quemadmodum enim, si in dando fuerit stipulatio, et contra heredes transmittebatur, ita et si in faciendo est, licet in mortis tempus colligatur, attamen ad similitudinem in dando conceptae stipulationis et heredes obligari, ut non discrepet factum a datione, sed sit lex nostra per omnia sibi consentanea. **2.** Quod et in legatis simili modo relictis observari censemus.

D. XV k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc. anno secundo.

XXXVIII De Inutilibus Stipulationibus

[1] *Imp. Antoninus A. Paulino.* Ex stipulatione, in qua impubes sine tutore auctore spopondisti, non es obligatus.

PP. k. Iul. Romae Laeto II et Cereale conss.

[2] *Imp. Alexander A. Menophilo.* Libera matrimonia esse antiquitus placuit. ideoque pacta, ne liceret divertere, non valere et stipulationes, quibus poenae inrogarentur ei qui divortium fecisset, ratas non haberi constat.

PP. III non. Febr. Maximo II et Aeliano conss.

[3] *Impp. Diocletianus et Maximianus AA. Isidoro.* **pr.** Ut inter absentes verborum obligatio contrahi non potest, ita alteri, cuius iuri subiectus non est, aliquid dari vel restitui, nisi sua intersit, nemo stipulari potest.

[15] *The same Augustus to John, Praetorian Prefect.* **pr.** If someone promised by stipulation to build a city block (*insula*) for the promisee when he (the promisor) was dying, such a stipulation seemed impossible to the ancients. But if We analyze the intent of the contracting parties, it seems probable that they meant that the obligation actually begin against the dying man (the promisor), but fall on his heirs until it is entirely executed. For there is no one so foolish as to think he can erect such a building in an hour's time, or that the decedent intended that he (alone) was in a position to complete such a project. **1.** So We have ordained that if such a thing occurs, the heirs are liable, so that the act that he promised to do at the time of his death be carried out by his heirs, as though special mention of the heir was made although this was not express. For as a stipulation that involves giving is transmitted also against heirs, so also if it involves doing, although (only) if framed at the time of death, nevertheless the heirs are also obligated on the model of a stipulation framed around giving, so that doing is not different from giving, but Our law is harmonious with itself in everything. **2.** For legacies as well We decree that this rule be observed similarly.

Given October 18, at Constantinople, in the second post-consulate of the viri clarissimi *Lampadius and Orestes (532).*

Thirty-Eighth Title Invalid Stipulations[114]

[1] *Emperor* A*NTONINUS Augustus to Paulinus.* You are not bound by a stipulation in which you made a promise, when below the age of puberty, without the authorization of your *tutor*.

Posted July 1, at Rome, in the consulship of Laetus, for the second time, and Cerealis (215).

[2] *Emperor* A*LEXANDER Augustus to Menophilus.* Long-standing tradition holds that marriages are free. So it is settled that agreements preventing divorce are invalid, and stipulations imposing penalties on the party who divorced are not considered licit.

Posted February 3, in the consulship of Maximus, for the second time, and Aelianus (223).

[3] *Emperors* D*IOCLETIAN and* M*AXIMIAN Augusti to Isidorus.* **pr.** Just as a verbal obligation (i.e., a stipulation) cannot be contracted between absent parties, so no one can effectively exact a stipulation that something be given or delivered to a third party to whose power he is not subject, unless he has an

[114] See Inst. 3.19.

1. Cum igitur, defuncta in matrimonio filia tua, superstitis filii nomine partem dimidiam dotis a marito detineri, alteram vero partem nepoti tuo vel, si is in rebus humanis non esset, Iuliano restitui per pactum convenisse proponas, praeventoque morte nepote etiam stipulationem ad Iulianum factam ob absentiam eius non valuisse significes, ac propterea ex persona ac stipulatione tua, qua restitui cuncta iuxta pactorum tenorem provideras, reddi tibi desideres: super stipulatu tuo adi praesidem provinciae, ut examinatis partium adlegationibus, quantum constituerit interesse tua, iuxta placiti fidem dotis portionem Iuliano restitutam fuisse, ob incertae actionis effectum concludat condemnationem taxatae quantitatis.

PP. id. Dec. ipsis IIII et III AA. conss.

[4] *Idem AA. et CC. Domnae.* Ex eo instrumento nullam vos habere actionem, quia contra bonos mores de successione futura interposita fuit stipulatio, manifestum est, cum omnia, quae contra bonos mores vel in pacto vel in stipulatione deducuntur, nullius momenti sint.

PP. III k. Mai. AA. conss.

[5] *Idem AA. et CC. Aquilinae.* Dolo vel metu adhibito actio quidem nascitur, si subdita stipulatio sit, per doli tamen vel metus exceptionem submoveri petitio debet.

S. XIII k. Oct. AA. conss.

[6] *Idem AA. et CC. Septimio et Eustolio.* Si avia vestra sibi et Eustolio, quam mutuam dederat pecuniam, dari fuit stipulata, nihil ei, cuius subiecta iuri non fuerit, quaerere potuit. sane si ipse quod ei solvi placuerat in stipulatione suo nomine deduxit, obligationem in eius etiam personam constitisse non ambigitur.

S. V k. Oct. CC. conss.

interest in this (occurring). 1. Since, therefore, you state that your daughter died during marriage and that her husband kept half the dowry in the name of a surviving son, while it was agreed (between you and the husband, by stipulation) that the remainder be turned over to your grandson or, if he were not living, to Julian; and since you indicate that, your grandson being dead, the stipulation made for Julian's benefit was also invalid because of his absence (when the stipulation was made); and that therefore, on the basis of your person (as *paterfamilias*) and of the stipulation in which you had provided that everything be returned in accord with the tenor of the pacts, you want it delivered to you – approach the provincial governor concerning your stipulation, in order that, once he examines the allegations of the parties and determines the extent of your own interest that a portion of the dowry be restored to Julian in accord with the agreement, because of the effect of an action for an indefinite amount (*actio incerta*) he may determine the highest value for the condemnation (of the ex-husband).[115]

Posted December 13, in the consulship of the Augusti themselves, Consuls for the fourth and third times, respectively (290).

[4] *The same Augusti and the Caesars to Domna.* It is obvious that you have no right of action on this document, since, contrary to good morals, a stipulation was entered into regarding future inheritance, for everything contained in a pact or stipulation that is contrary to good morals has no legal consequence.

Posted April 29, in the consulship of the Augusti (293).

[5] *The same Augusti and Caesars to Aquilina.* When deceit or duress was used, an action (still) does arise if a stipulation was added, but the claim should be defeated through the defense of deceit or of duress (*exceptio doli vel metus*).

Written September 19, in the consulship of the Augusti (293).

[6] *The same Augusti and Caesars to Septimius and Eustolius.* If, for the benefit of herself and Eustolius, your grandmother exacted a stipulation that the loan she had given be paid, she could acquire nothing for him (Eustolius) to whose power she was not subject. Of course, if he himself in his own name exacted a stipulation that it be paid to him, there is no doubt that an obligation arose as to him as well.

Written September 27, in the consulship of the Caesars (294)

[115] Blume: "The daughter of Isidorus died in marriage and Isidorus had made a contract with his son-in-law … to the following effect: One-half of the dowry was to remain with the son-in-law, as a provision for the son of the marriage; the other half was to go to the grandson of Isidorus, if alive, if not, to Julianus. A stipulation was added."

XXXVIIII De Duobus Reis Stipulandi et Duobus Reis Promittendi

[1] *Impp. Diocletianus et Maximianus AA. Diogeni.* **pr.** Creditor prohiberi non potest exigere debitum, cum sint duo rei promittendi eiusdem pecuniae, a quo velit. **1.** Et ideo, si probaveris te conventum in solidum exsolvisse, rector provinciae iuvare te adversus eum, cum quo communiter mutuam pecuniam accepisti, non cunctabitur.

PP. v k. Mart. Diocletiano III et Maximiano AA. conss.

[2] *Idem AA. et CC. Fabricio.* Exprimere debueras tuis precibus, utrumne in partem an in solidum singuli vos obligaveritis ac duo rei promittendi extiteritis, cum, si quidem ab initio unusquisque pro parte sit obligatus, egredi contractus fidem non possit, si vero in solidum, electio rescripto adimi non debeat.

S. id. April. Byzantii AA. conss.

[3] *Idem AA. et CC. Andronico.* Propter mutuam uni datam pecuniam aliis reis promittendi factis, ob non numeratam sibi pecuniam obligationem remitti desiderio postulantium iura refragantur.

S. v id. Febr. Sirmi CC. conss.

[4] *Imp. Iustinianus A. Iohanni pp.* **pr.** Cum quidam rei stipulandi certos habebant reos promittendi, vel unus forte creditor duos vel plures debitores habebat, vel contrario multi creditores unum debitorem, et alii ex reis promittendi ad certos creditores debitum agnoverint vel per solutionem vel per alios modos, quos in anterioribus sanctionibus interruptionibus et invenimus positos et nos ampliavimus, vel forte ad unum creditorem quidam ex debitoribus devotionem suam ostenderunt, vel cum plures essent creditores, debitor qui solus existeret ad unum ex his vel quosdam debitum agnovit, et quaerebatur, si eis vel ei datur licentia adversus alios indevotionem suam exercere et quasi tempore emenso

Thirty-Ninth Title Joint Promisees and Joint Promisors[116]

[1] *Emperors* Diocletian *and* Maximian *Augusti to Diogenes.* **pr.** When there are two promisors (*rei promittendi*) of the same money, a creditor cannot be prevented from demanding payment from whom he wishes. 1. And so, if you prove that you were sued (as a joint promisor) and paid the entire debt (*in solidum*), the provincial governor will not hesitate to lend you his assistance against the party with whom you received the loaned money jointly.

Posted February 25, in the consulship of Diocletian, for the third time, and Maximian, Augusti (287).

[2] *The same Augusti and the Caesars to Fabricius.* In your petition, you ought to have stated whether you obligated yourselves for part (of a debt) or (instead) you were two joint promisors for the entirety, since, if each was obligated from the start for a part, he (the creditor) cannot overstep the contract's terms; but if for the entirety, his choice (to sue you or to sue your co-debtor for the entirety) should not be taken away by rescript.

Written April 13, at Byzantium, in the consulship of the Augusti (293).

[3] *The same Augusti and Caesars to Andronicus.* When a money loan is given to one person, but others became joint promisors (for its repayment), the rights (to recovery) are destroyed if the obligation (of the others) is remitted, pursuant to their request (to a judge), on the ground that they received no money themselves.

Written February 9, at Sirmium, in the consulship of the Caesars (294).

[4] *Emperor* Justinian *Augustus to John, Praetorian Prefect.* **pr.** When multiple joint promisees (creditors) have specified joint promisors (debtors), or when, say, one creditor has two or more debtors, or on the contrary many creditors have one debtor; and some of the promisors acknowledge the debt to certain of the creditors either by paying it or by the other means that We noted in earlier laws and have increased for interruptions (of the statute of limitations),[117] or, say, some of the debtors display to one creditor their willingness to perform, or, when there are several creditors, the sole debtor acknowledged the debt to one or some of them; a question was raised whether they or he had leave to display their non-compliance toward the others and to refuse payment by reason of the lapse of the period (of limitation), or whether, when some of the

[116] See D. 45.2; Inst. 3.16. In a long note, Krüger discusses a constitution, issued by Diocletian and Maximian to Paulina on December 3, 386, which was restored at the outset of this title by Haloander, whose source is uncertain (possibly the Gregorian Codex); the constitution is not in the manuscript tradition for Justinian's Codex. It translates: "If two or more persons jointly accept delivery of something as an entirety (*in solidum*), and an accident occurs, each person has an action for the entirety as long as the property remains in the same legal condition (*in eadem causa*)."

[117] See C. 2.55.5.3, 7.40.2–3.

exactionem recusare, vel quibusdam ex debitoribus debitum agnoscentibus vel in iudicio pulsatis debent et alii ab omni contradictione repelli:

1. Nobis pietate suggerente videtur esse humanum semel in uno eodemque contractu qualicumque interruptione vel agnitione adhibita omnes simul compelli ad debitum persolvendum, sive plures sint rei sive unus, sive plures creditores vel non amplius quam unus. 2. Sancimus in omnibus casibus, quos noster sermo complexus est, aliorum devotionem vel agnitionem vel ex libello admonitionem aliis debitoribus praeiudicare et aliis prodesse creditoribus. 3. Sit itaque generalis devotio et nemini liceat alienam indevotionem sequi, cum ex una stirpe unoque fonte unus effluxit contractus vel debiti causa ex eadem actione apparuit.

D. k. Sept. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

XXXX De Fideiussoribus et Mandatoribus

[1] *Impp. Severus et Antoninus AA. Lysiae.* Si Lysias adempta parte bonorum exulare iussus est, non nisi pro parte quam retinuerit creditoribus obligatus est. verum qui pro eo fidem suam adstrinxerint, iure pristino conveniri possunt.

PP. id. Oct. Severo A. III et Victorino conss.

[2] *Idem AA. Plotio.* **pr.** Creditori, qui pro eodem debito et pignora et fideiussorem accepit, licet, si malit, fideiussorem convenire in eam pecuniam, in qua se obligaverit. quod cum facit, debet ius pignorum in eum transferre. 1. Sed cum in alia quoque causa eadem pignora vel hypothecas habet obligatas, non prius compellendus est transferre pignora, quam omne debitum exsolvatur.

D. V k. Febr. Apro et *Maximo conss.*

debtors acknowledge the debt or are defeated in a trial, the others also should be prevented from (raising) any objection (to the claim):

1. As fidelity (to contracts; *pietas*) suggests to Us, it seems just that, when some interruption or acknowledgment once occurs in one and the same contract, all are simultaneously forced to pay the debt, whether there are several promisors or one, and whether there are many creditors or no more than one. **2.** We ordain that in all cases embraced by Our discussion, the willingness to perform or the acknowledgment of some (debtors), or their notice resulting from a complaint (*libellus*), prejudices the other debtors and benefits the other creditors. **3.** So let the duty to perform be general, and let no one be allowed to rely on another's non-performance, when one contract has flowed from a single root and source, or the (underlying) reason for a debt appeared in one and the same action.[118]

Given September 1, at Constantinople, after the consulate of the viri clarissimi *Lampadius and Orestes (531).*

Fortieth Title Sureties (*Fideiussores*) and Mandators[119]

[1] *Emperors* Severus *and* Antoninus *Augusti to Lysias.* If part of his property was confiscated and Lysias was ordered into exile, he was not obligated to his creditors except for the part he retained. But those who bound their own credit (by becoming sureties) for him can be sued by the former right (even prior to his exile; i.e., they are still fully liable).

Posted October 15, in the consulship of Severus Augustus, for the third time, and Victorinus (200).

[2] *The same Augusti to Plotius.* **pr.** A creditor who, (as security) for the same debt, receives both pledges and a surety may, if he prefers, sue the surety for the money that he obligated himself to pay. When he does this, he should transfer the pledge rights to him (the surety, to assist him in getting repayment). **1.** But when he has the same pledges or hypothecs obligated also in another case (of debt from the same debtor), he should not be forced to transfer the pledges before the entire debt is paid.

Given January 28, in the consulship of Aper and Maximus (207).

[118] Blume: "The substance of this law is that if one of two or more joint-debtors does any act whereby the prescriptive period is interrupted as to him, even in relation to only one of the joint-creditors – of more than one – this interruption of the prescriptive period, is good as against all the debtors, and benefits all the creditors ... The prescriptive period might be interrupted by acknowledgment, by payment of interest or part of the principal, by execution of a new duebill, or suit against one of the debtors."

[119] See D. 46.1; Inst. 3.20. A *fideiussor* is a surety bound for another's debt through a special form of stipulation (an *adpromissio*). A *mandator* assumes liability for another's debt by informally directing a third party to extend credit to the debtor, in an arrangement resembling a rudimentary letter of credit. The principal practical difference between suretyship and mandate lies in how the relationship is created.

[3] *Idem AA. Maximo.* **pr.** Non recte procuratores nostri, si adlegationi tuae fides adesset, audire te noluerunt ex bonis fideiussoris quae ad fiscum pervenerunt pecuniam repetentem, sed reum principalem convenire iusserunt, cum electionis potestas permittatur creditori. **1.** Sed cum tu duos fideiussores accepisse te proponas, si et alter idoneus est, intellegis te divisa quantitate partem competentem a procuratore petere debere et adversus alium fideiussorem experiri. **2.** Nam licet significes adiectum in obligatione, ut singuli in solidum tenerentur, tamen nihil haec res mutat condicionem iuris et constitutionem. nam et cum hoc non adiciatur, singuli tamen in solidum tenentur: sed ubi sunt omnes idonei, in portionem obligatio dividitur.

PP. XVII k. Sept. Antonino A. III et Geta III conss.

[4] *Imp. Antoninus A. Rufae.* Novatione legitime perfecta debiti in alium translati, prioris contractus fideiussores vel mandatores liberatos non ambigitur, si modo in sequenti se non obligaverunt.

PP. XV k. Oct. Antonino A. IIII et Balbino conss.

[5] *Idem A. Potamoni.* Iure nostro est potestas creditori relicto reo eligendi fideiussores, nisi inter contrahentes aliud placitum doceatur.

PP. VI non. Mai Messala et Sabino conss.

[6] *Idem A. Pollae.* Si pater tuus pro Cornelio, cum pecuniam mutuam acciperet, se non obligavit, frustra ex eo, quod tabulas obligationis ut testis adsignavit, conveniris.

PP. XI k. Iul. Messala et Sabino conss.

[7] *Idem A. Eroti.* Si creditor condicioni mandato adscriptae, cum pecuniam mutuam daret, in accipiendis hypothecis non paruit, frustra te iudicio mandati convenit, quando non alias te obligasse intellegaris, quam si pignoribus contraheretur obligatio.

PP. k. Iul. Laeto II et Cereale conss.

[8] *Imp. Alexander A. Longo.* Filius familias, qui pro patre, quamvis in venditione fundi, fideiussit, tenetur.

PP. II id. Oct. Maximo II et Aeliano conss.

[3] *The same Augusti to Maximus.* **pr.** If your allegation is true, Our procurators wrongly refused to hear your demand for money from a surety's property that had fallen to the Treasury, but (instead) ordered you to sue the principal debtor. **1.** But since you state that you received two sureties, then, if the other is solvent, you know that, having divided the amount, you should claim the proper portion from the (imperial) procurator and sue the other surety (for the rest); for a creditor is allowed the power to choose. **2.** For although you state that it was added in the contract that each was liable for the entirety (*in solidum*), nevertheless this does not change your legal situation or this provision. Even should this not be added (expressly), each party is still liable for the entirety; but when all are solvent, the obligation is divided into shares.

Posted August 16, in the consulship of Antoninus Augustus, for the third time, and Geta, for the third time (298).

[4] *Emperor* Antoninus *Augustus to Rufa.* If a debt is transferred to a third party (debtor) through a legally made novation, there is no doubt that the sureties or mandators of the previous contract are released unless they obligated themselves also for the second.

Posted September 17, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[5] *The same Augustus to Potamo.* Under Our law, a creditor has the option to leave the principal alone and proceed against the sureties, unless some other agreement is shown between the contracting parties.

Posted May 2, in the consulship of Messala and Sabinus (214).

[6] *The same Augustus to Polla.* If your father did not obligate himself for Cornelius when he (Cornelius) received a money loan, a suit against you (as his heir)on the grounds that he signed the document as a witness is useless.

Posted June 21, in the consulship of Messala and Sabinus (214).

[7] *The same Augustus to Eros.* If a creditor did not observe the condition attached to the mandate by taking hypothecs when he gave the money loan (authorized by the mandate), he sues you ineffectually in a trial on mandate, since you understood yourself as obligated only if the obligation was contracted with pledges.

Posted July 1, in the consulship of Laetus, for the second time, and Cerealis (215).

[8] *Emperor* Alexander *Augustus to Longus.* A son in his father's power who goes surety for his father, albeit for the sale of a farm, is (personally) liable.

Posted October 14, in the consulship of Maximus, for the second time, and Aelianus (223).

[9] *Idem A. Aristocrati.* Etiamsi de iure obligationis pignorum actum fuerit, fideiussoribus liberatio non contingit.
PP. V k. Dec. Maximo II et Aeliano conss.

[10] *Idem A. Vitali.* **pr.** Fideiussor seu mandator si in usuras quoque obligatus est, iustam causam recusandi solvere eas non habet. **1.** Ut autem is, qui cum altero fideiussit, non solus conveniatur, sed dividatur actio inter eos qui solvendo sunt, ante condemnationem ex ordine postulari solet.
PP.

[11] *Idem A. Sallustio.* **pr.** Cum alter ex fideiussoribus in solidum debito satisfaciat, actio ei adversus eum qui una fideiussit non competit. **1.** Potuisti sane, cum fisco solveres, desiderare, ut ius pignoris quod fiscus habuit in te transferretur, et si hoc ita factum est, cessis actionibus uti poteris. quod et in privatis debitis observandum est.
PP. VII k. Nov. Alexandro A. III et Dione conss.

[12] *Idem A. Theodoto.* Blanditus tibi est, qui non teneri te persuasit, quod, cum pro alio intervenires, ἐγγυῶμαι dixisti, cum et his verbis obligationem verborum contrahi pridem receptum est.
PP. VI k. Sept. Agricola et Clemente conss.

[13] *Pars ex epistula Gordiani A.* Si Barsagoram latronem Lysanias decurio inventurum se spopondisset, aut exhibere compellendus est aut transmittendus ad praefectum praetorio vel ad praesidem provinciae.

[14] *Idem A. Salvio.* **pr.** Mandati actio personalis est. quae si nomine fideiussoris vel adversus debitorem seu heredes eius competit, praeses provinciae quae deberi compererit reddi iubebit. **1.** Pignora etenim, quae reo stipulandi nexa fuerunt, ita demum ad vos transeunt, si facta nominis redemptione solutio celebrata est vobisque mandatae sunt actiones. **2.** Quod si factum est, ea quoque vobis persequentibus adversus possessores extraordinariam iurisdictionem idem vir clarissimus impertiet.
PP. III non. Iul. Gordiano A. et Aviola conss.

[9] *The same Augustus to Aristocrates.* A lawsuit brought on legally obligated pledges does not free the sureties (from liability on the debt).

Posted November 27, in the consulship of Maximus, for the second time, and Aelianus (223).

[10] *The same Augustus to Vitalis.* **pr.** A surety or mandator, if obligated also for interest (on the principal debt), has no just basis to refuse to pay it. **1.** But it is properly and commonly requested prior to a condemnation that a person who went surety with another not be sued alone, but that the action be divided among those who are solvent.

Posted ...

[11] *The same Augustus to Sallustius.* **pr.** When one of the sureties has satisfied the debt in full, he has no right of action against his co-surety. **1.** You could, of course, have demanded, when you paid the Treasury, that the Treasury transfer to you the pledge right it had, and if this was so done, you can use the actions ceded to you. This should also be applied to private debts.[120]

Posted October 26, in the consulship of Alexander, for the third time, and Dio (229).

[12] *The same Augustus to Theodotus.* In backing another's debt, you said (in Greek), "I bind myself." The person who persuaded you that you were not liable was (just) being affable, since it has long been recognized that a verbal obligation (*obligatio verborum*) is contracted by such words.

Posted August 27, in the consulship of Agricola and Clemens (230).

[13] *Part of a letter of* GORDIAN *Augustus.* If the decurion Lysanias solemnly promised that he would find the bandit Barsagoras, he should be compelled either to produce him or be sent to the Praetorian Prefect or the provincial governor (for punishment).

[14] *The same Augustus to Salvius.* **pr.** The action on mandate is *in personam.* If it lies in a surety's name or against a debtor or his heirs, the provincial governor will order repayment of what he finds is due. **1.** Pledges that were obligated to the promisee pass to you as long as release was effected by paying off the account and the actions were mandated to you (by the principal creditor). **2.** If this was done, the same *vir clarissimus* will extend extraordinary jurisdiction to you as you pursue them (the pledges) against their (current) possessors.

Posted July 5, in the consulship of Gordian Augustus and Aviola (239).

[120] See D. 46.1.39. Blume: "The rule seems harsh and has been the subject of considerable controversy."

[15] *Idem A. Claudiano.* **pr.** Si indebitam pecuniam quasi ex causa fideiussionis obstrictus in cautionem per errorem deduxisti, tam doli mali exceptione uti quam condicere, ut obligatio tibi accepto feratur, potes. 1. Non est autem dubium fideiussorem, rei promittendi bonis ad fiscum devolutis si idem fiscus ob debitum restituendum fuerit conventus et solverit, liberari.

PP. v k. Dec. Gordiano A. et Aviola conss.

[16] *Idem A. Maximo.* Fuit liberum, antequam adversus omnes fideiussores lis contestaretur, unum eorum eligere creditori, si modo ceteros minus idoneos existimaret. at nunc post litis contestationem petitionem divisam redintegrari iuris ratio non patitur.

PP. II id. Iun. Gordiano A. II et Pompeiano conss.

[17] *Idem A. Brasidae.* Omissis quoque pignoribus fideiussorem a creditoribus utiliter conveniri, nisi in id quod ex his refici non potuerit acceptus sit, explorati iuris est.

PP. VI id. Mart. Attico et Praetextato conss.

[18] *Imp. Philippus A. et Philippus C. Smyrnae.* Si, ut proponis, fundum ob debitum obligatum non iusto pretio vendidisti, residuam quantitatem, quam ex pretio eiusdem servare potuisses, refundi tibi a fideiussore non iure poscis.

PP. v k. Aug. Peregrino et Aemiliano conss.

[19] *Impp. Diocletianus et Maximianus AA. et CC. Sabiniano.* Si alienam reo principaliter constituto obligationem suscepisti vel fideiussorio sive mandatorio vel quocumque alieno nomine pro debitore intercessisti, non posse urgueri creditorem, eum qui mutuam accepit pecuniam quam te convenire, scire debueras, cum, si hoc in initio contractus specialiter non placuit, habeat liberam electionem.

S. II k. Mai. AA. conss.

[20] *Idem AA. et CC. Aurelio.* Sententia bonorum omnium ademptionem continente rei damnati principalis intercessores eligendi creditori potestas non adimitur.

[15] *The same Augustus to Claudianus.* **pr.** If, believing yourself a surety, you erroneously included unowed money in a written promise (to pay), you can use both the defense of fraud (if the promisee sues you on the note) and an action *in personam* that the obligation be handed over to you as "received" (*acceptum*). **1.** Further, there is no doubt that a surety is released if, after the promisor's property fell to the Treasury, this same Treasury was sued for repayment of the debt and paid it.

Posted November 27, in the consulship of Gordian Augustus and Aviola (239).

[16] *The same Augustus to Maximus.* Before joinder of issue (*litis contestatio*) occurred against all the sureties, the creditor was free to choose one of them if he thought the others less solvent. But now, after joinder of issue, the logic of law (*iuris ratio*) does not allow that the divided claim be made whole again.

Posted June 12, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

[17] *The same Augustus to Brasidas.* The law is certain that creditors may also ignore the pledges and (instead) effectively sue a surety, unless he was taken (as a surety) for what could not be realized from them.

Posted March 10, in the consulship of Atticus and Praetextatus (242).

[18] *Emperor Philip Augustus and the Caesar Philip to Smyrna.* If, as you state, you (as a creditor) did not get a just price (*pretium iustum*) when selling a farm obligated for a debt, you cannot legally demand that the surety make good the deficiency of the debt that you could have recovered from its price.

Posted July 28, in the consulship of Peregrinus and Aemilianus (244).

[19] *Emperors Diocletian and Maximian Augusti and the Caesars to Sabinianus.* If you assumed another person's obligation after the principal debtor was established, or you intervened on a debtor's behalf as a surety or a mandator or on some other basis, you ought to have known that the creditor cannot be pressed to sue the person who accepted the money loan rather than you, since, if this was not specifically agreed upon at the outset of the contract, he had a free choice (on whom to sue).[121]

Written April 30, in the consulship of the Augusti (293).

[20] *The same Augusti and Caesars to Aurelius.* When a verdict deprives someone of all his goods, his creditor's power is not taken away to choose (whom to sue among) the sureties (*intercessores*) of the condemned defendant.

[121] This constitution was later modified by Nov. 4.

[21] *Idem AA. et CC. Iuliano.* Sicut eligendi fideiussores creditor habet potestatem, ita intercessorem postulantem cedi sibi hypothecae sive pignori obligata iure non prius ad solutionem, nisi mandata super hac re fuerit persecutio, convenit urgueri.

S. XI k. Nov. AA. conss.

[22] *Idem AA. et CC. Hermiano.* Si ultra hoc, quod accepit ea, pro qua te mandatorio nomine intercessisse commemoras, daturum te scripsisti,[xviii] praeses provinciae ex hoc, quod ultra mandatum tuum numeratum est, a te nihil exigi patietur.

S. XII k. Mai. CC. conss.

[23] *Idem AA. et CC. Antipatro.* Reos principales vel mandatores simpliciter acceptos eligere vel pro parte convenire vel, satis non faciente contra quem egeras primo, post ad alium reverti, cum nullus de his electione liberetur, licet.

S. non. Dec. Nicomediae CC. conss.

[24] *Idem AA. et CC. Pergamio.* Fideiussoris quidem heres exemplo rei principalis tenetur. sed si idem utrisque succedat, intercessionis obligatione finita velut principalis tantum debitoris heres conveniri potest.

S. XI k. Ian. CC. conss.

[25] *Idem AA. et CC. Philippo.* Pignoribus datis a reo principali distractis nec post longi temporis intervallum residuum a fideiussore creditor petere prohibetur.

S. VI k. Ian. CC. conss.

[26] *Imp. Iustinianus A. Iuliano pp.* **pr.** Sancimus, si quis pro alio spoponderit, quatenus eum intra certum tempus tradat vel certam quantitatem pecuniarum pro eo inferat, et tempore statuto iam effluente non poterit eum repraesentare, non statim pecunias pro eo stipulatas inferre, sed competere quidem post temporis lapsum omnimodo poenalem actionem, non autem statim summam, pro qua fideiussor admissus est, profligari. **1.** Sed si quidem usque ad sex mensuum spatium tempus statutum sit, aliud tantum ei indulgeri, intra quod si possit personam exhibere et eam tradere, poena sit liberatus. **2.** Sin autem amplius quam sex mensuum tempus ab initio constitutum est, tunc, quanticumque

[xviii] Si ultra hoc quod daturum te scripsisti ea, pro qua te mandatorio nomine intercessisse commemoras, accepit, ...

[21] *The same Augusti and Caesars to Julian.* Just as a creditor has the option to chose (to sue) the sureties, so it is proper that a surety, if he asks that property obligated as a pledge or hypothec be assigned to him, not be pressed to pay before the right to claim it is mandated to him (by the creditor).

Written October 22, in the consulship of the Augusti (293).

[22] *The same Augusti and Caesars to Hermianus.* If the woman, for whom you say you interceded as a mandator, received more (as a loan) than you wrote that you would give (to guarantee the loan), the provincial governor will not permit you to be sued for the amount paid to her beyond what was stated in your mandate.

Written April 20, in the consulship of the Caesars (294).

[23] *The same Augusti and Caesars to Antipater.* He (the creditor) is allowed to choose (to sue) either the principal debtors, or the mandators who were accepted unconditionally, or to sue for a portion (of the debt), or, if the first person you had sued does not satisfy the debt, to have recourse to another, since none of them is freed by the (initial) choice.

Written December 5, at Nicomedia, in the consulship of the Caesars (294).

[24] *The same Augusti and Caesars to Pergamius.* The surety's heir is, indeed, liable on the pattern of the principal debtor. But if the same person becomes heir to both, the surety obligation ends and he can be sued only as the heir of the principal debtor.

Written December 22, in the consulship of the Caesars (294).

[25] *The same Augusti and Caesars to Philip.* When the pledges given by the principal debtor were sold, the creditor is not prevented from claiming the remainder from the surety even after the lapse of a long time.

Written December 27, in the consulship of the Caesars (294).

[26] *Emperor* J*USTINIAN* *Augustus to Julian, Praetorian Prefect.* **pr.** We ordain that if someone solemnly promises on another's behalf to produce him (for appearance in court) within a specified time or pay a specified amount of money for him, and after the time limit expires he is unable to present him, he does not at once pay the stipulated money for him. The action for the penalty does indeed lie in any case after the lapse of such time, but the amount for which he was admitted as surety is not exacted at once. **1.** But if the time limit was fixed up to six months, another equal time period is granted to him, within which, if he can produce and deliver the person, he is released from the penalty. **2.** But if from the outset a time of more than six months was set, then whatever extent of time was given, still after its lapse he shall have just a

temporis curricula data sunt, tamen post lapsum eorum semenstres tantum habere eum indutias, intra quas sit ei licentia personam et non pecunias reddere. **3.** Sin autem et secunda adiectio temporis excedat, tunc omnimodo poenam pecuniariam persolvat. **4.** Sed si quidem post statutum ab initio tempus completum maluerit reum pro quo convenitur defendere, licere ei hoc facere, nisi pacti tenor ad hoc reclamaverit, si forsitan sine defensione facienda pro eo fideiussit: sed si defensionem subierit, eam usque ad finem adimplere, nulla ei licentia concedenda in medio personam tradere et pecuniarum dationem effugere. **5.** Sin autem et secundum tempus effluxerit, nullo modo ei licentia concedatur nec ad defensionis venire praesidium, sed omnimodo poenam conferat, nisi intra primum tempus quod statutum est reus principalis ab hac luce fuerit subtractus: tunc enim penitus ab exactione poenae liberum eum custodiri oportet. **6.** Quod si secundo tempore instante mortuus fuerit, nihilo minus poena iam commissa a fideiussore exigatur. **7.** Omnibus, quae in fideiussores, quando tali poenae fuerint illigati, statuimus, et in heredes pro utilitate eorum obtinentibus.

D. VI k. April. Constantinopoli Lampadio et Oreste vv. cc. conss.

[27] *Idem A. Iuliano pp.* **pr.** Si fideiussor nullam quidem cautionem faciat ostendens se fideiussorem extitisse, praesentibus autem tabulariis hoc confessus est, quod in fide sua eum suscepit, dubitabatur a Palaestina advocatione, utrumne post duos menses liberatur quasi sine scriptis fideiussione facta, secundum generalia edicta sublimissimae praetorianae sedis, an utpote scriptura interveniente teneatur: et divisio alia introducebatur, si id iuris esse debet tam in publicis causis quam in privatis.

1. Sancimus itaque, nisi confessio litteris exposita fuerit a fideiussoribus ex repraesentatione personarum, licet attestatio super hoc praecesserit, attamen adhuc sine scriptis esse fideiussionem, videlicet in causis privatis, existimari *et* duobus mensibus effluentibus ab huiusmodi nexu fideiussores liberari, nisi in tempus certum data est fideiussio: tunc enim in tantum eam extendi, in quantum etiam attestatio fuerit expressa. **2.** Sin autem publica causa interveniat, tunc omnimodo attestationem pro scriptura haberi. multis etenim privilegiis propter publicas necessitates publico iuri praestitis non ab re est et nos huiusmodi praerogativam ei condonare.

D. X k. Mart. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

six-month truce within which he has leave to produce the person rather than the money. 3. But if the second time limit passes, then he shall pay the money penalty in any case. 4. But if, indeed, after lapse of the time originally set, he prefers to defend the defendant on account of whom he is sued, he is permitted to do this unless the tenor of the pact cries out against this, e.g., if perhaps his form of suretyship lacks the right of defense. But if he undertakes a defense, he must carry it out to the end, and he is not permitted in the middle (of the lawsuit) to hand over the person and escape paying money. 5. But if the second time limit also has elapsed, in no way is he given this leave, but he shall pay the penalty in any case, unless the defendant died within the originally fixed time limit; for then he must be kept entirely free from exaction of a penalty. 6. But if he died during the second period, the penalty that is now due shall be nevertheless exacted from the surety. 7. All these things which We provide for sureties when they are subject to such a penalty, apply also to heirs because of their benefit (from inheriting).

Given March 27, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[27] *The same Augustus to Julian, Praetorian Prefect.* **pr.** If, indeed, a surety should execute no written document showing that he was a surety, but in the presence of scribes he has acknowledged that he undertook suretyship for him (for his appearance in court), the question was raised by the Society of Advocates (*advocatio*) in Palestine as to whether after two months, in accord with the general edicts of the sublime Praetorian office, he is released on the ground that the suretyship (itself) was not in writing; or is he bound inasmuch as there is a written record (of his acknowledgment)? And a further distinction was introduced: should this be the law in public as well as in private cases?

1. We therefore ordain that unless the acknowledgment is set out in writing by the sureties for production of persons (in court), and even if an oral statement on this preceded, nevertheless it is still considered to be an unwritten suretyship at least for private cases, and after two months sureties are released from such an obligation unless the suretyship was given for a definite time; for then it lasts for as long as the acknowledgment stated. 2. But in a public case an (oral) acknowledgment before witnesses is generally considered the same as a writing. For it is not inappropriate that since many advantages are accorded to public law because of public requirements, We Ourselves also grant such an advantage to it.

Given February 20, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[28] *Idem A. Iohanni pp.* **pr.** Generaliter sancimus, quemadmodum in mandatoribus statutum est, ut contestatione contra unum ex his facta alter non liberetur, ita et in fideiussoribus observari. **1.** Invenimus enim et in fideiussorum cautionibus plerumque ex pacto huiusmodi causae esse prospectum, et ideo generali lege sancimus nullo modo electione unius ex fideiussoribus vel ipsius rei alterum liberari, vel ipsum reum fideiussoribus vel uno ex his electo liberationem mereri, nisi satisf*iat* creditori, sed manere ius integrum, donec in solidum ei pecuniae persolvantur vel alio modo satis ei fiat. **2.** Idemque in duobus reis promittendi constituimus, ex unius rei electione praeiudicium creditori adversus alium fieri non concedentes, sed remanere et ipsi creditori actiones integras et personales et hypothecarias, donec per omnia ei satisfiat. **3.** Si enim pactis conventis hoc fieri conceditur et in usu quotidiano semper hoc versari adspicimus, quare non ipsa legis auctoritate hoc permittatur, ut nec simplicitas suscipientium contractus ex quacumque parte possit ius creditoris mutilare?

D. XV k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[29] Ἐάν τις ἐγγυήσηται ἐπὶ τόκοις, μὴ μόνον εἰς διετίαν κατέχεσθαι, ἀλλὰ τοσοῦτον χρόνον, ὅσον σύνθηται. ὅσον οὖν θέλει χρόνον ὁριζέτω, μόνον εἰ μὴ ὑπὲρ τὸ διπλοῦν συνάγεται ἐν αὐτῷ.

XXXXI De Novationibus et Delegationibus

[1] *Imp. Alexander A. Quintiano et Timotheo.* Delegatio debiti nisi consentiente et stipulanti promittente debitore iure perfici non potest: nominis autem venditio et ignorante vel invito eo, adversus quem actiones mandantur, contrahi solet.

PP. V id. Febr. Maximo II et Aeliano conss.

[28] *The same Augustus to John, Praetorian Prefect.* **pr.** We ordain generally that the rule decreed for mandators, namely that when there is joinder of issue against one of them, the other is not released, be applied also to sureties. **1.** For We find that in the written contracts of sureties this point is often foreseen through a pact providing for this. Therefore, We ordain by a general law that a surety is in no way released when suit is brought against another surety for this matter, nor does the defendant (the principal debtor) win release when suit is brought against one of the sureties or the principal himself, unless the creditor is satisfied; rather, his right remains unaffected until the money is paid to him in its entirety or he is satisfied otherwise. **2.** Our decision is the same as to joint promisors: We do not permit action against one of them to prejudice action against another. Rather, the creditor retains his full rights of action, both *in personam* and on a hypothec, until he is entirely satisfied. **3.** For if it is allowed to do this in agreements and We (also) see this constantly occurring in daily usage, why is it not allowed by legal authority itself, so that the contracting parties' naiveté cannot damage a creditor's rights in any respect?

Given October 18, at Constantinople, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[29][122] If someone goes surety for interest (on a debt), he is liable not just for two years, but for as much time as he contracted. So he may set whatever time limit he wishes, as long as he is not bound above twice (the principal).

Forty-First Title Novations and Delegations[123]

[1][124] *Emperor* Alexander *Augustus to Quintianus and Timotheus.* The delegation of a debt cannot be legally accomplished unless the debtor agrees and promises the (new) creditor by stipulation. However, the sale of an account commonly occurs even when the person against whom the actions are mandated (i.e., the debtor) is unaware or unwilling.

Posted February 9, in the consulship of Maximus, for the second time, and Aelianus (223).

[122] The text of this constitution is taken from the Basilika (26.1.93). It lacks a salutation and subscription.

[123] See D. 46.2. A novation (*novatio*) is the merging and transfer of a prior debt into another obligation, in such a way as to destroy the former debt. In Roman law, one way to accomplish this is through *delegatio*, whereby the old creditor assigns the debtor to a new creditor and directs the debtor to promise by stipulation to pay the new creditor; thereby, the old debt is replaced by a new one.

[124] = C. 4.39.3, in part.

[2] *Imp. Gordianus A. Firmino.* Ex contractu pecuniae creditae actio inefficax dirigitur, si delegatione personae rite facta iure novationis vetustior contractus evanuit.

PP. k. Sept. Pio et Pontiano conss.

[3] *Idem A. Muciano.* **pr.** Si delegatio non est interposita debitoris tui ac propterea actiones apud te remanserunt, quamvis creditori tuo adversus eum solutionis causa mandaveris actiones, tamen, antequam lis contestetur vel aliquid ex debito accipiat vel debitori tuo denuntiaverit, exigere a debitore tuo debitam quantitatem non vetaris et eo modo tui creditoris exactionem contra eum inhibere. **1.** Quod si delegatione facta iure novationis tu liberatus es, frustra vereris, ne eo, quod quasi a cliente suo non faciat exactionem, ad te periculum redundet, cum per verborum obligationem voluntate novationis interposita debito liberatus sis.

PP. v id. Iun. Gordiano A. et Aviola conss.

[4] *Idem A. Stratonico.* Non abstulit tibi procurator tuus actionem, si, cum ei mandasses exactionem pecuniae, quam hi tibi debebant, contra quos supplicas, parte accepta de reliquo eos liberavit, cum neque contra voluntatem tuam novationem facere neque in eo quod non solvebatur eos liberare potuerit.

PP. id. Nov. Gordiano A. et Aviola conss.

[5] *Impp. Diocletianus et Maximianus AA. et CC. Septimiae.* Si pater tuus, cui te successisse proponis, creditori pro Alexandro suscepto nomine certam pecuniam stipulanti spopondit, licet per improbitatem Alexander ei satis non fecit, tamen summae repromissae nimis improbe solutio negatur.

S. II id. April. Sirmi CC. conss.

[6] *Idem AA. et CC. Ziparo.* Nec creditoris creditori quisquam invitus delegari potest.

S. XII k. Nov. Dorostolo[xix] *CC. conss.*

[7] *Idem AA. et CC. Zoilo.* Si solvere tibi pecuniam delegatus Eucarpus dare spopondit vel debitum constituit, suo nomine conveniri potest.

[xix] Durostoro

[2] *Emperor* GORDIAN *Augustus to Firminus.* An action for money owed on a contract is brought ineffectually if a delegation of the person (of the debtor) was properly made and the prior contract disappeared by the law of novation.

Posted September 1, in the consulship of Pius and Pontianus (238).

[3] *The same Augustus to Mucianus.* **pr.** If there was no delegation of your debtor and therefore the rights of action remained with you, then even if you mandate to your creditor your actions against him for payment, prior to joinder of issue (*litis contestatio*) or his (the creditor's) receiving some of the debt or his giving notice (demanding payment) to your debtor you are not forbidden from demanding from your debtor the amount owed and thereby obstructing your creditor's collection from him. **1.** But if a delegation was made and you are released by the law of novation, you needlessly fear that the risk falls on you should he fail to collect as if from a client; you (as the former creditor) are released from the debt through a verbal obligation (the stipulation) made with the intent of novation.

Posted June 9, in the consulship of Gordian Augustus and Aviola (239).

[4] *The same Augustus to Stratonicus.* Your procurator did not deprive you of your right of action if, when you gave him a mandate to collect money owed to you by the objects of your complaint, he accepted part and released them from the rest, since he could neither make a novation against your will nor release them as to the unpaid portion.

Posted November 13, in the consulship of Gordian Augustus and Aviola (239).

[5] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Septimia.* If your father, whose heir you say you are, took up an account and, on behalf of Alexander, solemnly promised his creditor by stipulation a specified sum of money, then even if Alexander dishonestly did not satisfy him (your father), nevertheless (the novation succeeds and so your) payment of the re-promised amount is not rightly refused.

Written April 12, at Sirmium, in the consulship of the Caesars (294).

[6][125] *The same Augusti and Caesars to Ziparus.* No debtor can be delegated unwillingly to a creditor's creditor.

Written October 21, at Durostorum, in the consulship of the Caesars (294).

[7] *The same Augusti and Caesars to Zoilus.* If Eucarpus, who (as a debtor) was delegated to pay you money, (either) solemnly promised by stipulation to give

[125] Combine with C. 4.5.8.

alioquin adversus eum experiri pro chirographario debitore tuo frustra conaris.

S. XVII k. Ian. CC. conss.

[8] *Imp. Iustinianus A. ad senatum.* **pr.** Novationum nocentia corrigentes volumina et veteris iuris ambiguitates resecantes sancimus, si quis vel aliam personam adhibuerit vel mutaverit vel pignus acceperit vel quantitatem augendam vel minuendam esse crediderit vel condicionem seu tempus addiderit vel detraxerit vel cautionem iuniorem acceperit vel aliquid fecerit, ex quo veteris iuris conditores introducebant novationes, nihil penitus priori cautelae innovari, sed anteriora stare et posteriora incrementum illis accedere, nisi ipsi specialiter remiserint quidem priorem obligationem et hoc expresserint, quod secundam magis pro anterioribus elegerint. **1.** Et generaliter definimus voluntate solum esse, non lege novandum, etsi non verbis exprimatur, ut sine novatione, quod solito vocabulo ἀνοβατεύτως[ix] dicunt, causa procedat: hoc enim naturalibus inesse rebus volumus et non verbis extrinsecus supervenire.

D. XI k. Aug. Constantinopoli Lampadio et Oreste vv. cc. conss.

XXXXII De Solutionibus et Liberationibus

[1] *Imp. Antoninus A. Aristaenetae.* In potestate eius est, qui ex pluribus contractibus pecuniam debet, tempore solutionis exprimere, in quam causam reddat. quod si debitor id non fecit, convertitur electio ad eum qui accepit. si neuter voluntatem suam expressit, prius in usuras id quod solvitur, deinde in sortem accepto feretur.

PP. prid. non. Iun. duobus Aspris conss.

[2] *Imp. Alexander A. Bassae.* Liberari fideiussores, quotiens fiscus tam creditori quam debitori, licet diversis stationibus, succedit, ius certum est. quod et in tua persona procuratores mei custodient.

S. k. Iun. Lupo et Maximo conss.

[ix] ἀναβατεύτως

it or informally promised the debt (through a *constitutum debiti*), he can be sued on his own account. Otherwise your attempt to sue him on behalf of your debtor by a promissory note is ineffective.[126]

Written December 16, in the consulship of the Caesars (294).

[8] *Emperor JUSTINIAN Augustus to the Senate.* **pr.** To correct harmful writings on novations and clear up the doubts in ancient law, We ordain that if anyone either summons an additional person, or changes something, or receives a pledge, or allows the amount (of the debt) to be increased or diminished, or adds or removes a condition or time limit, or receives a subsequent promissory note, or does anything that the founders of the ancient law considered novations, none of these things changes the earlier security provision in any way; instead, the prior ones remain and the later ones accrue as an increment to them, unless they themselves expressly remit the earlier obligation and state that they opt for the subsequent one in place of the earlier ones. **1.** And generally We provide that novation must occur only by consent and not by operation of law, even if it is not expressly stated that the transaction occurs without a novation – what they call by the usual (Greek) expression "through a rider." For We wish this to occur in the natural course of things, and that it not appear through words (imposed) from without.[127]

Given July 22, at Constantinople, in the consulship of viri clarissimi *Lampadius and Orestes (530).*

Forty-Second Title Payments and Releases[128]

[1] *Emperor ANTONINUS Augustus to Aristaeneta.* It is in the power of a person who owes money on several contracts (to a single creditor) to designate, at the time of his payment, for what purpose he makes it. But if the debtor did not do this, the choice becomes the recipient's. If neither expressed his wish, the amount paid is applied first to interest, then to the principal.

Posted June 4, in the consulship of the two Aspri (212).

[2] *Emperor ALEXANDER Augustus to Bassa.* It is settled law that whenever the Treasury succeeds (to the property of) both the creditor and debtor, albeit at different offices (of the Treasury), the sureties are released. My procurators shall follow this rule also in your case.

Written June 1, in the consulship of Lupus and Maximus (232).

[126] Eucarpus owed money to Zoilus' debtor and was delegated to pay the debt to Zoilus; but there was no novation unless the transaction was completed through a stipulation or an informal *constitutum debiti* whereby Zoilus was substituted for Eucarpus' original creditor.

[127] See Inst. 3.29.3.

[128] See D. 46.3.

[3] *Imp. Gordianus A. Apollonio.* Si, cum servus liberam peculii administrationem haberet, mutuam pecuniam ab eo accepisti, eique ante ademptum peculium vel priusquam ademptum cognosceres eam exsolvisti, ea solutione liberatus es.

PP. v k. Oct. Pio et Pontiano conss.

[4] *Idem A. Rufinae.* Nihil interest, utrum creditori pecuniam mutuam solveris, an ex eius voluntate servo numeraveris. nec enim ex eo, quod creditor in fatum concessit, priusquam instrumenta redderet, evacuatae obligationis vires reparari queunt.

PP. prid. id. Oct. Pio et Pontiano conss.

[5] *Idem A. Celso.* Nulla tibi adversus creditorem alienum actio superest eo, quod debitam ei quantitatem offerens ius obligationis in te transferri desideras, cum ab eo te nomen comparasse non suggeras, licet[xxi] solutione ab alio facta nomine debitoris evanescere soleat obligatio.

PP. VII k. Nov. Pio et Pontiano conss.

[6] *Idem A. Alexandro.* Si inter patrem tuum eosque, quos debitores esse dicebas, non de dubia lite transactio facta est, sed parte tantummodo recuperata universum se recepisse cavit nec de superfluo eos, qui verbis obligati erant, per acceptilationem liberavit nec donationis causa id factum est, exuberantis debiti integra ei repetitio competit.

PP. III id. Febr. Gordiano A. et Aviola conss.

[7] *Imp. Philippus A. et Philippus C. Antiocho.* Eius quantitatis, cuius petitionem ratio compensationis excludit, usuram non posse reposci manifestum est.

PP. VI k. Aug. Peregrino et Aemiliano conss.

[8] *Idem A. et C. Rufo.* Usuras, quae quotannis in urbe numerandae sunt, promittere[xxii] alio loco dependi nisi ex iusta causa exempli ratio minime sinit.

PP. v id. Mai. Philippo A. et Titiano conss.

[9] *Impp. Diocletianus et Maximianus AA. Cassio.* Obsignatione totius debitae pecuniae sollemniter facta liberationem contingere manifestum

[xxi] et
[xxii] permittere

[3] *Emperor* GORDIAN *Augustus to Apollonius.* If a slave had free administration (*libera administratio*) of his *peculium* and you took a money loan from him, and you paid it back before his *peculium* was taken away from him or before you knew of this, you are released by this payment.
Posted September 27, in the consulship of Pius and Pontianus (238).

[4] *The same Augustus to Rufina.* It makes no difference whether you pay a money loan to the creditor, or (instead) you disburse it to his slave at his request. Nor can a discharged obligation regain vitality by reason of the creditor dying before he hands over the documents (proving the debt).
Posted October 14, in the consulship of Pius and Pontianus (238).

[5] *The same Augustus to Celsus.* You have no remaining right of action against another person's creditor by virtue of tendering to him the amount owed and seeking transfer of the obligation right to yourself, since you do not indicate that you had bought the account from him; and when a third party makes a payment on a debtor's account, the (original) obligation is usually extinguished.
Posted October 26, in the consulship of Pius and Pontianus (238).

[6] *The same Augustus to Alexander.* If there was no settlement of a doubtful legal claim between your father and those you say are his debtors, but he received only part and gave an acknowledgment that he had received it all, and he did not use a formal acceptance (*acceptilatio*) to release from the remainder those who were obligated verbally (under a stipulation), and this was not done as a gift, he (still) has the entire claim for the remaining debt.
Posted February 11, in the consulship of Gordian Augustus and Aviola (239).

[7] *Emperor* PHILIP *Augustus and the Caesar* PHILIP *to Antiochus.* It is obvious that no interest can be demanded for an amount when the claim for it (the amount) is barred by reason of a judicial off-set (*compensatio*).
Posted July 27, in the consulship of Peregrinus and Aemilianus (244).

[8] *The same Augustus and Caesar to Rufus.* If interest (on a debt) is to be paid annually in the city (of Rome), fear of a bad precedent (*ratio exempli*) does not allow permitting its payment elsewhere, except for a good cause.
Posted May 11, in the consulship of Philip Augustus and Titianus (245).

[9] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Cassius.* When the sealing of all the money owed takes place in the regular manner, it is obvious that

est. sed ita demum oblatio debiti liberationem parit, si eo loco, quo debetur solutio, fuerit celebrata.

PP. v id. Mai. Maximo II et Aquilino conss.

[10] *Idem AA. et CC. Ambrosio.* Successores eius, qui maior quinque et viginti annis in solutum pro debito iure mancipia dedit, haec revocare non posse constat.

S. v id. April. Byzantii AA. conss.

[11] *Idem AA. et CC. Capitolinae.* Cum maritum tuum a debitoribus tuis minoris viginti et quinque annis constitutae velut ex causa tibi debiti aliquas accepisse quantitates nec tamen te consensum commodasse significes, nullum tibi potuit praeiudicium fieri, nisi factam solutionem post maiorem aetatem ratam feceris.

S. v k. Mai. Heracliae AA. conss.

[12] *Idem AA. et CC. Eutycho.* Invito vel ignorante creditore qui solvit alii, non se liberat obligatione. quod si hoc vel mandante vel ratum habente eo fecerit, non minus liberationem consequitur, quam si eidem creditori solvisset.

S. III id. Mai. AA. conss.

[13] *Idem AA. et CC. Philotimo.* Si obligatum ex causa mandati non per stipulationem facta novatione, post acceptilatione liberasti, sed tantum receptam ex eadem causa debitam quantitatem falso scripsisti, figmento veritatis extingui non potuit obligatio.

S. VII k. Iun. AA. conss.

[14] *Idem AA. et CC. Cutae.* Pecuniae solutae professio collata instrumento maiorem gestae rei probationem continet, quam si chirographum acceptae mutuae pecuniae fuisset redditum.

S. v id. Iul. AA. conss.

[15] *Idem AA. et CC. Quartioni.* Quod debitori tuo chirographum redditum contra voluntatem tuam adseveres, nihil de iure tuo deminutum est. quibuscumque itaque argumentis iure proditis hanc obligationem tibi probanti eum per huiusmodi factum liberationem minime consecutum iudex ad solutionem iure debiti compellet.

S. v k. Sept. AA. conss.

release occurs. But tender of a debt leads to release (only) if it takes place where the debt is owed.

Posted May 11, in the consulship of Maximus, for the second time, and Aquilinus (286).

[10] *The same Augusti and the Caesars to Ambrosius.* It is clear that if a person over age 25 lawfully gave slaves in payment of a debt he owed, his successors cannot reclaim them.

Written April 9, at Byzantium, in the consulship of the Augusti (293).

[11][129] *The same Augusti and Caesars to Capitolina.* Since you indicate that, while you were under age 25, your husband received some sums of money from your debtors as if on the basis of a debt owed you, and that you did not provide your consent, he could not prejudice you unless you ratified the payment after coming of age.

Written April 27, at Heraclea, in the consulship of the Augusti (293).

[12] *The same Augusti and Caesars to Eutychus.* Someone who pays a third party without the creditor's consent or knowledge does not release himself from the obligation. But if he does this and the creditor mandates or ratifies it, he achieves release not less than if he had paid it to the same creditor.

Written May 13, in the consulship of the Augusti (293).

[13] *The same Augusti and Caesars to Philotimus.* If a person was obligated to you on the basis of a mandate and you did not release him through a stipulation by making a novation and then a formal release (*acceptilatio*), but you just wrote, falsely, that you had received the amount owed for this reason, the obligation could not be extinguished by the false pretense of truth.

Written May 26, in the consulship of the Augusti (293).

[14] *The same Augusti and Caesars to Cuta.* Acknowledgment of a money payment in a document is a better proof of what was done than is return of the promissory note (*chirographum*) for the receipt of the money loaned.

Written July 11, in the consulship of the Augusti (293).

[15] *The same Augusti and Caesars to Quartio.* If, as you assert, a promissory note was returned to your debtor against your will, your rights are not at all diminished. So if you prove this obligation by whatever legal proofs you can, under the law of debt the judge will compel him to pay, since he hardly achieved release by such an act.

Written August 28, in the consulship of the Augusti (293).

[129] Combine with C. 5.16.17.

[16] *Idem AA. et CC. Charidemo.* Eum, a quo mutuam sumpsisti pecuniam, in solutum nolentem suscipere nomen debitoris tui compelli iuris ratio non permittit.

S. xv k. Nov. AA. conss.

[17] *Idem AA. et CC. Cassio.* Manifesti iuris est tam alio pro debitore solvente quam rebus pro numerata pecunia consentiente creditore datis tolli comparatam obligationem.

S. k. Dec. Sirmi AA. conss.

[18] *Idem AA. et CC. Domitio Aphobio.* Inquisitio veritatis tolli non potuit, quod chirographa, quae fecerat procurator tuus, recepta tibique restituta ab ipsius herede proponas cum subscriptione procuratoris significante, quod nihil creditoribus debeatur, cum nihil prohibeat et creditoribus satisfactum et non vestrae pecuniae, sed ipsius, cui negotium gerendum mandaveras, processisse solutionem.

S. id. Febr. CC. conss.

[19] *Idem AA. et CC. Diogeni.* Si, actore tam mutuis pecuniis dandis quam debitis recipiendis praeposito, in hoc quod susceperas eius dominae per ipsum fecisti satis, instrumentum inane solutione celebrata nihil tibi nocere potest. aliter enim solventes servo de actione domini liberare se minime possunt.

S. v id. Oct. CC. conss.

[20] *Idem AA. et CC. Eucratidi.* Si operas certi servi pecunia sumpta creditorem sibi in debitum compensare placuit, his secundum conventionis fidem praestitis de mancipio restituendo pacti tenor servari debet.

S. v k. Nov. Hadrianopoli CC. conss.

[21] *Idem AA. et CC. Rufo.* Interest multum, utrumne spe futurae numerationis suscepisse te quod instrumento continetur scripsisti, an accepta minore quantitate tantum quantum lectio probat in scriptura conferri placuit. nam superiori quidem casu residui petitio debiti

[16] *The same Augusti and Caesars to Charidemus.* The logic of law (*iuris ratio*) does not permit that your creditor, from whom you received a money loan, be compelled unwillingly to accept your debtor's account as payment.

Written October 18, in the consulship of the Augusti (293).

[17] *The same Augusti and Caesars to Cassius.* It is clear law that a purchased obligation is released as much by a third party paying for the debtor as by property being given, with the creditor's consent, for the money paid.

Written December 1, at Sirmium, in the consulship of the Augusti (293).

[18][130] *The same Augusti and Caesars to Domitius Aphobius.* A search for the truth (i.e., a judicial investigation) cannot be excluded by reason of the fact that, as you state, the promissory notes that your procurator had executed were returned (to him) and then restored to you by his heir with the procurator's notation that nothing was owed to the creditors, since nothing prevents it being true that the creditors were satisfied, but that payment came not from your money but from that of the person to whom you entrusted the management of your affairs (the procurator).

Written February 13, in the consulship of the Caesars (294).

[19] *The same Augusti and Caesars to Diogenes.* If a slave manager (*actor*) was charged both with giving money loans and receiving debts, and for the debt you had undertaken you satisfied his female owner through him, the document (proving the debt), valueless if payment is known to have occurred, cannot harm you at all. For otherwise those who pay a slave cannot (thereby) release themselves from the master's lawsuit.

Written October 11, in the consulship of the Caesars (294).

[20] *The same Augusti and Caesars to Eucratides.* If, for a debt to himself, a creditor agreed to accept the work of a specific slave in place of a money payment, and this work was rendered with fidelity to the agreement, the tenor of the pact should be carried out concerning return of the slave (to the debtor).

Written October 28, at Adrianople,[131] in the consulship in the Caesars (294).

[21] *The same Augusti and Caesars to Rufus.* It makes a great difference whether you wrote that the amount recorded in a document was accepted by you in expectation of a future payment, or whether it was agreed that, upon receipt of a lesser sum, the amount mentioned in the writing should be stated to have been received. For in the first case the claim for the rest of the debt

[130] Combine with C. 2.25.1 (slightly different date), 4.51.4 (only source for Aphobius).

[131] More likely Anchialos (Connolly). Mommsen dates to October 31, 294.

manet integra, posteriori vero consensu transactionis finitis stare convenit.

S. III non. Dec. CC. conss.

[22] *Idem AA. et CC. Grato.* Inductum (id est cancellatum) nec ne sit chirographum, vestrum solutionem semel debiti factam ei, qui exigendi potestatem habuit, probantium nihil interest.

S. V id. Dec. CC. conss.

[23] *Idem AA. et CC. Vatio.* Si litterarum Auxanonis contemplatione, quas ad Aristonem de numeranda tibi pecunia dederat, recepisse scripsisti debitum ab Aristone, mandato non impleto, cum petitio debiti manet integra, nihil legitimam exactionem impedire potest.

S. XV k. Ian. Nicomediae CC. conss.

[24] *Idem AA. et CC. Rufino.* Cum pro pecunia quam acceperas secundum placitum Euandro te fundum dedisse profitearis, eius industriam vel eventum meliorem tibi, non ipsi prodesse, contrarium non postulaturus, si minoris distraxisset, non iusta[xdiii] petis.

S. VII k. Ian. Nicomediae CC. conss.

[25] *Idem AA. et CC. Antelliano.* Solutionem adseveranti probationis onus incumbit: quo facto chirographum condicere potest.

S. III k. Ian. Nicomediae CC. conss.

XXXXIII De Acceptilationibus

[1] *Imp. Antoninus A. Apronio.* Iam tibi rescripsi posse apud iudicem quaeri, an sollemnibus verbis tutoris auctoritate interveniente soror tua acceptilatione debitorem suum liberaverit. quare si in repetenda pecunia, quam exsolvit, diversa pars perseveraverit, uteris defensionibus competentibus.

PP. III id. Febr. duobus Aspris conss.

[xdiii] iuste

remains intact, but in the second it is proper to stick with what is resolved in the consensual settlement (and so bar suit for any remainder).

Written December 3, in the consulship of the Caesars (294).

[22] *The same Augusti and Caesars to Gratus.* In proving that a debt payment was once made to a party who had the power to collect it, as to you it makes no difference whether or not the promissory note was erased, i.e., cancelled.

Written December 9, in the consulship of the Caesars (294).

[23] *The same Augusti and Caesars to Vatius.* If, in consideration of Auxano's letters which he had given on behalf of Aristo about paying money to you, you wrote that you had received a debt from Aristo, but the mandate (to Auxano) was not fulfilled, since your claim on the debt (from Aristo) remains intact, nothing obstructs (your) legal collection (of it).

Written December 18, at Nicomedia, in the consulship of the Caesars (294).

[24] *The same Augusti and Caesars to Rufinus.* Since you acknowledge that, in accord with an agreement, you gave a farm to Evander in return for money you had accepted, you do not justly request that his diligence or better luck (in selling for a larger price) profit you, not him, since you would not seek the contrary if he had sold it for a smaller price.

Written December 26, at Nicomedia, in the consulship of the Caesars (294).

[25] *The same Augusti and Caesars to Antellianus.* The burden of proof falls on the person alleging payment. If this is done, he can sue to recover a promissory note.

Written December 30, at Nicomedia, in the consulship of the Caesars (294).

Forty-Third Title Formal Releases (*Acceptilationes*)[132]

[1] *Emperor* Antoninus *Augustus to Apronius.* I have (previously) sent you a rescript that trial can be held before a judge as to whether your sister, with consent from her *tutor*, released her debtor through a formal release (*acceptilatio*) with the prescribed words. So if the other party perseveres in reclaiming the money he paid, you will use the relevant defenses.[133]

Posted February 11, in the consulship of the two Aspri (212).

[132] See D. 46.4.

[133] Blume: "In this case the sister ... the creditor ... died, leaving her brother as her heir. The debtor of the sister demanded the money back which he had paid in payment of the debt, upon the ground that the sister's release was not valid. But the rescript says that if she gave a formal release, with the consent of her guardian, her act is valid and that, accordingly, the debtor, being lawfully released, cannot reclaim the money, which, had not valid release been given, he might have recovered as having been paid without consideration or on any just ground."

[2] *Impp. Diocletianus et Maximianus AA. et CC. Claro.* Si donationis gratia novatione facta per acceptilationem praestiteris liberationem, omnis agendi via perempta est.

S. VI k. Ian. AA. conss.

[3] *Idem AA. et CC. Demetriae.* Per Aquilianam stipulationem pacto subditam obligatione praecedente sublata et acceptilatione, quae fuerit inducta, perempta ei, qui ex nulla causa restitui potest, omnis agendi via praecluditur.

S. V k. Dec. CC. conss.

XXXXIIII De Evictionibus

[1] *Impp. Severus et Antoninus AA. Munatio.* Emptor hereditatis rem a possessoribus sumptu ac periculo suo persequi debet. evictio quoque non praestatur in singulis, cum hereditatem iure venisse constet, nisi aliud nominatim inter contrahentes convenit.

PP. VI k. Mart. Severo II et Victorino conss.

[2] *Idem AA. Quartae.* Quoniam avus tuus, cum praedia tibi donaret, de evictione eorum cavit, potes adversus coheredes tuos ex causa stipulationis consistere ob evictionem praediorum, pro portione scilicet hereditaria. nudo autem pacto interveniente minime donatorem hac actione teneri certum est.

PP. II k. Mart. Antonino A. II et Geta II conss.

[3] *Idem AA. Aureliano.* Qui rem emit et possidet, quamdiu evicta non est, auctorem suum propterea, quod aliena vel obligata res dicatur, convenire non potest.

PP. VIII k. Aug. Faustino et Rufino conss.

[2][134] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Clarus.* If a novation was made (by you) as a gift and you (then) granted a discharge (from the novated debt) through a formal release, every avenue for (your) bringing suit is closed.

Written December 27, in the consulship of the Augusti (293).

[3] *The same Augusti and Caesars to Demetria.* If a preceding obligation is removed by an Aquilian stipulation[135] attached to a pact, and a formal release that was cancelled is destroyed, every avenue for bringing an action is foreclosed and in no way can he be restored (to his former rights as a creditor).

Written November 27, in the consulship of the Caesars (294).

Forty-Fourth Title Evictions[136]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Munatius.* The purchaser of an inheritance should recover the property from its possessors at his own expense and risk. When it is agreed that an inheritance was lawfully sold, there is no liability (on the seller's part) for eviction from individual pieces of property unless it is expressly agreed otherwise between the parties.

Posted February 24 or 25, in the consulship of Severus, for the second time, and Victorinus (200).

[2] *The same Augusti to Quarta.* Since your grandfather, in bestowing properties on you, gave a formal guarantee (*cautio*) against eviction from them, you can sue your co-heirs on the stipulation because of your eviction from the properties – in proportion, of course, to their (shares in the) inheritance. But it is settled that a donor is not liable in this action if there was a bare pact (against eviction, without a *cautio*).

Posted February 28, in the consulship of Antoninus Augustus, for the second time, and Geta, for the second time (205).

[3] *The same Augusti to Aurelianus.* A person who buys and takes possession of property cannot sue the guarantor (against eviction; i.e., the seller as *auctor*) as long as he is not evicted (by the true owner), (i.e., there is no claim merely) because the object allegedly belongs to a third party or is obligated (as security for a debt).

Posted July 25, in the consulship of Faustinus and Rufinus (210).

[134] Perhaps combine with C. 3.32.18.

[135] The Aquilian stipulation, invented by the late Republican jurist Aquilius Gallus, is a formal device to release an obligation not contracted by stipulation. See D. 43.4.18 and Inst. 3.29.2.

[136] *Evictiones*; see D. 46.3; also 21.2. *Evictio* occurs when a current possessor is legally ousted from possession by the true owner of property. Much of this title centers on sellers who are guarantors (*auctores*) against subsequent eviction.

[4] *Imp. Antoninus A. Georgio.* Si praedium tibi pro soluto datum aliis creditoribus fuerat obligatum, causa pignoris mutata non est. igitur si hoc iure fuerit evictum, utilis tibi actio contra debitorem competit. nam eiusmodi contractus vicem venditionis obtinet.

PP. XI k. Aug. duobus Aspris conss.

[5] *Idem A. Patroinae.* Ex praediis, quae mercata es, si aliqua a venditore obligata et necdum tibi tradita sunt, ex empto actione consequeris, ut ea a creditrice liberentur: id enim fiet, si adversus venditorem ex vendito actione pretium petentem doli exceptionem opposueris.

PP. XV k. Oct. duobus Aspris conss.

[6] *Imp. Alexander A. Octavio.* Non dubitatur, etsi specialiter venditor evictionem non promiserit, re evicta ex empto competere actionem.

PP. VIII id. Mart. Alexandro A. cons.

[7] *Idem A. Hilariano.* Auctore laudato si evicta res est, fideiussorem, etiamsi agi causam ignoraverit, conveniri evictionis nomine posse non ambigitur.

PP. III non. April. Alexandro A. cons.

[8] *Idem A. Clementio.* Emptor fundi, nisi auctori aut heredi eius denuntiaverit, evicto praedio neque ex stipulatu neque ex dupla neque ex empto actionem contra venditorem vel fideiussores eius habet. sed et si iudicio emptor non adfuit aut praesens per iniuriam iudicis victus est absente auctore vel fideiussore, regressum adversus eum non habet.

PP. VIII id. Dec. Alexandro A. cons.

[9] *Idem A. Terentio.* Si controversia tibi possessionis, quam bona fide te emisse adlegas, ab aliquo movetur, auctori heredive eius denuntia. et si quidem obtinueris, habebis quod emisti. sin autem evictum erit, a venditrice successoreve eius consequeris, quanti tua interest: in quo continetur etiam eorum persecutio, quae in rem emptam a te, ut melior fieret, erogata sunt.

PP. XI k. Ian. Alexandro A. cons.

[10] *Idem A. Largo.* Si fines agri venditor demonstravit et legem dixit intra eos neminem ingressurum, si quid inde evincatur, periculo fit

[4] *Emperor* ANTONINUS *Augustus to Georgius.* If land given to you as a payment had been (previously) obligated to other creditors, the legal basis of the pledge is unchanged. So if you are evicted (by the creditors) on this basis, you have an analogous action (*utilis actio*) against the debtor, since such a contract is much like a sale.

Posted July 22, in the consulship of the two Aspri (212).

[5] *The same Augustus to Patroina.* Of the properties that you bought, if some were obligated (as security) by the seller and have not yet been handed over to you, by an action on purchase you will bring it about that they be redeemed from the creditor (who holds the security interest). For this will (also) happen if you set up the defense of deceit against the seller who claims the price in an action on sale.

Posted September 17, in the consulship of the two Aspri (212).

[6] *Emperor Alexander Augustus to Octavius.* There is no doubt that although a seller did not specifically promise (a warranty against) eviction, an action on purchase lies if eviction occurs.

Posted March 8, in the consulship of Alexander Augustus (222).

[7] *The same Augustus to Hilarianus.* There is no doubt that if the guarantor (seller) was put on notice (of an eviction suit) and eviction (of the buyer) then occurred, the (seller's) surety can be sued on the eviction even if he did not know of the lawsuit.

Posted April 3, in the consulship of Alexander Augustus (222).

[8] *The same Augustus to Clementius.* Unless the buyer of a farm gives notice to the guarantor or his heir, after eviction he has no action against the seller or his sureties on a stipulation (against eviction) or to recover double or on the sale. But also if the buyer was not present at the trial, or was present and lost through judicial misconduct in the absence of the guarantor or his surety, he has no recourse against him (the seller).

Posted December 6, in the consulship of Alexander Augustus (222).

[9] *The same Augustus to Terentius.* If someone raises a dispute with you over a possession you claim you purchased in good faith, give notice to the guarantor (seller) or her heir. If, indeed, you win, you will have what you bought. But if there is an eviction, from the seller or her heir you will recover your interest (*quanti tua interest*), including also what you spent on improvements to the object of sale.

Posted December 22, in the consulship of Alexander Augustus (222).

[10] *The same Augustus to Largus.* If the seller of land indicated the boundaries and gave a guarantee (*lex*) that no one would invade them, and you are then

auctoris. quod si finibus suis quos[xxiv] demonstravit, agrum vendidit, lis finalis ad venditorem non pertinet.

PP. VII k. Dec. Maximo II et Aeliano conss.

[11] *Idem A. Clementi.* Exceptione doli recte eum submovebis, quem ab auctore tuo fideiussorem accepisti, si eius nomine controversiam refert, quasi per uxorem suam, antequam tu emeres, comparaverit, qui vendenti adeo consensum dedit, ut se etiam pro evictione obligaverit.

PP. non. Febr. Pompeiano et Peligno conss.

[12] *Imp. Gordianus A. Philippo.* Sive in libertatem evictus est servus quem mercatus es, sive cum comparares convenit, si qua quaestio eius nomine relata esset, etsi necdum evictus esset, ut pretium recuperares, praeses provinciae, quod tibi praestandum animadverterit, restitui iubebit.

PP. VII id. Mart. Gordiano A. et Aviola conss.

[13] *Idem A. Zoilo.* Si ob causam iudicati pignora capta sunt ex eius auctoritate, cui praecipiendi ius fuit, ea de quibus complecteris, eaque tu mercatus es, frustra ab ea quae condemnata est vel quae in eius locum successit eorum refertur quaestio, quandoquidem, etsi evictio eorum ab alio subsecuta fuisset, adversus eos debuisse dari actionem, quibus pretii solutio proficit, meritissime rescriptum est.

PP. XVI k. Iun. Gordiano A. et Aviola conss.

[14] *Idem A. Secundino.* Sive possessio venditoris fuit, filius eiusdemque patris heres frustra quaestionem movet, sive non patris, sed filii eius possessio fuit, de qua iure hereditario auctor laudari potest, controversiam movere non potest.

PP. XIIII k. Aug. Gordiano A. et Aviola conss.

[xxiv] quos non

evicted, the (seller as) guarantor bears the risk. But if he sold the land with its (current) borders, but did not indicate them, the suit over boundaries does not concern the seller.

Posted November 25, in the consulship of Maximus, for the second time, and Aelianus (223).

[11] *The same Augustus to Clemens.* Through the defense of deceit (*exceptio doli*) you will properly defeat the person you accepted from your guarantor as a surety, if on his own account he (the surety) raises a dispute over it on the theory that he purchased it through his wife before you bought it (and hence that he is the true owner), (since) he gave his consent to the sale to such an extent that he even obligated himself for eviction.

Posted February 5, in the consulship of Pompeianus and Pelignus (231).

[12] *Emperor* G*ORDIAN* *Augustus to Philip.* If the slave you purchased was evicted into freedom (i.e., found to be free and so unsaleable), or if it was agreed when you made the purchase that if any controversy arose on this account, you should recover the price even if he was not yet evicted, the provincial governor will order restitution of what he determines should be paid to you.

Posted March 9, in the consulship of Gordian Augustus and Aviola (239).

[13] *The same Augustus to Zoilus.* If, pursuant to a judgment, the pledges you describe were seized on the authority of a person with jurisdiction, and you then purchased them, controversy over them is pointlessly raised by the woman who was condemned or by her successor, since even if their eviction (from you) by a third party had followed, a rescript most deservedly held that an action should be given against those who profited from your payment of the price (i.e., the pledgors).[137]

Posted May 17, in the consulship of Gordian Augustus and Aviola (239).

[14] *The same Augustus to Secundinus.* If (at the time of sale) a possession was the seller's, his son, as the father's heir, baselessly raises a question (about true ownership). If the possession was not the father's but the son's, then since he (the son) can be put on notice as the guarantor under the law of inheritance, he cannot raise the dispute.[138]

Posted July 19, in the consulship of Gordian Augustus and Aviola (239).

[137] Blume: "The pledgee obtained the pledged property pursuant to judgment, and had it sold. The pledgor and his heir could not reclaim it. And if the title was not good, and a third person came in and took it away from the purchaser, the pledgor was responsible to the latter, but only to the extent of the amount paid out by him plus interest. D. 21.2.74.1."

[138] Blume: "Since the son, as heir, was liable on a warranty for quiet enjoyment, it would have been useless for him to try to recover the property."

[15] *Imp. Philippus A. et Philippus C. Menandro.* Si non iniuria iudicantis, sed iuris ratione superatus es, pignus ob evictionem acceptum sollemniter persequi potes.
PP. k. Aug. Philippo A. et Titiano conss.

[16] *Impp. Diocletianus et Maximianus AA. Alexandro et Diogeni.* Super empti agri quaestione disceptabit praeses provinciae et, si portionem diversae partis esse cognoverit, impensas, quas ad meliorandam rem vos erogasse constiterit, habita fructuum ratione restitui vobis iubebit. nam super pretio evictae portionis non eum qui dominium evicerit, sed auctricem conveniri consequens est.
PP. x k. Iul. ipsis IIII et III AA. conss.

[17] *Idem AA. Muciano.* Si, cum quaestio tibi super eo quem comparaveras commoveretur, auctorem tuum certum fecisti nec citra iudicis disceptationem eum quem emeras tradidisti, praeses provinciae in damnis, quae te tolerasse meministi, medelam iuris adhibebit.
PP. V id. Nov. ipsis IIII et III AA. conss.

[18] *Idem AA. et CC. Eutychio.* Si status super homine tibi venumdato mota quaestio est, sollemnibus, quae iuris admittit ratio, interpositis si secundum libertatem fuerit lata sententia, poteris de evictione, si nesciens condicionem eius comparasti, sine aliqua dubitatione auctorem vel eius fideiussores heredesve eorum convenire. quod si fuisse servum sententia declaraverit, intellegis ad venditorem te reverti non posse.

[19] *Idem AA. et CC. Theodoro.* Si obligata praedia venumdedisti et longi temporis praescriptione solita emptores se tueri possunt, evictionis periculum timere non potes.
S. II k. Mai. AA. conss.

[20] *Idem AA. et CC. Solido et aliis.* **pr.** Si parentes vestri mancipia venumdederunt quaestioque dominii mota est, emptoribus adesse ac defendere causam non prohibemini. **1.** Quod si eis haec iam evicta sunt,

[15] *Emperor* PHILIP *Augustus and the Caesar* PHILIP *to Menander.* If you were defeated (in an action over eviction) not through judicial misconduct but by reason of law, in the proper manner you can pursue a pledge taken against eviction.

Posted August 1, in the consulship of Philip Augustus and Titianus (245).

[16] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Alexander and Diogenes.* The provincial governor will try the dispute as to the purchased land, and, if he finds a portion of it belongs to the other party, he will order restitution to you of the expenditures you made on its improvement, after taking account of (i.e., deducting) the fruits. For as to the price paid for the evicted portion, it follows that suit is against not the person who recovered ownership, but the woman guarantor (seller).

Posted June 22, in the consulship of the Augusti themselves, Consuls for the fourth and third time, respectively (290).

[17] *The same Augusti to Mucianus.* When a dispute (about ownership) arose over a slave you purchased, if you notified your guarantor and did not deliver the one you had bought (to the claimant) until the judge's decision, the provincial governor will provide a legal remedy for the losses that you state you sustained.

Posted November 9, in the consulship of the Augusti themselves, Consuls for the fourth and third time, respectively (290).

[18] *The same Augusti and the Caesars to Eutychius.* If a question of legal status is raised about a slave sold to you, and the proper words that the logic of law (*iuris ratio*) allows were interposed (in transferring ownership) but the verdict favored liberty, then if you purchased while unaware of his legal condition, beyond all doubt you can sue the guarantor or his sureties or their heirs on the eviction. But if the verdict declares he was a slave, you realize that you have no recourse against the seller.

(293).

[19] *The same Augusti and Caesars to Theodorus.* If you sold properties obligated (as pledges) and the buyers can protect themselves by the usual long-time prescription (*praescriptio longi temporis*), you cannot fear a risk (of liability) from (their) eviction.

Written April 30, in the consulship of the Augusti (293).

[20] *The same Augusti and Caesars to Solidus and others.* **pr.** If your parents sold slaves and a question of ownership arose, you are not prevented from being present for the buyers and defending the case (as potentially liable guarantors). **1.** But if they have already been evicted from them, your request to

instauratio litis ex persona vestra, si appellationem non interposuistis, contra ius desideratur. **2.** Empti sane iudicio pro evictione si conveniri coeperitis, nec vobis, ut defendatis, negotium denuntiatum probetur, intellegitis, quatenus vosmet ipsos tueri debeatis.

S. VI k. Iul. AA. conss.

[21] *Idem AA. et CC. Heliodoro.* **pr.** Empti actio longi temporis praescriptione non submovetur, licet post multa spatia rem evictam emptori fuerit comprobatum. **1.** Si itaque is, quem te comparasse commemoras, nunc in libertatem proclamet, interpellare venditorem sive successores eius debes, ut tibi adsistant causamque instruant. **2.** Quem si liberum esse vel servum[xxv] non esse fuerit pronuntiatum, nec te conventione remisisse periculum evictionis fuerit comprobatum, praeses provinciae, si res integra est, quanti tua interest restitui tibi providebit.

S. XI k. Iul. Serdicae AA. conss.

[22] *Idem AA. et CC. Iulio.* Cum tibi liberum venumdatum fundum ab auctore proponas, si ex antecedente obligatione quod debebatur iure solvisti, stipulationem, quam subiectam emptioni de indemnitate proponis, ipsius conceptio commissam manifeste declarat.

S. VII k. Sept. Viminacii AA. conss.

[23] *Idem AA. et CC. Eustochiae.* Cum successores etiam venditoris pro evictione teneri possint, si velut obligata sibi res publica Thessalonicensium pignoris instituat iure persequi quae comparasti, auctoris heredibus quocumque gradu constitutis adsistere negotio denuntia. quod sive praesentibus his fundus quem emisti fuerit evictus sive absentibus, postea quanti tua interest rem evictam non esse teneri, non quant*um* pretii nomine dedisti, si aliud non placuit, publice notum est.

S. II k. Ian. Sirmi AA. conss.

[24] *Idem AA. et CC. Eutychio.* **pr.** Si post perfectam venditionem ante pretium numeratum rei venumdatae mota fuerit quaestio vel mancipia venumdata proclament in libertatem, cum in ipso limine contractus immineat evictio, emptorem, si satis ei non offeratur, ad totius vel residui pretii solutionem non compelli iuris auctoritate monstratur. **1.** Unde cum parte pretii numerata, domus quam emisti tibi velut pignoris iure

[xxv] servum tuum

reopen the litigation is contrary to law if you did not appeal (the judgment). **2.** Of course, if you come to be sued over the eviction by the action on sale, and it is not shown that you received notice to defend (the earlier suit), you know to what extent you should protect yourselves.

Written June 26, in the consulship of the Augusti (293).

[21] *The same Augusti and Caesars to Heliodorus.* **pr.** The action on purchase is not barred by a long-time prescription even if it is confirmed that the buyer was evicted from the object after a very great time.[139] **1.** So if the person whom you say you bought now asserts his freedom, you should call upon the seller or his successors to stand by you and assist your case. **2.** If the verdict is that he is free or not your slave, nor is it confirmed that you you agreed to waive the (seller's) risk for your eviction, the provincial governor will, if the matter remains intact, provide restitution to you of your interest.

Written June 21,[140] at Serdica, in the consulship of the Augusti (293).

[22] *The same Augusti and Caesars to Julius.* Since you say that the guarantor sold you a farm (represented as) free (from all claims), if you paid what was legally owed from a preceding obligation (on the farm), then from the very framing of the stipulation for indemnity that you say was added to the purchase, it (the stipulation) is clearly in default.

Written August 26, at Viminacium, in the consulship of the Augusti (293).

[23] *The same Augusti and Caesars to Eustochia.* Since the seller's successors can also be liable for eviction, if the municipality of Thessalonica begins a lawsuit on pledge in order to recover what you bought as having been (previously) obligated to it, give notice to the seller's heirs, no matter their rank, to stand by the transaction. If, whether in their presence or absence, you are evicted from the farm you bought, it is universally recognized that they are liable for your interest in not being evicted, (and) not just for what you gave as the price, unless it was otherwise agreed.

Written December 31, at Sirmium, in the consulship of the Augusti (293).

[24] *The same Augusti and Caesars to Eutychius.* **pr.** If, after a completed sale but before the price is paid, a question is raised about (ownership of) the purchased property, or if purchased slaves assert their freedom, since an eviction looms on the very threshold of the contract, legal authority makes evident that the buyer cannot be compelled to pay the entire price or the remainder unless he is given security (against eviction). **1.** So, since you allege that, after you paid

[139] Blume: "The prescription period ... applied only to real actions for the recovery of property."
[140] More likely July 22 (Connolly). Mommsen dates to June 28, 293.

obligatae ne ad emptionem accederes, denuntiatum ab aliquo proponas, iudex tibi quae ex emptione veniunt praestari providebit.

S. VI k. Febr. Sirmi CC. conss.

[25] *Idem AA. et CC. Saturninae.* Si tibi liberam Saturninus condicionem eius ignorans distraxit ac nunc eam defendit in libertatem, hac libera pronuntiata venditorem vel ex stipulatione duplae, quantum in hanc deductum est, vel empti actione quanti tua interest convenire potes.

S. id. Febr. CC. conss.

[26] *Idem AA. et CC. Neoni.* Si quis tibi servum vendidit, postquam is rebus humanis exemptus est, cum evictionis periculum finitum sit, a te conveniri non potest.

S. II k. April. Sirmi CC. conss.

[27] *Idem AA. et CC. Theophilo.* Si fundum sciens alienum vel obligatum comparavit Athenocles nec quicquam de evictione convenit, quod eo nomine dedit, contra iuris poscit rationem. nam si ignorans, desiderio tuo iuris forma negantis hoc reddi refragatur.

S. XVII k. Oct. CC. conss.

[28] *Idem AA. et CC. Maximiano.* Emptori etiam venditoris iura prodesse non ambigitur. si igitur vobis propter rei proprietatem mota fuerit quaestio, tam propriis quam venditoris defensionibus uti poteritis.

S. III non. Oct. Scuppis CC. conss.

[29] *Idem AA. et CC. Rheso.* Si permutationis gratia praedia curatoribus quondam fratris tui mater tua dedit, his, quae in eorum vicem accepit, posteaquam ad defensionem fuerit denuntiatum, vel cum eorum non haberet facultatem, evictis quanti interest eos conveniri posse rationis est.

S. VII id. Dec. Nicomediae CC. conss.

[30] *Idem AA. et CC. Hastio.* Non ex eo, quod duplam qui a matre tua mancipium comparavit evictionis nomine stipulatus est, alienae

part of the price of the house you bought for yourself, someone notified you not to proceed with the purchase because it was obligated as a pledge, the judge will see to it that you receive what came from the purchase.

Written January 27, at Sirmium, in the consulship of the Caesars (294).

[25] *The same Augusti and Caesars to Saturnina.* If Saturninus, not knowing her status, sold a free woman to you and now defends her freedom, if she is pronounced free you can sue the seller either on the stipulation for double your outlay on her, or by the action on sale for your interest.

Written February 13, in the consulship of the Caesars (294).

[26] *The same Augusti and Caesars to Neo.* If someone sells you a slave, he cannot be sued by you after he (the slave) has died, since the risk of eviction is ended.

Written March 31, at Sirmium, in the consulship of the Caesars (294).

[27] *The same Augusti and Caesars to Theophilus.* If Athenocles knowingly bought a farm that belonged to a third party or was obligated (as a pledge), and there was no agreement on eviction, his demand to recover his expenditures on this account is contrary to legal logic. For if (he bought) while unaware (of the farm's legal status), the legal rule stands in the way of your wish not to return the sum.

Written September 15, in the consulship of the Caesars (294).

[28] *The same Augusti and Caesars to Maximian.* There is no doubt that a seller's rights benefit the buyer. So if a dispute was raised against you over the title of property (that you purchased), you will be able to use both your own defenses and the seller's.

Written October 5, at Scupi, in the consulship of the Caesars (294).

[29][141] *The same Augusti and Caesars to Rhesus.* If your mother exchanged properties with the former *curatores* of your brother, and then, after she gave notice (to the curators to defend them) or had no access to them, she was evicted from the properties that she received in turn, it stands to reason that they can be sued for her interest.

Written December 7, at Nicomedia, in the consulship of the Caesars (294).

[30] *The same Augusti and Caesars to Hastius.* The fact that the person who bought a slave from your mother took a stipulation (from her) for double on account of eviction does not prove his knowledge that the property belonged to a third party,

[141] Possibly combine with C. 6.56.2.

rei scientia convincitur, nec opinio eius ex hoc laeditur, ut malae fidei emptor existimetur. aliis itaque hoc indiciis, si vis, probare debes.

S. id. Dec. CC. conss.

[31] *Idem AA. et CC. Agatho.* Heredem fideiussoris rerum, pro quibus defunctus apud emptorem intercesserat pro venditore, factum eius cui successit ex sua persona dominium vindicare non impedit, scilicet evictionis causa durante actione.

S. XVIII k. Ian. Nicomediae CC. conss.

XXXXV Creditorem Evictionem Non Debere

[1] *Imp. Alexander A. Publicio.* **pr.** Cum iure creditoris propter fisci debita praedium obligatum procurator meus vendidit, evictio non debetur, quia et privatus creditor eodem iure utitur, nisi nominatim hoc repromissum a privato fuerit. **1.** Si tamen fiscus in ius alterius creditoris successit, emptori non iusta fisci nomine movetur controversia, sive quia potior fuerat, quando vendebat, sive quia infirmior, quoniam hoc utique praestare debet, qui pignoris iure vendat, potiorem se ceteris esse creditoribus.

PP. XV k. Nov. Maximo II et Aeliano conss.

[2] *Imp. Gordianus A. Sabino.* Si a creditrice iure pignoris fundos pater tuus comparaverit, evictis praediis ita demum petitionem adversus creditricem habere iure potes, si, cum vendiderit, de evictione rei promisit vel etiam dolo malo, cum sciret prudensque esset rem sine vitio non esse, eam patri tuo, cui successisti, venumdedit. nam sicut genus eiusmodi contractus inscium creditorem vinculo evictionis non adstringit, ita eum, qui fraudem admisit vel decepit, non excusat.

PP. VIII id. April. Sabino II et Venusto conss.

XXXXVI De Patria Potestate

[1] *Impp. Antoninus et Verus AA. Titio.* Si filium tuum in potestate tua dicis esse, praeses provinciae aestimabit, an audire te debeat, cum diu

nor is his good name injured thereby to the extent of his being considered a buyer in bad faith. So you should prove this by other evidence, if you wish.

Written December 13, in the consulship of the Caesars (294).

[31] *The same Augusti and Caesars to Agathus.* If (by warranting against eviction) for property the decedent assumed liability (as a surety) on behalf of a seller with a buyer, this act of his predecessor does not prevent the surety's heir from asserting ownership based on his own person (and not deriving from the deceased), though the action because of eviction obviously remains available.[142]

Written December 15, at Nicomedia, in the consulship of the Caesars (294).

Forty-Fifth Title A Creditor is Not Liable for Eviction

[1] *Emperor* ALEXANDER *Augustus to Publicius.* pr. When my procurator, acting under the law for a creditor, sold land obligated because of debts to the Treasury, no (tacit warranty against) eviction is owed (to the buyer) because a private creditor enjoys the same right unless he furnished an express warranty. **1.** But if (conversely) the Treasury has succeeded to the rights of another creditor, a lawsuit is not properly raised in the Treasury's name against a buyer (at the prior Treasury sale) whether because its right when it sold was superior (to other creditors), or because it was weaker, inasmuch as a creditor who makes a sale under pledge law ought to guarantee that he is superior to other creditors.

Posted October 18, in the consulship of Maximus, for the second time, and Aelianus (223).

[2] *Emperor* GORDIAN *Augustus to Sabinus.* If your father purchased farms from a creditor under pledge law, and they were evicted, you (as his heir) can rightfully sue the creditor as long as, when she sold the property to your father whom you succeeded, she gave a promise about eviction or she was also deceitful in selling since she knew and was aware that the object of sale was not without defect. For just as a contract of this type does not burden an unknowing creditor with the restraint of (a warranty against) eviction, so it does not excuse one who practiced fraud or deceived (the buyer).

Posted April 6, in the consulship of Sabinus, for the second time, and Venustus (240).

Forty-Sixth Title Paternal Power (*Patria Potestas*)[143]

[1] *Emperors* ANTONINUS *and* VERUS *Augusi to Titius.* If you claim that your son is still in your power, the provincial governor will assess whether

[142] This constitution contradicts laws 11 and 14 above, as also C. 3.32.14, 4.51.3.
[143] See D. 1.6; Inst. 1.9.

passus sis ut patris familias rem eius agi per eos, qui testamento matris tutores nominati fuerunt.

PP. sine die et conss.

[2] *Imp. Antoninus A. Maroniae.* Eius, quod in potestate patris agens habuisti, dominium ad patrem tuum pertinuit extra ea, quae non adquiruntur.

PP. XIII k. Mart. Laeto II et Cereale conss.

[3] *Imp. Alexander A. Artemidoro.* Si filius tuus in potestate tua est, res adquisitas tibi alienare non potuit: quem, si pietatem patri debitam non agnoscit, castigare iure patriae potestatis non prohiberis, artiore remedio usurus, si in pari contumacia perseveraverit, eumque praesidi provinciae oblaturus dicturo sententiam, quam tu quoque dici volueris.

PP. V id. Dec. Albino et Maximo conss.

[4] *Impp. Valerianus et Gallienus AA. et Valerianus C. Gallae.* **pr.** Congruentius quidem videtur intra domum, inter te ac filios tuos si quae controversiae oriuntur, terminari. **1.** Sed si ita res fuit, ut iniuriis eorum et ad ius experiundum et ad vindictam processeris, aditus praeses provinciae super disceptationibus quidem pecuniariis consuetum exerceri iubebit ordinem iuris: reverentiam autem debitam exhibere matri filios coget et, si provectam ad inclementiores iniurias improbitatem deprehenderit, laesam pietatem severius vindicabit.

PP. XVI k. Iun. Aemiliano et Basso conss.

[5] *Impp. Diocletianus et Maximianus AA. Donatio.* Filia tua non solum reverentiam, sed et subsidium vitae ut exhibeat tibi, rectoris provinciae auctoritate compelletur.

PP. k. Mart. Diocletiano III et Maximiano AA. conss.

[6] *Idem AA. Hermogeni.* Abdicatio, quae Graeco more ad alienandos liberos usurpabatur et apoceryxis dicebatur, Romanis legibus non comprobatur.

he should hear you, since you have long permitted his property to be managed as that of a *paterfamilias* through those who were named *tutores* in his mother's will.

Posted without date and year (161–169).

[2] *Emperor* ANTONINUS *Augustus to Maronia.* Ownership of the property you had while under your father's power belonged to your father, except for things not acquired (by you for his benefit).

Posted February 17, in the consulship of Laetus, for the second time, and Cerealis (215).

[3] *Emperor* ALEXANDER *Augustus to Artemidorus.* If your son is in your power, he could not alienate property that he (previously) acquired for you. If he (now) fails to diplay the dutifulness (*pietas*) that is owed to a father, you are not prevented from punishing him by exercising the right of a father's power. You may resort to a harsher remedy if he persists in such defiance, and you may hand him over to the provincial governance for issuance of the verdict that you also wish to be issued.

Posted December 9, in the consulship of Albinus and Maximus (227).

[4] *Emperors* VALERIAN *and* GALLIENUS *Augusti and the Caesar Valerian to Galla.* **pr.** If any lawsuits arise between you and your sons, it seems more fitting that this be settled within your household. **1.** But if things reach the point that you are led by their insulting conduct both to resort to law and to (seek) punishment, the provincial governor, if approached, will indeed order the usual legal rules for monetary disputes (to be followed), but he will (also) compel sons to show the respect due their mother, and, if he notices that their depravity has advanced to more serious outrages, he will quite severely punish this injury to dutifulness (*pietas*).

Posted May 17, in the consulship of Aemilianus and Bassus (259).

[5] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Donatius.* By the authority of the provincial governor, your daughter is forced to show you not just respect, but also to provide the means of support.

Posted March 1, in the consulship of Diocletian, for the third time, and Maximian, Augusti (287).

[6] *The same Augusti to Hermogenes.* Renunciation (*abdicatio*), which was used in Greek custom to disown children and was called "public renunciation" (*apoceryxis*), is not approved by Roman laws.

PP. XVII k. Dec. Maximiano A. II et Ianuario conss.

[7] *Idem AA. et CC. Duplianae.* Si maritus tuus, licet militans, in patria potestate constitutus filium legitimis suscepit nuptiis, eum in potestate avi perseverasse non ambigitur.

S. prid. non. April. CC. conss.

[8] *Idem AA. et CC. Aemilianae.* Libertos exemplo ingenuorum filios suos post libertatem ex legitimis nuptiis natos in potestate habere non est prohibitum.

S. XVI k. Mai. Sirmi CC. conss.

[9] *Idem AA. et CC. Nicagorae.* Nec filium negare cuiquam esse liberum senatus consulta de partu agnoscendo ac denuntiata poena, item praeiudicium edicto perpetuo propositum et remedium alimentorum apud praesidem maiori trimo petenti monstratum iure manifesto declarant.

S. V k. Mai. Sirmi CC. conss.

[10] *Imp. Constantinus A. ad Maximum pu.* Libertati a maioribus tantum impensum est, ut patribus, quibus ius vitae in liberos necisque potestas olim erat permissa, eripere libertatem non liceret.

D. XV k. Iun. Thessalonicae Severo et Rufino conss.

XXXXVII De Adoptionibus

[1] *Imp. Gordianus A. Marciae.* Hi, qui in aliena sunt potestate, iuxta ius civile non nisi apud eum, apud quem plena legis actio est, adoptari possunt.

PP. k. Iun. Gordiano A. et Aviola conss.

Posted November 15, in the consulship of Maximian Augustus, for the second time, and Januarius (288).[144]

[7] *The same Augusti and the Caesars to Dupliana.* If your husband, although in the army, stayed in paternal power and had a son by a legitimate marriage, it is not doubtful that he (the husband's son) had remained in his grandfather's power.

Written April 4, in the consulship of the Caesars (294).

[8][145] *The same Augusti and Caesars to Aemiliana.* It is not forbidden that freedmen, like the free-born, have in their power their children who are born from a legitimate marriage after they receive freedom.

Written April 16, at Sirmium, in the consulship of the Caesars (294).

[9] *The same Augusti and Caesars to Nicagoras.* That no one is free to deny his own child is shown in clear law by decrees of the Senate on acknowledgment of offspring with a threatened penalty (for failure to do so), by the prejudicial judgment (*praeiudicium*) provided in the Perpetual Edict, and by the remedy of maintenance afforded by the governor for a child over age three who claims this.[146]

Written April 27, at Sirmium, in the consulship of the Caesars (294).

[10][147] *Emperor* CONSTANTINE *Augustus to Maximus, City Prefect.* Our ancestors attached so much importance to freedom that fathers, who once had the power of life and death (*ius vitae necisque*) over children, could not take away their freedom.

Given May 18, at Thessalonica, in the consulship of Severus and Rufinus (323).

Forty-Seventh Title Adoptions[148]

[1] *Emperors* GORDIAN *Augustus to Marcia.* By the rules of private law, those who are in another's power cannot be adopted except before someone (a magistrate) with plenary jurisdiction (*plena legis actio*).

Posted June 1, in the consulship of Gordian Augustus and Aviola (239).

[144] Mommsen dates to November 15, 287.

[145] = C. 6.55.7 (differently worded).

[146] See D. 25.3.1 and 25.4.1 (the *SC Plancianum*), and D. 25.3.3.1 (a Hadrianic SC); and Inst. 4.6.13 on the prejudicial judgment.

[147] = C.Th. 4.8.6; combine with C. 7.18.3. Seeck dates to February 15, 323.

[148] See D. 1.7; Inst. 1.11. This title covers two forms of adoption: true *adoptio*, the transfer of a child-in-power from one *paterfamilias* to another; and *adrogatio*, the adoption of a *sui iuris* person, which is much more closely controlled. Where the Codex uses *adrogatio*, it is translated "adrogation."

[2] *Impp. Diocletianus et Maximianus AA. Timotheo.* **pr.** Impuberem, quem ad vicem naturalis subolis adrogare desideras, si hi, qui sanguinis necessitudine iunguntur, id ei expedire apud praesidem provinciae confirmaverint, filium habebis, ita ut bonorum tuorum quarta pars tam in postremo iudicio tuo, quam si a te emancipatus fuerit, ei praebeatur et super patrimonio eius idoneis fideiussoribus datis servo publico caveatur, ne sub copulandae adoptionis obtentu in facultates eius, quae ei diligenti provisione servandae sunt, inruas. **1.** Adrogatio etenim ex indulgentia principali facta proinde valet apud praetorem vel praesidem intimata, ac si per populum iure antiquo facta esset.

PP. v id. Mart. Maximo II et Aquilino conss.

[3] *Idem AA. Marciano.* Cum eum, quem adrogare vis, libertum tuum esse profitearis nec ullam idoneam causam precibus indideris, id est quod non liberos habes, intellegis iuris auctoritatem desiderio tuo refragari.

PP. XVI k. Iul. Maximo II et Aquilino conss.

[4] *Idem AA. Proculiano.* Adoptio non tabulis, licet per tabellionem conficiendis, sed sollemni iuris ordine apud praesidem solet copulari.

PP. k. Sept. ipsis IIII et III AA. conss.

[5] *Idem AA. et CC. Syrae.* A muliere quidem, quae nec suos filios habet in potestate, adrogari non posse certum est. verum quoniam in solacium amissorum tuorum filiorum privignum tuum cupis in vicem legitimae subolis obtinere, adnuimus votis tuis secundum ea, quae adnotavimus, et eum proinde atque ex te progenitum ad fidem naturalis legitimique filii habere permittimus.

S. prid. non. Dec. Triballis Tiberiano et Dione conss.

[6] *Idem AA. et CC. Melitoni.* Adrogationes eorum, qui sui iuris sunt, nec in regia urbe nec in provinciis nisi ex rescripto principali fieri possunt.

S. IIII non. April. Byzantii AA. conss.

[2] *Emperors* Diocletian *and* Maximian *Augusti to Timotheus.* **pr.** You wish to adrogate a minor (*impubes*) as your natural son. If his blood relatives affirm before the provincial governor that this (adrogation) benefits him, you will have him as your son, provided that a quarter of your estate is provided to him (either) in your last will or if you emancipate him. And, regarding his estate, a bond with suitable sureties must be given to a public slave to prevent you from invading his assets under the pretense of effecting an adoption; (for) they must be preserved for him with careful forethought. **1.** For an adrogation that is made with imperial permission and registered with the Praetor or governor is as valid as if it had been made before the people under ancient law.

Posted March 11, in the consulship of Maximus, for the second time, and Aquilinus (286).

[3] *The same Augusti to Marcianus.* Since you state that the person you wish to adrogate is your freedman, but you include no proper reason in your petition, i.e., that you have no children, you know that law's authority is against what you wish to do.

Posted June 16, in the consulship of Maximus, for the second time, and Aquilinus (286).

[4] *The same Augusti to Proculianus.* Adoption is normally effected not by documents, even ones prepared by a notary, but by the appropriate legal proceeding before a governor.

Posted September 1, in the consulship of the Augusti themselves, Consuls for the fourth and third times, respectively (290).

[5] *The same Augusti and the Caesars to Syra.* It is settled that adrogation cannot be made by a woman, for she does not even have her own children in her power. But since you wish to have your stepson as a legitimate offspring in solace for your lost children, We assent to your wishes in accord with the appended rules, and We allow you to have him as your own natural and legitimate son, as though born from you.

Written December 4, at Triballi, in the consulship of Tiberianus and Dio (291).

[6] *The same Augusti and Caesars to Melito.* Adrogations of persons who are *sui iuris* cannot be made in the Imperial City or in the provinces except by Imperial rescript.

Written April 2, at Byzantium, in the consulship of the Augusti (293).

[7] *Idem AA. et CC. Attico.* In adoptionem quidem alienae civitatis civi recte dato additur, non mutatur patria, ac propterea ius originis in honorum ac munerum obsequio per adoptionem non minui perspicis.

S. XI k. Febr. Sirmi CC. conss.

[8] *Idem AA. et CC. Isioni.* In adoptionem patre, in cuius est potestate, libertae filiam dante, matris patronus adoptare non prohibetur. nam sui iuris adrogatio feminae nisi ex nostro rescripto numquam procedit.

S. V id. Febr. CC. conss.

[9] *Idem AA. et CC. Marciano.* Adoptatum, licet ex beneficio nostro, emancipatione sollemni separare familia sua pater adoptivus minime prohibetur.

V k. Nov. Anchiali CC. *conss.*

[10] *Imp. Iustinianus A. Iohanni pp.* **pr.** Cum in adoptivis filiis, qui filii familias constituti a patribus naturalibus aliis dantur, antiquae sapientiae incidit quaedam dubitatio, si oportet talem filium, si praeteritus a naturali patre fuerat, habere contra eius testamentum de inofficioso actionem (quam Papinianus quidem negat, Paulus autem sine effectu derelinquit, Marcianus vero distinguit, ne ex hac causa utriusque patris perderet successionem, naturalis quidem voluntate eius circumventus, adoptivi propter egestatem, quam forte habebat), et iterum aliud vitium erat exortum: si enim post patris naturalis obitum pater adoptivus per emancipationis modum iura adoptionis dissolvisset, nulla spes ei remanebat neque contra patris naturalis voluntatem, quia mortis eius tempore in aliena fuerat familia constitutus, neque contra adoptivum patrem, quia per emancipationem eius familia exemptus est:

ideo talem dubitationem et tale vitium corrigentes sancimus per adoptionem quidem ad extraneam personam factam iura naturalis patris minime dissolvi, sed ita eum permanere, quasi non fuisset in alienam familiam translatus. cum enim tanta fragilitas est adoptionis, ut possit in ipso die et filius fieri et extraneus per emancipationem inveniri, quis patiatur iura patris naturalis nexu divino copulata ludibrio defraudari, cum in hoc casu et contradicendi filio ex iure vetere datur licentia et invitus transire ad aliam familiam non cogitur?
1. Omnia igitur, secundum quod iam disposuimus, cum ad extraneum

[7] *The same Augusti and Caesars to Atticus.* When someone is given in legal adoption to the citizen of a different city, he has an additional home city (*patria*), not a changed one, and you see, therefore, that by adoption the law of his place of origin is not lessened as to holding offices and performing civic duties.

Written January 22, at Sirmium, in the consulship of the Caesars (294).

[8] *The same Augusti and Caesars to Isio.* If a father gives in adoption a daughter in his power, her mother being a freedwoman, then this mother's patron (who manumitted her) is not forbidden from adopting her. For it is the adrogation of a *sui iuris* woman that does not go forward except pursuant to Our rescript.

Written February 9, in the consulship of the Caesars (294).

[9] *The same Augusti and Caesars to Marcianus.* An adoptive father is not forbidden from using a ritual emancipation to separate from his *familia* his adopted child, even though (the adoption occurred) through Our grant.

October 28, at Anchialus, in the consulship of the Caesars (294).

[10] *Emperor* JUSTINIAN *Augustus to John, Praetorian Prefect.* **pr.** In the case of adoptive sons who are sons-in-power and given (in adoption) by their natural fathers to third parties, some uncertainty arose among the ancient jurists as to whether such a son, if he had been passed over by his natural father (in his will), had an action against his will as undutiful – something that Papinian denies, while Paul leaves the matter undetermined, but Marcian distinguishes in order to prevent someone losing an inheritance from both fathers for the following reason: from his natural father (because he was) cheated by the man's intent, from his adoptive father because he happens to be poor. And, second, another fault arises (in older law): if after the natural father's death the adoptive father undid the rights of adoption by emancipating him, there remained to him no hope (of obtaining an inheritance) either against the wish of the natural father since at the time of his death he belonged to another's *familia*, nor against the adoptive father since (when the latter died) he was separated from his *familia* by emancipation.

Eliminating this uncertainty and this fault, We ordain that the rights (to the estate) of a natural father are not undone by giving a child in adoption to an outside person, but he remains as if he had not been transferred to another's *familia*. For since the frailty of adoption is so great that on the very same day a person can both become a son (in a new *familia*) and find himself an outsider through emancipation, who would permit that the rights (to the estate) of a natural father, effected through a holy bond, be scornfully circumvented, (especially) since in this case (even) by old law the son has the right to object and is not forced to cross unwillingly to another *familia*? **1.** Therefore, as We

patrem filius per adoptionem transfertur, maneant integra iura sive ad de inofficiosi[xxvi] querellam sive ad alias omnes successiones sive ab intestato sive ex testamento, quae liberis deferuntur, ut et ipse possit prodesse patri naturali et ab eo naturalia debita percipere.

1a. Si vero pater naturalis avo materno filii sui vel, si ipse fuerit emancipatus, etiam paterno, vel proavo simili modo paterno vel materno filium suum dederit in adoptionem, in hoc casu, quia in unam personam concurrunt et naturalia et adoptiva iura, maneat stabile ius patris adoptivi et naturali vinculo copulatum et legitimo adoptionis modo constrictum: et ad eum solum respiciat filius, cui eum et natura adgregavit et lex per adoptionem adsignavit, et Papiniani sententia in hac specie procedat, et ad eum tantummodo filius adoptivus spes totas extendat et non patris naturalis successionem molestare concedatur, sed avita et proavita tantummodo reverentia protegetur, eique adquirat quae possunt adquiri et prodesse, et is ei solus pater intellegatur, quem lex fecit et natura non dereliquit. **1b.** Neque enim Marciani distinctioni locum esse in hoc casu invenimus, ubi nullius circumventionis suspicio potest aliquam sibi vindicare licentiam, avita et proavita adfectione haec omnia resecante. **1c.** Sed haec manere integra, nisi avus et proavus emancipatum fecerint filium adoptivum: tunc etenim necesse est iterum ad patrem naturalem eum reverti, cum emancipationis interventu adoptio in quamcumque personam facta dissolvitur.

1d. Sed ne articulum adoptionis et in extraneam personam factae sine lege relinquamus, licentiam damus tali adoptivo patri, id est extraneo, si voluerit, nihil ei testamento suo relinquere, sed quidquid ei reliquerit, hoc libertatis sit, non legitimo vinculo adstrictum: cum enim per omnia naturae suae filium adgregavimus, manifestissimum est, quod et adquisitiones omnium rerum, quae ad filium familias pervenerint, secundum leges nostras non adoptivo extraneo patri, sed naturali usque ad modum usus fructus perveniunt, et remaneat in sacris patris naturalis, quasi imaginaria quadam et nova adfectione ei adquisita, non pristinae cognationis deminutione introducta.

1e. Sed si quidem remaneat in tali adoptione nulla interveniente emancipatione, in hoc tantummodo prodesse ei volumus adoptionem, ut non successione ab intestato patris extranei adoptivi defraudetur,

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have already provided, when a son is transferred to an outsider by adoption, all his rights shall remain intact, including the complaint of an undutiful (will) and all other (rights appertaining to) successions, whether intestate or testate, that are granted to children, to the extent that he be able both to benefit his natural father (by acquiring property for him) and receive natural debts (*naturalia debita*) from him.

1a.[149] But if a natural father gives his son in adoption to the maternal grandfather of his son, or, if he himself (the natural father) was emancipated, (he gives his son) even to his paternal (grandfather), or similarly to his paternal or maternal great-grandfather, in this case, because both natural and adoptive rights conjoin in a single person, the right of the adoptive father, effected through a natural tie and constrained by the legal form of adoption, remains in force, and the son shall look to that person alone to whom nature has joined him and law of adoption has assigned him. In such case Papinian's view shall apply, and the adoptive son shall rest all his hopes only on him, forbearing to contest the succession to his natural father, but protected only by his grandfather's and great-grandfather's familial respect (*reverentia*); for him he shall acquire what can be acquired beneficially, and that man alone is considered a father whom the law made and nature did not forsake. **1b.** Nor do We find room for Marcian's distinction in this case, where no suspicion of fraud can provide him some pretext when his grandfather's or great-grandfather's familial affection (*adfectio*) avert all these (suspicions). **1c.** But these (provisions) remain in force unless the grandfather or great-grandfather emancipates the adoptive son. For then it is necessary that he be returned to his natural father, since an adoption made to some person is undone by an intervening emancipation.

1d. But so that We not leave unregulated the provision for adoption by an outside person (*extranea persona*), We give such an adoptive father, i.e., an outsider, permission to leave him (the son) nothing in his will, if he wishes, but whatever he leaves him is his decision, bound by no legal tie. For since in every respect We have tied the son to his nature (i.e., emphasized the link to his natural father), it is quite plain that acquisitions of all property that come to the son-in-power fall by Our laws not to the adoptive outsider father, but to the natural one, up to and including their usufruct; and he shall continue in the familial rites (*sacra*) of his natural father, as if he had acquired some fictitious new familial affection without diminishing his former blood relationship.

1e. But if he remains in this adoption with no intervening emancipation, We wish the adoption to benefit him only to the extent that he not be cheated of succession on intestacy to an adoptive outsider father, but enjoy an additional

[149] First portion = Inst. 1.11.2.

sed habeat accessionem fortunae ex patris naturalis sibi voluntate adquisitam. 1f. Neque enim ex vetere iure cognationis nexus naturalis patris per adoptionem filio dissolvebatur, sed accedebant iura adoptiva certis reliquiis ex iure naturali remanentibus, et qui legitimus erat familiae adoptivae, is naturalis fuerat cognatus. quis enim materna iura possit abolere, cum videbatur et antiquo iure patrem quidem habere adoptivum, matrem autem eam, quam natura cognoscit? 1g. Et ideo sancimus, etsi habet huiusmodi filius iura integra naturae, tamen, si intestatus pater extraneus adoptivus decesserit, habere eum etiam sui heredis ius ad eius tantummodo successionem, ut non etiam legitima iura ad familiam extranei patris adoptivi habeat, nec ipsa ad eum communionem aliquam habeat, sed quasi extraneus ita ad illam familiam inveniatur. 2. Sin autem per emancipationem iura adoptiva fuerint dissoluta, tunc nullus ei penitus regressus ad adoptivum extraneum patrem, etsi moriatur intestatus, relinquatur, sed maneat tantummodo patrem naturalem cognoscens, tamquam non fuisset ab initio in adoptionem translatus.

3. Quae autem de aliis adoptivis diximus, haec sancimus etiam de his, qui ex Afiniano senatus consulto ex tribus maribus fuerant ab extraneo adoptati, nulla penitus differentia inter alios adoptivos et eos introducenda.

4. Quae in filio diximus in adoptionem a patre dato, haec et in filia et in nepote et in nepte et deinceps personis utriusque sexus in sacris constitutis extendimus, si tamen tempore mortis avi sui parentes eos vel eas non antecedant. si enim patres eos antecedant (ubi nec imponitur necessitas avo aliquid nepoti vel nepti relinquere), maneant omnia iura adoptiva ei intacta. haec enim omnis sanctio de filio et filia et nepote et nepte et deinceps personis in sacris constitutis introducta est, ubi dubitabatur, quid statuendum est, quasi duobus patribus ei, uno ex natura, altero ex lege positis.

5. Ubi autem homo sui iuris constitutus per adrogationem ex Augusta liberalitate sese dederit in adoptionem, tunc omnia iura patris adoptivi habeat intacta. cum enim nullum inter patres inducitur discrimen, sit suus heres adoptivus patri adrogatori et familiae eius adgregetur, et

good fortune acquired through the wish of his natural father. 1f. For also in the ancient law the blood relationship of a natural father to his son was not undone by adoption; rather, the adoptive rights were an accretion, leaving intact certain remnants on the basis of natural law; and a person who was legitimately (agnatically) in the adoptive family was (also) a cognate of his natural one. For who is able to abolish maternal rights, when even in ancient law he was deemed to have an adoptive father, to be sure, but a mother who was recognized by nature? 1g. And so We ordain that although such an adopted son keeps intact his natural rights, still, if an adoptive outsider father dies intestate, he also has the right of a *suus heres* in succeeding to him, but only in such a way that he does not also have legitimate (agnatic) rights (of succession) to the *familia* of his adoptive father, nor does it have some shared relationship to him, but he stands like an outsider to that *familia*. 2. But if adoptive rights are undone through emancipation, then no recourse whatsoever is left to him against (the estate of) his adoptive outsider father even if he dies intestate, but only recognition of his natural father remains, as if from the outset he had not been transferred into adoption.

3. We have ordained further that what We have said regarding other adoptive (children) applies also to those who, pursuant to the *SC Afinianum*,[150] were adopted from among three males (brothers) by an outsider; no fundamental distinction shall be introduced between other adoptive persons and them.

4. What We said in the case of a son whom his father gives in adoption, this We extend also to the case of a daughter, grandson, granddaughter, and successively persons of either sex involved in familial rites (*sacra*), provided that at the time of their grandfather's death their parents did not take precedence over them (in succession to the estate). For if fathers took precedence over them – in which case no necessity is imposed on the grandfather to leave anything to a grandson or granddaughter – all adoptive rights shall remain intact to him, for this entire provision has been enacted concerning a son, daughter, grandson, granddaughter, and successively persons involved in family rites, where there used to be doubt concerning what should be determined, when, as it were, he has two fathers, one imposed by nature and the other by law.

5. But when, pursuant to Imperial generosity, a *sui iuris* person gives himself in adoption through adrogation, then he shall have intact all the rights (to the succession) of his adoptive father. For when there is no conflict between the fathers, the adoptive (child) shall be a *suus heres* to his father the adrogator and shall be added to his *familia*, and all things that the ancient lawgivers

[150] This decree, of early imperial date, dealt with a child who was one of three brothers and was adopted by a third person; he acquired a right to partial succession to his adoptive father's estate. See Inst. 3.1.14.

omnia, quae ad filium adrogatum veteres legum latores induxerunt, intacta illibataque in eorum personis reserventur.

D. k. Sept. Constantinopoli Lampadio et Oreste vv. cc. conss.

[11] *Idem A. Iohanni pp.* Veteres circuitus in adoptionibus, quae per tres emancipationes et duas manumissiones in filio aut per unam emancipationem in ceteris liberis fieri solebant, corrigentes sive tollentes censemus licere parenti, qui liberos in potestate sua constitutos in adoptionem dare desiderat, sine vetere observatione emancipationum et manumissionum hoc ipsum actis intervenientibus apud competentem iudicem manifestare, praesente et eo qui adoptatur et non contradicente, nec non eo qui eum adoptat.

D. v k. Nov. Constantinopoli Lampadio et Oreste vv. cc. conss.

XXXXVIII De Emancipationibus Liberorum

[1] *Impp. Diocletianus et Maximianus AA. Herennio.* Si lex municipii, in quo te pater emancipavit, potestatem duumviris dedit, ut etiam alienigenae liberos suos emancipare possint, id quod a patre factum est suam obtinet firmitatem.

PP. III non. Dec. ipsis IIII et III AA. conss.

[2] *Idem AA. Gennadiae.* In emancipationibus liberorum nec non donationibus non tam scriptura quam veritas considerari solet.

PP. V id. Mart. Tiberiano et Dione conss.

[3] *Idem AA. et CC. Heliodoro.* Non nudo consensu patria liberi potestate, sed actu sollemni vel casu liberantur, nec causae, quibus motus pater emancipavit filium, sed actus sollemnitas quaeritur.

S. XV k. Oct. Sirmi AA. conss.

enacted for an adrogated son shall be preserved intact and unimpaired in their persons.

Given September 1, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[11][151] *The same Augustus to John, Praetorian Prefect.* Correcting or abolishing the ancient vagaries for adoptions, which were customarily made through three emancipations and two manumissions for a son and through one emancipation in the case of other descendants (*liberi*), We direct that if a parent wishes to give in adoption descendants in his power, he is permitted to ignore the ancient ritual of emancipations and manumissions and to declare that this was done as a matter of record (*actis intervenientibus*) before the appropriate judge, in the presence of the person being adopted and with his consent, as well as in that of the adopter.

Given October 28, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

Forty-Eighth Title Emancipations of Children[152]

[1] *Emperors Diocletian and Maximian Augusti to Herennius.* If the law of the municipality in which your father emancipated you gave the duumvirs the power that foreigners (*alienigenae*) also be able to emancipate their children (through municipal courts), then what your father did is valid.

Posted December 3, in the consulship of the Augusti themselves, Consuls for the fourth and third times, respectively (290).

[2] *The same Augusti to Gennadia.* With emancipations of children as well as with gifts, the true facts are considered more important than a written document.

Posted March 11, in the consulship of Tiberianus and Dio (291).

[3] *The same Augusti and the Caesars to Heliodorus.* Children are released from paternal power not by naked consent, but by a proper procedure or by a natural event (*casus*; e.g., the death of a *paterfamilias*), and consideration is taken not of the reasons motivating the father to emancipate a child, but (only) of the formal act.

Written September 17, at Sirmium, in the consulship of the Augusti (293).

[151] Combine with C. 4.58.13, 8.48.6; Lounghis *et al.* date this constitution to November 1, 531. The end of the text is also in Inst. 1.12.8. Earlier procedure is described in Gaius, *Inst.* 1.132.

[152] See D. 1.7; Inst. 1.12.

[4] *Idem AA. et CC. Coloniae.* Nec avus neptem suam liberare potestate cogitur nec in cuiusquam iniuriam beneficia tribuere moris est nostri.
D. id. Oct.

[5] *Imp. Anastasius A. Constantino pp.* Iubemus licere parentibus, id est patri avo paterno seu proavo ceterisque ulterius per masculini sexus personas continua generis serie coniunctis, si liberos, quos habent in potestate propria, id est filium filiam, nepotem seu neptem ex filio, pronepotem seu proneptem ceterosque itidem per masculini sexus personas continua generis linea sibi coniunctos, per emancipationem vel absentes et peregre degentes vel in isdem locis seu regionibus et civitatibus commorantes, in iudicio vero non praesentes, iuris sui constituere maluerint, supplicationibus porrectis mereri super hoc divinum oraculum hocque apud competentem iudicem, ad cuius iurisdictionem actus emancipationis pertinet, insinuare superque precibus a semet oblatis apud eum deponere, ut hoc subsecuto et auctoritate praecedente principali plenissimum robur emancipatio sortiatur, et personae, in quas talis liberalitas collata sit, de aliena potestate quasi a parentibus ex emancipatione manumissae liberentur: si tamen ipsae nihilo minus sub gestorum testificatione vel apud eundem iudicem vel apud alium quemlibet proposito parentum suam etiam voluntatem consonare vel ante preces oblatas et sacros apices promulgatos vel postea deposuerint, nisi infantes sint, qui et sine consensu etiam hoc modo sui iuris efficiuntur.
D. XI k. Aug. Constantinopoli Probo et Avieno iuniore conss.

[6] *Imp. Iustinianus A. Iohanni pp.* Cum inspeximus in emancipationibus vanam observationem custodiri et venditiones in liberas personas figuratas et circumductiones inextricabiles et iniuriosa rhapismata, quorum nullus rationabilis invenitur exitus, iubemus huiusmodi circuitu in posterum quiescente licentiam esse ei, qui emancipare vult, vel ex lege Anastasiana hoc facere vel sine sacro rescripto intrare competentis iudicis tribunal vel eos adire magistratus, quibus hoc facere vel legibus vel ex longa consuetudine permissum est, et filios suos vel filias, nepotes vel neptes vel deinceps progeniem in potestate sua constitutam a sua manu dimittere et legitima iura omnimodo habere, etsi non specialiter haec sibi servaverit, et peculium donare vel alias res

[4] *The same Augusti and Caesars to Colonia.* A grandfather is not compelled to release his granddaughter from power, nor is it Our custom to bestow benefits (on one person) in order to injure someone (else).

Given October 15 (293–304).

[5][153] *Emperor* ANASTASIUS *Augustus to Constantine, Praetorian Prefect.* We order that if forebears (*parentes*) – i.e., a father, paternal grandfather or great-grandfather, and other remoter persons connected to them through males in a continuous genealogical line – wish through emancipation to make *sui iuris* (one or more) descendants (*liberi*) whom they have in their own power – i.e., a son, daughter, grandson or granddaughter from a son, a grandson or granddaughter, and other in like fashion connected to them through males in a continuous genealogical line, whether (these children are) absent and living abroad or dwelling in the same places or regions or cities, but not present in court – they are allowed to file a petition and obtain an Imperial order on this, and register it with the appropriate judge having jurisdiction over the act of emancipation, and deposit it there along with the petition they sent, so that when this is done and the Imperial authorization precedes, the emancipation has the greatest strength, and the persons on whom such generosity was bestowed are released from another's power just as if manumitted by the parents from an emancipation; provided that they (the emancipated) nonetheless verify through the evidence of records or before the same or some other judge, either before or after the petition is filed and the Imperial rescript issued, that their will is in accord with their parents' plan – unless they are infants, in which case they are also made *sui iuris* in this way, (but) without their consent.

Given July 22, at Constantinople, in the consulship of Probus and the younger Avienus (502).

[6][154] *Emperor* JUSTINIAN *to John, Praetorian Prefect.* Since We have noticed that an empty ritual continues in emancipations, with contrived sales to free persons and inextricable meanderings and wrongful blows that have no rational consequence, We order that such circuity cease in the future, and that anyone who wishes to emancipate do this either pursuant to the Anastasian law, or without an Imperial rescript go before the tribunal of the appropriate judge, or approach those magistrates who have jurisdiction either by statutes or from protracted usage; and that (in any of these ways) he discharge from his power his sons or daughters, grandsons or granddaughters, or, generally, offspring in his power, and in all cases retain his legal rights (as to inheritance) even if he does not specifically reserve this for himself; and that he give them their *peculium* or transfer other property as an

[153] Combine with C. 6.20.18, 6.58.11 (both with slightly different dates).
[154] Combine with C. 6.58.13, 8.47.11. This constitution is based on 5 above.

liberalitatis titulo in eos transferre, et eas res, quae adquiri indignantur, per usum fructum secundum nostrae constitutionis modum detinere et omnia facere, vana tantummodo secundum quod dictum est observatione sublata.

D. k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

XXXXVIIII De Ingratis Liberis

[1] *Imppp. Valentinianus Valens et Gratianus AAA. ad Praetextatum pu.* Filios et filias ceterosque liberos contumaces, qui parentes vel acerbitate convicii vel cuiuscumque atrocis iniuriae dolore pulsassent, leges emancipatione rescissa damno libertatis immeritae multare voluerunt.

D. XV k. Sept. Ambianis Lupicinio et Iovino conss.

L De Postliminio et de Redemptis ab Hostibus

[1] *Impp. Severus et Antoninus AA. Ovinio.* **pr.** Ex duobus captivis Sarmatia nata patris originem ita secuta videtur, si ambo parentes in civitatem nostram redissent. quamquam enim iure proprio postliminium habere non possit quae capta non est, tamen parentum restitutio reddet patri filiam. **1.** Qui cum ab hostibus interemptus sit, matris dumtaxat condicionem, quae secum filiam duxit, videtur necessario secuta. nam fictio legis Corneliae, quae legitimos apud hostes defuncto constituit heredes, ad eam quae illic suscepta est non pertinet, cum eo tempore quo captus est diem suum pater obisse existimetur.

PP. sine die et consule.

[2] *Imp. Gordianus A. Publiciano.* **pr.** Ab hostibus redempti, quoad exsolvatur pretium, in causam pignoris constituti quam in servilem condicionem videntur esse detrusi: et ideo si nummi eo nomine expensi donatio intercedat, pristinae condicioni eos reddi manifestum est. **1.** Proinde si ab hostibus redemptam post dissolutum veluti

act of generosity, and, in accord with Our constitution,[155] retain through usufruct the property that they are ashamed to acquire, and do everything (else that may be done), with only, as said, the empty ritual being abolished.

Given November 1, at Constantinople, after the consulate of the viri clarissimi *Lampadius and Orestes (531).*

Forty-Ninth Title Ungrateful Children

[1][156] *Emperors Valentian, Valens, and Gratian Augusti to Praetextatus, City Prefect.* When insolent sons, daughters, and other descendants assail their parents either with bitter rebukes or the anguish of some horrible insult, the laws wanted them punished by rescinding emancipation and depriving them of their undeserved freedom.

Given August 18, at Ambiani, in the consulship of Lupicinius and Jovinus (367).

Fiftieth Title Resumption of Civil Rights (*Postliminium*) and Persons Ransomed from Enemies[157]

[1] *Emperors Severus and Antininus Augusti to Ovinius.*[158] **pr.** A woman born in Sarmatia to two captives is held to have acceded to the legal status of her father if both her parents had (subsequently) returned to Our territory. For although a woman who was not captured cannot enjoy resumption of civil rights (*postliminium*) by her own right, nevertheless the return of her parents restores the daughter to her father. **1.** When he was killed by the enemy (*hostes*), she (the daughter) is held necessarily to have acceded only to the status of her mother, who took her daughter with her. For the fiction of the lex Cornelia,[159] which established legitimate heirs when someone died among the enemy, does not apply to the woman who was sired there, since (for purposes of law) her father is considered to have lost his life at the time he was captured (and not during his captivity).

Posted without date and year (193–211).

[2] *Emperor Gordian Augustus to Publicianus.* **pr.** Until the price is paid (by them to the ransomers), persons ransomed from the enemy are held to be in the position of a pledge (*in causam pignoris constituti*) rather than forced into a servile state. And so if money paid out on this account is a gift, they plainly are restored to their former condition. **1.** So if you took in marriage a woman

[155] C. 6.61.6.3.

[156] = C.Th. 8.14.1

[157] See D. 49.15. Ransom occurs "through trade" (*commercio*) when the ransoming party pays with an expectation of repayment by the ransomed party.

[158] Ovinius is described in D. 38.17.1.3 and 49.15.9 as the Governor of Lower Moesia.

[159] The Lex Cornelia, of *c.* 80 BCE, validated the previously written will of a Roman who was captured by Roman enemies and died in captivity.

naturalis pignoris vinculum in matrimonio habere coepisti, nihil est, quod de statu eius seu liberorum communium debeas pertimescere.

PP. II id. Iun. Gordiano A. II et Pompeiano conss.

[3] *Impp. Diocletianus et Maximianus AA. Varo.* Cum cognatos tuos nondum postliminio regressos adfirmes, sed adhuc in rebus esse humanis, et bona eorum fraudibus diversae partis dissipari, interpellatus rector provinciae providebit eum sub observatione constituere, qui stipulante servo publico satis idonee dederit.

PP. V k. Sept. Diocletiano III et Maximiano conss.

[4] *Idem AA. Hermogeni.* **pr.** Nec nos praeteriit hereditatem eius, quam incognitum erat ab hostibus interfecta an capta esset, a filio adiri non potuisse (quando eorum bona, qui in hostium potestatem rediguntur, eo demum tempore successionis iure adquiri possunt, cum captos apud hostes mortuos esse cognoscitur), nec super facultatibus eius, cuius incerta vita ac fortuna fuit, transigi vel iudicari potuit. **1.** Unde posteaquam apud hostes materteram vestram fati munus implesse innotuit, tunc vobis licentia permittitur agnoscendae per bonorum possessionem successionis: non officientibus enim, quae perperam gesta sunt, si priorem gradum obtinetis, successionis compendium ad vos pertinet.

PP. V k. Iun. ipsis AA. IIII et III conss.

[5] *Idem AA. Ursae.* Cum non redemptum ab hostibus filium tuum, sed sine ullo contracto traditum a barbaris praefecto legionis dicas, postliminii ius locum habuit et ilico ingenuitati suae reddi eum praeses provinciae iubebit.

PP. XVI k. Iun. ipsis AA. IIII et III conss.

[6] *Idem AA. Iusto.* Cum et postliminii ius et communis utilitatis ratio exigat, ut, si qui captos ab hostibus redemerint, accepto pretio redemptos suae ingenuitati restituant, proponasque redemptorem noluisse oblatum pretium a te vel ab alio recipere, praeses provinciae efficaci instantia compellet eum legibus obtemperare et recepto eo quod pretii nomine dependitur status securitatem non inquietare.

PP. k. Febr. Tiberiano et Dione conss.

ransomed from the enemy, after the discharge of, as it were, this natural pledge (through repayment of the ransom) there is no reason why you should be afraid concerning her status or that of your common children.

Posted June 12, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Varus.* Since you state that your relatives have not yet returned with restoration of rights, but are still alive, and that their estates are dissipated by the deceit of your adversary, the provincial governor, if approached, will place him under observation and see to it that he gives sufficient security through a stipulation to a public slave.

Posted August 28, in the consulship of Diocletian, for the third time, and Maximian (287).

[4] *The same Augusti to Hermogenes.* **pr.** It has not escaped Us that, as long as it is unknown whether a woman was killed or captured by enemies, her inheritance cannot be entered on by her son, since the property of those who fall into the power of enemies can only be acquired by the law of succession when it is known that they died in enemy captivity. Nor can there be a settlement or adjudication regarding her resources while her life and fate are uncertain. **1.** So after it is known that your maternal aunt met her fate (i.e., died) among the enemy, then you are permitted to take up the succession by possessing her estate (*per bonorum possessionem*). Since (your) improper acts (in taking possession prematurely) do not obstruct this, the benefit of succession will come to you (now) if you are the nearest heir.

Posted May 28, in the consulship of the Augusti themselves, Consuls for the fourth and third times, respectively (290).

[5] *The same Augusti to Ursa.* Since you say that your son was not ransomed from the enemy, but without any (prior) agreement turned over by the barbarians to the prefect of the legion, the law of recovery of rights applied and the provincial governor will order his immediate restoration to free-born status.

Posted May 17, in the consulship of the Augusti themselves, Consuls for the fourth and third times, respectively (290).

[6] *The same Augusti to Justus.* Since both the law of resumption of rights and considerations of general benefit require that those who ransom captives from enemies restore the ransomed to free-born status when the price is paid, and you say that a ransomer declined to accept the price tendered by you or by a third party, the provincial governor will promptly and effectively force him to obey the law and, after receiving what was paid as a price, not (further) perturb your confidence in your status.

Posted February 1, in the consulship of Tiberianus and Dio (291).

[7] *Idem AA. Claudio.* Foedissimae mulieris nequitia permovemur. cum igitur filiam tuam captam ac prostitutam ab ea quae eam redemerat ob retinendae pudicitiae cultum ac servandam natalium honestatem ad te confugisse proponas, praeses provinciae, si filiae tuae supra dictam iniuriam ab ea, quae sciebat ingenuam esse, inflictam cognoverit, cum huiusmodi persona indigna sit pretium recipere propter odium detestabilis quaestus, etiamsi pretium compensatum non est ex necessitate miserabili, custodita ingenuitate natae tuae adversus flagitiosae mulieris turpitudinem tutam eam defensamque praestabit.

PP. III non. Febr. Tiberiano et Dione conss.

[8] *Idem AA. Matronae.* Praeses provinciae, ne ulterius in servitutis iugo detinearis, curae habebit: qui pro sollertia tua parum ignorat magis filiorum tuorum statum tueri, quos, posteaquam redempta es, enixam te esse significas, cum eos, qui post redemptionem nascuntur, ne pignoris quidem vinculo ob pretium, quod pro his datum non est, teneri nullis auctoribus visum est.

PP. V id. Febr. Tiberiano et Dione conss.

[9] *Idem AA. et CC. Gregorio.* pr. Captum ab hostibus filium, patre mortuo medio tempore, lex Cornelia reversum, si in potestate patris tempore quo capiebatur fuit, suum facit heredem. 1. Unde si ex testamento ad te sive intestato successionem patris tui pertinere apud praesidem provinciae probaveris, restitui tibi res hereditarias iubebit, si non tantum postquam reversus es tempus effluxit, quantum intentionem tuam temporis prolixitate conquiescere facit.

PP. V id. April. AA. conss.

[10] *Idem AA. et CC. Apollodorae.* Sicut liberis captis ab hostibus ac postliminio reversis status pristinus restituitur, sic servi domino. unde si haec, cuius meministi, ancilla patris tui fuit nec commercio redempta est, reversa dominum vel eius successorem sequitur, qui per captivitatem hanc amiserat.

S. III k. Mai. Hadrianopoli AA. conss.

[11] *Idem AA. et CC. Eutychio.* Si liberum captum te ab hostibus commercio redemit Sabinus et eum vinculum pignoris superstitem

[7] *The same Augusti to Claudius.* We are disgusted with the wickedness of this abominable woman. So since you state that your daughter was captured (by enemies) and then prostituted by the woman who ransomed her, and that she fled to you in an effort to retain her chastity and preserve the honorable status of her birth, since such a woman is unworthy to receive the price on account of the odiousness of her hateful profession even if the (ransom) price has not been repaid (to her) because of (your) poverty, if the provincial governor learns (in a trial) that this wrong was inflicted on your daughter when she knew she was free-born, he will ensure your daughter's free-born status and will guard and protect her against this scandalous woman's depravity.

Posted February 3, in the consulship of Tiberianus and Dio (291).

[8] *The same Augusti to Matrona.* The provincial governor will see to it that you are no longer detained in servitude. In response to your concern, he knows to protect the status of your children whom you state you bore after you were ransomed, since no authorities (jurists) have held that those born after payment of ransom (to the captors) are bound even by a pledge bond for a price that was not paid on their behalf.

Posted February 9, in the consulship of Tiberianus and Dio (291).

[9] *The same Augusti and the Caesars to Gregorius.* **pr.** If a son is captured by the enemy and his father dies in the meantime, then if he was in his father's power when he was captured, the lex Cornelia makes him a *suus heres* on his return. **1.** So if you prove before the provincial governor that your father's succession comes to you through a will or on intestacy, he will order restoration of the inheritance property to you unless so much time has passed since your return as to render your claim moot through long duration of time.

Posted April 9, in the consulship of the Augusti (293).

[10] *The same Augusti and Caesars to Apollodora.* Just as through resumption of civil rights their former status is restored to free men who are captured by enemies and then returned, so slaves (are restored) to their master. So if the woman you mention was your father's slave and she was not ransomed through trade, on her return she belongs to the owner or his successor, who had lost her through her captivity.

Written April 29, at Adrianople, in the consulship of the Augusti (293).[160]

[11] *The same Augusti and Caesars to Eutychius.* If through trade Sabinus ransomed you, a free person, from enemy captivity, and it is shown that he

[160] Mommsen dates to May 13, 293.

remisisse tibi probetur, non libertus effectus, sed ingenuitati quam amiseras restitutus nullum filiis eius obsequium debes.
S. xv k. Ian. AA. conss.

[12] *Idem AA. et CC. Quintianae.* Ab hostibus capti et non commercio redempti, sed virtute militum nostrorum liberati ilico statum, quem captivitatis casu amiserant, recipiunt: servi autem dominis suis restituentur: receptos enim eos, non captos iudicare debemus, et militem nostrum defensorem eorum decet esse, non dominum.
S. v k. Ian. AA. conss.

[13] *Idem AA. et CC.* Si is, qui te ab hostibus ingenuam captam commercio redemit, sibi matrimonio coniunxit, dignitate nuptiarum et voto futurae iustae subolis vinculo pignoris tibi remisso redditos natales pristinos rationis est.
S. v id. Mart. CC. conss.

[14] *Idem AA. et CC. Severae.* Ius postliminii filiam rebus humanis exempta matre, dum in servitutis ipsa necessitate per captivitatis causam fuit, eventu purgato vigore ad eius legitimam invitat hereditatem, nec tibi medii temporis fortuna, quominus res maternas successione quaesitas persequi possis, iniuriam fieri patimur.
S. xvi k. April. CC. conss.

[15] *Idem AA. et CC. Mucatraulo.* Is, qui liber constitutus captus ab hostibus commercio redimitur, et antequam restituatur pro eo data pecunia, successionis iura sibi vindicare favore ingenuitatis potest, ut ex ea possit pretium pro se datum exsolvere.

[16] *Idem AA. et CC. Basilinae.* Commercio redemptae filios, licet ex servo medio susceptos tempore, origini ingenuitatis matris iuxta ea quae benigne placuerunt reddi convenit.
S. v k. Sept. Viminacii AA. conss.

released you from the remaining pledge bond, you were not made a freedman; rather, you were restored to your free-born status and owe no service (*obsequium*) to his sons.

Written December 18, in the consulship of the Augusti (293).

[12] *The same Augusti and Caesars to Quintiana.* Persons captured by enemies and not ransomed through trade, but freed by the bravery of Our soldiers, immediately recover the status they lost through the misfortune of captivity. But slaves are restored to their owners, since We ought to consider them as recovered, not captured (as booty), and it is proper that Our soldiery be their defender, not their owner.

Written December 28, in the consulship of the Augusti (293).

[13] *The same Augusti and Caesars <to ... >.* If a man ransomed you, a free-born woman, through trade from enemy captivity, and he then took you in marriage, the reasonable conclusion is that, in view of the dignity of marriage and the hope of legitimate issue, the pledge bond is remitted and your former birthrights are restored to you.

Written March 11, in the consulship of the Caesars (294).

[14] *The same Augusti and Caesars to Severa.* When her mother was removed from human affairs (i.e., died) while she (the daughter) was forced to be in slavery as a result of being captured, this occurrence is deprived of legal force; the law on resumption of rights invites her to her lawful inheritance, nor do We allow your situation in the meantime to do you harm by making it less possible to claim your mother's property through (the law of) succession.

Written March 17, in the consulship of the Caesars (294).

[15] *The same Augusti and Caesars to Mucatraulus.* Through (the law's) partiality to free-born status, a free person who is captured by enemies and ransomed through trade, even before the money paid for him is repaid, can claim for himself rights of succession so that he can pay the ransom from it.

[16] *The same Augusti and Caesars to Basilina.* As has been humanely established, it is proper that if a woman is ransomed with money, her children, although they were sired by a slave in the meantime, be returned to their mother's original free-born status.

Written August 28, at Viminacium, in the consulship of the Augusti (293).[161]

[161] This constitution is out of order, but may have been misdated from 294. Mommsen dates to September 27, 294.

[17] *Idem AA. et CC. Diogeniae.* **pr.** Liber captus ab hostibus et commercio redemptus tunc demum cum pretium solverit vel hoc ei qualicumque remittatur indicio, statum pristinum recipit. **1.** Quo genere matre filium redimente, cum huiusmodi contractus non de mercede, sed de tristitia repudianda cogitatur, voti recipiendi filium cogitatio cum optabili condicione filium ilico matri restituit, ita ut et civilium obsequio munerum propter casum praeteritum non excusetur. **2.** Pro pietatis itaque ratione ab hostibus redempto filio facti te paenitere ac de pretio quicquam tractare non convenit: dotem tamen ab eo debitam iure concesso reddi postulas.

S. III k. Nov. Develto[xxvii] *CC. conss.*

[18] *Idem AA. et CC. Tryphoniano.* Ab hostibus captis ac postliminio reversis pro huiusmodi casu amissa, quae in eadem causa quidem durant, omnimodo directa, quae vero per usucapionem vel liberationem ex bonis subtracta vel non utendo finita esse videntur, intra annum utilem experientibus actione rescissoria restituuntur.

PP. XII k. Dec. CC. conss.

[19] *Imppp. Valentinianus Valens et Gratianus AAA. ad Severianum ducem.* **pr.** Si quos forte necessitas captivitatis abduxit, sciant, si non transierunt, sed hostilis inruptionis necessitate transducti sunt, ad proprias terras festinare debere, recepturos iure postliminii ea, quae in agris vel mancipiis seu aliis rebus ante tenuerunt, etsi a fisco nostro possideantur. **1.** Nec timeat quisquam alicuius contradictionis moram, cum hoc solum requirendum sit, utrum aliquis cum barbaris voluntate fuerit an coactus.

D. V k. Iul. Remis Gratiano A. et Dagalaifo conss.

[20] *Impp. Honorius et Theodosius AA. Theodoro pp.* **pr.** Diversarum homines provinciarum cuiuslibet sexus condicionis aetatis, quos barbarica feritas captiva necessitate transvexerat, invitos nemo retineat, sed ad propria redire cupientibus libera sit facultas. **1.** Quibus si

xxvii Deulto

[17] *The same Augusti and Caesars to Diogenia.* **pr.** A freeman who is captured by enemies and ransomed through trade recovers his old status only when he pays the price or some sort of evidence indicates it was remitted. **1.** In this (latter) class is a mother ransoming her son, since such a contract is motivated not by reward but to end distress; the thought of a hope of recovering a son has immediately restored the son to his mother with the wished-for status, such that he is not even excused because of his past misfortune from carrying out civil duties. **2.** For reasons of family devotion (*pietas*), therefore, it is improper that you regret ransoming your son from the enemy and raise question as to the price; but nevertheless you have full right to demand (return of) the dowry owed by him (as heir to his father).

Written October 30, at Deultum, in the consulship of the Caesars (294).[162]

[18] *The same Augusti and Caesars to Tryphonianus.* To those captured by enemies and returned with resumption of civil rights, in compensation for such a misfortune what was lost and remains in the same situation is absolutely restored through a direct action. But things held to be removed from their goods through usucapion or manumission, or lost by non-use, are restored within one judicial year (*annus utilis*) through an action for annulment (of previous dealings; *actio rescissoria*).

Posted November 20, in the consulship of the Caesars (294).

[19][163] *Emperors* VALENTINIAN, VALENS, *and* GRATIAN *Augusti to Severianus, Duke.* **pr.** If individuals have been led away through the duress of captivity, they should know that if they did not go (voluntarily) but were forcibly carried off during an enemy incursion, they should hasten back to their own lands and recover, by the law of resumption of civil rights, what they held before in land or slaves or other things, even if Our Treasury possesses them. **1.** Nor need anyone fear delay arising from some defense, since the only inquiry to be made is whether he was with the barbarians voluntarily or by compulsion.

Given June 27, at Remi, in the consulship of Gratianus Augustus and Dagalaifus (366).

[20][164] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Theodorus, Praetorian Prefect.* **pr.** No one shall retain, against their will, persons of the various provinces, no matter their sex, legal status, or age, whom barbarian cruelty had driven away through the constraint of captivity; rather, if they wish to return to their own property, they shall be free to do so. **1.** Any expenditure

[162] Mommsen dates to October 29, 294.
[163] = C.Th. 5.7.1 (Brev. 5.5.1), with a slightly different text. Seeck gives June 15, 366.
[164] = C.Th. 5.2.2; Sirm. 16 (with a different date); combine with C. 1.4.11.

quicquam in usum vestium vel alimoniae impensum est, humanitati sit praestitum nec maneat victualis sumptus repetitio: exceptis his, quos barbaris vendentibus emptos esse docebitur, a quibus status sui pretium propter utilitatem publicam emptoribus aequum est redhiberi. **2.** Ne quando enim damni consideratio in tali necessitate positis negari faciat emptionem, decet redemptos aut datum pro se pretium emptoribus restituere aut laboris obsequio vel opere quinquennii vicem referre beneficii, habituros incolumem, si in ea nati sunt, libertatem. **3.** Reddantur igitur sedibus propriis sub moderatione qua iussimus, quibus iure postliminii etiam veterum responsis incolumia cuncta servanda sunt.

4. Si quis itaque huic praecepto fuerit conatus obsistere actor conductor procuratorque, dari se metallis cum poena deportationis non ambiget: si vero possessionis dominus, rem suam fisco noverit vindicandam seque deportandum. **5.** Et ut facilis exsecutio proveniat, Christianos proximorum locorum volumus huius rei sollicitudinem gerere: curiales quoque proximarum civitatum placuit admoneri, ut emergentibus talibus causis sciant legis nostrae auxilium deferendum: ita ut noverint rectores universi decem libras auri a se et tantundem a suis apparitoribus exigendum, si praeceptum neglexerint.

D. III id. Dec. Ravennae Honorio VIII et Theodosio III AA. conss.

LI De Infantibus Expositis Liberis et Servis et de His Qui Sanguinolentos Emptos vel Nutriendos Acceperunt

[1] *Imp. Alexander A. Claudio.* Si invito vel ignorante te partus ancillae vel adscripticiae tuae expositus est, repetere eum non prohiberis. sed restitutio eius, si non a fure vindicaveris, ita fiet, ut, si qua in alendo eo vel forte ad discendum artificium iuste consumpta fuerint, restitueris.

PP. III k. Iun. Iuliano et *Crispino conss.*

[2] *Imppp. Valentinianus Valens et Gratianus AAA. ad Probum pp.* **pr.** Unusquisque subolem suam nutriat. quod si exponendam putaverit,

on clothing or maintenance shall be provided for humanity's sake, nor shall a claim lodge for the cost of nourishment, with the exception of those persons who, it will be shown, were bought from barbarian sellers. From these, buyers justly reclaim the price of their status, because of the public benefit (*utilitas publica*). 2. For in order that anxiety about loss at any time not lead to a refusal to purchase persons placed in such straits, the ransomed should rightly either repay the purchase price to the buyers or requite the benefit by obedient labor and work for five years while retaining their free status if they were so born. 3. So, subject to the limitation We ordered, let them be returned to their own homes, where, by the law of resumption of civil rights, everything must be preserved intact for them, in accord with the responses of the ancients (jurists) as well.

4. If any manager (*actor*), lessee, or procurator attempts to resist this ordinance, he will not doubt his own condemnation to the mines with the penalty of capital exile (*deportatio*); but if the owner of a possession (resists), he should know that his property is to be confiscated by the Treasury and he himself deported. 5. And to assist swift enforcement, We wish the Christians (the clergy) of neighboring places to give attention to this matter. It is settled that the decurions of neighboring cities also be alerted so that they know know support is to be provided for Our law when such cases arise; likewise, that all governors know that 10 pounds of gold will be levied from them, and a like amount from their subordinates, if they neglect this order.

Given December 11, at Ravenna, in the consulship of Honorius, for the eighth time, and Theodosius, for the third time, Augusti (409).[165]

Fifty-First Title Exposed Free and Slave Infants and Those Who Purchase Newborns or Undertake Raising Them

[1] *Emperor* ALEXANDER *Augustus to Claudius.* If the offspring from your slave-woman or from your enrolled female tenant (*adscripticia*) was exposed without your consent or knowledge, you are not forbidden from reclaiming him. However, his restitution, unless you bring a claim of ownership against a thief, is on the condition that if there were any legitimate expenditures in maintaining him or, say, on teaching him a craft, you (first) repay them.

Posted May 30, in the consulship of Julian and Crispinus (224).

[2][166] *Emperors* VALENTINIAN, VALENS, *and* GRATIAN *Augusti to Probus, Praetorian Prefect.* pr. Everyone must support his own offspring. But if he thinks about exposing them, he will be subjected to the established legal

[165] Seeck dates this constitution to December 3, 408.
[166] See C. 9.16.7; §1= C.Th. 5.7.2.

animadversioni quae constituta est subiacebit. **1.** Sed nec dominis vel patronis repetendi aditum relinquimus, si ab ipsis expositos quodammodo ad mortem voluntas misericordiae amica collegerit: nec enim dicere suum poterit, quem pereuntem contempsit.

D. III non. Mart. Gratiano A. III et Equitio conss.

[3] *Imp. Iustinianus A. Demostheni pp.* **pr.** Sancimus nemini licere, sive ab ingenuis genitoribus puer parvulus procreatus sive a libertina progenie sive servili condicione maculatus expositus sit, eum puerum in suum dominium vindicare sive nomine dominii sive adscripticiae sive colonariae condicionis: sed neque his, qui eos nutriendos sustulerunt, licentiam concedi penitus (cum quadam distinctione) eos tollere et educationem eorum procurare, sive masculi sint sive feminae, ut eos vel loco libertorum vel loco servorum aut colonorum aut adscripticiorum habeant. **1.** Sed nullo discrimine habito hi, qui ab huiusmodi hominibus educati sunt, liberi et ingenui appareant et sibi adquirant et in posteritatem suam vel extraneos heredes omnia quae habuerint, quomodo voluerint, transmittant, nulla macula vel servitutis vel adscripticiae aut colonariae condicionis imbuti: nec quasi patronatus iura in rebus eorum his qui eos susceperunt vel susceperint praetendere concedi, sed in omnem terram, quae Romanae dicioni supposita est, haec obtinere. **2.** Neque enim oportet eos, qui ab initio infantes abegerunt et mortis forte spem circa eos habuerunt, incertos constitutos, si qui eos susceperunt, hos iterum ad se revocare conari et servili necessitati subiugare: neque hi, qui eos pietatis ratione suadente sustulerunt, ferendi sunt denuo suam mutantes sententiam et in servitutem eos retrahentes, licet ab initio huiusmodi cogitationem habentes ad hoc prosiluerint, ne videantur quasi mercimonio contracto ita pietatis officium gerere. **3.** Haec conservantibus tam viris clarissimis praesidibus provinciarum quam viris religiosissimis episcopis nec non officiis praesidalibus et patribus et defensoribus civitatum et omni civili auxilio.

D. XV k. Oct. Chalcedone Decio vc. cons.

LII Quae Sit Longa Consuetudo

[1] *Imp. Alexander A. Apro evocato.* Praeses provinciae probatis his, quae in oppido frequenter in eodem genere controversiarum servata

punishment. 1. But We give no right to reclaim to masters or patrons if those they have more or less exposed to death are taken up by (someone displaying) a merciful compassion; for he will not be able to claim as his own a child he despised while it was perishing.

Given March 5, in the consulship of Gratian Augustus, for the third time, and Equitius (374).

[3][167] *Emperor* JUSTINIAN *Augustus to Demosthenes, Praetorian Prefect.* pr. If a small boy has been exposed, whether he was born of free-born parents or is of freedman extraction or is tainted by the status of a slave, We ordain that no one be permitted to claim him as his property, whether as slave, as a bound tenant (*adscripticius*), or as a free tenant (*colonus*); nor may those who undertake to rear such children raise them with any distinction whatsoever. But those who take them up in order to nourish them are also granted no permission whatsoever – with some exception – to raise them and arrange their training, whether they are male or female, in order to hold them either as freedmen or slaves or tenants or ascribed. 1. Children raised or reared or brought up by such people shall, without any distinction, be considered free and free-born and may acquire property and leave all that they have to their posterity or to outside heirs as they wish, marked with no stain of servitude or of ascribed or tenant status. Nor shall those who have taken them up or take them up in the future be allowed to pretend to any rights of patronage, as it were; but over the entire territory subject to Roman rule, these ordinances apply. 2. For it is not right that persons who at the start expelled infants and perhaps had hopes of death for them, (and were) left uncertain if anyone took them up, (subsequently) try to recall them once more and subject them to slavery. Nor are those who took them up out of compassion to be heard if they change their minds again and reduce them to slavery, even though they resorted to this after having it in mind from the start, lest in this way they seem to perform an act of dutifulness (*pietas*) for money. 3. Both the *viri clarissimi* provincial governors and the most revered bishops shall uphold these provisions, along with the governors' offices and the Senators and the Defenders of Cities and every civil resource.

Given September 17, at Chalcedon, in the consulship of the vir clarissimus *Decius (529).*

Fifty-Second Title What is Long-Standing Custom?[168]

[1][169] *Emperor* ALEXANDER *Antoninus to Aper, a veteran.* When it is shown what has often been done in a city in this sort of dispute, the provincial governor

[167] = C. 1.4.24.
[168] See D. 1.3.
[169] = C. 8.10.3; combine with C. 8.1.1.

sunt, causa cognita statuet. nam et consuetudo praecedens et ratio quae consuetudinem suasit custodienda est, et ne quid contra longam consuetudinem fiat, ad sollicitudinem suam revocabit praeses provinciae.

PP. VI k. April. Iuliano et Crispino conss.

[2] *Imp. Constantinus A. ad Proculum.* Consuetudinis ususque longaevi non vilis auctoritas est, verum non usque adeo sui valitura momento, ut aut rationem vincat aut legem.

D. VIII k. Mai. Constantino A. V et Licinio C. conss.

[3] *Impp. Leo et Anthemius AA. Alexandro.* Leges quoque ipsas antiquitus probata et servata tenaciter consuetudo imitatur et retinet: et quod officiis curiis civitatibus principiis vel collegiis praestitum fuisse cognoscitur, perpetuae legis vicem obtinere statuimus.

D. VII id. Sept. Zenone cons.

LIII De Donationibus

[1] *Impp. Severus et Antoninus AA. Lucio.* Emptionum mancipiorum instrumentis donatis et traditis et ipsorum mancipiorum traditionem factam intellegis: et ideo potes adversus donatorem in rem actionem exercere.

PP. V k. Iul. Faustino et Rufino conss.

[2] *Imp. Gordianus A. Leonidi.* Si nominis persecutionem in te emancipatam pater tuus titulo donationis transtulit, frustra praetendit, qui debitori tuo heres extitit, consensum fuisse debitoris necessarium, cum satis fuerit actiones eo nomine tibi mandatas fuisse.

PP. II id. Mart. Gordiano A. II et Pompeiano conss.

[3] *Imp. Decius A. Marcellino.* Spem futurae actionis plena intercedente donatoris voluntate posse transferri non immerito placuit.

will hear the case and decide. For both existing custom and the reasons that gave rise to it should be upheld, and the provincial governor will make it his business to prevent anything being done contrary to long-standing custom (*longa consuetudo*).

Posted March 27, in the consulship of Julian and Crispinus (224).

[2] *Emperor CONSTANTINE Augustus to Proculus.* Long-standing custom and usage are of no mean authority, but will not have weight to the point of contravening either reason or statute.

Given April 24, in the consulship of Constantine Augustus, for the fifth time, and Licinius Caesar (319).

[3][170] *Emperors LEO and ANTHEMIUS Augusti to Alexander.* Custom, approved as of old and tenaciously adhered to, also imitates and upholds the statutes themselves. We order that what is recognized as having been provided in government offices (*officia*), local senates, cities, command posts, and guilds has the force of a permanent law.

Given September 7, in the consulship of Zeno (469).

Fifty-Third Title Gifts

[1] *Emperors SEVERUS and ANTONINUS Augusti to Lucius.* You understand that when documents evidencing the sales of slaves are handed over as gifts, there is also a delivery (of possession) of the slaves themselves; and so you can bring an action *in rem* against the donor (to obtain the slaves).

Posted June 27, in the consulship of Faustinus and Rufinus (210).

[2] *Emperor GORDIAN Augustus to Leonides.* If your father, in emancipating you, transferred as a gift an action on a debt, your debtor's heir pretends in vain that the debtor's agreement was necessary (for the transfer), since it is enough if the rights of action on that debt were (simply) mandated to you.

Posted March 14, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

[3] *Emperor DECIUS Augustus to Marcellinus.* Not undeservedly it has been held that the expectation of a future right of action can be transferred if the donor gives full consent.

[170] Combine with C. 1.57.1, probably; it describes Alexander as a Duke and Augustal Prefect.

PP. non Mart. Decio A. II et Grato conss.

[4] *Imp. Probus A. Massiciae.* Si functiones per eum, cui donata res non erat, vel ab actoribus ipsius nomine celebratae sunt, tibi obesse non potest.

PP. V k. Ian. Messala et Grato conss.

[5] *Imppp. Carus Carinus et Numerianus AAA. Falconillae.* Si donatio per epistulam facta non paret, verba tamen testamenti, quibus liberalitas testatricis confirmata est, fideicommissum continere non ambigitur.

PP. VI k. Febr. Romae Carino II et Numeriano AA. conss.

[6] *Impp. Diocletianus et Maximianus AA. Calpurniae Aristaenetae.* Nec ambigi oportet donationes etiam inter absentes, maxime si ex voluntate donantium possessionem ii quibus donatum est nanciscantur, validas esse.

PP. IIII id. Febr. Mediolani Maximo II et Aquilino conss.

[7] *Idem AA. Iulio.* Censualis quidem professio domino praeiudicare non solet. sed si in censum velut sua mancipia deferenti privigno tuo consensisti, donationem in eum contulisse videris.

PP. id. Iul. ipsis AA. IIII et III conss.

[8] *Idem AA. Florae.* Si praeses provinciae non donandi voluntate filiorum tuorum nomine praedia in censum detulisse te manifestis probationibus cognoverit, quod fides veri suggesserit, statuet.

PP. VIII id. Sept. ipsis AA. IIII et III conss.

[9] *Idem AA. et CC. Augustinae.* Legem, quam rebus tuis donando dixisti, sive stipulatione tibi prospexisti, ex stipulatu, sive non, incerto iudicio (id est praescriptis verbis) apud praesidem provinciae debes agere, ut hanc impleri provideat.

PP. XVI k. Mai. AA. conss.

Posted March 7, in the consulship of Decius Augustus, for the second time, and Gratus (250).

[4][171] *Emperor* PROBUS *Augustus to Massicia.* You cannot be prejudiced (as to title) by the fact that taxes (on your property) were paid by a man to whom the property had not been given, or by his slave manager *(actor)* in his name.

Posted December 28, in the consulship of Messala and Gratus (280).

[5] *Emperors* CARUS, CARINUS, *and* NUMERIAN *Augusti to Falconilla.* Even though the gift does not appear to have been made through a letter, still it is not doubtful that the words of her will, whereby the generosity of the testatrix is confirmed, contain a trust.

Posted January 27, at Rome, in the consulship of Carinus, for the second time, and Numerianus, Augusti (284).

[6][172] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Calpurnia Aristaeneta.* It should not be doubted that gifts are also valid between absent parties, especially if the donees take possession with the consent of the donors.

Posted February 11, at Milan, in the consulship of Maximus, for the second time, and Aquilinus (286).

[7] *The same Augusti to Julius.* Listing property in a census (for taxation) does not usually prejudice its owner (as to title). But if you agreed to your stepson reporting slaves as his own for a census, you are held to have made a gift to him.

Posted July 15, in the consulship of the Augusti themselves, Consuls for the fourth and third times, respectively (290).

[8] *The same Augusti to Flora.* If the provincial governor finds by clear evidence that for a census you reported properties in the name of your sons with no donative intention, he will decide what fidelity to the truth indicates.

Posted September 6, in the consulship of the Augusti themselves, Consuls for the fourth and third times, respectively (290).

[9] *The same Augusti and the Caesars to Augustina.* To gain enforcement of the condition that you set for your propertes in giving them, you should bring suit before the provincial governor on a stipulation if you exacted one, or, if not, through an indefinite action, i.e., one with a limiting preamble (*praescriptis verbis*).

Posted April 16, in the consulship of the Augusti (293).

[171] = *Frag. Vat.* 288.
[172] = *Frag. Vat.* 282 (which omits "especially"); combine with C. 3.29.4.

[10] *Idem AA. et CC. Hermionae.* Nec ignorans nec invitus quisque donat. unde si de hoc fundo non cogitasti, cuius velut donationi consensisse continetur instrumento, maiores veritate rei quam scriptura vires obtinente intellegis, de quo non cogitasti nec specialiter subscripsisti, nihil te perdidisse.

S. v k. Mai. AA. conss.

[11] *Idem AA. et CC. Septimio Sabiniano.* **pr.** Cum de bonis tuis partem quidem penes te retinuisse, partem vero in eum quem in potestate habes donationis titulo contulisse commemores, non est incerti iuris in eum, qui in sacris familiae tuae remanet, destinationem magis paternae voluntatis factam, quam perfectam donationem pervenisse. **1.** Delegationes autem nominum in emancipatum collatae perfectam donationem efficiunt.

S. prid. k. Mai. Heraclea AA. conss.

[12] *Idem AA. et CC. Aurelio.* Portionem propriam rebus necdum divisis nemo prohibetur titulo donationis in alium transferre.

D. XVII k. Iun. AA. conss.

[13] *Idem AA. et CC. Uraniae.* Si aliquid per epistulam donatum tibi probetur, brevitas chartulae donation*i*, si haec recte facta probetur, nihil quicquam derogat.

D. XV k. Iun. Sirmi AA. conss.

[14] *Idem AA. et CC. Idaeae.* Si filius tuus res ad te pertinentes sponsae suae te non consentiente donavit, ad eam quod non habuit transferre non potuit.

S. XV k. Oct. AA. conss.

[15] *Idem AA. et CC. Severae.* **pr.** Aeris alieni, quod ex hereditaria causa venit, non eius, qui donationis titulo possidet, sed totius iuris successoris onus est. **1.** Si itaque nemini obligata praedia pro donatione consecuta es, supervacuam geris sollicitudinem, ne vel heredes donatricis vel eius creditores te iure possint convenire.

S. XV k. Dec. AA. conss.

[10] *The same Augusti and Caesars to Hermiona.* No one makes a gift unknowingly or unwillingly. So if you were not thinking of this (particular) farm that is mentioned in the document as if you had consented to giving it, since the truth of the matter has greater strength than a writing, you understand that you lost nothing about which you were not thinking and to which you did not expressly subscribe.

Written April 27, in the consulship of the Augusti (293).

[11][173] *The same Augusti and Caesars to Septimius Sabinianus.* pr. Since you state that you retained part of your property in your control, but transferred part as a gift to a person in your power, the law is not unclear that it came to this person, who remains within your agnatic kin group (i.e., in your *potestas*), more as an indication of a father's intention than a completed gift. **1.** But a conferral of accounts that is delegated to an emancipated (son) results in a completed gift.

Written April 30, at Heraclea, in the consulship of the Augusti (293).

[12] *The same Augusti and Caesars to Aurelius.* Although property is not yet divided (among co-owners), none is forbidden from transferring his interest to a third party as a gift.

Given May 16, in the consulship of the Augusti (293).

[13] *The same Augusti and Caesars to Urania.* If it is shown that something was given to you by letter, the brevity of the document does not prejudice (the effectiveness of) the gift, if it is shown to have been properly made.

Given May 18,[174] *at Sirmium, in the consulship of the Augusti (293).*

[14] *The same Augusti and Caesars to Idaea.* If, without your consent, your son gave property belonging to you to his fiancée (*sponsa*), he could not transfer to her what he did not have (i.e., title to the property).

Written September 17, in the consulship of the Augusti (293).

[15] *The same Augusti and Caesars to Severa.* pr. The burden of (paying) a debt that arises from an inheritance falls not on the person who possesses (the inheritance) as a gift (through a legacy or trust), but on the legal successor to the entirety. **1.** So if you obtained as a gift properties not obligated (as security) to anyone, you are needlessly concerned about the legal possibility of suit by either the donor's heirs or her creditors.

Written November 17, in the consulship of the Augusti (293).

[173] = *Consultatio* 6.10 (with more detail, but omitting §1).
[174] More likely December 18 (Connolly). Mommsen gives September 17, 293.

[16] *Idem AA. et CC. Theodoro.* Senectus ad donationem faciendam sola non est impedimento.

D. v k. Dec. AA. conss.

[17] *Idem AA. et CC. Hermiae.* **pr.** Sive emancipatis filiis res donasti sive in potestate constitutis et sui iuris effectis ac tenentibus non ademisti, blandiri tibi non debes, velut res donatas ex paenitentia liceat auferre. **1.** Sane si ea, quae in tua positis potestate donaveras, post emancipationem contra tuam tenuerunt voluntatem, horum penes te dominium remansit, si quidem nec tempore quo voluisti propter vinculum potestatis sibi quicquam quaerere, nec post invito te de rebus tuis potuerunt.

S. vi k. Ian. AA. conss.

[18] *Idem AA. et CC. Audiano.* Si donationis causa furti actio tibi remissa probetur, supervacuam geris sollicitudinem.

S. v k. Ian. AA. conss.

[19] *Idem AA. et CC. Alexandriae.* Si avia vestra proprias res quacumque ratione factas titulo liberalitatis in eum contra quem preces funditis contulit, quominus haec rata maneant, quod ex origine patris vel avi vestri descendunt, nihil prodest.

S. xvi k. Febr. Sirmi CC. conss.

[20] *Idem AA. et CC. Helvio.* Vice donatricis alio voluntate eius subscribente iure facta donatio non habebitur irrita.

S. vii k. Febr. CC. conss.

[21] *Idem AA. et CC. Antoniae.* Constante matrimonio dotem penes maritum suum constitutam avia tua donare tibi non potuit.

S. v id. Mart. CC. conss.

[22] *Idem AA. et CC. Diomedi.* **pr.** Cum res filio emancipato ea condicione, ut creditoribus tuis solveret, te donasse proponas, si stipulatione vel in continenti habito pacto huic rei prospexisti, creditoribus quidem non contra eum ex placito vestro, sed adversus te competit actio.[xxviii] **1.** Eum autem, cui certa lege praedia donasti, incerta civili actione ad

[xxviii] tibi autem adversus filium ex stipulatu competit actio

[16] *The same Augusti and Caesars to Theodorus.* Old age by itself constitutes no impediment to making a gift.

Given November 27, in the consulship of the Augusti (293).

[17] *The same Augusti and Caesars to Hermias.* **pr.** Whether you made a gift to emancipated children, or you did not take it away from children in your power when you emancipated them while they held it, you should not fool yourself that you can change your mind and reclaim what you gave. **1.** Of course, if, against your will, after emancipation they held property that you had given them while they were in your power, you remain the owner of it, if, indeed, because of the restraint of your (paternal) power they could not acquire anything for themselves at the time you wished (i.e., even with your consent), nor thereafter (after emancipation) could they acquire any of your property without your consent.

Written December 27, in the consulship of the Augusti (293).

[18] *The same Augusti and Caesars to Audianus.* If an action on theft (*actio furti*) is shown to have been remitted to you as a gift (from the victim of the theft), your worry (about the validity of the remission) is needless.

Written December 28, in the consulship of the Augusti (293).

[19] *The same Augusti and Caesars to Alexandria.* If as an act of generosity your grandmother made a gift of her own property, however acquired, to the person against whom you direct your petition, the fact that it originally came from your father or grandfather is of no avail in invalidating the transaction.

Written January 17, at Sirmium, in the consulship of the Caesars (294).

[20] *The same Augusti and Caesars to Helvius.* A gift, (otherwise) legally made, will not be held invalid if signed by a third party acting for the donor with her consent.

Written January 26, in the consulship of the Caesars (294).

[21] *The same Augusti and Caesars to Antonia.* While the marriage continued, your grandmother could not make a gift to you of her dowry, which was in her husband's control.

Written March 11, in the consulship of the Caesars (294).

[22] *The same Augusti and Caesars to Diomedes.* **pr.** You state that you gave property to your emancipated son on the condition that he pay your creditors. If you provided for this through a stipulation or an accompanying pact, the creditors have no right of action against him on the basis of your condition, but you have one against your son on the stipulation. **1.** Nevertheless, through

placitorum obsequium urgueri secundum legem donationibus dictam convenit.

S. VII k. April. Sirmi CC. conss.

[23] *Idem AA. et CC. Olympiadi.* Si ea quae donaveras posteriori placito qui acceperat donum tibi reddidit, donationis antecedens instrumentum actis sequentibus nihil obesse potest.

S. V k. Oct. CC. conss.

[24] *Idem AA. et CC. Macario.* Si patri tuo heres non extitisti, ex facta ab eo liberalitate titulo donationis non posse iura tua laedi manifestissimi iuris est.

PP. non. Febr. Antiochiae Diocletiano VII et Maximiano VI AA. conss.

[25] *Imp. Constantinus A. ad Maximum pu.* **pr.** Donatio, sive directa sit sive mortis causa instituta, sive condicionibus faciendi ac non faciendi suspensa sive ex aliquo notato tempore promissa, sive animo dantium accipientiumve sententiis, quantum ius sinit, cognominata, sub hac fieri debet observatione, ut quas leges indulgent actiones condiciones pactionesque contineat, hisque penitus cognitis vel recipiantur, si complacitae sunt, vel reiciantur, si sunt molestae. **1.** In conscribendis autem donationibus nomen donatoris, ius ac rem notari oportet, neque id occulte aut privatim, sed ut tabulae aut quodcumque aliud materiae tempus dabit vel ab ipso vel ab eo quem sors ministraverit perscribatur: actis etiam adnectendis, quae apud iudicem vel magistratus conficienda sunt, ubi hoc leges expostulant.

D. III non. Febr. Romae Sabino et Rufino conss.

[26] *Idem A. Aconio Catullino proconsuli Africae.* **pr.** Si quis in emancipatum minorem, priusquam fari possit aut habere rei quae sibi donatur adfectum, fundum crediderit conferendum, omne ius compleat instrumentis ante praemissis. **1.** Quod per eum servum, quem idoneum esse constiterit, transigi placuit, ut per eum infanti adquiratur.

D. XII k. Mai. Serdicae Sabino et Rufino conss.

a civil action for an indefinite amount (*actio incerta civilis*) you may sue the person to whom you gave land under a definite condition, to compel his compliance with the term annexed to the gift.

Written March 26, at Sirmium, in the consulship of the Caesars (294).

[23][175] *The same Augusti and Caesars to Olympiades.* If a donee, pursuant to a later agreement, returned to you your gift, the preceding document for the gift cannot prejudice the subsequent transaction.

Written September 27, in the consulship of the Caesars (294).

[24] *The same Augusti and Caesars to Macarius.* If you were not your father's heir, the law is absolutely clear that your rights cannot be injured by his generosity in making a gift (of your property in his will).

Posted February 5, at Antioch, in the consulship of Diocletian, for the seventh time, and Maximian, for the sixth time, Augusti (299).

[25][176] *Emperor Constantine Augustus to Maximus, City Prefect.* **pr.** Whether a gift is direct or made in contemplation of death (*mortis causa*), or subject to conditions of doing or not doing something, or promised from some indicated time, or, by the intention of donors or the purpose of donees, given another name to the extent that the law allows, it should be made under this regulation: that it contain actions, conditions, and agreements that are legally permissible, and, when these are thoroughly examined, they should either be accepted if they satisfy, or rejected if they are burdensome. **1.** In documenting gifts, furthermore, the name of the donor, the property, and the title to it should be noted, and this not secretly or privately, but such that the wax tablets, or any other material that chance provides, are written out either by him (the donor) or by one whom the occasion offers. When law demands this, public records shall also be added, which must be executed before the judge or magistrates.

Given February 3, at Rome, in the consulship of Sabinus and Rufinus (316).

[26][177] *The same Augustus to Aconius Catullinus, Proconsul of Africa.* **pr.** If someone entrusts the conveyance of a farm to an emancipated minor before the latter can speak or have a disposition of will toward the object given to him, let him (the donor) fulfill all legal requirements (making the donation effective) after executing the documents. **1.** This, it has been agreed, is done through a slave deemed suitable, so that the infant acquires through him.

Given April 20, at Serdica, in the consulship of Sabinus and Rufinus (316).

[175] Combine with C. 6.42.27.

[176] = C.Th. 8.12.1, *Frag. Vat.* 249; combine with C. 5.37.21, *Consultatio* 9.13.

[177] = C.Th. 8.12.2. Justinian's version is heavily abbreviated, often with loss of grammatical sense. Seeck dates to April 17, 317.

[27] *Idem A. ad Severum comitem Hispaniarum.* **pr.** Data iam pridem lege statuimus, ut donationes interveniente actorum testificatione conficiantur. quod vel maxime inter necessarias coniunctissimasque personas convenit custodiri, si quidem clandestinis ac domesticis fraudibus facile quidvis pro negotii opportunitate confingi potest, vel id quod vere gestum est aboleri. **1.** Cum igitur ne liberos quidem ac parentes lex nostra ab actorum confectione secernat, id, quod necessario super donationibus apud acta conficiendis iam pridem statuimus, universos teneat. **2.** Gesta autem confici super rebus etiam alibi collocatis ubicumque sufficit.

D. IIII non. Mai. Constantinopoli Dalmatio et Zenophilo conss.

[28] *Impp. Honorius et Theodosius AA. Monaxio pp.* Quisquis rem aliquam donando vel in dotem dando vel vendendo usum fructum eius retinuerit, etiamsi stipulatus non fuerit, eam continuo tradidisse credatur, ne quid amplius requiratur, quo magis videatur facta traditio, sed omnimodo idem sit in his causis usum fructum retinere, quod tradere.

D. prid id. Mart. Constantinopoli Honorio A. XI et Constantio II conss.

[29] *Impp. Theodosius et Valentinianus AA. Hierio pp.* In extraneos et saepe ignotos donationem collatam valere receptum est: et si sine scripto donatum quod fuerit, adhibitis aliis idoneis documentis hoc quod geritur comprobetur.

D. XI k. Mai. Felice et Tauro conss.

[30] *Imp. Leo A. Constantino pp.* **pr.** In hac sacratissima urbe conscriptae donationes ubicumque positarum rerum apud magistrum census insinuentur. **1.** In aliis vero civitatibus, sive absens sive praesens rector provinciae sit, sive eadem civitas habeat magistratus sive non habeat et defensor tantummodo sit, donator habeat liberam facultatem donationes rerum suarum ubicumque positarum sive apud moderatorem cuiuslibet provinciae sive apud magistratus sive apud defensorem cuiuscumque civitatis prout maluerit publicare: atque ut ipsa donatio sita est in voluntate donantis, ita ei liceat donationem suam apud

[27][178] *The same Augustus to Severus, Count of the Spains.* **pr.** In a previous law We provided that donations be made through the evidence of public records. This should apply especially between kinsmen and closely connected persons, if indeed through secret domestic frauds something can easily be contrived as opportunity arises, or what was really done can be nullified. **1.** Since, therefore, Our law does not exempt even children or parents from executing records, the rule that We formerly provided as to the necessity of executing gifts in the public records shall apply to all persons. **2.** But a record executed even as to property located elsewhere suffices everywhere.

Given May 4, at Constantinople, in the consulship of Dalmatius and Zenophilus (333).

[28][179] *Emperors Honorius and Theodosius Augusti to Monaxius, Praetorian Prefect.* Whoever retains the usufruct when giving some property as a gift or as a dowry or selling it is construed as having delivered it immediately even if he exacts no stipulation (on this issue), so that nothing further is needed to have the delivery seem more complete, but in these cases retaining the usufruct is the same as delivering (the property).[180]

Given March 14, at Constantinople, in the consulship of Honorius Augustus, for the eleventh time, and Constantius, for the second time (417).

[29] *Emperors Theodosius and Valentinian Augusti to Hierius, Praetorian Prefect.* The received view is that a donation is valid when made to third parties, even ones often unknown. And if something is given without a writing, what was done is confirmed if other appropriate documents provide evidence.

Given April 21, in the consulship of Felix and Taurus (428).[181]

[30] *Emperor Leo Augustus to Constantine, Praetorian Prefect.* **pr.** In this Imperial City (Constantinople), written (promises of) gifts of property, wherever located, are registered with the Master of the Census. **1.** But in other cities, whether the provincial governor is absent or present, and whether the city has a magistrate or it does not have one and there is only a defender, the donor of property, no matter where it is located, shall have the unrestricted ability to register these gifts either with the governor of any province or with the magistrates or the defender of any city, as he wishes. And just as the gift itself is entirely at the will of the donor, so it shall be permitted to register his

[178] = C.Th. 8.12.5; combine with C. 4.21.14. Section 2 = C.Th. 8.12.8. The previous law is C. 8.53.25 above.

[179] = C.Th. 8.12.9.

[180] Blume: "That reservation of usufruct should take the place, or be the equivalent, of delivery applied, when the rescript was written only to cases of gift. Justinian extended it, by interpolation to cases of sale."

[181] Seeck dates to February 20, 428.

quemcumque ex memoratis voluerit intimare. **2.** Et hae donationes, quae in diversis provinciis et civitatibus apud quemlibet ex praedictis fuerint publicatae, obtineant inconcussam ac perpetuam firmitatem.

D. v non. Mart. Constantinopoli Patricio cons.

[31] *Imp. Zeno A. Sebastiano pp.* **pr.** In donationibus, quae actis insinuantur, non esse necessarium iudicamus vicinos vel alios testes adhibere: nam superfluum est privatum testimonium, cum publica monumenta sufficiant. **1.** Verum et alias donationes, quas gestis non est necessarium adlegari, si forte per tabellionem vel alium scribantur, et sine testium subnotatione valere praecipimus, ita tamen, si ipse donator vel alius voluntate eius secundum solitam observationem subscripserit: donationibus, quae sine scriptis conficiuntur, suam firmitatem habentibus secundum constitutionem Theodosii et Valentiniani ad Hierium praefectum praetorio promulgatam.

D. k. Mart. Constantinopoli Ello vc. cons.

[32] *Imp. Anastasius A. Euphemio pp.* Secundum divi Leonis constitutionem donationes apud virum clarissimum magistrum census tantummodo insinuari praecipimus, huiusmodi forma in illis instrumentis observanda, quae in hac regia urbe confecta seu celebrata fuerint: nec concedi quemquam vel apud defensores seu magistratus aliarum civitatum vel in aliis quibuslibet locis praeter memoratum iudicium insinuare: scientibus tam his qui ad huiuscemodi insinuationem pervenerint quam his qui eam susceperint nec non tabellionibus, quicumque testimonium suum non in competenti (ut dictum est) loco vel iudicio praebuerint, vicenarum librarum auri multa et alia gravissima indignatione se feriendos.

D. prid. k. Mai. Paulo vc. cons.

[33] *Imp. Iustinianus A. Menae pp.* **pr.** Illam subtilem observationem amputamus, per quam donationis titulo cessiones actionum accipientes non aliter eas suis transmittere heredibus poterant, nisi litem ex his contestati essent vel ius contestationis divino rescripto meruissent. nam sicut venditionis titulo cessas actiones etiam ante litis contestationem ad heredes transmitti permittitur, simili modo et donatas ad eos transferri volumus, licet nulla contestatio vel facta vel petita sit. **1.** Quod et in procuratore constituendo ad movendas easdem cessas actiones similiter observandum erit, ut minime quis impediatur procuratorem

donation with whomever he wishes of the aforesaid persons. 2. And the gifts that are registered in the various provinces and cities with any of the aforementioned persons shall have unshaken and permanent strength (at law).[182]

Given March 3, at Constantinople, in the consulship of Patricius (459).

[31] *Emperor* ZENO *Augustus to Sebastianus, Praetorian Prefect.* **pr.** For gifts that are registered in public records, We judge it unnecessary to summon neighbors or others as witnesses; since private testimony is useless when public documents suffice. **1.** But also other gifts that do not need to be registered, if, say, they are written by a notary or a third party, We also order to be valid without signatures of witnesses, provided that the donor himself or another with his consent signs according to the usual rule. Gifts that are made without writings are valid (if made) according to the constitution of Theodosius and Valentinian publicly issued to Hierius the Praetorian Prefect.[183]

Given March 1, at Constantinople, in the consulship of the vir clarissimus *Illus (478).*

[32] *Emperor* ANASTASIUS *Augustus to Euphemius, Praetorian Prefect.* In accord with the constitution of Leo of blessed memory,[184] We direct that gifts be registered only with the *vir clarissimus* Master of the Census – a rule to be applied in those documents that are executed or published in this Imperial City. Nor is anyone allowed to register either before defenders or magistrates of other cities or in any other places except for the aforementioned court. And let both those who attempt such a registration and those (magistrates) who have accepted it, as well as notaries, know that anyone who provides testimony (as to the validity of documents) not in, as they say, the appropriate location or court shall be visited with a fine of 20 pounds of gold and other severe penalty.

Given April 30, in the consulship of the vir clarissimus *Paulus (496).*

[33] *Emperor* JUSTINIAN *to Menas, Praetorian Prefect.* **pr.** We abolish that technical rule whereby those who receive assignment of rights of action as a gift cannot transmit them to their heirs unless they have had joinder of issue (*litis contestatio*) on them or they earned the right of joinder through an imperial rescript. For just as, for actions assigned pursuant to their sale, transmission to heirs is permitted before joinder of issue, similarly We wish that those donated also be transmitted to them, even though no joinder was made or sought. **1.** This rule shall also apply for appointing a procurator to bring suit on

[182] In this and many subsequent constitutions within this title, it is actually not the gift itself that is being registered, but the promise of a gift; registration makes the donative promise actionable. Except in unusual circumstances, gifts themselves were previously irrevocable only after conveyance; see C. 8.55.

[183] Law 29 above.

[184] Law 30 above.

cessarum sibi per donationem actionum dare, licet nulla litis contestatio facta vel petita sit. 2. Quae in his tantum personis locum habere censemus, quae susceptis per donationem cessionibus adhuc superesse noscuntur: nam iam mortuis huiusmodi personis vetera iura super hisdem cessionibus posita servari concedimus.

D. k. Iun. Constantinopoli dn. Iustiniano A. pp. II cons.

[34] *Idem A. Demostheni pp.* **pr.** Sancimus omnem donationem sive communem sive ante nuptias factam usque ad trecentos solidos cumulatam non indigere monumentis, sed communem fortunam habere, ut non usque ad ducentorum solidorum summam teneat, sed in huiusmodi observatione similes sint tam communes quam ante nuptias donationes. **1.** Si quid autem supra legitimam definitionem fuerit donatum, hoc quod superfluum est tantummodo non valere, reliquam vero quantitatem quae intra legis terminos constituta est in suo robore perdurare, quasi nullo penitus alio adiecto, sed hoc pro non scripto vel intellecto esse credatur.

1a. Exceptis donationibus tam imperialibus quam his, quae in causas piissimas procedunt: quarum imperiales quidem donationes merito indignari sub observatione monumentorum fieri tam a retro principibus quam a nobis sancitum est, sed firmam habere propriam maiestatem: alias vero, quae ad pietatem respiciunt, usque ad quingentorum summam et sine monumentis esse validas censemus. **1b.** His insuper ante nuptias donationibus, quae in adultas minores sui iuris constitutas cuiuscumque summae procedunt, secundum veterum legum scita, et nisi actis intervenientibus corroboratae sunt, suam retinentibus firmitatem.

1c. Sin autem non in auro res donationis fuerint datae, sed per res mobiles vel immobiles vel se moventes, quantitatum earum aestimari et, si quidem usque ad legitimam solidorum summam erigatur, validam eam et sine monumentis conservari: sin autem amplioris summae inveniatur et minime actis comprobata est, superfluum tantum vacuari. **2.** Ne autem communione inducta donatori et qui liberalitatem suscepit aliqua oriatur contentio, electionem damus ei, qui ampliorem summam in re donata habuerit, reliquae aestimationis quantitatem offerre ei, qui minorem causam habuit, et totum possidere. **2a.** Sin autem hoc minime facere maluerit, tunc omnimodo res dividi secundum quantitatem utrique parti competentem, si res dividi sine suo periculo possibilis est. **2b.** Sin autem huiusmodi casibus,[xxix] in quibus partitio utiliter celebrari

[xxix] in huiusmodi casibus

these same assigned rights of action, so that no one be prevented from giving a procurator rights of action assigned to him as a gift, even if no joinder of issue has been made or sought. **2.** We hold that these rules are relevant only for those persons who are known to be still alive after assignments through gift; for when such persons are now dead, We allow observation of the old law for such assignments.

Given June 1, at Constantinople, in the consulship of our Lord Justinian, Ever Augustus, for the second time (528).

[34] *The same Augustus to Demosthenes, Praetorian Prefect.* **pr.** We ordain that all gifts up to 300 solidi, no matter whether ordinary or pre-nuptial, do not require public registration but (instead) have a shared outcome, in that they are not valid (merely) up to 200 solidi (as was formerly true), but both ordinary and pre-nuptial gifts are similar in such regulation.[185] **1.** If, however, anything is given above the legal limit, only the excess is invalid, but the remainder that lies within the legal boundaries remains in force, as if no additional amount was added; but this (the remainder) shall be understood as not written or comprehended.

1a. Exempted (from this rule) are both imperial donations and those that involve religious causes. That it is undignified to require registration of imperial donations has been ordained both by earlier emperors and by Us;[186] rather, they are valid by their own force. But We direct that the others, those made on religious grounds, be valid up to the amount of 500 (solidi) without registration. **1b.** In addition, pre-nuptial gifts of whatever amount made to adult women less than 25 (and over 12), who are *sui iuris*, retain their validity in accord with the ordinance of ancient law,[187] even if they are not confirmed by records.

1c. But if gifts are not given in gold, but as movable or immovable or self-moving property, their value is appraised and, if indeed it reaches to the legal amount of (300) solidi, this is valid and enforced with no registration; but if it is found to be of a higher amount, and it is not attested in records, just the excess shall be invalid. **2.** But to prevent some quarrel arising between the donor and the recipient of his bounty when co-ownership is imposed, to the party who has the larger share in the gift We give an option to offer the amount of the remaining appraisal to the party who has the smaller share, and (in this way) to possess the entirety. **2a.** But if he does not wish to do this at all, then the object is in any case to be divided according to the amount falling to each party, if the object can be divided without endangering it. **2b.** But in those cases where

[185] Blume: "C.Th. 3.5.8 (428 A.D.) limited a prenuptial gift, not registered, to 200 solidi. Inst. 2.7.2 indicates that that limit applied also in ordinary gifts. But the language of the instant law suggests a former difference. The next law of this title raised the limit to 500 solidi."

[186] See C. 1.2.19.

[187] C. 5.3.17.

minime potest, amplioris summae dominus noluerit aestimationem offerre, tunc licebit etiam ei, qui minoris summae habet potestatem, offerre pretium et totum sibi vindicare.

3. Si quis autem per diversa tempora in eandem personam multas faciat liberalitates, quarum singulae quidem legitimam quantitatem non excedunt, in unum autem compositae et praedicto modo exaggeratae redundare videntur et maioris esse quantitatis, non videatur eas oportere in unum coadunare et introducere modos, per quos non convaleant et in irritum devocentur, sed e contrario et plures intellegantur et singulae secundum sui naturam obtineant et monumentorum observatione non indigeant. **3a.** Cum enim a veteribus super hac re variatum est, aliis multas aliis unam eas definientibus, nobis causa placuit humanior, ut et multae intellegantur et omnes validae, et hi qui liberalitates accipiunt sciant veros non falsos suos esse donatores.

4. Si quis autem talem receperit[xxx] donationem, in qua stipulatus fuerit annuam cuidam praestare quantitatem tantae summae, quae non excedit legitimum donationis modum, variabatur, utrum eum ex particulari donatione multas fecisse donationes existimandum est et eas actis non indigere, an ex totius stipulationis fundamento et fonte eius, ex quo annuae donationes profluxerunt, et unam esse eam donationem putandam et procul dubio monumentorum observatione vallandam. **4a.** Quod veteres quidem sat abundeque variaverunt, nos autem certa divisione concludimus, ut, si huiusmodi quidem fuerit donatio, ut intra vitam personarum stetur vel dantis vel accipientis, multae intellegantur donationes et liberae monumentorum observatione. incertus etenim fortunae exitus hoc nobis suggessit, ut possibile sit unius anni tantummodo vel brevioris vel etiam amplioris temporis metas supervivere vel donatorem vel eum qui donationem accepit, et ex hoc inveniri totam summam donationis non excedere legitimam quantitatem. **4b.** Sin autem etiam heredum ex utraque parte fuerit mentio, vel[xxxi] adiciatur tempus vitae vel donatoris vel qui donationem accipiet, tunc, quasi perpetuata donatione et continuatione eius magnam et opulentiorem eam efficiente, et una intellegatur et quasi densioribus donationibus cumulata excedere legitimum modum et omnimodo acta reposcere et aliter minime convalere.

Recitata septimo in novo consistorio palatii Iustiniani. D. III k. Nov. Decio vc. cons.

[35] *Idem A. Iuliano pp.* **pr.** Si quis argentum donaverit certumque pondus nominaverit, non autem vasa vel generaliter vel specialiter

[xxx] fecerit
[xxxi] vel non

separation cannot usefully be effected and the owner of the larger share does not choose to pay the value (of the smaller share), then he who controls the smaller share will be permitted to tender its price and claim the entirety for himself.

3. Moreover, if anyone bestows many bounties at various times on the same person, each of which does not exceed the legal amount, but if added and heaped together in the aforesaid manner they seem excessive and of greater (than legal) amount, it would seem improper to add them together and (in this way) find ways whereby they are void and are diverted into invalidity. On the contrary, they should be understood as multiple (gifts), with each treated according to its nature and not requiring observance of registration. **3a.** Since the opinion of the ancients (the jurists) differed on this matter, with some considering them many gifts and some one, We thought it the more humane course that they be interpreted as many and all be valid, and that those who receive bounties know that their donors are real, not sham.

4. Moreover, if anyone made a gift whereby he promised by stipulation to pay someone an annual amount of a sum that did not exceed the legal limit of a gift, it was doubted whether on the basis of (each) particular gift he should be considered to have made many gifts, (thus) not requiring registration, or (instead) on the basis of the entire stipulation and from its source, out of which the annual gifts flowed, this should be considered one gift and (hence) undoubtedly to be protected by requiring registration. **4a.** Because the ancients varied quite widely, We have settled on a clear distinction: if the gift is of such a kind that it is limited by the lifetime of the donor or recipient, they are interpreted as many donations, free from the requirement of registration. For the uncertainty of fate suggests to Us the possibility that the giver or recipient may survive only a year, or a shorter or longer time, and for this reason the total sum of the donation does not exceed the legal limit. **4b.** But if there is also mention of heirs on either side, or if the lifetime of the donor or the recipient is not added, then it is, as it were, a perpetual gift, the continuation of which makes it great and richer, and it should be interpreted as one (gift) that is amassed, as it were, from recurrent gifts; it (therefore) exceeds the legal limit and in any case requires registration and is otherwise invalid.

Recited at the seventh (milestone) in the New Consistory of Justinian's Palace. Given October 30, in the consulship of the vir clarissimus *Decius (529).*

[35][188] *The same Augustus to Julian, Praetorian Prefect.* **pr.** If someone makes a gift of silver and names a specified weight, but does not name vessels either

[188] Combine with C. 8.55.10.

expresserit, necessitatem ei imponi omnimodo praefatum pondus argenti dare, sive in vasis quibus voluerit, non tamen peioribus aestimatione massae, sive in ipsa aestimatione, quae pro massa rudi in illis locis frequentata est. **1.** Si vero reditum certum ex possessionibus donaverit, non tamen nomina possessionum edixerit, necesse habere de sua substantia fundos tradere tantum reditum inferre valentes, quantum in donatione posuerit, in talibus tamen agris, qui nec omnibus quos habet in possessione anteponuntur nec deteriores omnibus sunt, sed status mediocris inveniuntur. **2.** Similique modo, si quis certum numerum servorum donaverit, non tamen et is nominatim servos inscripserit, et hic mediocris figurae servos tradere et neque tales, quos non habere magis quam habere prodest, nec iterum eos, qui omnem servorum familiam donatoris antecellunt: sed et hic mediocritas spectetur. **3.** Sin autem donator neque argentum neque servos habens vel non tantum quantum donavit fecerit eorum donationem, aestimationem in his celebrari pro eo quod deest, ita tamen, ut argenti quidem secundum quod praediximus aestimatio detur, in servis autem non amplius nec minus quindecim solidis quantitas pro singulis reddetur, in reditibus autem in quindecim annos aestimationem praestet. **3a.** Sed in his omnibus, si quidem intra legitimam summam donatio fiat, nulla monumenta requirantur: sin autem amplioris summae, tunc ad acta publica decurratur, ita ut in his, quae amplioris sunt aestimationis, secundum nostram legem non totum, sed solum superfluum evanescat.

4. Sed et si quis universitatis faciat donationem, sive bessis sive dimidiae partis suae substantiae sive tertiae sive quartae sive quantaecumque vel etiam totius, si non de inofficiosis donationibus ratio ad hoc reclamaverit, coartari donatorem legis nostrae auctoritate tantum quantum donavit praestare: observatione et hic monumentorum secundum quod iam sanximus omnimodo requirenda.

5. Sed si quidem in omnibus supra dictis casibus usus fructus fuerit a donatore retentus, et traditionem iure intellegi fieri. **5a.** Sin autem hoc minime donator expresserit, si quidem stipulatio donationi inserta sit, ex eius auctoritate traditionem compelli fieri. **5b.** Sin vero et hoc praetermissum sit et usum fructum minime detinuerit, nihilo minus ex lege nostra necessitatem ei imponi etiam tradere hoc quod donare existimavit, ut non ex hoc inutilis sit donatio, quod res non traditae sunt, nec confirmetur ex traditione donatio, sed liberalitatem plenam et secundum legem nostram perfectissimam constitutam necessarius traditionis effectus sequatur, et necessitatem habeat donator omnimodo res vel partem substantiae quam

generally or specifically, it will be necessary for him in any case to give the aforesaid weight of silver either in the form of such vessels as he wishes, with an appraised value not below that of bullion, or through the appraised amount itself according to the market value of crude bullion in that area. **1.** But if he gives as a gift a specified income from his possessions but does not specify the names of the possessions, it will be necessary for him to deliver, out of his property, farms sufficient to bring as much return as he specified in the gift – but they consist not in farms that are better than all (others) he possesses, nor worse than all, but (in farms) of average condition. **2.** Similarly, if someone gives a fixed number of slaves, but he does not also indicate the slaves by name, here, too, he hands over slaves of medium condition, not ones that it would be better not to have than to have, nor those surpassing the entire household of slaves of the donor; but here, too, average condition shall be looked for. **3.** But if the donor who has neither the silver nor the slaves, or not as much as he gives, makes a donation of them, an appraisal is made for what is lacking, but in the following way: an appraisal of silver is given as above; in the case of slaves, an amount of not more or less than 15 solidi for each; in the case of income (from property), he provides a value appraised over fifteen years. **3a.** But in all these cases, if indeed the gift is within the legal amount, they need no registration; but if (they are) of a higher amount, then there shall be resort to public records, provided that for those having a higher appraisal (that are not registered), in accord with Our law[189] they are not invalid entirely, but only the excess.

4. But also if anyone makes a donation from his entire property, either of two-thirds or of half of his estate, or of a third or a quarter, or of any proportion or even of all of it, if the rule against undutiful gifts does not cry out against it (i.e., its validity), the donor is constrained by the authority of Our law to proffer as much as he gave, provided, however, that registration is executed as We have now comprehensively ordained.

5. But if, in all the aforesaid cases, the usufruct is retained by the donor, a handover (of the gift) is understood as occurring by (operation of) law. **5a.** Further, if the donor does not declare this, but a stipulation is attached to the gift, on its authority a handover may be enforced. **5b.** But if this too was omitted and he did not reserve the usufruct, nonetheless under Our law he is obliged also to hand over what he intended to give, so that the gift not be ineffective because the property was not delivered. A gift shall not be corroborated by delivery; rather, delivery shall be the necessary consequence of a gift that is complete and made in accordance with Our law, and the donor is required in any case to hand over the property, either the part of it that he

[189] Law 34.1 above.

nominaverit vel totam substantiam tradere. 5c. Cum enim in arbitrio cuiuscumque sit hoc facere quod instituit, oportet eum vel minime ad hoc prosilire vel, cum ad hoc venire properavit, non quibusdam excogitatis artibus suum propositum defraudare tantamque indevotionem quibusdam quasi legitimis velamentis protegere.

5d. Tantoque magis haec firma esse, si piis actibus vel religiosis personis donatio deputata sit (monumentorum observatione in his modis secundum quod specialiter a nobis in huiusmodi casibus praedictum est observanda), ne in praefatis causis ex quibusdam machinationibus non solum indevotus, sed etiam impius donator intellegatur poenasque non solum legitimas, sed etiam caelestes expectet.

5e. Resque donatas in omnibus supra dictis casibus non solum eos, dum supersunt, sed etiam eorum successores reddere compelli, non tantum his, in quos donatio facta est, sed etiam eorum heredibus.

D. xv k. April. Constantinopoli Lampadio et Oreste vv. cc. conss.

[36] *Idem A. Iohanni pp.* pr. Si quis pro redemptione captivorum pecunias dederit sive per cautionem dare promiserit cuiuscumque quantitatis, cognoscat se neque repetitionem habere neque exactionem cautionis posse declinare, utpote gestis sicut in donationibus non subsecutis super insinuatione eiusdem quantitatis: eo videlicet, qui pecunias accepit vel prima vice vel post cautionem, necessitatem habente piissimam administrationem adimplere, nulla ei molestia vel inquietudine inferenda vel ab eo qui pecunias praebuit vel ab aliis ex legum auctoritate permissis hoc requirere, sed tantummodo sacramentum praestare, quod re vera omnem quantitatem sine dolo vel aliqua deminutione ad redemptionem dederit captivorum.

1. Simili etiam modo gestorum absolvimus ordinatione donationes rerum mobilium vel sese moventium, quas viri gloriosissimi magistri militum fortissimis praestant militibus tam ex sua substantia quam ex spoliis hostium, sive in ipsa bellorum occupatione sive in quibuscumque locis degere noscuntur.

2. Eandem liberalitatem nostrae legis indulgemus etiam his, quorum incendio vel ruina domus corruptae sunt, quibusdam forte pecunias cuiuscumque quantitatis praebentibus vel cautionem conficientibus, ut et ipsi nec repetitionem timeant, verum etiam exactionem pecuniarum confessioni insertarum facere possint, licet non gesta fuerint subsecuta: nulla eis licentia danda pecunias ad alias causas nisi ad refectionem domorum erogare. quod si aliqua dubitatio orta fuerit, utrum tota quantitas an pars eius in aedificiis expensa est, hoc domini domus sacramento dirimetur.

has named or the whole. **5c.** For since it lies in an individual's discretion to do what he undertook, he should either not jump to this (i.e., not make a donative promise) or, when he hastened to get to it, not resort to elaborate trickeries so as to circumvent his own undertaking and hide his want of principles behind some quasi-legal veils.

5d. Much more is a gift binding if the gift is allocated for pious acts or religious persons – in this connection the requirement of registration, specially ordered by Us for such instances,[190] must be observed – so that in these cases the donor, through some deceptions, be known not merely as undutiful but as irreligious, and (hence) await not merely legal but also heavenly punishments.

5e. In all the aforementioned cases, not only those (donors) while they live, but also their successors, are obliged to deliver the donated property not only to those to whom the gift was made, but also to their heirs.

Given March 18, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

[36] *The same Augustus to John, Praetorian Prefect.* **pr.** If someone gives money to ransom captives or through a written promise (*cautio*) promises to give it, he should know that, no matter the amount, he has no claim for recovery, nor can he refuse payment of the written promise by arguing that, as with gifts, registration did not ensue regarding a declaration of this same amount. Obviously the person who receives the money either in the first place or after the written promise has an obligation to fulfill this most pious task, without annoyance or disturbance either by the person offering the money or by third parties who are allowed by authority of law to investigate this; he shall only provide his oath that in fact he gave the entire amount to ransom the captives, without deceit or any loss.

1. Similarly, We dispense with the requirement of registration for gifts of movable and self-moving property that the *viri gloriosi* Masters of Soldiers present to their bravest soldiers either from their own property or from enemy spoils, whether in direct conduct of wars or in whatever place they are known to live.

2. We bestow the same bounty of Our law also on those whose homes are destroyed by fire or collapse, if, say, some persons pay money of any amount or execute a written promise, in order that they (the donees) not fear a suit for recovery, but also can lay claim to money stated in the acknowledgment even if registration did not follow. But no license shall be accorded them to expend the money for any other purpose except rebuilding their homes. But if any question arises whether the entire amount or (only) a part of it was spent on buildings, it shall be resolved by an oath of the house's owner.

[190] C. 1.2.19.

3. Ceteris etiam donationibus, quae gestis intervenientibus minime sunt insinuatae, sine aliqua distinctione quingentos usque ad solidos valituris. hoc etenim tantummodo ad augendas huiusmodi donationes addendum esse ex praesenti lege decernimus: anteriore tempore nostra lege praecedente moderando, qua usque trecentos solidos factae donationes et sine insinuatione firmitatem obtinere iussae sunt.

D. XV k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[37] *Idem A. Iohanni pp.* Verba superflua, quae in donationibus poni solebant, id est sestertii nummi unius assium quattuor, penitus esse reicienda censemus. quid enim verbis opus est, quae rerum effectus nullus sequitur? sancimus itaque nullo modo eorum mentionem vel in imperialibus donationibus vel in aliis omnibus de cetero fieri, sed et si quisquam per verbositatem aliquid tale inscripserit sive remiserit, nulla differentia sit.

LIIII De Donationibus Quae sub Modo vel Condicione vel ex Certo Tempore Conficiuntur

[1] *Impp. Valerianus et Gallienus AA. Gamicae.* **pr.** Si doceas, ut adfirmas, nepti tuae ea lege a te esse donatum, ut certa tibi alimenta praeberet, vindicationem etiam hoc casu utilem eo, quod legi illa obtemperare noluerit, impetrare potes, id est actionem, qua dominium pristinum restituatur tibi. 1. Nam condictio quidem hoc casu (id est in personam actio) iure procedit: verum vindicationem quoque divi principes in hoc casu dandam esse sanxerunt.

PP. VI k. Dec. Tusco et Basso conss.

[2] *Impp. Diocletianus et Maximianus AA. Aurelio Zenoni.* Si praediorum proprietatem dono dedisti ita, ut post mortem eius qui accepit ad te rediret, donatio valet, cum etiam ad tempus certum vel incertum ea fieri potest, lege scilicet quae ei imposita est conservanda.

PP. V id. Mart. Maximo II et Aquilino conss.

[3] *Idem AA. Iuliae Marcellae.* **pr.** Quotiens donatio ita conficitur, ut post tempus id quod donatum est alii restituatur, veteris iuris auctoritate

3. Other gifts as well, if not at all declared in intervening records, shall without distinction be valid up to 500 solidi. We direct that this rule shall be adopted through the present law only for the future, in order to increase such gifts; the time preceding shall be governed by Our earlier law,[191] whereby gifts up to 300 solidi were ordered to have validity even without declaration.

Given October 18, at Constantinope, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[37] *The same Augustus to John, Praetorian Prefect.* Empty words customarily placed in gifts, i.e., (that the gift is given for a consideration) of a one sesterius coin or of four asses, We feel should be entirely discarded. For what need is there for words that have no material effect? Therefore We ordain that no allusion to them be made either in Imperial gifts or in all others in the future; but if someone verbosely inserts some such or fails to do so, there shall be no difference (in legal outcome).

Fifty-Fourth Title Gifts Made Subject to a Duty, under a Condition, or for a Definite Time

[1] *Emperors Valerian and Gallienus Augusti to Gamica.* **pr.** If you show, as you allege, that you made a gift to your granddaughter on condition that she provide specified maintenance to you, in this case you can obtain an analogous suit on ownership (*vindicatio utilis*) on the ground that she refuses to comply with the condition, i.e., an action whereby your former ownership (of the gift) is restored. 1. Indeed, in this case a claim for restitution (*condictio*), i.e., an action *in personam*, is (also) legally available; but deified emperors ordered that a suit on ownership also be given in this case.

Posted November 26, in the consulship of Tuscus and Bassus (258).

[2][192] *Emperors Diocletian and Maximian Augusti to Aurelius Zeno.* If you made a gift of the ownership of land subject to the limitation that it revert to you upon the recipient's death, the gift is valid, since one can be made up to a definite or indefinite time limit, with the annexed limitation, of course, being enforced.

Posted March 10, in the consulship of Maximus, for the second time, and Aquilinus (286).

[3][193] *The same Augusti to Julia Marcella.* pr. Whenever a gift is made subject to a duty that after a time the property given be turned over to a third party, on

[191] Law 34 pr. above.
[192] = *Frag. Vat.* 283, with the opposite outcome.
[193] = *Frag. Vat.* 286.

rescriptum est, si is in quem liberalitatis compendium conferebatur stipulatus non sit, placiti fide non impleta, ei qui liberalitatis auctor *fuit* vel heredibus eius condicticiae actionis persecutionem competere. **1.** Sed cum postea benigna iuris interpretatione divi principes ei qui stipulatus non sit utilem actionem iuxta donatoris voluntatem competere admiserint, actio, quae sorori tuae, si in rebus humanis ageret, competebat, tibi accommodabitur.

PP. Sirmi XI *k. Oct. ipsis* IIII *et* III *AA. conss.*

[4] *Idem AA.* Perfecta donatio condiciones postea non capit. quare si pater tuus donatione facta quasdam post aliquantum temporis fecisse condiciones videtur, officere hoc nepotibus eius fratris tui filiis minime posse non dubium est.

D. k. Oct. Tiberiano et Dione conss.

[5] *Idem AA. et CC. Dexippo.* Si quid mater filiae suae in potestate patris constitutae sub hac condicione, si fuerit intra biennium emancipata, donavit, licet hoc matris voluntate sui iuris effecta non tenuit, tamen prius marito defuncto sui iuris quocumque modo effecta ad similitudinem legati ita relicti rem donatam firmiter habere vel vindicare potest.

S. id. Dec. Nicomediae CC. conss.

LV De Revocandis Donationibus

[1] *Imp. Philippus A. Agilio Cosmiano.* **pr.** Etsi perfectis donationibus in possessionem inductus libertus quantolibet tempore ea quae sibi donata sunt pleno iure ut dominus possederit, tamen, si ingratus sit, omnis donatio mutata patronorum voluntate revocanda sit. **1.** Quod observabitur et circa ea, quae libertorum nomine, pecunia tamen patronorum et beneficio comparata sunt. **2.** Nam qui obsequiis suis liberalitatem patronorum provocaverunt, non sunt digni, qui eam retineant, cum coeperint obsequia neglegere, cum magis in eos collata liberalitas ad obsequium inclinare debet quam ad insolentiam erigere. **3.** Hoc tamen ius stabit intra ipsos tantum, qui liberalitatem dederunt. ceterum neque filii eorum neque successores ad hoc beneficium pertinebunt: neque

the authority of ancient law a rescript was given that if the beneficiary of this bounty (to whom the property would revert) had not exacted a stipulation and the agreement was not honored, the (original) giver of the bounty or his heirs had a right of action for restitution (*condictio*). **1.** But since, by generous subsequent legal interpretation, deified emperors allowed a person who had not exacted a stipulation to have an analogous action (against the donee) in accord with the donor's intent, you will be granted the right of action that your sister had, were she (still) living.

Posted at Sirmium, September 21, in the consulship of the Augusti themselves, Consuls for the fourth and third times, respectively (290).

[4] *The same Augusti.* A completed gift does not admit of subsequent conditions. So if your father, after making a gift, is deemed to have imposed certain conditions some time later, it is not doubtful that this can hardly prejudice his grandsons, the sons of your brother.

Given October 1, in the consulship of Tiberianus and Dio (291).

[5] *The same Augusti and the Caesars to Dexippus.* If a daughter was in her father's power and her mother gave her a gift on condition that she be emancipated within two years, then although she did not hold this (gift) in accord with her mother's intent when she became *sui iuris* (through her father's death and not by emancipation), nevertheless since the (donor's) husband died before (the time limit) and she became *sui iuris* in some manner, she can securely hold or claim the property given, as with a legacy left in this manner.[194]

Written December 13, in the consulship of the Caesars (294).

Fifty-Fifth Title Revocation of Gifts

[1][195] *Emperor* PHILIP *Augustus to Agilius Cosmianus.* **pr.** Although a freedman was placed in possession of a completed gift and for a period of time he possesses what was given him as its owner with full right, still, if he is ungrateful, the entire gift may be revoked if his patrons change their minds. **1.** This rule will apply also for things acquired in the name of freedmen but with the money and through the kindness of their patrons. **2.** For those who through their services (*obsequia*) elicit the generosity of patrons are not worthy to retain it when they begin to ignore their services, since the generosity that was extended to them ought to incline them more to respect than to insolence. **3.** But this right (of revocation) will be confined to those who extended the bounty. Neither their children nor

[194] See C. 6.25.3.
[195] = *Frag. Vat.* 272 (which has the recipient's *nomen*).

enim fas est ullo modo inquietari donationes, quas is qui donaverat in diem vitae suae non retractavit.

D. xv k. Iul. Aemiliano et Aquilino conss.

[2] *Imp. Probus A. Felici.* Si apud provinciae praesidem aviam filiae tuae quasi paenitentia ductam subtracta instrumenta donationum igni exussisse constiterit, vereri te non oportet, ne id, quod iure vires acceperat, ex post facto possit in dubium revocari.

PP. III non. Mai. Sirmi Probo A. et Paulino conss.

[3] *Imppp. Carus Carinus et Numerianus AAA. Ianuario et Felici.* Possessionem, quam in vos emancipatos per donationem mater contulit, ex paenitentia sola alienare non potuit.

PP. II id. Ian. Carino II et Numeriano AA. conss.

[4] *Impp. Diocletianus et Maximianus AA. et CC. Proculae.* Confiteri in fraudem te alterius donasse professionem inhonestam continere intellegas. itaque si donationem perfecisti, eam revocare non potes ex memorata adlegatione sub obtentu paenitentiae.

PP. k. April. Heracliae AA. conss.

[5] *Idem AA. et CC. Epagatho.* Si donationem rite fecisti, hanc auctoritate rescripti nostri rescindi non oportet.

S. v k. Mai. Heracliae AA. conss.

[6] *Idem AA. et CC. Herenniae.* Velles nec ne filio tuo praedia itemque mancipia donare, fuit initio tibi liberum. desine itaque postulare, ut donatio quam perfeceras revocetur sub praetextu mariti ac liberorum absentiae, cum huius firmitas ipsorum praesentia non indigeret.

S. v k. Oct. Viminacii CC. conss.

[7] *Impp. Constantius et Constans AA. ad Philippum pp.* **pr.** His solis matribus, quae non in secundi matrimonii foedus nupserint, sed unius tantum matrimonii sunt, revocandarum donationum quas in filios fecerint ita decernimus facultatem, si eos ingratos circa se esse ostenderint. **1.** Quidquid igitur is qui a matre impietatis arguitur ex titulo

their successors are eligible for this benefit; for it is not decent (*fas*) that gifts be disturbed in any way if the donor did not retract them during his lifetime.

Given June 17, in the consulship of Aemilianus and Aquilinus (249).

[2] *Emperor* PROBUS *Augustus to Felix.* If before the provincial governor it emerges that the grandmother of your daughter was moved by regret to secretly seize the gift instruments and burn them, you need not fear that an act having full force at law (the gift) can be put in doubt by a something done thereafter.

Posted May 5, at Sirmium, in the consulship of Probus Augustus and Paulinus (277).

[3] *Emperors* CARUS, CARINUS, *and* NUMERIAN *Augusti to Januarius and Felix.* A possession that your mother gave you after your emancipation she cannot alienate on the mere ground that she regrets (the gift).

Posted January 12, in the consulship of Carinus, for the second time, and Numerian, Augusti (284).

[4] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Procula.* An admission that you gave a gift in order to defraud a third party contains, you understand, an acknowledgment of dishonesty. So, if you completed the gift, upon the ground stated you cannot revoke it on the pretext of regretting it.

Posted April 1, at Heraclea, in the consulship of the Augusti (293).

[5] *The same Augusti and Caesars to Epagathus.* If you made a gift in proper form, this must not be rescinded through the authority of Our rescript.

Written April 27, at Heraclea, in the consulship of the Augusti (293).

[6] *The same Augusti and Caesars to Herennia.* You were free, at the start, to give land and slaves to your son as you wish. So cease demanding the rescission of your completed gift under the pretense that your husband and children were absent, since its validity would not require their presence.

Written September 27, at Viminacium, in the consulship of the Caesars (294).

[7][196] *Emperors* CONSTANTIUS *and* CONSTANS *Augusti to Philip, Praetorian Prefect.* **pr.** Only to those mothers who have not entered on marriage twice, but remain in just one marriage, do We grant the power of revoking gifts made to children if they show themselves ungrateful to them (their mothers). **1.** So if his mother charges him with want of devotion (*impietas*), he is compelled to

[196] = C.Th. 8.13.1; combine with C.Th. 3.13.1, 8.13.2.

donationis tenet eo die, quo controversiae qualecumque principium iussu iudicantis datur, matri cogatur reddere. **2.** Ceterum quae ante adhuc matre pacifica iure perfecta sunt et ante inchoatum coeptumque iurgium vendita donata mutata in dotem data ceterisque causis legitime alienata, minime revocamus. **3.** Actionem vero matris ita personalem esse volumus, ut vindicationis tantum habeat effectum nec in heredem detur nec tribuatur heredi. **4.** De ceteris autem, quae portentuosae vilitatis abiectaeque pudicitiae sunt, satis etiam tacite cautum putamus. quis est enim, qui his aliquid arbitretur tribuendum esse, cum etiam illis, quae iure, secundas tamen contraxerunt nuptias, nihil ex his privilegiis tributum esse vellemus?

D. XII k. Oct. Limenio et Catullino conss.

[8] *Idem AA. ad Orfitum pu.* Si umquam libertis patronus filios non habens bona omnia vel partem aliquam facultatum fuerit donatione largitus et postea susceperit liberos, totum quidquid largitus fuerit revertatur in eiusdem donatoris arbitrio ac dicione mansurum.

D. V k. April. Arbitione et Lolliano conss.

[9] *Impp. Theodosius et Valentinianus AA. ad senatum.* Donationes circa filium filiamve, nepotem neptemve, pronepotem proneptemve emancipatos celebratas pater seu avus vel proavus revocare non poterit nisi edoctis manifestissimis causis, quibus eam personam in quam collata donatio est contra ipsam venire pietatem et ex causis quae legibus continentur fuisse constabit ingratam.

D. VIII id. Nov. Ravennae Theodosio XII et Valentiniano II AA. conss.

[10] *Imp. Iustinianus A. Iuliano pp.* **pr.** Generaliter sancimus omnes donationes lege confectas firmas illibatasque manere, si non donationis acceptor ingratus circa donatorem inveniatur, ita ut iniurias atroces in eum effundat vel manus impias inferat vel iacturae molem ex insidiis suis ingerat, quae non levem sensum substantiae donatoris imponit, vel vitae periculum aliquid ei intulerit vel quasdam conventiones sive in scriptis donationi impositas sive sine scriptis habitas, quas donationis acceptor spopondit, minime implere voluerit. **1.** Ex his enim tantummodo causis, si fuerint in iudicio dilucidis argumentis cognitionaliter

return to her whatever part he holds under title of a gift on the day when such a suit is set in motion on a judge's order. **2.** But whatever part (of the gift) was legally complete while his mother was still amicable, and was sold, donated, exchanged, given in dowry, or otherwise legally alienated before the suit began, We do not revoke. **3.** But We wish the mother's action to be *in personam*, such that it has only the effect of an ownership claim (*vindicatio*), and it shall not be given against his heir nor transmitted to her heir. **4.** And We think this quite sufficiently provides, by implication, for women of monstrous stinginess or debased virtue. For is there anyone who would think they should get anything, when We wish none of these privileges bestowed on those who contract a second marriage, although (they do so) legally?

Given September 20, in the consulship of Limenius and Catullinus (349).

[8][197] *The same Augusti to Orfitus, City Prefect.* If a patron without children bestows as a gift all his goods or some portion of his resources on freedmen, and he subsequently has children, all he has given shall revert (to the patron), to remain in his control and power.

Given March 28, in the consulship of Arbitio and Lollianus (355).

[9][198] *Emperors Theodosius and Valentinian Augusti to the Senate.* Gifts made to an emancipated son or daughter, grandson or granddaughter, or great-grandson or great-granddaughter, cannot be revoked by a father, grandfather, or great-grandfather unless very clear reasons are advanced showing that the gift's recipient was guilty of a lack of devotion (*pietas*) and ungrateful for reasons set forth in statutes.

Given November 6, at Ravenna, in the consulship of Theodosius, for the twelfth time, and Valentinian, for the second time, Augusti (426).

[10][199] *Emperor Justinian Augustus to Julian, Praetorian Prefect.* **pr.** We ordain generally that all gifts legally made remain valid and unimpaired if the gift's recipient is not found to be ungrateful to the donor, such that he heaps atrocious insults on him, or raises impious hands against him, or by treacherous conduct inflicts considerable loss that does not weigh lightly on the donor's property or that endangers his life, or the gift's recipient does not want to comply with some agreements either attached in the instrument of gift or unwritten but he has formally promised. **1.** For these reasons only, if they are proven in court upon trial and with unambiguous proofs, We allow the gifts

[197] = C.Th. 8.13.3. Constans had died in 350.

[198] = C.Th. 8.13.6; combine with C.Th. 4.1.1, 5.1.8; and C. 6.55.11, 6.56.5, 6.55.10, 6.60.3, 6.61.1, 8.55.9; and perhaps also C.Th. 1.4.3, and C. 1.14.2, 1.14.3, 1.19.7, 1.22.5. Seeck dates to November 7, 426.

[199] Combine with C. 8.53.35.

adprobatae, etiam donationes in eos factas everti concedimus, ne sit cuidam licentia et alienas res capere et fragilitatem ridere donatoris, et iterum ipsum donatorem suasque res perdere et praefatis malis ab ingrato donationis acceptore adfici. 2. Haec tamen usque ad primas personas tantummodo stare censemus, nulla licentia concedenda donatoris successoribus huiusmodi querimoniarum primordium instituere. etenim si ipse qui haec passus est tacuit, silentium eius maneat semper et non a posteritate eius suscitari concedatur vel adversus ipsum qui ingratus esse dicitur vel adversus eius successionem.

D. XV k. April. Constantinopoli Lampadio et Oreste vv. cc. conss.

LVI De Mortis Causa Donationibus

[1] *Imp. Alexander A. Daphenae.* Si donationi contineatur, ut altero defuncto ad alterum portio eorum quae donabantur pertineret, existente condicione, si mortis causa donatio perficiebatur, fideicommissi actio competit.

PP. IIII k. Oct. Maximo II et Aeliano conss.

[2] *Imp. Gordianus A. Zoilo.* **pr.** Intestata mortua quondam nuru tua neptis tua, quae ex ea filio tuo quaesita est, quandoque potest ad eius venire successionem. 1. Nec tamen ea post mortem filii tui, ex quo quaesierat filiam, alii nuptui se collocando dotem dans prohibebatur quam vellet condicionem eidem doti dicere. 2. Sed si mortis causa donationem in fratrem suum conferens in casum mortis suae eam dotem eundem fratrem suum stipulari passa est, cum divi Severi constitutione etiam in mortis causa donationibus, si de cetero patrimonio quantum Falcidia iubet heres non habet, provisum sit, is qui nurui tuae heres extiterit eius constitutionis beneficium non prohibebitur postulare.

PP. X k. Febr. Gordiano A. et Aviola conss.

[3] *Impp. Diocletianus et Maximianus AA. et CC. Heredi.* Nec fratris sui mortis causa recte factam donationem sorori rescindere licet.

S. III k. Ian. Sirmi AA. conss.

made to them to be rescinded, so that no one have license to take another's property and laugh at the donor's weakness, and the donor himself both loses his property and is afflicted with the aforesaid evils by the gift's ungrateful recipient. **2.** Nevertheless, We order that these rules apply only to the original parties; no permission is granted to the donor's successors to launch such complaints. For if the person who suffered these things was silent, his silence shall remain permanent and unable to be taken up by his posterity either against the allegedly ungrateful person or his successors.

Given March 18, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

Fifty-Sixth Title Gifts in Contemplation of Death[200]

[1][201] *Emperor* ALEXANDER *Augustus to Daphena.* If a gift (to two persons) has a limit that if one dies, his portion of the donated property go to the other, an action on trust (*fideicommissum*) lies if the gift in contemplation of death (*donatio mortis causa*) was completed and the condition is fulfilled.

Posted September 28, in the consulship of Maximus, for the second time, and Aelianus (223).

[2] *Emperor* GORDIAN *Augustus to Zoilus.* **pr.** If your former daughter-in-law died intestate, your granddaughter, born to your daughter-in-law and son, can at some point succeed her. **1.** Nonetheless, after the death of your son from whom she had a daughter, in contracting a second marriage and giving a dowry she is not prohibited from imposing on this dowry the condition she wanted. **2.** But if (at that time), with the intent of giving her brother a gift in contemplation of her death, she allowed said brother to exact a stipulation for this dowry, then since in the constitution of the deified Severus provision is made also for gifts in contemplation of death if, out of the remaining estate, the heir does not have the amount the lex Falcidia orders, your daughter-in-law's heir is not prevented from invoking the benefit of this constitution.

Posted January 23, in the consulship of Gordian Augustus and Aviola (239).

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Heres.*[202] A sister is not allowed to rescind her brother's legally executed gift made in contemplation of death.

Written December 30, at Sirmium, in the consulship of the Augusti (293).

[200] See D. 39.6. A gift *mortis causa* is given by a donor who anticipates dying before the donee.
[201] Combine with C. 4.48.3.
[202] Or possibly "to the heir."

[4] *Imp. Iustinianus A. Iohanni pp.* Cum de mortis causa donatione dubitabatur et alii quidem inter ultimas voluntates eam posuerunt et legatis adgregandam esse censuerunt, alii autem inter donationes quae inter vivos consistunt eam posuerunt, dubietate eorum explosa sancimus omnes mortis causa donationes, sive iuxta mortem facientis fuerint celebratae sive longiore cogitatione mortis subsecutae sunt, actis minime indigere neque expectare publicarum personarum praesentiam et ea quae super huiusmodi monumentis solent adhiberi. sed ita res procedat, ut, si quinque testibus praesentibus vel in scriptis vel sine litterarum suppositione aliquis voluerit mortis causa donationem facere, et sine monumentorum accessione res gesta maneat firmitate vallata et nullam calumniam accipiat neque propter hoc, quod gesta ei non accesserunt, inefficax esse atque inutilis videatur et omnes effectus sortiatur, quos ultimae habent liberalitates, nec ex quacumque parte absimiles esse intellegantur.

D. k. Sept. Constantinopoli Lampadio et Oreste vv. cc. conss.

LVII De Infirmandis Poenis Caelibatus et Orbitatis et Decimariis Sublatis

[1] *Imp. Constantinus A. ad populum.* **pr.** Qui iure veteri caelibes habebantur, imminentibus legum terroribus liberentur atque ita vivant, ac si numero maritorum matrimonii foedere fulcirentur, sitque omnibus aequa condicio capessendi quod quisque mereatur. nec vero quisquam orbus habeatur: proposita huic nomini damna non noceant. **1.** Quam rem et circa feminas aestimamus earumque cervicibus imposita iuris imperia velut quaedam iuga solvimus promiscue omnibus.

PP. k. April. Romae Constantino A. VI et Constantino C. conss.

[2] *Impp. Honorius et Theodosius AA. Isidoro pu.* Inter virum et uxorem rationem cessare ex lege Papia decimarum et, quamvis non interveniant liberi, ex suis quoque eos solidum capere testamentis, nisi forte lex

[4] *Emperor* Justinian *Augustus to John, Praetorian Prefect.* Since there was doubt (among the jurists) about a gift in contemplation of death, some classing it among his (the decedent's) last wishes and considering it as a legacy, while others classified it among gifts between living persons (*inter vivos*), We settle their doubt and ordain that all gifts in contemplation of death, whether they are executed just before the donor's death or are undertaken with a more distant anticipation of death, do not require registration and do not demand the presence of public officials and those things customarily observed for such documents. But let the matter go as follows: if, in the presence of five witnesses and either in writing or without the support of writing, someone wishes to make a gift in contemplation of death, without resort to (registered) documents the act shall be fully valid and not be subject to attack. Nor shall it be considered ineffective and useless because unaccompanied by records, and it shall have the same effects that final bequests have, nor shall they be considered different in any respect.

Given September 1, at Constantinople, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

Fifty-Seventh Title Annulling the Penalties for Celibacy and Childlessness, and Abolishing the 10 Percent Rule

[1][203] *Emperor* Constantine *Augustus to the people.* **pr.** Those men considered celibates (*caelibes*) under the ancient law shall be free from the threatening terrors of the law and shall live as if numbered among married men, supported by the bond of matrimony, and all men shall be on equal footing in taking what each deserves. Nor shall anyone be considered childless (*orbus*), and the losses imposed on this term shall not harm him. **1.** We think the same concerning women; We release all of them indiscriminately from the legal compulsions imposed like yokes upon their necks.

Posted April 1, at Rome, in the consulship of Constantinus Augustus, for the sixth time, and the Caesar Constantine (320).

[2][204] *Emperors* Honorius *and* Theodosius *Augusti to Isidore, City Prefect.* We ordain abolition of the rule of 10 percent (limiting the right of testate succession) between husband and wife under the lex Papia. Although they have no children, they take in full from their (respective) wills unless, possibly, some

[203] = C.Th. 8.16.1; combine with C. 6.9.9 and the constitutions cited there. Constantine refers to the lex Julia et Papia Poppaea (actually two statutes, 18 BCE/9 CE). Seeck dates to January 31, 320.
[204] = C.Th. 8.17.2; combine with C. 1.19.6, 8.58.1.

alia minuerit derelicta, decernimus. tantum igitur post haec maritus vel uxor sibi invicem derelinquant, quantum superstes amor exegerit.

D. prid. non. Sept. Varane cons.

LVIII De Iure Liberorum

[1] *Impp. Honorius et Theodosius AA. Isidoro pu.* Nemo post haec a nobis ius liberorum petat, quod simul hac lege omnibus concedimus.

D. prid. non. Sept. Varane cons.

[2] *Imp. Iustinianus A. Menae pp.* Illam iniuriam, quae contra matrem defuncti vel defunctae praeteritis fiebat temporibus, pro iustitiae ratione amputamus et legitima iura, quae ex Tertulliano senatus consulto ei praestantur, omnimodo eam habere sancimus, licet tres liberos ingenua vel libertina quattuor minime pepererit.

D. k. Iun. Constantinopoli ipso A. II cons.

other law lessens what is left. Therefore husband or wife may in future leave as much to each other as their present love demands.

Given September 4, in the consulship of Varanes (410).

Fifty-Eighth Title The Right Resulting from Children (*Ius Liberorum*)

[1][205] *Emperors Honorius and Theodosius Augusti to Isidorus, City Prefect.* Let no one hereafter seek from Us the right resulting from (having) children; through this law We grant it simultaneously to everyone.

Given September 4, in the consulship of Varanes (410).

[2][206] *Emperor Justinian Augustus to Menas, Praetorian Prefect.* In accord with Justice, We curtail the wrong committed in the past against the mother of a deceased male or female child and ordain that she has the absolute legal rights granted to her by the *SC Tertullianum* even though she has not borne at least three children if she is a free-born woman, or four if a freedwoman.

Given June 1, at Constantinople, in the consulship of the Augustus himself, for the second time (528).

[205] = C.Th. 8.17.3; combine with C. 1.19.6, 8.57.2.
[206] Combine with C. 6.55.12, 6.56.7. The *SC Tertullianum*, passed under Hadrian (117–138 CE), gave certain women a right of intestate succession to their children

Liber Nonus

I Qui Accusare Non Possunt

[1] *Impp. Severus et Antoninus AA. Silvano.* Prius est, ut criminibus, quae tibi ut graviora ab adversario tuo obiciuntur, caedis atque vulnerum respondeas, et tunc ex eventu causae iudex aestimabit, an tibi permittendum sit eundem accusare, tametsi prior inscriptionem deposuisti.

PP. v id. Mart. Tertullo et Clemente conss.

[2] *Imp. Antoninus A. Ingenuo.* **pr.** Si cautiones, quibus Secundinus solutam Ingenuo pecuniam probare se dicit, tutores vel curatores tui suspectas ut falsas habent, proprio nomine, cum non liceat alieno, non prohibentur in crimine falsi subscribere. **1.** Nec enim facile tutores vel curatores, qui officio et periculo suo res pupillorum vel adulescentium administrant, sententia notantur, nisi evidens eorum calumnia iudicanti apparebit.

PP. xii k. Oct. Antonino A. et Geta conss.

[3] *Imp. Alexander A. Rufo.* **pr.** Qui crimen publicum instituere properant, non aliter ad hoc admittantur, nisi prius inscriptionum pagina processerit et fideiussor de exercenda lite adhibitus fuerit. **1.** Sin vero post satisdationem praesentes non fuerint, edicto admonendi sunt, ut

Ninth Book

edited by Thomas A. J. McGinn

First Title Those Who Cannot Bring Criminal Prosecutions

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Silvanus.* You shall first respond to those more serious charges, namely, murder and the infliction of wounds, leveled at you by your opponent, and according to the outcome of the case, the judge will then evaluate whether you should be permitted to launch a criminal prosecution against him, even if you were the first to apply to do so.

Posted March 11, in the consulship of Tertullus and Clemens (195).

[2] *Emperor* ANTONINUS *Augustus to Ingenuus.* **pr.** If your *tutores* or *curatores* suspect that the documents of guaranty (*cautiones*), which Secundinus claims as proof that a sum of money was paid to Ingenuus (i.e., to you), were in fact forged, they are not prevented from filing a charge of forgery in their own names, since it cannot be done in someone else's (i.e., yours). 1. For *tutores* and *curatores*, who manage the property of their minor and adult wards as a duty and at their own risk, are not easily marked with legal infamy (*sententia notantur*), unless the malice behind their prosecution will be obvious to the judge.

Posted September 20, in the consulship of Antoninus Augustus and Geta (205).[1]

[3] *Emperor* ALEXANDER *Augustus to Rufus.* pr. Those hastening to launch a public criminal prosecution[2] shall not be permitted to go forward unless they first complete the accusation document (*inscriptionum pagina*) and furnish a surety (to guarantee) that they will carry through with the trial. 1. But if, however, after giving a surety, they do not show up, they are to be admonished

[1] So Krüger, but Geta's first consulship was in 205, his second in 208, while Caracalla's second was in 205, his third in 208.

[2] *Crimen publicum.* The category of such offenses long outlived the *quaestio* procedure laid down by various criminal law statutes. In what follows, the adjective "public" is used to characterize them even after this development.

veniant ad causam agendam, et si non adfuerint, non solum extra ordinem puniendi sunt, sed etiam sumptus, quos in eam rem et circa ipsum iter ad litem vocati fecerunt, dependere cogentur.

PP. III non. Febr. Alexandro A. cons.

[4] *Idem A. Dionysio.* Uxor tua, si consobrini sui necem vindicandam existimat, adeat praesidem provinciae.

PP. XVI k. Iul. Alexandro A. cons.

[5] *Idem A. Marcellinae.* Senatus consulto permissum non est mulieri legis Corneliae crimine reum facere, nisi res ad eam pertineat. cum igitur filii tui tutores et curatores habent, ipsi deliberare debent, an instrumenta, ex quibus adversarium filiorum tuorum obtinuisse dicis, falsa esse accusare debeant.

PP. k. Oct. Alexandro A. cons.

[6] *Idem A. Probo.* Accusationem, a qua discedere te professus es, repetere non debes.

PP. V non. Mai. Iuliano et Crispino conss.

[7] *Idem A. Felici.* Si ea quae crimen intendit cognitionem moratur, certa perferendae accusationi tempora iudex competens praestet, intra quae si agere supersederit, renuntiasse causae intellegitur.

PP. XV k. Sept. Agricola et Clemente conss.

[8] *Imp. Gordianus A. Gaio militi.* Non prohibentur milites actiones quae iudicii publici instar obtineant intendere, si suas suorumque iniurias exsequantur. ideoque consobrini tui necem defendere tibi permittimus.

PP. XVII k. Aug. Pio et Pontiano conss.

[9] *Idem A. Severiano.* Non ignorat competens iudex eam, quae ultionem et mortem filii persequi adlegat, non temere ad accusationem esse admittendam, nisi prius matrem se esse probaverit.

PP. VI non. Mart. Gordiano A. et Aviola conss.

in an edict to come and plead their case, and if they fail to comply, they are not only to be punished through extraordinary procedure (*extra ordinem*), but they will also be compelled to pay the expenses of the defendants in connection with the trial and the travel to court.

Posted February 3, in the consulship of Alexander Augustus (222).

[4] *The same Augustus to Dionysius.* If your wife believes the murder of her cousin should be avenged (at law), let her approach the provincial governor.

Posted June 16, in the consulship of Alexander Augustus (222).

[5] *The same Augustus to Marcellina.* By a decree of the Senate, a woman is not permitted to launch a criminal prosecution of an offense under the lex Cornelia,[3] unless the matter directly concerns her. Therefore, since your children have *tutores* and *curatores*, they themselves ought to consider whether they should prosecute on the ground that the documents with which you claim your children's opponent won his case were forged.

Posted October 1, in the consulship of Alexander Augustus (222).

[6] *The same Augustus to Probus.* You ought not to resume (as complainant) the criminal prosecution which you said you abandoned.

Posted May 3, in the consulship of Julian and Crispinus (224).

[7] *The same Augustus to Felix.* If she who initiates a criminal charge delays the trial, the appropriate judge shall set a fixed time within which to conclude the prosecution. If she fails to litigate within these limits, she is understood to have abandoned the case.

Posted August 18, in the consulship of Agricola and Clemens (230).

[8] *Emperor* G*ORDIAN* *Augustus to Gaius, a soldier.* Soldiers are not forbidden from initiating legal procedures (*actiones*) that are tantamount to a public criminal prosecution (*iudicium publicum*), if they pursue offenses committed against themselves or their own family members. For this reason We allow you to prosecute the murder of your cousin.

Posted July 16, in the consulship of Pius and Pontianus (238).

[9] *The same Augustus to Severianus.* The appropriate judge is not unaware that she who claims to be avenging at law the death of her son should not be allowed to proceed over-hastily to the prosecution, before she has shown that she is the mother (of the decedent).

Posted March 2, in the consulship of Gordian Augustus and Aviola (239).

[3] The Senatus consultum Libonianum dates to 61 CE, the lex Cornelia de falsis to 81 BCE.

[10] *Idem A. Mucatraulo militi.* Si crimen ad tuam tuorumque iniuriam pertinens exsequeris, sollemnibus te inscriptionibus adstringe, ut praesidem provinciae habere iudicem possis.
PP. k. Aug. Gordiano A. et Aviola conss.

[11] *Imp. Philippus A. et Philippus C. Saturnino.* Data opera partis adversae res vestras incendio exarsas esse adseverantes crimen Corneliae de sicariis exsequi potestis.
PP. XIII k. Iul. Peregrino et Aemiliano conss.

[12] *Impp. Diocletianus et Maximianus AA. et CC. Corinthiae.* **pr.** De crimine quod publicorum fuerit iudiciorum mulieri accusare non permittitur nisi certis ex causis, id est si suam suorumque iniuriam persequatur, secundum antiquitus statuta tantum de quibus specialiter eis concessum est non exacta subscriptione. **1.** Unde aditus praeses provinciae in primis examinabit, an tale sit crimen, cuius accusationem mulier subire non prohibetur.
S. V k. Mai. AA. conss.

[13] *Idem AA. et CC. ad Asclepium.* Si magnum et capitale crimen ac non leve frater contra fratrem suum instituerit, non solum audiendus non est, sed etiam exilii poena plectendus.
D. X k. Febr. CC. conss.

[14] *Idem AA. et CC. Aeliae.* Propter insidias, quas tuae vitae paratas contendis, accusationem apud praesidem provinciae contra filium tuum, si pietas et ratio naturalis animi tui non revocat intentionem, instituere potes.
S. XVI k. Mart. CC. conss.

[15] *Idem AA. et CC. Lupioni.* Criminis accusationem instituere cum periculo calumniae, si tibi existimatio integra est, minime prohiberis.

[10] *The same Augustus to Mucatraulus, a soldier.* If you are prosecuting a charge concerning an offense committed against you and members of your family, submit to the formal procedure of application, so that you can have the governor of the province as a judge.

Posted August 1, in the consulship of Gordian Augustus and Aviola (239).

[11] *Emperor* PHILIP *Augustus and* PHILIP *Caesar to Saturninus.* You claim that your property was intentionally set on fire by your opponents. You can therefore bring a charge under the lex Cornelia on murderers.[4]

Posted June 19, in the consulship of Peregrinus and Aemilianus (244).

[12] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Corinthia.* pr. A woman is not allowed to bring criminal prosecutions on a charge relevant to the public criminal courts (*iudicia publica*), except in certain situations, such as when they pursue offenses to themselves or to family members, in accordance with ancient enactments that only permit so much specifically to them, without requiring a formal (i.e., written) application. 1. Therefore, once approached, the governor of the province will determine first of all whether the charge is of such a kind as women are not forbidden to bring.

Written April 27, in the consulship of the Augusti (293).

[13] *The same Augusti and Caesars to Asclepius.* If a brother launches against his brother a serious capital charge (entailing loss of life or status; *capitale crimen*), and not a minor one, he shall not only not be heard but shall also be punished with a sentence of capital exile (*exilium*).

Given January 23, in the consulship of the Caesars (294).

[14] *The same Augusti and Caesars to Aelia.* You can launch a criminal prosecution against your son before the provincial governor, if dutiful affection (*pietas*) and your natural inclinations (*ratio naturalis animi tui*) do not inspire a change of heart, because of his plotting against your life that you allege.

Written February 14, in the consulship of the Caesars (294).

[15] *The same Augusti and Caesars to Lupio.* If you enjoy a proper reputation (*existimatio integra*, i.e., no legal infamy), you are not at all prevented from launching a criminal accusation, although you bear the risk of (being charged with) malicious prosecution.

[4] The lex Cornelia de sicariis et veneficis dates to 81 BCE.

S. III k. Mart. CC. conss.

[16] *Idem AA. et CC. Callitycho.* Cum rationibus iuris congruit desiderium tuum postulantis accusationem tertiam ei qui duos reos delatos habet non permitti contra legis praescripta, nisi suas suorumque iniurias quis persequatur.

S. XII k. Dec. Nicomediae CC. conss.

[17] *Pars sententiae eorundem AA. et CC. datae V id. Ian. Diocletiano VII et Maximiano VI AA. conss.* Iniquum et longe a beatitudine saeculi nostri esse credidimus, ut Thaumastus accusandi eius haberet facultatem, in cuius domo eum, licet ingenuum, a prima tamen aetate fuisse constabit.[i] quare ex nomine Thaumasti mentio super conflictu criminali Symmacho conquiescat. si quam sane civilem petitionem idem Thaumastus sibi competere confidit, iudicio praesidali poterit experiri.

[18] *Idem AA. et CC. Iuliano.* Si sororem tuam leviorum commissorum ream facis, accusationem non prohiberis exercere in iudicio praesidali, quo temerarie commissa congrua ultione plectantur.

D. III k. Mart. Diocletiano VIIII et Maximiano VIII AA. conss.

[19] *Imppp. Valentinianus Valens et Gratianus AAA. Laodicio praesidi Sardiniae.* Neganda est accusatis, qui non suas suorumque iniurias exsequantur, licentia criminandi in pari vel minori crimine, priusquam se crimine quo premuntur exuerint, secundum scita veterum iuris conditorum, ita tamen, ut et ipsi inscriptiones contra eos etiam pendente accusatione deponere possint.

D. prid. id. Aug. Carnunti Gratiano A. III et Equitio conss.

[i] constat

Written February 28, in the consulship of the Caesars (294).

[16] *The same Augusti and Caesars to Callitychus.* Your judicial request accords with generally accepted principles of law (*rationes iuris*). A man who has already initiated prosecution of two defendants is not permitted to proceed to a third in defiance of the statutory rules (*legis praescripta*), unless he is pursuing offenses committed against himself or family members.

Written November 20, at Nicomedia, in the consulship of the Caesars (294).

[17] *A part of the pronouncement* (sententia) *of the same Augusti and Caesars, given January 9 in the consulship of Diocletian, for the seventh time, and Maximian, for the sixth time, Augusti (299).* We have been of the opinion that it is unfair and far from the (ideal) happiness of Our reign that Thaumastus enjoys the opportunity to bring a criminal prosecution against the man in whose house, it is clear, he, although free-born, nevertheless lived from an early age. For this reason, reference to a criminal prosecution of Symmachus under the name of Thaumastus shall cease. If, to be sure, the same Thaumastus believes that he has any grounds for a private lawsuit, he will be able to bring this before the (provincial) governor's court.

[18] *The same Augusti and Caesars to Julian.* If you accuse your sister of relatively minor offenses, you are not prevented from initiating a prosecution in the governor's court, so that inappropriate acts are punished with the proper penalty.

Given February 28, in the consulship of the Augusti, for the ninth and eighth time, respectively (304).

[19][5] *Emperors* VALENTINIAN, VALENS, *and* GRATIAN *Augusti to Laodicius, Governor of Sardinia.* The possibility of bringing (against their accusers) charges for an equal or lesser offense shall be denied to those under accusation, unless they are prosecuting offenses committed against themselves or against their family members, until they have cleared themselves of the charges facing them, according to the rules of the ancient lawfinders (*scita veterum iuris conditorum*). In any case, even before the conclusion of their trial, they too can formally apply to prosecute their accusers.

Given August 12, at Carnuntum, in the consulship of Gratian Augustus, for the third time, and Equitius (374).

[5] = (In part, with changes) C.Th. 9.1.12. Seeck dates to August 12, 375.

[20] *Impp. Arcadius et Honorius AA. Eutychiano pp.* Si quis ex familiaribus vel ex servis cuiuslibet domus cuiuscumque criminis delator atque accusator emerserit, eius existimationem caput atque fortunas petiturus, cuius familiaritati vel dominio inhaeserit, ante exhibitionem testium, ante examinationem iudicii, in ipsa expositione criminum atque accusationis exordio ultore gladio feriatur. vocem enim funestam intercidi oportet potius quam audiri. maiestatis autem crimen excipimus.

D. VI id. Nov. Constantinopoli Caesario et Attico conss.

[21] *Impp. Honorius et Theodosius AA. consulibus praetoribus tribunis plebi senatui salutem dicunt.* Liberti si accusatores manumissorum heredumve esse praesumpserint, eodem quo servi supplicio tenebuntur, luituri poenas ante prohibitae delationis exordium.

D. VIII id. Aug. Ravennae Asclepiodoto et Mariniano conss.

II De Accusationibus et Inscriptionibus

[1] *Imp. Alexander A. Marciano.* Eos qui terminos effoderunt extraordinaria animadversione coerceri debere praeses provinciae non ignorabit.

PP. III k. Aug. Alexandro A. cons.

[2] *Idem A. Syro.* **pr.** Si cuiusdam criminis obnoxius servus postulatur, dominus eum defendere potest et in iudicio sistere accusatoris intentionibus responsurum. **1.** Post probationes autem criminis non ipse dominus, sed servus pro suo delicto condemnationem sustineat. ideo enim servum suum domino defendere permissum est, ut pro eo possit competentes adlegationes offerre.

PP. XI k. Dec. Alexandro A. cons.

[20][6] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Eutychianus, Praetorian Prefect.* If any slave or member of a household from any house at all should come forth as an informer (*delator*) or prosecutor in any sort of criminal law matter, poised (thereby) to threaten the reputation (*existimatio*), standing, or property of the person to whose household or ownership he has been attached, before the production of witnesses, before the trial begins, in the very declaration of the charges and the beginning of the prosecution he shall be struck down by an avenging sword. For a destructive voice ought to be silenced rather than heard. We make an exception, however, for the charge of treason (*maiestas*).

Given November 8, at Constantinople, in the consulship of Caesarius and Atticus (397).

[21][7] *Emperors* HONORIUS *and* THEODOSIUS *Augusti send greetings to the Consuls, Praetors, Tribunes of the Plebs, and Senate.* If freed-persons presume to act as the prosecutors of their manumitters or the heirs of the latter, they will be punished in the same manner as slaves, and will pay a penalty before the start of the forbidden accusation.

Given August 6, at Ravenna, in the consulship of Asclepiodotus and Marinianus (423).

Second Title Criminal Accusations and Their Registration[8]

[1] *Emperor* ALEXANDER *Augustus to Marcianus.* The governor of the province will not be unaware that those who have dug up boundary markers ought to be punished at his discretion (*extraordinaria animadversio*).

Posted July 30, in the consulship of Alexander Augustus (222).

[2][9] *The same Augustus to Syrus.* **pr.** If a slave is accused of a certain crime, his master can defend him and have him appear in court to answer the allegations of the prosecutor. **1.** After proof is offered of the offense, however, not the master, but the slave shall be condemned for his own wrongdoing. For on this account the master is allowed to defend his own slave, so that he can make appropriate assertions in his defense.

Posted November 21, in the consulship of Alexander Augustus (222).

[6] = C.Th. 9.6.3.
[7] = (with minor changes) C.Th. 4.10.2. Combine with C. 4.20.12 and the references given there.
[8] See D. 48.2.
[9] Combine with C. 3.42.2, 9.35.1.

[3] *Idem A. Stephanidi.* Reos capitalium criminum absentes etiam per procuratorem defendi leges publicorum iudiciorum permittunt.

PP. IIII non. Nov. Maximo II et Aeliano conss.

[4] *Imp. Gordianus A. Archelao.* Si accusatoribus absentibus et non per contumaciam adesse iudicio cessantibus ex una postulatione aditus praeses provinciae non causa cognita sententiam dixit, qua eum de quo querimoniam detulisti liberandum existimavit, criminatione etiam nunc perseverante, quae contumacia vel cessatione accusatorum non interveniente auferri non potuit, causa intentati criminis apud eundem vel successorem eius more iudiciorum tractabitur.

PP. non. Mart. Gordiano A. II et Pompeiano conss.

[5] *Idem A. Paulino.* Non ideo minus crimine seu atrociorum iniuriarum iudicio tenetur is qui in istam accusationem incidit, quod dicat alium se huius facti mandatorem habuisse. namque hoc casu praeter principalem reum mandatorem quoque ex sua persona conveniri posse ignotum non est.

PP. III id. Sept. Gordiano A. II et Pompeiano conss.

[6] *Idem A. Avidiano.* **pr.** Absentem capitali crimine accusari non posse, sed requirendum tantummodo adnotari solere, si desit, vetus ius est. **1.** Et ideo cum absentem te et ignorantem, cui numquam ullum crimen denuntiatum esset, per iniuriam a praeside provinciae in metallum datum dicas, quo magis in praesenti te agente, ut adseveras, iam nunc fides veri possit illuminari, praefectos praetorio adire cura, qui, quidquid novo more et contra formam constitutionum gestum deprehenderint, pro sua iustitia reformabunt.

PP. IIII non. April. Arriano et Papo conss.

[3] *The same Augustus to Stephanis.* The laws on the public criminal courts (*leges iudiciorum publicorum*) allow defendants being tried on capital charges (entailing loss of life or status; *capitalia crimina*) to be defended in their absence even by a procurator.

Posted November 2, in the consulship of Maximus, for the second time, and Aelianus (223).

[4] *Emperor* G*ORDIAN* *Augustus to Archelaus.* (You allege that) while the prosecutors have been away and have ceased to participate in the trial without displaying contempt of court, the provincial governor, after being approached, on the basis of a single judicial request (*postulatio*) delivered his decision without hearing the case, to the effect that he thinks the defendant, against whom you brought the accusation, should be released. If this is so, since the trial is even now (to be regarded as) underway, because it could not be dismissed when the prosecutors are not guilty of contempt or wrongfully abandoning the accusation, the charge that has been brought will be heard by the same governor or by his successor according to standard judicial procedure.

Posted March 7, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

[5] *The same Augustus to Paulinus.* Someone accused of relatively serious offenses is no less liable to a charge or a trial because he claims that another person put him up to such behavior. For it is not unknown that in this situation, apart from the main defendant, the instigator (*mandator*) can also be prosecuted under his or her name.

Posted September 11, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

[6] *The same Augustus to Avidianus.* **pr.** It is an ancient principle of law (*vetus ius*) that a person cannot be prosecuted on a capital charge (entailing loss of life or status; *capitale crimen*) when absent, but is usually only noted, if not present, as someone to be sought. **1.** And for this reason, since you claim that you were wrongly sentenced to the mines by the provincial governor in your absence, unknowingly, and when you had never been given notice of any charge, in order that at last now the truth of the matter, as you assert it, be brought out with you participating in the trial, take care to approach the Praetorian Prefects, who will recast in accord with their own sense of justice (*iustitia*) whatever they discover has been done contrary to established procedure and against the rules laid down by constitutions.

Posted April 2, in the consulship of Arrianus and Papus (243).

[7] *Idem A. Proculo.* Ea quidem, quae per officium praesidibus nuntiantur, et citra sollemnia accusationum posse perpendi incognitum non est. verum falsis nec ne notoriis insimulatus sit, perpenso iudicio dispici debet.

PP. VIII id. Ian. Peregrino et Aemiliano conss.

[8] *Exemplum sacrarum litterarum Diocletiani et Maximiani AA.* Si quis se iniuriam ab aliquo passum putaverit et querellam deferre voluerit, non ad stationarios decurrat, sed praesidalem adeat potestatem aut libellos offerens aut querellas suas apud acta deponens.

PP. sine die et consule.

[9] *Idem AA. Honorato.* **pr.** Qui de crimine publico in accusationem deductus est, ab alio super eodem crimine deferri non potest. **1.** Si tamen ex eodem facto plurima crimina nascuntur et de uno crimine in accusationem fuerit deductus, de altero non prohibetur ab alio deferri. **2.** Iudex autem super utroque crimine audientiam accommodabit: nec enim licebit ei separatim de uno crimine sententiam proferre, priusquam plenissima examinatio super altero quoque crimine fiet.

PP. XIIII k. Sept. Basso et Quintiano conss.

[10] *Idem AA. Ursae.* Qui explicandi negotii spem, cuius finis in iudicis potestate ac motu situs est, pollicetur, non minus ob illicitam sponsionem crimen contrahit, quam qui ad huiusmodi promissionis commercium contra disciplinam publicam adspirat.

PP. III k. Nov. ipsis IIII et III AA. conss.

[11] *Idem AA. have Crispine carissime nobis.* Si quis homicidii crimen existimat persequendum, secundum iuris publici formam debebit eum, qui in primordio homicidii postulaverat reum neque probaverat ideoque reus absolutus est, praevaricationis arguere: id enim salubriter statutis principum parentum nostrorum iurisque forma praescriptum est: vel si id non putaverit agendum, ad sequens crimen, id est pastorum latronumve, descendere eum coges atque id exsequi iudicio tuo, cum,

[7] *The same Augustus to Proculus.* It is not unheard of that those matters, certainly, which are reported to provincial governors by their staff, can be investigated without the formalities of a criminal prosecution. But whether the accusation made in the reports is true or false ought to be determined in the course of a trial.

Posted January 6, in the consulship of Peregrinus and Aemilianus (244).

[8] *Copy of an imperial letter from Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti.* If someone believes himself to be the victim of a crime and wishes to make a criminal complaint against another, he or she shall not resort to the military police (*stationarii*), but shall approach the provincial governor, either by delivering a petition or by having his or her complaint registered in the public records.

Posted without day or year.

[9][10] *The same Augusti to Honoratus.* **pr.** Someone who has been accused of a crime cannot be prosecuted by someone else for the same offense. **1.** If, however several charges arise from the same set of facts and someone has been prosecuted on one of them, he or she can be charged with another of these offenses by a third party. **2.** The (same) judge, moreover, will grant a hearing on both charges. For it will not be permitted for him to deliver a decision separately about one charge, until a very full investigation of the other has taken place as well.

Posted August 19, in the consulship of Bassus and Quintianus (289).

[10] *The same Augusti to Ursa.* Whoever makes a promise assuring the outcome of a case which lies in the authority and discretion of a judge no less commits a crime on account of an unlawful stipulation, than the person who seeks, contrary to public policy (*disciplina publica*), an agreement of this kind.

Posted October 30, in the consulship of the Augusti, for the fourth and third time, respectively (290).

[11] *The same Augusti: Greetings to Crispinus, most dear to us!* If someone thinks a charge of homicide should be prosecuted (after a defendant has been acquitted), according to the rules of public criminal law (*ius publicum*) he or she ought to prove guilty of judicial collusion the person who originally accused the defendant of homicide and (then) failed to prove the case, so that the defendant was acquitted. For this is laid down in salutary fashion in the enactments (*statuta*) of prior emperors, our predecessors (*parentes*), and in the

[10] Combine C. 7.56.3.

si quidem id ab incusato appareat esse commissum, ob ultionem publicam obnoxius legibus fiat.

D. VIII id. April. Hannibaliano et Asclepiodoto conss.

[12] *Idem AA. et CC. Aurelio.* Factum sponte se praecipitantis innocenti criminis periculum adferre non potest.

S. XIIII k. Iun. Sirmi AA. conss.

[13] *Imppp. Gratianus Valentinianus et Theodosius AAA. Mariniano vicario Hispaniae.* Si quis servos crediderit accusandos, non prius ad corporum tormenta veniatur, quam se vinculo subscriptionis adstrinxerit.

D. VI k. Iun. Patavi Merobaude iterum et Saturnino conss.

[14] *Idem AAA. et Arcadius A. Cynegio pp.* Singuli universique iudices cognoscant in publicis criminibus non oportere emendicatis suffragiis decretorum aut relationibus a publicis personis destinandis credere, sed rei veritatem requirere.

D. prid. k. Mai. Constantinopoli Arcadio A. et Bautone conss.

[15] *Idem AAAA. Tatiano pp.* Tunc convenit potentiores viros adesse iudiciis, cum eorum praesentiam in criminibus publicis per inscriptionem causa deposcat, licet in pecuniariis causis per procuratores lites sustineant.

D. XV k. Mart. Mediolani Valentiniano A. IIII et Neoterio conss.

rules of law (*iuris forma*). If perhaps he does not think he should do that, you will compel him to pursue the related offense, that is, the one committed by the shepherds and brigands, and to prosecute this in your court, since, if in fact this is seen to be the work of the accused, under the laws (*leges*) he shall become liable to punishment for a public crime.

Given April 6, in the consulship of Hannibalianus and Asclepiodotus (292).

[12] *The same Augusti and the Caesars to Aurelius.* The actions of someone voluntarily hurling her- or himself to death cannot prejudice a person innocent of a crime.

Written May 19,[11] *at Sirmium, in the consulship of the Augusti (293).*

[13][12] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Marinianus, Vicar of Spain.* If someone thinks slaves should be prosecuted for criminal offenses, their (judicial examination under) torture shall not proceed until he (the accuser) has bound himself through a formal (i.e., written) application for a trial.

Given May 27, at Padua, in the consulship of Merobaudes, for the second time, and Saturninus (383).

[14][13] *Emperors* GRATIAN, VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Cynegius, Praetorian Prefect.*[14] Judges both jointly and severally shall know that, regarding public criminal charges (*publica crimina*), they ought not to trust in testimonials elicited from town councils or in reports that must be forwarded by public officials, but that they themselves ought to inquire into the truth of the matter.

Given April 30, at Constantinople, in the consulship of Arcadius Augustus and Bauto (385).

[15][15] *The same Augusti to Tatianus, Praetorian Prefect.* It is established law that men of influence (*potentiores viri*) shall appear in court, when public criminal cases (*publica crimina*) require their presence, through a formal application, although in private law cases they manage their suits through procurators.

Given February 15, at Milan, in the consulship of Valentinian Augustus, for the fourth time, and Neoterius (390).

[11] The precise month is uncertain: Mommsen prefers December 19, 293.
[12] = (in part, with changes) C.Th. 9.1.14.
[13] = (in part, with changes) C.Th. 9.1.15.
[14] In fact, Gratian had died in 383.
[15] = (with changes) C.Th. 9.1.17.

[16] *Impp. Arcadius et Honorius AA. Pasiphilo.* **pr.** In causis criminalibus dignum est, ut inscriptiones proponantur, quae magnitudinem videlicet criminis tempusque designant, ut alterutram partem digna legum tenere possit auctoritas. **1.** Quod statutum si fuerit forte contemptum, hi qui ex officio ingrediuntur secretarium quinque librarum auri condemnatione ferientur.

D. VIII k. Ian. Mediolani Olybrio et Probino conss.

[17] *Impp. Honorius et Theodosius AA. consulibus praetoribus tribunis plebis senatui salutem dicunt.* **pr.** Accusationibus ordinem iam dudum legibus institutum servari iubemus, ut, quicumque in discrimen capitis accersitur, non statim reus qui accusari potuit aestimetur, ne subiectam innocentiam faciamus. sed quisquis ille est qui crimen intendit, in iudicium veniat, nomen rei indicet, vinculum inscriptionis adripiat, custodiae similitudinem habita tamen dignitatis aestimatione patiatur nec impunitam fore noverit licentiam mentiendi, cum calumniantes ad vindictam poscat similitudo supplicii. **1.** Nemo tamen sibi blandiatur obiectu cuiuslibet criminis de se in quaestione confessus, veniam sperans propter flagitia adiuncti, vel communione criminis consortium personae superioris optans, aut inimici supplicio in ipsa supremorum suorum sorte sociandus, aut eripi se posse confidens aut studio aut privilegio nominati, cum veteris iuris auctoritas de se confessos ne interrogari quidem de aliorum conscientia sinat. nemo igitur de proprio crimine confitentem super conscientia scrutetur aliena.

D. VIII id. Aug. Ravennae Asclepiodoto et Mariniano conss.

[16][16] *Emperors* Arcadius *and* Honorius *Augusti to Pasiphilus.* **pr.** In criminal cases it is appropriate that formal applications be made that set forth clearly the scope and chronology of the offense, so that an authoritative procedure worthy of the laws can hold both parties in check. **1.** If what is laid down here happens to be disregarded, those staff members who participate in the proceedings (i.e., have access to the *secretarium* or judge's chamber) will be fined 5 pounds of gold.

Given December 25, at Milan, in the consulship of Olybrius and Probinus (395).

[17][17] *Emperors* Honorius *and* Theodosius *Augusti send greetings to the Consuls, Praetors, Tribunes of the Plebs, and Senate.* **pr.** We order that the rules for criminal prosecutions long ago set down in the laws shall be maintained. So whoever is summoned to respond to a charge entailing the loss of life or status (*discrimen capitis*) shall not immediately be reckoned as a defendant eligible for prosecution, so that We not prejudice his or her innocence. But whoever initiates a charge shall come into court, set forth the name of the defendant, make him- or herself responsible through a formal application, submit to detention in the same manner as the defendant – taking into consideration his or her rank (*dignitas*), however – and shall know that there shall be no scope for lying that goes without punishment, since a similar penalty summons for vengeful punishment those who prosecute maliciously.[18] **1.** No one however shall flatter himself, having confessed his guilt regarding any sort of charge during judicial examination under torture, by hoping for pardon thanks to the wrongdoing of an accomplice, or by wishing to bind his fate to that of a higher-ranking person through a partnership in crime, or through punishment of a personal enemy (seeking) partnership in the very circumstances of his death, or by believing that he can be snatched from such a penalty through the intercession or privileged status of the person whom he named. For the authority of ancient law (*veteris iuris auctoritas*) does not permit those who have confessed their own guilt even to be questioned concerning the complicity of others. Therefore let no one who has confessed to the charge raised against him be heard concerning the complicity of others.

Given August 6, at Ravenna, in the consulship of Asclepiodotus and Marinianus (423).

[16] = (in part, with changes) C.Th. 2.1.8. Combine with C. 8.4.8, 9.37.1. Seeck dates to January 6, 395.

[17] = (in part, with minor changes) C.Th. 9.1.19. Combine with C. 4.20.12 and the *constitutiones* mentioned there.

[18] See C.Th. 9.46.10. This last sentence = C. 9.46.10.

III De Exhibendis vel Transmittendis Reis

[1] *Impp. Valentinianus et Valens AA. Valentino consulari Piceni.* Si miles in provincia repertus crimen publicum commiserit, eum rector provinciae sub custodia constituat atque ita vel causae meritum vel personae qualitatem ad magistrum militum referat.

D. XI k. Febr. Mediolani Valentiniano et Valente AA. conss.

[2] *Imppp. Gratianus Valentinianus et Theodosius AAA. Eutropio pp.* **pr.** Nullus in carcerem prius quam convincatur omnino vinciatur. **1.** Ex longinquo si quis est acciendus, non prius insimulanti accommodetur adsensus, quam sollemni lege se vinxerit. **2.** Eique qui deducendus erit ad disponendas res suas componendosque maestos penates spatium coram loci iudice aut etiam magistratibus sufficientium dierum, non minus tamen triginta tribuatur, nulla remanente apud eum qui ad exhibendum missus est copia nundinandi. **3.** Qui posteaquam ad iudicem venerit, adhibita advocatione ius debebit explorare quaesitum ac tamdiu pari cum accusatore fortuna retineri, donec reppererit cognitio celebrata discrimen.

D. III k. Ian. Constantinopoli Gratiano V et Theodosio AA. conss.

[3] *Imppp. Valentinianus Theodosius et Arcadius AAA. Drepanio proconsuli Africae.* Neminem iudicio exhibendum esse praecipimus, nisi de cuius exhibitione iudex pronuntiaverit.

D. prid. non. Febr. Mediolani Valentiniano A. IIII et Neoterio conss.

IIII De Custodia Reorum

[1] *Imp. Constantinus A. ad Florentium rationalem.* **pr.** In quacumque causa reo exhibito, sive accusator existat sive eum publicae sollicitudinis cura produxerit, statim debet quaestio fieri, ut noxius puniatur,

Third Title Producing and Transporting Defendants[19]

[1][20] *Emperors* VALENTINIAN *and* VALENS *Augusti to Valentinus, Consular Governor of Picenum.* If a soldier serving in a province is discovered to have committed a public crime (*crimen publicum*), the governor shall place him in custody, and shall report the facts of the case and the rank of the person concerned to the Master of the Soldiers.

Given January 22, at Milan, in the consulship of Valentinian and Valens Augusti (365).

[2][21] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Eutropius, Praetorian Prefect.* **pr.** No one at all shall be placed in prison in chains before conviction. **1.** If someone must be summoned over a great distance, the request of the accuser shall not be granted before he has made himself responsible through a formal application. **2.** The person to be transported will be granted an adequate amount of time, not less than thirty days, however, in which to put his affairs in order and console the grief of his household (*penates*) under the oversight of the local judge or even town officials. The person sent to escort him to court shall have no opportunity of extorting him (to pay for more time). **3.** When he subsequently comes before the judge, he ought to exercise, in the presence of legal counsel, the right to question his accuser, as well as to enjoy a status equal to the latter, until the trial in its course discloses a difference between the two.

Given December 30, at Constantinople, in the consulship of Gratian, for the fifth time, and Theodosius Augusti (380).

[3][22] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Drepanius, Proconsul of Africa.* We instruct that no one shall be produced in court unless the judge has ordered his production.

Given February 4, at Milan, in the consulship of Valentinian Augustus, for the fourth time, and Neoterius (390).

Fourth Title Custody of Defendants[23]

[1][24] *Emperor* CONSTANTINE *Augustus to Florentius, Comptroller* (Rationalis). **pr.** In whatever case a defendant is produced in court, whether a private prosecutor or a public official has brought this about, the trial ought to begin at

[19] See D. 48.3.
[20] = (in part, with changes) C.Th. 9.2.2 (addressed to Valentinian).
[21] = (with changes) C.Th. 9.2.3.
[22] = C.Th. 9.2.4.
[23] See D. 48.3.
[24] = (with changes) C.Th. 9.3.1.

innocens absolvatur. **1.** Quod si accusator aberit ad tempus aut sociorum praesentia necessaria videatur, id quidem debet quam celerrime procurari.

2. Interea vero exhibito non ferreas manicas et inhaerentes ossibus mitti oportet, sed prolixiores catenas, si criminis qualitas etiam catenarum acerbitatem postulaverit, ut et cruciatio desit et permaneat fida custodia. **3.** Nec vero sedis intimae tenebras pati debebit inclusus, sed usurpata luce vegetari et, ubi nox geminaverit custodiam, vestibulis carcerum et salubribus locis recipi ac revertente iterum die ad primum solis ortum ilico ad publicum lumen educi, ne poenis carceris perimatur, quod innocentibus miserum, noxiis non satis severum esse dignoscitur.

4. Illud etiam observabitur, ut neque his qui stratorum funguntur officio neque ministris eorum liceat crudelitatem suam accusatoribus vendere et innocentes intra carcerum saepta leto dare aut subtractos audientiae longa tabe consumere. **5.** Non enim existimationis tantum, sed etiam periculi metus iudici imminebit, si aliquem ultra debitum tempus inedia aut quocumque modo aliquis stratorum exhauserit, et non statim eum penes quem officium custodiae est atque eius ministros capitali poena subiecerit.

D. prid. k. Iul. Serdicae Constantino A. VI *et Constantino C. conss.*

[2] *Idem A. ad Euagrium.* **pr.** Si quis in ea culpa vel crimine fuerit deprehensus, quod dignum claustris carceris et custodiae squalore videtur, auditus apud acta, cum de admisso constiterit, poenam carceris sustineat atque ita postmodum eductus apud acta audiatur. **1.** Ita enim quasi sub publico testimonio commemoratio admissi criminis fiet, ut iudicibus immodice saevientibus freni quidam ac temperies adhibita videatur.

D. III *non. Febr. Heracleae Constantino A.* VII *et Constantio C. conss.*

[3] *Idem A. Acindyno pp.* Quoniam unum carceris conclave permixtos secum criminosos includit, hac lege sancimus, ut, etiamsi poenae

once, so that the guilty be punished and the innocent acquitted. 1. But if the prosecutor is away for a time, or the presence of accomplices seems necessary, this, at any rate, ought to be taken care of as quickly as possible.

2. Meanwhile, certainly, the defendant, once produced, ought not to be placed in iron fetters that fit close to the bone, but looser chains, if indeed the type of charge requires bitter resort to chains. The point is to avoid torment, while safeguarding custody. 3. Nor indeed ought he to suffer, while shut up, the darkness of a windowless room but be invigorated by resort to sunlight. And when night doubles the needs of detention, he ought to be brought to the prison entrance and placed in a healthy spot. When day returns, at sunrise, he ought to be immediately led back to the sunlight. The idea is that he not perish from the punishments in prison, which is regarded as pitiable for the innocent, but not sufficiently severe for the guilty.

4. The following practice too will be maintained. Those who perform the duties of prison-warden (*stratores*) and their servants shall not be permitted to practice cruelty after being bribed by the prosecutors, nor to deliver innocents to death in the confines of prisons, or to allow them to waste away from chronic disease after they are denied a hearing. 5. For not only a concern about damage to his reputation (*existimatio*, i.e., with legal infamy), but also personal risk, will loom over the judge if he does not immediately subject to the capital penalty (*capitalis poena*) the person in charge of the prison and his servants if one of the wardens has killed through starvation or by any means at all a prisoner detained longer than he ought to have been.

Given June 30, at Serdica, in the consulship of Constantine Augustus, for the sixth time, and Constantine Caesar (320).[25]

[2][26] *The same Augustus to Evagrius.* pr. If someone is shown to be guilty of a type of wrongful behavior or crime that is deemed worthy of confinement to a prison and the misery of detention, when he has been tried on the public record and guilt has been established, he shall take up his prison sentence in such a way that he shall be brought forth later and heard (again) upon the public record. 1. For in this way there will be a proclamation of the crime that has been committed, as though by a public deposition, so that there seems to be a certain check and restraint placed on the intemperate cruelty of judges.

Given February 3, at Heraclea, in the consulship of Constantine Augustus, for the seventh time, and Constantius Caesar (326).

[3][27] *The same Augustus to Acindynus, Praetorian Prefect.* A single secure unit within a prison contains criminals who mingle with each other. We lay down

[25] The date is more likely to be December 31, 320: Seeck and Projet Volterra.
[26] = C.Th. 9.3.2.
[27] = C.Th. 9.3.3, correctly attributing the constitution to Constantius.

qualitas permixtione iungenda est, sexum tamen disparem diversa claustrorum habere tutamina iubeatur.

D. non. April. Acindyno et Proculo conss.

[4] *Imppp. Valentinianus Valens et Gratianus AAA. ad Probum pp.* **pr.** Ad commentariensem receptarum personarum custodia observatioque pertineat, nec putet hominem abiectum atque vilem obiciendum esse iudici, si reus modo aliquo fuerit elapsus. nam ipsum volumus eiusmodi poena consumi, cui obnoxius docebitur fuisse qui fugerit. **1.** Si vero commentariensis necessitate aliqua procul ab officio egerit, adiutorem eius pari iubemus invigilare cura et eadem statuimus legis severitate constringi.

D. III k. Iul. Contionaci Gratiano A. II et Probo conss.

[5] *Imppp. Gratianus Valentinianus et Theodosius AAA. Eutropio pp.* **pr.** De his quos tenet carcer id aperta definitione sancimus, ut aut convictum velox poena subducat aut liberandum custodia diuturna non maceret. **1.** Iubemus autem, ut intra tricesimum diem semper commentariensis ingesserit numerum personarum, varietatem delictorum, clausorum ordinem aetatemque vinctorum. officium viginti libras auri aerario nostro iubemus inferre, iudicem desidem ac resupina cervice tantum titulum gerentem extorrem impetrata fortuna decem libras auri multandum esse censemus.

D. III k. Ian. Constantinopoli Gratiano V et Theodosio AA. conss.

[6] *Αὐτοκράτωρ Ἰουστινιανός Α. Μηνᾷ ἐπάρχῳ πραιτωρίων.* **pr.** Οὐδένα ἐμβάλλεσθαι ἐν φυλακῇ δίχα προστάξεως τῶν κατὰ τὴν εὐδαίμονα ταύτην πόλιν ἢ ἐν ἐπαρχίᾳ ἐνδόξων ἢ περιβλέπτων ἢ λαμπροτάτων ἀρχόντων

with this law that, although persons subjected to the same type of sentence shall be housed together, nevertheless different confinement facilities shall be ordained for men and women.

Given April 5, in the consulship of Acindynus and Proculus (340).

[4][28] *Emperors* VALENTINIAN, VALENS, *and* GRATIAN *Augusti to Probus, Praetorian Prefect.* **pr.** The detention and care of persons taken into custody shall be the responsibility of the head warden (*commentariensis*). He shall not think that a lowly and base person is to be brought up on charges before a judge if a defendant has somehow escaped. For We wish that he himself be liable to a penalty of this kind, if it is shown that he was responsible for the escapee. **1.** If, indeed, the head warden is for some urgent reason away from his responsibilities, We order that his assistant shall exercise oversight with equal care, and lay down that the latter shall be constrained by the same statutory rigor.

Given June 29, at Contionacum, in the consulship of Gratian Augustus, for the second time, and Probus (371).

[5][29] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Eutropius, Praetorian Prefect.* **pr.** We lay down through this clear provision (*definitio*), regarding those who are imprisoned, that swift punishment shall carry off the convicted and long-term detention shall not waste away the person who should be released. **1.** We order moreover that every thirty days the head warden shall, as a regular practice, report (to the judge) the number of persons, the types of crimes they have committed, the rank of those confined, and the age of those bound. We command that (otherwise) the administrative staff shall pay a fine of 20 pounds of gold to Our Treasury and We instruct that the slacking, spineless judge, who is a judge only in name, shall be banished, and, after pleading to keep his estate, shall pay a fine of 10 pounds of gold.

Given December 30, at Constantinople, in the consulship of Gratian, for the fifth time, and Theodosius Augusti (380).

[6][30] *Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect.* **pr.** We wish that no one be cast into custody without an order from a man holding the rank of *illustris*, *spectabilis*, or *clarissimus* as public officials in this prosperous

[28] = (with minor changes) C.Th. 9.3.5. Seeck dates to July 13, 371; Schmidt-Hofner, to June 29, 371. Blume: "The *commentariensis* … was … what we might call the clerk of the department of the court dealing with criminal cases, filing criminal complaints and keeping the records of all criminal cases. His office was one of the most important under the judges and he had process-servers, jailors, lictors and other ministerial officers under him." See C. 9.3.2.

[29] = (in part, with minor changes) C.Th. 9.3.6. Combine with C. 9.3.2.

[30] Pr.-1, 9 = (with changes) C. 1.4.22. §§2 and 6–8 are from Bas. 60.35.22; 3–5 from its scholia. Combine with C. 1.4.23, 9.5.2, 9.47.26. See also *Rhopai* 10.1, 11.5, 19.15.

ἢ τῶν ἐν ταῖς πόλεσιν ἐκδίκων βουλόμεθα. **1.** Ἐπὶ δὲ τῶν ἐμβληθέντων ἢ ἐμβαλλομένων τοὺς θεοφιλεστάτους τῶν τόπων ἐπισκόπους μίαν ἑκάστης ἑβδομάδος ἡμέραν τὴν τετράδα ἢ τὴν παρασκευὴν τοὺς ἐν ταῖς φυλακαῖς διερευνᾶσθαι καὶ σὺν ἀκριβείᾳ μανθάνειν τὰς τῆς αὐτῶν κατοχῆς αἰτίας καὶ εἴτε οἰκέται τυγχάνοιεν ὄντες εἴτε ἐλεύθεροι, εἴτε ἐπὶ χρήμασιν εἴτε ἐπὶ ἄλλοις ἐγκλήμασιν εἴτε ἐπὶ φόνοις ἐμβεβλημένοι. **2.** Καὶ εἰ μὲν δοῦλοί εἰσιν, εἴσω εἴκοσιν ἡμερῶν ἐκβάλλεσθαι αὐτοὺς ἢ σωφρονιζομένους ἢ τοῖς δεσπόταις παραδιδομένους. ἢ ἐὰν μὴ φαίνωνται οἱ δεσπόται, ἀπολύεσθαι αὐτούς. **3.** Ὁ ἐν εἱρκτῇ βληθεὶς διὰ χρηματικὸν ἐλεύθερος ἀπολυέσθω παρέχων ἐγγύας· εἰ δὲ ἀπορεῖ ἐγγυῶν, τεμνέσθω εἴσω λ' ἡμερῶν τὸ κατ' αὐτὸν καὶ ἀπολυέσθω. ἐὰν δὲ πλείονος χρόνου τὸ πρᾶγμα δέηται, τότε ἐξωμοσίᾳ καταπιστευέσθω μέχρι πέρατος τῆς δίκης· εἰ δὲ μετὰ τὴν ἐξωμοσίαν ἀπολειφθῇ πρὸ περαιώσεως τοῦ ζητουμένου, ἐκπιπτέτω τῶν οἰκείων πραγμάτων. **4.** Ἐὰν ἐλεύθερος ἐγκλήματι κατεχόμενος βληθῇ εἰς φυλακήν, ἐγγύας διδότω καὶ ἀπολυέσθω. εἰ δὲ ἀπορεῖ ἐγγυῶν, μεινάτω ἕως ἓξ μηνῶν μόνων ἐν τῇ φυλακῇ, ὧν ἐντὸς τεμνέσθω τὸ κατ' αὐτόν, εἰ μὴ ἄρα κεφαλικῶς ἐνάγεται. **5.** Ὁ γὰρ τοιοῦτος οὐδὲ ἐγγύῃ καταπιστεύεται, ἐὰν μέντοιγε ὑπὸ τῶν δημοσιευόντων κατηγορηθῇ· ἀλλὰ ἐντὸς πάλιν τῶν ἓξ μηνῶν τὸ κατ' αὐτὸν ὀφείλει πέρας λαβεῖν. εἰ δὲ οὐχ ὑπὸ τῶν δημοσιευόντων, ἀλλ' ὑπὸ ἰδικοῦ κατηγόρου ἐνήχθη, τότε καταθαρρεῖται ἡ ἐγγύη. ἐὰν δὲ οὐκ εὐπορῇ δοῦναι ἐγγύας, φυλάττεται ἐπὶ ἕνα μόνον ἐνιαυτόν, οὗ ἐντὸς τὸ κατ' αὐτὸν χρὴ πάντως τέμνεσθαι. **6.** Προλήψεως δὲ περὶ αὐτῶν γενομένης ὡς ὑπευθύνων, εἶναι αὐτοὺς ἐν τῇ φρουρᾷ, ἕως ὅτε περαιωθῇ ἡ δίκη. **7.** Εἰ δὲ ἤδη ψῆφος γέγονε παρὰ τῶν ἐγκεκλεισμένων, ἐκβιβάζεσθαι αὐτήν, εἴτε σωματική ἐστιν εἴτε χρηματική, ἐχόντων ἐξουσίαν ἐπὶ χρηματικῇ ἐκστῆναι. **8.** Ὑπομιμνησκόντων τῶν ἐπισκόπων τοὺς ἄρχοντας εἰδότας, ὡς ὅτι καὶ αὐτοὶ καὶ αἱ τάξεις αὐτῶν δέκα λίτρας παρέξουσιν. **9.** Ἀδείας διδομένης τοῖς κατὰ καιρὸν θεοφιλεστάτοις ἐπισκόποις, εἴ τινα ῥᾳθυμίαν ἴδοιεν γινομένην παρὰ τῶν κατὰ καιρὸν

city (Constantinople), and in the provinces, or from the community defenders (*defensores*) in the (other) cities. **1.** Regarding those who have been imprisoned or who will be imprisoned, the most devout local bishops shall, on one day each week, either the fourth day or the sixth day, inquire of the guards and learn with precision what the reasons are for their confinement, whether they have been imprisoned because of an issue at private law, or on some other charge, such as murder, whether they happen to be slave or free. **2.** And if they are slaves, within twenty days they shall be released, after being physically chastised or handed over to their masters (for physical punishment). But if their masters do not make an appearance, they shall be released from custody. **3.** If a free person has been imprisoned in connection with a civil suit, once he has provided sureties he shall be released. If he has no sureties, his case shall be decided within thirty days and he shall be released. If the case requires more time, through no fault of the prisoner, then he shall be bound by a judicial guaranty founded on an oath until the conclusion of the case. If, having given the oath, he absconds before the conclusion of the case, his goods shall be confiscated. **4.** If free persons are imprisoned on a criminal charge,[31] the case shall be heard immediately. If a free person charged with a (criminal) offense is imprisoned, he shall give sureties and be released. If he has no sureties, he shall remain in prison for a maximum of six months, within which his case shall be concluded, unless he is charged with a capital crime. **5.** For such a defendant is not given over to sureties if, at any rate, he has been accused by public officials. Even so, again, the case ought to be concluded within six months. The public officials acting as prosecutors shall know that, if they accuse falsely, the same penalty shall be inflicted upon them.[32] But if he is prosecuted not by public officials, but by a private accuser, the surety shall be allowed. If he is not able to offer sureties, he shall be kept in custody for no more than a year, within which time his case must be completely concluded. **6.** If, however, there is a presumption of guilt regarding the (defendants), they shall remain in custody until the case is decided. **7.** If a sentence has already been delivered against prisoners, it shall be carried out, whether the penalty is corporal or monetary in nature. If it is monetary, it shall be permitted to them to make assignment of their property (and be released). **8.**[33] Upon the admonition of the bishops, public officials shall not be unaware that they and their staffs will pay a fine of 10 pounds (of gold, if they violate these rules). **9.**[34] Permission is granted to the most reverend bishops currently in office to report to Us any negligence that

[31] The Basilika indicate that a charge of sedition is meant.

[32] This sentence derives from the Basilika. It is necessary for the sense of the passage and added by Paul Krüger, though only in a note; so also, "through no fault of the prisoner" in 3.

[33] See C. 1.4.22.2.

[34] = (in part) C. 1.4.22.2.

ἐνδοξοτάτων καὶ μεγαλοπρεπεστάτων καὶ λαμπροτάτων ἀρχόντων ἢ παρὰ τῶν πειθομένων αὐτοῖς τάξεων, ταύτην μηνύειν, ὡς ἂν προσήκουσα κατὰ τῶν ῥαθυμούντων ἐνεχθείη κίνησις.

D. xv k. Febr. Constantinopoli Decio cons.

V De Privatis Carceribus Inhibendis

[1] *Imp. Zeno A. Basilio pp.* **pr.** Iubemus nemini penitus licere per Alexandrinam splendidissimam civitatem vel Aegyptiacam dioecesin aut quibuslibet imperii nostri provinciis vel in agris suis aut ubicumque domi privati carceris exercere custodiam, viro spectabili pro tempore praefecto Augustali, et viris clarissimis omnium provinciarum rectoribus daturis operam semperque futuris in speculis, ut saepe dicta nefandissimorum hominum adrogantia modis omnibus opprimatur. **1.** Nam post hanc saluberrimam constitutionem et vir spectabilis pro tempore Augustalis et quicumque provinciae moderator maiestatis crimen procul dubio incursurus est, qui cognito huiusmodi scelere laesam non vindicaverit maiestatem: primatibus insuper officiorum eiusdem criminis laqueis constringendis, qui, simulatque noverint memoratum interdictum facinus in quocumque loco committi, proprios iudices de opprimendo nefandissimo scelere non protinus curaverint instruendos. **2.** Nam illud perspicuum est eos qui hoc criminum genus commiserint pro veterum etiam legum et constitutionum tenore tamquam ipsius maiestatis violatores ultimo subiugandos esse supplicio.

D. k. Iul. Constantinopoli Longino vc. cons.

[2] *Αὐτοκράτωρ Ἰουστινιανὸς Α. Μηνᾷ ἐπάρχῳ πραιτωρίων.* Ἰδιωτικὰς φυλακὰς πᾶσι τρόποις ἐν πόλεσιν ἢ ἐν κώμαις ἀπαγορεύομεν καθίστασθαι... Ἡ διάταξις κελεύει μὴ γίνεσθαι ἰδιωτικὰς φυλακάς· τοὺς δὲ τοῦτο πράττοντας ὑποκεῖσθαι καὶ ἐπιτιμίῳ καὶ διάγειν ἐν τῇ δημοσίᾳ φρουρᾷ τοσαύτας ἡμέρας, ὅσας δήποτ' ἂν γέγονεν ὁ ἐγκλεισθεὶς ἐν τῇ γενομένῃ παρ' αὐτῶν φυλακῇ, ὁποίας ἂν εἴησαν τύχης ἢ ἀξίας, ἐκπίπτειν δὲ καὶ τῆς δίκης τῆς ἁρμοζούσης αὐτοῖς κατὰ τῶν ἐγκλεισθέντων, προνοίᾳ τοῦ ἐπισκόπου καὶ

they should observe on the part of the *viri illustres, spectabiles,* and *clarissimi* current officials or on the part of the administrative staffs that obey them, so that appropriate punishment may be inflicted upon the negligent.

Given January 18, at Constantinople, in the consulship of Decius (529).

Fifth Title Repression of Private Prisons

[1] *Emperor* ZENO *Augustus to Basilius, Praetorian Prefect.* pr. We order that no one at all shall be permitted to operate a private prison, in the most illustrious city of Alexandria, in the diocese of Egypt, or in any of the other provinces of Our Empire, whether on his own rural property or in his home, wherever it is located. The current *vir spectabilis* Imperial Prefect of Egypt and the *viri clarissimi* governors of all the provinces will, always being vigilant, see to it that the oft-mentioned arrogance of these unspeakable persons shall be in every way crushed. 1. For in the wake of this most salubrious constitution it is far from doubtful that any *vir spectabilis* who is currently an imperial official as well as any governor of a province will bring upon himself a charge of treason (*maiestas*) if he learns of such a wicked act and does not avenge the insult to the Emperor (*maiestas*). Moreover, the chiefs of staff shall be constrained by the meshes of the same charge, if, as soon as they learn that the offense just forbidden is being committed in any place at all, they do not immediately take care to inform the judges they serve about the need to suppress this most unspeakable wickedness. 2. For this much is clear, that those who commit this type of crime, shall, also in accordance with the sense of the ancient statutes (*leges*) and constitutions, be subjected to the death penalty (*ultimum supplicium*), on the ground that they have committed treason (*maiestas*).

Given July 1, at Constantinople, in the consulship of the vir clarissimus *Longinus (486).*

[2][35] *Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect.* We entirely forbid the establishment of private jails in cities or villages ... This imperial law (*diataxis*) forbids the establishment of private prisons. Those who violate it shall be liable to the punishment (also)[36] of being incarcerated in the public prison as many days – no matter how many – as a prisoner spent in their prisons, whatever their rank or status may be. They shall also lose the suits that lie for them against their prisoners. This (their punishment) shall be the concern

[35] = (in part, with changes) C. 1.4.23, supplemented from Bas. 60.55.2. Combine with C. 1.4.22, 9.4.6, 9.47.26.

[36] It is possible these penalties were inflicted in addition to the death penalty given in C. 9.5.1.

τοῦ ἄρχοντος. εἰ δὲ ῥᾳθυμήσει ὁ ἄρχων, ὑφίσταται κίνδυνον καὶ περὶ τὴν οὐσίαν καὶ περὶ τὴν σωτηρίαν.

D. XV k. Febr. Constantinopoli Decio cons.

VI Si Reus vel Accusator Mortuus Fuerit

[1] Τὸ τῆς λειποταξίας ἔγκλημα λύεται τῇ τελευτῇ τοῦ λειποτακτήσαντος στρατιώτου.

[2] *Imp. Antoninus A. Eutychiano.* Etsi Marcellus qui crimine falsi postulabatur vita functus est ac per hoc crimen in persona eius sit extinctum, accusatio tamen non est abolita, cum tam uxorem eius quam te eodem crimine postulatos proponas.

PP. VII k. Oct. Laeto II et Cereale conss.

[3] *Idem A. Proculo.* Si is, quem homicidii seu cuiusvis criminis postulasti reum, vita functus est, frustra ob poenam desertae accusationis conveniris, cum morte eius crimen cum poena eius sit extinctum ac per hoc tibi adempta est necessitas accusationis.

PP. IIII k. Oct. Romae Sabino et Anullino conss.

[4] *Imp. Alexander A. Veroniciano.* **pr.** Si, ut proponis, causa pecuniaria ad emolumentum tuum spectat, licet Annianus, cui falsi crimen auctor[ii] tuus intendebat, vita functus sit, non prohiberis, si quis adversus te instrumento quod in dubium vocatur uti coeperit, accusationem instituere. **1.** Quamvis enim in persona principalis rei morte subducti iam subsistere non possit, tamen si quis illo uti voluerit, intellegit se periculo criminis esse subiectum.

PP. VI k. Ian. Albino et Aemiliano conss.

[ii] actor

of the bishops and public officials. If a public official neglects his duty, he shall be liable with regard to his property and his personal safety.

Given January 18, at Constantinople, in the consulship of Decius (529).

Sixth Title A Defendant or Accuser Dies

[1] The crime of desertion lapses when the soldier who has deserted dies.[37]

[2] *Emperor* ANTONINUS *Augustus to Eutychianus.* Even if Marcellus, who was being indicted on a charge of falsification, has died, and for this reason the charge against him has lapsed, nevertheless, the prosecution has not been dismissed, since you indicate that his wife and you yourself have been indicted on the same charge.

Posted September 25, in the consulship of Laetus, for the second time, and Cerealis (215).

[3] *The same Augustus to Proculus.* If he whom you have indicted for homicide or any other crime has died, it is useless to summon you to be punished for abandoning the prosecution, since by his death the charge together with its punishment has lapsed, and for this reason the need for you to continue with the prosecution has been removed.

Posted September 28, at Rome, in the consulship of Sabinus and Anullinus (216).

[4] *Emperor* ALEXANDER *Augustus to Veronicianus.* **pr.** If, as you allege, a civil suit stands to benefit you, although Annianus, whom your manager (*actor*) was prosecuting on a charge of forgery, has died, you are not prevented from launching a prosecution if someone begins to employ against you the document whose validity has been brought into question. **1.** For although (the prosecution) cannot continue at this point, thanks to the death of the principal defendant, nevertheless if someone desires to use that (document), he understands that he is liable to the risk of a charge (of forgery).[38]

Posted December 27, in the consulship of Albinus and Aemilianus (227).

[37] Supplemented from the scholia on Bas. 60.56.1.

[38] Veronicianus' manager (*actor*) brought a criminal suit against Annianus over an allegedly forged document (one that presumably affects the principal's interests). Before a verdict was rendered, Annianus died. X then brought an unspecified action against Veronicianus and sought to use the document as evidence. Veronicianus can bring a countersuit on the alleged forgery. The reading *actor* is preferred to *auctor* because it entails fewer assumptions about the situation of fact behind the rescript.

[5] *Imp. Gordianus A. Rufo.* Defunctis reis publicorum criminum, sive ipsi per se ea commiserunt sive aliis mandaverunt, pendente accusatione, praeterquam si sibi mortem consciverint, bona successoribus eorum non denegari notissimi iuris est.

PP. vii k. Nov. Pio et Pontiano conss.

[6] *Idem A. Iuliano.* **pr.** Si quis, cum capitali poena vel deportatione damnatus esset, appellatione interposita et in suspenso constituta fati diem functus est, crimen morte finitum est. **1.** Idem observatur et si accusator pendente appellationis tempore ultimum diem obisset. **2.** Sin autem[iii] relegationis poenam sustinuit et in parte bonorum damnatus appellatione usus est, etiam post mortem eius nihilo minus appellationis ratio examinabitur, cum desideretur, utrum valeat nec ne particularis publicatio.

PP. vi k. Aug. Gordiano A. et Aviola conss.

VII Si Quis Imperatori Maledixerit

[1] *Imppp. Theodosius Arcadius et Honorius AAA. Rufino pp.* **pr.** Si quis modestiae nescius et pudoris ignarus improbo petulantique maledicto nomina nostra crediderit lacessenda ac temulentia turbulentus obtrectator temporum fuerit, eum poenae nolumus subiugari neque durum aliquid nec asperum sustinere, quoniam, si id ex levitate processit, contemnendum est, si ex insania, miseratione dignissimum, si ab iniuria, remittendum. **1.** Unde integris omnibus ad nostram scientiam referatur, ut ex personis hominum dicta pensemus et, utrum praetermitti an exsequi rite debeat, censeamus.

D. v id. Aug. Constantinopoli Theodosio A. iii et Abundantio conss.

VIII Ad Legem Iuliam Maiestatis

[1] *Imp. Alexander A. Paulino.* Etiam ex aliis causis maiestatis crimina cessant meo saeculo, nedum etiam admittam te paratum accusare

iii <reus>

[5] *Emperor* GORDIAN *Augustus to Rufus.* It is a very well-known point of law (*ius notissimum*) that if defendants in public criminal cases (*publica crimina*) die before the conclusion of the trial, whether they have committed the offenses themselves or through agents, unless they commit suicide, their property is not denied to those eligible to succeed to them.

Posted October 26, in the consulship of Pius and Pontianus (238).

[6] *The same Augustus to Julian.* **pr.** If someone condemned to death or capital exile (*deportatio*) has died while an appeal is underway, the charge has lapsed through his or her death. **1.** The same rule holds even if the prosecutor has died while the appeal is pending. **2.** But if, however, the defendant has appealed after being condemned to non-capital exile (*relegatio*) and partial confiscation of property, the basis for the appeal will be examined nonetheless even after his death, since it should be determined whether the partial confiscation was valid or not.

Posted July 27 in the consulship of Gordian Augustus and Aviola (239).

Seventh Title Cursing the Emperor

[1][39] *Emperors* THEODOSIUS, ARCADIUS, *and* HONORIUS *Augusti to Rufinus, Praetorian Prefect.* **pr.** If someone, unmindful of modesty and ignorant of a sense of shame, believes that Our names should be insulted through outrageous and violent cursing and, because of his drunkenness, is a troublemaking critic of Our reign, We do not wish him to be punished for this. Nor (do We wish) that he suffer something harsh or oppressive, since, if the motive was foolishness, he is to be despised; if insanity, he is to be greatly pitied; if an intent to cause harm, he is to be forgiven. **1.** Therefore the matter shall be reported to Us in the first instance so that We may weigh the words in light of the character of the defendants and decide whether they ought properly to be passed over or punished.

Given August 9, at Constantinople, in the consulship of Theodosius Augustus, for the third time, and Abundantius (393).

Eighth Title The Lex Julia on Treason (*Maiestas*)[40]

[1] *Emperor* ALEXANDER *Augustus to Paulinus.* Charges of treason (*maiestas*) are disallowed during my reign even for other reasons, let alone I should

[39] = C.Th. 9.4.1. Combine with C. 10.32.44.

[40] See D. 48.4. Blume: "This crime was held to be like that of sacrilege."

iudicem propterea crimine maiestatis, quod contra constitutionem eius dicis pronuntiasse.

PP. III id. April. Maximo II et Aeliano conss.

[2] *Idem A. Faustiniano.* Alienam sectae meae sollicitudinem concepisti, quasi crimen maiestatis sustineres, etsi servo tuo iratus esse non perseveres, quod semper te facturum inconsultius iuraveris.

PP. III non. Febr. Iuliano et *Crispino conss.*

[3] *Imp. Constantinus A. ad Maximum pu.* **pr.** Si quis alicui maiestatis crimen intenderit, cum in huiuscemodi re convictus minime quisquam privilegio dignitatis alicuius a strictiore inquisitione defendatur, sciat se quoque tormentis esse subdendum, si aliis manifestis indiciis accusationem suam non potuerit comprobare. **1.** Cum eo, qui huius esse temeritatis deprehenditur, illum quoque tormentis subdi oportet, cuius consilio atque instinctu ad accusationem accessisse videbitur, ut ab omnibus commissi consciis statuta vindicta possit reportari.

PP. k. Ian. Volusiano et Anniano conss.

[4] *Imppp. Valentinianus Valens et Gratianus AAA. ad Olybrium pu.* Nullus omnino, cui inconsultis ac nescientibus nobis fidicularum tormenta offerentur, militiae vel generis aut dignitatis defensione uti prohibeatur, excepta tamen maiestatis causa, in qua sola omnibus aequa condicio est.

D. VIII id. Iul. Valentiniano np. et Victore conss.

[5] *Impp. Arcadius et Honorius AA. Eutychiano pp.* **pr.** Quisquis cum militibus vel privatis, barbaris etiam scelestam inierit factionem aut factionis ipsius susceperit sacramenta vel dederit, de nece etiam virorum illustrium qui consiliis et consistorio nostro intersunt, senatorum etiam (nam et ipsi pars corporis nostri sunt), cuiuslibet postremo qui nobis

admit you when you are ready to prosecute a judge on a charge of *maiestas* because you claim that he delivered judgment in violation of a constitution.

Posted April 11, in the consulship of Maximus, for the second time, and Aelianus (223).

[2] *The same Augustus to Faustinianus.* You have conceived an anxiety contrary to my principles when you maintain that you are guilty of treason (*maiestas*) because you rather inadvisedly swore (in the name of the Emperor) that you would always be angry at your slave, though you have ceased to be angry with him.

Posted February 3, in the consulship of Julian and Crispinus (224).

[3][41] *Emperor CONSTANTINE Augustus to Maximus, City Prefect.* **pr.** If someone accuses another person of treason (*maiestas*), because no one convicted in a matter of this kind enjoys protection from a rather severe inquiry by virtue of any rank he or she holds, the accuser shall know that he too shall be subjected to torture if he cannot prove his allegations by other clear evidence. **1.** Not only he who is discovered to be guilty of such rashness (in bringing a false accusation) ought to be subjected to torture, but also the one through whose counsel and instigation the accuser seems to have been encouraged to prosecute. The aim is to be able to visit the penalty established by law on all those complicit in the offense.

Posted January 1, in the consulship of Volusianus and Annianus (314).[42]

[4][43] *Emperors VALENTINIAN, VALENS, and GRATIAN Augusti to Olybrius, City Prefect.* Anyone at all who is threatened with torture on the rack without Our consent or knowledge shall be permitted to offer a defense based on military service, birth, or social rank. The exception however is the crime of treason (*maiestas*), for which alone everyone's status is equal.

Given July 8, in the consulship of Valentinian, Most Noble Boy, and Victor (369).

[5][44] *Emperors ARCADIUS and HONORIUS Augusti to Eutychianus, Praetorian Prefect.* **pr.** Whoever forms a criminal organization together with soldiers, civilians, even barbarians, or offers to others or takes an oath that binds the group together, or plots the murder even of *viri illustres* who participate in Our deliberations and Council, (and) of senators too, since they are a part of Our

[41] = (in part) C.Th. 9.5.1. See CIL 5.2781 (*FIRA* 1.94), with the full text.
[42] The date is perhaps June 1, 305: Projet Volterra. Seeck dates to January 1, 320.
[43] = (in part, with changes) C.Th. 9.35.1.
[44] = (with minor changes) C.Th. 9.14.3.

militat cogitarit (eadem enim severitate voluntatem sceleris qua effectum puniri iura voluerunt), ipse quidem utpote maiestatis reus gladio feriatur, bonis eius omnibus fisco nostro addictis:

1. Filii vero eius, quibus vitam imperatoria specialiter lenitate concedimus (paterno enim deberent perire supplicio, in quibus paterni, hoc est hereditarii, criminis exempla metuentur), a materna vel avita, omnium etiam proximorum hereditate ac successione habeantur alieni, testamentis extraneorum nihil capiant, sint perpetuo egentes et pauperes, infamia eos paterna semper comitetur, ad nullos umquam honores, nulla prorsus sacramenta perveniant, sint postremo tales, ut his perpetua egestate sordentibus sit et mors solacio et vita supplicio. **2.** Denique iubemus etiam eos notabiles esse sine venia, qui pro talibus umquam apud nos intervenire temptaverint. **3.** Ad filias sane eorum, quolibet numero fuerint, Falcidiam tantum ex bonis matris, sive testata sive intestata defecerit, volumus pervenire, ut habeant mediocrem potius filiae alimoniam quam integrum emolumentum ac nomen heredis. mitior enim circa eas debet esse sententia, quas pro infirmitate sexus minus ausuras esse confidimus.

4. Emancipatio, quae a praedictis sive in filios, post legem dumtaxat latam, sive in filias fuerit collata, non valeat. dotes donationes, quarumlibet postremo rerum alienationes, quas ex eo tempore qualibet fraude vel iure factas esse constiterit, quo primum memorati de ineunda factione ac societate cogitaverint, nullius statuimus esse momenti.

5. Uxores sane praedictorum[iv] recuperatas dotes, si in ea condicione fuerint, ut, quae a viris titulo donationis acceperunt, filiis debeant reservare, tempore quo usus fructus absumitur omnia ea fisco nostro se relicturas esse cognoscant, quae iuxta legem filiis debebantur: Falcidia etiam ex his rebus filiabus tantum, non etiam filiis deputata.

6. Id, quod de praedictis eorumque filiis cavimus, etiam de satellitibus consciis ac ministris filiisque eorum simili severitate censemus.

[iv] <post>

government, and, finally, of anyone at all working in the imperial service, shall himself, to be sure, inasmuch as he is guilty of treason (*maiestas*), be executed with the sword, and all of his property shall be confiscated by Our Treasury. For the laws (*iura*) have required that the intention to commit such a wicked act be punished with the same rigor as its actual commission.

1. But to his sons We grant the remission of a death sentence through a special act of imperial clemency, since they, in whom precedents of paternal, meaning inherited, criminality are a source of fear, ought (in principle) to be punished through execution, as was their father. They shall (however) be denied the right of inheritance or succession to the property of their mother, their grandparents, as well as all their close relatives. They shall take nothing left to them in the wills of non-relatives. They shall ever be needy and poor. They shall forever be accompanied by their father's legal infamy (*infamia*), so that they shall never be admitted to political offices or any oaths of loyalty at all. Finally, they shall be such that for them, as they languish in a permanent state of need, death shall be a consolation and life a punishment. 2. Further, We order that anyone who attempts ever to intervene with Us on behalf of such persons also be marked with legal infamy (*notabiles*) with no possibility of pardon. 3. Indeed, We wish that their daughters, whatever their number, receive, (but) only from their mother's estate, the one-fourth share guaranteed by the lex Falcidia, whether under a will or on intestacy. The aim is that the daughters have a modest source of support rather than full material benefit and status as an heir. For the sentence meted out to them ought to be milder, since We earnestly believe that they, because of their gender weakness (*infirmitas sexus*),[45] are going to display less boldness (than their brothers).

4. Emancipation performed by the aforesaid (criminals), whether of sons or of daughters, if it is done after the passage of this law, shall not be valid. Dowries, gifts, conveyances of property, in sum, of any kind whatsoever, which, it is established, were accomplished either fraudulently or legally from the time at which the above-mentioned persons first planned to join the (criminal) organization and enterprise, We decree to be void.

5. Certainly, the wives of the aforesaid persons, after recovering their dowries, if they are under an obligation to turn over to their sons what they have received from their husbands under title of gift, shall know that, at the time when their usufruct of this property terminates, they are going to leave to Our Treasury everything that according to the law would be owed to their sons. Also, the Falcidian fourth of this property is assigned only to the daughters, not also to the sons.

6. That which We have laid down concerning the aforesaid (criminals) and their sons, We establish with equal severity concerning their henchmen and

[45] On "gender" as a translation here see the note at C. 5.3.20.

7. Sane si quis ex his in exordio initae factionis, studio verae laudis accensus, ipse prodiderit factionem, et praemio a nobis et honore donabitur. is vero, qui usus fuerit factione, si vel sero, tamen incognita adhuc consiliorum arcana patefecerit, absolutione tantum ac venia dignus habebitur.

D. prid. non. Sept. Ancyrae Caesario et Attico conss.

[6] ... *Paulus de publicis iudiciis.* **pr.** Meminisse oportebit, si quid contra maiestatem imperatoris commissum dicatur, etiam post mortem rei id crimen instaurari solere, posteaquam divus Marcus Depitiani utpote senatoris,[v] qui Cassiani furoris socius fuerat, bona post mortem fisco vindicari iussit et nostro tempore multis heredibus ablata sunt. **1.** In hoc item crimine, quod ad laesam maiestatem imperatoris pertinet, etiam in caput domini servos torqueri.

2. *Marcianus libro primo de publicis iudiciis titulo ad legem Iuliam maiestatis.* Post divi Marci constitutionem hoc iure uti coepimus, ut etiam post mortem nocentium hoc crimen inchoari possit, ut convicto mortuo memoria eius damnetur et bona eius successoribus eripiantur: nam ex quo sceleratissimum quis consilium cepit, exinde quodammodo sua mente punitus est. **3.** Sic et divus Severus et Antoninus constituerunt, ex quo quis tale crimen contraxit, neque alienare neque manumittere eum posse: nec ei solvere iure debitorem Magnus Antoninus rescripsit. **4.** In hac causa in caput domini servi torquentur, id est propter causam

[v] senatoris, utpote

helpers who are complicit, and their sons. 7. If indeed any of these persons, at the outset of the criminal organization he has joined, is motivated by a desire for genuine praise and discloses its existence to the authorities, he will be rewarded by Us both financially and through grant of a political office. But if he who has participated in the organization discloses, perhaps late in the day, its secrets that are nonetheless still undisclosed, he will be deemed worthy only of acquittal and pardon.

Given September 4, at Ankara, in the consulship of Caesarius and Atticus (397).

[6][46] *Paul on the Public Criminal Courts (iudicia publica).* pr. It ought to be kept in mind that, if any offense is alleged to have been committed against the Emperor as head of state (*maiestas*), customarily this charge is set in motion even after the death of the defendant. (This has been so) since the deified Marcus (Aurelius) ordered that the property of the senator Depitianus,[47] inasmuch as he participated in the coup (*furor*) attempted by (Avidius) Cassius, be confiscated by the Treasury after his death. In our own time as well property has been seized from a great many heirs. 1. Likewise with this charge, which concerns harm done to the Emperor's *maiestas*, (it is the practice) to subject slaves to judicial examination under torture even regarding the life or status of their master.

2. *Marcian in the first book on Public Criminal Courts* (Iudicia Publica) *under the title on the lex Julia on maiestas.* Following the constitution of the deified Marcus (Aurelius), we began to use this principle of law, that even after the death of the guilty parties this charge could be launched, so that, after the conviction of the decedent defendant, his memory is condemned and his property seized from his successors. For from the point when someone has initiated a very wicked plot he is punished in a certain sense for his intentions (*sua mente*). 3. In this connection both the deified (Septimius) Severus and Antoninus (Caracalla) laid down in a constitution that from the time when a person embarked upon such an offense he could neither alienate (his property) nor manumit (his slaves). Antoninus the Great (*Magnus*: Caracalla) also wrote a rescript that a debtor could not validly repay him. 4. In this kind of case, meaning a case of *maiestas*, slaves are subjected to judicial examination under torture regarding the life or status of their master. Upon the death of someone who, as a decedent, is accused in connection with a case of *maiestas*,

[46] This constitution is said (MS *Vind.* 2267) to have begun and ended with portions in Greek that have not survived. What remains are two citations from Roman jurists.

[47] Probably Druentianus, Cassius' son-in-law. Avidius Cassius was a governor of Syria who led a revolt against Marcus Aurelius in 175.

maiestatis. et si decesserit quis, propter incertam personam successoris bona observantur, si in causa maiestatis fuisse mortuus arguatur, ut Severus et Antoninus litteris ad rationales missis rescripserunt ...

D. III non. Mart.

VIIII Ad Legem Iuliam de Adulteriis et de Stupro

[1] *Impp. Severus et Antoninus AA. Cassiae.* Publico iudicio non habere mulieres adulterii accusationem, quamvis de matrimonio suo violato queri velint, lex Iulia declarat, quae, cum masculis iure mariti facultatem accusandi detulisset, non idem feminis privilegium detulit.

PP. XIII k. Aug. Laterano et Rufino conss.

[2] *Idem AA. Cyro.* Crimen lenocinii contrahunt, qui deprehensam in adulterio uxorem in matrimonio detinuerunt, non qui suspectam adulteram habuerunt.

PP. k. Iul. Anullino et Frontone conss.

[3] *Imp. Antoninus A. Iuliano.* Verba legis Iuliae de adulteriis coercendis, sed etiam sententia per quaestionem quoque servorum sive ancillarum crimen admissum probari volentis ad earum tantum personarum servos ei rei exhibendos pertinet, de quibus specialiter comprehendit, id est mulieris et patris eius, non naturalis, sed iusti dumtaxat, quos intra sexagesimum diem ex dissolutione matrimonii numerandum manumitti vel distrahi prohibet et quorum dominis caveri praecipit, si defuncti fuerint in quaestione vel facti deteriores, secuta absolutione.

PP. XV k. Aug. Antonino A. IIII et Balbino conss.

[4] *Imp. Alexander A. Iuliano proconsuli Narbonensis.* **pr.** Gracchus, quem Numerius in adulterio noctu deprehensum interfecerit, si eius condicionis fuit, ut per legem Iuliam impune occidi potuerit, quod

his property is sequestered on the ground that the identity of his successor is uncertain, as Severus and Caracalla wrote in a letter sent as a rescript to their fiscal officials (*rationales*).

Given March 5.

Ninth Title The Lex Julia on Adultery and Criminal Fornication[48]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Cassia.* The lex Julia states that in a public criminal court (*iudicium publicum*) women cannot bring an accusation of adultery even if they wish to complain about a violation of their own marriage. Although (the statute) conferred on males the opportunity of prosecuting adultery by using a husband's right (*ius mariti*), it did not confer the same privilege on females.

Posted July 20, in the consulship of Lateranus and Rufinus (197).

[2] *The same Augusti to Cyrus.* They commit the offense of criminal pimping (*lenocinium*) who have remained married to a wife caught in the act of adultery, (but) not those who have kept as a wife a woman (merely) suspected of adultery.

Posted July 1, in the consulship of Anullinus and Fronto (199).

[3] *Emperor* ANTONINUS *Augustus to Julian.* The wording, as well as the sense, of the lex Julia on the repression of adultery allows the commission of the crime to be proved also through the judicial examination under torture of male and female slaves. But it permits only those slaves to be produced for this purpose who belong to those persons whom it specifically mentions, meaning those of the woman herself and her father, provided he be her legitimate and not (simply) her natural (biological) father. The law forbids the manumission or alienation of these slaves for a sixty-day period running from the day of divorce. It lays down that, if an acquittal has followed, their masters are to be compensated if the slaves die or are permanently injured ("made worse") as a consequence of the judicial examination under torture.

Posted on July 18, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[4] *Emperor* ALEXANDER *Augustus to Julian, Proconsular Governor of Narbonensian Gaul.* **pr.** If Gracchus, whom Numerius killed after catching him by night in the act of adultery, was of such a status that he might be killed

[48] See D. 48.5.

legitime factum est, nullam poenam meretur: idemque filiis eius qui patri paruerunt praestandum est. **1.** Sed si legis auctoritate cessante inconsulto dolore adulterum interemit, quamvis homicidium perpetratum sit, tamen quia et nox et dolor iustus factum eius relevat, potest in exilium dari.

PP. sine die et consule.

[5] *Idem A. Vadanti.* Adulter post quinquennium, quam commissum adulterium dicitur, quod continuum numeratur, accusari non potest: easque praescriptiones legibus reis datas auferri non oportet.

PP. id. Iun. Maximo II et Aeliano conss.

[6] *Idem A. Sebastiano.* **pr.** Iure mariti adulterii accusare volenti sexaginta dies utiles computantur, quibus in publico eius facultas fuerit, apud quem reus vel rea postulari potest: et cum praeterierint dies isti utiles, maritus quoque iure extranei agere potest. **1.** Et qui confidit accusationi, calumniae notam timere non debet: nam ad probationem sceleris divi parentes mei quaestionem de mancipiis eodem modo haberi permiserunt, quo si iure mariti ageretur.

PP. II id. Aug. Maximo II et Aeliano conss.

[7] *Idem A. Herculano.* **pr.** Propter violatam virginem adultam qui postea maritus esse coepit accusator iustus non est et ideo iure mariti crimen exercere non potest, nisi puella violata sponsa eius fuerit. **1.** Sed si ipsa iniurias suas adsistentibus curatoribus, per quos etiam negotia eius gerenda sunt, persequatur, praeses provinciae pro debita tanto delicto, si probetur, severitate examinabit.

PP. XII k. Ian. Maximo II et Aeliano conss.

[8] *Idem A. Domnae.* Reos adulterii duos simul marem et feminam ex eadem causa fieri lex Iulia de pudicitia vetat: sed ordine peragi utrosque licet.

with impunity under the lex Julia, Numerius deserves no penalty, because he acted lawfully. And the same provision shall be made for the sons who obeyed their father. 1. But if he killed the adulterer without the sanction of the law and motivated by anguish (*dolor*), although a homicide has been committed, he can be sent into exile (*exilium*) because both the night and his justified anguish mitigate his offense.

Posted without day and year.

[5] *The same Augustus to Vadans.* An adulterer cannot be prosecuted after the expiration of the five-year period, which runs continuously from when the act of adultery is said to have been committed. Such prescriptive time limits as are granted to defendants by the laws ought not to be disregarded.

Posted June 13, in the consulship of Maximus, for the second time, and Aelianus (223).

[6] *The same Augustus to Sebastianus.* **pr.** Sixty effective (*utiles*) days are granted to the man who wishes to prosecute a charge of adultery using a husband's right (*ius mariti*). During this period he has the opportunity to approach publicly the official in whose court the male or female defendant can be indicted. And when these effective days have expired, the husband can also proceed in court using the right of an outsider (*ius extranei*). 1. He who thus places his trust in prosecution ought not fear being branded (with legal infamy) as a malicious accuser. For, to prove this wicked deed, my deified predecessors (*parentes*) permitted that a judicial examination under torture of slaves to be held in the same manner as if prosecution were being conducted under a husband's right (*ius mariti*).

Posted August 12, in the consulship of Maximus, for the second time, and Aelianus (223).

[7] *The same Augustus to Herculanus.* **pr.** The man who subsequently becomes the husband of an adult never-married woman who has been raped is not an appropriate prosecutor and for that reason cannot bring a charge using the right of a husband (*ius mariti*), unless the girl who was raped was his fiancée. 1. But if she herself pursues her own wrongs, assisted by the *curatores* through whom her private business affairs must also be managed, the governor of the province will treat so great an offense with due rigor, if it is proven.

Posted December 21, in the consulship of Maximus, for the second time, and Aelianus (223).

[8] *The same Augustus to Domna.* The lex Julia on chastity (*de pudicitia*) forbids that the male and female defendants on an adultery charge for the same

PP. id. Ian. Iuliano et *Crispino conss.*

[9] *Idem A. Proculo.* Castitati temporum meorum convenit lege Iulia de pudicitia damnatam in poenis legitimis perseverare. qui autem adulterii damnatam, si quocumque modo poenam capitalem evaserit, sciens duxit uxorem vel reduxit, eadem lege ex causa lenocinii punietur.

PP. VII k. Febr. Iuliano et Crispino conss.

[10] *Idem A. Demetriano.* De crimine adulterii pacisci non licet et par delictum accusatoris praevaricatoris et refugientis[vi] veritatis inquisitionem est. qui autem pretium pro comperto stupro accepit, poena legis Iuliae de adulteriis tenetur.

PP. V non. Mai. Fusco et Dextro conss.

[11] *Idem A. Norbano.* Crimen adulterii maritum retenta in matrimonio uxore inferre non posse nemini dubium est.

PP. k. Sept. Alexandro II et Marcello conss.

[12] *Imp. Gordianus A. Aquilae.* Si, dum in tuo matrimonio uxor tua esset, se adulterio polluit, in ea provincia in qua id factum est adulterium more solito persequi debes. nec enim ab ea quae iam nupta est adulterium passa exordium accusationis sumi potest, si denuntiatio criminis nuptias non praecessit.

PP. non. Dec. Gordiano A. et Aviola conss.

[13] *Idem A. Basso.* Etsi crimine adulterii damnatus restitutus non esset, ut proponis, si tamen soror tua, cum qua adulterium commissum dicebatur, non est accusata, nec poenae nec infamiae subici potuit, et multo magis, cum et accusatorem vita esse functum proponas.

[vi] rei fugientis

offense be prosecuted simultaneously. But it is permitted fully to prosecute both of them one after the other.

Posted January 13, in the consulship of Julian and Crispinus (224).

[9] *The same Augustus to Proculus.* It befits the respect for chaste behavior characteristic of my reign that a woman condemned under the lex Julia on chastity continue to suffer the penalties laid down by the statute. He, moreover, who knowingly married or remarried a woman condemned for adultery, if she in some way or other has escaped the infliction of a penalty depriving her of life or status, under the same law he will be punished under the heading of criminal pimping (*lenocinium*).

Posted January 26, in the consulship of Julian and Crispinus (224).

[10] *The same Augustus to Demetrianus.* Settlements over prosecuting the charge of adultery are prohibited, and liability is the same for the collusive prosecutor and the defendant evading an enquiry into the truth. Moreover, he who has accepted payment for having discovered an act of criminal fornication (*stuprum*) is liable to the penalty established by the lex Julia on adultery.

Posted May 3, in the consulship of Fuscus and Dexter (225).[49]

[11] *The same Augustus to Norbanus.* No one doubts that a husband who has remained married to his wife cannot bring a charge of adultery.

Posted September 1, in the consulship of Alexander (Augustus), for the second time, and Marcellus (226).

[12] *Emperor Gordian Augustus to Aquila.* If, while married to you, your wife disgraced herself through adultery, you ought to prosecute the offense in the usual manner in the province where the adultery took place. A prosecution cannot, however, be launched first (i.e., without prosecuting her lover) against a woman guilty of adultery who has by now remarried, unless the announcement of the intent to prosecute preceded the new marriage.

Posted December 5, in the consulship of Gordian Augustus and Aviola (239).

[13] *The same Augustus to Bassus.* Although a man condemned on a charge of adultery has not had his rights restored, as you allege, nevertheless, if your sister, with whom the adultery was said to have been committed, has not been accused, she could not be subjected either to the punishment or to legal infamy (*infamia*), and all the more so since you also state that her prosecutor has passed away.

[49] Other constitutions show that this was the second consulship for Fuscus.

PP. k. Iun. Sabino II et Venusto conss.

[14] *Idem A. Silvano.* Adulteram, si postea quam crimen contra eam inchoatum est provincia excessit, etiam absentem inter reos recipi posse explorati iuris est.

PP. non. Mart. Attico et Praetextato conss.

[15] *Idem A. Hilariano militi.* **pr.** Si quondam uxor tua, antequam crimine adulterii peteretur, provincia excessit, neque absens accusari potest neque in eam provinciam in qua stipendium facis transmitti iure deposcitur. **1.** Sane cum per occupationes militares licuerit, accusare eam sollemniter poteris: nec enim tempus, quo muneribus militaribus occuparis, vindictam tibi, quam maritali dolore percussus reposcis, debet auferre.

PP. IIII id. Mart. Attico et Praetextato conss.

[16] *Impp. Valerianus et Gallienus AA. et Valerianus C. Arcesilao.* **pr.** Abolitionem adulterii criminis postulans praesidem in cuius officio accusatio fuerit instituta adire debes. **1.** Ceterum erras tu marite existimans, etiam si simpliciter, id est sine abolitione, destitisses, senatus consulto in persona tua futurum locum non fuisse: diversum enim divi principes saepe sanxerunt. **2.** Quin hoc amplius scias nullam fuisse tibi ulterius potestatem instituendae huiusmodi accusationis, quia et decreto patrum et lege Petronia ei, qui iure viri delatum adulterium non peregit, numquam postea id crimen deferre permittitur.

PP. XV k. Iun. Maximo et Glabrione conss.

[17] *Idem AA. et C. Victorino.* **pr.** Sine metu legis Iuliae de adulteriis coercendis revocare uxorem in matrimonium potes, cum nihil amplius quam libellos accusationis obtulisti, quia postea comperisse te adfirmas, quod vana indignatione ad accusationem incitatus fueris. **1.** Is enim committit in poenam, quam lex certo capite denuntiat, qui vel publice

Posted June 1, in the consulship of Sabinus, for the second time, and Venustus (240).

[14] *The same Augustus to Silvanus.* It is a well-recognized principle of law (*ius exploratum*) that if, after a prosecution of an adulteress has begun, she left the province, she can be treated as a defendant even in her absence.

Posted March 7, in the consulship of Atticus and Praetextatus (242).

[15] *The same Augustus to Hilarianus, a soldier.* **pr.** If, before your ex-wife was prosecuted on a charge of adultery, she left the province, neither can she be prosecuted in her absence nor is it lawful to demand that she be transported to the province where you are serving in the military. **1.** Of course, when your military responsibilities permit this, you will be able to launch a formal accusation against her. For the period in which you are taken up with military duties ought not to rob you of the vengeance that you, shattered by a husband's pain (*dolor*), demand.

Posted March 12, in the consulship of Atticus and Praetextatus (242).

[16] *Emperors* VALERIAN *and* GALLIENUS *Augusti and* VALERIAN *Caesar to Arcesilaus.* **pr.** If you are making a judicial request to dismiss an accusation of adultery, you ought to approach the provincial governor in whose court the prosecution was begun. **1.** But you, Husband, are wrong if you think that, when you simply have abandoned the prosecution, that is, without an official grant of dismissal, you are also not going to be liable under the terms of the senatorial decree (the *SC Turpillianum*).[50] For the deified Emperors have often ruled to the contrary. **2.** You should know, moreover, that you shall be deprived of the opportunity to initiate any further prosecution of this kind, because, according to both the decree of the Senate and the lex Petronia,[51] the man who abandoned an adultery accusation brought by a husband's right (*ius viri*) is never again permitted to bring this charge.

Posted May 18, in the consulship of Maximus and Glabrio (256).

[17] *The same Augusti and Caesar to Victorinus.* **pr.** You can remarry your ex-wife without fear of the lex Julia on repressing adultery, since you have done nothing more than present an application to prosecute, as you assert that you have discovered you were spurred on to prosecution by ill-grounded irritation. **1.** For he commits an offense worthy of the punishment that the statute sets forth in a given chapter if either he has as a wife a woman condemned for

[50] The *SC Turpillianum* was passed in 61 CE.
[51] The lex Petronia may have been passe at the time of the *SC Turpillianum* in 61 CE.

adulterio damnatam habet vel adulteram sciens, ut ignorationem simulare non possit, retinet uxorem.

PP. VI k. Aug. ipsis AA. IIII et III conss.

[18] *Idem AA. et C. Theod.* **pr.** Eum qui duas simul habuit uxores sine dubitatione comitatur infamia. in ea namque re non iuris effectus, quo cives nostri matrimonia contrahere plura prohibentur, sed animi destinatio cogitatur.

1. Verumtamen ei, qui te ficto caelibatu, cum aliam matrem familias in provincia reliquisset, sollicitavit ad nuptias, crimen etiam stupri, a quo tu remota es, quod uxorem te esse credebas, ab accusatore legitimo sollemniter inferetur. **2.** Certe res tuas omnes, quas ab eo interceptas matrimonii simulatione deploras, restitui tibi omni exactionis instantia impetrabis a rectore provinciae: nam ea quidem, quae se tibi ut sponsae daturum promisit, quomodo repetere cum effectu potes quasi sponsa?

Accepta id. Mai. Antiochiae Tusco et Basso conss.

[19] *Impp. Diocletianus et Maximianus AA. ad Pompeianum.* Quamvis indubitati iuris sit, quotiens adulterii crimen intenditur, praesentiam accusatoris procedere oportere, tamen quoniam ex litteris tuis cognovimus Materiam praepositi Viatoris uxorem habitis quaestionibus cum Iuliano quondam adulterium commisisse detectam sub ipsa prolatione sententiae Viatoris ipsius praesentiam postulasse, non putavimus confecto paene in iudicio facinore et iam agitata quaestione convicto praepositum ab excubiis limitis revocandum.

D.S. non. Dec. AA. conss.

adultery in a public criminal court or he knowingly, so that he cannot feign ignorance, keeps as a wife a woman guilty of adultery.

Posted July 27, in the consulship (of Valerian), for the fourth time, and (Gallienus), for the third time, Augusti (257).

[18][52] *The same Augusti and Caesar to Theodora.* **pr.** A man who had two wives at the same time is without doubt afflicted with legal infamy (*infamia*). For in this matter consideration is not taken for the effects at law, under which our fellow-citizens are prohibited from contracting more than one marriage at the same time, but intention.[53]

1. All the same, a man who, pretending to be unmarried, proposed marriage to you, when in fact he had left behind another "wife" (*mater familias*) in (another) province, will also be liable to a formal charge of criminal fornication (*stuprum*) brought by a lawful accuser. You are not liable to such a charge since you believed yourself to be a wife. **2.** At any rate, you will petition the governor of the province for restoration, with all (possible) perseverance in collecting, of all your property that you complain has come into that man's control under the pretense of marriage. For (on the other hand) in what way, to be sure, can you successfully recover, on the ground that you are a fiancée, precisely those gifts that he promised he would give you as his fiancée?

Received May 15, at Antioch, in the consulship of Tuscus and Bassus (258).

[19] *Emperors Diocletian and Maximian Augusti to Pompeianus.* Although it is an undoubted point of law (*ius indubitatum*) that, whenever a case of adultery is prosecuted, the accuser ought to be present, nevertheless since We have learned from your letter that Materia, the wife of the commander Viator, who was discovered, through the judicial examination (under torture of slaves), to have committed adultery at some point with Julian, has made a judicial request to have Viator himself present at the pronouncement of sentence, We did not think the commander should be recalled from his station on the frontier, since, in a trial almost concluded, the crime has been proved in the procedure (the judicial examination of the slaves) that has also already been conducted.

Given and written[54] *December 5, in the consulship of the Augusti (287).*

[52] §1 = (on a different point, in part, with changes) C. 5.3.5, which has the recipient's full name and is dated to *xv id. Mai.* (?).

[53] Blume: "While plural marriages were unlawful in Rome, it seems to have been left unpunished, except by infamy, until the time of Diocletian, unless the act also constituted adultery, for in that case it was punished as adultery. Dig. 48.5.11.12."

[54] Or possibly "Given on the day" (*Datum sub die*).

[20] *Idem AA. Didymo.* Foedissimam earum nequitiam, quae pudorem suum alienis libidinibus prosternunt, non etiam earum, quae per vim stupro comprehensae sunt, inreprehensam voluntatem leges ulciscuntur, quando etiam inviolatae existimationis esse nec nuptiis earum aliis interdici merito placuit.

PP. III non. Oct. ipsis IIII et III AA. conss.

[21] *Idem AA. Silano.* **pr.** Ob commissa adulteria atque accusandas uxores certa tempora, quae utiliter computari solent, praescripta sunt. **1.** Si igitur per occupationes publicas accusationem instituere non potuisti nec ante creditum tibi munus praescripta tempora transacta sunt, post depositam sollicitudinem qua detineris integram accusandi potestatem habebis. **2.** Ad quam, cum vacare coeperis, properare debebis, ne effrenata licentia ad terrendam adversariam futurae accusationis speciem praetendas.

PP. XIIII k. Nov. ipsis IIII et III AA. conss.

[22] *Idem AA. Obrimo.* Si ea quae tibi stupro cognita est passim venalem formam exhibuit ac prostituta meretricio more vulgo se praebuit, adulterii crimen in ea cessat.

PP. XII k. Nov. ipsis IIII et III AA. conss.

[23] *Idem AA. Proculo.* **pr.** Servi ob violatum contubernium adulterii accusare non possunt.

1. Is autem, qui post dissociatum matrimonium uxorem licito iure duxerit obque intentatae accusationis ac potentis patrocinii metum ei qui accusationem instituerat aurum et argentum dedit, ad recipiendum id ulciscendamque turpis lucri cupiditatem adire praesidem potest, qui examinatis partium adlegationibus et inquisita fide veri, si quid ab eo qui innocens est ob illati criminis timorem datum esse cognoverit, quemadmodum sententiam formare debeat, evidentibus iuris placitis instruetur. **2.** Sin vero constiterit corrupti matrimonii velut mercedem

[20] *The same Augusti to Didymus.* The laws take vengeance upon the most foul worthlessness of those women who abase their sense of shame (*pudor*) in service of the lusts of others, but not also the blameless lack of consent (*voluntas*) of those who have been forcibly raped. This is so since it has rightly been settled law also that their reputation (*existimatio*) be unimpaired and that they are not forbidden to remarry.

Posted October 5, in the consulship of the Augusti, for the fourth and third time, respectively (290).

[21] *The same Augusti to Silanus.* **pr.** Fixed time periods are prescribed with reference to the commission of adultery and the prosecution of wives. These are usually reckoned on the basis of what days a trial can be held. 1. If, then, because you were taken up with public business, you were unable to initiate a prosecution and the prescribed periods have elapsed before the responsibility entrusted to you (has concluded), after you have laid aside the obligations by which you are detained you will have an unabridged opportunity to prosecute. 2. You ought to hasten to take this opportunity as soon as you are free, so that, equipped with limitless scope for action, you do not extend the prospect of a future prosecution in order to terrify your adversary.

Posted October 19, in the consulship of the Augusti, for the fourth and third time, respectively (290).

[22] *The same Augusti to Obrimus.* If a woman, who has been found by you in a judicial hearing to have committed an act of criminal fornication (*stuprum*), has promiscuously offered her body for sale and, having prostituted herself, has made herself available indiscriminately in the manner of a prostitute, the charge of adultery does not lie against her.

Posted October 21, in the consulship of the Augusti, for the fourth and third time, respectively (290).

[23] *The same Augusti to Proculus.* **pr.** Slaves cannot bring a prosecution for adultery because of a betrayal of their domestic partnership (*contubernium*).

1. Moreover, someone who lawfully married a woman following her divorce and has handed over, out of concern about an impending prosecution and the political influence of the accuser, gold and silver to the man who had initiated the prosecution, can approach the governor for the purpose of recovering this and avenging the accuser's greed for base profit. If the latter, after investigating the assertions of the parties and examining the reliable basis for the truth, discovers that something has been given by an innocent man out of fear of a charge that has been launched, he will be instructed by clear pronouncements of law (*iuris placita*) as to how he ought to shape his sentence. 2. But if, however, it should be established that the wages, so to speak, of a corrupt marriage

ad captandam impunitatem solutam esse, eum, qui etiam adversus senatus consulti censuram cum foedissimo flagitio accepit, puniri iubebit.
PP. k. Nov. ipsis IIII et III AA. conss.

[24] *Idem AA. Sossiano.* Etsi libidine intemperatae cupiditatis ex actorum lectione exarsisse te cognitum est, tamen cum ancillam comprehendisse et non liberam stuprasse detectum sit, ex huiusmodi sententia gravatam potius opinionem tuam quam infamia adflictam esse manifestum est.
PP. v id. Mart. Tiberiano et Dione conss.

[25] *Idem AA. et CC. Crispino.* Quoniam Alexandrum, qui in crimen vocatur, etiam praescriptionem esse pollicitum eo nomine, quod accusator uxorem post comprehensum adulterium penes se habuisse videatur, et de statu suo agere nunc velle perspeximus, ita ordo quaestionis dirimendus videtur, ut in primis quidem de statu Alexandri quaeratur, ita ut, si eum liberum esse adhibita audientia deprehenderis, praescriptionis ei obiciendae facias potestatem: sin vero eundem servum esse cognoveris, remotis praescriptionis impedimentis in adulterium crimen[vii] protinus debebis inquirere ac, si eum detectum in eo flagitio esse perspexeris, poenam decernere, quam in adulterii crimen legum sanctio statuit.
D. v k. Sept. AA. conss.

[26] *Idem AA. et CC. Phoebo.* Commissum ante adulterium cum eo, cui se postea nuptiis sociavit, velamento matrimonii non extinguitur.
PP. XVIII k. Ian. CC. conss.

[27] *Idem AA. et CC. Concordio praesidi Numidiae.* Ita nobis pudor cordi est, ut removeamus prisci iuris ambages et constituamus in adulterii quaestione abolitis de medio ceteris praescriptionibus praeter quinquennii temporis et lenocinii quod marito obicitur exceptionem,

[vii] [crimen]

have been paid in order to secure impunity, the governor will order to be punished a man who has also violated the strictures of the senatorial decree (the *SC Turpillianum*) through a most base and outrageous act.

Posted November 1, in the consulship of the Augusti, for the fourth and third time, respectively (290).

[24] *The same Augusti to Sossianus.* Although it has been established in a judicial hearing that you, spurred by the recitation of stage actors, blazed forth with the passion of unrestrained desire, nevertheless, since it has been determined that the woman you raped was a slave and not free, it is clear that, from a sentence of this kind, your social reputation (*opinio*) has been compromised but not burdened with legal infamy (*infamia*).

Posted March 11, in the consulship of Tiberianus and Dio (291).

[25][55] *The same Augusti and the Caesars to Crispinus.* We have determined that Alexander, the defendant on a charge (of adultery), has also made known his intention of raising a defense to the effect that the prosecutor seems to have kept his wife with him after the discovery of her adultery and that he (Alexander) now wishes to litigate over his own legal status. It therefore seems that the procedure of the trial must be reconstituted so that, first of all certainly, a hearing shall be held about Alexander's status, so that, if after the hearing you discover that he is free, you shall offer him the opportunity of raising this defense. But if, on the other hand, you learn that he is a slave, you ought to strip away the obstacles posed by the defense and make immediate inquiry into the adultery. And if you determine that he is guilty of this offense, you ought to levy upon him the penalty that the sanction of the laws has laid down for the crime of adultery.

Given August 28, in the consulship of the Augusti (293).

[26] *The same Augusti and Caesars to Phoebus.* If a woman had committed adultery with a man whom she later married, the offense is not effaced through the cover of marriage.

Posted December 15, in the consulship of the Caesars (294).

[27] *The same Augusti and Caesars to Concordius, Governor of Numidia.* A sense of shame (*pudor*) is so dear to Our hearts that We remove all the ambiguities of the old law (*priscum ius*) and We establish that in a trial for adultery all defenses shall be utterly abolished except that of the prescription of five years from the date of the offense and that of criminal pimping (*lenocinium*) lodged

[55] See C. 1.23.3.

illam etiam, quae post solutum prius matrimonium ante denuntiationem nuptae competit, fidem criminis nosci. indignum est enim, ut ultionem pudoris praestigiae versuti iuris excludant.

PP. k. Iun. Tusco et Anullino conss.

[28] *Imp. Constantinus A. Africano.* Quae adulterium commisit, utrum domina cauponae an ministra fuerit, requiri debebit, et ita obsequio famulata servili, ut plerumque ipsa intemperantiae vina praebuerit: ut, si domina tabernae fuerit, non sit a vinculis iuris excepta, si vero potantibus ministerium praebuit, pro vilitate eius quae in reatum deducitur accusatione exclusa liberi qui accusantur abscedant, cum ab his feminis pudicitiae ratio requiratur, quae iuris nexibus detinentur et matris familias nomen obtinent, hae autem immunes ab iudiciaria severitate praestentur, quas vilitas vitae dignas legum observatione non credidit.

D. III non. Febr. Heracleae Constantino A. VII et Constantio C. conss.

[29] *Idem A. ad Euagrium.* **pr.** Quamvis adulterii crimen inter publica referatur, quorum delatio in commune omnibus sine aliqua legis interpretatione conceditur, tamen ne volentibus temere liceat foedare conubia, proximis necessariisque personis solummodo placet deferri copiam accusandi, hoc est patri fratri nec non patruo et avunculo, quos verus dolor ad accusationem impellit. **1.** Sed et his personis legem imponimus, ut crimen abolitione, si voluerint, compescant.

2. In primis maritum genialis tori vindicem esse oportet, cui quidem ex suspicione ream coniugem facere licet, vel eam, si tantum suspicatur, penes se detinere non prohibetur, nec inscriptionis vinculo contineri, cum iure mariti accusaret, veteres retro principes adnuerunt.

against the husband, and that the wife too, who remarries after divorce but before the announcement of the intent to prosecute, shall learn the certainty of the charge. For it is unworthy that contrivances of craftily contorted law (*ius versutum*) preclude the avenging of shame.

Posted June 1, in the consulship of Tuscus and Anullinus (295).

[28][56] *Emperor* Constantine *Augustus to Africanus.* If any woman had committed adultery, it ought to be inquired whether she was the mistress of a tavern or a servant woman, and thus in the performance of her servile duty she herself frequently proffered the wines of intemperance. If she were the mistress of a tavern, she shall not be exempt from the bonds of the law. But if she has given service to those who drink, then, in consideration of the mean status of the woman who is brought to trial, the prosecution shall be blocked and the men who are accused shall go free. The reason is that respect for chastity (*pudicitia*) is required (only) of those women who are held by the constraints of the law and who enjoy the status of a respectable woman (*materfamilias*), while those whose mean status in life has not been deemed worthy of compliance with the laws shall be rendered immune from judicial severity.

Given February 3, at Heraclea, in the consulship of Constantine Augustus, for the seventh time, and Constantius Caesar (326).

[29][57] *The same Augustus to Evagrius.* **pr.** Although the crime of adultery is classified as "public," meaning its prosecution is granted to all in common without any statutory limitation (*interpretatio legis*), nevertheless, in order that it shall not be permitted, for those who wish to do so heedlessly, to bring disgrace upon marital unions, it is Our decision that the opportunity of prosecuting be made available only to the nearest and very close relatives, meaning a father, brother, as well as paternal and maternal uncle, whom true pain (*dolor*) drives to prosecution. **1.** But even for these types of persons We set this condition (*lex*), that if they wish to cease prosecution, they shall accomplish this through a formal grant of dismissal by the court (*abolitio*).

2. The husband above all ought to be the avenger of his marriage bed. He, certainly, is permitted to prosecute his wife on the basis of circumstantial evidence (*suspicio*), or, if he merely suspects her, he is not forbidden to keep her with him. Nor have the Emperors in the long ago past allowed him to be bound by the constraint of an application to prosecute, when he acts with the right of a husband (*ius mariti*).

[56] = (with minor changes) C.Th. 9.7.1.
[57] = (in part, with changes) C.Th. 9.7.2.

3. Extraneos autem procul arceri ab accusatione censemus: nam etsi omne genus accusationis necessitas inscriptionis adstringat, nonnulli tamen proterve id faciunt et falsis contumeliis matrimonia deformant. 4. Sacrilegos autem nuptiarum gladio puniri oportet.

PP. Nicomediae VII k. Mai. Constantino A. VII et Constantio C. conss.

[30] *Impp. Constantius et Constans AA. ad populum.* Cum vir nubit in feminam, femina viros proiectura quid cupiat? ubi sexus perdidit locum, ubi scelus est id quod non proficit scire, ubi Venus mutatur in alteram formam, ubi Amor quaeritur nec videtur: iubemus insurgere leges, armari iura gladio ultore, ut exquisitis poenis subdantur infames, qui sunt vel qui futuri sunt rei.

PP. Romae XVII k. Ian. Constantio III et Constante II AA. conss.

[31] *Imppp. Gratianus Valentinianus et Theodosius AAA. Cynegio pp.* In adulterii quaestione ab omni familia non solum mariti, sed etiam uxoris, quae tamen tunc temporis domi fuerit, quo adulterium dicatur admissum, quaerendum est sine defensione cuiusquam.

D. III id. Dec. Constantinopoli Arcadio A. et Bautone conss.

[32] *Imppp. Theodosius Arcadius et Honorius AAA. Rufino pp.* Adulterii accusatione proposita praescriptiones civiles, quibus aut dos repeti fingitur aut ex ratione aliqua debitum flagitatur, quae occurrere atque

3. We ordain, moreover, that outsiders shall be kept far away from prosecution. For although the necessity of making an application conditions every type of prosecution, nevertheless, some persons do this recklessly and disturb marriages with false insults. 4.[58] Moreover, those who commit outrage against marriages ought to be punished with the sword.

Posted April 25, at Nicomedia, in the consulship of Constantine Augustus, for the seventh time, and Constantius Caesar (326).

[30][59] *Emperors* CONSTANTIUS *and* CONSTANS *Augusti to the People.* When a man "marries" (*nubit*) as a woman does, a woman about to reject men!, what might he be desiring? Where sex has lost its (proper) place, where there is a crime that it does not profit to know, where sexual passion (*Venus*) is altered to a different form, where Love (*Amor*) is sought yet not seen, We order the statutes (*leges*) to arise, (and) law (*iura*) to be armed with an avenging sword, so that those disgraceful men (*infames*) who are (now) or who are going to be guilty (of this crime) shall be consigned to choice punishments.

Posted December 16, at Rome, in the consulship of Constantius, for the third time, and Constans, for the second time, Augusti (342).[60]

[31][61] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Cynegius, Praetorian Prefect.*[62] In a trial for adultery, judicial examination (of slaves, under torture) must be held, without excepting anyone, for the entire slave household (*familia*) not only of the husband, but also of the wife, nevertheless limited to those who were present at that time in the house in which the act of adultery is said to have been committed.

Given December 11, at Constantinople, in the consulship of Arcadius Augustus and Bauto (385).

[32][63] *Emperors* THEODOSIUS, ARCADIUS, *and* HONORIUS *Augusti to Rufinus, Praetorian Prefect.* When a prosecution for adultery is instituted, civil claims, under which the recovery of a dowry is sought or for some reason the

[58] = (in part, with changes) C.Th. 11.36.4.

[59] = (with minor changes) C.Th. 9.7.3. This constitution is clearly directed against passive homosexuality, but its diction and meaning are very obscure. "Marry" is usually taken to mean "have (anal) sex with." Its unusual language and possible problems with the text make translation of this constitution especially challenging.

[60] The precise day and year are uncertain. The latter is either 342 or – perhaps more likely – 346. The C.Th. version has December 4, 342 as "given" and December 16 as "posted." Seeck gave December 4, 342; the Projet Volterra has December 4, 342 as "given" and December 16, 342 as "received."

[61] = (in part, with minor changes) C. 9.16.8; C.Th. 9.7.4.

[62] In fact, in 383 Arcadius became emperor and Gratian died.

[63] = (with minor changes) C.Th. 9.7.7.

perstrepere examini consuerunt, iussimus sequestrari nec earum obice aliquid negotio tarditatis adferri: sed accusatione fundata, hoc est cum constiterit, quo iure (id est mariti vel extranei) quove tempore actio fuerit intromissa, discutiatur crimen, facti qualitas publicetur, cum et iurgia quae magnitudine superant, praeponantur et civilis actio criminali iure postponatur, idem tamen, cum competere coeperit, habitura momenti, dummodo non obsit examini.

D. VII id. Dec. Constantinopoli Arcadio A. II et Rufino conss.

[33] *Idem AAA. Rufino pp.* **pr.** Si qui adulterii fuerint accusati et obtentu proximitatis intentata depulerint, per commemorationem necessitudinis fidem crimini derogando, dum existimatur non debere credi quod adlegatur, non potuisse committi, hi si postmodum in nuptias suas consortiumque convenerint, facinus illud, in quo fuerint accusati, manifesta fide atque indiciis evidentibus publicabunt. **1.** Unde si qui eiusmodi reperti fuerint, iussimus in eosdem severissime vindicari et veluti convictum facinus confessumque puniri.

D. prid. non. Dec. Constantinopoli Theodosio A. III et Abundantio conss.

[34] *Impp. Honorius et Theodosius AA. Palladio pp.* Si mulier repudii oblatione sine ulla legitima causa a se dati discesserit, ne viduitatem stupri procacitate commaculet, accusationem repudiato marito iure deferimus.

D. VI id. Mart. Ravennae Eustathio et Agricola conss.

[35] *Imp. Iustinianus A. Iohanni pp.* **pr.** Libertatem servorum, qui ad dominium pertinent uxoris vel mariti vel parentium eorum, repudio

repayment of a debt is claimed, have customarily obstructed and thrown into confusion the judicial process. We have ordered that these shall be set apart and that through these impediments no delay shall be offered to this process. But when a prosecution is well-founded, that is, when it is established by what right – meaning that of the husband (*ius mariti*) or of an outsider (*ius extranei*) – or at what time the trial is to go forward, the offense shall be examined and the nature of the facts shall be brought to light (first as to the criminal prosecution), both because disputes of greater magnitude shall take precedence and because private lawsuits shall yield to criminal proceedings. All the same, when the former (civil claim) begins to lie, it is going to enjoy due consideration as long as it does not obstruct the (criminal) process.

Given December 7, at Constantinople, in the consulship of Arcadius Augustus, for the second time, and Rufinus (392).

[33][64] *The same Augusti to Rufinus, Praetorian Prefect.* **pr.** Suppose that persons accused of adultery have, by asserting their close relationship, refuted the charges against them, robbing the charge of credibility through a recitation of the closeness of their kinship with each other, as long as it is thought that what is charged ought not to be believed, that the crime in question could not have been committed: if these same persons later come together in marriage and a marital partnership, they will be (deemed as) making public their guilt with regard to the crime of which they were accused, with patent credibility and through manifest evidence. **1.** So, if any persons of this kind are discovered, We have ordered that they shall be very severely chastised and that they shall be punished as though they have been convicted of and confessed to this crime.

Given December 4, at Constantinople, in the consulship of Theodosius Augustus, for the third time, and Abundantius (393).

[34][65] *Emperors Honorius and Theodosius Augusti to Palladius, Praetorian Prefect.* If a woman leaves her husband by giving a notice (*repudium*) tendered without any lawful cause, in order that she shall not disgrace her unmarried status through the impudence of criminal fornication (*stuprum*), We grant the husband who has been given notice of divorce the right to prosecute (evidently under the *ius mariti*).

Given March 10, at Ravenna, in the consulship of Eustathius and Agricola (421).

[35] *Emperor Justinian Augustus to John, Praetorian Prefect.* **pr.** When a notice of divorce (*repudium*) is sent on account of suspicion of the crime of

[64] = C.Th. 9.7.8.
[65] = (in part, with changes) C.Th. 3.16.2, which also gives Constantius as emperor.

misso propter suspicionem criminis adulterii, legum conditores intra duorum mensum spatium post missionem repudii numerandum suspendi definiunt propter tormentorum quaestionem, si opus exegerit, eis imponendam. 1. Sin vero uxor matrimonio sub praefato modo dissoluto rebus humanis exempta fuerit, nihil de tempore, quousque servos eos propter memoratam causam permanere deceat, adiciunt. 2. Nobis vero necessarium esse videtur certum tempus etiam in hoc casu statuere propter dotis quaestionem, utrum in lucrum marito cedat an heredibus mulieris restituatur. 3. Sancimus itaque duos etiam menses post mortem mulieris servari, ut intra eos ante dicti servi permaneant et facultatem maritus habeat probationes adulterii per eos praestare: transacto vero memorato tempore licentiam habere heredem mulieris libertatem eis imponere, nisi per culpam eius maritus prohibitus fuerit causam adulterii, ipse videlicet imminens, exercere.

D. v k. Nov. Constantinopoli post consulatum Lampadii et Orestis vv. cc. anno secundo.

X Si Quis Eam Cuius Tutor Fuerit Corruperit

[1] *Imp. Constantinus A. ad Bassum vicarium Italiae.* Si tutor pupillam quondam suam violata castitate stupraverit, deportatione subiugetur atque universae eius facultates fisci viribus vindicentur, quamvis eam poenam debuerit sustinere, quam raptori leges imponunt.

D. prid. non. April. Aquileiae Constantino A. VII et Constantio C. conss.

XI De Mulieribus Quae Servis Propriis Se Iunxerunt

[1] *Imp. Constantinus A. ad populum.* **pr.** Si qua cum servo suo occulte rem habere detegitur, capitali sententia subiugetur, tradendo ignibus verberone. 1. Sitque omnibus facultas crimen publicum arguendi, sit

adultery, the founders of the laws (*legum conditores*) establish that the manumission of slaves who are in the ownership of the wife, the husband, or their parents shall be suspended for a period of two months after the sending of the *repudium*, so that they be subjected to judicial examination under torture, if there is need of this.

1. But if, however, a wife should, after her marriage has ended in the manner just mentioned, pass away, they add nothing about the time period in which it is appropriate that the slaves remain slaves for the aforesaid reason. 2. To Us, however, it seems necessary to establish a fixed time period, even in this situation, while the issue of the dowry is decided, whether it passes to the benefit of the husband or is restored to the wife's heirs. 3. We therefore lay down that two months also shall be observed after the death of the woman, so that the previously mentioned slaves remain as such for this period and the husband enjoy the opportunity of proving the adultery through them. But once the just-mentioned time period has elapsed, the woman's heir shall have permission to manumit them, unless through the heir's fault (*culpa*) the husband has been prevented from launching the accusation of adultery, as he was clearly about to do.

Given October 28,[66] *at Constantinople, in the second post-consulate of the* viri clarissimi *Lampadius and Orestes (532).*

Tenth Title A *Tutor* Violates His Former Female Ward

[1][67] *Emperor* CONSTANTINE *Augustus to Bassus, Vicar of Italy.* If a *tutor* commits criminal fornication (*stupraverit*) with his former female ward, having outraged her chastity, he shall be afflicted with capital exile (*deportatio*) and his property in its entirety shall be claimed by the Treasury, although he ought to suffer that penalty which the laws impose on someone guilty of abduction (*raptor*).

Given April 4, at Aquileia, in the consulship of Constantine Augustus, for the seventh time, and Constantius Caesar (326).[68]

Eleventh Title Women Involved with Their Own Slaves

[1][69] *Emperor* CONSTANTINE *Augustus to the People.* **pr.** If any woman is discovered to have a secret relationship with her slave, she shall be afflicted with a capital sentence (*capitalis sententia*), while the worthless rascal (*verbero*) shall

[66] The precise day is uncertain; an alternative is October 18.

[67] = (in part, with changes) C.Th. 9.8.1.

[68] The precise year is uncertain: 326 or 320. For "abduction", see C.Th. 9.24.1, to which this law almost certainly refers.

[69] = (in part, with minor changes) C.Th. 9.9.1.

officio copia nuntiandi, sit etiam servo licentia deferendi, cui probato crimine libertas dabitur.

2. Filii etiam, quos ex hac coniunctione habuit, exuti omnibus dignitatis insignibus in nuda maneant libertate, neque per se neque per interpositam personam quolibet titulo voluntatis accepturi aliquid ex facultatibus mulieris. 3. Successio autem mulieris ab intestato vel filiis, si erunt legitimi, vel proximis cognatisque deferatur vel ei, quem ratio iuris admittit: ita ut et quod ille qui quondam amatus est et quod ex eo suscepti filii quolibet casu in sua videantur habuisse substantia, mulieris dominio sociatum a memoratis successoribus vindicetur.

D. IIII k. Iun. Serdicae Constantino A. VII et Constantio C. conss.

XII Ad Legem Iuliam de Vi Publica seu Privata

[1] *Impp. Severus et Antoninus AA. Peliae.* Ob debitum viri vel civile munus res uxoris qui pignori capiunt, vim contrahere videntur.

D. k. Iul. Romae Antonino A. II et Geta II conss.

[2] *Imp. Antoninus A. Vero.* Tutoris tui lege Iulia de vi privata damnati si tertia pars bonorum fisco vindicata est, tutelae actionem pro ea portione adversus fiscum dirige, modo si nulla praescriptio locum habeat. nam successio oneribus portionis suae respondet.

PP. XV k. Mart. Antonino A. IIII et Balbino conss.

be burned alive. 1. There shall be opportunity for everyone to prosecute this public criminal offense (*crimen publicum*); there shall be scope for administrative staff to lodge a complaint; there shall even be permission granted to a slave to lay evidence. If the offense is proved, freedom will be granted to the slave.

2. The children whom she has produced in this relationship shall also shed every manifestation of social rank and shall enjoy free status and no more. Nor shall they receive, either directly or through a third party, anything from their mother's estate through any manifestation of her wishes. 3. Succession to her property on intestacy, however, shall accrue to her children, if she has any that are legitimate, or to her nearest kin and blood-relatives (*cognati*), or to the person entitled to it under the principles of private law (*ratio iuris*). This shall happen in such a way that whatever property her former lover or any of their children are deemed to have acquired in any manner shall be assigned to the ownership of the woman and shall be claimed by those persons named above who are eligible to succeed to her.

Given May 29, at Serdica, in the consulship of Constantine Augustus, for the seventh time, and Constantius Caesar (326).[70]

Twelfth Title The Lex Julia on Public Force or on Private Force[71]

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Pelias.* Those who seize a wife's property as a pledge on account of a husband's debt or municipal obligation (*munus civile*) are deemed to commit (unlawful) force (*vis*).

Given July 1, at Rome, in the consulship of Antoninus Augustus, for the second time, and Geta, for the second time (205).[72]

[2] *Emperor* ANTONINUS *Augustus to Verus.* If one-third of the estate of your *tutor* has been claimed by the Treasury after his condemnation under the lex Julia on private force (*vis privata*), raise an action on tutelage for that portion against the Treasury, provided that no defense applies. For the successor (to the estate of the *tutor*) is liable for the burdens of its portion (that are due to the minor ward).

Posted February 15, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).[73]

[70] The precise year is uncertain: 326, 320, or more likely 329: Projet Volterra. Seeck had May 29, 329.
[71] See D. 48.6–7. The lex Iulia de vi publica et de vi privata may have been two distinct statutes that were likely passed *c.* 17 BCE.
[72] So Krüger, but Geta's first consulship was in 205, his second in 208, while Caracalla's second was in 205, his third in 208.
[73] Blume: "The ward had a lien on the property of the guardian for what was due."

[3] *Impp. Diocletianus et Maximianus AA. et CC. Bianori.* Si confidis sponsam filii tui raptam esse vel filium tuum inclusum, instituere sollemni more legis Iuliae de vi accusationem apud praesidem provinciae non prohiberis.

PP. VIII k. Mai. Veronae AA. conss.

[4] *Idem AA. et CC. Liberatio.* **pr.** Si criminis accusationem propter res a servo raptas intentandam putaveris, non contra dominum, sed contra eum quem facinus commisisse proponis hanc instituere debes. **1.** Sed quoniam a Fuscinillo etiam te verberibus adflictum adseveras, si hominibus coactis hoc fecit, de hoc etiam, si legis Iuliae de vi privata reum deferendum putaveris, apud praesidem provinciae age non ignarum, quemadmodum criminibus probatis res vindicari debeat.

S. XVII k. Iul. Sirmi AA. conss.

[5] *Idem AA. et CC. Oploni.* In possessionem fundi licet creditor per vim ingrediatur, Iuliae legis vis privatae reus deferri potest.

S. VI id. Dec. Nicomediae CC. conss.

[6] *Imp. Constantinus A. ad Catullinum proconsulem Africae.* Quoniam multa facinora sub uno violentiae nomine continentur, cum aliis vim inferre certantibus, aliis cum indignatione resistentibus verbera caedesque crebro deteguntur admissae, placuit, si forte quis vel ex possidentis parte vel eius qui possessionem temerare temptaverit interemptus sit, in eum supplicium exerceri, qui vim facere temptavit et alterutri parti causam malorum praebuit: et non iam relegatione aut deportatione insulae plectetur, sed supplicium capitale excipiat nec interposita provocatione sententiam quae in eum fuerit dicta suspendat.

D. XV k. Mai. Aquileiae Gallicano et Basso conss.

[7] *Idem A. ad Bassum pu.* **pr.** Si quis ad se fundum vel quodcumque aliud adserit pertinere ac restitutionem sibi competere possessionis

[3][74] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Bianor.* If you are certain that your son's fiancée has been abducted, or your son has been sequestered, you are not prevented from launching a formal accusation under the lex Julia on Force before the provincial governor.

Posted April 24, at Verona,[75] *in the consulship of the Augusti (293).*

[4] *The same Augusti and Caesars to Liberatius.* **pr.** If you think that a criminal prosecution should be brought on account of property that has been carried off by a slave, you ought to proceed not against the master, but against the person you allege to have committed the offense. 1. But because you assert that you were also beaten by Fuscinillus, if he did this after gathering together a group of men, concerning this matter as well, if you think he ought to be prosecuted under the lex Julia on private force, institute proceedings before the governor of the province, who knows how the matter ought to be avenged once the charges have been proved.

Written June 15, at Sirmium, in the consulship of the Augusti (293).[76]

[5] *The same Augusti and Caesars to Oplo.* Although it is a creditor who attempts to take possession of a farm by force, he can be accused under the lex Julia on private force.

Written December 8, at Nicomedia, in the consulship of the Caesars (294).

[6][77] *Emperor* CONSTANTINE *Augustus to Catullinus, Proconsul of Africa.* Because many offenses are embraced by the single term "violence," when some men act as aggressors and others heatedly resist them, blows and slaughter are frequently revealed to have been inflicted. It is settled law that if by chance someone either on the side of the possessor or on that of the one who attempts to disturb possession should be killed, punishment shall be inflicted upon him who set out to employ force and so caused harm to one or the other party. Nor will the offender be punished in future through exile, whether mild (*relegatio*) or capital (*deportatio*), to an island. Instead, he shall be put to death (*supplicium capitale*), and he shall not delay the execution of the sentence passed on him by lodging an appeal.

Given April 17, at Aquileia,[78] *in the consulship of Gallicanus and Bassus (317).*

[7][79] *The same Augustus to Bassus, City Prefect.* **pr.** If someone asserts that a farm or any other kind of property belongs to him and believes that possession

[74] Combine with C. 5.1.1, dated either to April 14 or 24.
[75] Mommsen proposes Heraclea.
[76] The precise year is uncertain: Mommsen prefers December 16, 294.
[77] = (in part, with changes) C.Th. 9.10.1.
[78] The location is uncertain: the C.Th. has Serdica.
[79] = (in part, with changes) C.Th. 9.10.3. Perhaps combine with C. 7.19.7.

putat, civiliter super possidendo agat aut impleta sollemnitate iuris crimen violentiae opponat, non ignarus eam se sententiam subiturum, si crimen obiectum non potuerit comprobare, quam reus debet excipere. **1.** Quod si omissa interpellatione vim possidenti intulerit, ante omnia violentiae causam examinari praecipimus et in ea requiri, quis ad quem venerit possidentem, ut ei quem constiterit expulsum amissae possessionis iura reparentur, eademque protinus restituta, si criminalis quaestio agitetur, violentus poenae non immerito destinatus in totius litis terminum differatur, ut agitato negotio principali, si contra eum fuerit iudicatum, in insulam deportetur bonis omnibus abrogatis.

PP. prid. non. Oct. Romae Constantino A. v et Licinio C. conss.

[8] *Imppp. Valentinianus Theodosius et Arcadius AAA. ad Albinum pu.* **pr.** Servos, qui fecisse violentiam confessionibus testium aut propriis docebuntur, si id inscio domino commiserint, postremo supplicio deditos luere perpetrata censemus. **1.** Quod si illi metu atque exhortatione dominorum violentiam admiserint, palam est secundum legem Iuliam dominum infamem pronuntiatum loci aut originis propriae dignitate non uti, servos vero, quos furoribus talium paruisse constiterit, metallis post sententiam dedi. **2.** Viles autem infamesque personae et hi, qui bis aut saepius violentiam perpetrasse convincentur, constitutionum divalium poena teneantur. **3.** Iudicem vero nosse oportet, quod gravi infamia sit notandus, si violentiae crimen apud se probatum distulerit omiserit vel impunitate donaverit aut molliorem quam praestituimus poenam protulerit.

D. prid. non. Mart. Mediolani Valentiniano A. IIII et Neoterio conss.

[9] *Impp. Honorius et Theodosius AA. Aureliano pp.* Crimen non dissimile est rapere et ei qui rapuerit rapta scientem delictum servare.

should be restored to him, he shall proceed by suit at private law or shall make formal accusation of the offense of violence, in awareness of the fact that, if he cannot prove the charge he has brought, he shall be subject to the same punishment that a (guilty) defendant ought to suffer. **1.** But if he omits recourse to law and uses force against the possessor, We instruct that before all else the cause of the violence shall be investigated and it thus shall be determined who acted aggressively and who was in possession (of the property), so that the rights of possession lost by the man who is determined to have been expelled (from the property) shall be restored. When this has been accomplished forthwith, if a criminal prosecution is begun, an aggressor deservedly marked for punishment shall be put off until the conclusion of the entire suit, so that once the main issue has been decided, if the decision goes against him, he shall be deported to an island (*deportatio*, capital exile) and all his property confiscated.

Posted October 6, at Rome, in the consulship of Constantine Augustus, for the fifth time, and Licinius Caesar (319).

[8][80] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Albinus, City Prefect.* **pr.** We order that slaves who are shown to have committed violence, either on the testimony of witnesses or by their own admission, if they acted without the knowledge of their master, shall pay for their misdeeds with the death penalty (*postremum supplicium*). **1.** But if they have committed violence through fear of or at the urging of their masters, it is clear that, pursuant to the lex Iulia, the master shall be afflicted with legal infamy (*infamia*) and so be deprived of the status deriving from his rank and birth. But the slaves who, it is established, have obeyed the insane commands of such persons shall be sentenced to the mines. **2.** Moreover, low and infamous persons (*viles infamesque personae*), as well as those who have been convicted of the crime of violence more than once, shall be liable to the penalty established by imperial constitutions.

3. The judge, however, ought to be aware that he shall be branded with grievous legal infamy (*infamia*) if a charge of violence has been proved in his court and he has delayed, dropped, or explicitly denied punishment, or if he has set a penalty lighter than the one We have prescribed.

Given March 6, at Milan, in the consulship of Valentinian Augustus, for the fourth time, and Neoterius (390).

[9][81] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Aurelianus, Praetorian Prefect.* As a crime, robbery is not unlike preserving, in full knowledge of the offense, robbed goods for the robber.

[80] = (with changes) C.Th. 9.10.4.

[81] = (in part, with minor changes) C.Th. 9.28.2. Reference is to fences, i.e., receivers of stolen property.

D. III non. Mart. Constantinopoli Honorio X et Theodosio VI AA. conss.

[10] *Impp. Leo et Anthemius AA. Nicostrato pp.* **pr.** Omnibus per civitates et agros habendi bucellarios vel Isauros armatosque servos licentiam volumus esse praeclusam. **1.** Quod si quis praeter haec, quae nostra mansuetudo salubriter ordinavit, armata mancipia seu bucellarios aut Isauros in suis praediis aut iuxta se habere temptaverit, post exactam centum librarum auri condemnationem vindictam in eos severissimam proferri sancimus. **2.** Viri quoque clarissimi provinciarum rectores in speculis esse debebunt, ne quis audeat statuta nostrae mansuetudinis in aliquo violare, scientes, quod ex dissimulatione dignitatis et administrationis cingulo privabuntur et post centum librarum auri multam salutis vitaeque suae periculum sustinebunt: primatibus videlicet apparitionis suae personis praeter amissionem fortunarum suarum capitali quoque supplicio feriendis.

D. V k. Sept. Anthemio A. II cons.

XIII De Raptu Virginum seu Viduarum Nec Non Sanctimonialium

[1] *Imp. Iustinianus A. Hermogeni magistro officiorum.* **pr.** Raptores virginum honestarum vel ingenuarum, sive iam desponsatae fuerint sive non, vel quarumlibet viduarum feminarum, licet libertinae vel servae alienae sint, pessima criminum peccantes capitis supplicio plectendos decernimus, et maxime si deo fuerint virgines vel viduae dedicatae (quod non solum ad iniuriam hominum, sed ad ipsius omnipotentis dei inreverentiam committitur, maxime cum virginitas vel castitas corrupta restitui non potest): et merito mortis damnantur supplicio, cum nec ab homicidii crimine huiusmodi raptores sint vacui.

1. Ne igitur sine vindicta talis crescat insania, sancimus per hanc generalem constitutionem, ut hi, qui huiusmodi crimen commiserint et qui eis auxilium tempore invasionis praebuerint, ubi inventi fuerint in ipsa

Given March 5, at Constantinople, in the consulship of Honorius, for the tenth time, and Theodosius, for the sixth time, Augusti (415).

[10] *Emperors* Leo *and* Anthemius *Augusti to Nicostratus, Praetorian Prefect.* **pr.** We wish that everyone, both in the towns and in the countryside, be denied permission – which has already been denied – to maintain private troops (*bucellarii*), Isaurians, or armed slaves. **1.** But if someone, contrary to what Our Humanity has beneficially laid down, attempts to keep armed slaves, *bucellarii*, or Isaurians on his properties or about his person, We ordain that after paying a fine of 100 pounds of gold they shall be afflicted with a very serious penalty.

2. Also, the *viri clarissimi* who govern provinces ought to be on guard against anyone daring to contravene the enactments (*statuta*) of Our Humanity in any respect. They are aware that for their deliberate disregard they will be deprived of the protection of social rank and official position and, following a fine of 100 pounds of gold, they will endure risk to their life and safety. Obviously, their chiefs of staff shall have their property confiscated and suffer capital punishment (*capitale supplicium*) besides.

Given August 28, in the consulship of Anthemius Augustus, for the second time (468).

Thirteenth Title Abduction of Never-Married Women, Widows, and Female Monastics

[1][82] *Emperor* Justinian *Augustus to Hermogenes, Master of Offices.* **pr.** We decree that those who abduct respectable or free-born never-married women, whether they are formally engaged to them or not, or any sort of widows (*viduae*) even if they are freedwomen or slaves belonging to someone else, since they are guilty of the worst of crimes, shall suffer the death penalty (*mortis supplicium*). This is especially true if the never-married women or widows are consecrated to God, because this offense is not only an outrage toward mankind but an act of impiety toward Almighty God Himself, above all since physical virginity or chaste character, once corrupted, cannot be restored. And they are deservedly condemned to death, since such abductors are not free from the crime of homicide (*homicidium*).

1. In order, then, that such irresponsible conduct not increase without punishment, We ordain through this general law (*constitutio generalis*) that those who commit an offense of this nature and those who provide assistance to

[82] = (in part, with changes) C. 1.3.53. Combine with C. 5.17.11.

rapina et adhuc flagrante crimine comprehensi a parentibus virginum vel viduarum vel ingenuarum vel quarumlibet feminarum aut earum consanguineis aut tutoribus vel curatoribus vel patronis vel dominis, convicti interficiantur. **1a.** Quae multo magis contra eos obtinere sancimus, qui nuptas mulieres ausi sunt rapere, quia duplici crimine tenentur tam adulterii quam rapinae et oportet acerbius adulterii crimen ex hac adiectione puniri. **1b.** Quibus connumeravimus etiam eum, qui saltem sponsam suam per vim rapere ausus fuerit.

1c. Sin autem post commissum tam detestabile crimen aut potentatu raptor se defendere aut fuga evadere potuerit, in hac quidem regia urbe tam viri excelsi praefecti praetorio quam vir gloriosissimus praefectus urbis, in provinciis autem tam viri eminentissimi praefecti praetorio per Illyricum et Africam quam magistri militum per diversas nostri orbis regiones nec non viri spectabiles praefectus Aegypti vel comes Orientis et vicarii et proconsules et nihilo minus omnes viri spectabiles duces et viri clarissimi rectores provinciarum nec non alii cuiuslibet ordinis iudices, qui in locis inventi fuerint, simile studium cum magna sollicitudine adhibeant, ut eos possint comprehendere et comprehensos in tali crimine post legitimas et iuri cognitas probationes sine fori praescriptione durissimis poenis adficiant et mortis condemnent supplicio.

1d. Quibus et, si appellare voluerint, nullam damus licentiam secundum antiquae Constantinianae legis definitionem.

1e. Et si quidem ancillae vel libertinae sint quae rapinam passae sunt, raptores tantummodo supra dicta poena plectentur, substantiis eorum nullam deminutionem passuris. **1f.** Sin autem in ingenuam personam tale facinus perpetretur, etiam omnes res mobiles seu immobiles et se moventes tam raptorum quam etiam eorum, qui eis auxilium praebuerint, ad dominium raptarum mulierum liberarum transferantur providentia iudicum et cura parentum earum vel maritorum vel tutorum seu curatorum.

1g. Et si non nuptae mulieres alii cuilibet praeter raptorem legitime coniungentur, in dotem liberarum mulierum easdem res vel quantas ex his voluerint procedere, sive maritum nolentes accipere in sua pudicitia remanere voluerint, pleno dominio eis sancimus applicari, nemine

them at the time of the assault, where they have been discovered in the very act of abduction and caught during the commission of the offense itself by the parents of the never-married women, widows, free-born women, or any women at all, or by their blood-relations (*consanguinei*), *tutores*, *curatores*, patrons (*patroni*), or owners (of slaves), they shall, upon conviction, be executed. **1a.** We establish this rule all the more (vigorously) against those who have dared to abduct married women, because they are liable on a double charge, that of adultery as much as that of abduction, and the offense of adultery ought to be punished more harshly on account of this addition. **1b.** We have numbered among these also the man who, at all events, dares the forcible abduction of his fiancée.

1c. If, however, after committing so detestable a crime, the ravisher proves able either to defend himself through influence or to escape by flight, in this Imperial City certainly both the *viri excelsi* Praetorian Prefects and the *vir gloriosissimus* Urban Prefect; in the provinces, however, both the *viri eminentissimi* Praetorian Prefects of Illyricum and Africa and the Masters of the Soldiers throughout the various areas of Our world, as well as the *viri spectabiles* Prefect of Egypt, the Count of the East, the Vicars, the Proconsuls, and not less the *viri spectabiles* Dukes, the *viri clarissimi* provincial governors, and also other judges of any rank who are found locally, shall show like diligence and great care, so that they may arrest and, upon arrest for such a crime, after proper proof recognized by the law, shall inflict upon them the harshest punishment and condemn them to death, without granting the privilege of venue (*fori praescriptio*).

1d. Even if they wish to appeal, We deny them permission to do so, pursuant to the rule (*definitio*) of the ancient law (*lex*) of Constantine.[83]

1e. Moreover, if, in fact, the victims of abduction are slaves or freedwomen, the abductors will be punished only with the penalty mentioned above, and will not suffer confiscation of their property.

1f. But if, however, such an offense is committed against a free-born female, in addition (to the death penalty) all movable, immovable, and self-propelling property of the abductors as well as of those who have lent them assistance shall be made over to the ownership of the abducted free women through the foresight of the judges and the solicitude of the parents of the victims as well as of their husbands, *tutores*, and *curatores*.

1g. Moreover, if unmarried women are later lawfully joined in marriage to anyone but their abductor, We ordain that this very property or as much of it as they wish shall form part of the dowry of (these) free women. But if they refuse a husband and wish to remain in their state of chastity, We lay down that this shall accrue to them with full rights of ownership, and that no judge

[83] C.Th. 9.24.1.3.

iudice vel alia quacumque persona haec audente contemnere. **2.** Nec sit facultas raptae virgini vel viduae vel cuilibet mulieri raptorem suum sibi maritum exposcere, sed cui parentes voluerint excepto raptore, eam legitimo copulent matrimonio, quoniam nullo modo nullo tempore datur a nostra serenitate licentia eis consentire, qui hostili more in nostra re publica matrimonium student sibi coniungere. oportet etenim, ut, quicumque uxorem ducere voluerit sive ingenuam sive libertinam, secundum nostras leges et antiquam consuetudinem parentes vel alios quos decet petat et cum eorum voluntate fiat legitimum coniugium.

3. Poenas autem quas praediximus, id est mortis et bonorum amissionis, non tantum adversus raptores, sed etiam contra eos qui hos comitati in ipsa invasione et rapina fuerint constituimus. **3a.** Ceteros autem omnes, qui conscii et ministri huiusmodi criminis reperti et convicti fuerint vel eos susceperint vel quamcumque opem eis intulerint, sive masculi sive feminae sunt, cuiuscumque condicionis vel gradus vel dignitatis, poenae tantummodo capitali subicimus, ut huic poenae omnes subiaceant, sive volentibus sive nolentibus virginibus seu aliis mulieribus tale facinus fuerit perpetratum. **3b.** Si enim ipsi raptores metu atrocitatis poenae ab huiusmodi facinore temperaverint se, nulli mulieri sive volenti sive nolenti peccandi locus relinquetur, quia hoc ipsum velle mulieri ab insidiis nequissimi hominis qui meditatur rapinam inducitur. nisi etenim eam sollicitaverit, nisi odiosis artibus circumvenerit, non facit eam velle in tantum dedecus sese prodere. **3c.** Parentibus, quorum maxime vindicta intererat, si patientiam praebuerint ac dolorem remiserint, deportatione plectendis. **4.** Et si quis inter haec ministeria servilis condicionis fuerit deprehensus, citra sexus discretionem eum concremari iubemus, cum hoc etiam Constantiniana lege recte fuerat prospectum. **5.** Omnibus legis Iuliae capitulis, quae de raptu virginum vel viduarum seu sanctimonialium sive antiquis legum libris sive in sacris constitutionibus posita sunt, de cetero abolitis, ut

or any other person at all shall dare to disregard this. **2.** Nor shall any never-married woman, widow, or any woman at all who has been abducted have the opportunity to demand her abductor as a husband, but their parents shall join them in lawful marriage to the man whom they (their parents) wish, with the exception of the abductor, because permission has in no way and at no time been conceded by Our Serenity for them to consent to those who in Our Commonwealth strive to marry by hostile means. For whoever wishes to marry a woman, whether free-born or freed, shall ask, consistently with Our laws and ancient custom, her parents or the other appropriate parties (in order that) a lawful marriage comes about through their consent.

3. The punishments, moreover, which We have mentioned above, that is, death and loss of property, We have set not only against ravishers but also against those who accompany them in the assault and act of ravishing. **3a.** All others, whether men or women of whatever status, rank, or title, who are found to have known of and abetted such a crime and are convicted, or who harbor them (the ravishers) or offer them any help whatsoever, We subject only to capital punishment. Thus all shall be subject to this punishment, whether such a crime is committed with never-married or other women, with or without their consent.[84] **3b.** For if abductors themselves abstain from a crime of his kind out of fear of the severity of the punishment, opportunity of wrongdoing will be left for no woman, willing or not, because this very wish is suggested to a woman through the wiles of the very worthless man who plans her abduction. For unless he importunes her, unless he besets her with his hateful contrivances, he does not bring it about that she wishes to betray herself to such a great disgrace. **3c.**[85] If the parents, for whom vengeance would be in their utmost interest, show indulgence and forgo their indignation, they shall be punished with capital exile (*deportatio*). **4.** Moreover, if someone of slave status is caught providing such assistance, We order that without distinction of sex he or she shall be burned alive, since this too was properly provided for in the law of Constantine.[86] **5.** Those rules set forth in all chapters of the lex Julia concerning the abduction of never-married women, widows and female monastics,[87] in the ancient books of laws, or in imperial constitutions, are henceforth abolished, so that only this law shall suffice for all in this title

[84] Blume: "The primary meaning [of *raptus* and *rapere*] was 'abduction' and 'abduct' by force. Hence the foregoing punished abduction of a woman for the purpose of carnal intercourse, or, in the case of widows and virgins, for the purpose of marriage. It was in part the aim of this law not to permit any marriage except with the consent of the father." As the text implies, in some cases the abduction was staged with the consent of the bride-to-be as a way of evading a marriage arranged by her father or other relatives.

[85] = (in part) C.Th. 9.24.1.4.

[86] C.Th. 9.24.1.5.

[87] Since Diocletian's day, at least, abduction was punished under the lex Iulia de vi: C. 9.12.3.

haec tantummodo lex in hoc capite pro omnibus sufficiat. **6.** Quae de sanctimonialibus etiam virginibus et viduis locum habere sancimus.

D. XV k. Dec. Constantinopoli dn. Iustiniano pp. A. III cons.

XIIII De Emendatione Servorum

[**1**] *Imp. Constantinus A. ad Bassum.* **pr.** Si virgis aut loris servum dominus adflixerit aut custodiae causa in vincula coniecerit, dierum distinctione sive interpretatione depulsa nullum criminis metum mortuo servo sustineat. **1.** Nec vero immoderate suo iure utatur, sed tunc reus homicidii sit, si voluntate eum ictu fustis aut lapidis occiderit vel certe telo usus letale vulnus inflixerit aut suspendi laqueo praeceperit vel iussione taetra praecipitandum esse mandaverit aut veneni virus infuderit vel dilaniaverit poenis publicis corpus, ferarum unguibus latera persecando vel exurendo oblatis ignibus membra, aut tabescentes artus atro sanguine permixta sanie defluentes prope in ipsis adegerit cruciatibus vitam relinquere saevitia immanium barbarorum.

D. V id. Mai. Romae Constantino A. V et Licinio conss.

XV De Emendatione Propinquorum

[**1**] *Impp. Valentinianus et Valens AA. ad senatum.* **pr.** In corrigendis minoribus pro qualitate delicti senioribus propinquis tribuimus potestatem, ut, quos ad vitae decora domesticae laudis exempla non provocant, saltem correctionis medicina compellat. **1.** Neque nos in puniendis morum vitiis potestatem in immensum extendi volumus, sed iure patrio auctoritas corrigat propinqui iuvenis erratum et privata

(*caput*). **6.** We ordain that the rules for female monastics shall also apply to never-married women and widows.

Given November 17, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, for the third time (533).

Fourteenth Title Disciplining Slaves

[1][88] *Emperor* CONSTANTINE *Augustus to Bassus.* **pr.** If a master punishes a slave with rods or straps, or throws him or her into chains as a means of keeping the slave in custody, he or she shall have no fear of a criminal charge if the slave dies, the question of when this happens and (all) legal technicalities being rendered irrelevant. **1.** Nor shall he however enjoy this right without limitation, but he shall be prosecuted for murder (*homicidium*) if he kills the slave through a deliberate blow of a club or a stone, or at any rate inflicts a fatal blow through use of a weapon,[89] commands the slave to be hung by a noose, issues a terrible order that the slave be flung headlong from a height, administers a venomous poison, or mutilates the slave's body as a punishment inflicted in public, such as tearing his flesh with the claws of wild beasts or burning his limbs by the application of flames, or if he, in the savage manner of monstrous barbarians, forces the parts of a slave's body, wasting away and dripping black blood mixed with gore, to forsake life almost in the midst of the torments themselves.

Given May 11, at Rome, in the consulship of Constantine Augustus, for the fifth time, and Licinius (319).

Fifteenth Title Disciplining Close Relatives

[1][90] *Emperors* VALENTINIAN *and* VALENS *Augusti to the Senate.* **pr.** We grant to older close relatives (*seniores propinqui*) the power (*potestas*) to correct younger ones in proportion to the severity of the offense, in order that at least the medicine (*medicina*) of correction compels those whom praiseworthy precedents within the family do not inspire to lead a becoming lifestyle. **1.** Nor do We wish that the power of punishing defects in character and conduct be extended without limit, but authority by a father's right (*iure patrio auctoritas*) shall correct and repress, by a private punishment, the mistakes of a young close relative.

[88] = (with changes) C.Th. 9.12.1.
[89] See Gaius, D. 50.16.233.2.
[90] = C.Th. 9.13.1.

animadversione compescat. **2.** Quod si atrocitas facti ius domesticae emendationis excedit, placet enormis delicti reos dedi iudicum notioni.

D. prid. k. Dec. Valentiniano et Valente AA. conss.

XVI Ad Legem Corneliam de Sicariis

[1] *Imp. Antoninus A. Aurelio Herculiano et aliis militibus.* **pr.** Frater vester rectius fecerit, si se praesidi provinciae obtulerit: qui[viii] si probaverit non occidendi animo Iustum a se percussum esse, remissa homicidii poena secundum disciplinam militarem sententiam proferet. **1.** Crimen enim contrahitur, si et voluntas nocendi intercedat. ceterum ea, quae ex improviso casu potius quam fraude accidunt, fato plerumque, non noxae imputantur.

PP. prid. k. Febr. Laeto II et Cereale conss.

[2] *Imp. Gordianus A. Quintiano.* Is, qui adgressorem vel quemcunque alium in dubio vitae discrimine constitutus occiderit, nullam ob id factum calumniam metuere debet.

PP. III non. April. Arriano et Papo conss.

[3] *Imp. Gallienus A. Munatio.* Si, ut adlegas, latrocinantem peremisti, dubium non est eum, qui inferendae caedis voluntate praecesserat, iure caesum videri.

PP. XIII k. Febr. Valeriano et Lucillo conss.

[4] *Exemplum sacrarum litterarum Diocletiani et Maximiani AA. Agathoni.* Eum, qui adseverat homicidium se non voluntate, sed casu

[viii] cui

2. But if the outrageousness of the deed exceeds the limits of the right of household correction, it is Our decision to hand over the parties guilty of a monstrous offense to the jurisdiction of judges.

Given November 30, in the consulship of Valentinian and Valens Augusti (365).

Sixteenth Title The Lex Cornelia on Murderers[91]

[1] *Emperor* ANTONINUS *Augustus to Aurelius Herculianus and other soldiers.* **pr.**[92] Your brother would have done better if he had handed himself over to the governor of the province. But if he shows him that he struck Justus without the intention of killing him, he (the governor) will forgo the penalty for homicide and pronounce sentence pursuant to military regulations. 1.[93] The explanation is that the criminal offense (of homicide) is committed when the intent of causing harm is also present. But those actions that occur unexpectedly because of chance (*casus*) rather than from bad motives (*fraus*) are generally imputed to fate, not fault (*noxa*).

Posted January 31, in the consulship of Laetus, for the second time, and Cerealis (215).

[2] *Emperor* GORDIAN *Augustus to Quintianus.* He who kills an attacker or anyone else when in danger of losing his own life ought not to fear a malicious prosecution (*calumnia*) on that account.

Posted April 3, in the consulship of Arrianus and Papus (243).

[3][94] *Emperor* GALLIENUS *Augustus to Munatius.* If, as you assert, you killed a man engaged in the act of (violent) robbery, there is no doubt that he who first intended to cause bloodshed is deemed to have been justifiably killed (*iure caesus*).

Posted January 20, in the consulship of Valerian and Lucillus (265).

[4][95] *A copy of an imperial letter from* DIOCLETIAN *and* MAXIMIAN *Augusti to Agatho.* He (the defendant) asserts that he killed a man not deliberately

[91] See D. 48.8. *Sicarii*, literally "dagger-wielders," "assassins," are construed as "murderers" more generally. In general, "homicide" is technically correct in English when malice aforethought is not an issue.

[92] = (with minor changes) *Collatio* 1.8.

[93] = (in part, with minor changes, from another constitution by Alexander Severus in 222) *Collatio* 1.9.

[94] Some scholars insert here a constitution found at *Edictum Theodorici* 15: "If someone drives back an assassin coming at him with a sword, he shall not be considered a killer."

[95] = (in part, with minor changes) *Collatio* 1.10.

fortuito fecisse, cum calcis ictu mortis occasio praebita videatur, si hoc ita est neque super hoc ambigi poterit, omni metu ac suspicione, quam ex admissae rei discrimine sustinet, secundum id quod adnotatione nostra comprehensum est volumus liberari.

D. prid. k. Dec. Sirmi ipsis AA. IIII et III conss.

[5] *Idem AA. et CC. Agotio.* Si quis te reum Corneliae legis de sicariis fecerit, innocentia purgari crimen, non adulta aetate defendi convenit.

S. VI k. Nov. Romae CC. conss.

[6] *Idem AA. et CC. Philisco.* Is, qui cum telo ambulaverit hominis necandi causa, sicut is, qui hominem occiderit vel cuius dolo malo factum erit commissum, legis Corneliae de sicariis poena coercetur.

S. VII k. Ian. Nicomediae CC. conss.

[7] *Imppp. Valentinianus Valens et Gratianus AAA. ad Probum pp.* Si quis necandi infantis piaculum adgressus adgressave sit, sciat se capitali supplicio esse puniendum.

PP. VII id. Febr. Romae Gratiano A. III et Equitio conss.

[8] *Impppp. Gratianus Valentinianus Theodosius et Arcadius AAAA. Cynegio pp.* Si forte mulier marito mortis parasse insidias vel quolibet alio genere voluntatem occidendi habuisse inveniatur, vel forte maritus eo modo insectetur uxorem, in eadem quaestione ab omni familia non solum mariti, sed etiam uxoris, quae tamen tunc temporis domi fuerit, quaerendum est sine cuiusquam defensione.

D. III id. Dec. Arcadio A. et Bautone conss.

(*voluntas*), but through the random operation of chance (*casus fortuitus*), a blow from a kick evidently being the cause of death. If this is true and the point cannot be doubted, We wish that he be freed from all fear and suspicion weighing upon him as a consequence of committing this act, pursuant to what is embraced by Our written instructions (*adnotatio*).

Posted November 30, at Sirmium, in the consulship of the Augusti, for the fourth and third time, respectively (290).

[5] *The same Augusti and the Caesars to Agotius.* If someone prosecutes you under the lex Cornelia on Murderers, it is appropriate that you clear yourself of this crime by proving your innocence, not by defending yourself through your age, as (i.e., since you are) an adult (*non adulta aetate*).

Written October 27, at Rome,[96] *in the consulship of the Caesars (294).*

[6] *The same Augusti and Caesars to Philiscus.* He who walks about with a weapon in order to murder someone, just as he who murders a person or he through whose bad intent (*dolus malus*) this (offense) is committed, is liable to the penalty of the lex Cornelia on Murderers.

Written December 26, at Nicomedia, in the consulship of the Caesars (294).

[7][97] *Emperors* VALENTINIAN, VALENS, *and* GRATIAN *Augusti to Probus, Praetorian Prefect.* If anyone, male or female, commits the wicked crime of infanticide, let him or her know that the punishment of the capital penalty (*capitale supplicium*) must be inflicted upon him or her.

Given February 7, at Rome, in the consulship of Gratian Augustus, for the third time, and Equitius (374).

[8][98] *Emperors* GRATIAN, VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Cynegius, Praetorian Prefect.* If by chance a wife is discovered to have laid a deadly trap for her husband or to have intended to kill him in some other manner, or (if) by chance a husband pursues his wife in like manner,[99] judicial examination (of the slaves, under torture) must be held, without excepting anyone, for the entire slave household (*familia*) not only of the husband, but also of the wife, nevertheless limited to those who were present at that time in the house.

Given December 11, in the consulship of Arcadius Augustus and Bauto (385).

[96] According to Krüger this location is not correct.
[97] = (with changes) C.Th. 9.14.1; cf. C.Th. 8.51.2.
[98] = (in part, with changes) C.Th. 9.7.4.
[99] What follows = C. 9.9.31.

XVII De His Qui Parentes vel Liberos Occiderunt

[1] *Imp. Constantinus A. ad Verinum vicarium Africae.* Si quis in parentis aut filii aut omnino adfectionis eius, quae nuncupatione parricidii continetur, fata properaverit, sive clam sive palam id fuerit enisus, poena parricidii punietur neque gladio neque ignibus neque ulla alia sollemni poena subiugetur, sed insutus culleo et inter eius ferales angustias comprehensus serpentium contuberniis misceatur et, ut regionis qualitas tulerit, vel in vicinum mare vel in amnem proiciatur, ut omni elementorum usu vivus carere incipiat, ut ei caelum superstiti, terra mortuo auferatur.

D. XVI k. Dec. Licinio V et Crispo C. conss. accepta prid. id. Mart. Carthagine Constantino A. V et Licinio C. conss.

XVIII De Maleficis et Mathematicis et Ceteris Similibus

[1] *Imp. Antoninus A.* Plus est hominem veneno extinguere quam occidere gladio.

PP. sine die et consule.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Tiberio.* Artem geometriae discere atque exerceri publice intersit. ars autem mathematica damnabilis interdicta est.

S. XIII k. Sept. Sirmi CC. conss.

[3] *Imp. Constantinus A. ad Maximum.* **pr.** Nullus haruspex, nullus sacerdos, nullus eorum, qui huic ritui adsolent ministrare, limen alterius accedat nec ob alteram causam, sed huiusmodi hominum amicitia quamvis vetus repellatur: concremando illo haruspice, qui ad domum alienam accesserit, et illo in insulam detrudendo post ademptionem

Seventeenth Title Those Who Have Killed Their Parents or Children[100]

[1][101] *Emperor* Constantine *Augustus to Verinus, Vicar of Africa.* If anyone hastens the death of a parent, child, or any other close relative (*adfectio*) at all that is included in the class of "parricide," whether acting secretly or openly, he or she will be punished with the penalty given for parricide, meaning he or she shall not suffer execution by the sword, by being burned alive, or by any other formally prescribed means. Instead, he shall be sewn up in a sack and, within its dismal confines, shall enjoy the company of serpents. And, as the topography of the place allows, he shall be hurled into a nearby stretch of sea or a river, in order that, while still alive, he begins to be deprived of every benefit of the elements, as the (sight of the) sky is taken away while he still lives and the earth when dead.

Given November 16, in the consulship of Licinius, for the fifth time, and Crispus, Caesars (318); received March 14, at Carthage, in the consulship of Constantine Augustus, for the fifth time, and Licinius Caesar (318–319).[102]

Eighteenth Title Sorcerers, Astrologers, and Others Like Them

[1] *Emperor* Antoninus *Augustus.* It is worse to kill someone with poison than with a sword.

Posted without day or year.

[2] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Tiberius.* Learning and practicing the skill of surveyor (*ars geometriae*) shall be (deemed to be) in the public interest. But the despicable skill of astrology (*ars mathematica*) is forbidden.

Written August 20, at Sirmium, in the consulship of the Caesars (294).

[3][103] *Emperor* Constantine *Augustus to Maximus.* **pr.** No diviner (*haruspex*), no priest, no one who customarily performs rituals of this kind shall cross the threshold of another, not even for another reason (than divination), but friendship with such persons, even when of long standing, shall be renounced. Any diviner who visits someone else's house shall be burned alive, and that person who summons him through persuasion or material inducements shall

[100] See D. 48.9.
[101] = (with minor changes) C.Th. 9.15.1; Inst. 4.18.6.
[102] The year for "received" is likely 319: Projet Volterra.
[103] = (with changes) C.Th. 9.16.1.

bonorum, qui eum evocaverit suasionibus vel praemiis. 1. Accusatorem autem huius criminis non delatorem esse, sed dignum magis praemio arbitramur.

PP. k. Febr. Romae Constantino A. v et Licinio C. conss.

[4] *Idem A. et C. ad Bassum pp.* **pr.** Eorum est scientia punienda et severissimis merito legibus vindicanda, qui magicis adcincti artibus aut contra salutem hominum moliti aut pudicos animos ad libidinem deflexisse detegentur. 1. Nullis vero criminationibus implicanda sunt remedia humanis quaesita corporibus aut in agrestibus locis innocenter adhibita suffragia, ne maturis vindemiis metuerentur imbres aut ruentis grandinis lapidatione quaterentur, quibus non cuiusque salus aut aestimatio laederetur, sed quorum proficerent actus, ne divina munera et labores hominum sternerentur.

D. x k. Iun. Aquileiae Crispo et Constantino CC. conss.

[5] *Imp. Constantius A. ad populum.* Nemo haruspicem consulat aut mathematicum, nemo hariolum. augurum et vatum prava confessio conticescat. Chaldaei ac magi et ceteri, quos maleficos ob facinorum magnitudinem vulgus appellat, nec ad hanc partem aliquid moliantur. sileat omnibus perpetuo divinandi curiositas. etenim supplicium capitis feret gladio ultore prostratus, quicumque iussis obsequium denegaverit.

D. VIII k. Febr. Mediolani Constantio A. VIIII et Iuliano C. II conss.

[6] *Idem A. et C. ad populum.* Multi magicis artibus usi elementa turbare, vitas insontium labefactare non dubitant et manibus accitis audent ventilare, ut quisque suos conficiat malis artibus inimicos. hos, quoniam naturae peregrini sunt, feralis pestis absumat.

be exiled to an island after his or her property is confiscated. 1. We consider, however, the prosecutor of this offense not as an informer (*delator*) but as someone instead deserving of a reward.

Posted February 1, at Rome, in the consulship of Constantine Augustus, for the fifth time, and Licinius Caesar (319).[104]

[4][105] *The same Augustus and* LICINIUS *Caesar to Bassus, Praetorian Prefect.* **pr.** There shall be punishment and vengeance deservedly inflicted by the most severe laws upon the expertise of those who are discovered to be equipped with magic skills, to have meddled with people's health or to have turned chaste minds toward lust. 1. But criminal accusations shall not impede remedies devised for human bodies and nostrums, innocently applied in rural districts, to check concern for heavy downpours of rain falling upon grape-vintages ripe for harvest or their being damaged by the impact of falling hail. By such means no one's safety or reputation is harmed, but their actions bring it about that divine gifts and human efforts are not brought to naught.

Given May 23, at Aquileia, in the consulship of Crispus and Constantine Caesars (321).[106]

[5][107] *Emperor* CONSTANTIUS *Augustus to the People.* No one shall consult a diviner (*haruspex*) or astrologer, nor shall anyone (consult) a soothsayer (*hariolus*). The depraved profession of augurs and seers shall fall silent. Chaldeans, magicians (*magi*), and the others, whom the common people call sorcerers (*malefici*) on account of the enormity of their misdeeds, shall not contrive anything of this sort. Everyone's interest in foretelling the future shall forever cease. For whoever refuses obedience to these commands will endure the death penalty (*supplicium capitis*), laid low by an avenging sword.

Given January 25, at Milan, in the consulship of Constantius Augustus, for the ninth time, and Julian Caesar, for the second time (357).

[6][108] *The same Augustus and* JULIAN *Caesar to the People.* Many persons, using magic skills, do not hesitate to disturb the elements and endanger the lives of innocent parties. Having summoned the spirits of the departed, they dare to agitate (them), in order that each person destroy his or her personal enemies through evil practices. Because they are alien to nature, a savage destruction shall carry them off.

[104] Seeck gives February 1, 320; and the Projet Volterra prefers 320 for "received."
[105] = C.Th. 9.16.3.
[106] The year 318 is more likely: Seeck and Projet Volterra.
[107] = (with minor changes) C.Th. 9.16.4.
[108] = (with minor changes) C.Th. 9.16.5.

D. prid. non. Dec. Mediolani Constantio A. VIIII et Iuliano C. conss.

[7] *Idem A. et C. ad Taurum pp.* **pr.** Etsi excepta tormentis sunt corpora honoribus praeditorum (praeter illa videlicet crimina, quae legibus demonstrantur), etsi homines magi, in quacumque sint parte terrarum, humani generis inimici credendi sunt, tamen quoniam qui in comitatu nostro sunt ipsam pulsant propemodum maiestatem, si quis magus vel magicis contaminibus adsuetus, qui maleficus vulgi consuetudine nuncupatur, aut haruspex aut hariolus aut certe augur vel etiam mathematicus aut narrandis somniis occultans artem aliquam divinandi aut certe aliquid horum simile exercens in comitatu meo vel Caesaris fuerit deprehensus, praesidio dignitatis cruciatus et tormenta non fugiat. **1.** Si convictus ad proprium facinus detegentibus repugnaverit pernegando, sit eculeo deditus ungulisque sulcantibus latera perferat poenas proprio dignas facinore.

D. III non. Iul. Arimini Datiano et Cereale conss.

[8] *Impp. Valentinianus et Valens AA. ad Modestum pp.* Culpa similis est prohibita discere quam docere.

D. prid. id. Dec. Constantinopoli Valentiniano et Valente AA. conss.

[9] *Imppp. Valentinianus Theodosius et Arcadius AAA. Albino pu.* **pr.** Quicumque maleficiorum labe pollutum audierit deprehenderit occupaverit, ilico ad publicum protrahat et iudiciorum oculis communis hostem salutis ostendat. **1.** Quod si quisquam ex agitatoribus (id est aurigis) seu ex quolibet alio genere hominum contra hoc interdictum venire temptaverit aut clandestinis suppliciis etiam manifestum reum maleficae artis oppresserit, ultimum supplicium non evadat geminae

Given December 4, at Milan, in the consulship of Constantius Augustus, for the ninth time, and Julian Caesar, for the second time (357).[109]

[7][110] *The same Augustus and Caesar to Taurus, Praetorian Prefect.* **pr.** Although the bodies of public officials are exempted from torture – apart from, obviously, (cases concerning) those offenses set forth in the laws – and although magicians (*magi*), in whatever part of the earth they are found, shall be regarded as enemies of the human race, nonetheless, because there are those in Our court who come close to committing treason (*maiestas*) itself, if any of them is discovered, in my court or in that of the Caesar, to be a magician (*magus*) or habituated to magic pollutions, one who is customarily styled by the common people as a "sorcerer" (*maleficus*), or diviner (*haruspex*), soothsayer (*hariolus*), or, certainly, an augur or even an astrologer, someone who conceals some skill of divination for the purpose of elucidating dreams or at any rate who practices something similar to these things, he shall not, through the protection of his rank, escape torments and tortures. **1.** If, upon conviction, he contests through staunch denial those revealing his own crimes, he shall be given over to a wooden rack in the shape of a horse (*eculeus*) and endure his sides being torn by furrowing talons, penalties worthy of his misdeed.

Given July 5, at Rimini, in the consulship of Datianus and Cerealis (358).[111]

[8][112] *Emperors* VALENTINIAN *and* VALENS *Augusti to Modestus, Praetorian Prefect.* Learning prohibited things is blameworthy conduct (*culpa*), not unlike teaching them.

Given December 12, at Constantinople, in the consulship of Valentinian and Valens Augusti (365).[113]

[9][114] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Albinus, City Prefect.* **pr.** Whoever hears, catches, or seizes someone stained with the blot of sorcery shall immediately drag him or her forth in public and exhibit this enemy of the common safety to the eyes of the courts. **1.** But if one of the drivers – that is, charioteers – or any other kind of person should attempt to violate this prohibition, or by covert punishments should even put to death someone manifestly guilty of a sorcerer's practices, he shall not escape the death penalty (*ultimum supplicium*), being liable to a double suspicion:

[109] The year is more likely 356: Seeck and Projet Volterra.
[110] = (with minor changes) C.Th. 9.16.6.
[111] The year is more likely 357: Projet Volterra.
[112] = (in part, with minor changes) C.Th. 9.16.8.
[113] The precise year is uncertain: 365 or 370. Seeck gives December 12, 370; Schmidt-Hofner has the constitution "given" December 12, 370, or "posted" December 12, 373.
[114] = (with minor changes) C.Th. 9.16.11.

suspicionis obnoxius, quod aut publicum reum, ne facinoris socios publicaret, severitati legum et debitae subtraxerit quaestioni aut proprium fortassis inimicum sub huiusmodi vindictae nomine consilio atrociore confecerit.

D. XVII k. Sept. Romae Timasio et Promoto conss.

XVIIII De Sepulchro Violato

[1] *Imp. Gordianus A. Zenoni.* Res religioni destinatas, quin immo religionis effectas, scientes qui contigerint et emere et distrahere non dubitaverint, tametsi iure venditio non subsistat, laesae tamen religionis in crimen inciderunt.

PP. III k. Mart. Sabino II et Venusto conss.

[2] *Imp. Constantius A. ad Titianum pu.* Si servus in demoliendis sepulchris fuerit apprehensus, si id sine domini scientia faciat, metallo addicetur, si vero domini auctoritate vel iussione urguetur, relegatione plectetur. et si forte detractum aliquid de sepulchris ad domum eius villamque provectum reperietur, villa sive domus aut aedificium quodcumque erit fisci viribus vindicetur.

D. VII k. Iul. Mediolani Acyndino et Proculo conss.

[3] *Idem A. ad Limenium pp.* Si quis sepulchrum laesurus attigerit, locorum iudices si hoc vindicare neglexerint, non minus nota quam viginti librarum auri in sepulchrorum violatores statuta poena grassetur, ut eam largitionibus nostris inferre cogantur.

D. V k. April. Limenio et Catullino conss.

[4] *Idem A. ad populum.* **pr.** Qui sepulchra violant, domus ut ita dixerim defunctorum, geminum videntur facinus perpetrare: nam et sepultos

either that he withdrew someone guilty of a public criminal offense (*reus publicus*) from the severity of the laws and the due scrutiny of a trial, in order that he or she not disclose any partners in crime; or that he perhaps destroyed his personal enemy under title of a punishment of this kind through a rather outrageous scheme.

Given August 16, at Rome, in the consulship of Timasius and Promotus (389).

Nineteenth Title Violation of Tombs[115]

[1] *Emperor* GORDIAN *Augustus to Zeno.* Those who knowingly happen to buy and sell, and who do not hesitate to do this, property dedicated to a religious purpose, or rather productive of a religious purpose, even though the sale (itself) is void by operation of law, nevertheless have implicated themselves in the crime of outrage to religious scruple.

Posted February 28, in the consulship of Sabinus, for the second time, and Venustus (240).

[2][116] *Emperor* CONSTANTIUS *Augustus to Titianus, City Prefect.* If a slave is seized in the act of demolishing tombs, and if he does this without his master's knowledge, he will be bound over to the mines. But if he is compelled to act by the authorization or command of his master, he will be punished with exile (*relegatio*). And if anything removed from the tombs happens to be discovered to have been brought to his (the master's) house or villa, the villa, house, or any other kind of building will be claimed for the resources of the Treasury.

Given June 25, at Milan, in the consulship of Acyndinus and Proculus (340).

[3][117] *The same Augustus to Limenius, Praetorian Prefect.* If anyone touches a tomb with the intent of wreaking outrage upon it, (and) if the judges in that area neglect to punish this act, the mark of legal infamy (*nota*) shall fall upon them no less than the penalty of 20 pounds of gold established for those who outrage tombs, in order that they are compelled to contribute this fine to (fund) Our acts of generosity.

Given March 28, in the consulship of Limenius and Catullinus (349).

[4][118] *The same Augustus to the People.* **pr.** Those who outrage tombs – so to speak, the houses of the dead – are deemed to commit a double offense. This

[115] See D. 47.12.
[116] = (with changes) C.Th. 9.17.1.
[117] = (with changes) C.Th. 9.17.2.2.
[118] = (with minor changes) C.Th. 9.17.4.

spoliant destruendo et vivos polluunt fabricando. **1.** Si quis igitur de sepulchro abstulerit saxa vel marmora vel columnas aliamve quamcumque materiam, fabricandi gratia sive id fecerit venditurus, decem pondo auri cogatur fisco inferre, sive quis propria sepulchra defendens hanc in iudicium querellam detulerit sive quicumque alius accusaverit vel officium nuntiaverit. **2.** Quae poena priscae severitati accedit: nihil enim derogatum est illi supplicio, quod sepulchra violantibus videtur impositum. **3.** Huic autem poenae subiacebunt et qui corpora sepulta aut reliquias contrectaverint.

D. id. Iun. Mediolani Constantio A. VIIII *et Iuliano C.* II *conss.*

[5] *Imp. Iulianus A. ad populum.* **pr.** Pergit audacia ad busta diem functorum et aggeres consecratos, cum et lapidem hinc movere et terram sollicitare et cespitem vellere proximum sacrilegio maiores semper habuerunt: sed et ornamenta quaedam tricliniis aut porticibus auferri de sepulchris. **1.** Quibus primis consulentes, ne in piaculum incidant contaminata religione bustorum, hoc fieri prohibemus poena sacrilegii cohibentes.

D. prid. id. Febr. Antiochiae Iuliano A. IIII *et Sallustio conss.*

[6] *Imp. Iustinus A. Theodoto pu.* Cum sit iniustum et nostris alienum temporibus iniuriam fieri reliquiis defunctorum ab his, qui debitorem sibi esse mortuum dicendo debitumque exigendo sepulturam eius impediunt, ne in posterum eadem iniuria procederet cogendis his ad quos funus mortui pertinet sua iura perdere, ea quidem, quae mortuo posito ante sepulturam eius facta fuerint vel exigendo quod debitum esse dicitur vel confessiones aliquas aut fideiussorem aut pignora capiendo, penitus amputari praecipimus: redditis vero pignoribus vel pecuniis quae solutae sunt vel absolutis fideiussoribus et generaliter omnibus sine ulla innovatione in pristinum statum reducendis principale negotium ex integro disceptari: eum vero, qui in huiusmodi deprehensus

is because they both rob the dead by destroying and contaminate the living by building. 1. If, then, someone carries off from a grave stone, marble, columns, or any other kind of building material, whether he does this with the intention of using it himself or selling it, he shall be compelled to pay a fine to the Treasury of 10 pounds of gold, no matter whether someone brings a complaint to protect his own (relatives') tombs, or anyone else brings an accusation, or the administrative staff reports this. **2.** This penalty is consistent with the severity of long ago. For nothing has been taken away from that penalty which appears to have been inflicted on those who violate tombs. **3.** Moreover, those who physically interfere with buried bodies or human remains will also be liable to this penalty.

Given June 13,[119] *at Milan, in the consulship of Constantius Augustus, for the ninth time, and Julian Caesar, for the second time (357).*

[5][120] *Emperor JULIAN Augustus to the People.* **pr.** Audacity (currently) extends to the tombs of the dead and the consecrated mounds, whereas our ancestors always regarded it as the closest thing to sacrilege to displace a stone from there, to disturb the dirt, or to tear up the sod. But (now We see that) certain decorations are even carried off from tombs for dining rooms and porticos. **1.** Consulting their interest first of all, in order that they not fall into a wicked act because religious scruple (*religio*) regarding the tombs is contaminated, We prohibit the commission of such acts by repressing them with the penalty of sacrilege.

Given February 12, at Antioch, in the consulship of Julian Augustus, for the fourth time, and Sallustius (363).

[6] *Emperor JUSTIN Augustus to Theodorus, City Prefect.* It is unjust and foreign to the policy of Our reign that outrage be inflicted upon the remains of deceased persons by those who – by claiming the decedent as their debtor and by demanding the repayment of the debt – obstruct his or her burial. For this reason, in order that the same outrage not continue indefinitely by compelling those responsible for the funeral of the decedent to lose their rights, We instruct that anything, certainly, that is done between the laying out of the decedent and burial, either by demanding what is said to be owed or by taking some admissions (of liability), sureties, or pledges – shall be completely voided. In fact, the pledges (taken) or any money which has been paid shall be returned, the sureties shall be released, and in general everything shall be restored to its previous state without any alteration, and (then) the main issue shall be examined anew. (We instruct) moreover that anyone caught in the commission of an offense of this kind shall pay 50 pounds of gold or that, if

[119] The day is more likely January 13: Projet Volterra. Seeck gives June 13, 389.
[120] = (in part, with changes) C.Th. 9.17.5.

fuerit flagitio, quinquaginta libras auri dependere vel, si minus idoneus sit ad persolvendum, suo corpore sub competenti iudice poenas luere.
D. k. Dec. Constantinopoli Olybrio vc. cons.

XX Ad Legem Fabiam

[1] *Imp. Antoninus A. Placido.* Pater tuus adversus eum, a quo sollicitatam ancillam, plagio quoque facto exportatam queritur, apud suum iudicem civiliter in rem actione instituta consistat. si in causa tenuerit, etiam legis Fabiae crimen persequi poterit. quod si per violentiam mancipium abreptum est, accusationem vis non prohibetur intendere.
PP. XII k. April. Antonino A. IIII et Balbino conss.

[2] *Idem A. Aurelio.* Si ab Aeliano servum tuum susceptum et aliquamdiu occultatum moxque eo suadente fugae datum probare potes, legis Fabiae crimen per te vel actionem ad eam rem propositam, id est servi corrupti, per procuratorem tuum persequi potes.
PP. VII k. Aug. Antonino A. IIII et Balbino conss.

[3] *Imp. Alexander A. Cornelio.* Ut legis Fabiae poena debeatur, in crimen subscriptio et accusatio et sententia necessaria est.
PP. VIII k. Iul. Iuliano et *Crispino conss.*

[4] *Imp. Gordianus A. Paulinae.* Non valet procuratoris sententia, si vicem praesidis non tueatur, qui legi Fabiae locum esse pronuntiavit, cum eius legis disceptatio ad praesidis provinciae pertineat notionem.
PP. III non. Dec. Gordiano A. et Aviola conss.

he is not sufficiently wealthy to pay this, he shall pay a penalty with his body before the appropriate judge.

Given December 1, at Constantinople, in the consulship of the vir clarissimus *Olybrius (526).*

Twentieth Title The Lex Fabia[121]

[1] *Emperor* ANTONINUS *Augustus to Placidus.* Under a private law property action (*actio in rem*), your father shall proceed before the appropriate judge against the man by whom he complains his slave woman was induced to flee and, through an act of kidnapping (*plagium*), into the bargain compelled to migrate. If he succeeds in that case, he will also be able to pursue a criminal charge under the lex Fabia. But if the slave was violently abducted, he is not prevented from raising a charge of force (*vis*).

Posted March 21, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[2] *The same Augustus to Aurelius.* If you are able to prove that your slave was taken in and hidden by Aelianus for a period of time and that, then, upon his (Aelianus') instigation, the slave took to flight, you can yourself pursue a criminal charge under the lex Fabia, or through your procurator the private law action appropriate for this matter, that is, (the action) for corrupting a slave (*actio servi corrupti*).

Posted July 26, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[3] *Emperor* ALEXANDER *Augustus to Cornelius.* In order that the penalty of the lex Fabia be invoked, a signed complaint on this charge, a trial, and the issuing of a sentence are necessary.

Posted June 24, in the consulship of Julian and Crispinus (224).

[4] *Emperor* GORDIAN *Augustus to Paulina.* A sentence pronounced by an imperial procurator has no force, unless he is acting in place of the governor when he found that the *lex* Fabia had been violated, since trying cases under this statute falls under the jurisdiction of the provincial governor.

Posted December 3, in the consulship of Gordian Augustus and Aviola (239).

[121] See D. 48.15. The lex Fabia, probably of late Republican date, established penalties against unjustifiably appropriating to oneself the rights of an owner over the slave of another or even over a free person. Examples of such behavior include kidnapping, treating a free man as a slave, or persuading another's slave to flee his master.

[5] *Impp. Valerianus et Gallienus AA. et Valerianus C. Iulianae.* Si fratrem tuum adversarius supprimit, legis eum Fabiae, adito praeside provinciae reum debes postulare.

PP. non. Mai Aemiliano et Basso conss.

[6] *Impp. Diocletianus et Maximianus AA. Marcianae.* In fuga servum constitutum neque vendere neque donare licet. unde intellegis te in legem incidisse, quae super huiusmodi delictis certam poenam fisco inferendam statuit, exceptis coheredibus et sociis, quibus in divisione communium rerum licitationem de fugitivo servo invicem facere permissum est. ita vero liceat fugitivum vendere, ut tunc venditio valeat, quando ab emptore requisitus fuerit deprehensus.

PP. III id. Mart. Diocletiano et Maximiano AA. conss.

[7] *Idem AA. Maximo pu.* **pr.** Quoniam servos a plagiariis alienari ex urbe significas atque ita interdum ingenuos homines eorum scelere asportari solere perscribis, horum delictorum licentiae maiore severitate occurrendum esse decernimus. **1.** Ac propterea si quem in huiusmodi facinore deprehenderis, capite eum plecti non dubitabis, ut poenae genere deterreri ceteri possint, quominus istiusmodi audacia vel servos vel liberos ab urbe abstrahere atque alienare audeant.

D. VI id. Dec. Diocletiano III et Maximiano AA. conss.

[8] *Idem AA. Constant.* Praeses provinciae discreto prius iure dominii intellegat, audiendum sit plagii crimen nec ne. nam si proprietatis tuae mancipium esse constiterit, expirasse criminis intentionem emersa dominii luce manifestabit: si vero servum alienum esse constiterit, post disceptatam proprietatis quaestionem et criminis causam audiet.

PP. VIII k. Sept. ipsis AA. IIII et III conss.

[5] *Emperors* VALERIAN *and* GALLIENUS *Augusti and* VALERIAN *Caesar to Juliana.* If your opponent is detaining your brother, you ought to approach the provincial governor and make a judicial application to prosecute him under the lex Fabia.

Posted May 7, in the consulship of Aemilianus and Bassus (259).

[6] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Marciana.* It is not permitted to sell or to give as a gift a fugitive slave. From this you understand that you have violated the statute,[122] which for offenses of this kind has established that a fixed penalty shall be paid to the Treasury. An exception is made for co-heirs and partners (*socii*), for whom it is allowed, in the division of joint property, to offer bids for the fugitive slave among themselves. In this way it shall indeed be permitted to sell a fugitive slave, so that the sale is valid at the point when he or she is tracked down and seized by the buyer.

Posted March 13, in the consulship of the Augusti (287).

[7] *The same Augusti to Maximus, City Prefect.* **pr.** Since you indicate that slaves are being removed (for sale) from the City (Rome) by kidnappers and you write that at times, in a similar way, free-born persons are accustomed to be carried off through their wicked actions, We decree that the outrageous presumptiveness of these offenses is to be met with greater severity. **1.** And for this reason if you catch anyone in the commission of this kind of crime, you will not hesitate to inflict the death penalty (*capite*) upon him, in order that the rest can be deterred through this kind of penalty from daring, through boldness of this sort, to carry off from the capital and sell either slaves or free persons.

Given December 8, in the consulship of Diocletian, for the third time, and Maximian, Augusti (287).

[8] *The same Augusti to Constans (?).* The governor of the province, after first determining who has the right of ownership (of a slave), shall deduce whether a criminal charge of kidnapping (*plagium*) should be heard or not. For if it is decided that the slave is your property, it will be obvious, once clarity over the issue of ownership is achieved, that the ground for the charge has vanished. But if it is established that the slave belongs to someone else, after the issue of ownership is examined he (the governor) will hear the criminal case.

Posted August 25, in the consulship of the Augusti, for the fourth and third time, respectively (290).

[122] This appears in fact to be an SC, mentioned, for example, at Ulpian, D. 48.15.2.2–3.

[9] *Idem AA. et CC. Eugenio.* Eum, qui mancipium alienum celat, Fabiae legis crimine teneri non est incerti iuris.
S. id. Mai. Heracliae AA. conss.

[10] *Idem AA. et CC. Dizae.* Comparantem ab eo, qui abduxit plagio mancipia, si delicti socius non probetur, nullo crimine teneri convenit.
S. non. Nov. Lucione[ix] *AA. conss.*

[11] *Idem AA. et CC. Ampliatae.* Abducti plagio facta venditio statum non mutat: liberae enim personae sollicitatione crimen committitur, non condicioni praeiudicatur.
S. non. *Nov. Lucionae*[x] *AA. conss.*

[12] *Idem AA. et CC. Muciano.* Si quis servum fugitivum sciens cum rebus furtivis suscepit, cum horum nomine furti actione teneatur, haec tibi rector provinciae cum solita poena restitui efficiet. sed et si criminis plagii accusationem institueris, tibi audientiam praebere non dubitabit.
S. prid. id. Sept. Singiduni CC. conss.

[13] *Idem AA. et CC. Severino.* Plagii criminis accusatio publici sit iudicii.
S. v k. Dec. CC. conss.

[14] *Idem AA. et CC. Callistheni.* Plagii criminis accusatio cessat, si vos[xi] servos vel liberos adseverent qui suppressisse dicuntur, non commissi velandi, sed ad hanc opinionem iusta ducti ratione.
S. prid. non. Dec. Nicomediae CC. conss.

[ix] Lugio
[x] Lugio
[xi] suos

[9] *The same Augusti and the Caesars to Eugenius.* That he, who conceals someone else's slave, is liable on a charge under the lex Fabia is not an uncertain point of law (*incertum ius*).

Written May 15,[123] *at Heraclea, in the consulship of the Augusti (293).*

[10] *The same Augusti and Caesars to Diza.* It is appropriate that a person who buys slaves from another who has abducted them in an act of kidnapping (*plagium*), is liable under no criminal charge if he is not proved to be complicit in the crime.

Written November 5, at Luciona,[124] *in the consulship of the Augusti (293).*

[11] *The same Augusti and Caesars to Ampliata.* The sale of a person abducted in an act of kidnapping (*plagium*) does not alter his or her status. This is because a crime that is committed through the luring away of a free person is without prejudice to his or her status.

Written November 5, at Luciona, in the consulship of the Augusti (293).

[12] *The same Augusti and Caesars to Mucianus.* If someone knowingly has sheltered a fugitive slave along with stolen property, since he is liable for these items on an action for theft (*actio furti*), the governor of the province will see to their being returned to you along with the customary penalty (inflicted on the defendant). Moreover, if you begin a prosecution on a charge of kidnapping (*plagium*), he will not hesitate to grant you a hearing.

Written September 12, at Singidunum (Belgrade), in the consulship of the Caesars (294).

[13] *The same Augusti and Caesars to Severinus.* An accusation under a charge of kidnapping (*plagium*) shall be a matter for a public criminal court (*iudicium publicum*).

Written November 27, in the consulship of the Caesars (294).

[14] *The same Augusti and Caesars to Callisthenes.* A prosecution on a charge of kidnapping (*plagium*) fails if those who are said to have detained (persons) assert they are their own slaves or children, (if they were) led to this idea not to conceal a crime, but for an apposite reason.

Written December 4, at Nicomedia, in the consulship of the Caesars (294).

[123] The precise day is uncertain: Mommsen prefers May 1.

[124] Here and in 11, Luciona is unidentified. Projet Volterra conjectures Sirmium.

[15] *Idem AA. et CC. Pomponio.* Liberum sciens condicionem eius invitum venumdando plagii criminis poena tenetur.

D. XIII k. Ian. Nicomediae CC. conss.

[16] *Imp. Constantinus A. ad Domitium Celsum vicarium Africae.* **pr.** Plagiarii, qui viventium filiorum miserandas infligunt parentibus orbitates, metalli poena cum ceteris ante cognitis suppliciis tenebantur. **1.** Si quis tamen eiusmodi reus fuerit oblatus, posteaquam super crimine patuerit, servus quidem vel libertate donatus bestiis obiciatur, ingenuus autem gladio consumatur.

D. k. Aug. Constantino A. IIII et Licinio IIII conss.

XXI Ad Legem Viselliam

[1] *Impp. Diocletianus et Maximianus AA. et CC. Baccho.* **pr.** Lex Visellia libertinae condicionis homines persequitur, si ea quae ingenuorum sunt circa honores et dignitates ausi fuerint attemptare vel decurionatum adripere, nisi iure aureorum anulorum impetrato a principe sustentantur. tunc enim quoad vivunt imaginem, non statum ingenuitatis obtinent et sine periculo ingenuorum etiam officia peragunt publica. **1.** Qui autem libertinus se dicit ingenuum, tam de operis civiliter quam etiam lege Visellia criminaliter poterit perurgueri: in curiam autem se immiscens damno quidem cum infamia adficitur: muneribus vero personalibus in patria patroni, quae congruunt huiusmodi hominibus, singulos pro viribus adstrictos esse non dubium est.

PP. II id. Febr. Antiochiae CC. conss.

[15] *The same Augusti and Caesars to Pomponius.* A person who knowingly sells a free person against his will is liable to the penalty of the crime of kidnapping (*plagium*).

Given December 20, at Nicomedia, in the consulship of the Caesars (294).

[16][125] *Emperor Constantine Augustus to Domitius Celsus, Vicar of Africa.* **pr.** Kidnappers, who inflict a pitiable childlessness on parents of still-living children, used to be liable to punishment in the mines, along with other penalties known heretofore. **1.** But if, nonetheless, someone is accused of such a crime, after his guilt is proved, if he should be, in fact, a slave or freedman, he shall be thrown to the beasts, but should he be free-born, he shall be executed with the sword.

Given August 1, in the consulship of Constantine Augustus, for the fourth time, and Licinius, for the fourth time (315).

Twenty-First Title The Lex Visellia[126]

[1] *Emperors Diocletian and Maximian Augusti and the Caesars to Bacchus.* **pr.** The lex Visellia punishes persons of freed status if they dare to usurp those things that pertain to the public offices and social rank of the free-born, or appropriate the standing of a decurion, unless they are justified by the grant of the right of gold rings by the Emperor. For then, as long as they live, they possess the virtual, not the actual, status of free birth, and without risk they (can) perform even the official duties associated with the free-born. **1.**[127] That freed-person, however, who (merely) claims to be free-born, can be pursued as much in private law on a suit for services owed his or her master (*operae*) as also by a criminal prosecution under the lex Visellia. But he who inserts himself into the town council (*curia*) is punished with material loss, assuredly, along with legal infamy (*infamia*). There is no doubt, on the other hand, that, consistently with their material resources, they are bound as individuals to perform, in the hometown of their patron, the personal duties that befit such persons.

Posted February 12, at Antioch, in the consulship of the Caesars (300?).

[125] = (in part, with changes) C.Th. 9.18.1.

[126] The lex Visellia of 24 CE punished freedpersons who falsely pretended to be free-born.

[127] = (in part, with minor changes) C. 9.31.1.1.

XXII Ad Legem Corneliam de Falsis

[1] *Imp. Antoninus A. Severino.* Si partus subiecti crimen diversae parti obicitis, causa capitalis in tempus pubertatis pueri differri non debuit, sicut iam pridem mihi et divo Severo patri meo placuit. neque enim verisimile est eam quae arguitur non ex fide causam suam defensuram, cum periculum capitis subeat.

PP. non. Mart. duobus Aspris conss.

[2] *Imp. Alexander A. Valerio.* Satis aperte divorum parentum meorum rescriptis declaratum est, cum morandae solutionis gratia a debitore falsi crimen obicitur, nihilo minus salva exsecutione criminis debitorem ad solutionem compelli oportere.

PP. III non. Mai. Maximo II et Aeliano conss.

[3] *Idem A. Maximo.* Maiorem severitatem exigit, ut merita eorum qui falsis rescriptionibus utuntur digna poena coerceantur. sed qui deceptus est per alium, si suam innocentiam probat et eum a quo accepit exhibet, se liberat.

PP. IIII k. Ian. Albino et Maximo conss.

[4] *Idem A. Cassio.* Licet ex tabulis, quas sub nomine patris tui uxorem eius, id est novercam tuam, subrepto vero testamento falsas protulisse adlegas, cum crimen admissum ignores, legatum adscriptum tibi consecutus sis, tamen non impedieris accusationem contra eam impletis sollemnibus instituere.

PP. XI k. Ian. Albino et Maximo conss.

Twenty-Second Title The Lex Cornelia on Falsifications[128]

[1] *Emperor* Antoninus *Augustus to Severinus.* If you accuse your adversary of the crime of introducing a changeling, the trial, on a capital charge (*causa capitalis*), ought not to be postponed until the time the boy reaches adulthood, just as I myself and my father, the deified Severus, ruled some time ago. For it is unlikely that the accused woman will not argue her case sincerely, since she faces the risk of the capital penalty (*periculum capitis*).[129]

Posted March 7, in the consulship of the two Aspri (212).

[2] *Emperor* Alexander *Augustus to Valerius.* It has been fairly clearly laid down in the rescripts (*rescripta*) of my deified predecessors (*parentes*) that when a charge of falsification (*falsum*) is raised by a debtor for the purpose of delaying payment, the debtor ought nonetheless to be compelled to make the payment, without prejudice to prosecution of the criminal charge.

Posted May 5, in the consulship of Maximus, for the second time, and Aelianus (223).

[3] *The same Augustus to Maximus.* It requires greater severity in order that the deserts of those who employ forged rescripts (*rescriptiones*) be punished with a worthy penalty. But if someone has been deceived by another person, should he prove his innocence and produce the person who is the source (of a forged rescript), he clears himself.

Posted December 29, in the consulship of Albinus and Maximus (227).

[4] *The same Augustus to Cassius.* Although you received – in ignorance that a crime had been committed – a legacy assigned to you under your father's name in a will that you assert his wife, that is, your stepmother, produced as a forgery after suppressing the genuine one, you are, all the same, not prevented from launching a prosecution against her upon completing the formalities.

Posted December 22,[130] in the consulship of Albinus and Maximus (227).

[128] See D. 48.10. Blume: "The Cornelian law against falsification (broader than that of forgery merely) passed in the time of Sulla, severely punished many acts of falsification or forgery. Under that law were also prohibited counterfeiting of money and for a man to write for a testator a provision for his own benefit in the testament written by him, or by his slave, or child in his power at his request or by his consent. The two subjects last mentioned are dealt with in the next two succeeding titles." Thus, in what follows *falsum* is translated as "falsification" unless there is a reference to a forged document. The law dates to 81 BCE.

[129] Writing not long after the death of Caracalla, Marcian gives as penalties under the lex Cornelia de falsis capital exile (*deportatio*) and confiscation of all property for free persons and death for slaves: D. 48.10.1.13.

[130] The date is more likely to be the same as in the preceding constitution, December 29.

[5] *Idem A. Petronio.* Falsi quidem crimen vel aliud capitale movere vos matri vestrae secta mea non patitur. sed ea res pecuniarium compendium non aufert. si enim de fide scripturae, unde eadem mater vestra fideicommissum sibi vindicat, dubitatio est, inquiri fides veritatis etiam sine metu criminis potest.

PP. III k. Sept. Agricola et Clemente conss.

[6] *Imp. Philippus A. et Philippus C. Ulpio.* Qui falsas tabulas dixerit nec tenuerit, ad defuncti iudicium adspirare non potest.

PP. XV k. April. Philippo A. et Titiano conss.

[7] *Impp. Valerianus et Gallienus AA. et Valerianus C. Heliodoro.* Ipse significas, cum primo adversarii instrumenta protulerunt, fidem eorum te habuisse suspectam. facta igitur transactione difficile est, ut is qui provinciam regit velut falsum, cui semel adquievisti, tibi accusare permittat.

PP. III k. Iul. Tusco et Basso conss.

[8] *Idem AA. et C. Marino.* Si falsos codicillos ab his contra quos supplicas factos esse contendis, non ideo accusationem evadere possunt, quod se illis negent uti. nam illis prodest instrumenti usu abstinere, qui non ipsi machinatores falsi esse dicuntur et quos periculo solus usus adstrinxerit. qui autem compositis per scelus codicillis in severitatem legis Corneliae inciderunt, non possunt defensiones eius recusando crimen evitare.

PP. III k. Iul. Aemiliano et Basso conss.

[9] *Impp. Carinus et Numerianus AA. Messio.* **pr.** Si docueris apud praesidem provinciae ab intestato te heredem eius extitisse, qui codicillos scripserat, ordinarium est, ut in hereditatis possessione constitutus fideicommissa praebeas, quae iure relicta sunt, nisi consilium est codicillos falsos arguere. **1.** Quod si criminaliter coeptum interventu indulgentiae sopitum est, habes tamen residuam indagationem, potest de fide scripturae civiliter quaeri.

PP. III k. April. Carino II et Numeriano AA. conss.

[5] *The same Augustus to Petronius.* My policy (*secta*) does not allow you to bring a charge of forgery (*falsum*), certainly, or any other capital charge (*crimen capitale*) against your mother. But this fact does not deprive you of monetary compensation. For if there is some doubt over the reliability of the documentation your mother is using to claim a trust (*fideicommissum*) for herself, the truth of the matter can be examined even without fear of a criminal charge.

Posted August 30, in the consulship of Agricola and Clemens (230).

[6] *Emperor Philip Augustus and Philip Caesar to Ulpius.* Someone who alleges a will has been forged and does not prove it cannot hope to receive any bequest left to him or her in it.

Posted March 18, in the consulship of Philip Augustus and Titianus (245).

[7] *Emperors Valerian and Gallienus Augusti and Valerian Caesar to Heliodorus.* You yourself indicate that you suspected the reliability of the documents when your opponents first produced them. Therefore, now that you have made an out-of-court settlement (*transactio*), it is difficult for the provincial governor to allow you to prosecute as forged that to which you have already acquiesced.

Posted June 29, in the consulship of Tuscus and Bassus (258).

[8] *The same Augusti and Caesar to Marinus.* If you allege that the parties against whom you petition forged codicils, they cannot escape prosecution (simply) because they deny that they relied on them. For to refrain from reliance on a document is of advantage (only) to those who are not said themselves to be the contrivers of falsification (*falsum*) and to whom such reliance alone would pose a risk. Those, however, who have criminally composed codicils and so rendered themselves liable to the severity of the lex Cornelia cannot escape a charge by taking exception to its prosecution under the law.

Posted June 29, in the consulship of Aemilianus and Bassus (259).

[9] *Emperors Carinus and Numerianus Augusti to Messius.* **pr.** If you show before the governor of the province that you are the heir on intestacy of the decedent, who wrote codicils, the usual course is for you, once you are in possession of the inheritance, to execute the trusts (*fideicommissa*) that have been properly left under law, unless it is your intention to contend that the codicils are forged. 1. But if the criminal proceeding has been ended by the interposition of an imperial pardon, you nevertheless have a judicial investigation remaining (for you), which can be tried in a civil suit (*civiliter*) over the reliability of the documentation.

Posted March 30, in the consulship of Carinus, for the second time, and Numerianus Augusti (284).

[10] *Impp. Diocletianus et Maximianus AA. Legitimo.* Cum suppositi partus crimen patrui tui uxori moveas, apud rectorem provinciae instituta accusatione id proba.

PP. XI k. Oct. Diocletiano A. II et Aristobulo conss.

[11] *Idem AA. Isidoro.* Si lis pecuniaria apud pedaneos iudices remissa est, etiam de fide instrumenti civiliter apud eos iuxta responsum viri prudentissimi Pauli requiretur.

PP. X k. Iul. Diocletiano III et Maximiano AA. conss.

[12] *Idem AA. et CC. Primo.* Querella falsi temporalibus praescriptionibus non excluditur nisi viginti annorum exceptione, sicut cetera quoque fere crimina.

S. VI id. Aug. Viminacio AA. conss.

[13] *Idem AA. et CC. Marco.* Qui veluti praesentem scripsisse res recepisse suas, cum absens esset, conscripsit, non ignoranti quicquam aufert, sed se criminis obligat periculo.

PP. VI k. Ian. Sirmi AA. conss.

[14] *Idem AA. et CC. Gentianae.* Eum, qui celavit vel amovit testamentum, committere crimen falsi publice notum est.

S. III k. Ian. Sirmi AA. conss.

[15] *Idem AA. et CC. Rufo.* Si creditor colludens cum debitore suo tibi praedium venumdedit, falsum commisit et tibi nihil officit, sed se magis criminis accusationi fecit obnoxium.

S. XIII k. Febr. CC. conss.

[16] *Idem AA. et CC. Fortunato.* De fide testamenti querenti duplex via litigandi tributa est. quamvis itaque per procuratorem accusationem

[10] *Emperors Diocletian and Maximian Augusti to Legitimus.* Since you are charging the wife of your paternal uncle with the offense of introducing a changeling, begin a prosecution before the provincial governor and prove it.

Posted September 21, in the consulship of Diocletian Augustus, for the second time, and Aristobulus (285).

[11] *The same Augusti to Isidorus.* If a civil suit has been referred to delegated (lower-level) judges, then, according to a reply (*responsum*) of the very learned man Paul, enquiry into the reliability of a (relevant) document will also be conducted on a civil basis before them.

Posted June 22, in the consulship of Diocletian, for the third time, and Maximian, Augusti (287).

[12] *The same Augusti and the Caesars to Primus.* A prosecution for falsification (*falsum*) is not barred by defenses asserting lapse of time, aside from the affirmative defense (*exceptio*) of twenty years, just as with most of the other criminal charges.

Written August 8, at Viminacium, in the consulship of the Augusti (293).

[13] *The same Augusti and Caesars to Marcus.* A person who composed a document purporting that a third party wrote that he had received back his property as though he were present when (in fact) he was absent, does not deprive that party, if unaware, of anything, but renders himself liable to the risk of a criminal charge.

Posted December 27, at Sirmium, in the consulship of the Augusti (293).

[14] *The same Augusti and Caesars to Gentiana.* It is well known that a person who has concealed or removed a testament commits the public (*publice*) criminal offense of falsification (*falsum*).

Written December 30, at Sirmium, in the consulship of the Augusti (293).

[15] *The same Augusti and Caesars to Rufus.* If a creditor, in collusion with his debtor, has sold you a property, he has committed falsification (*falsum*). Nothing prejudices your rights, but he has all the more made himself liable to criminal prosecution.[131]

Written January 20, in the consulship of the Caesars (294).

[16] *The same Augusti and Caesars to Fortunatus.* For someone making a complaint about the reliability of a testament, a twofold route of litigation is made

[131] As Blume notes, it is not clear what the collusion involved. The Basilika (60.41.49) suggests that the creditor is falsely claiming that his security interest has priority over other creditor claims.

persequi non potes, disceptatione tamen privata de eius fide queri non prohiberis, cum reus ita conventus non tantum ab alio iuste, sed etiam eo[xii] qui civiliter egit sollemniter accusari possit.

S. VIII id. Febr. Sirmi CC. conss.

[17] *Idem AA. et CC. Menelao.* **pr.** Sicut falsi testamenti vel codicillorum scriptura temporis intervallo firmari non potest, ita vera quae iure subsistit non evanescit. **1.** Si itaque de fide delicti vel per accusationem vel per privatum iudicium quereris, rector provinciae tunc demum eos exhiberi de quibus interrogatio fieri potest iubebit, si prius ceteris indiciis fuerit commotus.

S. III id. Febr. Sirmi CC. conss.

[18] *Idem AA. et CC. Maximo.* Ex initio falsi commissi iusta possessio non paratur. unde contra eos, quos de dominio fundi tecum contendere proponis, accusationem instituere potes.

S. III non. Mart. CC. conss.

[19] *Idem AA. et CC. Cosmiae.* **pr.** Etsi ad te negotium pertinuit, etiam atque etiam tecum deliberare debueras, ne improbam institueres accusationem, hoc instrumentum falsum in quo subscripseras arguere contendens. **1.** At cum mulieribus in aliena causa falsi non sit concessum accusare, tu autem haec eadem praedia te prius alii donasse proponas, fieri tibi facultatem accusandi contra iuris postulas formam.

S. VIII id. Mart. CC. conss.

[20] *Idem AA. et CC. Rufino.* Nec exemplum precum editionis aliter per errorem scriptum, cum non nisi dolo falsum committentes crimini subiugentur, cognitionem dati iudicis moratur.

S. XI k. Nov. Dorostoli CC. conss.

[xii] <ab> eo

available. So, although you cannot conduct a criminal prosecution through a procurator, nevertheless you are not prevented from suing on its genuineness in a civil trial, since the person summoned on this basis as defendant can not only properly be sued by another, but can also be formally prosecuted on a criminal charge by the person who has brought a private lawsuit (*civiliter*).

Written February 6, at Sirmium, in the consulship of the Caesars (294).

[17] *The same Augusti and Caesars to Menelaus.* **pr.** Just as the documentation of a forged testament or codicils cannot gain validity through the passage of time, so genuine documents, which derive their validity through the operation of law, do not lose this (through the passage of time). **1.** If, therefore, you make a complaint about the credibility of an offense either through a criminal accusation or by a private lawsuit, the governor of the province will then precisely order that those parties be produced concerning whom the judicial enquiry can go forward, if he is first persuaded by the rest of the evidence.

Written February 11, at Sirmium, in the consulship of the Caesars (294).

[18] *The same Augusti and Caesars to Maximus.* Rightful possession cannot take its point of departure from a falsification (*falsum commissum*). For this reason you can launch a prosecution against those with whom you assert you have a disagreement over the ownership of a farm.

Written March 5, in the consulship of the Caesars (294).

[19] *The same Augusti and Caesars to Cosmia.* **pr.** Although the matter did (in fact) concern you, you ought to have deliberated with yourself again and again whether to launch an unjust prosecution, seeking to show that this document that you had signed was forged. **1.** But since it is not permitted to women to bring criminal prosecutions in cases of falsification (*falsum*) that are not their own, and you moreover allege that you previously gave as a gift to someone else these same properties, you are making a judicial request for the opportunity to prosecute that is against the rule of law (*forma iuris*).

Written March 8, in the consulship of the Caesars (294).

[20] *The same Augusti and Caesars to Rufinus.* A copy of an application for a lawsuit was made imprecisely through an error. Since those who produce false documents are not liable to a criminal charge if they do not act with fraudulent intent (*dolo*), this issue does not delay a judicial hearing before the judge who is assigned to the case.

Written October 22, at Dorostolum, in the consulship of the Caesars (294).

[21] *Imp. Constantinus A. Maecilio Hilariano correctori Lucaniae et Brittiorum.* **pr.** Si quis decurio testamentum vel codicillos aut aliquam deficientis scripserit voluntatem vel conscribendis publicis privatisque instrumentis praebuerit officium, si falsi quaestio moveatur, decurionatus honore seposito quaestioni, si ita poposcerit causa, subdatur. **1.** Sed non statim desinit esse decurio, qui in huiusmodi facto fuerit:[xlii] quantum enim ad municipales pertinet necessitates, decurio permanet: quantum ad rem gestam et veritatem reserandam uti decurionatus honore non poterit. **2.** Nec vero is, qui ante fuerit tabellio, ad eludendam quaestionem super his quae ante conscripsit factus decurio defendi hac poterit dignitate, quoniam scripturae veritas, si res poposcerit, per ipsum debet probari auctorem.

D. III k. Febr. Sabino et Rufino conss.

[22] *Idem A. ad Maximum pu.* **pr.** Ubi falsi examen inciderit, tunc acerrima fiat indago argumentis testibus scripturarum collatione aliisque vestigiis veritatis. **1.** Ne accusatori tantum quaestio incumbat nec probationis ei tota necessitas indicatur, sed inter utramque personam sit iudex medius nec ulla interlocutione divulget quae sentiat, sed tamquam ad imitationem relationis, quae solum audiendi mandat officium, praebeat notionem, postrema sententia quid sibi liqueat proditurus.

2. Ultimum autem finem strepitus criminalis compendioso spatio limitamus, quem litigantem disceptantemque fas non sit excedere, cuius exordium nascetur auspicio testatae actionis apud iudicem competentem: capitali post probationem supplicio, si id exigat magnitudo commissi, vel deportatione ei qui falsum commiserit imminente.

PP. VIII k. April. in foro Traiani Constantino A. VI et Constantino C. conss.

[xlii] <deprehensus>

[21] [132] *Emperor* CONSTANTINE *Augustus to Maecilius Hilarianus, Governor* (corrector) *of Lucania and Bruttium.* **pr.** If any decurion writes down a testament, codicils, or some expression of the last will of a dying person, or is responsible for the composition of public and private documents, and a judicial investigation of forgery (*falsum*) starts up, his status as a decurion is laid aside and he is given over to judicial examination under torture, if the case demands this. 1. But he who is caught in this sort of situation does not immediately cease to be a decurion. For regarding his obligations to his town, he remains a decurion. As far as the deed perpetrated and the need to unlock the truth is concerned, he will be unable to use his status as a decurion. 2. Nor indeed can a man, who was previously a notary (*tabellio*), once he becomes a decurion, be protected by this status for the purpose of frustrating a judicial enquiry into those (documents) that he composed previously. This is because the reliability of the documentation, if the situation demands it, ought to be established by the author himself.

Given January 30, in the consulship of Sabinus and Rufinus (316).

[22][133] *The same Augustus to Maximus, City Prefect.* **pr.** When a trial for falsification (*falsum*) occurs, then a very thorough investigation shall be conducted on the basis of arguments, witnesses, and the comparison of documents and other evidence for the truth. **1.** The examination shall be the responsibility not only of the prosecutor, nor shall the entire burden of proof be imposed upon him, but the judge shall stand between both disputants. He shall not by any oral expression express what he thinks, but on the model of a remanded case, which entrusts him solely with the responsibility of granting a hearing, he shall offer his full attention. What he considers to be clear he is going to disclose in his final decision.

2. Moreover, We impose a maximum time limit on criminal trials with an abridged span of time, which it shall not be right (*fas*) for a litigant or a judge to exceed.[134] This period will take its beginning from the inauguration of the procedure, once this has been publicized, before the appropriate judge. After proof is offered, the person guilty of *falsum* shall be sentenced to death (*capitale supplicium*), if the magnitude of the offense demands this, or capital exile (*deportatio*).

Posted March 25, in the Forum of Trajan (Rome), in the consulship of Constantine Augustus, for the sixth time, and Constantine Caesar (320).[135]

[132] = (with changes) C.Th. 9.19.1. Combine with C. 10.32.15.
[133] = (in part, with changes) C.Th. 9.19.2.
[134] C.Th. 9.19.2.2 gives this as a year.
[135] The precise year is uncertain: 326 or 320. The Projet Volterra prefers 320 for "received."

[23] *Imppp. Valens Gratianus et Valentinianus AAA. ad Maximinum pp.* **pr.** Damus licentiam litigantibus, si apud iudicem proferatur scriptura, de qua oritur aliqua disputatio, utrum de falso criminaliter statuat, qui dubitet de instrumenti fide, experiri an civiliter. **1.** Quod si expetens vindictam falsi crimen intenderit, tunc quaestione civili per sententiam terminata criminis fiat indago, ut, si quis tabulas testamenti chirographa testationesque nec non etiam rationes privatas vel publicas, pacta et epistulas vel ultimas voluntates, donationes venditiones, vel si quid prolatum aliud instituere conabitur, habeat accusandi facultatem.

2. Civilis autem inquisitionis inter utrasque partes confligentium lenior examinatio procedat, cum iudex, qui praeerit quaestioni, intentiones actoris falsas et convicta crimina reorum ex legibus poenis competentibus possit ulcisci.

PP. XVI k. Mai. Romae Valente V et Valentiniano AA. conss.

[24] *Imppp. Valentinianus Theodosius et Arcadius AAA. Proculo pu.* Praebemus licentiam, ut civiliter sive criminaliter, ut actor elegerit, super prolatis codicillis vel aliis instrumentis requiratur et incumbat probatio fidei instrumenti ei primitus, qui scripturam obtulerit, deinde ei, qui stricta instantia falsum arguere paratus est.

D. Mediolani X k. Febr. Timasio et Promoto conss.

XXIII De His Qui Sibi Adscribunt in Testamento

[1] *Imp. Antoninus A. Vallatio.* Quamquam ita interpretentur iuris periti, ut contra legem Corneliam videatur se scribere heredem filius emancipatus patre dictante, tamen cum et, si testamentum non esset scriptum, iustus successor futurus esset accepta bonorum possessione

[23][136] *Emperors* VALENS, GRATIAN, *and* VALENTINIAN *Augusti to Maximinus, Praetorian Prefect.* pr. If a document is produced before a judge and some dispute arises over it, We grant permission to the litigants, so that the person expressing doubt as to the validity of the document may decide whether to proceed with a criminal prosecution on a charge of forgery (*falsum*) or with a private law action. **1.** But if he or she seeks vengeance for forgery by raising a criminal charge, that trial shall go forward after the civil action ends with a sentence, in order that if anyone tries to assemble the contents of a testament, handwritten documents, declarations of intent, as well as private and public accounts, informal agreements, letters or other expressions of a person's last will, gifts, sales, or anything else adduced as evidence, he or she shall have the opportunity of launching a criminal prosecution.

2. The investigation associated with a civil trial, however, shall proceed more gently between the two contending parties, since the judge trying the case can punish the false allegations of the plaintiff and the proven crimes of the defendants with the appropriate statutory (*ex legibus*) penalties.

Posted April 16, at Rome, in the consulship of Valens, for the fifth time, and Valentinian Augusti (376).

[24][137] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Proculus, City Prefect.* We grant permission for a trial to go forward on a civil or criminal basis, as the plaintiff chooses, in cases concerning codicils or other documents adduced as evidence. The proof of the reliability of the documentation shall in first place be assigned to the party who has produced the written evidence, and thereafter to the party who is prepared, after making insistent representations, to prove it is forged.

Given January 23, at Milan, in the consulship of Timasius and Promotus (389).

Twenty-Third Title Those Who Write Themselves into a Testament[138]

[1] *Emperor* ANTONINUS *Augustus to Vallatius.* Although the jurists (*iuris periti*) give the opinion that an emancipated son, by writing himself into the will as heir at the dictation of his father, is considered to violate the lex Cornelia, nevertheless, since without a testament being drawn up the son would have

[136] = (with changes) C.Th. 9.19.4.
[137] = (with changes) C.Th. 4.4.2.
[138] See D. 48.10. The lex Cornelia on Falsifications was later supplemented by the Neronian SC *Libonianum* (Suet. *Nero* 17).

filius patri, perinde habebitur, atque si sua manu pater tuus te heredem scripsisset functus dulci officio.

PP. non. Sept. duobus Aspris conss.

[2] *Idem A. Atticio.* **pr.** Si testator codicillis quos scripsisti legatum quoque seu fideicommissum reliquisse tibi sua manu adscripsit, non videris in poenam senatus consulti incidisse. **1.** Quod si testamentum dictasse codicillis significavit, legato quidem vel fideicommisso abstinere debes, poena vero falsi tibi principali beneficio remittitur.

PP. id. Dec. Antonino A. IIII et Balbino conss.

[3] *Imp. Alexander A. Martiali.* Senatus consulto et edicto divi Claudii prohibitum est eos, qui ad scribenda testamenta adhibentur, quamvis dictante testatore aliquid emolumentum ipsis futurum scribere, et poena legis Corneliae facienti inrogata est: cuius veniam deprecantibus ob ignorantiam et profitentibus a relicto discedere raro amplissimus ordo vel divi principes veniam dederunt.

PP. XVII k. April. Maximo II et Aeliano conss.

[4] *Idem A. Crescenti.* Quae in testamento uxoris maritus sua manu legata sibi adscripserit, pro non scriptis habentur, et legis Corneliae poena, si venia impetrata non est, locum habet.

PP. III non. Febr. Fusco II et Dextro conss.

[5] *Idem A. Gallicano militi.* Quod adhibitus ad testamentum commilitonis scribendum iussu eius servum tibi adscripsisti, pro non scripto habetur et ideo id legatum petere non potes. sed secutus tenorem

been the legally recognized successor of his father and received possession of his property (*bonorum possessio*), the matter will be treated as though your father had discharged his pleasant responsibility by writing you into the will as heir by his own hand.

Posted September 5, in the consulship of the two Aspri (212).

[2] *The same Augustus to Atticius.* **pr.** If the testator added a note, in his own hand in the codicils that you wrote out, that he had left to you a legacy or trust (*fideicommissum*), you are not deemed to have incurred the penalty laid down by the decree of the Senate. **1.** But if he indicated in the codicils that he dictated the (entire) testament, you ought, in fact, to refuse the legacy or *fideicommissum*. You are, however, forgiven the penalty for falsification (*falsum*) through the Emperor's generosity.

Posted December 13, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[3] *Emperor* ALEXANDER *Augustus to Martialis.* By the decree of the Senate and an edict of the deified Claudius,[139] those who are engaged to inscribe testaments are forbidden to write in some future reward for themselves, even though the testator dictates this. The penalty of the lex Cornelia is invoked for one who does this. The most respectable order (i.e., the Senate) and the deified emperors have seldom granted pardon to those begging for release from the penalty on account of their ignorance and declaring that they will refuse the bequest.

Posted March 16, in the consulship of Maximus, for the second time, and Aelianus (223).

[4] *The same Augustus to Crescens.* Those legacies which a husband wrote for himself in his own hand in his wife's testament are deemed not to have been written (i.e., void) and the penalty of the lex Cornelia lies against him if he has not obtained pardon.

Posted February 3, in the consulship of Fuscus, for the second time, and Dexter (225).

[5] *The same Augustus to Gallicanus, a soldier.* Because, when you were engaged to write out the testament of your fellow-soldier, you added a note, at his behest, that his slave (would be left) to you, this bequest is deemed as though not written (i.e., void) and for this reason you cannot seek to recover this legacy. But pursuant to my policy of forbearance (*indulgentia*) I forgive

[139] The *SC* is the *Libonianum*; for the edict, see Callistr. D. 48.10.15.2.

indulgentiae meae poena*m* legis Corneliae tibi remitt*o*, in quam credo te magis errore quam malitia incidisse.

PP. XVII k. Iul. Fusco II et Dextro conss.

[6] *Impp. Diocletianus et Maximianus AA. Aufidio.* Si libertatem tibi manu tua imperante domino adscripsisti, cum proponas dominum non subscripsisse et suis litteris tuam libertatem expressim agnovisse, ad impetrandam libertatem senatus consulti auctoritas tibi obest. poena tamen falsi tibi remittitur, quoniam non potueras contra domini voluntatem venire.

PP. VI id. Dec. ipsis IIII et III AA. conss.

XXIIII De Falsa Moneta

[1] *Imp. Constantinus A. ad Ianuarinum.* **pr.** Quoniam nonnulli monetarii adulterinam monetam clandestinis sceleribus exercent, cuncti cognoscant necessitatem sibi incumbere huiusmodi homines inquirendi, ut investigati tradantur iudiciis, facti conscios per tormenta ilico prodituri ac sic dignis suppliciis addicendi. **1.** Accusatoribus etiam eorum immunitatem permittimus, cuius modus, quoniam dispar patrimonium est, a nobis per singulos statuetur.

2. Si quis autem militum huiusmodi personam susceptam de custodia exire fecerit, capite puniatur. **3.** Appellandi etiam privato licentia denegetur: si vero miles aut promotus in gradu huiusmodi crimen incurrerit, super eius nomine et gradu ad competentes iudices referatur.

4. Domus vero vel fundus, in quo haec perpetrata sunt, si dominus in proximo constitutus sit, cuius incuria vel neglegentia punienda est, etsi ignoret, fisco vindicetur, nisi dominus, ante ignorans, ut primum reppererit, scelus prodiderit perpetratum: tunc enim possessio vel domus ipsius proscriptionis iniuriae minime subiacebit. **5.** Sin vero longissime

you the penalty of the lex Cornelia, which you had incurred, I believe, more out of mistake than bad intentions (*malitia*).

Posted June 15, in the consulship of Fuscus, for the second time, and Dexter (225).

[6] *Emperors Diocletian and Maximian Augusti to Aufidius.* If you, in your own handwriting and at your master's command, wrote in (his testament) a bequest of freedom for yourself, although you allege that your master did not sign (the testament) and recognized (the grant of) your freedom expressly in a (separate) letter of his, the force (*auctoritas*) of the senatorial decree impedes you from obtaining your freedom. Nevertheless, the penalty for falsification (*falsum*) is forgiven you, because you could not oppose the wishes of your master.

Posted December 8, in the consulship of the Augusti, for the fourth and third time, respectively (290).

Twenty-Fourth Title Counterfeit Money

[1][140] *Emperor Constantine Augustus to Januarinus.* **pr.** Because some mint-workers, through covert criminal activity, produce counterfeit money, let everyone understand that the necessity is imposed upon them of investigating this sort of person, in order that, once their cases have been examined, they are handed over to the courts. Having been rendered ready, through judicial examination under torture, to betray their accomplices on the spot, they shall thence be bound over to worthy punishments. 1. We also allow their accusers immunity from taxation, the measure of which, because their net worth (*patrimonium*), varies, We will determine on an individual basis.

2. Moreover, if any soldier lets a person of this sort, once detained, escape from custody, he shall suffer the death penalty (*capite*). 3. Permission to launch an appeal shall be denied even to a private citizen. But if a soldier or someone promoted to a higher rank commits this kind of crime, a report of his name and rank shall be made to the appropriate judges.

4.[141] The house or farm, in fact, at which such crimes have been committed, shall be claimed for the Treasury, if the owner, whose neglect or negligence (*incuria vel neglegentia*) must be punished, even if he was unaware, was in the vicinity. An exception is made if the owner, being previously unaware, discloses the commission of the crime as soon as he discovers it. For in that case his landholding (*possessio*) or house will not at all be liable to the affront of confiscation. 5. But if, on the other hand, he has been very far away from that

140 = (with changes) C.Th. 9.21.2. Combine with C. 7.13.2.
141 §§4 and 5 contain elements taken from C.Th. 9.21.2.4 and 2, 9.21.4 pr.

ab ea domo vel possessione afuerit, nullum sustineat detrimentum: actore videlicet fundi vel servis vel incolis vel colonis, qui hoc ministerium praebuerunt, cum eo qui fecit supplicio capitali plectendis. 6. Viduas autem ac pupillos speciali dignos indulgentia credidimus, ut viduae nec in proximo constitutae domo sua vel possessione careant, si nulla apud ipsas tam gravis conscientiae noxa resideat, impuberes vero, etiamsi conscii fuerint, nullum sustineant detrimentum, quia aetas eorum quid videat ignorat. 7. Tutores tamen eorum, si in proximo sint, quoniam ignorare eos, quid in re pupilli geritur, non oportet, haec poena expectabit, ut de rebus eorum, si idonei fuerint, tantum fisco inferatur, quantum a pupillo fuerat inferendum.

D. XII k. Dec. Romae Crispo II et Constantino II CC. conss.

[2] *Idem A. ad Tertullianum proconsulem Africae.* Si quis nummum falsa fusione formaverit, universas eius facultates fisco nostro addici praecipimus: in monetis etenim tantum nostris cudendae pecuniae studium frequentari volumus. cuius obnoxii maiestatis crimen committunt, et praemio accusatoribus proposito, quicumque solidorum adulter poterit reperiri vel a quoquam fuerit publicatus, ilico omni dilatione submota flammarum exustionibus mancipetur.

D. prid. non. Iul. Mediolani Constantino A. VII et Constantio C. conss.

[3] *Imppp. Valentinianus Theodosius et Arcadius AAA. Rufino pp.* Si quis super cudendo aere vel rescripto aliquo vel etiam adnotatione nostra sibi eripuerit facultatem, non solum fructum propriae petitionis amittat, verum etiam poenam quam meretur excipiat.

D. IIII id. Iul. Constantinopoli Theodosio A. III et Abundantio conss.

house or landholding (*possessio*), he shall suffer no loss. Obviously, the manager of the farm, the slaves, residents (*incolae*), and bound tenants (*coloni*),[142] who have provided their assistance, shall be visited with the death sentence (*supplicium capitale*), along with the person who committed the offense. **6.**[143] But We have deemed widows (*viduae*) and minor wards to be worthy of Our particular understanding (*indulgentia*), such that widows, even if they were in the vicinity, but are not guilty of the serious offense of complicity, shall not be deprived of their house or landholding, (and) minors, in fact, even if complicit, shall suffer no loss, because their age does not know what it perceives. **7.** This penalty, however, will await their *tutores* if they are in the vicinity, since they ought not to be unaware of what is being done on their minor ward's property. They shall pay to the Treasury from their resources, if they are sufficiently wealthy, as much as what the minor ward would be compelled to pay.

Given November 20, at Constantinople, in the consulship of Crispus, for the second time, and Constantine, for the second time, Caesars (321).[144]

[2][145] *The same Augustus to Tertullianus, Proconsular Governor of Africa.* If anyone mints coins through counterfeit casting, We instruct that all of his property shall be bound over to Our Treasury. For We wish that the practice of striking coins be conducted only in Our mints. Those liable to this law commit the offense of treason (*maiestas*) and a reward has been established for accusers. Whoever can be discovered to be a forger of coins or is exposed as such by anyone, shall be made over, immediately, with all delay removed, to the searing flames (to be burned alive).

Given July 6, at Milan, in the consulship of Constantine Augustus, for the seventh time, and Constantius Caesar (326).

[3][146] *Emperors* V*ALENTINIAN*, T*HEODOSIUS*, *and* A*RCADIUS Augusti to Rufinus, Praetorian Prefect.* If anyone seizes the opportunity of striking coins on the basis of some rescript or even written instructions (*adnotatio*) of Ours, he shall not only lose the fruits of his petition but also shall receive the punishment he deserves.

Given July 12, at Constantinople, in the consulship of Theodosius Augustus, for the third time, and Abundantius (393).

[142] For the translation of *coloni* as "bound tenants," see the note at C. 11.48.
[143] §§6 and 7 = (with changes) C.Th. 9.21.4.1.
[144] The date is more likely 320: Projet Volterra. Seeck gives November 20, 318. The constitution was actually issued in Rome, see C. 7.13.2 and C.Th. 9.21.2 (Krüger).
[145] Drawn from C.Th. 9.21.3, 5, and 9, the first of which gives the addressee as Tertullus.
[146] = C.Th. 9.21.10.

XXV De Mutatione Nominis

[1] *Impp. Diocletianus et Maximianus AA. et CC. Iuliano.* Sicut initio nominis cognominis praenominis recognoscendi singulos impositio privatim libera est, ita horum mutatio innocentibus periculosa non est. mutare itaque nomen sive praenomen sine aliqua fraude licito iure, si liber es, secundum ea quae saepe statuta sunt minime prohiberis, nulli ex hoc praeiudicio futuro.

S. xv k. Ian. AA. *conss.*

XXVI Ad Legem Iuliam de Ambitu

[1] *Impp. Arcadius et Honorius AA. Pompeiano proconsuli Africae.* **pr.** Nullus omnino principatum vel numeratum seu commentariensis gradum vel cetera officia repetere audeat, cum publicae disciplinae semel gesta sufficiant. 1. Ac si quispiam promotorum denuo ad munus etiam per sacras litteras inrepserit, quod ante docebitur gessisse, cassatis quae hoc modo sunt impetrata, ad solutionem debiti primitus artetur, et qui contra fecerint poenam deportationis ad instar legis Iuliae ambitus excipiant.

D. prid. k. Iun. Mediolani Stilichone et Aureliano conss.

XXVII Ad Legem Iuliam Repetundarum

[1] *Imppp. Gratianus Valentinianus et Theodosius AAA. Matroniano duci et praesidi Isauriae.* Ut unius poena metus possit esse multorum, ducem qui male egit ad provinciam quam nudaverat cum custodia competenti ire praecipimus, ut non solum, quod eius non dicam

Twenty-Fifth Title Changing One's Name

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Julian.* Just as at the start there is a free private giving of (names, i.e.,) a *nomen, cognomen,* and *praenomen,* in order to identify individuals, so changing them is not a source of danger for innocent persons. Therefore, if you are a free person, you are not at all prevented, according to what has often been laid down, from changing a *nomen* or *praenomen,* if this is done without deceptive intent (*fraus*) as permitted by law, with no prejudice (harm) accruing to anyone from this.

Written December 18, in the consulship of the Augusti (293).

Twenty-Sixth Title The Lex Julia on Corrupt Solicitation (*Ambitus*)[147]

[1][148] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Pompeianus, Proconsul of Africa.* **pr.** No one at all shall dare to seek for a second time the position of chief of staff (*principatus*), accountant (*numeratus*), clerk (*commentariensis gradus*), or the other staff positions, since it suits public policy (*publica disciplina*) that these be held (only) once. **1.** And if someone who has been promoted creeps back in again, even by an imperial letter (*sacrae litterae*), to a position which it is proved he held before, after those things that have been obtained in this way have been voided, he shall be compelled at first to pay any debt (associated with the position), and (then) those who violate (this law) shall receive the penalty of capital exile (*deportatio*) on the model of the lex Julia on corrupt solicitation (*ambitus*).

Given May 31,[149] at Milan, in the consulship of Stilicho and Aurelianus (400).

Twenty-Seventh Title The Lex Julia on Provincial Extortion[150]

[1][151] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Matronianus, Commander (Dux) and Governor of Isauria.* In order that the penalty inflicted on one person can be the source of fear for many, We instruct that the commander (*dux*) guilty of maladministration shall return under the appropriate guard to the province he had despoiled. The purpose is that not

[147] See D. 48.14. The statute dates to 18 BCE.
[148] = (in part, with changes) C.Th. 9.26.2. Combine with C. 10.72.12, 12.61.3; C.Th. 1.12.8, 11.1.28. Section 1 = (in part, with changes) C.Th. 9.26.3.
[149] The precise month is uncertain: May or December. Seeck gives May 31, 400.
[150] See D. 48.11. This statute is from 59 BCE.
[151] = (with changes) C.Th. 9.27.3, which gives the recipient's province as Sardinia.

domesticus, sed manipularius et minister accepit, verum etiam quod ipse a provincialibus nostris rapuit aut sustulit, in quadruplum invitus exsolvat.

D. prid. Id. Iun. Constantinopoli Antonio et Syagrio conss.

[2] *Idem AAA. Floro pp.* Sciant iudices super admissis propriis aut a se aut ab heredibus suis poenam esse repetendam.

D. x k. Sept. Antonio et Syagrio conss.

[3] *Idem AAA. Marcellino.* Omnes cognitores et iudices a pecuniis atque patrimoniis manus abstineant neque alienum iurgium putent suam praedam. etenim privatarum quoque litium cognitor idemque mercator statutam legibus cogetur subire iacturam.

D. prid. non. April. Mediolani Merobaude II et Saturnino conss.

[4] *Idem AAA. et Arcadius A. edictum ad provinciales.* Iubemus hortamur, ut, si quis forte honoratorum decurionum possessorum, postremo etiam colonorum aut cuiuslibet ordinis a iudice fuerit aliqua ratione concussus, si quis scit venalem de iure fuisse sententiam, si quis poenam vel pretio remissam vel vitio cupiditatis ingestam, si quis postremo quacumque de causa improbum iudicem potuerit approbare, is vel administrante eo vel post administrationem depositam in publicum prodeat, crimen deferat, delatum approbet, cum probaverit, et victoriam reportaturus et gloriam.

D. x k. Iul. Constantinopoli Honorio np. et Euodio conss.

[5] *Imppp. Valentinianus Theodosius et Arcadius AAA. Severino comiti rerum privatarum.* **pr.** Unusquisque procurator, praepositus gynaecei, tabularius susceptor colonus vel quicumque se a comite domorum meminerit esse concussum, cum ipse cui pecuniam numeraverit

only what his, shall I not call it, bodyguard, but also what his soldiers and servants have received, but also what he himself has pillaged or carried off from Our provincials, he shall pay fourfold, (even) against his will.

Given June 12, at Constantinople, in the consulship of Antonius and Syagrius (382).

[2][152] *The same Augusti to Florus, Praetorian Prefect.* Let judges (*iudices*) know that the penalty for their misdeeds shall be sought either from themselves or from their heirs.

Given August 23, in the consulship of Antonius and Syagrius (382).

[3][153] *The same Augusti to Marcellinus.* All those who preside over hearings (*cognitores*) and judges shall keep their hands off the money and property (of others). Nor shall they consider someone else's legal wrangling to be a source of spoil for themselves. For the person who is a *cognitor* of private lawsuits and also at the same time a merchant (of justice) will be compelled to suffer the penalty laid down by the laws.

Given April 4, at Milan, in the consulship of Merobaudes, for the second time, and Saturninus (383).

[4][154] *Emperors* GRATIAN, VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti (issue) an Edict to the People of the Provinces.* We instruct, We urge that if perchance any former official, decurion, landowner, or, finally, even any bound tenant (*colonus*) or person from any social rank whatsoever is shaken down by a judge for some reason, (or) if anyone knows that a legal decision was bought and sold, (or) if anyone knows a penalty was remitted or inflicted upon payment of a price through the character defect of greed, (or) if anyone, finally, can show that a judge acted corruptly in any case at all, this person, whether the judge is still in office or he has laid this down, shall come forth in public, shall launch a prosecution, shall prove the charge, and when he has done so, will gain victory and glory for himself.

Given June 22, at Constantinople, in the consulship of Honorius, Most Noble Boy, and Euodius (386).

[5][155] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Severinus, Count of the Privy Purse.* **pr.** Any (imperial) procurator, manager of a weaving mill (*gynaeceum*), official in charge of fiscal records (*tabularius*), tax collector (*susceptor*), bound tenant (*colonus*), or anyone at all who recalls

[152] = C.Th. 9.27.4. In this and following texts, provincial governors are referred to in their role as chief judicial officers (*iudices*).
[153] = (with changes) C.Th. 9.27.5.
[154] = (with minor changes) C.Th. 9.27.6.
[155] = (with changes) C.Th. 9.27.7.

administratione decesserit, intra anni spatia ad iudicium spectabilitatis tuae quidquid dederit repetiturus occurrat, ut prosit pensionibus, quidquid ille reddiderit. **1.** Sin vero ex tempore depositae administrationis praestituti temporis curricula transfluxerint, nulla vox advocationis emergat, sed ipsos procuratores praepositos colonos tabularios susceptores obnoxios ad solutionem volumus artari.

D. prid. non. Iun. Mediolani Valentiniano A. IIII *et Neoterio conss.*

[6] *Impp. Theodosius et Valentinianus AA. Florentio pp.* **pr.** Sancimus eiusmodi viros ad provincias regendas accedere, qui honoris insignia non ambitione vel pretio, sed probatae vitae et amplitudinis tuae solent testimonio promoveri,[xiv] ita sane ut, quibus hi honores per sedis tuae vel nostram fuerint electionem commissi, iurati inter gesta depromant se pro administrationibus sortiendis neque dedisse quippiam neque daturos umquam postmodum fore, sive per se sive per interpositam in fraudem legis sacramentique personam, aut donationis venditionisve titulo aut alio velamento cuiuscumque contractus, et ob hoc exceptis salariis nihil penitus tam in administratione positos quam post depositum officium pro aliquo praestito beneficio tempore administrationis, quam gratuito meruerint, accepturos. **1.** Et licet neminem divini timoris contemnendo iureiurando arbitramur immemorem, ut saluti propriae ullum commodum anteponat, tamen, ut ad salutis timorem et necessitas periculi subiungatur, tunc si quis ausus fuerit praebita sacramenta neglegere, non modo adversus accipientem, sed etiam adversus dantem accusandi cunctis tamquam crimen publicum concedimus facultatem, quadrupli poena eo qui convictus fuerit modis omnibus feriendo.

D. VI *k. Dec. Constantinopoli Theodosio A.* XVII *et Festo conss.*

[xiv] promereri

that he has been shaken down by the Count of the Imperial Household, after the person to whom the money was paid has laid aside his administrative post, shall, within the term of one year, come before the court of Your Respectability, in order to claim back whatever he has given. The point is that whatever he (the Count) pays back shall benefit the fiscal accounts. **1.** But if, however, the established time period, from the point when the Count has left his post, has passed, no further appeal shall be allowed, but We wish that the procurators, managers, bound tenants, record-keepers, tax collectors be liable for payment of what they owe.

Given June 4, at Milan, in the consulship of Valentinian Augustus, for the fourth time, and Neoterius (390).

[6] *Emperors* Theodosius *and* Valentinian *Augusti to Florentius, Praetorian Prefect.* **pr.** We ordain that the (only) sort of men who shall take up the position of provincial governor regularly earn the distinction of office not through influence-peddling or bribery, but through the recommendation of a praiseworthy life and the approval of your Magnificence, so indeed that those who are appointed to this office by your choice or Ours shall take an oath upon the public records that they have neither given anything nor afterwards will ever give something for the assignment of public positions, and that (they have done or will do this) this neither personally nor through a third party employed to circumvent the law and the oath, and this neither under the title of gift, sale, nor other screen of any kind of contract, and (also) that on account of this position, they will accept nothing at all apart from their salaries, either while in office or after they have stepped down, for any kindness they performed during their term of office, which they received gratuitously. **1.** And although We believe that no one is unmindful of the fear of God in disdaining his oath so as to put any advantage before his own safety, nevertheless, in order that the inevitability of peril be joined to the fear for his safety, if, then, someone dares neglect the oath he has given, We grant the opportunity to everyone, as though this were a public criminal offense (*crimen publicum*), of prosecuting not only the receiver, but also the giver, in order that he who is convicted shall be punished in every way by the infliction of a fourfold penalty.

Given November 26, at Constantinople, in the consulship of Theodosius Augustus, for the seventeenth time, and Festus (439).

XXVIII De Crimine Peculatus

[1] *Imppp. Theodosius Arcadius et Honorius AAA. Rufino pp.* Iudices, qui tempore administrationis publicas pecunias subtraxerunt, lege Iulia peculatus obnoxii sunt et capitali animadversioni eos subdi iubemus: his nihilo minus, qui ministerium eis ad hoc adhibuerunt vel qui subtracta ab his scientes susceperunt, eadem poena percellendis.

D. III non. Mart. Constantinopoli Honorio X et Theodosio VI AA. conss.

XXVIIII De Crimine Sacrilegii

[1] *Imppp. Gratianus Valentinianus et Theodosius AAA.* Qui divinae legis sanctitatem aut nesciendo confundunt aut neglegendo violant et offendunt, sacrilegium committunt.

D. III k. Mart. Thessalonicae Gratiano A. V et Theodosio A. conss.

[2] *Idem AAA. ad Symmachum pu.* Disputari de principali iudicio non oportet: sacrilegii enim instar est dubitare, an is dignus sit, quem elegerit imperator.

D. V k. Ian. Mediolani Ricomere et Clearcho conss.

[3] *Idem AAA. et Arcadius A. Eutropio pp.* Ne quis sine sacrilegii crimine desiderandum intellegat gerendae ac suscipiendae administrationis officium intra eam provinciam, in qua provincialis et civis habetur, nisi hoc cuidam ultronea liberalitate per divinos adfatus imperator indulgeat.

D. XVI k. Aug. Arcadio A. et Bautone conss.

Twenty-Eighth Title The Crime of Public Embezzlement[156]

[1][157] *Emperors* THEODOSIUS, ARCADIUS, *and* HONORIUS *Augusti to Rufinus, Praetorian Prefect.* Judges who, during their term of office, have embezzled public funds are liable under the lex Julia on embezzlement and We order that they shall be afflicted with the capital penalty (*capitalis animadversio*). No less shall those who furnished assistance to them in this matter or who knowingly received embezzled property from them be afflicted with the same penalty.

Given March 5, at Constantinople, in the consulship of Honorius, for the tenth time, and Theodosius, for the sixth time, Augusti (415).

Twenty-Ninth Title The Crime of Sacrilege[158]

[1][159] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti.* Whoever through ignorance disturbs or through negligence outrages or damages the sanctity of imperial law (*divina lex*) commits sacrilege.

Given February 28, at Thessalonica, in the consulship of Gratian, for the fifth time, and Theodosius Augusti (380).

[2][160] *The same Augusti to Symmachus, City Prefect.*[161] An imperial decision ought not to be disputed. For it is tantamount to sacrilege to doubt whether he is worthy whom the Emperor has chosen.

Given December 28, at Milan, in the consulship of Richomer and Clearchus (384).

[3][162] *Emperors* GRATIAN, VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Eutropius, Praetorian Prefect.* No one shall, without committing the crime of sacrilege, have the impression that he should seek the responsibility of taking up and holding an administrative position in the province where he is a resident and a citizen, unless the Emperor grants this to someone out of spontaneous generosity through an imperial pronouncement (*divini adfatus*).

Given July 17, in the consulship of Arcadius Augustus and Bauto (385).

156 See D. 48.13. Blume: "All who stole money or other property that belonged to the State, Church, or municipality were guilty of this crime." The lex Julia is probably Augustan.

157 = Drawn from C.Th. 9.28.1 and 2, the first of which dates from September 10, 392; cf. Inst. 4.18.9. Combine with C. 9.12.9. Seeck dates this constitution to September 10, 392.

158 See D. 48.13.

159 = (with minor changes) C.Th. 16.2.25. Combine with C. 1.1.1.

160 = (in part) C.Th. 1.6.9.

161 In fact, in 383 Arcadius became emperor and Gratian died.

162 Blume: "To the same effect is C. 1.41.1." Seeck dates this constitution to June 17, 380.

XXX De Seditiosis et His Qui Plebem Audent contra Publicam Quietem Colligere

[1] *Imppp. Gratianus Valentinianus et Theodosius AAA. Florentio praefecto Augustali.* Si quis contra evidentissimam iussionem suscipere plebem et adversus publicam disciplinam defendere fortasse temptaverit, multam gravissimam sustinebunt.

D. XIII k. Ian. Constantinopoli Ricomere et Clearcho conss.

[2] *Imp. Leo A. Erythrio pp.* In nullis locis aut civitatibus tumultuosis clamoribus cuiusquam interpellatio contumeliosa procedat nec ad solam cuiusquam invidiam petulantia verba iactentur: scituris his, qui huiusmodi voces emiserint moverintque tumultus, se quidem fructum ex his quae postulant nullatenus habituros, subdendos autem poenis his, quas de seditionum et tumultus auctoribus vetustissima decreta sanxerunt.

D. II non. Mart. Constantinopoli Leone A. III cons.

XXXI Quando Civilis Actio Criminali Praeiudicet et An Utraque ab Eodem Exerceri Potest

[1] *Imppp. Valens Gratianus et Valentinianus AAA. Antonio pp.* pr. A plerisque prudentium generaliter definitum est, quotiens de re familiari et civilis et criminalis competit actio, utraque licere experiri, sive prius criminalis sive civilis actio moveatur, nec si civiliter fuerit actum, criminalem posse consumi, et similiter e contrario. 1. Sic denique et per vim possessione deiectus, si de ea recuperanda interdicto unde vi erit usus, non prohibetur tamen etiam lege Iulia de vi publico iudicio instituere accusationem: et suppresso testamento cum ex interdicto de tabulis exhibendis fuerit actum, nihilo minus ex lege Cornelia testamentaria poterit crimen inferri: et cum libertus se dicit ingenuum, tam de operis

Thirtieth Title Rebels and Those Who Dare to Rally the Common People Against Public Order

[1][163] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Florentius, Augustal Prefect.*[164] If anyone, contrary to the clearest command, tries to take under his protection the common people and perchance to defend them in defiance of public order, they will incur a very serious fine.

Given December 20, at Constantinople, in the consulship of Richomer and Clearchus (384).

[2][165] *Emperor* LEO *Augustus to Erythrius, Praetorian Prefect.* In no places or cities shall an insulting public interruption of any (speaker) take place amid disruptive shouting, nor shall provocative words be tossed out solely for the purpose of ill will toward anyone. Those who utter remarks of this kind and stir up public disorder shall know that they certainly are in no way going to reap the fruits of what they demand, but that they shall (also) be subjected to those penalties that very ancient judgments (*vetustissima decreta*) have ordained for the instigators of rebellions and disorder.

Given March 6, at Constantinople, in the consulship of Leo Augustus, for the third time (466).

Thirty-First Title When a Private Law Action Excludes a Criminal Prosecution and Whether Both Can Be Raised by the Same Person

[1][166] *Emperors* VALENS, GRATIAN, *and* VALENTINIAN *Augusti to Antonius, Praetorian Prefect.* **pr.** It has been generally held by most jurists (*prudentes*) that, whenever both a private law action and a criminal proceeding lie concerning property, both may be brought, without reference to which one is brought first, so that if the private action is launched first, the criminal proceeding cannot be excluded, and likewise vice versa. **1.** Thus, in consequence even if someone has been violently deprived of possession, if in order to recover this he resorts to the interdict "whence by force" (*unde vi*) he is not nevertheless prevented from also launching a prosecution under the lex Julia on Force using public criminal procedure (*iudicium publicum*). So if, in a case involving concealment of a testament, a suit was launched on the interdict concerning the

[163] = C.Th. 9.33.1. Combine with C.Th. 11.39.9.
[164] In fact, in 383 Arcadius became emperor and Gratian died.
[165] Combine with C. 1.3.27, 1.12.6.
[166] = (with changes) C.Th. 9.20.1. Combine with C. 4.19.24.

civiliter quam etiam lege Visellia criminaliter poterit perurgueri. 2. Quo in genere habetur furti actio et legis Fabiae constitutum, et plurima alia sunt, quae enumerari non possunt, ut, cum altera prius actio intentata sit, per alteram quae supererit iudicatum liceat retractari. 3. Qua iuris definitione non ambigitur etiam falsi crimen, de quo civiliter iam actum est, criminaliter esse repetendum.

D. prid. id. Ian. Treviris Valente VI et Valentiniano II AA. conss.

XXXII De Crimine Expilatae Hereditatis

[1] *Impp. Severus et Antoninus AA. Euphratae.* Expilatae quidem hereditatis crimen intentare non potes, quando communis arcae rebus inspectis claves traditas coheredi profitearis. sed cum de his exhibendis apud iudicem quaereretur, rationem compensationis induci non oportuit. exhibitis enim quae desiderantur suis iudicibus directa quaestio derelinquenda est.

PP. XII k. Mai. Antonino A. II et Geta II conss.

[2] *Imp. Antoninus A. Primo.* Expilatae hereditatis crimen adversus vitricum adito praeside provinciae persequi non prohiberis.

PP. VII k. Mart. Laeto II et Cereale conss.

production of testamentary documents, a charge on the lex Cornelia on wills[167] can be brought all the same. And when a freedperson claims to be free-born, he or she can be pursued as much in private law on a suit for services owed his or her master (*operae*) as also by a criminal prosecution under the lex Visellia.[168]
2. In this category belong an action on theft (*actio furti*) and a procedure established under the lex Fabia,[169] and many other examples that cannot be listed, with the effect that when one procedure has been launched first, it shall be permitted to treat the matter handled there again with that which remains. Under this rule of law (*definitio iuris*) there is no doubt also that a charge of falsification (*falsum*) that has already been tried under private law must be pursued again as a criminal matter.

Given January 12, at Trier, in the consulship of Valens, for the sixth time, and Valentinian, for the second time, Augusti (378).

Thirty-Second Title The Crime of Misappropriating an Inheritance[170]

[1] *Emperors* Severus *and* Antoninus *Augusti to Euphrata.* You cannot, to be sure, raise a charge of misappropriating an inheritance, since you acknowledge that, after the contents of a chest owned in common were inspected, keys were handed over to a co-heir. But since a hearing was held before a judge over the production of this property, there ought to have been no rationale introduced for an off-set. For when the items that have been demanded are produced, the direct action (for dividing the inheritance) shall be left to its own (appropriate) judges.[171]

Posted April 20, in the consulship of Antoninus Augustus, for the second time, and Geta, for the second time (205).[172]

[2] *Emperor* Antoninus *Augustus to Primus.* You are not prevented from approaching the governor of the province and prosecuting your stepfather for the offense of misappropriating an inheritance.

Posted February 23, in the consulship of Laetus, for the second time, and Cerealis (215).

[167] The reference to the lex Cornelia testamentaria concerns the lex Cornelia on Falsifications (C. 9.22), from 81 BCE.
[168] This last sentence appears also in C. 9.21.1.1. The lex Visellia is from AD 24.
[169] The lex Fabia was probably of late Republican date: see above under C. 9.20.
[170] See D. 47.19.
[171] Blume: "That one heir may not bring an accusation for this crime against his co-heir, is clearly stated in C. 3.36.3. And that no counter-claim may be set up in an action for production of such property, appears from C. 4.31.14."
[172] So Krüger, but Geta's first consulship was in 205, his second in 208, while Caracalla's second was in 205, his third in 208.

[3] *Idem A. Helenae.* Si avi tui hereditatem adisti, expilatae hereditatis crimine adversus novercam quondam tuam experiri non prohiberis.

PP. III non. Ian. Sabino et Anullino conss.

[4] *Imp. Gordianus A. Basso.* **pr.** Adversus uxorem, quae socia rei humanae atque divinae domus suscipitur, mariti diem suum functi successores expilatae hereditatis crimen intendere non possunt. **1.** Et ideo res, quas per eandem abesse quereris, competenti in rem actione vel, si dolo malo fecerit, quo minus res mobiles possideret, ad exhibendum persequere.

2. Fructus autem rerum quas mala fide tenuit, licet expilatae hereditatis non teneatur crimine, suos non facit, sed extantes quidem vindicari, absumptos vero condici posse procul dubio est.

PP. VI k. Mart. Attico et Praetextato conss.

[5] *Imp. Philippus A. et Philippus C. Sulpicio.* Obtentu expilatae hereditatis emolumentum legatorum, maxime suspensa cognitione, legatariis isdemque libertis defuncti auferri non oportet.

PP. XV k. Febr. Philippo A. et Titiano conss.

[6] *Idem A. et C. Basiliae.* Expilatae hereditatis crimen loco deficientis actionis intendi consuevisse non est iuris ambigui.

PP. X k. Mart. Aemiliano et Aquilino conss.

XXXIII Vi Bonorum Raptorum

[1] *Imp. Gordianus A. Valerio.* Vi bonorum raptorum actionem, quae cum poena sua retrahit ablata, potius ad mobilia moventiaque quam ad fundos per iniuriam occupatos spectare explorati iuris est.

[3] *The same Augustus to Helena.* If you have entered upon your grandfather's estate, you are not prevented from bringing a charge for misappropriating the inheritance against your former stepmother.

Posted January 3, in the consulship of Sabinus and Anullinus (216).

[4] *Emperor GORDIAN Augustus to Bassus.* **pr.** Against a wife, acknowledged as a helpmate in matters human and sacred (*socia rei humanae atque divinae*),[173] the heirs of her decedent husband cannot bring a charge of misappropriating an inheritance. **1.** So for that reason sue, with the relevant action *in rem*, for those items that you allege she has carried off, or, if she has acted with bad intent (*dolus malus*) so that she not be in possession of movable property, seek (an action) for their production.

2. Although she is not liable on a charge of misappropriating the inheritance, nevertheless she does not assume ownership of the income (*fructus*) from that property which she has possessed in bad faith (*mala fide*). Instead, it is far from doubtful that those items, at any rate, that are still in existence can be claimed through a suit on ownership, while the value of those that have been consumed can be recovered through a claim for restitution (*condictio*).

Posted February 24, in the consulship of Atticus and Praetextatus (242).

[5] *Emperor PHILIP Augustus and PHILIP Caesar to Sulpicius.* The benefit of legacies bequeathed to freedperson legatees of the decedent ought not to be disallowed on the pretext that the inheritance has been misappropriated, especially when the judicial investigation (of the matter) has been postponed.

Posted January 18, in the consulship of Philip Augustus and Titianus (245).

[6] *The same Augustus and Caesar to Basilia.* It is not a doubtful point of law (*ius ambiguum*) that a charge of misappropriating an inheritance has customarily been brought when no other action is available.

Posted February 20, in the consulship of Aemilianus and Aquilinus (249).

Thirty-Third Title Theft by Force[174]

[1] *Emperor GORDIAN Augustus to Valerius.* It is an established point of law (*ius exploratum*) that the action for theft by force, which, along with a penalty, provides for the restitution of the property carried off, pertains to movable and

[173] The manuscript reading *domus* cannot stand. Either it must be dropped (as in the rendering above) or read as *domum*, that is, "taken into one's household as a helpmate in matters human and sacred."

[174] See D. 47.8; Inst. 4.2. Theft by force is commonly called robbery (*rapina*).

PP. k. Mart. Attico et Praetextato conss.

[2] *Impp. Valerianus et Gallienus AA. Longino.* Si res mobiles, quarum in te fuerat dominium perfecta donatione translatum, violenter heres donatricis abripuit, vi bonorum raptorum actionem intra annum quidem, quo experiundi potestas fuit, in quadruplum, post annum in simplum intendere non vetaris.

PP. VII k. Mai. Saeculare et Donato conss.

[3] *Impp. Diocletianus et Maximianus AA. et CC. Euelpisto.* Res obligatas sibi creditorem vi rapientem non rem licitam facere, sed crimen committere convenit, eumque etiam vi bonorum raptorum infra annum utilem in quadruplum, post simpli actione conveniri posse non ambigitur.

S. VII id. Ian. Sirmi AA. conss.

[4] *Idem AA. et CC. Attalo.* De his, quae servum alienum nesciente domino vi rapuisse dicis, infra annum in quadruplum vi bonorum raptorum et post in simplum dominus eius noxali actione apud competentem iudicem conveniri potest.

S. II k. Mai. Heracleae AA. conss.

[5] *Idem AA. et CC. Dominae.* Sive negotiorum gestorum contra novercam tuam sive actione vi bonorum raptorum, quae in quadruplum intra annum utilem ac post in simplum constituta est, putaveris agendum, notione praesidali poteris experiri.

S. VI non. Iul. Philippopoli AA. conss.

self-propelling property, rather than to real estate that has been seized wrongly (*per iniuriam*).

Posted March 1, in the consulship of Atticus and Praetextatus (242).

[2] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Longinus.* If the heir of the female donor has seized violently the movable property whose ownership was conveyed to you through an executed gift, you are not forbidden from raising an action for theft by force, for a fourfold penalty if the action is brought within a year, of necessity, of the time in which you have had the opportunity to bring it, (but) for the value of the property if the action is brought after a year.

Posted April 25, in the consulship of Saecularis and Donatus (260).

[3][175] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Euelpistus.* It is a settled rule that a creditor who seizes by force items encumbered to him does not do something licit, but does commit a criminal offense, and there is no doubt that he can also be sued on an action for theft by force for a fourfold penalty (if suit is brought) within an effective year (*annus utilis*), (but) if afterwards, for the value of the property.

Written January 7, at Sirmium, in the consulship of the Augusti (293).

[4] *The same Augusti and Caesars to Attalus.* Concerning property that you allege someone else's slave, without his master's knowledge, seized by force, the master can be sued in a noxal action for theft by force before the appropriate judge, for a fourfold penalty within a year and for the value of the property afterwards.

Written April 30, at Heraclea, in the consulship of the Augusti (293).

[5] *The same Augusti and Caesars to Domina.* Whether you think you should sue your stepmother on an action for the management of affairs (*negotia gesta*) or on one for theft by force, (the latter) for a fourfold penalty within an effective year and the value of the property afterward, you will be able to proceed under the governor's jurisdiction.

Written July 2, at Philippopolis, in the consulship of the Augusti (293).

[175] Combine with C. 4.10.7.

XXXIIII De Crimine Stellionatus

[1] *Imp. Alexander A. Alexandro.* Improbum quidem et criminosum fateris easdem res pluribus pignorasse, dissimulato in posteriore obligatione, quod eaedem aliis pignori tenentur. verum securitati tuae consules, si oblato omnibus debito criminis instituendi causam peremeris.

PP. V id. Febr. Pompeiano et Peligno conss.

[2] *Imp. Gordianus A. Valenti.* Si pater tuus in te donationem contulit et, cum emancipatus esses, traditionibus dominium corporum in te transtulit posteaque creditorem sortitus quasdam earum rerum sine tua voluntate velut proprias suas obstrinxit, ius tuum non laesit. nec tamen iniuria stellionatus crimine petetur, cum sciens alienam rem te non consentiente velut propriam suo nexuit creditori.

PP. II k. Ian. Gordiano A. et Aviola conss.

[3] *Idem A. Hadriano.* Stellionatus accusatio inter crimina publica non habetur.

PP. id. April. Attico et Praetextato conss.

[4] *Imp. Philippus A. Euprepeti.* Ignorantia creditoris, cui res pridem apud alios obligatae pignoris seu hypothecae iure obligantur, non sine periculo capi consuevit. etenim eiusmodi fraudes ad extraordinariam criminis exsecutionem spectare ac stellionatus commissum severissime esse vindicandum saepe rescriptum est. 1. Proinde sive ignorantiam tuam debitor circumvenire temptaverit, seu obligatione rite perfecta participato fraudis consilio per subiectam quasi anteriorem personam dispendium tuum ad occultum compendium suum pertemptat,[xv] adire suum iudicem potes congruentem iuri ac debitae[xvi] religioni sententiam relaturum.

PP. VI id. Mai. Peregrino et Aemiliano conss.

[xv] <trahere>
[xvi] debitam

Thirty-Fourth Title The Crime of Double-Dealing (*Stellionatus*)[176]

[1] *Emperor* Alexander *Augustus to Alexander.* You acknowledge that it is immoral, in fact, and criminal to have pledged the same items to more than one person, having concealed the fact that they were (already) pledged to others when making a subsequent contract. But you will consult your own interest in being free from concern if, by paying off your debt to everyone, you completely remove the reason for making an accusation.

Posted February 9, in the consulship of Pompeianus and Pelignus (231).

[2] *Emperor* Gordian *Augustus to Valens.* If your father made you a gift and, after you were emancipated, informally conveyed ownership of the items to you, and thereafter, having obtained a loan from a creditor, without your approval bound (by pledge or hypothec) certain of these items as though they were his own, he has not prejudiced your right. Nor will he, all the same, unjustly be prosecuted on a charge of double-dealing, when he knowingly bound over to his creditor someone else's property as though it were his own, without your consent.

Posted December 31, in the consulship of Gordian Augustus and Aviola (239).

[3] *The same Augustus to Hadrianus.* A prosecution for double-dealing is not ranked among public criminal offenses (*crimina publica*).

Posted April 13, in the consulship of Atticus and Praetextatus (242).

[4] *Emperor* Philip *Augustus to Euprepes.* **pr.** Taking advantage of the ignorance of a creditor to whom property is bound over by right of pledge or *hypotheca*, when previously the (same) property was bound over to others, has not usually happened without risk. For it has often been laid down in imperial rescripts that frauds (*fraudes*) of this kind pertain to the extraordinary (*extra ordinem*) repression of crime and that the commission of double-dealing shall be avenged very severely. **1.** So whether the debtor has tried to take advantage of your ignorance, or whether, after the obligation has been legally completed, he, having taken on an accomplice in a fraudulent scheme (*fraus*), attempts, by interposing a third party as though a prior creditor, to turn your loss into his clandestine gain, you can approach the appropriate judge, who will deliver a verdict consistent with law (*ius*) and in fulfillment of his duty (*religio*).

Posted May 10, in the consulship of Peregrinus and Aemilianus (244).

[176] See D. 47.20. *Stellionatus* (literally "behaving like a lizard") is a residual category of deceitful criminal behavior that other crimes fail to reach.

XXXV De Iniuriis

[1] *Imp. Alexander A. Syro.* Nec servis quidem alienis licet facere iniuriam.
PP. XI k. Dec. Alexandro A. cons.

[2] *Idem A. Davo.* Iniuriarum actio tibi duplici ex causa competit, cum et maritus in uxoris pudore et pater in existimatione filiorum propriam iniuriam pati intelleguntur.
PP. prid. idus Maias Agricola et Clemente conss.

[3] *Imp. Gordianus A. Donato.* Si non es nuntiator, vereri non debes, ne eapropter, quod iniuriae faciendae gratia quidam te veluti delatorem esse dixerunt, opinio tua maculata sit. quin immo adversus eos, quos minuendae opinionis tuae causa aliquid confecisse comperietur, more solito iniuriarum iudicio experiri potes.
PP. II id. Iul. Gordiano A. et Aviola conss.

[4] *Impp. Valerianus et Gallienus AA. et Valerianus C. Vindi.* Atrocem sine dubio iniuriam esse factam manifestum est, si tibi illata est, cum esses in sacerdotio et dignitatis habitum et ornamenta proferres: et ideo vindictam potes eo nomine exsequi.
PP. II ... Aemiliano et Basso conss.

[5] *Impp. Diocletianus et Maximianus AA. Victorino.* Si non convicii consilio te aliquid iniuriosum dixisse probare potes, fides veri a calumnia te defendit. si in rixa inconsulto calore prolapsus homicidii convicium obiecisti et ex eo die annus excessit, cum iniuriarum actio annuo tempore praescripta sit, ob iniuriae admissum conveniri non potes.
PP. VI id. Iul. ipsis IIII et III AA. conss.

[6] *Idem AA. Flaviano.* Cum nec patronos iniuriam facere libertis iuris aequitas permittat, proponasque patronae heredes eum, qui libertatem

Thirty-Fifth Title Affronts (*Iniuriae*)[177]

[1][178] *Emperor* ALEXANDER *Augustus to Syrus.* It is not even permitted to inflict an affront on the slaves of others.

Posted November 21, in the consulship of Alexander Augustus (222).

[2] *The same Augustus to Davus.* An action for affront lies for you under a double rationale, since both a husband as to the shame (*pudor*) of his wife and a father with regard to the reputation (*existimatio*) of his children are (also) understood to suffer an affront to themselves.

Posted May 14, in the consulship of Agricola and Clemens (230).

[3] *Emperor* GORDIAN *Augustus to Donatus.* If you are not an informer (*nuntiator*), you ought not to fear that, on account of the fact that, in order to inflict an affront upon you, certain persons have described you as though you were an informer, your social reputation (*opinio*) has been compromised. Instead, in fact, you may bring suit for affront in the customary manner against those who, it will be shown, have concocted something to impair your social reputation.

Posted July 14, in the consulship of Gordian Augustus and Aviola (239).

[4] *Emperors* VALERIAN *and* GALLIENUS *Augusti and* VALERIAN *Caesar to Vindes.* It is clear beyond doubt that an aggravated affront has been committed if it was inflicted upon you when you held a priesthood and displayed the dress and (other) attributes of this rank. And for that reason you can pursue vengeance under that title.

Posted ... in the consulship of Aemilianus and Bassus (259).

[5] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Victorinus.* If you can prove that you said something insulting with no abusive intent (*convicii consilium*), (the court's) confidence in your truthfulness protects you from malicious prosecution (*calumnia*). If during a brawl you made a slip, out of heedless anger, and hurled an insult of "murderer" (at someone), and since that day a year has passed, because the action on affronts is limited to the period of one year, you cannot be sued for the commission of an affront.

Posted July 10, in the consulship of the Augusti, for the fourth and third times, respectively (290).

[6] *The same Augusti to Flavianus.* Since legal fairness (*iuris aequitas*) does not permit even patrons to inflict affront on their freedpersons, and you allege

[177] See D. 47.10, Inst. 4.4. *Iniuriae* are private affronts to the personal dignity of others.

[178] Combine with C. 3.42.2, 9.2.2.

a defuncta acceperat, iniuriis adficere, curabit praeses provinciae contumeliam heredum compescere.

PP. id. Iul. ipsis IIII et III AA. *conss.*

[7] *Idem AA. et CC. Paenentiano.* Iniuriarum causa non publici iudicii, sed privati continet querellam.

S. id. Febr. Sirmi AA. conss.

[8] *Idem AA. et CC. Marciano.* Dominum pro atroci iniuria, quam servus eius passus est, edicti perpetui actione proposita, qua damni etiam haberi rationem verbis evidenter exprimitur, agere posse convenit.

S. XV k. Nov. CC. conss.

[9] *Idem AA. et CC. Nonnae.* Qui liberos infamandi gratia dixerunt servos, iniuriarum conveniri posse non ambigitur.

S. VI k. Dec. Nicomediae CC. conss.

[10] *Idem AA. et CC. Paulo.* Si quidem aviam tuam ancillam infamandi causa rei publicae civitatis Comanensium dixit Zenodorus ac recessit, iniuriarum actione statim conveniri potest. nam si perseveret in causa facultatem habens agendi, super hac deferri querellam ac tunc demum, si non esse serva fuerit pronuntiata, postulari convenit.

S. XV k. Ian. Nicomediae CC. conss.

[11] *Imp. Zeno A. Alexandro viro illustri.* Si quando iniuriarum actio, quam inter privata delicta veteris iuris auctores connumerant, a quibuslibet illustribus viris, militantibus seu sine cingulo constitutis, vel uxoribus eorum vel liberis masculini sexus vel filiabus, superstitibus videlicet patribus aut maritis illustribus, vel si adversus aliquam huiusmodi personam criminaliter forte movetur, ipsos quidem, qui super iniuria queruntur, inscribere aliaque omnia, quae in huiusmodi causis de more procedunt, sollemniter observare decernimus: licere autem illustri accusatori vel reo, uxori vel liberis masculini sexus seu filiae itidem illustris superstitis causam iniuriarum in quocumque iudicio competenti per

that the heirs of the female patron inflicted affronts upon a man who received his freedom from the decedent, the governor of the province will take care to repress the insult inflicted by the heirs.

Posted July 15, in the consulship of the Augusti, for the fourth and third times, respectively (290).

[7] *The same Augusti and the Caesars to Paenentianus.* A case of affront involves not a public criminal prosecution (*publicum iudicium*) but a suit under private law.

Written February 13, at Sirmium, in the consulship of the Augusti (293).

[8] *The same Augusti and Caesars to Marcianus.* It is appropriate that a master whose slave has suffered an aggravated affront can sue for this on the action set forth in the Perpetual Edict, where the measure of damages is also described in clear words.

Written October 18, in the consulship of the Caesars (294).

[9] *The same Augusti and Caesars to Nonna.* There is no doubt that those who have called free persons slaves for the purpose of defaming them can be sued for affront.

Written November 26, at Nicomedia, in the consulship of the Caesars (294).

[10] *The same Augusti and Caesars to Paulus.* If, to be sure, Zenodorus called your grandmother a slave of the town of Comana for the purpose of defaming her and (then) desisted, he can be sued immediately on an action for affront. For if he persists in the case while possessing the opportunity of launching a suit (to prove her slave status), it is appropriate that the suit (on affront) be delayed and then finally that he be sued if the woman has been declared not to be a slave.

Written December 18, at Nicomedia, in the consulship of the Caesars (294).

[11] *Emperor Zeno Augustus to the* vir illustris *Alexander.* If at any time an action for affront, which the ancient jurists (*veteris iuris auctores*) number among the private delicts, happens to be raised by any *viri illustres* whatsoever, whether on active (military) service or not, (or) by their wives, by their male or female children obviously while their *illustres* fathers or husbands are still living, or in case (such) a criminal accusation happens to be brought against any person of this kind, We decree that those very persons, to be sure, who (want to) bring suit for affront, shall make a formal application and faithfully respect all the other aspects of customary procedure in cases of this kind. (We decree) moreover that it shall be allowed to an *illustris* prosecutor or defendant, to his wife, to their children whether male or female, provided again in the latter

procuratorem criminaliter suscipere vel movere, sententiam iudice contra eum qui procuratorem dederit, etsi ipse non adesset[xvii] iudiciis nec causam per procuratorem diceret, legibus prolaturo: ita tamen, ut nullus alius idem sibi audeat vindicare vel a nostro numine postulare: sed in ceteris mos iudiciorum qui hactenus obtinuit et in posterum servetur intactus.

D. v non. Nov. Constantinopoli Illo vc. cons.

XXXVI De Famosis Libellis

[1] Πᾶς ὁ εὑρίσκων φλυαρίαν ἢ ἐσφραγισμένην ἢ ἀσφράγιστον καὶ μὴ παραχρῆμα καίων ἀλλ' ἀναγινώσκων ὑποκείσθω τῇ τιμωρίᾳ, ἥτινι ὑπόκειται καὶ ὁ συντεθεικὼς τὴν φλυαρίαν.

[2] *Impp. Valentinianus et Valens AA. edictum.* **pr.** Si quis famosum libellum sive domi sive in publico vel quocumque loco ignarus reppererit, aut corrumpat, priusquam alter inveniat, aut nulli confiteatur inventum. **1.** Sin vero non statim easdem chartulas vel corruperit vel igni consumpserit, sed vim earum manifestaverit, sciat se quasi auctorem huiusmodi delicti capitali sententia subiugandum.

2. Sane si quis devotionis suae ac salutis publicae custodiam gerit, nomen suum profiteatur et ea, quae per famosum persequenda putavit, ore proprio edicat, ita ut absque ulla trepidatione accedat, sciens, quod, si adsertionibus veri fides fuerit opitulata, laudem maximam ac praemium a nostra clementia consequetur. **3.** Sin vero minime haec vera ostenderit, capitali poena plectetur. huiusmodi autem libellus alterius opinionem non laedat.

D. XIIII k. Mart. Constantinopoli Valentiniano et Valente AA. conss.

[xvii] ac si ipse adesset

case that a daughter's *illustris* father is still alive, to respond to or initiate a suit for affront on a criminal basis in any appropriate court whatsoever through a procurator. The judge shall pronounce sentence in accordance with the laws against a person who has appointed a procurator, as if this party himself had been present in court and did not make a case through a procurator. This (shall happen) in such a way, however, that no other person shall dare to claim this same privilege for him- or herself or to petition for this from Our Holiness. As to all other persons, the judicial practice which has obtained up to this point shall also be maintained unchanged in future.

Given November 1, at Constantinople, in the consulship of the vir clarissimus *Illus (478).*

Thirty-Sixth Title Defamatory Publications

[1] Whoever discovers a slanderous publication, signed or unsigned, and does not immediately burn it, but reads it, shall be liable to the same penalty as the person who composed it.[179]

[2][180] *Emperors* VALENTINIAN *and* VALENS *Augusti; an Edict.* **pr.** If someone unknowingly discovers a defamatory publication either at home, in public, or in any place at all, he shall either destroy it before another person comes across it or communicate to no one else what he has found. **1.** But if, however, he does not immediately efface the document or destroy it by burning it, but discloses the sense of what it contains, let this person know that he shall be subjected to a capital sentence (*capitalis sententia*) as though he were the author of this kind of offense.

2. Indeed, if someone (who writes a defamatory publication) has a concern for his own self-preservation and the public safety, he shall declare his own name and announce personally those things that he thought should be pursued through a defamatory publication, so that he may approach, without any fear, knowing that, if the actual truth supports the allegations, he will receive the greatest praise, as well as a reward from Our Clemency. **3.** But if, however, he does not at all prove these things (he has alleged) to be true, he will be afflicted with capital punishment (*capitalis poena*). Moreover, a publication of this kind shall not harm the social reputation (*opinio*) of another person.

Given February 16, at Constantinople, in the consulship of Valentinian and Valens Augusti (365).

[179] See Bas. 60.63.1.

[180] = (in part, with changes) C.Th. 9.34.7 (the *principium* derives from C.Th. 9.34.9, dating to January 19, 386).

XXXVII De Abigeis

[1] *Impp. Arcadius et Honorius AA. Pasiphilo.* Abacti animalis accusatio non solum cum inscriptionibus, sed etiam sine ea observatione proponitur.

D. VIII k. Ian. Mediolani Olybrio et Probino conss.

XXXVIII De Nili Aggeribus Non Rumpendis

[1] *Impp. Honorius et Theodosius AA. Anthemio pp.* Si quis posthac per Aegyptum intra duodecimum cubitum fluminis Nili ulla fluenta de propriis ac vetustis usibus praeter fas praeterque morem antiquitatis usurpaverit, flammis eo loco consumatur, in quo vetustatis reverentiam et propemodum ipsius imperii appetierit securitatem: consciis et consortibus eius deportatione constringendis, ita ut numquam supplicandi eis vel recipiendi civitatem vel dignitatem vel substantiam licentia tribuatur.

D. X k. Oct. Constantinopoli Honorio VIII et Theodosio III AA. conss.

XXXVIIII De His Qui Latrones vel in Aliis Criminibus Reos Occultaverint

[1] *Imppp. Valentinianus Valens et Gratianus AAA. Simplicio vicario.* pr. Eos, qui se cum alieni criminis reo occultando eum sociarunt, par ipsos et reos poena expectet. 1. Et latrones quisquis sciens susceperit vel offerre iudiciis supersederit, supplicio corporali aut dispendio facultatum pro qualitate personae et iudicis aestimatione plectatur.

PP. Romae X k. April. Gratiano A. III et Equitio conss.

Thirty-Seventh Title Cattle Rustlers[181]

[1][182] *Emperors* Arcadius *and* Honorius *Augusti to Pasiphilus.* A prosecution for the rustling of an animal moves forward not only through a formal accusation, but also without this usage.

Given December 25, at Milan, in the consulship of Olybrius and Probinus (395).

Thirty-Eighth Title Levees on the Nile Shall Not Be Burst

[1][183] *Emperors* Honorius *and* Theodosius *Augusti to Anthemius, Praetorian Prefect.* If anyone in Egypt hereafter diverts any flow of water, within 12 cubits (a little over 5.3 meters) of the Nile, from its particular and long-term uses in violation of right (*fas*) and ancient custom, that person shall be consumed by flames on the spot where he made an assault on the respect for the past and very nearly the safety of the Empire itself. Those who are complicit in knowledge and accomplices in the deed shall be punished with capital exile (*deportatio*), in order that they never enjoy the possibility of petitioning for or receiving their citizenship, rank, or property.

Given September 22, at Constantinople, in the consulship of Honorius, for the eighth time, and Theodosius, for the third time, Augusti (409).

Thirty-Ninth Title Those Who Conceal Bandits and Persons Guilty of Other Criminal Offenses[184]

[1] *Emperors* Valentinian, Valens, *and* Gratian *Augusti to Simplicius, Vicar.* **pr.**[185] A punishment equal to that of the guilty parties themselves shall await those who by hiding him have associated themselves with the culprit of a crime with which they were not involved. **1.**[186] And anyone who knowingly takes in bandits or omits to turn them over to the courts shall be punished with corporal punishment or confiscation of property, in accordance with their personal status and the assessment of the judge.

Posted March 23, at Rome, in the consulship of Gratian Augustus, for the third time, and Equitius (374).

[181] See D. 47.14.
[182] = (with changes) C.Th. 2.1.8.1. Combine with C. 8.4.8, 9.2.16. Seeck dates to January 6, 395.
[183] = (with minor changes) C.Th. 9.32.1.
[184] See D. 47.16.
[185] Pr. = (with minor changes) C.Th. 9.29.1.
[186] 1 = (in part, with minor changes) C.Th. 9.29.2, which adds Theodosius I as emperor in place of Valens (and by implication Valentinian II in place of I) and dates to February 27, 383 or 391.

[2] *Imp. Marcianus A. Palladio pp.* **pr.** Si qui latrones seu aliis criminibus obnoxii in possessione degunt seu latitant, dominus possessionis, si praesto est, aut procuratores, si dominus abest, seu primates possessionis ultro eos offerant aut, si scientes hoc sponte non fecerint, conveniantur a civili officio, ut tradant provinciali iudicio eos qui requiruntur, prout iuris est sub examine iudicis arguendos et poenas post documenta congruas subituros. si vero exhibere eos domini vel procuratores aut primates possessionis distulerint, tunc ad detinendos eos a rectore provinciae omnia civilia dirigantur auxilia.

1. Si autem propter multitudinem forte eorum, qui in praedio sunt, civile adminiculum sufficere non posse constiterit et memorati audaces exsecutoribus obiecerint manus vel alias parere distulerint, tunc iudex provinciae memor periculi sui a viro devoto tribuno seu primatibus militum qui in locis sunt auxilium postulet, ut per militarem manum correpti accusati sine damno atque laesione cuiuslibet legibus offerantur et convicti poenas subeant competentes: non ignaro iudice, quod, si adversus innocentes vel ob aliam causam praeter latronum vel aliorum nocentium investigationem militare auxilium postulaverit aut dispendiis adfici provinciales concesserit, commotione severissima, prout tua celsitudo iudicaverit, ferietur. **1a.** Tribuni etiam seu primates numerorum, qui in locis sunt, admoniti per litteras iudicis si adminiculum militare praebere noluerint, aut si ab ipsis militibus damna provincialibus inflicta fuerint, et damna et laesiones restituent et acerrima condemnatione pro arbitrio virorum illustrium magistrorum militum ferientur.

2. Domini etiam praediorum seu procuratores vel primates possessionum impunes non manebunt, si praesentes et scientes ultro non obtulerint nocentes vel admoniti eos exhibere distulerint: nam dominus quidem possessionis dominio privabitur, procurator vero seu primates perpetuo exilio subiacebunt. ipsi quoque procuratori vel domino vel primatibus possessionis, si se ad comprimendam multitudinem rusticanorum sufficere non posse firmaverint et id provinciali iudicio palam fecerint, militare auxilium rector provinciae a tribuno vel primatibus numeri faciet dari, si civilia sufficere non posse perspexerit.

[2] *Emperor* M*ARCIAN* *Augustus to Palladius, Praetorian Prefect.* pr. If any bandits or those guilty of other criminal offenses live (openly) or hide out on a landed estate (*possessio*), the owner of the property, if present, or his procurators, if the owner is absent, or the overseers of the property shall turn them over of their own accord, or, if they knowingly do not do this of their own accord, they shall be summoned by the civil administrative staff so that they surrender those being sought to the provincial governor's court in order that, in accordance with the law, they shall be accused in a trial before a judge and suffer appropriate punishment following proof. But if the owners, procurators, or overseers of the property delay in producing them, then all civil assistance shall be directed by the governor of the province toward securing their detention.

1. If, however, on account of the numbers perchance of those who are on the property, the civil administration turns out to be inadequate, and the aforementioned, in their audacity, lay hands on those carrying out the orders of the civil authority or otherwise fail to obey, then the judge (governor) of the province, mindful of the danger to himself, shall demand assistance from the tribune appointed for this purpose or from the military commanders stationed in that place, in order that the accused shall be seized by military force without loss or damage to anyone at all and be handed over to the laws. Once convicted, they shall suffer the appropriate penalties. The judge shall not be unaware of the fact that if he summons military assistance against innocent parties or for any other reason aside from an enquiry into bandits or other guilty persons or allows the provincials to suffer financial loss, he will be struck with a very severe blow, in accordance with the judgment of your Highness. 1a. If, as well, the tribunes or the commanders of the military units stationed in that place, once instructed by a letter from the judge, refuse to furnish military assistance, or if loss is inflicted upon the provincials by the soldiers themselves, they will make good the loss and damage and will suffer a very harsh penalty to be decided by the *viri illustres* Masters of Soldiers.

2. Also the owners of the properties, their procurators, and the overseers of these properties will not remain unpunished if, being present and in the know, they do not of their own accord turn over the guilty or, when exhorted to do so, they fail to produce them. For the owner, certainly, will be deprived of title to his property, while the procurators and the overseers will be liable to permanent exile (*perpetuum exilium*). If, too, they affirm that they lack sufficient force to restrain the large number of peasants (*rusticani*) and make this clear to the provincial court, the governor of the province, if he discerns that civil assistance cannot suffice, will see to it that military assistance is provided by the tribune or the unit commanders to the procurator, owner, or overseers of the property themselves.

3. Si vero post exhibitionem eorum qui accusantur innocentes eos esse et nihil criminis admisisse patuerit, accusatores poenam quae in calumniatores exercenda est subire cogantur. exemplo autem grave est sic latronem requirere, ut innocentibus periculum fiat.

D. XII k. Ian. Constantinopoli Marciano A. cons.

XXXX De Requirendis

[1] *Imp. Antoninus A. Rustico.* **pr.** Cum absenti reo gravia crimina intentantur, sententia festinari non solet, sed adnotari, ut requiratur, non utique ad poenam, sed ut potestas ei sit purgandi se, si potuerit. 1. Postquam vero requirendus factus intra annum redierit, si se crimine purgaverit, res arbitrio iudicis signatas recipiat: sin vero intra id tempus reversus post intimationem suam fuerit defunctus, etsi necdum se purgaverit, ad heredes proprios res transmittit.

D. Gentiano et Basso conss.

[2] *Imp. Constantinus A. ad Ianuarium.* Quicumque ex eo die, quo reus fuerit in iudicio petitus, intra anni spatium noluerit adesse iudicio, res eius fisco vindicentur, et si postea repertus nocens fuerit deprehensus, saeviori sententiae subiugetur. sed et si argumentis evidentibus et probatione dilucida innocentiam suam purgare suffecerit, nihilo minus facultates eius penes fiscum remaneant.

D. id. Ian. acc. V k. Aug. Corintho Constantino A. V et Licinio C. conss.

[3] *Impp. Honorius et Theodosius AA. Palladio pp.* In pecuniariis causis edictum contra latentem propositum existimationem eius non laedit. criminalis vero programmatis tenor hanc tantum ferat de iure

3. If, however, it emerges after the production of those accused that they are innocent and have committed no crime, the accusers shall be compelled to suffer the penalty that is to be inflicted on those guilty of malicious prosecution. Moreover, it is a bad precedent to seek out a bandit in such a way as to expose the innocent to danger.

Given December 21, at Constantinople, in the consulship of Marcian Augustus (451).

Fortieth Title Wanted Persons[187]

[1] *Emperor* ANTONINUS *Augustus to Rusticus.* **pr.** When criminal charges of a serious nature are raised against a defendant who is absent, the usual practice is not to rush to judgment, but to make an official notation that he be sought out, not precisely for sentencing, but in order that the defendant have the opportunity of clearing himself, if possible. **1.** In fact, after the person who is registered as wanted returns within a year, if he clears himself, he shall receive his property that had been under seal, at the discretion of the judge. But if, however, he returns within this time period and gives notice (of his return), and then dies, even if he has not cleared himself, the property passes to his own heirs.

Given in the consulship of Gentianus and Bassus (211).

[2][188] *Emperor* CONSTANTINE *Augustus to Ianuarius.*[189] Whoever refuses to be present in court within a year from the time when he is cited as a criminal defendant before the court, shall have his property claimed by the Treasury, and if afterwards the defendant is located and found guilty, he shall be subjected to a more severe sentence. But even if he succeeds, by manifest proofs and a clear demonstration of the evidence, in showing his innocence, his property shall remain nonetheless with the Treasury.

Given January 13 and received July 28, at Corinth, in the consulship of Constantine Augustus, for the fifth time, and Licinius Caesar (319).

[3][190] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Palladius, Praetorian Prefect.* In civil cases, the Edict promulgated against defendants concealing themselves does not compromise their reputation (*existimatio*; i.e., does not inflict legal infamy). But the sense of a criminal declaration (*criminale*

[187] See D. 48.17.
[188] = C.Th. 9.1.2.
[189] The addressee is more likely Januarinus: Haenel.
[190] = (in part, with changes) C.Th. 10.10.29. Combine with C. 10.1.10, 10.10.4; C.Th. 4.15.1.

censuram, ut inter reos adnotati non iam patrimonium debeat transferre, sed famae existimationem laedere.

D. VIII id. Iul. Ravennae Eustathio et Agricola conss.

XXXXI De Quaestionibus

[1] *Impp. Severus et Antoninus AA. Spicio Antigono.* **pr.** Quaestionem de servis contra dominos haberi non oportet, exceptis adulterii criminibus, item fraudati census accusationibus et crimine maiestatis, quod ad salutem principis pertinet. **1.** In ceteris autem, quamquam ea, quae servus contra dominum dixit, iudicaturi sententiam formare non debeant, tamen si aliis quoque probationibus fides veritatis investigetur, praescriptionis invidia evanescit. **2.** In pecuniariis vero causis nec inopia probationum servos contra dominum interrogari posse manifestum est.

PP. k. Ian. Dextro et Prisco conss.

[2] *Idem AA. Catulo.* Insolitum est et grave exemplo audiri servos adversus tutores vel matrem dominorum suorum, nisi tutelae agatur.

PP. III id. Sept. Cilone et Libone conss.

[3] *Imp. Antoninus A. cum cognitionaliter audisset, dixit:* Primum servi alieni interrogabuntur. si praestita fuerint ex tanto scelere argumenta, ut videantur accedere ad verisimilia causae crimina, ipsa quoque mulier torquebitur: neque enim aegre feret, si torqueatur, quae venenis viscera hominis extinxit.

PP. VII k. April. Sabino et Anullino conss.

programma) shall bring this legal sanction to bear only in such a way that it should not at this point transfer (to the Treasury) property of the person registered among criminal defendants, but rather harm his reputation (*famae existimatio*; i.e., inflict legal infamy).

Given July 8, at Ravenna, in the consulship of Eustathius and Agricola (421).

Forty-First Title Judicial Examination Under Torture[191]

[1][192] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Spicius Antigonus.* **pr.** Judicial examination under torture of slaves ought not to be conducted against their masters, aside from charges of adultery, accusations of tax fraud, and a prosecution for treason (*maiestas*), which concerns the safety of the Emperor. **1.** As for the rest, however, although what the slave has said against the master ought not to shape the decision of him who is going to deliver a sentence, nevertheless, if the foundation for the truth is also brought to light through other evidence, the ill will associated with the exclusion (*praescriptio*) fails. **2.** But it is obvious that in civil cases slaves cannot be questioned to the detriment of their masters even where proof is lacking.

Posted January 1, in the consulship of Dexter and Priscus (196).

[2] *The same Augusti to Catulus.* It is unheard of and sets a bad precedent for slaves to be heard against the *tutores* or mother of their masters, except in a suit on tutelage.

Posted September 11, in the consulship of Cilo and Libo (204).

[3] *Emperor* ANTONINUS *Augustus, when he had held a judicial hearing, declared:* First, the slaves belonging to someone else (other than the defendant) will be questioned. If (in this way) proofs are furnished of such great wickedness that the proceedings seem to draw close to (the disclosure of) likely crimes, the woman herself will also be subjected to judicial examination under torture. For she will not take it badly if she, who ended someone's life through poison, is tortured.

Posted March 26, in the consulship of Sabinus and Anullinus (216).

[191] See D. 48.18. The references in this title to the torture and examination of slaves amount to the same thing: the judicial examination under torture of slaves (*quaestio servorum*). Blume: "Their testimony was normally taken by torture, and in fact it appears that it could not be taken in any other form." There are also instances where torture is invoked as a penalty or as a means of examining free persons judicially (below).

[192] See Ulp. D. 48.1.16.

[4] *Pars ex rescripto imp. Antonini A.* Sicuti convictis confessisque ad societatem scelerum vocantibus eos, a quibus apprehensi custoditive sunt, facile credi non oportet, ita, si evidentibus rationibus post commissum communiter facinus ad evitandam de se sententiam id fecisse fuerint probati, publicae vindictae non sunt subtrahendi.

PP. v k. April. Sabino et Anullino conss.

[5] *Imp. Alexander A. Respecto.* Nec si mors testatoris vindicanda est, quaestioni indiscrete subiciuntur hi, qui libertatem supremo iudicio acceperunt.

PP. vi id. Mart. Iuliano et *Crispino conss.*

[6] *Imp. Gordianus A. Herodiano.* Pridem placuit domestica servorum seu libertorum propriorum vel maternorum interrogatione in causis ad dominos vel patronos pertinentibus abstinendum esse, ut neque pro his neque adversus eos in capitalibus vel pecuniariis quaestionibus veritatis vim obtinere possit, quod in confessionem ab eis fuerit deductum.

PP. vii id. Mai. Sabino et Venusto conss.

[7] *Impp. Diocletianus et Maximianus AA. Urbanae.* Servos, qui proprii indubitate iuris tui probabuntur, ad interrogationem nec offerente te produci sineremus: tantum abest, ut et invita te contra dominam vocem rumpere cogantur.

PP. k. Nov. Maximo ii et Aquilino conss.

[8] *Idem AA. ad Sallustianum praesidem.* pr. Milites neque tormentis neque plebeiorum poenis in causis criminum subiungi concedimus, etiamsi non emeritis stipendiis videantur esse dimissi, exceptis scilicet his, qui ignominiose sunt soluti. quod et in filiis militum et veteranorum servabitur.

1. Oportet autem iudices nec in his criminibus, quae publicorum iudiciorum sunt, in investigatione veritatis a tormentis initium sumere, sed

[4] *Part of a Rescript by the same Augustus.* Just as those who have confessed and been convicted ought not to be readily believed when they name as their accomplices those who have arrested and detained them, so, if the latter are shown by clear proofs to have acted thus after the joint commission of a crime in order to escape punishment for themselves, they shall not be exempted from the infliction of public vengeance.

Posted March 28, in the consulship of Sabinus and Anullinus (216).[193]

[5] *Emperor* ALEXANDER *Augustus to Respectus.* Not even if the death of the testator must be avenged are those who received their freedom in the testament indiscriminately subjected to judicial examination under torture.

Posted March 10, in the consulship of Julian and Crispinus (224).

[6] *Emperor* GORDIAN *Augustus to Herodianus.* It has long been the rule that, in cases relating to masters or patrons, one should abstain from the judicial examination under torture of their own slaves or freed-persons or those of their mother, so that what is drawn out of them by way of confession (during such examination) can furnish decisive evidence neither for or against masters and patrons in both civil and criminal trials.

Posted May 9, in the consulship of Sabinus and Venustus (240).[194]

[7] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Urbana.* We would not permit slaves, who are shown to be yours by undoubted right, to be produced for questioning even if you were to offer this. So much the less, even against your wishes, shall they be compelled to raise their voices against their owner.

Posted November 1, in the consulship of Maximus, for the second time, and Aquilinus (286).

[8] *The same Augusti to Sallustianus, Governor.* pr. We permit soldiers to be subjected neither to (judicial examination under) torture nor to the penalties inflicted upon common people (*plebeii*) in criminal cases, even if they are deemed to have been discharged without having served a full term of service, unless, of course, they have been dishonorably discharged. This rule will also be observed for the children of soldiers and of veterans.

1. Moreover, judges, ought not, even in those criminal cases which are defined as public (*iudicia publica*), to begin their investigation of the truth with

[193] Blume: "See 9.2.17.1, which, in so far as confessed criminals are concerned, seems to be inconsistent with this law, unless it means, as it probably does, that all proof of the crime must come from other sources than the accusers."

[194] Other constitutions show that this was the second consulship for Sabinus.

argumentis primum verisimilibus probabilibusque uti. 2. Et si his veluti certis indiciis ducti investigandae veritatis gratia ad tormenta putaverint esse veniendum, tunc id demum facere debebunt, si personarum condicio pateretur. hac enim ratione etiam universi provinciales nostri fructum ingenitae nobis benevolentiae consequentur.

PP. Sine die et consule.

[9] *Idem AA. ad Charisium praesidem Syriae.* Super statu ingenuitatis per omnia interrogationum et quaestionum vestigia decurrendum est, ne alieni forte sordidae stirpis splendidis et ingenuis natalibus audeant subrogari, vel propria ac debita per compositam quaestionem quibus competit successio denegetur.

D. VI id. Mai. Hemesa ipsis IIII et III AA. conss.

[10] *Idem AA. Ptolemaeo.* Cum testamentum falsum esse proponas, ad illuminandam veritatem servos hereditarios, etsi libertas eis ab eo qui se heredem esse adfirmat praestita est, etiam per tormenta interrogari constitutionibus principum est permissum.

PP. VI k. Sept. ipsis IIII et III AA. conss.

[11] *Idem AA. Boetho.* pr. Divo Marco placuit eminentissimorum quidem nec non etiam perfectissimorum virorum usque ad pronepotes liberos plebeiorum poenis vel quaestionibus non subici, si tamen propioris gradus liberos, per quos id privilegium ad ulteriorem gradum transgreditur, nulla violati pudoris macula adspergit. 1. In decurionibus autem et filiis eorum hoc observari vir prudentissimus Domitius Ulpianus in publicarum disputationum libris ad perennem scientiae memoriam refert.

PP. V k. Dec. ipsis IIII et III AA. conss.

tortures, but ought first to rely on likely and probable evidence (of another sort). 2. And if, led by this, as it were, definite evidence, they think that they should resort to tortures for the sake of investigating the truth, then in the final analysis they ought to do this, if the status of the parties permits. For in this way too all Our provincials will reap the fruit of Our innate benevolence.

Posted without day or year.

[9] *The same Augusti to Charisius, Governor of Syria.* Resort shall be had, in an enquiry over free-born status (in a dispute over an inheritance), to all means of accumulating evidence through questioning of witnesses and judicial examination under torture, so that non-kinsmen, perhaps of low birth, do not dare to arrogate to themselves the benefits of high status and free birth, or a right to succession that is proper and owed is not denied, because of a contrived judicial investigation, to those entitled to it.

Given May 10, at Emesa, in the consulship of the Augusti, for the fourth and third time, respectively (290).

[10] *The same Augusti to Ptolemaeus.* Since you allege that the testament is forged, it is permitted by imperial enactments (*constitutiones principum*) that, for the purpose of shedding light on the truth, the slaves in the inheritance, even if they have been granted freedom by the person who claims to be heir, shall be examined judicially even under torture.

Posted August 27, in the consulship of the Augusti, for the fourth and third time, respectively (290).

[11] *The same Augusti to Boethus.* pr. A decision was made by the deified Marcus (Aurelius) that the descendants of men with the rank of *eminentissimus*, to be sure, as well as that of *perfectissimus*, down to great-grandchildren, shall not be subjected to the penalties or judicial examination under torture inflicted upon the common people (*plebeii*), provided that, however, the descendants of nearer degree, through whom this privilege is transmitted, are not stained by any blot of an outraged sense of sexual shame (*violati pudoris macula*). 1. Regarding decurions and their children, moreover, that most learned man Domitius Ulpian in his work on *Public Disputations*[195] holds that this rule be observed, redounding to the eternal commemoration of knowledge.

Posted November 27, in the consulship of the Augusti, for the fourth and third time, respectively (290).

[195] See Ulp. D. 50.2.2.2.

[12] *Idem AA. Aspro.* Quotiens de dominio mancipiorum tractatur, si aliis probationibus veritas illuminari non possit, de se ipsa esse cum tormentis interroganda iuris auctores probant.

PP. III id. Mai. Sirmi Tiberiano et Dione conss.

[13] *Idem AA. et CC. Philippae.* Hoc, quod placet, si de hereditate quaeratur, hereditarios servos interrogari, tibi opitulari non potest. ibi enim, dum de dominio incertum est, ad quem ex hereditate pertineat, merito per interrogationem hereditarii servi ad veritatis indaginem perveniatur. tu autem adseverando servum communem esse non dubitas portionem ad eum pertinere, contra quem interrogari eum cupis: quae res quaestionem ab eo haberi non permittit, cum nec communis servus adversus dominum, qui non occidisse socium suum dicatur, interrogari possit.

S. III k. Mai. Heracliae AA. conss.

[14] *Idem AA. et CC. Constantio.* Servos non solum pro dominis, sub quorum dominio sunt constituti, sed nec pro his quorum antea fuerunt interrogari posse constat.

S. VIII id. April. CC. conss.

[15] *Idem AA. et CC. Maximo.* Interrogari servos de facto suo non solum in criminali causa, sed etiam in pecuniaria (veluti quando per eum depositi vel commodati nomine vel in aliis causis legibus cognitis res aliis praestitae sunt) posse non ambigitur.

S. V id. April. CC. conss.

[16] *Imppp. Valentinianus Valens et Gratianus AAA. ad Antonium pp. Galliarum.* **pr.** Decuriones sive ob alienum sive ob suum debitum exsortes omnino earum volumus esse poenarum, quas fidiculae et tormenta constituunt. quod quidem capitale iudici erit, si in contumeliam ordinis exitiumque temptetur. **1.** Maiestatis tantummodo reos et quae nefanda dictu sunt conscios aut molientes ex ordine municipali maneat tam cruenta condicio.

D. XV k. Oct. Treviris Valente V et Valentiniano AA. conss.

[12] *The same Augusti to Asper.* Legal experts (*iuris auctores*) hold that, whenever there is a question over the ownership of slaves, if the truth cannot be clarified by other proofs, they shall be subjected to judicial examination under torture about their own situation.

Posted May 13, at Sirmium, in the consulship of Tiberianus and Dio (291).

[13] *The same Augusti and the Caesars to Philippa.* The rule that, if an inheritance is disputed, the slaves in the estate are subjected to judicial examination (under torture), cannot help you. For (only) in cases where, regarding ownership, it is uncertain to whom a slave belongs through inheritance, shall it be right to proceed to a search for the truth through the examination of a slave in the inheritance. But you, in asserting that the slave in question is owned in common, have no doubt that a portion of this slave belongs to him against whom you wish the slave to be examined. This fact disallows such a procedure in this case since not even a jointly-owned slave, who is not said to have killed the co-owner, can be subjected to judicial examination (under torture).

Written April 29, at Heraclea, in the consulship of the Augusti (293).

[14] *The same Augusti and Caesars to Constantius.* It is settled law that slaves cannot be judicially examined under torture on behalf of their current nor even of their former masters.

Written April 6, in the consulship of the Caesars (294).

[15] *The same Augusti and Caesars to Maximus.* There is no doubt that slaves can be judicially examined under torture about their own behavior not only in criminal cases but also in civil ones – for example, when property is given by them to others in connection with a deposit, loan, or in other situations recognized by the laws.

Written April 9, in the consulship of the Caesars (294).

[16][196] *Emperors* V*ALENTINIAN*, V*ALENS*, *and* G*RATIAN Augusti to Antonius, Praetorian Prefect of the Gallic Provinces.* **pr.** We wish that decurions be entirely free from punishments of cords or racks on account of either someone else's debt or their own. This will indeed be the source of a capital charge (*capitale*) against a judge, if he should attempt it to the disrespect and destruction of the order (of decurions). **1.** Such a bloody procedure shall be in store only for those of the municipal order (of decurions) who are guilty, either as accomplices or principals, of treason (*maiestas*) or of unspeakable practices.

Given September 17, at Trier, in the consulship of Valens, for the fifth time, and Valentinian, Augusti (376).

[196] = (in part) C.Th. 9.35.2.

[17] *Impp. Arcadius et Honorius AA. Messalae pp.* **pr.** Nihil sibi deflectens a iustitia indignatio cognitorum, nihil venalis exigentium terror in eas, quae aut innocentia securae aut principalis[xviii] sunt honore munitae, intellegat licere personas ad inferendas iniurias corporales. habeat hanc mercedem laboris multorum munerum testimoniis commendata devotio. **1.** Idem est et si munia decurionatus quis deposuit: nam et ipse propter pristinam dignitatem quaestionem non patitur.

D. XII k. Sept. Theodoro cons.

[18] *Imp. Iustinianus A. Demostheni pp.* De tormentis hereditariorum servorum sancimus, nullo discrimine secundum anteriores leges et constitutiones interposito, sive de iure hereditatis aliqua moveatur inter heredes quaestio sive de corporibus tantum hereditariis sive de utroque eorum, servos de corporibus tantum hereditariis interrogari: et licere servos eos tantummodo, qui res regendas detinent, sive in servitute relicti sunt sive libertatem adipisci per ultimam testatoris voluntatem praecepti sunt, in quaestionem rerum hereditariarum deduci et ex his ea quae occultata sunt revelari: prius sacramento super his a nobis statuto praestando.

D. XV k. Oct. Chalcedone Decio vc. cons.

XXXXII De Abolitionibus

[1] *Impp. Diocletianus et Maximianus AA. Paternae.* Praeses provinciae si perspexerit abolitionem ad omnia crimina quae mota sunt pertinentem a se impetratam, ne semel finita instaurentur, intercessione auctoritatis suae prospiciet. supplicatione vero porrecta nutui principali

[xviii] principalitatis

[17][197] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Messala, Praetorian Prefect.* **pr.** While detracting nothing from their commitment to justice, those conducting judicial investigations in their outrage and those exacting payment (of taxes) in the venal terror they inspire shall understand that it is not permitted to inflict corporal injury on those persons who are either protected by their innocence or shielded by the office of leading municipal councilor. (Such) dedication, commended by evidence of many services, shall have this reward for its effort. **1.** The same holds for someone who has laid down his duties as a decurion. For even he does not suffer judicial examination under torture, on account of his former official position.

Given August 21, in the consulship of Theodorus (399).

[18][198] *Emperor* JUSTINIAN *Augustus to Demosthenes, Praetorian Prefect.* Concerning the (judicial examination under) torture of slaves belonging to an inheritance, (but) without making the distinction drawn in earlier statutes (*leges*) and constitutions, We ordain that, whether some dispute arises among the heirs over the right to an inheritance, over just the disposition of individual items in the inheritance, or over both issues, the slaves shall be subjected to judicial examination (under torture) only with respect to items in the inheritance. And (We ordain) that the only slaves who shall be permitted to be subject to examination concerning the property in the estate are those in physical control of the items to be disposed of, whether they remain slaves or have been instructed to gain their freedom through the testator's last wishes, and through them those pieces of property that have been concealed shall be brought to light. Before this happens, the oath that We have established for such matters[199] shall be given.

Given September 17, at Chalcedon, in the consulship of the vir clarissimus *Decius (529).*

Forty-Second Title Dismissals of Prosecution[200]

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Paterna.* If the governor of the province ascertains that he has granted dismissal for all of the charges that had been raised, he will, by interposing his own authority, see to it that, once terminated, they do not resume. But a charge that has been suspended

[197] Pr. = (with changes) C.Th. 9.35.6. Combine with C. 1.54.6, 4.44.17, 10.32.51.
[198] Combine with C. 2.58.1.
[199] C. 2.58.1.1.
[200] See D. 48.16.

praefata abolitione sopitum crimen ab eadem persona renovari potest.
PP. XV k. Dec. Diocletiano III et Maximiano AA. conss.

[2] *Imp. Constantinus A. ad Ianuarinum pu.* **pr.** Abolitio praesentibus partibus causa cognita non a principe, sed a competenti iudice postulari debet, id est si per errorem seu temeritatem seu calorem ad accusationem prosiluerit: hoc enim accusator explanans abolitioni locum faciet. **1.** Sin autem per depectionem vel pecuniis a reo corruptus ad postulandam abolitionem venit, redemptae miserationis vox minime admittatur, sed adversus nocentem reum inquisitione facta poena competens exseratur. **2.** Hi autem, qui suas suorumque iniurias defendunt et qui cognatos suos in accusationem deduxerunt, omnimodo abolitionem petere non prohibentur.
D. VI k. Dec. Serdicae Constantino A. V et Licinio C. conss.

[3] *Imppp. Valentinianus Valens et Gratianus AAA. ad Probum pp.* **pr.** Fallaciter incusantibus accusationis abolitio non dabitur. **1.** Sin autem sincera mente accusationem instituerit et reus aliquid iniuriae inscriptionis illatae toleraverit, id est si vel carcerem sustinuerit vel tormenta vel verbera vel catenas, abolitio non petetur, nisi forte ille qui haec passus est suum consensum ad petendam abolitionem accommodavit. **2.** Quando autem reus nihil tale passus est, postquam fuerit officii custodiae traditus, intra dies triginta accusatori petenti, etiam invito reo, dari permittitur. post hoc vero tempus, nisi reus consentiat, censemus non esse tribuendam.

3. Quod si ingenuorum, licet plebeiorum, qui conscii vel participes criminum non erant, testimonii gratia corpora fuerint lacessita verberibus tormentisque vexata, abolitionem etiam duarum partium

through the aforesaid dismissal can be renewed by the same person by permission of the Emperor.

Posted November 17, in the consulship of Diocletian, for the third time, and Maximian Augusti (287).

[2][201] *Emperor* CONSTANTINE *Augustus to Januarinus, City Prefect.* **pr.** Dismissal of prosecution ought to be requested judicially not from the Emperor but from the appropriate judge in the presence of (both) parties and upon the holding of a hearing, that is, if (the accuser) has leapt forward to prosecute through mistake, rashness, or anger. For in making this kind of explanation, the prosecutor will provide a rationale for a dismissal. **1.** But if, however, he comes to request a dismissal because he has made a sordid agreement or he is corrupted by payment from the defendant, the voice of a purchased pity shall not at all be heard, but, after a judicial enquiry has been made, an appropriate punishment shall be visited upon the guilty defendant. **2.** Those, however, who prosecute wrongs done to themselves or their own family members and those who have accused their own blood relations (*cognati*) are not at all prevented from seeking a dismissal.

Given November 26, at Serdica, in the consulship of Constantine Augustus, for the fifth time, and Licinius Caesar (319).

[3][202] *Emperors* VALENTINIAN, VALENS, *and* GRATIAN *Augusti to Probus, Praetorian Prefect.* **pr.** Dismissal of prosecution will not be granted to those making false accusations. **1.** But if, however, someone has begun a prosecution with sincere intentions, and the defendant has sustained some form of injury from the accusation directed at him or her, for example, has endured prison, torture, beatings, or chains, dismissal will not be sought unless by chance the person who has suffered these things has granted consent for the application of dismissal. **2.** When, however, the defendant has suffered no such thing from the point he or she has been handed over to the custody of the administrative staff, if the accuser applies within thirty days, a dismissal is allowed, even if the defendant is unwilling. After this time period has passed, however, We ordain that it shall not be granted unless the defendant agrees.

3. But if, for the purpose of gathering evidence, the bodies of free-born albeit common persons (*plebeii*), who were not complicit or active participants in the crimes, have been abraded by blows or afflicted by torture, We order that dismissal, even when sought with the consent of the two parties, shall be energetically refused by the judge, and that the charge under way,

[201] Pr. and 1 = (with changes) C.Th. 9.37.1, which lacks §2.

[202] Pr. = (in part, with changes) C.Th. 9.37.3 (dating to May 18, 382); 1 and 4 = (with changes) C.Th. 9.37.2; 2 and 3 = (in part, with changes) C.Th. 9.37.4 (dating to January 25, 409).

consensu petitam iubemus vigore iudicis denegari et crimen propositum, cuius examen tormentis iam coeperat, agitari.

4. Sin autem testibus tormenta minime sunt illata, et sic abolitio non dabitur in illis criminibus, ut in violata maiestate aut patria oppugnata vel prodita aut peculatus admisso aut sacramentis desertis, omniaque[xix] quae iuri veteri continentur: in quibus iudex non minus accusatorem ad docenda quae detulit, quam reum ad purganda quae negat debet urguere.

D. prid. id. Oct. Treviris Valentiniano np. et Victore conss.

XXXXIII De Generali Abolitione

[1] *Imp. Antoninus A. Rutiliano consulari Lyciae.* Qui potentatus et vis aliorumque criminum reum fecit, si post abolitionem ex forma solita reorum factam et edicta proposita intra diem statutum repetere supersederit, persequi crimina volens non est audiendus.

PP. VIII k. Mai. Laeto II et Cereale conss.

[2] *Impp. Diocletianus et Maximianus AA. Paulino.* Cum eo tempore, quo indulgentia nostra crimina extinxit, accusatio a te instituta non fuerit, publicae abolitionis praescriptio cessat.

PP. VI id. Febr. Maximo II et Aquilino conss.

[3] *Imppp. Valentinianus Valens et Gratianus AAA. ad senatum.* Indulgentia, patres conscripti, quos liberat notat nec infamiam criminis tollit, sed poenae gratiam facit.

D. XIIII k. Iun. Treviris Gratiano A. II et Probo conss.

[xix] omnibusque

whose basis has already begun to be judicially examined under torture, shall be pursued to its conclusion.

4. But if, however, no tortures at all have been visited upon the witnesses, even so, dismissal will not be granted regarding certain charges, for example, when treason (*maiestas*) has been committed (against the Emperor), the homeland has been attacked or betrayed, public money or property has been embezzled, or soldiers have been unfaithful to their oath, and all (similar charges) embraced in the ancient law (*ius vetus*). In these cases the judge ought no less to compel the accuser to prove what he has alleged, than the defendant to clear him- or herself of what he or she denies.

Given October 14, at Trier, in the consulship of Valentinian, Most Noble Boy, and Victor (369).

Forty-Third Title General Dismissal

[1] *Emperor* ANTONINUS *Augustus to Rutilianus, Consular Governor of Lycia.* A person has accused another of abuse of power (*potentatus*), force (*vis*), and other criminal offenses. If, after a (temporary) dismissal has been granted to the defendants in the usual manner, the accuser omits to renew his stated intentions (to prosecute) within the established time period, should he wish to prosecute these charges he shall not be heard.

Posted April 24, in the consulship of Laetus, for the second time, and Cerealis (215).

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Paulinus.* If, at the time when Our mercy (*indulgentia*) cancelled criminal accusations, you had not (yet) begun your prosecution, the defense (*praescriptio*) of a public dismissal does not hold.

Posted February 8, in the consulship of Maximus, for the second time, and Aquilinus (286).

[3][203] *Emperors* VALENTINIAN, VALENS, *and* GRATIAN *Augusti to the Senate.* A pardon, Conscript Fathers, frees defendants but still stains (their reputation), as it does not remove the crime's legal infamy (*infamia*), but only remits the penalty.

Given May 19, at Trier, in the consulship of Gratian Augustus, for the second time, and Probus (371).

[203] = (in part) C.Th. 9.38.5. Combine with C. 9.16.9.

XXXXIIII Ut intra Certum Tempus Criminalis Quaestio Terminetur

[1] *Imppp. Valentinianus Theodosius et Arcadius AAA. Desiderio vicario.* Quisquis accusator reum in iudicium sub inscriptione detulerit, si intra certum tempus accusationem coeptam persequi supersederit vel, quod est contumacius, ultimo die adesse neglexerit, quarta bonorum omnium parte multatus aculeos consultissimae legis incurrat, scilicet manente infamia, quam veteres iusserant sanctiones.

D. IIII id. Iul. Treviris Arcadio A. et Bautone conss.

[2] *Impp. Honorius et Theodosius AA. Caeciliano pp.* **pr.** Noverint iudices cuilibet culmini honorive praesidentes, necessariis utrique parti, si petantur, dilationibus non negatis praecedentibus scilicet inscriptionibus, intra certum tempus criminales causas limitandas: quo emenso subeat accusator, quia destitit, poenam legibus constitutam, et si persona vilior fuerit, cui damnum famae non sit iniuria, poenam patiatur exilii, nisi forte intra statuti temporis metas consensus partium abolitionem poposcerit. **1.** In iudicum autem debet esse diligentia, ut, si nulla rationabilis a reo vel accusatore dilatio postuletur, urgueant talium causarum notionem non expectatis moris.

D. XII k. Febr. Ravennae Honorio VIII et Theodosio III AA. conss.

[3] *Imp. Iustinianus A. Menae pp.* Criminales causas omnimodo intra duos annos a contestatione litis connumerandos finiri censemus nec ulla occasione ad ampliora produci tempora, sed post bienii excessum minime ulterius lite durante accusatum absolvi, scientibus iudicibus eorumque officiis, quod, si litigatoribus admonentibus ipsi litis introductionem vel examinationem distulerint, poena vicenarum librarum auri ferientur.

D. k. April. Decio vc. cons.

Forty-Fourth Title That a Criminal Trial Be Ended Within a Fixed Period of Time

[1][204] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Desiderius, Vicar.* Whichever accuser brings a defendant into court through formal application, if he fails to conclude within a fixed period the prosecution once it is begun or, what is more insolent, omits to be present on the last day (of the trial), shall encounter the sharp edges of a most provident law through being fined a fourth part of all of his property, obviously with legal infamy (*infamia*) accruing, which the ancient penalties (*veteres sanctiones*) had ordered.

Given July 12, at Trier, in the consulship of Arcadius Augustus and Bauto (385).

[2][205] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Caecilianus, Praetorian Prefect.* **pr.** All presiding judges of whatever rank or official position shall know that, although necessary postponements are granted to either party upon request, obviously, when formal application to prosecute has been made, criminal trials must be restricted to a fixed time period. When this has passed, the prosecutor who has abandoned his accusation shall suffer the penalty established by the laws, and if he is a person of relatively low social status (*vilior*), for whom damage to his reputation (*damnum famae*, i.e., legal infamy) is no real loss, he shall suffer the punishment of capital exile (*exilium*), unless, by chance, a postponement within the limits of the fixed period is requested through mutual agreement of the parties. **1.** It ought to be the responsibility of the judges, however, that if no postponement for good cause is requested by the defense or the prosecution they compel the judicial investigation of such cases to proceed without tolerating delay.

Given January 21, at Ravenna, in the consulship of Honorius, for the eighth time, and Theodosius, for the third time, Augusti (409).

[3] *Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect.* We ordain that criminal cases shall be entirely concluded within two years, to be calculated from joinder of issue, and for no reason be extended over longer periods of time. Instead, after the two-year period has passed, the prosecution shall completely cease and the accused shall be acquitted. Judges and their staffs shall be aware that if, amid complaints of the litigants, they themselves delay the start or the continuation of the trial, they will each be afflicted with a penalty of 20 pounds of gold.

Given April 1, in the consulship of the vir clarissimus *Decius (529).*

[204] = (with minor changes) C.Th. 9.36.1, which gives the fixed time period as a year.

[205] = (in part, with changes) C.Th. 9.36.2, which gives the fixed time period as a year. Combine C. 1.4.9, 1.55.7–9, 4.20.11; C.Th. 9.2.6, 9.31.1, 9.37.4.

XXXXV Ad Senatus Consultum Turpillianum

[1] *Imp. Antoninus A. Anniano.* Is demum in senatus consultum incidisse videtur, qui crimen publici iudicii detulit et causa ordinata, id est inscriptionibus depositis et fideiussore de exercenda lite praestito eoque qui accusatur sub custodia officii facto, non impetrata abolitione ab exsecutione criminis destitit.

[2] *Imp. Gordianus A. Appio.* Si pro eo, qui in crimen subscripsit, fidem tuam adstrinxisti isque destitit et commissa stipulatio est, non ultra quantitatem quam spopondisti obligatus es: eo qui destitit infamia nihilo minus notando et extra ordinem secundum iudicialem motum puniendo.

PP. VI id. Iun. Gordiano A. et Aviola conss.

[3] *Impp. Valerianus et Gallienus AA. Arcadio.* Quamvis eum ordinem scriptura contineat, ut primo abolitio criminis posceretur, tunc de omnibus placitis obtemperaretur, non observantibus tamen adversariis pactorum fidem instaurare accusationem minime potes, a qua ipse destitisti.

PP. prid. non. Iul. Tusco et Basso conss.

[4] *Idem AA. Patrophilo.* Si is, de quo supplicas, contra parentes vestros desertam, ut dicis, accusationem coeperit persequi, praescriptio illi in iudicio praesidis destitutae rei poterit opponi.

PP. prid. non. Mai. Saeculare et Donato conss.

[5] *Impp. Diocletianus et Maximianus AA. et CC. Matronae.* Si femina suam suorumque iniuriam exsequatur, cum ipsa pacto contra vetitum destitisse profiteatur, in senatus consulti Turpilliani poenam eam incidisse certi iuris est.

S. VI non. April. Pisi[xx] *CC. conss.*

[xx] III non. April Sirmi

Forty-Fifth Title The *Senatus Consultum Turpillianum*[206]

[1] *Emperor* ANTONINUS *Augustus to Annianus.* He alone is deemed to have violated the decree of the Senate, who brought a public criminal charge (*crimen iudicii publici*) and gets the case underway, that is, registers a formal application to prosecute, offers a surety for the conduct of the trial, and has the defendant placed in the custody of the administrative staff, but then without obtaining a dismissal (*abolitio*) abandoned prosecution of the charge.

[2] *Emperor* GORDIAN *Augustus to Appius.* If you stood surety for someone who made a formal (i.e., written) application to initiate a criminal prosecution and (then) abandoned the prosecution, and you are (now) bound to pay on the basis of the stipulation you made, you are not obligated beyond the amount for which you stipulated. For the prosecutor who has abandoned the accusation shall be nonetheless marked with legal infamy (*infamia*) and shall be punished moreover in extraordinary cognition (*extra ordinem*) at the behest of the judge.
Posted June 8, in the consulship of Gordian Augustus and Aviola (239).

[3] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Arcadius.* Although the document contains an arrangement that first, the dismissal of the case would be requested, and then, that all the agreements would be carried out, nevertheless, if your opponents have not fulfilled their side of the agreements, you cannot at all renew the prosecution that you have abandoned.
Posted July 6, in the consulship of Tuscus and Bassus (258).

[4] *The same Augusti to Patrophilus.* If the person concerning whom you petition has begun to follow through with a prosecution of your parents that he, as you claim, had abandoned, he can be countered, in the court of the provincial governor, with a defense (*praescriptio*) of an abandoned prosecution.
Posted May 6, in the consulship of Saecularis and Donatus (260).

[5] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Matrona.* If a woman pursues wrongs inflicted upon her and members of her family, and she admits that she has abandoned the prosecution of them after making an agreement forbidden (by law), it is a certain point of law (*certum ius*) that she is liable to the penalty of the *SC Turpillianum.*
Written April 3, at Sirmium, in the consulship of the Caesars (294).

[206] See D. 48.16. The *SC* dates to 61 CE.

[6] *Idem AA. et CC. Luciliano.* In exsecutionibus criminum obtinuisse videtur illos destitisse, qui animum accusationis implendae prorsus deseruerunt. cum igitur aliis ex causis vel simplicitatis ratione necdum te ad finem vindictae pervenisse preces tuae testentur, poteris postposita formidine impedimenti super aliquantulo silentio institutam accusationem secundum leges perferens quam probabis tibi debitam vindictam reportare.

PP. III k. Iul. Diocletiano VI et Maximiano AA. conss.

XXXXVI De Calumniatoribus

[1] *Imp. Alexander A. Sabino.* Calumnia eo tempore coerceri solet, quo de causa praesente accusatore iudicatur. ideoque posteaquam de causa iudicatum est, contra consuetudinem calumniam accusatoris puniri desideras.

[2] *Idem A. Apolloniae.* **pr.** Mater inter eas personas est, quae sine calumniae timore necem filii sui vindicare possunt: idque beneficium senatus consulti et in aliis publicis iudiciis servatum est. **1.** Sed et extraneus heres, qui suspicionem, quam de morte sua habuisse defunctus cavit, exsequitur, hoc nomine a calumnia excusatus est, cum inter voluntariam accusationem et officii necessitatem heredis multum intersit.

PP. VI k. Iul. Iuliano et Crispino conss.

[3] *Idem A. Eumeliano.* Qui non probasse crimen quod intendit pronuntiatur, si calumniae non damnetur, detrimentum existimationis non patitur. non enim, si reus absolutus est, ex eo solo etiam accusator, qui potest iustam habuisse veniendi ad crimen rationem, calumniator credendus est.

[6] *The same Augusti and Caesars to Lucilianus.* It is deemed to have been the rule in prosecuting crimes that those who have absolutely given up their intentions of completing the prosecution are considered to have abandoned it. Since, therefore, your petition claims that for other reasons or out of naiveté you have not yet concluded your quest for vengeance, you will be able to lay aside your concerns of a legal obstacle on account of a minor delay, carry to its conclusion according to the laws the prosecution you have initiated, and gain the vengeance that you will prove is owed to you.

Posted June 29, in the consulship of Diocletian, for the sixth time, and Maximian Augusti (299, 303, or 304).

Forty-Sixth Title Malicious Prosecutors[207]

[1] *Emperor* ALEXANDER *Augustus to Sabinus.* It is the standard operating procedure to punish malicious prosecution at the point when the case is decided, in the presence of the prosecutor. For that reason your request to punish an accuser for malicious prosecution after the case has (already) been decided is contrary to usual practice.

[2] *The same Augustus to Apollonia.* **pr.** A mother ranks among those persons who, without fear of punishment for malicious prosecution, can avenge the death of her child. This privilege of the senatorial decree holds also in other public criminal trials (*publica iudicia*).[208] **1.** But even an outside heir, who follows up the suspicion that the decedent expressed concerning his or her own death, is exempted from a charge of malicious prosecution for this reason, since there is a great difference between a voluntary prosecution and the obligation imposed by an heir's duty.

Posted June 26, in the consulship of Julian and Crispinus (224).

[3] *The same Augustus to Eumelianus.* Whoever is adjudged not to have proven the charge that he has brought, if he is not convicted of malicious prosecution, does not suffer any harm to his reputation (*detrimentum existimationis*, i.e., legal infamy). For if a defendant has been acquitted, it is not for this reason alone that the accuser, who might have had a good reason for coming forward to prosecute, shall be deemed as well to be a malicious prosecutor.

[207] See D. 48.16.

[208] The reference is to the *SC Turpillianum*: C. 9.45.

[4] *Imppp. Carus Carinus et Numerianus AAA. Archelao.* Calumniae poena in paternae mortis accusatione cessat.

PP. XI k. Dec. Caro et Carino AA. conss.

[5] *Impp. Diocletianus et Maximianus AA. Caesio.* Qui calumniatores pronuntiantur, in publicorum dumtaxat iudiciorum quaestionibus, non etiam in liberalibus causis, quae privatas disceptationes continent, periclitari solent.

PP.

[6] *Idem AA. et CC. Domitio.* Dominis servorum per accusatoris calumniam tortorum adversus eum poena dupli lege Iulia providetur.

S. XVI k. Sept. ipsis AA. conss.

[7] *Impp. Valentinianus et Valens AA. ad Valerianum.* Non prius quemquam sinceritas tua ad tuae sedis examen iubebit adduci, quam sollemnibus satisfecerit, qui nititur fidem doloris adserere, cum iuxta formam iuris antiqui ei qui coeperit arguere aut vindicta proposita sit, si vera detulerit, aut supplicium, si fefellerit.

D. VII k. Dec. Remis Gratiano np. et Dagalaifo conss.

[8] *Imppp. Gratianus Valentinianus et Theodosius AAA. Menandro vicario Asiae.* **pr.** Nostris et parentum nostrorum constitutionibus comprehensum est eos, qui accusationem alienis nominibus praesumpsissent, delatorum numero esse ducendos. **1.** Atque ideo calumniosissimum caput et personam iudicio irritae delationis infamem supplicium sequatur, quo posthac singuli universique cognoscant non licere in eo quod non possit ostendi iudicum animos commovere.

D. VIII id. Mai. Constantinopoli Arcadio A. et Bautone conss.

[4] *Emperors* Carus, Carinus, *and* Numerianus *Augusti to Archelaus.* The penalty for malicious prosecution does not hold in the case of a prosecution for a father's death.

Posted November 21, in the consulship of Carus and Carinus Augusti (283).

[5] *Emperors* Diocletian *and* Maximian *Augusti to Caesius.* The risk of conviction for malicious prosecution typically holds only for public criminal trials (*publica iudicia*), not also for cases concerning free status, which are private disputes.

Posted.

[6] *The same Augusti and the Caesars to Domitius.* A penalty for double damages arising out of the judicial examination of slaves under torture is given to masters by the lex Julia against an accuser guilty of malicious prosecution.[209]

Written August 17, in the consulship of the Augusti (290 or 293).

[7][210] *Emperors* Valentinian *and* Valens *Augusti to Valerianus.* Your Uprightness will not order anyone to be brought to trial before your court until the person who strives to prove the reasons for his grievance has carried out the formalities of beginning a prosecution, since, according to the rule of the ancient law (*forma iuris antiqui*), the one who took the initiative of prosecuting attained either vengeance if he told the truth, or punishment if he lied.

Given November 25, at Reims, in the consulship of Gratian, Most Noble Boy, and Dagalaifus (366).

[8][211] *Emperors* Gratian, Valentinian, *and* Theodosius *Augusti to Menander, Vicar of Asia.*[212] **pr.** It has been laid down in Our constitutions and those of Our predecessors (*parentes*) that persons who have presumed to bring accusations in the names of others shall be classed as informers (*delatores*). **1.** And on that account punishment (evidently, capital exile) shall attend the very malicious source and person (who is) afflicted with legal infamy (*infamis*) by the verdict of a wrongful prosecution, in order that henceforth both individuals and people in general shall learn that it is not permitted to importune the minds of judges in a matter that cannot be proven.

Given May 8, at Constantinople, in the consulship of Arcadius Augustus and Bauto (385).

[209] The lex Iulia iudiciorum publicorum was passed together with the lex Iulia iudiciorum privatorum *c.* 17 BCE.
[210] = C.Th. 9.1.9, where Valerianus is Urban Prefect.
[211] = (with minor changes) C.Th. 9.39.2.
[212] In fact, in 383 Arcadius became emperor and Gratian died.

[9] *Idem AAA. Floro pp.* Fallaciter incusantibus, maxime post exhibitionem accusati, nullius iuris color velut derivata accusatione proficiat: non publica abolitio, non privata talibus prospiciat subveniatque personis: non specialis indulgentia, ne beneficium quidem eos generale subducat.

D. xv k. Iun. Constantinopoli Antonio et Syagrio conss.

[10] *Impp. Honorius et Theodosius AA. consulibus praetoribus tribunis plebis senatui salutem dicunt.* Quisquis crimen intendit, non impunitam fore noverit licentiam mentiendi, cum calumniantes ad vindictam poscat similitudo supplicii.

D. VIII id. Aug. Ravennae Asclepiodoto et Mariniano conss.

XXXXVII De Poenis

[1] *Imp. Titus Aelius Antoninus A.* Etiam in opus perpetuum damnati non dissimilis condicionis sunt ab his qui deportantur in insulam.

PP. sine die et cons.

[2] *Imp. Antoninus A. Valerio.* Procurator meus, qui vice praesidis non fungebatur, exilii poenam tibi non potuit inrogare, ac propterea frustra vereris sententiam, quae nulla iuris ratione subnixa est.

PP. VI k. Iul. duobus Aspris conss.

[3] *Idem A. Geminio.* Decurionem in opus publicum dari non oportere manifestum est.

[4] *Idem A. Marinae.* Si ante conceptus est puer, de quo libellos dedisti, quam mater eius in metallum daretur, natus condicionis eius est, cuius ante condemnationem mater eius fuit.

[9][213] *The same Augusti to Florus, Praetorian Prefect.* Especially after the production of the defendant in court, those making false accusations shall not benefit from any legal pretext, as though their accusation was discharged. For no general or particular grant of dismissal shall advantage and assist such persons.[214] No special pardon, not even a general grant of favor, shall free them from punishment.

Given May 18, at Constantinople, in the consulship of Antonius and Syagrius (382).

[10][215] *Emperors HONORIUS and THEODOSIUS Augusti send greetings to the Consuls, Praetors, Tribunes of the Plebs, and Senate.* Whoever initiates a charge shall know that the freedom to lie will not go unpunished, since symmetry of punishment summons malicious prosecutors to vengeance (for their act).

Given August 6, at Ravenna, in the consulship of Asclepiodotus and Marinianus (423).

Forty-Seventh Title Punishments[216]

[1] *Emperor TITUS AELIUS ANTONINUS Augustus.* The status even of those who have been condemned to perpetual forced labor is not dissimilar to that of those who are sentenced to capital exile (*deportatio*) on an island.

Posted without day or year.

[2] *Emperor ANTONINUS Augustus to Valerius.* My imperial procurator who was not acting as a substitute for the governor did not have the authority to inflict upon you a penalty of capital exile (*exilium*). And for that reason you have no grounds to fear a sentence which had no basis in law (*iuris ratio*).

Posted June 26, in the consulship of the two Aspri (212).

[3] *The same Augustus to Geminius.* It is clear that a decurion ought not to be sentenced to forced public labor (*opus publicum*).

[4] *The same Augustus to Marina.* If the child, concerning whom you have sent a petition, was conceived before its mother was sentenced to the mines, it enjoys at birth the status possessed by its mother before her condemnation.

[213] = (in part) C.Th. 9.37.3. Combine with C. 4.19.25.
[214] See Pap. D. 48.16.8 and 10.
[215] = (in part) C. 9.2.17.
[216] See D. 48.19.

[5] *Idem A. Senecioni.* Honor veteranis etiam in eo habitus est, ut liberi eorum usque ad primum dumtaxat gradum poena metalli vel operis publici non adficiantur, sed in insulam relegentur.

[6] *Idem A. Apioni.* Incredibile est, quod adlegas liberum hominem, ut vinculis perpetuis contineretur, esse damnatum: hoc enim vix in sola servili condicione procedere potest.

PP. III id. Febr. Messala et Sabino conss.

[7] *Imp. Alexander A. Isidoro.* Impunitas delictis propter aetatem non datur, si modo in ea quis sit, in quam crimen quod intenditur cadere potest.

[8] *Idem A. Victorino.* Deportatorum in insulam ab eo, cui id faciendi ius erat, bona fisco vindicantur, relegatorum autem non nisi sententia specialiter adempta fuerint.

[9] *Idem A. Demetriano.* Si matrem tuam decurionis filiam fuisse probatum fuerit, apparebit eam non oportuisse in ministerium metallicorum nec in opus metalli dari.

[10] *Idem A. Catulino.* Servus sub poena vinculorum sine temporis praefinitione domino reddi iussus sententia praesidis provinciae perpetuo vinctus esse debet.

PP. VIIII k. Sept. Iuliano et Crispino conss.

[11] *Imp. Gordianus A. Attiano.* Metalli supplicium tam ad personas liberas quam etiam ad serviles pertinet condiciones.

[12] *Impp. Diocletianus et Maximianus AA. in consistorio dixerunt:* Decurionum filii non debent bestiis subici. *Cumque a populo exclamatum est, iterum dixerunt:* Vanae voces populi non sunt audiendae. nec enim vocibus eorum credi oportet, quando aut obnoxium crimine absolvi aut innocentem condemnari desideraverint.

Sine die et consule.

[13] *Idem AA. Ursiano.* Servo ex sententia damnato si quoquo modo ex sententia proprietatis ius amputatum non sit, domino suo obsequi eum par est.

[5] *The same Augustus to Senecio.* Veterans are eligible even for this privilege, that their descendants up to the first degree are not sentenced to the mines or forced public labor (*opus publicum*), but relegated (through non-capital exile) to an island.

[6] *The same Augustus to Apio.* What you assert is beyond belief, that a free person has been condemned to perpetual chains. For this can scarcely occur with persons of slave status, and only there.

Posted February 11, in the consulship of Messala and Sabinus (214).

[7] *Emperor* ALEXANDER *Augustus to Isidorus.* Immunity from punishment for offenses is not given on account of age, provided that the defendant is old enough to be capable of committing the criminal offense that is charged.

[8] *The same Augustus to Victorinus.* The property of those sentenced to capital exile on an island by a judge with authority to issue this sentence is claimed by the Treasury, but that of persons (merely) relegated is not taken from them unless there is a special sentence (to this effect).

[9] *The same Augustus to Demetrianus.* If it is proved that your mother is the daughter of a decurion, it will be clear that she ought not to have been sentenced to assist miners, much less to labor in the mines.

[10] *The same Augustus to Catulinus.* A slave ordered by the provincial governor to be returned to his master in chains, without any set time limit, ought to be bound perpetually.

Posted August 24, in the consulship of Julian and Crispinus (224).

[11] *Emperor* GORDIAN *Augustus to Attianus.* Free persons as well as slaves may be sentenced to labor in the mines.

[12] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti declared in their Council* (consistorium)*:* The children of decurions ought not to be thrown to beasts. *When an outcry arose from the populace they declared a second time:* The empty cries of the populace shall not be heard. For their views ought not to be trusted when they wish either a guilty person to be freed or an innocent to be condemned.

Without day or year.

[13] *The same Augusti to Ursianus.* When a slave has been condemned by a court sentence, if in any way the right of ownership has not been taken away by the sentence, it is fair that he remain in his master's service.

[14] *Idem AA. et CC. Vitali.* Si operis publici temporalis poenae sententia praefinitus necdum excessit dies, hunc expectari convenit, cum non remitti poenam facile publice intersit, ne ad maleficia temere quisquam prosiliat.

[15] *Idem AA. et CC. Agathemero.* Poenam sua dictam sententia praesidi provinciae revocare non licet.

[16] *Imp. Constantinus A. ad Catullinum.* Qui sententiam laturus est, temperamentum hoc teneat, ut non prius capitalem in quempiam promat severamque sententiam, quam in adulterii vel homicidii vel maleficii crimen aut sua confessione aut certe omnium, qui tormentis vel interrogationibus fuerint dediti, in unum conspirantem concordantemque rei finem convictus sit et sic in obiecto flagitio deprehensus, ut vix etiam ipse ea quae commiserit negare sufficiat.

D. III non. Nov. Treviris. accepta XV k. Mai. Hadrumeti Volusiano et Anniano conss.

[17] *Idem A. Eumelio.* Si quis in metallum fuerit pro criminum deprehensorum qualitate damnatus, minime in eius facie scribatur, cum et in manibus et in suris possit poena damnationis una scriptione comprehendi, quo facies, quae ad similitudinem pulchritudinis caelestis est figurata, minime maculetur.

D. XII k. April. Cabilluno Constantino A. IIII et Licinio IIII conss.

[18] *Imp. Constantius A. Theodoro praesidi Arabiae.* pr. Dum reis manifesta probatione convictis spatium ante sententiam temporis datur, facultas supplicandi vel quibusdam malignis artibus tam praesidum quam officiorum poenas evitandi criminosissimis patet, cum in homicidii crimine et in aliis detectis gravioribus causis ultio differenda

[14] *The same Augusti and the Caesars to Vitalis.* If the time limit in a sentence of forced public labor has not expired, it is appropriate to wait for this, since the easy remission of sentence is not in the public interest, to prevent people from rashly leaping into wrongdoing.

[15] *The same Augusti and Caesars to Agathemerus.* It is not permitted for a provincial governor to cancel a punishment imposed by his own sentence.

[16][217] *Emperor* CONSTANTINE *Augustus to Catullinus.* Whoever is about to pronounce sentence shall hold to this limitation, that he not lay down a capital (*capitalis*) or severe sentence against anyone before such person has been convicted on a charge of adultery, homicide, or sorcery by his or her own confession or at any rate on the evidence of all those who have been examined judicially under torture or (mere) questioning (leading) to one and the same well-aligned conclusion, and so he or she has been detected in the crime alleged, in such a way that even he himself or she herself can scarcely deny commission of the offense.

Given November 3, at Trier, received April 17, at Hadrumetum (Sousse), in the consulship of Volusianus and Annianus (314).[218]

[17][219] *The same Augustus to Eumelius.* If someone has been sentenced to the mines because of the gravity of the crimes of which he or she has been convicted, he or she shall not at all be tattooed on the face, since the penalty imposed by conviction can be set forth in a single inscription either on the hands or on the legs, in order that the face, which has been designed to resemble the beauty of heaven, shall not at all be disfigured.

Given March 21, at Cabillunus,[220] *in the consulship of Constantine Augustus, for the fourth time, and Licinius, for the fourth time (315).*[221]

[18][222] *Emperor* CONSTANTIUS *Augustus to Theodorus, Governor of Arabia.* **pr.** When time is given before the imposition of sentence to defendants convicted by clear proof, an opportunity lies open to the most criminal of persons to appeal or to evade, by certain evil machinations, the penalties imposed by governors as well as by their staffs, although in the case of the criminal offense of homicide and conviction for other, more serious, crimes, vengeance must not be delayed by this defect (in procedure). **1.** In the future, therefore, the

[217] = C.Th. 9.40.1. Combine with C. 7.62.12; C.Th. 11.36.1.
[218] The year is more likely 313, and 314 for "received": Projet Volterra.
[219] = (with minor changes) C.Th. 9.40.2.
[220] Possibly Chalon-sur-Saône, but the location is uncertain. Tillemont suggests Cibalae.
[221] The year is more likely 316: Projet Volterra. Seeck gives March 31, 316.
[222] = (with changes) C.Th. 9.40.4.

non sit. 1. Igitur de cetero iuxta criminis qualitatem legem oportet servari et in scelerosos et in noxios proferri iuris sententiam.

D. id. Oct. Constantio A. IIII et Constante C. conss.

[19] *Impp. Gratianus et Valentinianus AA. Olybrio pu.* Ne quis pro coercitione delicti vel pistoribus vel cuicumque alteri corpori, cum alterius sit corporis, addicatur: sed unusquisque pro crimine, in quo fuerit deprehensus, motum congruae severitatis excipiat.

D. III id. April. Valentiniano et Valente AA. conss.

[20] *Imppp. Gratianus Valentinianus et Theodosius AAA. Flaviano pp. Illyrici.* **pr.** Si vindicari in aliquos severius contra nostram consuetudinem pro causae intuitu iusserimus, nolumus statim eos aut subire poenam aut excipere sententiam: sed per dies triginta super statu eorum sors et fortuna suspensa sit. 1. Reos sane accipiat vinciatque custodia et excubiis sollertibus vigilanter observet.

D. XV k. Sept. Veronae Antonio et Syagrio conss.

[21] *Idem AAA. et Arcadius A. ad Principium pp.* Ne diu apparitorum prava admodum venalisque perfidia in publica impune commoda desaeviret, censemus etiam in absentes eos[xxi] pro competenti ultione debere consurgi.

D. k. Iun. Arcadio A. et Bautone conss.

[xxi] reos

law ought to be observed consistently with the nature of the offense, and the legal sentence (*iuris sententia*) ought to be delivered (immediately) against the wicked and the guilty.

Given October 15, in the consulship of Constantius Augustus, for the fourth time, and Constans Caesar (346).[223]

[19][224] *Emperors* GRATIAN *and* VALENTINIAN *Augusti to Olybrius, City Prefect.*[225] No one shall, as punishment for an offense, be bound over to the bakers or any other professional group when he belongs to another one. But each and every one shall feel the impact of the severity appropriate to the crime of which he or she has been convicted.

Given April 11, in the consulship of Valentinian and Valens Augusti (365, 368, or 370).[226]

[20][227] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Flavianus, Praetorian Prefect of Illyricum.* **pr.** If We, contrary to Our usual practice, have commanded that certain persons be punished rather severely, in consideration of the nature of the case, We do not wish that they immediately either suffer their punishment or receive their sentence. Instead, fate and fortune regarding their status shall be in suspense for thirty days. **1.** By all means defendants shall (in the meantime) be placed into custody and bound, where they shall be watched over carefully by competent guards.

Given August 18, at Verona, in the consulship of Antonius and Syagrius (382).[228]

[21][229] *Emperors* GRATIAN, VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Principius, Praetorian Prefect.*[230] In order that the entirely depraved and venal treachery of administrative staff members no longer rage furiously to the detriment of the common good, We ordain that action ought to be taken with an appropriate penalty even against defendants who are absent.

Given June 1, in the consulship of Arcadius Augustus and Bauto (385).

[223] Constans held the consulship for the third time in this year, though only in the East.
[224] = (with minor changes) C.Th. 9.40.9. Combine with C.Th. 14.3.9, perhaps also C.Th. 1.31.2, 14.5.1.
[225] The constitution may be attributed to these two emperors, to Valentinian and Valens, or to all three.
[226] Two of the C.Th. constitutions give Treviri (Trier) as the location. Seeck gives April 11, 370.
[227] = (with minor changes) C.Th. 9.40.13.
[228] The year is uncertain: 390 is the alternative, preferred by Seeck.
[229] = (with minor changes) C.Th. 9.40.14.
[230] In fact, Gratian died in 383.

[22] *Impp. Arcadius et Honorius AA. Eutychiano pp.* **pr.** Sancimus ibi esse poenam, ubi et noxa est. **1.** Propinquos notos familiares procul a calumnia submovemus, quos reos sceleris societas non facit: nec enim adfinitas vel amicitia nefarium crimen admittunt. **2.** Peccata igitur suos teneant auctores nec ulterius progrediatur metus, quam reperietur delictum. **3.** Hoc singulis quibusque iudicibus intimetur.

D. VIII k. Aug. Constantinopoli Theodoro vc. cons.

[23] *Impp. Honorius et Theodosius AA. ad Anthemium pp.* **pr.** Omnes, quos damnationis condicio diversis exiliis destinatos metas temporis praestituti in carceris implesse custodia deprehendit, solutos poena vinculisque laxatos custodia liberari praecipimus nec formidare miserias ullas exilii. **1.** Sit satis immensorum cruciatuum semel luisse supplicia, ne, qui diu privati sunt aurae communis haustu et lucis adspectu non intra breve spatium catenarum ponderibus praegravati, etiam exilii poenam sustinere iterum compellantur.

D. XIIII k. Mai. Constantio et Constante conss.

[24] *Idem AA. Monaxio pp.* Rectores provinciarum conveniri praecipimus, ut hi, qui pro suo crimine poenam exilii sub certo temporis spatio subire decreti sunt, exacto praefinito tempore nec claustris carceralibus nec in locis quibus exules versati sunt teneantur.

D. III k. Sept. Eudoxiopoli Theodosio A. VII et Palladio vc. conss.

[25] *Idem AA. Monaxio pp.* His, qui conficiendi naves incognitam ante peritiam barbaris tradiderunt, capitale supplicium proponi decernimus.

D. VIII k. Oct. Constantinopoli Monaxio et Plinta conss.

[22][231] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Eutychianus, Praetorian Prefect.* **pr.** We lay down that where there is guilt, there shall also be punishment. **1.** We decisively free from malicious prosecution close relatives, acquaintances, and friends whom complicity does not render guilty of wrongdoing. This is because neither family relationship nor friendship constitute an unspeakable criminal offense (in themselves). **2.** Therefore the offenders themselves shall bear responsibility for their misdeeds, and fear shall proceed no further than where wrongdoing is found. **3.** This rule shall be made known to each and every judge.

Given July 25, at Constantinople, in the consulship of the vir clarissimus *Theodorus (399).*

[23][232] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Anthemius, Praetorian Prefect.* **pr.** We instruct that all those who are found, following sentence to different forms of exile, to have fulfilled the terms assigned to them (for exile) in the confinement of a prison, shall be freed from their penalty, released from their bonds, and set free from custody – nor shall they fear any of the miseries of exile. **1.** Let one atonement for crime be enough of immeasurable sufferings, in order that those who for a long time have been deprived of the breath of the air common to all and the sight of the light, and who have been burdened with the weights of chains for not a brief span of time, shall not also for a second time be forced to endure a penalty of exile.

Given April 18, in the consulship of Constantius and Constans (414).

[24][233] *The same Augusti to Monaxius, Praetorian Prefect.* We instruct that provincial governors be called upon to see that those who for a crime have been sentenced to exile for a fixed time period, once that time has ended, shall not be held either in prison or in those places in which they spent their exile.

Given August 30, at Eudoxiopolis, in the consulship of Theodosius Augustus, for the seventh time, and the vir clarissimus *Palladius (416).*

[25][234] *The same Augusti to Monaxius, Praetorian Prefect.* We decree that those who have taught barbarians how to build ships, a skill previously unknown to them, shall suffer the death penalty (*capitale supplicium*).

Given September 24, at Constantinople, in the consulship of Monaxius and Plinta (419).

[231] = C.Th. 9.40.18.
[232] = (with minor changes) C.Th. 9.40.22.
[233] = C.Th. 9.40.23.
[234] = (in part, with changes) C.Th. 9.40.24.

[26] *Αὐτοκράτωρ Ἰουστινιανὸς Α. Μηνᾷ ἐπάρχῳ πραιτωρίων.* **pr.** Θεσπίζομεν ... Ἡ διάταξις κελεύει τοὺς πεμπομένους ἐν ἐξορίᾳ μὴ διάγειν ἐν τῇ φυλακῇ τῶν τόπων, εἰς οὓς ἐπέμφθησαν, ἀλλὰ μηδὲ ἐξορίζεσθαί τινα εἰς τὸ φρούριον τῆς Γύψου ἢ εἰς ἑτέρας φυλακάς. **1.** Ἀλλ' εἰ μὲν τὸ ἁμάρτημα ἄξιόν ἐστι θανάτου, ὑποκεῖσθαι τῇ τοιαύτῃ κολάσει, εἰ δὲ ἐξορίας ἢ διηνεκοῦς ἢ προσκαίρου, τότε ἐξορίζεσθαι αὐτοὺς μὴ κελευομένους ἐν ταῖς φυλακαῖς τῶν τόπων ἐν οἷς πέμπονται ἀποτίθεσθαι, ἀλλὰ πέμπεσθαι εἰς ἐπαρχίαν, εἰς ἣν ἂν ὁ δικάζων ὁρίζῃ, χωρὶς τῶν ὑπεξῃρημένων κατωτέρω ἐπαρχιῶν τε καὶ πόλεων, ἔχοντας αὐτοὺς ἐξουσίαν ἐν πάσῃ τῇ ἐπαρχίᾳ εἰς ἣν ἐπέμφθησαν διατρίβειν, μὴ δυναμένους ἐξιέναι τῆς ἐπαρχίας ἢ μένοντας ἐν τῇ ἐπαρχίᾳ ἄτακτόν τι ποιῆσαι.

2. Ἐὰν δέ τις ἢ τῆς ἐπαρχίας ἐξέλθῃ ἢ μένων ἐν τῇ ἐπαρχίᾳ ἄτακτόν τι ποιήσῃ, ἔστω ὑπὸ τὸν ἔσχατον κίνδυνον τιμωρούμενος ἢ παρὰ τοῦ ἄρχοντος τῆς ἐπαρχίας ἢ παρὰ τοῦ ἄρχοντος ἐκείνων τῶν τόπων, εἰς οὓς ἔφυγε. **3.** Καὶ οἱ βαλλόμενοι δὲ ἐν δεσμωτηρίῳ ἐν τῇ βασιλίδι πόλει μὴ μενέτωσαν ὑπὲρ τὸν χρόνον τὸν ὁρισθέντα ἤδη ἐν τῷ ἀνωτέρω τίτλῳ περὶ τῶν φυλαττομένων.

4. Ὁμοίως δὲ καὶ ἐν ταῖς ἐπαρχίαις συντομωτέραν γίνεσθαι τὴν ἐξέτασιν τῶν ἐγκλημάτων· καὶ ἐὰν φανῇ τις ἄξιος ἐξορίας, ἐξορίζεσθαι αὐτὸν μὴ εἰς φυλακήν, ἀλλ' εἰς ἐπαρχίαν χωρὶς τῶν ἀπηγορευμένων, ἐπὶ τῷ πάλιν ὑποκεῖσθαι αὐτοὺς τῇ ἐσχάτῃ τιμωρίᾳ, ἢ ἐὰν ἐξέλθωσι τῆς ἐπαρχίας ἢ ἐκεῖσε διάγοντες ἄτακτόν τι ποιήσωσι.

5. Τοὺς δὲ ἄρχοντας Ἀλεξανδρείας καὶ Θηβαΐδος κελεύει μόνους εἰς Γύψον καὶ εἰς Ὄασιν ἐκπέμπειν αὐτοὺς ἢ ἕως ἓξ μηνῶν ἢ τὸ μήκιστον ἕως ἐνιαυτοῦ. **6.** Εἰ δὲ διηνεκής ἐστιν ἡ ἐξορία, μήτε εἰς Γύψον πεμπέτωσαν μήτε εἰς Ὄασιν μήτε εἰς φυλακὴν ἑτέρας ἐπαρχίας, ἀλλ', ὡς εἴρηται εἰς τελείαν ἐπαρχίαν, ἐπὶ τῷ, εἴ τι πταίσουσιν ἢ παρεξέλθωσι τὰς κελεύσεις τῶν πεμψάντων αὐτοὺς ἀρχόντων, εἰς ἔσχατον τιμωρηθῆναι.

7. Κελεύει δὲ τοὺς ταξεώτας τοὺς ἐν ἑκάστῳ δικαστηρίῳ ὑπομιμνήσκειν τοὺς ἄρχοντας περὶ τούτου τοῦ νόμου, καὶ μηδὲ κατέχεσθαί τινα ὑπὲρ τὸν χρόνον τῆς ἐξορίας ἑαυτοῦ, ἀλλὰ παραχρῆμα ἀφίεσθαι ἀζημίως καὶ ἀδιαστρόφως, τὸν δὲ ἐπιχειρήσοντά τι λαβεῖν τὸ τετραπλάσιον ἀποδιδόναι. **8.** Κεκώλυνται δὲ οἱ ἄρχοντες ἐξορίζειν εἰς τὰς ὑποτεταγμένας τῇ διατάξει ἐπαρχίας τε καὶ πόλεις.

[26][235] *(Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect.* **pr.** We decree … This constitution forbids those who have been sent into exile to remain in custody in those places to which they have been sent or to be exiled to the prison of Gypsus or to any of the other prisons. **1.** But if the crime in question merits the death penalty, (the constitution ordains) that such a penalty shall be inflicted upon them, while if it merits exile, whether permanent or temporary, then they shall be exiled, but not ordered to be placed in the prisons of the places in which they are sent. Instead, they shall be sent into the province that the judge determines, aside from the provinces and cities excepted below,[236] so that they are permitted to live in any part of the province to which they have been sent, without being able to leave the province or creating any disturbance while they reside there.

2. But if someone leaves the province or stays there and creates some disturbance, he shall suffer the death penalty, either at the hands of the governor of that province or the governor of the place to which he has fled. **3.** And as far as concerns those who are thrown into prison in this imperial city (Constantinople), they shall not remain there beyond the time-limit laid down in the title above concerning those in custody.[237]

4. In the same way judicial investigation of criminal offenses in the provinces shall also occur in a briefer time-frame, and if anyone is deemed to merit exile he or she shall be exiled not to a prison, but to a province, apart from those forbidden, on the condition again that they shall be liable to capital punishment if they either leave the province or while residing there create some disturbance.

5. (The constitution) ordains that the governors of Alexandria and the Thebaid shall be the only ones permitted to send (convicts) to Gypsus or the Oasis, either for six months or a year at the longest. **6.** In case of permanent exile, they shall be sent neither to Gypsus nor the Oasis, nor to a prison in another province, but instead, as said above, to a province as a whole, on the condition that if they commit some wrong or disobey the commands of the governors who have sent them into exile, they shall suffer the death penalty.

7. (The constitution) ordains that the officials of each and every court shall call this law to the attention of the governors. And no one shall be detained past the term of his or her exile, but shall immediately be let go without penalty or interference, while anyone who attempts to take something (i.e., a bribe) shall pay a fourfold penalty. **8.** The governors, moreover, are forbidden to exile anyone to the provinces and the cities attached (in a list) to this constitution.[238]

[235] Combine with C. 1.4.22, 1.4.23, 9.4.6, 9.5.2. The inscription and subscription are restored from C. 1.4.22 and 23, the first word from *Collectio Tripartita* 1.3, *Paratitlon* 51. What follows is a summary taken from Bas. 60.51.63.

[236] This list does not survive.

[237] See C. 9.4.6.

[238] This list does not survive.

9. Οἱ κατὰ τόπον ἐπίσκοποι φροντιζέτωσαν παραφυλαχθῆναι ἐν τοῖς ἐξοριζομένοις διηνεκῶς ἢ ἐπί τινα χρόνον ῥητὸν τὰ ποστεταγμένα τῇ διατάξει.

D. xv k. Febr. Constantinopoli Decio cons.

XXXXVIII Ne sine Iussu Principis Certis Iudicibus Liceat Confiscare

[1] *Imp. Theodosius A. et Valentinianus C. ad Hierium pp.* Nulli iudicum liceat, exceptis his, qui in summa administrationis sunt positi potestate, proscriptionis tempestate totius substantiae aliquem percellere, nisi ad nostras aures hoc ipsum referatur.

D. x k. Febr. Constantinopoli Theodosio A. xi et Valentiniano C. conss.

XXXXVIIII De Bonis Proscriptorum seu Damnatorum

[1] *Imp. Antoninus A. Marcello.* **pr.** Servorum capitis crimine damnatorum peculia dominis non auferri notum est, sed quod servum dominus habuisse probaverit, recipiet pretiumque rerum, si quae ex eo distractae sunt. **1.** Ipsius quoque praesentiae potestas ei dabitur, quoad rationes per eum administratae reddantur ac dispungantur. sed meminisse dominum oportebit instare, ut id velocius fiat, ut poenae suae reddi possit.

PP. iii k. Aug. Antonino A. et Balbino conss.

[2] *Imp. Alexander A. Frontoni.* Deportati nec earum quidem rerum, quas post poenam inrogatam habuerint, heredem habere possunt, sed hae publicantur.

PP. non. Febr.

[3] *Idem A. Iuliano.* Si filius tuus, cum esset in tua potestate, in insulam deportari meruit, peculium eius nec quod in castris adquisivit vel quod ei militaturo donasti auferri tibi debet.

9.[239] The local bishops shall take care that, in the case of those exiled permanently or for a specified time, what is laid down in this constitution shall be observed.

Given January 18, at Constantinople, in the consulship of Decius (529).

Forty-Eighth Title Without the Emperor's Order, Certain Judges Shall Not Be Permitted to Order Confiscations

[1][240] *Emperor* THEODOSIUS *Augustus and* VALENTINIAN *Caesar to Hierius, Praetorian Prefect.* It shall be permitted to no judge, apart from those possess the highest authority of administration, at the time of his condemnation (to exile) to inflict on anyone the confiscation of his entire estate, unless the matter is (first) brought to Our ears.

Given January 23, at Constantinople, in the consulship of Theodosius Augustus, for the eleventh time, and Valentinian Caesar (425).[241]

Forty-Ninth Title Property of the Exiled and the Condemned[242]

[1] *Emperor* ANTONINUS *Augustus to Marcellus.* **pr.** It is well known that the *peculia* of slaves convicted on a capital charge (*capitis crimen*) are not taken from their masters, but the master will receive back whatever he or she shows the slave to have possessed, or its value if property was alienated. **1.** The power to demand the presence of the slave himself will also be given to the master until the accounts the slave managed are rendered and balanced. But the master ought to remember to press that this happens rather quickly, in order that he (the slave) can be turned over to his punishment.

Posted July 30, in the consulship of Antoninus Augustus and Balbinus (213).

[2] *Emperor* ALEXANDER *Augustus to Fronto.* Persons condemned to capital exile (*deportatio*) can have no heir even as to those things that came to them after the passing of sentence; but these (too) are confiscated.

Posted February 5.

[3] *The same Augustus to Julian.* If your son, while he was in your *potestas*, was sentenced to capital exile (*deportatio*) on an island, neither his *peculium*, nor

[239] This is supplied from *Coll. Tripartita* 1.3, *Paratitlon* 51.
[240] = (in part, with changes) C.Th. 9.41.1. Combine with C. 9.49.10.
[241] The year is more likely to be 426, preferred by Seeck.
[242] See D. 48.20.

PP. IIII id. Sept. Alexandro II et Marcello conss.

[4] *Imp. Gordianus A. Callimorpho.* In metallum damnatus poenae servus efficitur et ideo eiusmodi sententiam passi bona vindicantur rationibus fisci. quare si quid rerum habuit is, quem postea indulgentia liberatum esse proponis, ad ius fisci potius quam ad ipsius dominium pertinet.

PP. X k. Nov.

[5] *Imp. Philippus A. et Philippus C. Arruntiano.* Si, ut proponis, bona eius, qui tutelam tuam administravit, sententiam passi ad fiscum sunt devoluta, procuratorem nostrum adire cura, qui, si quid iure posci animadverterit, non negabit.

[6] *Impp. Diocletianus et Maximianus AA. et CC. Gaudentio.* De bonis matris deportatae filiis nihil deberi iuris absolutissimi est.

S. XII.

[7] *Imppp. Valentinianus Valens et Gratianus AAA. ad Probum pp. pr.* Si quis intra provinciam pro qualitate delicti stilum proscriptionis incurrerit, per ordinarii officii sollicitudinem bonorum eius indago diligentissime celebretur, ne quid rei privatae commodis per gratiam atque colludium furto subducatur. 1. Et plena descriptio comprehendat, quod spatium et quod sit ruris ingenium, quid aut cultum sit aut colatur, quid in vineis olivis aratoriis pascuis silvis fuerit inventum, quae etiam gratia et quae amoenitas sit locorum, quis aedificiis ac possessionibus ornatus, quotve mancipia in praediis occupatis vel urbana vel rustica vel quarum artium generibus imbuta teneantur, quot sint casarii vel coloni, quot boum exercitiis terrarum atque vomeribus instruentium,[xxii] quot

[xxii] inservientium

what he acquired while on military service, nor what you gave him as a gift when he was about to enter service ought to be taken from you.

Posted September 10, in the consulship of Alexander (Augustus), for the second time, and Marcellus (226).

[4] *Emperor* GORDIAN *Augustus to Callimorphus.* A person condemned to the mines becomes a penal slave and for that reason the property of a person who has thus been sentenced is claimed for the accounts of the Treasury. Therefore, if he was later freed by a pardon, as you claim, any property that he had (previously) owned belongs to the Treasury rather than to himself.

Posted October 23.

[5] *Emperor* PHILIP *Augustus and* PHILIP *Caesar to Arruntianus.* If, as you allege, the property of your *tutor*, pursuant to a sentence pronounced upon him, has passed to the Treasury, be sure to approach Our Procurator (of the Privy Purse). If he decides that you have a right to request something, he will not deny it to you.

[6][243] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Gaudentius.* It is very certain law (*ius absolutissimum*) that nothing is owed to her children from the property of a mother who has been condemned to capital exile (*deportatio*).

Written ...

[7][244] *Emperors* VALENTINIAN, VALENS, *and* GRATIAN *Augusti to Probus, Praetorian Prefect.* pr. If anyone within a province is proscribed (i.e., sentenced to capital exile) owing to the gravity of his offense, a most assiduous search shall be made of his property through the diligence of the regular administrative staff, in order that nothing be pilfered from the assets of the Privy Purse through exercise of undue influence or collusion. 1. And a full description shall include the size of an estate, the nature of the land, what has been and what is being grown, what is found in the vineyards, olive groves, ploughfields, pasturages, woodlands, also the charm and pleasantness of the property, the equipment of buildings and properties, how many slaves are kept on the properties being worked, whether urban or rural, and trained with what kinds of skills, how many cottagers or bound tenants (*casarii vel coloni*), how many oxen employed in cultivation or in plowing, how many herds of cattle and draft animals, and of what kind, how much gold and silver, clothing and necklaces, both as to kind, weight, and variety, and what has been found in store-chambers.

[243] See C. 3.44.11, dating to April 6, 290.
[244] = (with minor changes) C.Th. 9.42.7.

pecorum et armentorum greges et in qua diversitate numerati sint, quantum auri et argenti, vestium ac monilium vel in specie vel in pondere et in quibus speciebus, quidve in enthecis sit repertum. **2.** Tum demum omnia ea, quae velle nos perspicis, inquisitione constricta rationalis rei privatae tradantur officio aut palatinis super hac causa missis nostro nectenda patrimonio.

3. Mox vero ad nos sub litteris publicis iudicis singillatim de omnibus nominatimque referatur, procul dubio neglegentia multanda. **4.** Nam si quid post factam a praedicto officio investigationem rationalis rei privatae, cui inquisitio secunda mandata est, amplius fortassis invenerit, officium fraudulentum ea condemnatione ferietur, ut aliud tantum quantum fuerat subtractum ex propriis facultatibus inferat.

D. III non. Mai. Treviris Valentiniano np. et Victore conss.

[8] *Imppp. Gratianus Valentinianus et Theodosius AAA. Eutropio pp.* **pr.** Si deportatus suos et emancipatos filios habuerit, pars, quae ex bonis eius liberis concessa est, ad eos tantum qui in potestate erant transferatur, si emancipati ea, quae consecuti erant emancipationis tempore, damnose existimant conferenda. **1.** Sin autem confusionem bonorum et donationis elegerint, omnia ea, quae fiscus liberis damnati concedit, aequae divisionis partibus sortiantur. **2.** Quae regula etiam in dote filiae vel neptis ex filio deportati conferenda custodienda erit.

D. XV k. Iul. Thessalonicae Gratiano V et Theodosio AA. conss.

[9] *Impp. Arcadius et Honorius AA. Caesario pp.* **pr.** Si quis posthac stilum, quod absit, proscriptionis exceperit, uxor res proprias ex quocumque titulo sibi quaesitas veluti manu iniecta mox vindicet aut certe quoquo modo occupatas statim recipiat. dos etiam, non quae aliquotiens inaniter dotalium instrumentorum tenore conscribitur, sed

2. Then, at the end, all those things that, as you see, We want, after an inventory is completed, shall be handed over to the staff of the chief Comptroller (*rationalis*) of the Private Imperial Account or to the Palace officials sent for this purpose, in order to be added to Our property.

3. Next, in fact, an official report shall be sent to Us by the judge, in which all individual items are mentioned by name, any omission from which, it is far from doubt, shall be punished with a fine. 4. For if, after the inventory conducted by the staff mentioned above, the chief Comptroller of the Private Imperial Account, who is under instructions to carry out a second inventory, happens to find something more, the administrative staff guilty of fraud will have inflicted upon them a penalty to pay from their own resources that is twice the value of the property that was removed.

Given May 5, at Trier, in the consulship of Valentinian, Most Noble Boy, and Victor (369).[245]

[8][246] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Eutropius, Praetorian Prefect.* **pr.** If a man sentenced to capital exile (*deportatio*) has children both in his power and emancipated, the part of his property that is permitted to his children shall accrue only to those children he has in power (*potestas*) if those who are emancipated believe that the property they received at the time of emancipation would disadvantage them if put into hotchpot. 1. But if, however, they choose to mingle (in hotchpot) their property and what has been given them as a gift, all that which the Treasury permits to children of a person condemned to capital exile they shall receive through an equal division of the shares. 2. This rule (*regula*) shall be applied and maintained also in the case of the dowry of a daughter of a man condemned to capital exile, or a granddaughter through a son.

Given June 17, at Thessalonica, in the consulship of Gratian, for the fifth time, and Theodosius Augusti (380).

[9][247] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Caesarius, Praetorian Prefect.* **pr.** If anyone henceforth receives – may it not happen! – a sentence of proscription (capital exile), his wife shall directly claim her own property, by whatever title she acquired it, as though she has seized it personally, or at any rate she shall receive it immediately by whatever means she has taken possession of it. Her dowry too shall be repaid immediately – not that which is sometimes emptily written into the text of dowry documents, but that which

[245] Seeck gives March 5, 369; but Schmidt-Hofner retains the transmitted date.

[246] = (in part, with changes) C.Th. 9.42.8. Combine with C. 5.1.3 and the constitutions mentioned there. On hotchpot (*collatio*), see D. 37.6; C. 6.20.

[247] Pr. = (in part, with changes) C.Th. 9.42.15; 1–3 = (with changes) C.Th. 9.42.1, by Constantine, dating to February 27, 321. Combine with C.Th. 9.1.8.

quam se corporaliter tradidisse docuerit, repraesentetur. ea etiam, quae ab innoxio adhuc marito ante nuptias titulo donationis acceperit, vel durante matrimonio largitione viri ad eam ante proscriptionem pervenerint, apud eam firmiter permaneant.

1. Si quid etiam in emancipatos liberos ante tempus criminis ac reatus patrem contulisse claruerit, integrum isdem citra inquietudinem reservetur. quod vero nec uxor nec emancipati liberi potuerint vindicare, captum a publicis personis ita ad me referri specialiter censeo, ut illud quoque addatur, utrum filios habeat qui damnatus est, simulque adiciatur, utrum idem apud se ex causa donationis aliquid vindicaverint.

2. Sed in his, qui fiscalibus actibus nexi sunt et pro ratiociniis proscribuntur et condemnantur, placuit, si quid proprium uxor habuit vel a marito datum ante init*um* actum, ex quo origo fraudis ac vitii in iudicium deducta est, si quid deinde in emancipatos filios donatione collatum est, antequam crimen oriatur, intemeratum apud accipientium iura persistere: nec quicquam fisco in qualibet causa teneatur obnoxium, nisi quod in dominio proprio cum obligari ortus est habuit vel quod agens tam suo quam uxoris vel filiorum vel cuiuscumque praeterea nomine comparavit. **3.** Exceptis dumtaxat Caesarianis, id est catholicianis, qui ab omni iuris beneficio excluduntur, nisi probata a me purgataque ratiocinia fuerint, ut, quod innoxie habuerint, transmittendi copiam habeant.

D. III non. Aug. Constantinopoli Arcadio IIII et Honorio III AA. conss.

[10] *Impp. Theodosius et Valentinianus AA. Hierio pp.* **pr.** Quando quis quolibet crimine damnatus capitalem poenam vel deportationem sustineat, si quidem sine liberis mortuus sit, bona eius ad fiscum perveniant: si vero filii vel nepotes ex defunctis filiis relicti erunt, dimidia parte aerario vindicata alia eis reservetur. idem est et si postumos dereliquerit.

she proves was physically handed over. That too, which she received from her still innocent husband before the marriage under the title of a gift, or which came to her from the generosity of her husband during the marriage before his proscription, shall steadfastly remain with her.

1. If anything too is shown to have been given by a father to his emancipated children before the time of the accusation and crime, it shall remain wholly theirs, without disturbance. But that which neither a wife nor emancipated children can claim for themselves, I ordain shall be seized by public officials so that it be specially delivered to me, in such a way that a note shall be also added as to whether the condemned has children and at the same time a further note shall be attached as to whether they have claimed any property for themselves under title of a gift.

2. And in the case of those who are in debt to the Treasury, and because of their tax obligations are proscribed and condemned, it has been decided that if the wife had anything of her own or that has been given to her by her husband before the beginning of court proceedings, at the point at which the origins of the fraud and wrongdoing were brought before a court, and next, if anything has been given to emancipated children as a gift before the charge arises, it shall remain undisturbed with respect to the rights of the recipients. Nor shall anything in any case be deemed bound to the Treasury, except what he had as his property when his obligation to the Treasury arose or what he has acquired thereafter in conducting his business operations either in his own name, or in that of his wife, children, or anyone else. 3. An exception is made for subordinate fiscal officials (*Caesariani*), i.e., the holders of seized property (*Catholiciani*),[248] who are excluded from every benefit under this law (*ius*) unless their accounts have (first) been inspected and cleared by me so that they have the opportunity of passing on what they have innocently acquired.

Given August 3, at Constantinople, in the consulship of Arcadius, for the fourth time, and Honorius, for the third time, Augusti (396).

[10][249] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Hierius, Praetorian Prefect.* pr. Whenever someone is condemned on any charge whatsoever and is sentenced to death or capital exile (*deportatio*), should he die, to be sure, without children, his property shall pass to the Treasury. But if children or grandchildren through decedent sons are left behind, one-half shall be claimed by the Treasury and the rest set apart for them. The same holds even if he leaves behind posthumous children.

[248] Reference is to the regional accountants (*rationales*) responsible for carrying out seizures for the Imperial Treasury.

[249] = (with changes) C.Th. 9.42.24. Combine with C. 9.48.1.

1. Decurioni vero, qui hoc incurrerit, si liberos non habeat, succedat curia bonaque universa detineat aut ipsa per se aut suo ordinatura periculo munera subiturum. **2.** Sin autem erit suboles curiali, etsi ea necdum procreata est, integris patris fortunis fulciatur. **3.** Si filia vel filiae fuerint, pars dimidia ad eas deveniat facultatum, pars ad curiam. **4.** Sin mares curiales fuerint intermixti, dimidia pars eis curiae nomine deferatur, et aliam, quam in commune omnibus tribuit indulgentia principalis, pro virili dividant portione. **5.** Excepta sola maiestatis quaestione: quam si quis sacrilego animo adsumpserit, iuste poenam ad suos etiam posteros mittit.

D.ix k. Febr. Constantinopoli Theodosio XII et Valentiniano II AA. conss.

[11] Ἐάν τις ὡς ἐπὶ τυραννίδι ἐλεγχθεὶς δήμευσιν ὑπομείνῃ, οἱ μὲν ἔχοντες αὐτοῦ πράγματα καὶ διάγοντες ἐν τῇ βασιλίδι πόλει εἴσω δύο μηνῶν ὀφείλουσιν αὐτὰ προσαγγεῖλαι, οἱ δὲ μὴ διάγοντες ἐν τῇ βασιλίδι πόλει εἴσω ὀκτὼ μηνῶν. εἰ δὲ μὴ τοῦτο ποιήσουσι, μετὰ τῶν πραγμάτων τὸ τετραπλάσιον παρέχουσι.

L De Bonis Mortem Sibi Consciscentium

[1] *Imp. Antoninus A. Aquilae.* **pr.** Eorum demum bona fisco vindicantur, qui conscientia delati admissique criminis metuque futurae sententiae manus sibi intulerint. **1.** Eapropter fratrem vel patrem tuum si nullo delato crimine, dolore aliquo corporis aut taedio vitae aut furore aut insania aut aliquo casu suspendio vitam finisse constiterit, bona eorum tam ex testamento quam ab intestato ad successores pertinebunt.

PP. XII k. Ian. duobus Aspris conss.

1. But in the case of a decurion who thus runs afoul of the law, if he does not have children, his town council shall succeed to him and take physical control of his entire estate and either itself undertake the civic duties (incumbent upon such property) or shall appoint someone to do this at his own risk. 2. But if, however, the decurion has any (male) children, even if not yet born, they shall be supported by the entire estate of their father. 3. If there are one or more daughters, half of the (father's) resources shall accrue to them, and the rest to the town council. 4. But if some of the children are males (and some females), a half shall be made over to them as councillors, in the name of the council, and the remainder, which imperial benevolence grants to all in common, they shall divide equally among them.

5.[250] An exception is made only for a trial for treason (*maiestas*). If someone commits this offense with an impious intention, he justly passes his penalty onwards even to his descendants.

Given January 23, at Constantinople, in the consulship of Theodosius, for the twelfth time, and Valentinian, for the second time, Augusti (426).

[11][251] If someone convicted of treason suffers confiscation of property, those who possess their property here and live in the imperial city (Constantinople) ought to turn this over within two months and, if they do not live in the imperial city, within eight months. But if they do not do this, they pay a fourfold penalty along with their property.

Fiftieth Title The Property of Suicides[252]

[1] *Emperor* ANTONINUS *Augustus to Aquila.* **pr.** Forfeit to the Treasury is precisely the property of those who, out of their consciousness of a crime that has been committed and has begun to be prosecuted, and out of their fear of a sentence hanging over them, take their own lives. 1.[253] On that account, if it is established that your brother or father, accused of no crime, but (only) out of some bodily pain, weariness of life, raging insanity, instability of mind, or some mischance, took his life by hanging, his property will accrue to his heirs either under a will or on intestacy.

Posted December 21, in the consulship of the two Aspri (212).

250 = (in part) C.Th. 9.42.6, by Valentinian and Valens, dating to November 25, 364.
251 This constitution derives from Bas. 60.52.17.
252 See D. 48.21.
253 See Marcian, D. 48.21.3.4.

[2] *Imp. Alexander A. Rustico.* Eorum, qui in reatu diem suum functi sunt, si non perduellionis causam sustinuerunt nec ob metum criminis mortem sibi consciverunt, bona ad successores transmittuntur.

D. id. Mai. Alexandro A. iterum et Marcello conss.

LI De Sententiam Passis et Restitutis

[1] *Imp. Antoninus A. cum salutatus ab Oclatinio Advento et Opellio Macrino praefectis praetorio clarissimis viris, item amicis et principalibus officiorum et utriusque ordinis viris et processisset,*[xxiii] *oblatus est ei Iulianus Licinianus ab Aelio Ulpiano tunc legato in insulam deportatus, Antoninus Augustus dixit:* Restituo te in integrum provinciae tuae. *Et adiecit:* Ut autem scias, quid sit in integrum: honoribus et ordini tuo et omnibus ceteris.

[2] *Idem A. Quieto.* Cum patrem tuum in metallum damnatum fuisse proponas eiusque bona merito a fisco occupata sunt, non ideo, quod ex indulgentia mea poena tantummodo metalli liberatus esset, etiam bonorum restitutionem impetravit, nisi speciale beneficium super hoc fuerit impetratum.

[3] *Imp. Alexander A. Stratoniciano.* **pr.** Si debitor poenam sententiae passus est, quam bonorum ademptio secuta est, quamvis postea civitati Romanae restitutus non totam substantiam, sed aliquid ex indulgentia principis ut haberet impetravit, aeris tamen alieni ex praecedente tempore poena liberatus est. **1.** Sin vero partem bonorum accepit, pro rata portione eius tenetur. quod si ob pecuniam debitam fisco bona eius occupata sunt, mansit una cum fideiussoribus propriis creditoribus obligatus.

[4] *Idem A. Valentinae.* Tutor filiorum, quorum te bonorum possessionem accepisse dicis, in metallum damnatus et postea ex indulgentia

[xxiii] processisset et

[2] *Emperor* ALEXANDER *Augustus to Rusticus.* The property of those who have taken their own lives while under accusation, if they were not being prosecuted for treason (*perduellio*) and have not committed suicide out of fear over the charge, passes to their heirs.

Posted May 15, in the consulship of Alexander Augustus, for the second time, and Marcellus (226).

Fifty-First Title Those Who Have been Sentenced and Restored[254]

[1] *Emperor* ANTONINUS *Augustus. After (the emperor) had received formal greetings from Oclatinius Adventus and Opellius Macrinus, Praetorian Prefects and* viri clarissimi, *likewise from his friends* (amici) *and the chiefs of staff, as well as from men of both the senatorial and equestrian orders, and had (then) stepped forward, and Julian Licinianus was presented to him, (a man) who had been sentenced to capital exile* (deportatio) *on an island by Aelius Ulpianus, then a governor. Antoninus Augustus declared:* I restore you to your province with rights. *And he added:* Moreover, so that you know what "with rights" means: political office, membership in your *ordo*, and all the rest.

[2] *The same Augustus to Quietus.* Although you allege that your father had been condemned to the mines and that his property was rightly seized by the Treasury, he was not also entitled to recover that property, since he was released, through my grant of pardon, only from the penalty of forced labor in the mines (and nothing more), unless he obtained a particular remission beyond that one.

[3] *Emperor* ALEXANDER *Augustus to Stratonicianus.* **pr.** If a debtor has received a sentence which is accompanied by the confiscation of his goods, although he has subsequently been restored to Roman citizenship and did not receive his entire estate back, but only certain items through the Emperor's kindness, he has all the same been freed from the prior penalty for debt. **1.** But if, on the other hand, he has recovered a portion of his estate, he is liable (for repayment of his debts) proportionately. But if his property was seized on account of a debt that he owed to the Treasury, he, together with his sureties, remains obligated to his private creditors.

[4] *The same Augustus to Valentina.* Your children's *tutor* was condemned to the mines and later released by a general pardon. You claim that you acquired

[254] See D. 48.23.

generali regressus, quamquam locupletior sit, actione tutelae administratae tibi non tenetur, si non gratia sententiae facta specialiter statum pristinum cum bonis recuperaverit.

[5] *Idem A. Iuliano.* Si ademptis bonis in insulam datus sis, quamvis ex indulgentia communi redisti, actiones tamen, quascumque habuisti, remanent in causa bonorum publicatorum, nec ex ordine est quod petis, ut contra heredes tutorum actiones tibi praestentur.

[6] *Imp. Gordianus A. Fabiano.* In insulam filio deportato hacque ratione vinculo paternae potestatis exempto, si postea ex indulgentia divi Alexandri, ut proponis, reditus in patrium solum praecedensque dignitas restituta sit, potestas tamen patria repetita non videtur.

[7] *Imp. Philippus A. et Philippus C. Cassio.* Generalis indulgentia nostra reditum exsulibus seu deportatis tribuit, non etiam loca militiae pridem adempta concessit neque integram atque illibatam existimationem reservavit.[xxiv]

[8] *Impp. Valerianus et Gallienus AA. Seleuco.* Frustra adhuc servum esse tui iuris existimas, qui in metallum datus poena eius postea liberatus est. per huiusmodi enim indulgentiae occasionem integrari dominium prius non placuit. verum idcirco tamen impune tibi eum praeses provinciae iniuriosum esse non patietur. quod si quid rerum tuarum tenet, procurator vobis iudex erit: fisci enim coepit esse mancipium.

[9] *Impp. Diocletianus et Maximianus AA. Restitutae et aliis.* Si pater vester in insulam deportatus generali indulgentia restitutus est nec, ut liberos in potestatem reciperet, specialiter impetravit, in dubium non venit hereditatis commodum per vos ei adquiri, quos sententia contra eum prolata patres familias effecit, nequaquam potuisse.

[10] *Idem AA. Demetrio.* Cum indulgentia nostra interveniente sis reversus ad lares tuos, frustra vereris, ne ex adnotatione praesidis quae iam abolita est calumniam patiaris.

[xxiv] reseravit

possession of their property. Although he may be wealthier, he is not liable to you in an action over the tutelage he managed if he did not, thanks to a special remission of the sentence, recover both his prior status and his property.

[5] *The same Augustus to Julian.* If your property was confiscated and you were sent to an island, although you have returned because of a general pardon, whatever rights of action you held nonetheless remain bound to the property that was confiscated, and it is not appropriate for you to request that you be granted actions against the heirs of your *tutores.*

[6] *Emperor* GORDIAN *Augustus to Fabianus.* If your son was sentenced to capital exile (*deportatio*) on an island, and for this reason was freed from paternal power (*potestas*), if he subsequently, as you declare, thanks to a pardon granted by the deified Alexander (Severus), returned to his hometown and had his prior rank (*dignitas*) restored to him, nevertheless paternal power (*patria potestas*) is not deemed to have been restored.

[7] *Emperor* PHILIP *Augustus and* PHILIP *Caesar to Cassius.* Our general pardon granted the right of return to exiles and those sentenced to capital exile (*deportatio*), but it did not also restore the military ranks that were taken away some time ago, nor (by removing legal infamy) did it render their reputation (*existimatio*) whole and unimpaired.

[8] *Emperors* VALERIAN *and* GALLIENUS *Augusti to Seleucus.* You vainly entertain the belief that you are still the owner of the slave who was sentenced to work in the mines and later released. For it has been the rule that ownership is not restored through a grant of pardon of this kind. But all the same the governor of the province will not allow him for this reason to inflict affront with impunity on you. And if he is in possession of any of your property, the procurator will act as judge for you, since he begins to be a slave of the Treasury.

[9] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Restituta and others.* If your father was sentenced to capital exile (*deportatio*) on an island and was later restored by a general pardon, and he did not obtain a particular dispensation that he receive his children back into his power (*potestas*), there is no doubt that the benefit of an inheritance could not at all be acquired for him through you, since the sentence inflicted upon him made you of independent legal status (*patres familias*).

[10] *The same Augusti to Demetrius.* Since you have been restored to your home thanks to Our grant of pardon, you are needlessly concerned that you will endure a malicious prosecution arising from the registration (of your

[11] *Idem AA. et CC. Philippo.* Casus eius, qui fundi moverat quaestionem, et ex benignitate nostra facta cum bonis restitutio statum pristinum causae non immutavit.

[12] *Idem AA. et CC. Tryphoni.* Si deportationis sententiae veniam indulgentia nostra consecuta recepit substantiam, se protegere sceleris poena contra creditores, quo minus iure debitum solvat, improbe conatur.

[13] *Imp. Constantinus A. ad Maximum pu.* **pr.** In quaestione testamenti, quod deportati filius remeante patre fecisset, remotis Ulpiani atque Pauli notis Papiniani placet valere sententiam, ut in patris sit filius potestate, cui dignitas ac bona restituta sunt.

1. Ita tamen, ut gesta per filium, cuius consilia legitima aetas firmaverat, rata sint eodem in potestate patria redeunte, ne eorum rescissio efficiat, quod est maxime absurdum, eodem tempore nec in patris nec in sua quemquam fuisse potestate. **2.** Minores enim aetate iure quicquam agere prohibentur. quibus si damnato patre tutor datus est, necesse est, ut ab officio suo recedat regresso eo, quem non solum nomine redire, sed etiam officium suum nulla pravitate corruptum liberis praebere oportet, ut eorum bona tueatur et augeat. **2a.** Nam si patria potestate ad corrumpendi atque effundendi patrimonii licentiam abutetur, ut furioso ac dementi, item prodigo, libidinum omnium vitiorumque servo non est eorum pecunia committenda. **2b.** Ab administratione fugiat

name on the list of accused persons) by the governor of the province, since it has now been deleted (through the pardon).

[11] *The same Augusti and the Caesars to Philippus.* The misfortune (i.e., capital exile) of a man who had initiated a suit over a farm, and who has then been restored with his property thanks to Our generosity, has not altered the original status of the lawsuit.

[12] *The same Augusti and Caesars to Trypho.* If a woman, whose sentence of capital exile (*deportatio*) has been commuted by Our pardon, has had her property restored to her, she is wrong to attempt to defend herself against her creditors, by asserting the penalty for her wrongdoing, so as not to pay what she lawfully owes.

[13][255] *Emperor* CONSTANTINE *Augustus to Maximus, City Prefect.* **pr.** In a dispute over a will made by the son of a man who had been sentenced to capital exile (*deportatio*) and then restored, after discarding the annotations of Ulpian and Paul, We ordain that the opinion of Papinian shall have validity, with the result that the son is in his father's power (*potestas*) when social rank and property have been restored to the latter.

1. This shall be so, nevertheless, such that the legal acts of the son, who is of sufficient age that they would be legally valid, shall be confirmed, even though he returns to his father's power, so that abrogating them does not produce an especially absurd situation in which someone is neither in his father's power nor in his own.[256] **2.** For minors are prohibited by law from transacting any business. If a *tutor* has been appointed for them after their father was condemned (to capital exile), it is necessary that he steps down if the father returns, since he (the father) ought not only to return in name, but also to perform his duty, unspoiled by any impropriety, toward his children, so that he safeguards and increases their property. **2a.** For if he misuses his paternal power to exercise an unbounded opportunity for despoiling and wasting their property, then, just as though he were an insane or unstable person, (or) likewise a prodigal who is a slave to every lust and vice, their money shall not be entrusted to him. **2b.** (If so,) he shall flee from management of their property, and there shall not cease

[255] ≐ (with minor changes) C.Th. 9.43.1. Combine with C.Th. 1.4.1. As the latter notes, Ulpian's and Paul's original *notae* on Papinian's *Quaestiones* were subsequently altered and came to be considered suspect authority.

[256] While the father was in exile, his son wrote a will, which he was legally entitled to do if of age. The father was then pardoned and, possibly for avaricious reasons, now seeks to resume power over the son and thereby also invalidate the son's will; that is, he wants his resumption of power to be retrospective. The Emperor threads the needle.

neque tutor esse desinat omniaque minoris dispendia suis ipse damnis praestet.

2c. Sententia vero deportationis nullo patrem praeiudicio deminuat. quem si comperta integritas ut natura, ita officio liberis restituerit, ei gubernacula rerum tradenda sunt, cuius ad imitationem publici iuris provisa custodia est. quae nisi bonis patribus detur, luctuosior erit reditus quam discessus.

3. Ideoque tantum ad restitutionem indulgentia valeat, quantum ad correctionem sententia valuit, utque deportationis ipsum per se nomen rerum omnium spoliatio est, ita indulgentiae restitutio bonorum ac dignitatis uno nomine amissorum omnium sit recuperatio. et filii emancipationem a patribus officiis petant, ut libertatem non damnationis, sed lenitatis paternae testem habeant.

D. XVIII k. Oct. Sirmi Crispo II et Constantino II CC. conss.

to be a *tutor* (for this purpose), while he himself shall pay at his own cost for all losses accruing to the minor's property.

2c. But a sentence of capital exile shall not impair a father's status by prejudicing his future claims. If his good character (*integritas*), when ascertained, restores him to his children on the basis of both their duty and biological bond, the management of their property shall be turned over to him, after whom the protection (i.e., the institution of guardianship) afforded by public law (*ius publicum*) is modeled. Unless this is granted to good fathers, there will be more grief at their return than at their departure.

3. On that account the pardon shall count for restoration, as much as the sentence did for castigation, and insofar as the concept of capital exile itself entails the confiscation of all property, so the concept of pardon shall entail the restoration of property and rank, in a word, the recovery of everything that was forfeited. And children shall seek emancipation from their fathers by their services to them, so that they have their freedom as a witness not of a father's condemnation (to capital exile), but of his generosity of spirit.

Given September 14, at Sirmium, in the consulship of Crispus, for the second time, and Constantine, for the second time, Caesars (321).

Liber Decimus

I De Iure Fisci

[1] *Impp. Severus et Antoninus AA. Attico et Severo.* Si prius, quam fisci rationibus pater vester obligaretur, perfectam praediorum donationem fecisse fuerit probatus, quod citra fraudem creditorum gestum est, non rescinditur.

[2] *Imp. Gordianus A. Sereno.* Instar obtinere minime potest rei iudicatae computatio a tabulariis facta, nisi sententia procuratoris fuerit comprobata.

[3] *Idem A. Atticae.* Si minori pretio, quam res est, aperta fraude emptoris vel gratia quae obligata sunt a fisco venierunt, aditus procurator meus debitam quantitatem inferenti restitui ea praedia iubebit.

[4] *Impp. Diocletianus et Maximianus AA. Mucatraulo.* **pr.** Certa forma super metoecis data est, qui iussu principis in aliam civitatem translati sunt. nam praedia eorum, quae antequam demigrarent habuerint, si ab his distracta non essent, fisci rationibus vindicari iam pridem decretum est, nisi aliud speciali praecepto augusta maiestas decreverit. **1.** Ut igitur a principibus salubriter statutum est, ita salvis his, quae utiliter placuerunt, parentibus heredes eos exsistere minime oportere nulla legis sanctione statutum est.

Tenth Book

edited by Dennis P. Kehoe

First Title The Right of the Treasury[1]

[1] *Emperors* Severus *and* Antoninus *Augusti to Atticus and Severus.* If it is proved that, before he became obligated to the accounts of the Treasury, your father completed a donation of properties (*praedia*), what has been transacted without defrauding creditors is not rescinded.

[2] *Emperor* Gordian *Augustus to Serenus.* A computation made by tax officials (*tabularii*) of a case that has been adjudicated cannot produce a balancing of accounts (*instar*) unless it has been approved by verdict of the procurator.

[3] *The same Augustus to Attica.* If properties (*praedia*) that were obligated have been sold by the Treasury for a lower price than they are worth by clear fraud or influence of the buyer, my procurator, when approached, will order them to be restored when (you) proffer the amount owed.

[4] *Emperors* Diocletian *and* Maximian *Augusti to Mucatraulus.* **pr.** A definite rule has been given for resident foreigners (*metoeci*) who by order of the Emperor have been transferred into another city. For it was decreed long ago that the properties that they had before they emigrated, if they have not been sold by them, be claimed for the accounts of the Treasury, unless Our August Majesty has decreed something else by a special instruction. 1. Therefore as it has been advantageously established by the Emperors, so without prejudice to these matters that have been usefully decided, it has not been established by any sanction of the law that they must not be heirs of their parents.[2]

[1] See D. 49.14.

[2] Blume: "Metoici were colonists who were transferred from one place to some other. The transfer could not be made except by order of the emperor. The property which they left behind upon their transfer became that of the fisc, unless a special order to the contrary was made. The right of succession mentioned in the last part of this law referred … to the property of their parents who did not migrate."

[5] *Exemplum sacrarum litterarum Diocletiani et Maximiani AA. ad Flaccum.* **pr.** Prohibitum est cuiuscumque bona, qui fisco locum fecisse existimabitur capi prius, quam a nobis forma fuerit data. **1.** Et ut omni provisionis genere occursum sit Caesarianis, sancimus licere universis quorum interest obicere manus his, qui ad capienda bona alicuius venerint, qui succubuerit legibus, ut, etiamsi officiales ausi fuerint a tenore datae legis desistere, ipsis privatis resistentibus a facienda iniuria arceantur. **2.** Tunc enim is, cuius interest bona alicuius non interpellari, officialibus volentibus ea capere debet adquiescere, cum litteris nostris cognoverit non ex arbitrio suo Caesarianos ad capiendas easdem venisse facultates, sed iustitiae vigorem id fieri statuisse.

[6] *Imp. Constantinus A. ad provinciales.* Iustas etiam et quae locum habent fisci actiones praecipimus concremari ob hoc solum, quod suis temporibus prolatae non sunt. iam calumniae privatorum eo saltem arceantur exemplo, quo iustas fisci lites silere praecipimus.

D. III k. Iun. Constantino A. V et Licinio C. conss.

[7] *Idem A.* **pr.** Defensionis facultas danda est his, quibus aliquam inquietudinem fiscus infert, cum facultates eorundem adhuc controversia pendente inquietari describique fas non sit. **1.** Ubi ergo controversia extiterit fisco alicuius patrimonium vindicante, apud eum omnibus facultatibus constitutis cognitio ventiletur, ut, cum rei exitus debere eas vindicari probaverit, tum demum res persequi liceat et super modo facultatum ac rerum interrogationem haberi, quae per condicionales servos investiganda est, ut, si quid subtractum fuerit, exigatur et extrinsecus tantum aliud multae nomine, quantum fuerat per fraudem ablatum. **2.** Sane in huiuscemodi quaestione si Caesariani nomen inciderit, ad usurpationem constitutionis istius non debebit

[5] *Copy of a sacred letter of* DIOCLETIAN *and* MAXIMIAN *Augusti to Flaccus.* **pr.** It is prohibited that property of any person who was judged to have "made a place" for the Treasury (i.e., to be subject to seizure by the Treasury) be seized before a rule has been given by Us. **1.** And in order that by every type of provision the *Caesariani* (officials of the Treasury) be resisted, We ordain that all who have an interest be permitted to interpose their hands against those who have come to seize the property of anyone who has submitted to the laws, so that, even if officials have dared to depart from the terms of the law that has been given, they might be prevented from committing an injustice by the resistance of private persons themselves. **2.** For the person who has an interest that someone's property not be disturbed should acquiesce in the officials' wish to seize it at that time, when he has learned from Our letter that the *Caesariani* have not come to take the same property on their own judgment, but that the vigor of justice has established that this happen.

[6][3] *Emperor* CONSTANTINE *Augustus to the provincials.* We instruct that even proper causes of action and those that have a place for the Treasury be "burned" (i.e., barred) for this reason alone, that they were not brought in their due time. For vexatious litigation (*calumniae*) of private persons should be prevented at all events by this example, whereby We instruct that (even) lawful cases of the Treasury be put to rest.

Given May 30, in the consulship of Constantine Augustus, for the fifth time, and Licinius Caesar (319).

[7][4] *The same Augustus.* **pr.** The opportunity (*facultas*) of a defense is to be given to those to whom the Treasury affords some disquiet, since it is not proper that the same people's property be disturbed and inventoried while a dispute is still pending. **1.** Therefore when a dispute arises upon the Treasury's claim of someone's property, a hearing shall be aired while all the property is established with him, so that, when the outcome of the matter proves that this property is owed, only then would it be permitted to pursue the things and to conduct an inquiry over the amount of resources and property, which is to be investigated through slaves whose ownership is conditional (*condicionalis*, since the outcome of the proceedings may result in their ownership passing to the Treasury), so that, if anything has been withdrawn, it should be demanded and in addition, by way of a fine, as much again as had been taken away by fraud. **2.** Certainly if the name of a *Caesarianus* (official of the Fiscus) turns up in such an investigation, he should not undertake to benefit from

[3] = C.Th. 10.1.3.
[4] = C.Th. 10.1.5.

accedere, si quidem consuetudo fraudium, quibus praedicti omnia temerare consueverunt, exceptionem eorundem meruerit.

D. prid. k. Ian. Sirmio Constantino A. VII et Constantio C. conss.

[8] *Impp. Valentinianus et Valens AA. ad Dracontium vicarium Africae.* Qui in contractibus scelestis ac fisco perniciosis interversorum maculosis se fraudibus implicuerunt, in quadrupli redhibitionem teneantur.

D. XV k. Dec. Hadrumeto Valentiniano et Valente AA. conss.

[9] *Impp. Honorius et Theodosius AA. Patricio comiti rerum privatarum.* Super creandis susceptoribus periculo procuratorum rei dominicae dispositionem tuae sublimitatis firmam esse praecipimus, ita ut, omni ambitione cessante, quae statuta sunt quaeque antiqua consuetudine commendantur, in pabulis vel sumptu familiae ministrando intemerata permaneant: super irenarcho et optione omni antiqua consuetudine observanda.

D. III k. Ian. Constantinopoli Theodosio A. VIIII et Constantio III conss.

[10] *Idem AA. Palladio pp.* Eorum patrimonia mortuorum, qui vitae suae tempore diversis conscientiam suam dicuntur polluisse criminibus, fisci rationibus nequaquam competere vel ab eo alienari censemus, nisi post publicam accusationem eos constiterit fuisse convictos.

D. VIII id. Iul. Ravennae Eustathio et Agricola conss.

[11] Πᾶσα δημοσία δίκη ἐντὸς ἓξ μηνῶν μετὰ τὴν προκάταρξιν μετρουμένων πληρούσθω, εἰ μὴ ἄρα συμβῇ κατὰ τὸ ἀναγκαῖον ἢ πρόσωπα ἢ δικαιώματά τινα ἕτερα ἐξ ἐπαρχιῶν ἀχθῆναι κατὰ τὴν βασιλίδα πόλιν, ἢ αὐτοὶ οἱ ἐναγόμενοι τὴν αἰτίαν ὑπερθέσεως παράσχωσιν ὡς ἀπαράσκευοι.

this constitution, if indeed the habitual frauds, by which the above-mentioned (*Caesariani*) have been wont to spoil everything, merit an exception for the same persons.

Given December 31, at Sirmium, in the consulship of Constantine Augustus, for the seventh time, and Constantius Caesar (326).

[8][5] *Emperors* VALENTINIAN *and* VALENS *Augusti to Dracontius, Vicar of Africa.* Those who, in contracts that are criminal and harmful to the Treasury, have involved themselves in the filthy fraud of embezzlers (*interversi*), shall be held liable for fourfold restitution.

Given November 17, at Hadrumetum, in the consulship of Valentinian and Valens Augusti (365).

[9][6] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Patricius, Count of the Privy Purse.* We instruct that the disposition of Your Sublimity be firm concerning the appointment of tax collectors (*susceptores*) at the risk of the procurators of the Privy Purse (*res dominica*), so that, with all ambition ceasing, what has been legislated and is commended by ancient custom concerning fodder and providing expenses for the slave staff remain unchanged. Every ancient custom is to be observed concerning the peace officer (*irenarchus*)[7] and the *optio* (a military officer responsible for supplies).

Given December 30, at Constantinople, in the consulship of Theodosius Augustus, for the ninth time, and Constantius, for the third time (420).

[10][8] *The same Augusti to Palladius, Praetorian Prefect.* We decree that the patrimonies of those dead persons who are said during their lifetimes to have polluted their own conscience with diverse crimes, by no means shall be seized (*competere*) for the accounts of the Treasury or be alienated by it, unless it has been established that they had been convicted after a public accusation.

Given July 8, at Ravenna, in the consulship of Eustathius and Agricola (421).

[11][9] Every trial involving the Treasury should be completed within six months measured after joinder of issue, unless it should happen that either persons or some other proofs are by necessity summoned from the provinces to the Imperial City, or the defendants themselves provide, as the reason for delay, that they are not prepared.

[5] = C.Th. 10.1.10, which dates the constitution's being given to November 17, 364, which Seeck prefers; Schmidt-Hofner argues for November 17, 365. Krüger suggests that the date and place in the text describe when the constitution was accepted, not given.

[6] = C.Th. 10.1.17.

[7] On *irenarchae*, see C. 10.77.

[8] = C.Th. 10.10.30, with different wording; combine with C. 9.40.3, 10.10.4; C.Th. 4.15.1, 10.10.29. C.Th. 10.10.30 adds "Constantius Augustus" to the emperors.

[9] From Bas. 56.2.55.

II De Conveniendis Fisci Debitoribus

[1] *Imp. Gordianus A. Saturnino et aliis.* Non iniusta ratione desideratis repromissa fisco indemnitate eos principali loco conveniri, qui reliqua contraxerunt, mox ad vos perveniri, qui ab his quaedam mercati estis.

[2] *Impp. Valerianus et Gallienus AA. et Valerianus C. Patrophilo.* Fisco quidem contra te manet actio, quod argentum, quod inferre debebas, rationibus fuit relatum, si cautioni, quae tibi super eo exposita est, tabularius non subnotavit. aequum est tamen, ut prius de bonis eius qui exactor fuit, si solvendo est et conveniendi eius facultas datur, indemnitati fisci satisfiat, tunc a te, si servari hic modus non possit, reposcatur.

[3] *Impp. Diocletianus et Maximianus AA. Ianuario.* **pr.** Quoniam Augurio ac filio eius ad exigenda reliqua consortes vos atque sociatos esse dicatis eisque certorum dumtaxat nominum exactionem mandatam nec inter eum et ceteros, qui exactores fuerant nominati, confusae exactionis mutuum periculum constitutum, sed separato muneris obsequio discretam sollicitudinis rationem fuisse adseveratis, a iure non discrepat, ut prius ex bonis exactorum, qui principali loco ad exactionem fuerant destinati, indemnitati fiscali satisfiat, postque eos, si solidum debitum exsolutum non sit, nominatores conveniri. **1.** Rationalis igitur noster iuris ordinem sequetur, excussisque exactorum facultatibus nec non etiam nominatorum, si fiscus in universi debiti quantitate securitatem indemnitatis consecutus non fuerit, etiam vos ad restituenda fiscalia debita adstringet.

[4] *Imppp. Valentinianus Valens et Gratianus AAA. ad Archelaum comitem Orientis.* Hi, qui fisco nostrae mansuetudinis obnoxii sunt, omissa frustratione teneantur, ut, quod suis nominibus debent, de suis

Second Title Suing Debtors to the Treasury

[1] *Emperor* Gordian *Augustus to Saturninus and others.* Not for an unjust reason do you desire, after making a formal promise of indemnity to the Treasury, that those persons who have contracted arrears be sued as principals (*principali loco*), and that recourse (only) then be had to you, who have purchased certain items from them.

[2] *Emperors* Valerian *and* Gallienus *Augusti and* Valerian *Caesar to Patrophilus.* An action remains to the Treasury against you since the silver, which you were obligated to pay, was credited on the (tax) accounts, if the tax official (*tabularius*) did not countersign the written receipt (*cautio*) that was issued to you over this matter. However, it is fair that the indemnity of the Treasury be satisfied first from the property of the one who was the exactor (of the revenues due to the Treasury), if he is solvent and the opportunity to sue him is provided, and then for it to be demanded from you, if this method cannot be maintained.

[3] *Emperors* Diocletian *and* Maximian *Augusti to Januarius.* **pr.** You (pl.) say that you were partners (*consortes*) and were allied with Augurius and his son to exact arrears, (and) that the exaction of only certain debts was mandated to them, and that a mutual risk for the whole task of exacting arrears (*confusae exactionis mutuum periculum*) was not established between him (Augurius) and the others who had been nominated as exactors. You also assert that the account under your care was distinct, since your obedience to the liturgy was separate. This does not differ from the law, so that the Treasury's indemnity may be satisfied first from the property of the exactors who were appointed as principals to exact payments, and that after them, if the entire debt has not been paid, their nominators may be sued. **1.** Our Comptroller (*rationalis*),[10] therefore, will follow the order of the law, first investigating the resources of the exactors as well as of their nominators, (and) if the Treasury has not gained security for its indemnity for the amount of the entire debt, he will oblige you as well to the payment of the debts to the Treasury.

[4][11] *Emperors* Valentinian, Valens, *and* Gratian *Augusti to Archelaus, Count of the East.* Those who are indebted to the Treasury of Our Clemency shall be bound without evasion, such that they are compelled to pay what they

[10] Blume: "The ordinary judge was the rationalis, translated comptroller, in a preceding period called simply procurator. The fisc was also represented by the advocate of the fisc. C. 2.8."
[11] = C.Th. 10.16.2; combine with C. 11.9.1, where Archelaus is Count of Imperial Finances. C. 11.9.1 has "Given July 3, at Nebiodunum, and received July 18, at Marcianopolis."

facultatibus cogantur exsolvere, servatis, cum compleverint, adlegationibus propriis, si quas adversus quoscumque ex suis contractibus debitores competere sibi ex iure crediderint, ita ut adversus eos, quos sibi obnoxios adseverant, legibus et iudiciis experiendum esse cognoscant.

D. III non. Iul. Novioduno Valentiniano np. et Victore conss.

[5] *Impppp. Valens Gratianus et Valentinianus AAA. Fortunatiano comiti rerum privatarum.* **pr.** Inter chartulas confiscati brevis quidam adseveratur inventus, qui nomina continebat debitorum seu contractorum. **1.** Cum tamen neque testibus credita pecunia probaretur neque cautionibus ea quae brevi inserta sunt ostendantur, iniquum esse perspeximus, ut sub propriae adnotationis manu unusquisque faciat debitorem. **2.** Occasionis igitur huius calumniam praesenti volumus iussione cohiberi, ut brevis vanitate reiecta nullus ad redhibitionem de his, quorum nomina conscripta sunt, urgeatur. **3.** Quod et in aliis similibus causis observandum esse censemus.

D. prid. non. Iul. Hierapoli Gratiano A. IIII et Merobaude conss.

III De Fide et Iure Hastae Fiscalis et de Adiectionibus

[1] *Imp. Antoninus A. Agortiae.* Quod in libellum contulisti, procuratori meo, ad cuius officium desiderium tuum pertinet, adlega. cui si probaveris non auctore procuratore vel eo, cui vendendi fuit facultas, neque habitis hastis nec omni ordine peracto venditas res esse, et id quod ex causa iudicati debes exsolveris, rescissa venditione mala fide facta easdem res recipies cum fructibus, quos ad emptorem mala fide pervenisse vel pervenire debere constiterit.

PP. non. Ian. Antonino A. IIII et Balbino conss.

[2] *Imp. Gordianus A. Heracleoni.* Duplex ratio desiderium tuum iuvat, et quod praetermissa hastarum sollemnitate possessiones tuas ex officio distractas suggeris, et quod pretii vilitate ob exiguum debitum gratiosam emptionem in fraudem tuam utilitatemque rationum mearum

owe for their debts from their own property, while maintaining, after they have completed this, their own claims, if they believe that any are available to them by law against any debtors from their own contracts, in such a way that they recognize that they must pursue these against those who they assert are indebted to them through the laws and the courts.

Given July 5, at Noviodunum, in the consulship of Valentinian, Most Noble Boy, and Victor (369).

[5][12] *Emperors* VALENS, GRATIAN, *and* VALENTINIAN *Augusti to Fortunatianus, Count of the Privy Purse.* **pr.** Among the papers (*chartulae*) of someone whose property has been confiscated[13] it is asserted that a list (*brevis*) was discovered that contained the names of debtors or contractors. **1.** Since, however, it was not proved by witnesses that money was loaned and those debts that are inserted in the list are not demonstrated by written promises, We have seen that it is unfair that anyone might create a debtor by the signature (*manus*) of his own annotation. **2.** By this order, We want the vexatious litigation arising from this situation to be prevented, so that, since We reject the list's presumption, no one from among those whose names have been written (in it) be pressed for repayment. **3.** We decree that this also be observed in other similar cases.

Given July 6, at Hierapolis, in the consulship of Gratian Augustus, for the fourth time, and Merobaudes (377).

Third Title The Faith and Law of Auctions by the Treasury, and Higher Bids

[1] *Emperor* ANTONINUS *Augustus to Agortia.* Disclose to my procurator, to whose office your desire pertains, what you have included in your petition. If you prove to him that the property was sold not under the authority of the procurator or of one who had the right to sell, and without holding an auction (*hastae*) or observing every procedure, and you pay what you owe as a result of an adverse verdict (*ex causa iudicati*), a sale conducted in bad faith will be rescinded, and you will regain the same property with its fruits that are established to have accrued or that ought to accrue to the buyer in bad faith.

Posted January 5, in the consulship of Antoninus Augustus, for the fourth time, and Balbinus (213).

[2] *Emperor* GORDIAN *to Heracleo.* A twofold rationale supports your desire, both because you allege that your properties (*possessiones*) were sold officially although the customary auction was omitted, and because you say that your

[12] = C.Th. 10.16.3 (where the final sentence is lacking).
[13] C.Th. 10.16.3 reads "of someone deported."

adversarium commentum fuisse dicis. quapropter illicita ista redargue, tam indemnitati fisci consulturus quam tuae securitati opem laturus.

PP. v k. ... Gordiano A. et Aviola conss.

[3] *Idem A. Crispo.* Etsi instrumenta emptionis non extent, quibuscumque tamen probationibus uxor tua ostenderit ad se eam domum pertinere, quam a fisco eius nomine dicis comparatam, pretiumque ab ea exsolutum et in eam dominium translatum, frustra fiscum ex persona matris eius referre quaestionem procurator meus non sinet.

PP. v k. Nov. Gordiano A. et Aviola conss.

[4] *Impp. Diocletianus et Maximianus AA. Marcellinae.* Si tempora, quae in fiscalibus hastis statuta sunt, patiuntur, cum etiam augmentum te facturam esse profitearis, adi rationalem nostrum, ut iuxta ius pretii uberioris oblationem admittat.

PP. III id. Ian. Sirmi ipsis IIII et III AA. conss.

[5] *Imppp. Valentinianus Valens et Gratianus AAA. ad Viventium pp. Galliarum.* **pr.** Quaecumque pro reliquis prodigorum in annonario titulo ceterisve fiscalibus debitis in quibuscumque corporibus sub auctione licitanda sunt, fisco auctore vendantur, ut perpetuo penes eos sint iure dominii, quibus res huiusmodi sub hastae sollemnis arbitrio fiscus addixerit. **1.** Et si quid umquam, ut a fisco facta venditio possit infringi, auctoritate rescripti fuerit impetratum, nullus obtemperet, cum etiam minoribus, si quando aliquid ex rebus eorum pro fiscalibus debitis adiudicatur emptoribus, repetitionis facultas in omnem intercipiatur aetatem.

D. III id. Nov. Treviris Valentiniano np. et Victore conss.

[6] *Idem AAA. ad Felicem comitem sacrarum largitionum.* Si qui proscribente ac distrahente fisco debitorum fiscalium emerint facultates, pro earum rerum tantum pretio obnoxii sint, quas eos patuerit decursis

adversary contrived, through a cheap price for a small amount owed, a corrupt sale to defraud you and the interests of my accounts. For this reason, prove these unlawful actions, both to serve the indemnity of the Treasury and to bring support for your security.

Posted on the fifth day before the Kalends ... in the consulship of Gordian Augustus and Aviola (239).

[3] *The same Augustus to Crispus.* Even if the documents for the purchase should not exist, by whatever proofs your wife shows that that house belongs to her, which you say was bought from the Treasury in her name, and (for which) the price was paid by her and ownership was transferred to her, my procurator will not allow the Treasury mistakenly to raise a question on the basis of her mother's person (whose property was sold to her daughter).

Posted October 28, in the consulship of Gordian Augustus and Aviola (239).

[4] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Marcellina.* If the dates that have been established in auctions by the Treasury allow (it), since you claim that you are going to offer a higher bid, approach Our comptroller, so that he admit an offer of a more substantial price in accordance with the law.[14]

Posted January 11, at Sirmium, in the consulship of the Augusti themselves, for the fourth time and for the third time, respectively (290).

[5][15] *Emperors* VALENTINIAN, VALENS, *and* GRATIAN *Augusti to Viventius, Praetorian Prefect of the Gauls.* **pr.** Whatever properties are to be auctioned for the arrears of spendthrifts for the land tax (*in annonario titulo*) or for other debts to the Treasury, in whatever physical form, should be sold with the Treasury as guarantor (*auctor*), so that they be under perpetual right of ownership with the persons to whom the Treasury has assigned such property under the outcome of the customary auction. **1.** And if any measure is ever obtained by the authority of a rescript that a sale carried out by the Treasury be voided, no one shall obey this, since the right to reclaim (property) is precluded at every age, even for those less than 25, if ever something from their property should be adjudicated to buyers for debts to the Treasury.

Given November 11, at Trier, in the consulship of Valentinian, Most Noble Boy, and Victor (369).

[6][16] *The same Augusti to Felix, Count of Imperial Finances.* If any persons have bought the property of debtors to the Treasury when the Treasury is publicly

[14] For the rule, see D. 49.14.50 and C. 11.32.1.
[15] = C.Th. 10.17.1; *Frag. Vat.* 37.
[16] = C.Th. 10.17.2. Seeck dates to March 9, 368; Schmidt-Hofner, to March 9, 368 or 370.

hastis et proscriptione habita comparasse. nam ita eos munimus, ut nullius conventioni reliquorum fiscalium nomine patiamur extrinsecus subiacere.

D. VII id. Mart. Marcianopoli Valentiniano et Valente AA. conss.

[7] *Αὐτοκράτωρ Ζήνων τῷ Δομνίκῳ.* Ἐὰν δημευθέντος τινὸς ἡ οὐσία πιπράσκηται, ἔξεστι καὶ τῷ κόμιτι τῶν ἰδιοκτήτων τοῦ βασιλέως καὶ τῇ σχολῇ τῶν παλατίνων καὶ τῷ τοῦ δημοσίου συνηγόρῳ ἀγοράζειν τινὰ πράγματα ἐκ ταύτης τῆς οὐσίας, μηδενὸς διαβάλλοντος τὸ συνάλλαγμα.

PP. III k. Aug. post consulatum.

IIII De Venditione Rerum Fiscalium cum Privatis Communium

[1] *Imp. Alexander A. Victorio.* **pr.** Forma est, quotiens ad fiscum vel minima portio rei pertineat, ut universa a procuratoribus meis distrahantur, sed pretium partis tantum in fiscum redigatur, reliquum dominis partium restituatur. **1.** Emptorem igitur praediorum, de quibus libellum dedisti, apud suum iudicem conveni usurum defensionibus, si quae sibi competunt.

PP. VII k. Oct. Fusco et Dextro conss.

V Ne Fiscus Rem Quam Vendidit Evincat

[1] *Pars epistulae imp. Alexandri A. ad rationales.* **pr.** Gravissimum verecundia mea duxit, ut, cuius rei pretium, cum bona fide esset addicta, semel fiscus acceperit, eius controversiam referat. **1.** Non solum ergo emptorem ab eadem statione, sed ne ab alia quidem quaestionem pati debere aequum est, cum et in his venditionibus emptore non inquietato officia inter se possint experiri.

D. XV k. Mai. Modesto et Probo conss.

advertising and selling it, they should be liable only for the price for those things that it is clear they have purchased after the auction has run its course and the public announcement has been made. For We protect them in this way, that We not allow them to be subject additionally to anyone's lawsuit for arrears owed to the Treasury.

Given March 9, at Marcianopolis, in the consulship of Valentinian and Valens, Augusti[17] *(370).*

[7][18] *Emperor ZENO to Dominicus.* If the property of someone whose goods have been confiscated should be sold, it is permitted for the Count of the Privy Purse and (the Count) of the Palatine Corps and the Advocate of the Treasury to buy some items from this property, and no one should object to the contract.

Posted July 30, in the post-consulate of...

Fourth Title The Sale of Property Belonging to the Treasury and Owned in Common with Private Citizens

[1] *Emperor ALEXANDER to Victorius.* **pr.** The procedure, whenever even the smallest portion of a property belongs to the Treasury, is that the whole thing be sold by my procurators, but only a part of the price be claimed for the Treasury, and the rest restored to the owners of the (other) shares. **1.** Therefore sue the buyer of the properties about which you have given a petition before his own judge, and he will use any defenses that are available to him.

Posted September 25, in the consulship of Fuscus and Dexter (225).

Fifth Title The Treasury Should Not Evict From Property That It Has Sold

[1] *Part of a letter from Emperor ALEXANDER Augustus to the Comptrollers.* **pr.** My modesty has considered it most burdensome to raise a controversy about property once the Treasury has accepted its price, when it has been assigned (to the highest bidder at an auction) in good faith. **1.** It is therefore fair not only that the buyer should not suffer any inquiry, not only from the same department (*statio*, where the buyer bid for the property), but also from any other, since even in these sales the offices (of the Treasury) can dispute among themselves without disturbing the buyer.

Given April 17, in the consulship of Modestus and Probus (228).

[17] It should be "Consuls for the third time."
[18] Taken from Bas. 56.6.7. Krüger adds "Augustus" to Zeno's title. Lounghis *et al.* date the constitution to between 474 and 491.

[2] *Imp. Marcianus A. Palladio pp. Orientis.* Retractare fiscum, quod semel vendidit, aequitatis honestatisque ratio non patitur.

D. v k. Ian. Constantinopoli Marciano A. cons.

VI De His Qui Ex Publicis Rationibus Mutuam Pecuniam Acceperunt

[1] *Impp. Valentinianus et Valens AA. ad Probum pp.* Si quis ab exactoribus tabulariis arcariis officiisve rationum fenebrem pecuniam sumpserit, detectus in eodem ad quadrupli poenam ex hac auctoritate teneatur.

D. IIII id. Mart. Treviris Valentiniano et Valente AA. conss.

[2] *Imppp. Gratianus Valentinianus et Theodosius AAA.* **pr.** *Palladio comiti sacrarum largitionum.* Sciant omnes accipiendi mutuo ex largitionibus sacris auri non patere cuiquam facultatem. **1.** Quod si quis aurum ex nostro aerario privatis commodis profuturum occulte aut cautionis aut sponsionis fide ut debitor redditurus sine nostra auctoritate acceperit, ablatis bonis omnibus perpetuae deportationis subdetur exilio. **2.** Is etiam, qui ex memoratis thesauris sub specie publici creditoris aurum cuiquam commodarit ac dederit, capitali sententia subiugetur.

D. XII k. Aug. Heracleae Eucherio et Syagrio conss.

VII Poenis Fiscalibus Creditores Praeferri

[1] *Imp. Alexander A. Marcello.* Rem suam persequentibus poenae exactio postponitur. sicut itaque in sortis quantitate fisci persecutio potior est, ita in triplo quod poenae nomine adiectum est propria forma ferenda est.

PP. k. Iul. Iuliano et Crispino conss.

[2] *Emperor* Marcian *Augustus to Palladius, Praetorian Prefect of the East.* Considerations of fairness and honesty do not allow the Treasury to reconsider once it has sold something.

Given December 28, at Constantinople, in the consulship of Marcian Augustus (451).

Sixth Title Those Who Have Received Money on Loan from the Public Accounts

[1][19] *Emperors* Valentinian *and* Valens *Augusti to Probus, Praetorian Prefect.* If anyone has received money lent at interest from exactors (officials of the Treasury), tax officials (*tabularii*), treasurers (*arcarii*), or offices of the accounts (*rationes*), when he is discovered in this same act, he shall be held by this authority to a fourfold penalty.

Given March 12, at Trier, in the consulship of Valentian and Valens Augusti (368 or 370).

[2][20] *Emperors* Gratian, Valentinian, *and* Theodosius *Augusti to Palladius, Count of Imperial Finances.* **pr.** All should know that the ability to receive gold on loan from the Imperial Finances is not open to anyone. **1.** But if anyone without Our authority receives gold from Our Treasury to serve private purposes either secretly or on the faith of a formal promise or of a surety (*aut cautionis aut sponsionis fide*) to pay it back as a debtor, he will be subject to an exile of perpetual deportation after all his property is taken away. **2.** Also that person who has loaned and given anyone gold from the aforementioned treasures in the guise of a public creditor shall be subjected to capital punishment.

Given July 21, at Heraclea, in the consulship of Eucherius and Syagrius (381).

Seventh Title Creditors Have Priority over Penalties Owed the Treasury

[1][21] *Emperor* Alexander *Augustus to Marcellus.* The exaction of a penalty (*poena*) is postponed for those pursuing their own property. Just as the Treasury's claim (*persecutio*) takes precedence in the amount of the principal, so in a triple amount that has been added as a penalty the special rule is to be followed.

Posted July 1, in the consulship of Julianus and Crispinus (224).

[19] = C.Th. 10.24.1, which adds to the list of lenders "or anyone else to whom the care over fiscal treasures might be assigned." Seeck dates to March 12, 368; Schmidt-Hofner, to March 12, 368, 370, or 373.

[20] = C.Th. 10.24.2, with a different wording and holding ("not" is omitted in §1); combine with C. 4.61.8, whose date reads "Given July 6, at Constantinople, and received July 21."

[21] Blume refers to Papinian, D. 49.14.37, and Paul, D. 49.14.48.1, for the principle that creditors seek satisfaction before the Treasury exacts a penalty.

VIII De Fiscalibus Usuris

[1] *Imp. Antoninus A. Antiocho.* Eius summae, quam tibi poenae nomine inflictam probaturus es, usurae non exigentur: nec enim multam tibi procurator meus inrogavit ultra quam placitum est, sed poenam te iussit inferre.

PP. XV k. Dec. Sabino et Anullino conss.

[2] *Imp. Alexander A. Victorino.* Si sub pignore creditum fuit, etiam fiscum, qui successit in locum debitoris, usuras praestare oportet, si eas dependi saltem pacto placuit.

PP. III non. Sept. Iuliano et Crispino conss.

[3] *Imp. Iustinianus A. Menae pp.* Fiscum etiam nostrum parere sanctioni nostri numinis iubemus, per quam usque ad dimidiam centesimae usuras stipulari creditoribus exceptis certis personis permisimus, ut ipse etiam fiscus ultra dimidiam centesimae partem a debitoribus suis minime exigat, sive principaliter ei promiserunt sive a prioribus suis creditoribus actiones ad eum quocumque modo devolutae sunt.

D. VIII id. April. Constantinopoli Decio vc. cons.

VIIII De Sententiis Adversus Fiscum Latis Retractandis

[1] *Imp. Antoninus A. Aristaeo.* Causas, in quibus contra fiscum iudicatum est, intra triennium retractari posse, et post id tempus, si praevaricatio arguatur vel manifesta fraus probetur, notum est.

PP. non. Iul. duobus Aspris conss.

[2] ...

X De Bonis Vacantibus et de Incorporatione

[1] *Impp. Diocletianus et Maximianus AA. Scyrioni rationali.* Scire debet gravitas tua intestatorum res, qui sine legitimo herede decesserint, fisci nostri rationibus vindicandas nec civitates audiendas, quae

Eighth Title Interest Rates of the Treasury

[1] *Emperor* ANTONINUS *Augustus to Antiochus.* Interest will not be exacted for that sum that you will prove was inflicted on you as a penalty. For my procurator has not imposed a fine on you beyond what has been decided, but he has ordered you to pay a penalty.

Posted November 17, in the consulship of Sabinus and Anullinus (216).

[2] *Emperor* ALEXANDER *Augustus to Victorinus.* If a loan was made with a pledge, the Treasury, which has succeeded into the place of the debtor, must also provide interest, as long as it was agreed in the (original) pact that it be paid.

Posted September 3, in the consulship of Julian and Crispinus (224).

[3][22] *Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect.* We order the Treasury to obey the ordinance of Our Divine Majesty,[23] through which We have permitted creditors, with the exception of certain persons, to take stipulations for interest up to 6 percent, so that the Treasury itself should not exact interest over 6 percent from its debtors, whether they have promised this at the outset or whether claims (*actiones*) have devolved to it by whatever means from its previous creditors.

Given April 6, at Constantinople, in the consulship of the vir clarissimus *Decius (529).*

Ninth Title Reconsidering Verdicts Issued against the Treasury

[1] *Emperor* ANTONINUS *Augustus to Aristaeus.* It is well known that cases in which a judgment has been made against the Treasury can be reconsidered within a three-year period, and (also) after that time, if an accusation of collusion (*praevaricatio*) should be made or manifest fraud be proved.

Posted July 7, in the consulship of the two Aspri (212).

[2][24]

Tenth Title Ownerless Property and Its Incorporation (into Imperial Property)

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Scyrio, Comptroller.* Your Eminence should know that the property of the intestate, who have died without a lawful heir, are to be claimed for Our accounts and that cities are not to be heard if they strive to claim the right to claim this for themselves on

[22] Combine with C. 7.54.2.
[23] C. 4.32.26.
[24] A second law is cited by Theodorus ad Nov. 128.14.

sibi earum vindicandarum ius veluti ex permissu vindicare nituntur: et deinceps quaecumque intestatorum bona a civitatibus obtentu privilegiorum suorum occupata esse compereris, ad officium nostrum eadem revocare non dubites.

D. prid. id. April. Hannibaliano et Asclepiodoto conss.

[2] *Imp. Constantinus A. ad Aemilium rationalem.* Si quando adnotationes nostrae contineant possessionem sive domum, quam donaverimus, 'integro statu' donatam, hoc verbo ea vis continebitur, quam ante scribebamus 'cum adiacentibus et mancipiis et pecoribus et fructibus et omni iure suo': ut ea, quae ad instructum possessionis vel domus pertinent, tradenda sint.

D. VI id. Mart. Mediolani Constantino A. III et Licinio conss.

[3] *Imppp. Valentinianus Valens et Gratianus AAA. ad Florianum comitem rerum privatarum.* **pr.** Si quando aut alicuius publicatione aut ratione iuris aliquid rei nostrae addendum est, rite atque sollemniter per comitem rerum privatarum, deinde rationales in singulis quibusque provinciis commorantes incorporatio impleatur et diligens stilus singillatim omnia adscribat. **1.** Tituli vero, quorum adiectione praedia nostris sunt consecranda substantiis, non nisi publica testificatione ponantur: gravissimis statim subdendis suppliciis, qui huiusmodi aliquid propria usurpatione temptaverint.

D. IIII k. April. Valentiniano np. et Victore conss.

[4] *Impp. Honorius et Theodosius AA. Palladio pp.* Vacantia mortuorum bona tunc ad fiscum iubemus transferri, si nullum ex qualibet sanguinis linea vel iuris titulo legitimum reliquerit intestatus heredem.

D. VIII id. Iul. Ravennae Eustathio et Agricola conss.

the theory of (an imperial) dispensation (*permissu*). And henceforth whatever goods of the intestate you discover have been seized by the cities under the pretense of their privileges, you shall not hesitate to recall the same to Our office.

Given April 12, in the consulship of Hannibalianus and Asclepiodotus (292).

[2][25] *Emperor* CONSTANTINE *Augustus to Aemilius, Comptroller.* If ever Our annotations (written responses to petitions) should include an estate (*possessio*) or house of which We have made a gift (with the designation) given "with its status intact" (*integro statu*), this term will have the same force as when We used to write "with its appurtenances (*adiacentia*), slaves, livestock, crops, and every right it has," so that those things that pertain to the furnishing (*instructus*) of the estate or house are to be conveyed.[26]

Given March 10, at Milan, in the consulship of Constantine Augustus, for the third time, and Licinius (313).

[3][27] *Emperors* VALENTINIAN, VALENS, *and* GRATIAN *Augusti to Florianus, Count of the Privy Purse.* **pr.** If ever anything is to be added to Our property, either because of the confiscation of someone's goods or by reason of law, its incorporation shall be completed with due observance and solemnly by the Count of the Privy Purse, then by the Comptrollers dwelling in the various individual provinces, and a diligent pen should note everything individually. **1.** But notices, by whose addition properties (*praedia*) are to be consecrated among our resources, shall not be included unless witnessed in public. Those who try some such thing by acting on their own are to be subjected at once to the most serious punishments.[28]

Given March 29, in the consulship of Valentinian, Most Noble Boy, and Victor (369).

[4][29] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Palladius, Praetorian Prefect.* We order ownerless property (*vacantia bona*) of decedents to be transferred to the Treasury[30] at that time, if the person dying intestate has not left behind any lawful heir from any lineage by blood or consideration of law.

Given July 8, at Ravenna, in the consulship of Eustathius and Agricola (421).

[25] = C.Th. 10.8.1.

[26] Classical Roman law distinguished between a legacy of a *fundus cum instrumento* and a *fundus instructus*. The former term refers to a farm with the equipment, animals, and slaves needed for its cultivation, whereas the latter term in addition includes furnishings and other amenities that would serve the owner during his residence there.

[27] = C.Th. 10.9.1.

[28] Blume: "the affixing of notices on properties, either to secure imperial protection or to harm a property-owner, is addressed in C. 2.14–16."

[29] = C.Th. 10.10.30, with fuller wording and with Constantius included as emperor; combine with C. 9.40.3, 10.1.10; C. Th. 4.15.1, 10.10.29.

[30] C.Th. has "We order the escheated property (*caduca bona*) of dead persons to be transferred to claimants (*competitores*) from Our Finances (*nostra largitate*) then ..."

[5] *Impp. Theodosius et Valentinianus AA. Hermocrati comiti rerum privatarum.* **pr.** Si vacantia vel alio modo bona delata legibus ad aerarium perhibeantur, certi palatini electi et iureiurando obstricti mittantur, ut eorum instantia praeses provinciae praesente fisci patrono diligenter inquirat, cuius vacans cadensque fuerit patrimonium, quantumque vel quale videatur. **1.** Et cum data reclamandi copia nullum id iure possidere vel vindicare constiterit locumque aerario factum esse tam ipsius relatione quam publicorum monumentorum fide constiterit, rerum nobis notitia intimetur, ut iussu nostro vacantia vel aliae res nomine occupentur aerarii. **2.** Quae forma etiam in parte bonorum vel in una alterave re seu actione una vel etiam pluribus servetur. nam si quid per fraudem in dispendium aerarii fuerit admissum, missi quidem exsecutores non evitant indignationem, praeses autem facultatum parte dimidia multabitur, fisci vero patronus detrimentum quod vitio eius fisco ingeritur resarcire urguebitur.

D. VII id. Oct. Constantinopoli Theodosio XV et Valentiniano IIII AA. conss.

XI De Delatoribus

[1] *Imp. Alexander A. Basso.* Si ei qui capere potest tacitum fideicommissum relictum est, cessat delatio. his enim prohibetur tacite relinqui, qui palam relictum capere non possunt.

PP. XIII k. Mai. Maximo II et Aeliano conss.

[2] *Imp. Gordianus A. Eutychemo.* **pr.** Monente officii sollicitudine, quin immo iussu procuratoris, ut causam ab alio delatam convenienti diligentia instrueres, non ipsum voluntarium delationis munus suscepisse te actorum lectio, quae precibus intexta sunt, manifeste declarat. **1.** Eapropter

[5][31] *Emperors* Theodosius *and* Valentinian *Augusti to Hermocrates, Count of the Privy Purse.* **pr.** If ownerless properties or ones that have in accordance with the laws devolved (*delata*) to the Imperial Treasury in any other way should be reported, certain Palatine officials chosen for the task and bound by oath should be sent, so that at their instance the provincial governor diligently inquire, in the presence of an Advocate (*patronus*) of the Treasury, to whom the ownerless and escheating (*cadens*) patrimony had belonged, and how large and of what sort it might seem to be. **1.** And when, after the opportunity to reclaim it has been given, it is established that no one possesses it or claims its ownership lawfully, and it is also established that a place has been made for the Treasury both by its own report and by the faith of public records, the notification of the matters should be communicated to Us, so that by Our order the ownerless property or other goods should be seized in the name of the Treasury. **2.** This procedure should also be maintained in the case of part of the property or in one or another item or in one or several claims. For if something has been admitted fraudulently at the expense of the Treasury, the executors (*exsecutores*, officials who enforced debts to the Treasury) who have been sent do not avoid wrath, but the governor will be fined half of his property, while the Advocate of the Treasury will be compelled to make good the loss that has accrued to the Treasury by his failing.

Given October 9, at Constantinople, in the consulship of Theodosius, for the fifteenth time, and Valentinian, for the fourth time, Augusti (435).

Eleventh Title Informers (*Delatores*)

[1] *Emperor* Alexander *Augustus to Bassus.* If a tacit trust[32] has been left to a person who is able to receive it, there is no place for informing. For it is prohibited for a bequest to be made tacitly to those persons who cannot openly take what has been left to them.

Posted April 19, in the consulship of Maximus and Aelianus (223).

[2] *Emperor* Gordian *Augustus to Eutychemus.* **pr.** A reading of the records, which have been included in your petition, manifestly shows that you have not undertaken the voluntary duty itself of informing, since the care of the office, not to mention the order of the procurator warns you to apply appropriate diligence to a case reported by another person. 1. For that reason, the *vir clarissimus*

[31] = C.Th. 10.8.5, with somewhat different wording. The C.Th. version includes the term *caduca*, and refers to the Treasury in Achaia.

[32] *Fideicommissum tacitum*: a trust involving a secret agreement between the testator and a nominal heir to circumvent the law by passing property to someone legally ineligible to receive it.

ne quid in persona tua quod est sectae temporum meorum alienum attemptetur, praeses provinciae vir clarissimus ad sollicitudinem suam revocabit.

PP. VIII id. Sept. Pio et Pontiano conss.

[3] *Idem A. Caecilio.* Nulla macula vel crimine delatoris adspergitur is, qui, cum ab officialibus fundum seu domum fisci possidere contenderetur, non se sed alium eius rei possessorem esse monstravit.

PP. prid. k. Iul. Gordiano A. II et Pompeiano conss.

[4] *Impp. Carinus et Numerianus AA. Candido.* Ex varia statutorum diversitate ad id decursum est, ut hi, qui rei publicae causas defendunt, delatorum criminibus non teneantur, cum omnibus notissimum est eos solos exsecrabiles nuntiatores esse, qui fisco deferunt.

PP. III k. Sept. Carino et Numeriano AA. conss.

[5] *Imp. Constantinus A. ad provinciales.* **pr.** Omnes iudices invigilare praecipimus delatores sine fisci advocato denuntiantes poenis adficere. apertissimi enim iuris est, ut, quod ex cuiuscumque patrimonio ceciderit in casum, et legibus et retro iuris ordine fisci advocatis agentibus vindicetur. **1.** Sed quia nonnulli praecipites secundum ius possessa patrimonia deferre non cessant, damus omnibus qui se laesos existimant contra delatores severitatem iudicum implorare ferro destrictam.

D. XI k. April. Constantinopoli Constantio et Albino conss.

[6] *Imppp. Gratianus Valentinianus et Theodosius AAA. Panhellenio consulari Lydiae.* Servum domini delatorem iubemus in exemplum omnium proditorum severissimae sententiae subiugari, etiamsi obiecta probaverit, excepto crimine maiestatis.

D. VII k. Nov. Constantinopoli Antonio et Syagrio conss.

provincial governor will recall his care that nothing be attempted in connection with your person that is foreign to the principles of my times.[33]

Posted September 6, in the consulship of Pius and Pontianus (238).

[3] *The same Augustus to Caecilius.* A person who has shown that not he himself but someone else was the possessor of that property, when officials contended that he was in possession of a house or farm belonging to the Treasury, is not sullied with any stigma or charge of an informer.

Posted June 30, in the consulship of Gordian Augustus, for the second time, and Pompeianus (241).

[4] *Emperors CARINUS and NUMERIAN Augusti to Candidus.* As a result of the multifarious diversity of the statutes, it has come to this, that those who defend cases for a municipality should not be subject to the charges of (being) informers, since it is very well known to everyone that the only detestable informers (*nuntiatores*) are the ones who inform to the Treasury.

Posted August 29, in the consulship of Carinus and Numerian Augusti (284).

[5][34] *Emperor CONSTANTINE Augustus to the provincials.* **pr.** We instruct all judges to take care to inflict punishments on informers making denunciations without an Advocate of the Treasury. For it is quite clearly the law that whatever from someone's property has not passed to an heir (*cadere in casum*), should, both according to the statutes and to the precedents of law, be claimed by the Treasury when its advocates pursue the case. **1.** But since some rash individuals do not cease informing about patrimonies possessed in accordance with the law, We give to everyone who consider themselves harmed (the right to) to implore a severity of the judges made inexorable by the sword.

Given March 22, at Constantinople, in the consulship of Constantius and Albinus (335).

[6][35] *Emperors GRATIAN, VALENTINIAN, and THEODOSIUS Augusti to Panhellenius, Consular Governor of Lydia.* We order that a slave who is an informer on his master be subject to the most severe verdict as an example to all betrayers, even if he proves his accusations, except for a charge of treason (*maiestas*).

Given October 26, at Constantinople, in the consulship of Antonius and Syagrius (382).

[33] As Blume points out, someone prosecuting a case as a duty and not at his own initiative would not suffer the penalties connected with failing to obtain a conviction.

[34] = C.Th. 10.10.3, which omits the phrase "making denunciations without an Advocate of the Treasury."

[35] = C.Th. 10.10.17, which omits the phrase "except in a charge of treason."

[7] Οὔτε οἰκέτῃ οὔτε ἐλευθέρῳ ἔξεστι καταμηνύειν, ὅθεν μηδεὶς εὐλαβείσθω μήτε θάνατον μήτε οὐσίας ἀφαίρεσιν. εἰ δέ τις ἢ ἄλλως πως καταμηνύσει τινὰ ἢ ὡς εὑρόντα θησαυρὸν διαβαλεῖ, οἰκέτης μὲν ὢν παραχρῆμα διδόσθω πυρί, καὶ μάλιστα εἰ τοῦ δεσπότου κατηγορεῖ, ἐλεύθερος δὲ ὑπάρχων καὶ τῆς οὐσίας ἐκπίπτων καὶ τῆς πολιτείας ἔξω τῶν ὅρων τῆς Ῥωμαϊκῆς γινέσθω βασιλείας.

[8] pr. Μὴ ἐξέστω τοῖς τοῦ δημοσίου συνηγόροις λέγειν, ὡς περιηχήθησάν τινα κατέχειν δημόσια καὶ διὰ ταύτης τῆς ἀφανοῦς κατηγορίας ἐπιβουλεύειν ἑτέροις, ἀλλὰ καὶ ὁ καταμηνυτὴς παρέστω καὶ ἡ ποιότης αὐτοῦ σκοπείσθω. **1.** Καὶ μηδὲ υἱὸς πατέρα ἢ μητέρα ἢ ἀπελεύθερος πάτρωνα ἐπὶ δημοσίοις καταμηνυέτω, μηδὲ ὁ ἐξορίαν ὑπομείνας ἢ ἐπὶ συκοφαντίᾳ κατακριθεὶς ἢ πληγὰς παρὰ τοῦ ἄρχοντος δεξάμενος μηδὲ ἕτερον πρόσωπον ἀπὸ νόμου εἰργόμενον ἀκουέσθω. **2.** Οἰκέτης δὲ ἢ ἐπὶ δημοσίᾳ αἰτίᾳ ἢ ἐπὶ ἄλλῃ τινὶ τοῦ δεσπότου κατηγορῶν ἐν αὐτῷ τῷ φθέγγεσθαι τὴν κατηγορίαν ἀποτεμνέσθω, εἰ καὶ ἀληθεύει κατὰ τοῦ δεσπότου.

3. Καὶ ἡ σχολὴ δὲ τῶν παλατίνων ἐὰν καταμηνύσῃ τινός (μόνη γὰρ αὕτη καὶ δύναται καταμηνύειν καὶ ἀναγκάζεται), ἢ καὶ ἕτερος ὁ ἐκ τοῦ νόμου συγχωρούμενος, μνημονευέτω τοῦ καταμηνύοντος ὁ τοῦ δημοσίου προεστώς. **4.** Καὶ εἰ μὲν ἐπὶ τῆς βασιλίδος πόλεώς ἐστιν ὁ καταμηνυθείς, ἐκ διαλαλίας τοῦ κόμητος τῶν ἰδικῶν ὑπομιμνησκέσθω καὶ μηδὲν πλέον πάσῃ τῇ τῶν παλατίνων σχολῇ καὶ τῷ κατὰ καιρὸν πριμικηρίῳ καὶ τοῖς τοῦ δημοσίου συνηγόροις διδότω τῶν τεσσάρων νομισμάτων μήτε ὑπὲρ τῆς ὑπομνήσεως μήτε ὑπὲρ προβολῆς τοῦ ἐντολέως. **4a.** Καθ' ἑκάστην δὲ διάγνωσιν τὰ νενομισμένα δαπανήματα ἐν τῷ εἰρημένῳ δικαστηρίῳ παρεχέτω καὶ ὑπὲρ τῆς διαγνώσεως αὐτῆς καὶ ὑπὲρ τῆς τῶν πεπραγμένων ἐκλήψεως. **4b.** Καὶ ἀνεύθυνος μὲν ὢν ἀπαλλαττέσθω τῆς δίκης. εἰ δὲ ὑπεύθυνος φανείη, μὴ αὐτὰ μόνα ἅπερ ἔχων εὑρίσκεται πράγματα ἢ τὸ χρέος ὅπερ ἐχρεώστει ἀποδιδότω, ἀλλὰ καὶ τὰ συμβάντα τῷ ταμείῳ δαπανήματα ἐκ διπλασίων διδότω, ὑπὲρ οὗ μάτην ἐδικάσατο.

5. Ἐὰν δὲ πράγματα μόνα καταμηνύηται ὡς διαφέροντα τῷ ἱερωτάτῳ ταμείῳ, ἀγνοεῖται δὲ ὁ ταῦτα διακρατῶν, καὶ ἐν τῇ βασιλίδι πόλει τὰ πράγματα ἢ ὑπὸ τὴν αὐτῆς ἐνορίαν ᾖ, ἀκινήτοις μὲν οὖσιν αὐτοῖς μὴ ἐπιβαλλέτω τίτλους ἡ σχολὴ τῶν παλατίνων μηδὲ ἐπιβαινέτω αὐτοῖς,

[7][36] It is allowed neither for a slave nor a free person to inform, so that no one should fear death or the confiscation of property. But if someone for any reason should inform against someone or accuse him of finding a treasure, if he is a slave he should be immediately given over to fire, and especially if he accuses his master. A free person is to lose his property and citizenship and be outside the boundaries of the Roman Empire.

[8][37] **pr.** It must not be permitted for the Advocates of the Treasury to say that people have been reported as occupying some properties belonging to the Treasury and through this anonymous accusation to plot against others, but the informer must be present and his quality examined. **1.** And a son shall not inform against his father or mother concerning Treasury properties, nor shall a freedman against his patron, nor shall one be heard who has endured exile, been condemned for false accusation, received blows from the magistrate, or is any other person excluded by the law. **2.** A slave accusing his master on a public charge (i.e., involving the Treasury) or any other kind shall be cut off in the very act of uttering the accusation, even if he speaks the truth about the master.

3. In addition, if the Palatine Corps (*schola Palatinorum*) should accuse someone – it alone by itself both can and is compelled to inform – as well as (if) anyone else allowed by the law (does so), the Patron (*proestos*) of the Treasury shall note the informer. **4.** If the accused is in the Imperial City, he shall be summoned in accordance with an interim order of the Count of the Privy Purse, and he shall give no more than (a total of) 4 solidi *(nomismata)* to the entire Palatine Corps, the temporary superintendent, and the Advocates of the Treasury, either for the accusation or for appointing a procurator. **4a.** For each hearing he shall provide the expenses established by law in the aforementioned court, both for the trial itself and for the recording of the protocol. **4b.** If he (the accused) is not guilty he shall be absolved of the charge. If he should appear guilty, he must give back not only the property that he is found to have or the loan that he has borrowed, but pay double the expenses that accrued to the Treasury for what he litigated over in vain.

5. If it should only be reported that property belongs to the Most Sacred Treasury, but that it is unknown who possesses it, and this property should be in the Imperial City or within its territory, if the property is immovable the Palatine Corps shall not impose signs (indicating title to the property) or enter upon it, but the Count of the Privy Purse of the Emperor must post placards in the most visible places in the Imperial City as well as where the property is situated,

[36] From Bas. 56.7.7; Lounghis *et al.* date to between 491 and 518. Blume: "All informers were suppressed in connection with any matters which involved the loss of life or property of anyone, unless, as stated in the next law, the information was given in connection with treason."

[37] From Bas. 56.7.8, giving a Greek synopsis of the original constitution. In 4b, οὗ is accepted for ᾧ in the manuscripts.

ἀλλὰ προγράμματα προτιθέτω ὁ κόμης τῶν ἰδιοκτήτων τοῦ βασιλέως ἐν τοῖς περιφανέσι τόποις τῆς βασιλίδος καὶ ἐν οἷς τὰ πράγματα διάκειται, ἐπιτρέπων ἑκάστῳ ἀντιποιουμένῳ τούτων τῶν πραγμάτων εἴσω τριάκοντα ἡμερῶν καταλαμβάνειν τὸ αὐτοῦ δικαστήριον καὶ συνίστασθαι τοῖς ἑαυτοῦ δικαίοις ἐπὶ ταῖς εἰρημέναις δαπάναις, εἴτε αὐτὸς ὁ κατέχων τὰ πράγματα βούλεται ἀπαντῆσαι εἴτε φίλος αὐτοῦ εἴτε οἰκέτης εἴτε *ἀπελεύθερος, ὅταν ἄπεστιν ὁ τῇ ἀληθείᾳ ταῦτα κατέχων*, πληρουμένων καὶ ἐπὶ αὐτῷ πάντων, ὅσα περὶ τοῦ φύλακος τῆς νομῆς νενομοθέτηται. **5a.** Ἐὰν δὲ μήτε αὐτὸς ὁ τῆς ὑποθέσεως κύριος μήτε ἐντολεὺς αὐτοῦ νεμόμενος μήτε φύλαξ τῆς νομῆς φανείη εἴσω τριάκοντα ἡμερῶν καὶ τοῦτο αὐτὸ γένηται δῆλον ἐν ὑπομνήμασι, γινέσθω μὲν ἐπὶ νομῆς τῶν πραγμάτων τὸ ταμεῖον, μηδενὸς προκρίματος ἐπαγομένου τῷ κυρίῳ τῶν πραγμάτων ἐν ταῖς ἁρμοζούσαις αὐτῷ περὶ τούτων δικαιολογίαις. **5b.** Εἰ δὲ κινητὰ ἢ αὐτοκίνητα εἴη τὸ καταγγελθέντα πράγματα, μηδὲ ταῦτα κατεχέτω τις προπετῶς, ἀλλ' ἀναζητείσθω ὁ ταῦτα νεμόμενος καὶ ὑπομνησθεὶς ἀγωνιζέσθω τὴν δίκην ἐπὶ τοῖς εἰρημένοις δαπανήμασι καὶ ὅροις. **5c.** Διὰ δὲ πάντων τῶν ἐννόμων τρόπων καὶ ἀποδείξεων ἐγγράφων ἢ καὶ *ἀγράφων ἀνερευνάσθω τὰ πράγματα*, καὶ *διὰ τῶν* δυναμένων εἰδέναι τὸ ἀληθὲς προσώπων· εἰδότος τοῦ ἐναγομένου, ὡς, ἐὰν ἡττηθῇ, οὐ μόνον τὰ περὶ τὴν δίκην γινόμενα δαπανήματα ἀπαιτηθήσεται, ἀλλὰ καὶ αὐτὰ τὰ πράγματα παρ' αὐτῷ φανέντα καὶ τὴν τούτων διατίμησιν.

6. Ταῦτα καθόλου περὶ τῶν δημοσίων πραγμάτων ἡ διάταξις νομοθετήσασα ἐπιφέρει λοιπὸν ἰδικὴν νομοθεσίαν περὶ τῶν διὰ τυραννίδα δημευομένων, λέγουσα τὸν ἐπὶ τούτοις καταμηνύοντα μηδὲ μηνυτὴν καλεῖσθαι, ἀλλὰ ἑτοίμως προσδέχεσθαι, καὶ εἰ μὲν συκοφαντήσωσιν οἱ προσαγγείλαντες, ὁμοίως τοῖς ἄλλοις μηνυταῖς αὐτοὺς τιμωρεῖσθαι, ἐὰν δὲ διελέγξωσι τὰ μηνυθέντα, μὴ μόνον ἀπαλλάττεσθαι τῆς τιμωρίας, ἀλλὰ καὶ ὀγδόην μοῖραν *τῶν προσαγγελθέντων πραγμάτων αὐτοὺς κομιεῖσθαι.* **7.** Τοὺς δὲ καταγγελθέντας, ἐὰν μὲν τὰ παρ' αὐτῶν κατεχόμενα πράγματα ἤτοι ἡ οὐσία πᾶσα ἐλάττων εἴη τῶν πεντήκοντα τοῦ χρυσίου λιτρῶν, πρὸς τὴν διατίμησιν αὐτῶν τὰς ἐγγύας διδόναι. εἰ δὲ ὑπερβαίνει τὰς πεντήκοντα λίτρας, ἄχρι μὲν τῶν πεντήκοντα παρέχειν καὶ αὐτοὺς τὰς ἐγγύας, ἐπὶ δὲ τῇ λοιπῇ ποσότητι διόμνυσθαι, προστιθέντας ἐν τῇ ἐξωμοσίᾳ, ὡς προσεδρεύσουσι τῷ δικαστηρίῳ αὐτοὶ ἢ οἱ τούτων ἐντολεῖς καὶ οὐκ ἀπολειφθήσονται τοῦ δικαστηρίου τῶν θείων ἰδικῶν τοῦ *βασιλέως.* **7a.** Ἐὰν δὲ μετὰ τὴν ἐξωμοσίαν ἀπολειφθέντες τρίτον κληθεῖεν ἑκάστης κλήσεως ὑπὲρ δέκα ἡμέρας γενομένης, γένηται δὲ καὶ τρία κατ' αὐτῶν κηρύγματα, καὶ μηδὲ οὕτως φανεῖεν αὐτοὶ ἢ οἱ ἐντολεῖς αὐτῶν ἢ διεκδικηταί, ἐπιβαινέτω μὲν τοῖς πράγμασι τὸ ἱερώτατον ταμεῖον, φυλάττεσθαι δὲ τὸ ἀπόκριτον τοῖς ἀπολιμπανομένοις.

allowing each person who within thirty days makes a claim for the property to approach the same court and to defend his claims on the basis of the aforesaid expenses, whether the very person who possesses the property wishes to take up the case, or (instead) his friend or a slave or freedman when the person who truly possesses it (the property) is absent; and all will be fulfilled in connection with this that has been established by law for someone defending possession. **5a.** If neither the author of the controversy himself should appear within thirty days nor his procurator managing it nor a guardian of his possession, and this very matter appears manifest in the record, the Treasury shall be put in possession of the property, with no prejudice accruing to the owner of the property in the court proceedings available to him concerning it. **5b.** If the property under denunciation is movable or self-moving (i.e., animals or slaves), no one shall occupy it rashly, but its possessor must be sought out and, when informed, plead his case in accordance with the aforesaid expenses and terms. **5c.** The property should be investigated through all lawful methods and written and unwritten proofs, as well as through persons capable of knowing the truth. The defendant will know that, should he be defeated, he will be required to provide not only the expenses that occurred in connection with the trial, but also all the property found with him and its estimated value.

6. The constitution legislating these things generally concerning properties belonging to the Treasury also includes a special provision concerning property confiscated as a result of treason (*tyrannis*), saying that the person who reports about it is not called an informer, but that he is readily received, and if those who have made a report engage in a false accusation, they will be punished in a manner similar to informers. But if they should prove their revelations, they will not only escape punishment, but they will take a one-eighth share of the reported property. **7.** Those who are accused, if the property in their possession or indeed their entire estate (*ousia*) should be worth less than 50 pounds of gold, shall offer sureties in accordance with its valuation. If it (the property's value) exceeds 50 pounds (of gold), they shall themselves provide sureties for up to 50 pounds, and then swear on the remaining amount, including in the oath that they or their procurators will be present at the trial and will not leave the trial involving the divine Privy Purse of the Emperor. **7a.** But if after their oath they should be absent and, having been summoned three times with each summons occurring after a ten-day interval, there should be three declarations made against them, and if they, their procurators, or their advocates should still not appear, the Most Sacred Treasury shall enter upon their property, but the right of defense is maintained for those who are absent.

8. Εἰ δὲ τὰ προσαγγελθέντα πράγματα ἐν ἐπαρχίᾳ διάκεινται, καὶ ἢ ἀφ' ἑαυτοῦ κινούμενος ὁ τῆς ἐπαρχίας ἄρχων ἢ ἐκ προστάξεως τοῦ κόμητος τῶν ἰδικῶν τοῦ βασιλέως ἐξετάζει τὴν ὑπόθεσιν, μηδὲν ταραχῶδες μηδὲ βίαιον γινέσθω, ἀλλὰ τὰ μὲν δαπανήματα τῆς δίκης εἰς τὸ τρίτον μέρος τῶν ἐν τῇ βασιλίδι πόλει γινομένων παρεχέσθω. **9.** Ἕκαστος δὲ προσαγγέλλων ἢ τῷ κόμητι τῶν θείων ἰδικῶν τοῦ βασιλέως ἢ τῇ σχολῇ τῶν παλατίνων ἢ τοῖς λαμπροτάτοις τοῦ δημοσίου συνηγόροις ἢ τοῖς λαμπροτάτοις ἄρχουσι τῶν ἐπαρχιῶν γινωσκέτω, ὡς, εἴτε ἐπιμείνας τῇ δίκῃ φανείη συκοφάντης εἴτε ἀποστῇ τῆς κατηγορίας καὶ ἀφανὴς γένοιτο, σύμμετρον μὲν ἔχων περιουσίαν καὶ μὴ δεδιὼς τὴν ἐν αὐτῇ τιμωρίαν καὶ πληγὰς βαρυτάτας ὑπομένει καὶ διηνεκῶς ἐξορίζεται· ἐὰν δὲ στρατείαν ἔχῃ ἢ σεμνὸν ἐπιτήδευμα ἢ περιουσίαν ἀρκοῦσαν, ἐκπίπτει καὶ τῆς στρατείας καὶ τῆς οὐσίας καὶ οὐδὲ τὴν βασιλίδα πόλιν οὐδὲ τὴν ἐπαρχίαν οἰκῆσαι συγχωρεῖται.

10. Παραφυλαττόντων τὸν νόμον τοῦ τε κόμητος τῶν ἰδικῶν τοῦ βασιλέως καὶ τῆς πειθομένης αὐτῷ σχολῆς, καὶ τοῦ παραβαίνοντος αὐτὸν ἐφ' ἑκάστῳ κεφαλαίῳ πεντήκοντα χρυσίου λίτρας πρόστιμον ἀπαιτουμένου. **11.** Εἰ δὲ ἐν ἐπαρχίᾳ παραβαθείη τι τούτων, ἐφ' ἑκάστῃ αἰτίᾳ ἀνὰ τριάκοντα χρυσίου λιτρῶν καὶ οἱ τῶν ἐπαρχιῶν ἄρχοντες καὶ αἱ πειθόμεναι τάξεις αὐτοῖς ἀπαιτείσθωσαν. **12.** Ἵνα δὲ τὰ τῶν προστίμων τούτων μὴ λανθάνῃ, ἔξεστι καὶ αὐτοῖς τοῖς ἠδικημένοις καταμηνύειν τὸν παραβάντα τὸν νόμον καὶ προσαγγέλλειν τῷ εὐσεβεστάτῳ βασιλεῖ ἢ τῷ ἐνδοξοτάτῳ μαγίστρῳ ἀζημίως, ἵνα ταῦτα δι' αὐτοῦ μανθάνων ὁ βασιλεὺς αὐτῷ τῷ μαγίστρῳ τὴν τῶν προστίμων εἴσπραξιν ἐπιτρέψῃ.

XII De Petitionibus Bonorum Sublatis

[1] *Imppp. Gratianus Valentinianus et Theodosius AAA. Eutropio pp.* **pr.** Quisquis in crimine maiestatis deprehensus fuerit et punitus bonaque eius, sicut plectendi consuetudo criminis habet, fiscus invaserit, nullus eadem sub spe munificentiae principalis audeat proprio iuri poscere. qui contra legem id ausus fuerit sperare, quod non licet, reus violatae legis habeatur. **1.** Sed quoniam plerumque ita in nonnullis inverecunda petentium inhiatione constringimur, ut etiam non concedenda tribuamus, nec rescripto quidem nostro adversus formam latae legis loci aliquid relinquatur. **2.** Si quid autem ex bonis talibus nostro

8. If the reported properties are situated in a province, and the provincial governor, either on his own accord or at the instruction of the Count of the Emperor's Privy Purse, examines the case, nothing must transpire in a disorderly or violent fashion, but the expenses for the trial shall be provided on a one-third proportion to ones that happen in the Imperial City. **9.** And each person, announcing either to the Count of the Divine Privy Purse of the Emperor, to the Palatine Corps, or to the *viri clarissimi* Advocates of the Treasury or to the *viri clarissimi* governors of the provinces, shall know that if, when he persists in his case, he should appear guilty of false accusation, or if he should withdraw from the accusation and hide, if he has a modest patrimony and so does not fear a monetary punishment, he endures a most grievous scourging and is exiled immediately. If he should hold a service post (*militia*) or an honorable profession or sufficient wealth, he loses his service and his property and is not permitted to live either in the Imperial city or in the province.

10. The Count of the Emperor's Privy Purse and the Corps that obeys him will observe the law, and from the person who violates it 50 pounds of gold will be exacted as a fine on each occasion. **11.** If any of these measures should be violated in a province, for each offense the provincial governors and the offices obeying them shall be fined 30 pounds of gold. **12.** So that the details of the fines not escape anyone's notice, it is permitted also for those who have been wronged to report the person violating the law, and without fear of punishment to make this announcement to the Most August Emperor or to the Master (of Offices), *vir illustris* (*endoxotatos*), so that, upon learning these things through him, the Emperor might entrust the Master himself with the exaction of the fines.

Twelfth Title The Abolition of Petitions for (Escheated) Property

[1][38] *Emperors* Gratian, Valentinian, *and* Theodosius *Augusti to Eutropius, Praetorian Prefect.* **pr.** No one who has been caught in a crime of treason, (and who) has been punished and, as is customary in punishing a crime, has had the Treasury seize his property, should dare to ask for the same property back to be his own under the hope of imperial munificence. Whoever, contrary to the law, dares to hope for what is not permitted, shall be considered accused of violating the law. **1.** But since We are commonly bound in some cases by the immoderate greed of people petitioning that We provide even things that cannot be conceded, no place should be left for Our rescript against the rule of a promulgated law. **2.** If, however, We wish, in Our judgment, that

[38] = C.Th. 10.10.15.

iudicio, nullo tamen desiderante atque poscente, concedi cuiquam voluerimus, huiusmodi tantum valeat liberalitas.

D. XVI k. Dec. Thessalonicae Gratiano V et Theodosio AA. conss.

[2] *Impp. Theodosius et Valentinianus AA. Zoilo pp.* **pr.** Omne semen alienas appetendi fortunas stirpitus eruere cupientes nulli deinceps volumus petitionis rerum esse licentiam, etsi intestatus quisquam quaeve ac nullis e numero propinquorum extantibus vel uxore vel marito fati munus impleverit et cuiuscumque sit condicionis aut sectae, seu quolibet titulo res fuerit fiscalis. **1.** Nemo audeat ad petitionem rerum defuncti defunctaeve, cuiuscumque fortunae aut sectae sit, etsi fisco nostro locus pateat, adspirare, cum nec illis quidem, quorum actu atque officio petitionem procedebat effectus, impune liceat nostris sanctionibus adversari. **1a.** Sed vir illustris quidem cuiuscumque temporis quaestor, si oblatae petitioni subscripserit vel etiam responsum dederit, virque illustris comes rerum privatarum, si vel instrui permiserit vel petitionem, si qua insinuatur, admiserit, indignationem nostri numinis sustinebunt, ceterisque fient vindictae temeritatis exemplum. **1b.** Memoriales vero, qui excipienda eiusmodi rescripta vel implenda curaverint, et palatinos, qui instruxerint vel gesta admissae petitionis ediderint, bonorum proscriptione puniri decernimus. **2.** Pari forma res etiam civiles et ad ius publicum pertinentes ab omni petitione muniendas esse censemus, scilicet nec pragmatica iussione vel sacra adnotatione vel quolibet oraculo divino seu mandatis, si qua contra hanc sanctionem nostram fuerint impetrata, quodcumque roboris habere valituris.

D. X k. Mai. Constantinopoli Theodosio A. XVIII et Albino conss.

XIII De His Qui Se Deferunt

[1] *Imp. Constantinus A. rationalibus Hispaniarum.* **pr.** Is, cuius tacite fidei commissa fuerit hereditas, statim officio gravitatis tuae nuntiet et gesta prodat et continuo quod actum fuerit renuntiet, et post

someone receive a grant from such properties, when no one is desiring it and asking for it, only liberality of this sort shall be valid.

Given November 16, at Thessalonica, in the consulship of Gratian, for the fifth time, and Theodosius, Augusti (380).

[2][39] *Emperors THEODOSIUS and VALENTINIAN Augusti to Zoilus, Praetorian Prefect.* **pr.** Desiring to dig out by the roots every seed of seeking other people's fortunes, We wish henceforth that no one have the right (*licentia*) of petitioning for property, even if some man or woman fulfills the duty of fate (passes away) with no survivors from among the number of his or her relatives (*propinqui*) or a wife or a husband, whatever his or her condition or sect (*secta*, i.e., whether Catholic or heretic) might be, or if the property belongs to the Treasury under any title. **1.** No one should dare to aspire to a petition for the property of a deceased man or woman, of whatever fortune or sect he or she might be, even if a place should be open for Our Treasury, since opposition to Our ordinances with impunity is not even permitted to those persons from whose action and office the effect of petitions would proceed. **1a.** But the *vir illustris* Quaestor at any time, if he has signed a petition that has been offered or even given a response, and the *vir illustris* Count of the Privy Purse, if he has permitted a petition to be drawn up, or, if one should be introduced, has admitted it, will sustain the indignation of Our Divine Majesty, and to others they will be an example of temerity avenged. **1b.** We determine that the record-keepers (*memoriales*) who have the responsibility to record and implement such rescripts, and the Palatines, who draw them up or publish the record (*gesta*) of an admitted petition, are to be punished with the proscription of their property. **2.** We decree that civil matters too as well as ones pertaining to public law be protected from every petition, so that neither a pragmatic sanction (*pragmatica iussio*), nor an emperor's sacred response to a written petition (*adnotatio*), nor any divine imperial enactment (*oraculum*) or orders, if any have been obtained contrary to Our ordinance, will have any authority.

Given April 22, at Constantinople, in the consulship of Theodosius Augustus, for the eighteenth time, and Albinus (444).

Thirteenth Title Those Who Inform on Themselves

[1][40] *Emperor CONSTANTINE Augustus to the Comptrollers of the Spains.* **pr.** The person to whose tacit faith an inheritance was entrusted shall at once announce to the office of Your Eminence, reveal what has been done (*gesta*),

[39] = Nov.Theod. 17.2, with slightly different wording.
[40] = C.Th. 10.11.1. On tacit *fideicommissa*, see C. 10.11.1.

hanc fidem tertiam ab omnibus defuncti bonis percipiat portionem. **1.** Quod si ab uxore defuncti istud officio devotionis tuae fuerit revelatum, ipsa etiam, quam defunctus esse voluit heredem, si gesta aperuerit, tali praemio mancipetur, ut ex omni patrimonio medium consequatur et cum fisco nostro celebret divisionem, id etiam habitura privilegium, ut prior eligat portionem: et tunc occultator ille gestorum, fisci et mulieris pariter inimicus, exutus omni patrimonio suo ac fisco vindicato in insulam deportetur.

D. id. Mart. Gallicano et Basso conss.

XIIII Si Liberalitatis Imperialis Socius sine Herede Defecerit

[1] *Imp. Constantius A. Orioni comiti rerum privatarum.* Iubemus, ut, si quis forte ex his, quibus communiter a nobis aliquid donatum sit, nullo herede relicto decesserit, ad consortem potius solacium quam ad personam aliam pars perveniat decedentis.

D. xv k. Iul. Mediolani Philippo et Salia conss.

XV De Thesauris

[1] *Impp. Leo et Zeno AA. Epinico consulari.* **pr.** Nemo in posterum super requirendo in suo vel alieno loco thesauro vel super invento ab alio vel a se effusis precibus pietatis nostrae benignas aures audeat molestare. **1.** Nam in suis quidem locis unicuique, dummodo sine sceleratis ac puniendis sacrificiis aut alia qualibet arte legibus odiosa, thesaurum (id est condita ab ignotis dominis tempore vetustiore mobilia) quaerere et invento uti liberam tribuimus facultatem, ne ulterius dei beneficium invidiosa calumnia persequatur, ut superfluum sit hoc precibus postulare, quod iam lege permissum est, et imperatoriae magnanimitatis videatur praevenire liberalitas postulanda. **2.** In alienis vero terrulis nemo audeat invitis, immo nec volentibus vel ignorantibus dominis opes abditas suo nomine perscrutari. **3.** Quod si nobis super hoc aliquis crediderit supplicandum aut praeter huius legis tenorem in alieno loco thesaurum

and immediately renounce what has been enacted, and after this (display of) faith he shall receive a one-third portion of all the property of the deceased. 1. But if this has been revealed to the office of Your Devotion by the wife of the deceased, she herself, whom the deceased wanted to be heir, if she reveals what has been done, shall be redeemed by such an award that she gain half from the entire patrimony and share a division with Our Treasury, and she will also have this privilege, that she choose her portion first. And then the hider of the record (*gesta*), an enemy equally of the Treasury and the wife, shall be deported onto an island after being stripped of all his property, which is claimed by the Treasury.

Given March 15, in the consulship of Gallicanus and Bassus (317).

Fourteenth Title If a Partner in Imperial Generosity Dies Without an Heir

[1][41] *Emperor* CONSTANTIUS *Augustus to Orion, Count of the Privy Purse.* We order that, if any of those persons to whom We have given something as common property dies by chance without leaving an heir, the share of the decedent should pass to the partner (*consors*) as a solace rather than to another person.

Given June 17, at Milan, in the consulship of Philippus and Salia (348).

Fifteenth Title Treasure Troves

[1] *Emperors* LEO *and* ZENO *Augusti to Epinicus, Consular (Governor).*[42] **pr.** No one henceforth should dare to bother the kindly ears of Our Piety with effusive prayers about seeking a treasure trove (*thesaurus*) on his own or another's property, or about one found either by another or by himself. 1. For We grant the free right (*facultas*) to everyone, as long as it is done so without criminal and punishable sacrifices or some other art hateful to the laws, to find on his or her own property a treasure – that is, movable property hidden by unknown owners in an older time – and to use it when it is found, in order that invidious calumny no longer follow a benefit of God, it be unnecessary to request by prayers what has long been permitted by the law, and the generosity of imperial magnanimity be seen to anticipate what is to be requested. 2. But in other persons' plots no one should dare, against the owners' wills, let alone when they do not (positively) wish it or are unaware, to ferret out hidden wealth in his own name. 3. But if someone thinks to supplicate Us about this or searches out and finds a treasure in a place

[41] = C.Th. 10.14.2, with different wording. The constitution was probably issued by Constans (Projet Volterra).

[42] Krüger writes *comiti sacrarum largitionum*, "Count of Imperial Finances."

scrutatus invenerit, totum hoc locorum domino cedere compellatur et velut temerator legis saluberrimae puniatur. **4.** Quod si forte vel arando vel alias terram alienam colendo vel quocumque casu, non studio perscrutandi, in alienis locis thesaurum invenerit, id quod repertum fuerit dimidia retenta altera data cum locorum domino partiatur. ita enim eveniet, ut unusquisque suis fruatur et non inhiet alienis.

D. VI id. Oct. Leone iuniore A. cons.

XVI De Annona et Tributis

[1] Αἱ σχολάζουσαι τὸ λοιπὸν ἀννόναι καὶ αἱ κεφαλιτιόναι τῷ δημοσίῳ διεκδικείσθωσαν καὶ μὴ διαιρείσθωσαν παρὰ τῶν ἀρχόντων ἑτέροις ἢ εἰς δημόσια ἔργα δίχα θείου τύπου καὶ τὴν δόσιν καὶ τὸν τρόπον τοῦ δαπανήματος διορίζοντος. ἀλλὰ μηδὲ ἐκ τοῦ δημοσίου κανόνος εἰς ἰδιωτικὸν ἢ δημόσιον ἔργον ὕλαι μεταφερέσθωσαν ἢ εἰς ἀγορασίαν ὑλῶν χρήματα διδόσθωσαν ἄνευ θείου τύπου. τοῦ παραβαίνοντος οἴκοθεν τὸ δημόσιον πληροῦντος, καὶ τοῦ προσφόρου σκρινίου βαρυτάτοις ἐπιτιμίοις ὑποκειμένου.

[2] *Impp. Valerianus et Gallienus AA. et Valerianus C. Antiocho.* Aes quidem alienum pro portionibus, ex qua quisque defuncto heres extitit, praestare oportet, annonas autem is solvere debet, qui possessiones tenet et fructus percipit.

PP. ... Saeculare et Donato conss.

[3] *Imp. Decius A. Citicio.* Indictiones non personis, sed rebus indici solent: et ideo, ne ultra modum earundem possessionum quas possides conveniaris, praeses provinciae prospiciet.

PP. XVII k. Nov. Aemiliano et Aquilino conss.

[4] *Imp. Constantinus A. ad Proclianum.* Omnes pensitare debebunt, quae manus nostrae delegationibus adscribuntur, nihil amplius exigendi. nam si quis vicarius aut rector provinciae aliquid iam cuiquam

belonging to another in violation of the terms of this law, he shall be compelled to cede this whole thing to the owner of the place and be punished as a violator of a most advantageous law. 4. But if by chance he finds a treasure on property belonging to another by plowing or by otherwise cultivating another's land or by some chance, not out of a desire to search for it, he shall retain half of what is found and, giving away the other half, share (the treasure) with the owner of the property. Thus it will come about that each person enjoys his own things and does not gape longingly at those belonging to other people.

Given October 10, in the consulship of Leo the Younger, Augustus (474).

Sixteenth Title The *Annona* (Tax on Land)[43] and (Other) Taxes

[1][44] Unused food taxes (*annonae*) and personal assessments (*capitatio*) are henceforth to be claimed for the state and shall not be divided by the governors among other persons or assigned to public works without an imperial rescript (*theios typos*) that defines both the amount given and the type of expense. But wood is not to be transferred from the tax (*canon*) accruing to the Treasury for a public or private purpose, nor are funds for the purchase of wood to be given without a divine rescript. Anyone who violates this will compensate the Treasury from his private resources and the appropriate department will be subject to the gravest punishments.

[2] *Emperors* Valerian *and* Gallienus *Augusti and* Valerian *Caesar to Antiochus.* Each heir must pay (the decedent's) debts in proportion to the share he has inherited from the deceased, but the one who holds the properties (*possessiones*) and obtains the fruits should pay the land taxes.

Posted ... in the consulship of Saecularis and Donatus (260).

[3] *Emperor* Decius *Augustus to Citicius.* Indictions[45] are customarily imposed not on persons, but on property. Therefore the provincial governor will see to it that you are not sued beyond the amount assessed on the same properties (*possessiones*) that you possess.

Posted October 16, in the consulship of Aemilianus and Aquilinus (249).

[4][46] *Emperor* Constantine *Augustus to Proclianus.* All should pay the charges that are ascribed in the tax assessments (*delegationes*) made by Our hand, with nothing more to be exacted. For if any provincial Vicar or governor

[43] The *annona* was a tax in kind, beginning in the third century, but at times it could be commuted to cash.

[44] From Bas. 56.8.1. This passage should perhaps be restored at C 1.26.6; see the note there.

[45] For indictions, see Title 17 below.

[46] = C.Th. 11.1.1, a fuller version; Seeck attributes this constitution to Constantius and dates it to January 18, 360.

crediderit remittendum, quod aliis remiserit, de propriis dare facultatibus compelletur.

D. XV k. Iul. Constantino A. IIII et Licinio IIII conss.

[5] *Imp. Constantius A. ad Uranium.* Omnes omnino ad oblationem functionum publicarum oportet urgueri. lege enim nostra signatum est nec esse extraordinaria nec vocari, quae sollemniter a provincialibus devotissimis conferenda sunt.

D. III non. Febr. Constantio A. II et Constante conss.

[6] *Impp. Valentinianus et Valens AA. ad Dracontium vicarium Africae.* Pro locis ac proximitate possessionum annonam ad limitem transvehi praecipimus.

D. XV k. Iul. Mediolani Valentiniano et Valente AA. conss.

[7] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad Principium pp.* In fraudem annonariae rei ac devotionis publicae elicitum damnabili subreptione rescriptum manifestum est vires non posse sortiri. circa omnes igitur par atque aequalis illationis forma teneat.[1]

D. VIII k. Oct. Aquileia Arcadio A. et Bautone conss.

[8] *Imppp. Valentinianus Theodosius et Arcadius AAA. Cynegio pp.* Nemo possessorum ad instruendas mansiones vel conferendas species longius delegetur, sed omnis itineris ac necessitatis habita ratione delegentur.

D. X k. Ian. Constantinopoli Arcadio A. et Bautone conss.

[9] *Idem AAA. Cynegio pp.* Mediterraneae civitates antea maritimis et maritimae mediterraneis onerabantur expensis, ut plus haberet dispendii

[1] teneatur (C.Th.)

believes that any remittance should be made to anyone, he will be compelled to pay out of his own resources what he has remitted to others.

Given June 17, in the consulship of Constantine Augustus, for the fourth time, and Licinius, for the third time (315).

[5][47] *Emperor* CONSTANTIUS *Augustus to Uranius.* Everyone in every case must be pressed to the payment of public tax charges (*functiones*). For it has been set out by Our law that they (taxes) that are customarily to be paid by the most devoted provincials are not extraordinary charges and are not so called.

Given February 3, in the consulship of Constantius Augustus, for the second time, and Constans (339).

[6][48] *Emperors* VALENTINIAN *and* VALENS *to Dracontius, Vicar of Africa.* We instruct that the land tax (*annona*) be transported to the frontier in accordance with the locations and the proximity of properties (*possessiones*).

Given June 17, at Milan, in the consulship of Valentinian and Valens, Augusti (365).

[7][49] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Principius, Praetorian Prefect.* It is manifest that a rescript elicited by damnable trickery to defraud the collection of the land tax and the public devotion (i.e., the payment of taxes) cannot obtain any validity. Therefore the equal and fair rule for payment shall be maintained in connection with everyone.

Given September 24, at Aquileia, in the consulship of Arcadius Augustus and Bauto (385).

[8][50] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Cynegius, Praetorian Prefect.* No landowner shall be assigned to build post stations (*mansiones*) or to deliver supplies (*species*) at too great a distance, but they are to be assigned with consideration taken of the entire journey and of necessity.

Given December 23, at Constantinople, in the consulship of Arcadius Augustus and Bauto (385).

[9][51] *The same Augusti to Cynegius, Praetorian Prefect.* Towns located inland were previously burdened with maritime expenses, and towns on the sea with

[47] = C.Th. 11.1.5, with some changes in wording.
[48] = C.Th. 11.1.11; combine with C.Th. 11.1.10. Both date to May 17, which Seeck accepts.
[49] = C.Th. 1.2.9, 11.1.20.
[50] = C.Th. 11.1.21, which adds "with the exception of the supply for the border troops," and omits *delegentur* at the end of the sentence. Seeck dates to December 18, 385.
[51] = C.Th. 11.1.22.

translatio quam devotionis illatio. hoc non solum in praesens, verum etiam in posterum prohibemus ea lege, ut se ultimo noverint supplicio puniendos, qui ista commiserint.

D. III non. Sept. Valentiae Honorio np. et Euodio conss.

[10] *Impp. Arcadius et Honorius AA. Minervio comiti rerum privatarum.* Obsistere commodis publicis et statutis necessitatibus non possunt privilegia dignitatum. unde ut quisque praedii emolumenta consequitur, si non is evoluto anni spatio intra sex menses omnem cui esse constrictus dicitur reliquorum intulerit cumulum, ad ipsos qui sunt domini praedii exactionem volumus pertinere.

PP. Romae Honorio A. IIII et Eutychiano conss.

[11] *Idem AA. Hadriano pp.* Iudices, quos circa profliganda aerarii nostri compendia neglegentes ac desides fuisse constiterit, omnia quae in administratione positi perceperunt emolumenta reddere compellantur.

D. III k. Mart. Mediolani Vincentio et Fravito conss.

[12] *Imp. Theodosius A. Isidoro pp. Illyrici.* **pr.** Id ab unaquaque provincia censuimus expetendum, quod ab isdem nuper esse promissum tua sublimitas indicavit. **1.** Ut nullus vero de cetero ad possessiones eorum (quod maxime formidant) inspector accedat, Macedonum reliqui exemplum secuti mediae quantitatis, ut obtulisse noscuntur, tributa suscipiant. **2.** Sed Achivi, qui protestati sunt nihil a se ultra tertiam partem posse conferri, illud exsolvant, ad quod se indubitanter fore idoneos pollicentur. **3.** Quae dispositio in perpetuum observabitur: sacrosancta Thessalonicensis ecclesia civitatis excepta, ita tamen, ut aperte sciat propriae tantummodo capitationis modum beneficio mei numinis

inland ones, so that the transport had a greater expense than the payment of devotion (i.e., taxes). By this law We prohibit this not only for the present, but also for the future, so that those who commit such things know that they are to be punished with the ultimate penalty.

Given September 3, at Valentia, in the consulship of Honorius, Most Noble Boy, and Euodius (386).

[10][52] *Emperors Arcadius and Honorius Augusti to Minervius, Count of the Privy Purse.* Privileges of rank cannot stand in the way of public interests and established requirements. Thus as each person gains the emoluments of an estate (*praedium*), if, after the passage of a year, he has not within six months paid the entire total of the arrears to which he is said to be bound, We want the exaction to fall on the very people who are the owners of the estate.

Posted[53] at Rome, in the consulship of Honorius Augustus, for the fourth time, and Eutychianus (398).

[11][54] *The same Augusti to Hadrian, Praetorian Prefect.* Governors (*iudices*) who it is clear have been negligent and lazy in wasting the incomes (*compendia*) to Our Treasury shall be compelled to return all the emoluments that they have obtained while placed in administration.

Given February 27, at Milan, in the consulship of Vincentius and Fravitus (401).

[12][55] *Emperor Theodosius Augustus to Isidorus, Praetorian Prefect of Illyricum.* **pr.** We have decreed that what Your Sublimity has indicated has been recently promised by them should be sought from each and every province. **1.** So that henceforth no inspector approach their properties (*possessiones*, to re-assess their tax liability) – which they especially fear – the remaining ones, following the example of the Macedonians, should undertake (to pay) taxes (*tributa*) at half the amount, as they are known to have offered. **2.** But the Achaeans, who have protested that nothing can be paid by them beyond the third part (of what they nominally owe), should pay that amount, which they promise they without doubt will be capable of doing (*idonei*). **3.** This disposition will be observed in perpetuity, with the exception of the sacrosanct Church of Thessalonica, under this condition, that it know clearly that only the amount of its own capitation tax may be relieved by the benefit of My Imperial

[52] = C.Th. 11.1.25. Seeck dates to February 11, 398.
[53] C.Th. includes the phrase "posted in the proclamation of *vir clarissimus* Varus, Vicar of the City of Rome."
[54] Combine with C.Th. 1.10.6.
[55] = C.Th.11.1.33; par. 3 = C. 1.2.8. Seeck dates to October 10, 423.

sublevandum, nec externorum gravamine tributorum rem publicam ecclesiastici nominis abusione laedendam.

D. VI id. Oct. Constantinopoli Victore vc. cons.

[13] *Αὐτοκράτωρ Ἀναστάσιος Α. Ἀνθεμίῳ ἐπάρχῳ τῶν πραιτωρίων.* **pr.** Ἐὰν μὲν αἰτήσῃ ἐπαρχία ἢ πόλις κουφισμὸν λαβεῖν τυχικῆς συντελείας ἢ ἐπόπτην ἢ ἐξισωτὴν πεμφθῆναι, ἀναφερέσθω μὲν ἡ δέησις αὐτῶν εἰς βασιλέα, καὶ ἐξ ἐπιλογῆς αὐτοῦ ὁ ἐπιτήδειος πρὸς τοῦτο πεμπέσθω ὅρκον πρότερον διδούς. καὶ ἐάν τι μηνύσῃ οὗτος τοῖς ἐπάρχοις, μηδεὶς τύπος διδόσθω ἐπὶ τὴν μήνυσιν αὐτοῦ, εἰ μὴ αὐτοὶ οἱ ἔπαρχοι ἀναδιδάξωσι βασιλέα πάντα τὰ παρ᾽ αὐτοῦ ἀναδιδαχθέντα καὶ ζητηθέντα, καὶ οὕτως θεῖος ἐκφωνηθείη τύπος ὀφείλων πᾶσι τρόποις παραφυλάττεσθαι. ὁ δὲ καθεὶς ἄνθρωπος δεήσεις περὶ τοιούτων ἐννοιῶν μὴ ἐπιδιδότω· μήτε δὲ κουφισμὸς ἢ μείωσις διηνεκῶς ἢ προσκαίρως μήτε ἐποψία μήτε ἐξίσωσις γινέσθω χωρὶς βασιλικῆς ἐγγράφου κελεύσεως.

1. Ἀλλὰ μήτε ἐκταγὰς ποιείτωσαν οἱ ἔπαρχοι ὑπὲρ χρόνων προλαμβανόντων τὴν αὐτὴν ἀρχήν, μήτε σιτηρέσιά τισιν ἀφοριζέτωσαν ἢ ἄλλως πως χρήματα ἢ μὴ παρεχόμενα τὴν ἀρχήν, ἢ παρεχόμενα μέν, διὰ δὲ τὴν ἔλλειψιν τῶν ταῦτα κομιζομένων σωμάτων ἀργήσαντα ἢ διὰ τὸ παυθῆναι τὴν αἰτίαν σχολάσαι, δι᾽ ἣν παρείχοντο τὴν ἀρχήν· ἀλλὰ ταῦτα πάντα ἐκ βασιλικῆς μόνης αὐθεντίας γινέσθω κατὰ τὸν θεῖον ἔγγραφον τύπον. οἱ δὲ μὴ τοῦτο παραφυλάττοντες καὶ τὸ διδόμενον οἴκοθεν ἀποδιδότωσαν καὶ πᾶσαν ἄλλην ζημίαν, ἣν ἂν ὑποστῇ τὸ δημόσιον.

2. Μήτε δὲ ὑπερθέσεις ἢ προθεσμίας ἐπὶ τούτοις ὀφειλομένοις δημοσίοις ἐνδιδότω τις ἢ τὰς νενομισμένας προθεσμίας χωρὶς ἐγγράφου θείας κελεύσεως. ὁ δὲ τοῦτο κατὰ αὐθεντίαν οἰκείαν ποιῶν οἴκοθεν καταβαλλέτω τὰ κεχρεωστημένα τῷ δημοσίῳ.

3. Μήτε δὲ τὰ πολιτικὰ χρήματα, ὅσα ἢ τῷ δημοσίῳ εἰσφέρεται ἢ τοῖς πόλεσιν ἀφώρισται, εἰς ἑτέρας μεταφερέσθω χρείας ἢ προσώποις τισὶν ἀφοριζέσθω χωρὶς θείας κελεύσεως. **4.** Καὶ ἡ τάξις δὲ τῶν ἐπάρχων, εἰ μὴ πάντα τὰ περιεχόμενα τῇ διατάξει ταῦτα παραφυλάξει καὶ διδάξει τοὺς

Majesty, and that the State must not be harmed by the weight of unrelated exemptions through misuse of the name of the Church.[56]

Given October 10, at Constantinople, in the consulship of vir clarissimus *Victor (424).*

[13][57] *Emperor* ANASTASIUS *Augustus to Anthemius, Praetorian Prefect.* **pr.** If a province or a city should request an abatement of its capitation tax or that an inspector or a tax adjuster be sent, their petition is to be brought to the Emperor, and upon his (the Emperor's) choice a suitable person be sent having previously taken an oath. And if this person should report something to the (Praetorian) Prefects, no rescript shall be given in response to his report, unless the Prefects themselves inform the Emperor of all that has been learned and investigated by him, and in this way an imperial rescript be shall be issued that is to be observed in every way. The person dispatched is not to present requests concerning such intentions. No lightening, reduction either immediately or temporarily, examination, or adjustment should take place without a written imperial command.

1. But the Prefects are not to make tax assignments for the times preceding their own office, nor are they to provide grain rations to anyone or funds in any other way, unless they were provided from the beginning, or, if provided, have been unused because of the failing of the persons that took them, or they have lost the reason for which they were originally given because they have been stopped. But all these things are to take place only through the Emperor's authority in accordance with a written imperial rescript. Those who do not observe this must pay back what has been given out from their own resources, as well as every other loss that has accrued to the Treasury.

2. No one should offer extensions or delays for what is owed to the Treasury, or those extensions established by law, without a written imperial order. The person who does this on his own authority must pay what is owed to the Treasury.

3. City funds, either those that are paid to the Treasury or have been reserved for the cities, must not be transferred to other needs or reserved for any persons without a divine order. **4.** The office of the Prefects, if it does not observe all these things encompassed in this constitution and does not inform the Prefects, as well as the provincial governors and those bureaus obeying them, and the other public officials, if they should not obey such orders as these, must

[56] Blume, taking Gothofredus' emendation of *lexamine* for *gravamina*, translates as follows: "and that the state shall not be injured by the exemption of other property along with its own through the abuse of the ecclesiastical name."

[57] From Bas. 56.8.13; apparently combined with C. 10.19.9.

ἐπάρχους, καὶ οἱ ἄρχοντες τῶν ἐπαρχιῶν καὶ αἱ πειθόμεναι τάξεις αὐτοῖς καὶ οἱ λοιποὶ δημοσιεύοντες, εἰ[ii] ταῖς τοιαύταις κελεύσεσιν ὑπουργήσαιεν, οἴκοθεν διδότωσαν τὴν συμβαίνουσαν τῷ δημοσίῳ βλάβην καὶ ὡς τοῦ νόμου καταφρονήσαντες πεντήκοντα χρυσίου λίτρας προστιμάσθωσαν. **5.** Τριμερῶς δὲ πάντα τὰ δημόσια εἰσφερέσθω, τά τε ἄλλα καὶ τὰ λεγόμενα Ἀρμενιακά, τουτέστι καλάνδαις Ἰανουαρίαις καὶ καλάνδαις Μαΐαις καὶ πρὸς τῷ τέλει τῆς ἐπινεμήσεως, ἐξ ἴσων τριῶν μερῶν διαιρουμένων τῶν δημοσίων, καὶ μηδεμιᾶς καινοτομίας ἐν τῷ μέσῳ γινομένης κατὰ τῶν συντελῶν.

6. Ἐπειδὴ δὲ τὰ Ἀρμενιακὰ τελέσματα ἐν δύο καταβολαῖς συνετελεῖτο, ἔξεστι τοῖς ταῦτα συντελοῦσιν, εἰ βούλονται, τὴν προτέραν συνήθειαν προτιμᾶν καὶ ἐν δύο καταβολαῖς ἀνὰ ἥμισυ καταβάλλειν, καὶ τὸ ἕτερον ἥμισυ ἐν τῷ Σεπτεμβρίῳ τῆς μελλούσης ἐπινεμήσεως καταβάλλειν. **7.** Εἰ δὲ καὶ τριμερῶς βούλονται τὰ Ἀρμενιακὰ δημόσια καταβάλλειν, ἐχέτωσαν τὸν Σεπτέμβριον μῆνα τῆς μελλούσης ἐπινεμήσεως πρὸς ὑπέρθεσιν αὐτοῖς δεδομένον. **8.** Τὸ δὲ προαπεσταλμένον κατὰ σύνθεσιν εἰσφερέσθω ἐν τῷ προνομίῳ ἑκάστης ἐπινεμήσεως, ἐπειδὴ τοῦτο δηλοῖ καὶ ἡ προσηγορία αὐτοῦ.

D. k. April. Paulo vc. cons.

XVII De Indictionibus

[1] *Impp. Honorius et Theodosius AA. Palladio pp.* **pr.** Omnes omnino quocumque titulo possidentes, quod delegatio superindicti nomine videtur amplexa, velut canonem cogantur inferre: et ne qua sit dubietas, hac aperta definitione decernimus, ut id potius canonis vocabulo postuletur. **1.** Nulla igitur domus vel sacri patrimonii vel emphyteutici iuris vel hominum privatorum, etiamsi privilegium aliquod habere doceantur, ab hac necessitate seiuncta sit, quae iam non extraordinarium, ut hactenus, sed ipsis facientibus canonicum nomen accepit.

D. VII id. Ian. Ravennae Theodosio A. VII et Palladio conss.

[2] *Impp. Theodosius et Valentinianus AA. Dario pp.* Particulari delegationum notitia ante indictionis exordium singulis transmissa provinciis, collationis modum a possessoribus multo ante prospectum devotionis

[ii] εἰ <μή>

pay from their private resources the loss accruing to the Treasury, and in addition must be assessed a fine of 50 pounds of gold as ones who have scorned the law. 5. All the pubic taxes are to be paid in three installments, both the others and those called "Armenian," that is, January 1 and May 1, as well as at the end of the indiction,[58] with the public taxes divided into three equal parts, and no innovation will take place in the midst (of this process) for the taxpayers.

6. Since the "Armenian" imposts were paid in two installments, it is permitted for those paying these, if they wish, to observe the previous custom and to pay (the charges) in two installments of one-half each ... [59] and to pay the other part in September at the beginning of the following indiction. 7. If they wish to pay the "Armenian" public charges in three parts, they are to consider the month of September of the ensuing indiction as given to them as an extension. 8. But the taxes previously assigned must be paid according to custom at the beginning of each indiction, since even its name shows this.

Given April 1, in the consulship of the vir clarissimus *Paul (496).*

Seventeenth Title Indictions[60]

[1][61] *Emperors* Honorius *and* Theodosius *Augusti to Palladius, Praetorian Prefect.* pr. Absolutely all those possessing (land) under any title should be compelled to pay, like a tax (*canon*), what the assessment (*delegatio*) is seen to have encompassed under the title of a an extraordinary charge (*superindicti nomine*); and, lest there be any doubt, We resolve by this clear definition that it should rather be demanded under the term "tax" (*canon*). 1. Therefore no household, whether belonging to the Sacred Patrimony, or under emphyteutic right,[62] or belonging to private persons, even if they should be shown to have some privilege, shall be severed from this necessity, which is no longer extraordinary (i.e., a special tax imposed on an ad hoc basis), as (it has been) up to now, but has taken the title of "tax" from those who pay it.

Given January 7, at Ravenna, in the consulship of Theodosius Augustus, for the seventh time, and Palladius (416).

[2][63] *Emperors* Theodosius *and* Valentinian *Augusti to Darius, Praetorian Prefect.* After transmitting the specific notification of the assessments (*delegationes*) to the individual provinces before the beginning of the indiction, not

[58] For indictions, see Title 17 below.
[59] A reference to the first payment has apparently fallen out of the text.
[60] In the third century, *indictiones* were occasional taxes imposed on agricultural land, but in the later Empire the term referred more generally to the land tax, which was revised in fifteen-year cycles.
[61] = C.Th. 11.5.2.
[62] On the emphyteutic right, see C. 4.66.
[63] = C.Th. 11.5.4; combine with C.Th. 11.1.37.

solitae, non subitis calumniis, tua sublimitas faciat imputari, ut et provincialibus subeundi dispendii necessitas auferatur et officiis ingerendi damna licentia denegetur.

D. v k. Sept. Apameae Isidoro et Senatore conss.

XVIII De Superindicto

[1] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad proconsules vicarios omnesque rectores.* Nihil superindictorum nomine ad solas praefecturae litteras quisquam provincialis exsolvat, neque ullius omnino indictionis titulus etiam sollemnis immineat, nisi eum nostro confirmata iudicio et imperialibus nexa praeceptis sedis amplissimae deposcat indictio et cogat exactio.

D. vii k. Iun. Mediolani Antonio et Syagrio conss.

XVIIII De Exactionibus Tributorum

[1] *Imp. Constantinus A. ad Aelianum proconsulem Africae.* Ducenarii et centenarii sive sexagenarii non prius debent aliquem ex debitoribus convenire, quam a tabulario civitatis nominatim breves accipiant debitorum. quam quidem exactionem sine omni fieri concussione oportet.

D. k. Nov. Treviris Constantino A. iiii et Licinio iiii conss.

[2] *Idem A. ad populum.* **pr.** Nemo carcerem plumbatarumque verbera aut pondera aliaque ab insolentia iudicum reperta supplicia in debitorum solutionibus vel a perversis vel ab iratis iudicibus expavescat. carcer poenalium, carcer hominum noxiorum est: officialium et cum denotatione eorum iudicum, quorum de officio coercitiores esse debebunt,

with sudden chicanery (*subitis calumniis*), Your Sublimity will see to it that the amount of the tax-payment (*collatio*) be reckoned as the one long before foreseen by the possessors as their customary devotion (*devotio*, i.e., tax payment), so that the necessity of undergoing an expense be removed from the provincials and permission be denied to the bureaus to inflict losses.

Given August 28, at Apamea, in the consulship of Isidorus and Senator (436).

Eighteenth Title Extraordinary Charges

[1][64] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to the Proconsuls, Vicars, and all governors.* No provincial is to pay anything as an extraordinary charge in response to letters of the (Praetorian) Prefecture, nor shall even the customary proclamation of any tax liability whatsoever (*ullius omnino indictionis titulus*) threaten, unless an indiction from the highest seat (of government), confirmed by Our judgment and bound with Imperial orders, should demand it and its enforcement should compel it.

Given May 26, at Milan, in the consulship of Antonius and Syagrius (382).

Nineteenth Title Tax Collecting

[1][65] *Emperor* CONSTANTINE *to Aelianus, Proconsul of Africa.* Procurators with a salary of 200,000 sesterces, 100,000 sesterces, or 60,000 sesterces[66] should not sue a (tax) debtor before they expressly receive the lists (*breves*) from the tax official (*tabularius*) of the city. This exaction must proceed without any extortion.

Given November 1, at Trier, in the consulship of Constantine Augustus, for the fourth time, and Licinius, for the fourth time (315).[67]

[2][68] *The same Augustus to the people.* **pr.** No one should be terrified by prison or the lashes or weights of leaded whips or any other punishments devised by the insolence of judges, whether they are bribed (*perversis*) or wrathful, for the payment of (tax) debts. The jail is for those found guilty, for people who are harmful; it is also for officials and, with a censure, for those judges, from whose office those persons, when they have allowed something contrary to this law,

[64] = C.Th. 11.6.1. Seeck gives December 26, 382.

[65] = C.Th. 11.7.1; combine with C. 2.8.3, 12.61.1; C.Th. 1.12.1, 9.34.2, 11.1.2.

[66] The salaries designated the ranks of procurators of equestrian rank in the early Empire; as Blume points out, in the fourth century the titles refer to Imperial officials called *agentes in rebus*, couriers: C. 12.20.

[67] The other versions of this law have other dates; Krüger, based on C. 1.12.1, 12.61.1, suggests: "in the consulship of Constantine Augustus, for the third time, and Licinius, for the third time (313), received February 15, at Carthage." Likelier is November 1, 314 (Projet Volterra), but Seeck had November 8, 313.

[68] = C.Th. 11.7.3; combine with C. 8.34.3, 8.57.1; C.Th. 4.11.3(?). Seeck gives January 31, 320.

qui contra hanc legem admiserint. 1. Securi iuxta praesidem transeant solutores: vel certe, si quis tam alienus ab humano sensu est, ut hac indulgentia ad contumaciam abutatur, contineatur aperta et libera et in usum hominum instituta custodia militari. 2. Si in obdurata nequitia permanebit, ad res eius omnemque substantiam eius exactor accedat solutionis obsequio cum substantiae proprietate suscepto. qua facultate praebita omnes fore credimus proniores ad solvenda ea, quae ad nostri usus exercitus pro communi salute poscuntur.

D. k. Febr. Constantino A. VI et Constantino C. conss.

[3] *Imp. Constantius A. Nemesiano comiti largitionum.* Quotiens quis et privati debitor invenitur et fisci, et abreptus ab uno officio teneatur, ad universi debiti solutionem qui eum abstulit coartetur ac totius summae exactionem in se suscipiat, qui eundem avellendum subtrahendumque crediderit.

D. IIII id. Mai. Nizibi Amantio et Albino conss.

[4] *Idem A. ad Eustathium pp.* Actores ceterique rei privatae nostrae ad solutionem specierum sollemnium debiti vigoris auctoritate cogantur, ne provinciales rei privatae nostrae fatiget immunitas.

D. VIII id. Mart. pp. Romae Limenio et Catullino conss.

[5] *Imppp. Theodosius Arcadius et Honorius AAA. Rufino pp.* Apparitores, quicumque in collatione auri praecepti fuerint officii sui adhibere servitium, titulorum debita et collationum summas relationis suae fide et adnotatione praescribant, sitque ex officialis instructione officium conscium, quid exactum quidve perlatum esse videatur, ne

ought to be subject to greater punishment.[69] **1.** The payers should pass before the governor in security; or certainly, if someone is so removed from human sensibility that he abuses this indulgence to persist in stubbornness (i.e., by refusing to pay taxes owed), he should be confined by a military watch that is open and free and established for the use of people. **2.** If he persists in his obdurate wickedness, the collector shall approach his goods and all his property, with the duty to pay assumed along with ownership of his property. With this opportunity provided We believe that everyone will be readier to pay what is asked for the uses of Our army for the common safety.

Given February 1, in the consulship of Constantine Augustus, for the sixth time, and Constantine Caesar (320).

[3][70] *Emperor* Constantius *Augustus to Nemesianus, Count of Imperial Finances.* Whenever someone is found to be a debtor of both the Privy Purse (*privati*) and the Treasury, should he also be dragged off and held by one office, the one (official) who has taken him away shall be bound to the payment of the entire debt, and anyone who believes that the same person should be pulled away and withdrawn (from this custody) shall take upon himself the exaction of the whole amount.[71]

Given May 12, at Nisibis, in the consulship of Amantius and Albinus (345).

[4][72] *The same Augustus to Eustathius, Praetorian Prefect.* Managers and other personnel of Our Privy Purse shall be compelled by the authority of the law (*vigor*) to pay what is owed for customary supplies, lest the immunity of Our Privy Purse wear out the provincials.

Given March 8, posted at Rome, in the consulship of Limenius and Catullinus (349).

[5][73] *Emperors* Theodosius, Arcadius, *and* Honorius *Augusti to Rufinus, Praetorian Prefect.* Subordinate officials, whichever ones have been instructed to provide the service of their office in collecting gold, shall list the debts of the accounts (*tituli*) and the sums of the payments with the fidelity and annotation (*adnotatio*) of their report, and, on the basis of the instruction by the official. the office should be aware of what is seen to have been exacted or carried over,

[69] Following Mommsen's emendation of *coercitores*.
[70] = C.Th. 11.7.5.
[71] Blume: "This law … shows that delinquent taxpayers could be arrested and kept in custody. In order to facilitate the collection of debts due to the government, whether owing to the Privy Purse or to the fisc, and to make it more certain that the whole debt should be collected, it was made the duty of the official who arrested the debtor to hold him until the whole debt was paid; in fact such official was made responsible for the whole debt. This method avoided conflict between the officials of the fisc and those of the Privy Purse."
[72] = C.Th. 11.7.6; combine with C.Th. 2.1.1.
[73] = C.Th. 11.7.14; combine with C. 10.32.43.

longinqui itineris diversitate susceptor abductus et curiae suae desit et rei familiaris detrimenta sustineat.

D. prid. id. April. Constantinopoli Theodosio A. III et Abundantio conss.

[6] *Impp. Arcadius et Honorius AA. Theodoro pp.* In fiscalibus debitis, hoc est annonariis ceterisque titulis, qui ad arcam eminentissimae pertinent praefecturae, nec non in iis debitis, quae rationalis usurpat officium, rectores provinciarum constringantur et eos necessitas maneat exigendi, a quibus expectatur auctoritas.

D. VIII k. Iun. Mediolani Honorio A. IIII et Eutychiano conss.

[7] *Idem AA. Hadriano pp.* **pr.** Missi opinatores cum delegatoriis iudicibus eorumque officiis insistant, ut intra anni metas id quod debetur accipiant: nihil his sit cum possessore commune, cui non militem, sed exactorem, si sit obnoxius, convenit imminere. **1.** Iudices itaque, qui provinciales passi fuerint opinatoribus delegari, eiusdem quantitatis duplex poena retinebit: et apparitores ex quolibet officio sententiam deportationis excipient, si per semet exigendos voluerint delegare militibus: et curiales temporale manebit exilium, si eos quos sollemniter exigere consuerunt opinatoribus putaverint esse tradendos, cum iudicem oporteat inquirere debitores, tabularios fideliter providere nomina debitorum, apparitores sive curiales consuetudine servata regionum convictis debitoribus imminere: ut perceptis congruis emolumentis opinatores impleto anno ad proprios numeros valeant remeare.

2. Qui si ultra annum protracti fuerint, iudices *et* officia absque ulla mora de proprio cogantur exsolvere militibus quod debetur, ipsis adversus obnoxios repetitione servata. **3.** Quod si ad nos aliqua de retentis opinatoribus querella pervenerit, in duplum ab his

lest the collector (*susceptor*), drawn away by the diversion of a long journey, be absent from his own (city) council and sustain harm to his property.

Given April 12, at Constantinople, in the consulship of Theodosius Augustus, for the third time, and Abundantius (393).

[6][74] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Theodorus, Praetorian Prefect.* In debts to the Treasury, that is, for the taxes in kind (*annonariis titulis*) and other categories that belong to the Treasury (*arca*) of the Most Eminent Prefecture, as well as in those debts that the office of the Comptroller claims, the provincial governors shall be bound (to exact them) and the necessity to do so shall await them, from whom authority is expected.

Given May 25, at Milan, in the consulship of Honorius Augustus, for the fourth time, and Eutychianus (398).

[7][75] *The same Augusti to Hadrian, Praetorian Prefect.* **pr.** Military tax assessors[76] (*opinatores*), having been sent with tax judges (*delegatorii iudices*) and their offices, should insist that they receive what is owed within a year; they should have nothing in common with a landowner (*possessor*), who, if he is delinquent, is fittingly pressed not by a soldier, but by a civil collector. **1.** And a double penalty for the same amount will restrain the governors (*iudices*) who have allowed the provincials to be assigned to the military tax assessors. Subordinate officials (*apparitores*) from any office will receive a sentence of deportation if on their own initiative they willingly assign to soldiers the people to be pressed for payment. Temporary exile will await decurions, if they think that the people from whom they customarily have exacted taxes are to be turned over to the military tax assessors, since the governor is supposed to inquire about the debtors, and the tax officials (*tabularii*) must faithfully provide the names of the debtors, while the subordinate officials or the decurions, maintaining the custom of the regions, should press convicted debtors for payment, so that, when they have gained appropriate emoluments, the military tax assessors at year's end might be able to return to their own units.

2. If they are delayed beyond a year, the governors and the offices shall be compelled without any delay to pay the soldiers what is owed out of their own resources, while maintaining for themselves the right to seek this back from those liable. **3.** But if any complaint comes to Us concerning military tax assessors who have been held back, a double amount shall be exacted right away from them (the governors and their staffs) so that the soldiers receive the part

[74] Combine with C.Th. 2.1.11; see also C. 11.74.1; C.Th. 1.11.2, both addressed to Firminus, Count of Imperial Finances. These constitutions date to May 24.

[75] = C.Th. 11.7.16.

[76] This is Krüger's interpretation of the term *opinator*.

protinus exigetur, ut partem debitam miles, reliquum fiscus accipiat. **4.** Iudicibus quoque eorumque officiis eatenus subvenimus, ut in contumaces debitores cuiuslibet dignitatis auctoritatem suam exserant ac, si impudenter solutio differatur, actores procuratores eorumque praedia persequantur, de eorum quoque nominibus ad nostram scientiam relaturi.

D. III id. Iul. Mediolani Vincentio et Fravito conss.

[8] *Impp. Leo et Anthemius AA. Nicostrato pp.* Si divina domus aut quilibet cuiuscumque dignitatis atque fortunae re vera fundos extra metrocomias non patrocinii gratia, sed emptionis iure vel quolibet alio titulo legitimo possederit et non impositas rei publicae functiones agnoverit, quemadmodum prior dominus dependebat, omnibus modis possessiones eorum publico vindicentur et curiae eiusdem civitatis sub qua vici siti sunt adsignentur, ut publicis commoditatibus circa tributarias functiones undique nostra provisione videatur esse consultum.

D. k. Sept. Anthemio A. II cons.

[9] *Αὐτοκράτωρ Ἀναστάσιος Α. Ἀνθεμίῳ ἐπάρχῳ τῶν πραιτωρίων.* **pr.** Ἵνα μὴ πολλῶν ἀπαιτούντων τὰ δημόσια καὶ οἱ συντελεῖς βλάπτωνται καὶ αὐτὸς ὁ δημόσιος λόγος, εἷς μόνος κανονικάριος εἰς ἑκάστην ἐπαρχίαν ἐκ τοῦ προσφόρου πεμπέσθω σκρινίου, ὀφείλων κατεπείγειν τὴν ἐξάνυσιν τῶν κεχρεωστημένων τίτλων τῷ ἰδίῳ σκρινίῳ. **1.** Ἐξπελευστὴς μέντοι μὴ πεμπέσθω, εἰ μὴ μετὰ παραδρομὴν τῆς ὡρισμένης προθεσμίας καὶ ἑτέρου μηνός. τούτου δὲ τοῦ χρόνου διατρέχοντος πεμπέσθω ὁ ἐξπελευστής, προστιμωμένου καὶ τοῦ ἄρχοντος καὶ τῆς τάξεως αὐτοῦ καὶ τοῦ κανονικαρίου πρὸς τὸν οἶκον τῶν μὴ ἀπαιτηθέντων χρημάτων καὶ πρὸς τὴν τῆς ῥᾳθυμίας ποσότητα, ὥστε τὸν αὐτὸν ἐξπελευστὴν καὶ τὰ λοιπαζόμενα δημόσια καὶ τὸ πρόστιμον μεθοδεύειν. **2.** Μόνῳ δὲ τῷ ἄρχοντι καὶ τῇ τάξει καὶ τῷ κανονικαρίῳ ὁ ἐξπελευστὴς ἐπικείσθω, ἀφοριζομένης αὐτῷ παραμυθίας καὶ πρὸς τὴν ἐπαρχίαν τὴν χρεωστοῦσαν καὶ πρὸς τὰ διαστήματα. τὴν δὲ παραμυθίαν ταύτην ὁ ἄρχων ἐπιγινωσκέτω καὶ ἡ τάξις αὐτοῦ καὶ ὁ κανονικάριος ὡς αἴτιοι γενόμενοι τοῦ πεμφθῆναι τὸν ἐξπελευστήν.

owed, and the Treasury the rest. **4.** We provide help to governors and their offices to this extent, that they avail themselves of their authority against stiff-necked debtors of any rank, and, if payment should impudently be delayed, that they should pursue their managers, procurators, and their properties, and bring a report concerning their names to Our knowledge.

Given July 13, at Milan, in the consulship of Vincentius and Fravitus (401).

[8][77] *Emperors* LEO *and* ANTHEMIUS *Augusti to Nicostratus, Praetorian Prefect.* If the Divine Household or anyone of any rank and fortune has genuinely possessed farms outside of chief villages (*metrocomiae*), not for the sake of legal representation (*patrocinium*), but under right of purchase or any other lawful title, but has not acknowledged the payments (*functiones*) imposed on the municipality in the way that the previous owner paid them, their possessions are to be claimed in all ways for the public and shall be assigned to the council of the same town in which the districts (*vici*) are situated, so that by Our forethought consultation be seen to have been made for the public interests in connection with tax payments.

Given September 1, in the consulship of Anthemius Augustus, for the second time (468).

[9][78] *Emperor* ANASTASIUS *Augustus to Anthemius, Praetorian Prefect.* **pr.** So that the taxpayers and the Public Treasury itself not be harmed by the multitude of those exacting public taxes, one tax collector (*canonicarius*) alone is to be sent to each province from the appropriate bureau, with the obligation to exact the payment of the accounts (*tituli*) owed to his own bureau. **1.** An enforcer is not to be sent except after the completion of the defined extension and an additional month; when this time is completed, the enforcer shall be sent, with the governor and his office as well as the tax collector being fined in accordance with the amount (?) of money not exacted and with the degree of their negligence, so that the same enforcer exact both the arrears to the public treasury as well as the fine. **2.** The enforcer shall only press the governor, the office, and the tax collector for the expenses allotted to him commensurate with both the province that owes and its distance. The governor, along with his office and the tax collector, are to acknowledge the expenses, since they are responsible for the tax enforcer's being dispatched.

[77] From Bas. 56.8.23; combine with C. 11.54.1, 11.56.1.

[78] From Bas. 56.8.24. There are apparently two Greek constitutions of the Emperor Anastasius addressed to the Praetorian Prefect Anthemius, and their subscriptions may have been confused with the subscription of this constitution. Krüger emends the addressee to Euphemius, Praetorian Prefect, and restores the date as March 31, based on C. 10.16.13, with which the present constitution should perhaps be combined. In 1, possibly ὄγκον for οἶκον (mommsen).

3. Ἐξπελευστὴς δὲ ἕτερος μηδέποτε πεμπέσθω μηδὲ ἄλλος τις μετὰ τὸν ἐξπελευστήν. ἐὰν δὲ νομίσωσιν οἱ ἔπαρχοι χρειῶδες εἶναι τὸ καὶ ἕτερον ἐκπέμψαι μετὰ τὸν ἐξπελευστήν, τὰ αὐτὰ καὶ ἐπὶ τούτῳ κρατείτω, καὶ τὴν ὁριζομένην αὐτῷ παραμυθίαν ὁ αἴτιος τοῦ πεμφθῆναι αὐτὸν παρεχέτω, τουτέστιν ὁ τῆς ἐπαρχίας ἄρχων καὶ ἡ τάξις αὐτοῦ καὶ ὁ κανονικάριος καὶ ὁ ἐξπελευστής. 4. Ἡ γὰρ ἀφορισθεῖσα τῷ κανονικαρίῳ παραμυθία πᾶσι τοῖς μετ᾽ αὐτὸν πεμπομένοις ἀπαιτηταῖς ἀρκεῖ, καὶ μηδὲν περαιτέρω μήτε τὰ συστήματα τῶν πόλεων μήτε οἱ συντελεῖς ἀναπείσθωσαν, εἰ καὶ πλείονες πρὸς ἀπαίτησιν ἐκπεμφθείησαν, προστιμωμένων ἑκάστοτε πάντων τῶν ἐκπεμπομένων καὶ μὴ ἀνυόντων τὰ δημόσια. 5. Καὶ ὅσαι δὲ γίνονται ἐκταγαί, τῷ κανονικαρίῳ πεμπέσθωσαν, ὥστε δι᾽ αὐτοῦ καὶ ταύτας ἀνύεσθαι, μὴ αὐξάνεσθαι δὲ διὰ τοῦτο τὴν ἀφωρισμένην αὐτῷ παραμυθίαν. 6. Ἐνδοματικὰ δὲ μηδεὶς λαμβανέτω, ἀλλὰ καὶ αὐτὸ τὸ ὄνομα παντελῶς ἀπαλειφέσθω. 7. Εἰ δὲ κατά τι παραβαθείη τὰ νομοθετηθέντα, πεντήκοντα χρυσίου λιτραὶ ἐπιτίμιον ἔστω καὶ κατὰ τῆς τάξεως τῶν ἐπάρχων καὶ κατὰ τῶν ἀρχόντων τῶν ἐπαρχιῶν καὶ τῶν τάξεων αὐτῶν καὶ κατὰ τῶν λοιπῶν τῶν δημοσιευόντων προσώπων.

D. XII k. Aug. Paulo vc. cons.

[10] *[Ὁ αὐτὸς βασιλεύς.]* ... Θεσπίζομεν ... Περὶ τῶν προσφευγόντων ταξεωτῶν ἢ πολιτευομένων, ὅπως δεῖ αὐτοὺς ἀπαιτεῖσθαι τὰς δημοσίους εἰσφοράς, φησὶν ἡ διάταξις παρακελευσαμένη μηδένα καταβάλλειν ἐπ᾽ αὐτοὺς τὰς *συντελείας*, εἰ μὴ *δημοσιεύσωσιν*. ἐπὶ *γὰρ* τοὺς προσφεύγοντας ἢ ἄλλως κρύπτοντας ἑαυτοὺς οὐδεμίαν βούλεται γίνεσθαι παρὰ τῶν συντελεστῶν ἐπ᾽ αὐτοὺς καταβολήν.

D. prid. k. April. Iohanne et Paulino conss.

XX De Superexactionibus

[1] *Impp. Arcadius et Honorius AA. Apollodoro proconsuli Africae.* **pr.** Quidquid ultra debitum elicitum fuerit a curialibus vel cohortalibus vel aliis exactoribus, in duplum eruatur, quod provincialibus restitui protinus oportebit. 1. Si quis autem exactorum in superexactionis crimen

3. Another tax enforcer is never to be sent out nor anyone else after the enforcer. If the prefects should deem that it is necessary that another person be sent out after the enforcer, he shall enjoy the same arrangements in this circumstance, and the person responsible for his being sent out must provide the established expenses, that is, the governor of the province, his office, and the tax collector, as well as the (first) enforcer. 4. The expenses established for the tax collector suffice for all the exactors sent out after him, and nothing further is to be demanded whether from the guilds (*systemata, corpora*) of the cities or from their taxpayers, even if several people have been sent out to exact tax arrears, since each time all the people are fined who are sent out and do not expedite the public taxes. 5. And as many tax assessments take place, they shall be sent out to the tax collector, so that through him these matters be expedited and that, as a result of this, the allotted expenses not be increased for him. 6. No one shall take housing expenses; rather, this category is to be completely abandoned. 7. But if in any way these enactments should be violated, there is to be a fine of 50 pounds of gold both for the offices of the prefects and for the governors of the provinces and their offices, as well as the remaining persons in public service.

Given July 21, in the consulship of the vir clarissimus *Paul (496).*

[10][79] *The same emperor* ... We ordain ... The constitution addresses subordinate officials (*taxeonton; cohortales* or *apparitores*) and officials (*politeuomenon*) who are in flight, that they must be pressed for the payment of public taxes, ordering that no one make payments to them unless they should be performing a public function. It does not want any payment to be made by the taxpayers to those who have fled or are otherwise in hiding.

Given March 31, in the consulship of John and Paulinus (498).

Twentieth Title Excessive Exactions

[1][80] *Emperors* Arcadius *and* Honorius *Augusti to Apollodorus, Proconsul of Africa.* **pr.** Whatever has been elicited by decurions or their subordinate officials (*cohortales*) or other tax collectors beyond what is owed must be rooted out in twice the amount, and this will have to be restored to the provincials immediately. 1.[81] If, however, any tax collector has been convicted on a charge

[79] Krüger restores the address on the basis of the subscription. For the date, see the preceding note. Blume: "The apparitors of the governor of a province were known as cohortalini or cohortales, originally a military term, meaning members of a cohort. The apparitors here mentioned were members of the official staff of an officer of higher rank than the governor."

[80] = C.Th. 11.8.2, with briefer wording.

[81] Section 1 = C.Th. 11.8.1, dated to March 6, 397.

fuerit confutatus, capitali periculo cupiditas eius amovenda atque prohibenda est, si in isdem sceleribus perseveret.

D. prid. id. Mart. Mediolani Stilichone et Aureliano conss.

XXI De Capiendis et Distrahendis Pignoribus Tributorum Causa

[1] *Imp. Constantinus A. ad Afros.* Res eorum, qui fiscalibus debitis per contumaciam satisfacere differunt, distrahantur: comparatoribus data firmitate perpetua possidendi.

D. XV k. Iun. Serdicae Constantio et Maximo conss.

[2] *Idem A. Restituto praesidi Sardiniae.* Satis sit debitorem annonarum ad solvendi necessitatem capione pignorum conveniri.

D. VIII id. Dec. Thessalonicae Constantio VI et Constante III AA. conss.

XXII De Apochis Publicis et Descriptionibus Curialium

[1] *Impp. Honorius et Theodosius AA. Anthemio pp.* pr. Ad inferiorum curialium relevandas fortunas et impressionem potentium itidem curialium cohibendam placuit, ut descriptiones, si quae per singulos ordines cogentibus diversis negotiis agitantur, non sumant ante principium, quam apud acta provinciarum rectoribus intimentur et ex eorum fuerint receptae sententiis. 1. Sed et aurum, quod ex huiusmodi contributione redigitur, ita debet susceptori aurario consignari, ut securitatibus nomen inferentis, dies consul mensis causa et summa comprehendatur, quo et descriptionis aequitas illustretur et descriptus

of making an excessive exaction, his greed is to be removed and prevented by the risk of capital punishment if he should persevere in the same crimes.

Given March 14, at Milan, in the consulship of Stilicho and Aurelianus (400).

Twenty-First Title Seizing and Selling Pledges on Account of Taxes

[1][82] *Emperor* CONSTANTINE *Augustus to the Africans.* The property of those people who put off satisfying their debts to the Treasury out of contumacy shall be sold, with the purchasers given perpetual security of possession.

Given May 18, at Serdica, in the consulship of Constantius and Maximus (327).

[2][83] *The same Augustus to Restitutus, Governor of Sardinia.* It should be enough that a debtor for land taxes (*annonarum causa*) be pressed by the seizure of his pledges in order to compel payment.

Given December 6, at Thessalonica, in the consulship of Constantius, for the sixth time, and Constans, for the third time, Augusti.

Twenty-Second Title Public Receipts (*Apochae*) and Tax Assessments of Decurions

[1][84] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Anthemius, Praetorian Prefect.* **pr.** To relieve the fortunes of the lower decurions and at the same time to restrain the aggression of the powerful ones, it has been decided that tax assessments, if they are conducted among individual orders as diverse business compels, shall not take their beginning before they are entered into the records for the provincial governors and have been received with their verdicts (*sententiae*).[85] **1.** But the gold that is exacted from a contribution of this type should be signed over to the gold collector (*susceptor aurarius*) in such a way that the name of the contributor is included in the receipts (*securitates*), as well as the day, the consul, the month, the reason, and the amount, so that the fairness of the assessment be made clear and the person assessed be protected by

[82] = C.Th. 11.7.4, with different wording. Seeck dates to May 18, 328.
[83] = C.Th. 11.7.7, the address of which reads: "Emperors Constantius and Constans Augusti to Bibulenius Restitutus, Governor of Sardinia." The consular date is erroneous. Krüger suggests 320 as a possible date, which would mean that the attribution of the law to Constantius and Constans is also wrong. The preferred date is June 12, 346 (Projet Volterra); Seeck argued for 337.
[84] = C.Th. 12.1.173, with somewhat different wording. Seeck dates to August 26, 409.
[85] C.Th 12.1.173 has "have been affirmed with their authority."

documentis evidentibus fulciatur. 2. Hoc etiam observando, ut in quadrimenstruis quoque brevibus, qui ad excellentiae tuae officium sollemniter diriguntur, celebratae descriptionis dispunctio societur, ut omnes vestrae potestatis scientiam formidantes nihil ad relevationem locupletum atque inopum perniciem audeant pertemptare. 3. Quod et tunc optimum est custodiri, cum lucrativae facultates ex bonis curialium curiae obvenerint, ut et inopes et locupletes fructu provisionis simillimae potiantur. 4. Quam dispositionem si quis iudicum numerariorum vel curialium mutilandam esse crediderit, interminationi quam vestra sedes statuerit subiacebit.

D. VII k. Sept. Constantinopoli Varane cons.

[2] *Impp. Theodosius et Valentinianus AA. Celeri proconsuli Africae.* Semel securitatem de refusione munerum emissam ab alio iudice non liceat refricari. et ideo spectabilitas tua saluberrimae ac iustissimae praeceptionis formam secuta prohibebit in posterum eos ad discussionem transacti muneris constringi, quos claruit accepta securitatis prosperitate laetari.

D. V k. Mai. Ravennae post consulatum Felicis et Tauri vv. cc.

[3] *Imp. Marcianus A. Constantino pp.* Quicumque de provincialibus et collatoribus decurso posthac quantolibet annorum numero, cum probatio aliqua ab eo tributariae solutionis exposcitur, trium cohaerentium sibi annorum apochas securitatesque protulerit, superiorum temporum apochas non cogatur ostendere, neque de praeterito ad illationem functionis tributariae coartetur, nisi forte aut curialis aut quicumque apparitor vel optio vel actuarius vel quilibet publici debiti exactor sive compulsor possessorum vel collatorum habuerit cautionem, aut id quod deposcit deberi sibi manifesta gestorum adsertione patefecerit.

D. XV k. Aug. Varane et Iohanne conss.

[4] Ὁ μὴ προσθέμενος ταῖς ἀποχαῖς τὸ τῶν ἰουγῶν ποσὸν κʹ λίτρας χρυσίου προστιμᾶται.

transparent documents. **2.** This too is to be observed, that in the four-monthly reports that are customarily directed to Your Excellency's office, an itemization of the aforementioned assessment be included, so that no one, fearing the knowledge of Your power, should dare to attempt anything for the relief of the wealthy and the ruin of the weak. **3.** It is best to maintain this practice, when bequeathed resources come to the council[86] from the goods of the decurions, so that both the weak and the wealthy gain the profit of a very similar provision. **4.** If any governor (*iudex*), auditor (*numerarius*), or decurion thinks this ordinance is to be mutilated, he will be subject to the threats that Your office has decided.

Given August 26, at Constantinople, in the consulship of Varanes (410).

[2][87] *Emperors* Theodosius *and* Valentinian *Augusti to Celer, Proconsul of Africa.* It should not be permitted for a receipt once issued for payment for public services (*munera*) to be erased by another governor (*refricari*, i.e., so that the person involved be called upon to perform more service or to make a further payment). And for this reason Your Visibility (*spectabilitas tua*), following the rule of the most beneficial and just order, will prohibit those who, it has become clear, rejoice when they have received the good fortune of a receipt, henceforth to be bound to an investigation of a completed public service.

Given April 28, at Ravenna, in the post-consulate of the viri clarissimi *Felix and Taurus (429).*

[3] *Emperor* Marcian *Augustus to Constantine, Praetorian Prefect.* Whoever from among the provincials and taxpayers, after the lapse in the future of however many years, when any proof is requested from him of a tax payment, has produced receipts and documents for three consecutive years, shall not be compelled to show receipts for earlier times, nor may he be pressed for the provision of a tax payment for a past period, unless by chance a decurion, any subordinate official, a supply officer (*optio*), a bookkeeper (*actuarius*), or any exactor of a public debt or enforcer of landowners or taxpayers has a written promise (*cautio*), or it is apparent from a manifest entry in the records that what he demands is owed to him (the official).

Given July 18, in the consulship of Varanes and John (456).

[4][88] Anyone who does not include in the receipts the number of *iuga* (the units of land used for tax assessments) is fined 20 pounds of gold.

[86] C.Th. 12.1.173.3 has a somewhat different version: "It is best to maintain this practice for those to whom bequeathed wealth comes from the property of the decurions, so that they themselves gain the profit of a very similar provision."
[87] = C.Th. 12.1.185; combine with C. 11.59.16, and possibly C.Th. 11.1.34, 11.30.68 (both dated to February 25, which Seeck accepts).
[88] This is restored from Nov. Theod. 17.13.

[5] *Imp. Iustinianus A. Menae pp.* Securitatibus, quae publicarum functionum gratia sive in solidum sive ex parte solutae esse conscribuntur, nullam exceptionem non numeratae pecuniae penitus opponi concedimus.

D. k. Iun. Constantinopoli dn. Iustiniano A. II cons.

XXIII De Canone Largitionalium Titulorum

[1] *Imppp. Gratianus Valentinianus et Theodosius AAA. Lolliano.* Omnem summam auri vel argenti reliquarumque specierum, quae sacris largitionibus ex more penduntur, statim ut exactio fuerit celebrata, ad thesauros uniuscuiusque provinciae vel ad proximos referri sub obsignatione tabularii ceterorumque, quos sollicitos esse debere praecedentia iussa decreverant, et thesaurorum praepositis consignari praecipimus, ut exinde ad sacrum comitatum integer omnium titulorum numerus dirigatur.

D. XII k. Aug. Merobaude II et Saturnino conss.

[2] *Impp. Honorius et Theodosius AA. ad Anthemium pp.* **pr.** Neque sacrarum privatarum vel largitionum palatina officia ex quacumque causa ex quocumque titulo fiscalis debiti, cum ad provinciam mittuntur, possessores per se audeant convenire, sive id ex praeterito reliquum trahatur seu praesentis temporis tributo solvi conveniat: sed rectores provinciarum frequenter adeundo commoneant eorumque officiis incumbant. **1.** Quod si rector provinciae imminentem sibi memoratorum declinare molestiam quaerens vel qualibet alia ratione isdem propria auctoritate publicae exactionis permiserit curam, tam ipse quam officium eius vicena auri pondo fisco dependent.

D. VII id. Dec. Constantinopoli Basso et Philippo conss.

[5][89] *Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect.* We do not allow any defense whatsoever of money not paid (*exceptio non numeratae pecuniae*) to be opposed for (tax) receipts, which are written to show that money was paid for public charges (*publicae functiones*), either for the whole amount or in part.[90]

Given June 1, at Constantinople, in the consulship of Our Lord Justinian Augustus, for the second time (528).

Twenty-Third Title The Tax for Categories of the Imperial Finances

[1] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Lollianus.* We instruct that every sum of gold or silver and of other commodities that are customarily paid to the Imperial Finances, as soon as their exaction has been performed, be brought to the (imperial) treasuries (*thesauri*) of each province or to the nearest ones under the signature of a tax official (*tabularius*) and of the others whom the preceding orders had decreed ought to be concerned with this, and be signed over to the chiefs (*praepositi*) of the treasuries, so that then the entire number of all the accounts (*tituli*) may be directed to the Sacred Council (*sacer comitatus*).

Given July 21, in the consulship of Merobaudes, for the second time, and Saturninus (383).

[2][91] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Anthemius, Praetorian Prefect.* **pr.** The palace offices of the Sacred Privy Purse or of the Imperial Finances shall not dare by themselves to sue landowners (*possessores*) for any cause resulting from any category of debt to the Treasury when they are sent to the provinces, whether the arrears are carried over from a past period or it is agreed that they be paid as tax for the present time; but they should warn the governors by frequently approaching them and should press their offices. 1. But if the provincial governor, seeking to avert imminent trouble from the aforementioned people, or for any other reason, has on his own authority permitted these same ones the responsibility for the exaction of public taxes, both he himself and his office will each pay 20 pounds of gold to the Treasury.

Given December 7, at Constantinople, in the consulship of Bassus and Philippus (408).

[89] = C. 4.30.14.1, with a fuller holding; combine with 1.4.21, 4.2.17, 4.20.18, 4.21.17, possibly 4.30.15, and 5.15.3.

[90] For the *exceptio non numeratae pecuniae*, see C. 4.30.

[91] = C.Th. 11.7.17.

[3] *Impp. Leo et Anthemius AA. Heliodoro comiti sacrarum largitionum.* **pr.** Praecepit nostra serenitas neque veloci cursui neque alii praeter veterem consuetudinem gravamini subiacere chartularios, qui de cohortalibus officiis uniuscuiusque provinciae largitionales titulos retractare constituuntur, cum et idem amplissima praefectura disposuisse perhibeatur, ut his necessitatibus liberati fideliter largitionales titulos valeant retractare. **1.** Quod si aliquo tempore nostra iussio temerario ausu ex aliqua parte fuerit violata, tam rector provinciae quam apparitio eius triginta librarum auri condemnatione plectentur. **2.** Insuper virum spectabilem Orientis comitem eiusque officium licentiam habere conatus nefarios inhibendi tam moderatorum quam cohortalis officii, cum de hac re admoniti fuerint a palatinis et eandem poenam formidantibus, si non omnibus modis pietatis nostrae decreta congruum mereantur effectum. **3.** Illud etiam generali forma sancimus, ut in omnibus provinciis tam nominatio specialium susceptorum largitionalium titulorum quam defensio tractatorum non tantum per viros clarissimos moderatores provinciarum, sed etiam per viros spectabiles proconsules et praefectum Augustalem ac laudabiles vicarios una cum eorum officiis, admonentibus semper nec non imminentibus palatinis procuretur providentibus, ut post nominationem etiam specialium susceptorum largitionalium titulorum nulla minuendae exactionis ad sacrum pertinentis aerarium aut transferendi ad arcarios aut quoslibet alios extraneos titulos rectoribus provinciarum aut eorum officiis, sed etiam curialibus licentia permittatur: quadrimenstruis brevibus per idoneum tractatorem eorundem titulorum super commendandis ratiociniis publicis periculo rectorum provinciarum ad sacratissimam urbem transmittendis. **4.** Nam quacumque ex parte, quam iussit nostra tranquillitas, si minus fuerit procuratum, poena superius designata tam ipsi iudices quam eorum officia se noverint esse plectendos.

D. VIII k. Aug. Constantinopoli Anthemio A. II cons.

[4] *Idem AA. Heliodoro comiti sacrarum largitionum.* Praecipimus, ut, si forte delegatio, quae ab amplissima praefectura in diversas provincias ex more quotannis emittitur, minus contineat omnes largitionales titulos aut quo modo exactio eorum debet procedere, nihilo minus competentem a viris spectabilibus tam proconsulibus quam vicariis et viro spectabili comite Orientis et praefecto Augustali nec

[3] *Emperors* Leo *and* Anthemius *Augusti to Heliodorus, Count of Imperial Finances.* **pr.** Our Serenity has instructed that the tax registrars (*chartularii*), who are appointed from among the supporting offices of the Praetorian Prefecture (*de cohortalibus officiis*) of each province to audit the accounts of the Imperial Finances, not be subject to the fast post-service or to any other burden beyond the ancient custom, since the Greatest Prefecture is understood to have made the same disposition, so that, freed from these necessities, they might be able to audit the accounts of the Imperial Finances faithfully. **1.** But if at any time Our order is violated by rash daring on any part, both the governor of the province and his support staff (*apparitio*) shall be punished with a condemnation of 30 pounds of gold. **2.** In addition, (We order) that the *vir spectabilis* Count of the East have permission to inhibit the nefarious efforts of the governors (*moderatores*) as well as of the Prefecture's staff (*cohortalis officii*), since they have been warned about this matter by the palace officials who also fear the same penalty, if the decrees of Our Piety should not in all ways gain an appropriate performance. **3.** We also ordain this by a general rule, that in all provinces both the nomination of special collectors (*susceptores*) for accounts of the Imperial Finances as well as the defense of the accounts being audited be managed not only through the *viri clarissimi* provincial governors, but also through *viri spectabiles* Proconsuls, as well as the Augustal Prefect and the praiseworthy Vicars, along with their offices, with the palace officials always reminding and also looming over them, making sure that, after the nomination even of special exactors for accounts of the Imperial Finances, license not be permitted to provincial governors or their offices, or even decurions, to reduce an exaction belonging to the Sacred Treasury or to transfer it to treasurers or to any other external accounts. The four-monthly reports concerning the rendering of accounts are to be transmitted to the Most Sacred City at the risk of the provincial governors through a suitable auditor of the same accounts. **4.** For if what Our Tranquility has ordered has not been attended to in any degree, both the governors themselves and their offices shall know that they are to be struck with the penalty designated above.

Given July 25,[92] *at Constantinople, in the consulship of Athemius Augustus, for the second time (468).*

[4] *The same Augusti to Heliodorus, Count of Imperial Finances.* We instruct that, if by chance a tax assessment (*delegatio*), which is sent out customarily each year by the Greatest Prefecture into diverse provinces, should not include all the accounts of the Imperial Finances or the way in which their exaction ought to proceed, even so the appropriate exaction of all the accounts of the Imperial Finances shall be carried out by both the *viri spectabiles* Proconsuls

[92] Krüger writes March 25, so as to precede the following title.

non rectoribus provinciarum eorumque officiis et curialibus omnium largitionalium titulorum exactionem procurari: vicenarum librarum auri condemnationem prae oculis habentibus, si quid minus exactum vel illatum sacro fuerit aerario, quam prisca et inveterata consuetudo sacris largitionibus inferri constituit.

D. k. Iul. Constantinopoli Anthemio A. II cons.

XXIIII Ne Operae a Collatoribus Exigantur

[1] *Imppp. Valentinianus Valens et Gratianus AAA. ad Viventium pp.* Operarum praebitionem, quae illicite a provincialibus hactenus expetita est, sinceritas tua cessare praecipiat.

D. x k. Mart. Treveris Valentiniano np. et Victore conss.

XXV De Immunitate Nemini Concedenda

[1] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad populum.* His nostrae serenitatis edictis civitatum tabulariis erit flamma supplicium, si cuiusquam fraude ambitu potestate iniusta cuiuspiam profiteretur immunitas, ac non secundum praecedentem definitionem omnes omnino abolita specialium immunitatum gratia necessitas tributariae functionis firmata censitorum peraequatorum provincialium iudicum peraequatione constrinxerit.

D. III non. Mart. Mediolani Merobaude II et Saturnino conss.

[2] *Impp. Honorius et Theodosius AA. Anthemio pp.* Per Bithyniam ceterasque provincias possessores et reparationi publici aggeris et ceteris eiusmodi muneribus pro iugorum numero vel capitum, quae possidere noscuntur, adstringi cogantur.

D. VII k. Nov. Constantinopoli Honorio VIIII et Theodosio V AA. conss.

and vicars, as well as the *vir spectabilis* Count of the East, and the Augustal Prefect, as well as the provincial governors and their offices and the decurions. They have a condemnation of 20 pounds of gold before their eyes, if anything less has been exacted or paid to the Sacred Treasury than an ancient and long-standing custom has established be paid to the Imperial Finances.

Given July 1, at Constantinople, in the consulship of Anthemius Augustus, for the second time (468).

Twenty-Fourth Title Labor Services Shall Not Be Exacted from Taxpayers

[1][93] *Emperors Valentinian, Valens, and Gratian Augusti to Viventius, Praetorian Prefect.* Your Sincerity should instruct that the provision of labor services (*operae*), which up to now has been illicitly sought from the provincials, cease.

Given February 20, at Trier, in the consulship of Valentinian, Most Noble Boy, and Victor (369).

Twenty-Fifth Title No One Is to Be Granted Immunity

[1][94] *Emperors Gratian, Valentinian, and Theodosius Augusti to the People.* By these edicts of Our Serenity, flames will be the punishment for tax officials of the towns if immunity for any person should be pronounced[95] by anyone's fraud, bribery, or unjust power; and if, the influence of special immunities being abolished, the obligation of the tax payment does not bind everyone in every way in accordance with the preceding definition,[96] after the adjustment of the tax assessors, tax adjusters, and provincial governors has been confirmed.

Given March 5, at Milan, in the consulship of Merobaudes, for the second time, and Saturninus (383).

[2][97] *Emperors Honorius and Theodosius Augusti to Anthemius, Praetorian Prefect.* Landowners (*possessores*) in Bithynia and the other provinces shall be compulsorily bound to both the repair of the public road (*agger*) and to other services of this type in proportion to the number of land (*iuga*) and personal (*capita*) tax units that they are known to possess.

Given October 26, at Constantinople, in the consulship of Honorius, for the ninth time, and Theodosius, for the fifth time, Augusti (412).

[93] = C.Th. 11.10.1.
[94] = C.Th. 13.10.8.1; combine with C. 11.48.9.
[95] Krüger suggests emending to *provideretur*, "be provided."
[96] See C.Th. 13.10.8 pr. = C. 11.48.9.
[97] = C.Th. 15.3.5, with somewhat different wording.

XXVI De Conditis in Publicis Horreis

[1] *Impp. Valentinianus et Valens AA. ad Volusianum pu.* **pr.** Omnia quae in horreis habentur expendi volumus, ita ut non prius ad frumentum tendatur expensio, quod sub praefectura tua urbis horreis infertur, quam vetera condita fuerint erogata. **1.** Et si forte vetustate species ita corrupta est, ut per semet erogari sine querella non possit, eidem ex nova portione misceatur, cuius adiectione corruptio velata damnum fisco non faciat. **2.** Ad istud autem negotium arbitratu ac iudicio tuo nobilis prudens fidelis optime sibi conscius pro integritatis meritis adponatur custos ac mensor, qui vel frumenta modio metiatur vel iustis aestimationibus colligat, quanta habeantur in condito.

D. VI id. April. divo Ioviano et Varroniano conss.

[2] *Idem AA. Artemio praesidi.* **pr.** Cum ad quamlibet urbem mansionemve accesseris, protinus horrea inspicere te volumus, ut devotissimis militibus effloratae et incorruptae species praebeantur. **1.** Nam si per incuriam officii gravitatis tuae sartorum tectorum neglecta procuratione aliqua pluviis infecta perierint, iam ad damnum tuum referentur.

D. VIII k. Sept. Arelate divo Ioviano et Varroniano conss.

[3] *Impp. Arcadius et Honorius AA. Anatolio pp. per Illyricum.* **pr.** Nulli posthac horreaticas species contingendi copia praebeatur. **1.** Sin vero quisquam temerator horreorum extiterit, qui sibi ex praedictis aliquid audeat usurpare, hanc poenam sciat nostro arbitrio definitam, ut deportationis poenae subiectus totius substantiae cogatur subire iacturam.

D. VII id. Iul. Constantinopoli Caesario et Attico conss.

Twenty-Sixth Title Items Stored in Public Granaries (*Horrea*)

[1][98] *Emperors* VALENTINIAN *and* VALENS *Augusti to Volusianus, City Prefect.* **pr.** We want everything that is kept in the granaries to be disbursed in such a way that the disbursement not reach the grain that is brought into the city's granaries under Your Prefecture before the old supplies have been appropriated. **1.** And if by chance the supply has been corrupted by age in such a way that it cannot be appropriated by itself without a complaint, some from the new portion should be mixed in, by the addition of which the hidden corruption not cause a loss to the Treasury. **2.** However, for this business, at your discretion and judgment there should be appointed a guard and measurer who is noble, wise, faithful, and suitably conscientious in accordance with the merits of his integrity, who is either to mete out the grain in a *modius* measure or reckon by fair estimations what is stored.

Given April 8, in the consulship of the deified Jovian and Varronianus (364).[99]

[2] *The same Augusti to Artemius, Governor.*[100] **pr.** When you approach any city or post station, We want you to inspect their granaries right away, so that fresh (*efflorataе*) and unspoiled supplies are offered to the most devoted soldiers. **1.** For if through the lack of care on the part of the office of Your Eminence (*gravitas tua*) any supplies perish after being damaged by rain as a result of neglecting the repair of the roofs, they will be reckoned as your loss.

Given August 25, at Arles,[101] *in the consulship of the deified Jovian and Varronianus (364).*

[3][102] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Anatolius, Praetorian Prefect in Illyricum.* **pr.** Henceforth no one should be offered the capacity to touch supplies kept in granaries. **1.** But if someone is discovered to be a despoiler of granaries by daring to use something from the aforesaid (supplies), he shall know that this punishment is defined by Our judgment, that, being subject to the penalty of deportation, he be forced to undergo the loss of all his property.

Given July 9, at Constantinople, in the consulship of Caesarius and Atticus (397).

[98] = C.Th. 11.14.1, with somewhat different wording; combine with C. 1.28.1 (= C.Th. 1.6.5).

[99] Based on C. 1.28.1, Krüger suggests a date "in the consulship of Valentinian and Valens Augusti" (365). Seeck dates to April 4, 365; Schmidt-Hofner, to April 8, 365.

[100] The word for governor here is *praeses*. C.Th. 8.3.1 (364) is addressed to an Artemius, *corrector* (of Lucania and Bruttium, according to Krüger).

[101] Krüger points out that at this time Valentinian made a journey from Sirmium to Emona.

[102] = C.Th. 11.14.3. Seeck dates to June 7, 397.

XXVII Ut Nemini Liceat in Coemptione Specierum Se Excusare et de Munere Sitoniae

[1] *Imp. Anastasius A. Matroniano pp.* **pr.** Quotiens urguente necessitate comparationes frumenti vel hordei aliarumque specierum quibuslibet provinciis indicentur, nulli penitus possidentium sese sub cuiuscumque privilegii occasione excusandi tribui facultatem censemus, omnique, cuicumque possidentium quocumque modo quocumque tempore per sacros apices vel etiam pragmaticam sanctionem aut iudicialem forte dispositionem huiusmodi excusatio data est vel postea data fuerit, licentia minime umquam contra tenorem nostrae legis saluberrimae valitura. **1.** Adeo namque huiusmodi onera cunctis, pro qua singulos portione contingit, volumus inrogari, ut ab isdem comparationibus nec sacratissimam nostrae pietatis nec serenissimae nostrae coniugis domum pateremur subtrahere.

D. III k. Aug. Constantinopoli Olybrio vc. cons.

[2] **pr.** Οἱ τὰς πόλεις οἰκοῦντες ἢ ἐν αὐταῖς κεκτημένοι μὴ ἀναγκαζέσθωσαν εἰς ἑτέραν πόλιν ἢ εἰς τὴν μητρόπολιν εἴδη χορηγεῖν. **1.** Εἰ δὲ καί τις ἀπαραίτητος αἰτία καταναγκάσει τοῦτο γενέσθαι, τοῖς δικαίοις τιμήμασι τοῖς ἐν ἐκείνῃ τῇ πόλει κρατοῦσιν, ἐξ ὧν τὰ εἴδη παρέχεται, πιπρασκέτωσαν, ἐκείνων ταῦτα μετακομιζόντων τῶν δεομένων τῶν εἰδῶν. **2.** Ὑπολογιζέσθω δὲ τοῖς πιπράσκουσι τὰ τιμήματα τῶν εἰδῶν εἰς τὰ συντελούμενα παρ' αὐτῶν ἐν χρυσῷ δημόσια. οὐδὲ γὰρ δίκαιον νῦν μὲν ἀπαιτεῖσθαί τινα παρέχειν εἴδη, μετὰ χρόνον δὲ αὐτῷ τὰ τιμήματα λογίζεσθαι, οὕτως εὐθηνίας γενομένης. **3.** Τοῦ λαμπροτάτου ἄρχοντος ἑκάστης ἐπαρχίας ἐγκινδυνεύοντος εἰς τὸ καταλογίζεσθαι τὰ τῶν εἰδῶν τιμήματα κατὰ τὰς ὡρισμένας προθεσμίας ὑπὲρ αὐτῶν ἐκπέμπεσθαι. **4.** Μηδεὶς δὲ ἀναγκαζέσθω πιπράσκειν πᾶσαν χρείαν αὐτοῦ, ἀλλὰ τὰ ἐκπεριττεύοντα εἴδη· ἀσεβὲς γάρ ἐστιν ἀποστερεῖσθαί τινα τῶν οἰκείων καὶ ἑτέροις ταῦτα χορηγεῖν· ρ' χρυσίου λίτρας ὑφισταμένου ζημίαν καὶ κινδυνεύοντος εἰς τὴν ἀξίαν καὶ τὴν ζώνην αὐτοῦ τοῦ παραβαίνοντος τὸν νόμον ἢ συγχωροῦντος αὐτὸν παραβαθῆναι.

5. Μηδεὶς ποτε χωρὶς μεγάλης ἀνάγκης ἐπιταττέσθω τοῖς κτήτορσιν συνωνήν, καὶ ὅτε δὲ γίνεται, κατὰ θείαν μόνον κέλευσιν γινέσθω, ἐφ' ᾧ τε τὸ τῆς συνωνῆς χρυσίον ἐκ τῆς συντελουμένης παρὰ τῶν κτητόρων ἐν χρυσῷ συντελείας παρακατέχεσθαι, ἐὰν ὅλως τὰ τῆς οἰκείας αὐτῶν

Twenty-Seventh Title No One Shall Be Permitted to Excuse Himself from Purchase of Supplies and the Service of Securing Grain

[1][103] *Emperor* ANASTASIUS *Augustus to Matronianus, Praetorian Prefect.* **pr.** Whenever, at the urging of necessity, (compulsory) purchases of grain or barley[104] or other supplies should be declared in any provinces, We decree that no landowner (*possidens*) be granted the right to excuse himself under the pretext of any privilege. No permission will have any validity against the terms of this most beneficial law of Ours in any way and at any time, no matter which landowner has been or will have been granted an excuse of this type, through sacred imperial letters or even a pragmatic sanction or perhaps a judicial arrangement (*iudicalis dispositio*). **1.** For so much do We wish that burdens of this type be imposed on everyone, in the portion that they fall upon individuals, that We do not suffer the withdrawal of the most sacred household either of Our Piety or of Our Most Serene Spouse from the same purchases.

Given July 30, at Constantinople, in the consulship of the vir clarissimus *Olybrius (491).*

[2][105] **pr.** Those who live in the cities or possess property in them are not to be compelled to provide supplies for another city or for the metropolis (the provincial capital). **1.** But if some unavoidable cause forces this to happen, they should sell at the just prices prevailing in the city from which the supplies are furnished, while those who require the supplies provide for their transportation. **2.** The prices for the supplies are to be reckoned for the sellers in accordance with the public taxes they pay in gold.[106] For it is not just that someone be required to provide supplies, and that the prices be reckoned for him after that time, when it has thus become cheap. **3.** The *vir clarissimus* governor of each province will carry the risk for calculating the prices of the supplies (and) that they be sent out at the times designated for them. **4.** No one should be compelled to sell his entire supply, but (only) the supplies that are in surplus. For it is impious that a person be deprived of his private supplies and provide them for others. The person who violates the law or facilitates its violation faces a fine of 100 pounds of gold and also risks his station (*dignitas*) and his rank (*cingulum*).

5. No one ever is to impose a compulsory purchase on the landowners except under great necessity, and when this happens, it should only take place in accordance with a divine (imperial) order, on the basis of which the gold for the purchase shall be furnished from the tax payments made by the landowners in gold, if the amount of their own private tax payment should suffice completely for the purchase.

[103] Combine with C. 7.39.4, 11.62.14.

[104] Cujacius emends to *olei*, "oil," based on C. 11.23.2.

[105] Restored from Bas. 56.9.5. The constitution may be from the Emperor Anastasius; compare C. 1.4.19. Lounghis *et al.* date to 498.

[106] Blume says the prices are to be reckoned at the same rate at which taxes in kind were commuted in gold.

συντελείας ἀρκῇ πρὸς τὴν συνωνήν. **6.** Ἐὰν δὲ μὴ χρεωστῶσι δημόσια οἱ τὴν συνωνὴν ἐπιταγέντες ἢ μέρος χρεωστῶσιν, ἐν νομίσμασιν εὐστάθμοις πρότερον τὸ χρυσίον λαμβανέτωσαν καὶ οὕτως τὸ εἶδος ἀπαιτείσθωσαν, μηδενὸς τολμῶντος ἢ παράσταθμα δοῦναι τὰ νομίσματα ἢ ἐλλιπῶς ταῦτα καταβαλεῖν ἢ ἄλλως πως ζημιῶσαι τοὺς ὑποτελεῖς, ἀλλὰ καὶ τὸ τετραπλάσιον παντὸς τοῦ παραλλήλου καὶ τῆς ζημίας ἀπαιτουμένου καὶ τοῦ ἐλλιπῶς καταβάλλοντος. **7.** Εἰ δὲ καί τις συνωνὴν ἐπιτάξας τολμήσει ἢ τὴν ἐπιταγεῖσαν παρανόμως ἐκβιβάσει, πεντήκοντα χρυσίου λίτρας προστιμάσθω καὶ τῆς στρατείας καὶ ἀξίας ἐκπιπτέτω, ὑποκείμενος καὶ μείζονι κινήσει. **8.** Καὶ ὅτε δὲ κατὰ θείαν κέλευσιν γένηται ἐπιταγὴ συνωνῆς, ἕκαστος τῶν κτητόρων πρὸς τὴν ἀναλογίαν τῶν ζευγῶν ἤτοι ζυγοκεφαλῶν ὑποκείσθω τῇ συνωνῇ, μηδενὸς αὐτῆς ἐξαιρουμένου.

9. Ὁ δὲ ὑπὲρ ταύτην τὴν ἀναλογίαν ἀπαιτῶν τινὰ τῶν συντελειῶν προφάσει τῆς συνωνῆς καὶ ζημίᾳ τῶν πεντήκοντα τοῦ χρυσίου λιτρῶν ὑποκείσθω καὶ ζώνης καὶ ἀξίας ἐκπιπτέτω καὶ ἑτέραν μείζονα προσδοκάτω κίνησιν. **10.** Ἀλλὰ ταῦτα χωρὶς τῆς Θρᾳκικῆς διοικήσεως νενομοθέτηται. ἐν Θρᾴκῃ γάρ, ἐπειδὴ οὐκ εἰς ὁλόκληρον εἰσφέρεται τὰ δημόσια, διὰ τὸ προφάσει τῶν βαρβαρικῶν ἐφόδων ἐλαττωθῆναι τοὺς γεωργοὺς καὶ μὴ ἀρκεῖν τὴν ἐν εἴδεσι συντέλειαν τοῖς κατ' αὐτὴν ἱδρυμένοις στρατιώταις, καὶ πάντων μᾶλλον ἀποτρέφεσθαι εἰς αὐτὴν στρατιωτικὰ τάγματα ἀνάγκη ἐστὶ συνεχὴς πάνυ γίνεσθαι, ἐπειδὴ μὴ ἐνδέχεται δίχα συνωνῆς ἀποτρέφεσθαι τοὺς ἐν αὐτῇ στρατιώτας· ἐν ἐκείνῃ τοίνυν τῇ διοικήσει ἡ μέχρι σήμερον κρατείτω συνήθεια, ὑποκειμένων καὶ τῶν ἐμπόρων τῇ συνηθείᾳ, πρότερον μέντοι καὶ τοῖς συντελεσταῖς καὶ τοῖς ἐμπόροις καταβαλλομένου τοῦ τῆς συνωνῆς χρυσίου ἐν εὐστάθμοις νομίσμασι καὶ ὀβρύζοις, καὶ οὕτως αὐτῶν ἀπαιτουμένων ἀδιαστρόφως καὶ ἀζημίως τὸ εἶδος εἰσφέρειν, τοῦ δὲ ταῦτα παραβαίνοντος τοῖς αὐτοῖς ἐπιτιμίοις ὑποκειμένου. **11.** Βέλτιον γὰρ ἀντὶ τῆς ἰδιωτικῆς ἐμπορείας μᾶλλον τοῖς στρατιώταις καὶ τοὺς ἐμπόρους χορηγεῖν τὰς ἀναγκαίας αὐτῶν ἀποτροφάς.

12. Ἐὰν δέ ποτε διά τινας πόλεις μὴ ἐχούσας σιτωνικὰ χρήματα μήτε ἑτέρωθεν εὐπορούσας ἀνάγκη γέγονε συνωνὴν ποιήσασθαι, ἐξέστω μὲν τοῖς ἄρχουσι ταύτην ποιεῖν, ἐν μόνῃ δὲ τῇ ἐνορίᾳ τῆς πόλεως τῆς τοῦ σίτου δεομένης καὶ ἐν τοῖς αὐτῆς ὁρίοις, καὶ κατὰ τὰ ἐν τοῖς τόποις κρατοῦντα κατὰ καιρὸν τιμήματα. τοῦτο δὲ παραφυλαττέτωσαν καὶ οἱ πατέρες τῶν πόλεων καὶ πᾶς ἕτερος τῆς συνωνῆς προνοούμενος.

13. Εἰ δὲ καὶ ἀνάγκη γίνεται πολιτικὴν γενέσθαι συνωνήν, ὡς ἐπιζητουμένων εἰδῶν ἐν τῇ βασιλίδι πόλει, καὶ ἐν ταύτῃ κατὰ θείαν μόνην κέλευσιν προβαινέτω, τοῦ χρυσίου πρότερον κατὰ τὰ ἐπ' ἀγορᾶς ἐν ἐκείνοις τοῖς τόποις ὤνια παρεχομένου ἀδιαστρόφως καὶ ἀζημίως, μετὰ τοῦ καὶ τὰ ναῦλα ἐκ τοῦ δημοσίου παρέχεσθαι, ὥστε τὸν συντελεστὴν πιπράσκειν μόνον τὸ ἐπιζητούμενον εἶδος καὶ πληρωθῆναι τοῖς δεομένοις τὴν χρείαν.

6. If those who have been assigned the purchase are not in arrears for their taxes or are so in part, they should first take the gold in full-weighted coins and in this way the supplies be demanded of them, and no one should dare either to give coins deficient in weight or to fall short in their payment, or otherwise to cause loss to those liable, but everyone who causes a loss and falls short in his payment (is to pay) a penalty four times the difference (i.e., between what they paid and what they should have). **7.** If indeed anyone dares to assign a compulsory purchase or exacts an assigned one unlawfully, he is to be fined 50 pounds of gold and lose his service and rank, remaining subject to a greater penalty. **8.** And when an assignment of a compulsory purchase occurs in accordance with a divine order, each of the landowners should be subject to the purchase in proportion to his tax liability in land and personal units (i.e., *iuga* and *capita*), and no one should be excepted from this.

9. The one who demands any of the taxes beyond this proportion under the pretext of a compulsory purchase shall both be liable to a fine of 50 pounds of gold and lose his rank and station, and he shall also await a greater punishment. **10.** But these measures have been ordained except for the diocese of Thrace. For in Thrace, as the taxes are not paid in their entirety, since the farmers have been reduced in number on account of barbarian incursions and the payment in supplies is not sufficient for the soldiers stationed there, it is necessary above all that assignments to feed the military occur continually there, since it is not possible for the soldiers in that province to be fed without a compulsory purchase.[107] Therefore in that diocese the custom that has obtained up until today should prevail, and the merchants are subject to it, that the gold for the purchase first be paid both to the collectors and to the merchants in full-weighted and pure coins, and in this way they are required to provide the supplies without delay or loss, and the person violating these measures is subject to the same penalties. **11.** For it is better, instead of the private market, that the merchants furnish the soldiers their necessary provisions.

12. But if ever it is necessary that a (compulsory) purchase be conducted on account of any cities not having funds for the purchase of grain or resources from anywhere else, it shall be possible for the governors to carry this out, but only in the territory of the city that lacks grain and within its boundaries, and in accordance with the prices prevailing at that time in the place. Both the fathers of the city should observe this as well as everyone else supervising the purchase.

13. And if it is necessary for there to be a public (*politike*) purchase, because supplies are being sought in the Imperial City, indeed in this case it may go forward only in accordance with a divine order, with the gold provided without delay or loss in accordance with the market prices in those places, and providing for the transport charges from public funds, so that the tax payer sell only the supplies that are sought, and the need for those lacking (thus) be filled.

[107] The text is unclear, and the translation is based on Mommsen's suggestions for what one would expect here.

14. Μηδὲν δὲ ἐκ ταύτης τῆς διατάξεως καινιζέσθω τὰ ἐπὶ τῇ συνωνῇ τῆς Ἀλεξανδρέων μεγαλοπόλεως διατετυπωμένα, ἀλλὰ κρατείτω καὶ ὁ θεῖος τύπος ὁ διατυπώσας τὰ περὶ τῶν ἐπεισάκτων στρατιωτῶν ἀποτροφῆς. **15.** Ὑποκείσθω δὲ τῷ προστίμῳ τῶν πεντήκοντα τοῦ χρυσίου λιτρῶν καὶ τὸν εἰς ζώνην καὶ ἀξίαν ὑπομενέτω κίνδυνον ἥτε μεγίστη τάξις τῶν ἐνδοξοτάτων ἐπάρχων καὶ οἱ λαμπρότατοι τῶν ἐπαρχιῶν ἄρχοντες μετὰ τῶν πειθομένων αὐτοῖς τάξεων καὶ οἱ κατὰ τόπον ἔκδικοι καὶ ἄλλοι οἱ δημοσιεύοντες παραβαίνοντες αὐτοὶ τὸν νόμον ἢ παραβαθῆναι συγχωροῦντες ἢ μὴ μηνύοντες ἀνυπερθέτως καὶ ἀληθῶς κατὰ τῶν παραβαινόντων αὐτόν.

[3] [*Ὁ αὐτὸς βασιλεύς.*] **pr.** ... Θεσπίζομεν σιτώνην ... Ὅταν ἔν τινι πόλει σιτώνου γένηται χρεία, κατὰ δοκιμασίαν καὶ ἐπιλογὴν καθ' ἑκάστην πόλιν ἐπισκόπου καὶ τῶν ἐν τοῖς κτήτορσι πρωτευόντων γινέσθω ἡ ἐπὶ αὐτῷ προβολή, οὐ κατὰ τὸ δοκοῦν τοῖς προβαλλομένοις, οὐδὲ ἐφ' οἷς ἂν βουληθείησαν προσώποις, ἀλλὰ μόνων τῶν ἐπὶ τῆς χώρας ἐκείνης ταξεωτῶν τῶν στρατευομένων καὶ τῶν ἀποθεμένων τὴν τάξιν, διὰ τῶν εἰρημένων προσώπων πρὸς τὴν σιτωνείαν προβαλλομένων, ἐπειδὴ εὐχερέστερον οὗτοι ταῖς δημοσίαις χρείαις ἐντετριμμένοι ἐκ μακρῶν χρόνων τὸ τῆς σιτωνείας διανύουσι βάρος. **1.** Πάσης δὲ ζημίας ἀπαλλαττέσθωσαν οἱ σιτωνοῦντες καὶ πληροῦντες τὴν εἰρημένην χρείαν κατὰ τὸ δίκαιον λογοθετείσθωσαν· οὐ γὰρ δίκαιον αὐτοὺς ἀντὶ τοσούτων κόπων καὶ ζημιοῦσθαι. χορηγείτωσαν δὲ τὸν σῖτον κατὰ τὰ ἐπ' ἀγορᾶς ὤνια καὶ μηδὲν περαιτέρω. **2.** Ὁ δὲ παραβαίνων ἢ παραβαθῆναι συγχωρῶν τὸν νόμον λ' χρυσίου λίτρας ἐπιτίμιον καταβαλλέτω.

[4] ... Ἦλθεν ... Προνοίᾳ ἐπισκόπου οἱ κατὰ χώραν ταξεῶται τὴν σιτωνίαν μετέρχονται.

XXVIII De Collatione Donatorum vel Relevatorum aut Translatorum seu Adaeratorum

[1] *Impp. Theodosius et Valentinianus AA. Hermocrati pp.* **pr.** Dispositionem amplissimae recordationis Antiochi, quae certam quantitatem ante se relevatis possessionibus nomine canonis indixit, non imminui decernimus: id enim, quoniam in canonem cecidit et

14. On the basis of this constitution no innovation is to be made in the procedures defined for the purchase for the great city of Alexandria, but the sacred protocol shall prevail that has defined the procedures for the feeding of the reserve soldiers. **15.** The greatest office of the *viri illustres* prefects, and the *viri clarissimi* provincial governors, along with the offices that obey them, the local defenders, and other public officials who violate the law themselves, allow it to be violated, or do not report right away and truthfully about those violating it shall be liable to a fine of 50 pounds of gold and face the loss of their rank and station.

[3][108] [*The same Augustus*] … **pr.** We decree that a purveyor of grain (*sitónēs*) … Whenever there is need in any city for a purveyor of grain, his appointment shall be made according to the judgment and choice of the bishop of the city and of the foremost landholders, not according to the opinion of those who nominate candidates nor from among the persons that they desire; but only members of the provincial staff (*taxeotai*) of the region, who are serving or have served, shall be elected purveyors by the aforementioned persons, inasmuch as they who are versed in public affairs by long service will more easily bear the burden of the office of purveyor. **1.** The grain purchasers are to be free of any loss, and, fulfilling the aforementioned need they are to be fairly audited. For it is not fair that they should suffer a loss in exchange for such labors. They are to provide the grain in accordance with the market prices and nothing higher. **2.** Whoever violates this law or permits it to be violated shall pay a fine of 30 pounds of gold.
(491–505).

[4][109] … has come … The officials on site carry out the purchase of grain under the care of the bishop.

Twenty-Eighth Title Payment of Taxes for Properties That Have Been Bestowed (by the Emperor), or Relieved (of Taxes), Transferred, or Commuted in Cash

[1][110] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Hermocrates, Praetorian Prefect.* **pr.** We determine that the assessment of Antiochus of most magnificent memory,[111] which imposed a fixed amount as tax on the properties that were relieved (*relevatae*) prior to him, not be diminished. For We do not

[108] pr. and 2 = C. 1.4.17; the inscription is reconstructed. The text is restored from B. 56.9.6.
[109] Taken from *Collectio Tripartita* 1.3, *Paratitlon* 54.
[110] = Nov. Theod. 26, with much fuller wording, and where Hermocrates is Praetorian Prefect of the East; combine with C. 11.59.17. Seeck dates to November 29, 444.
[111] See C.Th. 11.20.6; Antiochus, as Praetorian Prefect, acted on imperial instructions in 430.

anniversaria debet pensitatione persolvi, nec in praeteritum nec in posterum patimur esse concessum. 1. Indulgentiam vero memoratae descriptionis et in anteactum et in posterum tempus non solum in relevatis, verum etiam in donatis adaeratis translatisque, seu quodlibet aliud nomen novae descriptionis excogitatum est, volumus observari nullamque super his umquam exactionis molestiam formidari, quibus non tantum reliqua praeteriti temporis relaxamus, sed nec in posterum quicquam innovationis aut oneris adiciendum esse censemus, nullique licere deinceps contra divalia statuta relevare suas possessiones. 2. Noverit tamen amplissimae tuae sedis officium, quod si aliquando nobis suggestio huic nostrae sanctioni contraria porrigatur, vel si sacris mandatis (si qua forte citra suggestionem his piis dispositionibus adversa manaverint) obsequatur et aliquos tamquam debitores ex huiusmodi titulo crediderit exponendos, ducentarum librarum auri se condemnatione multandum.

D. XII k. Dec. Constantinopoli Theodosio A. XVIII et Albino conss.

XXVIIII De Collatione Aeris

[1] *Impp. Arcadius et Honorius AA. Hilario.* Aeris pretia, quae a provincialibus postulantur, ita exigi volumus, ut pro viginti libris aeris solidus a possessore reddatur.

D. V k. Ian. Mediolani Arcadio IIII et Honorio III AA. conss.

XXX De Discussoribus

[1] *Imppp. Valentinianus Valens et Gratianus AAA. ad Arthemium vicarium Hispaniarum.* Quotiens in disceptatione constiterit inique discussionem fuisse confectam et fidem facti non poterit approbare

allow this (amount) to be remitted either for the past or the future, since it has turned into a regular tax and also ought to be paid in an annual installment. **1.** We wish that the indulgence of the aforementioned assessment be observed both for the past and the future not only for properties whose taxes have been lowered, but also for those whose taxes have been given, commuted, and transferred, or whatever other name for a new assessment has been thought of, and that no trouble concerning the exaction (of taxes) for these properties be feared, for which We not only relax the arrears of past time, but We decree that no innovation or burden be added for the future, and that no one be permitted henceforth to relieve the taxes on his own properties contrary to the divine statutes. **2.** The Office of Your Most Magnificent See should know, however, if at any time an official query (*suggestio*) should be handed to Us contrary to Our ordinance, or if it should obey sacred orders – if any have been disseminated without a request contrary to these pious assessments – and has thought to set out some persons as if they were debtors from such an account, that this is to be punished with a condemnation of 200 pounds of gold.

Given November 20, at Constantinople, in the consulship of Theodosius Augustus, for the eighteenth time, and Abinus (444).[112]

Twenty-Ninth Title Payment of Bronze

[1][113] *Emperors Arcadius and Honorius Augusti to Hilarius.* We want the prices for bronze that are demanded from the provincials to be exacted in this way, that a *solidus* be returned for 20 pounds of bronze from the possessor.

Given December 28, at Milan, in the consulship of Arcadius, for the fourth time, and Honorius, for the third time, Augusti (396).

Thirtieth Title Auditors (*Discussores*)[114]

[1][115] *Emperors Valentinian, Valens, and Gratian Augusti to Arthemius, Vicar of the Spains.* Whenever it is established that in a dispute an audit has been carried out unfairly and the auditor (*discussor*) cannot demonstrate the

112 Nov. Theod. 26 adds "with the same copy to the *vir illustris* Theodorus, Praetorian Prefect of Illyricum."

113 = C.Th. 11.21.2 (which has "25 pounds of bronze"); combine with C.Th. 7.4.22.

114 Blume: "These officials were auditors; that is to say, examining accountants. They were employed as special agents of the imperial government to examine the status of the receipts of taxes, inquire into delinquencies and, it seems, collect arrears, they are not to be confounded with equalizers or adjusters of assessment rolls … They were also employed to audit the accounts in municipalities, noting the income and outlay and determining the delinquencies, if any. Law 4 of this title. Other similar duties were doubtless imposed on them from time to time. They were, as noted in law 3 of this title, of comparatively high rank, and were at times chosen to fulfill the duties as auditor against their wishes."

115 = C.Th. 11.26.1.

discussor, ipse in eodem titulo et in eodem modo ad solvendum protinus urgeatur, in quo alterum perperam fecerit debitorem.

D. prid. id. Mai. Valentiniano np. et Victore conss.

[2] *Impp. Arcadius et Honorius AA. Messalae pp.* Ne casu amissa securitate publica quaedam praeda nascatur collatoribus, decernimus, ut, quando securitates a discussoribus seu apparitoribus expositae ratiociniis publicis continentur, rursus per iniuriam non petantur.

D. v k. Dec. Mediolani Stilichone et Aureliano conss.

[3] *Impp. Theodosius et Valentinianus AA. Apollonio pp.* Per singulas provincias vel civitates honoratis usque ad comitivam consistorianam nec non etiam militantibus et suis obsequiis non adhaerentibus, advocatis quin etiam fori provincialis mandari discussionis iugorum sollicitudinem decernimus.

D. v k. Ian. Eudoxio et Dioscoro conss.

[4] [*Αὐτοκράτωρ Ἰουστινιανὸς Α. Ἰουλιανῷ ἐπάρχῳ πραιτωρίων.*] **pr.** Μηδεὶς γινέσθω λογοθέτης χωρὶς βασιλικῆς κελεύσεως ἰδικῶς μεμνημένης τῆς αὐτοῦ τοῦ λογοθέτου προσηγορίας· μήτε κατὰ κέλευσιν τῶν ἐπάρχων μήτε ἐκ προστάξεως ἄλλου οἱουδήποτε δικαστηρίου γινέσθω τις λογοθέτης ἐν ταῖς ἐπαρχίαις ἢ πολιτικῶν ἔργων ἢ σιτωνικῶν χρημάτων ἢ λιμενητικῶν ἢ τῶν περὶ τοὺς δημοσίους ὁλκοὺς τῶν πόλεων δαπανωμένων ἢ περὶ τειχοποιίαν ἢ περὶ ὁδοστρωσίαν ἢ γεφυρῶν ἢ μώλων κατασκευήν, ἀλλ' οὐδὲ τῶν λουτρωνικῶν χρημάτων ἢ ἄλλως ὁπωσοῦν εἰς πολιτικὴν ζήτησιν ἀναφερομένων, χωρὶς βασιλικοῦ τύπου. **1.** Αὐτὸς γὰρ ὁ βασιλεύς, εἴτε ἐκ δημοσίου χρήματα ἐκπέμψῃ πρὸς τειχοποιίαν ἢ ἑτέρου παντὸς ἔργου κατασκευήν, εἴτε εὕρῃ παρ' ἑτέρου καταλελειμμένα χρήματα πόλεσι πρὸς ἅπαξ ἢ καὶ διηνεκῶς, ὅτε ἂν αὐτῷ παρασταίη, πέμπει τὸν λογοθέτην καὶ τὸ ἔργον ὀφείλοντα μετρῆσαι καὶ ἀκριβεῖς λογισμοὺς ποιήσασθαι καὶ εἰς τὸ θεῖον αὐτοῦ κράτος ἀναγαγεῖν, ἐφ' ᾧ τε γενομένης ὀρθῶς τῆς δαπάνης θείαν γενέσθαι παρ' αὐτοῦ τοῖς δεδαπανηκόσιν ἀμεριμνίαν καὶ μηκέτι δευτέραν ζήτησιν αὐτοὺς ὑπομένειν ἢ κληρονόμους αὐτῶν ἢ διαδόχους.

reliability of what he has done, he himself shall be pressed to pay immediately on the same account and in the same way in which he had wrongly made the other person a debtor.

Given May 14, in the consulship of Valentinian, Most Noble Boy, and Victor (369).

[2][116] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Messala, Praetorian Prefect.* Lest, by chance, upon the loss of a receipt (for taxes paid), taxpayers experience some public pillaging, We determine that, when receipts issued by auditors or subordinate officials have been included in the public accounts, they (taxes) shall not be sought again unlawfully.

Given November 27, at Milan, in the consulship of Stilicho and Aurelianus (400).

[3] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Apollonius, Praetorian Prefect.* Throughout the individual provinces or cities We determine that the responsibility for auditing the land-tax assessments (*iuga*) be entrusted to office-holders up to the rank of the Count of the Imperial Consistory, as well as to those holding public office (*militia*) and those not bound by their obedience,[117] and even to advocates of the provincial court.

Given December 28, in the consulship of Eudoxius and Dioscorus (442).

[4][118] [*Emperor* JUSTINIAN *Augustus to Julian, Praetorian Prefect.*] **pr.** No one is to become an auditor without an imperial order that specifically mentions the title of an auditor. No one should become an auditor in the provinces in accordance with the order of the prefects or on the appointment by any court whatsoever either for public works, for funds for the purchase of grain, for harbor maintenance, or for the expenses connected with public aqueducts in the cities, for wall building, for paving roads, or for the construction of bridges or ramparts (μώλων), or for funds for the baths or for anything else connected in any way with a public purpose, without an imperial command. **1.**[119] For the Emperor himself, whether he sends funds from the public treasury for wall building or the performance of any other work, or whether he finds from another source funds left to the cities, whether for a one-time or perpetual payment, whenever he (the Emperor) might decide (παρίστημι), he sends an auditor who is to measure the work and to provide exact calculations and report them to his Imperial Majesty, so that when the expenditure has been made correctly those who have spent the money have an imperial immunity from him and so that neither they nor their heirs or successors are liable to a

[116] = C.Th. 11.26.2; combine with C. 2.14.1, 11.74.2, 12.5.18; C.Th. 8.5.59 (possibly), 10.3.5.

[117] According to Blume, this phrase refers to people not on active service.

[118] The address is restored from C. 1.4.26; combine with C. 3.2.4, 12.63.2. The text is restored from Bas. 56.10.5.

[119] Sections 1–2 = C. 1.4.26 pr.-1.

2. Εἰ δὲ καὶ ὁ λογοθέτης πεμπόμενος ἐπιτραπείη ποιῆσαι ἀμεριμνίαν τοῖς ὀρθῶς δεδαπανηκόσιν τὰ χρήματα καὶ μετὰ τῆς τῶν λόγων ἐρεύνης ἔκθηται αὐτῶν ἀμεριμνίαν τοῖς ὀρθῶς δεδαπανηκόσιν, ἔστω καὶ αὕτη κυρία, ὡς μήτε θείας ἀμεριμνίας δεῖσθαι τὸ λοιπὸν μήτε ἑτέρας ἀσφαλείας τὸν δαπανήσαντα ἢ τοὺς κληρονόμους αὐτοῦ ἢ διαδόχους, ἀλλ' ἀρκεῖσθαι τῇ τοῦ λογοθέτου ἀσφαλείᾳ.

3. Ἐπαγγέλλεται δὲ καὶ δαπάνας διδόναι τοῖς λογοθέταις ἡ διάταξις, ἐφ' ᾧ τε ἀζημίως αὐτοὺς ποιεῖσθαι τὴν λογοθεσίαν. 4. Ὁ δὲ οἴκοθεν δαπανῶν ἢ περὶ ἔργα τῆς πόλεως ἢ περὶ ἄλλην κοινωφελῆ χρείαν μηδενὶ ὑποκείσθω λογοθεσίῳ μήτε αὐτὸς μήτε κληρονόμος μήτε διάδοχος αὐτοῦ, μηδὲ ἐπιζητήσει δημοσίων λογισμῶν, οἷον ἐπὶ κερδῶν ἢ τῶν λεγομένων ἀγωγικῶν ἤτοι παραπομπικῶν ἢ τῶν δαπανωμένων περὶ τοὺς δημοσίους ὄνους ἢ ὀνηλάτας ἢ τῶν διωγμητικῶν καὶ τῶν ἄλλων, ἃ γενικῷ ὀνόματι καλεῖται sollemnia.

5. Μηδεὶς δὲ τῶν ἀρχόντων πεμπέτω λογοθέτην, ἀλλὰ ἀναφερέτω πρὸς βασιλέα, ἐφ' ᾧ τε παρ' αὐτοῦ πέμπεσθαι τὸν ἐπὶ τούτοις λογοθέτην, μηδὲ ἄχρις ἑνὸς ὀβολοῦ ὀφείλοντα κερδᾶναι, ἀλλὰ τῷ τε δημοσίῳ λόγῳ καὶ τοῖς ὑποτελέσι φυλάττειν τὸ δίκαιον. 6. Ἐὰν οὖν εὑρὼν παρά τισι χρήματα δημόσια ὁ λογοθέτης ἀνύσῃ αὐτὰ καὶ εἰς τὸ θεῖον ornamentum εἰσκομίσῃ, ἔξεστιν αὐτῷ καθ' ἑκάστην λίτραν ἓξ νομίσματα ὑπὲρ θεραπείας παρακατασχεῖν. 7. Εἰ δὲ παρὰ τῶν ὄντων ἐν ἐπαρχίαις ἢ ἑκόντων ἢ ἀκόντων ἄχρις ἑνὸς ὀβολοῦ λάβῃ, αὐτὸς μὲν τὸ λαμβανόμενον ἀποδιδότω, τετραπλάσιον ὀφείλων εἰσκομισθῆναι τοῖς δημοσίοις, καὶ ποινῆς βασιλικῆς πειράσθω ὡς τὸ δημόσιον προδεδωκὼς ἢ τοὺς συντελεστὰς ἀδικήσας· ὁ δὲ ἀνασχόμενος παρασχεῖν ὡς διὰ τοῦτο καθομολογῶν ὑπεύθυνον αὐτὸν εἶναι τοῖς δημοσίοις ἀπαιτηθήσεται πάλιν τὰ περὶ ὅσων ὑπέμεινε ζήτησιν ὀφείλοντα εἰσκομισθῆναι τῷ δημοσίῳ λόγῳ.

8. Καὶ ἐπὶ ταύτῃ τῇ τῶν sollemnium ζητήσει ὁ βασιλεὺς μανθάνων τὸ γενόμενον λογοθέσιον θείαν ἀμεριμνίαν ἐκτίθεται τοῖς λογοθετήσασι, μηκέτι δεύτερον εὐλαβουμένοις λογοθέσιον, αὐτῷ τῷ λογοθετοῦντι ἐπιτρέπων τοῖς λογοθετουμένοις ποιεῖν ἀμεριμνίαν, ἐφ' ᾧ τε τοὺς ταύτην λαμβάνοντας μηκέτι δευτέραν μένειν λογοθεσίαν. 9. Μήτε δὲ ὑπὲρ τῆς γενομένης ἀμεριμνίας λαμβανέτω τι παντελῶς ὁ λογοθέτης, ἀλλ' ἐὰν ὅλως ἐπιχειρήσῃ τι λαβεῖν, ἄδειαν ἐχέτωσαν οἱ κτήτορες καὶ πολῖται καὶ ἀπωθεῖσθαι τὸν ἐκβιβασμὸν αὐτοῦ καὶ δεήσεις ἐπιδιδόναι τῷ κατὰ καιρὸν βασιλεῖ, ὥστε πεμφθῆναί τινα κατὰ χώραν τὸν ὀφείλοντα ποινὴν εἰσπρᾶξαι τὸν ἐπιχειροῦντά τι ἀπαιτῆσαι.

second investigation. **2.** If the auditor who has been sent should be entrusted to provide immunity to those who have correctly spent the funds and after the balancing of the accounts (ἐρεύνη) provides immunity for those who have spent money correctly, this immunity is to be valid, so that the person spending the money not require an imperial immunity any longer or another formal promise, or his heirs or successors, but the formal promise (*asphalaeia, cautio*) from the auditor be sufficient.

3. The constitution promises to provide expenses to the auditors so that they might conduct the auditing without a loss. **4.** Anyone who makes expenditures from his own resources either for works of the city or for another common purpose should not be liable to any auditing, not himself, his heir, or his successor, nor (should he be liable) to an investigation of public accounts, as with profits, or the so-called accounts for transporting or convoying, or expenses connected with public donkeys or donkey-drivers, or the ones connected with prosecutions, or the others that are called by the generic name "customary" (*sollemnia*).

5. No provincial governor is to send an auditor, but he must refer it to the Emperor, so that the auditor for these matters be sent by him, and he (the auditor) is not to make a profit even of 1 obol, but instead is to guard the right of the public treasury and the taxpayers. **6.** If the auditor, finding public funds in anyone's hands, exacts them and brings them to the divine Treasury (*ornamentum*), he may keep 6 solidi for each pound (of gold) for his service. **7.** If he should take even an obol from the provincials, whether they are willing or unwilling, he must give back what he has taken, being required to provide a fourfold (penalty) to the public treasuries, and also be subject to a trial with imperial punishment for betraying the Treasury and wronging the taxpayers. But the one who allowed the payment, as if confessing by that act that he is liable to the public, must be required to pay to the Public Treasury the amount for which he was subject to an investigation.

8. Concerning this investigation of the customary expenses (*sollemnia*), the Emperor when he learns that the auditing has taken place, provides imperial immunity to those who have conducted the audit, so that they not be subject to a second auditing, (and) allowing the auditor to provide immunity to the ones being audited, so that the ones taking this task not undergo a second audit. **9.** The auditor must not receive anything whatsoever for the immunity that has been granted, but if he should attempt to take anything at all, the landowners and the citizens are to be able to repel his exaction without fear and give their petitions to the Emperor at the time, so that someone may be sent to the region to exact a penalty from the one trying to demand something.

10. Εἰ δὲ καί τις ἄρχων μετὰ τὸν παρόντα νόμον χωρὶς θείας ἐγγράφου κελεύσεως πρὸς αὐτὸν πεμπομένης ἀποστείλῃ λογοθέτην ἐπὶ οἱονδήποτε τῶν εἰρημένων, ἔτι αὐτὸς μὲν ὁ ἄρχων εἴκοσι χρυσίου λίτρας πρόστιμον ὑποστήσεται, ἡ δὲ ταξις αὐτοῦ πέντε καὶ δέκα.

11. Μήτε προφάσει ἀνακαθάρσεως ὀχετῶν ἢ τῶν πρὸς τοῖς τείχεσιν οἰκοδομημάτων καὶ τῆς αὐτῶν καταλύσεως, ἢ τῶν ἐν ταῖς δημοσίαις στοαῖς γενομένων τῶν καλουμένων προδουλείων καὶ ἐρειπίων, ἢ τῶν ἐν ταῖς μεσοστύλοις τῆς πόλεως οἰκοδομουμένων, ὡς ὀφειλόντων ἀνατραπῆναι, ἢ περὶ εἰκόνων ἢ τοιουτοτρόπων ὅλως ἐπινοιῶν ἢ πολιτικῶν ζητήσεων ποιείσθω τινὰς προστάξεις. **12.** Εἰ δὲ καὶ ποιήσει, ἄδειαν ἐχέτωσαν οἱ ἐν ταῖς πόλεσι τὸν ἐντεῦθεν ἐκβιβασμὸν ἀπωθεῖσθαι καὶ μηδεμίαν ἀπόκρισιν ποιεῖν ἐν ταῖς τοιαύταις πράξεσι, μετὰ τοῦ καὶ τοὺς ἄρχοντας τῶν ἐπαρχιῶν, εἰ τοῦτο τὸ γινόμενον σιωπήσοιεν, καὶ πᾶσαν πολιτικὴν καὶ δημοσίαν βοήθειαν τοῖς αὐτοῖς ὑποκεῖσθαι ἐπιτιμίοις, ἐξουσίαν ἐχόντων τῶν βουλομένων δεήσεις ἐπιδιδόναι βασιλεῖ καὶ δι' αὐτῶν διδάσκειν τὰ γινόμενα, ὡς ἂν ἐκ βασιλικῆς ἀγανακτήσεως ἐπακολουθήσῃ διόρθωσις· πρὸς τὸ καὶ τοὺς προστάξαντας ἄρχοντας γενέσθαι τι τοιοῦτο εἴκοσι χρυσίου λίτρας προστιμᾶσθαι καὶ μείζονα προσδοκᾶν βασιλικὴν ἀγανάκτησιν, τὰς δὲ πειθομένας αὐτοῖς τάξεις μετὰ τοῦ προστίμου τῶν πέντε καὶ δέκα τοῦ χρυσίου λιτρῶν καὶ τὴν ἐν σώματι τιμωρίαν ὑπομένειν. **13.** Μόνον γὰρ ἔξεστι τῷ βασιλεῖ καὶ τὴν ἐπὶ τοῖς τοιούτοις ἐποψίαν ἐπιτρέπειν ἀνδρὶ καθαρῷ καὶ σὺν ἀληθείᾳ καὶ πρὸς ὠφέλειαν τῶν πόλεων τὰ τοιαῦτα ζητοῦντι καὶ μηδὲν παντελῶς ὑπὲρ αὐτῶν κομιζομένῳ.

14. Προνοείτωσαν δὲ οἱ τῶν πόλεων πατέρες καὶ οἱ τῶν κτητόρων εὐυπόληπτοι, ὥστε μηδένα πολιτικὸν τόπον ἢ δημόσιον ἢ πρὸς τὰ τείχη ἢ ἐν ταῖς δημοσίαις στοαῖς ἢ λατρείαις[III] ἢ ὁπουδήποτε κείμενον ὑπό τινων ἀλόγως κατέχεσθαι, καὶ μὴ ἐκδίδοσθαι τόπον πολιτικὸν χωρὶς θείου τύπου. τὰ γὰρ παρ' αὐτῶν μὴ ὀρθῶς ἐκδιδόμενα ἀνατρέπεται καὶ ζημιοῦνται οἱ ἐξειληφότες. **15.** Προνοείτωσαν δὲ οἱ αὐτοί, ὥστε τοὺς ἐκ τύπου θείου ἔχοντας νομὴν ὕδατος μὴ πλεονεκτεῖν τοὺς ἑτέρους καὶ τὸν μὲν πλέον τὸν δὲ ἔλασσον λαμβάνειν.

16. Ἔργον δὲ ἔστω τοῦ μεγαλοπρεπεστάτου κόμητος τῶν θείων ἰδικῶν τοῦ βασιλέως καὶ τῶν ὑπηρετουμένων αὐτῷ παλατινῶν διερευνᾶν ταῦτα καὶ προσαγγέλλειν καὶ τὴν τῶν ἐπικειμένων προστίμων εἴσπραξιν ποιεῖσθαι, ἢ ἐὰν ῥᾳθυμήσειεν, εἴκοσι χρυσίου λίτρας προστιμᾶσθαι, τὴν δὲ τάξιν αὐτοῦ πέντε καὶ δέκα.

D. VIII k. Iul. Chalcedone Lampadio et Oreste vv. cc. conss.

[III] πλατείαις

10. If some governor after the present law should dispatch an auditor to any of the aforesaid persons without a written imperial order sent to him, the governor himself will be liable to a fine of 20 pounds of gold, and his office to a fine of 15.

11.[120] Moreover, he is not to make any assignments on the pretext of cleansing the drains or the buildings alongside the walls and their demolition, or the so-called servitudes that exist in the porticoes and the ruins, or the constructions within the public porticoes, so that they may be demolished, or concerning statues or any at all such fraud or public investigations. 12. If he does this, those in the cities shall have no fear in rejecting the execution from that side and in making no response in such matters; and both the provincial governors and their staffs, if they should keep silent when this transpires, along with their entire city and public staff shall be liable to the same penalties. Those who wish have the right to present petitions to the Emperor and through these to provide information about what has been done, so that correction ensue as a result of imperial indignation. In addition, governors who order some such thing to occur are fined 20 pounds of gold and await further imperial indignation, and the offices that obey them are subject to physical punishment along with the fine of 15 pounds of gold. 13. For only the Emperor may entrust the inspection of such matters to a pure man who is to investigate such matters with truthfulness and in the interest of the cities and who should taken nothing at all for this.

14.[121] The fathers (i.e., the councilors) of the cities and the landowners of good reputation must take care that no place belonging to the city or the public, situated either against the walls or in the public colonnades or streets or anywhere else should be occupied by anyone unlawfully, and that no place belonging to the city should be leased out without an imperial instruction (*typos*). Those that have been leased out incorrectly are returned and the persons who have taken them are fined. 15.[122] They must also take note that those holding possession over water in accordance with an imperial instruction should not defraud the others with one taking more and another less.

16. It shall be the job of the Most Magnificent Count of the Emperor's Privy Purse and the palace officials who serve him to inquire into these things thoroughly and to disclose them, and to perform the exaction of the fines that are established, or if they should neglect this, they are fined 20 pounds of gold and their office 15.

Given June 24, at Chalcedon, in the consulship of viri clarissimi *Lampadius and Orestes (530).*

[120] Sections 11 and the beginning of 12 = C. 1.4.26.8.
[121] Section 14 is largely C. 1.4.26.9.
[122] Section 15 = C. 1.4.26.10.

XXXI ...

XXXII De Decurionibus et Filiis Eorum et Qui Decuriones Habentur Quibus Modis a Fortuna Curiae Liberentur

[1] *Impp. Valerianus et Gallienus AA. et Valerianus C. Caesoni.* Si, cum te pater decurionem esse voluisset, illo in rebus humanis agente honor tibi iste delatus est, tenentur quidem etiam heredes eius rei publicae (nam in hac parte vice fideiussoris pater accipitur), sed non ante nisi tuis rebus excussis.

PP. v k. Dec. Aemiliano et Basso conss.

[2] *Exemplum sacrarum litterarum Diocletiani et Maximiani AA.* Observare magistratus oportebit, ut decurionibus sollemniter in curiam convocatis nominationem ad certa munera faciant eamque statim in notitiam eius qui fuerit nominatus per officialem publicum perferre curent, habituro appellandi, si voluerit, atque agendi facultatem apud praesidem causam suam iure consueto: quem si constiterit nominari minime debuisse, sumptus litis eidem a nominatore restitui oportebit.

Sine die et consule.

[3] *Idem AA. Iulio.* Cum decurionatus honorem sponte susceperis, albo eximi, licet annosum te esse dicis, non potes.

PP. id. Nov. Diocletiano A. II et Aristobulo conss.

[4] *Idem AA. Cassiano.* Cum adoptivum filium ex adoptantis dignitate decurionis filium effici nulla dubitatio est, pro atrocibus iniuriis eum,

Thirty-First Title[123]

Thirty-Second Title[124] In What Ways Decurions, Their Sons, and Those Who Are Considered Decurions Are Freed from the Condition of (Serving on) the City Council

[1] *Emperors* VALERIAN *and* GALLIENUS *Augusti and* VALERIAN *Caesar to Caeso.* If, since your father wanted you to be a decurion, that office has been conferred upon you while he was still participating in human affairs (i.e., alive), his heirs are also obligated to the municipality – for in this respect the father is taken as functioning as surety – but not before your property has been examined.

Posted November 27, in the consulship of Aemilianus and Bassus (259).

[2] *Copy of the Sacred Letter of* DIOCLETIAN *and* MAXIMIAN *Augusti.* It will be necessary for magistrates to observe that, when the decurions have been summoned into the council in accordance with the law, they make a nomination for (performing) specific services and take care to bring this immediately to the notice of the person nominated through a public official. He (the person nominated) will have an opportunity by customary right to plead his case before the governor. If it is established that he should not have been nominated, the expenses for the litigation will have to be restored to him by the nominator.

Without day and consul.

[3] *The same Augusti to Julius.* Since you have willingly undertaken the office of serving as decurion, you cannot be removed from the album,[125] although you say you are getting along in years.

Posted November 13, in the consulship of Diocletian Augustus, for the second time, and Aristobulus (285).

[4] *The same Augusti to Cassianus.* Since there is no doubt that an adoptive son is made the son of a decurion as a result of the rank of the adopter, the

[123] A full title has fallen out.

[124] Many of constitutions in this and the following titles concern the obligations of members of city councils in the Roman Empire, or decurions, to perform services for their communities. These services, for which the Latin term is *munera*, are often called liturgies, and people of all ranks were called upon to perform them. Such services can be divided between those connected with the ownership of property, and those that were attached to specific persons, *munera personalia*. The latter category included services that involved physical labor, *munera sordida*, "base services," as well as ones involving the financial liability of the person performing the service. The most important such service that decurions performed in the later Empire involved collecting taxes. People performing these functions were financially liable, and, in addition, they might often be called upon to nominate a successor, for whose performance they would also bear financial liability. The services that decurions and others owed to their towns are to be distinguished from service performed for the emperor, *militia*. Service for the emperor resulted from an appointment and often brought an increase in one's social rank. For the sake of clarity, the phrase *munera civilia*, liturgies to be performed for one's town, is translated "civic services," whereas the translation for *militia*, when it is otherwise not clear, is "Imperial service."

[125] The album is a town's official list of its decurions.

quem ad vicem naturalis pignoris tibi adscribebas, a praeside provinciae illicitis corporis cruciatibus adfici non oportuit hocque congruenti poena coercebitur.

PP. XII k. Dec. Diocletiano A. II et Aristobulo conss.

[5] *Idem AA. Alexandro.* Filios in potestate patris positos ad munera seu honores non posse devocari falso tibi persuasum est. sane si ad nominationem filii consensum non accommodaveris, ob administrationem ipsius minime conveniri poteris.

PP. VI id. ... Maximo II et Aquilino conss.

[6] *Idem AA. et CC. Leontio.* Expertes litterarum decurionis munera peragere non prohibent iura.

D. VIII k. Mai. AA. conss.

[7] *Idem AA. et CC. Diogeniano.* Licet indivisa bona fratres habent, nihilo minus tamen singuli suo nomine civilibus tenentur muneribus.

PP. IIII id. Mai. Paulino[iv] *ipsis AA. conss.*

[8] *Idem AA. et CC. Platoniano.* Infamia, quae tibi abominanda est, non etiam amissionis oculorum casus quaesitum adimit honorem.

D. XVI k. Febr. Nicomediae CC. conss.

[9] *Idem AA. et CC. Aurelio.* In albo decurionum perscriptis patrem non habenti filios anteferri constitit.

[10] *Idem AA. et CC. Aurelio.* Si ultra septuagesimum annum aetatis patrem tuum esse praeses provinciae perspexerit, eum personalium munerum vacatione perfrui providebit.

[11] *Idem AA. et CC. Maximo.* Uxorem pro marito decurione conveniri non posse procul dubio est.

[iv] Hadrianopoli

person whom you wrote is the equal to a natural child to you should not have been treated by the provincial governor with unlawful physical tortures for his savage wrongdoings, and this conduct will be restrained with an appropriate punishment.

Posted November 20, in the consulship of Diocletian Augustus, for the second time, and Aristobulus (285).

[5][126] *The same Augusti to Alexander.* You have been falsely persuaded that sons placed in the power of the father cannot be summoned for services or offices. Certainly, if you have not given your consent to the nomination of your son, you will not be able to be sued for his administration.

Posted on the sixth day before the ides ... in the consulship of Maximus, for the second time, and Aquilinus (286).

[6] *The same Augusti and the Caesars to Leontius.* The laws do not prohibit the illiterate from performing the services of a decurion.

Given April 24, in the consulship of the Augusti (293).

[7] *The same Augusti and Caesars to Diogenianus.* Although the brothers hold their property undivided, nonetheless as individuals they are bound for civic services under their own name(s).

Posted May 10, at Adrianople, in the consulship of the Augusti themselves (293).

[8] *The same Augusti and Caesars to Platonianus.* It is infamy (*infamia*), which is an abomination to you, that ends the office you sought, not also the accident of losing your eyes.

Given January 17,[127] at Nicomedia, in the consulship of the Caesars (294).

[9] *The same Augusti and Caesars to Aurelius.* It is established that, among those listed in the album of decurions,[128] a father is ranked ahead of someone not having sons.

[10] *The same Augusti and Caesars to Aurelius.* If the provincial governor observes that your father is more than 70 years old, he will see to it that he enjoy a dispensation from personal services.

[11] *The same Augusti and Caesars to Maximus.* It is far from doubtful that a wife cannot be sued for her husband's service as decurion.

[126] Combine with 10.62.4.

[127] Krüger emends "November 16."

[128] Krüger reads *in albo decurionum perscribendo*, "in drawing up the album of decurions."

[12] *Idem AA. et CC. Zotico.* Nec infames immunitatem habere, cum hoc privilegii, non notae sit, convenit.

D. v k. Dec. AA. conss.

[13] *Idem AA. et CC. Proto.* A muneribus decurionatus nec sententia praesidis in perpetuum nec anni quinquaginta nec podagrae valitudo praestat excusationem.

[14] *Imp. Constantinus A. ad Euagrium.* Nemo iudex aliquem suo arbitrio de curia liberet. nam si quis fuerit eiusmodi infortunio depravatus, ut debeat sublevari, de eius nomine ad nostram scientiam referri oportet, ut certo temporis spatio civilium munerum ei vacatio porrigatur.

PP. id. Mart. Constantino A. III et Licinio III conss.

[15] *Idem A. Hilariano correctori Lucaniae et Brittiorum.* Universos decuriones volumus a tabellionum officiis temperare.

D. III k. Febr. Sabino et Rufino conss.

[16] *Idem A. ad Hilarianum proconsulem Africae.* Si quis decurio vel propriae rei causa vel rei publicae cogatur nostrum adire comitatum, is non ante discedat, quam insinuato iudici desiderio proficiscendi licentiam consequatur. quod si pro sua audacia parvi aliquis hanc fecerit iussionem, indignationem competentem sortiatur.

PP. VII id. Iul. Carthagine Crispo III et Constantino III conss.

[17] *Idem A. ad Euagrium pp.* Qui derelicta curia militaverit, revocetur ad curiam.

D. XVI k. Iun. Constantino A. VII et Constantio C. conss.

[12] *The same Augusti and Caesars to Zoticus.* It is established that the infamous[129] do not have immunity (from liturgies), since this results from a privilege, not from censure (*nota*).

Given November 27, in the consulship of the Augusti (293).[130]

[13] *The same Augusti and Caesars to Protus.* Neither a verdict by the governor granting perpetual exemption (*sententia ... in perpetuum*), nor being 50 years old, nor the illness of gout provides an excuse from the services of being a decurion.

[14][131] *Emperor* CONSTANTINE *Augustus to Evagrius, Praetorian Prefect.* No governor (*iudex*) shall free anyone from the council on his own judgment, for if someone is disfigured by such a calamity that he should be helped, there must be a report brought to Our knowledge about his name, so that a dispensation from civic services be extended to him for a certain period of time.

Posted March 15, in the consulship of Constantine Augustus, for the third time, and Licinius, for the third time (313).

[15][132] *The same Augustus to Hilarianus, Governor* (corrector) *of Lucania and Bruttium.* We want all decurions to refrain from the offices of the notaries.

Given January 30, in the consulship of Sabinus and Rufinus.

[16][133] *The same Augustus to Hilarianus, Proconsul of Africa.* If any decurion should be compelled to approach our retinue (*comitatus*) either for his own private business or for his municipality, he must not depart before he gains permission to set out, after making his desire known to the governor (*iudex*). But if anyone in his audacity should have little regard for this order, he shall encounter a suitable displeasure.

Posted July 9, at Carthage, in the consulship of Crispus, for the third time, and Constantine, for the third time (324).

[17][134] *The same Augustus to Euagrius, Praetorian Prefect.* Whoever has taken up imperial service (*militia*) after abandoning a council shall be recalled to it.

Given May 17, in the consulship of Constantine Augustus, for the seventh time, and Constantius Caesar (326).

[129] *Infames* were people who lost civic privileges as the result of being in a disgraced profession, such as being an actor or a pimp, or as a result of a criminal conviction, for example, for adultery.
[130] Mommsen emends to "the consulship of the Caesars" (294).
[131] = C.Th. 12.1.1, with fuller wording. Seeck dates to February 15, 326.
[132] = C.Th. 12.1.3, which has the addressee as Maecilius Hilarianus; combine with C. 9.22.21.
[133] = C.Th. 12.1.9, which has the penalty as "an outcome of deportation."
[134] = C.Th. 12.1.13, with fuller wording.

[18] *Idem A.* **pr.** Si ad magistratum nominati aufugerint, requirantur et, si pertinaci animo latere potuerint, his ipsorum bona permittantur, qui praesenti tempore in locum eorum ad duumviratus munera vocabuntur, ita ut, si postea reperti fuerint, biennio integro onera duumviratus cogantur agnoscere. **1.** Omnes enim, qui obsequia publicorum munerum declinare temptaverint, simili condicione teneri oportet.

D. III k. Oct. Serdicae Constantino A. VIII et Constantio IIII conss.

[19] *Idem A. ad Lucretium Paternum.* Vacuatis rescriptis, per quae munerum civilium nonnullis est vacatio praestita, omnes civilibus necessitatibus adgregentur, ita ut nec consensu civium vel curiae praestita cuiquam immunitas valeat, sed omnes ad munerum societatem conveniantur.

D. VIII k. Nov. Heracleae Constantino A. VIII et Constantio IIII conss.

[20] *Impp. Constantius et Constans AA. ordini civitatis Constantinae Cirtensium.* Magistratus desertores ad eam gravitas tua faciat necessitatem condicionis urgeri, ut, quascumque pro his expensas civitas prorogavit, refundere protinus ac repraesentare cogantur.

D. XIIII k. Febr. Naisso Acindyno et Proculo conss.

[21] *Idem AA. Nemesiano comiti.* Curiales omnium civitatum nullam pro re privata nostra debent inquietudinem sustinere nec huiusmodi oneribus velut extraordinariis occupari, quoniam satis est, si civitatum munera per eos congrue compleantur.

D. prid. id. Aug. Bessae Acindyno et Proculo conss.

[22] *Imp. Iulianus A. Iuliano comiti Orientis.* Eos indulserunt veteres principes ex materno genere curialibus Antiochenis adscribi, quos patris condicio nullius vindicaret iuri civitatis.

D. V k. Sept. Antiochiae Mamertino et Nevitta conss.

[18][135] *The same Augustus.* **pr.** If people nominated for a magistracy have fled away, they shall be sought out, and, if in their stubbornness they succeed in remaining in hiding, their property shall be granted to those who at the present time are called in their place to the services of the duumvirate,[136] such that, if they are found afterwards, they are to be compelled to acknowledge the burdens of the duumvirate for an entire two-year period. **1.** For all who try to duck out of obedience to public services must be bound by similar terms.

Given September 29, at Serdica, in the consulship of Constantine Augustus, for the eighth time, and Constantius, for the fourth time (329).

[19][137] *The same Augustus to Lucretius Paternus.* Since the rescripts are voided through which some have been provided a dispensation from civic services (*munera civilia*), everyone shall be enjoined for civic responsibilities in such a way that no immunity be valid that has been granted to anyone by the consensus of the citizens or council, but all be summoned to share in the services.

Given October 25, at Heraclea, in the consulship of Constantine Augustus, for the eighth time, and Constantius, for the fourth time (329).

[20][138] *Emperors* Constantius *and* Constans *Augusti to the Council of the City of Constantina Cirta.* Your Eminence should persuade those who abandon a magistracy about the necessity of their situation, so that they be compelled to pay for and restore whatever expenses the city has paid out for them.

Given January 19, at Naissus, in the consulship of Acindynus and Proculus (340).

[21][139] *The same Augusti to Nemesianus, Count.* Decurions in all cities should not sustain any worries concerning Our Privy Purse or be occupied by extraordinary burdens of this sort, since it is enough if services to cities are fulfilled appropriately through them.

Given August 12, at Bessa, in the consulship of Acindynus and Proculus (340).

[22][140] *Emperor* Julian *to Julian, Count of the East.* The old emperors granted that men be appointed to the decurions of Antioch on the basis of their maternal birth, provided they could not be claimed as citizens of a city from their father's rank.

Given August 28, at Antioch, in the consulship of Mamertinus and Nevitta (362).

[135] = C.Th. 12.1.16. Seeck dates to September 29, 319.
[136] Duovirs (*duumviri*) were the annual magistrates in Roman towns.
[137] = C.Th. 12.1.17.
[138] = C.Th. 12.1.29.
[139] = C.Th. 12.1.30; Seeck emends the place of promulgation to "Edessa."
[140] = C.Th. 12.1.51, with *dignitas* for *condicio*, translated as "rank." The earlier decrees do not survive.

[23] *Idem A. Iuliano comiti Orientis.* Providendum est eorum novitati decurionum, qui nuper nomen curiis addiderunt, ne praeteritis debitis susceptorum onerentur: sed conventis propter haec debita, qui ea praecedentibus delegationibus contraxerunt, nullam eos molestiam pro sarcina nominationis alienae sustinere patiaris.
PP. Beryto k. Nov. Mamertino et Nevitta conss.

[24] *Idem A. Leontio consulari Palaestinae.* Si quis decurio pater sit tredecim liberorum, honoratissimae munerum quieti donetur.
D. k. Mart. Antiochiae Iuliano A. IIII et Sallustio conss.

[25] *Impp. Valentinianus et Valens AA. ad Byzacenos.* Curiales ultra terminos propriae civitatis non iubeantur a moderatoribus provinciarum sui exhibere praesentiam, nisi publica necessitas exegerit.
D. prid. id. Sept. Aquileiae divo Ioviano et Varroniano conss.

[26] *Idem AA. ad Modestum pp.* pr. Quidam ignaviae sectatores desertis civitatum muneribus captant solitudines ac secreta et specie religionis cum coetibus monazonton congregantur. 1. Hos igitur atque huiusmodi deprehensos erui latebris consulta praeceptione mandamus atque ad munia patriarum subeunda revocari, aut pro tenore nostrae sanctionis[4] familiarium rerum carere illecebris, quas per eos censuimus vindicandas, qui publicarum essent subituri munera functionum.
PP. Beryto k. Ian. Valentiniano et Valente AA. conss.

[27] *Idem AA. Mauris Sitifensibus.* Privilegio militiae paternae se non vindicet, quem avitus curiae nexus adstringit. quod si militari avo et patre decurione nascetur, paternae erit succedaneus functioni.

[23][141] *The same Augustus to Julian, Count of the East.* Consideration must be made for the newness of those decurions who have recently added their name to the councils, so that they not be burdened with the past debts of tax collectors. But having pressed for payment of these debts from those who contracted them in past assessments (*delegationes*), you should not allow them (the new decurions) to sustain any trouble for the burden of someone else's nomination.

Posted at Beirut, November 1, in the consulship of Mamertinus and Nevitta (362).

[24][142] *The same Augustus to Leontius, Consular Governor of Palestine.* If any decurion shall be the father of thirteen children, he should be allowed a most honorable retirement from services.

Given March 1, at Antioch, in the consulship of Julian Augustus, for the fourth time, and Sallustius (363).

[25][143] *Emperors* VALENTINIAN *and* VALENS *Augusti to the People of Byzacena.* Decurions shall not be ordered by provincial governors to provide their presence beyond the boundaries of their own city, unless public necessity requires it.

Given September 12, at Aquileia, in the consulship of the deified Jovian and Varronianus (364).

[26][144] *The same Augusti to Modestus, Praetorian Prefect.* **pr.** Some followers of idleness, having abandoned the services (owed) to their cities, long for the deserts and out-of-the way places and, under the pretext of religion, join up with communities of monks. **1.** Therefore, with a well-considered injunction, We order that they and their like be caught and rooted out from their hiding places and be called back to undergo the services of their home towns, or, in accordance with the provisions of Our sanction, that they be deprived of the enticements of their property, which We decree is to be claimed by those who would be about to undergo the services of public duties (*functiones*).

Posted at Beirut, January 1, in the consulship of Valentinian and Valens Augusti (373).

[27][145] *The same Augusti to the People of Mauretania Sitifensis.* The person whom a grandfather's bond ties to the council shall not claim for himself the privilege of his father's imperial office (*privilegio paternae militiae*). But if he will be born from a grandfather in imperial office and a father who is a decurion, he will succeed to his father's duties.

141 = C.Th. 12.1.54.
142 = C.Th. 12.1.55, with different wording.
143 = C.Th. 12.1.60, with reference also to the appointment of priests.
144 = C.Th. 12.1.63, with different wording and referring specifically to Egypt. Seeck dates to January 1, 370; Schmidt-Hofner, to January 1, 373.
145 = C.Th. 12.1.64; combine with C.Th. 7.1.6. Seeck gives April 23, 368; Schmidt-Hofner, April 28, 368, 370, or 373.

D. VIIII k. Mai. Treviris Valentiniano et Valente AA. conss.

[28] *Idem AA. ad Volusianum pu.* Nullus qualibet praerogativa fultus a debitis muneribus habeatur immunis.

D. IIII k. Iul. Mediolani Valentiniano et Valente AA. conss.

[29] *Idem AA. Germaniano PP. Galliarum.* Nati ex inquilinarum nostrae domus matrimonio et patre decurione non patrum suorum, verum matrum condicionem sequantur.

D. III id. Oct. Valentiniano et Valente AA. conss.

[30] *Idem AA. ad Modestum pp.* Procuratores rei publicae actionibus publicis debere uti non venit in dubium.

[31] *Idem AA. et Gratianus A. ad Modestum pp.* Ex omnibus domibus producti, qui origine sunt curiali, ad subeundam publicorum munerum functionem protrahantur, quippe cum occultatoribus talium praeter iacturam existimationis etiam rerum discrimen incumbat, si ulterius progressi utilitatem publicam privatis studiis et patrociniis postponant.

D. III id. Iul. Ancyrae Gratiano A. II et Probo conss.

[32] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad Neoterium pp.* Fabricenses ordinibus restituantur, qui originem curialem et propriae munera declinaverint civitatis: reliqui ne levi quidem inquietudine pulsentur.

D. XVI k. April. Thessalonicae Gratiano V et Theodosio AA. conss.

[33] *Idem AAA. Eutropio pp.* **pr.** Omnes iudices provinciarumque rectores a consuetudine temerariae usurpationis abstineant sciantque neminem omnino principalium aut decurionum sub qualibet culpae

Given April 23, at Trier, in the consulship of Valentinian and Valens Augusti (368 or 370).

[28][146] *The same Augusti to Volusianus, City Prefect.* No one, propped up by any prerogative, shall be considered immune from services that he owes.

Given June 28, at Milan, in the consulship of Valentinian and Valens Augusti (365).

[29] *The same Augusti to Germanianus, Praetorian Prefect of the Gauls.* Those who are born from a marriage between women who are resident tenants (*inquilinae*) of Our household and a father who is a decurion shall not follow the rank of their fathers, but rather that of their mothers.

Given October 13, in the consulship of Valentinian and Valens (365).

[30] *The same Augusti to Modestus, Praetorian Prefect.* There is no doubt that procurators of a municipality should have recourse to public actions.

(370–371).[147]

[31][148] *The same Augusti and* GRATIAN *Augustus to Modestus, Praetorian Prefect.* Those who are of decurion origin, having been brought forth from all households, should be dragged out to undergo the duty of public services, since, in addition to the loss of their rank, the danger (of losing) their property is incumbent upon those who hide such people, if they should continue further in neglecting public needs for private interests and patronage (*patrocinium*).

Given July 13, at Ankara, in the consulship of Gratian Augustus, for the second time, and Probus (371).

[32][149] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Neoterius, Praetorian Prefect.* Workers in state arms factories (*fabricenses*) who have declined their origin as decurions and the services of their own city shall be restored to the councils; the remaining (workers) should not be disturbed even with a trivial worry.

Given March 17, at Thessalonica, in the consulship of Gratian, for the fifth time, and Theodosius, Augusti (380).

[33][150] *The same Augusti to Eutropius, Praetorian Prefect.* **pr.** All judges (*iudices*) and provincial governors shall refrain from the custom of a rash

[146] = C.Th. 12.1.67, which adds "with the exception of palace officials"; combine with C.Th. 6.4.18.
[147] Seeck dates to June 10, 371; Schmidt-Hofner, to between 370 and 375.
[148] = C.Th. 12.1.76.
[149] = C.Th. 12.1.81; combine with C.Th. 12.1.82.
[150] = C.Th. 12.1.85; combine with C.Th. 12.1.86.

aut erroris offensa cruciatibus esse subdendum. **1.** Quod si quis forte iudicum in hanc pertinaciam illiciti furoris eruperit, quod audeat principalem ac decurionem et suae, si sic dici oportet, curiae senatorem tormentis subdere, viginti librarum auri illatione multatus et perpetua infamia inustus nec speciali quidem rescripto notam eluere mereatur: et officium quinquaginta librarum auri multam fisco nostro cogetur inferre, quoniam, ut pertinaciae iudicis sui resistat, liberam eidem contradicendi permittimus facultatem.

D. XII k. Aug. Heracleae Eucherio et Syagrio conss.

[34] *Idem AAA. Floro pp.* **pr.** Si quis procurationem facultatum suarum curiali crediderit esse mandandam, totius dignitatis exceptione depulsa gravissima poena plectetur. **1.** Ille vero, qui immemor libertatis et generis infamissimam suscipiens vilitatem existimationem suam servili obsecundatione damnaverit, tradatur exsilio.

D. X k. Nov. Constantinopoli Antonio et Syagrio conss.

[35] *Idem AAA. Postumiano pp.* **pr.** In filiis decurionum retinendis priorum praeceptorum decreta sublimitas tua custodiat. **1.** Eos quoque, qui advocationis obtentu curialia onera declinant, agere universa compellat, quae et si necessitas non exigit, tamen patria non remittit. **2.** Ipsos quin etiam filios magistrorum, qui ex curiali stirpe descendunt, simili modo obnoxios esse decernat.

D. VIII id. April. Constantinopoli Merobaude II et Saturnino conss.

[36] *Idem AAA. ad Basilium comitem sacrarum largitionum.* Exemplo senatorii ordinis patris originem unusquisque sequatur, nec valeant specialiter delata rescripta, si quis se matris origine defendens a maiore curia ad minorem transferri fortasse promeruerit: neque ulla pro more provinciae referri sinatur exceptio.

usurpation and know that no chief civic magistrate (*principalis*) or decurion is to be subjected to torture regarding any offense resulting from fault or error. 1. But if any judge erupts into this stubbornness of unlawful madness, that he might dare to subject to torments a civic magistrate or a decurion and, if thus it must be said, a senator of his own council, having been fined with the payment of 20 pounds of gold and branded with perpetual infamy, he shall not merit escaping censure through a special rescript. And his office will be compelled to pay a fine of 50 pounds of gold to Our Treasury, since We permit this same person (the one subject to torture) the free right of contradicting so that he might resist the stubbornness of his own judge.

Given July 21, at Heraclea, in the consulship of Eucherius and Syagrius (381).

[34][151] *The same Augusti to Florus, Praetorian Prefect.* **pr.** If someone believes the management of his property is to be entrusted to a decurion, he should be struck with a most serious penalty, with any defense based on his entire rank removed. **1.** But that person who, unmindful of his free status and birth, condemns his reputation through servile obsequiousness by taking up a (thing of) most disreputable baseness, shall be handed over for deportation.

Given October 23, at Constantinople, in the consulship of Antonius and Syagrius (382).

[35][152] *The same Augusti to Postumianus, Praetorian Prefect.* **pr.** Your Sublimity should observe the decrees of previous orders as to retaining the sons of decurions. **1.** But (Your Sublimity) should compel those who decline the burdens of the council under the pretext of serving as advocate to perform them all, which, even if necessity does not demand them, the hometown does not remit. **2.** Indeed (Your Sublimity) should decree that the sons themselves of teachers, who are descendants from a family of decurion rank, be bound in a similar manner.

Given April 6, at Constantinople, in the consulship of Merobaudes, for the second time, and Saturninus (383).

[36][153] *The same Augusti to Basilius, Count of Imperial Finances.* On the analogy of the senatorial order, each person shall follow the origin of his father, nor should rescripts provided for a specific case have any validity, if someone perhaps, defending himself by his mother's origin, obtains transfer from the higher council to a lower one. Nor may any exception be allowed to be recorded in accordance with the custom of a province.

[151] = C.Th. 12.1.92, with somewhat different wording.
[152] = C.Th. 12.1.98; combine with C.Th 9.42.10.
[153] = C.Th.12.1.101, which has "each townsperson" (*municeps*).

D. xvi k. Iul. Romae Merobaude ii et Saturnino conss.

[37] *Idem AAA. Postumiano pp.* Quotienscumque se ex rescriptis nostris aliquid impetrasse contendent ii, quos obnoxios curiae vel origo fecerit vel latum inter partes iudicium designaverit, nullam prorsus spem curias declinandi ex colore sacrae iussionis accipiant.

D. xiiii k. Aug. Constantinopoli Merobaude II et Saturnino conss.

[38] *Idem AAA. ad Cynegium pp.* **pr.** Ne quis officialium poenae specie atque aestimatione curiae dedatur, nisi si quis forte curiam diffugiens ob hoc coeperit militare, ne ingenitis fungatur officiis. **1.** Omnes itaque omnino iudices tuae censurae subditos admonebis, ne quis eorum aestimet curiae loco supplicii quemquam deputandum, cum utique unumquemque criminosum non dignitas debeat, sed poena comitari.

D. viii id. Nov. Constantinopoli Ricomere et Clearcho conss.

[39] *Idem et Arcadius AAAA. ad Eusignium pp.* Curiales, qui sese privilegio domus nostrae defendi posse crediderint, ad curiam retrahantur et propriis functionibus mancipentur et publica damna sarciant.

D. viii k. Ian. Honorio np. et Euodio conss.

[40] *Idem AAA. Cynegio pp.* Quilibet principalium vel decurionum vel decoctor pecuniae publicae vel fraudulentus in adscriptionibus illicitis vel immoderatus in exactione fuerit inventus, iuxta pristinam consuetudinem non solum a vobis, quibus propter loci dignitatem rerum summa commissa est, verum a iudicibus ordinariis plumbatarum ictibus subiciatur.

Given June 16, at Rome,[154] *in the consulship of Merobaudes, for the second time, and Saturninus (383).*

[37][155] *The same Augusti to Postumianus, Praetorian Prefect.* Whenever those persons whom either their origin has made liable to (serving on) the council or a verdict made between the parties has appointed for this, contend that they have obtained something from Our rescripts, they shall not gain any hope of at all of declining (service on) the councils from the terms of a sacred order.

Given July 19, at Constantinople, in the consulship of Merobaudes, for the second time, and Saturninus (383).

[38][156] *The same Augusti to Cynegius, Praetorian Prefect.* **pr.** No official should be given over to (service on) a council under the appearance and the valuation of a penalty, unless perhaps, fleeing the council so that he not perform his inherited duties, he has begun to be in imperial service (*militare*). **1.** And so you will admonish all governors (*iudices*) subordinate to your judgment, that none of them deem that anyone should be assigned to a council as a punishment, since the companion of every criminal should not be rank, but punishment.

Given November 6, at Constantinople, in the consulship of Richomer and Clearchus (384).

[39][157] *The same Augusti and* Arcadius *Augustus to Eusignius, Praetorian Prefect.* Decurions who think they can be protected by a privilege of Our household shall be dragged back to the council, be claimed for their public payments (*functiones*), and make good losses to the public.

Given December 25, in the consulship of Honorius, Most Noble Boy, and Euodius (386).

[40][158] *The same Augusti to Cynegius, Praetorian Prefect.* Whoever from among the civic magistrates or decurions has been found to be a spendthrift with public money, fraudulent in unlawful tax assessments, or excessive in exacting them shall be subjected, in accordance with ancient custom, to the blows of the leaded lash not just by you, to whom the supervision of affairs has been entrusted, but also by ordinary judges.

[154] Gothofredus emends the place to Verona, since C. 1.15.1 was issued there on the same date.
[155] = C.Th. 12.1.102; combine with C.Th. 7.2.1.
[156] = C.Th. 12.1.108. Gratian was deceased by this date.
[157] = C.Th. 12.1.114. According to Krüger, the emperors should be Valentinian, Theodosius, and Arcadius: see C. 11.59.7, 11.62.7, 12.21.1.
[158] = C.Th. 12.1.117 (March 31); combine with C.Th. 12.1.116, dated March 27.

D. die k. April. Constantinopoli Valentiniano A. III et Eutropio conss.

[41] *Idem AAA. Cynegio pp.* Decurio fortunam quam nascendo meruit suffragiis atque ambitione non mutet: et si vacare per senectutem potuerit, propter ordinationem, quae per plurimos cito definiri solet, curiam non relinquat.

D. prid. non. Iul. Constantinopoli Valentiniano A. III et Eutropio conss.

[42] *Imppp. Theodosius Arcadius et Honorius AAA. Abundantio comiti et magistro utriusque militiae.* **pr.** Militaribus viris nihil sit commune cum curiis: nihil sibi licitum sciant, quod suae non subiectum est potestati: nullum iniuria, nullum verbere, nullum gravi pulsatione tribunus, dux ille an comes sit, curialem principalemve contingat. **1.** Si quis posthac temerario et inconsiderato ausu ullum ex principalibus viris usurpata attrectaverit iniuria, sciat se decem auri libris esse multandum.

D. prid. k. Aug. Constantinopoli Arcadio A. II et Rufino conss.

[43] *Idem AAA. Rufino pp.* Omnes, qui curiali obstricti sanguine diversis se officiorum privilegiis et actuum praeiudiciis adgregarunt, reddendos muniis esse non ambiges. sed nec rescripta aut adnotationes ad munerum fugam prodesse permittimus.

D. prid. id. April. Constantinopoli Theodosio A. III et Abundantio conss.

[44] *Idem AAA. Rufino pp.* Nullus solius materni sanguinis vinculis illigetur, quia mulierum infirmitas numquam huiusmodi functionibus reddit obnoxios, a quibus ipsa habetur immunis.

D. V id. Aug. Constantinopoli Theodosio A. III et Abundantio conss.

Given April 1, at Constantinople, in the consulship of Valentinian Augustus, for the third time, and Eutropius (387).

[41][159] *The same Augusti to Cynegius, Praetorian Prefect.* A decurion may not, through recommendations (*suffragia*) and corrupt solicitation, change the fortune that he acquired by birth.[160] And if he can have a dispensation from his duties because of old age, he shall not leave the council on account of a decree, which is customarily passed quickly by many people.

Given July 6, at Constantinople, in the consulship of Valentinian Augustus, for the third time, and Eutropius (387).

[42][161] *Emperors* THEODOSIUS, ARCADIUS, *and* HONORIUS *Augusti to Abundantius, Count and Master of the Two Military Commands.* **pr.** Military men should have nothing to do with councils. They should know that they are not allowed anything that is not subject to their power; whether one is a tribune, duke, or count, he shall not touch any decurion or imperial official with an injury, a lash, or a heavy beating. **1.** If anyone henceforth, in a rash and ill-considered display of daring, handles any chief civic magistrate by inflicting an injury, he shall know that he is to be fined 10 pounds of gold.

Given July 31, at Constantinople, in the consulship of Arcadius Augustus, for the second time, and Rufinus (392).

[43][162] *The same Augusti to Rufinus, Praetorian Prefect.* You should not doubt that all those who, though bound by their descent from a decurion, have attached themselves to the diverse privileges of offices and the protections arising from their services (*actuum praeiudiciis*), must be returned to their duties (as decurions). But We do not permit that rescripts or the Emperor's responses to petitions (*adnotationes*) be of any use for escaping services.

Given April 12, at Constantinople, in the consulship of Theodosius Augustus, for the third time, and Abundantius (393).

[44][163] *The same Augusti to Rufinus, Praetorian Prefect.* No one should be tied by the bonds of maternal blood alone, since the infirmity of women never makes people liable to such services from which a woman herself is considered immune.

Given August 9, at Constantinople, in the consulship of Theodosius Augustus, for the third time, and Abundantius (393).

[159] = C.Th.12.1.118 pr.
[160] Recommendations (*suffragia*) could be obtained by payment; see C. 4.3.1.
[161] = C.Th. 12.1.128.
[162] = C.Th. 12.1.134; combine with C. 10.19.5. The second sentence is added from C.Th. 12.1.137 pr.
[163] = C.Th.12.1.137.1; combine with C. 9.7.1.

[45] *Impp. Arcadius et Honorius AA. Ennodio proconsuli Africae.* Nominationum forma vacillare non debet, si omnes qui albo curiae detinentur adesse non possunt, ne paucorum absentia sive necessaria sive fortuita debilitet, quod a maiore parte ordinis salubriter fuerit constitutum, cum duae partes ordinis in urbe positae totius curiae instar exhibeant.

D. XVII k. Iun. Mediolani Olybrio et Probino conss.

[46] *Idem AA. Theodoro pp.* Ad subeunda patriae munera dignissimi et meritis et facultatibus curiales eligantur, ne tales forte nominentur, qui functiones publicas implere non possint.

D. IIII k. Oct. Mediolani Olybrio et Probino conss.

[47] *Idem AA. Caesario pp.* **pr.** Curiales, qui honorariam adepti sunt comitivam, formidare debent eos, quorum sunt moderationi commissi, nec se existimare ideo meruisse dignitatem, ut iudicum praecepta despiciant. **1.** Quod si in eadem culpa perseverent, quinque librarum auri multae obnoxius subiugetur, honore quoque quem prodidit spoliandus.

D. IIII k. Ian. Constantinopoli Olybrio et Probino conss.

[48] *Idem AA. Florentino pu.* In successione curialium decernimus, ut, etiam si patres decesserint, teneatur agnatio.

D. XII k. Ian. Mediolani Caesario et Attico conss.

[49] *Idem AA. Theodoro pp.* Omnes, qui quolibet curiae iure debentur, cuiuscumque superstitionis sint, ad implenda munia teneantur.

D. id. Febr. Mediolani Honorio A. IIII et Eutychiano conss.

[45][164] *Emperors* Arcadius *and* Honorius *to Ennodius, Proconsul of Africa.* The rule for nominations should not waver if all who are included in the album of the council cannot be present, lest the absence of a few, whether necessary or fortuitous, should invalidate what has usefully been decided by a majority, since two-thirds of the order (of decurions), when present in the city, provides the equivalent of the whole council.

Given May 16, at Milan, in the consulship of Olybrius and Probinus (395).

[46][165] *The same Augusti to Theodorus, Praetorian Prefect.* The most worthy decurions both in terms of their merits and wealth shall be chosen to undergo the services of the hometown, lest people by chance be nominated who cannot fulfill public responsibilities (*functiones*).

Given September 28, at Milan, in the consulship of Olybrius and Probinus (395).

[47][166] *The same Augusti to Caesarius, Praetorian Prefect.* **pr.** Decurions who have acquired the honorary rank of count (*honoraria comitiva*) ought to fear those to whose supervision they have been entrusted, and they should not fancy that they have received the rank so that they might despise the orders of the governors (*iudices*). **1.** But if they should persevere in this same fault, he (the person doing so) shall be subjected to a fine of 5 pounds of gold, to be stripped also of the office that he has betrayed.

Given December 29, at Constantinople, in the consulship of Olybrius and Probinus (395).

[48][167] *The same Augusti to Florentinus, City Prefect.* In the succession to decurions We determine that, even if the fathers have died, agnatic relations are be held liable.

Given December 21, at Milan, in the consulship of Caesarius and Atticus (397).

[49][168] *The same Augusti to Theodorus, Praetorian Prefect.* All who are obligated to the council by any right, shall be liable to fulfill services, whatever religion (*superstitio*) they might belong to.

Given February 13, at Milan, in the consulship of Honorius Augustus, for the fourth time, and Eutychianus (398).

164 = C.Th. 12.1.142; combine with C. 7.62.27, and C.Th. 12.1.141, 143–145.

165 The text is like that of C.Th. 12.1.140 (but with somewhat different wording, including the omission of the word "decurions"); it is apparently preserved out of its original order. The date is restored from C.Th.12.1.148, also addressed to Theodorus, Praetorian Prefect; but Seeck prefers January 20, 399.

166 = C.Th. 12.1.150.

167 = C.Th. 8.7.19.1 (which refers to fathers fleeing). Combine with C. 3.23.1; C.Th. 6.14.2, 12.1.153–155.

168 = C.Th. 12.1.157; combine with C.Th. 12.1.158. Seeck dates to September 13, 398.

[50] *Idem AA. Eutychiano pp.* Omnes omnino curiales in originalibus ac debitis perpetuo curiis perseverent, et qui ex his ad provinciarum regimen atque administrationem qualibet fraude atque ambitione pervenerint, sciant se non solum in sua curia remansuros, sed etiam cunctis rursus ab exordio muneribus servituros.

D. VIII k. Nov. Constantinopoli Honorio A. IIII et Eutychiano conss.

[51] *Idem AA. Messalae pp.* **pr.** Quamvis provisum fuerat congruae emendationis occursu, quemadmodum curiales militiae nomine et honore suspenso officiis redderentur, tamen quia hoc callido consilio reppererunt, ut evitatis provinciae suae finibus, tamquam his eorum tantum interdictus fuisset accessus, peregrinos expeterent commeatus, ne diutius in perniciem curiarum latitandi spes et solacium eos impunitatis exacuat, horum cupiditatibus obviamus, ut ex eorum bonis, qui se vel prosecutioni vel muniis civitatum interdictae dudum ambitione militiae vel qualibet fraude subtrahere conati fuerint, curiis quas deseruerant consulatur. **1.** Itaque si vocati edictis intra anni metas (ii tamen, qui manifestis curiae nexibus illigantur) latere potius quam redire maluerint, sciant post emensum annum interpellatis provinciarum moderatoribus ex facultatibus suis curiis quas destituerunt consulendum. neque enim de immaturo praeiudicio temporis possunt brevitatem causari.

D. XVII k. Sept. Theodoro vc. cons.

[52] *Idem AA. Probino proconsuli Africae.* Quis tam inveniri iniquus arbiter rerum potest, qui in urbibus magnifico statu praeditis ac votiva curialium numerositate locupletibus ad iterationem quempiam transacti oneris compellat, ut, cum alii necdum paene initiati curiae sacris fuerint, alios continuatio et repetitae saepe functiones adficiant?

D. XVI k. April. Mediolani Caesario et Attico conss.

[50][169] *The same Augusti to Eutychianus, Praetorian Prefect.* Absolutely all decurions should persevere in the councils that are theirs by origin and to which they are obligated in perpetuity, and those of them who have attained the governorship and administration of provinces by some fraud shall know that they will not only remain in their council, but that they will also fulfill all services again from the beginning.

Given October 25, at Constantinople, in the consulship of Honorius Augustus, for the fourth time, and Eutychianus (398).

[51][170] *The same Augusti to Messala, Praetorian Prefect.* **pr.** Although provision had been made, by interposing an appropriate correction, for the way in which decurions should be returned to their duties with the suspension of the name and honor of their imperial service (*militia*), nevertheless, since they have discovered, through their clever planning, that having evaded the territory of their province, as if access to these things (imperial positions) had been forbidden only within it, they hunt for journeys abroad: in order that the hope of hiding and the comfort of impunity no longer make them keen on the ruin of their municipal councils, We forestall their greed, so that provision be made, for the councils that they had abandoned, from the property of those individuals who have tried to withdraw themselves from prosecution or from the services for towns because of their ambition for long-forbidden service or by any fraud. **1.** And so if, having been summoned by Our edicts within the period of a year, they – that is, those people who are manifestly tied to the bonds of a council – prefer to hide rather than to return, they should know that after the passage of a year, once the provincial governors are informed, provision is to be made from their property for the councils that they have forsaken. Nor can they allege shortness of notice as a reason for (their objecting to) a hasty preliminary judgment (*de immaturo praeiudicio*).

Given August 16, in the consulship of vir clarissimus *Theodorus (399).*

[52][171] *The same Augusti to Probinus, Proconsul of Africa.* Who can be found to be so unfair a judge of matters as to compel anyone to repeat a burden that has been completed in cities endowed with a great status and wealthy with longed-for numbers of decurions, so that, while some have barely been initiated into the sacred rites of the council, continuation and frequent repetition of services (*functiones*) afflict others?

Given March 17, at Milan, in the consulship of Caesarius and Atticus (397).

[169] = C.Th. 12.1.159, with different wording.
[170] = C.Th. 12.1.161, with additional wording in section 1. Combine with C. 1.54.6, 4.44.17, 9.41.17, dated August 21.
[171] = C.Th. 12.5.3; this title should be placed before 47.

[53] *Impp. Honorius et Theodosius AA. Euchario proconsuli Africae.* Duumvirum impune non liceat extollere potestatem fascium extra metas territorii propriae civitatis.

D. VI id. Mart. Ravennae Honorio VIIII et Theodosio V AA. conss.

[54] *Idem AA. Palladio pp.* Generali lege sancimus, ut, si quis suum decurionem curiae vindicare maluerit, si praesidis desit copia, eundem manus iniectione concessa sciat ad examen cognitoris resultantem esse deducendum, ita ut moderator provinciae, si quaestio fortasse fiducia defensionis ulla generatur, nisi intra tres menses causam originis competenti disceptatione cognoverit atque convictum cum poena restituerit debitis muneribus vel liberum ab inquietudine pronuntiaverit, decem librarum auri multam cogatur exsolvere, eius etiam officium pari damni inrogatione teneatur.

D. V non. Mai. Ravennae Theodosio A. VII et Palladio conss.

[55] *Impp. Theodosius et Valentinianus AA. Isidoro pp.* Si quis decurio aut subiectus curiae ausus fuerit ullam adfectare militiam, nulla praescriptione temporis muniatur, sed ad condicionem propriam retrahatur, ne ipse vel eius liberi post talem ipsius statum procreati quod patriae debetur valeant declinare.

D. III non. April. Constantinopoli Isidoro et Senatore conss.

[56] *Idem AA. Isidoro pp.* **pr.** Alexandrinis principalibus, etsi advocatione fungantur, nihilo minus peregrinationi incumbat, nec cura publica nisi in sua tantum civitate committatur. **1.** Et primus curiae, cum muneribus universis expletis ad summum pervenerit gradum, comitivae primi ordinis fruatur post biennium dignitate praestita, in curialibus tamen permaneat.

D. prid. non. Iun. Constantinopoli Isidoro et Senatore conss.

[53][172] *Emperors* Honorius *and* Theodosius *Augusti to Eucharius, Proconsul of Africa.* A duumvir shall not be allowed with impunity to display the power of his rods (*fasces,* symbols of office) outside the boundaries of the territory of his own city.

Given March 10, at Ravenna, in the consulship of Honorius, for the ninth time, and Theodosius, for the fifth time, Augusti (412).

[54][173] *The same Augusti to Palladius, Praetorian Prefect.* We ordain in a general law that, if someone prefers to claim his decurion for the council, if the governor should not be available, he should know that, through the physical recovery (*manus inectio*) that has been permitted, the same person, if resisting (*resultantem*), is to be brought to an examination by a judge (*cognitor*) in such a way that the provincial governor, if perhaps any question is generated by the reliability of his defense, should be compelled to pay a fine of 10 pounds of gold, and his office shall be held by a payment of an equal loss, if within three months he has not tried the case of his origin at an appropriate hearing and (either) restored him if convicted with a penalty for the services he owed or pronounced him free from being troubled by any suits.

Given May 3, at Ravenna, in the consulship of Theodosius Augustus, for the seventh time, and Palladius (416).

[55][174] *Emperors* Theodosius *and* Valentinian *Augusti to Isidorus, Praetorian Prefect.* If any decurion or person subjected to the council dares to pretend to any imperial office (*militia*), he shall not be protected by any time prescription, but he must be dragged back to his own condition, so that neither he himself nor his children born after such a status has been decided for him be able to refuse what is owed to their hometown.

Given April 3, at Constantinople, in the consulship of Isidorus and Senator (436).

[56][175] *The same Augusti to Isidorus, Praetorian Prefect.* **pr.** The chief civic magistrates of Alexandria, even if they should be performing an advocacy, shall by no means be less liable for foreign service (*peregrinatio*),[176] nor shall a public responsibility be entrusted except in one's own city. **1.** And the chief of the council, when, after completing all his services, he has reached the highest rank, shall enjoy the rank of count of the first order, which is bestowed after two years, but nevertheless should remain among the decurions.

Given June 4, at Constantinople, in the consulship of Isidorus and Senator (436).

172 = C.Th. 12.1.174.

173 = C.Th. 12.1.181, with somewhat different wording.

174 = C.Th. 12.1.188. Combine with C. 12.57.12; C.Th. 12.1.187.

175 = C.Th. 12.1.189, with somewhat different wording. Combine with sections 57–59 of this title, as well as C. 11.28.2, 11.29.1; and C.Th. 11.5.3.

176 This reading (from C. Th.) seems to contradict the next clause, and Mommsen emends to *perigrinatio ne,* "should not be liable for foreign service."

[57] *Idem AA. Isidoro pp.* Quinque summates ordinis Alexandrini corporalibus iniuriis immunes esse censemus, ut voce libera commoditates patriae defendant, cum possint, si quid egerint criminose, pecuniariis coerceri dispendiis. aestimabuntur autem praesente curia viri spectabilis Augustalis iudicio.

D. prid. non. Iun. Constantinopoli Isidoro et Senatore conss.

[58] *Idem AA. Isidoro pp.* Eum, qui triginta annos in Alexandrina civitate civilibus inhaeserit muneribus, corporalibus muniis, non pecuniariis excusari convenit: habita consideratione videlicet meritorum, ut hoc bene cogniti privilegium consequantur nec eo passim fruantur indigni.

D. prid. non. Iun. Constantinopoli Isidoro et Senatore conss.

[59] *Idem AA. Isidoro pp.* **pr.** Si quos spontaneos hypomnematographi munificos suis exhortationibus ad publicas nominaverint functiones, iubemus non expectandum esse consensum pro tempore viri spectabilis Augustalis, qui fit plerumque venalis, sed utriusque partis sufficere voluntatem, ut incipiat functio, quam nullus incusat: tunc ad memoratum iudicem tam nominati quam etiam creatores consona relatione currente.[v] **1.** Quam si suscipere vel confirmare distulerit, sciat se viginti quinque auri librarum condemnatione plectendum.

D. prid. non. Aug. Constantinopoli Isidoro et Senatore conss.

[60] *Idem AA. Thomae pp.* **pr.** Nullus, qui nexu generis curiae tenetur obnoxius, per substitutam quamcumque personam curiales impleat functiones, sed ipse per se debitum patriae munus exsolvat, etsi spectabili dignitate decoratus sit, nisi hoc ei speciali beneficio sit concessum. **1.** Ii vero, qui honorario titulo illustrem dignitatem consecuti sunt, per

[v] current

[57][177] *The same Augusti to Isidorus, Praetorian Prefect.* We decree that the five chief magistrates of the council in Alexandria be immune from physical injuries, so that they might defend the interests of their hometown with a free voice, since they can be coerced with monetary expenditures if they commit any criminal act. They will be judged, however, in the presence of the council, by the *vir spectabilis* Augustal Prefect (the Governor of Egypt).

Given June 4, at Constantinople, in the consulship of Isidorus and Senator (436).

[58][178] *The same Augusti to Isidorus, Praetorian Prefect.* It is established that the person who has been involved in civic services (i.e., performing services within the city as opposed to serving in the imperial administration) in the city of Alexandria for thirty years be excused from physical services (in the city), but not from ones involving money. Plainly, there is consideration taken of merits, so that those who have good reputations (*bene cogniti*) gain this privilege and unworthy people not enjoy it indiscriminately.

Given June 4, at Constantinople, in the consulship of Isidorus and Senator (436).

[59][179] *The same Augusti to Isidorus, Praetorian Prefect.* **pr.** If the memoranda writers by their own exhortations nominate any willing volunteers (*munifici*) to public functions, We order that the agreement of the temporary *vir spectabilis* Augustal prefect not be awaited, since it is often up for sale, but that the wish of each party suffice, so that the function, which no one is questioning, begin. At that time both the people nominated and their electors will run to the aforementioned governor with a suitable report. **1.** But if he delays taking up (the report) or confirming it, he shall know that he is to be punished with a condemnation of 25 pounds of gold.

Given August 4,[180] at Constantinople, in the consulship of Isidorus and Senator (436).

[60][181] *The same Augusti to Thomas, Praetorian Prefect.* **pr.** No one who is held liable to the council by a tie of birth shall fulfill his functions connected with the council through any substitute, but he must by himself pay the service owed to his hometown, even if he has been decorated with the rank of *spectabilis*, unless this has been granted to him as a specific benefit. **1.** But those who have attained

[177] = C.Th. 12.1.190; see also the note at the beginning of C. 10.32.56.

[178] = C.Th. 12.1.191; see also the note at the beginning of C. 10.32.56.

[179] = C.Th. 12.1.192; see also the note at the beginning of C. 10.32.56. The *hypomnematographi*, "memoranda writers," or "registrars," were important city officials in late Roman Egypt.

[180] The laws with which this law is to be combined have June 4.

[181] Section 1 = C. 1.3.21, with different wording; see also C.Th. 12.1.187, which this law amends.

substitutos periculo suarum facultatum curiae muneribus satisfacere non vetentur.

D. v k. Mart. Constantinopoli Eudoxio et Dioscoro conss.

[61] *Imp. Leo A. Viviano pp.* **pr.** Neque Dorotheum virum illustrem et totam eius substantiam neque Irenaeum virum spectabilem tribunum et notarium, etsi ante paternas illustres dignitates natus est, ullam inquietudinem pro curiali genere et condicione sustinere decernimus: liberos quoque eorum, vel qui iam sunt vel futuri, eorumque posteros, quotienscumque continuata temporum et successionum perpetuitate nascentur, a curiali condicione et functione esse liberos: lege divae memoriae Iuliani, quae de materno curialium Antiochenae civitatis genere promulgata est, nihil in persona viri illustris Dorothei vel viri spectabilis Irenaei vel adversus facultates eorum vel adversus liberos eorundem, qui iam vel nati sunt vel postmodum quoquo tempore nascentur, vel adversus substantias eorum roboris habitura. **1.** Circa alias sane universas personas de materno genere ad memoratae Antiochenae civitatis tantummodo curiam pertinentes eandem legem praecipimus obtinere propriam firmitatem.

[62] *Idem A. Constantino pp.* **pr.** Si ille, qui ex filia decurionis Antiochenae splendidissimae civitatis et patre, qui nullius alterius civitatis muniis debeatur, procreatus est, sub examine provincialis iudicis vel sponte confessus vel certe convictus fuerit, quod ex filia sit curialis progenitus et albo decurionum adscriptus fuerit, nullam sibi superesse facultatem negandae vel evitandae condicionis existimet et curialem non adspernari fortunam avi materni sui pertemptet nec dubitet se muniis curialibus subiacere. **1.** Quod si quem curia, de qua praesens sanctio loquitur, natum ex filia curialis minime secundum praestitutam ordinationem sibi sociandum curaverit, prolem eius pulsare nullo modo penitus poterit: nec enim patimur conventionem eiusmodi praetermisso filio, quem filia curialis ediderat, a nepote vel pronepote vel ulterius incipere.

the rank "Illustrious" (*vir illustris*) by honorary title shall not be prohibited, at the peril of their own property, from performing their curial duties through substitutes.

Given February 25, at Constantinople, in the consulship of Eudoxius and Dioscorus (442).

[61] *Emperor Leo Augustus to Vivianus, Praetorian Prefect.* **pr.** We determine that neither the *vir illustris* Dorotheus and his entire property, nor the *vir spectabilis* Irenaeus, tribune and notary, even if he was (i.e., they were) born before his father (their fathers) gained the rank of *illustris*, should sustain any worry over his (their) birth and condition as a decurion; (and We determine that) their children, both those who already exist and future ones, and their descendants, however often ones will be born in the uninterrupted duration of times and successions, be free from the condition and function of decurions. The law of Julian of blessed memory, which was promulgated about the maternal descent of decurions in the city of Antioch,[182] will not have any force in the person of the *vir illustris* Dorotheus, or the *vir spectabilis* Irenaeus, either in reference to their resources or in reference to the same persons' children who have now been born or who will be born later at any time, or in reference to their wealth. **1.** We instruct that the same law obtain its appropriate firmness in connection with all other persons belonging only by maternal descent to the council of the aforementioned city of Antioch.

(457–465).

[62] *The same Augustus to Constantine, Praetorian Prefect.* **pr.** If that man, who was born from a daughter of a decurion in the most splendid city of Antioch and from a father who is obligated to the services of no other city, has, under questioning by the provincial governor, either confessed or certainly been convicted of having been born from the daughter of a decurion, and has (then) been listed in the album of decurions, he should not fancy that he has any right left to deny or avoid his condition, and he should not try to scorn the fortune of his maternal grandfather or doubt that he is liable to services of the council. **1.** But if the council about which the present ordinance speaks does not cause someone born from the daughter of a decurion to be associated with itself in accordance with the prescribed regulation, it will in absolutely no way be able to disturb his offspring. Nor do We allow a suit of this type to begin with a grandson or a great-grandson or later, when the son whom the daughter of a decurion had produced has been passed over.

(457–465).[183]

[182] = 22 of this title.

[183] Seeck gives August 7, 471.

[63] *Idem A. ad senatum.* Docticii viri clarissimi iuvenis fortuna super curiali condicione nullo modo inquietanda nec facultatibus eius, sed eo, qui huiusmodi conamen inierit, sacrilegii poenam luituro omnes, qui post peractam illustrem administrationem vel adhuc in ea posito patri suo gignuntur, a curialium intentione defendantur una cum paternis sine dubio substantiis, quas cum persona patris a curiali nexu liberas esse nemo dissimulet.

[64] *Imp. Zeno A. Sebastiano pp.* **pr.** Neminem ex his, qui obnoxii curiae constituti ab initio felicissimi nostrae pietatis imperii comitum privatarum nostrae vel Augustae partis, seu comit*is* largitionum vel comitis domesticorum, quaestoris vel magistri officiorum ad actum administrationis gerendum provecti sunt vel in posterum provehentur, ob hoc curialium munerum laqueos volumus evitare: sed obligatos cum liberis suis quandocumque progenitis et facultatibus suis post administrationem depositam curiae commoditatibus inservire, nisi forte aliis privilegiis super hoc legibus cognitis muniantur. nam alia universa legitima vel ex constitutionibus data privilegia integra volumus illibataque observari. **1.** Ne tamen indulti honor*is* inane nomen retinere videantur, dignitatum titulis potiantur, per substitutos suarum periculo facultatum curialibus muneribus respondentes habeant integra illibataque privilegia dignitatis. **2.** Eos vero, qui vel praefatas dignitates ante initium nostri imperii consecuti sunt, cum facultatibus suis et post eam dignitatem progenitis filiis a curialibus nexibus vel onere decernimus liberari. **3.** Hos autem, qui quocumque tempore patricii vel consules aut consulares facti sunt aut in posterum fuerint, aut magistri militum vel praefecti praetorio Orientis vel Illyrici vel urbis administrationem in actu positi quandoque gesserunt aut postea gesserint, omnimodo cum facultatibus suis et post eam dignitatem progenitis filiis a curiarum nexibus vel onere decernimus liberari.

[63] *The same Augustus to the Senate.* Since neither the rank (*fortuna*) nor the resources of the young *vir clarissimus* Docticius is in any way to be troubled concerning his condition as decurion, but (rather) the person who enters upon such an endeavor will pay the penalty for sacrilege, all who are born after the completion of his father's illustrious administration or when the father is still active in this shall be defended against nomination by the decurions, together with, beyond doubt, the father's property, the freedom of which from the bond of a decurion, along with the person of the father, no one should conceal.[184]

[64] *Emperor* ZENO *Augustus to Sebastianus, Praetorian Prefect.* **pr.** We do not want anyone on this account to avoid the snares of services of the council from among those persons who, though established as liable to the council from the beginning of the most prosperous rule of Our Piety, have advanced or in the future will advance to performing the administration (*ad actum administrationis gerendum*) of the Counts of the Privy Purse on Our part or that of the Augusta, or of the Count of Imperial Finances, the Count of the Household, the Quaestor or Master of Offices. But (We wish) them to be obligated with their children, whenever born, and their resources, to serve the interests of the council after they have set aside their administration, unless perhaps they should be protected by other privileges in laws that have been decided over this matter. For We wish that all other privileges resulting from laws or given in constitutions to be observed wholly and without impairment. **1.** Lest, however, they be seen to retain the empty name of an honor that has been bestowed, they shall gain the titles of their ranks, and, answering to their services as decurions through substitutes at the risk of their property, they shall have the privileges of rank in their entirety and without impairment. **2.** But We determine that those persons who have gained the aforementioned ranks before the beginning of Our rule are to be freed from the bonds or burden of the council along with their resources and their children born after (they have gained) their rank. **3.** We determine, however, that those who have at any time or will in the future become patricians, consuls, or senators with the rank of Consul (*consulares*), or having been placed in the post have at any time or in the future will have performed the administration of the Master of Soldiers or the Praetorian Prefect of the East or Illyricum, are freed from the bonds or burden of the council completely along with their property and their children born after (they have attained) their rank.
(476–480?).[185]

[184] Seeck gives 471–474.
[185] Lounghis *et al.* date to between December, 476, and May 1, 480.

[65] [Ὁ αὐτὸς βασιλεύς.] ...

[66] *Imp. Anastasius A. Polycarpo pp.* pr. Divae memoriae Zenonis sacratissimam constitutionem, quae de curialibus post certas excelsas administrationes seu dignitates condicionis nexu liberandis lata est, in hac tantummodo parte duximus corrigendam, qua cavetur eos etiam, qui ante eandem constitutionem, ab initio tamen eiusdem divae recordationis Zenonis imperii, comitis privatarum nostrae vel piissimae Augustae partis, seu comitis largitionum vel comitis domesticorum, quaestoris aut magistri officiorum licet ad actum administrationis gerendum provecti sunt, minime curialium munerum laqueos ob hoc evitare, sed obligatos cum liberis suis quandocumque progenitis et facultatibus suis post administrationem depositam curiae commoditatibus inservire, nisi forte aliis privilegiis super hoc legibus cognitis muniantur. 1. His etenim, qui memoratas administrationes vel unam ex his peregerunt, nec non liberis et rebus eorum beneficium, quod ante per illustrem administrationem peractam eis adquisitum est, intactum illibatumque iubemus servari, ut relaxatione condicionis et munerum curialium per anteriores principales dispositiones sibi concessa tam ipsi quam liberi eorum post huiusmodi administrationem adeptam procreati una cum propriis substantiis potiantur, etsi contigit eos post divae memoriae Zenonis constitutionem sive per se sive per substitutos suos curiae competentia munera subisse: eadem videlicet constitutione divae memoriae Zenonis ex die quo promulgata est suas vires obtinente, cum conveniat leges futuris regulas imponere, non praeteritis calumnias excitare.

[67] *Imp. Iustinianus A. Demostheni pp.* pr. Curialibus consortiis consulentes censemus, ut nemo sibi blandiatur et non certis modis sese liberum esse existimet, sed pro nostra forma tantummodo sciat posse libertatem sibi curialis competere condicionis: omnibus anterioribus modis, quos non comprehendit praesens sanctio, ex praesenti die antiquandis. 1. Si quis igitur vel summum patriciatus honorem fuerit consecutus, sive infulis consulatus honorarii aut ordinarii fuerit ampliatus, ut vel consul vel consularis efficiatur, seu praefectorum praetorio infulas susceperit gubernandas, vel urbicariam (in ipso tamen actu) meruerit

[65][186] [*The same Augustus* ...]

[66] *Emperor* ANASTASIUS *Augustus to Polycarp, Praetorian Prefect.* **pr.** We have deemed that the most sacred constitution[187] of Zeno of blessed memory, which was promulgated concerning the freeing of decurions from the bond of their condition after they obtained certain lofty administrative posts or ranks, to require correction in just the part in which provision is made also for those who, before the same constitution, but from the beginning of the reign of the same Zeno of blessed memory, although they were promoted to performing the administration of the Count of the Privy Purse on Our part or that of the Most Pious Augusta, of the Count of Imperial Finances or of the Household, or of the Quaestor or the Master of Offices, do not avoid the snares of decurions on account of this, but, obligated along with their children, whenever born, and with their property, serve the interests of the council after setting aside their administration, unless by chance they should be protected by other privileges concerning this decided by the laws. **1.** We order that the benefit that was previously acquired for them by completing the administration of an illustrious office be maintained in its entirety and without impairment for those who have completed the administration of these aforementioned offices or one of them, along with their children and property, so that both they themselves and their children born after they take up of an administrative post of this type, along with their own property, gain the dispensation from the condition and the services of the council granted them through previous imperial dispositions, even if it happens that they have performed services appropriate to the council after the constitution of Zeno of blessed memory, either themselves or through their substitutes. The same constitution of Zeno of blessed memory gains its validity from the day on which it was promulgated, since it is fitting that laws impose rules for the future and not provoke calumny for the past.

(497–499).[188]

[67] *Emperor* JUSTINIAN *Augustus to Demosthenes, Praetorian Prefect.* **pr.** In order to take consideration for the interests (*consortia*) of the councils, We decree that no one should fancy and judge himself to be free in certain ways, but should know that only in accordance with our rule can he be granted liberty from the condition of a decurion; all previous ways (of acquiring this freedom) that the present ordinance does not encompass are to be rescinded from the present day. **1.** Therefore if someone has gained the highest honor of the patriciate (*patriciatus*), or is increased by the distinctions of an honorary or ordinary consulate, so that he be made Consul or have consular rank, or if he undertakes governing the office of the Praetorian Prefects, or gains the City

186 A Greek constitution has fallen out.

187 64 above.

188 Lounghis *et al.* suggest 498.

praefecturam, nec non magistri militum officium gerendum susceperit, is gaudeat se huiusmodi condicionis esse exsortem et liberum cum suis facultatibus suaque posteritate, quam postquam meruit dignitatem vel actum gess*it* ediderit, anterioribus filiis in condicione pristina remansuris. **2.** Tam praefecturae quaestoris quam viri eloquentissimi fisci patroni tam praefecturae, quae Orientalibus et Illyricianis praesidet sedibus, quam urbicariae nexibus curiae liberantur, cum ad fisci patronatum pervenerint, una cum substantiis et liberis suis, quos vel ante habuerint vel postquam ad eundem gradum provecti sunt.

3. Viri etiam clarissimi principes agentium in rebus curiae libertatem ex antiquis legibus consecuti sunt, et viri spectabiles proximi sacri scrinii memoriae et sacrarum epistularum nec non sacri scrinii libellorum sacrarumque cognitionum et dispositionum cum substantiis suis et liberis, quos post emensa stipendia susceperant. **4.** Hoc etiam nos corroborantes intuitu laborum, quos multos longo prolixoque tempore pertulerunt, intactum illibatumque conservamus, ut ii omnes fortuna curiali liberentur cum sua substantia suaque subole secundum ea quae praediximus. **5.** Ex aevo autem sequente progenitos antea nullius futuri fisci patroni liberos concedimus liberandos, ut ne, quod summis apicibus dignitatum non est concessum, hoc alii sibi audeant vindicare: sed progeniti filii ante, quam ad fisci patronatum pervenerint, in condicione pristina remaneant. **6.** Aliis autem modis, quam his, quos singillatim enumeravimus, sive legibus antiquis comprehensi sunt (qualis erat is, quem ex tribus maribus concessum ante fuerat patri maximo senatui sociare) sive comprehensi anterioribus scitis non fuerant, liberationem competere cuidam curialis fortunae nullo patimur modo: sed sive pragmatica sanctio super hoc processit sive sententia eminentissimae praefecturae, sive alius quicumque modus excogitatus est, omnia ea penitus vacuari et pro infectis haberi, et curialia corpora suis reddi civitatibus et substantias eorum subiacere nulla excusatione eis penitus competente.

[68] [Ὁ *αὐτὸς βασιλεύς*.] …

Prefecture – albeit in the actual administration of it – not to mention if he takes up the office of the Master of Soldiers, he should rejoice that he has no part and is free of this condition, along with his property and his posterity which he will have produced after he has gained the rank or performed the administration, while his previous sons will remain in their original condition. **2.**[189] The most eloquent patrons of the Treasury in the court of the (Praetorian) Prefecture and that of the Quaestor (of the Sacred Palace), in the Prefecture that presides over the Eastern and Illyrican territories, as well as in the City Prefecture, are freed from the ties of the (city) council when they achieve being a patron of the Treasury, together with their property and their children whether born before or after they were promoted to this same rank.

3. The *viri clarissimi* chiefs (*principes*) of the couriers (*agentes in rebus*) have gained freedom from the council by ancient laws, as have the *viri spectabiles* subordinates (*proximi*) of the imperial bureau of Memory (for secretarial work on decisions), the Imperial Correspondence, as well as the imperial bureau of Petitions, and imperial Trials and Dispositions, together with their property and children whom they have raised after completing their service. **4.** To affirm this out of regard for the many labors that they have endured for a long and extended time, We maintain it wholly and without impairment, so that all of these might be freed, along with their property and offspring, from the lot of a decurion, in accordance with what We have proclaimed. **5.** However, for the future, We do not concede that children of any future patron of the Treasury should be freed if born previously, lest others dare to claim for themselves what has not been conceded to the very highest ranks; but the sons born before they achieved being patron of the Treasury shall remain in their original condition. **6.** We absolutely do not allow anyone to gain liberation from the lot of a decurion in any other ways than these that We have enumerated individually, whether they are included in ancient laws – like the person whom, out of three male children, it was allowed to the father to make a member of the greatest senate[190] – or have not been included in ancient statutes. But whether a pragmatic sanction has come forth about this or a verdict of the Most Eminent Prefecture, or whether any other method has been invented, all of these things are completely invalid and are considered as if they were never done, and the persons (*corpora*) of the decurions are returned to their cities and their property is liable, and no possibility of being excused at all is available to them.

(529).[191]

[68][192] [*The same Augustus …*]

[189] Section 2 seems to be corrupt, and this is a suggested translation.
[190] C.Th. 12.1.132 (393).
[191] Lounghis *et al.* date to between September 17 and October 30, 529.
[192] A constitution, possibly a repetition of C. 1.3.52.1, has fallen out.

XXXIII Si Libertus aut Servus ad Decurionatum Adspiraverit

[1] *Impp. Diocletianus et Maximianus AA. Saturnino.* Si libertus vel ius aureorum anulorum adeptus non est vel natalibus suis non restitutus, praeses provinciae non tantum curiae participare non permittet, sed iuxta legis severitatem congruenti poena ulciscetur.

[2] *Idem AA. Orcinae.* Praeses provinciae, si eum qui aedilitate fungitur servum tuum esse cognoverit, si quidem non ignarum condicionis suae ad aedilitatem adspirasse perspexerit, ob violatam servili macula curiae dignitatem congruenti poena adficiet: si vero, cum opinione publica mater eius pro libera haberetur, ex decurione procreatus ad capessendum honorem errore lapsus processit, dominio tuo eum subiugabit.

XXXIIII De Praediis Curialium sine Decreto Non Alienandis

[1] *Imppp. Valentinianus Theodosius et Arcadius AAA. Cynegio pp.* pr. Si quis decurionum vel rustica praedia vel urbana venditor necessitate coactus addicit, interpellet iudicem competentem omnesque causas singillatim quibus strangulatur exponat et ita demum distrahendae possessionis facultatem accipiat, si alienationis necessitatem probaverit. infirma enim erit venditio, si haec fuerit forma neglecta. 1. Ita enim fiet, ut nec immoderatus venditor nec emptor, cuiuscumque sit condicionis, inveniatur iniustus. denique nihil erit postmodum, quo venditor vel circumventum se insidiis vel oppressum potentia comparatoris queri debeat, quandoquidem sub fide actorum et de necessitate distrahentis et de voluntate patuerit comparantis. 2. Quod si quis contra vetitum occultis molitionibus per suppositas fraude personas cuiuslibet loci, quem tamen decurio distrahat, comparator extiterit, sciat se pretio quod dedit esse privandum et locum quem comparavit cum fructibus esse restituendum.

D. VIII k. Dec. Constantinopoli Honorio np. et Euodio conss.

Thirty-Third Title If a Freedman or Slave Aspires to Be a Decurion

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Saturninus.* If a freedman has not obtained the right of (wearing) golden rings (i.e., the right to be an equestrian) or has not been restored to his (free) birth, the provincial governor will not only not allow him to take part in the council, but will, in accordance with the severity of the law, take vengeance with an appropriate punishment.

[2] *The same Augusti to Orcina.* The provincial governor, if he learns that the person who is serving as Aedile is your slave, if he perceives that he (the slave) aspired to the aedileship while not ignorant of his condition, will visit on him an appropriate punishment for violating the dignity of the council with a servile blemish. If indeed, since his mother was considered free by public opinion, he, having been born from a decurion, has proceeded to seeking office out of error, he will subject him to your ownership.

Thirty-Fourth Title Properties of Decurions Are Not to Be Alienated without a Decree

[1][193] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Cynegius, Praetorian Prefect.* **pr.** If any decurion, compelled out of necessity to become a seller, puts up for sale any urban or rustic properties,[194] he shall approach a competent judge and explain individually all the reasons through which he is being tormented, and only then receive the right to sell his property if he proves the need for alienating it. For a sale will be invalid if this rule is neglected. **1.** For in this way it will come about that the seller will not be seen to be rash nor the buyer unjust, whatever his condition. Finally, there will be no reason why afterwards the seller ought to complain that he was tricked by a trap or was oppressed by the buyer's power, when, on the basis of the faith of the records, it is clear concerning the necessity imposed on the one selling and the willingness of the purchaser. **2.** But if anyone, contrary to what has been forbidden, turns out, by means of secret trickery through persons fraudulently substituted for him, to be a buyer of any place that a decurion might sell, he shall know that he is to be deprived of the price that he gave and that the place that he purchased is to be restored along with its fruits.

Given November 24, at Constantinople, in the consulship of Honorius, Most Noble Boy, and Euodius (386).

[193] = C.Th. 12.3.1, with some phrases from C.Th. 12.3.2. Combine with C. 10.72.9.
[194] C.Th. 12.3.1 adds "or any slaves."

[2] *Impp. Theodosius et Valentinianus AA. Florentio pp.* **pr.** Nec venditio rei hereditariae curiae adquisitae aut debitoris hereditarii qui solverit liberatio aliter admittenda est, nisi apud acta totius vel maioris partis ordinis intercedente decreto ineundi contractus vel dissolvendae obligationis causa probetur. **1.** Ita enim id quod ex ea redigitur ad praediorum iubemus comparationem expendi, quorum reditus omnes, sicut dictum est, eiusdem curiae publicis muneribus, quae solacio egere constiterit, iustissime servabuntur: ex consensu omnium et maxime ditiorum, vel idonea fideiussione oblata conductoribus eligendis.

D. v id. Iun. Constantinopoli Felice et Tauro conss.

[3] *Imp. Zeno A. Sebastiano pp.* **pr.** Curiales vendere quidem res immobiles vel mancipia rustica prohibemus sine interpositione decreti: donationes vero vel permutationes vel quoslibet alios etiam sine decreto permittimus celebrare contractus, quoniam et sacrae constitutiones, quae super hoc a retro principibus latae sunt, in plurimis suis partibus de pretio non redhibendo locutae sunt, ut ex hoc apertissime detur intellegi solum emptionis decurionibus sine decreto interdictum fuisse contractum. **1.** Cum tamen venditione intercedente, ut dictum est, decretum agitur, nihil eos vel qui ab his comparant dispendium, cuiuscumque personae vel causae vel theatralis liberalitatis nomine, quod frequenter fieri dicitur, sustinere decernimus, nec ex tabella decretum recitari, sed curialium vel maioris partis curiae relatione currente sine ulla malignitate referentium vel damno contrahentium ad confirmandam emptionem competentis iudicis proferri sententiam.

[4] [*Αὐτοκράτωρ Ἰουστινιανὸς Α.*] ...

[5] [*Ὁ αὐτὸς βασιλεύς.*] ...

[2][195] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Florentius, Praetorian Prefect.* **pr.** Neither the sale of inherited property that is acquired for the council, nor the liberation of a debtor to the estate who has paid, is to be admitted in any other way except that the case be recorded as approved, through passage of a decree by the whole council or a majority, for entry into the contract or dissolution of the obligation. **1.** And so We order that what is realized from this be expended for the purchase of properties (*praedia*), all the revenues from which, as has been said, will be most justly preserved for the public services of the same council, which clearly requires support. Lessees are to be chosen on the basis of the consensus of all and especially the wealthier, or when a suitable suretyship has been offered.

Given June 9, at Constantinople, in the consulship of Felix and Taurus (428).

[3] *Emperor* ZENO *Augustus to Sebastianus, Praetorian Prefect.* **pr.** We forbid decurions from selling immovable property or rural slaves without introducing a decree. But we permit entering into gifts or exchanges or any other contracts without a decree, since even the sacred constitutions, which have been issued on this matter by the Emperors in the past, have spoken in many places about not returning the price, so that from this it is quite clearly given to understand that decurions have only been forbidden the contract of purchase without a decree. **1.** When, however, a decree is being enacted as a sale is proceeding, as has been said, We determine that those persons (sellers) or those who are purchasing from them sustain no expense on account of any person or cause or theatrical generosity, which is said to happen often, and that the decree not be recited from a written tablet, but that the verdict of a competent judge be brought forward to confirm the purchase upon a continuing motion of the decurions or a majority of the council, without any malice on the part of those making the motion or loss for the parties to the contract.

(476–480 or 484?).[196]

[4][197] [*Emperor* JUSTINIAN *Augustus* ...]

[5] [*The same Augustus* ...]

[195] Combine with C. 10.35.1; C.Th. 12.4.1.
[196] Lounghis *et al.* date to between December, 476, and May, 480.
[197] Two Greek constitutions have apparently fallen out here. Lounghis *et al.* date the first between 527 and 534, and the second between 528 and 531.

XXXV Quando et Quibus Debetur Quarta Pars ex Bonis Decurionum et de Modo Distributionis Eorum

[1] *Impp. Theodosius et Valentinianus AA. Florentio pp.* Si decurionum consortio sit alienus qui curiali successit, competentis eidem iuris (sive ex asse sive ex parte heres sit bonorumve possessor) partem quartam iure optimo a curia peti decernimus.

D. v id. Iun. Constantinopoli Felice et Tauro conss.

[2] *Idem AA. Apollonio pp.* **pr.** Meminimus nuper emissa lege divali portionem quartam de facultatibus curialium fati munus implentium, ex qualibet novissima voluntate vel ab intestato etiam ad quemcumque praeterquam si ad filios curiales deferantur, curiarum deputasse corporibus. sed multi tamquam corrumpendi totius patrimonii occasione captata uniuscuiusque rei sibi particulam vindicando adeo totas dilacerant facultates, ut, dum participibus relictarum opum nocere cupiant, sua quoque iura praecipitent. **1.** Quorum nimiam licentiam provida dispositione frenantes ipsis quidem curialibus occupandi sua auctoritate res mortui copiam denegamus: heres autem, ad quem ab intestato vel ex postrema voluntate directis vel fideicommissariis verbis decurrit hereditas, omne patrimonium quod relictum est in partes quattuor dividi procuret, ut rebus totis in sortitum casumque deductis vel curiae quadrantis vel heredi vel fideicommissario per universitatem dodrantis electio ex sortis felicitate contingat. **1a.** Ita scilicet et praefati successores et curia promiscui rerum dominii liberabuntur incommodo. naturale quippe vitium est neglegi, quod communiter possidetur, utque se nihil habere, qui non totum habeat, arbitretur, denique suam quoque partem corrumpi patiatur, dum invidet alienae.

Thirty-Fifth Title When and to Whom the Fourth Part of the Goods of Decurions Is Owed, and the Method of Their Distribution

[1][198] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Florentius, Praetorian Prefect.* If the person who has succeeded a decurion (as heir) is unsuited to sharing the burdens of decurions, We determine that it is appropriate law that the council seek from the same person a fourth part (of the property of the deceased decurion) under the best law (*optimo iure*; i.e., unencumbered) – whether he should be sole heir or in part, or possessor of the estate (*bonorum possessor*).[199]

Given June 9, at Constantinople, in the consulship of Felix and Taurus (428).

[2][200] *The same Augusti to Apollonius, Praetorian Prefect.* **pr.** We remember that, in the divine law recently promulgated, We have assigned the fourth portion from the resources of decurions passing away to the corporations of the councils (*corpora curiarum*), when they have gone to anyone, other than the sons of decurions, in accordance with any final wish or even from an intestate person. But many people, as if taking the opportunity for corrupting the whole patrimony, so tear to pieces the resources by claiming a small part of every single thing for themselves that, while they desire to harm those sharing in the wealth left behind, they hurl their own rights to ruin as well. **1.** To rein in the excessive license of such people by means of a prescient disposition, We deny decurions themselves the right to seize the property of a dead person on their own authority. The heir, however, to whom the inheritance has passed either from an intestate person or in accordance with a final wish, whether in direct words or as a trust, shall take care that the entire patrimony that has been left be divided into four parts, so that from all the property that has been assigned to a choice by lot or chance, the council gain the choice of a fourth or the heir or trustee to the whole estate gain the choice of three-fourths by the luck of the draw. **1a.** In this way, to be sure, both the aforementioned successors and the council will be freed from the inconvenience of a mixed ownership of the property. For it is a natural flaw for what is communally possessed to be neglected, so that the person who does not have something in its entirety thinks that he does not have anything, and finally allows even his own share to be ruined while he is jealous about the other person's.

198 Combine with C. 10.34.2; C.Th. 12.4.1.

199 The *bonorum possessor* was the person granted succession rights on intestacy in accordance with Praetorian law.

200 = Nov. Theod. 22.2, with somewhat different wording. Combine with C. 10.36.1, both dated one day later. As stated in the *principium*, this law builds on the previous one.

2. Sed ubi quarta pars bonorum mortui curiae debet offerri, immobiles quidem res, quae nec latere facile possunt nec quicquam si divulgentur officiunt, sub adspectu etiam curialium aestimari dividique concedimus: mobiles autem res vel se moventes vel instrumenta, vel si quid etiam in huiusmodi iure consistat, in medium proferri divulgarique non patimur, sed iuratis successoribus, cum apud se diligenter aestimaverint, quae quantique sint pretii facultates, credi oportere decernimus. quid enim tam durum tamque inhumanum est, quam publicatione pompaque rerum familiarium et paupertatis detegi vilitatem et invidiae patere divitias?

3. In exigendis vero debitis, si pretium, quod pro quarta parte actionum curiae competit, successores praestare noluerint, cautionibus iurata fide prolatis in medium unusquisque a debitoribus convenientem sibi exigat portionem: eque diverso aes alienum, si cui defunctus fuerat obligatus, tam idem successores quam curia pro sua sorte restituere compellentur.

4. Quod si saepe dicti successores sacramentum sibi crediderint excusandum, tum vero ad similitudinem rerum immobilium diligentior curialibus omnium rerum indago praebebitur, scilicet ut universis mortui facultatibus in aperto propositis vel aestimatio rerum vel divisio sub praesentia curialium celebretur. 5. In omnibus autem casibus, ubi quarta pars curiae competit, transactiones interpositas firmas illibatasque manere decernimus.

6. Ad filiorum vero curialium vel nepotum ac pronepotum, scilicet decurionum, similitudinem, ad quos integras opes pervenire censuimus, filiam quin etiam neptem proneptemve principali eiusdem civitatis, unde pater avus vel proavus oritur, nuptam rerum vel ab intestato vel ex dispositione ultimae voluntatis quaesitarum integrum nullaque parte minutum dominium habere sancimus. 7. Quod si post parentum obitum inveniantur innuptae vel viduae, in impuberibus quidem post transactam pubertatem, in aliis vero, quae pubertatem excesserint, vel etiam in viduis post mortem parentis triennium dumtaxat volumus expectari, ut interim quarta portio suspensa aut apud eam, si in matrimonio curialis eiusdem civitatis fuerit collocata, perpetuo iure permaneat vel, si intra id temporis alienum eadem curia sortiatur maritum

2. But when the fourth part of the property of the deceased ought to be offered to the council, We grant that the immovable properties, which cannot easily be hidden and do not cause any harm when they are divulged, be appraised and divided in the view of the decurions as well. But We do not permit that movable property, whether self-moving (animals or slaves) or documents (*instrumenta*), or if something in addition consists in such a right, be brought out into the open (*in medium*, in public) and divulged, but We determine that the successors, under oath, must be believed when they have diligently estimated by themselves what the property is and what price it is worth. For what is so harsh and inhuman as when, amid public disclosure and display of financial affairs, the meanness of one's poverty be unveiled and wealth be subject to jealousy?

3. But in exacting debts, if the successors are unwilling to offer the price that is available to the council for the fourth part of rights of actions (i.e., against the debtors), each person, after making public promises under the faith of an oath, should exact the portion due him from the debtors. On the other hand, both the same successors and the council in accordance with its share will be compelled to restore any debt for which the deceased had been obligated.

4. But if the often mentioned successors believe that they should be excused from swearing an oath, then indeed a more exacting investigation of all the property will be provided for the decurions in much the same way as with the immovable property, that is to say, with all of the resources of the deceased placed out in the open, an appraisal or division of the property shall be carried out in the presence of the decurions. **5.** In all cases, however, when a fourth part is due to the council, We determine that the settlements that have been reached remain firm and undiminished.

6. In much the same way as with the sons of councilors, or their grandsons or great-grandsons, that is to say, decurions (themselves), whom We have decreed their riches in their entirety should reach, We ordain that the daughter or even the granddaughter or great-granddaughter married to a chief civic magistrate of the same city from which her father, grandfather, or great-grandfather comes, have ownership that is full and in no part diminished over the property acquired either from an intestate person or in accordance with the disposition of a final wish. **7.** But if after the death of the parents they should be found to be unmarried or widowed, (then) in the case of underage women after puberty has been reached, but for others who have passed puberty, or widows after the death of their parents, We want a three-year period to be observed, so that, in the interim, the fourth portion remain suspended under perpetual right either with that woman, if she has been placed in matrimony to a decurion of the same city, or, if within that time she should

penitusve nupta non fuerit, memorata pars totius substantiae curiae cum triennii tam urbanorum quam rusticorum praediorum dumtaxat fructibus addicatur: ita tamen, ut sacramenti tam de quantitate quam de aestimatione rerum mobilium deque actionibus inferendis excipiendisve, sicut in extraneis personis dictum est, ratio conservetur. **8.** Sed et si mater mortui vel avia tempore, quo filius neposve moritur, in coniugio eiusdem civitatis curialis inventa fuerit, ne ipsas quidem patimur quartae portionis subire iacturam. **9.** Extraneum quin etiam heredem propinquitatis quidem iure discretum, curiae tamen eiusdem civitatis obnoxium supra dictae portionis dispendio liberamus.

D. VIII id. Mart. Constantinopoli post consulatum Dioscori et Eudoxii vv. cc.

[3] *Imp. Iustinianus A. Menae pp.* **pr.** Si quis curialibus muniis obnoxius, uno forte vel pluribus filiis vel filiabus derelictis, filio quidem vel filiis suae substantiae partem minimam dereliquerit, eam tamen, quae excludere eos de inofficiosi querella potest, aliis autem suam substantiam dereliquit, ut ex hac patrimonii distributione ad filium quidem vel filios curiales minima pars substantiae remaneat, totum autem curiale munus masculis immineat, sive filii sive nepotes sint vel pronepotes, curiali tamen condicioni obnoxii: sancimus huiusmodi iniquitatem resecari et non minus quarta portione in masculos posse testatorem transmittere, sive unus est filius sive plures, nulla deminutione ex permixtione sororum eis facienda, ut non solum corporibus, sed etiam substantiis laborantes possint curiales habere consortium.

1. Ad hoc sancimus, si quis curialis filiabus pluribus derelictis ab hac luce fuerit subtractus, quarum una curiali eiusdem nupserit civitatis, aliis filiabus, quae ad huiusmodi vota non migraverint, vel extraneis in reliquam partem heredibus derelictis, non videri curiae ex sententia legis Theodosianae[1] ad Apollonium scriptae satisfieri: sed omnino quartam partem patrimonii curia consequatur, sive uni filiae, quae curialibus nuptiis copulata sit, deputanda sive ex aliis heredibus colligenda, filia procul dubio quae curiali nupsit immuni ab huiusmodi quartae datione servanda, cum per maritum eius quantum ad ipsius personam curiae sit

gain a husband not a member of the same council or has not at all been married, the aforementioned fourth part of the entire property shall be assigned to the council together with the fruits for a three-year period of both urban and rustic properties. (But this is to occur) in such a way that the procedure be maintained of swearing an oath both about the amount and the appraisal of the movable property and about bringing and defending against lawsuits, just as has been said in connection with non-related successors (*extranei*). **8.** But if the mother of the deceased or his grandmother is found to be in a marriage to a decurion of the same city at the time when her son or grandson dies, We do not allow these very women to undergo the loss of the fourth part. **9.** Indeed, We free an external heir, separated (from the deceased) in the law of relationships, but liable to the council of the same city, from the payment of the portion mentioned above.

Given March 8, at Constantinople, in the post-consulate of the viri clarissimi *Dioscorus and Eudoxius (443).*

[3][201] *Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect.* **pr.** If anyone liable to services to the council, leaving behind perhaps one or several sons or daughters, has left a very small portion of his property to his son or children, but an amount that can exclude them from the complaint of an undutiful will, (and) leaves to others his property in such a way that from this distribution of the patrimony a very small part remains for the son or sons who are decurions, but the entire service to the council looms over the males, whether they are sons, grandsons, or great-grandsons, but liable to the status of decurion, We ordain that such an inequity be cut off and that the testator not be able to transmit less than a fourth portion to the males, whether there is one son or several, and no diminution is to be caused for them by mixing in sisters, so that as decurions laboring not only with their bodies but also their property they can share in the burdens (*consortium*, i.e., with the council).

1. In addition to this, We ordain, if some decurion is withdrawn from this life leaving behind several daughters, one of whom marries a decurion of the same city, with other daughters who have not entered such marriages (*ad huiusmodi vota non migraverint*), or external persons as heirs for the remaining part, this does not seem to satisfy the council in accordance with the opinion of the law of Theodosius written to Apollonius.[202] But the council should by all means gain the fourth part, whether it is to be assigned to the one daughter who has been joined in a marriage to a decurion, or whether it is to be collected from the other heirs, with the daughter who married a decurion to be kept beyond doubt immune from such a provision of the fourth part, since the

[201] Combine with C. 5.27.8–9, and possibly 10.44.4.
[202] Above, 2 in this Title.

satisfactum: et hoc observari non solum si ultimo elogio condito testator curialis decesserit, sed etiam si intestato diem suum obierit.

2. Sed si quid minus fuerit vel minime derelictum, hoc modis omnibus filio curiali vel filiae, quae nupta est eiusdem civitatis decurioni, ex substantia patris curialis vel deputari vel adimpleri: nullo obstaculo curiae opponendo, si secundum praedictam legem filius nepos pronepos pater avus proavus curiali morienti fuerint derelicti, qui nexibus curialibus ex quacumque vel dignitate vel occasione fuerint absoluti: in hoc etenim Theodosianae legi apertissime volumus esse derogatum. **3.** Et generaliter definimus ex omni causa neque masculos liberos neque filias copulatas matrimonio curialis minus quarta parentis substantiae habere, vel non extantibus filiis vel filiabus, sed aliis heredibus ipsam curiam secundum anteriores leges quartae curialis morientis habere solacium.

D. k. Iun. Constantinopoli Iustiniano A. II cons.

[4] [*Ὁ αὐτὸς βασιλεύς.*] ...

[5] [*Ὁ αὐτὸς βασιλεύς.*] ...

XXXVI De Imponenda Lucrativis Descriptione

[1] *Impp. Theodosius et Valentinianus AA. Apollonio pp.* **pr.** Descriptionis onere siliquarum quattuor, quas ex lucrativis iugationibus tantum, non humanis vel animalium censibus neque mobilibus rebus iubemus indici, etsi curiales non sint, maiores ac posteros liberamus, ut, si pater avus vel proavus filio nepoti pronepotive, vel filiae nepti proneptive (nec interest, nuptae sint curialibus nec ne) postrema voluntate vel inter vivos etiam donatione quicquam de suis opibus largiatur, memoratae descriptionis cesset indictio: eque diverso ut, si posteriores ad maiores praedicta sibi consanguinitate devinctos

council is satisfied through her husband for what pertains to her person. And this is to be observed not only if the decurion dies as a testator with a final will, but also if he meets his last day intestate.

2. But if anything less is left or nothing at all, this by all means is to be either assigned to or supplemented for the decurion son or the daughter who is married to a decurion of the same city from the property of the decurion father. No obstacle is to be placed in the way of the council if, in accordance with the aforementioned law, a son, grandson, great-grandson, father, grandfather, or great-grandfather have been left behind (as heir) by a dying decurion, and they have been released from the bonds to the council as a result of either any rank or opportunity; in this situation We want most openly for the Theodosian law to have been modified. **3.** And We define generally in every case that neither male children nor daughters joined in a marriage to a decurion are to have less than a fourth of the property of a parent, or if there are no sons or daughters, but other heirs, the council itself shall have the solace of a fourth (of the property) of the dying decurion in accordance with previous laws.

Given June 1, at Constantinople, in the consulship of Justinian Augustus, for the second time (528).

[4][203] [*The same Augustus* …]
(528–531).

[5] [*The same Augustus* …]

Thirty-Sixth Title Imposing a Tax Assessment on Gainful Acquisitions[204]

[1][205] *Emperors* Theodosius *and* Valentinian *Augusti to Apollonius, Praetorian Prefect.* **pr.** We free ascendants and descendants, even if they should not be decurions, from the burden of the assessment of four *siliquae*, which We order to be imposed only on gainful taxable property in land (*lucrativae iugationes*), and not on the census for persons or animals or

203 Two constitutions have fallen out.

204 *Res lucrativae* were sources of wealth, such as legacies and trusts, that a person received without having to pay for them, in contrast to wages or rents. As Blume (who translates *res lucrativae* as "gifts") mentions, Theodosius I imposed an annual tax on property belonging to decurions that passed into the ownership of non-decurions: C.Th. 12.1.107 (384), 12.1.123.2 (391). In 428, Theodosius II (C.Th. 12.4.1) set the tax as four *siliquae* (one-sixth of a solidus) for each taxing unit (*iuga* and *capita*) of such property.

205 = Nov. Theod. 22.2. Combine with C. 5.27.8–9, 10.3.5.2.

praefatis titulis suas conferant facultates, nullius accessione gravaminis huiusmodi liberalitas oneretur: ita enim necessariis sibi coniunctisque personis sub liberalitatis appellatione debitum naturale persolvitur. 1. Cuius auctoritatem iuris pariter valere sancimus, et si ab intestato succedant praefiniti sibi generis ordine sociati: ex his enim successionibus maxime debiti potius solutio quam muneris oblatio comprobatur, quae non largientibus etiam dominis ipsa propinquitatis serie deferuntur. 2. Ceteri vero, licet quadam inter se cognatione iungantur, numquam tamen curiale praedium sine praedicto onere lucrabuntur, nisi is forte, cui lucro res cesserit, eiusdem civitatis ordini sit obstrictus, qui, licet inter extraneos numeretur, vacuum tamen ea functione quod datum est consequatur: nam cum personae condicio non mutetur, nec rei quidem statum convenit immutari.

3. Lucrativas vero res eas tantum volumus appellari atque praedictae descriptionis gravamen excipere, quae hereditatis legati fideicommissi iure mortis causa donatione vel cuiuslibet postremae voluntatis arbitrio ad quempiam delabuntur. 4. Inter vivos etiam donatio simplici liberalitate confecta lucrativae merebitur et nomen et sarcinam. si vero vel socer futurus filii nepotis vel pronepotis sponsae adfinitatis coeundae causa donaverit, vel parens etiam filiam neptem vel proneptem curiali seu extraneo nubentem dotaverit, licet casus eventu res eius cui data est vertatur ad lucrum, nec inter lucrativas numerabitur nec descriptionis oneri subiacebit. nec enim iuris optimi est matrimonium, cum tot tantisque suis difficultatibus opprimatur, adventiciis etiam cumulare ponderibus.

5. Res vero, quae memoratis causis lucrativae semel nomen exordiumque sortita est, licet ab eo qui susceperit ad alterum emptionis vel cuiuscumque contractus iure migraverit, cum praedicto descriptionis gravamine procul dubio transferetur, ut vel sciens sibi imputet,

on movable property, so that, if a father, grandfather, or great-grandfather should bestow anything from his riches on a son, grandson, or great-grandson, or on a daughter, granddaughter, or great-granddaughter – it does not make any difference whether or not they are married to decurions – by a final wish or as a gift between living persons, the imposition of the aforementioned assessment will be voided. On the other hand, if descendants should confer their property (*facultates*) on ascendants linked to them by the relationships named above under the aforementioned categories, such generosity will not be burdened by the addition of any charge; for thus is a natural debt discharged to persons who are related (*necessarii*) and conjoined to one another under the title of generosity. 1. We ordain that the authority of this law have equal validity even if the people defined above, associated in order of birth, should succeed an intestate person; from these successions the payment of a debt is acknowledged much more than the offering of a gift, since they are provided by the very chain of relationships even when the owners themselves do not bestow them. 2. But the remaining people, although they might be joined among themselves by some kinship, will nevertheless never acquire an estate (*praedium*) belonging to a decurion without the aforementioned burden, unless perhaps the person to whose profit the property has passed should be bound to the council of the same city, and who, although he might be counted among the external heirs, shall nonetheless gain what has been given free from that obligation (*functio*). For since the condition of the person is not changed, it is proper that the status of the property also not change.

3. We want only those things to be called gainful acquisitions (*res lucrativae*), and to be liable to the charge of the aforementioned assessment, that pass to someone by right of inheritance, legacy, or trust, or by a gift in contemplation of death or by the decision of any final wish. 4. A gift made between living persons out of simple generosity will also gain both the title and charge of a gainful acquisition. But if a future father-in-law gives a gift to the fiancée of his son, grandson, or great-grandson to form their relationship, or a parent (*parens*) has provided a dowry for a daughter, granddaughter, or great-granddaughter marrying a decurion or an external person (*extraneus*, i.e., not a decurion), although by chance the property should turn out to be gainful for the person to whom it was given, it will not be counted among gainful acquisitions and will not be subject to the burden of the tax assessment. For it is not appropriate to the best law also to pile burdens from third parties (*adventiciis ponderibus*) on marriage, since it is oppressed by its many and great difficulties.

5. But property that for the stated reasons has once been allotted the designation and original status (*exordium*) of a gainful acquisition, although it has passed from the person who took it up to another by right of sale or any contract,

qui accepit oneratam, vel, si ignoraverit, quod interest consequatur: contraque si cuiuslibet contractus exordio lucrativae nomen evaserit, etsi postea lucri titulo in dominatum alicuius ceciderit, sarcinam memoratae descriptionis effugiet. **6.** Nulla enim in huiuscemodi causis confusionis intercedit occasio, si ad primordium tituli posterior quoque formetur eventus, nisi forte res decurionis, quae ad eum cuiuslibet mercimonii iure pervenerit, ad alterum fuerit postrema eius voluntate vel ab intestato vel inter vivos donatione translata: tunc enim, quia semel in personam cecidit principalis, veterum titulorum nequaquam ratione perspecta condicionem et onus merebitur lucrativae.

D. VII id. Mart. Constantinopoli post consulatum Dioscori et Eudoxii vv. cc.

XXXVII De Praebendo Salario

[1] *Imp. Constantinus A. ad Marcellinum comitem Orientis.* Nulli salarium tribuatur ex viribus rei publicae nisi ei, qui iubentibus nobis specialiter fuerit consecutus.

D. V non. Oct. Constantinopoli Limenio et Catullino conss.

XXXVIII Si Curialis Relicta Civitate Rus Habitare Maluerit

[1] *Impp. Arcadius et Honorius AA. Eutychiano pp.* Curiales omnes iubemus interminatione moneri, ne civitates fugiant aut deserant rus habitandi causa, fundum, quem civitati praetulerint, scientes fisco esse sociandum eoque rure esse carituros, cuius causa impios se patriam vitando demonstraverint.

D. XVIII k. Ian. Constantinopoli Arcadio IIII et Honorio III AA. conss.

will without doubt be transferred with the aforesaid burden of the tax assessment, so that if the person who received it did so knowingly he will count it to his cost, or, if he did not know, he will gain his interest (sc., in not having the charge on the land). On the other hand, if from the original status under any contract the name of gainful acquisition is omitted, even if later it passes to the ownership of someone under the title of gainful acquisition (*lucri titulo*), it will escape the burden of the aforementioned tax assessment. **6.** For in such cases no opportunity arises for confusion (about its origins), if a later outcome should be fashioned in accordance with the terms of the title, unless perhaps the property of a decurion, which has come to him by right of any commerce, is transferred to another by his final wish or on intestacy or as a gift between the living; for in that circumstance, since once it has passed into the person of a decurion (*principalis*, in the sense of chief magistrate), without examining at all the reasons for its previous titles, it will gain the condition and burden of a gainful acquisition.

Given March 9, at Constantinople, in the post-consulate of the viri clarissimi *Dioscorus and Eudoxius (442).*[206]

Thirty-Seventh Title Offering an Honorarium (*Salarium*)

[1][207] *Emperor* CONSTANTINE *Augustus to Marcellinus, Count of the East.* No one shall be offered an honorarium from the resources of a municipality except a person who has gained it by Our specific order.

Given October 3, at Constantinople, in the consulship of Limenius and Catullinus (349).

Thirty-Eighth Title If a Decurion Leaves the City and Prefers to Dwell in the Country

[1][208] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Eutychianus, Praetorian Prefect.* We order all decurions to be duly warned not to flee or desert their cities in order to live in the country, knowing that the farm, which they prefer over the city, is to be joined to the Treasury (i.e., confiscated) and that they will do without that country estate for the sake of which they have demonstrated themselves to be disloyal by avoiding their hometown.

Given December 15, at Constantinople, in the consulship of Arcadius, for the fourth time, and Honorius, for the third time, Augusti (396).

[206] Seeck dates this constitution to March 9, 443.
[207] = C.Th. 12.2.1. Combine with C. 8.11.2. The emperors should be Constantius and Constans Augusti, as in C. 8.11.2.
[208] = C.Th. 12.18.2.

XXXVIIII De Municipibus et Originariis

[1] *Imp. Antoninus A. Silvano.* Cum te Byblium origine, incolam autem apud Berytios esse proponis, merito apud utrasque civitates muneribus fungi compelleris.

[2] *Imp. Gordianus A. Frontoni.* Si, ut proponis, ea, quae ex causa fideicommissi te manumisit, ab ea libertatem iustam fuerit consecuta, quae originem ex provincia Aquitania ducebat, tu quoque eius condicionis eiusque civitatis ius obtines, unde quae te manumisit fuit. eorum enim condicionem sequi ex causa fideicommissi manumissos pridem placuit, qui libertatem praestiterunt, non qui rogaverunt.

[3] *Imp. Philippus A. Patroclo.* Filios apud originem patris, non in materna civitate, etsi ibi nati sunt, si modo non domiciliis retineantur, ad honores seu munera posse compelli explorati iuris est.

[4] *Impp. Diocletianus et Maximianus AA. Secundo.* Origine propria neminem posse voluntate sua eximi manifestum est.

[5] *Imp. Constantinus A. ad Maximum vicarium Orientis.* Si quis vel ex maiore vel ex minore civitate originem ducit, si eandem evitare studens ad alienam se civitatem incolatus occasione contulerit et super hoc vel preces dare temptaverit vel qualibet fraude niti, ut originem propriae civitatis eludat, duarum civitatum decurionatus onera sustineat, in una voluntatis, in una originis gratia.

PP. VIII k. Ian. Paulino et Iuliano conss.

XXXX De Incolis et Ubi Quis Domicilium Habere Videtur et de His Qui Studiorum Causa in Alia Civitate Degunt

[1] *Imp. Antoninus A. Paulino.* Non tibi obest, si, cum incola esses, aliquod munus suscepisti, modo si ante, quam ad alios honores vocareris, domicilium transtulisti.

Thirty-Ninth Title Townsmen and Natives (*Originarii*)[209]

[1] *Emperor* ANTONINUS *Augustus to Silvanus.* Since you state that you are from Byblos by birth, but are a resident (*incola*) in Beirut, you will rightly be compelled to perform services in both cities.

[2] *Emperor* GORDIAN *Augustus to Fronto.* If, as you state, the woman who manumitted you in accordance with a trust gained lawful liberty from a woman who derived her origin from the province of Aquitania, you also obtain the right both of that condition and of that city from which the one who manumitted you came. It has long been decided that those manumitted in accordance with a trust follow the conditions of those who provided liberty, not of those who asked for this (through a *fideicommissum*).

[3] *Emperor* PHILIP *Augustus to Patroclus.* It is established law that sons can be compelled to offices or services in the place of origin (*origo*) of their father, not in the mother's city even if they were born there, as long as they are not retained (there) by (having) domiciles.

[4] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Secundus.* It is manifest that no one can be excluded by his own wish from his own place of origin.

[5][210] *Emperor* CONSTANTINE *Augustus to Maximus, Vicar of the East.* If anyone derives his origin from either a larger or smaller city, if, while eager to avoid it, he transfers to a different city, taking advantage of residency, and, in addition to this, either attempts to present a petition or to strive by any fraud to elude his origin in his own town, he shall sustain the burdens of being a decurion in two cities, in one because of his wish and in the other because of his origin.

Given December 25, in the consulship of Paulinus and Julian (325).

Fortieth Title Residents and Where Someone Appears to Have His Domicile, and Those Who Live in Another City for the Sake of Studies[211]

[1] *Emperor* ANTONINUS *Augustus to Paulinus.* There is no prejudice to you, if, when you were a resident (i.e., living in a town not as a citizen; *incola*), you undertook some service, as long as you transferred your domicile (*domicilium*) before being called to other offices.

[209] See D. 50.1.
[210] = C.Th. 12.1.12.
[211] See D. 50.1.

[2] *Imp. Alexander A. Crispo.* **pr.** Nec ipsi, qui studiorum causa aliquo loci morantur, domicilium ibi habere creduntur, nisi decem annis transactis eo loci sedes sibi constituerunt, secundum epistulam divi Hadriani, nec pater, qui propter filium studentem frequentius ad eum commeat. **1.** Sed si aliis rationibus domicilium in splendidissima civitate Laodicenorum habere probatus fueris, mendacium, quo minus muneribus fungaris, non proderit.

[3] *Impp. Diocletianus et Maximianus AA. Alexandro.* Est verum eos, qui in territorio alicuius civitatis commorantur, velut incolas ad subeunda munera vel capiendos honores non adstringi.

[4] *Idem AA. Alexandro.* Cum neque originales neque incolas vos esse memoratis, ob solam domus sive possessionis, licet ex substantia decurionis adquisita sit, causam publici iuris auctoritas muneribus subiugari vos non sinet.

[5] *Idem AA. Maximo.* Si in patria uxoris tuae vel in qualibet alia domicilium defixisti, incolatus iure ultro te eiusdem civitatis muneribus obligasti.

[6] *Idem AA. et CC. Marcello.* Privilegio speciali civitatis non interveniente tantum originis ratione ac domicilii voluntate ad munera civilia quemque vocari certissimum est.

[7] *Idem AA. et CC. Aurelio.* **pr.** Cives quidem origo manumissio adlectio adoptio, incolas vero, sicut et divus Hadrianus edicto suo manifestissime declaravit, domicilium facit. **1.** Et in eodem loco singulos habere domicilium non ambigitur, ubi quis larem rerumque ac fortunarum suarum summam constituit, unde rursus non sit discessurus, si nihil avocet, unde cum profectus est, peregrinari videtur, quo si rediit, peregrinari iam destitit.

[8] *Imppp. Valentinianus Theodosius et Arcadius AAA. ... praefecto Augustali.* Senatores in sacratissima urbe domicilium dignitatis habere videntur.

[2] *Emperor* ALEXANDER *Augustus to Crispus.* **pr.** Those very people who stay in some place for the sake of studies (*studiorum causa*) are not believed to have a domicile there unless they have established an abode for themselves in that place for a period of ten years, in accordance with a letter of the deified Hadrian; nor does a father who rather frequently travels there because of a son who is studying. **1.** But if for other reasons you are proved to have a domicile in the most splendid city of Laodicea, a lie to keep you from performing services will be of no avail.

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Alexander.* It is true that those persons who sojourn in the territory of some city are not bound to undergo services or take offices like residents.

[4] *The same Augusti to Alexander.* Since you mention that you (pl.) are neither natives (*originales*) nor residents, the authority of public law will not allow you to be subject to services for the sole reason that you possess a house, even if it has been acquired from the property of a decurion.

[5] *The same Augusti to Maximus.* If you have established a domicile in your wife's home town or in any other city, under the law of residency you have of your own doing obligated yourself to services for the same city.

[6] *The same Augusti and the Caesars to Marcellus.* It is quite certain that each person is called to public services just on the basis of origin and wish for domicile, without a special privilege of the city intervening.

[7][212] *The same Augusti and Caesars to Aurelius.* **pr.** Origin, manumission, adlection,[213] and adoption make citizens, whereas, just as the deified Hadrian declared most clearly in his edict, domicile (only) makes residents. 1. And there is no doubt that individual people have a domicile in the same place where someone has established a household (*lar*) and the bulk (*summa*) of his property and fortune, from which place he would not again depart if nothing should call him away, from which place when he has set out he is seen to be abroad, and to which place if he returns, he has now ceased to be abroad.

[8] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to …, Augustal Prefect.*[214] Senators are deemed to have the domicile of their rank in the most sacred city (of Constantinople).

212 Possibly combine with C. 7.62.11.
213 Adlection here refers to the admission of new citizens into a town.
214 C.Th. 13.5.18, a different law dated February 18, 390, is addressed to Alexander, Augustal Prefect (of Egypt).

D. k. Mart. Valentiniano A. et Neoterio conss.

[9] *Idem AAA. Martiniano comiti Orientis.* **pr.** Mulieres honore maritorum erigimus et genere nobilitamus et forum ex eorum persona statuimus et domicilia mutamus. **1.** Sin autem minoris ordinis virum postea sortitae fuerint, priore dignitate privatae posterioris mariti sequantur condicionem.

D. IIII id. Nov. Constantinopoli Arcadio A. II et Rufino conss.

XXXXI De Honoribus et Muneribus Non Continuandis inter Patrem et Filium et de Intervallis

[1] *Impp. Severus et Antoninus AA. Septimio Zenoni.* **pr.** Sicut honores et munera, cum pater et filius decuriones sunt, in eadem domo continuari non oportet, ita vacationum concessa tempora non aliis prodesse possunt, quam qui ad eosdem vel alios honores eademque vel alia munera denuo vocantur. **1.** Pro infante vero filio, quem decurionem esse voluisti, quamquam fidem tuam in posterum adstrinxeris, tamen onera sustinere non cogeris, cum ad ea quae mandari possunt voluntatem dedisse videaris.

[2] *Imp. Gordianus A. Cyrillo.* Ab honoribus ad eosdem honores quinquennii datur vacatio, triennii vero ad alios. legatione autem perfunctis biennii vacatio concessa est.

[3] *Impp. Diocletianus et Maximianus AA. et CC. Niciae.* **pr.** Intervalla temporum, quae in unius persona locum habent, fratribus, licet communia possideant bona, minime prodesse frequenter constitutum est. **1.** Sane his missis, qui necdum functi muneribus ad haec idonei constituti vocari debent, vos, si ad obsequium civilium munerum reppererit paruisse, ne iterum interpellemini, praeses provinciae providebit.

Given March 1, in the consulship of Valentinian Augustus and Neoterius (390).

[9][215] *The same Augusti to Martinianus, Count of the East.* **pr.** We elevate women through the honor of their husbands; through the family (of their husbands) We ennoble them; on the basis of the legal status (*persona*) of their husbands We determine their (proper) legal forum and change their domicile. **1.** If, however, they later acquire a husband of a lesser station, they shall be deprived of their previous rank and follow the rank of their later husband.

Given November 10, at Constantinople, in the consulship of Arcadius Augustus, for the second time, and Rufinus (392).

Forty-First Title Offices and Services Not to be Continued between Father and Son, and Intervals (between Such Duties)

[1][216] *Emperors Severus and Antoninus Augusti to Septimius Zeno.* **pr.** Just as offices and services, when a father and son are (both) decurions, do not have to be continued in the same household, so periods of time granted for leaves cannot benefit others besides those who are called anew to the same or other offices and the same or other services. **1.** Nevertheless you are not compelled to sustain the burdens for an infant son whom you have wanted to be a decurion, although you have bound your faith for the future, since you are deemed to have given your willingness for those things that can be commanded.

[2] *Emperor Gordian Augustus to Cyrillus.* A leave of five years is given for repeating the same offices, and of three years for taking up others. However, for those who have performed an embassy a leave of two years has been granted.[217]

[3] *Emperors Diocletian and Maximian Augusti and the Caesars to Nicias.* **pr.** It has been decided frequently in imperial constitutions that the intervals of time that apply to one person do not benefit brothers, although they possess property in common. **1.** Certainly, if he has excused those persons who ought to be called when they have not yet performed services but are deemed suitable for these, the provincial governor, if he finds that you have complied obediently in (performing) public services, will see to it that you not be importuned again.

[215] = C.Th. 2.1.7; combine with C.Th. 3.15.1.
[216] Par. 1 = D. 50.1.21.6, which includes Septimius in the name of the addressee.
[217] Diocletian and Maximian, C. 10.65.3, establish that the leave of two years was for overseas embassies, as Blume points out.

XXXXII De Muneribus Patrimoniorum

[1] *Imp. Antoninus A. Philocyrio.* Civilia munera per ordinem pro modo fortunarum sustinenda sunt.

[2] *Idem A. Materno.* Munera, quae patrimoniis publicae utilitatis gratia indicuntur, ab omnibus subeunda sunt.

[3] *Imp. Alexander A. Atilio.* Qui immunitatem munerum publicorum consecuti sunt, onera patrimoniorum sustinere debent. in quibus causis et hospites recipiendi sunt.

[4] *Impp. Valerianus et Gallienus AA. Neroni.* Non videtur abhorrere ratione sententia, qua praeses provinciae equos curiales alere non personarum, sed patrimonii esse decrevit. et tamen si iniqua esset, omisso a te appellationis auxilio necessario permanet.

[5] *Imppp. Carus Carinus et Numerianus AAA. Antepisto.* Neque tempore aetatis neque numero liberorum a muneribus quae patrimoniorum sunt excusationem quis habere potest.

[6] *Impp. Diocletianus et Maximianus AA. Polymnesto.* Professio et desiderium tuum inter se discrepant. nam cum philosophum te esse proponas, vinceris avaritiae caecitate et onera quae patrimonio tuo iniunguntur solus recusare conaris. quod frustra te facere ceterorum exemplo poteris edoceri.

[7] *Idem AA. Alexandro.* Etiam minores aetate patrimoniorum muneribus subiugari solent. unde intellegis te frustra plenam immunitatem desiderare, cum munera quae impensas exigunt subire te necesse sit.

[8] *Idem AA. et CC. Longino.* Nec protostasiae vel sacerdotii vel decaprotiae munera corporalia sunt, sed tantum patrimonii esse non ambigitur.

[9] *Idem AA. et CC. Marciae.* Patrimoniorum munera mulieres etiam sustinere debent.

Forty-Second Title Services Associated with Personal Fortunes (*Patrimonia*)

[1] *Emperor* Antoninus *Augustus to Philocyrius.* Public services are to be sustained by the council (*ordo*) in proportion to their (the decurions') fortunes.

[2] *The same Augustus to Maternus.* Everyone most undergo services that are imposed on patrimonies for the sake of public utility.

[3] *Emperor* Alexander *Augustus to Atilius.* Those who have gained immunity from public services should sustain the burdens imposed on their patrimonies. The quartering of soldiers (*hospites*) is to be included in these categories.

[4] *Emperors* Valerian *and* Gallienus *to Nero.* The verdict by which the provincial governor decreed that feeding chariot horses (*curules*) is a service not of persons, but of patrimonies does not seem alien to reason. However, even if it were unfair, it remains yours since the necessary recourse of (lodging) an appeal has been omitted by you.

[5] *Emperors* Carus, Carinus, *and* Numerian *Augusti to Antepistus.* No one can have a dispensation from services that are based on patrimonies because of their time of life or the number of children.

[6] *Emperors* Diocletian *and* Maximian *Augusti to Polymnestus.* Your census declaration (*professio*) and your desire contradict one another. For although you state that you are a philosopher, you are conquered by the blindness of avarice, and you alone try to refuse the burdens that are enjoined upon your patrimony. That you are wasting your time doing this you will be able to be taught by the example of others.

[7] *The same Augusti to Alexander.* Even minors are customarily subject to services based on patrimonies. Thus you understand that you desire complete immunity in vain, since it is necessary for you to undergo services that require expenditures.

[8] *The same Augusti and the Caesars to Longinus.* There is no doubt that the services of the chief tax collector,[218] or of a priesthood, or of the chief civic magistrates (*decaprotia = principales*) are not physical ones (*corporalia*) but only involve the patrimony.

[9] *The same Augusti and Caesars to Marcia.* Women too ought to sustain the services that involve patrimonies.

[218] *Protostasia*, also in C. 10.62.3.

[10] *Exemplum sacrarum litterarum eorundem AA. et CC. ad praefectos.* Quantum ad extraordinarias indictiones pertinet, praesidibus significamus, ut omnes possessores ceterosque sciant conveniri debere, quandoquidem ea patrimonii munera esse constet meritoque ab omnibus agnosci debeant, quo facilius obsequiis publicis pareatur.

XXXXIII Quemadmodum Civilia Munera Indicuntur

[1] *Imppp. Carus Carinus et Numerianus AAA. Feliciano.* Cum te curatorem ad cogendas angarias creatum appellationem interposuisse proponas, praeses provinciae, si alterius curiae te esse animadverterit, ad alieni corporis munera vocari non sinet, quia eius partis oneribus respondere debes, cui te attributum esse commemoras.

[2] *Impp. Diocletianus et Maximianus AA. Dionysio.* Maioribus honoribus functos ad minores devocari non oportere rationis est.

[3] *Idem AA. Eutychiano.* Cum te omnibus muneribus functum esse adseveras, ad eadem munera, si aliorum civium copia est, qui obsequiis civilibus fungi possunt, praeses provinciae devocari te non permittet.

[4] *Idem AA. et CC. Regino.* Ultra modum sumptuum te muneribus civilibus gravari levatis aliis praeses provinciae non patietur, sed aequalitatem tam iuris quam censurae memor circa ordinem custodiet.

XXXXIIII De His Qui Sponte Munera Susceperunt

[1] *Imp. Alexander A. Feliciano.* Veterani, qui, cum possent se tueri immunitate his concessa, decuriones se fieri in patria sua maluerunt, redire ad excusationem quam reliquerunt non possunt, nisi certa lege et pacto servandae immunitatis vel partem eius oneris agnoverunt.

[10] *Copy of a Sacred Letter of the same Augusti and Caesars to the Prefects.* As far as extraordinary tax assessments are concerned, We indicate to the governors that they should know that all landowners and others shall be pressed (*conveniri*) when it is clear that the services involve patrimonies and that they should be acknowledged by everyone, so that public duties (*obsequia*) more easily be complied with.

Forty-Third Title How Public Services Are Assigned

[1] *Emperors* CARUS, CARINUS, *and* NUMERIAN *Augusti to Felicianus.* Since you state that you have submitted an appeal about your election to enforce requisition of draft animals (*angariae*), the provincial governor, if he ascertains that you belong to a different council, will not allow you to be called to the services of an order (*corpus*) that is not your own, because you ought to respond to the burdens of that party to which you say you have been assigned.

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Dionysius.* It is reasonable that those who have performed greater offices must not be summoned to lesser ones.

[3] *The same Augusti to Eutychianus.* Since you assert that you have performed all of the services, the provincial governor will not permit you to be summoned to the same ones if there is a supply of other citizens who can perform civic duties.

[4][219] *The same Augusti and the Caesars to Reginus.* For public services the provincial governor will not allow you to be burdened beyond the measure of the costs (involved) when the share for others is lightened, but, mindful of both the law and censure, he will protect equality in regards to the council.

Forty-Fourth Title Those Who Have Taken Up Services of Their Own Accord

[1] *Emperor* ALEXANDER *Augustus to Felicianus.* Veterans who, when they could protect themselves through the immunity conceded to them, have preferred to become decurions in their hometown, cannot return to the dispensation that they have relinquished, unless by a specific agreement and

[219] Possibly combine with C. 10.51.4, which has the same addressee. Lounghis *et al.* date this constitution to between June 1, 528, and April 7, 529.

[2] *Impp. Diocletianus et Maximianus AA. Valerio.* Qui publici muneris vacationem habet, si aliquem honorem excepto decurionatu sponte susceperit, ob id, quod patriae suae utilitatibus cesserit vel gloriae cupiditate paulisper ius publicum relaxaverit, competens privilegium non amittit.

[3] *Imp. Leo A. Pusaeo pp.* **pr.** Qui condicioni non obnoxius curiali quemlibet honorem vel munus voluntate propria in quacumque gesserit civitate, nullum praeiudicium circa fortunam suam statumque sustineat: sed tam ipse quam liberi eius et qui ex his in posterum procreandi sunt ab omni huiusmodi nexu cum suis facultatibus liberi alienique permaneant, ita tamen ut, si aliqua functio volentibus eis fuerit iniuncta, ex qua necesse sit aliquid eos accipere, quod ex data sibi pecunia in reliquis apud eos mansisse constiterit, solventes sine ulla molestia vel condicionis suae formidine discedant. **1.** Si quis vero ex his omnia decurionum munera vel functiones vel honores nulla imminente necessitate, sed sua sponte peregerit, eum pro sua liberalitate patrem civitatis, in qua voluntarius municeps apparebit, si hoc ei libuerit, fieri constituique hac lege decernimus.

D. v id. Nov. Constantinopoli Basilisco et Herminerico conss.

[4] *Imp. Iustinianus A. Menae pp.* **pr.** Eos, qui liberi fortuna curiali constituti postea se curiae cuiuscumque civitatis obtulerint, confidere volumus, quod posteritas eorum non solum iam procreata, sed etiam post talem deditionem procreanda huiusmodi fortuna libera manebit, sive specialiter sub hac lege curiae se obtulerint, ut ab his descendentes tali fortuna liberi maneant, sive nullam huiusmodi fecerint mentionem, nullo audente dicere, quod nati vel concepti post talem deditionem sequi paternam condicionem debeant: hoc enim speciali beneficio alacriores omnes ad conferendam civitatibus huiusmodi opitulationem constituere properavimus: ita tamen, ut nec occasione quartae portionis bonorum huiusmodi decurionis quicumque successores eius aliquam inquietudinem patiantur, utpote libera eius substantia omni curiali

pact for maintaining their immunity they have acknowledged just a portion of that burden.

[2] *Emperors* Diocletian *and* Maximian *Augusti to Valerius.* Anyone who has a dispensation from a public service, if of his own accord he takes up an office except for the decurionate, does not lose the privilege available to him for the reason that he has yielded to the interests of his hometown or in a desire for glory has relaxed public law for a short time.

[3][220] *Emperor* Leo *Augustus to Pusaeus, Praetorian Prefect.* **pr.** A person who, although not liable to the condition of being a decurion, has performed some office or service in any city of his own free will shall not sustain any prejudice concerning his fortune or status. Rather, both he himself and his children, as well as those who in the future are to be procreated from them, shall remain along with their property free and exempt from such a bond, but under the condition that, if any function is enjoined upon them willingly, from which it is necessary for them to receive something, by paying what is established to have remained as arrears with them from the money they have been given, they may depart (from their office) without any vexation or fear about their condition. **1.** But if one of these persons performs all the services, payments (*functiones*), or offices of the decurions without any imminent necessity, but of his own accord, We determine by this law that for his generosity, if he desires this, he become and be established father of the city in which he will appear as a voluntary townsman (*municeps*).

Given November 9, at Constantinople, in the consulship of Basiliscus and Herminericus (465).

[4][221] *Emperor* Justinian *Augustus to Menas, Praetorian Prefect.* **pr.** We want those who, though having been established as free from the fortune of the council, afterwards offer themselves to the council of any city, to be confident that their posterity, not only what has already been procreated, but also what is to be procreated after such a concession, will remain free from this sort of fortune, whether they offer themselves to the council specifically under the condition that their descendants remain free of such a fortune, or whether they make no such mention. No one will dare to say that those born or conceived after such a concession ought to follow the father's condition. For by this specific benefit We have hastened to make everyone quicker to confer such assistance

[220] Possibly combine with C. 1.36.1, from which the subscription was probably restored.

[221] Combine with C. 5.27.8–9, and possibly 10.35.3, which have a subscription dating them to June 1 (C. 5.27.8, by Krüger's emendation), at Constantinople, in the second consulship of Justinian (528).

gravamine conservanda. 1. Et si quid defunctus vel ex administratione curialium munerum vel ex quarta portione ad eandem curiam semel vel saepius devoluta vel ex alia quacumque causa eidem curiae debuisse probetur, hoc idem successores curialibus reddere minime dubitent. 2. Illis scilicet, quae super naturalibus filiis, quos naturalis pater sub hac lege curiae dedit vel postea dederit, ut legitimos tam ex testamento quam ab intestato successores habeat, non solum veteribus legibus[1], sed etiam nostris sanctionibus disposita sunt, praesenti lege excipiendis, ut non ipsi tantum filii naturales, sed etiam ex his procreandi mares paternam sequantur fortunam, vel maribus liberis minime subsistentibus pars quarta substantiae mortui curiae deputetur.

XXXXV De His Qui a Principe Vacationem Acceperunt

[1] *Imppp. Theodosius Arcadius et Honorius AAA. Rufino pp.* Nullus vacationem temporariam curialis accipiat, nisi id forte veris ac probatis causis adnotatio nostra concesserit.

D. prid. non. Iun. Constantinopoli Theodosio A. III *et Abundantio conss.*

XXXXVI De Vacatione Muneris

[1] *Imp. Gordianus A. Ianuario.* Muneris publici vacationem ea continere, quae non lege, non senatus consulto, non constitutionibus principum iniunguntur, merito responsum est. ad quam formam iuris pertinens si coeperis ad munera extraordinaria a magistratibus devocari, appellatione interposita poteris apud praesidem iuris rationibus protegi.

to their cities, under the condition that any successors of such a decurion suffer no disturbance in connection with the fourth portion of the goods, since his property is to be maintained free from every burden of the council.[222] **1.** And if the deceased should be proved to have owed anything to the same council either from the administration of his services to the council or from the fourth part that has devolved once or repeatedly to the same council or for any other reason, his successors shall not hesitate to restore this same amount to the decurions (*curiales*). **2.** Thus those things are to be excepted in the present law that have been provided for both in the old laws as well as in Our ordinances[223] concerning natural sons whom a natural father has given or afterwards will give to the council under the condition that he have legitimate successors both in accordance with his will and on intestacy, so that not only the natural sons themselves but also males to be procreated from them follow the father's fortune, or when there are no surviving male children the fourth part of the deceased's property be assigned to the council.

Forty-Fifth Title Those Who Have Received a Dispensation from the Emperor

[1][224] *Emperors Theodosius, Arcadius, and Honorius Augusti to Rufinus, Praetorian Prefect.* No decurion should receive a temporary dispensation (*vacatio*), unless perhaps Our response to a petition (*adnotatio*) has granted it for reasons true and proved.

Given June 4, at Constantinople, in the consulship of Theodosius Augustus, for the third time, and Abundantius (393).

Forty-Sixth Title Dispensation from Service[225]

[1] *Emperor Gordian Augustus to Januarius.* It has been appropriately responded (to a petition) that a dispensation from a public service includes those things that are not enjoined by law, a decree of the Senate, or the constitutions of the Emperors. If in keeping with this rule of the law you begin to be called by the magistrates to extraordinary services, upon making an appeal you will be able to be protected before the provincial governor by reasons of law.

[222] For the obligation of the fourth part of the decurion's property, see above. C. 10.35.
[223] See C. 10.35.3.
[224] = C.Th. 12.1.135.
[225] See D. 50.5.

XXXXVII De Decretis Decurionum Super Immunitate Quibusdam Concedenda

[1] *Impp. Diocletianus et Maximianus AA. Ursino.* Exceptis qui liberalium studiorum antistites sunt et qui medendi cura funguntur, decreto decurionum immunitas nemini tribui potest.

[2] *Idem AA. et CC. Cassio.* Ordinis ambitiosa decreta sacris constitutionibus reprobantur.

XXXXVIII De Excusationibus Munerum

[1] *Imppp. Carus Carinus et Numerianus AAA. Demetrio.* Etiam ii, qui nostra procurasse monstrantur, muneribus civilibus quae dignitati eorum congruunt fungi debent.

[2] *Pars actorum Diocletiani et Maximiani AA. id. Febr. ... Inductis Firmino et Apollinario et ceteris principalibus Antiochensium adstantibus Sabinus dixit: ... Diocletianus:* Certis dignitatibus data a nobis indulgentia est munerum civilium et personalium, id est his, qui aut ex protectoribus sunt aut ex praepositis. ii ergo ad munera personalia aut civilia non vocabuntur.

[3] *Idem AA. Marino.* Tutelae sollicitudo a muneribus civilibus non excusat, utpote nec tres simul iniunctae diversarum domuum eiusmodi beneficium praestent.

[4] *Idem AA. Attalo.* Hydraulae munerum civilium immunitatem sibi iure concessam probare minime possunt.

[5] *Idem AA. et CC. Marcellino.* Procuratores absentium rei publicae causa munerum civilium vacationem non habent.

Forty-Seventh Title Decrees of the Decurions about Granting Certain People Immunity

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Ursinus.* No one can be granted immunity by a decree of the decurions except for those who are adept (*antistites*) in the liberal arts and those who discharge medical care.

[2] *The same Augusti and the Caesars to Cassius.* Presumptuous decrees of the council are condemned by the sacred constitutions.

Forty-Eighth Title Excuses (*Excusationes*) from (Civic) Services[226]

[1] *Emperors* CARUS, CARINUS, *and* NUMERIAN *Augusti to Demetrius.* Even those who are shown to have administered (as procurators) ones for Us should perform public services that are appropriate to their rank.

[2] *Part of the record of* DIOCLETIAN *and* MAXIMIAN *Augusti on February 13 … After Firminus and Apollinarius had been led in, and with the chief civic magistrates of Antioch standing by, Sabinus said …*[227] *Diocletian:* Indulgence for public and personal services has been granted by Us to specific ranks, that is, to those persons who are from among the protectors (*protectores*) or the chiefs (*praepositi*).[228] Therefore those persons will not be called to personal or civic services (for municipalities).

[3] *The same Augusti to Marinus.* The care of tutelage (*tutela*) does not excuse someone from civic services, inasmuch as three assignments (of tutelage) at the same time for different households shall not provide such a benefit.

[4] *The same Augusti to Attalus.* Water-organ players cannot prove that they have been lawfully granted immunity from civic services.

[5] *The same Augusti and the Caesars to Marcellinus.* Procurators for those who are absent on public business do not have a dispensation from civic services.

[226] See D. 50.6.
[227] Corrupt traces of a Greek text in the manuscripts cannot be understood.
[228] The *protectores* were a military group that accompanied the emperor; whereas the term *praepositi* seems to refer to chiefs of imperial bureaus, perhaps, as Blume suggests following Cujacius, the people in charge of the emperor's military standards.

[6] *Idem AA. et CC. Gaio.* Venatoribus immunitas ob hanc professionem solam nullo iure concessa probari potest.

[7] *Imp. Constantius A. ad Catulinum vicarium.* Negotiantes vestiarios linteones purpurarios et parthicarios, qui devotioni nostrae deserviunt, visum est secundum veterem consuetudinem ab omni munere immunes esse.

[8] *Idem A. ad Taurum pp.* **pr.** Placet nullum omnino iudicem de cetero provincialibus inferendum aliquid indicere, ut ea tantum sedulo cunctorum studio pensitentur, quae canonis instituti forma complectitur vel nostra clementia decernit inferenda vel delegatione sollemniter sanciente vel epistulis praecedentibus. **1.** Sed si quid urguere forsitan coeperit, referri ad celsitudinem tuam statuimus et auctore te fieri et eo persoluto referri ad scientiam nostram, ut nobis iubentibus roboretur. **2.** Si quis autem usurpatoria temeritate amplius aliquid fuerit conatus exigere, obnoxius quadrupli repetitione teneatur. **3.** Quae severitas iussionis ad ordinariorum iudicum officiorumque terrorem debebit excurrere, ut, si eorum vel gratiosa conventia vel ignobili dissimulatione temeritas admiserit curialis, eos quoque damni simplicis poena castiget.

D. k. April. Mediolani Constantio A. VIIII *et Iuliano C.* II *conss.*

[9] *Imppp. Valentinianus Valens et Gratianus AAA. ad Claudium proconsulem Africae.* Illud convenit praecaveri, ne quis hanc, quae personalis est functio, pretio putet esse taxandam.

D. k. Dec. Triveris Valentiniano et Valente AA. conss.

[10] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad Hypatium pp.* Privatae rei nostrae privilegiis permanentibus nihil extra ordinem

[6] *The same Augusti and Caesars to Gaius.* It can be proved that immunity has not been granted by any right to hunters based on this declaration alone.

[7][229] *Emperor* CONSTANTIUS *Augustus to Catulinus, Vicar.* It has been decided, in accordance with ancient custom, that merchants dealing in clothing, linen, purple dye, and Parthian animal skins, who (all) serve Our Devotion, are immune from every service.

[8][230] *The same Augustus to Taurus, Praetorian Prefect.* **pr.** It is decided that henceforth no governor impose the payment of anything on the provincials, so that, through the diligent zeal of everyone, just those things be paid that the rule of the established tax (*canon*) embraces or that Our Clemency determines must be paid, either when a tax assessment ordains it according to custom or when letters (from the Emperor) precede. **1.** But if perhaps some matter begins to be pressing, We establish that it be reported to Your Highness, that it happen on your authority, and when it is paid be reported to Our knowledge, so that it might be confirmed at Our behest. **2.**[231] However, if out of presumptuous temerity someone tries to exact anything more, he shall be held liable to a fourfold restitution. **3.** This severity of the order should issue forth to terrorize the ordinary governors and the offices, so that if by their obliging connivance or their ignoble dissimulation the heedlessness of a decurion allows something, a penalty of the loss alone punish them too.

Given April 1, at Milan, in the consulship of Constantius Augustus, for the ninth time, and Julian Caesar, for the second time (357).

[9][232] *Emperors* VALENTINIAN, VALENS, *and* GRATIAN *Augusti to Claudius, Proconsul of Africa.* It is appropriate that this precaution be taken, that no one think that what is a personal service is reckoned at a price.[233]

Given December 1, at Trier, in the consulship of Valentinian and Valens Augusti (370).

[10][234] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Hypatius, Praetorian Prefect.* With the privileges of Our Privy Purse enduring, estates (*praedia*) that have been assigned under perpetual right shall endure no extraordinary charge (*nihil extra ordinem*), nor shall they be affected by

[229] Possibly combine with C. 8.11.1 = C.Th. 15.1.5 (July 27, at Sirmium, 338, so under the Emperor Constans). Seeck dates to July 27, 338.
[230] Pr.-1 = C.Th.11.16.8. Seeck dates to April 1, 356.
[231] Par. 2–3 = C.Th.11.16.11 (Valentinian and Valens to Secundus, Praetorian Prefect, March 19, at Constantinople, 365/368/370).
[232] = C.Th. 14.3.12, with much fuller wording.
[233] Blume refers to Paul, D. 50.4.16 pr., for the same rule.
[234] = C.Th. 11.16.13.

praedia iure perpetuo consignata sustineant, neque adiectis saepius ac praeter primum delegationis canonem postulatis adficiantur impendiis, quandoquidem neque aurario canoni sub privilegiis aestimato aliquid ex ea iubentibus nobis praebitionum diversitate decutitur, et pari cum ceteris aestimari sorte non convenit, quos praeter annonarias functiones aestimata perpetuo pensitationum praerogativa nexuerint.

PP. Karthagine id. April. post consulatum Syagrii et Eucherii.

[11] *Idem AAA. ad Syagrium pp.* **pr.** Eos, qui cum honore comitum nomine magistrorum memoriae praefuerint vel epistulis vel libellis, item eos, qui ibidem peragendis signandisque responsis nostrae mansuetudini obsecundant, omnium civilium munerum fieri iubemus exsortes. **1.** Igitur qui ex eo gradu palatio nostro abscesserint, adesse sibi competentia privilegia glorientur: qui vero superioribus dignitatibus creverint, nihilo minus huius loci privilegia praesto sibi fuisse laetentur.

Lecta III k. Sept. Capuae Antonio et Syagrio conss.

[12] *Idem AAA. ad Hypatium pp.* **pr.** Maximarum culmina dignitatum, consistoriani quoque comites, notarii etiam nostri et cubicularii omnes atque ex cubiculariis ab omnibus sordidis muneribus vindicentur. **1.** Ceteros autem, palatina vel militari intra palatium praerogativa munitos ita demum privilegium simile contineat, si prioribus statutis se ad eiusmodi exceptionem docuerint pertinere, ut non singulis indulta personis, sed in commune dignitati vel corpori huiusmodi beneficia doceantur fuisse concessa: circa rhetores atque grammaticos eruditionis utriusque vetusto more durante. **2.** Sordidorum vero munerum talis exceptio sit, ut patrimoniis dignitatum superius digestarum nec conficiendi pollinis cura mandetur aut panis excoctio aut obsequium pistrini, nec paraveredorum huiusmodi viris aut parangariarum praebitio mandetur, exceptis his, quibus ex more Raeticus limes includitur, vel

expenditures that have been demanded again and again and added over and above the initial tax (*canon*) of the assessment, seeing that nothing is struck off from the tax in gold (*aurarius canon*) assessed in view of (these) privileges as a result of the difference in payments resulting from Our orders, and it is not consistent for those persons to be assessed in an equal class with others whom, in addition to the payments for the tax in kind (*annonarias functiones*), the estimated prerogatives (i.e., the tax in gold) have bound perpetually.

Posted at Carthage, April 13, in the post-consulate of Syagrius and Eucherius (382).

[11][235] *The same Augusti to Syagrius, Praetorian Prefect.* **pr.** We order to be discharged from all civic services[236] those who, with the office of Counts or the title of Masters, have been in charge of [the Office of] Memory or Letters or Petitions, as well as those who obey Our Clemency in completing and signing responses. **1.** Therefore those from that rank who have departed Our palace should pride themselves that appropriate privileges are available to them. But those who have grown (in standing) through higher ranks should rejoice that the privileges of this place will be no less available to them.[237]

Read August 30, at Capua, in the consulship of Antonius and Syagrius (382).

[12][238] *The same Augusti to Hypatius, Praetorian Prefect.* **pr.** The highest levels of the greatest ranks, as well as the Counts of the Consistory, and Our Notaries and all Chamberlains and former Chamberlains shall be freed from base services (*munera sordida*). **1.** But a similar privilege shall include the others, that is those fortified with a civilian or military prerogative within the Palace, only if they show they reach such an exemption by previous statutes, so that such benefits are shown not to have been conceded to individual persons, but to have been granted in common to a rank or an association (*corpus*); the ancient custom will remain in force concerning rhetoricians and grammarians of each erudition (i.e., of Greek and Latin). **2.** The exemption from base services is to be of such a kind that the care of making flour (*conficiendi pollinis*) not be imposed upon the patrimonies of the ranks listed above, nor the baking of bread, nor the duty to serve as a baker (*obsequium pistrini*), nor shall the provision of post-horses[239] or of extra transport (*parangiariae*) be ordered for such men, except for those by whom the Rhaetian frontier is protected or the utility

[235] = C.Th. 11.16.14, with fuller wording.

[236] C.Th. 11.16.14 has "base services," and then goes on to list examples.

[237] Blume refers to Theodosius II and Valentinian III, C. 12.9.1 (444) for the privileges granted to the heads of imperial bureaus.

[238] = C.Th. 11.16.15.

[239] For post-horses, *paraveredi*, see also Constantine, C. 12.50.2 (326), Arcadius, Honorius, C. 12.50.19 (403).

expeditionis Illyricae pro necessitate vel tempore utilitas adiuvatur. **3.** Operarum atque artificum diversorum, excoquendae etiam calcis obsequia nulla de talibus adiumenta poscantur: materiam lignorum atque tabulata exceptorum virorum patrimonia non praebeant: carbonis quoque nisi eum, quem moneta sollemniter vel fabricatio secundum veterem morem poscit armorum, ab huiusmodi viris praebitio desistat: publicis vel sacris aedibus construendis atque reparandis, capituli atque temonis necessitas nulla mandetur: legatis atque adlectis sumptus possessio huiusmodi privilegiis munita non conferat. **4.** Hoc tamen his patrimoniis prosit, quae dignitatem proprio videntur nomine possidere. **5.** Etiam eos, qui simili honore functi sunt, generali praerogativa a praebitione sordidorum munerum vindicamus.

D. v id. Dec. Antonio et Syagrio conss.

[13] *Idem AAA. et Arcadius A. ad Neoterium pp.* Sordidorum munerum excusatio delata personis ad heredem successoremve transire non potest. neque enim potest esse perpetuum, quod non rebus, sed personis contemplatione dignitatis atque militiae indulsisse nos constat.

D. XVIII k. Mai. Mediolani Arcadio A. et Bautone conss.

[14] *Imppp. Valentinianus Theodosius et Arcadius AAA. Tatiano pp.* Eam legem, quam de extraordinariis sordidisque muneribus expressis vocabulis functionum et insignibus dignitatum sine ulla ambage praescripsimus, ita circa eos, in quos nostra munera redundarunt, servandam esse praecipimus, ut isdem beneficiis non quamdiu militaverint, sed quamdiu vixerint perfruantur.

D. XI k. April. Mediolani Tatiano et Symmacho conss.

[15] *Impp. Arcadius et Honorius AA. ad Messianum comitem rerum privatarum.* **pr.** Evidenter atque absolute iubemus, ne fundi ad patrimonium nostrum pertinentes, seu conductionis titulo seu perpetuo iure teneantur, aliquid praeter ordinem superindicti vel pretii petiti

of the expedition in Illyricum is aided in accordance with need or time. **3.** No assistance with days of labor or diverse artisans or even duties to cook lime should be demanded from such persons; the patrimonies of the men excepted should not provide wood for fuel or building boards; the provision of charcoal also should cease for such men, except for the one from whom coining money customarily demands it or the manufacture of arms in accordance with ancient practice. No requirement to construct and repair public or sacred buildings or to pay for the raising of recruits (*capituli atque temonis*) is to be ordered; a property (*possessio*) protected by privileges of this type should not provide expenses for ambassadors and people chosen for this service (*legatis atque adlectis*). **4.** But this shall benefit those patrimonies that are held to possess a rank under their own name. **5.** By a general prerogative We also exempt from the provision of base services those who have performed a similar office.

Given December 9, in the consulship of Antonius and Syagrius (382).

[13][240] *The same Augusti and* ARCADIUS *Augustus to Neoterius, Praetorian Prefect.* The exemption from base services offered to persons cannot pass to an heir or a successor. For what We have manifestly granted, not for property but for persons in contemplation of rank and service, cannot be perpetual.

Given April 14, at Milan, in the consulship of Arcadius Augustus and Bauto (385).

[14][241] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Tatianus, Praetorian Prefect.* We instruct that that law,[242] which We prescribed concerning extraordinary and base services with specific names for the functions and titles of ranks without any ambiguity, be maintained in connection with those persons upon whom Our gifts have redounded, so that they enjoy the same benefits not for as long as they will have been in service, but for as long as they will have lived.

Given March 22, at Milan, in the consulship of Tatianus and Symmachus (391).

[15][243] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Messianus, Count of the Privy Purse.* **pr.** We order clearly and firmly that the farms belonging to Our Patrimony, whether they should be held under title of lease or under perpetual right, not recognize anything out of order in the name of an extraordinary

[240] = C.Th. 11.16.16, which correctly has the emperors as Valentinian, Theodosius, and Arcadius Augusti.
[241] = C.Th. 11.16.19, which adds that Tatianus is Praetorian Prefect of the East.
[242] C.Th. 11.16.18 (390).
[243] = C.Th. 11.16.20. Seeck dates to June 14, 389.

nomine vel de sordidis quibuscumque muneribus agnoscant. nam hoc et a divis principibus impetratum est et a nostra serenitate reparatum. 1. Quisquis igitur iudicum contra fecerit, quinque pondo auri de facultatibus, alia de officiis suis, totidem et curialibus, qui exsequi male iussa festinant, noverit eruenda.

D. XVII k. Iul. Mediolani Olybrio et Probino conss.

[16] *Idem AA. et Theodosius A. Melitio pp.* Ab illustribus personis sordida munera et extraordinariae necessitatis damna removemus.

D. XV k. Mart. Ravennae Honorio VIIII et Theodosio V AA. conss.

XXXXVIIII De Quibus Muneribus vel Praestationibus Nemini Liceat Se Excusare

[1] *Impp. Honorius et Theodosius AA. Herculio pp.* **pr.** Comparationi transvectionique specierum universi sine ullo privilegio coartentur ad necessitates Illyricianas: nam in his dumtaxat titulis nullum sub quodam cessare privilegii velamento censemus. 1. Sed sub hac condicione, cum tempus exegerit, huiusmodi collationi succumbant, ut non tantum requiratur idoneus, verum universi pro portione suae possessionis iugationisque ad haec munia coartentur, et a summis sarcina ad infimos usque decurrat.

D. III id. April. Constantinopoli Basso et Philippo conss.

[2] *Impp. Theodosius et Valentinianus AA. ad Taurum pp.* Cum ad felicissimam expeditionem numinis nostri omnium provincialium per loca, qua iter adripimus, debeant nobis ministeria exhiberi, neminem

charge (*superindicti*) or price demanded (sc., as commutation for a tax), or concerning any base services whatsoever. For this has both been established by the deified emperors and has been restored by Our Serenity. **1.** Therefore whichever governor (*iudex*) acts to the contrary shall know that 5 pounds of gold are to be paid from his property, another 5 pounds from his offices, and an equal amount from the decurions who hasten to carry out what has been badly ordered.

Given June 15, at Milan, in the consulship of Olybrius and Probinus (395).

[16][244] *Emperors* Honorius *and* Theodosius *Augusti to Melitius, Praetorian Prefect.* We remove base services and the losses for extraordinary requirements (i.e., extraordinary tax charges) from persons with the rank of *illustris*.

Given February 16, at Ravenna, in the consulship of Honorius, for the ninth time, and Theodosius, for the fifth time, Augusti (412).

Forty-Ninth Title Services and Payments from Which No One May Excuse Himself

[1][245] *Emperors* Honorius *and* Theodosius *Augusti to Herculius, Praetorian Prefect.* **pr.** Everyone shall be pressed for the purchase and transport of supplies for the needs in Illyricum, without any privilege: for in precisely these categories We decree that no one be exempt under the cover of any privilege. **1.** But they are to be liable to such a payment under this condition, that when the occasion demands, not only should a suitable (*idoneus*, i.e., solvent) person be sought out, but that everyone be pressed for these duties in proportion to his property and his tax liability for land (*iugatio*), and that the burden run from the loftiest persons to the lowest.

Given April 11, at Constantinople, in the consulship of Bassus and Philippus (408).

[2][246] *Emperors* Theodosius *and* Valentinian *Augusti to Taurus, Praetorian Prefect.* Since services ought to be provided for Us for the most felicitous expedition of Our Divine Majesty throughout the places of all the provincials where

[244] = C.Th. 11.16.23, where the emperors are Arcadius, Honorius, and Theodosius; combine with C.Th. 11.18.1, which correctly gives the emperors as Honorius and Theodosius, but has the date as the consulship of Honorius, for the eighth time, and Theodosius, for the third time, Augusti (409).

[245] = C.Th. 11.17.4, with somewhat different wording; combine with C.Th. 15.1.49, which has Herculius as Praetorian Prefect of Illyricum, and the subscription as "Given April 9, at Constantinople, in the consulship of Our Lords Honorius, for the ninth time, and Theodosius, for the fifth time, Augusti (412)." Seeck dates this constitution to April 9, 407.

[246] = C. 1.2.11 (in part).

ab angariis vel parangariis vel plaustris vel quolibet munere penitus excusari praecipimus, sed omnes, sive ad divinam nostram domum sive ad venerabilis Augustae vel ad sacrosanctas ecclesias vel quaslibet illustres domos pertinent, nec lege pragmatica nec divina adnotatione sacrove oraculo excusatos indictionibus magnificae tuae sedis tempore nostrae expeditionis oboedire decernimus.

D. XIII k. Mart. Constantinopoli Valentiniano A. VI et Nomo conss.

[3] *Imp. Leo A. Dioscoro pp.* Hac providentissima lege statuimus omni excusatione cessante nullaque persona vel dignitate penitus excepta, in quibuscumque locis administrationi sublimitatis tuae commissis opus exegerit, murorum constructionem seu comparationem frumenti aliarumque specierum sine ullo impedimento, prout commodum atque necessarium magnitudo tua perspexerit, fieri.

L Qui Aetate Se Excusant

[1] *Impp. Diocletianus et Maximianus AA. Severino et ceteris scholasticis Arabiis.* Cum vos adfirmetis liberalibus studiis operam dare, maxime circa professionem iuris, consistendo in civitate Berytorum provinciae Phoenices, providendum utilitati publicae et spei vestrae decernimus, ut singuli usque ad vicesimum quintum annum aetatis suae studiis non avocentur.

[2] *Idem AA. Theodoro.* Cum filios tuos patria potestate liberatos adhuc minores legitima aetate esse dicas, merito postulas, ut liberalibus studiis non avocentur. et ideo muneribus personalibus quae ad patrimonium non pertinent non adstringentur, si civium non est inopia.

[3] *Idem AA. Protelao.* **pr.** Manifesti iuris est maiores quinquaginta quinque annis invitos ad munera personalia vocari non posse. **1.** Cum

We hasten in Our march, We order that no one be excused from providing post-wagons or supplementary post-wagons (*angariae, parangariae*), from providing carts, or from any liturgy whatsoever, but We determine that everyone, whether they belong to Our divine household or that of the venerable Augusta or to the sacrosanct churches or to any illustrious households, (if) not excused by a general law (*lege pragmatica*) or by a Divine response to a petition (*adnotatio*) or a sacred imperial enactment (*oraculum*), obey the assessment (*indictio*) of Your magnificent office during the time of Our expedition.

Given February 16, at Constantinople, in the consulship of Valentinian Augustus, for the sixth time, and Nomus (445).

[3] *Emperor* Leo *Augustus to Dioscorus, Praetorian Prefect.* By this most provident law We establish that, with every excuse nullified and no person or rank whatsoever excepted, in whatever places entrusted to the administration of Your Sublimity a work demands it, the construction of walls or the purchase of grain or other supplies take place without any impediment, as Your Greatness considers advantageous and necessary.

(472?).[247]

Fiftieth Title Those Who Excuse Themselves on the Basis of Age

[1] *Emperors* Diocletian *and* Maximian *Augusti to Severinus and the other Arabian legal scholars.* Since you affirm that you devote your attention to liberal studies, especially concerning the profession of law, by remaining in the city of Beirut in the province of Phoenice, We determine that provision must be made for the public interest and your aspiration so that individuals not be called away from their studies up to the twenty-fifth year of their life.

[2] *The same Augusti to Theodorus.* Since you say that your sons were freed from their father's power but are still younger than the legal age, you rightly ask that they not be called away from their liberal studies. And for that reason they will not be bound to personal services that do not pertain to the patrimony, if there is not a shortage of citizens.

[3] *The same Augusti to Protelaus.*[248] pr. It is manifest law that persons older than 55 years[249] cannot be called unwillingly to personal services. 1. Thus, since you profess that you are older than 70, if after being nominated you have

[247] Seeck dates to 472–474.
[248] Krüger writes "Protesilaus."
[249] The age mentioned in the text is textually sound, but it contradicts the age limit of 70 stated later in the text and mentioned in the Digest (e.g., Ulp. D. 50.2.2.8, 50.6.4).

itaque septuagenario maiorem te esse profitearis, si nominatione facta appellationis auxilium interposuisti, tueri te notione praesidis provinciae potes iure concesso.

LI Qui Morbo

[1] *Imp. Gordianus A. Cassiano.* Si ea caecitate pater tuus oppressus est, ut utriusque oculi aciem prorsus amiserit, levamentum personalium munerum sentiet.

[2] *Impp. Diocletianus et Maximianus AA. Iuliano.* Cum articulari morbo debilitatum te esse dicas, iuxta iuris publici auctoritatem a personalibus muneribus vacationem habebis.

[3] *Idem AA. et CC. Celeri.* Podagrae quidem valitudo nec personalium munerum prodest ad excusationem: verum cum ita te valitudine pedum adflictum dicas, ut rebus propriis intercessum commodare non possis, adi rectorem provinciae, qui si adlegationibus tuis fidem adesse perspexerit, ad corporalia munera vocari te non patietur.

[4] *Idem AA. et CC. Regino.* Casus patris corporis munerum personalium filio iure non praestat excusationem.

LII De His Qui Numero Liberorum vel Paupertate Excusationem Meruerunt

[1] *Imp. Alexander A. Verecundo.* Numerus liberorum ab honoribus non excusat.

[2] *Imp. Philippus A. et Philippus C. Severino.* Filium ab hostibus captum ac necdum reversum ad excusationem munerum personalium patri proficere non posse magis placuit.

[3] *Idem A. et C. Nonno.* **pr.** Nepotes in locum parentum succedentes vice eorum prodesse consueverunt. **1.** Et ideo si quinque numerus liberorum ex amissorum filiorum nepotibus suppletur, a muneribus personalibus is, quem patrem tuum esse dicis, iuxta constituta excusatur.

interposed the aid of an appeal, you can protect yourself when the right is granted after an investigation by the governor.

Fifty-First Title Those Who (Excuse Themselves) Because of Disease

[1] *Emperor* GORDIAN *Augustus to Cassianus.* If your father has been oppressed by that type of blindness whereby he has completely lost the sight of each eye, he will perceive an alleviation from his personal services.

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Julian.* Since you say that you are debilitated by a disease of the joints, you will have a dispensation from personal services in accordance with the authority of public law.

[3] *The same Augusti and the Caesars to Celer.* The illness of gout is of no use for being excused from personal services; but since you say that you are so afflicted by an illness of the feet that you cannot provide attention to your own affairs, approach the provincial governor who, if he ascertains that there is trustworthiness in your allegations, will not allow you to be called to physical services.

[4][250] *The same Augusti and Caesars to Reginus.* A father's physical decay does not provide a legal exemption from personal services for his son.

Fifty-Second Title Those Who Have Merited a Dispensation Because of the Number of Children or Poverty

[1] *Emperor* ALEXANDER *Augustus to Verecundus.* The number of children does not provide a discharge from (the duty to hold) offices.

[2] *Emperors* PHILIP *Augustus and* PHILIP *Caesar to Severinus.* It has rather been determined that a son who was captured by the enemy but not yet returned cannot help a father obtain a discharge from personal services.

[3] *The same Augustus and Caesar to Nonnus.* **pr.** Grandchildren succeeding in the place of their parents have customarily served (to gain a discharge from services) in their place. **1.** And for that reason if the number of five children is replenished from grandchildren by lost sons, the person who you say is your father is excused from personal services in accordance with the (imperial) constitutions.

[250] Possibly combine with C. 10.43.4.

[4] *Impp. Diocletianus et Maximianus AA. Domno.* Cum facultates tuas in filium tuum contulisse te nec quicquam habere proponas, respectu eius patrimonii quod tuum esse desiit muneribus civilibus non adstringeris.

[5] *Idem AA. et CC. Marciae.* De personalibus muneribus, quae feminis pro sexus condicione indicuntur, exemplo marium quinque superstitum numero liberorum eas excusari divi parentes nostri constituerunt.

[6] *Imp. Constantinus A. Dalmatio.* **pr.** Eos, qui cuiuscumque sexus liberos quinque habeant, impetrata semel vacatione potiri convenit, ita ut, si in hoc numero filius legitimae aetatis inveniatur, obeundis statim pro suo patre muneribus applicetur, patribus, qui filios vel filias quinque habuerint, promissa legibus immunitate servanda. **1.** Quod si quis propter censum tenuiorem vacationem meruerit atque hoc probaverit, beneficio potiatur, si propter rerum angustias ad personalia vocatur obsequia.

D. XIIII k. Febr. Sirmio Crispo III et Constantino II conss.

LIII De Professoribus et Medicis

[1] *Imp. Antoninus A. Numisio.* Cum te medicum legionis secundae adiutricis esse dicas, munera civilia, quamdiu rei publicae causa afueris, suscipere non cogeris: cum autem abesse desieris, post finitam eo iure vacationem, si in eorum numero eris, qui ad beneficia medicis concessa pertinent, ea immunitate uteris.

[2] *Imp. Gordianus A. Heracliano.* Grammaticos seu oratores decreto ordinis probatos, si non se utiles studentibus praebeant, denuo ab eodem ordine reprobari posse incognitum non est.

[3] *Imp. Philippus A. et Philippus C. Ulpiano.* Poetae nulla immunitatis praerogativa iuvantur.

[4] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Domnus.* Since you state that you have transferred your resources to your son and that you do not have anything in consideration for that patrimony that has ceased to be yours, you are not bound to civic services.

[5] *The same Augusti and the Caesars to Marcia.* Concerning personal services, which are imposed on women in accordance with the condition of their sex, Our deified predecessors have ruled that they (i.e., the women) are discharged on the example of males with five surviving children.

[6][251] *Emperor* CONSTANTINE *Augustus to Dalmatius.* **pr.** It is appropriate that those persons of either sex who have five children receive a discharge once it has been granted, such that, if a son of legal age should be found in this number, he be assigned immediately to undergo services in place of his father, while the immunity promised by the laws be maintained for fathers who have five sons or daughters. **1.** But if someone gains a discharge on account of a rather modest census and proves this, he shall possess the benefit if on account of a lack of property he is called to comply with personal services (*personalia obsequia*).

Given January 19, at Sirmium, in the consulship of Crispus, for the third time, and Constantine, for the second time.[252]

Fifty-Third Title Professors and Doctors

[1] *Emperor* ANTONINUS *Augustus to Numisius.* Since you say that you are a doctor with the Second Legion *Adiutrix*, you will not be compelled to undertake civic services as long as you are absent on public business. When, however, you cease being absent (on public business), after the end of the dispensation from that right, if you will be in the number of those persons who are included in the benefits conceded to (non-military) doctors, you will take advantage of this immunity.

[2] *Emperor* GORDIAN *Augustus to Heraclianus.* It is not unknown that grammarians or orators who have been approved by a decree of the decurions, if they should not show themselves to be useful to students, can be rejected again by the same council (*ordo*).

[3] *Emperor* PHILIP *Augustus and* PHILIP *Caesar to Ulpianus.* Poets are not aided by any privilege of immunity.

[251] = C.Th. 12.17.1, with fuller wording in the preface.

[252] The date is either 321, when Crispus and Constantine were both Consuls for the second time, or 324, when they both held the consulship for the third time, as Krüger points out.

[4] *Impp. Diocletianus et Maximianus AA. Malcho.* Oratione divi Pii liberalium studiorum professores, non etiam calculatores continentur.

[5] *Idem AA. et CC. Concedemoni.* Nec intra numerum praestitutum ordine invito medicos immunitatem habere saepe constitutum est, cum oportet eis decreto decurionum immunitatem tribui.

[6] *Imp. Constantinus A. ad populum.* **pr.** Medicos et maxime archiatros vel ex archiatris, grammaticos et professores alios litterarum una cum uxoribus et filiis nec non etiam rebus, quas in civitatibus suis possident, ab omni functione et ab omnibus muneribus civilibus vel publicis immunes esse praecipimus neque in provinciis hospites recipere nec ullo fungi munere nec ad iudicium deduci vel exhiberi vel iniuriam pati, ut, si quis eos vexaverit, poena arbitrio iudicis plectetur. **1.** Mercedes etiam eorum et salaria reddi iubemus, quo facilius liberalibus studiis et memoratis artibus multos instituant.

PP. v k. Oct. Constantinopoli Dalmatio et Zenophilo conss.

[7] *Imp. Iulianus A.* **pr.** Magistros studiorum doctoresque excellere oportet moribus primum, deinde facundia. **1.** Sed quia singulis civitatibus adesse ipse non possum, iubeo, quisquis docere vult, non repente nec temere prosiliat ad hoc munus, sed iudicio ordinis probatus decretum curialium mereatur, optimorum conspirante consensu.

D. xv k. Iul. acc. IIII k. Aug. Spoletio Mamertino et Nevitta conss.

[8] *Imppp. Valentinianus Valens et Gratianus AAA. ad Probum pp.* Reddatur unusquisque patriae suae, qui habitum philosophiae indebite et insolenter usurpare cognoscitur, exceptis his, qui a probatissimis approbati ab hac debent colluvione secerni. turpe enim est, ut patriae functiones ferre non possit, qui etiam fortunae vim se ferre profitetur.

[4] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Malchus.* Professor of liberal studies, but not also teachers of arithmetic (*calculatores*), are included in the legislative proposal (*oratio*) of the deified Pius.

[5] *The same Augustus and Caesars to Concedemon.*[253] It has often been established in constitutions that doctors do not have immunity within the established number against the will of the council, since they must be granted immunity by a decree of the decurions.

[6][254] *Emperor* CONSTANTINE *Augustus to the people.* **pr.** We instruct that doctors and especially chief physicians and former chief physicians, grammarians and other professors of literature, along with their wives and children as well as their property that they have in their cities, be immune from every payment (*functio*) and from all civic or public services, and that in the provinces they not receive guests (i.e., billeted soldiers) or perform any service, or be summoned to or produced in court or suffer an injury, so that, if anyone bothers them, he will be punished with a penalty at the discretion of the governor. **1.** We order that their compensation and salaries be given to them, so that they might more easily instruct many in liberal studies and the aforementioned arts.

Posted September 27, at Constantinople, in the consulship of Dalmatius and Zenophilus (333).

[7][255] *Emperor* JULIAN *Augustus.* **pr.** Teachers and professors of studies must first excel in their character, then in their eloquence. **1.** But since I am not able to be present in individual cities, I order that whoever wishes to teach should not suddenly and rashly jump into this service, but should gain a decree of the decurions after being approved by the judgment of the order, with the harmonious consensus of the best people.

Given June 17 and accepted July 29, at Spoleto, in the consulship of Mamertinus and Nevitta (362).

[8][256] *Emperors* VALENTINIAN, VALENS, *and* GRATIAN *Augusti to Probus, Praetorian Prefect.* Each and every person who is known to usurp the posture of philosophy undeservedly and insolently shall be returned to his hometown (*patria*), with the exception of those who, having been approved by the most esteemed people, ought to be separated from this collection of filth. For it is disgraceful that the person who proclaims that he can endure the power of fortune not be able to endure services (*functiones*) to his hometown.

253 The name may be corrupt; perhaps Cedemo.
254 Composed from C.Th. 13.3.1–3, with differences in wording.
255 = C.Th. 13.3.5.
256 = C.Th. 13.3.7

D. XIIII k. Febr. Sirmio Valentiniano np. et Victore conss.

[9] *Idem AAA. ad Praetextatum pu.* **pr.** Archiatri scientes annonaria sibi commoda a populi commodis ministrari honeste obsequi tenuioribus malint quam turpiter servire divitibus. **1.** Quos etiam ea patimur accipere, quae sani offerunt pro obsequiis, non ea, quae periclitantes pro salute promittunt.

D. III k. Febr. Triveris Valentiniano et Valente III AA. conss.

[10] *Idem AAA. ad Olybrium pu.* Si quis in archiatri defuncti est locum promotionis meritis adgregandus, non ante eorum particeps fiat, quam primis qui in ordine reperientur septem vel eo amplius iudicantibus idoneus approbetur: ita tamen ut, quicumque fuerit admissus, non in priorem numerum statim veniat, sed eum ordinem consequatur, qui ceteris ad priora subvectis ultimus poterit inveniri.

D. VI id. Mart. Valentiniano et Valente III AA. conss.

[11] *Impp. Honorius et Theodosius AA. Monaxio pp.* **pr.** Grammaticos oratores atque philosophiae praeceptores nec non etiam medicos praeter haec, quae retro latarum sanctionum auctoritate consecuti sunt privilegia immunitatesque, frui hac praerogativa praecipimus, ut universi, qui in sacro palatio inter archiatros militarunt, cum comitivam primi ordinis vel secundi adepti fuerint aut maioris gradum dignitatis adscenderint, nulla municipali, nulla curialium conventione vexentur, seu indepta administratione seu accepta testimoniali meruerint missionem: sint ab omni functione omnibusque muneribus publicis immunes, nec eorum domus ubicumque positae militem seu iudicem suscipiant hospitandum. **1.** Quae omnia filiis etiam eorum et coniugibus illibata praecipimus custodiri. **2.** Haec autem et professoribus memoratis eorumque liberis deferenda mandamus.

D. prid. k. Dec. Constantinopoli Constantio et Constante conss.

Given January 19, at Sirmium, in the consulship of Valentinian, Most Noble Boy, and Victor (369).

[9][257] *The same Augusti to Praetextatus, City Prefect.* **pr.** Chief physicians who know that food resources are provided them from the people's resources should prefer to accommodate (*obsequi*) the less well-off honorably than to serve the wealthy disgracefully. **1.** Also, We allow them to receive what healthy people offer for services (*obsequia*), not what people in peril promise in return for their health.

Given January 30, at Trier, in the consulship of Valentinian and Valens, for the third time,[258] *Augusti (370).*

[10][259] *The same Augusti to Olybrius, City Prefect.* If someone is to be included in the place of a deceased chief physician based on the merits of a promotion, he shall not become a participant in these things before he is approved as suitable on the judgment of the seven or more first members who are found in the order (of physicians); but only on the condition that whoever is admitted should not come into the number of the first members of the order, but gain that rank that can be located as the last after the others have been advanced to higher stations.

Given March 10, in the consulship of Valentinian and Valens, for the third time, Augusti (370).

[11][260] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Monaxius, Praetorian Prefect.* **pr.** We instruct that grammarians, orators, and instructors of philosophy, as well as doctors, enjoy this prerogative in addition to those privileges and immunities that they previously have gained by the authority of the ordinances that have been passed, so that all those who have served in the sacred palace among the chief physicians, since they have gained the rank of count of the first or second order or have ascended to a rank of a higher dignity, not be vexed by any summons (*conventio*, to perform a service) on the part of the town or the council, whether they have gained a discharge either after taking up administration (in the palace) or receiving a testimonial (i.e., a letter in support); they shall be immune from every duty and all public services, nor shall their households wherever they are situated undertake the billeting of a soldier or governor. **1.** We instruct that all these privileges be maintained undiminished for their children and wives. **2.** We also command that this be conferred upon the aforementioned professors and their children.

Given November 30, at Constantinople, in the consulship of Constantius and Constantine (414).

257 = C.Th. 13.3.8 pr.-1, with somewhat different wording.
258 Gothofredus suggests Valens' second consulship (368). Seeck dates to January 30, 368.
259 = C.Th. 10.3.9.
260 = C.Th. 13.3.16.

LIIII De Athletis

[1] *Impp. Diocletianus et Maximianus AA. et CC. Hermogeni.* Athletis ita demum, si per omnem aetatem certasse, coronis quoque non minus tribus certaminis sacri, in quibus vel semel Romae seu antiquae Graeciae, merito coronati non aemulis corruptis ac redemptis probentur, civilium munerum tribui solet vacatio.

LV De His Qui Non Impletis Stipendiis Sacramento Soluti Sunt

[1] *Imp. Antoninus A. Verino.* Ignominiae causa sacramento liberati honoribus abstinere debent, a muneribus autem civilibus excusati non sunt.

[2] *Impp. Diocletianus et Maximianus AA. Caro veterano.* **pr.** Cum ob provectae aetatis senium sis dimissus, honestam missionem consecutum te esse ambigi non potest. **1.** Habebis itaque a civilibus muneribus nec non etiam honoribus vacationem. non tamen ea privilegia, quae his competunt qui pleno stipendiorum numero funguntur, usurpare te ius permittit, quando non perfecto statuto militiae tempore nec omnibus stipendiis decursis sacramento solutum te esse etiam ipse confitearis.

[3] *Idem AA. Philopatori.* **pr.** Veteranis ita demum honorum et munerum personalium vacatio iure conceditur, si post vicesimum annum militiae, quam in legione vel vexillatione militaverunt, honestam vel causariam missionem consecuti esse ostendantur. **1.** Unde cum te in cohorte militasse commemoras, intellegis supervacuo vacationem tibi velle flagitare.

Fifty-Fourth Title Athletes

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Hermogenes.* Dispensation from civic services is customarily granted to athletes only if they should be proved to have competed through their whole life, having been deservedly awarded, without corrupting or purchasing their rivals, with no less than three crowns for a sacred competition, including at least once in one held at Rome or in old Greece.[261]

Fifty-Fifth Title Those Who Have Been Released from Their (Military) Oath Without Completing Their Service

[1] *Emperor* ANTONINUS *Augusti to Verinus.* Those who have been released from their (military) oath (*sacramentum*) because of ignominy should abstain from offices, but they are not excused from civic services.

[2] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Carus, a veteran.* **pr.** Since you have been dismissed because of the feebleness resulting from your advanced age, it cannot be doubted that you have gained an honorable discharge (*honesta missio*). **1.** Therefore you will have a dispensation from civic services as well as offices. However, the law does not permit you to claim those privileges that are available to those who perform the full number of their years of service, since you yourself admit that you were released from your oath without completing the established time for military service and without the passage of all the years of service.

[3] *The same Augusti to Philopator.* **pr.** A dispensation from offices and personal services is lawfully granted to veterans only if, after the twentieth year that they have served in a legion or a detachment (*vexillatio*), they should be shown to have gained an honorable discharge or one based on disability (*causaria*). **1.** Therefore since you mention that you have served in a cohort,[262] you understand that you are uselessly wishing to demand a dispensation for yourself.

[261] P. Lips. I 44 (= *Chart.Lat.Ant.* XII 526), where the rescript is addressed *ad Synodum Xysticorum et Thymelicorum et ividem*, has a longer, differently worded, version of this constitution. The old Greek games are the Olympian, Isthmian, Nemean, and Pythian games.

[262] The distinction seems to be between veterans of the legions, who were granted dispensations, and those of auxiliary or other forces, who were not. But Blume takes this as referring to service in a civil capacity.

LVI Quibus Muneribus Excusantur Ii, Qui Post Impletam Militiam vel Advocationem per Provincias Suis Commodis Vacantes Commorantur et de Privilegiis Eorum

[1] **pr.** Οἱ πληρώσαντες στρατείαν ἢ συνηγορίαν πρὸς τοῖς ὑπάρχουσιν αὐτοῖς προνομίοις μήτε σιτωνίαν ἢ ἐλαιωνίαν ἢ ἐποψίαν ἔργων ἢ λογοθέσιον ἢ ἐκδικίαν ἢ πατερίαν ἢ λογιστίαν ἢ ἀγορανομίαν ποιείτωσαν. **1.** Ἀλλ' ἔνθα ἂν οἰκῆσαι βουληθῶσι, μήτε ὑπαντᾶν ἀναγκαζέσθωσαν τοῖς ἄρχουσι περαιτέρω πυλῶν μήτε εἰς συλλόγους ἄκοντες καλείσθωσαν μήτε ὀνομαζέσθωσαν ἢ ὀνομαζέτωσαν μήτε διαγραφὰς παρεχέτωσαν προφάσει συνηθειῶν ἢ θεωρητικῶν. **2.** Ἐχέτωσαν δὲ καὶ μίαν οἰκίαν ἐλευθέραν μητάτων τῶν ἐπιδημούντων στρατιωτῶν καὶ τῶν ἐν τοῖς τόποις διατριβόντων, δηλονότι τῶν ἐχόντων ἀξίας τινὰς τὴν ἰδίαν ἀτέλειαν κεκτημένων· ἡ γὰρ διάταξις αὕτη προστίθησι ταῖς προτέραις εὐεργεσίαις καὶ οὐκ ἀφαιρεῖται ἐξ αὐτῶν. **3.** Παρεχέτωσαν δὲ τὰ δημόσια καὶ τιμάτωσαν τοὺς ἄρχοντας καὶ τιμάσθωσαν παρ' αὐτῶν. **4.** Ὁ δέ τι τῶν ἐν τῇ διατάξει παραβαίνων ἢ παραβαθῆναι συγχωρῶν πεντήκοντα λίτρας χρυσοῦ προστιμηθήσεται.

LVII De Conductoribus Vectigalium Fisci

[1] *Impp. Diocletianus et Maximianus AA. Punico.* Non alios a muneribus et honoribus vacationem habere, quam qui mancipatum suo nomine vectigal a fisco conducunt, certum est. quare eos, qui ab his quaedam exercenda accipiunt, nullis privilegiis esse munitos haud dubii iuris est.

LVIII De Libertinis

[1] *Impp. Diocletianus et Maximianus AA. et CC. Lucillo.* Condicio libertinitatis de muneribus civilibus tribuere non potest excusationem nec in ea quidem civitate, ubi domicilium libertinus habet.

Fifty-Sixth Title The Civic Services from Which Those Are Excused Who, After Completing Service or an Advocacy, Remain in the Provinces Without Their Benefits, and Their Privileges

[1][263] **pr.** Those who have completed service or an advocacy, in addition to their existing privileges, are not to perform the purchasing of grain or of olive oil, or the inspection of construction work, or an accounting, or a defense, or service as father of the city or curator or aedile. **1.** But wherever they should wish to live, they shall not be compelled to meet the governors outside of the gates, nor be called unwillingly to assemblies, or be nominated (for offices) or have to nominate, or provide the tax assessments under the title of customs or spectacles. **2.** They shall have one house free from the billeting of soldiers temporarily located or residing there, that is, those who have certain ranks having obtained their own immunity. For this constitution adds to the previous benefits and does not subtract from them. **3.** They are to pay public taxes and honor the governors and be honored by them. **4.** Whoever violates any of the measures in the constitution or allows it to be violated will be fined 50 pounds of gold.

Fifty-Seventh Title Lessees (*Conductores*) of Treasury Imposts

[1] *Emperors* Diocletian *and* Maximian *Augusti and Caesars to Punicus.* It is certain that no persons, other than those who are leasing an impost (*vectigal*) from the Treasury contracted in their own name, have a dispensation from services and offices. Therefore the law is hardly doubtful that those persons who receive from them the exercise of certain tasks are not protected by any privileges.

Fifty-Eighth Title Persons of Freed Status

[1] *Emperors* Diocletian *and* Maximian *Augusti and the Caesars to Lucillus.* The condition of being freed cannot provide a dispensation from civic services, not even in the city in which the freedperson has domicile.

[263] Restored from Bas. 54.7.33.

LVIIII De Infamibus

[1] *Impp. Diocletianus et Maximianus AA. Charitoni.* Infames personae, licet nullis honoribus, qui integrae dignitatis hominibus deferri solent, uti possunt, curialium tamen vel civilium munerum vacationem non habent: sed et sollemnibus indictionibus ob tutelam publicam eos satisfacere necesse est.

LX De Reis Postulatis

[1] *Imp. Alexander A. Niciae.* Reos criminis postulatos novos honores appetere non debere, antequam purgarent innocentiam suam, et a divis parentibus nostris et a me saepe rescriptum est.

LXI De His Qui in Exsilium Dati vel Ordine Moti Sunt

[1] *Pars edicti imperatoris Antonini A. propositi Romae V id. Iul. duobus Aspris conss.* Quibus posthac ordine suo vel advocationibus ad tempus interdicetur, post impletum temporis spatium non prorogabitur infamia.

[2] *Imp. Gordianus A. Ulpio.* Ad tempus exsulare decurio iussus et impleto tempore regressus pristinam quidem dignitatem recipit, ad novos vero honores non admittitur, nisi tanto tempore his abstinuerit quanto per fugam afuit.

LXII De Filiis Familias et Quemadmodum Pater pro His Teneatur

[1] *Impp. Severus et Antoninus AA. Eutycho.* Patrem emancipato filio consentientem ad decurionatum non teneri dubii iuris non est: tunc enim consentiendo pater ad decurionatum obligatur, si filium in potestate habeat. consentire autem etiam is videtur, qui non testificatur dissentire nominationi.

Fifty-Ninth Title Infamous Persons

[1] *Emperors* DIOCLETIAN *and* MAXIMIAN *to Chariton.* Infamous persons (*infames*),[264] although they cannot share in any offices that are customarily offered to people of uncompromised rank, nevertheless do not have a dispensation from the services of decurions or from civic ones. Rather, for the public protection they must satisfy the regular public charges (*indictiones*).

Sixtieth Title Indicted Defendants

[1] *Emperor* ALEXANDER *Augustus to Nicias.* Rescripts have often been issued both by Our deified parents and by myself that defendants indicted for a crime cannot seek new offices before they make clear their own innocence.[265]

Sixty-First Title Those Sent into Exile or Removed from the Council

[1] *Part of an Edict of Emperor* ANTONINUS *Augustus, Posted at Rome, July 11, in the consulship of the two Aspri.* Infamy will not be extended for those who henceforth are banned temporarily from their council or advocacies after the completion of their term.[266]

(212).

[2] *Emperor* GORDIAN *Augustus to Ulpius.* A decurion who was ordered into exile for a time and returns when the time is completed regains his earlier rank, but he is not admitted to new offices unless he has abstained from these for a time at least as long as he was absent because of exile.

Sixty-Second Title Sons in Power and How a Father Is Held Liable for Them

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Eutychus.* The law is not doubtful that a father is not held liable for service as a decurion when he consents on behalf of an emancipated son. A father is obligated by consent for service as a decurion if he should have the son in his power. However, someone is seen as consenting who does not assert that he disagrees with the nomination.

[264] The term *infamis* designates persons involved in disgraced professions, as well as people who have suffered legal disabilities as a result of criminal convictions and certain civil suits. The following phrase is taken from C. 12.35.2.

[265] C. 2.12.6 (223) is a comparable rescript from Alexander Severus.

[266] For the edict referred to, see Ulpian, D. 50.2.3.1.

[2] *Imp. Aurelianus A. Aspasio.* Cum appellasse te dicas, ostendis causam ad te pertinere: potueras enim nominato filio tantum contestari et non consentire honori ei delato.

[3] *Impp. Diocletianus et Maximianus AA. Crispino.* **pr.** Si ii, qui cum patre ad protostasiae munus vocati sunt, etiam nunc in patria potestate constituti sunt, ab huiusmodi necessitatibus liberentur, cum ex eadem familia ac domo duos ad ista obsequia destinari periniquum videatur. **1.** Sane eos, quos emancipatos esse atque ex familia exisse manifestum est, sine cunctatione retinere debebis.

[4] *Idem AA. Alexandro.* **pr.** Sine periculo tuo magistratus filium tuum curatorem constituit nec appellandi tibi necessitas incumbebat. **1.** Sane nominator, qui filium in potestate positum non consentiente patre ad munus devocavit, si tamen ex voluntate tua antea filius decurio factus non erat, detrimento muneris obligabitur.

LXIII De Periculo Successorum Parentis

[1] *Imp. Alexander A. Claudiano.* Si de proprio suo patrimonio muneris editionem tuo nomine pater tuus repromisit ideoque etiam sacerdotem te creari impetravit, onus erogationis commune omnium heredum eius esse praeses provinciae non ignorabit.

LXIIII De Mulieribus in Quo Loco Munera Sexui Congruentia et Honores Agnoscant

[1] *Imp. Philippus A. Claudio.* Malchaeam, quae aliunde oriunda alibi nupta est, si non in urbe Roma maritus eius consistat, non apud originem suam, sed apud incolatum mariti ad honores seu munera, quae personis cohaerent quorumque is sexus capax esse potest, compelli posse saepe rescriptum est. patrimonii vero munera necesse est mulieres in his locis in quibus possident sustinere.

[2] *Emperor* AURELIAN *Augustus to Aspasius.* Since you say that you have appealed, you show that the case applies to you (and hence you are liable). For you could have just made a declaration when your son was nominated and not consented to the office conferred on him.

[3] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Crispinus.* **pr.** If those who have been called along with their father to serve as the chief tax collector[267] are even now established in their father's power, they shall be freed from such obligations, since it seems quite unjust that two persons from the same family and household be nominated for these duties. **1.** Certainly, you will be obliged to retain without hesitation those who have manifestly been emancipated and have left the family.

[4][268] *The same Augusti to Alexander.* **pr.** The magistrate appointed your son as *curator* without your risk, and (so) the necessity of appealing was not incumbent upon you. **1.** Certainly the nominator, who without the father's consent summoned a son placed in (his father's) power to a service, will be obligated for any loss from the service only if the son had not previously been made decurion in accordance with your wish.

Sixty-Third Title The Risk of the Parent's Successors

[1] *Emperor* ALEXANDER *Augustus to Claudianus.* If your father promised from his own patrimony the performance of games in your name and for that reason brought about your also being made a priest, the provincial governor will not ignore that the burden of the expense is shared by all of his heirs.

Sixty-Fourth Title In What Place Women Should Acknowledge Services and Offices Appropriate to Their Sex

[1] *Emperor* PHILIP *Augustus to Claudius.* Rescripts have often been issued that (a woman such as) Malchaea, who though born in one place was married in another, if her husband should not be present in the city of Rome, can be compelled to the offices or services that adhere to persons and of which that sex can be capable, not in her city of origin, but where her husband lives. But women must sustain patrimonial services in those places in which they possess property.

[267] *Protostasia*, also in C. 10.42.8.
[268] Combine with C. 10.32.5 (286).

LXV De Legationibus

[1] *Impp. Valerianus et Gallienus AA. Achillino.* Pater trium incolumium liberorum legationibus publicis liberatur.

[2] *Idem AA. et Valerianus C. Marco.* **pr.** Cum vos proprio nomine sumptus ob defensionem publicam susceperitis, id, quod ad proprias erogationes collega vester acceperat, non vobis reddere heredes eius, sed si in ea causa est, ut restitui omnino oporteat, rei publicae debent potius inferre. **1.** Sane si honorariis advocatorum erat ea quantitas destinata, restitui illud vobis, qui haec praestaturi estis, non iniuria postulatis. **2.** Eum autem collegam vestrum, quem defensione patriae destitisse dicitis, apud provinciae praesidem desertae adlegationis arguere potestis.

[3] *Impp. Diocletianus et Maximianus AA. Muciano.* Transmarina legatione apud nos perfunctos constitutum est biennii vacationem munerum civilium et honorum habere, non eos, qui de proximo obsequium rei publicae videntur exhibuisse.

[4] *Imp. Constantius A. ad Titianum.* **pr.** Universi omnino ex comitibus vel ex praesidibus, qui suffragio perceperint dignitates, civilibus oneribus muneribusque teneantur adstricti, ne commoda publica cum umbratili suffragiorum pactione lacerentur. **1.** Eos tamen a praedictis oneribus excipi oportebit, qui in legationibus publicis versati sunt.

D. prid. k. Iul. Triveris Placido et Romulo conss.

[5] *Imppp. Theodosius Arcadius et Honorius AAA. Apodemio pp. Illyrici.* **pr.** Si quod extraordinarium concilium postulatur, cum vel ad nos est mittenda legatio vel vestrae sedi aliquid intimandum, id, quod inter omnes communi consilio tractatuque convenerit, minime in examen cognitoris ordinarii referatur. **1.** Provincialium enim desideria, quibus necessaria saepe fortuitis remedia deposcuntur, vobis agnoscere atque

Sixty-Fifth Title Embassies[269]

[1] *Emperors Valerian and Gallienus Augusti to Achillinus.* A father of three living children is freed from public embassies (*legationes*).

[2] *The same Augusti and Valerian Caesar to Marcus.* **pr.** Since you (plural) have undertaken expenses in your own name for defending the interests of your town (*defensio publica*), your colleague's heirs do not have to pay back to you what he had received for his own expenditures, but, if it is of such a nature that it must be returned to begin with, they should rather pay it to the municipality. **1.** Certainly if that amount had been assigned for advocates' honoraria, you do not wrongfully request that it be restored to yourselves, since you are going to provide these (expenses). **2.** But before the provincial governor you can accuse that colleague of yours, who you say failed in the defense of his hometown, of deserting the embassy.

[3] *Emperors Diocletian and Maximian Augusti to Mucianus.* It has been established in a constitution that those who have performed an overseas embassy with Us have a dispensation for two years from civic services and offices, not those who are seen to have displayed obedience to a municipality at a short distance.

[4][270] *Emperor Constantius Augustus to Titianus.* **pr.** All former Counts and governors who have gained their rank by recommendations[271] shall be held bound to civic (*civilibus*) burdens and services, lest the public interests be torn to shreds by a private agreement for recommendations. **1.** Those persons, however, who have been involved in public embassies must be excepted from the aforesaid burdens.

Given June 30, at Trier, on the consulship of Placidus and Romulus (343).

[5][272] *Emperors Theodosius, Arcadius, and Honorius Augusti to Apodemius, Praetorian Prefect for Illyricum.* **pr.** If any extraordinary council is requested, when, for example, an embassy has to be sent to Us, or something has to be communicated to your office, what has been agreed upon among all by a common plan and consideration should not be referred for examination by an ordinary investigator. **1.** For We permit you to acknowledge and explore the fortuitous desires of the provincials, for which necessary remedies are often

269 See. D. 50.7.
270 = C.Th. 12.1.36, with fuller wording, and the additional provision that those mentioned be liable to capitation tax.
271 On recommendations to gain a privilege or title, see C. 4.3.
272 = C.Th. 12.12.12, with some differences in wording; the second half of 1, from "but" on, is restored from this source.

explorare permittimus, ut sit examinis tui, quae ex his auxilio tuo protinus implenda sunt, et quae clementiae nostrae auribus intimanda videantur. 2. In loco autem publico de communi utilitate provincialium sententia proferatur, atque id, quod maioris partis probaverit adsensus, sollemnis firmet auctoritas.

D. v k. Aug. Constantinopoli Arcadio A. II et Rufino conss.

[6] *Impp. Honorius et Theodosius AA. Monaxio pp.* Quotiens ab Alexandrina civitate legatio destinatur, universos curiales praecipimus, qui intra urbem consistunt, si non aegritudine vel alia inexcusabili necessitate impediuntur, in locum curiae convenire et decreta sua propria subscriptione firmata viro spectabili praefecto Augustali insinuare, ut eius relatione comitati tuis virtutibus suas petitiones intiment et sub examine tuo perpensa legatione res ordinetur.

D. III non. Oct. Constantinopoli Theodosio A. VII et Palladio vc. conss.

LXVI De Excusationibus Artificum

[1] *Imp. Constantinus A. ad Maximum pp.* Artifices artium brevi subdito comprehensarum per singulas civitates morantes ab universis muneribus vacare praecipimus, si quidem ediscendis artibus otium sit accommodandum, quo magis cupiant et ipsi peritiores fieri et suos filios erudire.

D. IIII non. Aug. Feliciano et Titiano conss.

Et est notitia ista: architecti medici mulomedici pictores statuarii marmorarii lectarii seu laccarii clavicarii quadrigarii quadratarii (quos Graeco vocabulo λιθοθήκτας appellant) structores (id est aedificatores) sculptores ligni musarii deauratores albini (quos Graeci κονιάτας appellant) argentarii barbaricarii diatretarii aerarii fusores signarii fabri bracarii aquae libratores figuli (qui Graece κεραμεῖς dicuntur) aurifices vitrearii plumarii specularii eborarii pelliones fullones carpentarii sculptores dealbatores cusores linarii tignarii blattearii (id est πεταλουργοί).

demanded, but in such a way that it be your decision as to which of these are to be fulfilled with your help and which it might seem have to be communicated to the ears of Our Clemency. 2. However, the verdict (*sententia*) concerning the common utility of the provincials shall be produced in a public place, and the established authority shall affirm what the agreement of the majority has approved.

Given July 28, at Constantinople, in the consulship of Arcadius Augustus, for the second time, and Rufinus (392).

[6][273] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Monaxius, Praetorian Prefect.* Whenever an embassy from the city of Alexandria is appointed, We instruct all decurions who live within the city, if they are not impeded by illness or another ineluctable necessity, to meet in the place of the council and to affix on the decrees their own signature affirmed by the *vir spectabilis* Augustal Prefect, so that, accompanied by his report, they might communicate their petitions to Your Virtues and the matter might be ordered upon the consideration of the embassy under your examination.

Given October 5, at Constantinople, in the consulship of Theodosius Augustus, for the seventh time, and vir clarissimus *Palladius (416).*

Sixty-Sixth Title Excusing of Artisans

[1][274] *Emperor* CONSTANTINE *Augustus to Maximus, Praetorian Prefect.* We instruct that artisans of the crafts included in the submitted brief, living in individual cities, have a dispensation from all services, if indeed their free time is devoted to learning their skills, so that they more desire both to become more skilled themselves and to teach their sons.

Given August 2, in the consulship of Felicianus and Titianus (337).

And there is this notice: architects, doctors, mule veterinarians, painters, statue makers, marble masons, couch makers or cistern-keepers, locksmiths, chariot racers, stone cutters whom they call by the Greek term *lithothektai*, masons – that is, builders – wood engravers, mosaic workers, gilders, stucco workers whom the Greeks call *koniatai*, silver smiths, gold embroiderers, filigree workers, bronze smiths, metal founders, sculptors, trouser makers, water levelers, potters who in Greek are called *kerameis*, goldsmiths, glassblowers, feather embroiders,[275] mirror makers, ivory workers, furriers, fullers, wagon makers, engravers, whitewashers, coin makers, linen weavers, beam makers, purple dye workers – that is, *petalourgoi.*

[273] = C.Th. 12.12.15, with much fuller wording but omitting mention of Alexandria. The last clause is restored from the C.Th.

[274] = C.Th. 13.4.2.

[275] C.Th. has *plumbarii*, lead workers, for *plumarii*.

[2] *Idem AA. ad Leontium pp.* Mechanicos et geometras et architectos, qui divisiones partium omnium incisionesque servant mensurisque et institutis operam fabricationibus stringunt, et eos, qui aquarum inventos ductus et modos docili libratione ostendunt, in par studium docendi atque discendi nostro sermone compellimus. itaque immunitatibus gaudeant et suscipiant docendos, qui docere sufficiunt.

D. prid. non. Iul. Leontio et Sallustio conss.

LXVII De Potioribus ad Munera Nominandis

[1] *Imp. Antoninus A. Basilidae.* Si ipse vocatus ad munera civilia potiorem alium nominandum putaveris, age causam tuam.

LXVIII Si Propter Inimicitias Creatio Facta Sit

[1] *Imp. Alexander A. Aniceto.* Si propter inimicitias ad munera civilia creatus es, hanc tibi nominationem non nocere praesidis aequitas faciet, cum et publicae utilitatis intersit non ex inimicitia creationes fieri debere, sed existimatione vera et commodo rei publicae.

LXVIIII De Sumptuum Recuperatione

[1] *Imp. Gordianus A. Dionysio.* Muneribus civilibus non fungeris, quae personis mandantur, si quinque filios incolumes habeas. at si contra id privilegium ad munus fatigandi tui causa quidam te devocaverint tuque appellatione interposita securitatem reportaveris, a nominatoribus sumptus quos in litem feceris recuperabis.

[2][276] *The same Augusti to Leontius, Praetorian Prefect.* By Our speech We compel into an equal zeal for teaching and learning: mechanics, surveyors, and architects, who maintain the divisions and sections of all parts and stick strictly to measurements and construction plans, as well as those who find and show the directions and amounts of water (aqueducts) with skillful leveling. Thus, those who are capable of teaching should rejoice in immunities and take up pupils to teach.

Given July 6, in the consulship of Leontius and Sallustius (344).

Sixty-Seventh Title Nominating More Qualified People for Services

[1] *Emperor* ANTONINUS *Augustus to Basilides.* If you yourself, after being called to public services, think another more qualified person should be nominated, pursue your case.

Sixty-Eighth Title If an Appointment Has Been Made on Account of Enmity

[1] *Emperor* ALEXANDER *Augustus to Anicetus.* If you have been appointed to civic services on account of enmity, the fairness of the governor will bring about that this nomination not harm you, since it matters also for the public interest that appointments take place not on the basis of enmity, but on the basis of a true evaluation and the interest of the municipality.

Sixty-Ninth Title The Recuperation of Expenses

[1] *Emperor* GORDIAN *Augustus to Dionysius.* You do not perform civic services that are mandated to persons if you have five living children. But if some persons contrary to this privilege have summoned you to a service in order to wear you out, and you, after making an appeal, have obtained an exemption, you will recover from the nominators the expenses you have made for the lawsuit.

[276] = C.Th. 13.4.3, which correctly has the emperors as Constantius and Constans.

LXX Si Post Creationem Quis Decesserit

[1] *Imp. Gordianus A. Asiatico.* Si ante diem subeundi honoris atque muneris pater tuus defunctus est, conveniri eo nomine heredes eius non oportere praeses provinciae minime ambigit.

LXXI De Tabulariis Scribis Logographis et Censualibus

[1] *Imp. Constantius A. ad Catullinum pp.* Nullus omnino ex tabulariis vel scribis vel logographis eorumque filiis in quocumque officio militet, sed ex omnibus officiis, nec non et si intra nostrum palatium militant, necdum impleto quinquennio reperti et retracti protinus officiis municipalibus reddantur.

D. VIII k. Iul. Lauriaco Marcellino et Probino conss.

[2] *Imppp. Gratianus Valentinianus et Theodosius AAA.* Quicumque decurionum sponte se censuali ministerio manciparit, condicionem habeat, quam ipse delegit, depositurus sui ordinis penitus dignitatem, si eum necessitas quaestioni subdendum invenerit.

D. XV k. Oct. Constantinopoli Ricomere et Clearcho conss.

[3] *Impp. Arcadius et Honorius AA. Hadriano pp.* **pr.** Generali lege sancimus, ut, sive solidis provinciis sive singulis civitatibus necessarii fuerint tabularii, liberi homines ordinentur neque ulli deinceps ad hoc officium patescat aditus, qui sit obnoxius servituti. **1.** Sed et si quis dominorum servum suum sive colonum chartas publicas agere permiserit (consensum enim, non ignorantiam volumus obligari), ipsum quidem, in quantum interfuerit publicae utilitati, pro ratiociniis, quae servo sive colono agente tractata sunt, obnoxium attineri, servum autem competentibus

Seventieth Title If Someone Dies after His Appointment

[1] *Emperor* Gordian *Augustus to Asiaticus.* If your father died before the day for undergoing his office and service, the provincial governor does not at all doubt that his heirs must not be sued on that account.

Seventy-First Title Tax Officials, Scribes, Bookkeepers, and Assessors[277]

[1][278] *Emperor* Constantius *Augustus to Catullinus, Praetorian Prefect.* No one at all from among the tax officials (*tabularii*), scribes, or bookkeepers (*logographi*)[279] or their sons are to serve in any (imperial) office, but having been discovered and removed from all offices, even if they serve within Our palace, before the completion of a five-year period, they shall be restored straightaway to municipal offices.

Given June 24, at Lauriacum (Lorch), in the consulship of Marcellinus and Probinus (341).

[2][280] *Emperors* Gratian, Valentinian, *and* Theodosius *Augusti.* Whoever of the decurions delivers himself over to service as an assessor (*censualis*) shall have the condition that he has himself chosen, but will give up completely the rank of his order, if necessity finds that he must undergo interrogation.[281]

Given September 17, at Constantinople, in the consulship of Richomer and Clearchus (384).

[3][282] *Emperors* Arcadius *and* Honorius *Augusti to Hadrian, Praetorian Prefect.* **pr.** We ordain by a general law that if tax officials become necessary either for entire provinces or individual cities, free men be appointed, and that no entry to this office be available to anyone who is liable to slavery. **1.** But if any owner permits his slave or bound tenant to manage public documents – for We want his consent, not his ignorance, to be obligated – he himself, as much as this is in the public interest, is held liable for the accounts that have been handled under the management of the slave or bound tenant, while the slave, having been subjected to an appropriate lashing, is assigned to the

[277] "Assessors" is a translation for the term *censuales*, who were subordinate to the City Prefect in Rome and Constantinople and oversaw the taxation of senators, among other responsibilities.

[278] = C.Th.8.2.1, 12.1.31, the latter of which has the emperors correctly as Constantius and Constans.

[279] The C.Th. version has decurions, and it also has the people concerned restored to "municipal councils and offices."

[280] = C.Th. 8.2.4.

[281] As Blume points out, decurions could not be subjected to torture.

[282] = C.Th. 8.2.5.

adfectum verberibus fisco addici. dominorum enim interfuit ab initio providere, ne publicis actibus privata servitia immiscerentur.

D. VIII k. April. Mediolani Vincentio et Fravito conss.

[4] *Impp. Theodosius et Valentinianus AA. Cyro pp.* Boëthos logistarum demogrammateos logographos diastoleos, quae vocabula publicis dicuntur subiacere necessitatibus, sive quolibet alio nomine nuncupentur, non honore aut alicuius privilegii colore subnixos pro definitione legum inexorabilium suam fortunam subire compelli, quatenus nec publicis quicquam noceatur aut minuatur utilitatibus, et suis corporibus illi reddantur, quos vel patris vel maiorum obligatio vel sua constringit.

LXXII De Susceptoribus Praepositis et Arcariis

[1] *Imp. Constantinus A. ad Euphrasium rationalem trium provinciarum.* **pr.** Susceptores publicos absque omni mora aurum suscipere censemus, ne quis per hanc occasionem sumptus facere compellatur. **1.** Nam si solvere volens a suscipiente fuerit contemptus, testibus adhibitis contestationem debebit proponere, ut hoc probato et ipse securitatem debitam commissi nexu liberatus cum emolumentis accipiat et, qui suscipere neglexerit, eius ponderis quod debebatur in duplum fisci rationibus per vigorem officii praesidis inferre cogatur. **2.** Quod autem susceptores iudice cuius interest neglegente violaverint, ex ipsius iudicis facultatibus sarcietur.

D. XIIII k. Aug. Paulino et Iuliano conss.

[2] *Impp. Valentinianus et Valens AA. ad Secundum pp.* Iuxta inveteratas leges nominatores susceptorum et eorum, qui ad praeposituram horreorum et pagorum creantur, teneantur obnoxii, si minus idonei sint, qui ab isdem fuerint nominati, nec quicquam ex eorum substantia celebrata per interpositam personam emptione mercentur.

Treasury. For it was in the interest of owners to make sure from the outset that private slaves not be involved in public business.

Given March 25, at Milan, in the consulship of Vincentius and Fravitus (401).

[4] *Emperors* Theodosius *and* Valentinian *Augusti to Cyrus, Praetorian Prefect.* Assistants of city curators (*logistae*), public scribes, bookkeepers (*logographi*), and auditors – titles that are said to be subordinate to public necessities – or by whatever other name they might be called, supported by neither an office nor the pretext of any privilege, are compelled to undergo their fortune in accordance with the prescription of the inexorable laws, insofar as the public interests are neither harmed not diminished; and those whom either an obligation of their father or ancestors or of their own binds shall be returned to their corporations (*corpora*).

(440–441).[283]

Seventy-Second Title Tax Collectors, Bureau Chiefs, and Bookkeepers

[1][284] *Emperor* Constantine *Augustus to Euphrasius, Comptroller of the Three Provinces (Sardinia, Sicily, and Corsica).* **pr.** We decree that the public tax collectors (*susceptores*) exact gold without any delay, lest anyone be compelled to bear expenses as a result of this pretext. **1.** For if someone willing to pay has been scorned by the collector, he will be obliged to provide his testimony after summoning witnesses, so that, having proved this, he himself receive the receipt he is owed along with his expenses (*emolumenta*), having been freed from the bond of confiscation, and the one who neglected to collect be compelled by the vigor of the governor's office to pay to the accounts of the Treasury double the weight of what was owed. **2.** If the governor (*iudex*) responsible for it neglects any violation that the tax collectors have committed, it will be made good from the resources of the governor himself.

Given July 19, in the consulship of Paulinus and Julian (325).

[2][285] *Emperors* Valentinian *and* Valens *Augusti to Secundus, Praetorian Prefect.* In accordance with laws of long standing, nominators of tax collectors or of those who are elected to head granaries and districts (*pagi*), shall be held liable if the ones nominated by these same people should not be suitable, nor are they to acquire anything from their property by purchase completed through an intermediary.

[283] Seeck dates to August 18, 441.
[284] = C.Th. 12.6.2, with substantially different wording. Combine with C. 10.73.1.
[285] = C.Th. 12.6.8.

D. III k. Aug. Constantinopoli Valentiniano et Valente AA. conss.

[3] *Idem AA. ad Mamertinum pp.* Susceptores novi non modo praesentis anni debita, verum etiam species, quas ex reliquis inferunt, quia novae sunt ac recentes, suscipiant.

D. prid. k. Nov. Romae Valentiniano et Valente AA. conss.

[4] *Idem AA. ad Florentium comitem sacrarum largitionum.* **pr.** Neminem susceptionis munere functum ad idem munus adstringi, nisi prius se vinculo sollicitudinis superioris absolverit. nam neque eos qui placuerint gravare iusti est, neque illos qui displicuerint tenere prudentis. **1.** Integro igitur singuli anniversario anno transcurso cogantur exponere, quibus titulis suscepta disperserint, ut facilius, si quis in furto fuerit deprehensus, recentem queat redintegrare iacturam. **2.** Non perpetui autem exactores teneantur in continuata vexandorum provincialium potestate, veluti concussionum dominatione, sed per annos singulos iudiciaria sedulitate mutentur, nisi aut consuetudo civitatis aut raritas ordinis eos per biennium esse compellat.

D. XV k. Oct. Mantebri Gratiano nob. puero et Dagalaifo conss.

[5] *Idem AA. ad Germanianum comitem sacrarum largitionum.* Quotienscumque certa summa solidorum pro tituli qualitate debetur et auri massa transmittitur, in septuaginta duos solidos libra feratur accepta.

D. VI id. Ian. Romae Lupicino et Iovino conss.

[6] *Idem AA. et Gratianus A. ad Chilonem.* Frumenta, quae horreis inferuntur, pro illationis modo ilico apocharum cautionibus

Given July 30,[286] *at Constantinople, in the consulship of Valentinian and Valens Augusti (365).*

[3][287] *The same Augusti to Mamertinus, Praetorian Prefect.* New tax collectors should receive not only what is owed for the present year, but also taxes in kind that they (the taxpayers) pay on the basis of arrears, since they (the taxes in kind) are new and fresh.

Given October 31, at Rome, in the consulship of Valentinian and Valens Augusti (365).

[4][288] *The same Augusti to Florentius, Count of Imperial Finances.* **pr.** No one who has performed the task of tax collecting is to be bound to the same service unless he has first absolved himself from the fetter of his previous care. For it is not the mark of a just person to burden those who have performed satisfactory service, nor of a prudent person to hold those who have been unsatisfactory. **1.** Therefore after the passage of an entire year they shall be compelled individually to set out the accounts in which they have paid what they have received, so that, if anyone has been caught in theft, he more easily be able to restore a recent loss. **2.** For tax collectors shall not be held perpetually in a continuing power to vex the provincials, as if in domination resulting from extortion, but they must be changed for individual years by the diligence of the governor, unless either the custom of the city of the lack of candidates in the council (*ordo*) should compel them to serve for a two-year period.

Given September 17, at Mantebrum, in the consulship of Gratian, Most Noble Boy, and Dagalaifus (366).

[5][289] *The same Augusti to Germanianus, Count of Imperial Finances.* Whenever a certain sum of solidi is owed in accordance with the nature of the account and a lump of gold is transferred, a pound (of gold) shall be considered accepted as the equivalent of 72 solidi.

Given January 8, at Rome, in the consulship of Lupicinus and Jovinus (367).

[6][290] *The same Augusti and* Gratian *Augustus to Chilo.* Grain that is paid into the granaries should immediately be noted with written receipts (*apocharum*

[286] Since the date of C.Th. 12.6.7 is August 4, 365, Krüger suggests amending this date to August 11 (*iii id. Aug.*).
[287] = C.Th. 12.6.10, which has "are paid." Krüger points out that Mamertinus had already been succeeded as Praetorian Prefect by July 22, 365. Seeck dates to October 31, 364.
[288] Pr.-1 = C.Th. 12.6.11. Section 2 = C.Th. 12.6.22 (November 30, 386). Seeck dates to September 17, 365; Schmidt-Hofner, to from March, 364, until July, 365.
[289] = C.Th. 12.6.13.1. Combine with C. 11.7.2, and possibly 11.11.1. "At Rome" is an emendation for "at Reims" here and at C. 11.7.2.
[290] = C.Th. 12.6.16.

adnotentur. non autem oportet in horreis fiscalibus nisi fiscalia frumenta constitui.

D. v id. April. Treviris post consulatum Gratiani A. III et Equitii vc.

[7] *Imppp. Gratianus Valentinianus et Theodosius AAA. have Hypati carissime nobis.* Minime diu penes ipsos susceptores maneat facta collatio, sed statim quodcumque a provincialibus fuerit exsolutum sacris thesauris inferatur.

D. III k. Mai. Constantinopoli post consulatum Antonii et Syagrii.

[8] *Imppp. Valentinianus Theodosius et Arcadius AAA. Cynegio pp.* Exactores vel susceptores in celeberrimo coetu curiae consensu et iudicio omnium sub actorum testificatione firmentur, provinciarumque rectoribus eorum nomina, qui ad publici munus officii editi atque obligati fuerint, innotescant. et animadvertant, quicumque nominaverint, ad discrimen suum universa quae illi gesserint redundare.

D. VI k. Nov. Constantinopoli Honorio np. et Euodio conss.

[9] *Idem AAA. Cynegio pp.* **pr.** Modios aeneos atque lapideos cum sextariis atque ponderibus per mansiones singulasque civitates iussimus collocari, ut unusquisque tributarius sub oculis constitutis rerum omnium modis sciat, quid debeat susceptoribus dare: ita ut, si quis susceptorum conditorum modiorum sextariorumque vel ponderum normam putaverit excedendam, poenam se sciat competentem esse subiturum. **1.** Et submotis, quae contra utilitatem populorum omnium hactenus gesta sunt, frumenti quinquagesimas, hordei quadragesimas, vini et laridi vicesimas susceptoribus dari praecipimus. **2.** Humanitatis autem necessitate commoti in Armeniae susceptionibus longinquitatis causa frumenti et hordei quadragesimas, vini et laridi quintas decimas dari praecipimus.

D. IIII k. Dec. Constantinopoli Honorio np. et Euodio vc. conss.

cautionibus) in accordance with the amount of the payment. But no grain should be deposited in granaries belonging to the Treasury except for Treasury grain.

Given April 9, at Trier, in the post-consulate of Gratian Augustus, for the third time, and the vir clarissimus *Equitius (375).*

[7] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti: Hail Hypatius, most dear to Us.* A payment when made should not remain for long at all with the tax collectors themselves, but whatever has been paid by the provincials should at once be delivered into the sacred Treasuries.

Given April 29, at Constantinople, in the post-consulate of Antonius and Syagrius (383).

[8][291] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Cynegius, Praetorian Prefect.* Tax exactors or collectors shall be approved in the fullest meeting of the council by the consensus and judgment of everyone under the testimony of the written record, and the names of those who have been nominated and obligated for the service of public office are to be made known to the governors of the provinces. And those who have nominated candidates should be aware that everything that they (the nominees) do redounds to their own risk.

Given October 27, at Constantinople, in the consulship of Honorius, Most Noble Boy, and Euodius (386).

[9][292] *The same Augusti to Cynegius, Praetorian Prefect.* **pr.** We have ordered that bronze and stone *modius* measures along with *sextarii* (one-sixteenth of a *modius*) and weights be provided at the way stations and individual towns, so that each and every taxpayer should know by his own eyes, with the measures established for all things, what he ought to give to the tax collectors, under this (further) condition, that if any tax collector thinks the norm of the established *modius* and *sextarius* measures or the weights should be exceeded, he shall know that he will undergo a suitable punishment. **1.** And removing those practices that have up to now been contrary to the interest of all peoples, We instruct that the tax collectors be given one-fiftieth of the grain, one-fortieth of the barley, and one-twentieth of wine and bacon. **2.** However, moved by the necessity of kindness, We instruct that, in the cases of tax collections in Armenia, because of the long distances, they be given one-fortieth of grain and barley, and one-fifteenth of wine and bacon.

Given November 28, at Constantinople, in the consulship of Honorius, Most Noble Boy, and the vir clarissimus *Euodius (386).*

[291] = C.Th. 12.6.20.
[292] = C.Th. 12.6.21. A *modius* is roughly 1 peck, the standard Roman dry measure.

[10] *Idem AAA. Cynegio pp.* Susceptores praesentibus defensoribus et modum iugationis possessorum et species singulas vel earum numerum quantitatemque perscribant.

D. IIII k. Dec. Constantinopoli Timasio et Promoto conss.

[11] *Impp. Arcadius et Honorius AA. Benigno vicario urbis Romae.* Securitates semel publicatas et gestis lectas vini susceptoribus imputari et coeptam arcae discussionem volumus in apertum quaesita ratione deduci et omnes publicas securitates quae gestis tenentur a susceptoribus accepto ferri.

D. VI id. Iun. Mediolani Stilichone et Aureliano conss.

[12] *Idem AA. Pompeiano suo salutem.* Si aliquid a susceptore vel tabulario fraudis admissum esse possessor deprehendat, nemo eorum semel in interversione convictus id rursus officium gerat, in quo ante decoxit, etsi rescriptum nostrum elicitum clandestina supplicatione tulerit.

D. prid. k. Ian. Mediolani Stilichone et Aureliano conss.

[13] *Idem AA. Lucio comiti sacrarum largitionum.* **pr.** Duos tabularios seu numerarios et susceptores totidem per universas provincias oportere constitui clementia nostra praecepit. **1.** Scire autem volumus praetorianam amplissimam praefecturam eos, qui aurum largitionale susceperunt, nihil cum arcae ratiociniis habere commune, iudices autem provinciarum quinque libris auri multandos et primates officiorum capitali poena plectendos, si hoc non fuerit custoditum.

[10][293] *The same Augusti to Cynegius, Praetorian Prefect.* Tax collectors shall write down both the amount of the landowners' tax liability for land (*iugatio*) and their individual taxes in kind (*species*), or the number and quantity of these, in the presence of defenders (*defensores*, community advocates in tax matters).

Given November 28, at Constantinople, in the consulship of Timasius and Promotus (389).

[11][294] *Emperors* Arcadius *and* Honorius *Augusti to Benignus, Vicar of Rome.* We wish that receipts, once published and read into the records, be reckoned for the collectors of wine and that the audit of the accounts of the treasury (*arca*) once begun be brought out in the open with precise calculation and that all public receipts that are contained in the records be carried as received by the tax collectors.

Given June 8, at Milan, in the consulship of Stilicho and Aurelianus (400).

[12][295] *The same Augusti send greetings to their Pompeianus.* If a landowner should discover that any fraud has been committed by a tax collector or official of the tax office (*tabularius*), no one of them, once convicted for pilfering, shall ever again hold the office in which he previously rifled property, even if he brings Our rescript elicited by a furtive supplication.

Given December 31, at Milan, in the consulship of Stilicho and Aurelianus (400).

[13] *The same Augusti*[296] *to Lucius, Count of Imperial Finances.* pr. Our Clemency has instructed that two tax officials (*tabularii*) or auditors (*numerarii*) and an equal number of tax collectors must be appointed through all the provinces. 1. However, We want the most magnificent Praetorian Prefecture to know that those who have collected gold belonging to the imperial Treasury (*aurum largitionale*) have nothing to do with the reckonings of the (Prefecture's) treasury (*arca*); the provincial governors are to be fined 5 pounds of gold, and the chiefs (*primates*) of the offices visited with capital punishment, if this (separation) is not maintained.[297]

[293] = C.Th. 12.6.23. Seeck dates to November 28, 386.

[294] = C.Th. 12.6.26.

[295] = C.Th. 12.6.27.. Combine with C. 9.26.1, 12.61.3; C.Th. 1.12.8, 11.1.28.

[296] Krüger, based on C.Th. 12.6.29, adds Theodosius as an Augustus.

[297] Blume: "The meaning of 'arcae,' just as the term 'fiscalis arcae' in C. 12.49.4, is not beyond all doubt. It has sometimes been accepted as referring to a fund, or chest, of the Crown Domain, under the immediate control of the governor, and the ultimate control of the Comptroller and Count of the Crown Domain ... But the term was frequently used to designate the chest of the praetorian prefect. That was true particularly in Justinian's time." As Blume notes, other constitutions, including C. 10.75.3 (= C. 11.65.5.1), show "the constant encroachment by the praetorian prefect on the other funds and the fact that the emperors by this legislation attempted to prohibit that."

D. VI k. Febr. Basso et Philippo conss.

[14] *Impp. Honorius et Theodosius AA. Euchario suo salutem.* **pr.** Humilioribus officiis aut extraordinariis oneribus occupari curiales non patimur, ne publica vacillet utilitas. **1.** Susceptionem itaque vestium aequius est ab officio proconsulari vel ab his qui in eodem meruerunt sollemniter procurari. horum namque interest huiusmodi explorare rationem et quaerere qualitatem eorum, quorum ad contuendum cura commodior est. neque enim aequum est, ut ad officium lucra, ad curialem susceptionis tantum damna pertineant. **2.** Hanc igitur ab ordinibus iniuriam submovemus, exceptis his, si qui curialium in officio memorato aut militasse aut militare fuerit deprehensus.

D. prid. k. Mart. Ravennae Honorio VIIII et Theodosio V AA. conss.

[15] *Impp. Theodosius et Valentinianus AA. Volusiano pp.* **pr.** Aurum sive argentum quodcumque a possessore confertur, arcarius vel susceptor accipiat, ita ut provinciae moderator eiusque officium ad crimen suum noverit pertinere, si possessoribus ullum fuerit ex aliqua ponderum iniquitate illatum dispendium. **1.** Et quidquid ex provinciis ad nostrum dirigetur aerarium, id ad illustres viros aerarii nostri comites relatione deferatur.

D. III k. Mart. Ravennae post consulatum Felicis et Tauri vv. cc.

LXXIII De Ponderatoribus et Auri Illatione

[1] *Imp. Constantinus A. ad Euphrasium rationalem trium provinciarum.* Aurum, quod infertur a collatoribus, si quis vel solidos voluerit vel materiam appendere, aequa lance et libramentis paribus suscipiatur.

PP. XIIII k. Aug. Paulino et Iuliano conss.

Given January 27, in the consulship of Bassus and Philippus (408).

[14][298] *Emperors* HONORIUS *and* THEODOSIUS *Augusti send greetings to Eucharius.* **pr.** We do not allow decurions to be occupied with more humble offices or with extraordinary burdens, lest the public utility totter. **1.** Thus it is fairer that the collection of clothing[299] be customarily managed by the office of the Proconsul or by those who have served in it. For it is in their interest to explore this method and to investigate the quality of those persons. Moreover, it is not fair that profits accrue to the office, but only losses for the collection to the decurion. **2.** Therefore We remove this injustice from the town councils, with the exception of those cases in which any of the decurions has been discovered to have served or to be serving in the aforementioned office.

Given February 29, at Ravenna, in the consulship of Honorius, for the ninth time, and Theodosius, for the fifth time, Augusti (412).

[15][300] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Volusianus, Praetorian Prefect.* **pr.** A bookkeeper (*arcarius*) or tax collector should receive any gold or silver that is paid by a landowner, under the condition that the provincial governor and his office know that they face criminal liability if any expenditure has been paid by the landowners as a result of any iniquity in the weights. **1.** And whatever will be directed from the provinces to Our Treasury should be presented in a report to the *viri illustres* Counts of Our Treasury.

Given February 27, at Ravenna, in the post-consulate of the viri clarissimi *Felix and Taurus (429).*

Seventy-Third Title Weighers (*Ponderatores*) and the Payment of Gold

[1][301] *Emperor* CONSTANTINE *Augustus to Euphrasius, Comptroller of the Three Provinces (Sardinia, Sicily, and Corsica).* Gold that is paid by taxpayers shall be received with a fair balance and weights, if anyone wants to weigh out solidi or bullion.

Posted July 19, in the consulship of Paulinus and Julian (325).

[298] = C.Th. 12.6.31. Combine with C.Th. 6.29.9, 8.4.23, 11.1.32, 11.7.19–21, in which texts Eucharius is addressed as "Proconsul of Africa."

[299] The *vestis militaris* was a tax to provide clothing for soldiers.

[300] = C.Th. 12.6.32 pr. Combine with C. 12.60.5; C.Th. 11.1.35 (February 14, 429).

[301] = C.Th. 12.7.1 with fuller wording. Combine with C. 10.72.1 ("Given July 19").

[2] *Imp. Iulianus A. ad Mamertinum pp.* Quotiens de qualitate solidorum orta fuerit dubitatio, placet quem sermo Graecus appellat per singulas civitates constitutum zygostaten, qui pro sua fide atque industria neque fallat neque fallatur, contentionem dirimere.

D. VIIII *k. Mai. Salonae Iuliano A.* IIII *et Sallustio conss.*

LXXIIII De Auri Publici Prosecutoribus

[1] *Impp. Honorius et Theodosius AA. Anthemio pp.* **pr.** Auri prosecutores partim nulla praemissa, ut adsolet, prosecutoria aurum praesumunt, partim diutius retentant, quod statim fuerat adsignandum. **1.** Ideoque censemus, ne quis absque praecepto viri illustris comitis sacrarum largitionum vel coquendum aurum sumat vel capiat deinceps retinendum.

D. XIII *k. Aug. Honorio* VIII *et Theodosio* III *AA. conss.*

LXXV De His Quae ex Publica Collatione Illata Sunt Non Usurpandis

[1] *Imp. Constantinus A.* Nullus iudicum id, quod a re publica ex collatione susceperit, mutui interventione opposita vel invadat vel conetur invadere.

D. prid. non. Mart. Treviris Paulino et Iuliano conss.

[2] *Imppp. Gratianus Valentinianus et Theodosius AAA. Palladio.* Nullus penitus ex eo, quod refertur in conditis vel in arca continetur, ad quemlibet titulum usurpet, nisi forte praesumendi facultatem sublimium potestatum iussione perceperit.

D. III *id. April. Constantinopoli Antonio et Syagrio conss.*

[2][302] *Emperor* JULIAN *Augustus to Mamertinus, Praetorian Prefect.* Whenever doubt has risen about the quality of solidi, it is decided that a person whom the Greek language calls a *zygostates* (weigher), appointed in individual cities, resolve the controversy, who in accordance with his faith and industry neither deceives nor is deceived.

Given April 23, at Salona, in the consulship of Julian Augustus, for the fourth time, and Sallustius (363).

Seventy-Fourth Title Conveyers (*Prosecutores*) of Public Gold

[1][303] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Anthemius, Praetorian Prefect.* **pr.** The conveyers of gold sometimes take the gold when no order for conveyance has been provided, as is customary, and sometimes they hold on to it for a rather long time when it should have been signed over at once. **1.** For that reason We decree that no one, without an order of the *vir illustris* Count of Imperial Finances, either take up gold to be melted[304] or collect gold then to be retained.

Given July 20, in the consulship of Honorius, for the eighth time, and Theodosius, for the third time, Augusti (409).

Seventy-Fifth Title Not Usurping What Is Provided from Public Tax Payments

[1][305] *Emperor* CONSTANTINE *Augustus.* No governor (*iudex*) shall lay hold of or try to lay hold of what he has received from a municipality as a tax payment after providing security for a loan.

Given March 6, at Trier, in the consulship of Paulinus and Julian (325).

[2][306] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Palladius.* Absolutely no one shall appropriate for any purpose what is received in storehouses or contained in the treasury (*arca*), unless by chance he has received the right to take this by an order of the sublime powers.

Given April 11, at Constantinople, in the consulship of Antonius and Syagrius (382).

[302] = C.Th. 12.7.2, with different wording.
[303] = C.Th. 12.8.1. Combine with C.1.45.2, 11.2.5.
[304] Blume, following Gothofredus' emendation of *cogendum* for *coquendum*, translates this as "to be delivered."
[305] = C.Th. 12.9.1.
[306] = C.Th. 12.9.2. addressed, however, to Lampadius.

[3] *Impp. Arcadius et Honorius AA. Messalae pp.* Sciant iudices nihil sibi ex privatae rei canone vel ex eo, quod ex isdem titulis exegerint, ad necessitates alias transferre licere, nisi malint gravissima severitate suam licentiam coerceri.

D. xvi k. Iun. Mediolani Theodoro cons.

LXXVI De Auro Coronario

[1] *Imppp. Gratianus Valentinianus et Theodosius AAA. Cynegio pp.* Ad collationem auri coronarii placuit neminem absque consuetudine esse cogendum.

D. xv k. Febr. Constantinopoli Ricomere et Clearcho conss.

LXXVII De Irenarchis

[1] *Impp. Honorius et Theodosius AA. Anthemio pp.* Irenarchae, qui ad provinciarum tutelam quietis ac pacis per singula territoria faciunt stare concordiam, a decurionibus iudicio praesidum provinciarum idonei nominentur.

D. viii k. Ian. Constantinopoli Honorio viii et Theodosio iii AA. conss.

LXXVIII De Argenti Pretio Quod Thesauris Infertur

[1] *Impp. Arcadius et Honorius AA. Eutychiano pp.* Iubemus, ut pro argenti summa, quam quis thesauris fuerat illaturus, inferendi auri accipiat facultatem, ita ut pro singulis libris argenti quinos solidos inferat.

D. xi k. Mart. Constantinopoli Caesario et Attico conss.

[3][307] *Emperors* Arcadius *and* Honorius *Augusti to Messala, Praetorian Prefect.* Governors should know that they are not permitted to transfer to other needs anything from the tax (*canon*) for the Privy Purse (*res privata*) or from what they have derived from the same sources, unless they prefer that their lack of responsibility be curbed with the gravest severity.

Given May 17, at Milan, in the consulship of Theodorus (399).

Seventy-Sixth Title Crown Gold[308]

[1][309] *Emperors* Gratian, Valentinian, *and* Theodosius *Augusti to Cynegius, Praetorian Prefect.* It has been decided that no one is to be forced into paying crown gold beyond what is customary.

Given January 18, at Constantinople, in the consulship of Richomer and Clearchus (384).

Seventy-Seventh Title Peace Officers (*Irenarchae*)[310]

[1][311] *Emperors* Honorius *and* Theodosius *Augusti to Anthemius, Praetorian Prefect.* Peace officers, who, to maintain the quiet and peace of the provinces, cause concord to prevail in individual territories, shall be nominated as suitable by the decurions on the judgment of the provincial governors.

Given December 25, at Constantinople, in the consulship of Honorius, for the eighth time, and Theodosius, for the third time, Augusti (409).

Seventy-Eighth Title The Price of Silver That Is Paid into the Treasuries

[1][312] *Emperors* Arcadius *and* Honorius *Augusti to Eutychianus, Praetorian Prefect.* We order that, in accordance with the amount of silver that someone was going to pay to the treasuries, he receive the right to pay gold, so that he pay 5 solidi for each pound of silver.

Given February 19, at Constantinople, in the consulship of Caesarius and Atticus (397).

[307] = C. 11.65.5.1, with minor differences in wording, and C.Th. 12.9.3.
[308] The term *aurum coronarium* refers to a payment in gold occasionally levied from provincial communities at the beginning of an emperor's reign.
[309] = C.Th. 12.13.5. Combine with C. 8.11.7.
[310] *Irenarchae* were civic officials charged with maintaining public order.
[311] = C.Th. 12.14.1, with a quite different sense. It assails peace officers for abusing the towns they are supposed to protect and so calls for their abolition, and the Praetorian Prefect is to find other means to assure the peace in the provinces by assigning the task to wealthier people.
[312] = C.Th. 13.2.1.

Liber Undecimus

I De Tollenda Lustralis Auri Collatione

[1] [*Αὐτοκράτωρ Ἀναστάσιος Α.*] **pr.** Συγχωρεῖ πᾶσιν εἰς τέλειον τὴν συντέλειαν τὴν τοῦ χρυσαργύρου, ἐξῃρημένων τῶν πόλεων ἢ κωμῶν τῶν λαβουσῶν τι κατὰ τελευταίαν βούλησιν ὑπὲρ τοῦ συντελεῖν τοῦτο, ἤγουν ἐὰν ἀπὸ τοῦ δημοσίου δίδοταί τι ὑπὲρ τοῦ συντελεῖν τοῦτο. **1.** Οἱ δὲ τὸ τέλος τοῦτο παρέχοντες ἄδειαν ἐχέτωσαν εἴτε ἐν Κωνσταντινουπόλει εἴτε ἐν τῇ ἐπαρχίᾳ καταβαλεῖν αὐτὸ εἴτε τὸν τέταρτον κατ' ἐνιαυτὸν εἴτε ὑπὲρ τετραετίαν, δίχα μέντοι ζημίας καὶ διαστροφῆς. **2.** Εἰ δέ τι ἐκ περιττοῦ ᾖ μετὰ τὸ τοιοῦτο τέλος, ἀναλισκέσθω εἰς ἀναγκαίας χρείας τῆς πόλεως, οἷον ἔργα ἢ σιτωνείαν ἢ φῶτα ἢ τὰ ὅμοια. **3.** Ἑκατὸν δὲ λίτρας ὁρίζει πρόστιμον τῇ σχολῇ τῶν παλατινῶν καὶ τοῖς ἄρχουσι καὶ τῇ τάξει καὶ τοῖς πολίταις, εἰ ταῦτα παραβαθεῖέν ποτε.

2. Μηδεὶς διαγραφέσθω εἰς θεωρητικὰ ἢ ἄλλα τινὰ προφάσει τοῦ κουφισθῆναι τὴν συντέλειαν τοῦ χρυσαργύρου, ἐπεὶ ἡ προειρημένη ποινὴ ἐπικείσεται.

II De Naviculariis seu Naucleris Publicas Species Transportantibus

[1] *Imp. Constantius A. et Iulianus C. Olybrio pu.* Nullam vim oportet navicularios sustinere delegatas species annonarias transferentes nec concussiones perpeti nec aliquod genus incommodi, sed venientes

Eleventh Book

edited by Dennis P. Kehoe

First Title Eliminating the Merchants Tax

[1][1] (*Emperor Anastasius Augustus …*) **pr.** It (the constitution) remits for everyone completely the payment of the merchants tax (*chrysargyron*), with the exception of those cities and villages that have taken something for its payment in accordance with a final will or if something has been given from public funds concerning its payment. **1.** Those who are paying this impost shall have the freedom to pay it in Constantinople or in the province, whether a fourth of the amount each year or (the whole amount) after a four-year period, without a penalty or distortion (of the amount owed, *diastrophe*). **2.** If there should be anything left over after this payment, it shall be used for necessary expenditures of the city, such as public works, the provision of grain, lights, or similar things. **3.** It establishes a fine of 100 pounds (of gold) for the Palatine Corps, the magistrates, the office (*taxis*), and the citizens, if these measures should ever be violated.

[2][2] No one shall be assessed for spectacles or other such things on the pretext that his payment of the merchants' tax (*chrysargyron*) has been lightened, since the aforementioned penalty will (then) loom (over the assessor).

Second Title Shipowners and Shipmasters Transporting Public Supplies

[1][3] *Emperor* C*ONSTANTIUS Augustus and* J*ULIAN Caesar to Olybrius, City Prefect.* Shipowners (*navicularii*) should not endure any force when transporting supplies for the food supply (*species annonarias*) assigned to them, nor

[1] Taken from Bas. 56.12.1, summarizing the original constitution. Zonaras 14.3.2 and Evagrius, *Schol. Hist. Eccl.* 3.39–41 report that Anastasius remitted this tax. Lounghis *et al.* date this constitution to May 498.

[2] From Bas. 56.12.2; Cuiacus conjectures that this constitution is also from Anastasius. Lounghis *et al.* date it to May 498.

[3] = C.Th. 13.5.9. Seeck gives June 1, 370; Schmidt-Hofner, June 1, 357.

ac remeantes omni securitate potiri: decem auri librarum multa proponenda his, qui eos inquietare temptaverint.

D. k. Iun. Romae Constantio VIIII et Iuliano C. II conss.

[2] *Impp. Arcadius et Honorius AA. Eusebio pp.* Comperimus naucleros susceptas species in negotiationis emolumenta convertere. Ideoque decernimus, ut intra annum quas susceperint inferant species et securitates reportent, quae etiam diem illationis edoceant, ut intra alterum annum eis reddantur, a quibus species praestitae sunt.

D. X k. Ian. Mediolani Arcadio IIII et Honorio III AA. conss.

[3] *Idem AA. Flaviano pu.* Ab his, qui in naucleros praedas egerunt, volumus eorum commodis satisfieri. Et ideo ne crescat in posterum eorum audacia, sancimus, ut, quicumque in rapinis fuerit deprehensus, poena quadrupli teneatur.

PP. Romae in foro Aproniani VIIII k. Febr. Stilichone et Aureliano conss.

[4] *Impp. Honorius et Theodosius AA. Anthemio pp.* Cum nauarchorum coetus circiter provincias Orientis inopia navium titubaret et investigandae classis obtentu insularum secessus obiret et navigandi opportunitate transacta iudiciorum indignatio sine transvectionis expectaretur effectu, merito celsitudo tua praefecto Augustali et insularum praeside conventis Alexandrinae et Carpathiae classis summates et nonnullos alios naucleros eo professionis adduxit, ut onus frumentarii commeatus, qui per Orientales nauarchos ex Alexandrinae civitatis conditis consueverat ad sacratissimam urbem transferri, in suam fidem susceptum ad eadem augustissimae urbis horrea comportarent, solaciis pro mercedula praestitis ex tributariae pensitationis immunitate vel ex eo,

should they suffer any extortion or any type of inconvenience, but they should enjoy complete security in coming and going; a fine of 10 pounds of gold is to be set for those who try to disturb them.

Given June 1, at Rome, in the consulship of Constantius, for the eighth time, and Julian Caesar, for the second time (357).

[2][4] *Emperors ARCADIUS and HONORIUS Augusti to Eusebius, Praetorian Prefect.* We have learned that shipowners (*naucleri*) have received supplies and turned them to profits for (their private) business. For that reason We decree that within a year they deliver the supplies that they have received and bring back receipts that also indicate the day of delivery, so that within a second year they be returned to the people by whom the supplies have been provided.

Given December 23, at Milan, in the consulship of Arcadius, for the fourth time, and Honorius, for the second time, Augusti (396).

[3][5] *The same Augusti to Flavianus, City Prefect.* We want shipowners' profits to be reimbursed by those who have robbed them. And for that reason, so that their audacity not increase in the future, We ordain that whoever has been caught in theft be subject to a fourfold penalty.

Posted at Rome in the Forum of Apronianus, January 24, in the consulship of Stilicho and Aurelianus (400).

[4][6] *Emperors HONORIUS and THEODOSIUS Augusti to Anthemius, Praetorian Prefect.* Since the guild (*coetus*) of the shipmasters in the provinces of the East was in danger because of a shortage of ships and it went around the hidden places in the islands under the guise of finding a fleet, and the indignation of the courts (*indignatio iudiciorum*) after the opportunity for sailing had been finished was expected to be without any effect on transportation, Your Highness, having convened the Augustal Prefect and the Governor of the islands at Alexandria, has rightly induced the chiefs of the fleet of Carpathus and some other shipowners to promise that they would accept on their own faith the burden of shipping the grain, which had customarily been transported to the Most Sacred City by shipmasters from the East from the supply stored at the city of Alexandria, and (to promise) to bring it to the same storehouses of the Most August City, with compensation provided for their commerce by immunity from the payment of tribute or from the tax called the "benevolence"

[4] = C.Th. 13.5.26, which omits the final "so that" clause.
[5] = C.Th. 13.5.29.
[6] = C.Th. 13.5.32; possibly combine with C. 11.6.6, 11.28.1.

quod vocatur φιλικόν, nec non etiam aliis, quae *tuae* cognitionis limavit examen.

D. XIIII k. Febr. Honorio VIII et Theodosio III AA. conss.

[5] *Idem AA. Anthemio pp.* Qui fiscales species suscepit deportandas, si recta navigatione contempta litora devia sectatus eas avertendo distraxerit, capitali poena plectetur.

D. XIIII k. Aug. Constantinopoli Honorio VIII et Theodosio III AA. conss.

[6] *Idem AA. Faustino pp.* **pr.** Iudices, qui in portibus dioeceseos suae onusta navigia, cum prosperior flatus invitat, sub praetextu hiemis immorari permiserint, una cum municipibus et corporatis eiusdem loci fortunarum propriarum feriantur dispendiis. **1.** Naucleri praeterea poenam deportationis excipiant, si aliquid fraudis eos admisisse fuerit revelatum.

D. XVIII k. Sept. Ravennae Varane vc. cons.

III De Praediis Naviculariorum

[1] *Impp. Valentinianus et Valens AA. Aureliano praefecto annonae.* Domum etiam mansuetudinis nostrae in his, quae naviculario nomine obnoxia sunt, agnoscere praecipimus debitam functionem.

D. III k. Oct. Lupicino et Iovino conss.

[2] *Idem AA. et Gratianus A. Chiloni proconsuli Africae.* **pr.** In his, quae navicularii vendunt, quoniam intercipere contractum emendi vendendique fas prohibet, emptor navicularii functionem pro modo portionis comparatae subeat: res enim oneri addicta est, non persona mercatoris. **1.** Neque navicularium iubemus fieri eum, qui aliquid comparavit, sed eam partem quae empta est pro suo modo ac ratione esse

(*philikon*; a harbor tax), and also from other charges, as the verdict of your inquiry has determined.

Given January 19, in the consulship of Honorius, for the eighth time, and Theodosius, for the third time, Augusti (409).[7]

[5][8] *The same Augusti to Anthemius, Praetorian Prefect.* Anyone who has received supplies for the Treasury to transport, if, with contempt for the direct sailing route and following out of the way shores, he has diverted them and sold them, is to be struck with capital punishment.

Given July 19, at Constantinople, in the consulship of Honorius, for the eighth time, and Theodosius, for the third time (409).

[6][9] *The same Augusti to Faustinus, Praetorian Prefect.* **pr.** Governors (*iudices*) who, under the pretext of winter, have permitted laden ships to delay in the ports of their diocese when a quite favorable wind invites them (to set sail), shall be punished along with the members of the town councils (*municipes*) and the members of the guilds (*corpora*) of the same place with the loss of their own fortunes. **1.** In addition, shipowners shall receive the punishment of deportation if it has been revealed that they have committed any fraud.

Given August 15, at Ravenna, in the consulship of the vir clarissimus *Varanes (410).*

Third Title Properties of Shipowners

[1][10] *Emperors VALENTINIAN and VALENS Augusti to Aurelianus, Prefect of the Food Supply.* We instruct that the House of Our Clemency acknowledge the public charges (*functio*) it owes also in these properties that are subject to supporting shipping.

Given September 29, in the consulship of Lupicinus and Jovinus (367).

[2][11] *The same Augusti and GRATIAN Augustus to Chilo, Proconsul of Africa.* **pr.** In the properties that shipowners sell, since right prohibits forbidding a contract of buying and selling, the buyer shall be liable for the public charge of a shipowner in proportion to the amount he has purchased; for it is property, not the person of the merchant, that is assigned the burden. **1.** We do not order that the person who has purchased something become a shipowner, but rather that the share that has been bought be obliged (*munifica*) in accordance with its amount

[7] C. 11.28.1 has the date January 28, 412.
[8] = C.Th. 13.5.33. Combine with C. 1.45.2, 10.74.1.
[9] = C.Th. 13.5.34, from which the phrase "in the ports" is restored; possibly combine with C. 4.40.4.
[10] = C.Th. 13.6.5.
[11] = C.Th. 13.6.7.

munificam: nec enim totum patrimonium ad functionem naviculariam occupandum erit, quod habuerit qui rei exiguae mercator accessit, sed illa portio, quae ab initio navicularii fuit, ad pensionem huiusmodi functionis sola tenenda est, residuo patrimonio, quod ab hoc vinculo liberum est, otioso et immuni servando. **2.** Domus vero, quarum cultu decus urbium potius quam fructus adquiritur, ubi a naviculariis veneunt, pro tanto modo ad hanc pensionem obligari placet, quantum habebant emolumentum, cum pecunia mutuarentur. **3.** Ubi vero spatia loci et exiguitas nullam habuit pensionem aut extructio, cuius est ardua difficilisque molitio, aut decus sumptuosum, aut, ut est plerumque liberale institutum, habitationem quis suam ornamento urbis adiecit, nolumus munificentiam quae postea addita est improbam licitationem aestimationis excipere: sed vetusta potius loci species et pensio cogitetur quam cultus hodiernus, qui per industriam hominis animosi accessit.

D. III non. Aug. post consulatum Gratiani A. III et Equitii vc.

[3] *Impp. Arcadius et Honorius AA. Messalae pp.* Hi, qui fundos naviculariae functioni adscriptos a naviculariis acceperunt quolibet ad se titulo transeuntes, secundum agri opinionem, quae antiquitus habetur adscripta, naviculariam functionem suscipere cogantur neque eas condiciones sibi aestiment profuturas, quas venditor minus idoneus in se recipit impositas ementis arbitrio: hac tamen ratione servata, ut, si ad minus idoneum fuerit translata possessio, etiam auctores transscripti praedii teneantur obnoxii, sitque hoc in promptu, ut damnis fiscalibus primitus ab idoneis consulatur.

D. XIIII k. Mart. Mediolani Theodoro vc. cons.

IIII De Navibus Non Excusandis

[1] *Impp. Arcadius et Honorius AA. Longiniano pp.* **pr.** Multi naves suas diversorum nominibus et titulis tuentur. Cui fraudi obviantes

and computation; for the entire patrimony of a person who has been a purchaser of a small amount is not to be seized for the shipping charge, but that portion that belonged to the shipowner from the beginning is alone to be held for the payment of such a charge, while the rest of the (buyer's) patrimony, which is free from this bond, is to be maintained as undisturbed and immune. **2.** But as for houses, by whose maintenance beauty rather than profits is acquired for cities, when they are sold by shipowners, it is decided that they be obligated for the payment only to the extent that they had a gain when they were lent[12] (rented) for money (*mutuarentur*). **3.** But when the space of the place and its small size did not result in any payment, or (when no income resulted from) a building whose construction is arduous and difficult or whose upkeep is expensive, or (when), as generally has been practiced freely,[13] someone has provided his dwelling as a decoration for the city,. We do not wish the generosity that has been later added to be subject to an unfair bidding to determine its value. But the previous appearance of the place and its payment should be thought of rather than its current decoration, which has been added through the work of a generous person.

Given August 3, after the consulship of Gratian Augustus, for the third time, and the vir clarissimus *Equitius (375).*

[3][14] *Emperors* Arcadius *and* Honorius *Augusti to Messala, Praetorian Prefect.* Those persons who have received farms registered for the shipping charge passing from shipowners to themselves under any title shall be compelled to undertake the shipping charge in accordance with the assessment of the land that was held to have been registered before, nor should they think that those conditions will benefit them that a less suitable (i.e., insolvent) seller has accepted when imposed on himself at the determination of a buyer. However, this rule is maintained that, if the possession has been transferred to a less suitable person, the authors (the sellers or donors) of the transfer of the property shall also be held liable, and this should be observed above all, that consideration for losses to the Treasury be taken first from suitable (solvent) persons.

Given February 16, at Milan, in the consulship of the vir clarissimus *Theodorus (399).*

Fourth Title Ships Not to Be Exempted

[1][15] *Emperors* Arcadius *and* Honorius *Augusti to Longinianus, Praetorian Prefect.* **pr.** Many maintain their ships under the names and titles of diverse

[12] The reading "mutuarentur" is restored from the C.Th. version.
[13] Blume, "in a praiseworthy spirit" for *libere.*
[14] = C.Th. 13.6.8; combine with C.Th. 13.5.28.
[15] = C.Th. 13.7.2.

praecipimus, ut, si quis ad evitationem publicae necessitatis titulum crediderit apponendum, sciat navem esse fisco sociandam. 1. Nam ut privatos quoque non prohibemus habere navigia, ita fraudi locum esse non sinimus, cum omnes in commune, si necessitas exegerit, conveniat utilitatibus publicis oboedire et subvectionem sine dignitatis privilegio celebrare.

D. III id. Ian. Ravennae Arcadio A. VI et Probo conss.

[2] *Impp. Theodosius et Valentinianus AA. Florentio pp.* **pr.** Iubemus nullam navem ultra duorum milium modiorum capacem ante felicem embolam vel publicarum specierum transvectionem aut privilegio dignitatis aut religionis intuitu aut praerogativa personae publicis utilitatibus excusari posse subtractam: nec si caeleste contra proferatur oraculum, sive adnotatio sit sive divina pragmatica, providentissimae legis regulas oppugnare debebit. 1. Quod etiam in omnibus causis cupimus observari, ut generaliter, si quid huiusmodi contra ius vel utilitatem publicam in quolibet negotio proferatur, non valeat. Quidquid enim in fraudem istius legis quolibet modo fuerit attemptatum, id navigii quod excusatur publicatione corrigimus.

D. VII id. April. Constantinopoli Theodosio A. XVII et Festo conss.

V Ne Quid Oneri Publico Imponatur

[1] *Impp. Arcadius et Honorius AA. Rufino pp.* Oneri publico sarcinam privatam ne quis imponat nec audeat portitores frumenti ad suscipiendum onus aliqua necessitate compellere. Hoc enim facto atque commisso non in dispendium solum atque naufragii damnum tenebitur obligatus, verum etiam publicae coercitionis experietur vigorem.

D. V id. Ian. Constantinopoli Olybrio et Probino conss.

persons.[16] To block this fraud We instruct that if anyone supposes to affix a placard (on his property to show that another is the owner) in order to avoid a public obligation, he shall know that his ship is to be forfeited to the Treasury. **1.** For just as We do not prohibit even private individuals from having ships, so too do We not allow a place for fraud, since it is fitting that everyone comply in common with the public interest, if necessity demands, and provide transport without privilege of rank.

Given January 11, at Ravenna, in the consulship of Arcadius Augustus, for the sixth time, and Probus (406).

[2][17] *Emperors* Theodosius *and* Valentinian *Augusti to Florentius, Praetorian Prefect.* **pr.** We order that no ship of a capacity greater than 2,000 *modii* may be exempted and withdrawn from public duties before the Felicitous Embarkment[18] or the shipment of public goods (*publicae species*), whether by reason of privilege of rank, by observance of religion, or by personal prerogative. Not even if the divine oracle[19] itself is adduced, whether in the form of an annotation (*adnotatio*) or pragmatic sanction, should it override the rules of this most providential law. **1.** We desire this to be observed in all cases: thus generally, if any such document is produced in any case against the law or public good, it shall be void. For We reprove any attempt to circumvent this law, whatever the means, by confiscation of the ship exempted.

Given April 7, at Constantinople, in the consulship of Theodosius Augustus, for the seventeenth time, and Festus (439).

Fifth Title That Nothing Be Added to a Public Cargo

[1][20] *Emperors* Arcadius *and* Honorius *Augusti to Rufinus, Praetorian Prefect.* No one shall add a private load to a public cargo, nor by any compulsion shall he force the stevedores of the grain to take up a cargo. If this is done and committed not only will he be held obligated for the expense and the loss of his ship, but he will also experience the vigor of public coercion.

Given January 9,[21] at Constantinople, in the consulship of Olybrius and Probinus (395).

[16] Blume: "patrons."
[17] = C. 1.2.10; Nov. Theod. 8.1
[18] The "Felicitous Embarkment" (*felix embola*) of the grain fleet that served Constantinople. Two thousand modii is about 13.5 metric tons of grain (or about 17,000 liters in dry measure).
[19] That is, a document procured from the imperial chancellery.
[20] = C.Th. 13.8.1
[21] Gothofredus emends the date to June 9 (*Iun.* for *Ian.*), since Theodosius died on January 17, 395.

VI De Naufragiis

[1] *Imp. Antoninus A. Maximo.* Si quando naufragio navis expulsa fuerit ad litus vel si quando reliquam terram attigerit, ad dominos pertineat: fiscus meus sese non interponat. quod enim ius habet fiscus in aliena calamitate, ut de re tam luctuosa compendium sectetur?

[2] *Imppp. Valentinianus Valens et Gratianus AAA. ad Modestum pp.* Si quis navicularius naufragium sustinuisse adfirmat, provinciae iudicem, eius videlicet, in qua res agitur, adire festinet ac probet apud eum testibus eventum, relatioque ad sublimissimam referatur praefecturam, ita ut intra anni spatium veritate revelata competens dispositio procedat. quod si per neglegentiam praefinitum anni spatium fortasse claudatur, supervacuas serasque interpellationes emenso anno placuit non admitti.

D. pp. Bersti[1] *non. Iun. Modesto et Arintheo conss.*

[3] *Imppp. Gratianus Valentinianus et Theodosius AAA. navicularis Afris salutem.* pr. Quotiens obruta vel submersa fluctibus navi examen adhibetur competentis iudicis, duorum vel trium nautarum quaestione habita ceteri ab huiusmodi nexu liberentur. quid est enim, quod non abunde intra praefinitum numerum sollers quaesitor inveniat? 1. Circa magistros navium, quibus est scientia plenior, immoretur: qui si fatali sorte defuerint, in alios inquisitio transferatur. 2. Sane si universos violentia tempestatis obruerit, ne veritas lateat, a liberis nautarum sive magistrorum intra iudicia constitutis super eorum quaeratur interitu, quos navicularius naufragio perisse contendit. 3. Susceptionis autem necessitas ex kalendis Aprilibus in diem kalendarum Octobrium mansura servabitur.

D. VIII id. Febr. Triveris Gratiano V et Theodosio AA. conss.

[1] Beryti

Sixth Title Shipwrecks

[1] *Emperor* ANTONINUS *Augustus to Maximus.* If at any time a ship has been pushed to the shore by a shipwreck, or if at any time it reaches the land left behind,[22] it shall belong to the owners; My Treasury must not interpose itself. For what right does the Treasury have in another's calamity, that it gain a profit from so grievous a situation?

[2][23] *Emperors* VALENTINIAN, VALENS, *and* GRATIAN *Augusti to Modestus, Praetorian Prefect.* If any shipowner affirms that he has sustained a shipwreck, he should hasten to approach the provincial governor, that is, of the province in which the matter is being dealt with, and prove the event before him with witnesses. A report shall also be brought to the Most Sublime Prefecture, so that an appropriate disposition may proceed within the period of a year after the truth has been revealed.[24] But if through negligence the defined period of a year should by chance be closed, it has been decided that, after the passage of a year, superfluous and late actions (*interpellationes*) may not be admitted.

Given and posted at Beirut,[25] June 5, in the consulship of Modestus and Arintheus (372).

[3][26] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to the African shipowners, greetings.* pr. Whenever an examination by a competent judge[27] is performed after a ship is overwhelmed or submerged by the waves, after the questioning of two or three of the sailors has been conducted, the remaining ones shall be freed from such a bond. For what is there that a skilful investigator might not find within the defined number? 1. He may take time with the masters of the ships, who have more complete knowledge; if they are missing because of their passing away, the inquiry should be transferred onto others. 2. Certainly if the violence of a storm has overwhelmed everyone, lest the truth be hidden, the children of the sailors or the masters of the ships, after being brought into court, shall be questioned about the deaths of those people, who, so the shipowner contends, perished in the shipwreck. 3. However, the necessity of taking up the cargo will be maintained in effect from April 1 until October 1.

Given February 6, at Trier, in the consulship of Gratian, for the fifth time, and Theodosius, Augusti (380).

[22] Salmasius emends the sentence to *reliqua terram attigerit*: "if what is left of the ship reaches land."
[23] = C.Th. 13.9.1.
[24] The C.Th. version has "that when the truth is reported he may gain a remedy from an indulgence (abatement of dues)."
[25] An emendation for *Bersti* in the manuscripts.
[26] = C.Th. 13.9.3, with different wording; combine with C.Th. 13.5.16.
[27] The C.Th. version has the "Prefect of the Food Supply." Blume notes that the "questioning" would be under torture.

[4] *Impp. Valentinianus Theodosius et Arcadius AAA. Tatiano pp.* Pro his, quae semel a collatoribus illata naufragiis perierunt, nolumus nobis aliquam cum possessoribus, sive senatores sive privati sint, esse communionem vel aliquid periculi ad eos redundare.

D. xv k. Aug. Constantinopoli Tatiano et Symmacho conss.

[5] *Impp. Honorius et Theodosius AA. navicularis per Africam.* **pr.** De submersis navibus decernimus, ut levato velo istae causae cognoscantur. Et si quisquam de talibus negotiis aliquid accepisse detegitur, iudex, apud quem constiterit, his conquerentibus qui nudantur pro qualitatibus personarum multandi removendi proscribendi habeat potestatem. **1.** Si vero causarum talium cognitores, libelli datione vel planaria interpellatione commoniti intra biennium has causas audire neglexerint, et hoc fuerit tempus elapsum, praeiudicium noceat eatenus cognitori, ut naviculario propter vitium iudicis absoluto mediam oneris eius partem, propter cuius probandam amissionem legitimo dumtaxat tempore cognitio petebatur, iudex cogatur inferre, residuam vero officium eius exsolvat.

D. xvi k. April. Ravennae Honorio viiii et Theodosio v AA. conss.

[6] *Impp. Honorius et Theodosius AA. Anthemio pp.* Super naufragiorum quae contigerint casibus usitato more habita quaestione si quis calculus modiationis dicatur tempestate maris deperisse, sub tuae sedis auditione nequaquam feratur acceptus, sed haec dispendii iactura in omne naviculariorum concilium, pro rata scilicet contingentis muneris, deferatur.

D. xiiii k. Febr. Honorio viii et Theodosio iii AA. conss.

[4][28] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Tatianus, Praetorian Prefect.* For those things that, once they were provided by the tax payers (*collatores*), have perished in shipwrecks, We do not wish to share the burden with the possessors (i.e., to charge those whose lands were assigned to support ships), whether they are senators or private individuals, and We do not wish any risk to revert back to them.

Given July 18, at Constantinople, in the consulship of Tatianus and Symmachus (391).

[5][29] *Emperors* THEODOSIUS *and* HONORIUS *Augusti to the shipowners in Africa.* **pr.** Concerning sunken ships, We determine that these cases shall be heard "with the curtain raised."[30] And if someone is revealed to have received something in connection with such business, the judge, before whom this has been established to be true, shall have the power to fine, remove, or proscribe him upon the complaint of the ones who are despoiled, in accordance with the qualities of the persons. **1.** But if the judges (*cognitores*) of these cases, having been informed by the filing of a petition or an informal complaint (*interpellatio planaria*), neglect to hear them within a two-year period, and this time has passed, the damage[31] is to harm the judge to the extent that, after the shipowner has been absolved on account of the fault of the judge, the judge shall be compelled to pay a half share of the burden, to prove the loss of which a hearing was sought certainly within the lawful time, but his office shall pay the rest.

Given March 17, at Ravenna, in the consulship of Honorius, for the eighth time, and Theodosius, for the third time, Augusti (412).

[6][32] *The same Augusti to Anthemius, Praetorian Prefect.* Concerning the cases of shipwrecks that have happened, when an investigation has been undertaken in the usual fashion, if some amount of grain shall be said to have been lost as a result of a storm at sea, the amount should not at all be entered, under a hearing of Your Seat, as "received," but this loss of expense is to be divided among the entire council of shipowners, in proportion to the duty that falls upon them.

Given January 19, in the consulship of Honorius, for the eighth time, and Theodosius, for the third time, Augusti (409).

[28] = C.Th. 13.9.4.

[29] = C.Th. 13.9.6; join with C.Th. 13.5.36–37.

[30] Blume: "The hall in which the judge gave a hearing to the parties was called auditorium or secretarium, because it was closed by a railing and curtain (velum), and free entrance thereto was granted only to the apparitors and certain persons of rank. Only the judge, the persons mentioned and the parties and their attorneys were permitted into this room during a trial, although the curtain might be removed and the public be permitted to witness the proceedings, which, however, seems to have been done in the later time only occasionally." See C. 7.45.6.

[31] *Praeiudicium*, which Blume translates as "preliminary judicial proceeding." The judge's failure to act causes loss to the plaintiff.

[32] = C.Th. 13.5.32; possibly join with C. 11.2.4, 11.28.1 (issued January 28, at Constantinople, in 412).

VII De Metallariis et Metallis et Procuratoribus Metallorum

[1] *Impp. Valentinianus et Valens AA. ad Cresconium comitem metallorum.* **pr.** Perpensa deliberatione duximus sanciendum, ut, quicumque exercitium metallorum vellet adfluere, is labore proprio et sibi et rei publicae commoda compararet. **1.** Itaque si qui sponte confluxerint, eos laudabilitas tua octonos scripulos in balluca, quae Graece χρύσαμμος appellatur, cogat exsolvere. **2.** Quidquid autem amplius colligere potuerint, fisco potissimum distrahant, a quo competentia ex largitionibus nostris pretia suscipiant.

D. IIII id. Dec. Parisiis Valentiniano et Valente AA. conss.

[2] *Idem AA. ad Germanianum comitem sacrarum largitionum.* Ob metallicum canonem, in quo propria consuetudo retinenda est, quattuordecim uncias ballucae pro singulis libris constat inferri.

D. VI id. Ian. Romae Lupicino et Iovino conss.

[3] *Imppp. Gratianus Valentinianus et Theodosius AAA. Floro pp.* Cuncti, qui per privatorum loca saxorum venam laboriosis effossionibus persequuntur, decimas fisco, decimas etiam domino repraesentent, cetero modo suis desideriis vindicando.

D. IIII k. Sept. Constantinopoli Antonio et Syagrio conss.

[4] *Idem AAA. Eusignio pp.* Cum procuratores metallorum intra Macedoniam Daciam mediterraneam Moesiam seu Dardaniam soliti ex curialibus ordinari, per quos sollemnis profligatur exactio, simulato hostili metu huic se necessitati subtraxerint, ad implendum munus retrahantur, et nulli deinceps licentia laxetur prius indebitas expetere dignitates, quam subeundam procurationem fideli sollertique exactione compleverint.

D. IIII k. Aug. Mediolani Honorio np. et Euodio conss.

Seventh Title Miners, Mines, and the Procurators of Mines

[1][33] *Emperors* Valentinian *and* Valens *Augusti to Cresconius, Count of the Mines.* **pr.** After careful consideration We have decided to ordain that whoever wants to hasten to exploit mines should, by his own labor, provide benefits both to himself and to the republic (i.e., should be allowed to do this). **1.** Thus, if any have come forward of their own accord, Your Praiseworthiness shall compel them to pay the 8-scruples tax in gold dust (*octonos scripulos in balluca*), which is called in Greek *chrusammos* (gold sand). **2.** But anything more they can collect they shall certainly sell to the Treasury, from which they are to receive the appropriate prices established by Our (Imperial) Finances (*ex largitionibus nostris*).

Given December 10, at Paris, in the consulship of Valentinian and Valens (365).

[2][34] *The same Augusti to Germanianus, Count of Imperial Finances.* For the tax (*canon*) on metals, for which the existing custom is to be retained, it is established that 14 ounces of gold dust be paid per pound.

Given January 10, at Rome, in the consulship of Lupicinus and Jovinus (367).

[3][35] *Emperors* Gratian, Valentinian, *and* Theodosius *Augusti to Florus, Praetorian Prefect.* All who follow a vein of rocks by laborious digging through properties belonging to private persons shall pay one-tenth to the Treasury and another tenth to the owner, but the rest is to be claimed for their own desires.

Given August 29, at Constantinople, in the consulship of Antonius and Syagrius (382).

[4][36] *The same Augusti to Eusignius, Praetorian Prefect.* Since the procurators of the mines in Macedonia, Dacia, and inland Moesia or Dardania, ordinarily nominated from the decurions (*curiales*), by whom the customary exaction is completed, have feigned fear of the enemy and withdrawn themselves from this necessity (of carrying out their duties), they are to be dragged back to fulfill their service, and hereafter no permission shall be offered for anyone to seek undeserved ranks before they have completed the office they are supposed to have undertaken with faithful and careful diligence.

Given July 29, at Milan, in the consulship of Honorius, Most Noble Boy, and Euodius (386).

[33] = C.Th. 10.19.3.
[34] = C.Th. 10.19.4; possibly join with C. 10.72.5, 11.11.1. "At Rome" is an emendation for "at Reims" here and at C. 10.72.5.
[35] = C.Th. 10.19.10.
[36] = C.Th. 1.32.5.

[5] *Imppp. Valentinianus Theodosius et Arcadius AAA. Romulo comitem sacrarum largitionum.* Per annos singulos septeni per hominem scripuli largitionibus inferantur ab aurilegulis, non solum in Pontica dioecesi, verum etiam in Asiana.

D. XI k. Mart. Constantinopoli Arcadio A. II et Rufino conss.

[6] *Idem AAA. Paterno.* Quosdam operta humo esse saxa dicentes id agere cognovimus, ut defossis in altum cuniculis alienarum aedium fundamenta labefactent. qua de re, si quando huiusmodi marmora sub aedificiis latere dicantur, perquirendi eadem copia denegetur.

D. XVII k. April. Constantinopoli Theodosio A. III et Abundantio conss.

[7] *Imp. Theodosius A. Maximino comiti sacrarum largitionum.* Metallarii sive metallariae, qui quaeve ea regione deserta, ex qua videntur oriundi vel oriundae, ad externa migraverint, indubitanter sine ulla temporis praescriptione ad propriae originis stirpem laremque una cum sua subole revocentur, et quos domus nostrae secreta retineant. sciant autem nullum exinde praeiudicium fisco esse generandum, etiamsi is, quem metallicum esse constiterit, privatis censibus suum nomen indiderit.

D. V id. Iul. Constantinopoli Victore vc. cons.

VIII De Murilegulis et Gynaeciariis et Procuratoribus Gynaecii et de Monetariis et Bastagariis

[1] *Imp. Constantinus A. ad Bithynos.* Monetarios in sua semper durare condicione oportet nec dignitatis cuiuscumque privilegio ab huiusmodi condicione liberari.

D. XII k. Aug. Gallicano et Basso conss.

[2] *Idem A. ad Felicem.* Procuratores rei privatae baphii et gynaecii, per quos et privata nostra substantia tenuatur et species in gynaeciis confectae corrumpuntur, in baphiis etiam admixta temeratio naevum

[5][37] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Romulus, Count of Imperial Finances.* Seven scruples per man shall be paid to the Finances every year by gold miners, not only in the Pontic diocese, but also in the Asian one.

Given February 19, at Constantinople, in the consulship of Arcadius Augustus, for the second time, and Rufinus (392).

[6][38] *The same Augusti to Paternus.* We have learned that some people, saying that there are rocks covered in the earth, follow this practice, that after digging underground tunnels, they undermine the foundations of other people's buildings. For this reason, if ever marble of this type is said to be hidden under buildings, the right (*copia*) to seek it is to be denied.

Given March 16, at Constantinople, in the consulship of Theodosius Augustus, for the third time, and Abundantius (393).

[7][39] *Emperor* THEODOSIUS *Augustus to Maximinus, Count of Imperial Finances.* Male or female miners, who have migrated to other places from that deserted region from which they seem to have originated, should undoubtedly be called back along with their offspring, without any prescription of time, to the household and hearth (*stirpem laremque*) of their own place of origin, and (the same applies to) those whom the hiding places in Our Household retain. They should know, however, that no prejudice is to be created for the Treasury as a result, even if the person who it is agreed is a miner has placed his own name in the private census records.

Given July 11, at Constantinople, in the consulship of the vir clarissimus *Victor (424).*

Eighth Title Purple Dye Collectors, Weavers, Procurators of Weaving, Moneyers, and Transport Workers

[1][40] *Emperor Constantine Augustus to the Bithynians.* Moneyers (*monetarii*) must always remain in their status and are not to be freed from such a status by the privilege of any rank.

Given July 21, in the consulship of Gallicanus and Bassus (317).

[2][41] *The same Augustus to Felix.* Since because of them Our private property is attenuated and products made in the weaving workshops are ruined, and in the dye works the mixing in polluted dye (*admixta temeratio*) produces a blemish

[37] = C.Th. 10.19.12.
[38] = C.Th. 10.19.14.
[39] = C.Th. 10.19.15, from which the phrase at the end of the second sentence is added.
[40] = C.Th. 10.20.1. Seeck dates to June 21, 317.
[41] = C.Th. 1.32.1 (which adds the *in* before *gynaeciis* and correctly gives Aquae, not Aquileia, as the place of origin).

adducit inquinatae adluvionis, suffragiis abstineant, per quae memoratas administrationes adipiscuntur, vel, si contra hoc fecerint, gladio feriantur.

D. ... k. Nov. Aquil. Dalmatio et Zenophilo conss.

[3] *Impp. Valentinianus et Valens AA. ad Germanum consularem.* Ingenuae mulieres, quae se gynaeciariis sociaverint, si conventae denuntiatione sollemni splendorem generis contuberniorum vilitati praeferre noluerint, suorum maritorum condicione teneantur.

D. IIII k. Iul. Mediolani Valentiniano et Valente AA. conss.

[4] *Idem AA. ad Auxonium pp.* Quod ad praesens remedium pertinet, quintum animal bastagariis pro reparatione praebeatur.

D. id. Dec. Marcianopoli Valentiniano et Valente AA. conss.

[5] *Idem AA. et Gratianus A. ad Philematium comitem sacrarum largitionum.* Qui aliquem ex familiis gynaecii in latebris habere comperti sunt, quinque librarum auri damno subicientur.

D. XII k. Sept. Ciliciae Modesto et Arintheo conss.

[6] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad Eucherium.* Qui textrini nostri mancipia occultatione celaverit, ternis libris auri pro singulorum hominum suppressione plectetur.

PP. Karthagine III k. Mart. post consulatum Ausonii et Olybrii.

[7] *Idem AAA. ad Hesperium pp.* **pr.** Edicimus, ne qua mulier splendidioris gradus monetarii adhaerens consortio decus nativae libertatis

of a fouled inundation, procurators of the dying and weaving workshops belonging to the Privy Purse shall refrain from seeking recommendations through which they gain the positions mentioned, or, if they do otherwise, they shall be struck with a sword.[42]

Given October ..., at Aquae, in the consulship of Dalmatius and Zenophilus (333).

[3][43] *Emperors* VALENTINIAN *and* VALENS *Augusti to Germanus, Consular Governor.*[44] Free-born women who have associated themselves with weavers, if, after being notified by formal warning, they are unwilling to prefer the splendor of their birth to the baseness of their unions (*contubernia*, i.e., legally invalid marriages with slaves), shall be held in the status of their husbands.

Given June 28, at Milan, in the consulship of Valentinian and Valens Augusti (365).

[4][45] *The same Augusti to Auxonius, Praetorian Prefect.* As to an immediate remedy, every fifth animal (i.e., one of every five) shall be offered to the transport workers as compensation (*pro reparatione*).

Given December 13, at Marcianopolis, in the consulship of Valentinian and Valens Augusti (368).

[5][46] *The same Augusti and* GRATIAN *Augustus to Philematius, Count of Imperial Finances.* Those who have been discovered holding in hiding places anyone from the slave staffs of the weaving workshop will be subject to a loss of 5 pounds of gold.

Given Augusti 21, at Cilicia,[47] *in the consulship of Modestus and Arintheus (372).*

[6][48] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Eucherius.* Whoever has hidden slaves of Our weaving workshop shall be fined 3 pounds of gold for each individual person suppressed.

Posted at Carthage, February 27, after the consulship of Ausonius and Olybrius (380).

[7][49] *The same Augusti to Hesperius, Praetorian Prefect.* **pr.** We pronounce that no woman of a more splendid rank lose the honor of her native liberty

[42] C.Th. 1.32.1 adds "having been removed from the number of Roman citizens."
[43] = C.Th. 10.20.3.
[44] Gothofredus has "Germanianus, Count of Imperial Finances."
[45] = C.Th. 10.20.4 (which has "the tenth animal"). On the *bastagarii*, see C.Th. 10.20.11 (384).
[46] = C.Th. 10.20.7.
[47] The place name is corrupt.
[48] = C.Th. 10.20.9.
[49] = C.Th. 10.20.10.

amittat. Quod si quam ab hac praeceptione statutum nostrae perennitatis abduxerit, ea vel legitima admonita conventione discedat vel, si complexui monetarii putaverit inhaerendum, non ambigat se et liberis praeiudicaturam et eius condicioni esse nectendam. **1.** Si qua vero originaria seu colonaria possessionis alienae ignaro domino seu sciente monetario adsociabitur, ii conventi mox iuri agrorum debitas personas retrahere festinent vel de cetero sciant repetendi facultatem silentii sui coniventia perdidisse. **2.** Sed ut monetario nullam extraneam necti volumus, ita et monetario patre susceptas prohibemus extraneis copulari.

D. prid. id. Mart. Aquileiae post consulatum Ausonii et Olybrii.

[8] *Idem AAA. Trifolio comiti sacrarum largitionum.* Aeternam fiximus legem, ne umquam bastagariis militiam vel suam deserere liceat vel aliam, antequam eam impleverint, subreptiva impetratione temptare.

D. VIIII k. Aug. Heracleae Ricomere et Clearcho conss.

[9] *Idem AAA. et Arcadius A. ad Principium pp.* Si quis naviculam functioni muricis et legendis conchyliis deputatam ausus fuerit usurpare, duarum librarum auri illatione teneatur.

D. VI k. Oct. Aquileiae Arcadio A. et Bautone conss.

[10] *Imppp. Arcadius Honorius et Theodosius AAA. Philometori comiti sacrarum largitionum.* Lotas in posterum sericoblattae et metaxae huiusmodi species inferri praecipimus: viginti librarum auri condemnatione proposita his, qui scrinium canonum tractant, prioribus etiam cuiuscumque officii, si statuta caelestia a quodam passi fuerint temerari.

D. V k. Iul. Constantinopoli Arcadio A. VI et Probo conss.

by clinging to a union with a moneyer. But if the ordinance of Our Eternity leads someone away from this notion, this woman[50] should either leave (her union) after being warned by lawful notice, or, if she thinks she should cling to the embrace of a moneyer, she should not doubt that she will prejudice her children and she is to be bound to his status. **1.** But if any woman bound to her place of origin (*originaria*) or of bound tenant status (*colonaria*) in another's possession will be joined to a moneyer, whether (her) owner knows it or not, they (owners) when notified shall hasten to drag back to the right of their lands the persons owed, or (else) in the future know that they have lost the right to seek them back as a result of the connivance of their own silence. **2.** But just as We do not want any outside woman to be joined with a moneyer, so too do We also prohibit women raised from a father who is a moneyer to be mated with outsiders.

Given March 14, at Aquileia, after the consulship of Ausonius and Olybrius (380).

[8][51] *The same Augusti to Trifolius, Count of Imperial Finances.* We have established an eternal law that it never be permitted for transport workers either to desert their own service (*militia*) or by a surreptitious appointment to attempt another before they have completed it.

Given July 24, at Heraclea, in the consulship of Ricomer and Clearcuhus (384).

[9][52] *The same Augusti and* ARCADIUS *Augustus to Principius, Praetorian Prefect.* If anyone has dared to commandeer a boat designated for the service of (collecting) dye and gathering shells, he shall be bound by a fine of 2 pounds of gold.

Given September 26, at Aquileia, in the consulship of Arcadius Augustus and Bauto (385).

[10][53] *Emperors* ARCADIUS, HONORIUS, *and* THEODOSIUS *Augusti to Philometor, Count of Imperial Finances.* We instruct that, in the future, products (*species*) of dyed purple silk (*sericoblatta*) and raw silk (*metaxa*) be delivered washed; a punishment of 20 pounds of gold is established for those who manage the bureau of taxes (*scrinium canonum*) as well as the heads (*priores*) of any[54] office if they have allowed the Heavenly Statutes to be violated by anyone.

Given June 27, at Constantinople, in the consulship of Arcadius Augustus, for the sixth time, and Probus (406).

[50] C.Th. 10.20.10 includes "in accordance with the authority of the *SC Claudianum*."
[51] = C.Th. 10.20.11, which omits the phrase "before they have completed it."
[52] = C.Th. 10.20.12.
[53] = C.Th. 10.20.13. As Blume points out, the importing of silk was under the exclusive control of the Count of External Trade (*comes commerciorum*; C. 4.40.2).
[54] C.Th. 10.20.13 has "that office."

[11] *Imp. Theodosius A. et Valentinianus C. Maximino comiti sacrarum largitionum.* pr. Murileguli, qui relicto atque despecto propriae condicionis officio vetitis se infulis dignitatum et cingulis penitus denegatis munisse dicuntur, ad propriae artis et originis vincula revocentur. 1. Ab illis autem, qui rebus eorum videntur inhiasse, quos in sua origine permanere et sollemnibus ministeriis inservire manifestum est, omnia quaecumque constiterit ex quocumque titulo possessa antiquis possessoribus restituantur. 2. Quod si alienigenae detentatores oneribus condicionis externae maluerint subiacere quam restituere facultates, et futura deinceps agnoscant munia sibi esse subeunda et de praeterito, si qua ipsis possidentibus reliqua colliguntur, a semet ipsis sciant sine aliqua excusatione solvenda.

D. XVII k. Nov. Constantinopoli Victore cons.

[12] *Idem A. et C. Maximino comiti sacrarum largitionum.* Ii, qui ex filiabus murilegulorum et alienae originis patribus sunt vel fuerint procreati, iura maternae condicionis agnoscant.

D. VIIII k. Iun. Theodosio A. XI et Valentiniano C. conss.

[13] *Impp. Theodosius et Valentinianus AA. Acacio comiti sacrarum largitionum.* Si quis ex corpore gynaeciariorum vel linteariorum vel linyphariorum monetariorumve aut murilegulorum vel aliorum similium ad divinas largitiones nexu sanguinis pertinentium voluerit posthac de suo collegio liberari, non quoscumque nec facile in locum proprium, freti dextrae triumphalis absolutione, substituant, sed eos, quos omnibus idoneos modis sub ipsis quodammodo amplissimae tuae sedis obtutibus approbaverint: ita tamen, ut is, qui ab huiusmodi condicione iuxta formam caelitus datam beneficio principali fuerit absolutus, universi generis sui prosapiam in functione memorati corporis permanentem cum omnibus eius qui absolvitur rebus obnoxiam largitionibus sacris futuram esse non dubitet.

D. VII k. Mart. Constantinopoli Theodosio XII et Valentiniano II AA. conss.

[11][55] *Emperors* Theodosius *Augustus and* Valentinian *Caesar to Maximinus, Count of Imperial Finances.* **pr.** Purple dye gatherers, who, after leaving and despising the duty of their own status, are said to have equipped themselves with forbidden marks of offices (*infulae dignitatum*) and with ranks altogether denied to them, shall be recalled to the bonds of their own skill and origin. 1. From those, however, who are seen to have gazed longingly at the property of people who it is clear remain in their origin and serve their customary ministries, everything that is possessed under any title must be restored to the original possessors. 2. But if the holders of this wealth, when born to another station (*alienigenae*), prefer to be liable to the burdens of a status not their own rather than to restore it, then they shall acknowledge that they have to perform the future duties and shall also know that, for the past, if any arrears are collected from when they themselves were possessors, they must pay these themselves without any excuse.

Given October 16, at Constantinople, in the consulship of Victor (424).

[12][56] *The same Augustus and Caesar to Maximinus, Count of Imperial Finances.* Those who have or will have been procreated from daughters of purple dye gatherers and fathers of other origin shall acknowledge the laws of the maternal status of their mothers.

Given May 24, in the consulship of Theodosius Augustus, for the eleventh time, and Valentinian Caesar (425).

[13][57] *Emperors* Theodosius *and* Valentinian *Augusti to Acacius, Count of Imperial Finances.* If anyone from the association of (silk) weavers (*corpus gynaeciariorum*), weavers of linen thread (*lintearii*) or cloth (*linypharii*), moneyers, or purple dye gatherers, or other similar professions belonging to the Imperial Finances by the bond of birth (*nexu sanguinis*) wants henceforth to be freed from his guild (*collegium*), they should not, buoyed the absolution of a triumphal right hand (i.e., by an imperial rescript), readily substitute just anyone into their own place, but (only) those whom they have deemed as suitable in every way under the very approval of Your Magnificent Seat. However, the person who, by the favor of the Emperor, has been absolved from such a status in accordance with the heaven-sent procedure should not doubt that the stock of the entire family, remaining responsible for the duty (*functio*) to the aforementioned association, will be liable to the Imperial Finances with all of the property of the person who is absolved.

Given February 23, at Constantinople, in the consulship of Theodosius, for the twelfth time, and Valentinian, for the second time, Augusti (426).

[55] = C.Th. 10.20.14; according to Gothofredus, this is to be combined with C. 11.9.4 (January 16).
[56] = C.Th. 10.20.15.
[57] = C.Th. 10.20.16.

[14] *Idem AA. Acacio comiti sacrarum largitionum.* Privatae vel linteae vestis magistri, thesaurorum praepositi vel baphiorum ac textrinorum procuratores ceterique, quibus huiusmodi sollicitudo committitur, non ante ad rem sacri aerarii procurandam permittantur accedere, quam satisdationibus dignis eorum administratio roboretur: scituri nec prosecutorias quidem sacras posthac sibimet postulandas.

[15] *Idem AA. Valerio comiti sacrarum largitionum.* Qui aut patre conchyliolegulo geniti probabuntur aut matre, memoratae adscriptioni obnoxios se esse non ambigant.

D. x k. April. Constantinopoli Hierio et Ardabure conss.

[16] **pr.** Μηδείς, ὡς ἔτυχεν, τοῖς δημοσίοις σωματείοις ἐγγραφέσθω, εἰ μὴ κατὰ τὸ ἀναγκαῖον καὶ ἐκ γένους ὢν τοιούτου καὶ ἡλικίας καὶ τέχνης ἐστὶν ἐπιτήδειος, πράξεως γινομένης ἐπὶ τούτῳ παρὰ τῷ ἄρχοντι τῆς ἐπαρχίας καὶ κατατιθεμένου τοῦ σωματείου, ὅτι ἐπιτήδειός ἐστι· καὶ τὰ πραττόμενα εἰς ἡμᾶς ἀναφερέσθω, ὥστε ἡμᾶς πάλιν ἐπικυρῶσαι διὰ θείων συλλαβῶν τάξιν προβατορίας λαμβανουσῶν. **1.** Εἰ δὲ παραβαίη ταῦτά τις, οὔτε τὰς παραμυθίας λήψεται τὰς ἐντεῦθεν οὔτε κοινωνήσει τῷ συματείῳ, ἀλλὰ βασανισθεὶς ἐξορισθήσεται διηνεκῶς ἐκ τῆς ἐπαρχίας, καὶ πᾶς δὲ συνεργήσας τοῖς αὐτοῖς ἐπιτιμίοις ὑποκείσεται, καὶ μάλιστα ὁ πραιπόσιτος.

VIIII De Vestibus holoveris et Auratis et de Intinctione Sacri Muricis

[1] *Imppp. Valentinianus Valens et Gratianus AAA. Archelao comiti sacrarum largitionum.* Auratas ac sericas paragaudas auro intextas viriles privatis usibus contexere conficereque prohibemus et a gynaeciariis tantum nostris fieri praecipimus.

D. v non. Iul. Nebiodumi. acc. xv k. Aug. Marcianopoli Valentiniano np. et Victore conss.

[14][58] *The same Augusti to Acacius, Count of Imperial Benefactions.* Masters of imperial (*privatae*) or linen clothing, superintendents of storehouses, or procurators of dyeing or weaving workshops and others, to whom such a care is entrusted, shall not be permitted to approach managing the property of the Imperial Treasury (*sacrum aerarium*) before their administration is strengthened by worthy sureties. They will know that henceforth they are not to ask for sacred letters of recommendation.[59]

(426).

[15][60] *The same Augusti to Valerius, Count of Imperial Finances.* Those who will be proved to be born from a father or mother who is a purple shell gatherer should not doubt that they (as well) are liable to the aforementioned status (*adscriptio*).

Given March 23, at Constantinople, in the consulship of Hierius and Ardabur (427).

[16][61] **pr.** No one, as has happened, is to be registered with the public associations, unless it is necessary and he belongs to it by birth and is suitable both in age and in skill, after a record of this matter has been made with the provincial governor and the association has attested that he is suitable. And the record shall be reported to Us, so that We might again confirm through Divine Letters that serve as proof. **1.** If anyone should violate these enactments, he will not gain the compensation that accrues from this nor will he participate in the association, but upon questioning he will be relegated from the province forever, and everyone who has helped him will be subject to the same penalties, especially the superintendent (*praepositus*).

Ninth Title Clothing Entirely of Purple and Embroidered with Gold, and Dyeing with Sacred Purple

[1][62] *Emperors Valentinian, Valens, and Gratian Augusti to Archelaus, Count of Imperial Finances.* We prohibit the weaving and manufacture, for private use, of men's (clothing with) borders (*paragaudae*) that are gold-embroidered and silk interwoven with gold, and We instruct that they only be made by Our weaving workshops.

Given July 3, at Nebiodunum, and received July 18, at Marcianopolis, in the consulship of Valentinian, Most Noble Boy, and Victor (369).

[58] Join with C.Th. 8.7.23, whose subscription reads "Given July 1, at Nicomedia, in the consulship of Theodosius, for the twelfth time, and Valentinian, for the second time, Augusti" (426). Seeck uses this date.

[59] Blume: "to excuse them from service."

[60] = C.Th. 10.20.17.

[61] From Bas. 54.16.16.

[62] = C.Th. 10.21.1 (also including women's garments); combine with C. 10.2.4 ("July 5, at Noviodunum"), in which Archelaus is Count of the East.

[2] *Imppp. Gratianus Valentinianus et Theodosius AAA. Floro pp.* Nemo vir auratas habeat aut in tunicis aut in lineis paragaudas, nisi ii tantummodo, quibus hoc propter imperiale ministerium concessum est. non enim levi animadversione plectetur, quisquis vetito se et indebito non abdicaverit indumento.

D. III k. April. Constantinopoli Antonio et Syagrio conss.

[3] *Imppp. Theodosius Arcadius et Honorius AAA.* Vellera adulterino colore fucata in speciem sacri muricis tingere non sinimus nec tinctum cum rhodino prius sericum alio postea colore fucari, cum de albo omnium colorum tingendi copia non negetur: nam capitalem poenam illicita temptantes suscipient.

[4] *Imp. Theodosius A. Maximino comiti sacrarum largitionum.* **pr.** Temperent universi, cuiuscumque sint sexus dignitatis artis professionis et generis, ab huiusmodi speciei possessione, quae soli principi eiusque domui dedicatur. **1.** Nec pallia tunicasque domi quis sericas contexat aut faciat, quae tincta conchylio nullius alterius permixtione subtexta sunt. **2.** Proferantur ex aedibus tradanturque tunicae et pallia ex omni parte texturae cruore infecta conchylii. nulla stamina subtexantur tincta conchylio, nec eiusdem infectionis arguto pectine solidanda fila decurrant. reddenda aerario holovera vestimenta virilia protinus offerantur. **3.** Nec est, ut quisquam de abiurato pretio conqueratur, quia sufficit calcatae legis impunitas. **4.** Ne quis vero nunc huiusmodi suppressione in laqueos novae constitutionis incurrat: alioquin ad similitudinem laesae maiestatis periculum sustinebit.

D. XVII k. Febr. Constantinopoli Victore vc. cons.

[5] *Impp. Theodosius et Valentinianus AA. Apollonio comiti sacrarum largitionum.* Purpurae nundinas, licet innumeris sint constitutionibus prohibitae, recenti quoque interminatione vetamus. et ideo septimum de scrinio exceptorum, sextum de scrinio canonum, quintum

[2][63] *Emperors* Gratian, Valentinian, *and* Theodosius *Augusti to Florus, Praetorian Prefect.* No man should have gold-embroidered purple borders (*paragaudae*) either on tunics or on linen garments, except for those alone to whom this has been granted on account of imperial service. Whoever does not renounce a forbidden and undeserved raiment shall be struck with a punishment that is not light.

Given March 30, at Constantinople, in the consulship of Antonius and Syagrius (382).

[3]*Emperors* Theodosius, Arcadius, *and* Honorius *Augusti.* We do not allow the dyeing of woolen cloth (*vellera*) darkened with counterfeit color to look like sacred purple dye, nor silk to be dyed pink and afterward to be darkened with another color, since the right (*copia*) of dyeing in all colors from white is not denied; for those who attempt what is not allowed will receive capital punishment.[64]

[4][65] *Emperor* Theodosius *Augustus to Maximinus, Count of Imperial Finances.* **pr.** All persons, of any gender, rank, skill, profession, and family, shall refrain from the possession of any product that is dedicated to the Emperor alone and His Household. **1.** No one shall weave or make at home silken cloaks and tunics, which, when dyed with purple, have been woven without the admixture of another color. **2.** Tunics and cloaks that have been dyed with the blood of the conch from every part of their weave should be brought out of buildings and handed over. No warps are to be woven after being dyed with purple, nor should supporting (*solidanda*) threads run with a bright comb (*pecten*) of the same dyeing (*infectio*). Men's[66] clothing entirely of purple must be exhibited straightaway to be returned to the Treasury. **3.** Nor is there any reason why anyone should complain about a foresworn price, since impunity for trampling the law suffices.[67] **4.** But let no one now run into the snares of the new constitution by concealment of this kind; otherwise he will sustain a penalty like that for treason (*laesa maiestas*).

Given January 16, at Constantinople, in the consulship of the vir clarissimus *Victor (424).*

[5][68] *Emperors* Theodosius *and* Valentinian *Augusti to Apollonius, Count of Imperial Finances.* We forbid the sale of purple dye (*purpurae nundinae*), although it has been forbidden in innumerable constitutions, also with a fresh

[63] = C.Th. 10.21.2 (which begins "No one").
[64] Seeck gives September 392.
[65] = C.Th. 10.21.3.
[66] "Men's" is omitted in the C.Th. version.
[67] C.Th. has "that one does not have time to worry about profit whose safety should not be in the price."
[68] = C.Th. 10.20.18.

de scrinio tabulariorum ad baphia Phoenices per certum tempus mitti praecipimus, ut fraus omnis eorum prohibeatur sollertia timentium, ne quaesitis longo sudore stipendiis careant: etiam viginti librarum auri condemnatione proposita.

D. VIII id. Mart. Constantinopoli Isidoro et Senatore conss.

X De Fabricensibus

[1] *Imppp. Valentinianus Theodosius et Arcadius AAA. Tatiano pp.* Omnibus fabricis non pecunias pro speciebus, sed ipsas species sine dilatione inferri praecipimus, ut venae nobilis et quae facile deducatur ignibus seu liquescat ferri materies praebeatur, quo promptius adempta fraudibus facultate commodo publico consulatur.

D. XV k. Nov. Theodosio A. II et Cynegio conss.

[2] *Idem AAA. Rufino magistro officiorum.* Primicerium fabricae post biennium non solum vacatione, verum etiam honore donari praecipimus, ita ut inter protectores eiusdem fabricae per biennium adoraturus aeternitatem nostram suo quisque tempore dirigatur.

D. VIII id. Mart. Mediolani Valentiniano A. IIII et Neoterio conss.

[3] *Impp. Arcadius et Honorius AA. Osio magistro officiorum.* Stigmata, hoc est nota publica, fabricensium brachiis ad imitationem tironum infligatur, ut hoc modo saltem possint latitantes agnosci (his, qui eos susceperint vel eorum liberos, sine dubio fabricae vindicandis) et qui subreptione quadam declinandi operis ad publicae cuiuslibet sacramenta militiae transierunt.

D. XVIII k. Ian. Constantinopoli Honorio A. IIII et Eutychiano conss.

sanction (*interminatio*). And for that reason We instruct that a seventh person from the bureau (*scrinium*) of scribes (*exceptores*), a sixth from the bureau of taxes (*canones*), and a fifth from the bureau of tax archivists (*tabularii*) be sent for a certain time to the dye works of Phoenicia, so that all fraud be prohibited by their cleverness as they fear losing the emoluments (*stipendia*) sought by long sweat; in addition, a condemnation of 20 pounds of gold is established.

Given March 8, at Constantinople, in the consulship of Isidore and Senator (436).

Tenth Title Arms Makers (*Fabricenses*)

[1][69] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Tatianus, Praetorian Prefect.* We instruct that all arms factories (*fabricae*) not be paid in money instead of materials (*species*), but in the materials themselves without delay, so that the iron ore that comes from a noble vein and that can easily be shaped by fire or melts might be provided. In this way the public interest may more readily be served, with the ease of committing fraud removed.

Given October 18, in the consulship of Theodosius Augustus, for the second time, and Cynegius (388).

[2][70] *The same Augusti to Rufinus, Master of the Offices.* We instruct that the chief (*primicerius*) of an arms factory after a two-year period be rewarded not only with a leave from duties (*vacatio*), but also honor, so that each one in his own time might be enrolled (*dirigatur*) among the protectors of the same arms factory for a two-year period to adore Our Eternity.

Given March 8, at Milan, in the consulship of Valentinian Augustus, for the fourth time, and Neoterius (390).

[3][71] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Hosius, Master of the Offices.* Brands, that is, a public marking, shall be inflicted on the arms of arms makers in imitation of recruits, so that in this way they may at least be recognized when hiding – since those who have taken them or their children up without doubt must be claimed for the arms factory – and when they by some trick to avoid work have gone over to the oath of some public service.

Given December 15, at Constantinople, in the consulship of Honorius Augustus, for the fourth time, and Eutychianus (398).

[69] = C.Th. 10.22.2.
[70] = C.Th. 10.22.3 (omitting "of the same arms factory for a two-year period"). The *protectores* were special guards of the emperor; Blume refers to the constitutions in C. 12.17.
[71] = C.Th. 10.22.4.

[4] *Impp. Honorius et Theodosius AA. Anthemio pp.* **pr.** Si quis consortium fabricensium crediderit eligendum, in ea urbe, qua natus est vel in qua domicilium collocavit, his quorum interest convocatis primitus acta conficiat, sese doceat non avo non patre curiali progenitum, nihil ordini civitatis debere, nulli se civico muneri obnoxium, atque ita demum gestis confectis vel apud moderatorem provinciae vel si is absit apud defensorem civitatis, ad militiam quam optaverit suscipiatur. **1.** Quod si absque hac cautione quispiam ad fabricensium consortium obrepserit, sciat se ad ordinis cui debetur patriaeque suae munera esse reducendum, ita ut nulla eum nec temporis nec stipendiorum praerogativa defendat.

D. XV k. Iun. Constantinopoli Honorio VIIII et Theodosio V AA. conss.

[5] *Impp. Theodosius et Valentinianus AA. Aureliano comiti rerum privatarum.* **pr.** Iure provisum est fabricenses artibus propriis inservire, ut exhaustis laboribus immorentur cum subole professioni, cui nati sunt. **1.** Denique quod ab uno committitur, totius delinquitur periculo numeri, ut constricti nominationibus suis sociorum actibus quandam speculam gerant, et unius damnum ad omnium transit dispendium. **2.** Universi itaque, velut in corpore unius formae, unius decoctionis, si ita res tulerit, respondere cogentur.

D. prid. non. Nov. Constantinopoli Theodosio A. XVII et Festo conss.

[6] *Impp. Leo et Anthemius AA. Euphemio magistro officiorum.* Eos, qui inter fabricenses sacrae fabricae sociati sunt, vel eorum uxores aut filios, qui itidem inter fabricenses militare dicuntur, non alibi pulsare volentibus respondere praecipimus, nisi in iudicio tuae sublimitatis, ad cuius iurisdictionem potestatemque pertinent: nec eos post stipendiorum1 finem militiae super civilibus vel curialibus muneribus, quibus nullo modo subiacere monstrantur, a viris clarissimis rectoribus provinciarum vel eorum officiis praeter licitum inquietari.

[4][72] *Emperors* Honorius *and* Theodosius *Augusti to Anthemius, Praetorian Prefect.* **pr.** If anyone has believed to choose the guild of the arms makers (*consortium fabricensium*), in the city in which he was born or in which he has established his domicile, having summoned those who are affected he shall first complete his declaration (*acta*), and he shall show that he is not born from a grandfather or a father who was a decurion, that he owes nothing to the city council (*ordo civitatis*), and that he is not liable for any public service for his city; and when his declaration is completed either before the provincial governor or, if he should be absent, before the defender of the city, only then is he to be taken up for the service (*militia*) that he has chosen. **1.** But if, without this written promise (*cautio*), someone has stolen his way into the guild of the arms makers, he should know that he is to be returned to the public services of the council (*ordo*) to which he is owed and of his home town, in such a way that no prerogative of time or service (*stipendia*) will defend him.

Given May 18, at Constantinople, in the consulship of Honorius, for the ninth time, and Theodosius, for the fifth time, Augusti (412).

[5][73] *Emperors* Theodosius *and* Valentinian *Augusti to Aurelianus Count of the Privy Purse.* **pr.** It has been provided by law that arms makers serve their own skills, so that when their labors are exhausted they remain liable with their offspring to the profession into which they have been born. **1.** Finally what is committed by one is a transgression (that occurs) at the risk of the entire number, so that bound by their own nominations they practice a certain watchfulness (*specula*) for the acts of their partners (*socii*), and the loss caused by one person passes to the expense of all. **2.** Thus all of them, as if in a body of one form, or one mixture, if the matter so requires, will be compelled to respond.

Given November 4, at Constantinople, in the consulship of Theodosius Augustus, for the seventeenth time, and Festus (439).

[6] *Emperors* Leo *and* Anthemius *Augusti to Euphemius, Master of the Offices.* We instruct that those who are associated with the arms makers of the Sacred Arms Factory or their wives or children, who are also said to serve among the arms makers, not respond to others wishing to sue (*pulsare*, "to strike") them in any place other than in the court of Your Sublimity, to whose jurisdiction and power they belong. After the completion of the terms of their service (*post stipendiorum finem militiae*) they are not to be bothered concerning civil or curial (i.e., connected with a town council) public services, to which they are shown to be in no measure liable, beyond what it permitted, by provincial governors with the rank of *viri clarissimi* or by their offices.[74]

[72] = C.Th. 10.22.6; possibly combine with C.Th. 12.1.175 (same date, but with a different addressee). For the prohibition on decurions from becoming arms makers, Blume refers to C. 10.32.32.

[73] = Nov. Theod. 6 (differently worded); combine with C. 6.62.5. Seeck gives November 4, 438.

[74] Seeck dates this constitution and the next to 467–472.

[7] *Idem AA. Euphemio magistro officiorum.* pr. Nullus fabricensium conductioni vel administrationi vel agriculturae alienarum rerum se posthac immiscere conetur: dominis quidem, si qui contra haec statuta meae pietatis venire ausi fuerint, res vel praedia, quae scientes quod fabricenses sunt isdem fabricensibus ministranda commiserint, amissuris, fabricensibus vero gravissime coercitis post facultatum suarum amissionem perpetua exilii poena et animadversione retinendis. 1. Quotiens sane in translatione armorum angariae necessariae fuerint, sublimitas tua litteras ad eminentissimam iubeat dirigi praefecturam et numerum ei armorum et ex quo loco transferenda sunt indicare, ut continuo super praebendis angariis pro numero eorum quae transferuntur armorum praeceptione sua viros clarissimos provinciae moderatores conveniat, ut secundum missam a sublimitate tua notitiam naves vel angariae confestim de publico praebeantur. 2. Quod si aliqua tarditas vel neglegentia post datas a sublimitate tua ad eminentissimam praefecturam litteras in destinandis auctoritatibus amplissimae sedis intercesserit et ex hoc armorum transvectio fuerit impedita, quinquaginta libris auri tam numerarium pro tempore officii eiusdem amplissimae sedis quam alios quorum interest condemnari praecipimus eamque auri quantitatem protinus exactam fisci viribus adgregari: multa praeterea triginta librarum auri proposita tam viris clarissimis qui provincias regunt quam eorum apparitionibus, si coniventibus his armorum subvectio tarditate aliqua fuerit praepedita.

XI De Veteris Numismatis Potestate

[1] *Impp. Valentinianus et Valens AA. Germano pp.* Solidos veterum principum veneratione formatos ita tradi ac suscipi ab ementibus et distrahentibus iubemus, ut nihil omnino refragationis oriatur, modo ut debiti ponderis sint et speciei probae: scituris universis, qui aliter fecerint, haud leviter in se vindicandum.

[2] *Idem AA. et Gratianus A. ad Iulianum pp.* Pro imminutione, quae in aestimatione solidi forte tractatur, omnium quoque specierum pretia decrescere oportet.

[7] *The same Augusti to Euphemius, Master of the Offices.* **pr.** No one of the arms makers shall try henceforth to involve himself in the lease, administration, or cultivation of others' property. Owners, if any have dared to violate these statutes of My Piety, will lose the property or lands (*praedia*) that they, knowing that they are arms makers, have entrusted to the same arms makers to be managed, but the arms makers, having been coerced very severely, are to be retained under penalty and punishment with perpetual exile after the loss of their property. 1. Whenever, however, in the transferring of arms the requisition of transport (*angiariae*) is necessary, Your Sublimity shall order that a letter be directed to the Most Eminent Prefecture and indicate to him the number of the arms that are being transferred and the place from which they are to be transferred, so that he immediately inform (*convenire*) by his instruction the provincial governors of the rank of *viri clarissimi* concerning the provision of requisitioned transport in accordance with the number of arms that are being transferred, so that in accordance with the notification sent by Your Sublimity ships or transport be offered at public expense. 2. But if any lateness or negligence has occurred in assigning the authorities of the Most Magnificent Seat (*amplissima sedes*) after the letter has been given by Your Sublimity to the Most Eminent Prefecture and the transport of arms has been impeded as a result of this, We instruct that both the temporary accountant (*numerarius*) of the same office of the Most Magnificent Seat as well as others who have an interest be fined 50 pounds of gold and that this amount of gold, having been exacted immediately, be added to the resources of the Treasury. In addition, a fine of 30 pounds of gold has been established both for the *viri clarissimi* who rule the provinces as well as their assistants (*apparitores*), if at their connivance the transportation of arms has been hindered by any slowness.

Eleventh Title The Value of Old Coinage

[1][75] *Emperors Valentinian and Valens Augusti to Germanus, Praetorian Prefect.* We order that the solidi minted out of veneration for the old emperors be handed over and received by buyers and sellers in such a way that no objection (*refragatio*) might arise, as long as they are of the weight owed and proven type (*species*); everyone who acts differently will know that a punishment not at all light is to exacted from them.

[2] *The same Augusti and Gratian Augustus to Julianus, Praetorian Prefect.* In proportion to the reduction that may be applied in valuing a solidus, the prices of all products (*species*) must also decrease.[76]

[75] Probably combine with C. 10.72.5 and 11.7.2; the subscription for the latter dates to January 9, 367. Seeck dates to January 8, 367; Schmidt-Hofner, 368–371. Gothofredus gives the addressee as "Germanianus, Count of Imperial Finances."

[76] Seeck gives 371–373.

[3] *Imppp. Gratianus Valentinianus et Theodosius AAA. Arintheo pp.* Universos auctoritas tua proposito edicto commoneat obryziacorum omnium solidorum uniforme pretium postulare, scilicet capitali supplicio puniendo, qui vel iussa nostrae maiestatis avaritiae caecitate contempserit, vel aeternales vultus, dum fraudibus studet, duxerit viliores.

XII Nulli Licere in Frenis et Equestribus Sellis et in Balteis Margaritas et Smaragdos et Hyacinthos Aptare et de Artificibus Palatinis

[1] *Imp. Leo A. Leontico.* **pr.** Nulli prorsus liceat in frenis et equestribus sellis vel in balteis suis margaritas et smaragdos et hyacinthos aptare posthac vel inserere. aliis autem gemmis frena et equestres sellas et balteos suos privatos exornare permittimus. de curcumis vero omnem prorsus qualiumcumque gemmarum habitum praecipimus submoveri. fibulis quoque in chlamydibus his utantur, quae solo auro et arte pretiosae sunt. si quis autem contra interdictum pietatis meae fecerit, sciat se continuo quinquaginta libris auri esse multandum. **1.** Nulli praeterea privatorum liceat (exceptis scilicet ornamentis matronalibus et tam muliebrium quam virilium anulorum habitu) aliquid ex auro et gemmis quod ad cultum et ornatum imperatorium pertinet facere neque illud sub hoc colore et praetextu praeparare, quod velit clementiae principali velut aliquod munus offerre: pietas enim mea huiusmodi dona non expetit neque regium sibi offerri a privatis cultum requirit. **2.** Sane si quis posthac aliquid contra vetitum huiusmodi sanctionis effecerit et offerenda clementiae meae ornamenta, quae usibus regiis deputata sunt, gemmis auroque decorata ausus fuerit praeparare, centum librarum auri condemnatione sciat se esse feriendum, capitali quoque subdendum esse supplicio: ornamenta enim regia intra aulam meam fieri a palatinis artificibus debent, non passim in privatis domibus vel officiis parari. **3.** Unde summa severitate sancimus, ut quod in cultu ornatuque nostro sacrum et adoptabile est, id facere temeritas privata non audeat. **4.** Si quis sane contra vetitum tranquillitatis meae aliquid fecerit, definitam superius multam ab his per officia palatinorum exigi et sacris largitionibus nostris iubemus inferri.

[3] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Arintheus, Praetorian Prefect.* Your Authority (*auctoritas tua*) shall admonish by a published edict everyone to demand a uniform price for all standard gold (*obryziaci*) solidi; but anyone is to suffer capital punishment who either scorns the orders of Our Majesty out of blind greed or who, as he pursues fraud, regards as cheaper the eternal countenances (on the coins).[77]

Twelfth Title No One Is Allowed to Fasten Pearls, Emeralds, and Sapphires on Bridles, Saddles, and Belts, and Palace Artisans

[1] *Emperor* LEO *Augustus to Leonticus.* **pr.** No one at all shall be allowed henceforth to fasten or insert pearls, emeralds, and sapphires (*hyacinthi*) on their bridles, saddles, and belts. We permit private individuals to decorate bridles, saddles, and belts with other gems. But with horse muzzles We instruct that all wearing of gems of any type be removed. They should use these kinds of clasps on robes that are precious only because of gold and the skill (in making them). If anyone acts against the interdict of My Piety, he should know that he is immediately to be fined 50 pounds of gold. **1.** In addition, no private individual shall be allowed to make anything from gold and gems that belongs to imperial dress and decoration – except, of course, for matronly decorations and the wearing of both women's and men's rings – nor to prepare, under this guise and pretext, that he wishes to offer some type of gift as it were to the Emperor's Clemency (*clementia principalis*): My Piety does not seek such gifts nor does it ask that royal haberdashery be offered by private people. **2.** Certainly, if someone henceforth does anything against what is forbidden by such a ordinance and dares to prepare ornaments decorated with gems and gold, which have been reserved for royal uses, for them to be offered to My Clemency, he shall know that he is to be struck with a fine of 100 pounds of gold and that he also must undergo capital punishment; for royal ornaments ought to be made within My court by palace artisans, and not be prepared everywhere in private houses or offices. **3.** Therefore We ordain with the utmost severity that private temerity should not dare to make what is sacred and worthy of adoption[78] in Our dress and ornamentation. **4.** Certainly, if anyone does anything contrary to the interdict of My Tranquility, We order that the fine defined above be exacted from them through the offices of the palace officials and that it be paid into Our Imperial Finances.[79]

[77] Seeck dates *c.* 379.
[78] For *adoptabile*, perhaps *adorabile*, "worthy of adoration."
[79] Seeck dates to 457–474.

XIII De Classicis

[1] *Impp. Valentinianus et Valens AA. Auxonio pp.* Classem Seleucenam aliasque universas ad officium, quod magnitudini tuae obsequitur, volumus pertinere, ut classicorum numerus ex incensitis vel adcrescentibus compleatur et Seleucena ad auxilium purgandi Orontis aliasque necessitates Orientis comiti deputetur.

Data indictione XII.

XIIII De Decuriis Urbis Romae

[1] *Imppp. Valentinianus Theodosius et Arcadius AAA. ad Trifolium pp.* Si quis decurialem de auferendis privilegiis putaverit lite pulsandum, intellegat se decuriae interpellare debere iudicem.

D. XIIII k. Febr. Mediolani Timasio et Promoto conss.

[2] *Imppp. Arcadius Honorius et Theodosius AAA. Exsuperantio Iulio et ceteris decurialibus.* **pr.** Leges tam a superioribus principibus quam a divo parente nostro conditas nostra auctoritate firmamus. **1.** Singulos itaque iudices scire volumus, ne quis huic collegio iniuriis corporalibus temptet notam atterere neque ab his commodis, quae rationibus approbantur, audeat separare. huic enim collegio volumus antiquam privilegiorum praerogativam servari.

D. VIII id. Iul. Romae Honorio A. VI et Aristaeneto conss.

XV De Privilegiis Corporatorum Urbis Romae

[1] *Imppp. Valentinianus Theodosius et Arcadius AAA. ad Alypium pu.* **pr.** Nulli sit liberum, nulli permissum, ut novum aliquid urbis incolae in urbe sustineant, sed in honorem aeternae urbis corporatis indulta

Thirteenth Title Marines

[1][80] *Emperors* VALENTINIAN *and* VALENS *Augusti to Auxonius, Praetorian Prefect.* We want the fleet at Seleucia and all the other ones to belong to the office that obeys Your Greatness (*magnitudo tua*), so that the number of marines (*classici*) be completed from those not registered in the census or from reserves and that the fleet at Seleucia be assigned to the Count of the East to aid in cleansing the Orontes and for other purposes.

Given in the twelfth year of the Indiction (369–70).

Fourteenth Title Associations[81] of the City of Rome

[1][82] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Trifolius, Praetorian Prefect.* If anyone has thought of suing a member of an association (*decuria*) to remove his privileges, he shall understand that he ought to bring the action before the judge of the association.

Given January 19, at Milan, in the consulship of Timasius and Promotus (389).

[2][83] *Emperors* ARCADIUS, HONORIUS, *and* THEODOSIUS *Augusti to Julius Exsuperantius and other members of the association.* **pr.** We affirm by Our Authority the laws established both by previous emperors and by Our Deified Parent. **1.** Thus, we want individual judges to know that no one should try to rub a mark of dishonor (*nota*) onto this guild with physical injuries or to dare to deprive (the members) of those benefits that are approved by careful reasoning.[84] For We wish that the ancient prerogative of privileges be preserved for this guild.

Given July 8, at Rome, in the consulship of Honorius Augustus, for the sixth time, and Aristaenetus (404).

Fifteenth Title Privileges of the Members of Associations of the City of Rome

[1][85] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Alypius, City Prefect.* **pr.** No one should be free or permitted (to cause) that the residents of the city sustain anything new in the city, but We instruct that, for

[80] = C.Th. 10.23.1. Seeck dates to early 369; Schmidt-Hofner, to between September 1, 369, and April 1, 370.
[81] This title, "de decuriis," is taken from the C.Th.; some manuscripts have "*de curialibus*," "concerning *decuriones*."
[82] = C.Th. 14.1.3.
[83] = C.Th. 14.1.4.
[84] "rationibus," which Blume translates as "by law."
[85] This is composed from C.Th. 14.2.2–4.

suffragia valere praecipimus. 1. Cura autem rectorum provinciarum corporati urbis Romae, qui in peregrina transgressi sunt, redire cogantur, ut servire possint functionibus, quas imposuit antiqua sollemnitas.

D. prid. id. Iul. Aquileiae Tatiano et Symmacho conss.

XVI De Pistoribus

[1] *Imp. Leo A. Viviano pp.* pr. Quicumque ex mancipibus comitis horreorum dignitatem et officium vel ambitione vel gratia vel pecunia seu quolibet alio modo posthac fuerit adsecutus, exutus dignitate, quam contra interdictum nostrae serenitatis adeptus est, multatus etiam viginti libris auri ad mancipum denuo consortium collegiumque revocetur. 1. Omne etiam speciale beneficium, quocumque modo contra hanc sanctionem fuerit impetratum, penitus conquiescat.

XVII De Suariis et Susceptoribus Vini et Ceteris Corporatis

[1] *Imppp. Valentinianus Theodosius et Arcadius AAA. ad Albinum pu.* Porcinarii urbis aeternae cum pervigilem laborem populi Romani commodis exhibeant, sordidis semper muneribus liberentur.

D. VIII k. Sept. Romae Timasio et Promoto conss.

[2] *Impp. Arcadius et Honorius AA. Florentino pu.* Quicumque ex corporibus suariorum sive excipiendae necessitate litis adstrictus seu inferendae voluntate spontanea provocatus iudicium voluerit experiri, fori urbani auditorium praestoletur.

the honor of the eternal city, the privileges (*suffragia*) granted to members of associations (*corporati*) be valid. 1. Members of associations of the city of Rome who have committed some offense abroad should be compelled to return by the care of the provincial governors, so that they can serve the functions (*functiones*) that ancient solemnity has imposed.

Given July 14, at Aquileia, in the consulship of Tatianus and Symmachus (391).

Sixteenth Title Bakers

[1] *Emperor* LEO *Augustus to Vivianus, Praetorian Prefect.* **pr.** Whoever henceforth from among the baking contractors (*mancipes*) has gained the rank and office of Count of the Granaries (*horrea*), either by solicitation, influence, money, or any other means, shall be stripped of the rank that he gained in violation of the interdict of Our Serenity, be fined 20 pounds of gold, and be recalled anew to his partnership with the contractors and to his guild (*collegium*). 1. In addition, every special benefit that has been gained in any way against this ordinance shall be completely idle.

(457–465).

Seventeenth Title Swine Dealers, Wine Contractors, and Other Members of Associations[86]

[1][87] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Albinus, City Prefect.* Since the pork dealers of the Eternal City provide tireless labor for the benefit of the Roman people, they shall always be freed from ignoble compulsory services (*munera sordida*).[88]

Given August 25, at Rome, in the consulship of Timasius and Promotus (389).

[2] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Florentinus, City Prefect.*[89] Whoever from the associations (*corpora*) of the swine dealers wishes to use a court, either bound by the necessity of defending against a lawsuit or provoked by a spontaneous wish to bring one, he should await a hearing in the city forum (i.e., before the City Prefect).

(395–397).

86 *Pecuarii*, "livestock dealers," are included in C.Th. 14.4, but omitted in Bas. 54.20.

87 = C.Th.14.4.6.

88 *Munera sordida* were obligatory public services that involved physical labor, as opposed to administrative or financial responsibility.

89 Name restored from C.Th. 14.4.7; the manuscripts have "Florentius, Praetorian Prefect." Some reference to wine collectors and other corporations may have fallen out. Seeck dates to February 15, 397.

XVIII De Collegiatis et Chartopratis et Nummulariis

[1] *Impp. Theodosius et Valentinianus AA. Cyro pu.* **pr.** Qui sub praetextu decanorum seu collegiatorum, cum id munus non impleant, aliis se muneribus conantur subtrahere, eorum fraudibus credidimus obviandum, ne quis sub specie muneris, quod minus exsequitur, alterius muneris oneribus relevetur, ne argentariorum vel nummulariorum munera declinentur ab his, qui dici tantum collegiati vel decani festinant. **1.** Ideoque si quis eorum sub nudae appellationis velamine collegiatum se seu decanum appellat, sciat pro se alium subrogandum, qui praedicto muneri sufficiens approbatur, subrogatione videlicet memoratorum vel eorum qui moriuntur primatum eius qui subrogatur admisso iudicio. **2.** Quod autem supra numerum, qui encautis brevibus continetur, nemo se quolibet patrocinio vel cuiuslibet adsumpta potentia debeat excusare, hoc nostrae est serenitatis censere, tuae sublimitatis tuique officii cautius observare.

3. Hoc inter omnes aequa lance servari praecipimus, nullo divinae domus patrocinio nullo sacrosanctarum ecclesiarum reverentia nullo qualibet vel cuiuslibet se potentia excusante. **4.** Sed ne tantum circa munera relevanda supplicibus consuluisse noscamur, illud etiam dicendum observandumque esse censemus, ut chartae venditio, quae de provinciis ad corporatos supplicum per innovationem translata est, primae constitutionis terminis concludatur, hoc est, quod initio dispositionis constitutum est, id in posterum nulla addita novatione servetur.

D. x k. April. Theodosio XVII et Festo conss.

[2] …

XVIIII De Studiis Liberalibus Urbis Romae et Constantinopolitanae

[1] *Imp. Theodosius A. et Valentinianus C. Constantio pu.* **pr.** Universos, qui usurpantes sibi nomina magistrorum in publicis magistrationibus

Eighteenth Title Members of the Guild (of Firefighters), Sellers of Papyrus, and Money Changers

[1][90] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Cyrus, City Prefect.* **pr.** We have believed that we must oppose the fraud of those who, under the pretext of being corpse bearers (*decani*) or members of the guild (sc. of firemen),[91] when (in fact) they do not fulfill this service, endeavor to withdraw themselves from other compulsory services, lest anyone, under the pretext of one compulsory service that he does not carry out be relieved of the burdens of another, so that the duties of the bankers (*argentarii*) and the money changers (*nummularii*) not be refused by those who hasten to be merely called members of the guild or burial men. **1.** If anyone, therefore, calls himself, under cover of a mere title, fireman or burial man, he should know that someone else, who is certified as suitable for the aforementioned liturgy, must be enrolled in his place – that is to say, when, for substitution of the aforementioned persons or of those who die, a trial has been initiated by the superiors of the one who is substituted.

2. That, however, no one should excuse himself over the number, which is included in the ink-written (*encauti*) lists, by any patronage or by assuming anyone's power, this is for Our Serenity to decree, and for Your Sublimity and Your Office to observe carefully.

3. We instruct that this be observed with an equal balance among everyone, with no patronage on the part of the Divine Household, no reverence for the sacrosanct churches, and no one excusing himself by any or anyone's power. **4.** But lest We be known only to have considered petitioners over relief from their duties, We decree that this must be said and observed, that the sale of papyrus, which has been transferred from the provinces to the members of the association by the petitioners' innovation, is to be governed by the terms of the initial constitution, that is, that what was established at the outset of the disposition (of the association), shall be maintained for the future with no additional innovation.

Given March 23, in the consulship of Theodosius, for the seventeenth time, and Festus (439).[92]

Nineteenth Title Liberal Studies of the City of Rome and Constantinople

[1][93] *Emperor* THEODOSIUS *Augustus and* VALENTINIAN *Caesar to Constantius, City Prefect.* **pr.** We instruct that all be removed from vulgar ostentation who,

[90] Pr.-1 = C. 1.2.9, with some differences in wording.

[91] The guild referred to here is that of the firemen of Constantinople; see C. 4.63.5 and note ad loc. Blume identifies the *decani* as people in charge of burials; cf. C. 1.2.4, 9.

[92] A constitution of Anastasius, referred to in Nov. 59 pr., may have fallen out here. The constitution increased the number of the *decani* at Constantinople by 150. See C. 1.2.18, which may refer to part of the same constitution.

[93] = C.Th. 14.9.3. Combine with C.Th. 15.1.53.

cellulisque collectos undecumque discipulos circumferre consuerunt, ab ostentatione vulgari praecipimus amoveri, ita ut, si qui eorum post emissos divinae sanctionis adfatus quae prohibemus atque damnamus iterum forte temptaverit, non solum eius quam meretur infamiae notam subeat, verum etiam pellendum se ex ipsa ubi versatur illicite urbe cognoscat.

1. Illos vero, qui intra plurimorum domus eadem exercere privatim studia consueverunt, si ipsis tantummodo discipulis vacare maluerint, quos intra parietes domesticos docent, nulla huiusmodi interminatione prohibemus: sin autem ex eorum numero fuerint, qui videntur intra Capitolii auditorium constituti, ii omnibus modis privatarum aedium studia sibi interdicta esse cognoscant, scituri, quod, si adversus caelestia statuta facientes fuerint deprehensi, nihil penitus ex illis privilegiis consequantur, quae his, qui in Capitolio tantum docere praecepti sunt, merito deferuntur.

2. Habeat igitur auditorium specialiter nostrum in his primum, quos Romanae eloquentiae doctrina commendat, oratores quidem tres numero, decem vero grammaticos: in his etiam, qui facundia Graecitatis pollere noscuntur, quinque numero sint sophistae et grammatici aeque decem. 3. Et quoniam non his artibus tantum adulescentiam gloriosam optamus institui, profundioris quoque scientiae atque doctrinae memoratis magistris sociamus auctores. 4. Unum igitur adiungi ceteris volumus, qui philosophiae arcana rimetur, duo quoque, qui iuris ac legum voluntates pandant, ita ut unicuique loca specialiter deputata adsignari faciat tua sublimitas, ne discipuli sibi invicem possint obstrepere vel magistri, neve linguarum confusio permixta vel vocum aures quorundam aut mentes a studio litterarum avertat.

D. III k. Mart. Constantinopoli Theodosio A. XI et Valentiniano conss.

XX De Honoratorum Vehiculis

[1] *Imppp. Gratianus Valentinianus et Theodosius AAA. Nebridio pu.* Omnes honorati seu civilium seu militarium vehiculis dignitatis suae, id est carrucis, intra urbem sacratissimi nominis semper utantur.

D. III k. Febr. Constantinopoli Honorio np. et Euodio conss.

usurping for themselves the name of professors (*magistri*), have been accustomed to take around pupils collected from everywhere in the public schools (*magistrationes*) and rooms, so that, if any of them by chance, after the publication of the pronouncement of the Divine Ordinance, attempts again what We prohibit and condemn, he shall not only sustain the mark of the infamy that he deserves, but also know that he is to be expelled from the very city where he acts illegally.

1. But we do not prohibit with any such threat of punishment those who have been accustomed to pursue the same studies privately within the households of all sorts of people, if they prefer to make themselves available only for the pupils themselves whom they teach within private walls. But if they are from the number of those who are seen as established within the auditorium of the Capitol, they should understand that they are altogether forbidden study within private houses; and they will know that if they are caught acting against the heavenly statutes, they are not to gain anything at all from those privileges that are deservedly provided only for those who have been instructed to teach alone in the Capitol.

2. Therefore Our auditorium should specifically have, first, among those whom their learning in Roman eloquence commends, three orators, and ten grammarians; among these also, who are known to excel (*pollere*) in the eloquence of their Greek (*facundia Graecitatis*), there should be five rhetoricians (*sophistae*) and likewise ten grammarians. 3. And since We wish that the glorious youth be taught not just in these arts, We add teachers (*auctores*) of a more profound knowledge and learning to the professors mentioned. 4. Therefore We wish one to be joined to the others who ferrets out the secrets of philosophy, and also two who explain the intentions of the law and statutes (*iuris ac legum voluntates*), so that Your Sublimity should have assigned to each one places designated specifically, lest the pupils or professors be able to drown one another out in turn, or lest the jumbled confusion of languages and voices distract the ears or minds of some from the study of literature.

Given February 27, at Constantinople, in the consulship of Theodosius Augustus, for the eleventh time, and Valentinian (425).

Twentieth Title The Vehicles of Persons of Official Rank

[1][94] *Emperors* Gratian, Valentinian, *and* Theodosius *Augusti to Nebridius, City Prefect.* All persons of official rank (*honorati*), whether civil or military, shall always use the vehicles appropriate to their status, that is, four-wheeled coaches, within the city of most sacred name.

Given January 30, at Constantinople, in the consulship of Honorius, Most Noble Boy, and Euodius (386).

[94] = C.Th. 14.12.1.

XXI De Privilegiis Urbis Constantinopolitanae

[1] *Impp. Honorius et Theodosius AA. Philippo pp. Illyrici.* Urbs Constantinopolitana non solum iuris Italici, sed etiam ipsius Romae veteris praerogativa laetetur.

D. prid. id. Iul. Eustathio et Agricola conss.

XXII De Metropoli Beryto

[1] *Impp. Theodosius et Valentinianus AA. Hormisdae pp.* Propter multas iustasque causas metropolitano nomine ac dignitate Berytum decernimus exornandam iam suis virtutibus coronatam. igitur haec quoque metropolitanam habeat dignitatem. Tyro nihil de iure suo derogatur. sit illa mater provinciae maiorum nostrorum beneficio, haec nostro, et utraque dignitate simili perfruatur.

XXIII De Canone Frumentario Urbis Romae

[1] *Impp. Valentinianus et Valens AA. ad Iulianum praefectum annonae.* Nautici apud praesidum vel magistratuum acta confiteantur incorruptas species suscepisse, eorumque, apud quos deponitur ista testatio, praesens adspectus probet nihil in his esse vitii. quod eo tempore, quo ad sacrae urbis portum pervenit, praefecturam iugiter observare praeceptum est.

D. xviii k. Iul. Remis Gratiano A. et Dagalaifo conss.

[2] *Impp. Arcadius et Honorius AA. ad senatum et populum.* Si quid frumenti vel olei urbicarii canonis remissione indultum est speciali beneficio, contra commodum publicum elicita non valeant.

D. xvii k. Mai. Mediolani Caesario et Attico conss.

Twenty-First Title Privileges of the City of Constantinople

[1][95] *Emperors* Honorius *and* Theodosius *Augusti to Philippus, Praetorian Prefect for Illyricum.* The city of Constantinople should enjoy not only Italic right (*ius Italicum*), but also the prerogative of ancient Rome herself.

Given July 14, in the consulship of Eustathius and Agricola (421).

Twenty-Second Title The Metropolis of Beirut

[1] *Emperors* Theodosius *and* Valentinian *Augusti to Hormisdas, Praetorian Prefect.* For many and just reasons We decree that Beirut, already crowned by her virtues, be honored with the name and rank of a metropolis. Therefore, she shall also have the rank of a metropolis. Nothing is removed from Tyre's right. Let the latter be the mother of the province by the benefit of Our ancestors, and the former by Our benefit, and let each one enjoy a similar rank.

(448–450).

Twenty-Third Title The Grain Tax of the City of Rome

[1][96] *Emperors* Valentinian *and* Valens *Augusti to Julian, Prefect of the Food Supply.* Shippers (*nautici*) shall announce in the records of the governors or magistrates that they have received unspoiled supplies, and the first-hand inspection of those with whom this declaration is deposited should prove that there is no flaw in them. The Prefecture (of the Food Supply) has been instructed also to observe this at that time, when they (the supplies) have arrived at the port of the sacred city.

Given June 14, at Reims, in the consulship of Gratian Augustus and Dagalaifus (366).

[2][97] *Emperors* Arcadius *and* Honorius *Augusti to the Senate and People.* If any grain or oil of the tax (*canon*) for the city has been forgiven by a special benefit, favors elicited against the public interest shall not be valid.

Given April 15, at Milan, in the consulship of Caesarius and Atticus (397).

[95] Combine with C. 1.2.6.
[96] = C.Th. 14.15.2.
[97] = C.Th. 14.15.3. Combine with C. 4.40.3; C.Th. 6.2.17–18, 6.4.31, 12.6.24, 13.5.27, 13.9.5.

[3] *Idem AA. Messalae pp.* **pr.** Neminem patimur in mutando canone urbis Romae nostrae clementiae beneficium postulare: sed etiam ea rescripta, quae quoquo modo potuerint impetrari, suscipi non sinimus. eos vero, qui contra haec fecerint, in duplum retinendos esse decernimus. **1.** Vicarios quin etiam ceterosque iudices, nisi deinceps ab usurpatione urbicarii canonis abstineant, deportationis poena detineri, primates officiorum capitali supplicio subiugari perpetua auctoritate sancimus.

D. prid. non. Sept. Altino Theodoro vc. cons.

XXIIII De Frumento Urbis Constantinopolitanae

[1] *Impp. Honorius et Theodosius AA. Urso pu.* Nulli, ne divinae quidem domui nostrae frumentum de horreis publicis pro annona penitus praebeatur, sed integer canon mancipibus consignetur, annona in pane cocto domibus exhibenda. ita enim debet canon ab inclitae memoriae Constantino praestitus nec non a divo pietatis meae avo Theodosio auctus expendi, quoniam crescit inopia, si frumenta, quae pro annona tribuuntur, ad usus alios deputata cogentur sibi de publico emere, quae aliis vendere potuissent.

D. x k. Aug. Constantinopoli Theodosio A. VII et Palladio conss.

[2] *Impp. Theodosius et Valentinianus AA. Leontio pu.* **pr.** Auri statuta quantitas ad coemptionem frumentariam sit perpetuo dedicata, nec liceat cuiquam postea administratione urbicariae potestatis percepta aliquid ex eadem summa minuere vel ad quoscumque alios usus convertere: sed sub gestorum testificatione certum fiat, et quod mancipibus mutui nomine datum est et quod ab isdem sit excepta omni concussione

[3][98] *The same Augusti to Messala, Praertorian Prefect.* **pr.** We suffer no one to request the benefit of Our Clemency in changing the tax of the city of Rome; but We do not even allow the reception of those rescripts that have been able to be gained in any way. Still, We decree that those who have acted against these measures are to be liable for double the amount. 1. Indeed, We ordain by Our perpetual authority that Vicars (*vicarii*) and other governors (*iudices*), unless they henceforth refrain from usurping the tax for the city, be bound by the penalty of deportation, and the chiefs (*primates*) of the official staffs be subject to capital punishment.

Given September 4, at Altinum, in the consulship of the vir clarissimus *Theodorus (399).*

Twenty-Fourth Title The Grain for the City of Constantinople

[1][99] *Emperors* Honorius *and* Theodosius *Augusti to Ursus, City Prefect.* No one, not even Our Divine Household, shall be furnished grain from the public granaries instead of the food supply (*annona*, that is, bread), but the tax shall be signed over to the baking contractors (*mancipes*) in its entirety, and the food supply is to be provided in (the form of) cooked bread for the houses. For the grain tax (*canon*) established by Constantine of illustrious memory and also increased by the deified Grandfather of My Piety, Theodosius,[100] should be distributed in this way, since scarcity would increase if they (the bakers) should be compelled to purchase for themselves at public expense the grain that is provided for the food supply but assigned to other uses, which they could have sold to others.[101]

Given July 23, at Constantinople, in the consulship of Theodosius Augustus, for the seventh time, and Palladius (416).

[2][102] *Emperors* Theodosius *and* Valentinian *Augusti to Leontius, City Prefect.* **pr.** A set quantity of gold shall be dedicated in perpetuity for the purchase of grain, nor shall anyone be allowed henceforth, after taking over the administration of power within the city, to withdraw anything from the same sum or to convert it to any other uses; but it should become certain by a sworn declaration about the transactions (*gestorum testificatio*) both what has been

[98] Pr. = C.Th. 14.15.5.
[99] = C.Th. 14.16.2.
[100] See C. 11.25.2.
[101] The wording is obscure. In Blume's interpretation the people who are forced to buy are not the bakers, but the public at large. Similarly, the Pharr translation of C.Th. 14.16.2 runs: "since want increases if the grain assigned to the annona is put to other uses, and the people are forced to buy for themselves from the public supplies that which they would have been able to sell to others."
[102] = C.Th. 14.16.3 (which has 611 pounds of gold in the *principium*).

solvendum. 1. Eum autem, qui hanc formam ausus fuerit inquinare, quantitatem, in qua suam calliditatem exercuerit, in duplum redhibere iubemus, et quidquid ex praedicta ratione adcreverit, ad cumulum eiusdem auri quantitatis et frumentarii tituli fomitem redundare, legisque huius tenorem aeneis tabulis incidi.

D. v k. Dec. Constantinopoli Areobindo et Aspare conss.

XXV De Annonis Civilibus

[1] *Imppp. Theodosius Arcadius et Honorius AAA. Proculo pu.* **pr.** Annonas publicas non tam titulis dignitatum quam singulorum viritim meritis attributas divi Constantini liberalitate sat claruit. 1. Ideoque nihil ex his scholarum nomine vindicetur, sed pro uniuscuiusque merito quae sunt concessa serventur, ut, quicumque perceptarum annonarum emolumenta vel in heredes proprios iure sanguinis transfuderunt vel in extraneos distractionis titulo transscripserunt, maneat, quod gestum est vel hereditatis merito vel alienationis arbitrio.

D. VII k. Iul. Constantinopoli Arcadio A. II et Rufino conss.

[2] *Imppp. Theodosius Arcadius et Honorius AAA. Tatiano pp.* **pr.** Centum viginti quinque modios frumenti praeter solitum canonem per singulos dies de praesenti sexta indictione ex die kalendarum Ianuariarum nomine parapeteumatis de horreis publicis huius almae urbis insita nostrae pietatis liberalitate tribuimus, datis sacris apicibus ad sublimissimam quoque per Orientem praefecturam, quibus possit et modum nostrae donationis agnoscere et incunctanter praebere quae iussimus. 1. Quam modiationem iugiter et in perpetuum civibus nostris debere conferri valitura in aevum hac lege sancimus.

given as a loan to the baking contractors and what is to be paid by the same people with all extortion removed. **1.** However, We order that the person who has dared to befoul this procedure restore double the amount in which he practiced his cleverness, and that whatever increase has come from the account mentioned above accrue to the total of the amount of gold and the support of the grain account, and also that the text of this law be inscribed on bronze tablets.

Given November 27, at Constantinople, in the consulship of Areobindus and Aspar (434).

Twenty-Fifth Title City Food Supplies

[1][103] *Emperors Theodosius, Arcadius, and Honorius Augusti to Proculus, City Prefect.* **pr.** It has been made quite clear by the generosity of the Deified Constantine that public food supplies (*annonae publicae*) are distributed not so much on the basis of ranks as on the merits of individuals on a per person basis. **1.** For this reason nothing shall be claimed by these persons by virtue of their corps (*scholae*), but the grants that have been made for the merit of each and every one are to be maintained, so that those who have transferred by the right of blood relationship to their own heirs the emoluments of the food supplies they have received or who have ascribed them to outsiders under a sale, what has been done either by the merit of inheritance or by the decision to alienate shall remain valid.

Given June 25, at Constantinople, in the consulship of Arcadius Augustus, for the second time, and Rufinus (392).

[2] *Emperors Theodosius, Arcadius, and Honorius Augusti to Tatianus, Praetorian Prefect.*[104] **pr.** We grant 125 modii of grain for distribution (*nomine parapeteumatis*) beyond the customary grain tax (*canon*) each day from the present January 1 in the sixth indiction from the public granaries of this dear city by the customary generosity of Our Piety, having given sacred letters to the Most Sublime Prefecture of the East, by which it will be possible both to acknowledge the amount of Our gift and to offer without hesitation what We have ordered. **1.** We ordain that this amount of grain ought to be conferred on our citizens immediately and in perpetuity, with this law remaining in effect for the ages.

(392).

[103] = C.Th. 14.17.10.
[104] The names of the issuing emperors are restored on the basis of C. 11.24.1 and C.Th. 14.17.14. Seeck gives early September 392.

XXVI De Mendicantibus Validis

[1] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad Severum pu.* Cunctis adfatim, quos in publicum quaestum incerta mendicitas vocabit, inspectis exploretur in singulis et integritas corporum et robur annorum, atque inertibus et absque ulla debilitate miserandis necessitas inferatur, ut eorum quidem, quos tenet condicio servilis, proditor studiosus et diligens dominium consequatur, eorum vero, quos natalium sola libertas prosequatur, colonatu perpetuo fulciatur, quisquis huiusmodi lenitudinem prodiderit ac probaverit: salva dominis actione in eos, qui vel latebram forte fugitivis vel mendicitatis subeundae consilium praestiterunt.

D. XII k. Iul. Patavi Antonio et Syagrio conss.

XXVII De Nautis Tiberinis

[1] *Impp. Valentinianus et Valens AA. ad Symmachum pu.* Qui navem Tiberinam habere fuerit ostensus, onus rei publicae necessarium agnoscat. Quaecumque igitur navigia in alveo Tiberis inveniuntur, competentibus et solitis obsequiis mancipentur, ita ut nullius dignitas aut privilegium ab hoc officio vindicetur.

D. VIII id. Oct. Altino divo Ioviano et Varroniano conss.

XXVIII De Frumento Alexandrino

[1] *Impp. Honorius et Theodosius AA. Anthemio pp.* **pr.** In aestimatione frumenti, quod ad civitatem Alexandrinam convehitur, quidquid de crithologia et zygostasii munere et pro naucleriorum tuenda substantia eminentia tua disposuit, roboramus. 1. Atque ut curialibus praedae auferatur occasio, iubemus eos ad huiusmodi sollicitudinem adfectandam numquam accedere, sed designata officia tuis provisionibus examinata sollicitudinem praedictam implere.

D. V k. Febr. Constantinopoli Honorio VIIII et Theodosio V AA. conss.

Twenty-Sixth Title Able-bodied Beggars

[1][105] *Emperors* Gratian, Valentinian, *and* Theodosius *Augusti to Severus, City Prefect.* For all those indeed whom an uncertain career in begging will summon to profit at public expense, both the soundness of their bodies and the strength of their years shall be investigated on the basis of individual inspections, and compulsion applied to the lazy and those who are not to be pitied for any disability, so that the one who eagerly and diligently reveals them gain ownership of the ones whom a servile condition holds, but whoever reveals and proves such laziness (*lenitudo*) for those who are accompanied only by the liberty of their birth is to be supported by the perpetual right of the colonate (*colonatus perpetuus*). Owners retain a right of action against those who have offered by chance either a hiding place for fugitives or encouragement to undertake begging.

Given June 20, at Padua (Patavium), in the consulship of Antonius and Syagrius (382).

Twenty-Seventh Title Tiber Sailors

[1][106] *Emperors* Valentinian *and* Valens *Augusti to Symmachus, City Prefect.* Whoever has been shown to have a ship on the Tiber must acknowledge a burden necessary for the state (*res publica*). Therefore whatever boats are found in the Tiber's channel should be claimed for the appropriate and customary services (*obsequia*), in such a way that no one's rank or privilege be made immune from this duty.

Given October 8, at Altinum, in the consulship of the deified Jovian and Varronianus (364).

Twenty-Eighth Title Grain for Alexandria

[1][107] *Emperors* Honorius *and* Theodosius *Augusti to Anthemius, Praetorian Prefect.* **pr.** In estimating the grain that is conveyed to the city of Alexandria, We affirm whatever Your Eminence has disposed concerning the barley collecting (*crithologia*) and the mandatory service (*munus*) of the weights and measures (*zygostasium*) and for maintaining the property of the shippers. **1.** And so that the opportunity for plunder be removed from the decurions, We order that they never accede to claiming such a duty (*sollicitudo*), but that the designated offices, examined by Your supervision, fulfill the aforementioned duty.

Given January 28, at Constantinople, in the consulship of Honorius, for the ninth time, and Theodosius, for the fifth time, Augusti (412).

105 = C.Th. 14.18.1
106 = C.Th. 14.21.1. Combine with C.Th. 11.36.16, 14.3.7 (issued at Milan, and addressed to Viventius, City Prefect).
107 = C.Th. 14.26.1. Possibly combine with C. 11.2.4, 11.6.6.

[2] *Impp. Theodosius et Valentinianus AA. Isidoro pp.* Diurnos centum et decem modios alimoniis Alexandrinae civitatis addi decernimus, ut nemo privetur eo, quod nunc usque percepit, et perissochoregiae nomen penitus amputetur et tesserae designentur et nostrae pietatis nomine censeantur.

D. prid. non. Iun. Constantinopoli Isidoro et Senatore conss.

XXVIIII De Alexandriae Primatibus

[1] *Impp. Theodosius et Valentinianus AA. Isidoro pp.* Corporatos civitatis Alexandrinae repurgandi fluminis onere liberamus et pro tenore et dispositione tua quadringentos solidos ex dinummio vectigali memoratae civitatis praecommodari decernimus, ita ut ex titulo navium omnibus modis repensetur.

D. prid. non. Iun. Constantinopoli Isidoro et Senatore conss.

XXX De Iure Rei Publicae

[1] *Imp. Antoninus A. Dionysio.* Si quid adversus rem publicam indefensam in ea specie, in qua neque defensores creati fuerint neque ut crearentur placuerit, statutum est, actionibus eius nihil est praeiudicatum.

[2] *Idem A. Aphrodisio.* An res publica, in cuius locum vos successistis eo, quod satisfecisse debito proponitis, ius pignoris in eo fundo habeat, apud suum iudicem quaeritur. Si enim neque beneficio sibi concesso id ius nacta est neque specialiter in obligatione pignoris sibi prospexit, causa eius non separatur a ceteris creditoribus, qui habent personalem actionem.

[3] *Imp. Alexander A. Saturnino.* Rem publicam ut pupillam extra ordinem iuvari moris est.

[4] *Impp. Diocletianus et Maximianus AA. Urbano.* Si secundum legem civitatis res publica, cuius meministi, ruina collapsis aedificiis tuis distraxit aream, nihil contra huius legis tenorem rector provinciae fieri patietur.

[2][108] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Isidorus, Praetorian Prefect.* We determine that 110 *modii* be added every day to the food supply of the city of Alexandria, so that no one be deprived of what he has received up to now, and that the title of the provision of surplus (*perissochoregia*) be abolished completely, that tokens (*tesserae*, for receiving bread) be designated and be valued in the name of Our Piety.[109]

Given June 4, at Constantinople, in the consulship of Isidorus and Senator (436).

Twenty-Ninth Title The Chiefs (*Primates*) of Alexandria

[1][110] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Isidorus, Praetorian Prefect.* We free the members of associations (*corporati*) of the city of Alexandria of the burden of dredging (*repurgandi*) the river, and We determine that 400,000 solidi be provided from the two-coin impost (*binummium vectigal*) of the aforementioned city in keeping with your policy (*tenor*) and disposition, so that compensation be made in every way for the ships (used for dredging).

Given June 4, at Constantinople, in the consulship of Isidorus and Senator (436).

Thirtieth Title The Right of a Municipality

[1] *Emperor* ANTONINUS *Augustus to Dionysius.* If any decision has been rendered against a municipality (*res publica*) undefended in this respect, that defenders (*defensores*) have not been elected and it was not decided that they be elected, its rights of action have not been prejudiced at all.

[2] *The same Augustus to Aphrodisius.* Whether the municipality, into whose place (as creditor) you (plural) have succeeded for the reason that, as you state, you have satisfied a debt (owed by a third-party debtor), has the right of pledge over the farm, is investigated before its own judge. For if it has not acquired that right for itself by the concession of a benefit and it has not provided this for itself specifically in obligating the pledge, its case is not separated from the other creditors, who have an action *in personam*.

[3] *Emperor* ALEXANDER *Augustus to Saturninus.* It is customary that a municipality, like a ward, be aided by extraordinary procedure (*extra ordinem*).

[4] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti to Urbanus.* If in accordance with a law of the city the municipality that you have mentioned sold a lot after your buildings had collapsed in ruin, the provincial governor will not allow anything to happen against the provisions of this law.

[108] = C.Th. 14.26.2. Combine with C. 10.32.56–59, 11.29.1.
[109] Blume translates "bear the name of Our Piety."
[110] = C.Th. 14.27.2; see note on C. 11.28.2.

XXXI De Administratione Rerum Publicarum

[1] *Imp. Philippus A. Crescentiae.* Fundum vectigalem, si suis quibusque temporibus debitae quantitates inferantur, invito possessore auferri non posse manifestum est.

[2] *Impp. Diocletianus et Maximianus AA. et CC. Iulio et Zenodoro.* Contra eos, qui rem publicam administrantes per officii necessitatem sub condicione relicti fideicommissi satis accipere debuerunt, quanti rei publicae interest satis non esse acceptum, dirigendam actionem perspicitis.

PP. VII k. Dec. CC. conss.

XXXII De Vendendis Rebus Civitatis

[1] *Impp. Severus et Antoninus AA. Herculiano.* Si sine ulla condicione praedia vendente re publica comparasti, perfecta venditione nulla ratione vereris, ne adiectione facta auferri tibi dominium possit. Tempora enim adiectionibus praestituta ad causas fisci pertinent, nisi si qua civitas propriam legem habeat.

[2] *Imp. Antoninus A.* Quamvis incrementum conductioni factae publici praedii videtur offerri, non tamen additamenti specie oportet fidem locationis infringi, praesertim cum tantum iam temporis ex contractu decessisse proponas.

[3] *Imp. Leo A. Erythrio pp.* **pr.** Si qua hereditatis vel legati seu fideicommissi aut donationis titulo domus aut annonae civiles aut quaelibet aedificia vel mancipia ad ius inclitae urbis vel alterius cuiuslibet civitatis pervenerunt sive pervenerint, super his licebit civitatibus venditionis pro suo commodo inire contractum, ut summa pretii exinde collecta ad renovanda sive restauranda publica moenia dispensata proficiat. **1.** Indefessa vero cura prospicientes, ne quis adversus commoda civitatum quicquam moliri possit incommodum, sed sine ulla fraude seu nundinatione vel colludio seu coniventia huiusmodi venditiones procedant, hoc in posterum observandum esse censemus, ut, si quidem ad hanc

Thirty-First Title The Administration of Public Property

[1] *Emperor* PHILIP *Augustus to Cresecentia.* It is manifest that a farm subject to an impost (*fundus vectigalis*, one that is leased from a municipality) cannot be taken away from the possessor against his will if the amounts owed should be paid in a timely manner.

[2][111] *Emperors* DIOCLETIAN *and* MAXIMIAN *Augusti and the Caesars to Julius and Zenodorus.* You see that an action for the municipality's interest that the sureties were not taken should be directed against those who, while administering the municipality through the requirement of their office, ought to have accepted security to guarantee a trust left (to the municipality).

Posted November 25, in the consulship of the Caesars (294).

Thirty-Second Title Selling a City's Property

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to Herculianus.* If you have purchased properties when the municipality was selling them without any condition, once the sale is completed you fear without reason that ownership can be taken away from you upon the submission of a higher bid. The times established for higher bids pertain to the interests of the Treasury, unless some city should have its own law.[112]

[2] *Emperor* ANTONINUS *Augustus.* Although an increase (a higher bid than yours) seems to be offered on the lease that has been made of a public property, nevertheless the terms of the lease must not be infringed under the pretext of an additional bid, especially since you state that so much time has already passed from (the beginning of) the contract.

[3][113] *Emperor* LEO *Augustus to Erythrius, Praetorian Prefect.* **pr.** If, by right of inheritance or legacy or trust or gift, any house or rights to municipal food distribution or buildings or slaves have come or will have come to belong to this Illustrious City (Constantinople) or any other city, the cities will be permitted to enter into a contract for sale to serve their interest, so that the amount of the price, once collected and paid, should serve for renewing or restoring public walls. **1.** Looking out with untiring care, lest anyone might be able to cause any harm to the interests of cities, but that sales proceed without any fraud, bargaining, collusion, or connivance, We decree that this be observed in the future, that, if it happens that a house or city food supplies or slaves

111 = C. 6.54.8 (February 24), which also gives the action against the administrators' successors.
112 Paul. D. 50.1.21.7 refers to this rescript.
113 Pr. = C. 6.24.12; combine with 8.11.22. Krüger dates this text and the related ones to 472; Seeck dates this constitution to February 29, 472.

inclitam urbem domum vel civiles annonas aut alia quaelibet aedificia aut mancipia pertinentia contigerit venumdari, non aliter nisi imperiali auctoritate vendantur. **2.** In provinciis vero praesentibus omnibus seu plurima parte tam curialium quam honoratorum et possessorum civitatis, ad quam res pertinent praedictae, propositis sacrosanctis scripturis singillatim unumquemque eorum qui convenerint iubemus sententiam quam putent utilem patriae suae designare, ut ita demum decreti recitatione in provinciali iudicio interveniente emptor competentem possit habere cautelam. **3.** Hos autem venditionum contractus, sive iam completi fuerunt seu postea ineundi fuerint, stabiles esse censemus.

D. v k. Mart. Marciano et Zenone conss.

XXXIII De Debitoribus Civitatum

[1] *Imp. Antoninus A. Diodoto.* Non prius debitorem rei publicae honorem in re publica subire, quam id quod debere constiterit conventus exsolverit, tam meis quam divorum principum constitutionibus declaratur.

[2] *Imp. Constantinus A. Verino suo salutem.* **pr.** Apud eos, quos superstites integris facultatibus esse pervideris vel quorum heredes incolumia retinent patrimonia, sortes rei publicae perseverare debebunt, ita tamen, ut annuas usuras suis quibusque temporibus exsolvant, cum simul et rei publicae utile sit retinere idoneos debitores et ipsis commodum cumulum debiti minime nutriri. **1.** Et quia nefas est obnoxiis corporibus alienatis circumscribi civitates, placuit, si qui debitor rei publicae civitatis quippiam ex eo patrimonio, quod habuit, cum pecuniam rei publicae sumeret, donaverit vel distraxerit vel qualibet in alium ratione contulerit, qualitate rei alienatae perspecta atque omnibus debitoris facultatibus consideratis, quas habuit, cum ei pecunia crederetur, pro rata ab eo, qui ex debitoris facultatibus aliquid detinet, ex sorte atque usuris postulari. **1a.** Itaque quotiens minus idoneum deprehenditur eius patrimonium, cuius nomen civitati alicui invenitur obnoxium, iudex omni diligentiae sollicitudine debebit inquirere, ad quos ex qualibet condicione transierint debitoris facultates, ut singuli aequa aestimatione habita pro rata rerum quas possident conveniantur,

belonging to this illustrious city are sold, they shall not be sold except with imperial authority. **2.** In the provinces We order that, in the presence of all or the greater part of both the decurions as well as the office-holders (*honorati*) and landowners (*possessores*) of the city, to which the aforementioned property belongs, after bringing forth the holy scriptures, each one of those who have convened is to indicate one by one the opinion that he thinks is useful to his hometown, so that only after the recitation of the decree occurs in the provincial court may the buyer be able to have a sufficient guarantee (*cautela*). **3.** We deem that these sale contracts, whether they have already been completed or are to be entered into afterwards, are valid.

Given February 25, in the consulship of Marcianus and Zeno (469).

Thirty-Third Title Debtors of Cities

[1] *Emperor* ANTONINUS *Augustus to Diodotus.* It is declared both in my constitutions and in those of the deified emperors that a debtor to a municipality not undertake an office in the municipality before, upon being sued, he has paid what it is established he owes.

[2][114] *Emperor* CONSTANTINE *Augustus sends greetings to Verinus.* **pr.** The fund's principal (*sortes*) belonging to a municipality should remain with those who you see are still alive with intact resources or whose heirs retain their patrimonies undiminished, but under the condition that they pay annual interest at the appropriate times, since it is at once both useful for the municipality to retain suitable (*idonei*, i.e., ones who can pay) debtors and a benefit for the debtors themselves that the amount of the debt not be increased. **1.** And since it is unspeakable for cities to be defrauded by the alienation of obligated properties (*obnoxia corpora*), if some debtor of the commonwealth of a city (*rei publicae civitatis*) has given away any part of the patrimony that he had when he took the municipality's money or has sold it or conferred it upon another person by any means whatsoever, upon examination of the quality of the property that has been alienated and consideration of all the debtor's resources that he had when money was lent to him, it has been decided that the principal and interest be demanded in proportion from the one who holds anything from the debtor's resources. **1a.** In this way whenever the patrimony of the person whose debt (*nomen*) is found to be owed to any city is discovered to be insufficient (to meet this debt), a judge with all care for diligence will be obliged to find out to whom the debtor's resources have passed under any condition, so that, after a fair appraisal is made, they may be sued individually in proportion to the

[114] = C.Th. 12.11.1, addressed to Locrius Verinus, with a somewhat different wording. Seeck dates to January 30, 320.

personalem actionem contra eum habituri debitorem, qui ipsis solventibus liberatur. **1b.** Ab eo autem, a quo constat fortunarum suarum partem maximam recessisse, etiam reliquam portionem quae apud eum resederit transferri ad idoneum oportebit.

2. Quod si quispiam debitor rei publicae civitatis fisco nostro locum fecerit, emptores, qui ex fisco nostro comparaverint, manifestum est secundum ius vetus et rescripta divorum constitutionesque nostras nullam debere molestiam sustinere. **3.** Quod si quis debitor non comparaverit vel certe ita omnia sua consumpserit, ut nemo aliquam rem ex eius bonis possideat, id debitum convenit ad dispendium rei publicae pertinere. Ideoque cura patris civitatis apud idoneos vel dominos rusticorum praediorum pecunia collocanda est.

PP. III k. Febr. Volusiano et Anniano conss.

XXXIIII De Periculo Nominatorum

[1] *Imp. Gordianus A. Severino.* Hi, qui a te collegaque tuo magistratus creati sunt, etiamsi maxime fideiussores non exegistis, tamen si per id temporis quo magistratus honor deponebatur solvendo fuerunt, periculo vos creationis non fecerunt obnoxios ex eo, quod casu aliquo patrimonium eorum mutilatum sit, cum cessationi suae id debeant imputare damnaque rei publicae, si qua ob culpam eorum passa est, sarcire, qui, cum nomine publico eos convenire potuissent, id facere supersederunt.

[2] *Idem A. Rufino.* Si successoris tui successor non idoneum loco suo magistratum denominavit, administrationis eius periculum ad personam tuam spectare nequaquam potest. etenim nominati successoris dumtaxat quisque periculum suscipere compellitur nec ad nominatoris nominatorem manus iure porrigi possunt.

property that they possess, while they will retain an action *in personam* against the debtor, who is freed (from obligation to the city) upon their payment of the debt. **1b.** It will be necessary, however, that the remaining portion that has stayed with a person from whom it is clear that the greatest part of his fortune has passed also be transferred to a suitable debtor.

2. But if some debtor of a municipality has made a place for Our Treasury,[115] it is manifest in accordance with ancient law, the rescripts of the deified emperors, and Our constitutions, that the buyers who have purchased from Our Treasury should not endure any trouble. **3.** But if any debtor does not raise the money (*comparaverit*) or has indeed used up all his own property in such a way that no one possesses any property from his goods, it is established that this debt is at the expense of the municipality. For that reason money is to be allocated by the care of the patron (*pater*) of the city among suitable debtors or owners of rustic properties.

Posted January 30, in the consulship of Volusianus and Annianus (314).

Thirty-Fourth Title The Risk of Nominators

[1] *Emperor* GORDIAN *Augustus to Severinus.* Those who have been made magistrates through you and your colleague (as your successors in municipal office), even if you did not precisely demand sureties, nevertheless, if they were solvent through that time in which the office of the magistracy was being set aside, they have not made you subject to the risk for their election on this account, that by some chance their patrimony was dissipated, since the ones who, when they could have sued them on behalf of the public, failed to do so, should attribute that to their own neglect, and they should make good the losses to the municipality, if it has suffered any on account of their (the successors') fault.

[2] *The same Augustus to Rufinus.* If the successor of your successor has nominated an unsuitable magistrate in his place, the risk for his administration cannot at all concern your person. For each person is compelled to take up the risk for his own successor alone and the hands (of the law) cannot be extended lawfully to the nominator of the nominator.

[115] As Blume interprets, this must mean that the property has become forfeit: "The instant law gave the city the right to pursue purchasers of property of a debtor of the city, and while not exactly giving a lien, gave a right nearly the same as a lien. The former law on the subject, accordingly, which put cities in the same class with persons who took no mortgage or pledge, was profoundly modified. See C. 11.30.2 … The fisc (state) had a lien on the property of its debtor. Property sold by it for taxes became that of the purchaser free from other claims. C. 4.46.1. If an abandoned inheritance, however, fell to the fisc, and it sold it to another, the purchaser was liable for the indebtedness against it. C. 4.39.1. If property was confiscated by the fisc for some reason, and a third party had a mortgage against it, such confiscation did not extinguish the mortgage … If there was no mortgage against it, the purchaser of the fisc, as stated in the instant law, took it free from any claims of a general creditor."

XXXV De Periculo Eorum Qui pro Magistratibus Intervenerunt

[1] *Imp. Antoninus A. Augustali.* Fideiussorem magistratuum in his quae ad rei publicae administrationem pertinent teneri, non in his quae ob culpam vel delictum *eis* poenae nomine inrogentur, tam mihi quam divo Severo patri meo placuit.

XXXVI Quo Quisque Ordine Conveniatur

[1] *Imp. Antoninus A. Luciano.* **pr.** Etsi duobus simul cura pecuniae civitatis, non tamen separatis portionibus mandetur, singuli non pro virili portione, sed in solidum rei publicae obligantur. **1.** Cum autem de indemnitate eius quaeritur, prius eius bona qui administravit ac mox, si satisfieri non potuerit, collegae conveniuntur. **2.** Vos tamen, qui heredes unius ex curatoribus extitistis, damnum si quod post mortem eius dolo vel culpa collegarum accessit, onerari non est rationis.

[2] *Imp. Gordianus A. Valenti.* **pr.** Quotiens duobus non separatim, sed pro indiviso munus iniungitur, et ita, ut unusquisque eorum periculo soliditatis videatur obstrictus, manus ad nominatorem, priusquam utrique qui id munus administraverunt sollemniter fuerint excussi, nulla ratione possunt porrigi. **1.** Si vero separatis portionibus ad munus nominati sunt, prius pro portione conveniantur qui administraverint, item fideiussores eorum: si nec ab his quidem indemnitas fuerit servata, tunc demum creatorem ac, si nec is quidem sufficiat, novissime participem muneris conveniri debere praeses non ignoret.

[3] *Impp. Carus Carinus et Numerianus AAA. Theodosio.* Si ita duumviri creati estis, ut mutuo periculo teneamini, in dubium non venit vicariis damnis vos esse obstrictos, cum in magistratibus prius nominatores conveniendos esse (hoc quod in persona vestra custodiri considerastis) constitutum est.

Thirty-Fifth Title The Risk of Those Who Have Stood Surety for Magistrates

[1] *Emperor* Antoninus *Augustus to Augustalis.* It has been decided both by myself and by the Deified Severus, my father, that a surety for magistrates is bound for those matters that pertain to the administration of public affairs (*res publica*), not for those things which might be charged as a penalty for their (the magistrates') fault or delict.

Thirty-Sixth Title In What Order Each Person Should Be Sued

[1] *Emperor* Antoninus *Augustus to Lucianus.* **pr.** Even if the care of money for a city should be entrusted to two people at the same time, but not in separate portions, they are individually obligated to the municipality not for their own portion (*pro virili portione*), but for the whole amount (*in solidum*). **1.** When, however, there is a question of making good its (the city's) loss, the property of the one who administered it is first sought, and then, if satisfaction cannot be obtained, that of his colleague. **2.** It is not reasonable, however, that you, who are heirs of one of the *curatores*, be burdened if any loss has ensued after his death by the deceit or fault of his colleagues.

[2] *Emperor* Gordian *Augustus to Valens.* **pr.** Whenever a service (*munus*) is enjoined upon two people, not separately, but jointly, and on this condition, that each one of them be seen as obligated for the risk for the whole amount, the hands (of the law) cannot by any reason be extended to the nominator before each one who has administered the service has been scrutinized (*excutere*). **1.** But if they have been nominated for the service with their portions separate, the ones who administered it should first be sued for their portion, and then their sureties; and if the loss is not salvaged from these, the governor should not ignore that only then the elector (*creator*) shall be sued, and if indeed he does not satisfy the debt, then finally an associate in the service (*particeps muneris*).

[3] *Emperors* Carus, Carinus, *and* Numerian *Augusti to Theodosius.* If you have been elected *duumviri* under the condition that you be held at mutual risk, it does not come into doubt that you are (each) obligated for losses caused by the other party, although it has been established in a constitution that with magistrates nominators should be sued first – you have understood that this is to be observed in your person.

[4] *Impp. Diocletianus et Maximianus AA. Dioni.* Cum te et collegam tuum magistratus vestri tempore publicum fenus collocasse proponas nec potuisse debitum a quibusdam rei publicae restitui, cum paratus sis pro te id quod solus gessisti satis rei publicae facere, consequens est rem publicam, si separati actus vestri fuerint, contra successores collegae tui vel rerum eius possessores prius ob personam eius progredi et, si solida indemnitas rei publicae servata non fuerit, nominatores eius interpellare ac postremo loco, si quid ex nomine collegae tui defuerit, ob culpae nexum te interpellare. Priores nominatores enim veluti fideiussores placuit obstringi.

XXXVII Ne Quis Liber Invitus Actum Rei Publicae Gerere Cogatur

[1] *Imp. Alexander A. Urbico.* Si, ut proponis, decreto ordinis ad libertatem ductus es, non debere te invitum actum rei publicae administrare curator rei publicae non ignorat, praesertim cum servi eiusmodi officia administrare debeant.

[2] *Impp. Diocletianus et Maximianus AA. Tiberio.* Si, cum ingenuus esses, ad actum gerendum a re publica compelleris, auxilium praesidis et iuris praesidia prout usus exigebat implorare potuisti.

XXXVIII Iniuncti Muneris Sumptus ad Omnes Collegas Pertinere

[1] *Impp. Diocletianus et Maximianus AA. Diodoro.* Cum ad munus exhibendarum angariarum cum aliis creatus a consortibus muneris sollicitudine deserta solum te functum esse proponas, sumptuum detrimenta, si qua acciderunt, collatione eorum, quos munus oportuit participare, provisione praesidis dividentur. Qui si etiam a te obsequium derelictum esse cognoverit, quid censurae publicae congruit, non ignoret.

[4] *Emperors* Diocletian *and* Maximian *Augusti to Dio.* Since you state that you and your colleague during the time of your magistracy lent public funds at interest and the debt could not be restored to the municipality by certain people, since you were prepared to make good to the municipality on your own behalf what you alone have carried out, it is consistent for the municipality, if your (respective) transactions were separate, to proceed first against the successors of your colleague or the possessors of his property on account of his person, and, if the loss to the municipality has not been made good in its entirety, to press his nominators and, in the last instance, if something is lacking in the name of your colleague, to press you as liable for the fault. For it has been decided that nominators be held liable first as if they were sureties.

Thirty-Seventh Title No Free Person Should Be Compelled Unwillingly to Perform a Transaction for a Municipality

[1] *Emperor* Alexander *Augustus to Urbicus.* If, as you state, you have been brought to liberty by a decree of the town council, the *curator* of the municipality will not ignore that you ought not unwillingly to administer a transaction for the municipality, especially since slaves ought to administer offices of this type.

[2] *Emperors* Diocletian *and* Maximian *Augusti to Tiberius.* If, although you were free born, you were being compelled to perform a transaction by a municipality, you could have asked for the help of the governor and the protections of the law as custom required.

Thirty-Eighth Title The Expense of an Enjoined Service Belongs to All the Colleagues

[1] *Emperors* Diocletian *and* Maximian *Augusti to Diodorus.* Since you state that you were elected together with others for the service (*munus*) of providing requisitioned transport and, when the care for this service was abandoned by your colleagues, you alone performed it, the losses arising from the expenses, if any occurred, will be shared, under the supervision of the governor, on the basis of the contribution by those who were supposed to participate in the service. But if he learns that obedience was also abandoned by you, he shall not ignore what is appropriate for public censure (of you).

XXXVIIII De His Qui ex Officio Quod Administraverunt Conveniuntur

[1] *Imp. Alexander A. Octavio.* Fenoris rei publicae, quod non tua culpa perditum esse apparuerit, sufficit sortis damnum, non etiam usurarum sustinere.

XXXX De Solutionibus et Liberationibus Debitorum Civitatis

[1] *Imp. Alexander A. quattuorviris et decurionibus Fabraternorum.* **pr.** Cautiones servorum publicorum ita demum firmam securitatem debitoribus praestant, si curatorum adsignantium vel eorum quibus exigendi ius est auctoritate subnixae sunt. **1.** Cum autem is qui exsolvisse dicitur solam scripturam actoris suscipientis pecuniam promet, ea tantum defensio consuevit admitti, si quod exsolutum est rationi rei publicae profecisse doceatur. **2.** Sane curator vester, si fraude servi constiterit effectum, ut interciperentur a curatore illatae a debitoribus quantitates, de peculio eius quod eo modo deest restituet.

XXXXI De Spectaculis et Scaenicis et Lenonibus

[1] *Imppp. Valens Gratianus et Valentinianus AAA. ad Hesperium proconsulem Africae.* Non invidemus, sed potius cohortamur amplectenda felicis populi studia, gymnici ut agonis spectacula reformentur. verumtamen cum primates viri populi studiis ac voluptatibus grati esse cupiant, promptius permittimus, ut integra sit voluptas, quae volentium celebretur impensis.

D. VI id. Mart. Triveris Valente V et Valentiniano AA. conss.

[2] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad Valerianum pu.* Quisquis equos, quos vel serenitas nostra vel ordinarii consules tribuunt voluptatibus, ad commodum compendiumque privatum abduxerit, unius librae auri condemnatione multetur.

D. VIII k. Mai. Triveris Eucherio et Syagrio conss.

Thirty-Ninth Title Those Who Are Sued in Connection with an Office That They Administered

[1] *Emperor* ALEXANDER *Augustus to Octavius.* It suffices that you sustain the loss of the principal of a municipality's funds lent at interest, which appears to have been lost without your fault, and not of the interest as well.

Fortieth Title Payments and Releases of a City's Debtors

[1] *Emperor* ALEXANDER *Augustus to the* quattuorviri *and decurions of Fabratera.* **pr.** Receipts (*cautiones*) given by public slaves only provide firm security for debtors if they have been supported the authority of the *curatores* signing them or of those who have the right to enforce debts. **1.** Since, however, the person who is said to have paid off a debt (in this case) offers only a written document of the manager (*actor*, i.e., a slave) taking the money, such a defense has customarily been admitted only if what has been paid should be shown to have benefitted the interest of the municipality. **2.** Admittedly your *curator*, if it is established that fraud was committed by (his) slave so that the amounts paid by the debtors were intercepted,[116] will restore what is lacking in this respect from his (the slave's) *peculium.*

Forty-First Title Spectacles, Stage Actors, and Pimps

[1][117] *Emperors* VALENS, GRATIAN, *and* VALENTINIAN *Augusti to Hesperius, Proconsul of Africa.* We do not begrudge but rather encourage embracing the passions of a happy people, that the spectacles (*spectacula*) of gymnastic competition be restored. However, since the leading men desire to win favor from the pursuits and pleasures of the people, We readily permit that the pleasure be complete that is celebrated at the expense of the willing.

Given March 10, at Trier, in the consulship of Valens, for the fifth time, and Valentinian Augusti (376).

[2][118] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *to Valerianus, City Prefect.* Whoever diverts for private benefit and gain horses that either Our Serenity or the ordinary consuls provide for pleasures shall be punished with a condemnation of one pound of gold.

Given April 24, at Trier, in the consulship of Eucherius and Syagrius (381).

[116] Mommsen omits "by the *curator*" in the manuscripts.

[117] = C.Th. 15.7.3 (from which *voluptas* is read for *voluntas* in the second sentence).

[118] = C.Th. 15.7.6–7. Combine with 3, and C.Th. 15.7.8, 15.10.2 (both Aquileia).

[3] *Idem AAA. ad Valerianum pu.* Eos qui agitandi munus exercent illustris auctoritas tua nullis praeter circense certamen adfici noverit oportere suppliciis.

D. VIII id. Mai. Eucherio et Syagrio conss.

[4] *Imppp. Theodosius Arcadius et Honorius AAA. Rufino pp.* **pr.** Si qua in publicis porticibus vel in his civitatum locis, in quibus nostrae solent imagines consecrari, pictura pantomimum veste humili et rugosis sinibus agitatorem aut vilem offerat histrionem, ilico revellatur neque umquam posthac liceat in loco honesto inhonestas adnotare personas. **1.** In aditu vero circi vel in theatri proscaeniis ut collocentur, non vetamus.

D. III k. Iul. Heracleae Arcadio A. III et Honorio A. II conss.

[5] *Impp. Honorius et Theodosius AA. Anthemio pp.* Nemo iudicum ex quacumque civitate in aliud oppidum vel ex provinciae solo equos curules aurigas bestias histriones cives temptet traducere, ne, dum popularibus plausibus intemperanter serviunt, et publicarum rerum statum fatigent et festivitatem impediant in cunctis oppidis celebrandam: ita ut, si quis hanc violaverit iussionem, poena teneatur ea, quae legum violatores persequitur.

D. VIII id. Aug. Constantinopoli Honorio VIII et Theodosio III AA. conss.

[6] *Impp. Theodosius et Valentinianus AA. Florentio pp.* **pr.** Lenones patres et dominos, qui suis filiabus vel ancillis peccandi necessitatem imponunt, nec iure frui dominii nec tanti criminis patimur libertate gaudere. **1.** Igitur tali placet eos indignatione subduci, ne potestatis iure frui valeant neve quid eis ita possit adquiri. sed ancillis filiabusque, si velint, conductisve pro paupertate personis, quas sors damnavit humilior, episcoporum liceat, iudicum etiam defensorumque implorato

[3][119] *The same Augusti to Valerianus, City Prefect.* Your Illustrious Authority should know that those who perform the service of driving chariots (*munus agitandi*) must not be subject to any punishments during (*praeter*) the circus competition.

Given May 8, in the consulship of Eucherius and Syagrius (381).

[4][120] *Emperors* THEODOSIUS, ARCADIUS, *and* HONORIUS *Augusti to Rufinus, Praetorian Prefect.* **pr.** If any painting should present a mime actor in humble clothing and a chariot driver with a wrinkled nose or a lowly actor in the public colonnades or in those places in the cities in which Our images are accustomed to be consecrated, it shall straightaway be torn down and henceforth it should never be permitted to draw attention to dishonorable persons in an honorable place. **1.** But We do not forbid that (such pictures) be placed in the entrance to a circus or in the proscenia of a theater.

Given June 29, at Heraclea, in the consulship of Arcadius Augustus, for the third time, and Honorius Augustus, for the second time (394).

[5][121] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Anthemius, Praetorian Prefect.* No governor (*iudex*) should try to bring from any city into another town, or from the soil of the province, chariot horses, drivers, animals, or actors from a city (*histriones cives*),[122] lest, while they are unrestrained in their slavishness to public applause, they wear out the state of public resources and impede the festivity that is to be celebrated in all towns. Thus if someone violates this order, he shall be held by that punishment that follows upon violators of the laws.

Given August 6, at Constantinople, in the consulship of Honorius, for the eighth time, and Theodosius, for the second time, Augusti (409).

[6][123] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Florentius, Praetorian Prefect.* **pr.** We do not suffer fathers or owners who are pimps, who impose the necessity of sinning on their daughters or slave girls, to enjoy the right of ownership or to rejoice in getting off scot-free from so great a crime. **1.** Therefore it is decided that they be removed as a result of such an outrage, so that they not be able to enjoy the right of (a father's) power, and that nothing be able to be acquired for them. But slave-women and daughters, if they should wish, or those whom a humble fate has condemned, when their persons have been leased out because of poverty, having implored the aid (*suffragium*) of the

[119] Combine with 2 and the texts referred there.
[120] pr. = C.Th. 15.7.12; combine with C. 1.4.4. Seeck dates to May 30, 394.
[121] = C.Th. 15.5.3.
[122] Mommsen places *cives* before *aurigas*, "drivers." The C.Th. version omits animals and actors. Blume translates "actors of any city."
[123] Pr. = C. 1.4.12, with different wording, and C.Th. 15.8.2.

suffragio omni miseriarum necessitate absolvi, ita ut, si insistendum eis lenones esse crediderint vel peccandi ingerant necessitatem invitis, non amittant solum eam quam habuerant potestatem, sed proscripti poenae mancipentur exilii metallis addicendi publicis: quae minor poena est, quam si praecepto lenonis cogatur quispiam coitionis sordes ferre, quas nolit.

D. XI k. Mai. Felice et Tauro conss.

[7] *Αὐτοκράτωρ Λέων Α. τῷ δήμῳ* ... Μηδεὶς πορνοβοσκείτω τοῦ λοιποῦ μηδὲ πόρος ἐντεῦθεν ταῖς λαργιτίοσιν εἰσαγέσθω. μήτε οὖν δούλην ἢ ἐλευθέραν προϊστάτω τις, ἐπεὶ εὐτελὴς μὲν ὢν ὁ τοῦτο ποιῶν πρὸς τῷ τιμωρηθῆναι καὶ μεταλλίζεται ἢ ὑπερορίως ἐξορίζεται, στρατείαν δὲ ἔχων ἢ ἐπιτήδευμα σεμνὸν ἀπόλλυσι καὶ αὐτὴν σὺν τῇ οὐσίᾳ. ὡσαύτως καὶ οἱ θυμελικοὶ τούτων ἀπεχέσθωσαν. εἰ δὲ δοῦλον εἴη τὸ προσταθέν, παρὰ παντὸς ἐκδικείσθω προῖκα, εἴτε ἀνὴρ εἴτε γυνὴ εἴτε κληρικὸς ἢ μοναχὸς τοῦτο ἐκδικεῖ. ταῦτα δὲ φυλαττέτωσαν οἱ ἄρχοντες οἱ μείζονες καὶ οἱ ἥττονες καὶ αἱ τάξεις αὐτῶν, ποινὴν ὑφορώμεναι καὶ εἰς τὸ σῶμα καὶ εἴκοσι λιτρῶν.

XXXXII De Expensis Publicorum Ludorum

[1] *Impp. Diocletianus et Maximianus AA. Marcello.* **pr.** Cum praesidem provinciae impensas, quae in certaminis editione erogabantur, ad refectionem murorum transtulisse dicas, et quod salubriter derivatum est non revocabitur et sollemne certaminis spectaculum post restitutam murorum fabricam iuxta veteris consuetudinis legem celebrabitur. **1.** Ita enim et tutelae civitatis instructae murorum praesidio providebitur et instaurandi agonis voluptas, confirmatis his quae ad securitatis cautionem spectant, insecuti temporis circuitione repraesentabitur.

bishops, perhaps, or of governors (*iudices*) or also defenders, shall be permitted to be released from all necessity of their miseries, under this condition, that if the pimps believe that they should insist on pursuing them or impose the necessity of sinning on them against their will, they shall not only lose the power that they had had, but they are to be proscribed and be made subject to the penalty of exile, to be assigned to the public mines. This is a lesser penalty then if someone at the behest of a pimp should be forced to endure the filth of copulation that she does not want.

Given April 21, in the consulship of Felix and Taurus (428).

[7][124] *Emperor* Leo *Augustus to the People.* … No one henceforth should act as a pimp, and no impost shall be exacted for the Imperial Finances from that source. No one may set a female slave or free woman to prostitution, since a person of lower rank (*euteles*, i.e., *humilior*) doing this, in addition to being punished, is given over to the mines or is exiled, and someone holding a service rank or an honorable profession loses it together with his property. Similarly theatrical musicians (*thymelici*) should refrain from these activities. If it is a slave who has been set to prostitution, she is to be claimed without any payment by everyone, whether a man, woman, cleric, or monk claims her. The magistrates, both the greater and lesser ones, and their offices, shall observe these measures, being liable to corporal punishment as well as a fine of 20 pounds (of gold).

(457–467).

Forty-Second Title Expenses of Public Games

[1] *Emperors* Diocletian *and* Maximian *Augusti to Marcellus.* **pr.** Although you say that the provincial governor transferred to the repair of walls funds that were dispersed for the production of a competition, both what was advantageously diverted will not be recalled and the customary spectacle of the competition will be celebrated in accordance with the law of the ancient custom after restoration of the fabric of the walls. **1.** In this way provision will be made for the defense of the city equipped with the protection of walls, and the pleasure of renewing the competition, after securing those things that pertain to security, will be made manifest in the passage of the following time.

[124] = C. 1.4.14 (in part); restored from Bas. 60.38.1.

XXXXIII De Aquaeductu

[1] *Imp. Constantinus A. ad Maximilianum consularem aquarum.* **pr.** Possessores, per quorum fines formarum meatus transeunt, ab extraordinariis oneribus volumus esse immunes, ut eorum opera aquarum ductus sordibus oppleti mundentur, nec ad aliud superindictae rei onus isdem possessoribus attinendis, ne circa res alias occupati repurgium formarum facere non occurrant. **1.** Quod si neglexerint, amissione possessionum multabuntur: nam fiscus eius praedium obtinebit, cuius neglegentia perniciem formae congesserit. **2.** Praeterea scire eos oportet, per quorum praedia aquaeductus commeat, ut dextra laevaque de ipsis formis quindecim pedibus intermissis arbores habeant: observante officio iudicis, ut, si quo tempore pullulaverint, excidantur, ne earum radices fabricam formae corrumpant.

D. XV k. Iun. Gallicano et Symmacho conss.

[2] *Imppp. Valentinianus Theodosius et Arcadius AAA. Pancratio pu.* Si quis de cetero vetiti furoris audacia florentissimae urbis commoda voluerit mutilare aquam ad suum fundum ex aquaeductu publico derivando, sciat eundem fundum fiscalis tituli proscriptione signatum privatis rebus nostris adgregandum.

D. VIII ... Constantinopoli Timasio et Promoto conss.

[3] *Idem AAA. Albino pu. Romae.* **pr.** Eos, qui aquae copiam vel olim vel nunc per nostra indulta meruerunt, usum aut ex castellis aut ex ipsis formis iubemus elicere neque earum fistularum quas matrices vocant cursum ac soliditatem attemptare vel ab ipso aquaeductu trahere. **1.** Quod si quis aliter fecerit, non solum id quod prius iure beneficii fuerat consecutus amittat, verum pro condicione quoque personae severissima poena plectetur.

D. V k. Sept. Romae Timasio et Promoto conss.

Forty-Third Title Aqueducts

[1][125] *Emperor* CONSTANTINE *Augustus to Maximilianus, Consular Prefect of Waters.* **pr.** We want landowners (*possessores*) through whose territory the channels of conduits (*formarum meatus*[126]) pass, to be free from extraordinary burdens, so that by their effort aqueducts that are filled with filth might be cleaned. These landowners are not to be bound to another burden from an extraordinary extra charge (*superindicta res*), lest, being occupied with other matters, they not be ready to perform the cleaning of the conduits. **1.** If they neglect this, they will be punished with the loss of their possessions, for the Treasury will obtain the property of the person whose neglect brings destruction to the conduit. **2.** In addition those through whose properties an aqueduct passes must know that they may have trees at a distance of 15 feet on the right and left side from the conduits themselves; the office of the governor (*iudex*) will observe that, if at any time they have sent off shoots, they should be cut out, so that their roots not corrupt the fabric of the conduit.

Given May 18, in the consulship of Gallicanus and Symmachus (330).

[2][127] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Pancratius, City Prefect.* If someone henceforth with the boldness of forbidden insanity wants to mutilate the interests of the most flourishing city by channeling water from a public aqueduct to his own farm, he shall know that the same farm, having been marked by the proscription of a fiscal claim, will be included among Our property.

Given on the eighth day before ..., at Constantinople, in the consulship of Timasius and Promotus (389).

[3][128] *The same Augusti to Albinus, City Prefect at Rome.* **pr.** We order those who have merited a supply of water, either formerly or at present, by Our indulgence to draw their use from the reservoirs (*castella*) or from the conduits (*formae*) themselves, and not to test the course and solidness of those pipes that they call *matrices* or to draw water from the aqueduct itself. **1.** But if anyone does otherwise, he shall not only lose what he had previously acquired by right of a benefit, but he shall be chastised with the severest punishment in accordance also with the condition of his person.

Given August 28, at Rome, in the consulship of Timasius and Promotus (389).

[125] = C.Th. 15.2.1.
[126] Blume: "acqueducts."
[127] = C.Th. 15.2.4. Since Pancratius was Prefect in 381–382, perhaps the emperors should be Gratian, Valentinian, and Theodosius. Seeck dates to 381 or 382.
[128] Pr. = C.Th. 15.2.5; 1 = C.Th. 15.2.6 (395).

[4] *Impp. Arcadius et Honorius AA. Asterio comiti Orientis.* Usum aquae veterem longoque dominio constitutum singulis civibus manere censemus nec ulla novatione turbari, ita tamen, ut quantitatem singuli, quam veteri licentia percipiunt, more usque in praesentem diem perdurante percipiant: mansura poena in eos, qui ad inrigationes agrorum vel hortorum delicias furtivis aquarum meatibus abutuntur.

D. k. Nov. Caesario et Attico conss.

[5] *Impp. Theodosius et Valentinianus AA. Cyro pp.* Si quis per divinam liberalitatem meruerit ius aquae, non viris clarissimis rectoribus provinciarum, sed tuae praecellentissimae sedi caelestes apices intimare debebit: condemnatione contra illum qui preces moderatoribus insinuare conatur quinquaginta librarum auri et contra universos administratores qui rescriptum per subreptionem elicitum suscipere moliuntur proponenda, apparitoribus nihilo minus eorundem virorum clarissimorum provinciae moderatorum animadversionibus pro vigore tui culminis subiugandis: et amplissima tua sede dispositura, quid in publicis thermis, quid in nymphaeis pro abundantia civium convenit deputari, quid his personis, quibus nostra perennitas indulsit, ex aqua superflua debeat impertiri.

[6] *Idem AA. Cyro pp.* pr. Omnis servitus aquarum aquaeductus Hadriani sive domorum sive possessionum sive suburbanorum sive balneorum vel per divinos adfatus intimatos in quolibet iudicio vel per usurpationem impertitos[ii] penitus exprobretur: maluimus etenim praedictum aquaeductum nostri palatii publicarum thermarum ac nymphaeorum commoditatibus inservire. et decernimus hanc dispositionem modis omnibus in posterum servari, nemini licentia tribuenda ab eodem aquaeductu precibus oblatis usum aquae petere vel eum audere perforare: scientibus his, qui qualibet ratione putaverint ad huiusmodi molimen accedere, vel officio, si ausum fuerit instruere vel minus instructis precibus parere, centena pondo auri multae nomine fiscalibus rationibus se esse illaturos.

1. Super his sancimus sulcum publicum aquarum nullis intra decem pedes arboribus coartari, sed ex utroque latere decempedale spatium integrum illibatumque servari. 2. Praeterea de plumbeis fistulis

[ii] *impetrata*

[4][129] *Emperors* Arcadius *and* Honorius *Augusti to Asterius, Count of the East.* We decree that any usage of water that is ancient and established by long ownership remain with individual citizens and that it not be disturbed by any innovation, but under the condition that individuals should receive the amount of water that they are receiving by ancient license, with the custom enduring up to the present day. Punishment will await those who abuse secret channels of the waters for irrigating their fields or for the delicacies of their gardens.

Given November 1, in the consulship of Caesarius and Atticus (397).

[5] *Emperors* Theodosius *and* Valentinian *Augusti to Cyrus, Praetorian Prefect.* If through divine generosity anyone has merited the right to water, he should direct the heavenly letters not to the *viri clarissimi* provincial governors, but to Your Most Excellent Seat. A penalty of 50 pounds of gold is to be established against a person who attempts to present his request to governors (*moderatores*) and against all administrators who scheme to receive a rescript elicited through fraud; the subordinate officials of the same *viri clarissimi* provincial governors are to be subject no less to punishments, in keeping with the vigor of Your Highness. And Your Most Magnificent Seat will decide what is appropriate to be assigned in the public baths and in the fountains (*nymphaea*) in keeping with the abundance of citizens, and what from the extra water should be allotted to those persons whom Our Eternity has indulged.

(440–441).

[6] *The same Augusti to Cyrus, Praetorian Prefect.* **pr.** Every servitude for waters from the aqueduct of Hadrian should be condemned completely, whether it is for houses, estates (*possessiones*), suburban properties, or baths, if it has been gained either through the publication of divine pronouncements in any court or through usurpation; for We have preferred that the aforesaid aqueduct serve the interests of the public baths and fountains (*nymphaea*) of Our Palace. And We decree that this disposition be maintained in all ways in the future, that no one is to be granted permission, after offering a petition, to seek the use of water from the same aqueduct or to dare to perforate it; those who think for any reason to engage in such shenanigans, or an office, if it has dared to draw up a petition or to comply with a petition not (yet) drawn up, know that they will each pay 100 pounds of gold as a fine to the accounts of the Treasury.

1. In addition to this, We ordain that the public channel of the waters should not be infringed upon with trees within 10 feet, but that from each side a 10-foot space be maintained whole and uncompromised. **2.** We further decree that

[129] = C.Th. 15.2.7. Combine with C.Th. 15.1.36.

ducentibus ad thermas, quae Achillis nuncupantur, quas providentia tuae magnificentiae factas esse cognovimus, eandem formam servari censemus. 3. Etenim memoratas fistulas thermis tantum et nymphaeis, quibus eminentia tua deputaverit, volumus inservire: facultate praebenda tuae sublimitatis apparitoribus circumeundi sine formidine domus suburbana balnea ad requirendum, ne qua deceptio vel suppressio vel insidiae contra publicam utilitatem a quoquam penitus attemptetur.

[7] *Idem AA. Eutychiano pp.* Ad reparationem aquaeductus huius almae urbis omnia vectigalia, quae colligi possunt ex universis scalis huius inclitae urbis et ex operariis qui Cyzicenii dicuntur, ad refectionem eiusdem aquaeductus procedere. illo videlicet observando, ut nemo eorum qui ius aquae possident quamcumque descriptionem sustineat: nam exsecrabile videtur domos huius almae urbis aquam habere venalem.

[8] *Imp. Zeno A. Adamantio pu.* **pr.** Hac lege sancimus, ut, si quis amplissimam praefecturam gubernans aurum aquaeductui deputatum ad alterum quodlibet opus non aquaeductibus vel aquae publicae competens extruendum vel curandum putaverit convertendum, de suis facultatibus eandem summam aquaeductus titulo repensare cogatur. 1. Separatus vero arcarius aurum aquaeductus suscipiat gloriosissimorum consulum liberalitate vel ex aliis titulis ad aquas publicas pertinentibus collectum vel postea colligendum.

[9] *Idem A. Sporacio.* Diligenter investigari decernimus, qui publici ab initio fontes vel, cum essent ab initio privati, postquam publice usum praebuerunt, ad privatorum usum conversi sunt, sive sacris apicibus per subreptionem impetratis, ac multo amplius si auctoritate illicita nec appetito colore sacri oraculi huiusmodi aliquid pertemptatum fuisse dignoscitur, ut ius suum regiae civitati restituatur et, quod publicum fuerit aliquando, minime sit privatum, sed ad communes usus recurrat: sacris oraculis vel pragmaticis sanctionibus adversus commoditatem urbis quibusdam impertitis iure cassandis nec longi temporis praescriptione ad circumscribenda civitatis iura profutura.

the same rule be observed with the lead pipes leading to the so-called baths of Achilles, which We have learned were made by the providence of Your Magnificence. 3. For We want the aforementioned pipes to serve only the baths and fountains to which Your Eminence has assigned them; the opportunity is to be offered to the subordinate officials of Your Sublimity to go without fear around the houses and suburban baths to make sure that no deception, subterfuge, or plot be attempted by anyone at all against the public utility.
(440?).

[7] *The same Augusti to Eutychianus, Praetorian Prefect.* All the imposts that can be collected from all the ladders[130] of this Famous City are to proceed for the repair of the aqueduct of this Generous City, as are the ones from the workers who are called Cyzicenii for the rebuilding of the same aqueduct; but this must be observed, that no one of those who possess a right of water should sustain any special assessment of taxes (*descriptio*); for it seems execrable that the houses of this Generous City have water that is purchased.[131]

[8] *Emperor* Zeno *Augustus to Adamantius, City Prefect.* pr. By this law We ordain that if anyone managing the Most Magnificent Prefecture thinks to divert gold assigned for an aqueduct to building or maintaining any other work not serving the aqueducts or public water, he shall be compelled to pay back from his own resources the same sum for the aqueduct fund. 1. The Treasurer (*arcarius*) shall separately receive the gold for the aqueducts that has been collected or henceforth is to be collected from the generosity of the Most Glorious Consuls or from other sources pertaining to the public waters.[132] .

[9] *The same Augustus to Sporacius.* We decree the diligent investigation of springs that were originally public or, although they were originally private, after they provided usage publicly, have (then) been converted for use by private people, whether sacred rescripts (*sacrae apices*) have been obtained surreptitiously, or much more so if it is determined that something has been attempted by illicit authority without seeking the appearance (*color*) of a sacred enactment (*oraculum*) of this type, so that the Imperial City be restored its right and that what has at one time been public (property) not at all be private but return to communal uses. Any imperial enactments or pragmatic sanctions obtained against the interest of the city are to have no legal force and the long-time prescription will not be of use in circumscribing the rights of the city.[133]

[130] According to Blume these were used to board ships that could not be docked.
[131] Seeck dates to 445–447.
[132] Lounghis *et al.* date to between 474 and 479.
[133] Lounghis *et al.* date to between 476(?) and 491.

[10] *Idem A. Spontio.* **pr.** Decernimus, ne quid a quacumque persona qualibet dignitate praedita contra munuscularios aquaeductus vel fontes publicos qui ad aquaeductus confluunt pertemptetur. **1.** Sed et si quis clam vel palam auctoritate confisus de isdem paragogiis vel fontibus aquam transduxerit vel clandestinis insidiis forte subripuerit, publicis aquaeductibus eam restituere compellatur. **2.** Hoc etiam praecipimus, ne in posterum a quolibet iuxta eosdem aquaeductus plantari qualescumque arbores possint, ne ex stirpibus labefactentur parietes aquaeductuum, quod antiquis etiam constitutionibus interdictum esse dignoscitur. **3.** Scientibus universis, quod in posterum super huiusmodi commissis suburbanum vel praedium vel balneum vel aquae mola vel hortus, ad cuius usum aqua publica fuerit derivata, vel si quid ex his iuxta aquaeductum positum ad eum pertinet, qui plantavit arbores aquaeductibus noxias, ad quemcumque pertineat locum vel hominem vel domum, proscriptionis titulo subiacebit et fisci viribus vindicabitur: nulli super huiusmodi poena nec per sacros apices venia tribuenda. **4.** Universos autem aquarios vel aquarum custodes, quos hydrophylacas nominant, qui omnium aquaeductuum huius regiae urbis custodiae deputati sunt, singulis manibus eorum felici nomine nostrae pietatis impresso signari decernimus, ut huiusmodi adnotatione manifesti sint omnibus nec a procuratoribus domorum vel quolibet alio ad usus alios avellantur vel angariarum vel operarum nomine teneantur. **5.** Quod si quem ex isdem aquariis mori contigerit, eum nihilo minus qui in locum defuncti subrogatur signo eodem notari praecipimus, ut militiae quodammodo sociati excubiis aquae custodiendae incessanter inhaereant nec muneribus aliis occupentur.

[11] *Imp. Anastasius A. Sergio pp.* Divinam dispositionem ab inclitae recordationis principe Theodosio super his, qui aquam sibi de publicis aquaeductibus seu fontibus praeberi desiderant, promulgatam hac etiam lege in sua firmitate durare sancimus, quatenus nemo vel in hac sacratissima civitate vel in provinciis sine divinis apicibus de sacro epistularum scrinio more solito edendis et iudicio tuae celsitudinis vel aliis quorum interest intimatis vel intimandis aquam de publico aquaeductu seu fonte trahere permittatur: his, quicumque nostra iussa violaverint seu violari concesserint, denarum librarum auri condemnatione aliaque gravissima indignatione feriendis.

[10] *The same Augustus to Spontius.*[134] **pr.** We decree that nothing should be attempted by any person endowed with any rank against the service-pipes (*munuscularii*) or the public springs that flow to the aqueducts. **1.** But if someone relying on his own authority either secretly or openly draws water from the same service-pipes (*paragogia*) or sources or perhaps steals it in a secret plot, he shall be compelled to restore it to the public aqueducts. **2.** We also provide this instruction, that henceforth trees of any sort should not be planted by anyone alongside the same aqueducts, lest the walls of the aqueducts be weakened by their roots, something that is known to have been forbidden in the ancient constitutions as well. **3.** All know that, in the future, for offenses of this type all property will be subject to proscription and will be claimed for the resources of the Treasury, whether it is a suburban estate, a country estate (*praedium*), a bath, a water mill, or a garden, for the use of which public water has been channeled off, of if anything from these (properties) situated alongside the aqueduct belongs to a person who has planted trees harmful to aqueducts, to whatever place, person, or household it might belong; no one is to be offered pardon from such a penalty, not even through a sacred rescript. **4.** We decree that all water workers (*aquarii*) or water guards (*aquarum custodes*), whom they call (in Greek) *hydrophylakes*, who have been assigned to the custody of all the aqueducts of this imperial city, be branded on individual hands with the happy name of Our Piety, so that by such a marking they be manifest to everyone and not be torn away by the procurators of the households or by anyone else for other uses or be held for requisitioned transport or labor. **5.** But if it happens that someone among the same water workers dies, We instruct that the one who is substituted into the place of the deceased be no less marked with the same sign, so that, associated in some way with their service (*militia*), they might stick unceasingly to their post of guarding the water and not be occupied with other services.

[11] *Emperor* ANASTASIUS *Augustus to Sergius, Praetorian Prefect.* We ordain that the divine disposition made by the Emperor Theodosius of famous memory concerning those who desire water to be provided for themselves from the public aqueducts or springs, having been promulgated also in this law, remain in its firmness, whereby no one be permitted to draw water from a public aqueduct or spring either in this most sacred city or in the provinces without divine rescripts to be acquired in the customary way from the Sacred Bureau of Correspondence, made known or to be made known in the tribunal (*iudicium*) of Your Highness or in others that have jurisdiction; those who violate Our orders or allow them to be violated are to be visited with a condemnation of 10 pounds of gold and other most grave indignation.[135]

[134] Possibly Sporacius, as in the previous constitution. Lounghis *et al.* date to between 476(?) and 491.

[135] Lounghis *et al.* date to 517. See 5 above for the law of Theodosius.

XXXXIIII De Gladiatoribus Penitus Tollendis

[1] *Imp. Constantinus A. Maximo pp.* Cruenta spectacula in otio civili et domestica quiete non placent. quapropter omnino gladiatores esse prohibemus.

PP. Beryto k. Oct. Paulino et Iuliano conss.

XXXXV De Venatione Ferarum

[1] *Impp. Honorius et Theodosius AA. Mauriano comiti domesticorum et vices agenti magistri militum.* **pr.** Occidendorum leonum cunctis facimus potestatem neque aliquam sinimus quemquam calumniam formidare. **1.** Bestias autem, quae ad comitatum ab omnibus limitum ducibus transmittuntur, non plus quam septem diebus intra singulas civitates retineri praecipimus: violatoribus eorum quinas libras auri fisci viribus illaturis.

D. XIII k. Iun. Constantio et Constante vv. cc. conss.

XXXXVI De Maiuma

[1] *Impp. Arcadius et Honorius AA. Caesario pp.* Clementiae nostrae placuit, ut maiumae provincialibus laetitia reddatur, ita tamen ut servetur honestas et verecundia castis moribus perseveret.

D. VII k. Mai. Constantinopoli Arcadio IIII et Honorio III AA. conss.

XXXXVII Ut Armorum Usus Inscio Principe Interdictus Sit

[1] *Impp. Valentinianus et Valens AA. ad Bulephorum consularem Campaniae.* Nulli prorsus nobis insciis atque inconsultis quorumlibet armorum movendorum copia tribuatur.

D. III non. Oct. Altino divo Ioviano et Varroniano conss.

Forty-Fourth Title Eliminating Gladiators Altogether

[1] [136] *Emperor* CONSTANTINE *Augustus to Maximus, Praetorian Prefect.* Bloody spectacles in times of civil peace and domestic quiet are not pleasing, for which reason We prohibit gladiators from existing completely.

Posted at Beirut, October 1, in the consulship of Paulinus and Julian (325).

Forty-Fifth Title Hunting of Wild Animals

[1][137] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Maurianus, Count of the Household and Acting Master of Soldiers.* **pr.** We provide the power to kill lions to everyone and we do not allow anyone to fear any calumny (for doing so). **1.**[138] However, We instruct that beasts, which are sent by all the dukes of the frontier areas (*limitum duces*) to the court (*comitatus*), not be kept in individual cities for more than seven days. Violators of these measures will pay 5 pounds of gold to the resources of the Treasury.

Given May 20, in the consulship of viri clarissimi *Constantius and Constans (414).*

Forty-Sixth Title The May Festival (*Maiuma*)

[1][139] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Caesarius, Praetorian Prefect.* It has pleased Our Clemency that the joy of the May Festival be restored to the provincials, but on the condition that decency be maintained and modesty endure as a result of chaste customs.

Given April 25, at Constantinople, in the consulship of Arcadius, for the fourth time, and Honorius, for the third time, Augusti (396).

Forty-Seventh Title That the Use of Arms Without the Emperor's Knowledge Be Forbidden

[1][140] *Emperors* VALENTINIAN *and* VALENS *Augusti to Bulephorus, Consular Governor of Campania.* No one at all shall be granted the right to transport arms of any type at all without Our knowledge and consultation.

Given October 5, at Altinum, in the consulship of the deified Jovian and Varronianus (364).

[136] = C.Th. 15.12.1.
[137] Pr. = C.Th. 15.11.1.
[138] 1 = C.Th. 15.11.2, possibly a different law from the one in the pr.
[139] C.Th. 15.6.1. The *Maiuma* (or *Maiumas*) was a festival in May honoring Dionysos and Aphrodite; celebrated apparently every three years, it lasted thirty days: J. Liebeschuetz, *Antioch* (1972), 230–231. Blume: "In 399 A.D. the festivity was again prohibited because decency had not been observed. C. Th. 15.6.2. But being mentioned as lawful in the Justinian Code, it must have been permitted again later."
[140] = C.Th. 15.15.1. Combine with C.Th. 9.30.2.

XXXXVIII De Agricolis Censitis vel Colonis

[1] *Imp. Constantinus A. ad Aemilianum pp.* Numquam rationibus vel colligendis frugibus insistens agricola ad extraordinaria onera trahatur, cum providentiae sit opportuno tempore his necessitatibus satisfacere.

Lecta VII id. Mai. Romae Ianuarino et Iusto conss.

[2] *Imp. Constantius A. ad Dulcitium consularem Aemiliae.* **pr.** Si quis praedium vendere voluerit vel donare, retinere sibi transferendos ad alia loca colonos privata pactione non possit. **1.** Qui enim colonos utiles credunt, aut cum praediis eos tenere debent aut profuturos aliis derelinquere, si ipsi sibi praedium prodesse desperant.

D. III k. Mai. Mediolani Constantio A. VIIII et Iuliano C. II conss.

[3] *Impp. Valentinianus et Valens AA. ad Faventium vicarium Italiae.* **pr.** Quisquis ex desertis agris veluti vagos servos liberalitate nostra fuerit consecutus, pro fiscalibus pensitationibus ad integram terrae professionem, ex qua videlicet servi manere videntur, habeatur obnoxius. **1.** Id etiam circa eos observari volumus, qui ex huiusmodi fundis servos ad possessiones suas transire permiserint.

D. prid. k. Aug. Mediolani Valentiniano et Valente AA. conss.

Forty-Eighth Title Farmers Enrolled in the Census or Bound Tenants[141]

[1][142] *Emperor* CONSTANTINE *Augustus to Aemilianus, Praetorian Prefect.* Never should a farmer busy with his accounts[143] or harvesting crops be dragged to extraordinary burdens, since it is a matter of providence for him to address these necessary tasks at the opportune time.

Read May 9, at Rome, in the consulship of Januarinus and Justus (328).

[2][144] *Emperor* CONSTANTIUS *Augustus to Dulcitius, Consular Governor of Aemilia.* **pr.** If someone wishes to sell or donate a property, he shall not be able by a private agreement to retain the bound tenants (*coloni*) for himself so as to transfer them to other places. **1.** For those who believe that bound tenants are useful ought either to hold them along with the properties or leave them behind to benefit others, if they indeed lose hope that a property is useful to themselves.

Given April 29, at Milan, in the consulship of Constantius Augustus, for the ninth time, and Julian Caesar, for the second time (357).

[3][145] *Emperors* VALENTINIAN *and* VALENS *Augusti to Faventius, Vicar of Italy.* **pr.** Whoever, from deserted fields (abandoned by their owners), has by Our generosity gained slaves as if they were wandering (i.e., without a master), shall be considered liable for payments to the Treasury for the land's full assessment (*professio*), from which the slaves are plainly seen as remaining. **1.** We also want this to be observed concerning those who have permitted slaves to cross over from such farms to their own possessions.

Given July 31, at Milan, in the consulship of Valentinian and Valens Augusti (365).

141 This and the following Titles deal with the "bound tenants" of late imperial estates. Where possible, Latin terminology has guided translation; but the distinctions here are difficult and highly disputed. The precise status of bound tenants remains a continuing scholarly controversy. Traditionally, bound tenants have been viewed as farmers cultivating a plot of land belonging to a landowner, to whom they paid a rent. For tax purposes, such tenants were registered on the estate, where they were legally obligated to remain; farmers who owned land that was registered in the census roles would not be bound tenants. However, in recent years a growing number of scholars sees bound tenants as including, or consisting primarily of, workers who entered into labor contracts with landowners. Although they might cultivate a plot belonging to the landowner and pay a rent, their primary service involved serving as wage laborers. For this view of bound tenancy, see especially Sirks (1993).

142 = C.Th. 11.16.4.

143 Perhaps "sowing," *sationibus*, although the reading *rationibus* ("accounts") is also in the C.Th. version.

144 = C.Th. 13.10.3. Seeck gives April 29, 356.

145 = C.Th. 11.1.12.

[4] *Idem AA. ad Modestum pp.* **pr.** Ii, penes quos fundorum dominia sunt, pro his colonis originalibus, quos in locis isdem censitos esse constabit, vel per se vel per actores proprios recepta compulsionis sollicitudine implenda munia functionis agnoscant. **1.** Sane quibus terrarum erit quantulacumque possessio, qui in suis conscripti locis proprio nomine libris censualibus detinentur, ab huius praecepti communione discernimus: eos enim convenit propriae commissos mediocritati annonarias functiones sub solito exactore cognoscere.
D. k. Mai. Constantinopoli Gratiano A. et Dagalaifo conss.

[5] *Idem AA. ad Oricum praesidem Tripolitanae.* Domini praediorum id quod terra praestat accipiant, pecuniam non requirant, quam rustici optare non audent, nisi consuetudo praedii hoc exigat.

[6] *Idem AA. ad Germanianum pp. Galliarum.* Omnes omnino fugitivos adscripticios colonos vel inquilinos sine ullo sexus muneri*s* condicionisque discrimine ad antiquos penates, ubi censiti atque educati natique sunt, provinciis praesidentes redire compellant.

[7] *Idem AA. et Gratianus A. ad Maximum pp.* **pr.** Quemadmodum originarios absque terra, ita rusticos censitosque servos vendi omnifariam non licet. **1.** Neque vero commento fraudis id usurpet legis illusio, quod in originariis saepe actitatum est, ut parva portione terrae emptori tradita omnis integri fundi cultura adimatur. **2.** Sed cum soliditas fundorum vel

[4][146] *The same Augusti to Modestus, Praetorian Prefect.* **pr.** Those with whom the ownership of farms resides, after receiving the instigation provided by compulsion, shall acknowledge, either themselves or through their own slave managers (*actores*), that duties to pay taxes (*munia functionis*) are to be fulfilled for the tenants bound by origin (*coloni originales*), who it will be clear are registered for the census (*censiti*) in the same places. **1.** Certainly we exclude from sharing in this regulation those who have possession of land no matter how small, when they, registered in their own places, are included in the census books under their own name. For it is appropriate for them, entrusted to their own modest resources (*mediocritas*), to acknowledge their payments for the *annona* (the tax on land) under the customary collector.

Given May 1, at Constantinople, in the consulship of Gratian Augustus and Dagalaifus (366).[147]

[5] *The same Augusti to Oricus, Governor of Tripolitania.* Owners of estates (*praedia*) shall accept that which the land provides, and, unless the custom of the estate should demand it, they should not ask for money, for which the farmers (*rustici*) do not dare to hope.

(366).[148]

[6] *The same Augusti to Germanianus, Praetorian Prefect of the Gauls.* The provincial governors shall compel all fugitive bound enrolled tenants (*adscripticii*) or resident tenants (*inquilini*), without any distinction of gender, service (*munus*), or condition, to return to their ancient hearths (*penates*), where they have been registered, raised, and born.

(366).

[7] *The same Augusti and* Gratian *Augustus to Maximus, Praetorian Prefect.* **pr.** As with (bound) tenants by origin (*originarii*), it is not at all permitted that farmers and slaves registered in the census (*censiti*) be sold from the land. **1.** Nor should a dodge around the law make use of this fraud by fabrication, which has often been done with tenants registered in their place of origin, that, with a small portion of the land conveyed to the buyer, the entire cultivation of the farm as a whole be taken away.[149] **2.** But when farms in their entirety or

[146] = C.Th.11.1.14.

[147] Possibly 371 (consulate of Gratian, for the second time, and Probus); so Seeck.

[148] Seeck dates this constitution and the next to October 13, 365; Schmidt-Hofner, to May 1–19, 366. The recipient should be Ruricius; see Ammianus 28.6.11, 22 (Krüger).

[149] Blume explains the ruse: a portion of a larger estate was sold together with all the cultivators from the estate, thereby leading to the remaining estate falling out of cultivation. To prevent this happening, the law divides the cultivators proportionately; and if the cultivators are sold separate from the land, the buyer forfeits any excess in price paid and the seller can recover the surplus of cultivators.

certa portio ad unumquemque perveniat, tanti quoque servi et originarii transeant, quanti apud superiores dominos et possessores vel in soliditate vel in parte manserunt: et emptor pretium quod dederit amissum existimet, nihilo minus venditori ad repetendos servos cum agnatione eorum vindicatione concessa. 3. Et si aliqua denique ex causa dissimulaverit legis usurpare beneficium atque iste sub hac taciturnitate decesserit, et heredibus eius et contra heredes emptoris vindicationem damus longi temporis praescriptione submota: mala fide namque possessorem esse nullus ambiget, qui aliquid contra legum interdicta mercatur.

[8] *Idem AAA. ad Probum pp.* pr. Omnes profugi in alieno latebras collocantes cum emolumentis tributariis, salva tamen moderatione, revocentur, scilicet ut, si, apud quos homines reperiuntur, alienos esse noverant fugitivos et profugis in lucrum suum usi sunt, hoc est sive excoluerunt agros fructibus dominis profuturos sive aliqua ab isdem sibi iniuncta novaverunt nec mercedem laboris debitam consecuti sunt, ab illis tributa quae publicis perierunt functionibus exigantur. 1. Ceterum si occultato eo profugi, quod alieni esse videntur, quasi sui arbitrii ac liberi apud aliquem se collocaverunt aut excolentes terras partem fructuum pro solo debitam dominis praestiterunt cetera proprio peculio reservantes, vel quibuscumque operis impensis mercedem placitam consecuti sunt, ab ipsis profugis quaecumque debentur exigantur: nam manifestum est privatum iam esse contractum. 2. Si qui vero inter agricolas, ut solet, ex quibuscumque commerciis huiusmodi hominibus inveniuntur esse debitores, coram partibus constitutis iudex ab obnoxiis quod debetur exposcat.

[9] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad populum.* Immunitates specialiter datae et iugatio et capitatio libris publicis et civitatum ac provinciarum encautariis sine aliqua probatione factae penes fruentes ereptae in functionem pristinam redeant.

D. III non. Mart. Mediolani Merobaude II et Saturnino conss.

in fixed part come to one person, as many slaves and bound tenants from the place of origin should pass as remained with the previous owners and possessors either altogether or in part; and the buyer should consider as lost the price that he has given, while the seller is conceded the right to claim (*vindicatio*) back the slaves with their offspring. 3. And finally if for any reason he (the seller) has feigned taking advantage of the benefit of the law and this person has died while maintaining this silence, We give a the right to sue for ownership to his heirs and against the heirs of the buyer, with the long-time prescription removed; for no one should doubt that he is a possessor in bad faith who purchases against the prohibitions of the laws.[150]

[8] *The same Augusti to Probus, Praetorian Prefect.* **pr.** All those in flight finding hiding places on another's property shall be called back, with their tributary emoluments, but with the normal regulation intact (*salva tamen moderatione*), so that if those with whom the persons are discovered knew that they were fugitives in another's power and have used the ones in flight for their own profit, that is, if they have cultivated fields to benefit the owners with their crops, or if they have undertaken some other tasks enjoined on them by the same people (the owners) and have not gained the pay owed for their work, the tribute shall be exacted from them (the owners harboring the runaways) that has been lost (*perierunt*) from the public payments (*functiones*). 1. But if those in flight, hiding the fact that they appear as in another's power, (and acting) as if they were under their own authority (*sui arbitrii*) and free, have taken up with someone and, after cultivating lands provided the owners part of the crops owed for the soil while reserving the rest for their own *peculium*, or have gained a wage agreed upon for performing some jobs, whatever is owed should be exacted from those in flight themselves: for it is manifest that this is now a private contract. 2. But if, as customarily happens, any people among the farmers are found to be debtors to such persons from any transactions, the judge shall, before the summoned parties, demand from those liable what is owed.[151]

[9][152] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to the People.* Immunities specially given and tax liability for land (*iugatio*) and capitation (*capitatio*) made without any approval in the public books and the records (*encauteriis*) both of the cities and the provinces shall return to their old payment, after being snatched away from those enjoying them.

Given March 5, at Milan, in the consulship of Merobaudes, for the second time, and Saturninus (383).

[150] Seeck dates to July 13, 371; Schmidt-Hofner, to 371–375.
[151] Seeck dates to July 13, 371; Schmidt-Hofner, to 368–375.
[152] = C.Th. 13.10.8 pr. Combine with C. 10.25.1.

[10] *Idem AAA. et Arcadius A. Cynegio pp.* **pr.** Cum antea per singulos viros, per binas vero mulieres capitis norma sit censa, nunc binis ac ternis viris, mulieribus autem quaternis unius pendendi capitis attributum est. **1.** Quocirca sublimitas tua huiusmodi census per Comanensium et Ariarathensium Armeniae secundae, Amasenorum Helenoponti et Diocaesarensium Cappadociae secundae urbes salubris et temperatae peraequationis modum monumentis publicis iubebit adnecti.

D. VI k. April. Constantinopoli Honorio et Euodio conss.

[11] *Impp. Arcadius et Honorius AA. ad populum.* Originarios colonos nullis privilegiis, nulla dignitate, nulla census auctoritate excusari praecipimus, sed amputatis omnibus, quae aliquotiens per gratiam sunt elicita, domino vel fundo esse reddendos.

[12] *Idem AA. Florentio ...* **pr.** Servos vel tributarios vel inquilinos apud dominos volumus remanere. nam cum metu damni deterritus unusquisque eum quem incognitum habuerit coeperit propulsare, voluntas fugiendi servis non erit: nemo enim dominum suum deserit sciens nusquam sibi latendi locum esse derelictum. **1.** Sed aut cognitum sibi ingenuum unusquisque suscipiet, aut eum qui se liberum esse simulaverit a se submovebit metuens his quae statuta sunt obnoxius fieri. **2.** Si quis igitur ex memoratis fugitivis apud quemlibet fuerit repertus, duodecim libras argenti fisco nostro inferat detentator, ipsi autem cuius fuit praeter eundem fugitivum alterum etiam eiusdem aestimationis inferre decernimus.

[13] *Idem AA. Vincentio pp. Galliarum.* **pr.** Definimus, ut inter inquilinos colonosve, quorum quantum ad originem pertinet vindicandam indiscreta eademque paene videtur esse condicio, licet sit discrimen in nomine, suscepti liberi vel utroque vel neutro parente censito statum paternae condicionis agnoscant. **1.** Illud etiam servandum est, ut, si

[10][153] *The same Augusti and* ARCADIUS *Augustus to Cynegius, Praetorian Prefect.* pr. While previously the norm of a caput (a unit of personal tax liability) was assessed as individual men but two women, now it has been established that the payment for one caput is based on two or three men, but four women. 1. Wherefore Your Sublimity will order the limit established by the temperate and healthy equalization of taxes (*peraequatio*) for such a census to be displayed on the public monuments throughout the cities of Comana and Ariaratheia of Armenia Secunda and the cities of Amaseia in Helenopontus and Diocaesarea in Cappadocia Secunda.

Given March 26, at Constantinople, in the consulship of Honorius and Euodius (386).

[11] *Emperors* HONORIUS *and* ARCADIUS *Augusti to the People.* We instruct that tenants by origin (*originarii coloni*) are not excused by any privileges, any rank, or any authority of the census, but, having been stripped of everything that has been at one time or another elicited through influence, they are to be returned to their landowner or farm.[154]

[12] *The same Augusti to Florentius* ... pr. We want slaves, tax-paying farmers (*tributarii*), or resident tenants (*inquilini*) to remain with their landowners (*domini*). For when, deterred by the fear of loss, each person starts to repel a person he has who is unknown to him, slaves will not have the will to flee, since no one leaves his master (*dominus*) knowing that there is no hiding place left for him anywhere. 1. But each person, fearing becoming liable to these measures that have been established, will receive someone he personally knows to be free, or he will remove from himself the one who has pretended his freedom. Therefore if someone from the aforementioned fugitives is found with anyone at all, the person holding him shall pay 12 pounds of silver to Our Treasury, but We decree that he deliver, to the very person to whom he (sc. the fugitive) belonged, in addition to the same fugitive, another of the same value.[155]

[13][156] *The same Augusti to Vincentius, Praetorian Prefect of the Gauls.* pr. We define that children raised among resident tenants (*inquilini*) and bound tenants (*coloni*), for whom, as far as claiming their origin is concerned, there seems to be an indistinct and almost identical condition, even though there may be a difference in the name, shall acknowledge (for themselves) the status of their paternal condition, whether either parent or neither one has been registered in the census. 1. But this also is to be observed, if ever the same owner of

[153] = C.Th. 13.11.2. Combine with C. 11.58.3.
[154] Seeck dates to April 26, 396.
[155] Seeck dates to April 18, 396.
[156] Combine with C. 11.48.14, and the texts mentioned there.

quando utriusque fundi idem dominus de possessione referta cultoribus ad eam colonos quae laborabat tenuitate transtulerit, idemque fundi ad diversorum iura dominorum qualibet sorte transierint, maneat quidem facta translatio, sed ita, ut praedii eius dominus, a quo coloni probantur fuisse transducti, translatorum agnationem restituat.

D. III id. Iul. Stilichone et Aureliano conss.

[14] *Idem AA. Vincentio pp. Galliarum.* Si coloni, quos bona fide quisque possedit, ad alios fugae vitio transeuntes necessitatem condicionis propriae declinare temptaverint, bonae fidei possessori primum oportet celeri reformatione succurri, tunc causam originis et proprietatis agitari.

D. IIII id. Iul. Mediolani Stilichone et Aureliano conss.

[15] *Impp. Honorius et Theodosius AA. Probo.* Colonos numquam fiscalium nomine debitorum ullius exactoris pulset intentio: quos ita glebis inhaerere praecipimus, ut ne puncto quidem temporis debeant amoveri.

[16] *Idem AA. Palladio pp.* Mulier, quae fuisse originaria docebitur, si cuiuscumque liberi hominis secuta consortium in urbibus vel in quibuscumque locis victura constitit, eius omnem subolem secundum vetera constituta conveniet revocari.

D. VI k. Iul. Ravennae Monaxio et Plinta conss.

[17] *Idem AA. Iohanni pp.* Per colonum praeiudicium possessioni invito vel inscio domino imponi non posse et iure et legum auctoritatibus decantatur.

D. id. Iul. Ravennae Honorio XIII et Theodosio X AA. conss.

two farms transfers bound tenants from a possession teeming with cultivators to the one that is struggling because of a shortage, and the same farms by any sort of chance pass to the rights of different owners; the transfer that has been done shall remain in effect, but subject to this condition, that the owner of the property from which the bound tenants are proved to have been moved restore the offspring of the ones transferred.

Given July 13, in the consulship of Stilicho and Aurelianus (400).

[14][157] *The same Augusti to Vincentius, Praetorian Prefect of the Gauls.* If bound tenants whom someone has possessed in good faith have tried to turn aside the necessity of their appropriate condition by going over to others in a crime of flight, first the good faith possessor must be helped by a quick intervention, and then the case concerning the origin and property be tried.

Given July 12, in the consulship of Stilicho and Aurelianus (400).

[15][158] *Emperors Honorius and Theodosius Augusti to Probus.* No charge of any tax enforcer (*exactor*) shall ever strike bound tenants on account of debts owed to the Treasury: We order that they cleave to the soil in such a way that they ought not to be removed even for a small amount of time.

[16][159] *The same Augusti to Palladius, Praetorian Prefect.* A woman who will be shown to have been a tenant by origin (*originaria*), if it is established that she has followed a marriage with any free man to live in cities or in any places whatsoever, it will be appropriate that all her offspring be recalled in accordance with ancient constitutions.

Given June 27, at Ravenna, in the consulship of Monaxius and Plinta (419).

[17][160] *The same Augusti to John, Praetorian Prefect.* It is often repeated both in law and by statutory authority that a tenant (or bound tenant, a *colonus*) cannot impose a prejudice on possession by an owner who is unwilling or unaware.

Given July 15, at Ravenna, in the consulship of Honorius, for the thirteenth time, and Theodosius, for the tenth time, Augusti (422).

[157] = C.Th. 4.23.1. Combine with C. 11.48.13, 11.66.6 (all dated one day later), and possibly C.Th. 12.19.1–3 (Milan, June 29).

[158] Perhaps to be combined with C. 8.16.8, 11.59.13, dated to "June 11, at Constantinople, in the consulship of Constans and Constantius (414)." Seeck gives January 10, 414. In C. 8.16.8, Probus is Count of Imperial Finances.

[159] = C.Th. 5.18.1.4, with somewhat different wording.

[160] = C. 8.15.8, C.Th. 2.30.2 (with different wording); combine with C. 2.13.2, 4 4.1, 4.26.13, 12.60.4, with the date of July 11, which Seeck adopts.

[18] *Impp. Theodosius et Valentinianus AA. Basso pp.* Colonos nulla ratione ad ullum quamvis humilioris militiae locum sinimus admitti: sed nec apparitores magisteriae potestatis censibus adscriptos probari concedimus, quia in hac parte et dominorum iuri et publicae consulimus honestati.

[19] *[Αὐτοκράτωρ Ἀναστάσιος A.].* Τῶν γεωργῶν οἱ μὲν ἐναπόγραφοί εἰσιν καὶ τὰ τούτων πεκούλια τοῖς δεσπόταις ἀνήκει, οἱ δὲ χρόνῳ τῆς τριακονταετίας μισθωτοὶ γίνονται ἐλεύθεροι μένοντες μετὰ τῶν πραγμάτων αὐτῶν· καὶ οὗτοι δὲ ἀναγκάζονται καὶ τὴν γῆν γεωργεῖν καὶ τὸ τέλος παρέχειν. τοῦτο δὲ καὶ τῷ δεσπότῃ καὶ τοῖς γεωργοῖς λυσιτελές.

[20] *Imp. Iustinianus A. Demostheni pp.* **pr.** Litibus imponentes celeritatem sancimus, si quando coloni cuiuscumque condicionis contra dominos terrae declamaverint super hoc ipso dubitantes, utrum is terrae dominus est nec ne (eos tamen dicimus, qui non ex longo prolixoque tempore vel longinqua et inveterata redituum susceptione sufficientem habent cautelam, in quibus casibus ne contradicendi quidem licentia colonis relinquitur, longi temporis praescriptione vel redituum frequentissima consequentia colonorum impetus excludente): talem esse super redituum vel publicarum functionum praestatione formam censemus, ut, si tales coloni, quales supra diximus, idoneum fideiussorem totius summae quae ab his dependitur praestiterint, quod omnes reditus sine ulla procrastinatione, si melior causa dominorum iudicetur, eis restituent, et talis fideiussor per triennium accipiatur eoque impleto iterum renovetur, coloni in medio nullo modo super reditibus a dominis inquietentur. 1. Sin autem hoc coloni minime facere voluerint vel potuerint, tunc idem reditus per officium iudicis annui exigantur per solita tempora, in quae etiam dominis dependebantur, et deponantur in aede sacra, id est in cimeliarchio civitatis, sub qua possessio sita est, vel si localis ecclesia ad susceptionem pecuniarum idonea non sit, in metropolitana ecclesia, ut remaneant cum omni cautela et post

[18] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Bassus, Praetorian Prefect.* We do not permit bound tenants to be admitted by any means to any place of public service (*locum militiae*), however humble; nor do We concede that those who are enrolled in the censuses (*adscripti censibus*, i.e., bound tenants) may be approved as subordinate officials (*apparitores*) of a magistrate's power,[161] because in this area We are consulting the right of landowners (*domini*) and public honor.

(426).[162]

[19][163] (*Emperor* ANASTASTIUS *Augustus*). Some farmers are enrolled as bound (*enapographoi*, i.e., *adscripticii*), and their *peculia* belong to the landowners; but others become paid farmers (*misthotoi*) in the course of thirty years, remaining free with their property; these are compelled to cultivate the land and to pay the tax (*telos*). This is advantageous for both the owner and for the tenants (*georgoi*).

[20] *Emperor* JUSTINIAN *Augustus to Demosthenes, Praetorian Prefect.* **pr.** To bring speed to lawsuits We ordain that, if ever tenants (*coloni*) of any condition declaim against the owners of the land and raise doubts about the very issue whether or not that person is the owner of the land – for We are referring to those people (owners) who do not have sufficient protection from a long and extended time or from a long-term and inveterate reception of rents (*reditus*), in which case tenants are not left with the license to contradict them, since the long-time prescription or the very frequent exaction of revenues excludes the attacks of the tenants – We decree that the following be the procedure for the payment of rents or public taxes (*functiones*), that, if such tenants as we have mentioned above provide a suitable surety for the whole sum that is paid by them, because they will restore all the rents to the owners without any delay if their case should be judged the better, and such a surety should be received for a three-year period and when that is completed be renewed again, the tenants in the mean time should not be disturbed in any way by the owners over the rents. **1.** But if the tenants are unwilling or unable to do this, than the same annual rents shall be exacted through the office of the judge for the customary times for which they were also paid to the owners, and they shall be deposited in a sacred building, that is, in the treasury of the city in which the estate (*possessio*) is located, or if a local church should not be suitable for receiving funds, they shall be deposited in a metropolitan church, so that they remain there with every security and, after the most complete determination, be given to the

[161] For rules about *apparitores*, cf. C. 12.54.3.
[162] Seeck gives March 30, 426.
[163] Restored from Bas. 55.1.18; that this law is of Anastatius is clear from the reference to it in 23.1. Lounghis *et al.* date to between 491 and 518.

plenissimam definitionem vel dominis dentur vel colonis restituantur. **2.** Sin autem reditus non in auro, sed in speciebus inferuntur, vel in totum vel ex parte, interim per officium iudicis fructus vendantur et pretia eorum secundum praedictum modum deponantur.

3. Haec de reditibus definientes ad publicas transeamus functiones. et si quidem coloni more solito eas dependant, ipsi maneant in pristina consuetudine, nullo praeiudicio dominis generando, qui et quiescentibus colonis et non contradicentibus ad publicum tributarias functiones minime inferebant. **3a.** Sin autem moris erat dominos totam summam accipere et ex ea partem quidem in publicas vertere functiones, partem autem in suos reditus habere, tunc, si quidem fideiussor a colonis detur, eundem fideiussorem dominis sine praeiudicio litis tantam summam inferre, quantam tributa publica faciunt, ut a dominis publicis rationibus persolvatur: nullo ex hoc colonis praeiudicio generando. super reditibus enim domini fideiussore fiant contenti.

4. Sin autem fideiussione cessante ad sequestrationem res veniat et pecuniae deponantur, ex earum summa tantam iudices separare, quanta ad publicas sufficiat functiones, et eam disponere dominum accipere, quatenus ipse eam persolvens publicas accipiat securitates: reliqua quantitate, quae in reditus puros remanet, in tuto collocanda et litis terminum expectante: **5.** Nullo praeiudicio sive colonis sive dominis ex huiusmodi fideiussione vel sequestratione vel publicarum functionum solutione generando: sed omni causa in suspenso manente, donec iudicialis sententia, quae de toto negotio procedit, omnem rem aperiat et ostendat, quis dominus terrae constitutus est et ad quem publicarum functionum securitas debet in posterum fieri, seu reditus vel pervenire vel permanere.

Recitata septimo in novo consistorio palatii Iustiniani. d. Decio vc. cons.

[21] *Idem A. ad senatum.* **pr.** Ne diutius dubitetur, si quis ex adscripticia et servo vel adscripticio et ancilla fuisset editus, cuius status sit, vel quae peior fortuna sit, utrumne adscripticia an servilis, sancimus ea quidem, quae in anterioribus legibus cauta sunt pro tali progenie, quae ex mulieribus adscripticiis et viris liberis progenita sit, in suo statu

landowners or be restored to the tenants. 2. If, however, the rents are paid not in gold but in kind, either in their entirety or in part, the crops should be sold in the interim through the office of the judge and the prices received for them deposited in accordance with the method mentioned above.

3. After setting these rules concerning rents, let Us go to public payments (*functiones*). And if indeed tenants should pay them in the customary manner, they are to remain in their former condition, with no prejudice to be created for the landowners, who, with the acquiescence of the tenants and without their contradicting this, were not making tax payments to the public treasury. 3a. But if it was the custom for the landowners to receive the whole sum and to turn over part of that for public payments and to have part for their own rents, then, if indeed a surety should be given by the tenants, then the surety shall pay the landowners the same sum as the public taxes represent, without prejudice to the litigation, so that it be paid by the landowners to the public accounts, without generating any prejudice from this for the tenants. For concerning the rents the landowners should be content with the surety.

4. But if without a surety the matter should come to sequestration and the funds should be deposited, the judges should separate from that sum as much as is sufficient for the public charges, and the landowner should accept disposing of this, in such a way that as he pays it himself he receive public receipts (*securitates*); the amount left over, which remains simply for the rents, is to be collected in a safe place to await the end of the litigation. 5. No prejudice is to be created either for the tenants or for the landowners from this type of surety, sequestration, or payment of public charges; but the whole case remains in abeyance until the court's judgment, that proceeds from the entire matter, opens the whole affair and shows who has been established as the owner of the land and to whom henceforth the receipt for the public charges ought to be issued, whether the rent should come (to the landowners) or remain (with the tenants).

Recited for the seventh time in the New Consistory of the Palace of Justinian. Given October 30,[164] *in the consulship of the* vir clarissimus *Decius (529).*

[21] *The same Augustus to the Senate.* **pr.** So that it not be doubted any longer, if anyone has been born from a woman of enrolled status (*adscripticia*) and a male slave, or from a male of enrolled status (*adcripticius*) and a female slave, as to what status he or she should be, or which fortune is worse, whether registered status or slave, We ordain those things that were provided for in earlier laws for such offspring as was born from women of enrolled status and free males, namely, that it (the issue) be left in its own status, and that offspring of

[164] Inserted by Krüger, who is followed by Lounghis *et al.*

relinqui, et sit adscripticia proles ex tali copulatione procreata. **1.** Si quis autem vel ex servo et adscripticia, vel ancilla et adscripticio fuerit editus, matris suae ventrem sequatur et talis sit condicionis, qualis et genetrix fuit, sive ancilla sive adscripticia: quod hactenus in liberis tantum et servis observabatur. quae etenim differentia inter servos et adscripticios intellegetur, cum uterque in domini sui positus est potestate, et possit servum cum peculio manumittere et adscripticium cum terra suo dominio expellere?

[22] *Idem A. Iuliano pp.* **pr.** Cum scimus nostro iure nullum praeiudicium generari cuidam circa condicionem neque ex confessionibus neque ex scriptura, nisi etiam ex aliis argumentis aliquid accesserit incrementum, sancimus solam conductionem vel aliam quamcumque scripturam ad hoc minime sufficere nec adscripticiam condicionem cuidam inferre, sed debere huiusmodi scripturae aliquid advenire adiutorium, quatenus vel ex publici census adscriptione vel ex aliis legitimis modis talis scriptura adiuvetur. **1.** Melius etenim est in huiusmodi difficultatibus ex pluribus capitulis condiciones ostendi et non solis confessionibus neque scripturis homines forte liberos ad deteriorem detrahi fortunam. **2.** Sin autem et scriptura et post scripturam confessio seu depositio, sine vi et necessitate tamen, intervenerit (quid enim, si etiam conductionale instrumentum vel alium chartulam, in qua subscripsit, intimavit et inter acta deposuit sese colonum fuisse adscripticium?), tunc ex utroque genere obligationis, id est tam scripturae quam confessionis vel depositionis, talem eum esse credendum, qualem et scripsit et inter acta deposuit.

3. Illud quoque non ineleganter dubitabatur, si coloni filius per triginta annorum curricula vel forsitan quadraginta seu ampliora, adhuc vivente patre et agriculturam peragente, ipse in libera conversatione morabatur, et dominus terrae, quia per patrem ei satisfiebat, non etiam eius praesentiam exigebat, an post obitum patris, vel postquam inutilis is forte existat et ruri non idoneus, potest excusari filius, longinqua libertate abutendo et quod per multos annos neque agrum coluit neque aliquid colonarii operis celebravit, cum non possit dominus incusari propter suam desidiam, cui per patrem eius omne quod voluerat accedebat. **4.** In omnibus itaque huiuscemodi speciebus satis acerbum

registered status be created from such copulation. 1. But if someone has been born either from a male slave and a woman of enrolled status, or from a female slave and a male of enrolled status, he or she shall follow the womb of the mother and be of such a condition as she was, whether she was a slave woman or a woman of enrolled status; this was observed up to now in slaves alone and free persons. For what difference will be understood between slaves and people of enrolled status, since each has been placed in the power of his owner, and he can manumit a slave with his *peculium* and expel from his ownership a person of registered status with his land?

(530).[165]

[22] *The same Augustus to Julian, Praetorian Prefect.* pr. Since We know that by Our law no prejudice is created concerning status from oral confessions or from a writing, unless something additional has been added from other evidence, We ordain that a lease alone[166] or any other writing not suffice for this and not impose the status of being enrolled (*adscripticia condicio*) on anyone, but some support should be added to such a writing, to the extent that such a writing is supported by an entry (*adscriptio*) in the public census or from other lawful means. 1. For it is better in such difficulties for conditions to be demonstrated from multiple sources (*capitulae*) and that people who are perhaps free not be dragged into a worse fortune by confessions or writings alone.

2. If, however, a writing intervenes and after the writing a confession or a deposition, but without force and compulsion – for what is it if he has produced a lease document or some other record (*chartula*) in which he has written his signature and in the records has set down that he had been an enrolled tenant (*colonus adscripticius*) – then on the basis of each type of obligation, that is of both the writing as well as the confession or deposition, he is to be believed to be of the status that he has written and set down in the records.

3. This point has also not inelegantly been debated, if the son of a bound tenant himself was living in free association (*libera conversatio*) through the passage of thirty or perhaps forty years or more, while his father was still alive and performing agriculture, and the owner of the land, because he was being satisfied through the father, was indeed not demanding his presence, whether, after the death of the father, or after that one perhaps becomes useless and not suitable for the country (i.e., for farming), the son can be excused, as a result of abusing a long-lasting freedom and because for many years he neither cultivated the land nor performed any work of a bound tenant, since the owner, to whom everything he wanted came through his (the son's) father cannot be censured for his neglect. 4. So in all such cases it seems to Us to be quite bitter

[165] Krüger adds: "Given July 22, at Constantinople, in the consulship of the *viri clarissimi* Lampadius and Orestes." He is followed by Lounghis *et al.*

[166] *Sola conductio*. Some scholars, who understand the legal relationship differently, translate this "a contract of employment alone."

nobis videtur domino praeiudicari colonorum absentia eorum, qui in rure nati et postea absentes per suos vel patres vel fratres vel cognatos agriculturam peragebant. cum enim pars quodammodo corporis eius per cognationem in fundo remanebat, non videtur neque peregrinari neque in libertate morari. **5.** Maneat itaque domino ius inconcussum, et donec eius vel antiquitas vel posteritas vel cognatio in agrum remanet, ipse videatur ibi resedisse.

D. x k. ... Constantinopoli post consulatum Lampadii et Orestis vv. cc.

[23] *Idem A. Iohanni pp.* **pr.** Cum satis inhumanum est terram quae ab initio adscripticios habebat suis quodammodo membris defraudari et colonos in aliis terris demorantes dominos terrae maximis damnis adficere, censemus, quemadmodum in curialium condicione nemo ex temporali cursu liberatur, ita nec adscripticiae condicioni suppositus ex annalibus curriculis, quantacumque emanaverint, vel quacumque prolixa negotiatione aliquis sibi vindicet libertatem: sed remaneat adscripticius et inhaereat terrae. et si se celaverit vel separare conatus fuerit, secundum exemplum servi fugitivi sese diutinis insidiis furari intellegatur et sit suppositus una cum subole sua, etsi in alia terra eam fecerit, huiusmodi fortunae et capitali illationi, nulla liberatione ei penitus competente.

1. Cum autem Anastasiana lex homines qui per triginta annos colonaria detenti sunt condicione voluit liberos quidem permanere, non autem habere facultatem terra derelicta in alia loca migrare, et ex hoc quaerebatur, si etiam liberi eorum cuiuscumque sexus, licet non triginta annos fecerint in fundis vel vicis, deberent colonariae esse condicionis an tantummodo genitor eorum, qui per triginta annos huiusmodi condicioni illigatus est: sancimus liberos colonorum esse quidem in perpetuum secundum praefatam legem liberos et nulla deteriore condicione praegravari, non autem habere licentiam relicto suo rure in aliud migrare, sed semper terrae inhaereant, quam semel colenda*m* patres eorum susceperunt. **2.** Caveant autem possessionum domini, in quibus tales coloni constituti sunt, aliquam innovationem vel violentiam eis inferre. si enim hoc approbatum fuerit et per iudicem pronuntiatum,

that the owner be prejudiced by the absence of those bound tenants who, having been born in the country and afterwards in their absence were performing their agricultural duties through their fathers, brothers, or relatives. For since part of his body in some way remained on the farm through his relative (*cognatio*), he is seen as neither being abroad or being in liberty. **5.** Thus the owner's right shall remain unshaken, and as long as either his parent (*antiquitas*) or posterity or a relative remains on the farm, he should be seen as having stayed there.

Given February 20,[167] *at Constantinople, after the consulship of the* viri clarissimi *Lampadius and Orestes (531).*

[23] *The same Augustus to John, Praetorian Prefect.* **pr.** Since it is quite cruel that land that from the beginning had enrolled tenants (*adscripticii*) somehow be defrauded of its members and that bound tenants dwelling on other lands afflict the owners of the land with very large losses, We decree that, just as no one in the condition of decurions is liberated by the passage of time, so too is no one who is placed in the condition of being a registered tenant freed by the passage of years, however many have slipped by, or by whatever obliging (*prolixa*) business someone claims liberty for himself: but the registered tenant shall stay in place and cling to the land. And if he has hidden or tried to separate himself, he is to be understood, following the example of a fugitive slave, as stealing himself by his long-enduring plots and he shall be subjected to such a fortune and the payment of the capitation tax (*capitali illationi*) together with his offspring, even if he has produced them on land belonging to another, with no liberation at all available to him.

1. However, the law of Anastasius[168] intended that (free) people who were detained in the condition of bound tenants (*colonaria condicio*) for thirty years remain free, but not have the right to abandon their land and to migrate into other places. Because of this there was a question whether also their children of either sex, although they have not passed thirty years on farms or in villages, ought to be in the condition of bound tenants or only their progenitor, who for thirty years has been tied to such a condition. We ordain that the children of bound tenants be free in perpetuity in accordance with he aforementioned law and that they not be burdened with any worse condition, but that they not have the right to abandon their countryside and migrate into a different place, but they shall always cling to the land that their fathers at one time took up to cultivate. **2.** But the owners of estates (*possessionum domini*), on which such bound tenants have been established, shall take care not to visit any innovation (i.e., in the terms of their tenure) or violence on them. For if this is proved

[167] Krüger suggests the month, which is not included in the manuscripts; he is followed by Lounghis *et al.*

[168] See 19.

ipse provinciae moderator, in qua aliquid tale fuerit perpetratum, omnimodo provideat et laesionem, si qua subsecuta est, eis resarcire et veterem consuetudinem in reditibus praestandis eis observare: nulla nec tunc licentia concedenda colonis fundum ubi commorantur relinquere. 3. Et hoc tam in ipsis colonis quam in subole eorum qualiscumque sexus vel aetatis sancimus, ut et ipsa semel in fundo nata remaneat in possessione sub isdem modis isdemque condicionibus, sub quibus etiam genitores eius manere in alienis fundis definivimus.

4. Nemini autem liceat vel adscripticium vel colonum alienum scienti prudentique in suum ius suscipere. 5. Sed et si bona fide eum susceperit, postea autem reppererit eum alienum esse constitutum, admonente domino vel ipsius adscripticii vel terrae et hoc faciente per se vel per procuratorem suum hunc restituere cum omni peculio et subole sua: et si hoc facere supersederit, omnis quidem temporis, quo apud eum remoratus est, publicas functiones sive terrenas sive animales pro eo inferre compelletur cura et provisione tam eminentissimae praefecturae quam praesidis provinciae: coartetur autem et sic ad restitutionem eius secundum veteres constitutiones et poenas eis insertas.

[24] *Idem A. Hermogeni magistro officiorum.* pr. Si qui adscripticiae condicionis constituti mulieres liberas quacumque mente aut quacumque machinatione sive scientibus dominis sive ignorantibus sibi uxores coniunxerunt vel postea coniunxerint, in sua libertate permanere tam eas quam prolem quae ex eis cognoscitur procreata sancimus: illo procul dubio observando, ut, si ex libero marito et adscripticia uxore partus fuerit editus, is maternae condicionis maculam, non paternam sequatur libertatem. 1. Sed ne adscripticii putent sibi impunitum esse tale conamen, quod maxime verendum est, ne liberarum mulierum nuptiis ab his excogitatis paulatim huiusmodi hominum condicio decrescat, sancimus, si quid tale fuerit ab adscripticio perpetratum, liberam habere potestatem dominum eius sive per se sive per praesidem provinciae talem hominem castigatione moderata corrigere et abstrahere a tali muliere. quod si neglexerit, sciat in suum damnum huiusmodi desidiam reversuram.

and pronounced through a judge, the very governor of the province in which anything of this sort has been perpetrated should take care in every way both to repair the harm for them and to maintain for them the ancient custom in paying rents; not even then is any permission to be conceded to the bound tenants to leave the farm where they dwell. **3.** And We ordain this both for the bound tenants themselves and for their offspring of any sex or age, that it too, once having been born on a farm, remain on the estate (*possessio*) under the same terms and conditions as the ones under which We have determined its parents remained on farms belonging to other persons.

4. No one shall be permitted knowingly and intentionally to take up into his own right a registered tenant or a bound tenant belonging to another. **5.** But if he takes him up in good faith, but afterwards discovers that he has been established as belonging to another, he shall, when asked to do so by the owner either of the registered tenant himself or of the land, and when he does this either himself or through his procurator, restore him with all his *peculium* and his offspring; and if he neglects to do this, he must be compelled, by the care and provision both of the most eminent Prefecture as well as of the provincial governor, to pay all the public charges for him, whether for land or for animals, for the entire time during which he remained with him; however, he shall be bound also in this way to the restitution of that one in accordance with the ancient constitutions and the penalties contained in them.

(531–534).

[24][169] *The same Augustus to Hermogenes, Master of Offices.* **pr.** If any persons established in the condition of registered tenants have married or marry free women with whatever intention or machination, whether the owners know or are unaware, We ordain that both they (the wives) and the offspring that is known to have been procreated from them remain in their liberty; but, far from any doubt, this principle is to be observed that, if offspring is born from a free husband and an enrolled tenant (*adscripticia*) wife, it follows the stain of the mother's condition and not the father's liberty. **1.** But in order that enrolled tenants not think that such an effort go unpunished, since it is particularly to be feared that the number of this class of persons may decrease by the intermarriages they dream up with free women, We ordain that if anything of that kind is done by an enrolled tenant, the owner shall have the free power, either personally or through the provincial governor, to correct such a person by proper chastisement and to take him away from such a woman. If he neglects this, he may know that such laziness will redound to his own loss.

[169] §1 = C. 7.24.1; apparently combine with C. 1.3.53, 5.17.11, and 9.13.1 (the subscription for these reads: "Given November 17, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, for the third time (533)." This date also in Lounghis *et al.*

XXXXVIIII De Capitatione Civium Censibus Eximenda

[1] *Imp. Constantinus A. ad Eusebium virum perfectissimum praesidem Lyciae et Pamphyliae.* Plebs urbana, sicut in Orientalibus quoque provinciis observatur, minime in censibus pro capitatione sua conveniatur, sed iuxta hanc iussionem nostram immunis habeatur.

D. k. Iun. Constantino A. III et Licinio III conss.

L In Quibus Causis Coloni Censiti Dominos Accusare Possunt

[1] *Imp. Constantinus A. ad Maximum vicarium Orientis.* Quisquis colonus plus a domino exigitur, quam ante consueverat et quam in anterioribus temporibus exactus est, adeat iudicem, cuius primum poterit habere praesentiam, et facinus comprobet, ut ille, qui convincitur amplius postulare, quam accipere consueverat, hoc facere in posterum prohibeatur, prius reddito quod superexactione perpetrata noscitur extorsisse.

PP. id.

[2] *Impp. Arcadius et Honorius AA. Nebridio comiti Asiae.* **pr.** Coloni censibus dumtaxat adscripti, sicuti ab his liberi sunt, quibus eos tributa subiectos non faciunt, ita his, quibus annuis functionibus et debito condicionis obnoxii sunt, paene est ut quadam servitute dediti videantur. 1. Quo minus est ferendum, ut eos audeant lite pulsare, a quibus ipsos utpote a dominis una cum possessionibus distrahi posse dubium non est. 2. Quam de cetero licentiam submovemus, ne quis audeat domini in iudicio nomen lacessere, et cuius ipsi sunt, eiusdem omnia sua esse cognoscant. 3. Cum enim saepissime decretum sit, ne quid de peculio

Forty-Ninth Title Removing the Capitation of Citizens from the Census

[1][170] *Emperor* CONSTANTINE *Augustus to* vir perfectissimus *Eusebius, Governor of Lycia and Pamphylia.* The urban plebs, as is observed also in the eastern provinces, shall not be held liable in the censuses for the capitation tax, but is to be considered exempt in accordance with this order of Ours.

Given June 1, in the consulship of Constantine Augustus, for the third time, and Licinius, for the third time (313).

Fiftieth Title Cases in which Bound Tenants Registered in the Census Can Accuse Owners

[1] *Emperor* CONSTANTINE *Augustus to Maximus, Vicar of the East.* If a landowner exacts more from any tenant[171] than what he was previously accustomed (to pay) and what was exacted from him in previous years, he should approach the judge whose audience he will first be able to gain, and he should prove the crime, so that the one who is convicted of demanding more than he had been accustomed to receive might be prohibited from doing this in the future, after first having returned what he is known to have extorted by perpetrating an excessive demand.[172]

Posted on the Ides ...

[2] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Nebridius, Count of Asia.*[173] **pr.** Bound tenants, that is, ones enrolled in the censuses, just as they are free from these persons to whom taxes do not make them subject, so they ought to be seen as almost given over in a kind of servitude to the ones to whom they are liable by annual charges and the debt of their condition. **1.** It is all the less to be tolerated that they dare to batter with a lawsuit those persons by whom as owners there is no doubt that they can be sold along with estates (*possessiones*). **2.** We remove this license henceforth, so that no one dare to harry the name of an owner in a court, and so that they know that all their possessions belong to the same person to whom they themselves belong. **3.** For since it has been decreed again and again that a bound tenant not be permitted either

[170] = C.Th. 13.10.2. Seeck gives June 1, 311.

[171] The Latin term *colonus* does not necessarily have the sense of "bound colonate," which is the conventional translation for the texts from late antiquity; it is possible that more tenants are meant here than those bound to the land.

[172] On *superexactiones*, see C. 10.20.1, and 4 of the following constitution. Seeck dates this constitution to December 25, 325.

[173] C. 7.62.28 has Nebridius as Proconsul of Asia, which is to be preferred. The *lex Romana Burgundionum* 14.6 records this person as Vicar of Asia. Seeck dates to July 22, 396.

suo cuiquam colonorum ignorante domino praedii aut vendere aut alio modo alienare liceret, quemadmodum contra eius personam aequo poterit consistere iure, quem nec propria quidem leges sui iuris habere voluerunt et adquirendi tantum, non etiam transferendi potestate permissa, domino et adquirere et habere voluerunt? **4.** Sed ut in causis civilibus huiusmodi hominum generi adversus dominos vel patronos et aditum intercludimus et vocem negamus exceptis superexactionibus, in quibus retro principes facultatem eis super hoc interpellandi praebuerunt, ita in criminum accusatione quae publica est non adimitur eis propter suam suorumque iniuriam experiendi licentia.

LI De Colonis Palaestinis

[1] *Imppp. Valentinianus Theodosius et Arcadius AAA. Cynegio pp.* Cum per alias provincias, quae subiacent nostrae serenitatis imperio, lex a maioribus constituta colonos quodam aeternitatis iure detineat, ita ut illis non liceat ex his locis quorum fructu relevantur abscedere nec ea deserere quae semel colenda susceperunt, neque id Palaestinae provinciae possessoribus suffragetur, sancimus, ut etiam per Palaestinas nullus omnino colonorum suo iure velut vagus ac liber exsultet, sed exemplo aliarum provinciarum ita domino fundi teneatur, ut sine poena suscipientis non possit abscedere: addito eo, ut possessionis domino revocandi eius plena tribuatur auctoritas.

LII De Colonis Thracensibus

[1] *Imppp. Theodosius Arcadius et Honorius AAA. Rufino pp.* **pr.** Per universam dioecesim Thraciarum sublato in perpetuum humanae capitationis censu iugatio tantum terrena solvatur. **1.** Et ne forte colonis

to sell or to alienate in some other fashion anything from his *peculium* without the knowledge of the owner of the property (*praedium*), in what way will he – whom the laws did not want to have his own possessions under his own authority (*sui iuris*), but instead wanted (to have) the right both to acquire and to hold for the owner, when he was (previously) permitted only the power to acquire, but not also the power to transfer – be able to stand against his person on an equal legal basis? 4. But as in civil cases, we both close off an entry and deny a voice to such a class of persons against their owners or patrons except in the case of excessive demands (*superexactiones*), in which previous emperors have provided the opportunity for them to bring an action on this issue, so also, in an accusation of crimes that is public, permission is not taken away from them to pursue a case on account of their own or their people's injury.

Fifty-First Title Bound Tenants in Palestine

[1][174] *Emperors* Valentinian, Theodosius, *and* Arcadius *Augusti to Cynegius, Praetorian Prefect.* Since, in the other provinces that are subject to the power of Our Serenity, the law established by our ancestors detains tenants by a kind of eternal right in such a way that they are not permitted to go away from these places by whose crops they are supported nor to desert what they have at one time taken up to cultivate, but this benefit is not also provided (*suffragetur*) to the landowners of the province of Palestine, We ordain that throughout Palestine (*Palestinas*) no one at all of the tenants may jump around under his own right (*suo iure*) as if wandering and free, but by the example of the other provinces he shall be bound to the owner of the farm in such a way that he cannot depart without a penalty for the one who receives him; this point is added, that the owner of the estate (*possessio*) be provided with the full authority to recall him.

Fifty-Second Title Bound Tenants in Thrace

[1] *Emperors* Theodosius, Arcadius, *and* Honorius *Augusti to Rufinus, Praetorian Prefect.* **pr.** Throughout the entire Diocese of the Thraces, after the removal of the census of the personal capitation tax, the tax assessment (*iugatio*) for land alone should be paid. 1. And lest by chance the capability

[174] Possibly combine with C. 11.59.7, and the texts mentioned there. Seeck dates to October 25, 386.

tributariae sortis nexibus absolutis vagandi et quo libuerit recedendi facultas permissa videatur, ipsi quidem originario iure teneantur, et licet condicione videantur ingenui, servi tamen terrae ipsius cui nati sunt aestimentur nec recedendi quo velint aut permutandi loca habeant facultatem, sed possessor eorum iure utatur et patroni sollicitudine et domini potestate. **2.** Si quis vero alienum colonum suscipiendum retinendumve crediderit, duas auri libras ei cogatur exsolvere, cuius agros transfuga cultore vacuaverit, ita ut eundem cum omni peculio suo et agnatione restituat.

LIII De Colonis Illyricianis

[1] *Imppp. Valentinianus Valens et Gratianus AAA. ad Probum pp.* **pr.** Colonos inquilinosque per Illyricum vicinasque regiones abeundi rure, in quo eos originis agnationisque merito certum est immorari, licentiam habere non posse censemus. **1.** Inserviant terris non tributario nexu, sed nomine et titulo colonorum, ita ut, si abscesserint ad aliumve transierint, revocati vinculis poenisque subdantur, maneatque eos poena, qui alienum et incognitum recipiendum esse duxerint, tam in redhibitione operarum et damni, quod locis quae deseruerant factum est, quam multae, cuius modum in auctoritate iudicis collocamus: ita ut etiam dominus fundi, in quo alienus fuisse monstrabitur, pro qualitate peccati coercitionem subire cogatur nec sit ignorantiae locus, cum ad criminis rationem solum illud sufficiat, quod incognitum sibi tenuit. **2.** Servum etiam in memoratis regionibus si quis receperit, ignorationis excusatione sublata quadrupli poena teneatur, operarum praeterea compendiis damnisque praestitis. **3.** In libertis etiam, quos pari usurpatione susceperit, is modus sit, quem circa liberos duximus colonos retinendum.

D. III id. Iul. Gratiano A. II et Probo conss.

seem to be permitted to (bound) tenants to wander off with the dissolution of their tax bonds and to withdraw to wherever they want, they themselves are to be held by the law of their origin (*originario iure*), and although they may seem to be free-born in their condition, even so they are to be considered as slaves of the land to which they have been born and they should not have the capability of withdrawing to wherever they want and to change their places, but the estate owner (*possessor*) shall exercise a right over them as well as the solicitude of a patron and the power of an owner. **2.** But if someone thinks to take up and retain a bound tenant belonging to another, he shall be compelled to pay 2 pounds of gold to the one whose fields he emptied with the desertion of its cultivator, so that he restore the same person with all his *peculium* and his family.[175]

Fifty-Third Title Bound Tenants in Illyricum

[1][176] *Emperors* VALENTINIAN, VALENS, *and* GRATIAN *Augusti to Probus, Praetorian Prefect.* **pr.** We decree that bound tenants and resident tenants (*coloni inquilinique*) in Illyricum and neighboring regions cannot have the right to leave the countryside, in which it is certain that they live by virtue of their origin and family. **1.** For they shall be servants to the land not by the bond of taxes, but under the name and title of bound tenants, so that, if they leave or go to another person, they shall be recalled and be subjected to chains and punishments, and punishment should await those who considered receiving a person belonging to another and unknown (to him), both in compensating for their services and the loss that has been inflicted on the places they had deserted, as well as in paying a fine, whose amount we place in the authority of the judge, so that the owner of the farm, on which the foreign tenant will be shown to have been, also be compelled to undergo restraining in accordance with the quality of his misdemeanor, and there be no place for ignorance, since this alone suffices for the intention of a crime, that he held someone unknown to himself. **2.** If anyone receives a slave in the aforementioned regions, the excuse of ignorance is removed and he shall be bound by a fourfold penalty, having besides made good the expenses and losses of the labor. **3.** Also in the case of freed persons, whom he has taken by an equal usurpation, that measure is to be observed that We considered necessary to retain concerning free bound tenants.

Given July 13, in the consulship of Gratian Augustus, for the second time, and Probus (371).

[175] Seeck dates to April 3, 393.
[176] §1 middle = C. 6.3.13, which refers to the *operae* of a freedman (see 3).

LIIII Ut Nemo ad Suum Patrocinium Suscipiat Vicos vel Rusticanos Eorum

[1] *Impp. Leo et Anthemius AA. Nicostrato pp. Orientis.* **pr.** Si quis post hanc nostri numinis sanctionem in fraudem circumscriptionemque publicae functionis ad patrocinium cuiuscumque confugerit, id, quod huius rei gratia geritur sub praetextu donationis vel venditionis seu conductionis aut cuiuslibet alterius contractus, nullam habeat firmitatem: tabellionibus, qui talia instrumenta perficere ausi fuerint, bonorum proscriptione plectendis, qui tamen scientes ausi fuerint huiusmodi instrumenta conscribere: vicis etiam vel possessionibus ad patrocinia confugientium publico vindicandis. **1.** Eae autem personae, quae contra publicam commoditatem in clientelam suam suscepisse collatores detectae fuerint, nobiliores quidem centum librarum auri condemnationem subire cogentur, mediocris vero fortunae facultatum suarum amissione plectentur: eadem poena multandis etiam his, qui intercedentes ministerium suum huiusmodi nefariis actibus improba mente praebuerint. **2.** Quam formam ex eo quidem tempore, quod sacra constitutio a divae memoriae Marciano promulgata continet, id est in Thracica quidem dioecesi abhinc annis triginta, hoc est a consulatu Aetii iterum et Sigisbuldi, in Orientali vero et Aegyptiaca et Pontica et Asiana dioecesi viginti octo, hoc est a consulatu Cyri valere atque exsecutioni mandari praecipimus.
D. k. Sept. Anthemio A. II cons.

[*Imp. Iustinianus A.* Si cuiuslibet tributarius iunxerit sibi tributariam uxorem, vel e contrario si cuiuslibet ancilla servo se iunxerit alieno, tam tributarii quam servi filios matrum sequi condicionem earumque more genitricum suarum dominis subditos esse censemus.]

[2] **pr.** Μηδεὶς κωμήταις προστασίαν ὑπισχνείσθω μηδὲ δεχέσθω γεωργοὺς ἐπὶ τούτῳ ὑπόσχεσιν προσόδων ἢ ἕτερον κέρδος λαμβάνων. εἰ δέ τις παραβαίη ταῦτα, καὶ τοῖς προειρημένοις ἐπιτιμίοις ὑποπεσεῖται καὶ ἑτέρᾳ μείζονι πειρασθήσεται κινήσει. **1.** Πρὸς τούτοις καὶ οἱ κωμῆται, εἰ μὲν δοῦλοι εἶεν, τοῖς δεσπόταις ἀποδοθήσονται σωφρονισθέντες, εἰ δὲ ἐλεύθεροι,

Fifty-Fourth Title No One Should Take up into his Patronage Villages or their Farmers

[1][177] *Emperors* LEO *and* ANTHEMIUS *Augusti to Nicostratus, Praetorian Prefect of the East.* **pr.** If anyone after this ordinance of Our Divine Majesty flees to the patronage of anyone to defraud or evade a public charge (*functio*), what is done for the sake of this purpose under the pretext of a donation, sale, lease, or any other contract shall have no validity; the notaries (*tabelliones*) who have dared to complete such documents are to be punished with the proscription of their property, as long as they have knowingly dared to sign such documents. The villages or properties (*possessiones*) of those fleeing to patronage are to be claimed for the public treasury. **1.** Those persons, however, who are detected as having taken up taxpayers (*collatores*) into their own protection (*clientela*) contrary to the public interest, if they are of noble rank they will be compelled to undergo a condemnation of 100 pounds of gold, whereas those of a more modest fortune will be punished with the loss of their wealth; those who intercede and with wicked intentions offer their own service for nefarious court actions (*actus*) of this kind are to be fined with the same penalty. **2.** We instruct that this enactment be in force and be entrusted to execution as of that time that the sacred constitution promulgated by Marcian of divine memory mentions, that is, in the diocese of Thrace, as of thirty years ago,[178] or from the consulship of Aetius, for the second time, and Sigisvultus,[179] but in the Dioceses of the East, of Egypt, of Pontus, and of Asia, as of twenty-eight years ago, that is, from the consulship of Cyrus.[180]

Given September 1, in the consulship of Anthemius Augustus, for the second time (468).[181]

[2][182] **pr.** No one is to promise patronage (*patrocinium*) to villagers or to receive farmers after taking a promise of revenues or any other gain for this. If someone should violate these ordinances, he will both be subject to the aforesaid punishments and he will be tested with another greater calamity. **1.** In addition to this, the villagers, if they should be slaves, after being castigated, will be returned to their owners, but if they should be free, they are fined 20 pounds of

177 Combine with C. 10.19.8, 11.56.1.

178 This constitution is not extant. Krüger: "thirty-two years," since Marcian ruled 450–457.

179 437 CE.

180 441 CE.

181 Some manuscripts include the following constitution, which may be an epitome of Just. Nov. 54: "*Emperor* JUSTINIAN *Augustus.* If a tax-liable tenant (*tributarius*) belonging to anyone marries a wife of the same class, or on the other hand if a slave-woman belonging to anyone marries a slave belonging to another person, We decree that the children both of the tax-liable tenant and of the slave follow the condition of the mothers and, in accordance with custom, be subject to the owners of their mothers."

182 From B. 56.13.2. Date and origin unknown.

κʹ λίτρας προστιμῶνται καὶ τύπτονται μετὰ δέκα τῶν πρωτευόντων τῆς κώμης καὶ διηνεκῶς ἐξορίζονται, ἐν ᾧ γνώμῃ πάντων ἐστασίασαν.

LV Ut Rusticani ad Nullum Obsequium Devocentur

[1] *Exemplum sacrarum litterarum Diocletiani et Maximiani AA. ad Charisium.* Ne quis ex rusticana plebe, quae extra muros posita capitationem suam detulit et annonam congruam praestat, ad ullum aliud obsequium devocetur neque a rationali nostro mularum fiscalium vel equorum ministerium subire cogatur.

Sine die et consule.

[2] *Impp. Valentinianus et Valens AA. ad Probum pp. Illyrici.* Si qui eorum, qui provinciarum rectoribus obsequuntur quique in diversis agunt officiis principatus et qui sub quocumque praetextu muneris publici possunt esse terribiles, rusticano cuipiam necessitatem obsequii quasi mancipio sui iuris imponant aut servum eius vel forte bovem in usus proprios necessitatesque converterint, ablatis omnibus facultatibus perpetuo subiugentur exilio, et nihilo minus rusticanum, qui se in eiusdem operas sponte propria detulisse responderit, par poenae severitudo constringat.

D. prid. k. Oct. Agrippinae Valentiniano et Valente AA. conss.

LVI Non Licere Metrocomiae Habitatoribus Loca Sua ad Extraneum Transferre

[1] *Impp. Leo et Anthemius AA. Nicostrato pp.* In illis, quae metrocomiae communi vocabulo nuncupantur, hoc adiciendum necessario nostra putavit humanitas, ut nulli extraneo illic quoquo modo possidendi licentia tribuatur: sed si quis ex isdem vicanis loca sui iuris alienare voluerit, non licere ei nisi ad habitatorem adscriptum eidem metrocomiae per qualemcumque contractum terrarum suarum dominium possessionemque transferre: sciente persona extranea, quod, si contra

gold, and they are beaten with ten of the *decemprimi* (ten people with administrative responsibilities in a village) and are exiled perpetually, as long as they have revolted with the knowledge of all of them.

Fifty-Fifth Title Farmers Should not be Called Away to Any Duty

[1] *Copy of the sacred letter of DIOCLETIAN and MAXIMIAN Augusti to Charisius.*[183] No one from the rural plebs (*rusticana plebs*), which, while it is placed outside the walls, has reported its liability for the capitation tax (*capitatio*) and offers an appropriate agricultural tax payment (*annona*), shall be called away to any other duty, nor shall (any of them) be compelled by Our Comptroller to undergo any service of providing mules or horses for fiscal purposes.

Without day and consul.

[2][184] *Emperors VALENTINIAN and VALENS Augusti to Probus, Praetorian Prefect of Illyricum.* If any of those persons who obey the provincial governors and who act in diverse offices of the principate and who, under any pretext of a public service, can be intimidating, should impose the necessity of obedience on any farmer (*rusticanus*) as if on a slave under their own right or convert his slave or perhaps his ox for their own uses and purposes, they shall be subject to perpetual exile with a loss of all their property, and a similar severity of punishment shall bind the farmer no less who has responded that he has provided himself for the services of the same person of his own accord.

Given September 30, at Agrippina (Cologne), in the consulship of Valentinian and Valens Augusti (368).

Fifty-Sixth Title Inhabitants of a Mother-Village Are Not Permitted to Transfer Their Properties to an Outsider

[1][185] *Emperors LEO and ANTHEMIUS Augusti to Nicostratus, Praetorian Prefect.* In the case of those places, which are called mother-villages (*metrocomiae*) in common parlance, Our Compassion has thought that this measure must necessarily be added, that no outsider be granted permission to possess there in any way. But if anyone from among the same villagers wants to alienate properties under his own right (*loca sui iuris*), he is not permitted to transfer ownership or possession of his lands by any type of contract except to an inhabitant enrolled

[183] Cf. C. 9.41.9 (290), addressed to Charisius as Governor of Syria.

[184] = C.Th. 11.11.1, which provides for the death penalty instead of exile. Schmidt-Hofner dates this constitution to September 30, 370 or 375.

[185] Combine with C. 10.19.8, 11.54.1.

vetitum se huic negotio immiscere vel illic possidere temptaverit, quicumque contractus initus fuerit, carebit effectu et contractu soluto, si quid praestitum est, hoc tantum reddetur.

D. k. Sept. Anthemio A. II cons.

LVII Ut Nullus ex Vicanis pro Alienis Debitis Vicanorum Teneatur

[1] *Imp. Zeno A. ...* Grave est et non solum legibus, verum etiam aequitati naturali contrarium, pro alienis debitis alios molestari. idcirco huiusmodi iniquitates contra omnes vicanos perpetrari modis omnibus prohibemus.

LVIII De Censibus et Censitoribus et Peraequatoribus et Inspectoribus

[1] *Imp. Constantinus A. ad populum.* Quoniam tabularii civitatum per collusionem potentiorum sarcinam ad inferiores transferunt, iubemus, ut, quisquis se gravatum probaverit, suam tantum pristinam professionem agnoscat.

PP. XV k. Febr. Romae Constantino A. III et Licinio III conss.

[2] *Imppp. Gratianus Valentinianus et Theodosius AAA. Eutropio pp.* **pr.** Quisquis vitem succiderit aut feracium ramorum fetus hebetaverit, quo declinet fidem censuum et mentiatur callide paupertatis ingenium, mox detectus competenti indignationi subiciatur. **1.** Illo videlicet evitante calumniam, qui forte detegitur laborasse pro copia ac reparandis agrorum fetibus, non sterilitatem aut inopiam procurasse.

D. prid. non. Iun. Constantinopoli Eucherio et Syagrio conss.

(*adscriptus*) in the same mother-village. The outside person knows that, if he tries to involve himself in this business against the prohibition or to possess something there, whatever contract has been entered into will lack effect and when it is dissolved, if something has been proffered, that alone will be restored.

Given September 1, in the consulship of Anthemius Augustus, for the second time (468).

Fifty-Seventh Title No Villager Should Be Held Liable for Debts of Other Villagers

[1] *Emperor* ZENO *Augustus* ... It is burdensome and contrary not only to the laws, but also to natural fairness, that people be troubled for the debts of others. For this reason We prohibit such iniquities from being perpetrated against villagers in every way.[186]

Fifty-Eighth Title Censuses, Census-Takers, Adjusters, and Inspectors

[1][187] *Emperor* CONSTANTINE *Augustus to the People.* Since the tax officials (*tabularii*) in the cities, through collusion with the more powerful, transfer the burden to the more humble people (*inferiores*), We order that whoever proves that he has been burdened should acknowledge only his original declaration (*professio*).

Posted January 18, at Rome, in the consulship of Constantine Augustus, for the third time, and Licinius, for the third time (313).

[2][188] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Eutropius, Praetorian Prefect.* **pr.** Whoever cuts down a vine or damages the fruit of productive branches in order to undermine the reliability of the censuses and cleverly to pretend to the quality of poverty (*ingenium paupertatis*), when he is soon caught he shall be subject to a suitable indignation. **1.** Plainly that one avoids calumny who by chance is detected as having labored for production (*copia*) and to increase the yields of his fields, and not to have contrived a poor crop (*sterilitas*) or scarcity.

Given June 4, at Constantinople, in the consulship of Eucherius and Syagrius (381).

[186] Lounghis *et al.* date to between 474 and 491.
[187] = C.Th. 13.10.1. Combine with C.Th. 10.10.1
[188] = C.Th. 13.11.1, with somewhat different wording.

[3] *Idem AAA. Cynegio pp.* Si peraequatore misso aliquis aut procuratorem suum retraxerit aut colonum per contumaciam retractationis fugaverit, ad eum censuum modum, quem vel eo vel procuratore illius absente peraequator apposuerit, nostrae sanctionis auctoritate tenebitur.

D. VI k. April. Constantinopoli Honorio np. et Euodio conss.

[4] *Imppp. Theodosius Arcadius et Honorius AAA. Rufino pp.* Omne territorium censeatur, quotiens defectorum levamen exposcitur, ut sterilia atque ieiuna his quae culta vel opima sunt compensentur.

D. III non. April. Constantinopoli Theodosio A. III et Abundantio conss.

[5] *Idem AAA. Rufino pp.* **pr.** Qui gravatos se a peraequatoribus conqueruntur et iniusto oneri impares esse proclamant, competitionis habeant facultatem, ut, quid remissum gratia, quid interceptum fuerit fraude, convincant et ex eo levamen accipiant, quod per deformia et criminosa commercia sibi impositum esse deplorant, ut aliis demeretur. **1.** Quod intra annum post codicum oblationem cui videbitur de iniusto onere conqueratur, iniquitatem peraequatoris accuset ac praestitam gratiam habita competitione convincat, ut, quod ei fuerat superfusum, ille cognoscat, quem debitae function*i* fraus clandestina subtraxerat. **2.** Emenso autem eo tempore actio denegabitur, exceptis minoribus qui fuerint indefensi, his etiam qui aberunt rei publicae causa: qui tamen ex eo tempore quae sunt statuta custodient, ex quo ad agendum habuerunt facultatem.

D. III k. Dec. Constantinopoli Theodosio A. III et Abundantio vc. conss.

[6] *Impp. Arcadius et Honorius AA. Eusebio pp.* Peraequatores ac discussores, si incurrerint culpam neglegentiae vel gratiae, non solum

[3][189] *The same Augusti to Cynegius, Praetorian Prefect.* If, when a tax adjuster has been sent, someone either withdraws his procurator or sets his tenant (*colonus*) to flight out of scorn for the reassessment, he will be held by the authority of Our sanction to the amount of the census that the adjuster has assigned in his or his procurator's absence.

Given March 27, at Constantinople, in the consulship of Honorius, Most Noble Boy, and Euodius (386).

[4][190] *Emperors* THEODOSIUS, ARCADIUS, *and* HONORIUS *Augusti to Rufinus, Praetorian Prefect.* The entire territory shall be subject to the census whenever relief is requested for failed crops (*defecta*), so that the unproductive and barren lands be balanced with those that are cultivated and rich.

Given April 3, at Constantinople, in the consulship of Theodosius Augustus, for the third time, and Abundantius (393).

[5][191] *The same Augusti to Rufinus, Praetorian Prefect.* **pr.** Those who complain that they have been oppressed by the tax adjusters (*peraequatores*) and proclaim that they are unequal to an unjust burden should have the opportunity for an investigation (*competitio*), so that they might prove what has been remitted because of influence and seized by fraud, and receive relief from what they deplore has been imposed on them by unseemly and criminal deals so as for it to be removed from others (by shifting the tax burden). **1.** He should make this complaint to whom it will seem appropriate about an unjust burden within a year after delivery of the assessment books (*codices*), and he should make an accusation of the unfairness of the tax adjuster and provide proof of the favor provided when the investigation is held, so that that one, whom clandestine fraud had removed from the charge he owed, might acknowledge what had been imposed on him. **2.** When, however, this time has been measured out, a right of action will be denied, except for minors who lack a defender, and those who are absent on public business; however, these persons will observe what has been legislated from that time when they have had an opportunity to bring a suit.

Given November 29, at Constantinople, in the consulship of Theodosius Augustus, for the third time, and the vir clarissimus *Abundantius (393).*

[6][192] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Eusebius, Praetorian Prefect.* Tax adjusters and auditors (*discussores*), if they commit (*incurrere*) fault through negligence or influence, will be required to undergo not only

[189] = C.Th. 13.11.3, with somewhat different wording. Combine with C. 11.48.10.
[190] = C.Th. 13.11.4, with different wording.
[191] = C.Th. 13.11.5.
[192] = C.Th. 13.11.8, with different wording.

honorum iacturam, verum etiam annonarum in quadruplum multam subire debebunt: ea vero, quae in damnum provincialium fuerint accepisse convicti, in quadruplum cogentur exsolvere.

D. IIII k. April. Mediolani Arcadio IIII *et Honorio III AA. conss.*

[7] *Impp. Honorius et Theodosius AA. Sebastio comiti primi ordinis.* **pr.** Apud eum possessio firma permaneat, cui a peraequatore semel eam traditam fuisse constiterit. **1.** Reliqua vero temporis anteacti a novo domino fiscum postulare non patimur, ne alterius culpa alter incipiat subiacere dispendio. **2.** Si quis vero privatus aut obligatam sibi possessionem, quae deserta huc usque permansit, aut ex aliquo titulo deberi sibi iure confirmat, adlegationes suas sine mora vel per se vel per aliam personam legibus ordinatam manifestare debebit, ita ut, si aequitatis ratione suadente ad petitorem fuerit translata possessio, is, qui eam a peraequatore susceperit, rei melioratae receptis sublevetur expensis. **3.** Verum ne sub specie litis dominationes semel constitutae turbentur, sex mensum spatium censemus debere servari, intra quod is, qui putat sibi rem probabili ratione competere, debitas exserat actiones. **4.** Quod si tempus adscriptum silentio fuerit interveniente transactum, nullum penitus repetendi volumus esse principium. **5.** Quod si quis eo tempore, quo peraequator praedium alicui addicit, de suo iure vel per se vel per homines suos non crediderit actitandum, sex mensum curriculis evolutis in perpetuum conquiescat.

D. prid. id. Mart. Ravennae Honorio A. XI et Constantio II conss.

LVIIII De Omni Agro Deserto et Quando Steriles Fertilibus Imponuntur

[1] *Imp. Constantinus A. Capestrino.* Cum divus Aurelianus parens noster civitatum ordines pro desertis possessionibus iusserit conveniri et pro his fundis, qui invenire dominos non potuerunt quos

the loss of their offices, but also a fourfold fine of the tax payments (*annonae*); indeed they will be compelled to pay fourfold the amount that they are convicted of having accepted at the loss of the provincials.

Given March 29, at Milan, in the consulship of Arcadius, for the fourth time, and Honorius, for the third time, Augusti (396).

[7][193] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Sebastius, Count of the First Order (comes primi ordinis).*[194] **pr.** Possession shall remain firm with the person to whom it is established that it has at one time been transferred by a tax adjuster. **1.** But We do not allow the Treasury to demand from the new owner arrears for time passed, lest because of the fault of one person another begin to be subject to a payment. **2.** But if any private person confirms that a property (*possessio*) that has remained deserted until now either is obligated to him or is lawfully owed to him under another title, he will be required to demonstrate his allegations without delay either by himself or through another person authorized by the laws, so that, if the possession has been transferred to the claimant at the urging of considerations of fairness, that person who has received it from the adjuster shall be relieved of the expenses he has borne for the improvement of the property. **3.** But so that, under the guise of a lawsuit, ownerships once established not be disturbed, We decree that a period of six months ought to be observed, within which a person who reasonably (*probabili ratione*) thinks that a suit is available to him should bring the required actions. **4.** But if the time prescribed has passed with silence intervening, We do not wish there to be any beginning at all for seeking it again. **5.** But if someone does not believe, in that time during which the adjuster assigned the property to someone, he had to take action concerning his right either by himself or through his people, he shall remain silent in perpetuity after the passage of six months.

Given March 14, at Ravenna, in the consulship of Honorius Augustus, for the eleventh time, and Constantius, for the second time (417).

Fifty-Ninth Title All Deserted Farmland, and When Unproductive Lands Are Imposed on Productive Lands

[1] *Emperor* CONSTANTINE *Augustus to Capestrinus.* Since the Deified Aurelian, Our Parent, ordered the city councils to be liable for deserted properties (*possessiones*) and for these farms that have not been able to find the owners whom We had instructed, after they had received an immunity for three years for the same

[193] = C.Th. 13.11.16. Combine with C. 11.59.15; C.Th. 13.6.9, 13.11.15–17.

[194] For the meaning of this title, see F. Mitthof, *ZPE* 109 (1995): 113–118, at 115.

praeceperamus, earundem possessionum triennii immunitate percepta de sollemnibus satisfacere, servato hoc tenore praecipimus, ut, si constiterit ad suscipiendas easdem possessiones ordines minus idoneos esse, eorundem agrorum onera possessionibus et territoriis dividantur.

Accepta ...

[2] *Idem A.* Si quis ab emphyteuticario seu patrimoniali possessore privati iuris quippiam comparaverit, cuius substantia alias possessiones sustentare consueverat, et succisis quasi quarundam virium nervis reliqua labuntur, earum possessionum onera subiturus est, quae penes distractores inutiles permanebunt.

D. VIII id. Dec. Thessalonicae Feliciano et Titiano conss.

[3] *Impp. Valentinianus et Valens AA. ad Mamertinum pp.* Quicumque deserta praedia meruerint sub certa immunitate, ad possessionem impetratorum non prius sinantur accedere, quam vel fideiussoribus idoneis periculo curialium datis vel fundis patrimonii sui maxime utilibus obligatis idonea cautione firmaverunt susceptam a se possessionem nullo detrimento publico relinquendam.

D. VII k. Iun. divo Ioviano et Varroniano conss.

[4] *Idem AA. et Gratianus A. ad Crescentem vicarium Africae.* Heredes scripti etiam pro minus idoneis fundis fiscale onus cogantur agnoscere, vel si renuntiandum hereditati putent, cedant his omnibus rebus, quas ex isdem bonis quocumque titulo et iure perceperint.

D. IIII id. Iul. Contionaci Gratiano A. II et Probo conss.

[5] *Imppp. Valens Gratianus et Valentinianus AAA. ad Antonium pp.* Qui utilia rei publicae loca possident, permixtione facta etiam deserta suscipiant, ut, si earum partium graventur accessu, quas antea per

properties, to satisfy the customary dues (*sollemnibus*),[195] We, maintaining this tenor (of Aurelian's law), instruct that, if it is established that the councils are not suited to take up the same properties, the burdens on the same lands should be divided among the (remaining) properties and territories.

Received ...[196]

[2][197] *The same Augustus.* If someone has purchased anything at all from a holder of an *emphyteusis* (*emphyteuticarius*) or a possessor of a patrimonial property with a private right (*patrimonialis possessor privati iuris*), whose resources had been accustomed to sustain other properties (*possessiones*), and, as it were, the rest collapses after the muscles providing some strength are cut off, he will undertake the burdens of those properties that will remain useless in the possession of the sellers.

Given December 6, at Thessalonica, in the consulship of Felicianus and Titianus (337).

[3][198] *Emperors* VALENTINIAN *and* VALENS *Augusti to Mamertinus, Praetorian Prefect.* Whoever have merited deserted properties (*praedia*) subject to a certain immunity shall not be allowed to enter into possession of what they have acquired before they have affirmed, by giving suitable sureties at the risk of the decurions or by obligating farms of their own patrimony that are especially useful with a suitable guarantee (*cautio*), that the property (*possessio*) for which they have taken responsibility is not to be abandoned at a loss to the public.

Given May 26, in the consulship of the Deified Jovian and Varronianus (364).

[4][199] *The same Augusti and* GRATIAN *Augustus to Crescens, Vicar of Africa.* Heirs who have been named (in a will) shall be compelled to acknowledge the fiscal burden even for less suitable farms, or, if they should intend to renounce the inheritance, they must yield it with all those things that they have gained from the same property under any title and right.

Given July 12, at Contionacum, in the consulship of Gratian Augustus, for the second time, and Probus (371).

[5] *Emperors* VALENS, GRATIAN, *and* VALENTINIAN *Augusti to Antonius, Praetorian Prefect.* Those who possess properties (*loca*) useful to a municipality shall take up deserted ones in a combination, so that, if they should be burdened by entering into those parts that they have previously abandoned out of scorn, they should yield them to other decurions, who will retain both types under the

[195] Neither Aurelian's order nor Constantine's grant of tax immunity survives.

[196] Seeck gives 312–337.

[197] = C.Th. 11.1.4; perhaps to be combined with C. 4.46.3, which is addressed to Egnatius Faustinus, Governor of Baetica. The C.Th. version has the emperor as Constantius.

[198] = C.Th. 5.15.14 (mutilated). Combine with C.Th. 12.12.3 (June 30, at Serdica).

[199] = C.Th. 11.1.17.

fastidium reliquerunt, cedant aliis curialibus, qui utraque hac condicione retineant, ut praestatione salva cum desertis et culta possideant sublata a paucis, quos iniquum est electa retinere, cum municipes gravatura sit pars relicta.

[6] *Imppp. Gratianus Valentinianus et Theodosius AAA. Nebridio comiti rerum privatarum.* **pr.** Ut quisque conductor fuerit inventus possessor fundi, qui ex publico vel templorum iure descendit, huic ager iungatur inutilior. **1.** Quod si contra id reluctandum existimaverit, alius possessor sub eadem praestatione quaeratur, vel si voluntarius qui sit conductor non invenietur, tunc ad possessores antiquos, id est decuriones vel quoslibet alios, loca iuris praedicti adiunctis inutilibus revertantur, idoneis fideiussoribus praestitis.

D. XV k. Febr. Constantinopoli Merobaude II et Saturnino conss.

[7] *Idem AAA. et Arcadius A. Cynegio pp.* **pr.** Quicumque defectum fundum patrimonialem exercuerit, fertilem idoneumque praestiterit, salvo patrimoniali canone perpetuo ac privato iure defend*at* velut domesticum et avita successione quaesitum, sibi habeat, suis relinquat, neque eum aut promulgatione rescripti aut reverentia sacrae adnotationis quisquam a fructu impensi operis excludat. **1.** Ceterum eos, qui opimas ac fertiles possident terras aut etiam nunc sibi aestimant eligendas, pro defecta scilicet portione summam debiti praesentis iubemus implere: illos etiam, qui emphyteuticario nomine nec ad plenum idoneas nec omnibus modis vacuas detinent, sic ex illis quoque quae praesidio indigent iustam ac debitam quantitatem debere suscipere, ut indulto temporis spatio post biennium decretum canonem solvendum esse meminerint. **2.** Nemo tamen qualibet meriti et potestatis obiectione submoveatur, quominus ad diacatochiae vicem defectas possessiones patrimonialis iuris accipiat, earum tributa et canonem soluturus: illud speciali observatione procurans, ut primum vicinas et in eodem territorio sortiatur, dehinc si neque finitimas neque in isdem locis repperit constitutas, tunc demum etiam longius positas, sed in quantum fieri valet pro interiecto spatio sibimet cohaerentes pro modo et aequitate suscipiat, ut id consensu omnium fiat, quod omnibus profuturum est.

condition that, along with the deserted properties, they possess, without prejudice to the tax payment, the cultivated ones that have been removed from a few people, for whom it is unfair to retain the ones they choose when the part that has been abandoned will burden the townspeople.[200]

[6][201] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Nebridius, Count of the Privy Purse.* **pr.** As each lessee (*conductor*) is found to be the possessor of a farm that is under public or temple right, land (*ager*) that is more unprofitable (*inutilior*) should be joined to this one. **1.** But if he thinks he should fight against this, another possessor shall be sought under the same terms of rent, or if a voluntary lessee will not be found, the properties under the right mentioned above should revert to the old possessors, that is, decurions or some others, with unproductive properties joined with them, after they (the old possessors) have provided suitable sureties.

Given January 18, at Constantinople, in the consulship of Merobaudes, for the second time, and Saturninus (383).

[7][202] *The same emperors and* ARCADIUS *Augustus to Cynegius, Praetorian Prefect.* **pr.** Whoever has worked a failing farm belonging to the Patrimony (*defectum fundum patrimonialem*) and rendered it fertile and suitable may defend it without prejudice to the patrimonial rent (*canon*) with a perpetual and private right as if he were the owner and it had been acquired by ancestral succession; he shall have it for himself and bequeath it to his heirs, and no one may exclude him from the fruit of the labor he has expended either by the promulgation of a rescript or by reverence for a sacred annotation (i.e., an answer to a rescript). **1.** But We order those persons who possess the richest and most fertile lands, or even now think that they should choose them, to fulfill the amount of the present debt for the failing portion, certainly; (We also order) those persons who hold lands under an emphyteutic title that are not fully suitable or are not empty (*vacuas*) in all ways, to be obliged to take up the fair and owed amount also from those lands that lack a defense in such a way that after two years with the indulgence of a period of time they remember that the decreed rent has to be paid. **2.** No one, however, should be removed by any claim of merit or power, so that he not accept failing properties of patrimonial right as a possessor (*ad diacatochiae vicem*), to pay the taxes and rent for them. He will take special care that he first be allotted neighboring lands and in the same territory, then, if he does not find lands either bordering his own or situated in the same locations, then (he should take) ones located further away, but to the extent that it is possible given the intervening space he should take up lands that are contiguous as is reasonable and fair, so that what will be beneficial to everyone will happen with their consent.

[200] Seeck gives 377–378.
[201] = C.Th. 10.3.4; perhaps to be combined with C. 11.71.2.
[202] = C.Th. 5.14.14.30. Combine with C. 11.64.2, 11.68.5, and possibly C. 11.51.1, 11.63.4, and 11.64.1.

D. VIII k. Nov. Constantinopoli Honorio np. et Euodio conss.

[8] *Imppp. Valentinianus Theodosius et Arcadius AAA. Tatiano pp. Orientis.* Qui agros domino cessante desertos vel longe positos vel in finitimis ad privatum pariter publicumque compendium excolere festinat, voluntati suae nostrum noverit adesse responsum: ita tamen, ut, si vacanti ac destituto solo novus cultor insederit, ac vetus dominus intra biennium eadem ad suum ius voluerit revocare, restitutis primitus quae expensa constiterit facultatem loci proprii consequatur. nam si biennii fuerit tempus emensum, omni possessionis et dominii carebit iure qui siluit.

[9] *Imppp. Theodosius Arcadius et Honorius AAA. Rufino pp. Orientis.* Qui fundos patrimoniales iure privato salvo canone susceperunt, hanc omnes sine ullius exceptione personae propositam intellegant optionem, ut aut ea loca, quibus minor est soli fecunditas, cum his, ex quibus fructus uberes capiunt, suscipere et tenere non abnuant, aut si eorum refugiunt sterilitatem, opimioribus cedant.

D. VIII id. Nov. Tyro Arcadio III et Honorio II AA. conss.

[10] *Impp. Arcadius et Honorius AA. Eutychiano pp.* Qui per potentiam fundos opimos ac fertiles occuparunt, cum quaestuosis uberibusque pro rata portione suscipiant infecundos ex eadem substantia.

D. non. Mart. Constantinopoli Honorio A. IIII et Eutychiano conss.

[11] *Idem AA. Hadriano pp.* pr. Locorum domini intra sex menses edictis vocati revertantur. qui si adfuerint, et propria teneant et ea quae ex praeterito contraxerint debita redhibere cogantur. 1. Sin vero impares

Given October 25, at Constantinople, in the consulship of Honorius, Most Noble Boy, and Euodius (386).

[8][203] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Tatianus, Praetorian Prefect of the East.* Whoever hastens to bring under cultivation farms (*agri*) deserted because of the absence of an owner – either located far away or nearby – for private as well as public gain should know that Our (positive) response is available for his wish, under this condition, that if a new cultivator settles on vacant or destitute soil, and within two years the old owner wishes to recall the same property to his own right, having first given restitution for what it is established has been spent, he will gain the right (*facultas*) over his own place. But if the two-year period has passed, the one who has remained silent will lack every right of possession and ownership.

(388–392).

[9][204] *Emperors* THEODOSIUS, ARCADIUS, *and* HONORIUS *Augusti to Rufinus, Praetorian Prefect of the East.* Those who have taken up farms belonging to the Patrimony, under private right without prejudice to the payment of the rent (*salvo canone*), should all understand that the following choice is offered without an exception for any person, that either they not refuse to take up and hold those places that have less fertility of the soil along with the ones from which they gain abundant crops, or if they flee from their barrenness (*sterilitas*), they (also) withdraw from the richer lands.

Given November 6, at Tyre, in the consulship of Arcadius, for the third time, and Honorius, for the second time, Augusti (394).

[10][205] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Eutychianus, Praetorian Prefect.* Those who through their power have seized rich and fertile farms shall also take up in proportion infertile farms from the same property along with the lucrative and rich ones.

Given March 7, at Constantinople, in the consulship of Honorius Augustus, for the fourth time, and Eutychianus (398).

[11] *The same Augusti to Hadrianus, Praetorian Prefect.* **pr.** The owners of properties (*loca*) when summoned by edicts should return within six months. If they are present, they shall hold them as their own and be compelled to pay back those debts that they have contracted in the past. **1.** But if they admit that they

[203] = C.Th. 5.11.12. Seeck dates to September 17, 391.
[204] = C.Th. 5.14.34.
[205] = C.Th. 13.11.9 (without the phrase "from the same property").

esse earum rerum tributis propria confitentur absentia nec adesse voluerint, penes eos, qui haec susceperint et certum quem tributorum canonem promittunt, proprietas possessionis intemerata permaneat, ut, postquam ea exsolverint, sciant sibi inquietudinem submovendam nec subreptione cuiusquam competitionis loca quae tenuerunt auferenda. **1.** Quibus etiam illud indulsimus, ut ex eo tempore, ex quo primum loca de quibus agitur coeperint possidere, tributa poscantur.

D. VI k. Sept. Stilichone et Aureliano conss.

[12] *Impp. Honorius et Theodosius AA. Seleuco pp.* Hac definitione sancimus nullum possessorem neque munificum praedium pro alienis debitis vel destitutione esse retinendum neque eorum praediorum depectione praegravari, quae ex isdem bonis quae retinentur nequaquam esse monstrantur, ne ullis praestigiis atque commentis exactio mutiletur.

D. prid. k. Febr. Ravennae Honorio VIIII et Theodosio V AA. conss.

[13] *Idem AA. ad Probum.* Omnium praediorum actores ac domini requirantur. quorum si vitio probantur debita fuisse contracta, in absoluto est, ut debeat dominium commutari.

D. III id. Iun. Constantinopoli Constante et Constantio conss.

[14] *Idem AA. Aureliano pp.* Rura et possessiones, quas curiales quolibet pacto publicatis apud acta provincialia desideriis suis vel reliquerunt vel possidere alios permiserunt, penes eos, qui eas excoluerunt et functiones publicas recognoscunt, firmiter perdurabunt, nullam habentibus curialibus copiam repetendi.

D. III non. Dec. Honorio X et Theodosio VI AA. conss.

are unequal to the tax charges (*tributa*) for those properties because of their own absence and they do not wish to be present, the ownership of the property shall remain uncompromised with those who have taken these up and promise some certain payment of the taxes (*certum quem tributorum canonem*), so that, after they have paid the taxes, they know that their worry is to be removed and that the properties (*loca*) that they have held are not to be taken away from them by the stealth of any claim. 2. We have made this further indulgence to them, that the taxes be demanded (only) from that time when they first begin to possess the properties (*loca*) in question.

Given August 27, in the consulship of Stilicho and Aurelianus (400).[206]

[12][207] *Emperors Honorius and Theodosius Augusti to Seleucus, Praetorian Prefect.* By this enactment We ordain that no possessor or productive property (*praedium munificum*) is to be retained for the debts of another or for his desertion of it, nor is (the possessor) to be burdened by a contract for properties that are by no means demonstrated to be among the ones that are being retained, lest the exaction (of taxes) be harmed by any tricks and fabrications.

Given January 31, at Ravenna, in the consulship of Honorius, for the ninth time, and Theodosius, for the fifth time, Augusti (412).

[13][208] *The same Augusti to Probus.* The managers (*actores*) and owners of all properties should be sought. If debts are proved to have been contracted by their fault, it is clear that ownership ought to be changed.

Given June 11, at Constantinople, in the consulship of Constans and Constantius (414).

[14][209] *The same Augusti to Aurelianus, Praetorian Prefect.* Lands (*rura*) and properties (*possessiones*) that decurions have left by any means or have permitted others to possess, having made known their wishes in the provincial records, shall firmly remain in the possession of those people who have brought them under cultivation and who acknowledge the public charges (*functiones*), with the decurions having no right to seek them back.

Given December 3, in the consulship of Honorius, for the tenth time, and Theodosius, for the sixth time, Augusti (415).

206 Seeck gives August 27, 405.
208 Combine with C. 8.16.8 (where Probus is "Count of Imperial Finances"), and possibly 11.48.15. Seeck dates to January 10, 414.
207 = C.Th. 11.1.31.
209 = C.Th. 11.24.6.5, which, for *rura*, has *arurae*, the unit of land in Egypt.

[15] *Idem AA. Sebastio comiti primi ordinis.* Si quis deserta praedia, quae navalem sustinent functionem et in desertis nunc usque remanent, sub peraequationis iure perceperit, meliore condicione in omnibus titulis convenit ea relevari, ut gravis sors navalis esse non possit pro ea quae resederit portiuncula, cum aliis fuerit dispendiis liberata.

D. prid. id. Mart. Ravennae Honorio A. XI et Constantio II conss.

[16] *Impp. Theodosius et Valentinianus AA. Celeri proconsuli Africae.* Iubemus neminem curialem pro alieni territorii debitis attineri, sed tantum municipem pro gleba propria conveniri.

D. V k. Mai. Ravennae post consulatum Felicis et Tauri vv. cc.

[17] *Idem AA. Hermocrati pp. Orientis.* Si quis auctoritate nostri numinis de fundis patrimonialibus steriles sub certi canonis pollicitatione susceperit, firmiter eum volumus possidere sub eiusdem tantum canonis solutione, quem nostrae maiestatis auctoritas per annos singulos solvendum esse praescripserit, nullamque eos descriptionem aut adiectionem aut innovationem in posterum sustinere, quoniam nimis absurdum est eos, qui nobis hortantibus fundos inopes atque egenos magno labore impenso aut exhausto patrimonio vix forte meliorare potuerint, utpote deceptos inopinatum onus suscipere illudque velut quadam circumventione deposci, quod si se daturos praescissent, fundos minime suscipere aut etiam colere paterentur.

D. XII k. Dec. Constantinopoli Theodosio A. XVIII et Albino conss.

LX De Fundis Limitotrophis et Terris et Paludibus et Pascuis Limitaneis vel Castellorum

[1] *Imppp. Valentinianus Valens et Gratianus AAA. ad Licinium pp.* **pr.** Tiberianus ad possibilitatem singulorum quorumque locorum intuens

[15][210] *The same Augusti to Sebastius, Count of the First Order.* If someone under the right of tax adjustment receives deserted properties that sustain a shipping charge (*navalis functio*) and that still now remain among the deserted properties, it is proper that they (the properties) be relieved by the better condition in all aspects, so that the charge to maintain a ship (*navalis sors*) might not be burdensome for the small part that remains, since it has been freed from other expenditures.

Given March 14, at Ravenna, in the consulship of Honorius Augustus, for the eleventh time, and Constantius, for the second time (417).

[16][211] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Celer, Proconsul of Africa.* We order that no decurion be detained for the debts of a foreign territory (i.e., of another town), but that a townsman only be liable for his own soil.

Given April 27, at Ravenna, after the consulship of the viri clarissimi *Felix and Taurus (429).*

[17][212] *The same Augusti to Hermocrates, Praetorian Prefect of the East.* If someone under the authority of Our Divine Majesty assumes responsibility for unproductive (*steriles*) farms from the ones belonging to the Patrimony under the promise of the payment of a certain rent (*canon*), We want him to possess them firmly only under (condition of) the payment of the same rent that the authority of Our Majesty has prescribed to be paid for individual years, and that they (the farms) in the future should sustain no re-assessment (*descriptio*), addition, or innovation, since it is quite absurd that those who, at Our urging, have perhaps scarcely been able to improve poor and destitute farms by expending great labor or exhausting their patrimony take up an unexpected burden as if they had been deceived, and that they be summoned by some trick, when, if they had known they would be paying it, they would not have endured to assume responsibility for the farms or even to cultivate them.

Given November 20, at Constantinople, in the consulship of Theodosius Augustus, for the eighteenth time, and Albinus (444).

Sixtieth Title Farms of Serving Frontier Troops and Lands, Marshes, and Pastures on the Frontiers or Belonging to Fortresses

[1] *Emperors* VALENTINIAN, VALENS, *and* GRATIAN[213] *Augusti to Licinius, Praetorian Prefect.* pr. Tiberianus, examining the possibility for each individual

[210] = C.Th. 6.2.24. Combine with C. 11.58.7; C.Th. 13.6.9, 13.11.15–17. Seeck dates to May 14, 417.

[211] = C.Th. 12.1.186; combine with C. 10.22.2. Seeck gives February 25, 429.

[212] = Nov. Theod. 26.4. Combine with C. 10.28.1. Seeck gives November 29, 444.

[213] The emperors should be Valentinian, Theodosius, and Arcadius. The Praetorian Prefect Licinius is unknown; this law should perhaps be combined with C. 10.16.7 (September 24), in which the addressee is Principius.

statuit certas possessiones, quae ad limitem frumenta conveherent. **1.** Quocirca generali lege sancimus Tiberiani dispositionem oportere servari, amoventes, quidquid vel potentia uniuscuiusque elicuit vel furtiva deprecatio, addentesque nihilo minus in futurum nulli licere adversus utilem vetustatem et praesentem legem nostram importuna et respuenda reposcere.

D. XVIII k. Oct. Aquileiae Arcadio A. et Bautone conss.

[2] *Impp. Honorius et Theodosius AA. Asclepiodoto pp. et consuli ordinario.* **pr.** Quicumque castellorum loca quocumque titulo possident, cedant ac deserant, quia ab his tantum fas est possideri castellorum territoria, quibus adscripta sunt et de quibus iudicavit antiquitas. **1.** Quod si ulterius vel privatae condicionis quispiam in his locis vel non castellanus miles fuerit detentator inventus, capitali sententia cum bonorum publicatione plectatur.

D. non. Mart. Constantinopoli Asclepiodoto et Mariniano conss.

[3] *Impp. Theodosius et Valentinianus AA. Nomo magistro officiorum.* **pr.** Agros limitaneos universos cum paludibus omnique iure, quos ex prisca dispositione limitanei milites ab omni munere vacuos ipsi curare pro suo compendio atque arare consueverant, et[iii] si in praesenti coluntur, ab his firmiter ac sine ullo concussionis gravamine detineri, et si ab aliis possidentur, cuiuslibet spatii temporis praescriptione cessante ab universis detentatoribus vindicatos isdem militibus sine ullo prorsus, sicut antiquitus statutum est, collationis onere volumus adsignari: in his etiam contra eos, qui praeceptionibus nostris obviam venire temptaverint, proscriptionis poena valitura. **1.** Nam si quis forte, quod minime audere debuerat, emptionis titulo memorati iuris possidet praedia, competens ei actio contra venditorem intacta servabitur.

D. prid. id. Sept. Constantinopoli Maximo II et Paterio conss.

[iii] [et]

place, has designated certain properties (*possessiones*) to bring grain to the frontier. 1. For this reason We ordain in a general law that the disposition of Tiberianus must be maintained, so as to remove what either anyone's power or a secret entreaty has elicited, and add that in the future no one be permitted to make unseemly and contemptible demands contrary to useful tradition (*vetustas*) and Our present law.

Given October 15, at Aquileia, in the consulship of Arcadius Augustus and Bauto (385).

[2][214] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Asclepiodotus, Praetorian Prefect and Ordinary Consul.* **pr.** Those who possess properties (*loca*) belonging to fortresses (*castella*) under any title shall withdraw from them and desert them, since it is only lawful for the territories of fortresses to be possessed by those to whom they have been assigned and about whom antiquity has judged. **1.** But if henceforth anyone either of private condition or a soldier not of the fortress is discovered holding (land) in these places, he shall be punished with a capital sentence and the confiscation of his property.

Given March 7, at Constantinople, in the consulship of Asclepiodotus and Marinianus (423).

[3][215] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Nomus, Master of Offices.* **pr.** We wish all fields on the frontiers (*agri limitanei*), together with marshes and every right, which the frontier soldiers in accordance with the ancient disposition had been accustomed to care for and plow themselves at their own profit, free from every public service (*munus*), if they are cultivated at present, to be held by these (i.e., soldiers) firmly and without any burden of extortion, and if they are (now) possessed by others, with the prescription from any passage of time being invalid, to be claimed for the same soldiers from all persons holding them without any burden at all of tax payment, just as it was established long ago. The penalty of confiscation will prevail against those who attempt to oppose Our commands. **1.** For if someone by chance, which he ought not at all dare, possesses properties of the aforementioned right by purchase, the appropriate action will be maintained for him intact against the seller.

Given September 12, at Constantinople, in the consulship of Maximus, for the second time, and Paterius (443).

[214] = C.Th. 7.15.2.
[215] = Nov. Theod. 24.4, with somewhat fuller wording. Combine with C. 1.31.4, 1.46.4.

LXI De Pascuis Publicis vel Privatis

[1] *Impp. Valentinianus et Valens AA. ad Rufinum pp.* **pr.** Cum nulla ratio sit, cur in pascuis saltibus rei privatae pensio debeat ampliari, nequaquam pro libidine ordinum augmenta facienda sunt. **1.** Etenim idcirco graviorem pensionem imponi ab ordinibus accipimus, ut animalia ex rebus privatis nostris a locorum pastibus arceantur: quod fieri non oportere divae memoriae Iulianus prorogata iussione constituit. **2.** Quare excellens auctoritas tua conventis rectoribus provinciarum non eam licitationis necessitatem patiatur inferri, quam repentinam faciunt civitates, sed eam manere decernat, quam statuit antiquitas.

D. VIIII k. Oct. Luceriae Valentiniano et Valente AA. conss.

[2] *Impp. Arcadius et Honorius AA. Simplicio comiti et magistro utriusque militiae.* Insignis auctoritas tua hac condicione a publicis pratis Apamenis animalia militum prohiberi praecipiat, ut universi cognoscant de emolumentis eorum tuique officii facultatibus duodecim libras auri fisci commodis exigendas, si quisquam posthac memorata prata mutilare temptaverit: non minore decernenda poena, si etiam prata privatorum Antiochenorum fuerint devastata: ita tamen, ut sine laesione provincialium provideant curiales, quo pacto animalium militarium pastui consulatur.

D. V id. Mart. Constantinopoli Honorio A. IIII et Eutychiano vc. conss.

[3] *Impp. Honorius et Theodosius AA. comitibus et magistris militum.* **pr.** Prata provincialium nostrorum et praecipue rei privatae nostrae perniciosum est militum molestia fatigari, ideoque lege ad amplissimam praefecturam promulgata censuimus, ne hoc deinceps usurpetur. **1.** Super qua re universos quorum interest convenire tua magnificentia non moretur, ne permittant possessores vel colonos pratorum gratia qualibet importunitate vexari.

Sixty-First Title Pastures Belonging to the Public and the Privy Purse

[1][216] *Emperors* VALENTINIAN *and* VALENS *Augusti to Rufinus, Praetorian Prefect.* **pr.** Since there is no reason why the payment ought to be increased on pastures and woods (*saltus*) belonging to the Privy Purse (*res privata*), increases are by no means to be made at the whim of town councils. **1.** For We learn that a greater payment is imposed by town councils for the reason that animals from Our own Privy Purse be kept away from the pastures belonging to the towns; Julian of deified memory established, in an order still in force (*prorogata*), that this must not happen. **2.** Therefore Your Excellent Authority, having notified the provincial governors, should not allow introduction of this mandatory bidding, which the cities do hastily, but should decree that the bidding remain in force that ancient practice has established.

Given September 23, at Luceria, in the consulship of Valentinian and Valens Augusti (365).

[2][217] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Simplicius, Count and Master of Each Military Service.* Your Illustrious Authority shall order that the soldiers' animals be prohibited from the public meadows of Apamea under these terms, that all know that 12 pounds of gold are to be exacted for the interests of the Treasury, from their (sc. the soldiers') emoluments and from the resources of Your office, if anyone henceforth tries to damage the aforementioned meadows; a penalty no smaller is also to be decreed if the meadows of private Antiochenes have been devastated; this is to be done so that the decurions take provision for how consultation is to be made for the pasture of soldiers' animals without harming the people of the provinces.

Given March 11, at Constantinople, in the consulship of Honorius Augustus, for the fourth time, and the vir clarissimus *Eutychianus (398).*

[3][218] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to the Counts and Masters of Soldiers.* **pr.** It is pernicious that the meadows belonging to Our provincials and especially to Our Privy Purse (*res privata nostra*) be worn out by the vexation caused by soldiers, and for that reason, having promulgated a law to the Most Magnificent Prefecture, We have decreed that from now on this right (sc., of using the aforementioned meadows) not be usurped. **1.** On this matter Your Magnificence shall not delay in informing all those with an interest in this matter that they not permit possessors or (bound) tenants (*coloni*) to be vexed by any importunity on account of meadows.

[216] = C.Th. 7.7.2.
[217] = C.Th. 7.7.3
[218] = C.Th. 7.7.5.

D. non. sept. Honorio x et Theodosio vi AA. conss.

LXII De Fundis Patrimonialibus et Saltuensibus et Emphyteuticis et Eorum Conductoribus

[1] *Imp. Constantinus A. Cupito.* Si quis fundos emphyteutici iuris salva lege fisci citra iudicis auctoritatem donaverit, donationes firmae sint, dummodo suis quibusque temporibus ea quae fisco pensitanda sunt repraesentare cogantur.

PP. xvii k. Iul. Treviris Constantino A. iiii et Licinio iiii conss.

[2] *Idem A. ad Dracontium.* Patrimonialis fundi pensitationem aurariam seu frumentariam intra tempus omissam minorum dominio non nocere praecipimus nec ad fraudem iuris eorum evadere, si, quod sollemniter debetur, paulo serius inferatur: ita tamen, ut permanente substantia parvulorum iudex tutorem vel curatorem, per quem differtur illatio, neglegentiae suae et deserti officii poenas exigat et damna deplorare compellat.

[3] *Impp. Valentinianus et Valens AA. ad Germanianum comitem sacrarum largitionum.* **pr.** Quicumque possessiones ex emphyteutico iure susceperint, ea ad refundendum uti occasione non possunt, qua adserant desertas esse coepisse, tametsi rescripta per obreptionem meruerint. **1.** Sed nec avelli eas ab his posse, nec si licitatio ab alio fuerit promissa, sed eas in perpetuum apud eos qui eas susceperint et eorum posteritatem remanere, nec si super hoc rescriptum fuerit adversus eos impetratum.

D. viii k. Oct. Mediolani Valentiniano et Valente AA. conss.

[4] *Idem AA. ad Florianum comitem rerum privatarum.* Fundi patrimoniales et qui ex emphyteutico iure ad domum nostram diversis

Given September 5, in the consulship of Honorius, for the tenth time, and Theodosius, for the sixth time, Augusti (415).

Sixty-Second Title Patrimonial, Woodland, and Emphyteutic Farms and their Lessees[219]

[1] *Emperor* CONSTANTINE *Augustus to Cupitus.* If anyone has made a gift of farms of emphyteutic right without prejudice to the law of the Treasury but without the authority of a judge, the gifts shall be firm as long as they (the recipients) are compelled to make the payments that are to be made to the Treasury at all the appropriate times.

Posted June 15, at Trier, in the consulship of Constantine Augustus, for the fourth time, and Licinius, for the fourth time (315).[220]

[2][221] *The same Augustus to Dracontius.* We instruct that a payment in gold or in grain for a farm belonging to the Patrimony (*patrimonium*) missed within the time (it was due) not harm the ownership by minors and that it not be the cause to defraud them of their right, if what is customarily owed should be paid a little late, but under this condition, that, while the property of the little ones remains intact, the judge exact penalties from the *tutor* or *curator*, by whom the payment is delayed, for his negligence and desertion of his office and compel him to lament his losses.

[3] *Emperors* VALENTINIAN *and* VALENS *Augusti to Germanianus, Count of Imperial Finances.* **pr.** Those who take responsibility for properties (*possessiones*) under emphyteutic right cannot use as an opportunity to return them their assertion that they have begun to be deserted, even if they have gained rescripts through deceit. **1.** But these (properties) cannot be torn from them, not even if a (higher) bid has been promised by another, but they remain in perpetuity with those who have taken responsibility for them and with their posterity, not (i.e., they cannot lose their right) even if a rescript has been obtained against them on this matter.

Given September 24, at Milan, in the consulship of Valentinian and Valens Augusti (365).[222]

[4][223] *The same Augusti to Florianus, Count of the Privy Purse.* Farms belonging to the Patrimony (*patrimonium*) and those under emphyteutic right that have

[219] For emphyteutic rights, see C. 4.66.
[220] Seeck gives June 15, 313.
[221] Possibly combine with C.Th. 11.19.1 (321). Seeck gives April 17, 368.
[222] Seeck dates this constitution to September 24, 369; Schmidt-Hofner argues for the transmitted date.
[223] Possibly combine with C. 11.66.2; C.Th. 5.15.18.

generibus devoluti sunt, sic eis qui eos poposcerint cedunt, ut commissi metus esse non possit. neque enim magis commodamus nostra, quam tradimus ea iure dominii: ita tamen, ut ea, quae in nostra possessione positi praestiterint, et in posterum dissolvant.

D. id. Mart. Treveris Valentiniano II et Valente II AA. conss.

[5] *Imppp. Valens Gratianus et Valentinianus AAA. ad Modestum pp.* Si qui a prioribus colonis vel emphyteuticariis destitutum patrimonialem fundum a peraequatore vel censitore susceperint, perpetuo eundem atque inconcusso iure possideant, nec quisquam secundus petitor accedat.

D. IIII non. Nov. Gratiano A. IIII et Merobaude conss.

[6] *Imppp. Gratianus Valentinianus et Theodosius AAA. Nebridio comiti rerum privatarum.* **pr.** Hi, quibus patrimoniales possessiones per Asianam ac Ponticam dioecesin vel a nobis vel a divis parentibus nostris sacra largitate donatae sunt, inconcusse possideant atque ad suos posteros mittant. **1.** Quod quidem non solum in heredibus, sed et in contractoribus omni genere volumus custodiri.

D. III k. April. Constantinopoli Ricomere et Clearcho conss.

[7] *Idem et Arcadius AAAA. Cynegio pp.* **pr.** Quicumque ad emphyteusin fundorum patrimonialium vel rei publicae iussu nostri numinis venerit, is si redundantia fortunarum idoneus fuerit ad restituenda, quae desertis forte possessionibus requirentur, patrimonium suum publicis implicet nexibus. **1.** Si vero minor facultatibus probabitur, datis fideiussoribus idoneis ad emphyteusin accedat: scientibus his, quos talium rerum cura sollicitat, in se neglegentiae damna, si huiusmodi cautio defuerit, esse vertenda.

D. VI k. Mart. Constantinopoli Honorio nob. puero et Euodio conss.

[8] *Idem AAAA. Clearcho pp.* Omnes fundi patrimoniales per Mesopotamiam et Osrhoenam provincias, quos constat divorum retro

devolved to Our House by diverse means, go to those who have demanded them in such a way that there can be no fear for what has been committed (i.e., by the previous holder). For We do not so much lend Our properties as hand them over with the right of ownership, but under this condition, that in the future they make the payments that they made when placed in Our possession.

Given March 15, at Trier, in the consulship of Valentinian, for the second time, and Valens, for the second time, Augusti (368).[224]

[5] *Emperors* VALENS, GRATIAN, *and* VALENTINIAN *Augusti to Modestus, Praetorian Prefect.* If any persons have taken responsibility from a tax adjuster or tax assessor (*censitor*) for a farm belonging to the Patrimony but deserted by previous bound tenants or holders of *emphyteusis*, they shall possess it with a right perpetual and unshaken, and no second claimant should come forward.

Given November 2, in the consulship of Gratian Augustus, for the fourth time, and Merobaudes (377).

[6] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Nebridius, Count of the Privy Purse.* **pr.** Those who have been given patrimonial properties (*possessiones*) in the Asian and Pontic Diocese either by Us or by Our Deified Parents as an act of sacred generosity shall possess them firmly and transmit them to their posterity. **1.** We want this to be maintained not only with heirs, but also with contractual partners of every type.

Given March 30, at Constantinople, in the consulship of Richomer and Clearchus (384).

[7] *The same Augusti and* ARCADIUS *Augustus to Cynegius, Praetorian Prefect.* **pr.** Whoever has come to emphytuetic possession (*emphyteusis*) of farms belonging to the Patrimony or a municipality at the behest of Our Divine Majesty, if that person, on account of an abundance of wealth, is suitable for restoring what will be needed if the properties (*possessiones*) are perhaps deserted, he shall subject his own patrimony to public liens. **1.** But if he will be proved to be unequal in his wealth, he may enter emphyteutic possession after giving suitable sureties; the ones whom the care for such matters concerns know that the losses for their negligence are to revert to themselves if such a promise is lacking.

Given February 24, at Constantinople, in the consulship of Honorius, Most Noble Boy, and Euodius (386).

[8] *The same Augusti to Clearchus, Praetorian Prefect.* All farms belonging to the Patrimony in the provinces of Mesopotamia and Osrhoene, which it

[224] C.Th. 5.15.18 has: "Given February 26, at Trier, in the consulship of Valentinian and Valens Augusti" (i.e., 365). Seeck dates to March 12, 368; Schmidt-Hofner, to March 15, 368.

principum sanctionibus limiti deputatos, ad ius pristinum sine ullius adsertionis revocentur obstaculo praebituri omnia, quae antea impendenda necessitatibus limitis praebere consueverant, ita ut nulli penitus audiantur, qui aut rescripto aut adnotatione dominium vel emphyteusin vel conductionem quolibet genere largitatis de nostra liberalitate meruerint.

D. prid. k. Mai. Constantinopoli Honorio np. et Euodio conss.

[9] *Impp. Arcadius et Honorius AA. Eutychiano pp.* Universi cognoscant nihil privato iure salvo canone fundis emptis cum patrimonialibus esse commune, ita ut ad eos numquam patrimonialium fundorum peraequator accedat: gravi multa feriendo eo, qui statuta nostrae clementiae ausus fuerit temerare.

D. prid. non. Iul. Nicomediae Honorio A. IIII *et Eutychiano conss.*

[10] *Idem AA. Eutychiano pp.* Fundos patrimoniales eos dumtaxat, qui salvo canone iure privato nostra liberalitate concessi sunt, cum his patrimonialibus, qui in condicione propria constituti sunt, illustris auctoritas tua iubebit exaequari, ita ut relevato, quod imminet fatigatis, translatio in eos, qui integris viribus florent, adscriptio tributorum aequa lance dividatur.

D. IIII *id. April. Constantinopoli Theodoro cons.*

[11] *Impp. Honorius et Theodosius AA. Probo comiti sacrarum largitionum.* Ius emphyteutici praedii, quod sine obligationis vinculo retentatum est, nostro iudicio immutabile perdurare praecipimus: possessionem autem, quae sine obligatione speciali fuerit vitiosa, vetustate temporis volumus adiuvari.

D. id. April. Ravennae Honorio VIIII *et Theodosio* V *AA. conss.*

[12] *Impp. Theodosius et Valentinianus AA. Tauro pp. et patricio.* **pr.** Possessores vel emphyteuticarii patrimoniales, qui fundos minime

is established were assigned to the frontier by past ordinances of the deified Emperors, shall be recalled to their former right without the obstacle of any claim, so as to provide everything that they previously had been accustomed to provide for spending on the requirements of the frontier. Thus no people shall be heard who, either on the basis of a rescript or an annotation (a written response to a petition), have gained ownership, emphyteutic possession, or a lease by any type of gift from Our generosity.

Given April 30, at Constantinople, in the consulship of Honorius, Most Noble Boy, and Euodius (386).

[9] *Emperors Arcadius and Honorius Augusti to Eutychianus, Praetorian Prefect.* All should know that farms bought under private right without prejudice to the rent (*canon*) have nothing in common with farms belonging to the Patrimony, so that the tax adjuster for farms belonging to the Patrimony never approaches them; the one who dares to violate the statutes of Our Clemency is to be smitten with a heavy fine.

Given July 6, at Nicomedia, in the consulship of Honorius Augustus, for the fourth time, and Eutychianus (398).

[10] *The same Augusti to Eutychianus, Praetorian Prefect.* Your Illustrious Authority will order that farms belonging to the Patrimony, which have been granted by Our generosity under private right without prejudice to the rent (*canon*), be adjusted specifically with those patrimonial properties that are established in their appropriate condition, so that after what threatens the exhausted properties has been lightened, there may be a transfer (of charges) onto the ones that flourish with their strength intact, and the assignment of taxes may be divided in equal weight.

Given April 10, at Constantinople, in the consulship of Theodorus (399).

[11] *Emperors Honorius and Theodosius Augusti to Probus, Count of Imperial Finances.* We instruct that the right over an emphyteutic property, which has been retained without the bond of an obligation, remain immutable in Our judgment; however, We want possession that was flawed without a specific obligation to be aided by the passage of time.

Given April 13, at Ravenna, in the consulship of Honorius, for the ninth time, and Theodosius, for the fifth time, Augusti (412).

[12][225] *Emperors Theodosius and Valentinian Augusti to Taurus, Praetorian Prefect and Patrician.* **pr.** Possessors or emphyteutic holders of patrimonial property, who have not purchased their farms up to now, as a result

[225] = C.Th. 5.12.3. Combine with C.Th. 11.28.15.

nunc usque compararunt, eodem largitatis modo nequaquam ad eorum comparationem urgueantur, sed tamquam pretiis depensis, sic eis nostri numinis beneficio potiantur, ut, quod iuris alter inferendo pretium consecutus est, hoc nostra liberalitate praedictus emphyteuticarius habeat. 1. Illud quoque ius, in quibus coluit praediis, quod aut ex successione aut ex comparatione privata aut nostri numinis liberalitate aut quocumque modo possedit, sciat inlibatum intemeratumque servari: licentia eis concedenda etiam libertates mancipiis ex fundis patrimonialibus atque emphyteuticariis, cum fundorum sunt domini, praestare.

D. XIIII k. Iul. Constantinopoli Ariobindo et Aspare conss.

[13] *Idem AA. ad Florentium pp.* Nulli iam in posterum licere praecipimus patrimoniales seu limitotrophos vel saltuenses fundos, qui per tractum Orientis positi sunt, ad ius transferre privatum, sive dempto sive salvo canone iuris fundorum immutatio postuletur: legis temeratores quinquaginta librarum auri poena coercentes tam videlicet petitorem quam officium, quod petitionem concedit admitti, licet adnotatio nostra, licet divina pragmatica contra vetitum proferatur.

D. VI id. Iun. Constantinopoli Theodosio A. XVII et Festo conss.

[14] *Imp. Anastasius A. Matroniano pp.* **pr.** Iubemus omnes, qui in quacumque dioecesi in quacumque provincia vel quolibet saltu fundos patrimoniales vel templorum aut agonothetici seu relevatorum iugorum vel cuiuscumque iuris per quadraginta iugiter annos (possessione scilicet non solum eorum qui nunc detinent, verum etiam eorum quoque qui antea possederant computanda) ex quocumque titulo vel etiam sine titulo hactenus possederunt vel postea per memoratum quadraginta annorum spatium possederint, nullam penitus super dominio memoratorum omnium fundorum vel locorum vel domorum a publico actionem vel molestiam aut quamlibet inquietudinem formidare. 1. Sed impositum canonem pro qualitate iuris, cuius praedia sunt vel loca, per singulos annos solventes pro certo habeant suum esse quod possident vel postea possederint, ita ut omnibus ad excludendam omnem quolibet modo e publico movendam quaestionem nudae et ex quocumque titulo vel etiam sine titulo corporalis quadraginta

of the same type of generosity shall not at all be pressed to buy them, but they shall take possession of them by the benefit of Our Divine Majesty as if the prices had been paid, so that the aforesaid emphyteutic holder have by Our generosity the right that another has gained by paying a price. **1.** He should know that the right for the properties he has cultivated, which he possesses from succession, private purchase, the generosity of Our Divine Majesty, or by whatever means, is maintained uncompromised and inviolate; they (emphyteutic holders) are also to be conceded the right to grant liberty to slaves from patrimonial or emphyteutic farms, since they are their owners.

Given June 18, at Constantinople, in the consulship of Ariobindus and Aspar (434).

[13][226] *The same Augusti to Florentius, Praetorian Prefect.* We instruct that henceforth no one be allowed to transfer to private right farms that belong to the Patrimony (*patrimonium*) or support the frontier or are woodlands (*saltus*), which are located in the territory (*tractus*) of the East, whether a change in the farms be requested with the removal or retention of the right to the rent (*canon*); We coerce the violators of the law with a fine of 50 pounds of gold, both the claimant and the office that allowed the claim to be admitted, even though Our annotation or a divine enactment be brought forward.

Given June 8, at Constantinople, in the consulship of Theodosius Augustus, for the seventeenth time, and Festus (439).

[14][227] *Emperor* ANASTASIUS *Augustus to Matronianus, Praetorian Prefect.* **pr.** We order everyone who, in any diocese, in any province, or in any woodland territory (*saltus*), has possessed up to this time farms belonging to the Patrimony or temples, or that are assigned to pay for games (*agonothetici*), or lands that have been relieved of their taxes (*relevatorum iugorum*) or of any other right, for forty consecutive years – the possession is to be counted not only of those who now hold the farms, but also of those who had possessed previously – under any title or even without a title, or who henceforth will have possessed them for the aforementioned period of forty years, not to fear public action, harassment, or any trouble at all concerning the ownership of all the aforementioned farms, places (*loca*), or houses. **1.** But by paying each year the rent (*canon*) imposed in accordance with the type of right under which the properties or places fall, they should be certain that what they possess or will possess afterwards is theirs, so that the defense of bare (*nuda*) or physical possession by any title, or even without title, for forty consecutive years shall suffice to exclude the raising of any question on

[226] = Nov. Theod. 5.2.1.
[227] Combine with C. 7.39.4, 10.27.1.

annorum iugis possessionis exceptio possit sufficere. **2.** Hoc etiam adiciendo, ut illi quoque, qui dempto canone huiusmodi fundos ab initio principali iussione datos sibi fuisse confirmant, si per quadragesimos annos adempti canonis beneficium iugiter possederunt, nec canonem, cuius ademptionem quadraginta, sicut dictum est, annorum possessio testatur, possint penitus profligari, eo quod nostrae pietati placuit in utroque casu, id est tam salvo quam dempto canone, possessorum iura nostrorum in eo statu, in quo per quadragesimos, sicut dictum est, iugiter annos manserunt, absque ulla innovatione durare.

D. III k. Aug. Constantinopoli Olybrio vc. cons.

LXIII De Mancipiis et Colonis Patrimonialium et Saltuensium et Emphyteuticariorum Fundorum

[1] *Imp. Constantinus A.* **pr.** Emphyteuticarios gravant coloni agros praeter consuetudinem usurpantes, quos nullis culturis erudierunt, cum sollemnitas id eos attractare permittat, quod eorum labore vel olivetis est obsitum vel vinetis. sed et inriguas fontium aquas usurpare conantur, quarum fructus solis emphyteuticariis debentur. **1.** Ideoque placuit, ut deinceps aquarum ius potestatesque penes emphyteuticarios permaneant, tantumque ex eis colonis impertiatur, quantum culturis eorum agrorum sufficere manifestum est, quos ipsi colunt. **2.** Pro modo autem superfluae inrigationis, quam ultra culturas suas usurpaverint, emphyteuticariis possessoribus pensiones accessionesque praebeant.

PP. VII id. Mart. Carthagine Constantino A. V et Licinio C. conss.

[2] *Impp. Valentinianus et Valens AA. ad Germanianum comitem sacrarum largitionum.* Libertates, quas mancipiis ex fundis patrimonialibus atque emphyteuticis qui fundorum non sunt domini praestiterunt, rationales huiusmodi praecepti auctoritate rescindant.

PP. XIII k. Mai. Lupicino et Iovino conss.

[3] *Imppp. Gratianus Valentinianus et Theodosius AAA. Postumiano pp.* Cognovimus a nonnullis, qui patrimoniales fundos meruerunt, colonos

behalf of the public. **2.** This provision is also to be added, that those who confirm that such farms had originally been given them free from rent by order of the Emperor, if they have possessed the benefit of the removal of the rent for forty consecutive years, shall not be able to be troubled (*profligari*) for the rent, whose removal a possession for forty years affirms, as has been said, since it has pleased Our Piety in either case, that is, while both preserving and removing the rent, that the rights of Our possessors endure without any innovation in that status in which they have remained for forty consecutive years, as has been mentioned.

Given July 30, at Constantinople, in the consulship of the vir clarissimus *Olybrius (491).*

Sixty-Third Title Slaves and Bound Tenants of Patrimonial, Woodland, and Emphyteutic Farms

[1] *Emperor* Constantine *Augustus.* **pr.** The tenants[228] are burdening the emphyteutic holders by usurping lands, in violation of custom, that they have not improved with any cultivation, although the law (*sollemnitas*) allows them only to touch what has been planted by their own labor with olives or vines. But they also endeavor to usurp irrigation water from springs, whose fruits are owed to the emphyteutic holders alone. **1.** Therefore it has been decided that from now on the right and power over the waters should remain with the emphyteutic holders, and that the tenants are to be permitted only so much water as manifestly sufficient for the cultivation of those lands that they themselves cultivate. **2.** The tenants shall offer payments and additional services to the emphyteutic holders in accordance with the amount of the additional water that they have usurped for purposes other than the cultivation of their crops.

Posted March 9, at Carthage, in the consulship of Constantine Augustus, for the fifth time, and Licinius Caesar (319).

[2] *Emperors* Valentinian *and* Valens *Augusti to Germanianus, Count of Imperial Finances.* The comptrollers (*rationales*), on the authority of this type of regulation, shall rescind grants of liberty that people who are not the owners have provided to slaves from patrimonial and emphyteutic farms.

Posted April 19, in the consulship of Lupicinus and Jovinus (367).

[3] *Emperors* Gratian, Valentinian, *and* Theodosius *Augusti to Postumianus, Praetorian Prefect.* We have learned from some who have merited patrimonial farms that the most ancient (bound) tenants are being driven

[228] The term *coloni* in this constitution does not seem to refer to bound tenants, but to farmers who have occupied land on an imperial estate in accordance with the Lex Manciana or a similar regulation. This regulation encouraged farmers to bring lands on imperial estates under cultivation by offering them perpetual leaseholds.

antiquissimos proturbari atque in eorum locum vel servos proprios vel alios colonos subrogari. edicti itaque huius auctoritate sancimus eos, qui deinceps huiusmodi aliquid crediderint attemptandum, isdem possessionibus esse privandos.

[4] *Idem AAA. et Arcadius A. Cynegio pp.* **pr.** Super patrimonialium refectione fundorum dudum nostris est legibus constitutum, ut ii, qui eos colentes solum eorum verterant, nunc alia loca deligentes, nunc ad militiam convolantes, ad avitas condiciones et propria iura revocentur. 1. Ceterum eos, qui castrensibus stipendiis otia quieta meruerunt veterani constituti, nequaquam placet tela in usum vomeris ligonisque convertere.

LXIIII De Fugitivis Colonis Patrimonialibus Et Emphyteuticis Et Saltuensibus

[1] *Imppp. Gratianus Valentinianus et Theodosius AAA. Cynegio pp.* Quicumque parvuli ex municipibus vel colonis patrimonialibus aut saltuensibus, quorum tamen avi ac patres implicati huiusmodi functionibus fuerint, coniventia militaris officii ad stipendium castrense vel officia diversa transierint, ad munera patriae vel agrorum cultus conventis ducibus tribunis ac praepositis revocentur neque his prosint stipendia.

[2] *Idem AAA. ad Cynegium pp.* Quisquis colonum patrimonialem aut sollicitatione susceperit aut occultatione celaverit, non solum ipsum restituere, sed etiam libram auri poenae nomine cogatur inferre.

D. VIII k. Nov. Constantinopoli Honorio np. et Euodio conss.

[3] *Impp. Honorius et Theodosius AA. Anthemio pp.* Cuiuscumque adnotationis vel oraculi dudum impetrati vel postea eliciendi auctoritate

off and either one's own slaves or other tenants are substituted in their place. Therefore by the authority of this edict We ordain that those who henceforth believe something of this sort should be attempted are to be deprived of the properties in question.

(383?).

[4][229] *The same Augusti and* ARCADIUS *Augustus to Cynegius, Praetorian Prefect.* **pr.** Concerning the restoration of patrimonial farms, it has long been established by Our laws that those who had turned their soil in cultivating them, but who are now choosing other places or are now flying to service (*militia*), should be called back to their ancestral conditions and their own rights. **1.** But it is not at all pleasing that those who, having been established as veterans, have earned quiet rest from their military service, convert their weapons into the use of the plow and mattock.

(384–389).

Sixty-Fourth Title Fugitive Bound Tenants from Patrimonial, Emphyteutic, and Woodland Properties

[1][230] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Cynegius, Praetorian Prefect.* Whichever children of townsmen (*municipes*) or bound tenants on patrimonial or woodland properties, whose grandfathers and fathers were tied to such functions, have passed to camp service or diverse duties by the connivance of a military office, shall be recalled to the public services of their hometown or the cultivation of the fields after the dukes, tribunes, or commanding officers (*praepositi*) have been informed, and their military service shall not be of benefit to them.

[2][231] *The same Augusti to Cynegius, Praetorian Prefect.* Whoever has either after enticing him taken up or concealed a bound patrimonial tenant shall be compelled not only to restore the person himself but also to pay a pound of gold as a fine.

Given October 25, at Constantinople, in the consulship of Honorius, Most Noble Boy, and Euodius (386).

[3] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Anthemius, Praetorian Prefect.* With the removal of authority of any annotation (a written response to a petition) or an imperial enactment (*oraculum*) obtained long ago or to be

[229] Perhaps combine with C. 11.59.7 and the other texts mentioned there. Seeck gives February 24, 386.
[230] Perhaps combine with C. 11.59.7 and the other texts mentioned there. Seeck gives February 24, 386.
[231] = C.Th. 5.17.2. Combine with C. 11.59.7 and the other passages mentioned there.

submota omnes, quos patrimonialium agrorum vinculis fortuna tenet adstrictos, sub quibuslibet gradibus militantes ad provinciae moderatoris iudicium ilico sub idonea intercessione mittentur.

LXV De Collatione Fundorum Patrimonialium et Emphyteuticorum

[1] *Imp. Constantinus A. ad Proculum proconsulem Africae.* Emphyteuticarii possessores, qui mansuetudinis nostrae beneficio ad extraordinaria minime devocantur munera, sicut ceteri provinciales obsequium suum muniendis itineribus impendant. nulla enim ratione debent ab hoc, quod in commune omnibus profuturum est, seiungi.

PP. non. Mai. Karthagine Constantino A. v et Licinio C. conss.

[2] *Idem A. ad Catullinum proconsulem Africae.* Patrimoniales fundos extraordinariis oneribus vel mediae aut tertiae portionis obsequiis fatigari non convenit, cum eosdem et auri speciem et frumenti plurimum modum constet persolvere: ita ut, qui violare statuta temptaverit, puniatur.

PP. VI k. Sept. Carthagini Constantino A. v et Licinio conss.

[3] *Imp. Iulianus A.* Omnes, qui patrimoniales fundos sive communiter sive ex asse retinent, pro his conveniendi sunt ad universorum munerum ad eosdem fundos pertinentium pro rata portione vel in solidum functiones, sicut unumquemque privatorum necessitas publicae pensitationis adstringit.

D. v k. April. Mamertino et Nevitta conss.

elicited in the future, all those whom their fortune holds tied to the bonds of fields belonging to the Patrimony (*patrimonium*), when they perform service in any rank (*militantes*), will be sent to the court of the provincial governor immediately under a suitable intervention.[232]

(408–415).

Sixty-Fifth Title Payment of Taxes for Patrimonial and Emphyteutic Farms

[1][233] *Emperor* CONSTANTINE *Augustus to Proculus, Proconsul of Africa.* Emphyteutic possessors, who, by the benefit of Our Clemency, are not summoned to extraordinary public services, shall like other provincials provide their obedience for paving roads. For they ought not for any reason to be kept from this (service), which will benefit everyone in common.

Posted May 7, at Carthage, in the consulship of Constantine Augustus, for the fifth time, and Licinius Caesar (319).

[2][234] *The same Augustus to Catullinus, Proconsul of Africa.* It is not appropriate that farms belonging to the Patrimony (*patrimonium*) be worn out by extraordinary burdens or by compliance to a half-share or a third-share of them, since it is established that these farms provide both gold coin and a great amount of grain; so that whoever attempts to violate the statutes shall be punished.

Posted August 27, at Carthage, in the consulship of Constantine Augustus, for the fifth time, and Licinius (319).

[3][235] *Emperor* JULIAN *Augustus.* All those who hold farms belonging to the Patrimony either in common or by themselves alone are to be held liable for them for the performance of all the public services (*munera*) pertaining to the same farms in proportion (to their share) or for the entire amount, just as the necessity of public payment binds each and every private individual.

Given March 28, in the consulship of Mamertinus and Nevitta (362).

[232] *Intercessio militaris* was enforced payment of taxes. Seeck dates this constitution to February 28, 409.

[233] = C.Th. 15.3.1.

[234] = C.Th. 11.16.1.

[235] = C.Th. 11.19.2.

[4] *Impp. Valentinianus et Valens AA. ad Germanianum comitem sacrarum largitionum.* **pr.** Placuit, ut emphyteuticorum fundorum patrimonialiumque possessores, quo voluerint tempore et quantum habuerint pensionis paratum (dummodo non amplius quam in tribus per singulos annos vicibus) officio rationalis adsignent ac de suscepto ab eodem securitatem eodem die pro more percipiant, modo ut intra Ianuariarum iduum diem omnis summa ratiociniis publicis inferatur: gravissimae poenae subdendo officio, si cuiquam quolibet anni tempore (dummodo nequaquam numerum trinae illationis excedat) solutionem facere gestienti negaverit susceptionis officium, vel si moram fecerit in chirographo securitatis edendo. **1.** Super quo possessores apud curatores vel magistratus aut quicumque in locis fuerint, qui conficiendorum actorum habeant potestatem, conveniet contestari, ut et de officii insolentia constet, in quod exercenda vindicta est, et his possit esse consultum.

D. XIIII k. Iun. Remis Gratiano np. et Dagalaifo conss.

[5] *Impp. Arcadius et Honorius AA. Messalae pp.* **pr.** Per omnes provincias patrimonialium fundorum ab ordinariis iudicibus canon exigatur, et quidquid exactum fuerit, dirigatur. **1.** Sciant vero memorati iudices nihil sibi ex privatae rei canone vel ex eo, quod ex isdem titulis contigerit, ad necessitates alias transferendum, nisi malint gravissima severitate eorum licentiam coerceri.

D. XVI k. Iun. Mediolani Theodoro cons.

LXVI De Fundis Rei Privatae et Saltibus Divinae Domus

[1] *Impp. Constantius et Constans AA. edictum ad Heliopolitanos.* Universi cognoscant has possessiones quas de fisco nostro comparaverunt seu comparant, nullo a nobis iure retrahi, sed propria firmitate possessas etiam ad posteros suos dominii perpetui durabilitate dimitti.

[4][236] *Emperors* VALENTINIAN *and* VALENS *Augusti to Germanianus, Count of Imperial Finances.* **pr.** It has been decided that, at the time they wish and for the amount of their payment they have ready (as long as it is in not more than three installments in an individual year), possessors of emphyteutic and patrimonial farms make their payment to the office of the Comptroller and receive a receipt, as is custom, on the same day for what he has received, as long as the whole sum is paid to the public accounts (*ratiociniis publicis*) by the Ides of January (January 13); the office is to be subject to a most serious punishment if it refuses its duty to someone desiring to make a payment at any time in the year – provided it not exceed the third payment – or if it causes a delay in issuing a written receipt (*chirographum securitatis*). **1.** On this matter it will be appropriate for the possessors to appeal before the *curatores*[237] or magistrates or whoever in these places have the power of preparing records, so that it both be clear concerning the insolence of the office against which punishment is to be inflicted and that their (the possessors') interests might be consulted.

Given May 19, at Reims, in the consulship of Gratian, Most Noble Boy, and Dagalaifus (366).

[5][238] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Messala, Praetorian Prefect.* **pr.** In all the provinces the rent (*canon*) for patrimonial farms shall be exacted by regular governors (*ordinarii iudices*), and whatever has been exacted is to be directed (by the governors to the appropriate account; *dirigatur*). **1.** But the aforementioned governors shall know that they must not transfer to other needs anything from the tax (*canon*) for the Privy Purse (*res privata*) or from what they have derived from the same sources, unless they should prefer that their lack of responsibility be curbed with the gravest severity.

Given May 17, at Milan, in the consulship of Theodorus (399).

Sixty-Sixth Title Farms Belonging to the Privy Purse and Woodlands of the Divine Household

[1][239] *Emperors* CONSTANTIUS *and* CONSTANS *Augusti, Edict to the Heliopolitani.* Everyone should know that the properties (*possessiones*) that they have purchased or are purchasing from Our Treasury are not taken back by Us under any right, but that, possessed with the firmness of private property, they are transferred also to their posterity with security of perpetual ownership.

[236] = C.Th. 5.15.20.

[237] *Curatores* (i.e., *curatores rei publicae*, who had oversight of the finances of cities) is restored from the C.Th. version.

[238] Section 1 = C. 10.75.3, C.Th. 12.9.3.

[239] = C.Th. 5.13.1 (which lacks the addressee); one CJ manuscript has *Constantinopolitanos*.

D. prid. id. Febr. Antiochiae Marcellino et Probino conss.

[2] *Impp. Valentinianus et Valens AA. ad Florianum comitem rerum privatarum.* **pr.** Ii, quos commoditas privatae rei praediorum ad ea postulanda sollicitat, adeant tuae dicationis officium et modum suae deliberationis indicent per libellos certumque habeant pro unaquaque villa, cum eo onere vel forma cui nunc habetur obnoxia ad novi domini iura migraverit, ut, si quid adiecerit sumptus cura sollertia, quidquid mancipiorum vel pecoris adcreverit, capitationis aut canonis augmenta non patiatur, sed solis dominis heredibusque dominorum sit cessura felicitas. **1.** Si quis autem in annis singulis non solverit debitum, ex re ipsius, quod in reliquis remansisse claruerit, sine aliquibus dependere cogetur indutiis. **2.** Sane si quem postea minus idoneum factum esse constabit nec ita ut expedit rationem reddere pensionis, res, quas ex nostris rebus acceperat, ad alium idoneum iure quo sanximus transferentur: nec tamen decoctoris cuiusque reliquis qui novus accedit onerari.

[3] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad Hesperium proconsulem Africae.* Quicumque possessionem rei privatae nostrae acceptam suo nomine vel iure perpetuo vel titulo conductionis ei crediderit esse tradendam, qui pensare utilitatem patrimonii nostri solvendo non valeat, is pro eo quem succedaneum subrogavit perpetuae solutioni statuatur obnoxius.

[4] *Idem AAA. ad Nebridium comitem rerum privatarum.* Universi fundi templorum ad rationalium rei privatae sollicitudinem curamque pertineant atque ab his anniversariis solutionibus postulatis peculiari, ut semper fuit, studio defendantur.

Given February 12, at Antioch, in the consulship of Marcellinus and Probinus (341).

[2][240] *Emperors* VALENTINIAN *and* VALENS *Augusti to Florianus, Count of the Privy Purse.* **pr.** Those whom the advantages of properties belonging to the Privy Purse move to request them should approach the office of Your Authority and indicate the nature of their deliberation through a petition, and they should be certain that, for each and every villa, it passes to the rights of the new owner with that burden or regulation to which it is now held liable, so that, if with care or ingenuity he has added any expense, he should not suffer increases in the capitation tax or in the rent (*canon*) for whatever addition there is in slaves or livestock, but the benefit alone shall pass to the owners or the owners' heirs. **1.** If anyone, however, does not pay what is owed in an individual year, he will be compelled to pay without any delay from his own property what has clearly remained in arrears. **2.** Certainly, if it will be established that someone henceforth has become insolvent (*minus idoneus*) and does not return the amount of the payment as is expedient, the property that he had received from Ours will be transferred to another suitable person under the right that We have ordained; nor is the new person who comes burdened by the arrears of every spendthrift.

[3] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Hesperius, Proconsul of Africa.*[241] Whoever believes that a property belonging to Our Privy Purse (*res privata nostra*) that he has received under his own name either under a perpetual right or under a lease is to be transferred to someone who is not capable of paying the benefit of Our Patrimony, that one shall be designated as liable in perpetuity for the payment on behalf of the one whom he substituted as a successor.

(376?).

[4] *The same Augusti to Nebridius, Count of the Privy Purse.* All farms belonging to temples shall fall under the care and management of the Comptrollers of the Privy Purse and, in the demanding of yearly payments, shall be defended by them with their particular zeal, as it always has been.

(382–384).[242]

[240] = C.Th. 5.13.4 (which omits "belonging to the Privy Purse"); perhaps to be combined with C. 11.62.4; C.Th. 5.15.18. Seeck dates to March 12, 368; Schmidt-Hofner, to after December 364, or after March 369.

[241] Hesperius was Proconsul of Africa in 376 and Praetorian Prefect in 377, which does not square with the names of the emperors. Seeck gives July 8, 377.

[242] Seeck dates to January 18, 383.

[5] *Idem et Arcadius AAAA. ad Nebridium comitem rerum privatarum.* **pr.** Usus aquae, quae fundorum nostrorum utilitatibus serviebat, plurimorum dicitur usurpatione sublatus, idque procuratorum coniventia vel dissimulatione perfectum, ut agrorum fertilitas destituta nullos fructus cultoribus praestet. **1.** Quia igitur satis iniustum est statum florentis ante patrimonii aridae sitis molestia fatigari, ad meatus pristinos universum aquae modum temporis praescriptione submota praecipimus revocari.

[6] *Impp. Arcadius et Honorius AA. Vincentio pp. Galliarum.* Eum, qui curiae vel collegio vel burgis ceterisque corporibus per triginta annos sine interpellatione servierit, res dominica vel intentio privata non inquietabit, si colonatus vel inquilinatus quaestionem movere temptaverit: sed in curia vel in corpore, in quo servierit, remaneat.

D. III k. Iul. Mediolani Stilichone et Aureliano conss.

[7] *Impp. Theodosius et Valentinianus AA. ad Eudoxium comitem rerum privatarum.* **pr.** Nemo dempto canone ad comparationem dominicae possessionis accedat. **1.** Quod si quis in posterum ad interdictum contractum accesserit, eum volumus pretia perdere fundos reddere fructus redhibere perpetuo nec expensarum vel melioratae rei fructuum exactioni compensationem opponere nec temporis sibimet contra nostra commoda praescriptione, excepto vetustatis auxilio, blandiri. **2.** Palatinum etiam officium, si quoquo modo contractus eiusmodi fuerit celebratus vel si talem petitionem instruxerit, quinquaginta pondo auri poenae nomine inferre privato nostrae mansuetudinis aerario. **3.** Nulla liberalitate nostrae clementiae, nulla sanctione contra tanta rei privatae commoda valitura, licet adnotatio vel divina pragmatica sit, quae contra vetita canonem vendere concedit vel poenam palatino remittit officio.

D. XIII k. Iun. Constantinopoli Anatolio vc. cons.

[5] *The same Augusti and* Arcadius *Augustus to Nebridius, Count of the Privy Purse.* **pr.** The use of water that served the benefit of Our farms is said to have been removed by the usurpation of very many people, and this has been accomplished with the connivance or dissimulation of the procurators, so that the fertility of the fields is ruined and offers no crops to the cultivators. **1.** Therefore since it is quite unjust that the previously flourishing state of the Patrimony be worn out by the vexation of arid thirst, We instruct that, with the prescription of time removed (i.e., without regard to the length of the violation), the entire amount of water be recalled to its original channels.

(383–384).

[6][243] *Emperors* Arcadius *and* Honorius *Augusti to Vincentius, Praetorian Prefect of the Gauls.* Neither the Imperial Household (*res dominica*) nor a private suit will disturb a person who has served a town council (*curia*), guilds (*collegia*), fortresses (*burgi*), or other associations (*corpora*) for thirty years without interruption, if (either one) tries to raise a question of his being a bound tenant (*colonatus*) or a resident tenant (*inquilinatus*); but he should remain in the council or in the association (*corpus*) in which he has served.

Given June 29, at Milan, in the consulship of Stilicho and Aurelianus (400).

[7][244] *Emperors* Theodosius *and* Valentinian *Augusti to Eudoxius, Count of the Privy Purse.* **pr.** No one shall enter into buying an imperial property (*dominica possessio*) with the rent (*canon*) removed. **1.** But if someone henceforth enters into a forbidden contract, We want him to lose the price, return the farms, pay back the crops forever, and not to oppose a claim for compensation for expenses or for improvements, nor to flatter himself by a time prescription against Our interests, except for the aid of long age (*vetustas*, 40 years). **2.** Even the Palatine Office, if somehow a contract of this type has been executed or if it has drawn up such a petition, is to pay 50 pounds of gold as a punishment to the private treasury of Our Clemency. **3.** No generosity of Our Clemency and no ordinance will prevail against such important interests of the Privy Purse, even though there may be an annotation (written response to a petition) or a divine enactment that permits selling the rent (*canon*) contrary to what has been forbidden or that remits the penalty for the Palatine Office.

Given May 20, at Constantinople, in the consulship of the vir clarissimus *Anatolius (440).*

[243] = C.Th. 12.19.2. Combine with C. 11.48.13–14 (former with this date, latter with June 28), C.Th. 12.9.1.3.

[244] = Nov. Theod. 19.

LXVII De Fundis et Saltibus Rei Dominicae

[1] *Imppp. Valentinianus Theodosius et Arcadius AAA. Drepanio comiti rerum privatarum.* Si quis ovium vel equarum greges in saltus rei dominicae alienus immiserit, fisco ilico vindicentur. quod si venalis procuratorum coniventia, ut id deinceps temptetur, admiserit, gravissimo eos iubemus supplicio subiacere.

[2] *Imppp. Theodosius Arcadius et Honorius AAA. ad Paulum comitem domorum.* **pr.** Si qua loca ad sacrum dominium pertinentia cuiuslibet temeritas occupavit, secundum veteris census fidem in sua iura retrahantur: rescriptis per obreptionem impetratis et praescriptione longi temporis et novi census praeiudicio in hac causa submovendis. **1.** Neque enim aut precatio colorata aut incubatio diuturna aut novella professio proprietatis nostrae privilegium abolere potuerunt.

D. v k. April. Constantinopoli Arcadio IIII et Honorio III AA. conss.

LXVIII De Agricolis et Mancipiis Dominicis vel Fiscalibus sive Rei Privatae

[1] *Imp. Constantinus A. ad Constantium pp.* Nullus omnino originalis colonus rei privatae nostrae ad aliquos honores vel quaelibet alia civitatis munera devocetur. nec enim civitatum ordinibus et ceteris, ex quibus pro multitudine fieri nominationes oportet, per omnia florentibus ad haec suprema praesidia iniuriosa nominatione descendendum est.

[2] *Idem A. Ianuario comiti Orientis.* Colonos nostros, qui sunt privati vel ad ratiocinia gerenda vel ad colendos agros idonei, retrahi iubemus ac tantum colendis nostris rebus addici, quin etiam in posterum

Sixty-Seventh Title Farms and Woodland Pastures of the Imperial Property

[1] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Drepanius, Count of the Privy Purse.* If an outsider drives flocks of sheep or herds of mares into the woodland pastures (*saltus*) belonging to the imperial property (*rei dominicae*), they shall be claimed immediately for the Treasury. But if the venal connivance of the procurators allows that this be attempted in the future, We order them to be subject to the most serious punishment.[245]

[2][246] *Emperors* THEODOSIUS, ARCADIUS, *and* HONORIUS *Augusti to Paulus, Count of the Household (comes domorum).* **pr.** If anyone has rashly occupied any places belonging to the Sacred Imperial Property (*sacrum dominium*), they shall be drawn back to their proper status in accordance with the faith of the former census; rescripts acquired through subterfuge, long time prescription, and the prejudice of a new census are to be dispensed with (i.e., are void). **1.** For an eloquent petition, squatting over the long term, or a new census declaration (*professio*) could not destroy the privilege of Our ownership (*proprietas*).

Given March 28, at Constantinople, in the consulship of Arcadius, for the fourth time, and Honorius, for the third time, Augusti (396).

Sixty-Eighth Title Imperial Farmers and Slaves, or Those Belonging to the Treasury or the Privy Purse

[1][247] *Emperor* CONSTANTINE *Augustus to Constantius, Praetorian Prefect.* No bound tenant by origin (*originalis colonus*) at all of Our Privy Purse (*res privata nostra*) shall be called to any offices or any compulsory duties (*munera*) of a city. Nor should the city councils and other bodies, from which nominations must be made because of their numbers, when they are flourishing in all respects, lower themselves by an unlawful nomination to these vanguard positions (*praesidia*).[248]

[2] *The same Augustus to Januarius, Count of the East.* We order Our bound tenants, who are private persons either suitable for keeping accounts or for cultivating fields, to be brought back and to be assigned only to performing Our business (*colendis nostris rebus*), and that it be observed henceforth that

[245] Seeck dates to 392.
[246] = C. 7.38.3, C.Th. 10.1.15, where the emperors are Arcadius and Honorius. Seeck dates to October 7, 325.
[247] See C.Th. 12.1.11 (325). Seeck gives October 7, 325.
[248] Blume translates: "resort to making wrongful nominations for those highly important positions."

observari, ne quis eorum rem privatam cuiusquam gerendam aut aliquid ministrandum suscipiat.

[3] *Idem AA. ad Equitium magistrum equitum et peditum.* Servi atque coloni, etiam eorum filii vel nepotes, vel quicumque de fundis ac possessionibus nostris clanculo ad officia convolaverint diversa, reddantur, etiamsi armatae habuerint sacramenta militiae. nos enim etiam eos discingi iubemus ac reddi, qui protectorum fuerint nomen adepti.

[4] *Idem AA. et Gratianus A. ad Florianum comitem rerum privatarum.* Ex ingenuo et colonis ancillisque nostris natos natasve origini, ex qua matres eorum sunt, facies deputari.

[5] *Imppp. Valentinianus Theodosius et Arcadius AAA. Cynegio pp.* Dominicos colonos neque ad descriptionem patimur devocari neque extraordinarias pati functiones, maxime cum adversus consuetudinem memoratis onera dicantur inferri.

[6] *Imp. Theodosius A. et Valentinianus C. Valerio comiti rerum privatarum.* Quotiens alicui colonorum agrum privati patrimonii nostri placuerit venumdari, non unus tantum, qui forte consortibus suis gravis ac molestus existat, sed alii quoque duo vel plures ex simili origine ac iure venientes in supra dicta emptione socientur.

D. id. Dec. Constantinopoli Theodosio A. XI et Valentiniano C. conss.

LXVIIII De Praediis Tamiacis et de His Qui ex Colonis Dominicis Aliisque Liberae Condicionis Procreantur

[1] *Imp. Zeno A. Chryseroti praeposito sacri cubiculi.* **pr.** Si liber colonus vel colona libera tamiaco vel tamiacae matrimonii iure copuletur, filii

none of them undertake to manage anyone's private business or to perform any service.[249]

[3] *The same Augusti to Equitius, Master of the Cavalry and Infantry.*[250] Slaves and bound tenants, also their sons and grandsons, or whoever has secretly flown from Our farms and properties (*possessiones*) to various offices, shall be returned, even if they have the oaths of armed military service. For We also order those who have acquired the name of Protectors to be deprived of their rank and to be returned.

[4][251] *The same Augusti and* Gratian *Augustus to Florianus, Count of the Privy Purse.* You will make sons or daughters born from a free-born man and Our female bound tenants or slaves be assigned to the origin from which their mothers are.

[5][252] *Emperors* Valentinian, Theodosius, *and* Arcadius *Augusti to Cynegius, Praetorian Prefect.* We do not allow imperial tenants (*dominicos colonos*) to be called to a special tax or to endure extraordinary charges, especially when burdens are said to be imposed on the above-mentioned persons contrary to custom.

[6][253] *Emperors* Theodosius *Augustus and* Valentinian *Caesar to Valerius, Count of the Privy Purse.* Whenever it has been decided to sell a farm belonging to Our Private Patrimony to any of the bound tenants, not one alone (should buy it) who perhaps might be burdensome and annoying to those sharing his lot (*consortes*), but two or more others from a similar origin and right should come together as partners in the purchase mentioned above.

Given December 13, at Constantinople, in the consulship of Theodosius Augustus, for the eleventh time, and Valentinian Caesar (425).

Sixty-Ninth Title Treasury Properties and Offspring Who Are Born from Imperial Bound Tenants and Others of Free Condition

[1] *Emperor* Zeno *Augustus to Chyseros, Grand Chamberlain.* **pr.** If a free male or female tenant should be joined by right of marriage to a bound male

[249] Seeck dates to February 15, 319.
[250] The emperors should be Valentinian and Valens; see 4. Seeck dates to September 24, 364; Schmidt-Hofner, to from October 365 to late May 367. For "protectors" see C. 12.17.
[251] Possibly combine with C. 6.4.2 (367). Seeck gives October 13, 367.
[252] Possibly combine with C. 11.59.7 and the texts mentioned there. Seeck dates to February 24, 386. The "special tax" below is Blume's translation for *descriptio*, a term that is obscure, but must refer to some kind of additional charge.
[253] = C.Th. 5.16.34 (5.14.9).

vel filiae ex huiusmodi contubernio procreati vel procreatae colonis dominicis adnectentur. 1. Sin autem adscripticius vel servus alienus colonam vel ancillam dominicam ducat uxorem vel adscripticia vel ancilla colono vel servo nubat dominico et ex huiusmodi coniunctionibus nati sunt liberi, legum veterum ius tenere sancimus.

[2] *Idem A. Sebastiano pp.* pr. Meminimus pragmatica sanctione iussisse fundos tamiaci iuris in provinciis positos nec non etiam possessiones Gonatici saltus sub certa forma (salvo scilicet canone et tributariis collationibus isdem praediis impositis) volentibus distrahi, quatenus, quidquid ex pretiis memoratorum fundorum possit restitui, publico inferatur. 1. Sed licet per eandem sanctionem huiusmodi venditionum contractibus plenissima delata sit cautio, attamen perpetuae emptionis securitati consulentes huius etiam perpetuae constitutionis auctoritate muniri eosdem emptores praecipimus.

LXX De Diversis Praediis Urbanis et Rusticis Templorum et Civitatum et Omni Reditu Civili

[1] *Imp. Iulianus A. Atarbino.* Pro aedibus, quas nonnulli in solo rei publicae extruxerunt, placitam praestare pensionem cogantur.

[2] *Idem A. Secundo pp.* Pamphyliae etiam civitates et quaecumque aliae quidquid sibi adquirant, id firmiter habeant.

[3] *Impp. Arcadius et Honorius AA. Hadriano comiti sacrarum largitionum.* Restaurationi moenium publicorum tertiam portionem eius

or female tenant of the Treasury, sons or daughters born from such a union (*contubernium*) should be included among the imperial bound tenants (*coloni dominici*). **1.** If, however, a bound enrolled tenant (*adscripticius*) or a slave belonging to another should take an imperial female tenant or slave as a wife, or a bound registered female tenant or slave should marry an imperial tenant or slave, and children are born from such unions, We ordain that the law of the old statutes hold.[254]

[2] *The same Augustus to Sebastianus, Praetorian Prefect.* **pr.** We recall that in a general ordinance We ordered farms under the right of the Treasury situated in the provinces, as well as properties (*possessiones*) in the *Gonaticus saltus* to be sold to willing (purchasers) under a fixed arrangement – to be sure without prejudice to the rent (*canon*) and with the land taxes imposed on the same properties – as long as whatever can be regained from the prices for the aforementioned farms be paid to the Public Treasury. **1.** But although through the same ordinance the fullest assurance (*cautio*) has been offered for such sale contracts, nevertheless, to provide for the security of a perpetual sale We instruct that the same buyers be protected also by the authority of this constitution.

(476–480 or 484?).[255]

Seventieth Title Diverse Urban and Rural Properties Belonging to Temples and Towns, and All Revenue Accruing to Towns

[1] *Emperor* Julian *Augustus to Atarbinus.* For the buildings that some people have constructed on the soil of a municipality, they shall be compelled to provide the payment agreed upon.[256]

[2][257] *The same Augustus to Secundus, Praetorian Prefect.* The cities of Pamphylia and any others that acquire something for themselves shall hold it firmly.

[3][258] *Emperors* Arcadius *and* Honorius *Augustus to Hadrianus, Count of Imperial Finances.* It is certain that a third portion of the rent (*canon*) that is

[254] As Blume notes, this means following the condition of the mother. Lounghis *et al.* date this constitution to between 476 and 491.

[255] Lounghis *et al.* date to either between December 476 and May 1, 480, or between March and April 484.

[256] Seeck dates to March 13, 362.

[257] Combine with C.Th. 10.3.1, 11.16.10, 11.23.2 (possibly), 12.1.50,12.13.1 (possibly). Except for the last one, these laws are dated: "Posted March 15 (or 13), at Constantinople, in the consulship of Mamertinus and Nevitta (362)." Seeck gives March 13, 362.

[258] = C.Th. 5.14.35.

canonis, qui ex locis fundisve rei publicae annua praestatione confertur, certum est satis posse sufficere.

D. VIII id. Aug. Olybrio et Probino conss.

[4] *Idem AA. Caesario pp.* Eos, qui auctione prima fundorum iuris patrimonialis sive templorum possessores effecti sunt vel fuerint, firmum dominium tenere decernimus, ne ulterius vacillet uniuscuiusque possessio, sed teneat quisque ius proprium, quod dato pretio roboratum est vel fuerit.

[5] *Impp. Valentinianus et Marcianus AA. ad Palladium pp. Orientis.* **pr.** Si qui ex titulo donationis vel ex emptione sive ex alio quolibet titulo possessiones vel domus vel ergasteria iuris dumtaxat civilis, quae huius iuris esse vere probantur, cuiuslibet civitatis et praecipue huius aeternae urbis, cui maiorem debemus favorem, tam civilis, ut dictum est, iuris quam etiam agonotheticas possessiones a consulatu Ausonii et Olybrii dempto civili canone acceperunt, eos impositum eis canonem iuxta fidem publicorum monumentorum civitatis ad quam eaedem res pertinuerunt, praebere iubemus. **1.** Nam si privatis viris debita non patimur denegari, multo magis praebenda sunt civitatibus quae iure debentur, cum sufficiat possessoribus, quod apud eos dominium in perpetuum ex nostra liberalitate permaneat. **2.** Si quae tamen possessiones iuris civilis canonem privatis largitionibus in praesenti praebent vel numquam ademptum vel postea impositum, ad hanc iussionem non pertinebunt, sed privato aerario canonem quem nunc agnoscunt inferre ex more debebunt, dominio firmiter apud eos successoresque eorum et detentatores pari modo permanente.

D. XV k. Febr. Constantinopoli Marciano A. cons.

[6] *Imp. Zeno A. Aeliano pp.* Hac in perpetuum valitura lege sancimus et Nicaeensium civitati seu habitatoribus eius tam ius exactionis quadringentorum solidorum annui canonis civilis reditus ad suam patriam pertinentis ex possessionibus, id est Calamo et Heliobomo nec non emptorio[iv] Variario cum emptio eorum sub territorio Apamenae civitatis constitutis, ex nuper lapsa tertia indictione cum

[iv] Emporio

provided in an annual payment from lots (*loca*) or farms belonging to a municipality suffices for the restoration of the public walls.

Given August 6, in the consulship of Olybrius and Probinus (395).

[4] *The same Augusti to Caesarius, Praetorian Prefect.* We determine that those who in the first auction have been or will have been made possessors of farms under the right of the Patrimonium (*ius patrimoniale*) or of temples hold firm ownership, so that each person's possession not be uncertain any longer, but each person shall hold his private right, which has been or will have been made firm by giving the price.[259]

[5][260] *Emperors* VALENTINIAN *and* MARCIAN *Augusti to Palladius, Praetorian Prefect of the East.* **pr.** If any persons have received by a gift or purchase or under any other title properties (*possessiones*), houses, or workshops (*ergasteria*), in so far as they are under the right of a city (*iuris dumtaxat civilis*), which are truly proved to be of this right, of any city whatsoever and especially of this eternal city, to which We owe greater favor, both properties under the right of a city, as has been said, and those supporting athletic competitions, since the consulship of Ausonius and Olybrius (379), with the removal of the city's rent (*canon*), We order them to provide the rent in accordance with the faith of the public records to the city to which the same properties belonged. 1. For if We do not allow what is owed to be denied in the case of private men, all the more so is what is lawfully owed to be provided to cities, since it should suffice for the possessors that ownership remain with them in perpetuity as a result of Our generosity. **2.** If, however, any properties (*possessiones*) under the right of a city at present provide the rent to the Private Benefactions (*privatis largitionibus*), whether it was never removed or was later imposed, they will not fall under this order, but they will be required to pay the rent that they now acknowledge to the Private Treasury in accordance with custom, and ownership remains firmly with them and their successors and those who hold it on their behalf (*detentatores*) in equal measure.

Given January 18, at Constantinople, in the consulship of Marcian Augustus (451).

[6] *Emperor* ZENO *Augustus to Aelianus, Praetorian Prefect.* By this law that is to endure in perpetuity, We ordain both that to the city of Nicaea or its inhabitants be restored the right to exact 400 solidi as the annual rent (*canon*) from the properties under the city income belonging to their hometown, that is from Calamus and Heliobomus, as well as the market of Variarius, together with those properties purchased in the territory of Apamea,[261] since the recently

[259] Seeck gives June 11, 397.
[260] = Nov. Marc. 3, with somewhat different wording.
[261] The text of this phrase is corrupt.

ipsa restitui, quam si quid, ex quo sanctio Marciani divae memoriae lata est, ad eiusdem civitatis praeiudicium gestum est, infirmari et, quod ex eadem provisione civitatibus delatum interea qualibet occasione imminutum est, ex auctoritate constitutionis nostrae serenitatis isdem civitatibus redhiberi, ita ut neque iudiciaria auctoritas nec imperiale rescriptum, quacumque videlicet adiectione munitum, saepe dictae generalis legis vires possit refringere. quod si quis aliter fecerit, poena gravi plectetur.

LXXI De Locatione Praediorum Civilium vel Fiscalium sive Templorum sive Rei Privatae vel Dominicae

[1] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad Florum pp. pr.* Divi patris nostri aperta praeceptio est fundos ex re privata nostra ita tradi perpetuariis, ut periculo collocantium officiorumque tradantur. 1. Neque enim quicquam potest ex devotionis plenitudine vacillare, si apparitione iudiciaria et fundi idoneis attributi sunt et sit fiscalis indemnitas idonea fideiussione munita. 2. Quorum si alterum vel utrumque neglectum est, quae ex hoc titulo pensitatio canonica desiderat, ex officiorum facultatibus seruentur.

[2] *Idem AAA. Nebridio comiti rerum privatarum.* Fundi rei publicae ab his, qui nec titulo conductionis eos detinent quique meliores cultu patrocinante reddiderunt, ne nostrarum quidem sanctionum (si forte quispiam per subreptionem meruerit) nutibus auferantur, iuxta legem veterem semel tantum licentia faciendae adiectionis indulta.

[3] *Impp. Arcadius et Honorius AA. Hadriano pp.* Loca omnia fundive rei publicae propositis prius licenter edictis dehinc, ubi in eum canonis

passed third indiction (479–480), and also that if anything has been done to the prejudice of the same city from the time when the ordinance of Marcian of deified memory was passed, it be nullified, and what from the same provision that has in the meantime been turned over to the cities has been diminished by any occasion, be restored to the same cities on the basis of the authority of the constitution of Our Serenity, so that neither the authority of a court (*iudicaria auctoritas*) nor an imperial rescript, protected by any additional statement (*adiectio*), could compromise the strength of a general law often pronounced. But if anyone acts otherwise, he will be met with a grave punishment.

(480?).[262]

Seventy-First Title The Leasing of Properties Belonging to Cities, the Treasury, Temples, or the Privy Purse or the Crown

[1] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Florus, Praetorian Prefect.* pr. It is the clear instruction of Our Deified Father that farms from Our Privy Purse be conveyed to perpetual leaseholders (*perpetuarii*) in such a way that they be conveyed at the risk of the lessors (*collocantes*) and the offices. 1. For there can be no wavering from the fullness of your devotion if by the service of a court the farms have both been assigned to suitable lessees and the indemnity of the Treasury has been protected by a suitable suretyship. 2. But if either or both of these has been neglected, the rental payment (*pensitatio canonica*) that is missing under this account shall be saved from the resources of the offices.

(380–383).

[2][263] *The same Augusti to Nebridius, Count of the Privy Purse.* Farms belonging to a municipality shall not be removed, by the permission of Our ordinances – if perhaps someone has surreptitiously merited one – from those who hold them without a title of a lease but have improved them with the aid of their cultivation, since in accordance with the old law the right of making a higher bid is allowed just once.

(382–384).

[3][264] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Hadrianus, Praetorian Prefect.* All lots (*loca*) or farms belonging to a municipality shall be leased to perpetual lessees (*conductores perpetuarii*) when, after the posting of edicts (to provide notice of the bidding) freely beforehand, bids for the amount of

[262] Lounghis *et al.* date to between August 31, 480 and August 31, 481.
[263] Possibly combine with C. 11.59.6 (383). Seeck gives January 18, 383.
[264] Possibly combine with C.Th. 11.20.3 (400). Seeck dates this constitution to August 6, 395.

modum contendentium augmenta succreverint, ut extendi ultra aut superari alterius oblatione non possint, perpetuariis conductoribus locentur.

[4] *Idem AA. Minervio comiti sacrarum largitionum.* Congruit aequitati, ut veteres possessores fundorum publicorum novis conductoribus praeferantur, si facta per alios augmenta suscipiant.

[5] *Impp. Theodosius et Valentinianus AA. Volusiano pp.* **pr.** Praedia domus nostrae, si semel iure perpetuo vel nostra praeceptione vel auctoritate illustris viri comitis aerarii privati apud aliquem fuerint vel iam dudum sunt collocata, ad alium transferri perpetuarium non oportet. **1.** Aperte enim definimus hoc edicto, ut a perpetuario numquam possessio transferatur, etiamsi alteri eam imperator vel exoratus vel sponte donaverit sive adnotatione sive pragmatica.

2. Cui si forte contra perpetuarium vir illustris comes privatarum, dum adlegabitur, adquiescet, et ipse de proprio centum libras auri et alias centum fisci viribus palatinum inferre cogatur officium. **3.** Nec tamen post adlegationem habebit huiusmodi iussio firmitatem, sed nec locabitur alteri, licet ingenti superare videatur augmento, possessio. **4.** Iure igitur perpetuo publici contractus firmitate perpetuarius securus sit et intellegat neque a se neque a posteris suis vel his, ad quos ea res vel successione vel donatione sive venditione vel quolibet titulo pervenit sive aliquando pervenerit, esse retrahendam.

5. Sane quia non ex omni parte excludenda est largitas principalis, rem divinae domus suae imperator, si velit, donabit ei, qui eam possidet iure perpetuo, sive ipse iam meruit sive cuiuslibet tituli iure successit. videtur enim suam concedere pensionem, non alteri nocere liberalitas, quae possidentem iure perpetuo dominum vult vocari.

6. Sane si quis non perpetuo iure, sed ad tempus locatam ab illustri viro comite rerum privatarum possessionem videtur adeptus, non erit obstaculo principali largitati, si voluerit in alterum donatione transferre, quod ad definitum tempus alter forte conduxit. **7.** Si vero pro tali

the rent (*canon*) from those competing have increased so that they cannot be extended further or be surpassed through an offer by another.

(400–405).

[4] *The same Augusti to Minervius, Count of Imperial Finances.* It is consistent with fairness that old possessors of public farms be preferred to new lessees if they should accept the higher bids (*augmenta*) offered by others.[265]

[5][266] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Volusianus, Praetorian Prefect.* **pr.** Properties (*praedia*) belonging to Our Household, if they will have once been or have long been leased (*collocata*) to someone under perpetual right by Our instruction or by the authority of the *vir illustris* Count of the Private Treasury, must not be transferred to another perpetual leaseholder (*perpetuarius*). **1.** For We plainly direct by this edict that possession never be transferred from a perpetual leaseholder, even if the Emperor, either upon an entreaty or of his own accord, has given this by an annotation (a written response to a petition) or a general ordinance (*pragmatica*).

2. If by chance the *vir illustris* Count of the Privy Purse (*comes privatarum*) will acquiesce in this (the imperial ordinance), while it is being produced, he himself will be compelled to pay from his own property 100 pounds of gold and the Palatine office another 100 pounds to the resources of the Treasury. **3.** Nor, however, will such an order after the production (of an imperial ordinance) have validity, and the property (*possessio*) will not be leased to another, although he might seem to prevail with a substantially higher bid. **4.** Therefore a perpetual leaseholder shall be secure in his perpetual right by the force of a public contract, and he shall know that the property is not to be withdrawn from him or his posterity, or from those to whom that property passes by succession, sale, gift, or in any other manner.

5. Certainly, because imperial generosity is not to be excluded totally, the Emperor, if he should wish, will give property belonging to His Divine Household to the one who possesses it under a perpetual right, whether he himself has already merited it or succeeded to it by the right of anyone's title. The generosity that wishes the one possessing under a perpetual right to be called the owner is seen as conceding a payment, not as harming another.

6. Certainly, if someone is seen to have gained a property not under a perpetual right, but leased for a term by the *vir illustris* Count of the Privy Purse, this will not be an obstacle to the Emperor's generosity, if he wishes to transfer to one person as a gift what another happens to have leased for a fixed term. **7.** But if a higher bid should be offered by another lessee for such a property,

[265] Dated by Seeck to 398–399.

[266] Possibly combine with C. 1.14.4 (429). Seeck dates to June 11, 429.

praedio ab altero conductore offeratur augmentum, sit in arbitrio conductoris prioris, cui res ad tempus locata est, ut, si ipse quod alter adiecit obtulerit, maneat penes eum temporalis illa conductio. **8.** Si vero idem hanc ipsam rem aliquando meruerit iure perpetuo possidere, habebit et ipse superius expressam perpetuam firmitatem.

LXXII De Conductoribus et Procuratoribus sive Actoribus Praediorum Fiscalium et Domus Augustae

[1] *Impp. Theodosius et Valentinianus AA. Basso pp.* Conductores hominesve augustissimae domus nostrae, quotiens de causa ad domum regiam pertinente aliquid quaestionis emerserit, non aliter quam ex legum ordine, quibus similiter omne hominum genus tenetur, vel excipiant vel inferant actiones: nec aliorum litigatorum negotio intercedant nec sententiam iudicantium aut illicito patrocinii sui fomite iura conturbent, nullive exsecutionis suae turbulentum ministerium audeant commodare: non privatis se negotiis, non publicis misceant: nec quiescentem domum delatio ulla sollicitet, ne eos inconsultae pertinaciae sero paeniteat. gravior enim poena constituenda est in hos, qui nostri iuris sunt et nostra debent custodire mandata.

D. prid. non. Mart. Ravennae Theodosio XII et Valentiniano II AA. conss.

LXXIII Quibus ad Conductionem Praediorum Fiscalium Accedere Non Licet

[1] *Impp. Arcadius et Honorius AA. Nestorio comiti rerum privatarum.* Nullus palatinorum, qui in officio rei privatae nostrae militat, conductoris nomine vel per se vel per quamlibet personam possessionum huiusmodi conducendarum habeat facultatem, cum neque militi neque curiali hoc faciendum permittimus.

D. VI k. Aug. Vincentio et Fravitta conss.

it shall be in the judgment of the prior lessee, to whom the property has been leased for a term, that, if he himself offers what the second bidder added, the term lease should remain with him. **8.** But if the same person has at one time merited possessing this very property under a perpetual right, he too will have the perpetual security described above.

Seventy-Second Title Lessees and Procurators or Managers of Properties Belonging to the Treasury and the Augustan Household

[1][267] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Bassus, Praetorian Prefect.* Lessees or persons of Our Most August Household, whenever any question arises about a case regarding the Imperial (*regia*) Household, shall either defend against or initiate the actions in no way other than in accordance with the regular procedure of the laws, to which every type of person is similarly bound; nor shall they intervene in the business of other litigators or disturb the verdict of the judges or the laws with the illicit tinder of their legal representation (*patrocinium*), and to no one may they dare to provide their troublesome help in pursuing a case (*exsecutio*); they should not become involved in private or public business; nor should any accusation upset a quiet household, lest they regret too late their ill-considered stubbornness. For[268] a very serious punishment is to be established for those who are under Our right and ought to observe Our commands.

Given March 6, at Ravenna, in the consulship of Theodosius, for the twelfth time, and Valentinian, for the second time, Augusti (426).

Seventy-Third Title Those Who Are Not Permitted to Enter into a Lease of Properties Belonging to the Treasury

[1][269] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Nestorius, Count of Imperial Finances.* No one of the palace officials (*palatini*) who serves in an office of Our Privy Purse shall have the right of leasing such properties as a lessee either by himself or through any person, since We do not permit this to be done either by a soldier or by a decurion.

Given July 27, in the consulship of Vincentius and Fravitta (401).

[267] = C.Th. 10.26.1.
[268] The following sentence is added from C.Th. 10.4.1.
[269] = C.Th. 10.3.6, which omits the final clause.

LXXIIII De Collatione Fundorum Fiscalium Vel Rei Privatae Vel Dominicae Vel Civitatum Vel Templorum

[1] *Impp. Arcadius et Honorius AA. Firmino comiti sacrarum largitionum.* Ordinariorum iudicum officiis nec non ipsis rectoribus provinciarum actores seu conductores dominicos conveniendi licentiam damus, ita tamen, ut rationalibus privatae rei ad exigenda fiscalia debita immineant.

D. VIIII k. Iul. Mediolani Honorio A. IIII et Eutychiano conss.

[2] *Idem AA. Messalae pp.* **pr.** Palatinos, qui a viro illustri comite rerum privatarum cum publicis litteris destinantur ad commonitionem iudicis, quo facilius ex praediis rei nostrae conferantur debitae pensiones, cum summa degere praecipimus disciplina. **1.** De quorum nominibus, si temere versati fuerint, ad sublimitatem tuam referri per ordinarios iudices oportebit, ut in eos severissime vindicetur.

D. k. Dec. Mediolani Stilichone et Aureliano conss.

[3] *Idem et Theodosius AAA. Petronio pp.* Omnia praedia, tam ea, quae in re privata olim tenentur, quam illa, quae ex proscriptorum bonis ad fiscum sunt devoluta, eatenus ab huiusmodi privilegiis et excusationibus submoveantur, ut omnes species annonarias, cursitationes etiam debitas atque integram opinionem sciant esse solvendam.

LXXV De Privilegiis Domus Augustae Vel Rei Privatae Et Quarum Collationum Excusationem Habent

[1] *Imp. Constantius A. ad Italicum.* Privatas possessiones nostras ab universis muneribus sordidis placet esse immunes, neque earum

Seventy-Fourth Title Tax Obligations of Farms Belonging to the Treasury, the Privy Purse, or the Crown, or Cities or Temples

[1][270] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Firminus, Count of Imperial Finances.* We give the power to summon managers or lessees of imperial property to the offices of regular judges as well as to the provincial governors themselves, under the condition that they press the Comptrollers of the Privy Purse to exact debts to the Treasury.

Given June 23, at Milan, in the consulship of Honorius Augustus, for the fourth time, and Eutychianus (398).

[2][271] *The same Augusti to Messala, Praetorian Prefect.* **pr.** We instruct that palace officials (*palatini*) who are sent by the *vir illustris* Count of the Privy Purse with a public letter to warn a judge that payments owed from estates in Our Property be paid more easily, act with the highest diligence. **1.** A report will have to be made about their names to Your Sublimity by the regular judges if they have acted rashly, so that the most severe punishment be exacted from them.

Given December 1, at Milan, in the consulship of Stilicho and Aurelianus (400).

[3] *The same Augusti and* THEODOSIUS *Augustus to Petronius, Praetorian Prefect.* All properties (*praedia*), both those that are held of old in the Privy Purse, and those that have devolved to the Treasury from the goods of the proscribed, shall be removed to such a degree from privileges and exemptions of this type, that all know that they must pay the taxes in kind (*species*) for the *annona*, also transportation costs that are owed, and the entire assessment (*opinio*).[272]

Seventy-Fifth Title Privileges of the Augustan Household or the Privy Purse and the Tax Duties from Which They Have an Exemption

[1][273] *Emperor* CONSTANTIUS[274] *Augustus to Italicus.* It is decided that Our private properties (*possessiones*) are exempt from all lowly public services (*munera sordida*, generally ones involving physical labor) and that their lessees

[270] = CTh. 1.11.2. Combine with C.Th. 11.19.4, and possibly also with C. 10.19.6 (from May 25, 398, but addressed to Theodorus, Praetorian Prefect); C.Th. 2.1.11. Except for C. 10.19.6, these laws date to May 24.

[271] = C.Th. 1.5.13. Combine with C. 2.14.1, 10.30.2, 12.50.18; C.Th. 10.3.5, and possibly C.Th. 8.5.59.

[272] Seeck dates to March 24, 404.

[273] = C.Th. 11.16.5. Combine with C. 3.26.6

[274] Krüger points out that the emperors should be "Emperor Constans Augustus" or "Emperors Constantius and Constans Augusti."

conductores nec colonos vel ad extraordinaria munera vel superindictiones aliquas conveniri.

D. VIII k. Febr. Bononiae Placido et Romulo conss.

[2] *Imppp. Valentinianus Valens et Gratianus AAA. ad Claudium.* **pr.** Rem privatam nostram levandorum provincialium causa canonicas necessitates ea condicione, qua cunctos, volumus sustinere. **1.** Sed excessit occasio iussionem, quandoquidem non locis solitis frumenta quae ex diversis sunt saltibus convehenda trahantur, sed eo usque portentur, quo grave atque damnosum est provehere. **2.** Proinde spectata sinceritas tua rem eandem in isdem locis implere faciat proprias functiones, quibus antea frumenta praebeb*at*.

[3] *Impp. Arcadius et Honorius AA. Minervio comiti rerum privatarum.* Pro tironibus in corporibus postulatis pretia conferri ex fundis perpetuariis nostrae rei privatae praecipimus.

[4] *Impp. Honorius et Theodosius AA. Asclepiodoto pp.* **pr.** Absit, ut nos instructionem viae publicae et pontium stratarumque opera titulis magnorum principum dedicata inter sordida munera numeremus. **1.** Igitur ad instructiones reparationesque itinerum pontiumque nullum genus hominum nulliusque dignitatis ac venerationis meritis cessare oportet. **2.** Domos etiam divinas tam laudabili titulo libenter adscribimus.

D. XV k. Mart. Constantinopoli Asclepiodoto et Mariniano conss.

[5] *Impp. Theodosius et Valentinianus AA. Flaviano pp.* Excepto patrimonio pietatis nostrae, cuius quidem reditus necessitatibus publicis frequentissime deputamus, universos possessores functiones in

(*conductores*) and bound tenants are not summoned for extraordinary services or for any special additional tax assessments (*superindictiones*).

Given January 25, at Boulogne (Bononia), in the consulship of Placidus and Romulus (343).

[2] *Emperors* VALENTINIAN, VALENS, *and* GRATIAN *Augusti to Claudius.*[275] **pr.** In order to relieve the provincials, We want Our private property (*res privata nostra*) to sustain the obligation to pay the obligatory taxes (*necessitates canonicae*) under the same condition as everyone. **1.** But the occasion exceeds the command whenever the grain that is to be transferred from diverse estates (*saltus*) is not collected at the customary places, but is carried such a distance that is burdensome and financially crippling to transport. **2.** Accordingly, Your Esteemed Uprightness should bring it about that the same property[276] fulfills its own charges in the same places in which it previously provided grain.

(368–370).

[3] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Minervius, Count of Imperial Finances.* We instruct that the prices for recruits demanded for the guilds (*corpora*) be paid from the farms held under perpetual lease of Our private property (*nostra res privata*).

(397–398).[277]

[4][278] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Asclepiodotus, Praetorian Prefect.* **pr.** Far be it from Us that We count among the humble public services the construction of a public road and bridges and the paving projects dedicated with the names of the great emperors. **1.** Therefore no type of persons, by the merits of any rank or veneration, is to be exempt from the construction and repair of routes and bridges. **2.**[279] We also gladly assign the imperial estates (*domus divinae*) to such a laudable purpose.

Given February 15, at Constantinople, in the consulship of Asclepiodotus and Marinianus (423).

[5][280] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Flavianus, Praetorian Prefect.* With the exception of the Patrimony (*patrimonium*) of Our Piety, whose income we assign very frequently to public needs, We decree

275 Proconsul of Africa 368–370. Seeck dates to April 26, 370; Schmidt-Hofner, to from December 368 to April 370.

276 Reading *rem eandem*, Cuiacius' emendation for *remeantem*.

277 Seeck gives November 12, 397.

278 = C.Th. 15.3.6. Combine with C. 12.37.15 (February 14).

279 Section 2 = C. 1.2.7.

280 = C.Th. 11.1.36; perhaps combine with C. 4.61.13 and possibly C. 2.15.1.

superindicticiis titulis absque ullius beneficii exceptione agnoscere oportere censemus.

D. III k. Mai. Ravennae Basso et Antiocho conss.

LXXVI De Grege Dominico

[1] *Impp. Arcadius et Honorius AA. Caesario pp.* Propositis edictis sublimis magnificentiae tuae minimi maximique moneantur, ut sciant singulas auri libras ex propriis facultatibus eruendas pro singulis equis vel equabus sive Hermogenianis sive Palmatis, nisi eos sponte obtulerint: in his vero, quos ex aliis gregibus occupatos esse constiterit, sex auri uncias fisci viribus inferendas.

D. prid. k. Dec. Constantinopoli Olybrio et Probino conss.

LXXVII De Palatiis Et Domibus Dominicis

[1] *Impp. Theodosius et Valentinianus AA. Iohanni comiti rerum privatarum.* Consecratas nobis aedes, id est inclita palatia, ab omni privatorum usu et communi habitatione excipimus.

LXXVIII De Cupressis Ex Luco Daphnensi Vel Perseis Per Aegyptum Non Excidendis Vel Vendendis

[1] *Impp. Arcadius et Honorius AA. Silvano comiti rerum privatarum.* Si quis Daphnensis luci in Syria vel Persei in Aegypto arborem comparaverit, quinque libris auri noverit se esse multandum: non minore dispendio et illo feriendo, qui vendere arbores ausus fuerit, quas non licet emptoribus comparare.

[2] *Impp. Theodosius et Valentinianus AA. Eudoxio comiti sacrarum largitionum.* **pr.** Omnes iudices cuiuscumque dignitatis sciant

that all possessors must acknowledge charges in extraordinary additional tax assessments without the exception of any benefit.

Given April 29, at Ravenna, in the consulship of Bassus and Antiochus (431).

Seventy-Sixth Title The Imperial Herd

[1][281] *Emperors* Arcadius *and* Honorius *Augusti to Caesarius, Praetorian Prefect.* Upon the posting of the edicts of Your Sublime Magnificence, the least and the greatest should be warned that they might know that individual pounds of gold are to be paid from their own resources for horses or mares, whether Hermogenians or Palmatians, unless they have offered them (the horses) voluntarily; but for those which it is has been established have been seized from other herds, 6 ounces of gold are to be paid to the resources of the Treasury.

Given November 30, at Constantinople, in the consulship of Olybrius and Probinus (395).

Seventy-Seventh Title Palaces and Imperial Houses

[1][282] *Emperors* Theodosius *and* Valentinian *Augusti to John, Count of the Privy Purse.* We except houses consecrated to Us, that is the famous palaces, from all use and common habitation by private individuals.

Seventy-Eighth Title Cypress Trees from the Grove of Daphne or Perseus in Egypt Are Not to Be Cut Down or Sold

[1] *Emperors* Arcadius *and* Honorius *Augusti to Silvanus, Count of the Privy Purse.* If anyone purchases a tree from the Grove of Daphne in Syria or of Perseus in Egypt, he shall know that he is to be fined 5 pounds of gold; and that one who has dared to sell trees, which buyers are not permitted to purchase, is to be struck with no less of an expense.[283]

[2] *Emperors* Theodosius *and* Valentinian *Augusti to Eudoxius, Count of Imperial Finances.* **pr.** All governors (*iudices*) of any rank shall know that

[281] = C.Th. 10.6.1.
[282] Combine with C.Th. 5.16.35. Seeck gives 426–429.
[283] Seeck gives 395–400 as the constitution's date.

posthac absque permissu magnitudinis tuae arborem ex Daphnensi luco Antiochenae civitatis praecidendi vel quolibet modo lapsas transferendi licentiam sibimet denegandam. 1. Sed nec alytarcha unam cupressum aliis plantatis excidere sibi licere contendat. ac ne solacio antiquitus ei concesso privari per omnia videatur, pro eo, quod ei cupressum excidere denegatur, unam auri libram eum de privatis nostris largitionibus accipere decernimus: quinque librarum auri condemnatione huius legis temeratore plectendo.

henceforth without the permission of Your Greatness the right is to be denied them to cut a tree in the Grove of Daphne in the city of Antioch or to transport ones that have fallen in whatever fashion. 1. But the Alytarch (a religious official) shall not contend that he is allowed to cut one cypress after planting others. But so that he not seem to be deprived in all respects of the solace conceded[284] to him long ago, We decree that he receive one pound of gold from Our Private Benefactions (*de privatis nostris largitioninibus*) for the fact that cutting a tree is denied to him. The violator of this law is to be punished with a condemnation of 5 pounds of gold.[285]

284 See C.Th. 10.1.12.
285 Seeck gives 427–429 as the constitution's date.

Liber Duodecimus

I De Dignitatibus

[1] *Imp. Alexander A. Severianae.* Si, ut proponitis, et avum consularem et patrem praetorium virum habuistis, et non privatae condicionis hominibus, sed clarissimis nupseritis, claritatem generis retinetis.

Sine die et consule.

[2] *Imp. Constantinus A. Volusiano pp.* Neque famosis et notatis et quos scelus aut vitae turpitudo inquinat et quos infamia ab honestorum coetu segregat, dignitatis portae patebunt.

[3] *Idem A. ad Rufinum pp.* Maior dignitas nulli debet circa prioris dignitatis seu militiae privilegia praeiudicium facere.

D. v k. Mai. Sirmio Constantino A. v et Licinio C. conss.

[4] *Impp. Constantius et Constans AA. Philippo pp.* Senatorum substantias, quas in diversis locis et provinciis possident, et homines eorum tam a temonariis oneribus conferendis quam a ceteris praestationibus,

Twelfth Book

edited by Charles F. Pazdernik

First Title Official Positions of Rank[1]

[1][2] *Emperor* ALEXANDER *Augustus to Severiana.* If, as you state, you had a grandfather of consular rank and a father of praetorian rank, and you have not married men of private status, but men of *clarissimus* rank, you retain the splendor of your (natal) family.

Without date and Consul (222–235).

[2] *Emperor* CONSTANTINE *Augustus to Volusianus, Praetorian Prefect.*[3] The doors to an official position of rank (*dignitas*) will be open neither to the infamous nor to the disreputable, nor to those whom crime or turpitude of life defiles, nor to those whom infamy segregates from the association of respectable men (*honesti*).

(313–315).

[3][4] *The same Augustus to Rufinus, Praetorian Prefect.* (The attainment of) a greater official position of rank (*dignitas*) must not vitiate the privileges obtained by reason of a prior official position of rank or military or civil office (*militia*).

Given 27 April, at Sirmium, in the consulship of Constantine Augustus, for the fifth time, and the Caesar Licinius (319).

[4] *Emperors* CONSTANTIUS *and* CONSTANS *Augusti to Philippus, Praetorian Prefect.* We direct that the property of Senators in various places and provinces, as well as their people thereon, shall be exempt from the obligation of

[1] Higher military and administrative posts, styled *dignitates, honores,* or *administrationes,* are distinguished in the sources from service as a common soldier or non-commissioned officer in the army or as an official in the civil service, which is called *militia.*

[2] Late imperial texts refer to the ascending ranks of *clarissimus* (plur. *clarissimi*), *spectabilis* (*spectabiles*), and *illustris* (*illustres*). By the sixth century only *illustres* were members of the Senate; *clarissimus* and *spectabilis* remained titles of honor, and the former continued to be hereditary.

[3] Actually, the City Prefect of Rome. Seeck dates this constitution to March 19, 314.

[4] = C.Th. 6.35.3 (altered). Combine with C. 12.28.2. This constitution's date is disputed.

quas iudices describunt, nec non etiam ab omnibus sordidis extraordinariisque et vilioribus muneribus liberos esse praecipimus nullaque sorte constringi functionis indignae.

[5] *Imp. Constantius A. ad Clearchum pu.* **pr.** Nemo praefectus urbis citra praeceptionem vel scientiam nostram ulli muneri subiuget senatorem: nemo curiam nostram immani pulset iniuria. **1.** Si quid enim senatoria praeditis dignitate fuerit forte mandandum, nostro est iudicio reservandum: sit namque dignitas, si[1] nobis iubentibus sustinetur.

[6] *Idem A. ad Orfitum.* Ne quis ex ultimis negotiatoribus vel monetariis abiectisque officiis vel deformis ministerii stationariis omnique officiorum faece diversisque pastis turpibus lucris aliqua frui dignitate pertemptet. sed et si quis meruerit, repellatur: repulsos autem etiam propriis reddi consortiis oportebit.

[7] *Idem A. ad senatum.* Quoniam diversi iudices nonnulla opera in quibusdam aestimant urbibus extruenda, ad huiusmodi necessitatem senatorum substantia non vocetur.

D. v non. Mai. Tauro et Florentio conss.

[8] *Imp. Iulianus A. Sallustio pp.* Ius senatorum et auctoritatem eius ordinis, in quo nos quoque ipsos numeramus, necesse est ab omni iniuria defendere.

D. non. Febr. Constantinopoli Mamertino et Nevitta conss.

[9] *Impp. Valentinianus et Valens AA. ad Symmachum pu.* Libertorum filios adipisci clarissimam dignitatem non prohibemus.

[1] sic <namque dignitas>

collecting recruit taxes (*temonaria onera*), as well as from other assessments levied by provincial governors (*iudices*), and also from all menial, supplementary, and ignoble compulsory public services (*sordida extraordinariaque et viliora munera*), and that they shall not be fettered by any disreputable function.

(346–349).

[5] *Emperor* CONSTANTIUS *Augustus to Clearchus, City Prefect (of Constantinople).* **pr.** No City Prefect shall subject a Senator to any compulsory public service (*munus*) without Our direction or knowledge; no one shall wrong Our Senate by (such) gross insult. **1.** If anything, perchance, is to be imposed upon those possessing senatorial rank, this must be reserved for Our discretion; for when We are the ones issuing orders rank is in this way maintained.

(352–353?).[5]

[6] *The same Augustus to Orfitus.* Persons of the lowest grade of merchants, or minters (*monetarii*) and petty officials, or persons engaged in the base occupation of policeman (*stationarius*) and men of the lowest dregs of officialdom and those who live on various disgraceful gains, shall not attempt to enjoy any official position of rank (*dignitas*). If any (such) person has attained it, he shall be expelled; and those who are expelled must be returned to their own associates.

(357–360).[6]

[7][7] *The same Augustus to the Senate.* Since the various provincial governors (*iudices*) deem it proper to have some public works erected in certain cities, the property of Senators shall not be called on to contribute to this kind of compulsory service (*necessitas*).

Given May 3, in the consulship of Taurus and Florentius (361).

[8][8] *Emperor* JULIAN *Augustus to Sallustius, Praetorian Prefect (of the Gauls).* The right (*ius*) of Senators, and the standing (*auctoritas*) of that order, in which We also number ourselves, must be protected from every wrong.

Given February 5, at Constantinople, in the consulship of Mamertinus and Nevitta (362).

[9] *Emperors* VALENTINIAN *and* VALENS *Augusti to Symmachus, City Prefect (of Rome).* We do not prohibit sons of freedmen from acquiring *clarissimus* rank.

(364–365).

[5] Seeck gives September 6, 353.
[6] Seeck gives July 6, 355.
[7] = C.Th. 15.1.7. Combine with C. 7.62.23 and the other laws cited there.
[8] = C.Th. 9.2.1.

[10] *Imppp. Valens Gratianus et Valentinianus AAA. ad Gracchum pu.* Severam indagationem per tormenta quaerendi a clarissimo nomine submovemus.

D. prid. non. Ian. Treviris Gratiano A. IIII et Merobaude conss.

[11] *Idem AAA. ad Procopium.* **pr.** Senator vel alius clarissimus privatos habeat filios, editos quippe, antequam susciperet dignitatem: quod non solum circa masculos dignoscitur constitutum, verum etiam circa filias simili condicione servandum. **1.** Cum autem paternos honores invidere filiis non oportet, a senatore vel solo clarissimo susceptum in clarissimatus sciendum est dignitate mansurum.

D. XVIII k. ... Hierapoli Gratiano A. IIII et Merobaude conss.

[12] *Imppp. Gratianus Valentinianus et Theodosius AAA. Neoterio pp.* Iudices, qui se furtis et sceleribus fuerint maculasse convicti, ablatis codicillorum insignibus et honore exuti inter pessimos quosque et plebeios habeantur, nec sibi posthac de eo honore blandiantur, quo se ipsi indignos iudicaverunt.

D. XVIII k. Febr. Thessalonicae Gratiano V et Theodosio AA. conss.

[13] *Imppp. Valentinianus Theodosius et Arcadius AAA. Marciano comiti Orientis.* Mulieres honore maritorum erigimus, genere nobilitamus et forum ex eorum persona statuimus et domicilia mutamus. sin autem minoris ordinis virum postea sortitae sunt, priore dignitate privatae posterioris mariti sequantur condicionem.

D. IIII id. Nov. Constantinopoli Arcadio A. II et Rufino conss.

[14] *Impp. Theodosius et Valentinianus AA. Basso pp.* Praecipimus, ut senatori in qualibet provincia constituto nullam habeant iudices iniungendi aliquid forte publici muneris potestatem.

[10][9] *Emperors* VALENS, GRATIAN, *and* VALENTINIAN *Augusti to Gracchus, City Prefect (of Rome).* We withhold the harsh method of investigation by means of torture from persons of *clarissimus* rank (*a clarissimo nomine*).

Given January 4, at Trier, in the consulship of Gratian Augustus, for the fourth time, and Merobaudes (377).

[11][10] *The same Augusti to Procopius.* **pr.** The sons of a Senator or other person of *clarissimus* rank shall be persons of private status, namely those who were born before the rank was received; and this is known to be decreed not only as to sons, but applies in like manner to daughters. **1.** Since, however, paternal honors should not put children at a disadvantage, it must be known that the child born to a Senator or any other *clarissimus* shall remain in the ranks of the *clarissimi.*

Given the 18th day before the kalends of ..., at Hierapolis, in the consulship of Gratian Augustus, for the fourth time, and Merobaudes (377).

[12][11] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Neoterius, Praetorian Prefect (of the East).* Provincial governors (*iudices*) convicted of having stained themselves by theft or other crime shall be deprived of the insignia conferred by their diplomas (*codicilli*), shorn of their honor and considered as among the lowest of men and as plebeians; nor shall they thereafter flatter themselves with the honor of which they proved themselves unworthy.

Given January 15, at Thessalonica, in the consulship of Gratian, for the fifth time, and Theodosius, Augusti (380).

[13][12] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Marcianus (Martinianus), Count of the East.* We elevate women through the honor of their husbands; through the family (of their husbands) We ennoble them; on the basis of the legal status (*persona*) of their husbands We determine their (proper) legal forum and change their domicile. If, however, they later acquire a husband of a lesser station, they should be deprived of their previous rank and follow the rank of their later husband.

Given at November 10, at Constantinople, in the consulship of Arcadius Augustus, for the second time, and Rufinus (392).

[14]*Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Bassus, Praetorian Prefect.* We direct that provincial governors (*iudices*) shall have no power of attaching to a Senator, in whatever province located, any compulsory public service (*publicum munus*) whatsoever.

(426).[13]

[9] = C.Th. 9.35.3, which has "from the senatorial name" (*a senatorio nomine*).
[10] pr. = C.Th. 6.2.7 (altered). Seeck dates to Summer 377.
[11] = C.Th. 9.27.1.
[12] = C. 10.40.9; C.Th. 2.1.7.
[13] Seeck gives March 6, 426.

[15] *Idem AA. ad Neuthium pu.* Clarissimis vel spectabilibus universis ad genitale solum vel quolibet alio et sine commeatu proficiscendi et ubi voluerint commorandi habitandive permittimus facultatem.

[16] *Idem AA. Apollonio pp.* Si gravius ullum facinus admittatur, nocente persona extra carceralem custodiam substitutione habita, super illustribus quidem nobis suggeri iubemus, super ceteris vero quadam minore dignitate decoratis ad tui referri culminis notionem, ut ita demum, quid de admisso crimine constitui oporteat, iudicetur.

[17] *Imp. Zeno A. Arcadio pp.* **pr.** Quotiens ex privata cuiuslibet interpellatione civili vel criminali viri illustres conveniendi sunt, nulla dandae fideiussionis concussione vexentur, sed per speciale privilegium suae committi fidei consequantur, iuratoria ab his cautione tantummodo exponenda. **1.** Quam si neglexerint et contra insertum cautioni sacramentum ipsi vel eorum procuratores afuerint, in pecuniariis quidem causis super possessione rerum ad eos pertinentium iudex competens, quod et iuris auctoritas et rei qualitas suggerit, ordinabit: in criminalibus vero negotiis dignitate quoque, qua se per suum videlicet periurium indignos esse probaverint, spolientur, ut in eos utpote illustri dignitate per suum facinus privatos inconsulta etiam nostra pietate iudicibus legum severitatem liceat exercere.

2. Quibus illustrium dignitatum privilegiis hoc etiam adiciendum statuimus, ut huiusmodi personae nullam ex cuiuslibet iudicis sine scriptis habita sententia conventionem neque in civili neque in criminali causa sustineant.

[18] *Imp. Anastasius A. Eusebio magistro officiorum.* Iubemus salvo honore, qui per evocationem sacrae revocatoriae defertur, durante licere cunctis tam maiores quam minores potestates gerentibus nec non etiam honorariis illustribus sive ex hac urbe regia, principali videlicet praecedente consensu, profecti fuerint, sive in provinciis habitantes

[15] *The same Augusti to Neuthius, City Prefect.* We allow all persons of *clarissimus* or *spectabilis* rank to go, without leave (*commeatus*), to their native soil or wherever they desire, and to tarry and live wherever they wish.

(426–443).[14]

[16] *The same Augusti to Apollonius, Praetorian Prefect (of the East).* If any serious crime is committed, and the guilty person has given bond instead of being in custody in prison,[15] We order that where persons of *illustris* rank are concerned, the matter shall be reported to us; if it concerns other persons, decorated by some lesser rank, the matter shall be referred to Your Highness, so that in this manner it may be determined what ought to be decided concerning the crime committed.

(442–443).

[17][16] *Emperor* Zeno *Augustus to Arcadius, Praetorian Prefect (of the East).* Whenever persons of *illustris* rank are to be summoned in any private suit, civil or criminal, they should not be troubled by an outrageous demand of suretyship (*fideiussio*), but they shall enjoy the special privilege of simply giving their guaranty on oath (*cautio iuratoria*) for their appearance. **1.** If they fail to comply with their guaranty contrary to the oath contained therein, and they or their procurators remain absent, then the competent judge, if it is a pecuniary suit, shall render a judgment concerning the possession of the property belonging to them, in accordance with what the authority of the law and the situation of the matter in hand may suggest; in criminal cases, they shall also be deprived of their official rank, of which, by their perjury, they have shown themselves manifestly unworthy, so that judges, without consulting Our Piety, may apply the severity of the laws to them, as to men deprived of their *illustris* rank by their own crime.

2. We decree this further privilege of *illustris* rank to be granted, that persons of this kind shall not be summoned by any judge in any case, civil or criminal, without a written decision (to that effect).

(485–486?).

[18] *Emperor* Anastasius *Augustus to Eusebius, Master of Offices.* We order that, notwithstanding the honor attached to the issuance of an imperial summons (*sacra revocatoria*), all who occupy superior and inferior official positions (*potestates*), as well as persons of honorary *illustris* rank (*honorarii illustres*), may come to this capital city without an imperial summons, whether they had previously departed therefrom, it would seem, with the Emperor's

[14] Seeck gives 326–343.

[15] This is the sense, as indicated by the Basilika, although the reading is uncertain.

[16] Combine with C. 3.24.3. The date is corrected to 490 following Lounghis *et al.*

sacratissimum, suis scilicet poscentibus negotiis, petere maluerint comitatum, sine sacra quoque revocatoria ad hanc regiam urbem pervenire.

II De Praetoribus et Honore Praeturae et Gleba et Folli et Septem Solidorum Functione Sublata

[1] *Impp. Valentinianus et Marcianus AA. Tatiano pu.* Nemo ex clarissimis et spectabilibus qui in provinciis degunt ad praeturam postea devocetur: maneat unusquisque domi suae tutus atque securus et sua dignitate laetetur.

D. xv k. Ian. Constantinopoli Valentiniano A. *vii et Avieno conss.*

[2] *Idem AA. ad senatum.* Glebam vel follem sive septem solidorum functionem sive quamlibet eiusmodi collationem tam circa personas quam circa res ac praedia funditus iubemus aboleri, ut omnis huiusmodi sopita perpetuo conquiescat exactio.

III De Consulibus et Non Spargendis ab His Pecuniis et de Praefectis et Magistris Militum et Patriciis

[1] *Impp. Theodosius et Valentinianus AA. ad senatum urbis ...* **pr.** Antiquitus statutum est consularibus viris ceteros quidem honoratos ipsius trabeae summitate, pares vero infulis consideratione tantum temporis anteire. **1.** Quis enim in uno eodemque genere dignitatis prior esse debuerat, nisi qui prior meruit dignitatem? cum posterior, et si eiusdem honoris praetendat auspicia, cedere tamen illius temporis consuli debeat, quo ipse non fuerit. **2.** Hoc observando et si iterata vice fastigia consulatus aliquis adscenderit: repetiti etenim fasces virtutes saepe meriti comprobant, non augent, quia nihil est altius dignitate. **3.** Quod si quis prior consul posteriori consuli eidemque patricio posthabitus patriciatum postea consequatur, vinci eum oportet qui prior

consent or whether they live in the provinces and want to come to the imperial court on their own, undoubtedly urgent, business.

(492–497).

Second Title Praetors and the Honor of the Praetorship, and the Abolition of the *Gleba, Follis,* and "7 Solidi"

[1][17] *Emperors* VALENTINIAN *and* MARCIAN *Augusti to Tatianus, City Prefect (of Constantinople).* No one of *clarissimus* or *spectabilis* rank who lives in the provinces shall hereafter be called to the Praetorship; each shall be safe and secure at home enjoying his rank.

Given December 18, at Constantinople, in the consulship of Valentinian Augustus, for the seventh time, and Avienus (450).

[2] *The same Augusti to the Senate.* We order that (the tax on Senators called) the *gleba* or *follis* or the payment of "7 solidi," or any contribution of this sort as to persons, their property, or lands, shall be utterly abolished, so that every imposition of this kind, once laid to rest, may forever cease.[18]

(450–455).

Third Title Consuls, and That Money Not Be Scattered by Them; and Prefects, Masters of Soldiers, and Patricians

[1] *The Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to the Senate of the City (of Constantinople).* **pr.** It has long since been established, in the case of ex-Consuls, that others who have been honored by the surpassing splendor of the same consular vestment (*trabea*) and are equal as to their insignia of office (*infulae*) take precedence (over their fellow ex-Consuls) only by reason of time. **1.** For who should rather take precedence within one and the same rank than he who first received the rank? The one later in time, though he claims the perquisites of the same honor, must nevertheless give way to one who was Consul at the time when he himself was not. **2.** This applies even if anyone ascends the heights of the consulship a second time; for *fasces* that are regained often, indeed, confirm the superlative qualities of the man thus rewarded, but they do not enhance those qualities, because nothing is greater than the rank itself. **3.** But if an earlier Consul, having ceded precedence to a subsequent Consul who is also a Patrician, should thereafter attain the patriciate, he who first

[17] Combine with C. 1.39.2.

[18] The *gleba* ("clod") or *follis*, instituted by Constantine, was an annual surtax on the landed wealth of Senators; its lowest assessment was 7 solidi.

meruit patriciatum, postquam iste honore patriciae dignitatis decoratus est.

[2] *Impp. Valentinianus et Marcianus AA. Sporacio comiti domesticorum et consuli.* **pr.** Ordinem consulatus ad antiquam reduximus sanctionem, ut sellam nostram honoris merito, non rapiendi studio populorum agmina sectarentur ac lucrandi cupiditate deposita venerabilem parentum habitum et felicissima antiquitatis ornamenta conspicerent. **1.** Hoc ergo exemplo etiam ceteros procedere consules volumus nec expendere eos sine effectu patimur. **2.** Cessante ergo ista spargendi vilitate amplissimi consules procedentes deinceps abstineant hoc errore perdendi, optimoque consilio operi necessario proficiat, quod erat incompetenter proiciendum. **3.** Ad instaurationem itaque aquaeductuum huius amplissimae urbis centena pondo auri praestentur per singulos consulatus, ut *et* consul patriae se dedisse noverit et data notum sit mansura esse perpetuo.

[3] *Imp. Zeno A.* **pr.** Nemini ad sublimen patriciatus honorem, qui ceteris omnibus anteponitur, adscendere liceat, nisi prius aut consulatus honore potiatur aut praefecturae praetorio vel Illyrici vel urbis administrationem aut magistri militum aut magistri officiorum, in actu videlicet positus, gessisse noscatur, ut huiusmodi tantum personis sive adhuc administrationem gerendo seu postea liceat (quando hoc nostrae sederit maiestati) patriciam consequi dignitatem. **1.** Quoniam vero gloriosissimae huic urbi, quae caput orbis terrarum est, omnifariam credimus consulendum, universos, qui posthac honorarii consulatus insignibus principali munificentia decorantur, centum auri libras ad reficiendum aquaeductum publicum ministrare censemus ad similitudinem eorum, qui per annale tempus consularium editione munerum gloriantur. nam ipsis quoque expedit, ut florentissima civitas centum auri librarum munificentia sustentata honorarium quoque sentiat consulatum.

became Patrician must give way, once the prior Consul has been decorated with the honor of the patrician rank.

(c. 426).[19]

[2] *Emperors* VALENTINIAN *and* MARCIAN *Augusti to Sporacius, Count of the Household and Consul.* **pr.** We have restored the order of the consulate to its ancient dignity so that the body of the populace will gather about Our seat of honor out of respect and not out of any desire for plunder, and may behold the venerable attire of the Fathers and the most salubrious ornaments of antiquity, all desire for gain having been abandoned. **1.** We desire, then, that future Consuls conduct their processions in accordance herewith and do not permit them to squander money uselessly. **2.** The despicable custom of scattering it about shall therefore cease, and the Most Exalted Consuls shall hereafter in their processions abstain from such foolish waste, and what (heretofore) was to be foolishly thrown away shall, in accordance with the best of plans, (hereafter) accomplish necessary work. **3.** One hundred pounds of gold, therefore, shall be furnished towards the repair of the aqueducts of this most exalted city during each consulship, so that the Consul may know that he has given something to the fatherland, and it may be known that what has been given will last forever.

(452).[20]

[3] *Emperor* ZENO *Augustus.* **pr.** No one shall be permitted to rise to the exalted rank of Patrician, which takes precedence over all others, unless he has first received the honor of the consulship, or is known actually to have exercised the functions of Praetorian Prefect (of the East) or of Illyricum, or as City Prefect, Master of Soldiers, or Master of Offices; so that these persons only, during or after their administration, shall be permitted to receive the patriciate, whenever it shall seem good to Our Majesty. **1.** And since We believe it Our duty to look out in every way for the welfare of this most glorious city, which is the capital of the world, We decree that all those who, by imperial munificence, are hereafter decorated by the insignia of the honorary consulship shall furnish 100 pounds of gold for the restoration of the public aqueducts, just like those who glory each year in the exhibition of consular games; for it is of advantage to them as well, that this most flourishing city (Constantinople), enriched by the munificence of 100 pounds of gold, may also be sensible of an honorary consulship.

(474–491).[21]

[19] Seeck dates to February 24, 426.
[20] Seeck dates to late 451.
[21] Lounghis *et al.* give between 476 and 480 or 484.

[4] *Idem A. Sebastiano pp.* **pr.** Sancimus viris excellentissimis consularibus omnibus, qui iam facti sunt vel postea fuerint, procedendi quoque et re ipsa per annum gerendi consulatus, impetrato videlicet principali iudicio, legitimam tribui facultatem, ita ut acta quam meruerint processione non novum aliquid vel quod nondum habeant adipisci, sed consulatus ius, quod semel eis consularitas detulerat, processionis iterasse beneficio videantur et in adoranda nostra purpura vel in consequendis cunctis consulum honoribus et privilegiis ex anteriore tempore provectionis ordinem sibimet noverint vindicandum. **1.** Hoc etiam observando, ut huiusmodi consul nec centum libras auri aquaeductibus huius inclitae civitatis pro tenore sacrae constitutionis praebendas, quas cum esset consularis praestiterat, consul postea creatus persolvere denuo compellatur.

[5] *Imp. Iustinianus A. Iohanni pp.* **pr.** Sancimus viros excelsos patricios, quos in huiusmodi dignitatis apicem augusta maiestas rettulerit, ilico ab imperialibus codicillis praestitis patres familias effici ac potestate liberari paterna, ne videantur, qui a nobis loco patris honorantur, alieno iuri esse subiecti. **1.** Quis enim patiatur patrem quidem posse per emancipationis modum suis nexibus filium relaxare, imperatoriam autem celsitudinem non valere eum quem sibi patrem elegit ab aliena eximere potestate? ne, si contrarium approbetur, per quamcumque machinationem imperialis maiestas minui videatur. **2.** Et hoc quidem raro contingere satis certum est: nemo enim facile respexit filium familias in patriciatus honorem provectum, quemadmodum in consulibus haec res usitata est. **3.** Sed ne quid in parte temporis tale eveniat et sine legibus inveniatur, ideo haec nobis visa sunt sancienda.

IIII De Praefectis Praetorio sive Urbis et Magistris Militum in Dignitatibus Exaequandis

[1] *Imppp. Valentinianus Valens et Gratianus AAA. ad Ampelium pu.* Praefectum urbis praefectum praetorio magistros equitum ac peditum

[4] *The same Augustus to Sebastianus, Praetorian Prefect (of the East?).* **pr.** We ordain that all the *viri excellentissimi* present or future (honorary) Consuls may, once imperial permission has been obtained, have the lawful right to hold a procession and to perform the actual functions of the consulship for a year. Having held the procession, to which they were granted the right, they shall not appear to have obtained something new or what they did not already have, but to have repeated the right of the consulship, which the (honorary) consulship had previously conferred upon them, with the favor of a procession; and in adoring Our purple and enjoying all the honors and privileges of Consuls, they should know that they may claim precedence according to the time of their first advancement. **1.** It must be further observed that such a Consul shall not be compelled to pay over again 100 pounds of gold for the aqueducts of this Famous City as required according to the tenor of the (earlier) imperial constitution,[22] which he had already paid when he was an (honorary) Consul, once he has subsequently been made an (actual) Consul.

(476–484).[23]

[5] *Emperor* JUSTINIAN *Augustus to John, Praetorian Prefect (of the East).* We ordain that the Eminent Patricians, whom August Majesty has raised to the summit of such a dignity, become, immediately upon the issuance of imperial diplomas (*codicilli*), *patres familias* and are liberated from paternal power, lest those who are honored by us as fathers should seem to be subjected to another's power. **1.**[24] For who would tolerate that a father should be able to release a son from his bonds by emancipation, but that imperial eminence should not have the power to release a man whom it has selected as one of its fathers from the power of another? If the contrary should be supposed to be true, imperial majesty would seem to be diminished by some misconstruction. **2.** It is certain that this will happen rarely enough; for few see a son in his father's power advanced to the honor of the patriciate, though this is customary in the case of Consuls. **3.** But lest such a thing might happen in the course of time without a law in relation thereto, We have deemed it best to enact these provisions.

(531–533).[25]

Fourth Title Equality in Rank of the Praetorian Prefect, the City Prefect, and the Master of Soldiers

[1][26] *Emperors* VALENTINIAN, VALENS, *and* GRATIAN *Augusti to Ampelius, City Prefect (of Rome).* We deem the City Prefect, the Praetorian Prefect, and

[22] That is, C. 12.3.3.1.
[23] Lounghis *et al.* give between 476 and 480 or 484.
[24] = Inst. 1.12.4.
[25] Lounghis *et al.* date to either between February 531, and January 532, or between October 18, 532, and November 534.
[26] = C.Th. 6.7.1. Combine with C. 12.12.1 (= C.Th. 6.14.1); C.Th. 6.9.1, 6.11.1, 6.22.4.

indiscretae ducimus dignitatis, usque adeo videlicet, ut, cum ad privatam secesserint vitam, eum loco velimus esse potiorem, qui alios promotionis tempore et codicillorum adeptione praecesserit.

D. III non. Iul. Nasonaci. acc. III non. Sept. Modesto et Arintheo conss.

[2] *Imppp. Gratianus Valentinianus et Theodosius AAA. Restituto pu.* **pr.** Quisquis magisterium equitum peditumque susceperit et gesserit ante captam a quoquam praefecturam, is, cum privatus erit et honorem deposuerit, ex praefectis qui provecti fuerint praeferatur. **1.** Si igitur sedes prior ante provectis, locus conspectior, decernendi loquendique facultas antiquior, cui est splendor adepti magistratus vetustior.

D. VIII k. Iul. Thessalonicae Gratiano V et Theodosio AA. conss.

V De Praepositis Sacri Cubiculi et de Omnibus Cubiculariis et Privilegiis Eorum

[1] *Impp. Honorius et Theodosius AA. Florentio pu.* Sacri cubiculi praepositi ea dignitate fungantur, qua sunt praediti, qui eminentissimam praetorianam vel urbanam meruerint praefecturam aut certe militarem magisteriam potestatem, ita ut sit inter eos post depositas administrationes nulla discretio, sive nostrae serenitatis adoraturi admittuntur imperium sive pro suo arbitrio sollemnes festivitates et coetus vel salutationes vel quaelibet alia officia frequentent, ut in sedibus et in consessu is eis ordo servetur, quem ordo provectionis ostenderit, sub habitu ipsis videlicet consueto, cum manifeste decretum sit eum esse qui praecesserit potiorem, vel illum subsequi, quem recentius probavit examen.

D. VIII id. Nov. Constantinopoli Honorio XIII et Theodosio X AA. conss.

the Masters of Cavalry and of Infantry (*magistri equitum ac peditum*) to be equal in rank, to such an extent, indeed, that when they have retired to private life, We want the person who was first promoted and first received his diplomas (*codicilli*) to take precedence over the others.

Given July 5, at Nasonacum; received September 3, in the consulship of Modestus and Arintheus (372).

[2][27] *Emperors* Gratian, Valentinian, *and* Theodosius *Augusti to Rest(it)utus, Prefect of the City (of Constantinople).* **pr.** Whoever has assumed and performed the official duties of Master of Cavalry and Infantry before another entered upon a prefecture shall, after retirement to private life and relinquishment of his post of honor, take precedence over ex-Prefects promoted (after him). **1.** Persons promoted ahead of others shall therefore have the more prominent seat, the more distinguished place, and the right of deciding and speaking first, which are the prerogatives of one who was first in acquiring the splendor of a magistracy.

Given June 24, at Thessalonica, in the consulship of Gratian, for the fifth time, and Theodosius, Augusti (380).

Fifth Title The Grand Chamberlain and All Chamberlains and Their Privileges

[1][28] *Emperors* Honorius *and* Theodosius *Augusti to Florentius, City Prefect (of Constantinople).* Grand Chamberlains (*sacri cubiculi praepositi*) shall enjoy the same rank as those who have reached the most eminent Praetorian Prefecture or City Prefecture, or certainly those who have received the authority (*potestas*) of the Master of Soldiers, and there shall be no distinction (in rank) among them after they have relinquished their posts, either when they are admitted to adore the power (*imperium*) of Our Serenity, or when present, at their discretion, at customary festivities, assemblies, salutations, or other functions (*officia*), so that in reference to being seated, and in assemblies, the order of precedence shall be observed for them that is indicated by the order of their promotion, provided they wear the customary (official) attire, since it has been clearly decreed that one who preceded (another in attaining his office) takes precedence (on such occasions), and that the other, whom a more recent consideration has approved, follows.

Given November 6, at Constantinople, in the consulship of Honorius, for the thirteenth time, and Theodosius, for the tenth time, Augusti (422).

[27] = C.Th. 6.7.2. Combine with C. 12.6.1 (= C.Th. 6.9.2).
[28] = C.Th. 6.8.1. The date is restored by Seeck.

[2] *Impp. Theodosius et Valentinianus AA. Proculo pu.* pr. Hac nostrae mansuetudinis aeterna lege sancimus, ut omnes cubicularii, qui de nostro cubiculo exeunt, antequam primum locum obtineant, excepto castrensi et comite domorum his privilegiis perfruantur, id est ut nec possessiones eorum angarias sive parangarias vel etiam paraveredos in posterum dispositione tui culminis vel alicuius calumnia dare cogantur, ne sordidis adstricti muneribus decus ministerii, quod militando videbantur adepti, otii tempore et quietis amittant. 1. Domos quoque eorum vel in hac sacratissima urbe vel in qualibet alia positas civitate ab omni hospitum cuiuslibet dignitatis inquietudine vindicamus. 2. Provinciarum rectoribus eorumque apparitionibus denarum librarum auri dispendio feriendis, si mansuetudinis nostrae statuta dissimulare et ex aliqua parte violare temptaverint.

[3] *Impp. Leo et Anthemius AA. Iohanni comiti et magistro officiorum.* Cubicularios tam sacri cubiculi mei quam venerabilis Augustae, quos utrosque certum est obsequiis occupatos et aulae penetralibus inhaerentes diversa iudicia obire non posse, ab observatione aliorum tribunalium liberamus, ut in sublimitatis solummodo tuae iudicio propositas adversus se excipiant actiones.

[4] *Imp. Leo A. Pusaeo pp.* pr. Iubemus omnes, qui vel iam in sacrum cubiculum cuiuspiam liberalitate donati aliove titulo dati vel dandi principalibus obsequiis inhaerere vel ante meruerunt vel postea meruerint, licet nulla interveniente scriptura, nulla confectione gestorum, postquam devotissimis cubiculariis fuerint sociati, ad condicionem libertatis ingenuitatisque rapiantur raptique videantur. 1. Hoc non solum circa superstites, sed etiam circa mortuos volumus custodiri.

[2][29] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Proculus, City Prefect (of Constantinople).* By this eternal law of Our Clemency, We ordain that all chamberlains (*cubicularii*) who retire from Our chamber before reaching the foremost position, excepting the Steward (*castrensis*) and the Count of the Household (*comes domorum*), shall enjoy the following privileges: that is to say, their property shall not be burdened hereafter by any regular or supplementary requisitions of vehicles or mounts for the public post (*angariae, sive parangariae vel etiam paraveredi*) either on order of Your Highness or pursuant to the vexatious information (*calumnia*) of anyone; and they shall not, in their time of leisure and peace, lose the respectability (*decus ministerii*) which they appeared to have acquired through their service by being held liable for menial compulsory public services (*sordida munera*). **1.**[30] We exempt also their houses, whether situated in this Most Imperial City or in any other city, from the duty of quartering any persons of any rank whatever. **2.** The governors (*rectores*) of the provinces and their subordinates (*apparitores*) will be punished by a fine of 10 pounds of gold, if they attempt to disregard or in any way to violate these provisions of Our Clemency.

(Given January 31, at Constantinople, in the consulship of Felix and Taurus [428]).

[3][31] *Emperors* LEO *and* ANTHEMIUS *Augusti to John, Count and Master of Offices.* The chamberlains (*cubicularii*) of my imperial chamber and of that of the esteemed Augusta, who, occupied as they are by their duties and obliged to attend upon the innermost recesses of the court, certainly cannot attend the various judicial tribunals, We exempt from appearance in other jurisdictions, so that only in the tribunal of Your Sublimity must they answer actions brought against them.

(467–468).

[4] *Emperor* LEO *Augustus to Pusaeus, Praetorian Prefect (of the East).* **pr.** We order that all (slaves) who have heretofore been given to Our imperial chamber by the liberality of anyone, or who by any grant have been or will hereafter be given, and who have heretofore been or will hereafter be attached to the service of the Emperor, shall, after they have been associated with the most devoted chamberlains (*cubicularii*), be rendered and be seen to have been rendered free and free-born, although no document or record in relation thereto has been executed. **1.** We desire this to be observed with respect not only to the living but

[29] Combine with C.Th. 6.2.26, 6.27.22 (from which the subscription is restored). Seeck gives the date.

[30] Compare C. 12.16.3.2–3.

[31] Combine with C. 12.25.3; see also 12.59.8.

nam cum hoc privilegium videatur principalis esse proprium maiestatis, ut non famulorum, sicut privatae condicionis homines, sed liberorum honestis utantur obsequiis, periniquum est eos dumtaxat pati fortunae deterioris incommoda. 2. Sed testamenta quidem ad similitudinem aliorum, qui ingenuitatis infulis decorantur, pro sua liceat eis condere voluntate: intestatorum vero nemo dubitet facultates utpote sine legitimis successoribus defunctorum fisci viribus vindicari.

3. Haec omnia tunc diligenti observatione volumus custodiri, cum sponte suaque voluntate quis dederit eunuchum sacri cubiculi ministeriis adhaesurum. 4. Si vero cuidam fuerit violenter extortus, aut invito domino vel ignaro intra sacrum ausus sit militare cubiculum, liceat domino destinatum sacra ex lege cubiculariis interpellare iudicium et eum, quem probaverit nolente se vel inscio sacrum penetrasse cubiculum, ut suum famulum cum peculio consequatur.

5. Sed sicut laesis implorandi praesidii facultatem denegari non convenit, ita nec calumniandi viam patimur diutius esse patefactam. ideoque tempus quinquennii praefinimus, intra quod contra eum suas debeant exercere quaestiones, ut, si medio tempore movere distulerint, ulterius eis tamquam in suum famulum vindicandi vel eius ut servi peculium vel bona quasi liberti copia denegetur.

6. Haec omnia, quae super devotissimis cubiculariis sancimus, etiam ad cubicularias, quae a dominis in sacrum cubiculum datae vel dandae sunt, superstites atque mortuas extendi propagarique decernimus.

[5] *Imp. Anastasius A. Eusebio magistro officiorum.* Iubemus duobus viris illustribus praepositis utriusque sacri cubiculi tam nostrae pietatis quam nostrae serenissimae coniugis, post finitam militiam si senatorio fuerint consortio sociati, licere, quotiens ad adspiciendos agros suos vel ob aliam causam proficisci voluerint, cingulo uti, cum hoc ad implendum eorum desiderium et ad nullius laesionem respicere videatur.

also to the dead. For since it is observed to be the special privilege of the imperial majesty to use the services, not of slaves, as people of private status (*privata condicio*) do, but the honorable services of free people, it would be very iniquitous if these only (i.e., the dead) should suffer the disadvantages of an inferior status. 2. They (the chamberlains) shall be permitted to make testaments, at their discretion, just like those who are decorated by the ornaments (*infulae*) of free birth. If they die intestate, no one needs to doubt that their property will be claimed for the Treasury, since the deceased are without legal heirs.

3. We desire then all these provisions to be strictly observed when anyone has freely and voluntarily given a eunuch for service in the imperial chamber. 4. If the eunuch, however, was taken from anyone by force, or if he shall dare to serve in the imperial chamber against the wish or without the knowledge of the master, the latter may cite him to appear in the tribunal designated for chamberlains by imperial law[32] and recover, in addition to the *peculium*, the slave whom he can show to have entered the imperial chamber without his consent or knowledge.

5. But just as, on one hand, it is not proper to deny to the injured the opportunity to implore assistance, so, on the other hand, We do not allow the path of persecution to remain open very long. We fix therefore a period of five years within which masters may commence their action, and if they fail to do so in that time, the opportunity to reclaim the slave or his *peculium*, or his property as that of a freedman, shall be denied.

6. All these provisions We have made concerning the most devoted male chamberlains (*cubicularii*), We determine shall be extended and applied to female chamberlains (*cubiculariae*), living or dead, given or to be given by their masters to the imperial chamber.

(467–468).[33]

[5] *Emperor* ANASTASIUS *Augustus to Eusebius, Master of Offices.* We order that the two Grand Chamberlains (*praepositi sacri cubiculi*), that of Our Piety and that of Our Most Serene Consort, both persons of *illustris* rank, shall be permitted, after their terms of service, if they have been associated with the senatorial order (*senatorium consortium*), to wear the belt of their office (*cingulum*) whenever they want to go away to inspect their lands or for other purposes, since this would seem to give them satisfaction and injures no one.

(492–497).

[32] C. 12.5.3.
[33] Seeck dates to 473.

VI De Quaestoribus Magistris Officiorum Comitibus Sacrarum Largitionum et Rei Privatae

[1] *Imppp. Gratianus Valentinianus et Theodosius AAA. Restituto pu.* Qui ex quaesturae honore aut efficaci magisterio aut comitiva utriusque aerarii nostri attonito splendore viguerunt, acclamatione excipiantur solita nec praetereantur ut incogniti.

D. VIII k. Iun. Thessalonicae Gratiano V et Theodosio AA. conss.

VII De Primicerio et Secundocerio et Notariis

[1] *Imppp. Gratianus Valentinianus et Theodosius AAA. Eutropio pp.* **pr.** Praecipua est nostrae pietatis intentio circa notariorum nomen: atque ideo, si umquam huius ordinis viri laborem quiete mutaverint vel senectute posuerint seu cum alia dignitate post hanc qualibet usi sunt, non omittant prioris vocabulum militiae, sed compendium sequentis honoris adsumant. **1.** Et si quis ex officio vel praecipue sublimitatis tuae temerarius ad census discussiones peraequationes, aliam denique ullam rem inquietator extiterit, officium suum noverit vel levis culpae offensione detecta gravis multae discrimine fatigandum et numerariorum corpus extincto iniuriae auctore minuendum.

D. XVII k. Iul. Thessalonicae Gratiano V et Theodosio AA. conss.

[2] *Imp. Zeno A. Hilariano magistro officiorum.* **pr.** Praeclaram nobilemque militiam spectabilium tribunorum notariorum, qui gloriosis obsequiis nonnihil rei publicae commoditatis adferunt et decoris, diversis beneficiorum titulis muniendam credidimus et augendam. **1.** Nam biennales metas viro spectabili pro tempore primicerio agendis numeris duximus statuendas.

Sixth Title Quaestors, Masters of Offices, Counts of Imperial Benefactions and of the Privy Purse

[1][34] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Rest(it)utus, City Prefect (of Constantinople).* Those who have lived in amazing splendor on account of the honor of the Quaestorship, the powerful office of Master (of Offices), or the Countship of either Treasury must be received with the customary acclamation and not passed by unrecognized.

Given May 25, at Thessalonica, in the consulship of Gratian, for the fifth time, and Theodosius, Augusti (380).[35]

Seventh Title The Chief Secretary, First Assistant Chief Secretary, and Notaries

[1][36] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Eutropius, Praetorian Prefect (of Illyricum).* **pr.** Our Piety has a special regard for the name of notaries (*notariorum nomen*). And, therefore, if men of this order have ever changed their labor for quietude, or laid their position aside on account of age, or have, after their service in this order, obtained another position of rank, they shall not neglect the designation of their former service, but add to it the reward of the subsequent honor. **1.** If any member of an official staff, especially anyone of the official staff of Your Sublimity, should be so imprudent as to disturb such persons with the burden of tax inspection or equalization or with any other matter, his staff must know that it incurs the risk of a heavy fine, even though the offense is revealed to be slight, and that the number of chief accountants (*numerarii*) will be diminished by the dismissal of the author of the offense.

Given June 15, at Thessalonica, in the consulship of Gratian, for the fifth time, and Theodosius Augusti (380).

[2][37] *Emperor* ZENO *Augustus to Hilarianus, Master of Offices.* **pr.** We believe that the distinguished and noble service of the tribunes of notaries, of *spectabilis* rank, who by their glorious services bring advantage and dignity to the state, ought to be fortified and exalted with various conferrals of benefits. **1.** We have thought it best to limit the *vir spectabilis* Chief Secretary (*primicerius*) to a period of two years of leading the corps (*numeri*).

[34] = C.Th. 6.9.2. Combine with C. 12.4.2 (= C.Th. 6.7.2, which supplies the corrected date).

[35] Seeck dates to June 24, 380.

[36] = C.Th. 6.10.1. This law is probably separate from 5.1.3 and the other laws addressed to Eutropius cited there. Accordingly, there is no need to emend the date.

[37] Combine with C. 12.40.11. This was probably a law of Leo II and Zeno.

2. Hos autem tribunos, qui suis negotiis occupati minime sacrum palatium curaverint frequentandum, nisi intra annale spatium revertantur, quamvis commeatus iura praetendunt, pro absentia quidem unius anni unius gradus, si vero duobus annis afuerint, duorum, si tribus, trium, si quattuor, similiter quattuor graduum subire iacturam his qui inferiores eis fuerint postponendos. 3. Qui vero per quinquennium integrum se repraesentare cessaverint, exemptos matricula tantum nomine tribunorum, nec vero ordine perpotiri, his in hunc modum dispositis vacationem census discussionis peraequationes et cuiuslibet alterius rei habituros.

4. Illud praecipue provisionem nostram flagitare perspeximus, ne per ambitionem aut gratiam aut cuiuslibet occasionis obtentu vel laborum seu sollicitudinum specie publicorum cuiquam liceat aliquando graduum seriem conturbare et temporum ratione calcata dudum militantibus anteferri et, quae longis prolixisque stipendiis defensa iam pollicetur senectus, gratiosa festinatione subripere. 5. Hoc etiam adiciendo, ut primicerius post depositam publicam numerorum sollicitudinem, ac si ipsam gessisset administrationem, cuius consequitur dignitatem, magistri officiorum pro antiqua consuetudine infulas sortiatur, omnibus vacantibus quamvis tempore praecedentibus praeponendus.

VIII Ut Dignitatum Ordo Servetur

[1] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad Praetextatum pp.* Si quis indebitum sibi locum usurpaverit, nulla se ignoratione defendat sitque plane sacrilegii reus, qui divina praecepta neglexerit.

D. XII k. Iun. Mediolani Ricomere et Clearcho vv. cc. conss.

[2] *Impp. Theodosius et Valentinianus AA. Cyro pp.* **pr.** Omnes privilegia dignitatum hoc ordine servanda cognoscant, ut primo loco habeantur ii, qui in actu positi illustres peregerint administrationes: secundo venient vacantes, qui praesentes in comitatu illustris dignitatis cingulum

2. But those tribunes who, occupied with their own affairs, have scarcely been concerned to visit the imperial palace and have not returned within a year – although they allege the rights of a leave of absence (*commeatus*) – shall suffer with respect to those who had been their inferiors the loss of one grade (*gradus*) on account of the absence of one year; of two grades, if absent two years; of three grades, if absent three years; likewise, of four grades, if absent four years. 3. Those, moreover, who have ceased to be present for a whole period of five years shall be stricken from the register and shall enjoy only the title (*nomen*), not the active rank (*ordo*), of tribune, with the reservation that despite these provisions they shall be free from the burden of tax inspection and equalization and from any other matter.

4. We have noticed that Our special attention is needed to see that no one through corrupt solicitation or influence, or on a pretence of any kind, or under the appearance of any public labor or care, may disturb the regular order of promotion and, by ignoring the reckoning of time, be preferred to those who have rendered lengthy service and through favoritism steal what old age, after long and extended devotion in duty, promises. 5. We must also add, that the Chief Secretary (*primicerius*) shall, after relinquishing public responsibility for the corps (*numeri*), be allotted the ornaments (*infulae*) of the Master of Offices, according to ancient custom, just as if he had carried on that office (*administratio*), the rank of which he attains, and shall have precedence over any titular officials (*vacantes*) though they precede him in time.

(474).

Eighth Title That the Order of Rank Be Preserved

[1][38] *Emperors Gratian, Valentinian, and Theodosius Augusti to Praetextatus, Praetorian Prefect (of Italy, Illyricum, and Africa).* If anyone usurps a place (of precedence) not belonging to him, he may not defend himself on the ground of ignorance, and a person who has neglected the imperial precepts is clearly guilty of sacrilege.

Given May 21, at Milan, in the consulship of the viri clarissimi *Richomer and Clearchus (384).*

[2] *Emperors Theodosius and Valentinian Augusti to Cyrus, Praetorian Prefect (of the East).* pr. All may ascertain that the privileges of rank shall be preserved in the following order: the first place is accorded those who have actually administered positions of *illustris* rank (*illustres administrationes*); next come titular office-holders (*vacantes*) who, while present at court (*in comitatu*), have received a belt of office (*cingulum*) of *illustris* rank; We assign the third place to

[38] = C.Th. 6.5.2.

meruerint: tertium ordinem eorum prospicimus, quibus absentibus cingulum illustris mittitur dignitatis: quartum honorariorum, qui praesentes a nostro numine sine cingulo codicillos tantum honorariae dignitatis adepti sunt: quintum eorum, quibus absentibus similiter sine cingulo mittuntur illustris insignia dignitatis. 1. Sed administratores quidem, etiam comites rei privatae, omnibus vacantibus omnibus honorariis anteponi censemus.

2. Vacantes autem post administratores venientes non omnes iam omnibus honorariis credidimus praeponendos, sed eos vacantes illis honorariis, qui similem adepti sunt dignitatem, ut praefectorius praefectorio, non quaestorius praefectorio praeponatur, parique modo quaestorius quaestorio, non vacans comes thesaurorum vel comes rei privatae honorario quaestorio vel ex magistro officiorum praeferatur.

3. Inter administratores illos etiam numerari decernimus, quibus illustribus in sacro nostro consistorio *cinctis* aliquid ordinariae dignitatis vel antea commisimus vel postea committemus peragendum, verbi gratia si vacant*i* magistro militum belli cura commitatur. 4. Cur enim aut vir magnificus Germanus magister militum vacans appellatur, cui bellum contra hostes mandavimus? aut cur excellentissimus Pentadius non egisse dicitur praefecturam, cuius illustribus cincti dispositionibus vice praetorianae praefecturae miles in expeditione copia commeatuum abundavit.

[3] ...

VIIII De Magistris Scriniorum

[1] *Impp. Theodosius et Valentinianus AA. Zoilo pp. Orientis.* **pr.** Viris spectabilibus magistris omnium sacrorum scriniorum nostrae benivolentiae liberalitas tribuenda est, qui nostrae quodammodo adsidere maiestati

those to whom, though absent, a belt of office of *illustris* rank has been sent; the fourth place to those honorary office-holders (*honorarii*) who, while present at Our court, have received from Our Majesty only a diploma (*codicilli*) of honorary (*illustris*) rank, without the belt of office; the fifth place to those to whom, though absent, the insignia of *illustris* rank, likewise without the belt, have been sent. 1. We deem it right that actual officials (*administratores*), including Counts of the Privy Purse, should take precedence over all titular (*vacantes*) and honorary (*honorarii*) officials.

2. We do not believe, however, that every titular official (*vacantes*), being inferior in rank to actual officials (*administratores*), should take precedence over every honorary official (*honorarii*), but, instead, that those titular officials should take precedence (only) over those honorary officials who have received the same rank; as (for instance) a (titular) Prefect over a(n honorary) Prefect, not a (titular) Quaestor over a(n honorary) Prefect; and in like manner a (titular) Quaestor over a(n honorary) Quaestor; but a titular Count of the Depots (*vacans comes thesaurorum*) or of the Privy Purse shall not take precedence over an honorary Quaestor (*honorarius quaestor*) or ex-Master of Offices (*ex magistro officiorum*).

3. We determine that among actual officials (*inter administratores*) shall also be numbered those who have received a belt of office of *illustris* rank in Our Imperial Council (*consistorium*), to whom a duty connected with the actual office (*aliquid ordinariae dignitatis*) has heretofore or shall hereafter be assigned – if, for instance, the management of a war is entrusted to a titular Master of Soldiers. 4. For why should the *vir magnificus* Germanus be called a titular Master of Soldiers, when We have entrusted a war against the enemy to him? Or why should the Most Excellent Pentadius, girded with the belt of *illustris* rank, not be said to have administered the prefecture, when by his management, in place of the Praetorian Prefect, the soldiers have had an abundant supply of provisions on their expedition?[39]

(440–441).[40]

[3] <A Greek constitution is apparently lost.>

Ninth Title Masters of the Bureaus

[1] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Zoilus, Praetorian Prefect of the East.* pr. The liberality of Our benevolence should be extended to the Masters of all the imperial bureaus (*magistri scriniorum*), persons of *spectabilis* rank, who seem, as it were, to sit by the side of Our Majesty (to

[39] This refers to the role of Germanus and Pentadius in the Vandal expedition of 441.

[40] Seeck dates to 441.

videntur. 1. Ideoque post depositum etiam officium ab omni indictionis onere seu civilium seu militarium iudicum prorsus immunes esse praecipimus, ut nec ab amplissima quidem sede tui culminis eis ulla molestia super suscipiendo quolibet gravamine privato vel publico penitus iniungatur. 2. Hoc beneficium ad proximos etiam sacrorum scriniorum et ex proximis volumus propagari. 3. Quinquaginta librarum auri officio tui culminis damnatione multando, si quid adversus statuta clementiae nostrae innovari concesserit.

D. v k. Mart. Theodosio A. xviii et Albino conss.

X De Comitibus Consistorianis

[1] *Impp. Arcadius et Honorius AA. Severino pu.* Eos, qui tranquillitatis nostrae consistorii dici comites meruerunt, spectabilibus proconsulibus aequari generaliter decernimus.

D. vii k. Oct. Constantinopoli Theodoro vc. cons.

[2] *Imp. Anastasius A. Eusebio magistro officiorum.* Viros spectabiles comites consistorianos et coniuges et liberos, servos quin etiam atque colonos eorum isdem privilegiis tam intentiones ab aliis proponendas excipiendo quam suas contra alios exercendo perfrui, quibus viri clarissimi principes scholae agentium in rebus per sacram pragmaticam sanctionem divae memoriae Zenonis utuntur.

XI De Comitibus Et Tribunis Scholarum

[1] *Impp. Honorius et Theodosius AA. Prisciano pu.* **pr.** Praepositos ac tribunos scholarum, qui et divinis epulis adhibentur et adorandi principis facultatem antiquitus meruerunt, inter quos comites etiam sacri

render assistance). 1.[41] We decree, therefore, that after retiring from office they shall be entirely exempt from every burden of a public obligation (*indictio*) by civil or military judges. They shall not be annoyed even by the most exalted office of Your Highness through the imposition upon them of any burden, public or private. 2. This benefit We desire also to extend to the chief clerks (*proximi*) and ex-chief clerks of the imperial bureaus. 3. The official staff of Your Highness will be punished by a fine of 50 pounds of gold, if they permit any innovation contrary to the statutes of Our Clemency.

Given February 26, in the consulship of Theodosius Augustus, for the eighteenth time, and Albinus (444).

Tenth Title Counts of the Imperial Council

[1][42] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Severinus, City Prefect (of Constantinople).* We decree, with general effect, that those who deserve to be called Counts of the Imperial Council (*comites consistorii*) of Our Tranquility shall be equal (in rank) with the Proconsuls, persons of *spectabilis* rank.

Given September 25, at Constantinople, in the consulship of the vir clarissimus *Theodorus (399).*

[2] *Emperor* ANASTASIUS *Augustus to Eusebius, Master of Offices.* The Counts of the Imperial Council, persons of *spectabilis* rank, and their wives and children, as well as their slaves and bound tenants (*coloni*), shall enjoy the same privileges in regard to answering the complaints of others against them, and in regard to their own complaints against others, as are enjoyed under the terms of the imperial pragmatic sanction of Zeno,[43] of blessed memory, by the Chiefs of Staff (*principes*) of the corps of imperial couriers (*schola agentium in rebus*), persons of *clarissimus* rank.

(492–497).

Eleventh Title Counts and Tribunes of the Imperial Guard

[1][44] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Priscianus, City Prefect (of Constantinople).* **pr.** We have directed that the commandants (*praepositi*) and tribunes of the imperial guard (*scholae*), who are summoned to imperial banquets and have long received the right of adoring the Emperor, and

[41] Sections 1 and 3 = C. 1.51.11 in part.
[42] = C.Th. 6.12.1.
[43] See C. 12.21.8.
[44] = C.Th. 6.13.1. Combine with C. 12.12.2 (= C.Th. 6.14.3), 12.13.1 (= C.Th. 6.16.1), 12.14.1 (= C.Th. 6.17.1); C.Th. 6.15.1, 6.20.1.

stabuli et cura palatii numerantur, si primi ordinis comitivam cum praepositura meruerunt et casu ad altiora non pervenerint, deposito sacramento inter eos, qui comites Aegypti vel Ponticae dioeceseos fuerint, quorum par dignitas est, haberi praecepimus. 1. Sin absque honore comitivae regimen fuerint nacti, absolutos militia inter eos qui duces fuerint provinciarum numerari iubemus.

D. XII k. April. Constantinopoli Lucio vc. cons.

XII De Comitibus Rei Militaris

[1] *Imppp. Valentinianus Valens et Gratianus AAA. Ampelio pu.* Qui contemplatione meritorum, ducto intra provincias transmarinas strenuissimo milite, primi ordinis comitivam fuerint consecuti, ea reverentia altissimarum dignitatum viris subiungantur, ut his locum praestent, qui proconsulatus insignibus adornantur.

D. III non. Iul. Nasonaci Modesto et Arintheo conss.

[2] *Impp. Honorius et Theodosius AA. Prisciano pu.* Eos, qui sub comitivae primi ordinis dignitate peculiariter ad quamlibet provinciam vel provincias defendendas milite credito auctoritate nostri numinis destinantur, et eos, qui vicem illustrium virorum magistrorum militum susceperint peragendam, ducibus, qui praeter Aegyptum et Ponticam in aliis provinciis administraverint, adaequamus.

D. XII k. April. Constantinopoli Lucio vc. cons.

XIII De Comitibus et Archiatris Sacri Palatii

[1] *Impp. Honorius et Theodosius AA. Prisciano pu.* Archiatros intra palatium militantes si comitivae primi ordinis nobilitaverit gradus, inter

among whom also are numbered the Counts of the Imperial Stable (*comites sacri stabuli*) and the Curator of the Palace (*cura palatii*), shall, if they have received the Countship of the First Order (*comitiva primi ordinis*) along with the post of commandant (*praepositura*) and happened to have reached no higher rank, after relinquishing their oath of imperial service (*sacramentum*) be numbered among those who have been Counts of Egypt or of the diocese of Pontica, whose rank is equal. 1. But if they obtained their appointment without the honor of the Countship, We order them, after their service, to be numbered among the Dukes of provinces.

Given March 21, at Constantinople, in the consulship of the vir clarissimus *Lucius (413).*

Twelfth Title Counts of Military Affairs

[1][45] *Emperors* Valentinian, Valens, *and* Gratian *Augusti to Ampelius, City Prefect (of Rome).* Those who, in view of their deserts and after conducting the most vigorous of soldiers within transmarine provinces, have attained the Countship of the First Order (*comitiva primi ordinis*) are subordinated to the men of the highest ranks with such respect (due them) that they must give precedence to those who have been decorated by the insignia of the Proconsulship (or: that those who have been decorated by the insignia of the Proconsulship must give them precedence).

Given July 5, at Nasonacum, in the consulship of Modestus and Arintheus (372).

[2][46] *Emperors* Honorius *and* Theodosius *Augusti to Priscianus, City Prefect (of Constantinople).* Those who hold the the Countship of the First Order and by authority of Our Divine Majesty have been specially sent with an army entrusted to them to defend any province or provinces, and those who have acted in the place of the Masters of Soldiers, of *illustris* rank, We make equal in rank with the Dukes who have administered provinces other than in Egypt and Pontica.

Given March 21, at Constantinople, in the consulship of the vir clarissimus *Lucius (413).*

Thirteenth Title Counts and Chief Physicians of the Imperial Palace

[1][47] *Emperors* Honorius *and* Theodosius *Augusti to Priscianus, City Prefect (of Constantinople).* We direct that the chief physicians (*archiatri*) serving

[45] = C.Th. 6.14.1. Combine with C. 12.4.1 and the other laws cited there.
[46] = C.Th. 6.14.3. Combine with C. 12.11.1 and the other laws cited there.
[47] = C.Th. 6.16.1. Combine with C. 12.11.1 and the other laws cited there.

vicarios taxari praecipimus, sive iam pridem deposuerunt militiam sive postea deposuerint, ita ut inter vicarios et duces qui administraverint et hos qui comitivam primi ordinis meruerint nihil intersit nisi tempus, quo quis administraverit vel comitivae indeptus est insignia.

D. XII k. April. Constantinopoli Lucio vc. cons.

XIIII De Comitibus Qui Provincias Regunt

[1] *Impp. Honorius et Theodosius AA. Prisciano pu.* Hos, qui in administratione civili ac provinciae gubernaculis sub iurisdictionis licentia comites quoque primi ordinis esse meruerint, vicariae dignitatis post depositam administrationem privilegiis frui oportet.

D. XII k. April. Constantinopoli Lucio vc. cons.

XV De Professoribus Qui in Urbe Constantinopolitana Docentes ex Lege Meruerint Comitivam

[1] *Imp. Theodosius A. et Valentinianus C. Theophilo pu.* Grammaticos tam Graecos quam Latinos, sophistas et iuris peritos in hac regia urbe professionem suam exercentes et inter statutos connumeratos, si laudabilem in se probis moribus vitam esse monstraverint, si docendi peritiam facundiamque dicendi interpretandi subtilitatem copiam disserendi se habere patefecerint, et coetu amplissimo iudicante digni fuerint aestimati, cum ad viginti annos observatione iugi ac sedulo docendi labore pervenerint, placuit honorari et his qui sunt ex vicaria dignitate connumerari.

D. id. Mart. Constantinopoli Theodosio A. XI et Valentiniano C. conss.

within the palace, if ennobled by the rank (*gradus*) of the Countship of the First Order (*comitiva primi ordinis*), shall be numbered among the Vicars (*vicarii*) whether they have already or shall hereafter quit their service, so that there shall be no difference (in rank) between, on one hand, Vicars and Dukes who have held actual office and those, on the other hand, who have received the Countship of the First Order, except as to the time during which they respectively administered the office or received the insignia of the Countship.

Given March 21, at Constantinople, in the consulship of the vir clarissimus *Lucius (413).*

Fourteenth Title Counts Who Govern Provinces

[1][48] *Emperors Honorius and Theodosius Augusti to Priscianus, City Prefect (of Constantinople).* Those in the civil administration and in the government of provinces with the right to give judicial decisions who have also deserved to be Counts of the First Order (*comites primi ordinis*) shall, after relinquishing their office (*administratio*), enjoy the privileges of the rank of Vicar (*vicaria dignitas*).

Given March 21, at Constantinople, in the consulship of the vir clarissimus *Lucius (413).*

Fifteenth Title Professors Who, Teaching in the City of Constantinople, Have Received the Countship by Statute

[1][49] *Emperor Theodosius Augustus and Caesar Valentinian to Theophilus, City Prefect (of Constantinople).* Be it resolved that the grammarians of Greek and Latin, the rhetoricians (*sophistae*), and the learned in the law (*iuris periti*) who practice their profession in this imperial city and who are a part of the established number (as regulated by statute), insofar as they have, by their upright demeanor, shown that they have led a life praiseworthy in itself, and if they have demonstrated their experience in teaching, their eloquence in speaking, their subtlety in interpretation and fluency in dissertation, and if they have been adjudged worthy by the most exalted council (the Senate), shall, after twenty years of constant attention and diligent labor of teaching, be honored and numbered among those of the rank of ex-Vicar (*ex vicaria dignitate*).

Given March 15, at Constantinople, in the consulship of Theodosius Augustus, for the eleventh time, and the Caesar Valentinian (425).

[48] = C.Th. 6.17.1. Combine with C. 12.11.1 and the other laws cited there.

[49] = C.Th. 6.21.1. Compare C. 11.19.1.

XVI De Decurionibus et Silentiariis

[1] *Impp. Honorius et Theodosius AA. Urso pu. et Aureliano pp. Orientis et Strategio pp. per Illyricum.* Decuriones nostri palatii post emensum fideliter obsequium postque deposita sacramenta militiae electionem habeant, sive ex magistro officiorum velut agentes dignitatem consequi a nostra maiestate maluerint, sive inter viros illustres comites domesticorum, videlicet inter agentes, taxari, ut tam in adoranda nostra serenitate quam in salutandis administratoribus et reliquis praedicti honoris privilegiis nec non in nostro consistorio his honor omnifariam observetur.

D. prid. k. Nov. Constantinopoli Honorio x *et Theodosio* vi *AA. conss.*

[2] *Idem AA. Venantio pp.* Unusquisque decurio vel silentiarius a tironum et equorum praestatione habeatur immunis: nullam collationem, quae plerumque poscitur, solvat: nihil his ulla potestas iniungat aut necessitas imponat.

D. vii *id. Mart. Ravennae Asclepiodoto et Mariniano conss.*

[3] *Impp. Theodosius et Valentinianus AA. Flaviano pp.* **pr.** Decurionibus et silentiariis, etiam si ad superiorem gradum successu meliore transcendunt, omnia privilegia, quae iam dudum divorum principum iudicio meruerunt, legis istius praeceptione noveris esse firmata, non praeiudicatura quacumque generalitate pragmatica. **1.** Nec angarias vel parangarias sive paraveredos ulla eis amplissimae praeceptionis imponat auctoritas. sordidis quoque muneribus, excoctione calcis et superindicti gravamine eos liberamus. **2.** Domus quoque eorum non tantum in hac

Sixteenth Title Decurions and Silentiaries[50]

[1][51] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Ursus, Prefect of the City (of Constantinople), and Aurelianus, Praetorian Prefect of the East, and Strategius, Praetorian Prefect of Illyricum.* The decurions of Our palace, after faithfully performing their duty (*obsequium*) and having relinquished their oaths of imperial service (*sacramenta militiae*), shall have the option whether they prefer to obtain from Our Majesty the rank of ex-Master of Offices as though they had actually officiated as such (*velut agentes*), or to be rated among the Counts of the Household (*comites domesticorum*) of *illustris* rank, that is, as though on an active basis (*inter agentes*), so that this honor shall be in every way extended to them in adoring Our Serenity, and in connection with the salutation of officials (*administratores*), and with respect to the other privileges of the aforesaid honor, as well as in Our Council (*consistorium*).

Given October 31, at Constantinople, in the consulship of Honorius, for the tenth time, and Theodosius, for the sixth time, Augusti (415).

[2][52] *The same Augusti to Venantius, Praetorian Prefect (of Italy and Africa?).* Every decurion (of the palace) and every silentiary shall be exempt from the duty of furnishing recruits or horses; he need not make any contribution which is generally asked; no authority shall enjoin, nor necessity impose, any burden upon him.

Given March 9, at Ravenna, in the consulship of Asclepiodotus and Marinianus (423).

[3][53] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Flavianus, Praetorian Prefect (of Italy, Illyricum, and Africa).* **pr.** You shall know that, even if decurions (of the palace) and silentiaries (*silentiarii*) advance to a higher rank (*gradus*) by a fortunate promotion, all privileges that they received by order of former Emperors remain in force by the direction of this law, and no general pragmatic sanction shall affect them adversely. **1.** No authority of any imperial order, however high, shall impose upon them the burden to furnish regular or supplementary requisitions of vehicles or mounts for the public post (*angariae vel parangariae sive paraveredi*). We also exempt them from menial compulsory public services (*sordida munera*), from burning lime, and from any extraordinary burden. **2.**[54] Their houses, also, situated not only in this Most Imperial

[50] The silentiaries were an elite corps of thirty court attendants, organized under three officers (or decurions), and charged with maintaining order and silence during audiences in the imperial palace.

[51] = C.Th. 6.23.1 (altered).

[52] = C.Th. 6.23.2.

[53] = C.Th. 6.23.3–4.

[54] Compare C. 12.5.2.

sacratissima urbe, sed in qualibet alia positas civitate immunes ab omni hospitum cuiuslibet dignitatis inquietudine vindicamus: permissa eis veniendi ad comitatum licentia praeter evocatoriae securitatem. multa decem librarum auri iudicibus provinciarum eorumque officiis infligenda, si statuta numinis nostri crediderint esse contemnenda. **3.** His addimus, ut, cum optatam quietem acceperint et inter viros illustres senatores coeperint numerari, honore curiae sine aliqua functione laetentur, immunitatisque gaudio plena dignitatis laetitia potiantur, ut dignitatem solam habeant ex senatu: sub hac videlicet definitione, ut triginta tantummodo numero ea privilegia consequantur, decuriones quoque tres. **4.** Sed eos tunc demum perpotiri decernimus beneficiis supra scriptis, cum per continuos tredecim annos inculpatas excubias peregerint.

D. VIIII k. April. Ravennae Aetio et Valerio conss.

[4] *Imp. Zeno A. Cosmae praeposito sacri cubiculi.* Ne ad diversa tracti viri devoti silentiarii iudicia sacris abstrahi videantur obsequiis, iubemus eos, qui quemlibet devotissimorum silentiariorum scholae vel eius uxorem civiliter vel etiam criminaliter pulsare maluerint, minime eum ex cuiuslibet alterius iudicio nisi ex iudicio tantummodo viri excellentissimi magistri officiorum conveniri.

[5] *Imp. Anastasius A. Polycarpo pp.* **pr.** Iubemus clarissimorum silentiariorum militia praeditos, etsi genitorum suorum in potestate sint constituti, quaecumque solaciorum sive emolumentorum vel donationum seu hereditatum nomine per militiam vel quamlibet eius causam his adquisita sunt vel fuerint, iure castrensis peculii possidere, nec ea posse vel parentes superstites sibimet vindicare vel auferre, vel etiam post eorum obitum fratres vel alios heredes eorum quasi ad defunctorum dominium pertinentia in divisionem deducere: nec enim oportet

City but in any other city, We declare shall be exempt from every inconvenience of quartering guests of any rank whatever. Leave is given them to come to the imperial retinue (*comitatus*) without the guarantee of an imperial summons (*evocatoria*). A fine of 10 pounds of gold will be inflicted upon the governors (*iudices*) of the provinces and their official staff, if they should believe these orders of Our Divine Majesty to be worthy of contempt. **3.** And We add that when they have received their hoped-for rest and begin to be numbered among the Senators of *illustris* rank, they shall enjoy the senatorial honor (*honor curiae*) without any obligation (*functio*), and in the pleasure of their exemption fully enjoy their rank (*dignitas*), so that they may have only dignity (*dignitas*) from the Senate. It is understood, of course, that only thirty silentiaries and three decurions shall attain these privileges. **4.** But We decree that they may enjoy the benefits described above only after they have faultlessly maintained their vigils through thirteen continuous years.

Given March 24, at Ravenna, in the consulship of Aetius and Valerius (432).

[4] *Emperor ZENO Augustus to Cosmas, Grand Chamberlain.* In order that the devoted silentiaries may not be dragged before various tribunals and thus seem to have been distracted from their imperial duties (*obsequia*), We order that anyone who wants to sue any member of the corps of most devoted silentiaries or his wife, either civilly or criminally, shall under no circumstances cause them to be summoned by any tribunal other than that of the *vir excellentissimus* Master of Offices.

(488–491).

[5] *Emperor ANASTASIUS Augustus to Polycarpus, Praetorian Prefect (of the East).* **pr.** We order that those serving in the position of the silentiaries of *clarissimus* rank, although they are under the (paternal) power (*potestas*) of their progenitors, shall possess as a military *peculium* (*iure castrensis peculii*) whatever they have acquired or will acquire in the way of salary, gains, gifts or inheritance by reason of their service or by any other means. Parents surviving them cannot claim or take it, nor after their demise may brothers or their other heirs claim it for purposes of partition, as if it were to be considered as part of the inheritance of the deceased. For labors of the silentiaries should not

labores eorum aliis fructum vel lucrum adferre. 1. Hac namque ratione simul et contemplatione nec ipsam militiam vel suffragium, quodcumque pro ea vel ab isdem viris devotis silentiariis vel a parentibus eorum vel quolibet alio datum est vel fuerit, ab his patimur in successionem defunctorum parentum conferri seu nomine collationis in medium easdem offerri pecunias vel his imputari.

2. Ad haec de tutelis et curationibus eos excusari sancimus, ne alienarum rerum administrationem subire compellantur, qui propter nostra ministeria nec suis curam seu provisionem diligenter deferre possunt.

3. Liberos insuper eorum, qui dignitate virorum spectabilium comitum seu tribunorum decorati sunt vel fuerint, nullatenus nolentes administrationem praeturae suscipere seu peragere.

4. Omnibus videlicet antelatis privilegiis in persona non tantum in praesenti militantium, sed etiam postea eidem consortio inserendorum tam tempore militiae quam post eam depositam observandis.

XVII De Domesticis et Protectoribus

[1] *Imppp. Valentinianus Theodosius et Arcadius AAA. ad Eusignium pp.* Domestici ac protectores osculandi, cum salutaverint, vicarios tui culminis habeant potestatem. poena enim sacrilegii similis erit, si his honorificentia non deferatur, qui contingere nostram purpuram digni sunt aestimati.

D. prid. non. Mart. Mediolani Valentiniano A. III et Eutropio conss.

[2] *Impp. Theodosius et Valentinianus AA. Heliodoro pu.* pr. Primicerius quidem domesticorum et protectorum utriusque scholae post acceptum

bring increase or gain to others. 1. Upon the same ground and for the same reason, neither the position in the imperial service itself, nor the (purchased) recommendation (*suffragium*) heretofore or hereafter paid for the position, either by the devoted silentiaries themselves or by their parents or by anyone else, shall We allow to become part of the estate of the deceased parents, nor shall the proceeds themselves be brought into hotchpot or charged against the silentiaries.

2. We decree, further, that they shall be exempt from tutelage and curatorship, so that those who, on account of their service to us, are not even able to give proper care and attention to their own matters may not be compelled to manage the property of others.

3. Besides, the children of those who heretofore have been or hereafter will be decorated by the rank of Counts or tribunes, persons of *spectabilis* rank, shall under no circumstances be compelled to take up or to administer the Praetorship against their wishes.

4. All of these aforementioned privileges are of course granted not only to those now serving, but also to those hereafter joining the fellowship (*consortium*), both during the time of their service and after they relinquish it.

(497–499).[55]

Seventeenth Title The Household Garrison and Guards[56]

[1][57] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Eusignius, Praetorian Prefect (of Italy and Illyricum).* The (Imperial) Household garrison and guards (*domestici ac protectores*), shall, when they pay their respects, have the right (*potestas*) of kissing the Vicars of Your Highness. For punishment similar to that in case of sacrilege will be imposed, if proper deference (*honorificentia*) is not shown to those who are deemed worthy to touch Our purple.

Given March 6, at Milan, in the consulship of Valentinian Augustus, for the third time, and Eutropius (387).

[2][58] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Heliodorus, City Prefect (of Constantinople).* pr. The chief (*primicerius*) of the Household garrison and guards of either corps (*schola*, i.e., that of infantry or cavalry) shall,

[55] Lounghis *et al.* suggest 498.

[56] By the sixth century the *domestici et protectores*, who in the fourth century served as a kind of training corps for prospective unit commanders, had become a ceremonial body of parade troops, admission to which was obtainable by purchase: see C. 2.7.25.3.

[57] = C.Th. 6.24.4.

[58] = C.Th. 6.24.11 (altered), with the conclusion added from C.Th. 6.24.9.

tribunatum inter eos spectabili dignitate potiatur, qui ducatum agere meruerint. 1. Alii vero, qui decursis stipendiis ab eodem decem usque numero subsequuntur, consulari, id est clarissimatus dignitate, perfruantur cum ipsa loci decem primorum accessione.

D. III id. Iun. Constantinopoli Aetio et Valerio vv. cc. conss.

[3] *Idem AA. Sporacio comiti domesticorum peditum.* **pr.** Si quis domesticorum nulla negotii publici abstrahente sollicitudine nec ei per commeatum sollemniter, ut abesset, facultate concessa biennium obsequiis serenitatis nostrae defuerit, is retrorsum in ordinem tractus inferiorem quinque sequentibus postponatur. 1. Si vero triennium eius absentia continuasse monstretur, usque ad decimum locum procul dubio regradetur. quod si quadriennio tenus afuerit, novissimus collocetur. quinquennio autem si fuerit devagatus, ipso iam cingulo spoliandus est. indignum quippe est desides ac propriis tam diu muniis aberrantes, quos esse convenit adsiduos, numerari.

[4] *Imp. Iustinianus A. Vigilantio comiti domesticorum consulari ac patricio.* Lege pragmatica sine fine victura praefiniendum ac constituendum credidimus, ut, si quis virorum fortium praesentalium domesticorum in equitum schola secundocerii locum indeptus diem interea supremum clauserit, heredes eius non reliqui tantum temporis, quod eidem gradui superesse monstratur, verum etiam insequentis anni, hoc est primiceratus, solaciis ac emolumentis fruantur omnibus, ut, quod ad quaestum et compendium militiaeque fructum prolixe pertinet, similis habeatur, ac si superstes permanserit ad finem usque supremum.

[5] [*Ὁ αὐτὸς βασιλεύς.*] Ἡ διάταξις τὸ προνόμιον τὸ δεδομένον τῷ σεκουνδοκερίῳ τῶν ἱππέων χαρίζεται καὶ τῷ σεκουνδοκερίῳ τῶν πεζῶν.

after reaching the tribunate, enjoy *spectabilis* rank among those who have attained the position of Duke. **1.** But the ten others next highest in rank who succeed those finishing their terms of office shall, on attaining the position (*locus*) of *decemprimi* (i.e., the ten senior officers after the *primicerius*), enjoy consular – which is to say, *clarissimus* – rank.

Given June 11, at Constantinople, in the consulship of the viri clarissimi *Aetius and Valerius (432).*

[3] *The same Augusti to Sporacius, Count of the Household Garrison, Infantry Corps.* **pr.** If any member of the Household garrison, lacking any public duty calling him away or a formally approved leave of absence, shall absent himself from the duties owing to Our Serenity for a period of two years, he shall be placed in a grade below that of the next five following him. **1.** If indeed his absence is shown to have continued for a period of three years, he shall assuredly be demoted ten grades. If he is absent for a period of four years, he shall be placed last on the list. But if he has wandered off for a period of five years, he must be deprived of his belt of office (*cingulum*) altogether, for it is not becoming that those who are idle and so long diverted by their own affairs, when they should be attentive to their duty, should remain on the rolls.

(c. 450).

[4] *Emperor* Justinian *Augustus to Vigilantius, Count of the Household Garrison, Consular and Patrician.* We believe We should determine and enact by an eternally valid pragmatic sanction that if any member of the stalwart Household garrison serving at Our court (*domestici praesentales*), having reached the position of first assistant chief (*secundocerius*) in the cavalry corps, shall have lived his final day while in office, his heirs shall receive not only the salaries and emoluments which he would have received during his remaining time in that position, but also those which he would have received during the following year, that is during the time when he would have been chief (*primicerius*); accordingly, as far as the question of gain, compensation, and fruits of his service is broadly concerned, it shall be treated as though he had survived to the very end of his service.

(527–534).

[5][59] (*The same Emperor.*) The constitution concedes the privilege granted to the first assistant chief (*secundocerius*) of the cavalry likewise to the first assistant chief of the infantry.

(527–534).

[59] A summary from Bas. 6.27.5.

XVIII De Praepositis Labarum

[1] *Impp. Honorius et Theodosius AA. Monaxio pp.* Qui praepositi labarum nostro iudicio promoventur, clarissimi sint inter *ad*lectos, ita ut ex consularibus habeantur. nam et immunitate digni sunt, quos nostri lateris comitatus illustrat.

D. III id. Nov. Constantinopoli Theodosio A. VII et Palladio conss.

XVIIII De Proximis Sacrorum Scriniorum Ceterisque Qui in Sacris Scriniis Militant

[1] *Imppp. Gratianus Valentinianus et Theodosius AAA. Cynegio pp.* Proximos memoriae, epistularum ac libellorum atque dispositionum ita vicariorum honore cumulamus, ut inter eos merito dignitatis habeantur, qui pro praefectis dioeceses sibi creditas temperarunt, ex eo tempore, ex quo eos splendor indepti proximatus ostendat, insequentibus praeponendi, qui vicarias postea administraverint. et nullam iniuriam descriptionis perhorrescant.

D. prid. k. Mai. Constantinopoli Honorio nobilissimo puero et Euodio conss.

[2] *Imppp. Valentinianus Theodosius et Arcadius AAA. Constantio pp.* In sacris scriniis nostris militantes in provinciis ordinarii vel spectabiles iudices a salutatione non arceant, etiam inviti in consessum accipiant: scituris vel principe vel corniculario vel capitibus officii, ternas libras auri ex suis facultatibus eruendas, si consistorium nostrum

Eighteenth Title Color Guards

[1][60] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Monaxius, Praetorian Prefect (of the East).* Those who are advanced by Our decree to the position of color guard (*praepositi labarum*) shall be admitted to the Senate with *clarissimus* rank (as *clarissimi inter adlectos*), so as to be considered ex-Consuls. For those who receive luster by being at Our side are worthy of exemption.

Given November 11, at Constantinople, in the consulship of Theodosius Augustus, for the seventh time, and Palladius (416).

Nineteenth Title Chief Clerks of the Imperial Bureaus and Others Who Serve in the Imperial Bureaus

[1][61] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Cynegius, Praetorian Prefect (of the East).* We amplify the chief clerks (*proximi*) of (the bureaus of) memorials, correspondence, petitions, and arrangements[62] (*[scrinia] memoriae, epistularum, libellorum atque dispositionum*) with the honor of Vicars (*vicariorum honor*), so that they will be considered of the same rank as those who govern dioceses entrusted to them on behalf of Prefects, with effect from the time at which the splendor of the position of chief clerk is attained by them and offers them distinction, giving them precedence over those who subsequently hold the position of Vicar. And they need fear no wrong from the assessment of taxes (*descriptio*).

Given April 30, at Constantinople, in the consulship of Honorius, Most Noble Boy, and Euodius (386).[63]

[2][64] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Constanti(an)us, Praetorian Prefect (of the Gauls).* Provincial governors (*iudices ordinarii*) and magistrates of *spectabilis* rank[65] shall not exclude those serving in Our imperial bureaux in the provinces from participating in the official morning reception (*salutatio*) and shall, even against their wishes, receive them to sit in court with them;[66] the Chief of Staff (*princeps*) and the Department Head (*cornicularius*) and the heads of the official staff (*capita officii*) should know that 3 pounds of gold will be taken from their property if

[60] = C.Th. 6.25.1.
[61] = C.Th. 6.26.4; the concluding sentence = C.Th. 6.26.12. Combine with C. 12.21.1 (= C.Th. 6.28.3).
[62] Reference to the bureau of arrangements (*scrinium dispositionum*) has been added from C.Th. 6.26.10.
[63] Seeck gives February 28, 386.
[64] = C.Th. 6.26.5.
[65] For example, Proconsuls and Vicars.
[66] What follows = C. 1.48.3 (altered) = C.Th. 6.26.5.

saepe ingredientibus secretarii iudicum non patuerit ingressus, aut reverentia non fuerit in salutatione delata aut sedendi cum iudice societas denegata.

D. VI id. Nov. Triveris Timasio et Promoto vv. cc. conss.

[3] *Impp. Arcadius et Honorius AA. Claudio pu.* In scriniis palatii militantes, id est memoriae epistularum libellorumque ac dispositionum, post viginti annos transactae militiae si discedendum sibi esse decreverint, consulari honore fulti inter adlectos habeantur huncque honorem dignitatis teneant, qui ex consularibus deferri consueverit. nec eos quisquam iniungendo aliquid vel iubendo possit ab impertito otio separare.

D. XV k. Mart. Constantinopoli Arcadio IIII et Honorio III AA. conss.

[4] *Imppp. Arcadius Honorius et Theodosius AAA. Epiphanio pu.* **pr.** Iubemus, ut primum omnium sit eorum, qui in sacris scriniis nostris, id est memoriae epistularum libellorum et dispositionum, referuntur, secura possessio ab omnibus sordidis muneribus excusata: superindictum non timeant, venalicium non petantur solumque canonicae indictionis praestent tributum: labore dignitas conquisita extraordinarium munus ignoret nec ullam temonis patiatur iniuriam: equorum tironumque praestationem nullus agnoscat, qui vel adhuc in scriniis militat vel honorem proximi et comitivam primi dispositionum longi temporis sudore quaesivit. et haec quidem patrimoniis censuimus deferenda. **1.** Quod autem omnibus constat deferri, adiectu alterius dignitatis perire non patimur, ut, etiamsi prosperioris fortunae iudicio ad honoris ornamenta processerint, vetera tamen eis scrinii labore privilegia quaesita serventur.

D. id. Oct. Ravennae Honorio VII et Theodosio II AA. conss.

ingress to the goveror's council chamber (*secretarium*) does not stand open to those who frequent Our Council (*consistorium*), or if reverence should not be paid them in the morning reception or the courtesy (*societas*) of sitting in court with the governor should be denied.

Given (posted) November 8, at Trier, in the consulship of the viri clarissimi *Timasius and Promotus (389).*

[3][67] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Claudius, City Prefect (of Constantinople).* If those serving in the imperial bureaus, that is, in (the bureaus) of memorials, of correspondence, of petitions, and of arrangements, decide to retire after twenty years of service, they shall be fortified with consular honors and be considered Senators (*inter adlectos*), and they may enjoy the honor of the rank customarily extended to ex-Consuls. Nor shall anyone, by enjoining or enforcing anything upon them, be able to separate them from the leisure granted them.

Given February 15, at Constantinople, in the consulship of Arcadius, for the fourth time, and Honorius, for the third time, Augusti (396).

[4][68] *Emperors* ARCADIUS, HONORIUS, *and* THEODOSIUS *Augusti to Epiphanius, City Prefect (of Rome).* **pr.** We order that, first, all those who belong to the imperial bureaus, that is, (the bureaus) of memorials, of correspondence, of petitions, and of arrangements, shall be safe in their exemption from all menial compulsory public services (*sordida munera*); they need fear no extra supplementary tax assessment (*superindictum*); no tax on sales (*venalicium*) shall be demanded of them, and they are under obligation to pay only the regular tax assessment (*canonica indictio*). Their rank, acquired by labor, shall know no extraordinary burden (*munus*) and be free from the obligation of collecting recruit taxes (*temo*); those still in the active service in the bureaus or who through many years of labor have obtained the honor of serving as chief clerk (*honor proximi*), or the Countship of the First (Order) of the bureau of arrangements (*comitiva primi* [*ordinis*] *dispositionum*), need acknowledge no duty of furnishing horses or recruits. And indeed We resolve that these privileges should be extended to their property. **1.** And what clearly is established for all, We do not permit to be lost by the addition of another rank. Hence those who by the judgment of a more favorable fortune have acquired additional ornaments of honor shall nevertheless retain the former privileges obtained by their work in the bureaux.

Given October 15, at Ravenna, in the consulship of Honorius, for the seventh time, and Theodosius, for the second time, Augusti (407).

[67] = C.Th. 6.26.8; compare C.Th. 6.26.7.

[68] = C.Th. 6.26.14. Combine with C.Th. 6.18.1 (which supplies the corrected date of 412; so also Seeck).

[5] *Impp. Honorius et Theodosius AA. Faustino pp.* **pr.** Peculiari praeceptionis nostrae favore praestamus, ut in scriniis memoriae epistularum libellorumque ab exceptoribus usque ad melloproximos dignitatem clarissimorum honoremque percipiant. **1.** Et sicuti reliqui, qui in isdem scriniis militant, liberum cum ordinariis iudicibus ingressum in secretarium consessumque habere legibus meruerunt, ii quoque, in quos hanc stipendiorum meritis clarissimatus conferimus dignitatem, cum spectabilibus etiam sese habere reverentiam recognoscant, ut consedendi ingrediendique secretarium sciant a nobis licentiam contributam.

D. VIII id. Iun. Ravennae Lucio vc. cons.

[6] *Idem AA. Eustathio quaestori et Helioni magistro officiorum.* Pro biennio annum solum agere deinceps decernimus eos, qui in tribus scriniis memoriae epistularum libellorumque ordine ac merito stipendiorum ad gradum pervenerint proximorum.

D. VIII id. Febr. Constantinopoli Theodosio A. VII et Palladio conss.

[7] *Impp. Theodosius et Valentinianus AA. Nomo magistro officiorum.* **pr.** Unicuique, qui in sacris scriniis militat, sui loci merita servari oportere constituimus, et universos, qui ultra numerum statutorum in isdem scriniis militant, sui gradus respectu per ordinem quem sortiti sunt in deficientium statutorum locum, ut tamen ultimis socientur, subire decernimus: scilicet ut nemini penitus liceat, cum sit posterior tempore, in locum praecedentis ambire, nisi forte adeo qui tempore vincitur laborum comparatione superat, ut quindecim primatum eiusdem scrinii testimonio cum sacramenti religione subnixus praecedentibus dignior iudicetur.

1. Hanc quoque observationem extra filios proximorum volumus custodiri. etenim cuique proximo unum de suis filiis, qui temporis

[5][69] *Emperors* Honorius *and* Theodosius *Augusti to Faustinus, Praetorian Prefect (of Italy and Africa).* **pr.** We grant as a special favor of Our imperial decree that those in the bureaus of memorials, correspondence, and petitions, from the shorthand writers (*exceptores*) to the deputy chief clerks (*melloproximi*), shall have the rank and honor as *clarissimi*. **1.** And just as the others serving in the same bureaus have, by law, been granted free access to the council chamber of governors of ordinary rank (*ordinarii iudices*) and to sit in court with them, so too those upon whom We have conferred *clarissimus* rank as a reward for their service (*stipendia*) shall recognize that they have the same right to deference as those of *spectabilis* rank, in order that they may know that they have the prerogative, conferred by us, of sitting (with the governor) in court and of entering the (governor's) council chamber.

Given June 6, at Ravenna, in the consulship of the vir clarissimus *Lucius (413).*[70]

[6][71] *The same Augusti to Eustathius, Quaestor, and Helion, Master of Offices.* We decree that those in the three bureaus of memorials, correspondence, and petitions who in the regular order and by the merit of their service (*stipendia*) have attained the position of chief clerk (*proximus*) shall hereafter serve only one year in this office, instead of two years (as heretofore).

Given February 6, at Constantinople, in the consulship of Theodosius Augustus, for the seventh time, and Palladius (416).

[7][72] *Emperors* Theodosius *and* Valentinian *Augusti to Nomus, Master of Offices.* **pr.** We have decreed that the rewards of one's position (*locus*) ought to be preserved in the case of anyone who serves in the imperial bureaus, and We determine that all those serving in these same bureaus beyond the number of established officials (i.e., as supernumeraries) enter, with respect to their own ranking (*gradus*), in their allotted order into the place (*locus*) of departing established officials (*statuti*), so that they (the most senior supernumeraries) are, however, associated with the most junior (regulars); clearly, then, it will be utterly impermissible for anyone who is junior in time of service to seek corruptly (*ambire*) the place (*locus*) of anyone more senior, unless, perchance, one who is disqualified by length of service prevails upon consideration of (the quality of) his work, such that the successful party, supported by the statement under oath of the fifteen most senior colleagues (*primates*) of the same bureau, is adjudged to be worthier than those more senior.

1. We want the foregoing provision to apply except in the case of sons of the chief clerks (*proximi*). We decide that it is possible for each chief clerk to prefer

[69] = C.Th. 6.26.16. The transmitted date is corrected to 410, in the consulship of Varanes.
[70] Seeck gives January 6, 410.
[71] = C.Th. 6.26.17.
[72] Combine with C. 12.19.8, 21.6, 26.2. Seeck dates this constitution to 444.

dumtaxat suffragio nititur, licet parum observasse militiam cognoscatur, insequentibus tempore, qui laborum meritis muniuntur, anteferre posse decernimus. 2. Illum tamen, qui locum statuti meretur, proximo quidem ducentos quinquaginta solidos, melloproximo vero vel adiutori pro consuetudine uniuscuiusque scrinii viginti aut quindecim solidos offerre praecipimus. 3. Quod si quis de supernumerariis, qui in statuti locum subire debuerat, ne pecuniam offerat, statuti etiam gradum recusare voluerit, sequenti tam offerendae quantitatis praedictae quam subrogandi licentia permittatur, ita videlicet, ut si secundus etiam vel tertius vel cuiuslibet numeri in eadem excusationis voluntate duraverit, accedenti semper eadem copia quam praecedens excusaverat tribuatur. 4. Hos autem, qui ad statutorum ordinem progredi noluerint, nec de suo gradu volumus removeri et, cum vacaverit statuti locus, condicionem quam antea repudiaverant, id est offerendae pecuniae et adipiscendi statuti locum liberam habere praecipimus facultatem.

[8] *Idem AA. Nomo magistro officiorum.* **pr.** Proximos sacrorum scriniorum, quos fides ac diuturnae observationis industria litterataque militia, comitem quin etiam dispositionum, quem probitas ac strenuitas merito commendat, completo tempore suae militiae comitivae sacri nostri consistorii cingulo in diem vitae potiri, manentibus videlicet iam dudum praestitis salvis privilegiis, decernimus. 1. Quibus enim arcana pietatis nostrae merito committuntur, his pietas nostra vitam cingulo supra dictae comitivae ornandam decorandamque decrevit.

[9] *Imp. Leo A. Patricio magistro officiorum.* In sacris nostris scriniis militantes per commeatum non continuatim praestitum ante conventionem profecti intra indultum temporis spatium erunt cum suis coniugibus et liberis a conventione securi: ab indictionibus etiam publicorum et civilium munerum et post completam militiam excusatione potiantur: super domibus quoque, quas in provinciis possident, metatorum molestia liberentur.

one of his sons who is qualified in respect of seniority but is acknowledged to have neglected his service (*militia*) over those who are more junior but deserve precedence by reason of their (superior) work. **2.** But We direct that the person qualified for an established position (*locus statuti*) shall pay 250 solidi to the chief clerk (*proximus*), and 20 or 15 solidi, according to the custom of each bureau, to the deputy chief clerk (*melloproximus*) or principal assistant (*adiutor*). **3.** If the supernumerary who should enter into an established position (*in statuti locum*) wishes to refuse that position (*statuti gradus*) in order to avoid payment of the money, then the option of paying the prescribed amount and being substituted in his place is available to the next in order. If the next in order, or third, or any other number should give the same excuse, the opportunity which his predecessor has refused is always open to the one immediately succeeding. **4.** We do not, however, wish those who are unwilling to join the ranks of established officials (*statutorum ordo*) to be disturbed from their own ranking (*de suo gradu*, i.e., as supernumeraries), and whenever thereafter an established position is open We order that they shall have the opportunity which they previously failed to embrace, that is, to pay the money and to obtain the position.

(443–444?).

[8][73] *The same Augusti to Nomus, Master of Offices.* **pr.** We decree that the chief clerks (*proximi*) of the imperial bureaus, whom fidelity, daily industry, and learned service commend, and indeed also the Count of (the bureau of) Arrangements (*comes dispositionum*), whose honesty and alacrity justly deserve credit, shall be entitled upon completion of their service to wear during their lifetimes the belt (*cingulum*) of the Countship of Our Imperial Council (*comitiva sacri nostri consistorii*), reserving to them, in addition, the privileges already granted them. **1.** Our Piety decrees for those to whom the secrets of Our Piety are deservedly committed a life adorned and decorated with the belt of the above-mentioned Countship.

(443–444?).

[9] *Emperor* Leo *Augustus to Patricius, Master of Offices.* Those serving in Our imperial bureaus who go away on a temporary leave of absence before a summons is served upon them shall, together with their wives and children, be exempt from being sued during their leave of absence. After completion of their service, they shall also be exempt from imposition of public and civic obligations. Their houses, too, in the provinces, shall be freed from the duty of quartering (*metata*).

(c. 466).[74]

[73] Combine with C. 12.19.7, 21.6 (where the concluding words of the pr. are repeated), 26.2. Seeck dates the constitution to 444.

[74] Seeck gives 457–470.

[10] *Idem A. Hilariano comiti et magistro officiorum ac patricio.* **pr.** Statutos memoriales praecipimus esse in scrinio quidem memoriae sexaginta duos, epistularum vero triginta quattuor, libellorum quoque triginta quattuor: antiquarios vero, qui habentur in scrinio memoriae, numquam minus esse quam quattuor. **1.** Supra scripti autem memoriales nullo modo duplici fungantur officio nec geminis chartis inrepserint, ut non occupentur plura in unum se commoda collaturi nihilque reliquis relicturi.

[11] *Imp. Anastasius A. Eusebio magistro officiorum.* Si quis in sacris nostris scriniis, id est memoriae dispositionum epistularum et libellorum, statutis iam connumeratus ab hac luce fuerit subtractus, ab eo, quicumque utpote vacante loco de substitutis in statutorum consortio fuerit ultimus subrogatus, pro solacio vel suffragio proximi definitam sacraeque constitutioni divae memoriae Theodosii et Valentiniani principum insertam quantitatem defuncti heredes vel successores vel liberi eius seu creditores, qui fenus cum mortuo pro statuti loco ei adquirendo contraxerint, consequantur: ita scilicet ut, si hereditas vel successio diem functi minime fuerit suscepta vel adita, tales personae, id est creditores quidem contra ceteros praerogativa sibi servata, liberi autem vel agnati seu cognati non hereditatis sed privilegii nomine simili modo huiusmodi summam percipiant sibique petere ac vindicare permittantur: nullius machinatione huiusmodi nostra dispositione retractanda seu violanda, maxime cum viros etiam pro tempore spectabiles eorundem proximos scriniorum, si quis eorum ante completum proximatus actum morte praeventus sit, ad heredes successoresque suos residui temporis proximatus solacia sine quadam imminutione transmittere non dubitetur.

[12] *Idem A. Celeri magistro officiorum.* **pr.** In sacris scriniis militantes et parentes atque uxores eorum nec non liberos ex sententia tantummodo tuae celsitudinis criminales et civiles intentiones agentium excipere

[10][75] *The same Augustus to Hilarianus, Count, Master of Offices, and Patrician.* **pr.** We direct that the (number of) established clerks (*statuti memoriales*) in the bureau of memorials (*scrinium memoriae*) shall be sixty-two, in the bureau of correspondence (*epistularum*) thirty-four, and in the bureau of petitions (*libellorum*) also thirty-four. The number of copyists (*antiquarii*) employed in the bureau of memorials shall not be less than four. The above-mentioned clerks (*memoriales*) shall not perform the duties of two offices nor duplicate paperwork, so that it may not happen that they appropriate several advantages to themselves and leave nothing for anyone else.

(470–474).

[11] *Emperor* ANASTASIUS *Augustus to Eusebius, Master of Offices.* If anyone enrolled among the established officials (*statuti*) in Our imperial bureaux, that is, (the bureaus) of memorials, arrangements, correspondence, and petitions, should be carried off from the light of day, his heirs, successors, children, or the creditors who made a loan (*fenus*) to the deceased for the purpose of obtaining an established position (*statuti locus*) shall receive from his replacement – namely, any one of the supernumeraries who has been substituted for the vacancy as the most junior in the established ranks – the sum of money fixed in the imperial constitution of the Emperors Theodosius and Valentinian, of blessed memory, for the benefit and help of the chief clerk (*proximus*);[76] and if the inheritance or succession of the deceased has not been entered upon or accepted, such persons, that is to say, the creditors–rights against others being preserved for them–and the children, agnates and cognates, shall in like manner receive, and are permitted to seek and claim, this sum, not as an inheritance but as a privilege. Our arrangement shall not be changed or violated by any scheme, particularly when it may not be doubted that the then-serving chief clerks (*proximi*) of these same bureaus, persons of *spectabilis* rank, transmit to their heirs and successors without diminution the benefits (*solacia*) of the remaining time of their position as chief clerk if any one of them should be prevented by death from completing his term.

(492–497).

[12][77] *The same Augustus to Celer, Master of Offices.* **pr.** We order that those serving in the imperial bureaus and their parents, wives, and children, shall answer the criminal and civil complaints of plaintiffs only upon order of Your Highness; their bound tenants and enrolled tenants (*coloni seu adscripticii*) and slaves living in this imperial city shall, moreover, enjoy the same benefit, being entrusted for

[75] Possibly combine with C. 1.23.6 (given March 27, 470, which Seeck accepts for this constitution), 12.59.9.
[76] See law 7 of this title.
[77] Possibly combine with C. 12.20.6.

iubemus, insuper etiam colonos seu adscripticios et servos eorum in hac regia urbe degentes eodem beneficio potiri, fidei pro tempore adiutoris viri spectabilis proximi vel unius ex statutis committendos: ita ut, si in provincia quicumque memorialis repertus fuerit, iuratoriae cautioni committatur, etsi non possideat immobilem substantiam, servi nihilo minus et coloni ad eum pertinentes fidei eius tradantur.

1. Modum insuper sportularum ad mediocrem deduci quantitatem et exsecutoribus de schola agentium in rebus attribuendis unum solidum singulos usque ad finem negotii proque ingressu in iudicio tuae magnitudinis quolibet modo faciendo duos solidos et pro editione gestorum exceptoribus dimidiam solidi partem et, si apud arbitrum negotium ventilari contigerit, ipsi quidem arbitro unum solidum et nihil amplius, exceptoribus autem eum observantibus tam pro ipso quod implere videntur ministerio quam pro editione gestorum seu relationis vel definitionis tertiam partem solidi praebere sancimus: nec pro tempore virum spectabilem fisci patronum vel exsecutores, quibus imminendi litibus sollicitudo iniuncta est, quicquam ab his exigere seu profligare concedi: dimidia scilicet expensarum, quas in iudicio tui culminis a memoratis personis praeberi statuimus, portione in iudiciis provincialibus ab his agnoscenda: ita ut, si de civilibus annonis vel tutela seu curatione vel novi operis nuntiatione litem eos subire contigerit, in maiore quidem iudicio ad similitudinem sumptuum, quos in iudicio eminentiae tuae dependere praecepti sunt, apud virum autem clarissimum praefectum annonae seu fisci patronum urbicariae magnificae praefecturae vel architectos pro modo eorum, quae super arbitris et litibus apud eos exercendis superius statuta sunt, solventes expensas nihil amplius agnoscere seu dependere cogantur.

2. Quae omnia custodiri iubemus, sive per se sive per procuratores aut defensores lites exercere maluerint. haec, si prolata scriptis sententia moniti sunt. **3.** Si vero ex depositione seu aliter quis eorum conventus fuerit, nihil eum vel scrinio viri clarissimi adiutoris vel cuilibet alii nomine sportularum offerre compelli. **3a.** Omnibus ante latis privilegiis postea, quibus per anteriores divorum principum sanctiones defenduntur, in persona tam eorum, qui adhuc militant et qui postea eandem militiam sortiti sunt, quam eorum, qui praedictam militiam gradu vocante iam deposuerunt vel postea deposuerint, servandis, ut eorum commodo ipsi quoque una cum uxoribus et liberis, colonis praeterea et servis propriis perfruantur.

their appearance to the care of the then-serving principal assistant (*adiutor*) of the chief clerk (*proximus*), a person of *spectabilis* rank, or of one of the established officials (*statuti*, i.e., in the bureaus); and so, if any clerk (*memorialis*) shall be found in a province, he shall be bound by his guaranty on oath (*iuratoria cautio*) even if he has no immovable property, and the slaves and bound tenants (*coloni*) belonging to him shall be entrusted to his good faith nonetheless.

1. We order, moreover, the measure of judicial fees (*sportulae*) to be reduced to a small quantity, and each of them shall give: 1 solidus to the court clerks (*exsecutores*) assigned from the corps of couriers (*agentes in rebus*) through to the end of the suit; 2 solidi for appearance in the tribunal of Your Greatness in whatever manner made; and one-half-solidus to the shorthand writers (*exceptores*) for a copy of the proceedings. And if it happens that the suit is tried before an arbitrator, 1 solidus and no more shall be paid to the arbitrator himself and one-third-solidus to the shorthand writers attending him for their services as such, as well as for a copy of the proceedings or of a report or decision. Nor shall the then-serving Advocate of the Treasury (*fisci patronus*), of *spectabilis* rank, or the court clerks (*exsecutores*) who are required to render services in connection with suits ask or demand anything. In provincial tribunals the aforesaid persons shall pay half of the amount which We have fixed for the tribunal of Your Highness. If they should happen to have litigation concerning the public food supply (*annonae civiles*) or guardianship or curatorship or in connection with a protest against new construction (*novi operis nuntiatio*) before a higher tribunal, then they must pay the same amount of fees which they are directed to pay before the tribunal of Your Eminence; but they shall not be compelled to acknowledge or pay in the tribunal of the Prefect of the Food Supply, a person of *clarissimus* rank, or the Advocate of the Treasury of the Magnificent City Prefecture, or the architects greater fees than those which have been fixed above for arbitrators and for suits tried by them.

2. We order all these provisions to apply whether they conduct the litigation personally or by procurators or defenders. The foregoing governs when they are summoned to appear by an order in writing. 3. If anyone of them is summoned by deposition or otherwise, he shall not be compelled to pay any fees (*sportulae*) to the bureau of the principal assistant (*adiutor*), of *clarissimus* rank, or anyone else. 3a. All the privileges previously conferred, by which they have been protected through previous ordinances of the blessed Emperors, shall hereafter be preserved for those now serving and those hereafter appointed to the same service, as well as for those who have already relinquished the aforesaid office or shall hereafter do so, upon their promotion,[78] so that they, together with their wives and children, as well as their bound tenants (*coloni*) and slaves, shall enjoy the advantages thereof.

[78] Lit., "with a (superior) ranking/grade/position summoning (them)," *gradu vocante*; alternatively, "leaving the ranking/grade/position vacant," *gradu vacante*.

4. Et quoniam in controversiis, quas in iudiciis moveri contigerit, aequalitatem litigatoribus volumus servari, et adversariis eorum pro sumptibus et expensis similem ante latorum beneficiorum praerogativam custodiri.

5. Propter hanc etenim causam et viros devotos memoriales non tantum agendo in quolibet iudicio, sed etiam actiones ab aliis ingerendas excipiendo privilegiis a nobis indultis potiri decernimus. **6.** His videlicet, qui militiam virorum devotissimorum memorialium gradu soluto deposuerunt seu deposuerint, et si quietis amore per provincias domicilium fovere maluerint, omnibus nihilo minus privilegiis, quae huiusmodi personis per sacratissimam legem nuper promulgatam a nostra serenitate praestita sunt, muniendis et eorum commodis atque auxilio potituris.

[13] *Imp. Iustinus A. Proculo quaestori sacri palatii.* **pr.** Comperimus divinitus quidem fuisse dispositum viros devotos adiutores tuae magnitudinis certo esse in numero nec ad huiusmodi nomen vel operam plures licitum esse adspirare, quam in scrinio quidem sacrae memoriae duodecim tantum, septenos vero in duobus reliquis scriniis, id est sacrarum epistularum sacrorumque libellorum, sed posterioris licentiam temporis supra modum indulgendo ambitionibus disturbasse rei merita ac in multitudinem divulgasse, ut inter memorialium et adiutorum numerum non longum paene intersit.

1. Sancimus itaque reduci ac renovari statutum ordinis terminum, non ut eximantur adiutoribus ii, qui praeter praedictam dispositionem in praesenti exuberant, sed ut interea omnibus aliis interdicatur ab adfectando hoc nomen, donec exeuntibus singulis ac recedentibus decrescere possit vetita conglomeratio legitimusque iam resideat numerus: non prohibendis viris devotis adiutoribus desistentibus eodem officio, cum vel ad laterculensis gradum in scrinio sacrae memoriae provecti fuerint vel secundum locum obtinuerint in duobus aliis scriniis, post quem proximi creabuntur, licet nondum redacta sit quantitas pristina, tamen alios pro se quos elegerint subrogandos adiutores petere, qui posteriores erunt ceteris.

4. And since We desire to maintain parity for the litigants in controversies in courts, (We decree that) their adversaries shall also enjoy the right of the aforementioned benefits in regard to outlays and expenses.

5. And so We decree that the devoted clerks of the imperial bureaux (*memoriales*) shall enjoy the privileges bestowed by Us not only in bringing an action but also in answering an action brought by others against them. **6.** And those who have completed their service and have relinquished their positions as most devoted clerks of the imperial bureaus or shall hereafter do so, though they prefer to establish their domicile in the provinces owing to a love of tranquility, shall nevertheless enjoy the protection of the privileges granted them by the imperial law recently promulgated by Our Serenity[79] and obtain the advantages and benefit thereof.

(503–518).

[13] *Emperor* JUSTIN *Augustus to Proculus, Quaestor of the Imperial Palace.* We have learned that an imperial enactment provided that the devoted principal assistants (*adiutores*) of Your Greatness should be of a definite number and that no more should be permitted to aspire to that name and work than twelve in the imperial bureau of memorials (*memoriae*), and seven each in both of the other bureaus, that is to say, in that of the imperial correspondence (*epistularum*) and of the imperial petitions (*libellorum*); but that the liberty taken in later times, by indulging corrupt solicitations (*ambitiones*) beyond the limit set, has disturbed this arrangement and has let in a multitude, so that there is hardly any difference between the number of clerks (*memoriales*) and the number of principal assistants.

1. We ordain therefore that the fixed arrangement be reinstated and renewed, not that those presently in excess of the number of principal assistants contrary to the foregoing arrangement should be removed, but that in the meantime all others shall be forbidden to aspire to this name, so that by various persons retiring and departing the forbidden superfluity may be decreased, and the legitimate number only remain. Nor do We forbid the devoted principal assistants who are leaving that same position, once they have been advanced to the grade of registrar (*laterculensis*) in the bureau of memorials or have attained the second place (i.e., of deputy chief clerk or *melloproximus*) in the two other bureaux, after which they are chosen as chiefs clerks (*proximi*), to choose substitutes for themselves – who will (however) come after the others (in rank) – even if the membership has not yet been reduced to its former number.

79 This law is not extant.

2. Illud etiam disponendum duximus utpote nonnullis anterioribus exemplis subnixum nec non iustitiae congruum, ut ab his, quibus concessum est adiutorum agmini pro se sociare, libellus offeratur viro illustri pro tempore quaestori petendaque eius subscriptio tempus atque hominem nec non rem ipsam continens, id est quod inter adiutores ei quem pro se subrogat merere permissum est: ordinandis videlicet isdem adiutoribus pro ratione temporum, quibus libelli porrecti sunt, ut, etiamsi memorialium matricula inferiore loco sit, qui prior in adiutoribus meruit, adiutor quidem habeatur superior, memorialis vero posterior pro utriusque ordinis modo vel discrimine: quod etiam in aliis quoque paene omnibus officiis observari dignoscitur.

[14] *Idem A. Tatiano magistro officiorum.* **pr.** Hac lege sancimus, si quando adiutores viri magnifici pro tempore quaestoris sacri nostri palatii in accusationem civilis causae vel criminalis deducti fuerint, strictum iuris et integritati congruum ordinem conservari, ut, si sine scriptis conveniendi sint, nomen eius praecipientis ore designatum esse sufficiat: sin autem scriptis in querimoniam unus adiutorum aut plures forte ferendi sint, monumenta sententiarum in persona tantummodo conveniendi adiutoris praecedentium aequum et iustum initium futuro praestent certamini.

1. Et quoniam probatioribus exemplis quam indecorae consuetudini deceat indulgeri, quod in universo scrinio devotissimorum libellensium evicisse monstratur, id in adiutores sacrae memoriae, sacrarum etiam epistularum transferendum censemus, ut, qui liberam proficiscendi licentiam pronuntiatione commeatus indepti fuerint, sine qualibet stipendiorum aut emolumentorum deductione peregre degant, etenim[ii] pro tempore viris clarissimis proximis et melloproximis aut eorum adiutoribus absentiae causa vel offerre de suo proprio aut ex annonis aut stipendiis quicquam relinquere cogendi, quamvis Ianuarias kalendas indultum excedat spatium et intra se festum diem contineat.[iii] 2. Ad haec illud observandum sancimus, ne alius adiutor propter quamcumque ambitionem his, qui in praesenti sunt, vel post eorum deminutionem addatur, licet in veterem numerum redacti fuerint.

[ii] minime
[iii] nec intra festum diem se contineat

2. We have also believed it well to arrange a matter which is sustained by past examples and not inconsonant with justice, that those who are permitted to substitute someone for themselves as one of the principal assistants should address a petition to the then-serving Quaestor, a person of *illustris* rank, seeking his signature (*subscriptio*) on a declaration stating the time, the name of the person, and the matter itself, that is to say, that the substituted person is permitted to serve among the principal assistants; and the principal assistants themselves are to be arranged in the order in which the petitions are submitted, so that although he may be in a lower place (*locus*) on the register of clerks, yet if he first commenced to serve as principal assistant, he shall be ranked a senior principal assistant but a junior clerk, in accordance with the practice and situation in each case, an arrangement also followed in almost all the other official staffs.

(522–526).[80]

[14] *The same Augustus to Tatianus, Master of Offices.* **pr.** By this law We ordain that if ever the principal assistants (*adiutores*) of the then-serving *vir magnificus* Quaestor of the Palace should become involved in a criminal or civil accusation, a strict arrangement consonant with law and honesty shall be observed, so that if they are to be summoned without writing, it shall suffice (to commence the proceedings) that their name be orally designated by the summoner; but if one or more of the principal assistants are to be sued in writing then the record of the preceding judgment only as to the person of the principal assistant to be summoned shall be sufficient for the proper beginning of the suit.

1. And since it is better to follow approved examples than an improper custom, We order that the practice prevailing throughout the most devoted bureau of petitions shall also apply to the principal assistants of the bureaus of imperial memorials and of imperial correspondence, namely that those who have permission to go away on an approved leave of absence may live abroad without any diminution of their stipends or emoluments and without (*minime*) being compelled to give to the then-serving chief clerks (*proximi*), of *clarissimus* rank, or to the deputy chief clerks (*melloproximi*) or to their principal assistants (*adiutores*) anything from their own property, salary, or stipends by reason of such absence, although the time of leave of absence is beyond the first day of January and extends beyond the festive day. 2. We also order that no other principal assistant shall by any corrupt solicitation (*ambitio*) be added either to the present number or after the diminution thereof, even after they have been reduced to the former number.

(520).[81]

[80] Lounghis *et al.* date to between 522 and 523, or between 525 and 526.

[81] Lounghis *et al.* date to between May 28, 520, and December 25, 524.

[15] *Impp. Iustinus et Iustinianus AA. Tatiano magistro officiorum.* **pr.** Certae quidem sunt dispositiones nostri numinis, quas super adiutoribus viri illustris pro tempore quaestoris nostri palatii, quorum obsequio res agitur quaestoria, dedimus.

1. Quarum prima quidem ad supplicationem eorundem adiutorum emissa numero eorum, qui erant illo tempore, quo preces nobis obtulerunt, neque aliquem eximi neque aliquem addi praecepit, praeterquam si quis eorum vel ad laterculensis gradum in scrinio sacrae memoriae vel ad secundum locum in duobus aliis scriniis, id est sacrarum epistularum sacrorumque libellorum et cognitionum, provectus fuerit: nam his licere desistentibus ab adiutoris officio alios pro se quos voluerint adiutores subrogare ultimum locum in isdem adiutoribus obtenturos, licet superiorem in memorialibus habeant.

2. Altera vero per sacram pragmaticam facta est, per quam excelsae memoriae Proculo viro suggerente praecepimus illos etiam adiutores posse in suum locum alios inducere, qui per aliquem fortuitum casum minus implere suum officium valeant, veluti senium vel morbum vel aliam necessariam causam: quod ex ipsorum adiutorum petitione idem magnificae memoriae Proculus ad nos rettulit.

3. Sed in praesenti, ab aliis memorialibus tam in scrinio sacrae memoriae quam in ceteris duobus sacrarum epistularum sacrorumque libellorum et cognitionum relatis aditi comperimus deminutionem eorundem adiutorum impediri per memoratam pragmaticam sanctionem et insuper venditionis quodammodo memorati officii locum introductum esse.

4. Quod ne de cetero fiat, praesentem sanctionem ad tuam magnitudinem mittimus, per quam iubemus illis tantummodo permissum esse secundum prius nostrae serenitatis rescriptum alios in suum locum subrogare, qui vel laterculensis gradum in scrinio memoriae vel secundum locum in aliis duobus scriniis adepti fuerint, secunda nostra sanctione super hoc capitulo de cetero cessante: nulli danda licentia eorundem adiutorum, praeterquam si ad memoratos gradus adscenderit, alium pro se isdem adiutoribus ex quocumque fortuito casu connumerare, ut eo modo ad veterem numerum idem adiutores redeant et duodecim quidem in scrinio sacrae memoriae, septeni vero in aliis

[15][82] *Emperors* Justin *and* Justinian *Augusti to Tatianus, Master of Offices.*

pr. There are certain orderings of Our Divine Majesty that We have made concerning the principal assistants (*adiutores*) of the then-serving Quaestor of Our Palace, of *illustris* rank, through whose service quaestorial duties are performed.

1. The first of these,[83] made upon the petition of the principal assistants themselves, directed that none should be taken from or added to the number existing at the time at which they addressed the petition to us, except that if one of them should reach the rank of registrar (*laterculensis*) in the bureau of memorials (*memoriae*) or the second place (*locus*; i.e., of deputy chief clerk or *melloproximus*) in the two other bureaus, that is, those of the imperial correspondence (*epistularum*) and of imperial petitions (*libellorum et cognitionum*), he should have the right, when leaving the position of principal assistant, to select in his place anyone he wants, who should take the most junior place among the principal assistants, although he might occupy a higher place among the clerks (*memoriales*).

2. The other order[84] was made by an imperial pragmatic sanction, in which We directed, upon the suggestion of Proculus, of exalted memory, that those principal assistants who by some unexpected circumstance were unable to occupy their position, for instance on account of old age, sickness, or other unavoidable cause, might substitute others in their place. This was suggested to Us by Proculus, of towering memory, upon petition of the same principal assistants.

3. But at present, having been approached by other clerks, both of the bureau of memorials as well as of the other two bureaus, those of the imperial correspondence and of imperial petitions, We learned that the diminution in the number of these principal assistants was hindered on account of the above-mentioned pragmatic sanction, and moreover that opportunity was in a manner introduced for the sale of the above-mentioned position.

4. In order that this may not happen in the future, We are sending the present ordinance to Your Greatness, by which We order that only those who have attained either the rank of registrar in the bureau of memorials or the second place in the other two bureaus shall be permitted to choose others in their place, in accordance with the prior rescript of Our Serenity, and that Our second ordinance made on this subject (as mentioned above) shall hereafter cease to have validity; to none of the same principal assistants, except those reaching the aforementioned ranks, is granted the opportunity of selecting a substitute for any cause whatever, so that by this means the aforesaid principal assistants may be reduced to the former number, namely twelve in the bureau of imperial memorials and seven each in the other two, that is those of the imperial

[82] Compare C. 1.31.5. Lounghis *et al.* give between April 22 and late July, 527.
[83] *See* C. 12.19.13 pr., 1.
[84] See C. 12.19.13.2.

duobus sint, id est sacrarum epistularum sacrorumque libellorum et cognitionum. 5. Illo videlicet observando, ne alius adiutor per quamcumque ambitionem his qui in praesenti sunt vel post eorum deminutionem, licet in veterem numerum redacti fuerint, addatur: nam si permutationem, licet fortuito casus inciderint, prohiberi disposuimus, multo magis prioribus manentibus alios introduci vetamus: ceteris scilicet anterioris sanctionis capitulis in suo robore permansuris.

XX De Agentibus in Rebus

[**1**] *Imppp. Arcadius Honorius et Theodosius AAA. Anthemio magistro officiorum.* Nullus de schola agentium in rebus de cetero locum mortui conetur invadere, sed is, qui ordine stipendiorum et laborum merito ad gradum militiae sequebatur, statim atque illum fata subduxerint in eius praemia percipienda succedat omni obreptione cessante.

D. prid. k. Iul. Constantinopoli Honorio A. VI et Aristaeneto conss.

[2] *Idem AAA. Helioni magistro officiorum.* Nulli posthac sine nostrae maiestatis auctoritate discingendi agentem in rebus, nulli eximendi pateat copia: nam probata schola et animadversionem vereri iudicis et nullam debet timere contumeliam vilitatis.

D. III id. Nov. Constantinopoli Honorio X et Theodosio VI AA. conss.

[3] *Imp. Leo A. Patricio magistro officiorum.* **pr.** Matriculam agentum in rebus a tua celsitudine confectam amittentes iubemus, ne ducenarii plus quam quadraginta octo in cingulis habeantur in posterum: et numerum centenariorum ducenti viri, quos vocante tempore gradus competentes admiserint, parique modo biarchorum nomen meritumque ducenti quinquaginta viri dumtaxat, praeterea circitorum trecenti et equitum quadringenti quinquaginta impleant. **1.** Sit in aeternum illa quoque

correspondence and of imperial petitions. **5.** This, too, must be observed, that no other principal assistant may be added, by any kind of corrupt solicitation, either to the present number or after the diminution thereof, even after they have been reduced to the former number. For insofar as We have directed that no substitution shall be made even for unexpected circumstances, so much more do We forbid others to be added while the prior members remain. The other subjects of the former ordinance shall remain in force.

(527).

Twentieth Title Imperial Couriers

[1][85] *Emperors* Arcadius, Honorius, *and* Theodosius *Augusti to Anthemius, Master of Offices.* No member of the corps of couriers (*schola agentium in rebus*) shall henceforth attempt to seize the place (*locus*) of a deceased member, but as soon as the fates have carried off the decedent, the person who followed him in service rank (*gradus militiae*) with respect to the regular order of compensation and the merit of his labor shall succeed to and take possession of his predecessor's emoluments, and every surreptitious activity shall cease.

Given June 30, at Constantinople, in the consulship of Honorius Augustus, for the sixth time, and Aristaenetus (404).

[2][86] *The same Augusti to Helion, Master of Offices.* No one, without authority from Our Majesty, shall hereafter have the power (*copia*) of depriving of his belt of office or dismissing a courier. For a corps (*schola*) which has received Our approbation should neither be overawed by a judge's capacity to punish nor fear vilification of a trifling kind.[87]

Given November 11, at Constantinople, in the consulship of Honorius, for the tenth time, and Theodosius, for the sixth time, Augusti (415).

[3] *Emperor* Leo *Augustus to Patricius, Master of Offices.* **pr.** We direct those who keep the register of couriers drawn up by Your Highness that hereafter no more than forty-eight *ducenarii* (highest in service rank) shall be kept on duty; the number of *centenarii* (second in rank) whom the competent authorities admit in order of seniority in rank shall consist of 200; in like manner the title and reward of *biarchus* ("commissary," third in rank) shall be limited to 250, that of *circitor* ("patrol," fourth in rank) to 300, and that of the *equites* ("troopers," fifth in rank) to 450. **1.** Let the following arrangement, too, of Your

[85] = C.Th. 6.27.14.

[86] = C.Th. 6.27.17, indicating that in fact this law was issued by the Emperors Honorius and Theodosius. Seeck corrects the date to November 11, 416.

[87] Taking *nullam* with both *animadversionem* and *contumeliam*, as the sense seems to require.

fixa stabilisque tuae sublimitatis dispositio, ut, si quis de numero ducenariorum, quos quadraginta octo quotannis esse censuimus, forsitan de luce migraverit, laborum eius fructum successores ab intestato vel ex testamento venientes luctui dispensent, et ita omnibus inter ceteros superstites potiantur solaciis, tamquam si vivus, qui haec eadem diu speraverat, sibimet vindicasset: qua de causa locum etiam eius successorum intuitu vacare conveniet. **2.** Nemo autem sine divali probatoria, quam codices in sacro nostro scrinio memoriae positi debeant inserendam accipere, militaribus eiusdem devotissimae scholae stipendiis vel privilegiis potiatur.

[4] *Idem A. Patricio magistro officiorum.* **pr.** Ex eo, quo primum ducenae vel centenariorum gradum in schola agentum in rebus militantes meruerint, desinant in sacratissima videlicet civitate constituti alterius iudicis cuiuslibet auctoritate pulsari, vel in alio quolibet examine praeterquam viri magnifici magistri officiorum et cui forsitan ipse concesserit actionibus sui quisque adversarii respondere. quod multo magis in criminalibus causis observari decernimus: absurdum est enim, ut in eius salutem vel existimationem valeat quisquam proferre sententiam, cuius de nulla re possit pecuniaria iudicare. **1.** Huius autem beneficii praerogativam subadiuvis etiam, qui singulis inveniuntur temporibus, deferri iubemus, licet hanc in eorum persona more quoque vetere servari cognoverimus: ut tamen post depositum officium memoratum, si non inter centenarios numerentur, communi iam lege respondere non ambigant. **2.** Praedictas autem omnes centenariorum personas in provincia repertas concessa nunc speciali fori praerogativa, nisi publicae exsecutionis sollicitudo his iniuncta sit, uti prohibemus eosque ordinariorum etiam iudicum pro vetere iure sententiis oboedire praecipimus.

[5] *Idem A. Patricio magistro officiorum.* **pr.** Agentes in rebus, qui per ordinem consequi solent principatus insignia, in unoquoque scrinio fabricarum et barbarorum quaternos subadiuvarum sollicitudinem per annum dumtaxat integrum procedentes gradatim subire hac in

Sublimity be fixed and stable unto eternity, that if any one of the *ducenarii*, whom We have determined shall annually consist of forty-eight, should, perchance, leave the light of day, his successors on intestacy or testacy shall, as a solace, receive the fruits of his labor; and so his survivors, among others, shall enjoy every consolation, as if he had lived and had claimed as his own the very things for which he long had hoped; for this reason it is proper that his place shall be left open in consideration of his heirs. **2.** No one, however, shall enjoy the stipends and privileges of service in the most devoted corps (*schola*) without an imperial certificate of appointment (*probatoria*) recorded in the books of Our imperial bureau of memorials.

(c. 466).[88]

[4] *The same Augustus to Patricius, Master of Offices.* **pr.** From the time at which those serving in the corps (*schola*) of couriers first reach the rank of *ducenarii* or *centenarii* (i.e., the highest or second highest service rank), they shall not, if they are located in this Most Imperial City, be sued by the order (*auctoritas*) of any judge or respond to the action of their adversaries in any court other than that of the *vir magnificus* Master of Offices, unless, perchance, the latter has delegated authority to another. We decree that this shall be particularly followed in criminal causes; for it would be absurd that anyone who cannot even adjudicate the pecuniary matters of another should render a decision concerning that person's well-being and character. **1.** We order the privilege of this benefit to be extended also to their deputy principal assistants (*subadiuvae*) whom they may have at various times, although We have learned that it has already been extended to them by former custom. After they have relinquished the aforementioned office, they are subject to the law applicable in ordinary cases, unless numbered among the *centenarii*. **2.** We forbid, however, all the above-mentioned *centenarii* who are discovered in the provinces to enjoy the special privilege here granted unless the care of the performance of a public duty has been enjoined upon them; and so We direct that they must obey the orders of the ordinary governors (*ordinarii iudices*) according to the ancient law (applicable in such cases).

(c. 466).

[5][89] *The same Augustus to Patricius, Master of Offices.* **pr.** We decree by this law, to be in force forever, that four of the imperial couriers who in due course usually attain the insignia of the position of Chief of Staff (*principatus*) shall, in regular order (*gradatim*), serve as deputy principal assistants (*subadiuvae*)

[88] Seeck gives 457–470 for this constitution and the next two.

[89] Early editions of C. inserted a new title here with the rubric "Concerning the commandants (*praepositi*) of the couriers (*agentes in rebus*)."

aeternum valitura lege decernimus: exceptis videlicet universis negotiatoribus quodlibet mercimonium per se gerentibus interpositasve personas, cum eis ante sacratissimis constitutionibus interdictum sit militare: exceptis nihilo minus his, qui possessionum alienarum sollicitudinem procurationemve susceperint. eos enim ad haec officia volumus adspirare, quorum labores scholae agentum in rebus testimonio comprobantur.

1. Illi quoque sunt ab hac liberalitate nostrae mansuetudinis excludendi, qui, cum scholae eidem socientur, in sacris scriniis, quibus vir spectabilis primicerius et tertiocerius praesunt, adiuvantes eos publicarum chartarum tractatibus occupantur et duobus officiis operam suam adhibere non possunt: nam praeter emolumenta, quae de praedictis scriniis consequuntur, principatus etiam solacio debent esse contenti. **2.** Quod si morbo vel aetatis senio capti vel imperiti huiusmodi rerum vel quocumque alio vitio praepediti per se memorati officii curam subire nequiverint, consideratis praecedentibus eorum laboribus per substitutum chartularium eiusdem scrinii, cui praefuturus est ipse, idoneum et tam moribus optimis praeditum quam scientiam peritiamque rerum habentem electione sua suarumque periculo facultatum praefatum munus eos implere praecipimus.

[6] *Imp. Anastasius A. Celeri magistro officiorum.* **pr.** Hac saluberrima sanctione decernimus agentes in rebus pro conventionibus et modo sportularum exsecutoribus praebendarum pro quantitate sumptuum, quae circa litigia sibimet ab aliis inferenda vel a se contra alios per semet ipsos seu per ordinandos a se procuratores exercenda convenit ab his agnosci, beneficiis, quae in sacro nostro militantibus ministerio iam pridem per divinas sanctiones indulta sunt, perpotiri, fideiussorem idoneum de eadem schola, non autem extraneum offerre compelli: **1.** Ita tamen, ut privilegia, quaecumque centenariis seu ducenariis vel chartulariis seu viris clarissimis principibus post depositam quoque militiam iam per dispositiones principales impertita et nunc usque observata

for the period of one year only, (one) in each (diocesan) bureau of the state arms factories (*fabricae*) and (in each diocesan bureau) of foreigners (*barbari*), excepting (herefrom) however all merchants carrying on any kind of trade either personally or through third persons, since they have by previous imperial constitutions been forbidden to be in the imperial service; and excepting no less those who have undertaken the care and management of the possessions of others. For We want these offices to be occupied by those whose labors have been approved by the testimonial of the corps (*schola*) of couriers.

1. Those, too, are to be excluded from this bounty of Our Clemency who, while associated with the same corps (*schola*), are occupied in the imperial bureaus (*sacra scrinia*) over which the Chief Secretary (*primicerius*, i.e., of the notaries), of *spectabilis* rank, and Second Assistant Chief Secretary (*tertiocerius*) preside, aiding them in drafting public documents, for they cannot do work on two official staffs; and aside from the emoluments which they receive from the aforesaid bureaus, they ought to be content with the solace of the position of Chief of Staff (*principatus*). **2.** But if, taken by sickness or old age, or inexperienced in such matters, or hindered for any other reason, they are unable to enter into the responsibility of the above-mentioned office themselves, then in consideration of their former labor We grant them discretion to fulfill, with their own choice and at the peril of their own property, the aforesaid duty by substituting a secretary (*chartularius*), drawn from the same bureau of which he himself is about to become the Chief of Staff, who is suitable, provided with the highest morals, and possessed of requisite knowledge and experience.

(c. 466).

[**6**][90] *Emperor* ANASTASIUS *Augustus to Celer, Master of Offices.* By this very salutary ordinance We order that couriers shall enjoy the benefits heretofore granted by imperial ordinances to those who are serving in Our imperial administration (*ministerium*), in connection with complaints (*conventiones*) and the measure of fees (*sportulae*) payable to court clerks (*exsecutores*) (and) in connection with the amount of expenses which should be paid by them in suits against them or in suits brought by them against others either directly or through procurators appointed by them; they shall (moreover) be compelled to provide a suitable surety (*fideiussor*) from their department, but not from outside it. **1.** The privileges, however, which are known to have heretofore been bestowed by imperial orders upon *centenarii*, *ducenarii*, or secretaries (*chartularii*), or upon the Chiefs of Staff (*principes*) of *clarissimus* rank, even after they have relinquished their office, and are still observed up to this time, shall be kept unimpaired and inviolate, since it would be absurd and foolish to concede that anyone, through

[90] Possibly combine with C. 12.19.12.

esse noscuntur, intacta inviolataque custodiantur, cum perabsurdum perque temerarium sit hanc nostrae pietatis liberalitatem quemquam astuta interpretatione non ad augmentum anteriorum privilegiorum, sed imminutionem convertere concedi: 2. Simili videlicet forma pro matribus et uxoribus eorum nec non etiam liberis sub eorum potestate constitutis nec aliam sortitis vel sortituris militiam nec non etiam servis ad eos pertinentibus servanda: 3. Ita ut in provinciis quoque supra dictae personae degentes simili beneficio perfruantur, sportulas tamen et litium expensas pro tertia superius enarratae quantitatis soluturae: 4. Denarum librarum auri condemnatione aliaque gravissima indignatione his feriendis, quicumque nostra iussa quolibet modo seu tempore violaverint seu violari concesserint.

XXI De Principibus Agentum in Rebus

[1] *Imppppp. Gratianus Valentinianus Theodosius et Arcadius AAAA. Cynegio pp.* pr. Agentes in rebus post palmam laboris emeriti principatus honore remuneramus. atque ideo officiales tam ad necessitates publicas quam privatas non nisi principe mittantur auctore, nullarumque sine ipso cuiquam mandetur exhibitio personarum, etiamsi intercessio in locis degentis officii fuerit impertita. 1. Causarum etiam patronos volumus esse conventos, ne ignorante principe ullam postulationem introducant, neve sub unius persona suscepti fraude quadam aliena negotia inserenda esse pertemptent. 2. Quod si fuerit definitio contempta, decem libras auri fisco nostro ab officio tuo iubemus inferri.

D. prid. k. Mart. Constantinopoli Honorio np. et Euodio conss.

[2] *Impp. Arcadius et Honorius AA. Theodoto pu.* Omnia citatoria, omnium scilicet causarum atque personarum, licet sint senatoriae dignitatis, ad principes specialiter revocari praecipimus, actus vero ceteros, qui in sacratissimo coetu senatus tractari consueverunt, censualium sollicitudine celebrari, nec aliquid praeiudicium ex subreptivo rescripto supplicibus inferri.

D. XII k. Iun. Constantinopoli Olybrio et Probino conss.

shrewd interpretation, could construe this bounty of Our Piety to be a decrease of former privileges rather than an increase thereof. 2. A similar rule in favor of their mothers and wives, and also their children under their (paternal) power who have not chosen or are not about to choose another branch of the imperial service, and also the slaves belonging to them, is to be respected. 3. And the aforesaid persons who live in the provinces shall also enjoy a similar benefit, paying, however, (only) the third part of the above-mentioned fees and costs of litigation. 4. Those who shall in any manner or at any time violate Our orders, or permit them to be violated, shall pay a fine of 10 pounds and be visited by even severer punishment.

(503–518).

Twenty-First Title Chiefs of Staff of the Couriers

[1][91] *Emperors* GRATIAN, VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti, to Cynegius, Praetorian Prefect (of the East).* **pr.** We reward the imperial couriers, after the success of their accomplished work, with the honor of the position of Chief of Staff (*principatus honor*). No officials (under him) shall be sent to attend to public or private responsibilities without his order, and no one shall without his authorization be directed to produce any person (in court), even if the order is issued in places where the official staff is located. 1. We also want advocates (*causarum patroni*) to acknowledge that they shall bring no suit in court without the knowledge of the Chief of Staff and that they should not fraudulently attempt to bring unrelated business before the court in the name of one accepted as a client. 2. If this order is violated, We order 10 pounds of gold to be paid by your staff into Our Treasury.

Given February 28, at Constantinople, in the consulship of Honorius, Most Noble Boy, and Euodius (386).

[2][92] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Theodotus, City Prefect (of Constantinople).* We direct that all summonses (*citatoria*) in all legal causes and in respect to all persons, even those of senatorial rank, shall be specifically recalled to (the direction of) the Chiefs of Staff (*principes*), but that other proceedings which usually take place in the most sacred assembly of the Senate shall be attended to by the tax assessors (*censuales*), nor shall any prejudice arise to suppliants through a rescript surreptitiously obtained.

Given May 21, at Constantinople, in the consulship of Olybrius and Probinus (395).

[91] = C.Th. 6.28.3, 4. Combine with C. 12.19.1 (= C.Th. 6.26.4).

[92] = C.Th. 6.28.5.

[3] *Impp. Honorius et Theodosius AA. Palladio proconsuli Africae.* Proconsularis apicis dignitatis adiectione principes agentum in rebus praecipimus decorari.

D. VII k. Oct. Ravennae Varane vc. cons.

[4] *Impp. Theodosius et Valentinianus AA. Valerio magistro officiorum.* **pr.** Ex agentibus in rebus principibus domesticos in suis actibus habere liceat eos, quorum fidem industriamque probatam sibi aestimant, etsi saepe eodem officio fuerint ante perfuncti. **1.** Et si quis agens in rebus post viginti quinque annorum curricula ob adversam corporis valitudinem militiae finem minime valuerit expectare, sed ad honorariam ex principe dignitatem testimonio scholae prosilierit, isdem eum privilegiis muniri censemus, quibus ii qui ad principatus actum progressi sunt potiuntur. **2.** Sed in salutationibus iudicum consessibusque priores eos, qui per longae militiae metas ad principatus actum pervenerint, etsi actus tempore posteriores sint, esse praecipimus. **3.** Nihil censualibus vel apparitoribus adversus privilegia eorum excogitantibus, tamquam in actu principatus fuerint versati, vicenarum librarum auri condemnatione contra eos proposita.

D. IIII k. Febr. Constantinopoli Theodosio A. XV et qui fuerit nuntiatus.

[5] *Idem AA. Cyro pp.* Eos, qui ordine transcursa militia post ducenam ad desideratum principis pervenerint gradum aut adiutores viri illustris magistri officiorum extiterint, cum inter honoratos coeperint numerari, vicarianae dignitatis titulis decorari censemus.

[6] *Idem AA. Nomo magistro officiorum.* Principes agentum in rebus, quos saepe saeva pericula vitaeque interdum renuntiatio ad memoratum gradum adduxit, completo tempore suae militiae comitivae primi

[3][93] *Emperors* Honorius *and* Theodosius *Augusti to Palladius, Proconsul of Africa.* We direct that the Chiefs of Staff of the couriers be decorated by the addition of the lofty distinction of proconsular rank (*proconsularis dignitas*).

Given September 25, at Ravenna, in the consulship of the vir clarissimus *Varanes (410).*

[4][94] *Emperors* Theodosius *and* Valentinian *Augusti to Valerius, Master of Offices.* **pr.** Chiefs of Staff of the couriers may in the performance of their duties have as personal assistants (*domestici*) those whose fidelity and industry they deem proven although the latter have often served in the same position before. **1.** And if any courier, after the service of twenty-five years, is on account of bodily infirmity unable to await the end of the service, but by the testimonial of the corps (*schola*) is advanced ahead of time to the honorary rank of ex-Chief of Staff, We determine that he shall be rewarded with the same privileges which are enjoyed by those who have actually officiated as Chief of Staff. **2.** But in the official morning receptions (*salutationes*) of governors (*iudices*) and when sitting with them in court, We decree that those who through the course of long service have actually officiated as Chief of Staff, even if they have done so later in time, shall take precedence. **3.** Nothing shall be devised against the privileges of these persons (i.e., the honorary ex-Chiefs of Staff), just as if they had actually occupied the position of Chief of Staff, by tax assessors (*censuales*) and subordinate officials (*apparitores*), at the risk of a fine of 20 pounds of gold.

Given January 29, at Constantinople, in the consulship of Theodosius Augustus, for the fifteenth time, and the one who is to be announced (436).

[5] *The same Augusti to Cyrus, Praetorian Prefect (of the East).* We direct that those who in regular order of their service have, after the rank of *ducenarius*, reached the desired rank (*gradus*) of Chief of Staff or become principal assistants (*adiutores*) of the Master of Offices, a person of *illustris* rank, shall, once they have begun to be numbered among the dignitaries (*honorati*), be decorated by the designation of the rank of Vicar (*vicariana dignitas*).

(440–441).[95]

[6][96] *The same Augusti to Nomus, Master of Offices.* We order that the Chiefs of Staff of the couriers, whom oftentimes grim dangers and at times renunciation of life have brought to the aforementioned rank (*gradus*), shall, when the time

[93] = C.Th. 6.28.7.

[94] = C.Th. 6.28.8. The Consul to be announced is the Emperor Valentinian, for the fourth time; Seeck corrects the date to January 29, 435.

[95] Seeck gives December 30, 440.

[96] Combine with C. 12.19.7, 8 (where the concluding words are repeated), 26.2. The date should be corrected to 445; Seeck had February 26, 444.

ordinis cingulo in diem vitae potiri, manentibus videlicet dudum praestitis salvis privilegiis, decernimus.

[7] *Imp. Leo A. Nicostrato pp.* **pr.** Quicumque ex corpore cohortalium militans in schola agentum in rebus filium procreaverit, antequam ad metas militiae suae perveniat,[iv] principatus honore decoretur, licet ipse post finitam militiam utpote liber nulla debeat huiusmodi conventione pulsari, filium tamen cohortali condicioni relinquat obnoxium. **1.** Si vero, postquam adeptus fuerit principatum, ediderit filium, is qui natus est, etiamsi in schola devotissimorum agentum in rebus militiam sortitus non fuerit, ita sit liber ac securus nec ullis cohortalis officii nexibus obligetur, quasi iam ex patre libero et ab hac condicione penitus alieno progenitus.

[8] *Imp. Zeno A. Iohanni magistro officiorum.* **pr.** Multis devotissimae scholae agentum in rebus aditionibus permoti viros clarissimos eiusdem scholae principes, qui finitis militiae stipendiis exeunt, quotiens ex maioris iudicis sententiis ipsi vel eorum coniuges aut liberi vel servi aut coloni sive per se sive per procuratores conveniantur, non amplius quam unum solidum exsecutoribus sportularum nomine praebere compelli, apparitoribus vicarianis seu praesidalis iudicii non nisi tertia parte solidi tantum praestanda: **1.** Nullasque eisdem concussiones aut vexationes in praebendis fideiussoribus ingeri, sed eos fideiussores quos locorum defensor existimaverit dare, ita videlicet, ut pro tenore generalium edictorum ii, qui vel in sacratissima urbe vel in provinciis immobiles possident facultates, iuratoriae cautioni et substantiae suae credantur. **2.** Hoc etiam adiciendo, ut numquam nisi ex sententia in scriptis prolata penitus moneantur.

3. Ad similitudinem insuper aliorum officiorum, quotiens civiles vel criminales contra eosdem cognitiones moventur, exsecutorem quidem negotii usque ad finem litis civilis seu criminalis unius esse solidi praestatione contentum. **4.** Et pro insinuandis nostrae serenitatis apicibus vel simplici contra obnoxios eorum postulatione deponenda binos solidos

iv <et>

of their service is complete, enjoy the belt (*cingulum*) of the Countship of the First Order (*comitiva primi ordinis*) during the remainder of their life, reserving to them, in addition, the privileges already granted them.

(*443–444?*).

[7] *Emperor* LEO *Augustus to Nicostratus, Praetorian Prefect (of the East).* **pr.** If any of the members of the provincial administration (*cohortales*) serves in the corps (*schola*) of couriers and has a son before the end of his service, and is (afterwards) decorated by the honor of the position of Chief of Staff (*principatus honor*), then, although he himself shall be free after the completion of his service from being required to perform any duty pertaining to the *cohortales*, the son, nevertheless, shall continue to be subject to that status. **1.** If however the son is born to him after he has reached the position of Chief of Staff, this son, even should he not serve in the corps of the most devoted couriers, shall be free and excused from any ties as a *cohortalis*, as if he were the son of a father free and entirely exempt from that status.

(*468*).[97]

[8] *Emperor* ZENO *Augustus to John, Master of Offices.* **pr.** Actuated by many requests of the most devoted corps (*schola*) of couriers, We decree that the Chiefs of Staff of that corps, of *clarissimus* rank, who depart with their period of service completed, shall pay no greater amount of fees (*sportulae*) than 1 solidus to the court clerks (*exsecutores*) and no more than a third part of a solidus to the subordinate officials (*apparitores*) of the court of the Vicar or the provincial governor (*vicariane seu praesidale iudicium*) whenever they, their wives, children, slaves, or bound tenants (*coloni*) are summoned either in person or through procurators by the order of one of the superior judges. **1.** They shall be troubled by no extortions or vexations in furnishing sureties, but shall give such sureties as the defender of the place (*defensor locorum*) thinks should be given, and those who, in accordance with the tenor of the general edicts, possess immovable property either in this most imperial city or in the provinces need on that account give only a guaranty on oath (*cautio iuratoria*) (to appear). **2.** This, too, is to be added, that they shall be summoned only pursuant to an order in writing.

3. And, further, as in the case of other members of official staffs, whenever a civil or criminal case is instituted against them the court clerk assigned to the transaction shall be content with payment to him of 1 solidus for the entirety of the civil or criminal suit. **4.** And for registering rescripts (*apices*) of Our Serenity or for a simple action brought by him or his wife against their debtors,

[97] Seeck gives February 8, 468.

ab his vel coniugibus eorum praeberi. **5.** Et quotiens exemplaria postulantur, ii quorum interest accepto solido quod petitur praebere non differant. **6.** Pro implendis vero monumentis, unde conveniendi tribuitur exsecutoribus facultas, non ultra quam tres solidos quibus competit impertiri praecipimus. **7.** Arbitro vero non amplius quam solidum et fisci patronis dimidiam solidi partem, notariis vero tertiam usque ad finem, sicut dictum est, causae praestare: super editione quoque chartularum solidi partem dimidiam praebere. **8.** Quod si non apud arbitrum, sed in competentibus iudiciis maioribus cognitio celebretur, inducendi quidem negotii gratia non nisi quattuor solidos eosdem viros clarissimos erogare, gestorum vero excipiendorum causa duos tantummodo solidos dare et nullius ultra supra scriptas quantitates cuilibet alteri praestandi sumptus exactione vexari. **9.** His omnibus locum habentibus, sive ipsi aliis litem ingerunt sive ab aliis pulsantur.

D. k. Sept. Theodorico cons.

XXII De Curiosis

[1] *Imp. Constantius A. ad Lollianum pp.* Curiosi et stationarii, vel quicumque funguntur hoc munere, crimina iudicibus nuntianda meminerint et sibi necessitatem probationis incumbere, non citra periculum sui, si insontibus eos calumnias nexuisse constiterit. cesset ergo prava consuetudo, per quam carceri aliquos immittebant.

D. XI k. Aug. Mediolani. acc. XII k. Sept. Arbitione et Lolliano conss.

[2] *Idem A. et Iulianus C. ad Taurum pp.* **pr.** Agentes in rebus in curis agendis et evectionibus publici cursus inspiciendis nostrorum memores praeceptorum credimus in omnibus velle profutura rei publicae: ideoque solos agentes in rebus in hoc genere iussimus obsequium adhibere, et non ab alio penitus officio. **1.** Hi vero pervigili diligentia providebunt, ne quis contra evectionis auctoritatem moveat cursum vel amplius postulet, quam concessit evectio. quisquis igitur aliquid tale perpetrare temptaverit, improbi coepti privetur effectu. **2.** Demonstretur etiam iudicibus

they shall pay only 2 solidi in each case. **5.** And whenever copies are demanded, those whom it concerns shall not delay, after receipt of the payment of 1 solidus, to furnish what is asked. **6.** For furnishing documents whereby court clerks are authorized to summon (parties), not more than 3 solidi shall be paid to the parties entitled thereto. **7.** But they (couriers and their wives) shall pay not more than 1 solidus to a judge arbitrator; not more than half of a solidus to the Advocates of the Treasury (*fisci patroni*), and not more than one-third of 1 solidus to the notaries (from the beginning) to the end, as has been said, of the case. For a copy of records (*chartulae*) they shall pay one-half of a solidus. **8.** But if the trial is not held before a judge arbitrator but before one of the competent superior judges, these same persons of *clarissimus* rank shall pay no more than 4 solidi for commencing the action and only 2 solidi for taking down the proceedings, and they shall not be troubled by an exaction of payment of expenses to anyone else beyond the amounts stated. **9.** These provisions shall apply whether they bring actions against others or are sued by others.

Given September 1, in the consulship of Theodoric (484).

Twenty-Second Title Inspectors of the Public Post

[1][98] *Emperor* Constantius *Augustus to Lollianus, Praetorian Prefect (of Illyricum).* The inspectors of the public post (*curiosi*) and the military police (*stationarii*), or whoever performs this function (*munus*), must remember to notify the governors (*iudices*) of crimes, and that upon them lies the duty of proof, not without danger to themselves if it is determined that they have brought false accusations against persons who are innocent. The wicked practice by which they have sent men to jail shall therefore cease.

Given July 22, at Milan, and received August 21, in the consulship of Arbitio and Lollianus (355).

[2][99] *The same Augustus and the Caesar* Julian *to Taurus, Praetorian Prefect (of Italy and Africa).* **pr.** We believe that the couriers (*agentes in rebus*), mindful of Our ordinances in the performance of their duties (*in curis agendis*) and in inspecting the warrants for the public post (*evectiones*), wish to look after the welfare of the state in all things. We order, accordingly, that they alone, and no other office, shall be engaged in this service. **1.** They will with ever-watchful care see to it that no one uses the public post beyond the authority of the warrant or demands more than the warrant authorizes. Whoever attempts to do this shall be deprived of any beneficial result of his dishonest attempt. **2.** The warrant

[98] = C.Th. 6.29.1.
[99] = C.Th. 6.29.2 (altered). Seeck corrected the date to April 17, 356.

vel curiosis evectio, etiamsi quis nobis iubentibus festinare memoret in obsequium necessarium, nec praevaleat contumacia vel dignitas. **3.** Ergo nummum vetamus exposci pro animalibus in cursu minime constitutis. quod si forte aliquis aestimaverit perpetrandum, eius quadruplum quod accepit inferre cogatur.

D. XV k. Mai. Mediolani Constantio A. VIIII et Iuliano C. II conss.

[3] *Idem A. ad agentes in rebus.* Per id tempus, quo cursus tuendi sollicitudinem sustinetis, condemnationes praefectorum praetorio circa eos solos irritae sunt futurae, qui servaverint honestatem. erga eos vero, qui inhoneste et contra decus saeculi vel honorem militiae versabuntur, non solum condemnatio mansura est, verum etiam gravior poena statuenda.

PP. prid. k. Dec. Eusebio et Hypatio conss.

[4] *Impp. Arcadius et Honorius AA. Marcello magistro officiorum.* **pr.** Agentes in rebus singulos per singulas provincias mittendos esse censemus, quibus tamen inspiciendarum evectionum tantum debeat cura mandari, ut nihil prorsus commune aut cum iudicibus aut cum provincialibus habeant. **1.** Nec naves debebunt illicita concussione vexare nec libellos aut attestationes litis gratia suscipere aut in carcerem quemquam trudere, sed cursui solum vacare.

D. k. Iun. Constantinopoli Olybrio et Probino conss.

XXIII De Palatinis Sacrarum Largitionum et Rerum Privatarum

[1] *Impp. Constantius et Constans AA. ad Veronicianum vicarium Asiae.* Palatini pro capitibus seu iugis suis tantum pensitationem atque obsequia recognoscant, extraordinariis et sordidis muneribus et susceptionibus et temonariis oneribus liberati.

D. non. Mai. Constantinopoli Constantio IIII et Constante III AA. conss.

shall also be shown to the governors (*iudices*) or to inspectors of the public post, even if the bearer states that he is engaged in an urgent mission (*obsequium*) at Our command, nor shall any refusal be considered nor any rank be exempt. 3. We therefore forbid money to be demanded for animals not provided by the public post. If perchance anyone should purpose to accomplish this, he shall be compelled to pay fourfold the amount received.

Given April 17, at Milan, in the consulship of Constantius Augustus, for the ninth time, and the Caesar Julian, for the second time. (357).

[3][100] *The same Augustus to the couriers.* During the time when you are concerned with the supervision of the public post, the penalties of the Praetorian Prefect shall have no effect only against those (of you) who have preserved their honesty. Indeed, against those engaged in acting dishonestly and without regard for the splendor of the times and the honor of the imperial service, not only will the penalty be preserved but an even heavier punishment imposed.

Posted November 30, in the consulship of Eusebius and Hypatius (359).

[4][101] *Emperors* Arcadius *and* Honorius *Augusti to Marcellus, Master of Offices.* **pr.** We order that into each province shall be sent a courier (*agens in rebus*), to whom, however, shall only be entrusted the duty of inspecting warrants for the public post (*evectiones*), in order that they shall have nothing at all in common with the governors (*iudices*) or the provincials. 1. They shall vex no ships by unlawful extortion, nor receive complaints (*libelli*) or declarations (*contestationes*) looking to a lawsuit, nor put anyone in prison, but they shall devote their time entirely to the public post.

Given May ?, at Constantinople, in the consulship of Olybrius and Probinus (395).

Twenty-Third Title Palatine Officials of the Imperial Benefactions and of the Privy Purse

[1][102] *Emperors* Constantius *and* Constans *Augusti to Veronicianus, Vicar of (the diocese of) Asia.* Palatine officials (*palatini*) need to pay only the taxes and obligations levied on their own capitation tax and land tax units (*capita seu iuga*), and they are exempt from supplementary and menial compulsory public services (*extraordinaria et sordida munera*), from service as tax receivers (*susceptiones*), and from the obligation of collecting recruit taxes (*temonaria onera*).

Given May 7, at Constantinople, in the consulship of Constantius, for the fourth time, and Constans, for the third time, Augusti (346).

[100] = C.Th. 6.29.3. Combine with C. 1.31.1 (= C.Th. 1.9.1); C.Th. 6.29.4–5. Seeck dates to October 31, 359.
[101] = C.Th. 6.29.8. The date in May is uncertain.
[102] = C.Th. 11.16.6. The date is corrected by Seeck to May 7, 335.

[2] *Imppp. Valentinianus Valens et Gratianus AAA. Titiano comiti sacrarum largitionum.* Nullus thesaurensis vel officialis comitis thesaurorum semel deprehensus eversor quocumque pacto aut repetat militiam suam aut aliam sibi requirat per ambitum dignitatem vel sese transferat ad aliam quamcumque militiam.

D. VIII k. Febr. Antiochiae Gratiano A. IIII et Merobaude conss.

[3] *Imppp. Gratianus Valentinianus et Theodosius AAA. Pancratio comiti rerum privatarum.* **pr.** Prisco iam nunc ordine revocato de palatino potius officio ad gerendum principatum officii comitis domorum per Cappadociam mittantur, quales comes etiam domorum, si inhonestum aliquid gesserit, vereatur. **1.** Idoneos itaque singulis annis e numero mittendariorum ad hoc eligere debebis et mittere.

D. prid. non. Iul. Scupis Ausonio et Olybrio conss.

[4] *Idem AAA. ad Hesperium pp.* Nihil omnino ullis iudicibus cum palatinis nostrae clementiae, quicumque a comitibus diriguntur, sit commune atque coniunctum, sed excepta reverentia, quae non solum ab inferioribus, sed etiam a maioribus et in provincia degentibus rectoribus provinciarum debetur atque defertur, suis quisque necessitatibus obsecundet.

D. VIII id. Dec. Sirmio Ausonio et Olybrio conss.

[5] *Idem AAA. Nebridio comiti rerum privatarum.* Quidam post impletum ordinem militiae palatinae quam gesserant honoremque transactum ad exceptorum scrinia transire nituntur. hac igitur lege sancimus, ut nulli prorsus dehinc ista audendi relinquatur occasio: sed unusquisque

[2][103] *Emperors* VALENTINIAN, VALENS, *and* GRATIAN *Augusti to Tatianus, Count of Imperial Benefactions.* No depot official (*thesaurensis*) or member of the official staff (*officialis*) of a Count of the Depots (*comes thesaurorum*) shall in any manner attempt to regain his place in the imperial service after he has once been found to be an embezzler (*eversor*; "wrecker") or obtain any other position of rank through corrupt solicitation or transfer himself to any other branch of the imperial service.

Given January 25, at Antioch, in the consulship of Gratian Augustus, for the fourth time, and Merobaudes (377).

[3][104] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Pancratius, Count of the Privy Purse.* **pr.** Reinstating the former arrangement, the position of Chief of Staff (*principatus officii*) of the Count of the Imperial Estates in Cappadocia (*comes domorum per Cappadociam*) shall be filled by persons sent preferably from the palatine staff (*palatinum officium*), whose qualities are such that even the Count of the Imperial Estates must fear them if he should do anything dishonest. **1.** You must, therefore, each year, select and send suitable men from among the messengers (*mittendarii*) for this purpose.

Given July 6, at Scupi (Skopje), in the consulship of Ausonius and Olybrius (379).

[4][105] *The same Augusti to Hesperius, Praetorian Prefect (of Italy and the Gauls).* There shall be absolutely nothing in common and no association between the governors (*iudices*) and the palatine officials of Our Clemency who are sent by the Counts, but each shall attend to his own duties, observing the deference that is owing and must be paid to the governors (*rectores*) of the provinces not only by inferior officials but also by their superiors stationed in the provinces.

Given December 6, at Sirmium, in the consulship of Ausonius and Olybrius (379).

[5][106] *The same Augusti to Nebridius, Count of the Privy Purse.* Some, having completed the regular order of palatine service in which they were engaged and having attained the honor (of the highest place therein), attempt to pass into the bureaus of shorthand writers (*scrinia exceptorum*). We therefore ordain by this law that henceforth no opportunity of daring such a thing shall be left for anyone. Everyone shall follow the regular order of that bureau in which he first

[103] = C.Th. 8.7.14.
[104] = C.Th. 6.30.2.
[105] = C.Th. 6.30.4. The date is corrected by Seeck to December 6, 378; Mommsen gave February 6, 379.
[106] = C.Th. 6.30.5.

eius scrinii, quod primum militando elegit, ordinem persequatur nec in alterius loco finem militiae requirat, qui iam proprii ordinis transegerit principatum.

D. v id. Oct. Constantinopoli Merobaude II et Saturnino conss.

[6] *Idem AAA. ad Probum pp.* Ab officiis palatinorum excellentia tua sciat ita penitus recedendum, ut neque ipsa postmodum licitum sibi credat isdem aliquid iniungere et praeterea provinciarum rectores prohibeat quicquam ulterius tale conari.

D. II k. Nov. Mediolani post cons. Merobaudis II et Saturnini.

[7] *Idem AAA. Trifolio comiti sacrarum largitionum.* pr. Scriniis omnibus largitionum comitatensium infra scriptas decernimus dignitates, ut his contenti ambiendi sibi aditum interclusum esse cognoscant, etiamsi speciale beneficium emendicato suffragio quisquam valuerit impetrare. annonas etiam iuxta definitum dignitatum modum volumus postulari nec amplius quicquam praesumi.

1. Brevis, quas dignitates per singula scrinia officiorum sacrarum largitionum habere statuimus, hic est:

2. Scrinii exceptorum: perfectissimus ordinis secundi numero unus, id est primicerius omnis scholae. perfectissimus id est primicerius exceptorum numero unus. ducenarii duo, id est tertiocerius et quartocerius. centenarius unus, id est primicerius instrumentorum. epistulares numero duo. formae primae numero triginta sex. formae secundae numero quattuor. formae tertiae numero tres.

sought service, and whoever has already occupied the position of Chief of Staff (*principatus*) in the regular order (of his own bureau) shall not seek to finish his service in any other.

Given October 11, at Constantinople, in the consulship of Merobaudes, for the second time, and Saturninus (383).

[6][107] *The same Augusti to Probus, Praetorian Prefect (of Italy, Africa, and Illyricum).* Your Excellency will take notice that you are to have nothing to do with the staffs (*officia*) of palatine officials, so that hereafter you will not think yourself entitled to impose any burdens upon them, and you will, besides, prohibit the governors (*rectores*) of the provinces from attempting anything of the kind hereafter.

Given (received?) October 26, at Milan, in the post-consulate of Merobaudes, for the second time, and Saturninus (384).

[7][108] *The same Augusti to Trifolius, Count of the Imperial Benefactions.* **pr.** We decree for all of the bureaus of the staff of the Count of the Imperial Benefactions (*scrinia largitionum comitatensium*) the positions of rank designated below, so that they be content with them and know that the opportunity of corrupt solicitation is barred for them, even should someone succeed in obtaining special dispensation through some recommendation (*suffragium*) importuned by him. We desire also that pay allowances (*annonae*) be sought in accordance with the established scale of ranks, nor should anything more be anticipated.

1. A short catalogue of the positions of rank We have decided to have in the several bureaus of the official staff of the Imperial Benefactions is as follows:

2. In the bureau of shorthand writers (*scrinium exceptorum*, the general clerical branch): one *perfectissimus* of the second class, that is to say, the chief (*primicerius*) of the corps as a whole (*schola*); one *perfectissimus* (of the third class),[109] that is to say, the chief of the (bureau of) shorthand writers (*primicerius exceptorum*; i.e., the *secundocerius* or first assistant chief of the corps as a whole); two *ducenarii*, that is to say, the second assistant chief (*tertiocerius*, chief of the *bastagae* or imperial transport service) and the third assistant chief (*quartocerius*, chief of the department of *libelli* or petitions); one *centenarius*, that is to say, the chief of (the department of) tax records (*primicerius instrumentorum*); two secretaries (*epistulares*; the lowest equestrian rank); thirty-six (clerks) of the first grade (*forma prima*); four of the second grade; three of the third grade. (Fifty in total.)

[107] = C.Th. 6.30.6. The date is corrected to 383.
[108] = C.Th. 6.30.7, which supplies the subscription. The figures stated in the catalogue of positions are those established in the sixth century.
[109] Compare *Not. Dig. Or.* 13.32 (ed. Seeck).

3. Scrinii numerorum: perfectissimus ordinis tertii numero unus. ducenarius numero unus. centenarii numero duo. epistulares numero duo. formae primae numero tres. formae secundae numero unus. formae tertiae numero duo.

4. Sacri scrinii tabulariorum: perfectissimus ordinis tertii numero unus. ducenarius numero unus. centenarius numero unus. epistularis numero unus. formae primae numero tres. formae secundae numero quinque.

5. Scrinii canonum: perfectissimus ordinis tertii numero unus. ducenarius numero unus. centenarius numero unus. epistulares numero duo. formae primae numero quattuor. formae secundae numero quattuor.

6. Scrinii mittendariorum: ducenarius numero unus. centenarii numero quinque. epistulares numero novem. formae primae numero septem. formae secundae numero triginta tres.

7. Scrinii auri massae: perfectissimus ordinis tertii numero unus, id est primicerius sacrae massae. perfectissimus numero unus, id est secundocerius. ducenarii numero duo, id est tertiocerius et quartocerius. centenarii numero quattuor. epistulares numero quattuor. **8.** Aurifices specierum: perfectissimus numero unus. ducenarii numero tres. centenarii numero sex. epistulares numero octo. formae primae numero decem et octo. formae secundae numero quattuor. **9.** Aurifices solidorum: ducenarius numero unus. centenarii numero septem. epistulares numero sex. formae primae numero novem. formae secundae numero triginta. **10.** Sculptores et ceteri aurifices: centenarius numero unus. epistulares numero quinque. formae primae numero sex. formae secundae numero decem et octo. **11.** Scrinii auri ad responsum: perfectissimus ordinis primi numero unus. perfectissimi ordinis secundi numero duo. ducenarii numero tres. centenarii numero duo. epistulares numero tres. formae primae numero tres. formae secundae numero duo. formae tertiae numero unus. **12.** Scrinii a miliarensibus: perfectissimus ordinis primi numero unus. ducenarius numero unus. formae primae numero unus. formae secundae numero duo. formae tertiae numero tres.

13. Scrinii vestis: perfectissimus primi ordinis numero unus. perfectissimus secundi ordinis numero unus. ducenarius numero unus. centenarius numero unus. epistulares numero duo. formae primae numero septem. formae secundae numero decem. formae tertiae

3. In the bureau for military regiments (*numeri*; probably accounted for outlays to soldiers): one *perfectissimus* of the third class; one *ducenarius*; two *centenarii*; two *epistulares*; three (clerks) of the first grade; one of the second grade; two of the third grade. (Twelve in total.)

4. In the bureau of accountants (*tabularii*): one *perfectissimus* of the third class; one *ducenarius*; one *centenarius*; one *epistularis*; three (clerks) of the first grade; five of the second grade. (Twelve in total.)

5. In the bureau of revenue (*canones*): one *perfectissimus* of the third class; one *ducenarius*; one *centenarius*; two *epistulares*; four (clerks) of the first grade; four of the second grade. (Thirteen in total.)

6. In the bureau of messengers (*mittendarii*): one *ducenarius*; five *centenarii*; nine *epistulares*; seven (clerks) of the first grade; thirty-three of the second grade. (Fifty-five in total.)

7. In the bureau of gold bullion (*auri massa*): one *perfectissimus* of the third class, that is, the chief (*primicerius*) of the bureau of imperial bullion (*sacra massa*); one *perfectissimus* (of the third class), that is, the first assistant chief (*secundocerius*); two *ducenarii*, that is, the *tertiocerius* and the *quartocerius*; four *centenarii*; four *epistulares*. (Twelve in total.) **8.** Goldsmiths (*aurifices specierum*): one *perfectissimus* (of the third class); three *ducenarii*; six *centenarii*; eight *epistulares*; eighteen (clerks) of the first grade; four of the second grade. (Forty in total.) **9.** Minters of solidi (*aurifices solidorum*): one *ducenarius*; seven *centenarii*; six *epistulares*; nine (clerks) of the first grade; thirty of the second grade. (Fifty-three in total.) **10.** Engravers and other craftsmen: one *centenarius*; five *epistulares*; six (clerks) of the first grade; eighteen of the second grade. (Thirty in total.) **11.** In the bureau of gold *ad responsum* (function obscure): one *perfectissimus* of the first class; two *perfectissimi* of the second class; three *ducenarii*; two *centenarii*; three *epistulares*; three (clerks) of the first grade; two of the second grade; one of the third grade. (Seventeen in total.) **12.** In the bureau of silver coinage (*a miliarensibus*): one *perfectissimus* of the first class; one *ducenarius*; one (clerk) of the first grade; two of the second grade; three of the third grade. (Eight in total.)

13. In the bureau of clothing (*vestis*): one *perfectissimus* of the first class; one *perfectissimus* of the second class; one *ducenarius*; one *centenarius*; two *epistulares*; seven (clerks) of the first grade; ten of the second grade; four of the third grade. (Twenty-seven in total.) **14.** Of the stewards of the imperial wardrobe (*officiales sacrarum vestium*): two *ducenarii*; two *centenarii*; two *epistulares*; seven (clerks) of the first grade; ten of the second grade; nine of the third grade. (Thirty-two in total.) **15.** Commissaries of the imperial wardrobe

numero quattuor. **14.** Officialium sacrarum vestium: ducenarii numero duo. centenarii numero duo. epistulares numero duo. formae primae numero septem. formae secundae numero decem. formae tertiae numero novem. **15.** Deputati sacrae vestis: perfectissimi secundi ordinis numero duo. ducenarii numero duo. centenarii numero duo. epistulares numero duo. formae primae numero tres.

16. Scrinii ab argento: perfectissimus ordinis secundi numero unus. centenarius numero unus. epistularis numero unus. formae primae numero quattuor. formae secundae numero tres. formae tertiae numero unus. **17.** Ad pecunias: perfectissimus ordinis secundi numero unus. formae primae numero duo. formae secundae numero duo. formae tertiae numero quinque. **18.** Argentarii comitatenses: ducenarius numero unus. centenarii numero duo. epistulares numero duo. formae primae numero octo. formae secundae numero viginti quinque. **19.** Barbaricarii: centenarius numero unus. epistulares numero duo. formae primae numero octo. formae secundae numero unus. …

D. IIII id. Iun. Heracliae Ricomere et Clearcho conss.

[8] *Idem AAA. et Arcadius A. Trifolio comiti sacrarum largitionum.* Placuit iusta et omnibus mittendariis palatini officii profutura suggestio, qua insinuasti, ut ex isdem annui singuli ex ducenariis, terni ex centenariis habito provisionis intuitu cingulo liberentur.

D. IIII id. Mart. Constantinopoli Arcadio A. et Bautone vc. conss.

[9] *Imppp. Arcadius Honorius et Theodosius AAA. Nestorio comiti rerum privatarum.* Non aliter quilibet in officio sacrarum largitionum vel privatarum cingulum militiae sibi sumendum existimet, nisi nostrae mansuetudinis adnotationem meruerit.

D. prid. id. Aug. Ancyrae Stilichone II et Anthemio conss.

[10] *Impp. Honorius et Theodosius AA. Iohanni pp.* Palatinos, qui sacrarum remunerationum rationem tractantes inculpanter ad calcem

(*deputati sacrae vestis*): two *perfectissimi* of the second class; two *ducenarii*; two *centenarii*; two *epistulares*; three (clerks) of the first grade. (Eleven in total.)

16. In the bureau of silver (bullion) (*ab argento*): one *perfectissimus* of the second class; one *centenarius*; one *epistularis*; four (clerks) of the first grade; three of the second grade; one of the third grade. (Eleven in total.) **17.** (In the bureau) of (copper) money (*ad pecunias*): one *perfectissimus* of the second class; two (clerks) of the first grade; two of the second grade; five of the third grade. (Ten in total.) **18.** The court silversmiths (*argentarii comitatenses*): one *ducenarius*; two *centenarii*; two *epistulares*; eight (clerks) of the first grade; twenty-five of the second grade. (Thirty-eight in total.) **19.** Producers of armor embellished in gold and silver (*barbaricarii*): one *centenarius*; two *epistulares*; eight (clerks) of the first class; one of the second class. (Twelve in total; 443 altogether.) (…).[110]

Given June 10, at Heraclea, in the consulship of Richomer and Clearchus (384).

[8][111] *The same Augusti and* Arcadius *Augustus to Trifolius, Count of the Imperial Benefactions.* The report (*suggestio*) that you have forwarded appears just and advantageous to the messengers (*mittendarii*) of the palatine staff, namely, that from among them one *ducenarius* and three *centenarii* should be relieved of their official belt (*cingulum*) each year, with due consideration of the law.

Given March 12, at Constantinople, in the consulship of Arcadius Augustus, for the first time, and Bauto (385).

[9][112] *Emperors* Arcadius, Honorius, *and* Theodosius *Augusti to Nestorius, Count of the Privy Purse.* No one whosoever shall deem himself authorized to assume the belt of office (*cingulum*) in the official staff of the Imperial Benefactions or of the Privy Purse unless he has received the written endorsement (*adnotatio*) of Our Clemency.

Given August 12, at Ankara, in the consulship of Stilicho, for the second time, and Anthemius (405).

[10][113] *Emperors* Honorius *and* Theodosius *Augusti to John, Praetorian Prefect (of Italy).* We direct that the palatine officials who, faithfully keeping the accounts of the imperial expenditures (*remunerationes*), have

[110] Manuscript O includes additional, otherwise unattested, information: two *perfectissimi*, a *secundocerius*, and four *centenarii*. Comparison with *Not. Dig. Or.* 13.33–34 suggests that the list of bureaus as presented here is complete, if the *tertiocerius* and *quartocerius* mentioned there are to be identified with the officials named in §2.

[111] = C.Th. 6.30.8. Combine with C.Th. 6.30.9.

[112] = C.Th. 6.30.18.

[113] = C.Th. 6.30.20.

terminumque militiae pervenerint, adiutorem et primicerios diversorum officiorum praecepimus habere privilegia, quae nuper agentum in rebus scholae a nostra sunt mansuetudine contributa, scilicet ut a tironum praebitione memorati reddantur exsortes ceteraque onera non agnoscant.

D. VII id. Iun. Ravennae post cons. Honorii VIIII et Theodosii V AA.

[11] *Idem AA. Anysio comiti sacrarum largitionum et Tauro comiti rerum privatarum.* Ad similitudinem sanctionis, quam de proximis sacrorum promulgavimus scriniorum, etiam in officio sacrarum largitionum atque privatarum pro biennio annum sub perpetua observatione praecipimus custodiri, ita ut et privilegia, quae huiusmodi officiis vel primiceriis sacris legibus deferuntur, integra illibataque serventur.

D. III k. Iul. Constantinopoli Theodosio A. VII et Palladio conss.

[12] *Imp. Theodosius A. et Valentinianus C. Maximino comiti sacrarum largitionum.* **pr.** Viros devotos palatinos non oportere in hac regia urbe apud virum illustrem praefectum urbis litigare compelli, nisi de aedificatione domorum et servitutibus et annonis orta videatur causa: in aliis vero causis tam pecuniariis quam criminalibus apud viros illustres tantummodo comites suos respondere. **1.** Rectoribus autem provinciarum intra administrationis suae fines inter praesentes palatinos nec causis publicis occupatos cognoscere tam pro civili quam pro criminali causa permittimus, sic tamen, ut non aliter criminalis sententia adversus eos proferatur, nisi ex suggestione provincialis iudicii vir illustris comes sub quo militat certioratus hoc ei permiserit.

[13] *Idem AA. Eudoxio comiti sacrarum largitionum.* Inter alias praerogativas, quas ante meruerant scholae societatis sacrarum largitionum,

come to the limit and end of their service, (that is,) the principal assistant (*adiutor*) and the chiefs (*primicerii*) of the different official staffs (*officia*), shall have the privileges which were recently bestowed by Our Grace upon the corps (*schola*) of couriers (*agentes in rebus*),[114] namely, that the aforementioned persons shall be rendered exempt from furnishing recruits and shall not assume other burdens.

Given June 7, at Ravenna, in the post-consulate of Honorius, for the ninth time, and Theodosius, for the fifth time, Augusti (413).

[11][115] *The same Augusti to Anysius, Count of the Imperial Benefactions, and Taurus, Count of the Privy Purse.* In conformity with the ordinance which We promulgated concerning the chief clerks (*proximi*) of the imperial bureaux (*sacra scrinia*),[116] We direct that an annual term of service, instead of two-year term, shall also be perpetually observed in the official staff of the Imperial Benefactions and of the Privy Purse, but that the privileges granted under imperial statutes to such official staffs or chiefs shall be preserved intact and undiminished.

Given June 29, at Constantinople, in the consulship of Theodosius Augustus, for the seventh time, and Palladius (416).

[12] *The Emperor* T*HEODOSIUS* *Augustus and the Caesar* V*ALENTINIAN* *to Maximinus, Count of the Imperial Benefactions.* **pr.** The devoted palatine officials in this imperial city should not be compelled to litigate before the City Prefect, a person of *illustris* rank, except in matters that appear to concern the construction of buildings, servitudes, and the food supply (*annonae*). In all other cases, civil and criminal, they should be required to answer only before their own Counts, persons of *illustris* rank. **1.** We nevertheless permit governors (*rectores*) of provinces, within the confines of their jurisdiction (*administratio*), to try cases civil as well as criminal involving palatine officials resident therein who are unoccupied with public business, with the limitation, however, that no sentence shall be pronounced against them in a criminal case unless the Count, of *illustris* rank, under whom the accused serves permits it upon the recommendation (*suggestio*) of the provincial court.

(424–425).

[13] *The same Augusti*[117] *to Eudoxius, Count of the Imperial Benefactions.* Among other prerogatives heretofore received by the corps (*scholae*) of the

[114] See C.Th. 6.27.13.
[115] = C.Th. 6.30.21.
[116] See C. 12.19.6.
[117] Strictly, it should be: "Emperors Theodosius and Valentinian Augusti." Seeck gives January 31, 428.

primicerius et tres primicerii scriniorum tribuni praetoriani militaris dignitate fruantur, nulla eis ex cuiuslibet iudicis praeceptione iniungenda publica vel privata necessitate.

[14] *Idem AA. Florentio pp.* **pr.** Iubemus viros devotos palatinos rei nostri numinis privatae isdem privilegiis decorari, quibus etiam palatini qui in sacris largitionibus deferuntur. cum enim par similisque militia sint, iustum et competens videtur isdem utrumque officium privilegiis gloriari. **1.** Primicerios itaque officii tresque primates scriniorum rerum privatarum finito tempore militiae inter tribunos militares praetorianos, salvis isdem praestitis privilegiis sacris constitutionibus, nostram clementiam adorare decernimus, ita tamen, ut nullam iniunctionem nullam sollicitudinem privati vel publici negotii quolibet iudiciario praecepto sustinere possint, sed excepta omni necessitate omnique fatigatione indeptae dignitatis honore potiantur.

XXIIII De Stratoribus

[1] *Impp. Valentinianus et Valens AA. ad Zosimum praesidem novae Epiri.* **pr.** Per omnes provincias edictum generale misimus, ut ab stratoribus unus tantum solidus probae nomine posceretur, et in offerendis equis certam formam staturam aetatem provinciales nostri custodiendam esse cognoscant. **1.** Quos etiam fisco certo solidorum modo obnoxios fecimus, si, quod stratores petere interdictum est, illi dare stratoribus non timerent. **2.** Officium quoque gravitatis tuae centum argenti libris multabitur, si sciens praedictam rem gestam fuisse non ilico eam severitati iudiciariae prodidisset.

D. XIII k. Iul. Apolloniae Valentiniano et Valente AA. conss.

department of Imperial Benefactions (*societas sacrarum largitionum*), the chief (*primicerius*) (of the corps as a whole) and three chiefs of the (separate) bureaus (*primicerii scriniorum*) shall enjoy the rank of Praetorian Military Tribune, and by the direction of no judge shall a public or private obligation be enjoined upon them.

(428?).

[14] *The same Augusti to Florentius, Praetorian Prefect (of the East).* **pr.** We order that the devoted palatine officials of the Privy Purse of Our Divine Majesty shall be adorned with the same privileges as the palatine officials serving in the Imperial Benefactions. For since their service appears to be equal and similar, it seems just and proper that each official staff should glory in the same privileges. **1.** Thus We decree that the chiefs (*primicerii*) of the (whole) staff and the three senior members (*primates*) of the (separate) bureaus (*scrinia*) of the Privy Purse shall at the end of their service adore Our Clemency among the Praetorian Military Tribunes, while retaining the privileges formerly granted to them by Our imperial constitutions, so that they shall not be burdened by any duty or care, private or public, by order of any judge, but exempt from all such burdens and from every trouble may enjoy the honor of the rank they have attained.

(428–430 or 438–439).[118]

Twenty-Fourth Title Inspectors of Horses

[1][119] *Emperors* VALENTINIAN *and* VALENS *Augusti to Zosimus, Governor of Nova Epirus.* **pr.** We have sent a general edict throughout all the provinces, that only 1 solidus shall be demanded by the inspectors of horses (*stratores*) for their approval, and Our provincials may know that, in offering horses, a certain shape, stature, and age (of the horses) must be observed. **1.** Those provincials who do not fear to give the inspectors what the latter are prohibited from seeking, We have also made liable for the payment of a definite number of solidi to the Treasury. **2.** The staff of Your Eminence, also, will be fined 100 pounds of silver, if it knows that the foregoing offence has been committed and has failed to report that fact immediately for judicial punishment of a most severe kind.

Given (?) June 19, at Apollonia, in the consulship of Valentinian and Valens, Augusti (365).

[118] Seeck gives 428–430.

[119] = C.Th. 6.31.1. The date is corrected to 374.

XXV De Castrensianis et Ministerianis

[1] *Impp. Honorius et Theodosius AA. Narsi comiti et castrensi sacri palatii.* In officio spectabilitatis tuae secundum formam divalium responsorum post completum tempus praefinitum, id est biennium, prioribus decedentibus insequentes ad locum pro merito laborum stipendiorumque succedant, nec ulla licentia tribuatur his, qui impletum deposuerint officium, denuo ad eandem militiam vel sollicitudinem remeandi.

D. VI id. Febr. Constantinopoli Theodosio A. VII et qui fuerit nuntiatus.

[2] *Idem AA. Scholastico comiti et castrensi sacri palatii.* Si quis primae vel secundae vel tertiae formae specialiter inter statutos gradum caelitus valuerit impetrare, supernumerarius ultimus formae tertiae in matriculis habeatur.

D. prid. id. Ian. Constantinopoli Honorio XIII et Theodosio X AA. conss.

[3] *Impp. Leo et Anthemius AA. Iohanni comiti et magistro officiorum.* Ii, qui in schola vestis sacrae militant, vel matres eorum vel uxores criminalem vel civilem litem contra se commovendam in nullo alio nisi in sublimitatis tuae suscipiant examine.

[4] *Impp. Leo et Zeno AA. Hilariano comiti et magistro officiorum.* **pr.** Ante omnia nullius penitus alterius iudicis minoris vel maioris sacro ministerio nostro deputatos, quorum officia singillatim brevis subter adnexus continet, nisi a tuae dumtaxat magnitudinis sententiis conveniri, ut in nullo penitus alterius iudicis foro pulsantium[v] nisi in tuae tantummodo amplitudinis examine praebeant aliquando responsum. **1.** Sed ne in hoc ipso iudicio enormibus molestentur dispendiis, vel ex nudis conveniantur facile cuiuscumque mandatis, ipsis quoque

[v] pulsantibus

Twenty-Fifth Title The Domestic Staff (*Castrensiani*) and Workers (of the Imperial Household)

[1][120] *Emperors* Honorius *and* Theodosius *Augusti to Narses, Count and Steward of the Imperial Palace.* When, in accordance with the provisions of imperial orders (*responsa*), the officials on the staff of Your Conspicuousness (*spectabilitas*) have completed the fixed time of service, that is, two years, those at the top of the list shall pass out of office, and their places shall be filled by those following them according to the merits of their labor and their terms of service (*stipendia*); and no permission to return again to the same service or responsibility (*militia vel sollicitudo*) shall be granted to anyone who has relinquished his completed office (*officium*).

Given February 8, at Constantinople, in the consulship of Theodosius Augustus, for the seventh time, and the one who is to be announced (416).

[2][121] *The same Augusti to Scholasticus, Count and Steward of the Imperial Palace.* If any one (of the supernumeraries) of the first, second, or third grade (*forma*) has obtained by special imperial permission (*caelitus*; lit., "from on high") a position (*gradus*) among the established officials (*statuti*), he shall occupy the position of most junior supernumerary of the third grade (*forma*) in the register.

Given January 12, at Constantinople, in the consulship of Honorius, for the thirteenth time, and Theodosius, for the tenth time, Augusti (422).

[3][122] *Emperors* Leo *and* Anthemius *Augusti to John, Count and Master of Offices.* Those who serve in the department of the imperial wardrobe (*schola vestis sacrae*), and their mothers and wives, shall not answer in any criminal or civil suit commenced against them, in any tribunal save that of Your Sublimity.

(467–468).

[4] *Emperors* Leo *and* Zeno *Augusti to Hilarianus, Count and Master of Offices.* **pr.** Above all, those assigned to Our imperial domestic service (*ministerium*), whose official staffs the subjoined schedule mentions specifically,[123] shall be summoned by the order of absolutely no other judge, inferior or superior, except only by that of Your Greatness, so that they need to answer complaints in the forum of no other judge, except only in the tribunal of Your Magnificence. **1.** And lest they be burdened by great expenses even in that tribunal, or be summoned (too) easily by the mere verbal order (*ex nudis*

[120] = C.Th. 6.32.1. The Consul to be announced is Palladius.
[121] = C.Th. 6.32.2.
[122] Combine with C. 12.5.3; see also 12.59.8.
[123] This schedule has not been preserved.

sportulis et fideiussionibus modum constituimus observandum, ante omnia decernentes, ne quando sine scriptura vel interpellatione deposita ac sententia prorogata tuae magnitudinis eademque non edita conveniri posse, conventos vero non alium fideiussorem nisi actuarium vel unum e primatibus suae scholae exsecutoribus pro suae personae responsione sine scripto praestare, sive per se ipsi sive procuratore dato in iudicio responsuri sunt, et sive in causis civilibus appetantur sive in criminalibus incusentur. 2. Nec ultra conventionis nomine sportularum quam unum aureum exsecutoribus usque ad finem litis praestent, quemcumque contigerit conveniri. inducendorum sane nomine et cognitionum exercendarum standaeque personae gratia ex simplici postulatione contra eos habita, sive ex appellatione subsecuta vel quolibet alio modo in iudicio deponatur, tribus tantummodo solidis usque ad terminum negotii eos qui accepturi sunt praecipimus semper esse contentos. in cognitionalibus vero gestis edendis duos tantummodo praestari solidos.

3. Haec autem privilegia non in eorum tantummodo, sed in matrum quoque et uxorum personis valere et ad integrum permanere: filiis quoque et maritis easdem fideiussionis nomine, si necessitas interpellationis exegerit, tradi nec alios vades exigi: ipsosque, dum militant, et post emensam militiam cum his, qui ex tempore prioris praestitae sibi pragmaticae sanctionis eiusdem militiae stipendia implesse noscuntur, omnibus privilegiis perfrui (cunctis nihilo minus capitulis sacris adfatibus divae recordationis Marciani, quos se meruisse adserunt, valituris, excepto hoc, quod in diversis iudiciis tunc respondere praecepti sunt) hac sanctione decernimus.

4. Advocato quoque fisci, exceptoribus etiam, qui apud arbitros hoc utuntur officio, ab exordio incipiendo usque ad terminum finemque negotii tertiam dumtaxat partem solidi praebituros: in huiusmodi autem arbitrorum gestis edendis non ultra praestare quam dimidiam solidi partem: et cum per provincias constitutus fideiussore conventus caruerit, adiuratoriae tantummodo cautioni committi nec ullo tempore nisi ex tuae dumtaxat magnitudinis sententia conveniri (exceptis tributariis et munerum functionibus et criminibus, quae in locis inquiri flagitari et vindicari generalia legum praecepta constituunt), praesenti sanctione decernimus: viro clarissimo adiutore sublimitatis tuae in speculis constituto, ne quid ex his quae statuimus aliqua subreptione violetur.

...

mandatis) of anyone, We order that the measure of judicial fees (*sportulae*) and provision for suretyship be observed, resolving above all that they shall not be able to be summoned without writing, or without a complaint lodged in court and without the order of Your Greatness being served on them; and when they are summoned they shall not be compelled to furnish to the court clerks (*exsecutores*), for their appearance, any surety other than the quartermaster (*actuarius*) or one of the senior officials (*primates*) of their department (*schola*), without writing, whether they intend to answer in court personally or by appointment of a procurator, and whether they are sued in civil cases or are accused in criminal cases. 2. And no one who happens to be summoned needs to pay to the court clerks, on account of the summons, fees in excess of 1 gold piece (*aureus*) (from the beginning) to the end of the lawsuit. We order that those having the right to receive fees, whether for bringing the case to a hearing or for the conduct of the trial and causing persons to appear as a result of a simple demand against them, be it on appeal or brought before the court in any other manner, shall be content with only 3 solidi to the end of the suit, and for a record of the proceedings given them only 2 solidi need be paid.

3. We direct with this decree that these privileges belong not only to them, but also fully and completely to their mothers and wives, who, if necessity arises by reason of any case brought against them, shall be committed to the suretyship of their sons and husbands, nor shall any other surety be required of them. The above-mentioned officials themselves, during and after their term of service, and those who learn that they have completed the terms of the same service (*eiusdem militiae stipendia*) since the enactment of the former pragmatic sanction for their benefit, shall enjoy all privileges (granted them), including those which they say were granted them by the rescript of Marcian, of blessed memory, which shall remain in force except as to the provision directing them to answer in the court of various judges.

4. We direct also by the present law that they shall pay to the Advocate of the Treasury and to the shorthand writers (*exceptores*) employed on the staff of the arbitrators only the third part of a solidus from the very beginning to the very end of a suit; for a copy of the proceedings before the arbitrators, they shall pay only half of a solidus. If one of them is summoned while located in a province, and he lacks a surety, he shall bound only by a guaranty on oath (*adiuratoria cautio*) (for his appearance), and he shall never be summoned unless pursuant to the order of Your Magnitude, except in cases involving payment of taxes or performance of public obligations, or for crimes, which must be investigated, tried, and punished in the place where committed as provided by general laws. The principal assistant (*adiutor*) of Your Sublimity, a person of *clarissimus* rank, is appointed as the watchman to see that none of these provisions is secretly violated.

(474).

XXVI De Decanis

[1] *Impp. Honorius et Theodosius AA. Helioni comiti et magistro officiorum.* Quattuor, qui ex corpore decanorum ad primum militiae gradum pervenerint, biennii spatio primiceratus gerant officium, neque ulterius cuiquam hoc loco liceat immorari, ut omni gratia et ambitione cessante post duorum annorum curricula succedant prioribus subsequentes.

D. prid. non. Nov. Constantinopoli Theodosio A. VII et Palladio vc. conss.

[2] *Impp. Theodosius et Valentinianus AA. Nomo magistro officiorum.* **pr.** Nostrae pietatis famulationibus adhaerentes decanos non oportet pro desiderio pulsantium ad alia protrahi iudicia, sed viri illustris tantum magistri officiorum observare examen. **1.** Hoc namque modo neque mansuetudinis nostrae obsequia decipiuntur et agentibus adversus eos iure adhibetur responsum. **2.** Ad exemplum itaque devotissimorum scholarium nulli licere memoratos ad aliud iudicium trahere et pulsatos priorum fidei scholae permitti praecipimus.

XXVII De Mensoribus

[1] *Impp. Honorius et Theodosius AA. Aemiliano magistro officiorum.* Primicerius mensorum biennio expleto agentis in rebus ultimi militiam sortiatur.

D. x k. Aug. Ancyrae Stilichone II et Anthemio conss.

XXVIII De Privilegiis Eorum Qui in Sacro Palatio Militant

[1] *Imp. Constantinus A. palatinis bene meritis salutem.* A palatinis tam his, qui obsequiis nostris inculpata officia praebuerunt, quam illis,

Twenty-Sixth Title Palace Doorkeepers

[1][124] *Emperors* Honorius *and* Theodosius *Augusti to Helion, Count and Master of Offices.* The four who arrive at the first grade (*gradus*) of the service from the company (*corpus*) of the doorkeepers (*decani*) shall fill the position of chief (*primiceratus*) for a period of two years, and no one shall be permitted to tarry in that position any longer, so that all favoritism and corrupt solicitation shall cease and those next in grade shall succeed those who precede them after the completion of two years.

Given at November 4, at Constantinople, in the consulship of Theodosius Augustus, for the seventh time, and the vir clarissimus *Palladius (416).*

[2][125] *Emperors* Theodosius *and* Valentinian *Augusti to Nomus, Master of Offices.* **pr.** It is improper that the doorkeepers attached to the household of Our Piety should be dragged into other tribunals on the whim of those that want to sue them. They should need to appear only before the tribunal of the *vir illustris* Master of Offices. **1.** In this manner the service (*obsequia*) of Our Clemency will not be slighted, and recourse is available to those who sue them. **2.** So We direct, in accordance with the example established for the most devoted palace troops (*scholares*), that no one shall be permitted to hale the above-mentioned persons into any other tribunal, and that those of them who are sued shall be committed to the care of the senior officials of their corps (*priores scholae*) (for their appearance).

(443–444?).

Twenty-Seventh Title Quartering Masters

[1][126] *Emperors* Honorius *and* Theodosius *Augusti to Aemilianus, Master of Offices.* The chief (*primicerius*) of the quartering masters (*mensores*) shall, upon completion of his service of two years, be appointed to the service of a courier (*agens in rebus*) as most junior (in rank).

Given July 23, at Ankara, in the consulship of Stilicho, for the second time, and Anthemius (405).

Twenty-Eighth Title Privileges of Those Who Serve in the Imperial Palace

[1][127] *Emperor* Constantine *Augustus to the well-deserving palatine officials, greeting:* We order all vexations or nominations (for performance of compulsory

[124] = C.Th. 6.33.1.
[125] Combine with C. 12.19.7, 8, 21.6. Seeck gives February 26, 444.
[126] = C.Th. 6.34.1. Combine with C.Th. 1.9.3.
[127] = C.Th. 6.35.1. Seeck corrects the date to October 29, 313.

qui in scriniis nostris, id est memoriae epistularum libellorumque, versati sunt, procul universas calumnias sive nominationes iubemus esse submotas, idque beneficium ad filios eorum atque nepotes ipso ordine sanguinis pervenire, atque immunes eos a cunctis muneribus sordidis et personalibus permanere cum universis mobilibus et mancipiis urbanis, neque iniurias eis ab aliquibus inferri: ita ut, qui haec contempserit, indiscreta dignitate poenas debitas exigatur.

D. IIII k. Nov. Triveris Volusiano et Anniano conss.

[2] *Idem A. Rufino pp.* **pr.** De cubiculis nostris vacatione donatos vel diversis obsequiis palatinis, memoriales etiam, qui in scriniis memoriae epistularum libellorum sacrarumque dispositionum referuntur, nec non et si qui in utroque officio palatinorum comitatensium singularumve urbium et officio admissionum et castrensis sacri palatii militant, privilegia volumus habere, ut nec ipsi nec filii nec nepotes eorum ad honores vel munera municipalia devocentur. **1.** Quibus omnibus condonamus, ne exactorum vel turmariorum, quos capitularios vocant, curam subeant vel obsequium temonariorum vel pentaprotiae aut etiam tironis praestationem agnoscant. **2.** Nam beneficiis nostris ita digni sunt, ut etiam censualibus vel personalibus vel corporalibus muneribus liberentur et habeant castrense peculium, sive adhuc palatium observant sive optata quiete donati sunt. **3.** Quibus omnibus privilegiis coniungimus agentes in rebus, licet militaribus videantur esse subnixi.

D. V k. Mai. Sirmio Constantino A. V et Licinio C. conss.

[3] *Imppp. Gratianus Valentinianus et Theodosius AAA. Eutropio pp.* Ex aula nostra decedentes viri ab omnibus iniunctis habeantur immunes:

public services) to be far removed from the palatine officials (*palatini*), who have blamelessly performed their duties in Our personal service, as well as from those serving in Our bureaus, that is, (the bureaus) of memorials, correspondence, and petitions (*scrinia memoriae epistularum libellorumque*), and that this benefit shall accrue to their sons and grandsons in the order of blood relationship, and that they shall remain exempt from all menial and personal compulsory public services (*munera sordida et personalia*) together with all their movable property and urban slaves, and that no outrage shall be committed against them by anyone; and therefore the proper fines shall be demanded from any person, without regard to his rank, who ignores these orders.

Given October 29, at Trier, in the consulship of Volusianus and Annianus (314).

[2][128] *The same Augustus to Rufinus, Praetorian Prefect.* pr. We desire that those from Our chambers or from the various palatine services who have been granted a release (*vacatio*), and also the clerks (*memoriales*) who belong to the bureaus of memorials, correspondence, petitions, and imperial arrangements (*scrinia memoriae epistularum libellorum sacrarumque dispositionum*) and indeed those also who serve on the staff of palatine officials (of the Imperial Benefactions) both at court and in the various cities (*palatinorum comitatensium singularumve urbium*) and on that of the ushers (*admissionales*) and of the Steward (*castrensis*) of the imperial palace shall have the privilege that neither they nor their sons and grandsons will be liable for municipal honors and obligations (*honores vel munera municipalia*). 1. We present to all these the privilege that they will not incur the responsibility (of filling the post) of tax collectors (*exactores*) or of cavalry recruitment tax officers (*turmarii*), who are called *capitularii*, nor will they acknowledge the duty of collectors of recruit taxes or of (membership on) the board of five leading men (*temonarii vel pentaprotia*) or even the responsibility of furnishing recruits (*tironis praestatio*). 2. For they are sufficiently worthy of Our benefits so as to be exempt also from serving as tax assessors and from personal and corporal obligations (*censualia vel personalia vel corporalia munera*) and to have their own military *peculium* whether they still attend to the palace or have been granted their desired rest. 3. To all these privileges We join also the couriers (*agentes in rebus*), although they appear to be supported by military (privileges).

Given April 27, at Sirmium, in the consulship of Constantine Augustus, for the fifth time, and of the Caesar Licinius (319).

[3][129] *Emperors Gratian, Valentinian, and Theodosius Augusti to Eutropius, Praetorian Prefect (of Illyricum).* Those who have departed from

[128] = C.Th. 6.35.3 (altered). Combine with C. 12.1.3. The constitution's date is disputed.
[129] = C.Th. 6.35.11.

numerariorum fastus vel rapaces quaestus tamquam experientes et idonei non patiantur.

D. III non. Febr. Constantinopoli Eucherio et Syagrio vv. cc. conss.

[4] *Idem et Arcadius AAAA. ad Pinianum pu.* **pr.** Omnes, qui in palatio militando diversis actibus paruerunt, in tantum eius dignitatis, cuius meruerint missionem, obtinere noverint insignia, ut his omnibus praeferantur in ordine atque consessu, qui posteriore tempore regendas provincias dignitatesque susceperint palatinas. **1.** Si quis autem temeraria usurpatione violare statuta temptaverit, sacrilegii poenam sustineat.

D. prid. non. Iul. Mediolani. acc. IIII k. Sept. Honorio np. et Euodio conss.

XXVIIII De Privilegiis Scholarum

[1] *Impp. Theodosius et Valentinianus AA. Phlegetio comiti et magistro officiorum.* **pr.** Viris spectabilibus comitibus scholarum verberandi regradandive senatores ac ducenarios licentiam denegamus. ea namque, quae tali commotione digna sunt, ad tuae sublimitatis volumus referri notitiam. **1.** Insuper etiam domesticos eorum non senatores vel ducenarios centenariosve fieri decernimus: poena quinque librarum auri plectendo, quisquis hanc divinam iussionem excesserit, scrinio vero barbarorum, si tale quid vel attemptari passum fuerit vel attemptatum contra leges non suggesserit, decem librarum auri condemnatione percellendo. **2.** Illud etiam observari non sine ratione conveniet, ne is, cui domestici officium per militiae gradum vel quinquennii tempus interdici censuimus, familiaritate comitis simulata rem prohibitam alio nomine valeat usurpare.

D. XV k. Mai. Constantinopoli Cyro vc. cons.

[2] *Impp. Leo et Zeno AA. Eusebio magistro officiorum.* **pr.** Hac lege decernimus, ut, qui in singulis scholis militant quique post emensa stipendiorum

Our Court (*aula*) shall be considered exempt from every imposition (of compulsory public services); they shall not, on the grounds that they are experienced and suitable, put up with the arrogance and grasping acquisitiveness of accountants (*numerarii*).

Given February 3, at Constantinople, in the consulship of viri clarissimi *Eucherius and Syagrius (381).*

[4][130] *The same Augusti and* Arcadius *Augustus to Pinianus, City Prefect (of Rome).* **pr.** All who have been engaged in the performance of various duties in the palace shall know that they shall enjoy the insignia of the rank from which they earned retirement to such an extent that they shall take precedence in rank and in order of seating before all those who subsequently receive provincial governorships or palatine offices. **1.** If anyone rashly and preemptively attempts to violate this order, he shall suffer the punishment of sacrilege.

Given July 6, at Milan, and received August 29 in the consulship of Honorius, Most Noble Boy, and Euodius (386).

Twenty-Ninth Title Privileges of the Imperial Guard

[1][131] *Emperors* Theodosius *and* Valentinian *Augusti to Phlegetius, Count and Master of Offices.* **pr.** We deny to the *viri spectabiles* Counts of the imperial guard (*scholae*) the right to punish corporally or reduce in rank *senatores* and *ducenarii*. For We want matters deserving such punishment to be referred to the notice of Your Sublimity. **1.** Moreover, We decree that their personal assistants (*domestici*) shall not be made *senatores* or *ducenarii* or *centenarii*[132] under penalty of 5 pounds of gold inflicted upon the person who violates this imperial command, and should the bureau of foreigners (*scrinium barbarorum*) allow anything of the sort to be done or fail to report any violation it shall be smitten by a fine of 10 pounds of gold. **2.** This too should be observed, not without reason, that anyone to whom We have decided that the position of personal assistant is forbidden on account of his service rank (*per militiae gradum*) or for the period of five years may not, by pretended friendship with the Count, accomplish his illicit aim on some other pretext.

Given April 17, at Constantinople, in the consulship of the vir clarissimus *Cyrus (441).*

[2] *Emperors* Leo *and* Zeno *Augusti to Eusebius, Master of Offices.* **pr.** We decree by this law that those who serve among the several regiments of the

[130] = C.Th. 6.35.13.
[131] = Nov. Theod. 21; pr. = C. 1.31.3.
[132] Or: "that *senatores* or *ducenarii* or *centenarii* shall not be made their personal assistants." These were, in descending order, the uppermost ranks of the guards.

curricula ad primiceriorum gradum pervenerint et adorata nostrae divinitatis purpura virorum clarissimorum comitum meruerint dignitatem, tam cingulo quam privilegiis omnibus sibimet competentibus perfruantur ac deinceps usque ad finem vitae foro tuae celsitudinis tantummodo subiaceant nec ex alterius cuiuslibet sententia civile subire litigium compellantur. 1. In criminalibus sane controversiis et in publicis tributis et adversus tales viros provincias moderantium congruam iurisdictionem volumus observari, ne sub praetextu concessi privilegii vel flagitiorum crescat auctoritas vel publica vacillet utilitas.

[3] *Imp. Zeno A. Longino magistro officiorum.* **pr.** Quotiens super causa civili vel etiam criminali, ex sententia videlicet iudicii tui culminis, scholares vel eorum coniuges, sive adhuc vivent mariti sive post mortem eorum in viduitate constitutae sunt, matresve eorum in viduitate permanentes aut liberi, qui non specialiter alterius iudicis iurisdictioni subiectam condicionem sortiti sunt, et servi ad eos pertinentes conveniuntur, minime eos easve extranei fideiussoris exactione vexari, sed pro consuetudine vetustissima et iugiter observata numerarium suae scholae fideiussorem praebere iubemus.

1. Hoc videlicet observando, ut in criminalibus causis quinque alios primates ex triginta viris, a primicerio usque ad tricesimum retro numerandis una cum numerario, volentes scilicet et non recusantes, praebeant fideiussores, aut recusantibus quinque sicut dictum est viris extraneus in criminibus tantummodo publicis fideiussor una cum numerario praebeatur: ita ut exsecutoribus non amplius ab his quam unus solidus, sive per se sive per procuratorem respondere maluerint, praebeatur. **1a.** In subeundis autem cognitionalibus certaminibus, quotiens causa fuerit arbitro delegata, pro contestatione litis unum solidum et pro definitione ab arbitro recitanda alterum unum et nihil amplius dari decernimus.

2. Quod si causa in iudicio tui culminis ab ipsa contestatione litis vel relatione iudicis aut appellatione interposita ventilatur, pro inducenda cognitione non amplius quam tres solidos, et chartarum vel recitandorum in cognitionibus instrumentorum nomine, editionis quin etiam gestorum duos tantummodo solidos dabunt. 3. Quotiens sane apud viros clarissimos provinciarum moderatores, ex delegatione scilicet sententiae tuae magnitudinis, contra viros fortissimos scholares vel

imperial guard (*scholae*), and who after completing the course of terms of service (*stipendiorum curricula*) have acquired the rank of chief (*primicerius*) and, having adored the purple of Our Divinity, have received the title of Count, of *clarissimus* rank, shall enjoy their belt of office (*cingulum*) as well as all privileges appertaining thereto, and thence forward to the end of their life they shall be subject only to the forum of Your Highness and shall not be compelled to answer a civil lawsuit by the order of anyone else. **1.** In criminal controversies, however, and in matters pertaining to the public revenue, We want the suitable jurisdiction of those governing the provinces to extend over these persons, lest under cover of a granted privilege the influence of criminality increase or the public advantage suffer.

(474).

[3] *Emperor* Zeno *Augustus to Longinus, Master of Offices.* **pr.** We order that whenever the imperial guardsmen (*scholares*), or their wives – whether in the lifetime of their husbands or after they have become widows following the death of their husbands – or their mothers remaining in widowhood, or their children who have not attained a status (*condicio*) specially subject to the jurisdiction of another judge, and slaves belonging to them, shall be summoned into court in a civil or even a criminal case by order of Your Highness, they shall not be harassed by the demand for an outside surety, but in accordance with most ancient and perpetually observed custom shall furnish as such surety only the chief accountant (*numerarius*) of their own troop (*schola*).

1. In criminal cases, indeed, the rule must be observed that they shall furnish as sureties, along with the chief accountant, five other senior officials (*primates*) from among thirty men, reckoning from the chief (*primicerius*) back to the thirtieth, provided they are willing and do not refuse; but if the aforementioned five refuse, then in criminal cases only shall an outside surety be furnished along with the chief accountant. They shall pay no more than 1 solidus to the court clerks (*exsecutores*) whether they prefer to answer in person or by a procurator. **1a.** We decree that in submitting to trial, they shall, whenever a case shall be referred to an arbitrator, pay 1 solidus for the joinder of issue and another solidus for the recitation of the decision by the arbitrator, and no more.

2. But if the case is tried in the tribunal of Your Highness from the joinder of issue on, or pursuant to, reference to you by a judge, or on appeal to you, they shall pay no more than 3 solidi for bringing the case to trial and only 2 solidi for the papers or reading the documents at the trial as well as for a copy of the record of the proceedings. **3.** If a case is tried against the most stalwart imperial guardsmen or their wives, children, or slaves before provincial governors (*moderatores*), persons of *clarissimus* rank, pursuant to an assignment of the

eorum coniuges vel liberos vel servos cognitio celebretur, non amplius quam dimidiam partem consuetorum sumptuum praeberi decernimus.

3a. Hoc etiam adiciendo, ut, qui acceptis commeatibus ad provincias profecti fuerint, usque ad quinque mensium spatium, intra quod ipsis erit remeandi licentia, nullam penitus actionem, super civili videlicet negotio (exceptis criminibus et tributariis functionibus) sustineant. **3b.** Ne tamen ibi quoque, post quinque scilicet commeatus menses, ex sententia iudicii tuae magnitudinis conventi in exigendis fideiussoribus aliquod sentiant detrimentum, iuratoriae eos cautioni iubemus committi.

4. Quotiens autem ex verbis et sine ulla scriptis prolata sententia idem fortissimi scholares vel eorum matres seu coniuges, ut dictum est, aut liberi vel servi moneantur, nihil ipsa exsecutione sportularum nomine penitus eos vel eorum matres seu coniuges aut liberos secundum superius datam distinctionem vel servos praebere decernimus.

5. Sed si talis sit negotii vilitas, ut etiam sine scriptis, consentientibus videlicet partibus, super ea possit cognosci, expectato sine scriptis, sicut dictum est, habendae cognitionis eventu, si deteriorem calculum reportaverint, sportularum nomine unum tantummodo solidum exsecutori praestabunt. **6.** Sin vero causae qualitas in scriptis habendam cognitionem flagitaverit, in hoc necesse est casu interlocutione in scriptis proferenda ea, quae superius de quantitate sportularum decidendarumque cognitionum disposita sunt, observari.

XXX De Castrensi Omnium Palatinorum Peculio

[1] *Imp. Constantinus A. ad Severum pu.* **pr.** Omnes palatinos, quos edicti nostri iam dudum certa privilegia superfundunt, rem, si quam, dum in palatio nostro morantur, vel si parsimonia propria quaesierint vel donis nostris fuerint consecuti, ut castrense peculium habere praecipimus. quid enim tam ex castris est, quam quod nobis consciis ac prope sub conspectibus nostris adquiritur? **1.** Sed nec alieni sunt a pulvere et labore castrorum, qui signa nostra comitantur, qui praesto sunt semper actibus, quos intentos eruditis studiis itinerum prolixitas et expeditionum difficultas exercet. **2.** Ideoque palatini nostri, qui privilegiis edicti uti potuerunt, peculia sua praecipua retineant, quae, dum in

case to them by order of Your Greatness, We determine that no more than half of the customary fees shall be paid.

3a. This too is to be added, that no civil action – criminal cases and proceedings relating to taxes being excepted – shall be commenced against those who have gone to the provinces on leave of absence until the lapse of a period of five months, within which they may return. **3b.** In order, nevertheless, that not even after the expiration of the five months for the leave of absence shall they, when summoned by order of the tribunal of Your Greatness, experience any difficulty in the demand for sureties, We order that they shall be bound by their own guaranty on oath (*iuratoria cautio*) (to appear).

4. Whenever, however, the most stalwart imperial guardsmen, or their mothers or wives, as has been said, or their children or slaves are summoned verbally and without a written order, We determine that they or their mothers or wives or children – according to the above-mentioned distinction – or slaves shall pay nothing in the way of fees (*sportulae*) at all for the suit.

5. If the amount involved in the transaction is so small that trial may be had regarding it without writing, upon consent of the parties, then, after waiting for the outcome of the trial (which is held, as stated, without writing) they shall, if they receive an adverse judgment, pay only 1 solidus in the way of fees to the court clerk. **6.** But if indeed the nature of the case demands that the proceedings be reduced to writing, then upon the entering of an interim order (*interlocutio*) in writing the aforesaid provisions as to the amount of fees and decisions of cases shall govern.

(484–491).

Thirtieth Title The Military *Peculium* of Palatine Officials

[1][133] *Emperor* Constantine *Augustus to Severus, City Prefect (of Rome).* **pr.** We direct that all palatine officials (*palatini*), whom Our edicts have long ago inundated with settled privileges, shall have as their military *peculium* anything they acquire while remaining in the palace, whether they have saved it by their own parsimony or obtained it by gifts from Us. For what is so clearly acquired by military service (*ex castris*) as that which is acquired with Our knowledge and virtually under Our eyes? **1.** Nor are they strangers to the dust and toil of the camp, since they accompany Our standards, are always present at Our acts, and, intent as they are upon their recondite studies, are worn out by the length of journeys and the difficulty of expeditions. **2.** Our palatine officials, therefore, who have been able to take advantage of the privileges of the edict shall retain as their own special *peculia* whatever they have acquired while

[133] = C.Th. 6.36.1.

palatio constituti sunt, aut labore, ut dictum est, proprio aut dignatione nostra quaesierint.

PP. x k. Iun. Constantino A. VII *et Constantio C. conss.*

XXXI De Equestri Dignitate

[1] *Impp. Valentinianus et Valens AA. ad Mamertinum pp.* Equites Romanos secundum gradum post clarissimatus dignitatem obtinere iubemus.

D. prid. k. Nov. Philippopoli divo Ioviano et Varroniano conss.

XXXII De Perfectissimatus Dignitate

[1] *Imp. Constantinus A. ad Paternum Valerianum.* Codicillis perfectissimatus fruantur, qui impetraverint, si abhorreant a condicione servili vel fisco aut curiae obnoxii non sint vel si pistores non fuerint vel non in aliquo negotio constiterint nec sibi honorem venali suffragio emerint nec rem alicuius administraverint.

XXXIII Qui Militare Possunt vel Non et de Servis ad Militiam vel Dignitatem Adspirantibus et Ut Nemo Duplici Militia vel Dignitate et Militia Simul Utatur

[1] *Impp. Severus et Antoninus AA. Antonio suo salutem.* Si militiae nomen dare vultis, offerte vos his qui probandi ius habent. non autem ignoratis eos, qui litis causa militiam appetierunt, postulantibus adversariis solvi sacramento solere.

they have been stationed in the palace either through their own effort, as has been said, or as a token of Our regard.

Posted May 23, at Constantinople, in the consulship of Constantine Augustus, for the seventh time, and the Caesar Constantius (326).

Thirty-First Title The Equestrian Rank

[1][134] *Emperors* VALENTINIAN *and* VALENS *Augusti to Mamertinus, Praetorian Prefect (of Italy, Africa, and Illyricum).* We order that the Roman equestrians (*equites*) shall occupy the second class (*gradus*) after the rank of *clarissimus.*

Given October 31, at Philippopolis, in the consulship of the blessed Jovianus and Varronianus (364).

Thirty-Second Title The Rank of "Most Perfect"

[1][135] *Emperor* CONSTANTINE *Augustus to Paternus Valerianus.* Those who have obtained the diplomas of the perfectissimate (*codicilli perfectissimatus*) may enjoy the benefit thereof if they are untouched by servile status (*condicio*), are liable neither to the Treasury nor to a municipal council (*curia*), have not been bakers (*pistores*) nor engaged in any trade, have not bought the honor by purchased recommendation (*venale suffragium*), and have not managed the property of anyone.

(312–337).

Thirty-Third Title Those Who Can and Cannot Be in the Imperial Service, and Also Slaves Aspiring to Such Service or to an Official Position of Rank, and That No One May Enjoy at the Same Time Two Positions of Such Service or an Official Position of Rank and a Position in Such Service

[1] *Emperors* SEVERUS *and* ANTONINUS *Augusti to their own Antonius, greeting:* If you want to enroll (*nomen dare*) in the imperial service (*militia*), offer yourself to those who have the right of approval. Do not forget, however, that those who have sought a post in the imperial service for the sake of a lawsuit are, upon demand of the adversaries, customarily absolved from their oath (i.e., dismissed from the service).

(203–209).

[134] = C.Th. 6.37.1. The constitution dates more probably to late May (Seeck); Schmidt-Hofner dates to May 24–26, 364.

[135] = C.Th. 6.38.1. Seeck dates to January 19, 317.

[2] *Impp. Diocletianus et Maximianus AA. Valerio militi.* Non tantum decurionum filiis, sed omnibus in fraudem civilium munerum nomina armatae militiae dantibus fraudem prodesse displicuit.

[3] *Impp. Arcadius et Honorius AA. Pulchro magistro utriusque militiae.* Cura pervigili observare debebit sublimitas tua, ne coloni vel saltuenses aut ultro se offerentes ad militiam suscipiantur armatam aut cogantur inviti.

[4] *Imp. Leo A. Dioscoro pp.* Omnes omnino curialis vel cohortalis condicionis constituti nullam armatam militiam in posterum adripiant.

[5] *Imp. Iustinus A. Licinio magistro officiorum.* **pr.** Eis quidem, quibus indultum hactenus demonstratur, quo binis aut ternis pluribusve mereantur cingulis non coniunctis e prisca consuetudine, sed absectis atque discrepantibus, detur electio, quem retinendum sibi potius censeant, quem deserendum cognoscant, ut in eo quod optaverint firmiter maneant, eo quod despexerint sine dubitatione reppellantur.

1. In posterum vero nemini prorsus facultas pateat eodem tempore plus quam unius ordinis nomen adfectare, interdicendis in commune cunctis ut dictum est binis pluribusve militiis, nec dignitatem coniungere cuilibet alii cingulo concedendis, ut et qui supplicandum de re vetita nobis existimaverint, poena decem librarum auri pro temeritate quamvis infructuosa plectantur, et qui susceperint iussionem augustam per subreptionem elicitam, quod nonnumquam contingit, decem librarum auri multa feriantur: scriniis etiam nec non officiis, quorum haec intersit, si non restiterint et hanc pragmaticam legem obiecerint, decem librarum auri dispendio puniendis. **1a.** Si quid autem contra haec perpetretur, sciant omnes, quod extra concessum admissum est aut actum fuerit vel notis conscriptum publicis, simile habeatur, ac si nec impetratum nec pronuntiatum omnino nec insertum esset ullis matriculis.

2. Scituris etiam omnibus, qui merentes in ordinibus armatis sive civilibus administrandas provincias seu regendos quoslibet numeros vel iam sunt seu de cetero fuerint iussione nostra sortiti et, ut servetur eis

[2] *Emperors* Diocletian *and* Maximianus *Augusti to Valerius, a soldier.* It is resolved that fraud will avail neither sons of decurions nor anyone else seeking enlistment in the armed military service to escape civil obligations (*civilia munera*).

(285–293).

[3] *Emperors* Arcadius *and* Honorius *Augusti to Pulcher, Master of Both Infantry and Cavalry.* Your Sublimity shall take great care lest bound tenants or (other) farm workers (*coloni vel saltuenses*) are enlisted in the armed military service, either voluntarily or by compulsion.

(395–401).

[4] *Emperor* Leo *Augustus to Dioscorus, Praetorian Prefect (of the East?).* No one belonging to the status of decurions or members of the provincial administration (*curialis vel cohortalis condicio*) may hereafter grasp at a place in the armed military service.

(472–474).

[5] *Emperor* Justin *Augustus to Licinius, Master of Offices.* **pr.** Those to whom permission has heretofore been conceded to serve in two or three or more official positions (*cingula*; lit., belts of office) which are not combined according to ancient custom, but instead separate and distinct, shall now be granted the choice as to which position they prefer to retain and which they want to leave, in order that they might remain in that which they have resolutely chosen and be expelled from that which they have unambiguously rejected.

1. Nor indeed shall anyone hereafter have the ability to seek a post (*nomen*) in more than one department (*ordo*) at the same time, and all alike, as has been said, are forbidden service in two or more places in the imperial service (*militiae*), nor shall anyone be permitted to combine an official position of rank (*dignitas*) with an ordinary official position (*cingulum*), so much so that even those who essay to importune Us on matters herein prohibited shall be punished by a fine of 10 pounds of gold for their temerity, albeit fruitless; and anyone who obtains an imperial order elicited by stealth, as sometimes happens, shall be punished by a fine of 10 pounds of gold. The bureaus (*scrinia*), also, and the official staffs (*officia*) concerned with this law shall, if they fail to resist violations of this pragmatic sanction, be punished by a fine of 10 pounds of gold. **1a.** If any act is done contrary to these provisions, let all take notice that what has been permitted or is transacted or inscribed in public records, contrary to what is legal, shall be considered as though it had neither been sought, proclaimed, nor inscribed at all in any register.

2. Likewise all those in the military or civil service who have heretofore been or shall hereafter be appointed on Our orders to administer provinces or to command soldiers, and who at the same time have received the imperial sanction to retain their position (*gradus*), are notified that an equitable choice

gradus, augusta promeriti sanctione, parem indulgendam sibi licentiam, postquam deposuerint sollicitudinem, aut in priore cingulo protinus persistendi, nullo vindicando titulo dignitatis, quem sollicitudo media praestiterint, aut retinendi splendorem, quem adquisierint administrationis obtentu, verum priore cingulo desistendi. 3. Monente tamen innata nobis clementia liberum esse cunctis prospeximus, si militia, qua decedendum est, inter eas habetur, quas volentibus licet distrahere, et in alios eam conferendi et pretia consequendi, prout in isdem agminibus consuevit hactenus.

4. Excipiendis videlicet nec deducendis in hanc perpetuo conservandam legem pragmaticam eis, qui binas militias simul compositas et sociali nexas consortio fuerint adsecuti, ut in viris dicatissimis scholaribus atque candidatis fieri moris est nec non in viris devotis laterculensibus et pragmaticariis vel a secretis contigit, quos memorialium etiam aut agentum in rebus adornat cingulus, et si qui simili stipendiorum iunguntur copula.

D. VIII k. Ian. Constantinopoli Iustino A. iterum et Opilione conss.

[6] *Imp. Iustinianus A. Menae pp.* **pr.** Super servis, qui postea ad quandam militiam adspirare temptaverint vel scientibus vel ignorantibus dominis, praecipimus, si quidem ignorantibus his eam meruerint, licere dominis adire competentem iudicem et suam ignorantiam eo, quod contrarium minime probatur, ostendere eoque modo spoliatos eos militia in suum dominium trahere: sin vero scientibus his servi militaverint, cadere quidem eos non tantum dominio eorum, sed etiam omni patronatus iure, illos vero ingenuos effectos, si quidem utiles ad militiam eis datam visi fuerint, in ea durare, sin vero minime idonei sint, ea privari.

1. Super illis autem servis, qui iam militarunt et adhuc in eadem militia perseverant, licentiam dominis damus intra triginta dierum spatium ab eo tempore connumerandorum, quo praesens sanctio divulgata fuerit, vel nostram adire clementiam vel competentes iudices et suam innocentiam commendare eosque in suum recipere dominium. 2. Quo tempore transacto simili modo tam dominio quam omni patronatus iure cadere eos necesse est.

D. VIII id. April. Constantinopoli Decio cons.

has been bestowed upon them, once they have discharged their responsibility (*sollicitudo*), either of remaining in their original office (*prius cingulum*) without interruption while disclaiming the title of the official position of rank (*titulus dignitatis*) conferred by the intervening responsibility (*sollicitudo*), or of retaining the splendor which they acquired by reason of their administration while retiring from their original office (*prius cingulum*). 3. Admonished, however, by Our inborn Clemency, We have deemed it best to grant permission that, if the imperial service (*militia*) from which retirement must take place is one of those which may be sold, it may be transferred to another and its price received, just as has been the custom heretofore in such bodies (*agmina*).

4. Excepted herefrom, however, and not to be subjected to this ever-enduring pragmatic sanction, are those who hold multiple offices which are naturally related and joined by a common bond, as is customary among the most obedient imperial guardsmen (*scholares*) and the imperial bodyguard (*candidati*) and happens as well among the devoted registrars (*laterculenses*) and the clerks who compose pragmatic sanctions (*pragmaticarii*) or the confidential secretaries (*a secretis*), whom the belt (*cingulum*) of the clerks of the bureaux (*memoriales*) or of couriers (*agentes in rebes*) adorns, and in the case of anyone whose terms of service (*stipendia*) are closely related.

Given December 25, at Constantinople, in the consulship of Justin Augustus, for the second time, and Opilio (524).

[6] *Emperor* JUSTINIAN *Augustus to Menas, Praetorian Prefect (of the East?).*
pr. As to slaves who shall hereafter attempt to aspire to any position in the imperial service, either with or without the knowledge of their masters, We order that if the former (the slaves) have received the position without the knowledge of the masters, the latter may go before a competent judge and prove their lack of knowledge, and if the contrary is not shown, the slaves shall be despoiled of their position and returned to the ownership of their masters. If the slaves, however, occupy the position with the knowledge of their masters, the latter shall not only lose ownership over the slaves but also all the rights of a patron. The slaves thus rendered free-born shall, if they shall appear to be useful in the service, remain therein, but if unsuitable be deprived thereof.

1. As to slaves who have heretofore occupied and who still occupy positions in the imperial service, We grant permission to the masters within the space of thirty days, reckoned from the time that the present sanction is published, either to come before Our Clemency or to go before competent judges to prove their lack of knowledge and thus to recover ownership over their slaves. 2. After that time has passed, they will be deprived of ownership as well as all the rights of a patron.

Given April 6, at Constantinople, in the consulship of Decius (529).

[7] *Idem A. Iohanni pp.* **pr.** Si quis servum suum dignitatem habere, quemadmodum militiam, fuerit passus, spolietur et dominio servi et iure, quod pervenit ad patronos. **1.** Cui enim ferendum est homines a nostra manu donationes accipientes adhuc inter servos haberi et forte cum suis dominis nostram purpuram adorantes? **2.** In his itaque casibus, in quibus non militia, sed dignitas volentibus dominis servis adquiritur, eadem iura reserventur, quae antea posita sunt, ne videatur nostra sanctio aliquid habere imperfectum.

3. Sciant autem domini ad exemplum praeteritae nostrae constitutionis, quae de huiusmodi servis loquitur, quod, nisi hoc intra triginta dies, ex quo hoc eis fuerit notum, manifestaverint et competentem iudicem adierint et spoliare eos dignitatibus curaverint, dominium eorum et ius patronatus amittant, nobis deliberantibus, postquam dominio fuerint servi liberati et inter ingenuos connumerati, si oportet eos habere dignitatem vel ea quasi indignos spoliari.

D. k. Sept. post consulatum Lampadii et Orestis vv. cc.

[8] *Ὁ αὐτὸς βασιλεύς Φ[λώρῳ κόμητι]||τῶν[θε]ί[ω]ν ἰ[δικῶν.* **pr.** Θεσπ]ί[ζ] ο||μεν .....|| παρα τ...... || .... || ......αιατο || ἢ καὶ πιμο****α**α** κατα || ... ιρ ... ν*υ|| .... || .... || .... ν λαμ||π[ροτατ** τριβουν** νοτα]ριο*||ο...... τοῦ || τριβούν[ο]υ .... νικα||τον .... || ν .... || δι[κ]α****** πραιτ ... || .... || κατα*σ*ω***ν *****ιων** || ἢ ποίαν [στρ]ατείαν ἡγοῖντο, καὶ εἴπερ αἱρετον **** τὴν τοῦ λαμπροτάτου κόμητος μᾶλλον ἀξίαν κεκτῆσθαι καὶ τοῖς συμβόλοις τε περιβλέπτου τριβούνου κεχρῆσθαι, τὴν ἄλλην ἢ ἄλλας τὰς οὔσας αὐτοῖς στρατείας ἀποθέσθαι, μηκέτι τούτων ἢ μιᾶς αὐτῶν ἀντιλαβέσθαι δυναμένων· ἤγουν εἴπερ ἐπὶ τῆς οἰκείας θέλοι διαμένειν στρατείας, τῇ ἀξίᾳ ἧς ἔτυχεν ἀπογορεῦσαι καὶ [τοῖς] ὑπὲρ τοῦ λαμπροτάτου τριβούνου νοταρίου πραιτοριαν[οῦ δεδομένοις] αὐτῷ συμβόλο[ις]. **1.** Ταύτῃ [ο]ὔ[ν] || τῇ εμτρεμ******** θεσπίζομεν μηνῶν εἴσω τριῶν μετὰ | τὸ *ατάμενιιτ *ν

[7] *The same Augustus to John, Praetorian Prefect (of the East).* **pr.** If anyone permits his slave to acquire an official position of rank (*dignitas*), just as in the case of an ordinary position in the imperial service (*militia*), he shall be deprived of ownership of the slave as well as the right that belongs to patrons. **1.** For how can anyone bear that men who receive gifts at Our hands should still be considered slaves and perchance jointly with their masters adore Our purple? **2.** In such cases, therefore, in which slaves have acquired, with the compliance of their masters, not an ordinary position in the imperial service but an official position of rank, the same laws are applicable that have heretofore been enacted, lest Our ordinance appear to contain anything that is imperfect.

3. Let masters therefore take notice, in conformity with Our past constitution which We enacted concerning slaves of this kind, that unless they proceed within thirty days after they have received knowledge of this enactment and go before a competent judge and cause the slaves to be despoiled of their rank, they shall lose ownership of them and the right pertaining to patrons, reserving to Us the right to consider whether, after the slaves have been liberated and are counted among the free-born, it should be proper for them to retain the rank or to be deprived thereof as unworthy.

Given September 1, in the post-consulate of the viri clarissimi *Lampadius and Orestes (531).*

[8][136] *The same Emperor to Florus, Count of the Privy Purse.* **pr.** We ordain that … declare in the proceedings conducted in your tribunal which official position of rank or what position in the imperial service they prefer, and if indeed … they prefer to possess the rank of a Count of *clarissimus* rank and to enjoy the insignia of a tribune of *spectabilis* rank, relinquish another position or positions which they occupy, so that they may claim only one and no more; but if he prefers to remain in his own position in the imperial service, he must renounce the official position of rank acquired, including the insignia conferred upon him as a Praetorian Tribune and notary of *clarissimus* rank. **1.** Therefore … We ordain that within three months after they have been well informed of this Our divine pragmatic sanction, in this imperial city before

[136] The text is badly mutilated. *Bas.* 57.1.45 summarizes the pr. and §1 as follows: "This Greek constitution confirms the (fifth) constitution of this title (i.e., C. 12.33.5), which says that no one may hold two positions in the imperial service at the same time, adding that no one should join another branch of the imperial service and be enrolled as a tribune and notary. (1.) It decrees, however, that everyone shall make a declaration for the official record as to which position in the imperial service or official position of rank he prefers, prescribing a time limit of three months after they have become aware of this ordinance, within which anyone who wishes to do so shall appear before the Count of the Privy Purse in Constantinople or the governors in the provinces and indicate his choice."

**** θεῖον || [ἡμῶ]ν πραγματικὸν νόμον γε||νέσθαι κατὰ ταύτην μὲν τὴν βα||[σιλίδ]α πόλιν παρὰ τῇ σῇ ὑπερο||[χῇ]***ου*οι*ιμενουστ**σ αταυ || .... ιη***κ*τ**ε*ασ*παρ|| κι**ιι*ριι**σ**μ*ιρσι*τ*ι*υ* || .... ν* πάντας τὴν ** || ***νιι***ην φανερὰν κατα||*ιιιο*ιι** εἴτε μίαν τις τῶν ἐξ*ν||των αὐτῷ στρατιῶν ἐπιλεξαν||των *νυ**ον αὐτὸν ἀφίστασθαι πάντως, εἴτε τῆς περιγενομένης ἀπὸ τοῦ λαμπροτάτου κόμητος ἢ καὶ τ[ῶ]ν [δ]ε[δο]μ[έ]ν[ω]ν αὐτ[ῷ] || συμβόλων τοῦ λαμπροτάτου τριβούνου ν[ο]ταρίο[υ] πρ[αιτο]ριανοῦ || μασασ .... γανητα || τραβα .....ατινιαν || ἐπιταχουσ .....ν||δα .... **2.** || .... ε* αυπρει* τ[οῖ]ς λ[α]μπροτάτοις τριβούνοις νοταρίοις πραιτοριανοῖς σιωεινσυσ*** || ** [τ]ὴν οἰκείαν φα[νε]ροῦν μὲν γνώμην εναξιομηνπερ*** || τῆς μὲν στρατείας ἀφαιρεθῆναι, μένουσιν δὲ τοῖς λαμπροτάτοις τριβούνοις νοταρίοις ἡμῶν συναριθμούμενοι, ἤγουν τῷ τὴν ἀξίαν τοῦ λαμπροτάτου κόμητος τοῦ θείου **μενεξο*εινκονοισ || τε***κταντων τῶν ἤδη πεπορισμένων εἰσὶν τῶν θείων πραγμάτων *π**ειενβα****σ**ν* || ναιτε*ε**ντω**τε*οι****α || αετον καὶ τῶν κατὰ ταυιον**κ* || ****στρατεῖαν ἢ στρατείας ... || ... ἀξίας ηνποθεν**ρ.. || *** τριβούνου τὸν ἀριθμου *** || ***σ***βασ*ο .... || ... ενεχ**υ***ε*ναιιαι**ι** || .... Εἰ δὲ συμβαίνοι παραδραμεῖν τὸν χρόνον τοῦτον, κελεύει αὐτούς, εἰ μὲν στρατείας πολλὰς ἔχοιεν, μίαν καὶ μόνην ἔχειν, εἰ δὲ στρατείαν καὶ ἐπιστολὰς τριβούνων νοταρίων, μένειν μόνον τριβούνους, εἰ δὲ στρατείαν καὶ κόμητος ἀξίαν, τὴν μὲν στρατείαν ἀπολλύειν, τὴν δὲ ἀξίαν τοῦ κόμητος τοῦ ὑψηλοῦ βήματος ἔχειν, μηδενὸς πραγματικοῦ τύπου παρὰ τὰ διηγορευμένα μέλλοντος ἰσχύειν. **3.** Ἐάν δέ τις στρατείαν ἔχων ἄρχων ἐπαρχίας γένηται καὶ λάβῃ θεῖον τύπον περὶ τοῦ φυλαχθῆναι αὐτῷ τὸν ἴδιον τόπον, κελεύει ἡ διάταξις τοῦτον τὸν τύπον ἰσχύειν, ἵνα ὁ μὲν στρατείας φυλάττηται τόπος, μηκέτι δὲ κεχρῆσθαι καὶ τῷ ἐκ τῆς ἀρχῆς ὡς εἰκὸς προσγενομένῳ αὐτοῖς ἀξιώματι. **4.** Εἰ δέ τι τοιοῦτο ἐπιχειρίσωσιν ἑκάτερόν τινες ποιεῖν καὶ δύο τυχὸν στρατείαις κεχρῆσθαι, ἑκατέρων ἐκπίπτουσιν. **5.** Ὁρίζει δὲ πρόστιμον εἴκοσι λιτρῶν κατὰ τῶν παραβαινόντων, εἰ καὶ θεῖον τύπον ὡς εἰκὸς προσποριζομένων καὶ ταύτῃ τῇ θείᾳ διατάξει ἐναντιουμένων· ὁμοίως δὲ καὶ κατὰ τῶν ἀρχόντων τῶν τὸν τοιοῦτον θεῖον τύπον προσδεχομένων.

XXXIIII Negotiatores Ne Militent

[1] *Imp. Iustinianus A. Menae pp.* **pr.** Eos, qui vel in hac alma urbe vel in provinciis cuidam ergasterio praesunt, militare de cetero prohibemus, exceptis argenti distractoribus, qui in hac alma urbe negotiantur. **1.** Hos enim utpote omnium contractibus utiles armata quidem militia penitus abstinere sancimus, aliam vero quamcumque sine metu praesentis sanctionis posse sibi adquirere. **2.** Si qui vero negotiatores, quos omni militia prohibuimus, iam militarunt, licentiam eis damus

Your Excellency ... in the provinces before the governors of those provinces, each shall express his preference, and if anyone chooses one of the positions in the imperial service which he occupies he shall entirely relinquish the others, or if the rank of ex-Count of *clarissimus* rank were retained or the insignia bestowed upon him of Praetorian Tribune and notary of *clarissimus* rank ... 2. ... for the Praetorian Tribunes and notaries of *clarissimus* rank ... express his preference ... be deprived of a position in the imperial service, they shall remain however in the corps of Our tribunes and notaries, or for him who the rank of Count of the imperial ... of *clarissimus* rank ...[137] Should this be the case, when this time expires, then (the constitution) directs that if they have several positions in the imperial service they shall retain only one; if they have a position in the imperial service and diplomas as a tribune and notary they shall remain only tribunes; if they have a position and the rank of Count, they shall lose the position and retain the rank of Count of the First Order. No pragmatic order shall prevail against these provisions. 3. If anyone occupying a position in the imperial service becomes governor of a province and has obtained an imperial order preserving for him his seniority (in the service), the constitution bids this order to remain in force, so that while his seniority within the imperial service is preserved for him he cannot enjoy in addition any rank he might possibly receive from his term as provincial governor. 4. If anyone presumes to seek and to enjoy two official positions, he shall lose both. 5. (The constitution) fixed, moreover, a fine of 20 pounds against the violators of this law, even if they produce an imperial order contravening it. A similar fine is imposed on governors who accept such an order.

(531–534).

Thirty-Fourth Title That Merchants Shall Not Hold a Position in the Imperial Service

[1] *Emperor* Justinian *Augustus to Menas, Praetorian Prefect (of the East?).* pr. We prohibit henceforth those who keep any shop in this Generous City (Constantinople) or in the provinces from holding any position in the imperial service (*militia*), excepting the sellers of silver (*argenti distractores*) who carry on their trade in this Generous City. 1. We ordain that the latter, useful as they are in all transactions, shall avoid entirely the armed service (*armata militia*), but that they may acquire any other position in the imperial service without fear of the present law. 2. If any merchants (*negotiatores*) whom We forbid to hold any position in the imperial service are now occupying such a position, We grant them permission to abandon their calling as merchants

[137] What follows is from Bas. 57.1.45.

negotiationem quidem relinquere, militiam vero retinere, scientibus quod, si postea negotiantes appareant, militia privabuntur. 3. Quod et in argenti distractoribus huius almae urbis, si armatam militiam iam sortiti sunt, tenere volumus, ut relicta negotiatione liceat eis in eadem militia durare. 4. Negotiantes etenim post hanc sanctionem huiusmodi militia privabuntur: illis, qui ad armorum structionem suam professionem contulerint, minime prohibendis ad competentem suae professionis venire militiam et huiusmodi negotiationem nihilo minus retinere.

XXXV De Re Militari

[1] *Imp. Antoninus A. Annaeo militi.* Stipendia et donativa temporis, quo apud hostes fuisse te dicis, restitui tibi postliminio regresso restitutoque non iure desideras.

[2] *Idem A. militibus cohortis primae.* Viginti stipendia si implestis, sordida munera militiae vobis non indicentur.

[3] *Idem A. Iuliano.* Milites ignominia missi, cum infamia notantur, nullis honoribus, qui integrae dignitatis hominibus deferri solent, uti possunt. habeant autem morandi ubi velint potestatem, praeterquam in eis locis, quibus specialiter arcentur.

[4] *Imp. Alexander A. Attico.* Defunctorum in desertione bona confiscari divus Marcus et Antoninus pater meus constituit.

[5] *Imp. Gordianus A. Valentino et aliis militibus.* **pr.** Cum adlegatis septem annos in desertione egisse maritum sororis vestrae et indulgentia nostra esse restitutum, non recte desideratis, ut id tempus, ac si in castris fuerit, habeatur. 1. Proinde excepto eo tempore, quod ad desertores pertinet, restitutus nostra indulgentia residuo militare debebit: ideoque nec stipendia temporis, quo in desertione fuerit, exigere poterit.

and to retain their position, in the knowledge that if they should thereafter again become merchants they will be deprived of their position. 3. We want this to apply also to the sellers of silver in this Generous City who have already been enrolled in the armed military service, so that if they abandon their calling as merchants they may remain in that service. 4. Those who become merchants after the enactment of this law will be excluded from positions of this kind. Those whose work, however, consists in the manufacture of arms are not prohibited from service consistent with their profession and may continue to practice their trade.

(528–529).

Thirty-Fifth Title Military Matters

[1] *Emperor* Antoninus *Augustus to Annaeus, a soldier.* You do not rightly ask that the pay and donatives of the period during which you say you were in the hands of the enemy should be reinstated for you once you had returned and recovered your status through the resumption of civil rights (*postliminium*).

(211–213).

[2] *The same Augustus to the soldiers of the First Cohort.* If you have served for twenty years, no menial duties of the service (*sordida munera militiae*) shall be imposed on you.

(211–213).

[3] *The same Augustus to Julian.* Soldiers dismissed in disgrace shall not, because they are branded by infamy, enjoy any honors which are customarily paid to men of spotless standing (*dignitas*). They shall have the ability (*potestas*), however, of living where they desire, except in those places which are specially forbidden them.

(213–217).

[4] *Emperor* Alexander *Augustus to Atticus.* The blessed Marcus and my father Antoninus decreed that the goods of deceased persons who were guilty of desertion should be confiscated.

(222–235).

[5] *Emperor* Gordian *Augustus to Valentinus and other soldiers.* pr. Since you state that the husband of your sister was for seven years a deserter and was restored by Our indulgence, you do not rightly desire that that time should be considered (the same) as if he had lived in camp. 1. Hence after deducting the time of the desertion, the person restored by Our indulgence must perform military service for the remainder of the time. And therefore he will not be able to demand the pay of that time during which he was a deserter.

(238–244).

[6] *Idem A. Bruto militi.* Semel causaria missis militibus instauratio non solet concedi obtentu recuperatae valitudinis melioris, quando non temere dimittantur, nisi quos constet medicis denuntiantibus et iudice competente diligenter etiam investigante vitium contraxisse.

[7] *Idem A. Domno veterano.* Frustra vereris, ne nota, quae propter delictum militare intercessit, existimationem tuam iam veterani laesisse videatur, maxime cum nec ex eo delicto, quod et in paganorum potest cadere personam, notatos milites post missionem placuerit esse famosos.

[8] *Imp. Philippus A. et Philippus C. Maccio.* Causaria missus nulla existimationis macula adspergitur.

[9] *Imp. Constantinus A. Aelio pp.* Si quis barbaris scelerata factione facultatem depraedationis in Romanos dederit, vel si quis alio modo factam diviserit, vivus amburatur.

D. IIII k. Mai. Severo et Rufino conss.

[10] *Imp. Constans A. Titiano pp.* Quicumque militum ex nostra auctoritate familias suas ad se venire meruerint, non amplius quam coniugia liberos, servos etiam de peculio castrensi emptos neque adscriptos censibus ad eosdem excellentia tua dirigi faciat.

D. III k. Iun. Limenio et Catullino conss.

[11] *Imppp. Gratianus, Valentinianus et Theodosius AAA. Cynegio pp.* Tribuni vel milites nullam evagandi per possessiones habeant facultatem: cum signis propriis in mansionibus solitis ac publicis maneant: aut si quis tam necessaria scita contempserit, de eo ac tribuno eius ad nostram scientiam rectorum ac defensorum relationibus protinus referatur, quatenus severissime in eos animadvertatur.

D. IIII id. April. Constantinopoli Ricomere et Clearcho conss.

[6] *The same Augustus to Brutus, a soldier.* Soldiers once dismissed on account of sickness are not usually eligible for reinstatement on the pretence of recovered health, since they are not routinely dismissed unless it clearly appears, after a report from physicians and careful investigation by an appropriate judge, that they have contracted a disease.

(238–244).

[7] *The same Augustus to Domnus, a veteran.* Your fear is groundless that the disgrace incurred on account of a military offense will appear to have harmed your good name now that you are a veteran, especially since it is understood that soldiers disgraced on account of an offense that civilians (*pagani*) are also capable of committing shall not be considered infamous upon their discharge.

(238–244).

[8] *Emperor* PHILIP *Augustus and the Caesar* PHILIP *to Maccius.* A dismissal on account of sickness is not an aspersion on the good name of anyone.

(244–247).

[9][138] *Emperor* CONSTANTINE *Augustus (and the Caesar) to Aeli(an)us, Praetorian Prefect(?).* If anyone by any wicked conspiracy gives opportunity to the barbarians to plunder Romans, or if anyone divides (with them) spoils obtained in any other manner, he shall be burned alive.

Given April 28, in the consulship of Serverus and Rufinus (323).

[10][139] *Emperor* CONSTANS *Augustus to Titianus, Praetorian Prefect (of the Gauls).* Whenever soldiers are permitted by Our order to have their households come to them, Your Excellency will see to it that only their wives and children, as well as slaves purchased out of the military *peculium*, but no enrolled tenants (*adscripti censibus*), are sent to them.

Given May 30, in the consulship of Limenius and Catullinus (349).

[11][140] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Cynegius, Praetorian Prefect (of the East).* The tribunes and the soldiers shall have no opportunity to roam about through private property; they shall remain with their own standards in the customary public encampments. And if anyone shall defy these necessary orders, he and his tribune must immediately be brought to Our attention in the reports of the governors (*rectores*) and defenders (*defensores*), so that the heaviest of punishments may be inflicted on them.

Given April 10, at Constantinople, in the consulship of Richomer and Clearchus (384).

[138] = C.Th. 7.1.1, which includes the Caesar (Constantine II) as an author. Combine with C. 12.42.1 (= C.Th. 7.12.1). The addressee's identity is uncertain.

[139] = C.Th. 7.1.3.

[140] = C.Th. 7.1.12. Combine with C.Th. 8.5.45.

[12] *Imppp. Theodosius Arcadius et Honorius AAA. Ricomeri comiti et magistro utriusque militiae.* Cum supra virentes fluminum ripas omnis legionum multitudo consistit, *id* provida auctoritate decernimus, ut nullus omnino immundo fimo sordidatis fluentis commune poculum polluat, neve abluendo equorum sudore deproperus publicos oculos nudatus incestet, sed procul a cunctorum obtutibus in inferioribus partibus fluviorum hoc ipsum faciat.

D. VI k. Iun. Vincentiae Tatiano et Symmacho conss.

[13] *Impp. Arcadius et Honorius AA. Romuliano pu.* **pr.** Nemo miles ex his, qui praesentes divino obsequio nostrae clementiae deputati sunt et qui in hac esse urbe praesente comitatu concessi sunt quive de aliis numeris vel legionibus sunt, vel sibi vacet vel aliena obsequia sine nutu principali peragere audeat. qui autem in huiusmodi facinore fuerint convicti, militia exuti poenas consentaneas luere compellantur: ii autem, qui in privato obsequio militem retinere fuerint reperti, quinque libris auri multae nomine feriantur. **1.** Sin vero quisquam missus a numero vel a tribuno ad comitatum serenitatis nostrae pervenerit (aliter enim eos hoc facere vetamus), ilico se viris illustribus comitibus, sub quorum regimine constituti sunt, offerre festinet et causas profectionis exponat, ut et responsum caeleste mereatur et citam remeandi accipiat facultatem. **2.** Si quos autem milites per provincias relictis propriis numeris passim vagari praesides earum cognoverint, correptos faciant custodiri, donec de his clementiae nostrae auribus intimetur et, quid fieri oporteat, decernamus.

D. k. Febr. Constantinopoli Honorio A. IIII et Eutychiano conss.

[14] *Idem AA. Stilichoni magistro militum.* **pr.** Contra publicam utilitatem nolumus a numeris ad alios numeros milites nostros transferri. sciant igitur comites vel duces, quibus regendae militiae cura commissa est, non solum de comitatensibus ac palatinis numeris ad alios numeros milites transferri non licere, sed ne ipsis quidem seu de

[12][141] *Emperors* THEODOSIUS, ARCADIUS, *and* HONORIUS *Augusti to Richomer, Count and Master of Both Infantry and Cavalry.* By Our provident authority We order that when the whole multitude of the legions stands on the green banks of the rivers, no one at all shall pollute the common cup by defiling the flowing streams with his foul ordure, nor while he is hastening to wash off the sweat from his horses shall he appear naked and offend the public gaze, but must do this in lower parts of the river away from the sight of everyone.

Given May 27, at Vincentia (Vicenza), in the consulship of Tatianus and Symmachus (391).

[13][142] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Romulianus, City Prefect (of Constantinople).* **pr.** No one of the soldiers who have been assigned to the imperial service (*divinum obsequium*) in the presence of Our Clemency and who have been permitted to be in this City when Our court is here or who belong to other troops and legions shall be at leisure or dare to perform services for others (*aliena obsequia*) without imperial consent. Those who are convicted of such an offense shall be compelled to leave the military (*militia*) and to suffer suitable punishments; and[143] whoever is found to have employed a soldier in his own service (*obsequium*) shall be punished by a fine of 5 pounds of gold. **1.** If a soldier is sent by his troop or by a tribune to the court of Our Serenity – for We forbid them to do this otherwise – he shall proceed at once to present himself to those *viri illustres* Counts to whose commands he is subject and explain the reasons for his mission, in order that he might deserve Our imperial answer and receive immediate permission to return. **2.**[144] If the governors (*praesides*) learn that these soldiers have left their own units and are roaming about in the provinces, they shall cause them to be arrested and guarded until a report about them reaches the ears of Our Clemency and We decide what ought to be done.

Given February 1, at Constantinople, in the consulship of Honorius Augustus, for the fourth time, and Eutychianus (398).

[14][145] *The same Augusti to Stilicho, Master of Soldiers.* **pr.** We do not want Our soldiers to be transferred from one unit to another contrary to the public advantage. Let the Counts and Dukes, therefore, to whom the responsibility of commanding the soldiery is entrusted, take notice that not only is it impermissible for soldiers to be transferred from the field and palatine units (*comitatenses ac palatini numeri*) to other units, but neither has the prerogative

[141] = C.Th. 7.1.13.
[142] = C.Th. 7.1.17 (altered).
[143] This sentence = C.Th. 7.1.15 (altered).
[144] = C.Th. 7.1.16.
[145] = C.Th. 7.1.18.

comitatensibus legionibus seu de riparensibus castricianis ceterisque cuiquam eorum transferendi militem copiam attributam, nisi hoc augusta maiestas publicae utilitatis gratia fieri iusserit: quia honoris augmentum non ambitione, sed labore ad unumquemque convenit devenire. **1.** Quod si qui contra fecerint, per singulos milites singulas auri libras a se noverint exigendas.

D. XIIII k. April. Mediolani Stilichone et Aureliano conss.

[15] *Imp. Leo A. Aspari magistro militum.* **pr.** Milites, qui a re publica armantur et aluntur, solis debent publicis utilitatibus occupari nec agrorum cultui et custodiae animalium vel mercimoniorum quaestui, sed propriae muniis insudare militiae. **1.** Nullam praeterea ex militibus posthac praedictis obsequiis vacare magnitudo tua patiatur, sed frequentes esse in numero suo iubeat, ut armorum quotidiano exercitio ad bella se praeparent. **2.** Quod si quis ex militaribus iudicibus ullos militum tam divinis quam regiis vel privatis domibus ac possessionibus diversisque aliis obsequiis contra interdictum serenitatis nostrae crediderit deputandos, sciat ab eo, qui contra vetitum fecerit, et ab eo, qui ausus accipere militem fuerit, per singulos milites singulas libras auri protinus exigendas.

D. prid. non. Iul. Constantinopoli Leone A. cons.

[16] *Idem A. Dioscoro pp.* Militares viros civiles curas adripere prohibemus, aut si aliquam huiusmodi sollicitudinem forte susceperint, et militia statim et privilegiis omnibus denudari decernimus: formidantibus his motum nostrae serenitatis, qui temeritate saluberrimis statutis obviam ire temptaverint.

[17] *Imp. Zeno A. Marciano magistro militum.* **pr.** Neminem in ullo numero equitum vel peditum vel in quolibet limite sine nostri numinis sacra probatoria in posterum sociari concedimus, consuetudine quae hactenus tenuit antiquata, quae magisteriae potestati vel ducibus probatorias militum facere vel militibus adiungere licentiam tribuebat, ut ii tantum in numeris vel in limitibus militent, qui a nostra divinitate probatorias consequuntur. **1.** Viros autem eminentissimos pro tempore

been accorded to any of them of transferring a soldier from the field legions (*comitatenses legiones*) or from the riparian or the garrison or any other forces (*riparenses castriciani ceterique*), unless Our August Majesty has ordered this to be done for the public good, because an increase in honor should come to each and every one not by corrupt solicitation, but by labor. 1. Those who act to the contrary may know that a pound of gold will be demanded of them for every soldier (so illegally transferred).

Given March 19, at Milan, in the consulship of Stilicho and Aurelianus (400).

[15] *Emperor* Leo *Augustus to Aspar, Master of Soldiers.* **pr.** Soldiers who are armed and sustained by the state should be used only for the public good and not employed in cultivating fields, guarding animals, or seeking profit in trade, but only in the assiduous performance of the duties of their service. 1. Your Greatness shall not hereafter afford soldiers leisure to engage in the aforementioned employments (*obsequia*), but order them to be present in their unit, so that by daily exercise in arms they may prepare themselves for war. 2. But if any military judge (*militaris iudex*) assigns any of the soldiers to imperial, royal, or private households and properties or to employments (*obsequia*) of any other kind contrary to the prohibition of Our Serenity, he shall know that both he who violated the order and the person who dared to receive a soldier will be immediately compelled to pay a pound of gold for each soldier (so received).

Given July 6, at Constantinople, in the consulship of Leo Augustus (458).

[16] *The same Augustus to Dioscorus, Praetorian Prefect (of the East?).* We forbid military officials (*militares viri*) from assuming civil responsibilities; and if they, perchance, have taken any charge of that kind upon themselves, We decree that they shall be immediately dismissed from military service and deprived of all their privileges. Whoever rashly ventures to thwart these most salutary regulations has the displeasure of Our Serenity to fear.

(472–474).

[17][146] *Emperor* Zeno *Augustus to Marcianus, Master of Soldiers.* **pr.** We permit no one hereafter to be enrolled in any unit of cavalry or infantry, or on any frontier, without an imperial certificate of appointment (*probatoria*) from Our Divine Majesty. The custom heretofore in force, which gave the Master of Soldiers (*magisteria potestas*) and the Dukes the right to issue military certificates of appointment or to enlist anyone in the army, is obsolete, so that only persons who have obtained certificates of appointment from Our Divinity may serve in the field units or on the frontiers. 1. It is for the currently serving Most Eminent Masters of Soldiers and the *viri spectabiles* Dukes, if they think

[146] The date is corrected to 474–491.

magistros militum nec non etiam viros spectabiles duces, si supplere numeros pro his qui fatalibus sortibus decrescent necessarium esse putaverint, veritate discussa per suggestionem suam nostrae mansuetudini declarare, qui et quanti et in quo numero vel limite debeant subrogari, ut ita demum, prout nostrae sederit maiestati, divina subnotatione subnixi militiam sortiantur: officio, quod tuae sublimitatis actibus obsecundat, centum librarum auri dispendio feriendo, si ex aliqua parte quae statuit nostra serenitas fuerint violata.

[18] *Imp. Anastasius A. Iohanni magistro militum praesentalium.* **pr.** Tam collatores et provinciales quam fortissimos milites prout oportet gubernari minimeque laesionem aliquam seu dispendium perpeti properantes necessarium esse perspeximus dicatissimos milites, qui de diversis praesentalibus numeris per Orientis partes noscuntur consistere, virorum spectabilium ducum iussionibus oboedire, ut, quidquid emerserit, quod pro communi securitate curandum est, hoc protinus utpote militari praesidio in proximis locis constituto competens possit mereri remedium: ita videlicet, ut etiam agentibus causas tam criminaliter quam civiliter praefati milites iam non apud magnificam magisteriam per Orientem potestatem vel ex sententiis seu praeceptionibus eius, sed per interlocutiones seu dispositiones tam excelsae tuae sedis, sub cuius iurisdictione consistunt, quam eorundem ducum respondeant.

1. Eo scilicet observando, ut ad responsum, qui de officio tuae sublimitatis huc usque ad praedictam magisteriam per Orientem potestatem moris erat destinari, viris spectabilibus ducibus inhaesurus mittatur tam per se quam per adiutores suos eosdem iudices observare et iussiones eorum implere curaturus: licentia ei non deneganda, etiam ad responsum, qui de officio alterius viri excelsi magistri militum praesentalis pro hac nostra dispositione destinatur, in locis, in quibus apparitionis tuae sublimitatis ad responsum non contigerit reperiri, suam sollicitudinem pro emergentibus maxime causis peragere. **1a.** Cuius etiam illi qui de altero officio mittendus est praebemus facultatem, ut non tantum per adiutores suos, id est ad responsum, sed etiam invicem se adiuvando nec publicis nec privatis causis vel exsecutionibus abesse videantur. **1b.** Ad singulos etenim duces ad responsum de apparitionibus vestris non prospeximus oportere destinari, ne per multitudinem eorum qualibet machinatione damna contra milites nostros augeri contingat.

it necessary to replenish units on account of losses sustained through fatalities, to declare in their recommendation to Our Clemency, after investigating the facts, which soldiers ought to be enlisted and how many and in what unit or on what frontier, so that only those who are endorsed by the imperial signature in the manner resolved upon by Our Majesty shall join the military. The official staff that carries out the acts of Your Sublimity will be punished by a fine of 100 pounds of gold if any part of these provisions made by Our Serenity is violated.

(472?).

[18] *Emperor* ANASTASIUS *Augustus to John, Master of Soldiers in the Imperial Presence.* **pr.** Hastening to ensure that taxpayers and provincials, as well as the most stalwart solders, are properly governed and do not suffer any injury or damage, We have deemed it necessary that the most devoted soldiers stationed throughout the Eastern prefecture who are acknowledged to belong to various units under your command (*presentales numeri*) should obey the orders of the *viri spectabiles* Dukes, so that, when anything occurs that requires attention for the common safety, it may immediately receive an appropriate remedy from the garrisons situated in neighboring places. The aforesaid soldiers need not, however, answer those bringing criminal or civil cases in the court of the Magnificent Master of Soldiers in the East on his orders or injunctions (*sententiae seu praeceptiones*), but shall answer only the preliminary orders and judgments (*interlocutiones seu dispositiones*) of the tribunal of Your Highness, under whose jurisdiction they are, and those of their own Dukes (under you).

1. But it is to be observed that the liaison officer (*ad responsum*) heretofore customarily sent from the official staff of Your Sublimity to the aforementioned Master of Soldiers in the East shall henceforth be sent to be attached to the Dukes of *spectabilis* rank and to be concerned, personally as well as through his assistants, to attend these same judges and carry out their orders. We do not, however, deny permission to a liaison officer who is appointed, pursuant to this order of ours, from the staff of another *vir excelsus* Master of Soldiers in the Imperial Presence, to take his own initiative in those cases, most particularly, that may arise in places in which there happens to be no liaison officer from your staff. **1a.** We give the same prerogative also to a liaison officer sent from any other staff, so that a liaison officer may be seen to be present at all public and private cases and judgment proceedings (*exsecutiones*), not only through his own assistants but also by one of them acting as substitute for the other. **1b.** For We have not deemed it best to send a liaison officer from your staff to every Duke, lest by reason of their multitude the injuries to the soldiers might, by some trickery, be increased.

2. Ut autem omnifariam tam publicae commoditati quam fortissimis prospiciatur militibus, sportularum nihilo minus exactionem merito censuimus moderandam. et iubemus nec ipsis ad responsum nec adiutoribus eorum pro criminalibus seu civilibus causis, etsi ex publicis causis descendere vel ad publicam causam pertinere dicantur, licere aliquid plus quam unum solidum a singulis vel nolentibus vel spontanea voluntate offerentibus suscipere militibus, ita ut, si universitas numeri seu principiorum monenda sit, duplicata quantitate tantummodo sportulas accipiant: in his etenim causis nec plures quam duos primates, quorum nomina semel ac primum gestis intervenientibus fuerint publicata, patimur conveniri, syndico videlicet, prout consuetudo deposcit legibusque cautum est, ordinando. **2a.** Hoc quoque adiecto, ut pro omnibus quibuslibet expensis ingressus in iudicio duciano faciendi unum tantum solidum nihilque amplius milites vel syndici litigantes dependere compellantur, ut huiusmodi solacium ad commodum ad responsum et eius adiutor*um* et exceptorum proficiat: nihil sibi usurpare vel suo nomine poscere vel viris devotis principibus, qui ducianum observant iudicium, vel duciana apparitione de praefatis litibus concedendis: ita videlicet, ut super litis expensis in personis etiam eorum, quicumque milites pulsare maluerint, eadem forma servetur.

3. Erit autem arbitrii atque aestimationis virorum spectabilium ducum pro qualitate negotiorum vel quantitate, quae devotissimis militibus ab adversariis eorum ingeritur, vel suam audientiam interponere litigiis vel eorum discussionem dicatissimis principiis seu arbitris in locis degentibus committere.

4. Quibus viris spectabilibus ducibus et eos observantibus ad responsum seu adiutoribus eorum curae sit, si quando ad eosdem duces milites fuerint arcessiti vel de locis in quibus constituti sunt movere praecepti, ne quolibet modo curiales seu collatores quibusdam adficiantur dispendiis, ita scilicet, ut pro militibus inspiciendis, quandocumque voluerint viri spectabiles duces etiam praesentales devotissimos milites adhibere, non immodicam multitudinem eorum tempore pacis convocare procurent. **5.** Sin vero etiam necessitate poscente milites ad alia perveniant loca, laesionibus contra curiales seu collatores nihilo minus modis omnibus abstineant. **5a.** Et si tam eundo quam redeundo triginta tantum dies oportet eos proficisci, ipsi suas expensas sibi praebendas collatoribus seu curialibus minime praegravandis suscipere non cessent: sin autem ulteriore tempore in aliis locis necesse sit eos commorari, expensas eis ulterioris ut dictum est temporis, ad quae pervenerint loca, ministrari.

2. To provide, moreover, in every way for the common good and for the most stalwart soldiers, We have deemed it best also to limit the exaction of fees (*sportulae*). And We order that neither the liaison officers themselves nor their assistants shall in any criminal or civil case, although it is alleged to arise out of or to touch upon a public matter, be permitted to receive more than 1 solidus from each soldier, whether unwillingly or willingly offered; and if the whole of a unit or all of the staff officers (*principia*) are to be summoned, they shall accept only double the amount of fees; for in such cases We allow no more than two of the staff officers (*primates*) to be summoned, the names of whom will first of all have been made public in the record of the proceedings, a representative (*syndicus*) being appointed according to custom and as is provided for by law. **2a.** This, too, is to be added, that the litigating soldiers or their representatives (*syndici*) are obliged to pay only 1 solidus and no more for all expenses involved in going into the ducal court, and this compensation shall inure to the benefit of the liaison officer and his assistants and shorthand writers (*exceptores*); and neither the devoted Chiefs of Staff (*principes*) who serve in the ducal court nor the other members of the ducal staff (*apparitio*) shall be permitted to appropriate for themselves or demand in their own name anything in connection with the aformentioned litigation; the same rules as to expenses of litigation shall, moreover, govern where other persons want to sue soldiers.

3. It will be left to the discretion and judgment of the Dukes of *spectabilis* rank, once they have considered the nature of the claims brought against the most devoted soldiers by their adversaries and the amount involved, whether to hear these cases personally or to refer them to the most devoted Chiefs of Staff (*principes*) or to arbitrators resident in the area.

4. The Dukes of *spectabilis* rank and the liaison officer in attendance on them, or the latter's assistants, shall take care that if soldiers are at any time ordered to present themselves before these aforesaid Dukes, or are directed to move from the places in which they are stationed, the decurions or the taxpayers are not afflicted with any loss; and whenever the Dukes of *spectabilis* rank desire also to summon the most devoted soldiers under the command of the Masters of Soldiers in the Imperial Presence (*presentales*) for the purpose of inspecting the troops, they shall take care not to gather together too great a number in time of peace. **5.** Whenever necessity indeed requires soldiers to go to another place, they must abstain from inflicting injuries in any way upon the decurions and taxpayers. **5a.** And if it takes them only thirty days to go and return they must pay their own expenses and not burden the decurions and taxpayers therewith; but if it is necessary for them to stay in other places longer than that time, their expenses of this so-called extra time shall be paid by the places where they stay.

6. Quoniam vero comperimus quosdam temerario atque iniquo proposito anteriore tempore certos e memoratis militibus tam in iudicio sublimitatis tuae quam apud excelsam magisteriam per Orientem potestatem in accusationem deduxisse et eos eodem tempore ad diversa quoque protraxisse iudicia diversasque super isdem personis isdemque causis et negotiis prolatas fuisse sententias, ne postea nihilo minus tantae contra milites nostros insidiae tantaque confusio querellis, quas eis ingeri contingit, generetur, nemini licere apud sedem magnitudinis tuae accusation*e* contra militem seu milites praesentales deposita conventioneque oblata eundem vel eosdem milites criminaliter seu civiliter per iussionem virorum spectabilium ducum inquietare, antequam negotium ex priore actione prioreque conventione finem legitimum sortiatur. **6a.** Idemque versa vice observari, ut, si quidam miles seu milites praesentales iussione viri spectabilis ducis incusati ac moniti fuerint, licentia denegetur agenti postulationem seu accusationem in iudicio tuae sublimitatis contra eundem militem vel eosdem milites deponere. **6b.** Nec si eundem vel eosdem tam criminaliter quam civiliter obnoxios esse firmaverit, facultatem eidem agenti superesse separatis intentionibus suis pro criminalibus quidem iudicium tuae celsitudinis, pro civilibus autem viri spectabilis ducis seu versa vice occupare.

7. Si quis vero ad huiusmodi tam audacissimum tamque aequitati contrarium conamen prosiluerit, eum pro pecuniariis quidem negotiis iactura litis et damnorum quae vitio eius contigerunt solutione percelli, pro criminalibus autem quasi calumniatorem convictum legum aculeos sentire.

8. Dispositiones autem ante latas non ad imminuendam potestatem magisteriae per orientem administrationis, sed pro tuitione locorum ac securitate publica noscimur praestitisse, cum non dubium sit ipsos etiam duces, quibus fortissimi praesentales milites parere praecepti sunt, sub eadem excelsa potestate esse constitutos.

D. k. Ian. Constantinopoli Anastasio A. et Rufo conss.

XXXVI De Castrensi Peculio Militum et Praefectianorum

[1] *Imp. Alexander A. Prisciano.* **pr.** Si in potestate tua filius tuus fuit eo tempore, quo quaedam nomine eius emisti, ea tua esse non dubitatur.

6. We have discovered that formerly some persons audaciously and with a wicked purpose sued some of the aforementioned soldiers in the tribunal of Your Sublimity and before the Exalted Master of Soldiers in the East, and at the same time have haled them into other tribunals, and hence several judgments were rendered against the same persons in the same cases and claims. In order that hereafter no such snares can be set for Our soldiers and no such confusion arise in connection with complaints brought against them, no one is permitted, once an accusation has been lodged before the tribunal Your Greatness against a soldier or soldiers under your command (*praesentales*) and a summons has been issued, to sue the same soldier or soldiers criminally or civilly by the order of the Dukes of *spectabilis* rank until the claim involved in the prior action and summons has been properly concluded. **6a.** So conversely it must be observed that, if any soldier or soldiers under the command of the Master of Soldiers in the Imperial Presence (*praesentales*) have been accused and summoned by order of a Duke of *spectabilis* rank, permission is denied to anyone seeking to lodge a complaint (*postulatio seu accusatio*) in the tribunal of Your Sublimity against the same soldier or soldiers. **6b.** And if the complainant affirms that the same soldier or soldiers are liable criminally as well as civilly, he shall have no prerogative to separate the charges and use the tribunal of Your Highness in the criminal case and that of the Duke of *spectabilis* rank for the civil case, or vice versa.

7. And if anyone shall most rashly and inequitably attempt anything of the kind, he shall, in a civil case, be smitten with the loss of his suit and payment of the damages caused by his offense, and, in a criminal case, feel the stings of the law as if convicted as a false accuser.

8. We know that the foregoing arrangements have been made not to diminish the power of the office of the Master of Soldiers in the East, but for the protection of places and for the public safety, since it is clear that the Dukes themselves, whom the most stalwart soldiers under the command of the Master of Soldiers in the Imperial Presence (*praesentales*) are directed to obey, are subject to that same exalted office (*potestas*; i.e., that of the Master of Soldiers in the East).

Given January 1, at Constantinople, in the consulship of Anastasius Augustus and Rufus (492).

Thirty-Sixth Title The Military *Peculium* of Soldiers and of the Staff of the Praetorian Prefecture[147]

[1] *Emperor* ALEXANDER *Augustus to Priscianus.* **pr.** If your son was in your (paternal) power at a time when you bought property on his account, it is clear

[147] See D. 49.17.

1. Peculio autem castrensi cedunt res mobiles, quae eunti in militiam a patre vel a matre aliisve propinquis vel amicis donatae sunt, item quae in castris per occasionem militiae quaeruntur. 2. In quibus sunt etiam hereditates eorum, qui non alias noti esse potuerunt nisi per militiae occasionem, etiamsi res immobiles in his erunt. 3. Matris autem hereditas, quamvis in militia delata sit, ad peculium castrense non pertinet. 4. In castrensi vero peculio praedium donatum non esse constat, quamvis empta ex castrensi peculio praedia eius condicionis efficiantur.

PP. id. Nov. Maximo II et Aeliano conss.

[2] *Idem A. Felici.* Filius familias alienationem nullius rei sine voluntate patris habet, nisi si castrensi peculium habeat.

PP. VIII k. Iul. Iuliano et Crispino conss.

[3] *Idem A. Feliciano militi.* Errat, qui tibi persuasit, quod nexu paternae potestatis iure sacramenti solutus es. manent enim nihilo minus milites in potestate parentium, sed peculium castrense proprium habent nec in eo ius ullum patris est.

PP. III id. Oct. Iuliano et Crispino conss.

[4] *Imp. Gordianus A. Gallo militi.* pr. Cum adlegas te a fratre tuo eodemque commilitone in isdem castris institutum heredem, successionem eius potius ex castrensi peculio tuo quam patri cuius in potestate es per te quaesitam videri rationis est. 1. Etenim peregrinationis labor sociatus commilitii eius et obeundorum munerum consortium adfectioni fraternae nonnihilum addidisse, quin immo vice mutua cariores invicem sibi reddidisse credendum est.

[5] *Impp. Diocletianus et Maximianus AA. et CC. Philostrato.* Intellegis filio qui militavit defuncto peculium eius penes patrem remansisse, non hereditatem patri quaesitam.

that it belongs to you. 1. Movable property, however, which was given to a person enlisting in military service by his father, mother, relatives or friends, and the things acquired in camp by reason of the service are part of his military *peculium*. 2. In this class also belong inheritances from parties with whom he could not have become acquainted except through the opportunity afforded by military service, even if immovable property will be part of it. 3. But an inheritance from his mother, although acquired during service, is not part of the military *peculium*. 4. And it is clear that a landed estate received as a gift is not part of the military *peculium*, although estates bought out of the military *peculium* are accorded this status.

Posted November 13, in the consulship of Maximus, for the second time, and Aelianus (223).

[2] *The same Augustus to Felix.* A son in his father's power has no right to alienate any property without the consent of his father, except when he has a military *peculium*.

Posted June 24, in the consulship of Julian and Crispinus (224).

[3] *The same Augustus to Felicianus, a soldier.* He errs who persuaded you that you were freed from the bond of paternal power when you took your oath (as a soldier). Soldiers remain under paternal power nonetheless, but they have the military *peculium* as their own, over which the father has no control.

Posted October 13, in the consulship of Julian and Crispinus (224).

[4] *Emperor* GORDIAN *Augustus to Gallus, a soldier.* pr. Since you claim that you were appointed as heir by your brother, your military comrade in the same camp, it seems reasonable that you acquired the inheritance rather out of your military *peculium* than for the benefit of your father in whose power you are. 1. And indeed it is plausible that the shared effort of marches, his comradeship in the service, and cooperation in the performance of duties not only added to his brotherly affection, but also made each mutually dearer to the other.

(238–241).

[5] *Emperors* DIOCLETIAN *and* MAXIMIANUS *Augusti and the Caesars to Philostratus.* You understand that when a son in military service dies, his *peculium* remains in control of the father; it is not acquired by the latter as an inheritance.

(293–305).

[6] *Impp. Theodosius et Valentinianus AA. Zoilo pp.* Ius castrensis peculii tam scriniarios quam exceptores ceterosque, qui in officio tui culminis merendi licentiam habere noscuntur, ac si in legione prima adiutrice nostra militent, inviolatum habere praecipimus.

XXXVII De Erogatione Militaris Annonae

[1] *Imp. Constantius A. et Iulianus C. Helpidio pp.* Repetita consuetudo monstravit expeditionis tempore buccellatum ac panem, vinum quoque atque acetum, sed et lardum, carnem vervecinam etiam milites nostros ita solere percipere: biduo buccellatum. tertio die panem: uno die vinum, alio die acetum: uno die lardum, biduo carnem vervecinam.

D. XVI k. Iun. Hierapoli Constantio X et Iuliano C. III conss.

[2] *Impp. Valentinianus et Valens AA. Secundo pp. E* vicesimo, non amplius, lapide milites sibi iubemus paleas convectare.

D. V k. Oct. Edessa Ioviano et Varroniano conss.

[3] *Idem AA. ad Victorem magistrum militum.* Cenaticorum nomine milites et eorum superstantes nihil penitus a provincialibus accipere audeant. sciant enim milites, quod oportet eos commoda sua, quae in annonarum perceptione adipiscuntur, accipientes extrinsecus detrimentis provinciales non adficere.

D. VI k. Ian. Bonamansione divo Ioviano et Varroniano conss.

[4] *Idem AA. et Gratianus A. ad Auxonium pp.* Sicut fieri per omnes limites salubri prospectione praecipimus, species annonarias vicinioribus limitibus a provincialibus ordinabis ad castra conferri. sed in veteranis castris constituti milites duas alimoniarum partes ibidem

[6][148] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Zoilus, Praetorian Prefect (of the East).* We direct that the bureau employees (*scriniarii*), as well as the shorthand writers (*exceptores*) and others, who are known to have permission to serve on the staff of Your Highness, have the undiminished right to a military *peculium*, just as they they serve in Our First Assistant Legion (*Legio I Adiutrix*).

(444).

Thirty-Seventh Title Distribution of Military Provisions

[1][149] *The Emperor* CONSTANTIUS *Augustus and the Caesar* JULIAN *to Helpidius, Praetorian Prefect (of the East).* Established practice has shown that Our soldiers while on an expedition receive hard biscuits and bread, wine also and sour wine, as well as pork and mutton as follows: biscuits for two days, bread on the third day; wine on one day, sour wine on the other; pork for one day, mutton for two days.

Given May 17, at Hierapolis, in the consulship of Constantius Augustus, for the tenth time, and the Caesar Julian, for the third time (360).

[2][150] *Emperors* VALENTINIAN *and* VALENS *Augusti to Secundus, Praetorian Prefect (of the East).* We order that soldiers shall gather their fodder (*paleae*) from as far away as the twentieth milestone and no farther.

Given September 27, at Edessa, in the consulship of Jovianus and Varronianus (364).

[3][151] *The same Augusti to Victor, Master of Soldiers.* Soldiers and their superiors must not dare to receive anything from the provincials on the pretext that it is commutation money for rations (*cenatica*). Indeed, soldiers should realize that they, receiving their pay (*commoda sua*), which they acquire in the receipt of provisions (*annonae*), must not subject provincials to inappropriate burdens.

Given December 27, at Bonamansio, in the consulship of the blessed Jovianus and Varronianus (364).

[4][152] *The same Augusti and the Emperor* GRATIAN *Augustus to Auxonius, Praetorian Prefect (of the East).* You will order provisions in kind (*species annonariae*) to be brought to the camps by the provincials nearest the frontiers, just as We in Our beneficial foresight have directed to be done on all frontiers. Soldiers stationed in veteran camps may take two-thirds of their

[148] Combine with C. 12.52.3. Seeck gives February 26, 444.
[149] = C.Th. 7.4.6. Seeck gives December 17, 360.
[150] = C.Th. 7.4.9. Probably issued in 363, while Jovian was emperor.
[151] = C.Th. 7.4.12. The date is probably May 27 (Seeck).
[152] = C.Th. 7.4.15.

de conditis sumant nec amplius quam tertiam partem ipsi vehere cogantur.

D. v non. Mai. Marcianopoli Valentiniano np. et Victore conss.

[5] *Idem AAA. ad Probum pp.* Actuarii nisi expleto triginta dierum spatio pittacia authentica confestim tradiderint, species, quas ex fiscalibus conditis dissimulaverint excludere vel numero cuius ratiocinia pertractant supersederint erogare, de propriis facultatibus vel militibus ipsis vel fiscalibus horreis adigantur inferre.

D. vi id. April. Sirmio Valentiniano et Valente AA. conss.

[6] *Imppp. Valens Gratianus et Valentinianus AAA. ad Modestum pp.* Fortissimi ac devotissimi milites annonas et capita singulis diebus aut certe competenti tempore, id est priusquam annus elabatur, de horreis consequantur: aut si perceptionem suam ac si debitam studio voluerint protelare, id, quod competenti tempore minime perceperint, fisci nostri commodis vindicetur.

D. prid. non. April. Antiochiae Gratiano A. IIII et Merobaude vc. conss.

[7] *Imppp. Valentinianus Theodosius et Arcadius AAA. Rufino pp.* Nulli militarium pro his annonis, quae in provinciis delegantur, repudiata ad tempus specierum copia et inopiae occasione captata pretia liceat postulare: ita ut, si quis propter anni abundantiam suscipere oblata neglexerit ac postea impositis pro necessitate rerum pretiis repudiata taxaverit, neque id quod contra hanc legem expetit sinatur exigere, neque id quod accipere dissimulaverit consequatur.

D. III k. Aug. Constantinopoli Theodosio A. III et Abundantio vc. conss.

[8] *Impp. Arcadius et Honorius AA. Hilario pp.* Provincialium commodis nos convenit subvenire. ad omnium itaque numerorum sive vexillationum aut etiam scholarum tribunos vel viros illustres comites

allowances from storehouses there, and they shall not be compelled to haul more than one-third themselves.

Given May 3, at Marcianopolis, in the consulship of Valentinian, Most Noble Boy, and Victor (369).

[5][153] *The same Augusti to Probus, Praetorian Prefect (of Italy, Africa, and Illyricum).* Unless the quartermasters (*actuarii*) deliver their original warrants (*pittacia*) immediately at the expiration of thirty days, they must make good from their own property, either to the soldiers themselves or to the state storehouses, the supplies which they neglected to draw from the state stores or failed to issue to the unit (*numerus*) whose accounts they keep.

Given (posted?) April 8, at Sirmium, in the consulship of Valentinian and Valens, Augusti (368, 370, or 373).

[6][154] *Emperors* VALENS, GRATIAN, *and* VALENTINIAN *Augusti to Modestus, Praetorian Prefect (of the East).* Our most stalwart and devoted soldiers shall obtain their own provisions and fodder for their horses from the storehouses each day, or at least within the proper time, that is, before the expiration of the year; and if they intentionally delay to take what is due them, the supplies not taken at the proper time shall become the property of Our Treasury.

Given April 4, at Antioch, in the consulship of Gratian Augustus, for the fourth time, and the vir clarissimus *Merobaudes (377).*

[7][155] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Rufinus, Praetorian Prefect (of the East).* No one of the military officials (*militares*), upon declining to receive the provisions levied in the provinces at a time when there is an abundance of supplies, shall be permitted to take advantage of a period of scarcity by demanding their monetary value. Accordingly, if anyone neglects to accept the provisions allocated to him on account of abundance during the year and subsequently values the property previously rejected at a price fixed by the scarcity of the times, he shall not be allowed to collect what he demands contrary to this law, nor shall he receive what he previously failed to accept.

Given July 30, at Constantinople, in the consulship of Theodosius Augustus, for the third time, and the vir clarissimus *Abundantius (393).*

[8][156] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Hilarius, Praetorian Prefect (of the Gauls?).* It is right for Us to look after the interests of the provincials. Your Sublimity will therefore notify the tribunes of all the military units or cavalry

[153] = C.Th. 7.4.16. The date and other details in the subscription are uncertain; Seeck gives April 8, 368, Schmidt-Hofner thought it was received or posted April 8, 370 or 373.

[154] = C.Th. 7.4.17.

[155] = C.Th. 7.4.20; possibly combine with C.Th. 5.14.33.

[156] = C.Th. 7.4.23.

sublimitas tua faciat pervenire, ut meminerint fenum militibus iustis capitibus praestandum iuxta legem divi Valentiniani nec tamen ad oppidum deferendum.

D. XVI k. Iul. Arcadio IIII et Honorio III AA. conss.

[9] *Idem AA.* **pr.** Excellentia tua erogationis per susceptores factae modum quantitate brevium conferri perficiat, ita ut, quo die numeris datum sit, diligentius exploretur ac, si quid amplius actuarios vel optiones accepisse constiterit, quam brevium datorum scriniis nostris veritas continet, memorati in duplum reddere compellantur: susceptoribus ea summa imputanda, quam semel flagitantibus eisdem erogasse monstraverint. **1.** Nam ad illustres quoque magistros utriusque militiae sacri apices cucurrerunt, quibus provida sanctione decrevimus, ut breves ante indictionis principium summa fide ac veritate confecti ad nostra scrinia dirigantur, secundum quos a susceptoribus erogatio celebretur.

D. VIII k. April. Constantinopoli Honorio A. IIII et Eutychiano vc. conss.

[10] *Idem AA. Eutychiano pp.* Iubemus per omnes provincias cunctis numeris ac militibus a Novembri mense de novello vino annonam dari, quoniam veteris dispendiosa videtur erogatio.

D. X k. Iun. Constantinopoli Honorio A. IIII et Eutychiano vc. conss.

[11] *Idem AA. provincialibus provinciae proconsularis.* Opinatoribus, id est exactoribus militaris annonae, nullum sit cum provinciali commercium, ita ut a iudicibus vel officio provinciali omnis summa debiti postuletur intra anni spatium conferenda.

D. prid. k. April. Mediolani Vincentio et Fravito conss.

squadrons (*numeri sive vexillationes*) as well as those of the imperial guard (*scholae*) or the Counts of *illustris* rank to remember that hay is to be furnished to the soldiers for the proper fodder allotments (*iustis capitibus*) according to the law of Valentinian of blessed memory[157] and is not to be hauled to town.

Given June 16, in the consulship of Arcadius, for the fourth time, and Honorius, for the third time, Augusti (396).

[9][158] *The same Augusti.* **pr.** Your Excellency will cause the amount of distribution made by the tax receivers (*susceptores*) to be compared with the quantity stated in the registers (*breves*); accordingly, on the day on which distribution has been made to the military units (*numeri*) a careful examination must take place, and if it appears that the senior or junior quartermasters (*actuarii vel optiones*) have received more than the value recorded in the registers submitted to Our bureaux, the aforementioned persons shall be compelled to return twice the amount, while the tax receivers shall be credited with the amount which they document as having been distributed upon demand of the aforementioned quartermasters. **1.** For imperial orders have also gone out to the Masters of Both Infantry and Cavalry of *illustris* rank, in which We by Our prescient ordinance have ordered that registers made with the greatest fidelity and accuracy should be sent to Our bureaux before the beginning of the tax cycle (*indictio*), in conformity with which distribution should be made by the tax receivers.

Given March 25, at Constantinople, in the consulship of Honorius Augustus, for the fourth time, and the vir clarissimus *Eutychianus (398).*

[10][159] *The same Augusti to Eutychianus, Praetorian Prefect (of the East).* We order that from the month of November new wine shall be supplied as a provision (*annona*) to all military units (*numeri*) and soldiers throughout the provinces, since distribution of old wine appears to be expensive.

Given May 23, at Constantinople, in the consulship of Honorius Augustus, for the fourth time, and the vir clarissimus *Eutychianus (398).*

[11][160] *The same Augusti to the provincials of the province of Proconsularis.* The military tax officers (*opinatores*), that is to say, those who draw upon the taxes levied for military provisions (*exactores militaris annonae*) shall have no dealings with the provincials; accordingly, the whole amount of the sum due to be collected within the space of a year shall be demanded by the governors (*iudices*) or the provincial official staff (*officium*).

Given March 31, at Milan, in the consulship of Vincentius and Fravitus (401).

157 This law is not extant.
158 = C.Th. 7.4.24.
159 = C.Th. 7.4.25 (altered).
160 = C.Th. 7.4.26. Combine with C.Th. 8.5.63, 11.1.29; compare C.Th. 11.5.1.

[12] *Idem AA. et Theodosius A. Anthemio pp.* Septem dierum, per quas tribuni emolumenti gratia sollemniter stillaturae nomine consequuntur resistentes species, non aliter adaerentur, nisi ut in foro rerum venalium distrahuntur.

D. v id. April. Constantinopoli Arcadio A. vi et Probo vc. conss.

[13] *Idem AA. Anthemio pp.* Lege repetita censemus, ut, si quis militum interclusam specierum exactionem refricare temptaverit vel adaerationes statutas ausus fuerit immutare, tam vir spectabilis dux centum librarum auri quam etiam eius officium pari condemnationis summa quatiatur, adiecta sacrilegii poena, quae divalium scitorum violatores palam insequitur.

D. x k. April. Constantinopoli Honorio viii et Theodosio iii AA. conss.

[14] *Idem AA. Constantio magistro militum.* His scholaribus, quibus laborum intuitu regendos numeros dederimus, de aerariis annonis singulos solidos per opinatores, caballationis quoque rationem pro administrato tempore debitam, quando militibus erogatur, sine mora praeberi oportet vel, si quis eorum antequam accipiat in fata concesserit, quod ex utraque causa ei debebatur, heredibus eius restituti.

D. xiii k. Dec. Constantio et Constante vv. cc. conss.

[15] *Idem AA. Asclepiodoto pp.* Annonas omnes, quae universis officiis atque sacri palatii ministeriis et sacris scriniis ceterisque cunctarum adminiculis dignitatum adsolent delegari, quasque ii, qui ad earum exactionem mittuntur, pro cupiditate et libidine sua graviter ex provincialium visceribus eruebant, ad similitudinem militum, quibus aerariae praebentur annonae, adaerari praecipimus, ut omnibus superius

[12][161] *The same Augusti and* THEODOSIUS *Augustus to Anthemius, Praetorian Prefect (of the East).* The seven-days' reserve of provisions in kind (*septem dierum resistentes species*), which the tribunes are accustomed to receive as a perquisite under the name of *stillatura* ("drippings, droppings"; also *stellatura*), shall not be commuted into cash at a valuation other than that of the goods in the open market.

Given April 9, at Constantinople, in the consulship of Arcadius Augustus, for the sixth time, and the vir clarissimus *Probus (406).*

[13][162] *The same Augusti to Anthemius, Praetorian Prefect (of the East).* We reiterate with the present law that if any soldier shall attempt to press again the prohibited demand for provisions in kind or shall dare to alter the fixed rates of commuting provisions in kind into cash, the *vir spectabilis* Duke shall be discomposed by a fine of 100 pounds of gold, and his staff shall meet with a like condemnation, in addition to the punishment for sacrilege which clearly follows the violators of imperial orders.

Given March 23, at Constantinople, in the consulship of Honorius, for the eighth time, and Theodosius, for the third time, Augusti (409).

[14][163] *The same Augusti to Constantius, Master of Soldiers.* It is proper that those imperial guardsmen (*scholares*) whom, in view of their labors, We place in command of military units shall without delay receive through the military tax officers (*opinatores*), whenever a distribution is made to the soldiers, 1 solidus from cash provisions (*aerariae annonae*) and also the amount of the fodder allowance for their horses (*caballatio*) due them in accordance with the length of time of their administration, and if any of them shall meet his fate before receiving payment, the amount due from either source shall be paid to his heirs.

Given November 19, in the consulship of the viri clarissimi *Constantius and Constans (414).*

[15][164] *The same Augusti to Asclepiodotus, Praetorian Prefect (of the East).* We decree that all provisions (*annonae*) usually assigned to all of the official staffs (*officia*) and the departments (*ministeria*) of the imperial palace and the imperial bureaus (*sacra scrinia*) and the other functionaries (*adminicula*) of every position of rank (*dignitates*), which those sent to collect them have on account of their own greed and lack of restraint been rooting brutally out of the vitals of the provincials, shall, by analogy with the soldiers who are provided with cash provisions (*aerariae annonae*), be commuted into cash; therefore let a directive

161 = C.Th. 7.4.28.
162 = C.Th. 7.4.30.
163 = C.Th. 7.4.34.
164 = C.Th. 7.4.35. Combine with C. 11.75.4 (= C.Th. 15.3.6).

designatis emolumenta debita in pretiis dispositio culminis tui pro publica utilitate taxatis praecipiat erogari.

D. XVI k. Mart. Constantinopoli Asclepiodoto et Mariniano conss.

[16] *Imp. Anastasius A. Longino magistro equitum ac peditum.* **pr.** Per hanc divinam dispositionem iubemus eos, quibus ex officio tuae sublimitatis militarium meritorum seu cuiuslibet praestationis committitur erogatio, in primis iurare pro iustitiae ratione iniunctam sibi sollicitudinem peracturos.

1. Et secundum praesentem saluberrimae nostrae dispositionis observationem solacium, sicut dictum est, publicum erogator manu sua sine ullo dolo vel fraude singulis militibus numeret, quatenus unusquisque miles accepto per suam manum solacio ipse cum actuario de negotiatione actuariis permissa secundum rationem agat iustitiae. **1a.** Hoc videlicet observando, ut pro singulis solidis actuario, sive statim sive post unum duosve seu amplius annos restitutum fuerit debitum, minus quidem uno tremisse, pro temporis scilicet brevitate, pacisci liceat. **1b.** Amplius autem quam unum tremissem nullus actuarius pro quoquo tempore seu annorum spatio pacisci penitus permittatur, nec ulla possit actuarius machinatione pro temporis prolixitate unius quantitatem tremissis excedere. **1c.** Si qua tamen inter actuarium et militem super pactione seu negotiatione tempore erogationis emerserit dubitatio, iubemus eidem militi dandas pecunias ab erogatore principiis dari et non secundum obtinentem hactenus consuetudinem easdem pecunias vel ab erogatore vel ab actuario retineri, quatenus causa apud devotissima principia propositis sacrosanctis scripturis inter actuarium et militem tractetur, ut ex omni parte miles nullum damnum sub quacumque occasione praeterquam id, quod eum ex iusta et permissa actuariis negotiatione debere constiterit, patiatur.

2. Super his vero, quos datis forte commeatibus abesse contigerit, haec volumus observari, ut pecuniae quae erogandae sunt usque ad triginta milites, quos tantummodo datis commeatibus dimitti sacra constitutio continet, apud devotissima principia sequestrentur, illorum scilicet tantummodo militum, quorum intra triginta commeatales viros constitutorum actuarius tempore erogationis pittacia utpote habita super pactione protulerit, quatenus, cum idem redierint milites, causa apud devotissima principia secundum praefatum modum tractata utriusque partis indemnitati similiter consuletur: non danda pro tempore tribuno licentia triginta viris amplius sub

of Your Highness require that the emoluments due to the above-mentioned persons shall be paid in money valued in accord with the public good.

Given February 14, at Constantinople, in the consulship of Asclepiodotus and Marinianus (423).

[16] *Emperor* Anastasius *Augustus to Longinus, Master of the Cavalry and Infantry.* By this imperial order We direct that the members of the official staff of Your Sublimity to whom the distribution of military benefits (*militaria merita*) or any other payment (*praestatio*) is committed shall first swear that they will execute the charge enjoined upon them in accordance with the principle of justice.

1. And the paymaster (*erogator*) shall, pursuant to attentive compliance with Our most beneficent order, as has been said, count out the public remuneration to each soldier with his own hand and without any deceit or fraud, so that each soldier may, when he has received his pay with his own hand, act in accordance with the principle of justice in transactions with the quartermaster (*actuarius*) in which the latter is permitted to engage. **1a.** And this, too, is to be observed, that the quartermaster is permitted, whether the debt is paid immediately or in a year or in two or more years, to bargain for interest at less than 1 tremissis per solidus (33⅓ percent) in proportion to the shortness of time. **1b.** But no quartermaster is permitted to bargain for more than 1 tremissis for any length of time or period of years whatever, and he cannot exceed the amount of 1 tremissis by any trickery on account of any length of time. **1c.** If at the time of the distribution of pay a dispute arises between the quartermaster and the soldier as to an agreement or transaction, We order the money due to the soldier to be given by the paymaster to the staff officers of the unit (*principia*) and not, in accordance with past custom, retained by the paymaster or the quartermaster, in order that the dispute between the quartermaster and the soldier may, with the holy scriptures placed before them, be investigated by the most devoted staff officers of the unit, and the soldier may not in any way be compelled under any pretext to pay anything except the amount that it is determined he owes pursuant to a just and permissible transaction with the quartermaster.

2. In the case of those who happen to be away on leave of absence, We desire these procedures to be observed: namely, that that the money to be paid to the thirty soldiers whom (this) imperial constitution permits to be sent away on leave of absence shall be deposited with the most devoted staff officers of the unit, it being the money, obviously, of only those soldiers for whom, having been included among the thirty men granted leave, the bookkeeper produced records (*pittacia*) at the time of payment concerning the agreement that was made, so that, when these soldiers return, the interests of both parties may be protected upon investigation of the case before the most devoted staff officers of the unit in the manner above set forth. No permission is to be given to the

commeatus occasione dimittere. **3.** Sin vero saluberrimam constitutionem offendendo amplius quam triginta viros datis commeatibus tribunus dimittere ausus fuerit, pecunias quidem, quae post praefatorum triginta virorum numerum per commeatus dimissis militibus erogandae fuerant, publicae rationi erogator non dubitet reportandas. **4.** Sciat vero tribunus praeter iam constitutas super huiusmodi facinore interminationes sese de propriis facultatibus singulis militibus, quibus ultra numerum triginta virorum sub nomine commeatuum eos dimittendo causam non consequendi publica solacia dederit, quidquid ob iniquam dimissionem amiserint, soluturum. **4a.** Nec prius idem tribunus ab eodem discedat numero, nisi omnes huiusmodi milites, id est quos post permissam triginta virorum quantitatem commeatus nomine dimiserit, indemnes in hac parte atque illaesos reddiderit. **5.** Hoc etiam adiciendo, ut sub gestorum testificatione tam decem ex devotissimis principiis, primates eorum videlicet, quam unusquisque caput scholae iuratus deponat, sub sua praesentia rem sicut superius dispositum est fuisse subsecutam, et sub obtutibus suis unumquemque militem solacium suum manu sua ab erogatoris dextera suscepisse: et huiusmodi gesta relatione a viro clarissimo tribuno vel devotissimis principiis intra tres menses mittenda, ex quo profectus fuerit, numerandos ad nostram referat pietatem. **6.** Hoc videlicet ante omnia curando, ut pro tempore erogator, postquam datae fuerint ex publico pecuniae, intra duos vel tres menses seu quattuor, pro qualitate scilicet spatiorum, commissam sibi sollicitudinem erogationis non dubitet faciendam: vel si ulterius apud se pecunias publicas differendo erogationem ausus fuerit retinere, sciat se modis omnibus damnum, quod ex negotiatione miles sustinuerit, ex propriis facultatibus militi soluturum.

7. Scientibus his, qui praefatae dispositionis observantiam sive in differenda ultra sigillatim definitum temporis spatium erogatione sive in qualibet alia parte fuerint egressi, non solum sese militiae cinguli amissionem, verum etiam facultatum quoque suarum publicationem pro tanto subituros flagitio: et insuper erogationum quoque sollicitudinem ab officio tuae celsitudinis, si imperatoria violata fuerit dispositio, ad alios transferendam, si non idem officium, simulac huiusmodi fuerit a quolibet facinus perpetratum, ad notitiam nostrae mansuetudinis vel certe ad scientiam illustrissimae magisteriae referre curaverit potestatis, ut eiusdem apparitionis periculo tale flagitium principales minime possit aures latere, quatenus ex omni parte eodem delicto revelato, quicumque saluberrimas nostrae pietatis ordinationes ausus

then-serving tribune to send away more than thirty men on leave of absence. **3.** But if the tribune shall dare to send away more than thirty men on leave of absence, contrary to this most beneficial constitution, then the paymaster should not hesitate to return to the public Treasury the money which was to be paid to men sent away on leave in excess of the aforementioned number of thirty. **4.** And the tribune should realize that aside from the punishments already fixed for such offenses, he must from his own means pay to every soldier above the number of thirty, whom he has caused to lose their regular pay by sending them away on leave of absence, whatever they may have lost by reason of such unlawful leave of absence. **4a.** Nor shall the tribune leave that same unit until he has in this respect indemnified and made whole all the soldiers of this kind, that is to say, those whom he sent away on leave of absence beyond the permitted number of thirty. **5.** This, too, is to be added, that, with reference to the documentary record, ten of the most devoted staff officers of the unit, that is to say, the senior staff officers (*primates*) and so too the head (*caput*) of each troop of imperial guards (*schola*), shall certify under oath that the matter has been carried out in their presence as above directed, and that under their gaze each of the soldiers has received his pay with his own hand from the right hand of the paymaster. Documents of this kind shall be referred to Our Piety, together with a report submitted by the tribune of *clarissimus* rank or by the most devoted staff officers, within three months as counted from the time that he (the tribune) has departed. **6.** This above all must be attended to, that the then-serving paymaster, after receiving the money from the Treasury, must within two, three, or four months, depending on the distance, not hesitate to make the payment committed to his charge; and if he shall dare to retain public money by deferring payment beyond that time, he should know that he must pay out of his own property any damages sustained by a soldier arising out of a business transaction.

7. Let all who fail in the observance of the aforesaid regulation by deferring payment in any instance beyond the appointed time or in any other manner take notice that for so great a crime they will not only suffer the loss of the belt of their office (*militiae cingulum*) but also confiscation of their property; and furthermore the responsibility of making payments shall, if this imperial order is violated, also be transferred from the official staff of Your Highness to others – especially if that same staff, as soon as such a crime is committed by anyone, does not scruple to bring it to the attention of Our Clemency or at least to the knowledge of the Most Distinguished Master of Soldiers (*illustrissima magisteria*), so that at the peril of the same officials such a crime cannot be hidden from the imperial ears – to the end that when such crime is clearly exposed the person who had dared to violate these most beneficent ordinances of Our Piety will not be able to evade the threatened punishment. Accordingly the soldiers who have been injured by reason of non-compliance with the tenor of

fuerit violare, interminatas minime possit poenas evadere: ita ut in singulis militibus, qui non observato in eorum persona tenore datae dispositionis laesi fuerint, liceat sacratissimum nostrum, per unum forte vel etiam binos milites pro omnibus verba facturos, petere comitatum et porrectis precibus quod contra nostram dispositionem passi sunt approbare, eoque facto statutis violator imperatoriae dispositionis suppliciis percellatur.

8. Illud praeterea modis omnibus observari decernimus, ut erogator omnes pecunias, quae mortuis militibus usque ad diem mortis eorum debitae fuerant, secundum datam iam divalem dispositionem uxoribus vel liberis eorum non dubitet ministrandas.

[17] *Idem A. Arcadio pp.* **pr.** Cum saepe contingit propter quasdam maximas et inexcusabiles rationes quibusdam ad custodiam vel aliam huiusmodi causam milites deputari vel etiam deputatos esse, et non convenit hoc modo publicum aliquod damnum seu dispendium sustinere, iubemus, si qui fortissimi milites ex quocumque numero curiis vel quibusdam corporibus vel sacrosanctis ecclesiis vel aliis personis pro custodia, ut dictum est, vel tali alia causa a nostro numine deputati sunt vel fuerint, ne per eorum translationes circa annonarum vel capitum eis praebendorum erogationem publicis rationibus quaedam laesio ingeratur, eadem de proprio personam seu personas, cui et quibus deputati sunt vel fuerint, modis omnibus agnoscere: hoc tantummodo de publico pro isdem annonis et capitu praebendo et imputando, quod in locis, ex quibus praefati milites perveniunt seu pervenerunt, imputabatur, vel si antelatam praestationem supradictae personae recusaverint, eosdem milites de suis locis non recedere, vel eos qui recesserint ad ea sine quadam mora redire.

1. Hoc omnifariam custodiendo, ut nemo devotissimorum militum cuicumque personae seu corpori sine speciali nostrae serenitatis iussione scriptis proferenda deputetur. **2.** Officio tuae celsitudinis, si hanc nostrae mansuetudinis formam, quotiens super militibus quibusdam deputandis aliquid statutum fuerit, gestis insinuare et, quid eos, quibus dati sunt, prout nobis placuit, agnoscere oportet, itidem publicare minime curaverit, tam dispendium, quodcumque publicum hac ex causa sustinuerit, ei de proprio resarcire, quam triginta librarum auri multam propter suam desidiam, immo magis conivemtiam dependere cogendo. **3.** Rectoribus nihilo minus provinciarum et apparitionibus eorum, si statuta nostra violaverint seu violari concesserint, eiusdem condemnationis solutione percellendis.

the foregoing order insofar as it relates to them may come to Our most imperial court, represented perhaps by one or even two soldiers speaking for all, and having pressed their claims they may demonstrate what they have suffered in contravention of Our decree, and once this is accomplished the violator of the imperial decree shall be beset with the prescribed penalties.

8. We resolve that this too must be in every respect observed, according to an imperial order heretofore given, namely that a paymaster should not hesitate to pay over to their wives or children all money owing to deceased soldiers up to the day of their death.

(491–505).

[17] *The same Augustus to Arcadius, Praetorian Prefect (of the East).* **pr.** Since it often happens, for certain substantial and unavoidable reasons, that soldiers are or have been assigned to certain persons for guard duty or some such similar thing, and since it is improper that the Treasury should suffer any damage or loss in this way, We order that if any of the most stalwart soldiers from any unit have been or shall be assigned by Our Divine Majesty to city councils, certain corporate bodies, holy churches, or other parties in order to serve as a guard, as has been stated, or for any such reason, the party or parties to whom they have been or shall be assigned assume responsibility in all respects out of their own pockets, lest any loss is registered in the public accounts as a result of transfer of these soldiers with respect to the distribution of the provisions and fodder to be provided for them. Only as much in the way of provisions and fodder shall be provided and assigned from the public Treasury as was customarily assigned in the places from which the aforementioned soldiers come or have come. If the above-mentioned parties refuse to guarantee their fulfillment of their obligation, the soldiers shall not leave their places, or if they have left they shall immediately return to them.

1. It is to be observed in all cases that not one of the most devoted soldiers shall be assigned to any party or corporate body without a special decree of Our Serenity, evidenced in writing. 2. If the staff of Your Highness fails to register an order of Our Clemency making an assignment of soldiers to any parties or fails to make known the amount that should be paid, in accordance with Our order, by those persons to whom the soldiers are assigned, they shall reimburse the public Treasury for all damages sustained by reason thereof out of their own property and shall also pay a fine of 30 pounds of gold on account of their negligence, or rather complicity. 3. The governors (*rectores*) of the provinces, too, and their staff (*apparitiones*), shall, if they violate Our orders or permit them to be violated, be punished by the same fine.

(491–505).

[18] [*Ὁ αὐτὸς βασιλεύς.*] Ἡ διάταξις κελεύει πρότερον ἐπὶ χώρας παρακρατεῖσθαι τὸ εἰς στρατιώτας δαπανώμενα καὶ τηνικαῦτα τὰς λοιπὰς αἰτίας τοῦ δημοσίου προβῆναι. *οὐδὲ γὰρ χρὴ μόνας τὰς ἐκπομπὰς* κατεπείγεσθαι, ῥαθυμεῖσθαι δὲ τὸ στρατιωτικὰ δαπανήματα. τοὺς δὲ ἄρχοντας καὶ τὰς πόλεις καὶ πάντα τὸν ἕτερον δημοσιεύοντα, εἴ τι παραβαθῇ τῶν θεσπισθέντων, καὶ τὰ χρήματα παρέχειν οἴκοθεν τοῖς στρατιώταις καὶ πρόστιμον ἑκατὸν λιτρῶν χρυσίου θεσπίζομεν.

[19] [*Ὁ αὐτὸς βασιλεύς.*] ... ||. **pr.** Θεσπίζομεν ... Ἡ διάταξις κελεύει, ἵνα, ἐὰν στρατιῶται ὑφεστῶτες μὴ ὦσιν ἐν ταῖς οἰκείαις ἀγγαρείαις, ἀλλ' ἢ εἰς βοήθειαν ἠφορίσθησαν προσώποις τισὶν ἢ κατὰ ἄφεσιν ἀπελύθησαν, μὴ λαμβάνειν τὰς ἀννόνας αὐτῶν τὸν ὑπομνηματοφύλακα ἐν εἴδει διὰ τὸ μὴ φθείρεσθαι, ἀλλ' ἐν χρυσῷ διατιμωμένου τοῦ εἴδους κατὰ τὴν τράπεζαν, ὅρκου παρεχομένου παρά τε τῶν τριβούνων καὶ τῶν βικαρίων καὶ τῶν δομεστίκων καὶ ὑπομνηματοφυλάκων καὶ ὀπτιώνων, οὐδὲν ἧττον καὶ μετὰ τὸν ὅρκον λογοθετουμένων καί, εἴτε ἂν εὑρεθείησαν ψευσάμενοι, ἐν διπλῷ καταβαλλόντων.

1. Εἰ δὲ καὶ στρατιώτης ἐξαργυρίσαι βουληθείη τὰς παρεχομένας αὐτῷ ἀννόνας, λήψεται τὸ χρήματα κατὰ τὴν τράπεζαν. εἰ δὲ τὸ εἶδος λαμβάνει, λήψεται τὸ ἐν τῇ χώρᾳ χορηγούμενον κατὰ δοκιμασίαν τοῦ θεοφιλεστάτου τῶν τόπων ἐπισκόπου καὶ τοῦ λαμπροτάτου ἐκδίκου τῆς πόλεως. **1a.** Εἰ δὲ καὶ ὁ ὑπομνηματοφύλαξ ἀγοράσῃ παρὰ στρατιώτου τὰς ἀννόνας αὐτοῦ καὶ αὐτὸς λαμβάνει αὐτὰς παρὰ τοῦ συντελεστοῦ ὡς ἐκχωρηθείσας αὐτῷ, πάλιν κατὰ τὴν τράπεζαν λαμβάνειν αὐτόν, εἰ μὴ παρὰ τὸ εἶδος βούλεται ὁ συντελεστὴς προσαγαγεῖν. **1b.** Εἰ δὲ καὶ οἱ συντελεσταὶ βουληθείησαν ἑκουσίως πωλῆσαί τινα τοῖς στρατιώταις, οὐ κωλύομεν τοῦτο γίνεσθαι, εἰ καὶ μέλλουσιν ἐκ τούτου κερδαίνειν, ἥττονα ποσότητα εἰδῶν παρέχοντες αὐτοῖς παρὰ τὴν δημοσίαν τράπεζαν. μὴ ἐξέστω δὲ τοῖς πολίταις[vi] ἐκ τούτου βλάπτειν τὸν συντελεστήν, ἵνα, ἐὰν αὐτοὶ κακῶς συμφωνήσωσιν, ἀναγκάζωσι τὸν συντελεστὴν καθὼς συνεφώνησε[vii] παρασχεῖν τὰ εἴδη.

2. Εὑροῦσα δὲ ἡ διάταξις, ὅτι καί τινες τῶν χαρτουλαρίων τῶν γενναιοτάτων ἀριθμῶν ἤτοι φοιδεράτων συνωνοῦνται ἑαυτοῖς σῖτον, ἵνα τὸ μὲν δημόσιον δίδωσιν αὐτοῖς κατὰ τὴν τράπεζαν τὰ τοῦ σίτου τιμήματα,

[vi] στρατιώταις
[vii] καὶ ὧν συνεφωνήνη

[18][165] (*The same Emperor.*) The constitution directs that whatever is to be paid to the soldiers in the respective localities should have top priority, and that subsequently the remaining obligations of the public Treasury shall be sent out. Nor would it be proper to hasten only the payment of revenues to the Treasury and to neglect payments to the soldiers. We order, moreover, that officials, cities, and all other public persons must, if any violation of what has been decided occurs, pay the money due to the soldiers and a fine of 100 pounds of gold.

(491–505).

[19][166] (*The same Emperor.*) **pr.** We decree ... The constitution directs that if soldiers are not engaged in their own duties, but are either assigned to private parties for the sake of rendering assistance or are sent away on leave of absence, the quartermaster (*actuarius*) shall not accept their provisions in kind, lest they perish, but in cash at the official commutation rate, upon an oath taken by the tribunes, their deputies (*vicarii*), their personal assistants (*domestici*), and the senior and junior quartermasters (*hypomnêmatophylakes* and *optiones*), who shall after the oath nonetheless render due account, and if they shall be convicted of perjury in the matter they shall pay double the amount.

1.[167] And if a soldier wants the provisions owing him commuted into cash, he shall receive it at the official commutation rate. If he prefers provisions in kind, he shall receive those that the region supplies as the most reverend bishop and the city defender of *clarissimus* rank may determine. **1a.** And if a quartermaster has purchased a soldier's provisions and as assignee demands them from the taxpayer, he, too, shall receive them at the official commutation rate unless the taxpayer prefers to pay them in kind. **1b.** And if taxpayers want to engage in private trade with the soldiers, We do not forbid them to do so, although they may profit from the fact that they deliver a smaller quantity of goods in kind to the soldiers than the latter would obtain at the official commutation rate. Nor shall the soldiers inflict any damage on the taxpayer on account of the fact that they made a bad bargain nor compel the taxpayer to deliver goods in kind contrary to the agreement.

2. Since, moreover, the constitution found that some of the secretaries (*chartularii*) of the most stalwart military units and of the federates (*foederati*)[168] were making purchases of grain for themselves, so that the Treasury might buy

[165] From Bas. 57.4.18, summarizing the constitution. For this and the following law, see C. 1.4.18.

[166] From Bas. 57.4.19, summarizing the constitution. Lounghis *et al.* date to between 491 and 518.

[167] The conclusion of this section = C. 1.4.18.

[168] Originally, *foederati* were barbarian soldiers serving as allies under the terms of a treaty (*foedus*); by the sixth century the term designated regular troops, but the basis of the distinction between federates and ordinary soldiers of the field army (*comitatenses*) is obscure.

αὐτοὶ δὲ ὡς προηγορακότες εἴδη κερδαίνουσι, κελεύει ἡ διάταξις μηδένα συντελεστὴν ἄκοντα ἀπαιτεῖσθαι παρέχειν αὐτοῖς συνωνήν. **2a.** Εἰ δὲ ἑκουσίως πωλῆσαι ζητήσῃ τις αὐτοῖς, μὴ ὑπερβαίνειν αὐτοὺς τὰ τιμήματα τῆς τραπέζης εἰς τὴν ποσότητα τὴν μέλλουσαν λόγῳ ἀννόνων τοῖς στρατιώταις χορηγεῖσθαι. **2b.** Εἰ γὰρ ἔξωθεν ἑτέραν ποσότητα βουληθῇ ἀγοράσαι, τότε κεκώλυται πραγματεύσασθαι, ὡς καὶ πᾶς στρατιώτης. **2c.** Ταῦτα δὲ πάντα δείκνυσι μέλλουσα γίνεσθαι ἀναψηλάφησις, ἀναγκάζουσα πάντα ἄνθρωπον τὸν ὁτεδήποτε ψευσάμενον σφετερισάμενον διπλάσιον καταθεῖναι, ἵνα τὸ μὲν ἁπλοῦν λάβῃ ὁ ἐκδικηθείς, τὸ δὲ ἕτερον ἁπλοῦν τὸ δημόσιον.

3. Πάντες δὲ οἱ στρατιῶται οἱ προσπαραμένοντες προσώποις τισὶν ἐν ἐξαργυρισμῷ λαμβανέτωσαν τὰς ἰδίας ἀννόνας κατὰ τὸν ἐξαργυρισμὸν τῆς τραπέζης, ὁμοίως δὲ καὶ τοὺς κεφαλιτίονας· καὶ μὴ ζητείτωσαν τὰ εἴδη, εἰ μὴ ἑκὼν ὁ συντελεστὴς ταῦτα καταβάλοι.

4. Τοῦ παραβῆναί τί ποτε τῶν προειρημένων τολμῶντος μέγιστον κίνδυνον ὑφορωμένου, εἴτε τριβοῦνος εἴτε βικάριός ἐστιν εἴτε δομέστικος εἴτε ὑπομνηματοφύλαξ εἴτε ὀπτίων εἴτε πρῶτος ἀριθμοῦ εἴτε ταξεώτης τοῦ στρατηλάτου, ἐὰν συμβῇ τί ποτε παρὰ τὸ ἀληθὲς γνωρισθῆναι ἢ ἐπιχειρισθῆναι, καὶ μη παραχρῆμα δηλωθῇ καὶ ἀνασταλῇ· ἡ γὰρ ἀναψηλάφησις πάντα τὰ παρὰ τὴν διάταξιν γινόμενα ἀπελέγξει.

XXXVIII De Excoctione et Translatione Militarium Annonarum

[1] *Impp. Arcadius et Honorius AA. Stilichoni comiti et magistro utriusque militiae.* **pr.** Opinatores, quibus species in diversis provinciis delegantur, contra omnem consuetudinem nullis consistentibus familiis excoctionem panis efflagitant. **1.** Illustris igitur auctoritas tua novam usurpationem congrua auctoritate repellat, ut, cum opinatores in provinciis delegantur, vetus consuetudo servetur.

D. id. Sept. Mediolani Theodoro vc. cons.

[2] *Idem AA. et Theodosius A. Hadriano pp.* **pr.** In excoctione buccellati, quod devotissimis militibus convenit praeparari, in translatione etiam annonae nullius excipiatur persona, videlicet ut ne nostra

the grain from them at the official commutation rate and make them a profit on the goods in kind already purchased, the constitution prohibits compelling the taxpayer to sell against his will. **2a.** But if anyone wants to sell to them voluntarily, they shall not depart from the price fixed by the official commutation rate so far as the quantity which is subsequently to be furnished to the soldiers in the way of their provisions is concerned. **2b.** For if he wishes to purchase an additional quantity (for resale), he is forbidden to engage in trade just like every soldier. **2c.** All of which will be disclosed by a future investigation, and whatever anyone has unlawfully gained he shall return twofold, the informer receiving one half and the Treasury the other.

3. All soldiers, moreover, who are assigned to certain parties shall receive their provisions in cash at the official commutation rate and in the same way their fodder allowance; nor shall they demand goods in kind unless the taxpayer voluntarily brings them.

4. Whoever dares to neglect any of the foregoing provisions will incur the utmost peril, be he a tribune, deputy tribune, personal assistant, a senior or junior quartermaster, chief of a unit, or member of the staff of the Master of Soldiers, whenever it happens that anything contrary hereto becomes known or is attempted and it is not immediately publicized and reported, for an investigation will show whatever has been done in violation of this constitution.

Thirty-Eighth Title Baking and Transport of Military Provisions

[1][169] *Emperors* Arcadius *and* Honorius *Augusti to Stilicho, Count and Master of Both Infantry and Cavalry.* **pr.** The military tax officers (*opinatores*) to whom the (collection of) goods in kind (*species*) in the different provinces is assigned are demanding the baking of bread, contrary to all custom, even though no troops (*familiae*; perhaps "soldiers' families") are stationed there. **1.** Your Authority, of *illustris* rank, will therefore repulse this novel abuse with a suitable directive (*congrua auctoritate*), so that when military tax officers are sent into the provinces the established custom is observed.

Given September 13, at Milan, in the consulship of the vir clarissimus *Theodorus (399).*

[2][170] *The same Augusti and* Theodosius *Augustus to Hadrianus, Praetorian Prefect (of Italy and Africa).* **pr.** No person shall be exempt, and not even Our own household (*domus*) shall be considered immune, in connection with the baking of hard biscuit (*buccellatum*), which must be prepared for the most

[169] = C.Th. 7.5.1.
[170] = C.Th. 7.5.2.

quidem domus ab his habeatur immunis. 1. Et si quisquam, quod non opinamur, implere quae sunt praecepta neglexerit, in procuratorem eius severissime vindicetur, ita ut, si huiusmodi contumaciae dominum conscium esse constiterit, quadruplum id, quod pro eius capitatione poscitur, posthabita dilatione solvatur.

D. VIIII k. April. Romae Honorio A. VI et Aristaeneto conss.

XXXVIIII De Militari Veste

[1] *Impp. Valentinianus et Valens AA. Auxonio pp.* Omnem canonem vestium ex kalendis Septembribus ad kalendas Apriles nostris largitionibus tradi praecipimus: proposita poena rectori provinciae vel eius officio condemnationis, quae tuae iustitiae videbitur.

D. XIIII k. Dec. Marcianopoli Valentiniano et Valente conss.

[2] *Imppp. Valens Gratianus et Valentinianus AAA. Modesto pp.* Provinciae Thraciarum per viginti iuga seu capita conferant vestem: Scythia et Mysia in triginta iugis seu capitibus interim annua solutione dependant: per Aegyptum et Orientis partes in triginta terrenis iugis, per Asianam vero et Ponticam dioecesim ad eundem numerum in capitibus seu iugis annuae vestis collatio dependatur, ita ut per Orientem provinciae in titulo auri comparaticii, quod per iugationem redditur, compensationis gratia perfruantur, exceptis Osrhoena et Isauria: nam easdem constat aurum comparaticium minime redhibere.

D. V id. Aug. Hierapoli Gratiano A. IIII et Merobaude vc. conss.

[3] *Impp. Arcadius et Honorius AA. Martiniano comiti sacrarum largitionum.* Fortissimis militibus nostris per Illyricum non binos tremisses pro singulis chlamydibus, sed singulos solidos dari praecipimus.

D. XVI k. Febr. Constantinopoli Arcadio IIII et Honorio III AA. conss.

devoted soldiers, or from the transport of provisions. **1.** If anyone fails to comply with what has been decreed, which We do not believe will happen, his procurator will be severely punished, and if it is determined that the owner has knowledge of such affrontery, fourfold the amount assessed for his capitation tax shall be paid without delay.

Given March 24, at Rome, in the consulship of Honorius Augustus, for the sixth time, and Aristaenetus (404).

Thirty-Ninth Title Military Clothing

[1][171] *Emperors* VALENTINIAN *and* VALENS *Augusti to Auxonius, Praetorian Prefect (of the East).* We direct that the entire tax for clothing (*canon vestium*) shall be paid to Our department of Imperial Benefactions (*largitiones*) between the first of September and the first of April, at the peril of a fine imposed on the governor (*rector*) of the province or his official staff in an amount which may seem best to Your Justice.

Given November 18, at Marcianopolis, in the consulship of Valentinian and Valens (368).

[2][172] *Emperors* VALENS, GRATIAN, *and* VALENTINIAN *Augusti to Modestus, Praetorian Prefect (of the East).* The provinces of Thrace shall contribute one suit of clothing (*vestis*) per twenty land or capitation tax units (*iuga seu capita*); Scythia and Moesia shall meanwhile annually contribute (one such suit) for thirty land or capitation tax units; throughout Egypt and the parts of the East (Oriens), thirty land tax units (*terrena iuga*); throughout the Dioceses of Asiana and Pontica the annual clothing tax (*vestis collatio*) shall be paid up to the same number (i.e., thirty) of capitation or land tax units, in such a manner that the provinces of the East shall enjoy the privilege of contributing commutation money in gold (*titulus auri comparaticii*), payable per land tax unit, with the exception of Osrhoene and Isauria, for it is established that these do not pay in gold.

Given August 9, at Hierapolis, in the consulship of Gratian Augustus, for the fourth time, and the vir clarissimus *Merobaudes (377).*

[3][173] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Martinianus, Count of the Imperial Benefactions.* We direct that to Our most stalwart soldiers in Illyricum shall be given, not two-thirds of a solidus (two *tremisses*) for each military tunic (*chlamys*), but 1 solidus.

Given January 17, at Constantinople, in the consulship of Arcadius, for the fourth time, and Honorius, for the third time, Augusti (396).

171 = C.Th. 7.6.2.
172 = C.Th. 7.6.3.
173 = C.Th. 7.6.4. Combine with C.Th. 6.30.14; compare also C.Th. 6.26.6, 6.30.13.

[4] *Impp. Honorius et Theodosius AA. Asclepiodoto pp.* Militaris adaeratio vestis a collatoribus exigatur, sacratissimis videlicet largitionibus inferenda, ita ut quinque eius partes fortissimis militibus erogentur in pretio, sexta vero portio a gynaeciariis clementiae nostrae absque ulla vel ipsorum vel publica incommoditate pro eadem contextione suscepta iunioribus gregariisque militibus in ipsa, quam maxime eos desiderare constitit, specie praebeatur.

D. VII id. Mart. Constantinopoli Asclepiodoto et Mariniano conss.

XXXX De Metatis et Epidemeticis

[1] *Imppp. Valentinianus Theodosius et Arcadius AAA. Theodoto magistro officiorum.* Si quis mensorum nostrorum manum, qua deputatas singulis quibusque domus enotant et postibus hospitaturi nomen adscribunt, delere non dubitaverit, ad instar falsi reus ex hac auctoritate teneatur.

D. VI k. Nov. Constantinopoli Theodosio A. III et Abundantio vc. conss.

[2] *Impp. Arcadius et Honorius AA. Hosio magistro officiorum.* **pr.** In qualibet vel nos ipsi urbe fuerimus vel ii qui nobis militant commorentur, omni tam mensorum quam etiam hospitum iniquitate submota duas dominus propriae domus, tertia hospiti deputata, eatenus intrepidus ac securus possideat portiones, ut in tres domus divisae partes primam eligendi dominus habeat facultatem, secundam hospes quam voluerit exsequatur, tertia domino relinquenda. plenum enim aequitate atque iustitia est, ut, qui aut successione fruitur aut empto vel extructione gaudet, electam praecipue iudicio suam rem teneat et relictam.

1. Ergasteria vero, quae mercimoniis deputantur, ad praedictam divisionis iniuriam non vocentur, sed quieta sint et libera et ab omni

[4][174] *Emperors* Honorius *and* Theodosius *Augusti to Asclepiodotus, Praetorian Prefect (of the East).* The military clothing tax, commuted into cash, shall be collected from the taxpayers and remitted, obviously, to the department of the Most Imperial Benefactions (*sacratissimi largitiones*). Five-sixths of this amount shall be distributed to the most stalwart soldiers in cash, and the remaining sixth, having been received by the weavers of Our Clemency for weaving, shall, without any burden either on them or the public (treasury), be provided to the recruits and common soldiers (*iuniores gregariique milites*) in the form of clothing of which, it is clear, they stand greatly in need.

Given March 9, at Constantinople, in the consulship of Asclepiodotus and Marinianus (423).

Fortieth Title Compulsory Quartering (*Metata*) and the Commutation Payments Therefor

[1][175] *Emperors* Valentinian, Theodosius, *and* Arcadius *Augusti to Theodotus, Master of Offices.* If anyone should not shrink from erasing the handwriting of Our quartering masters (*mensores*), by which they designate the houses assigned to individual persons and write on the doorposts the name of the person to be quartered there, the perpetrator shall, pursuant to this order, be considered guilty of an offence commensurate with forgery.

Given October 27, at Constantinople, in the consulship of Theodosius Augustus, for the third time, and the vir clarissimus *Abundantius (393).*

[2][176] *Emperors* Arcadius *and* Honorius *Augusti to Hosius, Master of Offices.* **pr.** In order that all annoyance on the part of quartering masters and the persons quartered may be removed in any city where We ourselves may be or those in Our service may lodge, (We decree that) the owner may reserve two-thirds of his house for his own use upon assigning a third part to the person quartered, and will remain free from fear or trouble to the extent that, once the house has been demarcated into three zones, the owner shall have the privilege of choosing the first part, the person quartered shall have as the second part whichever (of the two remaining) he may choose, and the third part shall be left to the owner. For it is the full measure of equity and justice that one who enjoys an inheritance or delights in the purchase or construction of a house should have his choice of the parts as well as the remaining third part.

1. Workshops used for trade shall not be subject to the aforementioned annoyance of division, but shall be safe, secure, and exempt from any

[174] = C.Th. 7.6.5.
[175] = C.Th. 7.8.4.
[176] = C.Th. 7.8.5.

hospitum iniuria defensata solis dominis conductoribusque deserviant. sane si stabulum, ut adsolet, militari viro in tertia domus parte defuerit, ex ergasteriis, nisi id dominus qualibet occasione providerit, pro animalium numero vel domus qualitate deputabitur.

2. Illustribus sane viris non tertiam partem domus, sed mediam hospitalitatis gratia deputari decernimus: ea dumtaxat condicione servata, ut alter ex his quilibet, quive maluerit, divisionem arbitraria aequitate faciat, alter eligendi habeat optionem.

3. Et firmissimum perpetuo quod iussimus perseveret, ita ut triginta libras auri qui illustri sunt praediti dignitate fisco nostro se illaturos esse cognoscant, ceteri vero militia sciant se esse privandos, si generale praeceptum amplius usurpando quam iussimus reprehensibili temeritate violaverint.

D. VIII id. Febr. Constantinopoli Honorio IIII et Eutychiano conss.

[3] *Idem AA. Vincentio pp.* Cunctos iudices scire volumus a praetoriis ordinariorum iudicum his praesentibus abstinendum.

D. XVI k. Febr. Mediolani Stilichone et Aureliano vv. cc. conss.

[4] *Idem AA. Aemiliano magistro officiorum.* Fabricensium domibus ubique constitutis omnem molestiam hospitum praecipimus amoveri, quo et Antiochensibus et ceterarum civitatum fabricis similis domorum excusatio praebeatur, absente scilicet sacro comitatu.

D. XI k. Febr. Constantinopoli Stilichone et Aureliano conss.

[5] *Impp. Honorius et Theodosius AA. Iohanni pp.* **pr.** Devotum possessorem ab omni inquietudine liberamus. 1. Primo igitur omnium ad nullum praedium publicum vel privatum domus nostrae vel cuiuscumque

annoyance of quartering and reserved for the exclusive use of the owners or lessees. Of course, if there is no stable, as happens, in the third part of the house allotted for a military official (*militaris vir*), room shall be assigned in the shops, unless the owner makes other arrangements, in accordance with the number of animals and the nature of the house.

2. We decree that persons of *illustris* rank, however, shall be assigned for their quartering not a third but a half of the house, provided that either the owner of the house or the person quartered, whoever wishes, shall make an equitable division of the house according to his discretion, while the other shall have the right of making the selection.

3. Let this most inviolable order of ours abide in perpetuity; accordingly, persons who have been awarded *illustris* rank should understand that they will pay 30 pounds of gold to Our Treasury, and others should know that they must be deprived of their position in the imperial service, if they defy this general order by reprehensibly venturing to claim more room than We have authorized.

Given February 6, at Constantinople, in the consulship of Honorius, for the fourth time, and Eutychianus (398).

[3][177] *The same Augusti to Vincentius, Praetorian Prefect (of the Gauls).* We want all (superior) magistrates to know that they must not lodge in the official residences (*praetoria*) of ordinary magistrates (*ordinarii iudices*; i.e., provincial governors), if these are present.

Given January 17, at Milan, in the consulship of the viri clarissimi *Stilicho and Aurelianus (400).*

[4][178] *The same Augusti to Aemilianus, Master of Offices.* We direct all the inconvenience of quartering persons to be withdrawn from the houses of armorers (*fabricenses*) wherever located. This exemption extends to the houses of the armorers at Antioch and other cities, provided that the imperial retinue (*comitatus*) is not present.

Given January 22, at Constantinople, in the consulship of Stilicho and Aurelianus (400).

[5][179] *Emperors* Honorius *and* Theodosius *Augusti to John, Praetorian Prefect (of Italy).* **pr.** We liberate the devoted landowner from all disturbances. 1. First of all, therefore, no quartering master (*metator*), by whomever sent,

[177] = C.Th. 7.8.6.
[178] = C.Th. 7.8.8 (altered). Seeck corrects the date to January 22, 405.
[179] = C.Th. 7.8.10.

iuris nullus metator accedat, si a quoquam fuerit destinatus. **1a.** Licentiam enim domino actori ipsique plebi serenitas nostra commisit, ut eum, qui praeparandi gratia ad possessionem venerit, expellendi habeat facultatem nec crimen aliquod pertimescat, cum sibi arbitrium ultionis suae sciat esse concessum: recteque sacrilegium prior arceat, qui primus invenerit. **1b.** Administrantem vero eiusque officii proceres, quorum praecepto inhibitam personam ad agrum aliquem destinaverit, in tempore proscribi debere censuimus. **2.** Solam sane hospitalitatem sub hac observatione concedimus, ut nihil ab hospite, quod vel hominum vel animalium pastui necessarium creditur, postuletur, omniumque sit acceleratum iter atque continuum nec ulli liceat residere, ne diuturnitas commanentium ulla ex parte praedium vexet.

3. Decem etiam librarum auri multa ferietur, quisquis administrator togatus apparitor ullus aut militans vel iter agens ullo in loco aliquid ab hospite postulaverit. **4.** In tantum enim inhiberi sceleratum morem iubemus, ut ipsis quoque praebentibus impunitum esse non patiamur, si quid sponte contra praeceptum nostrum probati fuerint obtulisse.

D. prid. id. Iun. Ravennae post consulatum Honorii VIIII et Theodosii V AA.

[6] *Idem AA. Hadriano pp.* Africae hoc prospectum est, ut infausta hospitalitatis praebitio tolleretur nec balneum quisquam a domino aedium postulet.

D. V non. Mart. Ravennae Constantio et Constante conss.

[7] *Idem AA. Eustathio pp.* Devotissimos milites ex procinctu redeuntes vel proficiscentes ad bella muri novi sacratissimae urbis singulae turres in pedeplanis suis suscipiant.

D. V non. Mart. Constantinopoli Honorio XIII et Theodosio X AA. conss.

shall enter any landed estate, public or private, belonging to the imperial household or to anyone else. **1a.** Indeed, Our Serenity gives permission to the owner, his agent and even his tenants (*plebs*), that these persons have the prerogative of expelling one who comes on the property to prepare quarters, nor need they be in fear of any prosecution, inasmuch as they may rest assured that the right to protect themselves has been accorded to them; for whoever first discovers a violation of imperial law (*sacrilegium*) may forthrightly protect himself against it. **1b.** We have ordered that the presiding official (*administrans*) and the senior members (*proceres*) of his staff, by whose direction a prohibited person is sent onto any property, ought to be proscribed for a limited time. **2.** We permit the simple right of quartering (*hospitalitas*), of course, but with the limitation that no food which is considered essential for either men or animals shall be demanded from the host; that all make their journey quickly and continuously; and that no one fixes his residence there, lest the length of the stay of the guests in any way burden an estate.

3. Any official (*administrator*), advocate (*togatus*), subordinate official (*apparitor*), member of the imperial service (*militans*), or traveler who demands anything from a host in any place shall be punished by a fine of 10 pounds of gold. **4.** Indeed, We so unequivocally order this disgraceful custom to be suppressed that We do not allow even those providing supplies to be exempt from punishment, if it is shown that they have offered anything voluntarily in violation of this order.

Given June 12, at Ravenna, in the post-consulate of Honorius, for the ninth time, and Theodosius, for the fifth time, Augusti (413).

[6][180] *The same Augusti to Hadrianus, Praetorian Prefect (of Italy and Africa).* It has been provided for the benefit of Africa that the repugnant provision of compulsory quartering (*hospitalitas*) must cease; nor shall anyone demand a bath from the owner of the houses.

Given March 3, at Ravenna, in the consulship of Constantius and Constans (414).

[7][181] *The same Augusti to Eustathius, Praetorian Prefect (of the East).* The ground floor rooms of each tower of the new wall of this Most Imperial City shall be for the use of the most stalwart soldiers returning from an engagement or going off to war.

Given March 3, at Constantinople, in the consulship of Honorius, for the thirteenth time, and Theodosius, for the tenth time, Augusti (422).

[180] = C.Th. 7.8.12. Combine with C.Th. 6.29.11, 7.4.33.
[181] = C.Th. 7.8.13.

[8] *Impp. Theodosius et Valentinianus AA. Helioni magistro officiorum.* Archiatros nostri palatii nec non urbis Romae et magistros litterarum pro necessariis artibus et liberalibus disciplinis nec non picturae professores, si modo ingenui sunt, hospitali molestia quoad vivent liberari praecipimus.

D. XIIII k. Sept. Hierio et Ardaburio conss.

[9] *Idem AA. Nomo magistro officiorum.* **pr.** Omnes, qui metata in suis domibus praestant, sive hospitia praebuerint metatoribus seu quolibet pacto satis eis fecerint, nullam vel pensionis vel discussionis domus gratia molestiam sustinere cogantur.

1. Deinde neminem volumus cuiuslibet loci vel ordinis in hac florentissima urbe domum propriam excusantem metatum sibi in alienis aedibus privilegio militiae vindicare. quod et in provinciis observari oportet. **2.** Ceteris vero, quibus illustris dignitas sub cingulo vel citra cingulum pro solo honore delata est, excusandarum aedium licentiam penitus denegamus. **3.** Hoc iuris in his etiam praecipimus observari, quos ipsa quidem administrationis condicio spectabiles novit, honor tamen additus a nostra liberalitate reddit illustres.

4. Scituris omnibus, quod si quis, cum cingulo perfruatur et excusationem ita propriae domus impetraverit, ut a pensione etiam portionis tertiae sit immunis, et militiae causa metatum in alienis domibus sibi crediderit vindicandum, si quidem honore praeditus excusationis ius habeat, carebit legum privilegiis, quas fraudare conatus est: si vero inter eos quibus nulla suffragatur dignitas numeretur, centum librarum auri sacratissimis largitionibus pendendarum illatione multabitur.

D. XVII k. Febr. Constantinopoli Theodosio A. XVIII cons.

[10] *Impp. Valentinianus et Marcianus AA. ... magistro officiorum.* **pr.** Hac lege sancimus, ut, si quis consularem et patriciam meruerit dignitatem, tres domos proprias dum superest habeat hospitum

[8][182] *Emperors THEODOSIUS and VALENTINIAN Augusti to Helion, Master of Offices.* We direct that the chief physicians of Our palace as well as those of the City of Rome and the masters of letters, as well as the teachers of the art of painting, shall for the benefit of the necessary arts and liberal instruction be exempt from the burden of quartering as long as they live, provided they are free-born.

Given August 19, in the consulship of Hierius and Ardaburius (427).

[9][183] *The same Augusti to Nomus, Master of Offices.* Those who furnish quarters (*metata*) in their own houses, whether they provide services (*hospitia*) for the quartering masters (*metatores*) or satisfy them by some other arrangement, shall not be compelled to put up with any annoyance on account of the house either over a payment (*pensio*) or an audit (*discussio*).

1. We want no one, moreover, of any position or rank (*locus vel ordo*) whatever, who exempts his own house in this Most Flourishing City from quartering to exercise the right of quartering in the house of another as a perquisite of the imperial service; which regulation shall apply also to the provinces. 2. We deny, however, to those upon whom *illustris* rank has been bestowed only as an honor (*pro solo honore*), either with or without the belt of office (*cingulum*), permission to exempt their houses from quartering altogether. 3. We direct that this provision of the law apply also in the case of those whom the very status of holding an official position (*administrationis condicio*) has acknowledged to be persons of *spectabilis* rank, yet the honor conveyed through Our liberality renders *illustres.*

4. And let all take notice that if anyone, while he enjoys the belt of office (*cingulum*), should obtain exemption from quartering for his own house, to the extent that he is not liable for the payment (*pensio*) for even a third part thereof, and claim for himself the right of quartering in the houses of others on account of the imperial service, he shall be deprived of the privileges of the laws which he tried to cheat, if he has been bestowed with an honor and has the right of exemption; if he is numbered among those whom no official position of rank (*dignitas*) recommends, he will be punished by a fine of 100 pounds of gold to be paid into the department of the Imperial Benefactions.

Given January 16, at Constantinople, in the consulship of Theodosius Augustus, for the eighteenth time (444).

[10] *Emperors VALENTINIAN and MARCIAN Augusti to Vincomalus,*[184] *Master of Offices.* pr. We ordain by this law that anyone who shall deserve both consular and patrician rank may have three of his own houses free from the burden

[182] = C.Th. 13.3.18 (altered).
[183] = Nov. Theod. 25.
[184] The name is restored from confused manuscript reports; John Vincomalus was Master of Offices 450?–452 (see Theodoret, *Epp.* 3.141), Consul 453.

immunitate securas, heredes vero eius filii aut pater aut mater nepotes aut frater aut soror aut uxor duarum domorum suarum excusatione potiantur. 1. Si quis vero consulatu tantummodo gloriatur, duas semis domos suas immunes habeat: post fata vero eius memorati heredes unam semis domum suam habeant nullis hospitiis praegravatam. 2. Pari privilegio perfruatur cum memoratis heredibus, qui solius patriciae dignitatis sine consulatu decoratur insignibus. 3. Praefectorii vero nec non et magistri militum duas domus suas habeant quoad vixerint hospitibus liberatas: heredes vero eorum memorati unam defendant domum suam simili excusatione munitam. 4. Magistri vero officiorum vel quaestores unam semis domum suam quoad vixerint habeant hospitum onere liberatam: heredes vero eorum praedicti unam ab hospitibus iure defendant. 5. Comites autem domesticorum et protectorum et sacrarum largitionum et privatarum et vir spectabilis primicerius notariorum singulas domus suas ab hospitum gravamine dum vivunt gaudeant esse securas: memorati vero heredes eorum mediam partem unius domus suae sciant excusatione muniri, residuae vero dimidiae partis tertiam portionem hospitibus deputandam esse cognoscant. 6. Si qui illustres honorarias dignitates quascumque sine actu caelitus impetrarunt, aequo animo suas domus hospitibus post hanc legem pandant pro tertia quae legibus praefinita est portione: exceptis videlicet ergasteriis, quae in plateis vel angiportis esse noscuntur. 7. Quod in omnibus domibus quae hospitales sunt observari iubemus: ita ut nemo vel ex sacro rescripto vel ex divina adnotatione seu pragmatica sanctione contra hanc legem uti possit excusationis auxilio. 8. His omnibus, quae per hanc legem constituimus, in hac aeterna urbe observandis.

[11] *Imp. Zeno A. Illyriciano magistro officiorum.* Decem post primicerium tribunos in domibus, quas in hac regia urbe possident, metatorum iussimus vacationem mereri.

[12] [*Αὐτοκράτωρ Ἰουστινιανὸς Α. Ἰουλιανῷ ἐπάρχῳ πραιτορίων.*] Μηδεὶς ἄρχων ἐν τῷ περινοστεῖν ζητείτω προφάσει ἐπιδημητικῶν ἢ προφάσει

of quartering during his life; and his heirs – namely, his sons, father, mother, grandsons, or brother, or sister, or wife – may receive exemption of two of their houses. **1.** A person who boasts only of consular rank shall have two and one-half houses exempt; after his death his heirs, above enumerated, shall have one and one-half houses unburdened by quartering. **2.** He and his above-enumerated heirs shall enjoy an equal privilege, who is decorated with the insignia of only the patriciate without the consulate. **3.** But Prefects (*praefectorii*) and Masters of the Soldiers shall have two of their houses freed from quartering as long as they live; their heirs, as above enumerated, shall defend one house fortified with a similar exemption. **4.** The Masters of Offices and Quaestors shall have one and one-half houses freed from the burden of quartering as long as they live; their above-mentioned heirs shall defend one from quartering. **5.** The Counts of the Household Garrison and Guards (*comites domesticorum et protectorum*) and of the Imperial Benefactions and of the Privy Purse, and the Chief Secretary (*primicerius*) of the Notaries, a person of *spectabilis* rank, may rejoice while they live that one house is unburdened by the bothersomeness of quartering; their heirs, as above enumerated, may know that one-half of their house is protected by such exemption, but they should acknowledge that the third part of the remaining half is assignable for quartering. **6.** Persons who have obtained any honorary official position of *illustris* rank from the Emperor (*caelitus*; lit., "from on high") without performing the duty thereof must hereafter willingly open for quartering one-third of their houses, the proportion fixed by law, with the exception however of shops which are known to be situated in streets and alleys.

7. We order this to apply to all houses fit for quartering; accordingly, no one may use an imperial rescript, annotation (*adnotatio*), or pragmatic sanction to exempt him in violation of this law. **8.** All the provisions that We have established through this law shall apply to this Eternal City.

(450–455).

[11][185] *Emperor* ZENO *Augustus to Illyricianus (Hilarianus), Master of Offices.* We order that the ten tribunes (of the notaries) next in order after the Chief Secretary (*primicerius*) are entitled to an exemption from quartering for their houses in this Imperial City.

(474).

[12][186] *(Emperor* JUSTINIAN *Augustus to Julian, Praetorian Prefect [of the East].)* No governor shall, while traveling about in his province, ask for any money on the pretext that it is commutation money for quartering (*prophasei*

[185] Combine with C. 12.7.2. This was probably a law of Leo II and Zeno.

[186] From Bas. 57.5.12. Combine with C. 1.4.26.16, from which the inscription and subscription are restored. Seeck gives October 11, 340.

ἀφοπλισμοῦ χρυσίον. εἰ δὲ τοῦτο ποιήσει, καὶ ἐκβάλλεται τῆς ἀρχῆς καὶ δημεύεται καὶ ἐξορίᾳ διηνεκεῖ ὑποβάλλεται.

[*D. VIII k. Iul. Chalcedone Lampadio et Oreste vv. cc. conss.*]

XXXXI De Salgamo Hospitibus Non Praebendo

[1] *Impp. Constantius et Constans AA. Leontio pp.* Ne quis comitum vel tribunorum aut praepositorum aut militum nomine salgami gratia, id est culcitas lignum oleum a suis extorqueat hospitibus: sed nec volentibus hospitibus in praedictis speciebus aliquid auferant: sed provinciales sint nostri ab hac praebitione securi: comitibus tribunis vel certe praepositis militibusque gravi vexationi subiacentibus.

D. V id. Oct. … conss.

XXXXII De Commeatu

[1] *Imp. Constantinus A. et C. Aeliano.* **pr.** Ne cui liceat praepositorum vel tribunorum cohortium vel vicariorum et familiarium eorum tempore expeditionis quocumque genere cuiquam de militibus a castris atque signis vel his etiam locis, in quibus pertendant, discedendi commeatum dare. **1.** Si quis vero contra hanc legem facere ausus fuerit et militem contra interdictum commeatu dimiserit eo tempore, in quo barbarorum incursio extiterit, et tunc, cum praesentes in castris atque apud signa milites esse debeant, quisquam afuerit, capite vindicetur.

D. IIII k. Mai. Severo et Rufino conss.

[2] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad Syagrium magistrum officiorum.* Quicumque de scriniis aut agentibus in rebus vel etiam ex officiis palatinis, his videlicet, qui sacrarum et privatarum remunerationum comitibus obsecundant, sex mensium spatium supra diem commeatus aut iussionem evectionis afuerit, is in inferiorem

epidêmêticôn) or that it is for permission to carry arms (*prophasei aphoplismou*). If he does so, he shall be removed from office, have his property confiscated, and be subjected to perpetual banishment.

<*Given June 24, at Chalcedon, in the consulship of the* viri clarissimi *Lampadius and Orestes (530).*>

Forty-First Title Accoutrements Not to Be Furnished to Quartered Persons

[1][187] *Emperors* Constantius *and* Constans *Augusti to Leontius, Praetorian Prefect (of the East).* No one shall in the name of the Counts, tribunes, commandants (*praepositi*), or soldiers demand anything in the way of accoutrements (*salgamum*), that is to say, mattresses, wood, or oil, from his host. They shall not take any of the aforementioned things even from a willing host. Our provincials shall be free from furnishing these things. The Counts, tribunes, and certainly the commandants and soldiers, will be subject to severe punishment (in case of violation of this law).

Given October 11, in the consulship of ... (340?; 344?).

Forty-Second Title Leave of Absence

[1][188] *Emperor* Constantine *Augustus and the Caesar* (Constantine) *to Aelianus.* **pr.** None of the commandants (*praepositi*), or tribunes of the cohorts, or their deputies (*vicarii*), or any person associated with them (*familiares*) shall, during an expedition, be permitted in any way to grant any soldier a leave of absence to depart from the camp or his standards or even the places where soldiers are stationed. **1.** If anyone dares to violate this law and sends away a soldier on a prohibited leave of absence at a time when an incursion of the barbarians is occurring, or if any soldier is absent when the soldiers should be in camp and with their standards, such act will be punished by death.

Given April 28, in the consulship of Severus and Rufinus (323).

[2][189] *Emperors* Gratian, Valentinian, *and* Theodosius *Augusti to Syagrius, Master of Offices.* If anyone from the bureaus (*scrinia*) or the couriers (*agentes in rebus*) or indeed the palatine departments (*officia palatina*), that is to say, those under the Counts of the Imperial Benefactions and of the Privy Purse, is absent for six months beyond the expiration of his leave of absence or the validity of his warrant for the public post (*evectio*), he shall be demoted and

[187] = C.Th. 7.9.2.
[188] = C.Th. 7.12.1. Combine with C. 12.35.9 (= C.Th. 7.1.1). The addressee's identity is uncertain.
[189] = C.Th. 7.12.2. Seeck gives October 1, 378.

locum quinque antelatis posterioribus devolvatur: is vero, qui anni vacationem arbitratu proprio iudiciarii praecepti oblitus adsumpserit, a decem post se militantibus transeatur: ac deinde cum iam aliquis desidia quadriennio officium proprium adire neglexerit, quadraginta de sequentibus postferatur: qui vero nec post quadriennii quidem tempus, militantum non immerito matriculis auferatur.

D. k. Oct. Ausonio et Olybrio conss.

[3] *Impp. Honorius et Theodosius AA. Gaisoni comiti et magistro militum.* Si qui sine commeatu aliquo annum in penatibus propriis vel in quibuslibet locis desidiosa quiete transegerit, decem sequentibus postponatur: in quo vero biennium talis culpa deprehenditur, viginti sibi antepositos congemiscat: tertius autem annus triginta praelatos iure deflebit, ita ut quartus exempto matriculae nullam veniam derelinquat.

D. prid. id. Iun. Ravennae post consulatum Honorii VIIII et Theodosii V AA.

XXXXIII De Tironibus

[1] *Impp. Valentinianus et Valens AA. Modesto pp.* Nullus tiro vagus aut veteranus aut censibus obnoxius ad militiam accedat.

D. XIIII k. Oct. Hierapoli Valentiniano et Valente III AA. conss.

[2] *Imppp. Gratianus Valentinianus et Theodosius AAA. Eutropio pp.* Quisquis mancipium iuris alieni in tirocinio militiae scribi curaverit, convictus ac proditus auri libram aerario nostro cogatur inferre, mancipio scilicet domino, si factum ignoraverit, reddendo.

D. id. Mai. Tyro metropoli. pp. Beryto Antonio et Syagrio conss.

[3] *Impp. Honorius et Theodosius AA. ... comiti sacrarum largitionum.* Tirones in scholis loco semper posteriore ponantur. nec enim patimur

five more junior colleagues advanced ahead of him. A person who is forgetful of the order giving him leave of absence and takes a vacation of a year on his own responsibility shall give way to ten colleagues in the imperial service more junior than he; and if anyone indolently fails to attend to his own duty for four years he shall be reduced below the forty following him; and if anyone fails to come back even after the period of four years, he shall deservedly be stricken from the roll of officials.

Given October 1, in the consulship of Ausonius and Olybrius (379).

[3][190] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Gaiso, Count and Master of Soldiers.* If anyone (who is an official) passes a year without any leave of absence in indolence and idleness at his own hearth or in any other place, he will be reduced in precedence below the ten following him; one in whom such an offense is detected for the period of two years may deplore the fact that twenty have preceded him; the third year will bewail the thirty rightly advanced above him; and the fourth year, once he has been stricken from the roll, shall leave behind no hope of pardon.

Given June 12, at Ravenna, in the post-consulate of Honorius, for the ninth time, and Theodosius, for the fifth time, Augusti (413).

Forty-Third Title Recruits

[1][191] *Emperors* VALENTINIAN *and* VALENS *Augusti to Modestus, Praetorian Prefect (of the East).* No errant recruit, veteran, or bound tenant (*censibus obnoxius*) shall enter the army.

Given September 18, at Hierapolis, in the consulship of Valentinian and Valens, for the third time, Augusti (370).

[2][192] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Eutropius, Praetorian Prefect (of Illyricum).* Anyone who has caused another's slave to be enrolled in the army as a recruit shall, when discovered and convicted, be compelled to pay 1 pound of gold into Our Treasury, and the slave, if his master did not know of it, shall be returned to the owner.

Given May 15, at Tyre the metropolis, and posted in Beirut, in the consulship of Antonius and Syagrius (382).

[3][193] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to ..., Count of the Imperial Benefactions.* Recruits in the imperial guard (*scholae*) shall always be

[190] = C.Th. 7.18.16. Gaiso was actually Master of Offices; the date is corrected to 410.
[191] = C.Th. 7.13.6 (altered). Combine with C.Th. 16.2.19.
[192] = C.Th. 7.13.11. This "law" evidently originated as part of an edict issued by the Praetorian Prefect of the East.
[193] = C.Th. 7.13.19.

quemquam celsiorem gradum obtinere, nisi cui et laborum adsiduitas et stipendiorum prolixitas suffragatur.

D. VII k. Dec. Ravenna Basso et Philippo conss.

XXXXIIII De Litorum et Itinerum Custodia

[1] *Impp. Honorius et Theodosius AA. Eustathio pp.* Saluberrima sanctione censemus, ne merces illicitae ad nationes barbaras deferantur. et quaecumque naves ex quolibet portu seu litore dimittuntur, nullam concussionem vel damna sustineant: ita tamen, ut earum naucleri deponant, in quam provinciam ituri sunt, ut hoc manifestato nulla contra eos postea indignatio seu concussio procedat.

D. XIIII k. Oct. Constantinopoli Theodosio A. VIIII et qui fuerit nuntiatus.

XXXXV De Desertoribus et Occultatoribus Eorum

[1] *Imppp. Gratianus Valentinianus et Theodosius AAA. ad Syagrium pp.* **pr.** Si quis forte desertorem agro tectoque susceperit atque apud se diu passus fuerit delitescere, actor quidem vel procurator loci, qui hoc sciens prudensque commiserit, capitali supplicio subiugetur, dominus vero, si huius rei conscius fuerit, praedii, in quo latuerit desertor, amissione puniatur. **1.** Si quis autem desertorem prodiderit mediocris loci ingenuus, immunitate potiatur. **2.** Neque solum de his loquimur, qui proxime signis felicibus applicati militiae rudimenta timuerunt, verum etiam qui stipendiis militaribus degenerem latebram praebuisse monstrantur. **3.** Desertor autem habebitur quisquis belli tempore aberit a signis. horum qui sponte processerit, peccati anterioris supplicium non timebit. sin vero flagitiosa ignavia delitescat, per eum, in cuius domo fuerit, invigilantibus extrinsecus quoque officiis publicis, ubicumque correptus severitati iudicis offeratur, degeneri morte gladium subiturus. **4.** Si autem rector provinciae propositam severitatem vel gratia vel dissimulatione distulerit, patrimonii atque existimationis damno subiciatur et in officii primores capitaliter vindicetur.

placed last in the list, nor indeed do We allow anyone to attain a higher grade (*gradus*) unless diligence and length of service recommend him.

Given November 25, at Ravenna, in the consulship of Bassus and Philippus (408).

Forty-Fourth Title Custody of the Shores and the Roads

[1][194] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Eustathius, Praetorian Prefect (of the East).* We decree by this most beneficial sanction that no forbidden goods shall be carried to barbarous peoples. No ships that leave any port or shore shall suffer any extortion or losses, but their masters shall state into what province they are about to sail, and when that is done they shall be subject to no insult or extortion.

Given at September 18, at Constantinople, in the consulship of Theodosius Augustus, for the ninth time, and the one who is to be announced (420).

Forty-Fifth Title Deserters and Those Who Conceal Them

[1][195] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Syagrius, Praetorian Prefect (of Italy).* **pr.** If any person, perchance, receives a deserter into his farm or house and permits him to hide for a long time with him, the manager (*actor*) or procurator of the place who does so knowingly and wittingly shall be subjected to capital punishment, and the owner who was complicit in the matter shall be punished by the loss of the estate where the deserter hid. **1.** If any free-born person of low station (*mediocris loci ingenuus*) exposes a deserter he shall receive immunity (from compulsory public services). **2.** Nor do We speak only of those who were just recently enrolled under the fortunate standards and feared the beginning of the service, but also of those who are shown to have furnished a disgraceful hiding place for military service (*stipendia militaria*; i.e., to have evaded enrollment through subterfuge). **3.** A person, moreover, who is absent from the standards in time of war will be considered a deserter. If such a person reports voluntarily, he need not fear punishment for his previous offense. But if, with disgraceful cowardice, he conceals himself, (then,) with the assistance of the person in whose house he had been and while the public officials also keep watch outside, he shall be arrested wherever he might be, offered up to the severity of a judge, and meet a shameful death by the sword. **4.** And if the governor (*rector*) of the province defers the lawful punishment, either through favor or negligence, he shall lose his patrimony and public standing (*existimatio*), and the senior members (*primores*) of his official staff shall be punished by death.

[194] = C.Th. 7.16.3 (altered). The Consul to be announced is Constantius, for the third time.
[195] = C.Th. 7.18.4, with the pr. added from 7.18.5. Combine with C. 7.13.4.

PP. id. Iul. Romae Gratiano v et Theodosio AA. conss.

[2] *Imppp. Arcadius Honorius et Theodosius AAA. Hadriano pp.* Si desertores inventi resistendum atque armis obtinendum putaverint, tamquam rebelles in ipsis temeritatis suae conatibus opprimantur: ita tamen, ut provinciarum iudices sollicita cautione disquirant, ne sub falsarum tractoriarum nomine desertionis suae crimen defendere moliantur, nec suppositis aut commentis epistulis evadendi habeant facultatem.

D. vi k. Mart. Ravennae Theodosio A. et Rumorido conss.

[3] *Idem AAA. Longiano pp.* Qui relictis militaribus castris se ad depraedationes vel latrocinium contulerint, severitatem iudicis non evadant.

D. viiii k. April. Ravennae Arcadio A. vi et Probo vc. conss.

XXXXVI De Veteranis

[1] *Imp. Constantinus A. cum introisset principia et salutatus esset a praefectis et tribunis et viris eminentissimis, acclamatum est:* **pr.** Auguste Constantine, deus te nobis servet: vestra salus nostra salus: vere dicimus, iurati dicimus. **1.** *Adunati veterani exclamaverunt:* Constantine Auguste, quo nos veteranos factos, si nullam indulgentiam habemus? *Constantinus A. dixit:* Magis magisque conveteranis meis beatitudinem augere debeo quam minuere. **2.** *Victorinus veteranus dixit:* Muneribus et oneribus universis locis conveniri non sinamur. *Constantinus A. dixit:* Apertius indica: quae sunt maxime munera, quae vos contumaciter gravant? **3.** *Universi veterani dixerunt:* Ipse perspicis scilicet.

Constantinus A. dixit: Iam nunc magnificentia mea omnibus veteranis id esse concessum perspicuum sit, ne quis eorum in nullo munere civili neque in operibus publicis conveniatur neque in nulla collatione

Posted July 15, at Rome, in the consulship of Gratian, for the fifth time, and Theodosius, Augusti (380).

[2][196] *Emperors* Arcadius, Honorius, *and* Theodosius *Augusti to Hadrianus, Praetorian Prefect (of Italy and Africa).* If deserters when discovered shall undertake to resist and to resort to arms they shall be crushed as rebels in the rashness of their very attempt. The governors (*iudices*) of the provinces must carefully investigate lest the accused struggle to defend their crime of desertion on the pretext of forged post warrants (*tractoriae*) or have the opportunity of acquittal through falsified and fictitious letters (*epistulae*).

Given February 24, at Ravenna, in the consulship of Theodosius Augustus and Rumoridus (403).

[3][197] *The same Augusti to Long(in)ianus, Praetorian Prefect (in Gaul or Italy).* Persons who desert military camps and engage in depredations and robberies shall not escape the severity of the judge.

Given March 24, at Ravenna, in the consulship of Arcadius Augustus, for the sixth time, and the vir clarissimus *Probus (406).*

Forty-Sixth Title Veterans

[1][198] *When the Emperor* Constantine *Augustus had entered the imperial military headquarters* (principia) *and had been saluted by the prefects, the tribunes and persons of Most Eminent rank, this acclamation was made:* Constantine Augustus, may God preserve you for us; your safety is our safety; we speak truly; we say so, on our oath. 1. *The veterans exclaimed in unison:* Constantine Augustus, for what purpose have we been made veterans, if we have no special grant (*indulgentia*) (of privileges)? *Constantine Augustus said:* I should rather increase again and again the happiness of my fellow-veterans than diminish it. 2. *Victorinus, a veteran, said:* We should not be allowed to be called upon to perform compulsory public duties and burdens (*munera et onera*) in all the various places. *Constantine Augustus said:* Indicate more clearly; what especially are the public duties (*munera*) that weigh upon you so stubbornly? 3. *All the veterans said:* Surely you know them yourself.

Constantine Augustus said: Let it now be plain, that by my magnificence this (privilege) is granted to all the veterans, that none of them shall be called on for any compulsory municipal duty (*munus civile*), nor for any public works, nor for any tax assessment (*collatio*), nor by any magistrate (*magistratus*), nor

[196] = C.Th. 7.18.11.
[197] = C.Th. 7.18.15. The recipient's name is corrected.
[198] = C.Th. 7.20.2. The date and place of issue are unclear; Seeck has March 1, 326, while Barnes conjectures March 1, 307. For "God," C.Th. has "the gods."

neque a magistratibus neque vectigalibus. **4.** In quibuscumque nundinis interfuerint, nulla ad venditionem proponenda dare debebunt. **5.** Publicani quoque, ut solent agentibus super compellere, ab isdem veteranis amoveantur. quiete post labores suos perenniter perfruantur. **6.** Fisco nostro quoque eadem epistula interdiximus, ut nullum omnino ex his inquietaret: sed liceat eis emere et vendere, optimis negotiis pecuniam tractare et mercimonia agitare, ut integra beneficia eorum sub saeculi nostri otio et pace perfruantur. **7.** Sed etiam nullo munere civili, id est corporali sive personali, vel de portorio onere eos adfici concedimus.

D. k. Mart. in civitate Velovocorum Constantino A. VI *et Constantino C. conss.*

[2] *Idem A. Maximo pp.* Providendum est, ne veterani protectoria dignitate cumulati, aut qui honores varios pro meritis suis consecuti sunt, incongruis pulsentur iniuriis, cum, si quis in hoc crimine fuerit deprehensus, rectores provinciarum pro iurisdictione sua examinantes factum pro sui qualitate eos coerceant.

D. IIII *k. Ian. Triveris Ianuarino et Iusto conss.*

[3] *Idem A. ad Euagrium pp.* Veterani, qui ex neglegentia vitae neque rus colunt neque aliquid honestum peragunt, sed latrociniis sese dederunt, omnibus veteranorum privilegiis exuti poenis competentibus a provinciarum rectoribus subiciantur.

D. III *id. Aug. Constantio A.* VI *et Constante* II *conss.*

[4] *Impp. Honorius et Theodosius AA. Eustathio pp. et Nestorio pp. Illyrici.* Nullus eorum, qui sacramentis inhaerere desierit, vel volens permittatur vel invitus militari cogatur observare iudicium: sententiis, quae non his observatis latae fuerint, nullam firmitatem habentibus, nisi forte reperiatur ibi tempore militiae coepta cognitio: tunc enim velut necdum cingulo deposito sub militari iudice rem tractari finirique

for any impost (*vectigalia*). 4. In whatever public markets they participate, they shall not be compelled to pay any taxes (*proponenda*) to sell their property. 5. The tax collectors (*publicani*) also, who are accustomed to overtax the tradespeople, shall be kept away from these same veterans. They shall enjoy perpetual peace after their labors. 6. We also, by the same letter (*epistula*), have forbidden Our Treasury to disturb any of them at all; but they may sell and buy, use their money for advantageous bargains, and carry on trade, so that they may enjoy their unimpaired privileges in the leisure and peace of Our time. 7.[199] And We grant also that they shall not be compelled to perform any municipal duty (*munus civile*), that is to say, any corporal or personal one, or be burdened by any duty of conveying (*deportorium onus*).

Given March 1, in the city (civitas) *of the Velovoci (?), in the consulship of Constantine Augustus, for the sixth time, and the Caesar Constantine (320?).*

[2][200] *The same Augustus to Maximus, Praetorian Prefect (of the East?).* Care must be taken to ensure that veterans who have been elevated through the rank of the protectorate (*protectoria dignitas*) or who have received various honors in recognition of their merits shall not be beset by unseemly affronts (*iniuriae*), since, if anyone should be apprehended in such a crime, the governors (*rectores*) of the provinces, examining the deed within their jurisdiction, shall punish them in accordance with the magnitude of the offence.

Given December 29, at Trier, in the consulship of Januarinus and Justus (328).

[3][201] *The same Augustus to Evagrius, Praetorian Prefect.* Veterans who through dissipation neither cultivate the soil nor pursue anything respectable, but devote themselves to brigandage (*latrocinium*), shall be deprived of all their privileges as veterans and subjected to suitable punishment by the governors (*rectores*) of the provinces.

Given August 11 in the consulship of Constantius, for the sixth time, and Constans, for the second time, Augusti (353).

[4][202] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Eustathius, Praetorian Prefect (of the East), and Nestorius, Praetorian Prefect of Illyricum.* No one who has ceased to abide by the (military) oath (upon discharge) shall be permitted voluntarily, or compelled involuntarily, to obey a military court. Rulings made in disregard of these principles shall have no effect, unless perchance the trial is found to have commenced during the time of service; for in that case We

199 This sentence does not appear in C.Th.
200 = C.Th. 7.20.5. Combine with 1.40.2 (= C.Th. 1.16.4).
201 = C.Th. 7.20.7 (altered). The date is corrected by Seeck to March 1, 339.
202 The dates are corrected.

praecipimus, nisi principali beneficio specialiter indulto quidam ex his sese defendant.

XXXXVII De Filiis Officialium Militarium Qui in Bello Moriuntur

[1] *Imp. Constantinus A. ad Euagrium pp.* Ii, qui ex officialibus quorumcumque officiorum geniti sunt, sive eorundem parentes adhuc sacramento tenentur sive iam dimissi erunt, in parentum militiam vocentur.
D. prid. non. Aug. Basso et Ablabio conss.

[2] *Imppp. Gratianus Valentinianus et Theodosius AAA. Neoterio.* Filios primipilariorum paternam sequi condicionem oportet.

[3] Ἐάν τις ἐν πολέμῳ τελευτήσῃ ὁπωσδήποτε στρατευόμενος, ὁ υἱὸς αὐτοῦ, ἐὰν εἷς ἐστιν, ἢ πολλῶν παίδων ὁ μείζων παραχρῆμα εἰς τὸν τόπον τοῦ πατρὸς ὑπεισερχέσθω καὶ τὰς ἀννόνας τὰς αὐτὰς λαμβανέτω, εἰ μέχρι βιάρχου ἦν ὁ πατήρ. εἰ δὲ ἀνώτερος ἦν τοῦ βιάρχου, βίαρχον μόνον γίνεσθαι τὸν παῖδα. πρόδηλον γάρ, ὅτι ὁ μείζων ταύτην ἔχων τὴν παραμυθίαν φροντίζει καὶ τῶν ἰδίων ἀδελφῶν.

XXXXVIII De Oblatione Votorum

[1] *Impp. Arcadius et Honorius AA. Basilio pu.* Quando votis communibus felix annus aperitur, in una libra auri et solidis obryziacis principibus offerendi devotionem animo libenti suscipimus statuentes, ut deinceps sequentibus annis uniuscuiusque sedulitas principibus suis talia ingerant semper et deferant.
D. III non. Mart. Mediolani Olybrio et Probino conss.

decree that the matter shall be handled and concluded by the military judge, as though the belt of military service had not yet been laid aside, unless certain persons protect themselves against it by reason of an imperial benefit exceptionally conferred.

(421–423).

Forty-Seventh Title Sons of Military Officials Who Die in War

[1][203] *Emperor Constantine Augustus to Evagrius, Praetorian Prefect.* Those who are begotten of members (*officiales*) of any official staff whatever, whether their parents are still bound by their oath (of office) or have already been discharged, are called into the service of their parents.

Given August 4, in the consulship of Bassus and Ablabius (331).

[2][204] *Emperors Gratian, Valentinian, and Theodosius Augusti to Neoterius.* The sons of a quartermaster-general (*primipilarius*) should follow the status (*condicio*) of their father.

(380?).

[3][205] If anyone serving in the army should die in war in any manner, his son if there is only one, or the elder of several, shall immediately take his father's place and receive his pay (*annonae*), if the father has not advanced higher than the rank of *biarchus* ("commissary"; roughly, "corporal"); but if his father attained a higher rank than *biarchus*, the son shall only become a *biarchus*. For it is clear that the elder son who receives this emolument will also care for his brothers.

Forty-Eighth Title Bestowal of Votive Offerings (*Oblatio Votorum*)

[1][206] *Emperors Arcadius and Honorius Augusti to Basilius, City Prefect (of Rome).* When the happy New Year opens with common prayers (*vota communia*), We receive with an eager heart the devotion expressed by an offering to the Emperors in the amount of 1 pound of gold, consisting of (72) solidi of pure gold, and We direct that henceforth in subsequent years the zeal of each and every person should always bring and present such offerings to his Emperors.

Given March 5, at Milan, in the consulship of Olybrius and Probinus (395).

[203] = C.Th. 7.22.3. Combine with C.Th. 12.1.19, 20.

[204] Compare C.Th. 7.22.11 on the same subject, addressed "to Our dearest friend, Neoterius, greetings," the subscription of which states that it was given (?) September 8, 380, at Sirmium. Seeck prefers that date here.

[205] From Bas. 57.7.3. This law has been identified as coming from the Emperor Maurice (582–602).

[206] = C.Th. 7.24.1.

XXXXVIIII De Numerariis Actuariis et Chartulariis et Adiutoribus Scriniariis et Exceptoribus Sedis Excelsae Ceterorumque Iudicum Tam Civilium Quam Militarium

[1] *Imp. Constantinus A. Veroniciano vicario Asiae.* Vorax et fraudulentum numerariorum propositum, qui diversis obsequiis rectoribus obsequuntur, ita inhibendum est, ut antea sanximus et nunc itidem sancimus condicioni eos subdi tormentorum et eculeis atque lacerationibus subiacere.

D. XIIII k. Iun. Optato et Paulino conss.

[2] *Impp. Valentinianus et Valens AA. ad Clearchum.* **pr.** Qui numerarii appellari consueverant consularium ac praesidum dumtaxat, tabularii post hanc nostram sanctionem vocabuntur, scientes se tormentis esse subiectos, nisi iudicibus vel his, qui provecti nostro iudicio ad provincias venerint, vel exactoribus debitorum aut reliquorum modum frequenter ingesserint sub actorum testificatione: quos scire oportet cum his qui debitores sunt sese ad solutionem esse retinendos, nisi omnia debita ipsis fuerint indicantibus persoluta. **1.** Triennii tamen spatio tabulariorum decet tempus omne concludi.

D. XIIII k. Mart. Constantinopoli Valentiniano et Valente AA. conss.

[3] *Idem AA. Rufino pp.* Numerarios amplissimae tuae sedis cingulum habere et militiae ordinem tenere iubemus.

D. prid. id. Dec. Parisiis Valentiniano et Valente AA. conss.

[4] *Imppp. Gratianus Valentinianus et Theodosius AAA. omnibus rectoribus provinciarum.* In provinciis singulis duo numerarii, qui

Forty-Ninth Title Chief Accountants, Quartermasters, Secretaries, Principal Assistants, Accountants, and Shorthand Writers of the Exalted Seat (of the Praetorian Prefect) and of the Other Judges, Civil and Military

[1][207] *Emperor* CONSTANTINE *Augustus to Veronicianus, Vicar of the Diocese of Asia.* The greedy and fraudulent conduct of the chief accountants (*numerarii*) who perform various services (*obsequia*) under the governors (*rectores*) must be restrained in such a manner that, as We formerly ordained and now again ordain, they shall be subjected to the status (*condicio*) of those liable to be tortured and submitted to the rack and to lacerations.

Given May 19 in the consulship of Optatus and Paulinus (334).

[2][208] *Emperors* VALENTINIAN *and* VALENS *Augusti to Clearchus.* pr. Those who have heretofore been accustomed to be called chief accountants (*numerarii*) of provincial governors (*consulares ac praesides*, of *clarissimus* rank) shall, after this Our ordinance, be called *tabularii*. They must take notice that they are subject to torture unless they routinely, with the corroboration of their records, inform the governors (*iudices*), or those who are sent on Our order and come to the provinces, or the tax collectors (*exactores*) of the amount of taxes due or delinquent; and they should know that they will be liable for the payment of taxes along with the debtors themselves unless, according to their reports, all such taxes have been paid. 1. It is proper, moreover, that the entire period of service of the chief accountants (*tabularii*) should be limited to three years.

Given February 16, at Constantinople, in the consulship of Valentinian and Valens Augusti (365).

[3][209] *The same Augusti to Rufinus, Praetorian Prefect (of Italy, Africa, and Illyricum).* We direct that chief accountants (*numerarii*) of your most magnificent seat may wear the belt of office (*cingulum*) and hold rank in the imperial service (*militiae ordinem tenere*).

Given December 12, at Paris, in the consulship of Valentinian and Valens Augusti (365).

[4][210] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to all the governors (rectores) of provinces.* Two chief accountants (*numerarii*), also called *tabularii*, shall be stationed in each province, so that one may be ordered to

[207] = C.Th. 8.1.4. Combine with C.Th. 8.15.2.
[208] = C.Th. 8.1.9. The recipient was Vicar of the Diocese of Asia.
[209] = C.Th. 8.1.11 (altered).
[210] = C.Th. 8.1.12.

et tabularii, collocentur, quo ad unum fiscalis arcae ratiocinium, ad alterum largitionales pertinere tituli iubeantur: scituri, quod, si ex alienis quicquam actibus ad alteram partem illicita fuerit usurpatione translatum, is, qui iudicis culpam dissimulatione texerit, gravissimo sit supplicio subiugandus.

D. III k. April. Constantinopoli Antonio et Syagrio conss.

[5] *Idem AAA. et Arcadius A. Principio pp.* Exceptores omnes iudicibus provincialibus obsequentes, qui nec cohortalem militiam sustinere videntur neque a fisco ullas consequuntur annonas, absque metu dare coeptis operam, etiamsi decuriones sint, minime prohibemus, dummodo munia propriae civitatis agnoscant et peracto secundum morem exceptionis officio ad propriam sibi curiam redeundum esse non nesciant.

D. IIII id. Dec. Aquileiae Arcadio A. et Bautone conss.

[6] *Impp. Arcadius et Honorius AA. Severo pu.* **pr.** Ne diutius ad cunctorum perniciem actuarii numerariorum consortiis adiuventur, illustris auctoritas tua cunctos ex numerariis actuariorum societate praecipiat abstinere atque ab eorum communione discedere. **1.** Quod si haec moniti custodire neglexerint, isdem poenis se quibus actuarios non ambigant subiacere.

D. IIII k. Iul. Nicaeae Honorio A. IIII et Eutychiano conss.

[7] *Impp. Theodosius et Valentinianus AA. Hierio pp.* **pr.** Actuarios tam classium urbis Constantinopolitanae quam thymelae equorumque curulium civitatum diversarum non aliter nisi, ut consueverat, manus sanxerit principalis, sublimitas tua praecipiat ordinari. **1.** Quod si quis talis sub tua fuerit iudicatione convictus, profecto irritis his, quae vetita contrectavit, etiam congruam indignationem incurret.

manage the account of the prefectural treasury (*fiscalis arca*) and the other the revenues of the department of Imperial Benefactions (*tituli largitionales*). They shall know that if anything is by an unlawful appropriation transferred from the accounts of the one to the other, he who deceitfully conceals the guilt of the governor (*iudex*) shall be subjected to a most severe punishment.

Given March 30, at Constantinople, in the consulship of Antonius and Syagrius (382).

[5][211] *The same Augusti and* ARCADIUS *Augustus to Principius, Praetorian Prefect (of Italy).* We do not at all forbid any shorthand writers (*exceptores*) serving provincial governors (*iudices*) who do not appear to have joined a provincial staff in the imperial service (*cohortalis militia*) nor draw any provisions (*annonae*) from the Treasury, to act in the capacity they have undertaken without fear, even though they are decurions, provided that they acknowledge the compulsory duties of their own city and do not forget that they must return to their own municipal council (*curia*) as is customary after their duties as shorthand writers are concluded.

Given December 10, at Aquileia, in the consulship of Arcadius and Bauto, Augusti (385).

[6][212] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Sever(in)us, City Prefect (of Constantinople).* **pr.** Lest quartermasters (*actuarii*) be abetted any longer by their collusion with chief accountants (*numerarii*) to the detriment of all, Your Authority, of *illustris* rank, should direct that all chief accountants must refrain from association with quartermasters and avoid contact with them. **1.** If they fail to obey these provisions after admonishment, they should not doubt that they will meet with the same punishment as the quartermasters.

Given June 28, at Nicaea, in the consulship of Honorius Augustus, for the fourth time, and Eutychianus (398).

[7][213] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Hierius, Praetorian Prefect (of the East).* **pr.** Your Sublimity will direct that the quartermasters (*actuarii*) of the fleets (*classes*) of the city of Constantinople, as well as those of the theater and of the racehorses of the various cities, shall not be appointed unless the imperial hand has sanctioned it, as has been the custom. **1.**[214] If any such person is convicted by your judgment, his unlawful acts shall immediately be void, and he shall also bring appropriate displeasure down upon himself.

[211] = C.Th. 8.7.17. Combine with C.Th. 11.16.17.
[212] = C.Th. 8.1.14. The name of the addressee is corrected; the law probably dates to July 12.
[213] pr. = C.Th. 8.7.21.2.
[214] = C. 12.59.6.1.

D. x k. Iul. Nicomediae Theodosio XII et Valentiniano II AA. conss.

[8] *Idem AA. Protogeni pp.* Scriniarios vel numerarios officii magnitudinis tuae iubemus nullatenus in posterum aut mutuam pecuniam sumere aut polliceri cuiquam pro publicis cogi expensis: quos nullam post depositam militiam inquietudinem sustinere volumus.

[9] *Imp. Leo A. Dioscoro pp.* Nemini licere deinceps iubemus in quacumque militia connumerato sollicitudinem actuarii subire vel post depositam eandem curam ad militiam adspirare, quatenus inter privatos agens omnique militari privilegio denudatus nihil nundinationis vel fraudis circa commendanda ratiocinia quibus obnoxius est attemptare valeat.

[10] *Imp. Zeno A. Arcadio pp.* **pr.** Nulli scriniario liceat pro tempore numerarios plus quam quaternis vicibus, nec his tamen continuandis, adiuvare: idemque hoc super chartulariis praebenda pro tempore numerariis opera observari decernimus, ita ut adiutorum quidem biennii, chartulariorum vero unius anni intervallo continuatio interrumpatur: nulla adiutoribus ad chartulariorum sollicitudinem, quam semel dedignati sunt, descendendi danda licentia: ita ut Orientalis quidem tractus pro tempore numerariis non nisi ab his scriniariis, qui intra triginta viros a numerario retro numerandos, Asianae vero dioeceseos numerariis non nisi ab his, qui intra quinquaginta a numerario similiter retro numerandos inveniuntur, Ponticae vero et Thracicae dioeceseos passim et pro suo libitu ex omni multitudine eligendorum adiutorum tribuatur facultas.

1. Omnia sane commonitoria vel praeceptiones aut evectiones seu quaelibet publica instrumenta non solum adiutori, verum etiam provinciae illius de qua disponitur tractatori inspiciendi itidemque

Given June 22, at Nicomedia, in the consulship of Theodosius, for the twelfth time, and Valentinian, for the second time, Augusti (426).

[8] *The same Augusti to Protogenes, Praetorian Prefect (of the East).* We order that the accountants (*scriniarii*) or the chief accountants (*numerarii*) of the official staff of Your Greatness shall not hereafter be compelled to make a loan or to make a promise to anyone to defray public expenses. We do not want them to be disturbed after their retirement from the imperial service.

(448–449).

[9][215] *Emperor* Leo *Augustus to Dioscorus, Praetorian Prefect (of the East?).* We order that no one enrolled in any branch of the imperial service shall be permitted hereafter either to assume the duties of quartermaster (*actuarius*) or, after leaving such employment (as an *actuarius*), to aspire to enter the imperial service, in order that he, acting as a private citizen, (but) denied all official privilege, may not be able to connive at any peculation or fraud in connection with the accounts entrusted to him for which he is responsible.

(472–474).

[10][216] *Emperor* Zeno *Augustus to Arcadius, Praetorian Prefect (of the East).* pr. No accountant (*scriniarius*) shall be permitted to serve as principal assistant (*adiuvare*) to the then-serving chief accountants (*numerarii*) more than four times, and this not in succession; and We determine that the same restriction shall apply to the assistance rendered by the secretaries (*chartularii*) to the then-serving chief accountants. Continuity in these positions, therefore, shall be interrupted by an interval of two years in the case of principal assistants (*adiutores*) and one year in the case of secretaries. No opportunity is offered to the principal assistants of reverting to the duties of the secretaries, which they had previously disdained. Accordingly, the prerogative is granted to the then-serving chief accountants in the diocese of the East (*Orientalis tractus*) to select their principal assistants only from those accountants who are found to be among the thirty most senior, counting back from the chief accountant (himself); to the chief accountants of the diocese of Asia, likewise, only from the fifty most senior; but to the chief accountants of the dioceses of Pontica and Thrace, to select as they like from the entire group of accountants indiscriminately.

1. We expect, of course, that the necessity of inspecting and at the same time of subscribing all letters of instruction, directions, warrants for the public post, and any other public documents falls upon not only the principal assistant but

[215] The date is corrected.
[216] Possibly combine with 12.60.6. The date is corrected to 490.

subscribendi, aliorum quoque, qui una cum eo tractant, in eadem subscriptione mentione habenda, necessitatem incumbere. **2.** Si quid autem sine hac observatione ex Orientali vel Asiano vel Thracico scrinio fuerit emissum, falsi suspicione non careat: exceptis publicis instrumentis, quae ex scrinio Ponticae dioeceseos emittuntur, quod in isdem instrumentis solum numerarium eiusdem dioeceseos eiusque adiutorem et chartularium subscribere magnitudo tua disposuit: ita ut, si quid huius legis fuerit violatum, numerarii quidem tam gradus sui quam sollemnitatum seu solaciorum universi anni iacturam, adiutores vero quinquaginta librarum auri et chartularii quindecim itidem librarum auri poenam subeant.

[11] *Idem A. Catoni magistro militum.* Officio magnitudinis tuae datis precibus postulante, ut numerariorum actus non in biennium, sed in unum annum statuatur, nostra pietas huiusmodi petitionibus adnuens dispositionem, quae promulgata fuerat super biennio, super uno tantummodo anno revocavit.

[12] *Imp. Anastasius A. Spartiatio pp. Illyrici.* **pr.** Per hanc divinam pragmaticam sanctionem decernimus, quod antea, dum tribuni praetoriani dignitas eis, qui in scriniis seu gradibus officii tuae celsitudinis deponunt militiam, praebeatur, custoditum fuisse dignoscitur, hoc super honore quoque comitivae dignitatis eis impertiri, ut sententia pro fine eorum militiae proferenda dignitatis etiam mentionem contineat, haec quoque tantummodo et sine speciali codicillorum vel divinorum apicum sanctione ad eandem dignitatem adipiscendam et privilegia eam sequentia sufficiat: ita tamen, ut primi ordinis comitivam per interlocutionem eiusdem potestatis mereantur cornicularius et primiscrinius et numerarius scrinii Macedoniae et scrinii Daciae et scrinii operum et scrinii auri. **1.** Hoc eodem in his etiam, qui post novellam dispositionem divae memoriae Zenonis, quae de isdem personis loquitur, deposuerunt militiam, obtinente.

also the financial manager (*tractator*) of the province concerned, with those who cooperate with the latter noted also in the same subscription. 2. If any document shall be issued from the bureau (*scrinium*) of the Eastern diocese, or from those of Asia or Thrace, without obeying these directions, it shall not lack the suspicion of forgery, excepting the public documents that are issued by the bureau for the diocese of Pontica, because Your Greatness has ordered these to be subscribed only by the chief accountant of the diocese and his principal assistant and secretary. If any provision of this law is violated, accordingly, the chief accountants shall not only lose their rank (*gradus*) but also their customary emoluments for the whole year, and the principal assistants shall incur a penalty of 50 pounds of gold and the secretaries at the same time a penalty of 15 pounds of gold.

(485–486?).

[11][217] *The same Augustus to Cato, Master of Soldiers.* Since the official staff of Your Greatness has presented a petition asking that the term of office of the chief accountants (*numerarii*) should be fixed at one year instead of two, Our Piety, granting approval to petitions of this kind, has recalled the order which had been promulgated as to two years, instead of one.

(485–486?).

[12] *Emperor Anastasius Augustus to Spartiatius, Praetorian Prefect of Illyricum.* By this imperial pragmatic sanction We direct that the custom known to have been observed when the rank (*dignitas*) of Praetorian Tribune is bestowed on persons retiring from the imperial service in the bureaus and the grades (*gradus*) of the official staff of Your Highness, shall also be followed in bestowing the honor of the rank of Count (*comitiva dignitas*) upon such persons, so that the citation executed at the conclusion of their service shall contain as well the mention of this rank; this alone, without the distinctive sanction of diplomas (*codicilli*) or imperial decrees, shall suffice for the bestowal of that same rank and the privileges appertaining thereto. Accordingly, the persons who shall merit the Countship of the First Order by order of the same authority (*per interlocutionem eiusdem potestatis*) are the Department Head (*cornicularius*) and the First Assistant Head (*primiscrinius*) and the Chief Accountant (*numerarius*) of the bureau of the diocese of Macedonia, of that of Dacia, of (public) works, and of gold. 1. This same provision shall also apply to those who have retired from the service subsequent to the recent order of Zeno, of blessed memory, which speaks of the same persons.

(491–518).

[217] The date is corrected to 490–491.

[13] pr. Ἡ διάταξις κελεύει τὰς παραμυθίας, ἃς ἐλάμβανεν ὁ ταβουλάριος ἐν τοῖς μεγάλοις τρισὶ σκρινίοις, τοῦτ᾽ ἔστι τῆς ἀνατολικῆς καὶ Ποντικῆς διοικήσεως, δίδοσθαι τῷ πρώτῳ καὶ δευτέρῳ καὶ τρίτῳ ταβουλαρίῳ, οὐκ ἐξ ἴσου μέρους, ἀλλὰ τοῦ μὲν ἡμίσεος τῷ πρώτῳ διαφέροντος, τοῦ δὲ τρίτου τῷ δευτέρῳ, τῷ δὲ τρίτῳ τοῦ ἕκτου, ὥστε καὶ τὸ δημόσιον ἔχειν τὸ ἀσφαλές, καὶ ἕκαστον αὐτῶν διὰ τῶν ἐνιαυτῶν λαμβάνειν ἐνιαυτοῦ τελείου ἀννόνας. **1.** Κελεύει δὲ τὸν τρακτεύοντα ἐπαρχίαν ἅμα τῷ γενέσθαι ταβουλάριον ἀφίστασθαι τοῦ τρακτάτου τῆς ἐπαρχίας, ἵνα μήτε περὶ πλείονα ἀπησχόληται καὶ βλάπτηται ἐκ τούτου τὸ δημόσιον, μήτε ἀμελῶν, ὡς εἰκός, τῶν ἐπαρχιῶν ἐγκαλῇ τοῖς ἅμα αὐτῷ νουμεραρίοις ὡς αἰτίοις γενομένοις. **2.** Αὐτοὶ δὲ οἱ τρεῖς ἐπιλεγέσθωσαν τοὺς ὀφείλοντας αὐτοῖς ὑπουργεῖν εἰς τὴν τῶν δημοσίων ἐξάνυσιν, ἵνα, ἐὰν οἱ τρακτευταὶ τῶν ἐπαρχιῶν ὑπέρθωνται καταβάλλειν ἐπὶ αὐτοὺς τὰ δημόσια, τοῦ τρακτάτου ἐκπίπτωσιν. **3.** Οἱ μέντοιγε τῶν ὅπλων ταβουλάριοι ἐν τοῖς ἄλλοις πᾶσι δουλευέτωσαν τῇ τάξει χωρὶς τῶν ἰδίων ἀννόνων· ταύτας γὰρ λήψονται κατὰ τὴν μέχρι νῦν κρατοῦσαν συνήθειαν τὴν βουλομένην εἰς πολλοὺς διαιρεῖσθαι τὰς τῷ πρώτῳ ἀνηκούσας συνηθείας.

L De Cursu Publico Angariis et Parangariis

[1] *Imp. Constantinus A. ad Titianum.* Equos, qui publico cursui deputati sunt, non lignis vel fustibus, sed flagellis tantummodo agitari decernimus: poena non defutura contra eum, qui aliter fecerit.
D. prid. id. Mai. Sabino et Rufino conss.

[2] *Idem A. ad Acyndinum pp.* **pr.** Praesidibus et rationalibus ceterisque, quibus propterea res publica et annonas et alimenta pecoribus subministrat, usurpandi paraveredi licentia derogetur. **1.** Sed nec alia via eundi quisquam habeat facultatem, nisi per quam cursus publicus stare

[13][218] **pr.** The constitution directs that the emoluments which the Chief Accountant (*tabularius*) receives in each of the three great bureaus (*scrinia*) – that is to say, (rather,) those of the dioceses of the East and of Pontus – shall be divided between the first, second, and third *tabularius* (i.e., the *numerarius, adiutor*, and *chartularius*?) not in equal parts, but so that half is allocated to the first, a third to the second, and a sixth to the third; thus the Treasury may be safe, and each of them may receive a full year's pay (*annonae*) every year. **1.** It also orders that the financial manager (*tractator*) of a province, as soon as he becomes Chief Accountant, shall lay down his duties as financial manager of the province, lest he be preoccupied with several things whereby the Treasury would suffer damage, and lest he be in a position to accuse the accountants (*numerarii*) with him of responsibility for the damage if the provinces, as happens, are neglected. **2.** These three shall themselves select those who ought to aid them in exacting taxes, so that if the financial managers in the provinces delay remitting the taxes due to them, the financial managers shall lose their position. **3.** The Chief Accountants (*tabularii*) (of the bureau) of arms, however, shall comply with the official staff in all things except in regard to pay (*annonae*); they shall receive this according to the custom heretofore prevailing which prefers the emoluments belonging to the first (Chief Accountant) to be divided into several parts.

Fiftieth Title The Public Post and Transport and Supplementary Transport

[1][219] *Emperor* CONSTANTINE *Augustus to Titianus.* We decree that the horses assigned to the public post shall not be struck by sticks or cudgels, but only by whips. Punishment will not be wanting on the person who does otherwise.

Given May 14, in the consulship of Sabinus and Rufinus (316).

[2][220] *The same Augustus to Acyndinus (Acindynus), Praetorian Prefect (of the East).* **pr.** The prerogative of appropriating an extra post-horse (*paraveredus*) shall be restricted in the case of governors (*praesides*) and comptrollers (*rationales*) and others to whom the state (*res publica*) furnishes both allowances for provisions and fodder for livestock (*annonae et alimenta pecoribus*) for that very purpose. **1.** And no one shall have the privilege of traveling by any route other than that which the public post is known to use, excepting, of course, the

[218] Summary from Bas. 6.35.13. In the *principium*, it is likely that the name of a "great bureau" (possibly Asia or Thrace) has fallen out of the text. Lounghis *et al.* date to between 491 and 518.

[219] = C.Th. 8.5.2 (altered).

[220] = C.Th. 8.5.3 (altered). The date is corrected by Seeck to 339.

dignoscitur: excepta videlicet tua sublimissima sede, cui cursus publicus et proficiscendi per eum licentia et ubi ratio exegerit praesto est.

PP. XV k. Mart. Constantino A. VII et Constantio C. conss.

[3] *Imp. Constantius A. ad Taurum pp.* **pr.** Evectiones ab omnibus postulentur, et tam iudices quam custodes publici cursus minime transire patiantur, antequam seriem evectionis adspexerint. **1.** Quod si quis putaverit resistendum et sine evectione iter facere detegitur, vel ultra tempus quod evectioni insertum est publico cursu uti conatus sit, ubi repertus fuerit, eundem iussimus detineri et, si quidem dignitate praeditus sit, de eius nomine ad prudentiam tuam et ad illustrem virum comitem et magistrum officiorum referri. adversus ceteros vero protinus indignatio competens exercenda est, quos sinceritas tua pro loco graduque militiae ibidem coerceri posse crediderit.

D. VIII k. Iul. Mediolani Constantio A. VIIII et Iuliano C. II conss.

[4] *Imp. Iulianus A. ad Mamertinum pp.* **pr.** Parhippum eum videri et habendum esse, si quis usurpato uno vel duobus veredis, quos solos evectio continebit, alterum tertiumve extra ordinem commoveat. **1.** Nihil autem interesse debet nec ad crimen vocari, utrum agens in rebus suo anne mulionis itineris subiugando, modo[viii] evectionis datae formam et licentiam non excedat.

D. V id. Sept. Mamertino et Nevitta conss.

[5] *Impp. Valentinianus et Valens AA. ad Symmachum correctorem Lucaniae et Brittiorum.* Si quis per publicum cursum iter faciens cuiuscumque dignitatis vel militiae ab itinere recto deverterit, poena in eum competens proferatur.

D. VIII k. April. Mediolani Valentiniano et Valente AA. conss.

[viii] suo anne mulionis itineri subiungat (sc. veredum) dummodo

seat of Your Sublimity, at whose disposal is the public post and the prerogative of traveling on it wherever the occasion may demand.

Posted February 15, in the consulship of Constantine Augustus, for the seventh time, and the Caesar Constantius (326).

[3][221] *Emperor* CONSTANTIUS *Augustus to Taurus, Praetorian Prefect (of Italy and Africa).* **pr.** Warrants for the public post (*evectiones*) shall be demanded from all, and neither the governors (*iudices*) nor the custodians of the public post should allow anyone to pass before inspecting the contents of the warrant. **1.** If anyone thinks of resisting this and is found to be traveling without a warrant, or has attempted to use the public post beyond the time specified in the warrant, We order him to be detained whenever he was discovered, and if he is a man of rank (*dignitate praeditus*) his name shall be reported to Your Prudence and to the *vir illustris* Count and Master of Offices. But suitable punishment shall be immediately visited upon all others whom Your Sincerity believes, in consideration of their position and grade of service (*pro loco graduque militiae*), to be able to be punished there.

Given June 24, at Milan, in the consulship of Constantius Augustus, for the ninth time, and the Caesar Julian, for the second time (357).

[4][222] *Emperor* JULIAN *Augustus to Mamertinus, Praetorian Prefect (of Italy, Africa, and Illyricum).* **pr.** If a person who has appropriated one or two public post-horses (*veredi*), which alone are authorized by his warrant (*evectio*), should lay hold of a second or a third in excess of the prescribed number, (it is obvious that) such a horse appears to be and should be considered a supplementary horse (*parhippus*). **1.** But it should not make any difference or be called a crime whether a courier (*agens in rebus*) adds such a horse for his own journey or for that of the groom, provided he does not exceed the express and implicit authority (*forma et licentia*) of the warrant issued to him.

Given September 9, in the consulship of Mamertinus and Nevitta (362).

[5][223] *Emperors* VALENTINIAN *and* VALENS *Augusti to Symmachus, Governor* (Corrector) *of Lucania and Bruttium.* If anyone, of whatever rank or branch of the imperial service (*dignitas vel militia*), travels by the public post and detours from the direct route, proper punishment shall be visited upon him.

Given March 25, at Milan, in the consulship of Valentinian and Valens Augusti (365).

[221] = C.Th. 8.5.8 (adding the Caesar Julian as author), 22. The date is corrected by Seeck to 356.
[222] = C.Th. 8.5.14.
[223] = C.Th. 8.5.25.

[6] *Idem AA. et Gratianus A. ad Ampelium pu.* **pr.** Evectionum copiam senatui, cum proficiscendi ad nos necessitas fuerit, serenitas nostra largita est, ita tamen, ut cum a nobis evocatur aut a clementiae nostrae veneratione discedat. **1.** Si quis ergo posthac contra vetitum sibi cursum publicum illicita temeritate praesumpserit, motum in se nostrae mansuetudinis excitabit.

D. III id. Dec. Triveris Gratiano A. II et Probo conss.

[7] *Idem AAA. ad Hesperium pp.* **pr.** In omnibus provinciis veredorum pars quarta reparetur. **1.** Stabula autem ut impensis publicis extruantur, contra rationem est, cum provincialium sumptu, in quorum locis stabula constituta sunt, citius arbitremur apparanda et utilius tam publico quam his, quos stercus animalium pro suo solacio habere concedimus.

D. III k. Mart. Triveris Gratiano A. IIII et Merobaude conss.

[8] *Imppp. Valens Gratianus et Valentinianus AAA. ad Ausonium pp.* Ut agendi itineris possit esse moderatio, deni veredi per dies singulos ex utraque parte dimittantur: poena quinque librarum auri minime defutura contra eos, qui statuta nostra neglexerint.

D. XII k. Mai. Triveris Valente VI et Valentiniano II AA. conss.

[9] *Imppp. Gratianus Valentinianus et Theodosius AAA. Floro pp.* **pr.** Iudicibus faciendae evectionis copiam denegamus, cum id tantum nostro numini et tuae sedi nec non viro illustri magistro officiorum sit reservandum, cum neque praefecto urbis neque magistris militum neque ducibus neque vicariis nec cuiquam alii praeter memoratas duas potestates hoc a nobis concessum sit. **1.** His enim tantum ambulandi facultatem iudices ex suo arbitrio praebituri sunt, quos in transmissione publicarum functionum prosecutores viderint constitutos: scituri, si

[6][224] *The same Augusti and* GRATIAN *Augustus to Ampelius, City Prefect (of Rome).* **pr.** Our Serenity has lavished an abundance of warrants for the public post (*evectiones*) upon the Senate whenever it has been necessary for them to come to Us, whether it is summoned by Us or departs once it has paid its respects to Our Clemency. **1.** If anyone, therefore, by impermissible indiscretion, presumes hereafter to use the public post contrary to law, he will spur Our Clemency into action against him.

Given December 11, at Trier, in the consulship of Gratian Augustus, for the second time, and Probus (371).

[7][225] *The same Augusti to Hesperius, Praetorian Prefect.* **pr.** A quarter of the post-horses shall be replaced (annually) in all of the provinces. **1.** It is, moreover, unreasonable that the stables should be built at public expense since We suppose that they can be constructed more quickly at the expense of the provincials in whose territory they are situated. That is more advantageous to the Treasury as well as to those to whom We have granted the right of manure in the stables (*stercus animalium*) as compensation.

Given February 27, at Trier, in the consulship of Gratian Augustus, for the fourth time, and Merobaudes (377).

[8][226] *Emperors* VALENS, GRATIAN, *and* VALENTINIAN *Augusti to Ausonius, Praetorian Prefect (of the Gauls).* In order that there may be regularity in connection with traveling, ten post-horses shall be sent each day from each direction, and a penalty of 5 pounds of gold will scarcely be wanting from those who fail to comply with Our statute.

Given April 20, at Trier, in the consulship of Valens, for the sixth time, and Valentinian, for the second time, Augusti (378).

[9][227] *Emperors* GRATIAN, VALENTINIAN, *and* THEODOSIUS *Augusti to Florus, Praetorian Prefect (of the East).* **pr.** We deny governors (*iudices*) the prerogative of issuing warrants for the public post. This prerogative is reserved solely for Our Divine Majesty, for your office, and for the Master of Offices of *illustris* rank; and it is granted by Us neither to the Prefect of the City, to the Masters of Soldiers, to the Dukes, to the Vicars (*vicarii*), nor to anyone else apart from the two aforementioned officials (*potestates*). **1.** Governors in accordance with their own judgment shall grant permission to travel only to those whom they see appointed as escorts (*prosecutores*) for the transportation of public

[224] = C.Th. 8.5.32. Combine with C.Th. 9.16.10.
[225] = C.Th. 8.5.34. The recipient was actually Proconsul of Africa.
[226] = C.Th. 8.5.35 (altered).
[227] = C.Th. 8.5.40. The date was corrected by Seeck to July 16, 382.

definitionem nostram excesserint, se quidem viginti quinque auri libris, officia vero quinquaginta esse multandos.

D. x k. Aug. Constantinopoli Antonio et Syagrio conss.

[10] *Idem AAA. Philagrio comiti Orientis.* Gravissimae poenae acerbitate proposita evectionum contractus, animalium quoque publicorum merces et ementis et distrahentis coercitione prohibemus.

PP. Beryto. d. XII k. Oct. Antonio et Syagrio conss.

[11] *Idem AAA. Cynegio pp.* Nullus evectione utatur privatus, tametsi valuerit impetrare.

D. VI non. Mart. Constantinopoli Ricomere et Clearcho conss.

[12] *Impppp. Valentinianus Theodosius et Arcadius AAA. Cynegio pp.* Quoniam veredorum quoque cura pari ratione tractanda est, sexaginta libras sella cum frenis, sexaginta itidem averta non transeat: ea condicione, ut, si quis praescripta moderaminis imperatorii libramenta transcenderit, eius sella in frusta caedatur, averta vero fisci viribus deputetur: exceptis auri centenariis, quae necesse est ab hippocomis in solitis sacculis reportari.

D. XV k. Iul. Constantinopoli Arcadio A. et Bautone conss.

[13] *Idem AAA. Floro pp.* pr. Non patimur hippocomos per eos qui veredis uterentur indigna spoliatione vexari, si quidem nonnulli veredarii saga eorum dicuntur auferre vel praecidere. **1.** Quocirca per omnes iudices et curiosos miserabilis removeatur iniuria, scientibus cunctis,

revenues (*functiones*), and they shall know that if they violate Our restriction they will be punished by a fine of 25 pounds of gold, and their official staff by a fine of 50 pounds.

Given July 23, at Constantinople, in the consulship of Antonius and Syagrius (382).

[10][228] *The same Augusti to Philagrius, Count of the East.* Under the bitterness of a most weighty punishment imposed as a threat on both purchasers and vendors, We prohibit contracts concerning warrants for the public post and also trade in public animals.

Posted at Beirut. Given September 20 in the consulship of Antonius and Syagrius (382).

[11][229] *The same Augusti to Cynegius, Praetorian Prefect (of the East).* No person in private station (*privatus*) shall make use of a warrant for the public post, even if he has succeeded in procuring one.

Given March 2, at Constantinople, in the consulship of Richomer and Clearchus (384).

[12][230] *Emperors VALENTINIAN, THEODOSIUS, and ARCADIUS Augusti to Cynegius, Praetorian Prefect (of the East).* Since the care of post-horses must be undertaken in like manner (as other property of the public post), the saddle and bridle shall not weigh more than 60 pounds; the saddlebag (*averta*) likewise. And it is provided that if anyone exceeds the weight limits fixed in this imperial regulation, his saddle shall be cut to pieces and his saddlebag assigned to the account of the Treasury,[231] excepting from this restriction, however, *centenaria* of gold (weighing 100 pounds), which must necessarily be carried back by the grooms (*hippocomi*) in the usual sacks.

Given June 17, at Constantinople, in the consulship of Arcadius Augustus and Bauto (385).

[13][232] *The same Augusti to Florus, Praetorian Prefect (of the East).* **pr.** We do not permit the grooms (*hippocomi*) to be vexed by shameful pilfering on the part of those who use post-horses, inasmuch as some of the horse couriers (*veredarii*) are said to be carrying off or tearing away their cloaks. **1.** Such deplorable outrage must be stopped by all the governors (*iudices*) and the inspectors of the public post (*curiosi*), and all may know that if Our ordinance has not

228 = C.Th. 8.5.41.
229 = C.Th. 8.5.44.
230 = C.Th. 8.5.47.
231 C.Th. ends here.
232 = C.Th. 8.5.50. The name of the addressee is missing in C.Th.

quod, si observata non fuerit nostra sanctio, non solum damna resarcire, verum etiam notam et multam qui neglexerit subire cogetur.

PP. XV k. Iul. Triveris Valentiniano A. IIII et Neoterio conss.

[14] *Idem AAA. Potamio praefecto Augustali.* Publici cursus exhibitio secundum locorum consuetudinem vel curialibus vel cohortalibus debet committi vel his, qui suo periculo ab eminentissima praefectura sub competenti cautela excipiunt.

D. III k. Aug. Constantinopoli Arcadio A. II et Rufino conss.

[15] *Impp. Arcadius et Honorius AA. Dextro pp.* Si quis vel per unam mutationem veredum superducendum esse crediderit, in quadruplum superductorum animalium pretium fisci viribus inferat.

D. XV k. April. Mediolano Olybrio et Probino conss.

[16] *Idem AA. Remistheo duci Armeniae.* His tantummodo utendi cursus publici facultas concessa est, qui legati de diversis gentibus ad nostram clementiam properare festinant.

D. VI k. Mart. Constantinopoli Caesario et Attico conss.

[17] *Idem AA. Vincentio pp.* Nemo mulionem mutationibus deputatum vel per sollicitationem vel per receptionem subtrahere audeat, decem libras argenti poenae nomine reformidans inferre.

D. XII k. Mart. Mediolani Honorio A. IIII et Eutychiano conss.

[18] *Idem AA. Messalae pp.* Animalia publica, dum longe maiore ac periniquo pretio pabula aestimantur per mancipes atque apparitores, aperte vexantur. ne id contingat, sublimitas tua disponat, ut neque

been obeyed, the violator will be compelled not only to pay the damages but also to suffer infamy and the payment of a fine.

Posted June 17, at Trier, in the consulship of Valentinian Augustus, for the fourth time, and Neoterius (390).

[14][233] *The same Augusti to Potamius, Augustal Prefect.* The maintenance of the public post must, in accordance with the custom of the places, be entrusted either to the decurions, or to the members of the provincial administration (*cohortales*), or to those who take it over, under proper guaranty and at their risk, from the most eminent prefecture.

Given July 30, at Constantinople, in the consulship of Arcadius Augustus, for the second time, and Rufinus (392).

[15][234] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Dexter, Praetorian Prefect (of Italy).* If anyone believes he may use a post-horse in excess of the number authorized, even over merely the distance of one stage between two post-stations (*per mutationem*), he shall pay to the account of the Treasury fourfold the value of the misappropriated animals.

Given March 18, at Milan, in the consulship of Olybrius and Probinus (395).

[16][235] *The same Augusti to Remistheus, Duke of Armenia.* The privilege of using the public post has been conceded only to those persons who waste no time in hastening to Our Clemency as delegates (*legati*) of various nations (*gentes*).

Given February 24, at Constantinople, in the consulship of Caesarius and Atticus (397).

[17][236] *The same Augusti to Vincentius, Praetorian Prefect (of the Gauls).* Let no one dreading the prospect of paying 10 pounds of silver as a penalty dare to carry away a groom (*mulio*) assigned to the post-stations (*mutationes*), either by enticing him away or simply by receiving him.

Given February 18, at Milan, in the consulship of Honorius Augustus, for the fourth time, and Eutychianus (398).

[18][237] *The same Augusti to Messal(l)a, Praetorian Prefect (of Italy and Africa).* Public animals are plainly abused when feed is valued at a very high and unjust price by the post-conductors (*mancipes*) and their subordinates (*apparitores*).

233 = C.Th. 8.5.51 (altered).
234 = C.Th. 8.5.53 (altered).
235 = C.Th. 8.5.57.
236 = C.Th. 8.5.58 (altered).
237 = C.Th. 8.5.60. Combine with C. 2.14.1 and the other laws cited there.

pabula mutationibus desint, neque provinciales ultra quam iustitiae sinit ratio praegraventur.

D. v k. Dec. Stilichone et Aureliano conss.

[19] *Idem AA. et Theodosius A. Septimino proconsuli Africae.* **pr.** Comperimus provinciales et pabula et pecuniam pro equorum cursualium sollemni ratione conferre et extrinsecus etiam paraveredorum onere praegravari. **1.** Provinciarum igitur rectores procurent, ne umquam cursus publicus veniat in querellam et occasio deceptionis curiales vel provinciales animalia indebita praestare compellat.

D. vii k. April. Ravennae Theodosio A. et Rumorido conss.

[20] *Idem AAA. Anthemio pp.* **pr.** Nemo ducum ingressus semel provinciam suam postmodum itineribus faciendis cursu atque angariis ipse sive suum utatur officium, sed expeditionem militarem iumentis propriis exsequantur. **1.** De cohortalinis etiam officiis eadem lege sancimus, ne quis ex his per provinciam suam discurrens veredo uti conetur in posterum, cum sacra prohibitum sanctione cognoscant. **2.** Quod si quis ducum vel apparitorum vel cohortalium temerario animo ea quae decernimus contemnenda putaverit, per singula animalia quibus usus fuerit singularum librarum auri illatione multabitur.

D. iiii non. Aug. Constantinopoli Honorio vii et Theodosio ii AA. conss.

[21] *Impp. Theodosius et Valentinianus AA. Cyro pp.* Nullus penitus cuiuslibet ordinis seu dignitatis vel sacrosancta ecclesia vel domus regia tempore expeditionis excusationem angariarum seu parangariarum habeat.

[22] *Imp. Leo A. Pusaeo pp.* **pr.** Cursum clavularem ab omni Orientali tractu nec non ab his civitatibus aliarum regionum, quarum instructio

In order that this may not happen, Your Sublimity must see to it that neither will feed be wanting at the post-stations nor will the provincials be burdened beyond what the reason of justice permits.

Given November 27, in the consulship of Stilicho and Aurelianus (400).

[19][238] *The same Augusti and* THEODOSIUS *Augustus to Septiminus, Proconsul of Africa.* **pr.** We have learned that the provincials are providing both fodder and money for the prescribed account of the horses of the public post and are furthermore weighed down by the burden of furnishing supplementary post-horses (*paraveredi*). **1.** The governors (*rectores*) of provinces, therefore, will take care that the public post will never give reason for complaint, and that the occasion for fraud will not compel decurions or provincials to furnish animals that they do not owe.

Given March 26, at Ravenna, in the consulship of Theodosius Augustus and Rumoridus (403).

[20][239] *The same Augusti to Anthemius, Praetorian Prefect (of the East).* **pr.** No Duke, once he has entered his province, and none of his official staff (*officium*) shall thereafter use the public post(-horses) or the post-wagons (*angariae*) for making journeys, but they shall carry out their military mission (*expeditio*) with their own beasts of burden. **1.** And with reference to the members of the provincial administration (*cohortalina officia*), We ordain by this law that none of them in traveling through his province shall hereafter attempt to use a post-horse (*veredus*) since they know that this is forbidden by imperial order. **2.** If any Duke, or one of his subordinates (*apparitores*), or a member of the provincial administration should be so rash as to think what We decree to be contemptible, he shall be punished by a fine of one pound of gold for each animal so used.

Given August 2, at Constantinople, in the consulship of Honorius, for the seventh time, and Theodosius, for the second time, Augusti (407).

[21] *Emperors* THEODOSIUS *and* VALENTINIAN *to Cyrus, Praetorian Prefect (of the East).* No person, of whatever order or rank (*ordo seu dignitas*), nor the holy church, nor the (estates of the) imperial household shall be exempt from furnishing transport or supplementary transport (*angariae seu parangariae*) during the time of an expedition.

(440–441).

[22] *Emperor* LEO *Augustus to Pusaeus, Praetorian Prefect (of the East).* **pr.** We order that the heavy wagon post (*cursus clavularis*) shall be suspended and

[238] = C.Th. 8.5.64. Combine with C.Th. 13.1.19.
[239] = C.Th. 8.5.66.

tui culminis meminit, tolli amputarique decernimus, ita tamen, ut in transitu fortissimorum militum (quando nostra serenitas disposuerit ex aliis ad alia eos loca deduci, evectionesque animalium secundum consuetudinem a nostra fuerint aeternitate consecuti) et in armorum tam confectione[ix] quam translatione servata consuetudine, in profectione quin etiam legatorum animalium dominis, qui ea solent accepta mercede locare, praebenda pensio arcae tui culminis imputetur. **1.** Tractorias videlicet animalium super memoratis causis nulli alii iudici, cuiuscumque sit dignitatis, nisi tuo tantummodo culmini faciendi licentiam patere decernimus.

[23] *Imp. Anastasius A. Armenio pp.* **pr.** Iubemus nemini licere cuiuscumque scholae vel officii vel militiae seu condicionis per totius Orientalis tractus partes ob quamcumque causam proficiscenti seu redeunti supra unum veredum unumque paraveredum, cum evectione tamen iudiciali, movere, nisi specialis ei praestita sit nostrae serenitatis quantitatem animalium continens evectio. **1.** Exceptis procul dubio his, qui pecunias publicas devehunt, cum in hac parte sine nostra quoque speciali auctoritate tanta convenit animalia moveri, quanta transvehendae pecuniae summa et eius tuitio deposcit. **2.** Quinquaginta librarum auri condemnatione his feriendis, quicumque nostra iussa quolibet modo seu tempore violaverint seu violare concesserint.

LI De Tractoriis et Stativis

[1] *Imppp. Theodosius Arcadius et Honorius AAA. Rufino pp.* **pr.** Tractoriae cum stativis solitis bidui tantummodo tempus accipiant. **1.** Nulli vero penitus cum necessariis sibi personis praebeantur, nisi his

[ix] Convectione

abolished in the entire diocese of the East (*Orientalis tractus*) and in those cities of other regions mentioned in the recommendation (*instructio*) of Your Highness; provided, however, that the custom (*consuetudo*) is preserved when Our most stalwart soldiers are on a march – once Our Serenity has directed them to be transported from one place to another, and post warrants (*evectiones*) for the use of animals according to custom have been obtained from Our Eternity – and in the stockpiling and shipment of arms, and indeed in connection with the journey of embassies, the rent payable to the owners of animals who are accustomed to lease them out for an agreed price being debited to the treasury (*arca*) of Your Highness. **1.** We decree that the prerogative of issuing post warrants with subsistence (*tractoriae*) for the use of animals for any of the above-mentioned purposes is open to no other magistrate of any rank whatever except only Your Highness.

(467–468).[240]

[23] *Emperor Anastasius Augustus to Armenius, Praetorian Prefect (of the East).* **pr.** We order that no one of any department (*schola*) or official staff (*officium*) or branch of the imperial service (*militia*) or status (*condicio*) setting out or returning through any part of the diocese of the East (*Orientalis tractus*) is permitted to travel with more than one saddle horse and one supplementary pack-horse (*veredus, paraveredus*), and then only with an official post warrant (*evectio*), unless a special warrant of Our Serenity which specifies the number of animals has been issued to him. **1.** Excepted herefrom, of course, are those who transport public revenues, since in such case it is proper that, without Our special authorization, as many animals be employed as the amount of money transported and its safety demands. **2.** Whoever shall in any manner or at any time violate Our orders or permit them to be violated shall be punished by a fine of 50 pounds of gold.

(491–518).

Fifty-First Title Post Warrants for Travel with Subsistence and Lodging

[1][241] *Emperors Theodosius, Arcadius, and Honorius Augusti to Rufinus, Praetorian Prefect (of the East).* **pr.** Post warrants with subsistence (*tractoriae*), with the customary provision for lodging (*cum solitis stativis*),[242] shall limit the time to two days only. **1.** No one at all, however, will be furnished with persons

[240] Seeck gives c. 465 or 473.

[241] = C.Th. 8.6.2. The date is corrected by Seeck to September 10, 392; combine with C. 9.28.1 (= C.Th. 9.28.1).

[242] *Tractoriae* and *stativae* (sc. *litterae*) are documents authorizing official travelers to requisition meals and lodging at state expense, as distinct from simple post warrants (*evectiones*) authorizing only the right to travel by the public post.

tantummodo, qui animalia atque equos sacro usui necessarios prosequuntur: ita tamen, ut his dimissis in tractoriarum corpore quinque dierum numerus adscribatur, ut nullus ultra hoc temporis spatium ad residendum in quo libitum fuerit loco copiam nanciscatur.

D. VII k. Sept. Constantinopoli Arcadio A. II et Rufino conss.

LII De Apparitoribus Praefectorum Praetorio et Privilegiis Eorum

[1] *Impp. Valentinianus et Valens AA. ad Mamertinum pp.* Praefecturae cornicularios, qui annis singulis exeunt post transactos corniculos nostram adorare purpuram volumus: quo honore perfunctis, cum iam missionem tenuerint, liberum otium damus, ut ad susceptionem vel cuiuslibet necessitatis officium minime devocentur.

D. III k. Febr. Mediolani Valentiniano et Valente AA. conss.

[2] *Idem AA. ad Zosimum praesidem Epiri novae.* **pr.** Praefectianos ad perniciem provincialium exactionibus in provinciis vel potius lucris et quaestibus suis sese immiscere vetamus: praeterea vel horreorum gerere custodiam vel curarum ius atque arbitrium sibi praesumere his denegamus. **1.** Horum si quis praesentis legis temerator existat, volumus eum competenti motu et indignatione percelli.

D. XIIII k. Dec. Mediolani Valentiniano et Valente IIII AA. conss.

[3] *Impp. Theodosius et Valentinianus AA. Zoilo pp.* **pr.** Cornicularii et primiscrinii, numerarii insuper, qui in officio tuae sublimitatis per ordinem obsequiis militiae terminatis desideratam laborum requiem sortiuntur, pro multis erga rem publicam sudoribus ab omnibus

necessary for himself (i.e., attendants) apart from those persons who tend to the animals and horses necessary for imperial purposes; provided, however, that when these persons are dispatched a limit of five days is expressly written into the body of the post warrants, lest anyone seize the opportunity of lingering longer than that time at any place of his choosing.

Given August 26, at Constantinople, in the consulship of Arcadius Augustus, for the second time, and Rufinus (392).

Fifty-Second Title Subordinate Officials of the Praetorian Prefect, and Their Privileges

[1][243] *Emperors* VALENTINIAN *and* VALENS *Augusti to Mamertinus, Praetorian Prefect (of Italy, Africa, and Illyricum).* It is Our wish that the Department Heads (*cornicularii*) of the prefecture who retire each year shall, after their term of office has expired, adore Our purple; and We grant to persons who have fulfilled that honor an undisturbed leisure once they have received their discharge (*missio*), so that they shall not be drafted for the collection of taxes (*susceptio*) or the performance of any public obligation (*necessitas*).

Given January 30, at Milan, in the consulship of Valentinian and Valens Augusti (365).

[2][244] *The same Augusti to Zosimus, Governor of New Epirus.* **pr.** We forbid members of the official staff of the Praetorian Prefect (*praefectiani*) to involve themselves in the collection of taxes in the provinces – or, rather, in gain and profit for themselves – to the detriment of the provincials. We further prohibit them from exercising supervision (*custodia*) over state warehouses or arrogating for themselves the authority and functions of the inspectors of the public post (*curarum ius atque arbitrium*).[245] 1. If any of these persons should be found to be a violator of the present law, We desire that he be punished with proper force and outrage.

Given November 18, at Milan, in the consulship of Valentinian and Valens, for the fourth time, Augusti (373).

[3][246] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Zoilus, Praetorian Prefect (of the East).* **pr.** The Department Heads (*cornicularii*) and the First Assistant Heads (*primiscrinii*) as well as the Chief Accountants (*numerarii*) who complete the duties of their service in the regular order in the official staff of Your Sublimity and obtain a desired rest from their labors shall, as a reward

243 = C.Th. 8.7.8. Combine with C.Th. 12.1.70.
244 = C.Th. 12.10.1 (altered). Seeck gives November 18, 364.
245 See also C. 12.22.2 (*in curis agendis*).
246 Combine with C. 12.36.6.

indictionibus tam militarium quam civilium iudicum semper habeantur immunes, et civilium tantum iudicum, non etiam militarium iurisdictioni subiaceant.

1. Huic sanctioni addendum esse censemus, ut, si quis praefectianus dum militat *vel* post depositum cingulum sine testamento quod legibus comprobatur nullisque ab intestato successoribus derelictis fati munus impleverit, omnes eius patrimonii facultates provisione magnificae tuae sedis non fisci viribus, sed arcae tui culminis rationibus vindicentur.

2. Scriniariis autem exceptoribus ceterisque, qui in officio tui culminis merent, cum in legione prima adiutrice nostra militant, audientiam tantummodo in causis in quibus pulsantur tuae celsitudinis deputamus. in provinciis vero commorantes rectoribus earum eos respondere iubemus, nisi publicum officium aliquod eis iniunctum sit.

LIII De Apparitoribus Praefecti Urbis

[1] *Impppp. Gratianus Valentinianus Theodosius et Arcadius AAAA. ad Principium pp.* Praeter eos, qui de officio eminentium potestatum numero stipendiorum et curriculis evolutis urbique praefect*i* serenitatis nostrae annis singulis attingere purpuram venerarique praecepti sunt, nulli prorsus eorum, qui provincialia officia peregerunt, tranquillitatis nostrae muricem adorare sit liberum, omnium suffragiorum obreptione cessante.

D. XIIII k. Oct. Aquileiae Arcadio A. et Bautone vc. conss.

[2] *Impp. Honorius et Theodosius AA. Palladio pp.* Quicumque illustris urbanae sedis apparitor clandestina fraude pistorem concusserit, accusatus atque convictus perpetuis paneficii nexibus addicatur.

for their many efforts in behalf of the state (*res publica*), always be considered exempt from the imposition of all public obligations (*indictiones*) by military or civil judges, and they shall be subject only to the jurisdiction of civil, but not of military, judges.

1. We think it right to add to this law that, if any member of the official staff of the Praetorian Prefect (*praefectianus*), either during his time in the imperial service or after he lays his belt of office (*cingulum*) aside, discharges his obligation to fate without a legally valid will and without leaving successors upon intestacy, all of the wealth of his inheritance shall be claimed by the prescience of the office of Your Magnificence not for the account of the Treasury (*fiscus*) but for the accounts of the treasury (*arca*) of Your Highness.

2. We reserve, moreover, for the accountants (*scriniarii*), shorthand writers (*exceptores*) and others employed on the official staff of Your Highness, because they serve in Our First Assistant Legion (*Legio I Adiutrix*), a hearing exclusively before Your Highness in cases in which they are sued. If they sojourn in the provinces, however, We order them to answer in the courts of the provincial governors (*rectores*) unless some public duty has been assigned to them.

(444).[247]

Fifty-Third Title Subordinate Officials of the City Prefect

[1][248] *Emperors Gratian, Valentinian, Theodosius, and Arcadius Augusti to Principius, Praetorian Prefect (of Italy).* Aside from those who have completed the number of their terms of service and the regular pattern of advancement on the official staff of the Eminent authorities (*potestates*; i.e., the Praetorian Prefects and the Masters of Soldiers) and of the City Prefect and who have been directed each year to touch and venerate the purple of Our Serenity, none of those who are employed on the provincial staffs shall be at liberty to adore the purple of Our Tranquility, and the insidious effect of all forms of influence (*suffragia*) shall cease.

Given September 18, at Aquileia, in the consulship of Arcadius Augustus and Bauto (385).

[2][249] *Emperors Honorius and Theodosius Augusti to Palladius, Praetorian Prefect (of Italy, Africa, and Illyricum).* Any subordinate official (*apparitor*) of the City Prefect, a person of *illustris* rank, who has extorted money from a baker by a clandestine fraud, shall, when accused and convicted, be condemned to belong forever to the bakers' trade.

[247] Seeck dates to February 26, 444.
[248] = C.Th. 8.7.16.
[249] = C.Th. 14.3.22. Combine with C.Th. 14.4.9.

D. VII k. Ian. Ravennae Honorio A. XI et Constantio II vc. conss.

LIIII De Apparitoribus Magistrorum Militum et Privilegiis Eorum

[1] *Impp. Valentinianus et Valens AA. ad Artemium correctorem.* Qui sese in officiis magistrorum equitum ac peditum militare monstraverint, ab omni nominationis iniuria excusentur.

D. XIII k. Oct. Aquileiae. acc. XV k. Nov. Salerni divo Ioviano et Varroniano conss.

[2] *Idem AA. ad Mamertinum pp.* Qui in officio magistrorum equitum ac peditum militiam sortiti sunt, ordinis sint militaris.

[3] *Impp. Theodosius et Valentinianus AA. Cyro pp.* Probari apparitores magisteriae potestatis neque curiales neque cohortales neque censibus volumus adscriptos.

D. prid. non. Mart. Constantinopoli Cyro vc. cons.

[4] *Idem AA. Apollonio magistro militum praesentali et Anatolio magistro militum per Orientem.* **pr.** Numerarios virorum illustrium magistrorum militum tam praesentalium quam orientalium qui ordine stipendiis militiae fuerint decorati, exeuntes tribunis praetorianis partis militaris sudoribus eorum beneficium deferentes sociari praecipimus: ita videlicet, ut post completam militiam ab omnibus indictionibus tam militarium quam civilium iudicum semper habeantur immunes. **1.** Principatus vero munere functos tribunis vigilum militaribus volumus adgregari.

Given December 26, at Ravenna, in the consulship of Honorius Augustus, for the eleventh time, and the vir clarissimus *Constantius, for the second time (417).*

Fifty-Fourth Title Subordinate Officials of the Masters of Soldiers, and Their Privileges

[1][250] *Emperors* VALENTINIAN *and* VALENS *Augusti to Artemius, Governor (*corrector*) (of Lucania and Bruttium).* Whoever shows that they are serving on the official staffs of the Masters of Cavalry and Infantry shall be exempt from the annoyance of any nomination (for a compulsory public service).

Given September 19, at Aquileia; received October 18, at Salerno, in the consulship of the blessed Jovianus and Varronianus (364).

[2][251] *The same Augusti to Mamertinus, Praetorian Prefect (of Italy, Africa, and Illyricum).* Persons who join the imperial service on the official staff of the Masters of Cavalry and Infantry belong to the military order (*ordo militaris*).

(364–365).

[3][252] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Cyrus, Praetorian Prefect (of the East).* We want subordinate officials (*apparitores*) of the Master of Soldiers (*magisteria potestas*) to be proven to be neither decurions, nor members of the provincial administraton (*cohortales*), nor enrolled tenants (*censibus adscripti*).

Given March 6, at Constantinople, in the consulship of the vir clarissimus *Cyrus (441).*

[4][253] *The same Augusti to Apollonius, Master of Soldiers in the Imperial Presence (*magister militum praesentalis*), and to Anatolius, Master of Soldiers in the East.* **pr.** We direct that the Chief Accountants (*numerarii*) of the Masters of Soldiers in the Imperial Presence and in the East, persons of *illustris* rank, who have been distinguished by reason of their precedence (*ordo*) and their terms of service (*stipendia militiae*), shall upon their retirement be associated with the Praetorian Tribunes of the army (*pars militaris*), receiving this as the reward of their labors; accordingly, after their service has been completed they shall always be considered exempt from the imposition of all public obligations (*indictiones*) by military or civil judges. **1.** We desire, moreover, that those persons who have discharged the duties of the office of Chief of Staff (*principatus munus*) shall be grouped with the military tribunes of the watches (*vigiles*).

(January 28, 443?).

250 = C.Th. 8.3.1. Combine with C.Th. 6.35.6.
251 = C.Th. 12.6.6(?). Seeck dates to April 18, 365; Schmidt-Hofner, to March 18, 365.
252 = Nov. Theod. 7.4.2. Combine with C. 7.62.33.
253 The date is restored conjecturally by Seeck.

[5] *Imp. Anastasius A. magistris militum.* Eos, qui in officiis vestris merentes statutorum tantummodo numero inserti sunt, fori praescriptione muniri, ceteros vero, qui supra huiusmodi numerum militare noscuntur, quasi nec militantes et apud illustrissimas praefecturas et apud clarissimos provinciarum rectores de quolibet pulsari et conveniri et sine cinguli praescriptione respondere negotio sancimus.

LV De Apparitoribus Proconsulis et Legati

[1] *Imppp. Valentinianus Theodosius et Arcadius AAA. ad Flaccianum proconsulem Africae.* Officio, quod tuis meritis obsecundat, non curialem quemquam nec ex ceteris corporibus volumus adgregari: ac si qui erunt inter apparitores huiusmodi, restitui eos debitis muniis mox iubemus.

D. non. Oct. Constantinopoli Theodosio A. III et Abundantio conss.

[2] *Impp. Arcadius et Honorius AA. Victorio proconsuli Africae et Dominatori vicario Africae.* Apparitioni tuae et legatorum quadringentos censuimus deputandos de his dumtaxat, quos sibi esse detractos rei publicae membra non queruntur.

D. XII k. Iun. Mediolani Honorio A. IIII et Eutychiano conss.

[3] *Idem AA. Messalae pp.* In proconsulari provincia officium proconsulare postulet, quod exigere consuevit, nec alienis se partibus impudenter inserat.

D. III k. Oct. Altino Theodoro vc. cons.

[5] *Emperor* ANASTASIUS *Augustus to the Masters of Soldiers.* We ordain that only those employed on your official staffs who are included within the complement of established officials (*statuti*) shall be protected by the right to object to the jurisdiction in which a suit is brought against them (*praescriptio fori*),[254] while the others who know that they serve as supernumeraries shall be sued and summoned anywhere, as though not in the imperial service (*quasi nec militantes*), before both the Most Distinguished Prefects (*illustrissimae praefecturae*) and the provincial governors of *clarissimus* rank, and must answer the matter without right to object to the jurisdiction, which is conferred by the holding of the belt of office.

(491–518).

Fifty-Fifth Title Subordinate Officials of a Proconsul and a Legate

[1][255] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Flaccianus, Proconsul of Africa.* We desire that no decurion nor member of any other corporate body belong to the official staff that serves Your Excellency; and if any such persons are among your subordinates We order them immediately to be restored to their own duties.

Given October 7, at Constantinople, in the consulship of Theodosius Augustus, for the third time, and Abundantius (393).

[2][256] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Victorius, Proconsul of Africa, and to Dominator, Vicar of the Diocese of Africa.* To your staff of subordinates and that of the legates We have decided that 400 persons ought to be assigned, but only from among those whom the citizens of a muncipality (*rei publicae membra*) do not protest at having been withdrawn from them.

Given May 21, at Milan, in the consulship of Honorius Augustus, for the fourth time, and Eutychianus (398).

[3][257] *The same Augusti to Messal(l)a, Praetorian Prefect (of Italy and Africa).* The proconsular official staff in a proconsular province may demand what it has been accustomed to exact, but must not impudently interfere in other areas.

Given September 29, at Altinum, in the consulship of the vir clarissimus *Theodorus (399).*

[254] For what follows, compare Nov. Theod. 7.4.1.
[255] = C.Th. 1.12.4.
[256] = C.Th. 1.12.6.
[257] = C.Th. 1.12.7. Combine with C. 12.58.2(?); C.Th. 11.7.15, 14.15.6 (= C. 11.23.3.1). The date is corrected to September 28, 400, by Seeck

LVI De Apparitoribus Comitis Orientis

[1] *Imppp. Theodosius Arcadius et Honorius AAA. Rufino pp. Orientis.* In officio comitis Orientis non amplius quam sescenti apparitores habeantur, quos quidem publicis necessitatibus novimus abunde suppetere.

D. III k. Ian. Heracliae Arcadio III et Honorio II AA. conss.

LVII De Cohortalibus Principibus Cornicularis et Primipilaribus

[1] *Imp. Constantinus A. edicto suo ad Afros.* Omnes stationarii neque superexactionem audeant neque carcerem habeant, neve quis personam licet pro manifesto crimine apud se habeat in custodia, sciens quod, si quid tale fuerit commissum, capite puniendus est.

PP. VI id. Mai. Karthagine Constantino A. IIII et Licinio IIII conss.

[2] *Impp. Constantius et Constans AA. ad Taurum pp.* **pr.** Nullus iudicum quemquam sine sacra probatoria probare audeat vel provehere. **1.** Excipimus tamen officia provincialia cursus publici sollicitudinem sustinentia: nec enim tanto muneri adminiculum denegari publica permittit utilitas.

D. VI k. Iun. Mediolani. acc. VIII id. Iul. Datiano et Cereale conss.

[3] *Impp. Valentinianus et Valens AA. Festo consulari Syriae.* Solita cohortalibus Syriae privilegia, quae a divo Diocletiano porrecta sunt atque concessa, nos quoque porreximus ac iubemus eos non ad sollicitudinem

Fifty-Sixth Title Subordinate Officials of the Count of the East

[1][258] *Emperors* THEODOSIUS, ARCADIUS, *and* HONORIUS *Augusti to Rufinus, Praetorian Prefect of the East.* No more than 600 assistants (*apparitores*) shall be employed on the official staff of the Count of the East, a number which We know to be amply sufficient for public needs.

Given December 30, at Heraclea, in the consulship of Arcadius, for the third time, and Honorius, for the second time, Augusti (394).

Fifty-Seventh Title Members of the Provincial Administration, Chiefs of Staff, Department Heads, and Quartermasters-General

[1][259] *Emperor* CONSTANTINE *Augustus in his edict to the Africans.* Military police (*stationarii*) should not dare to impose any surcharges, nor maintain a prison, nor should any of them hold a person in custody under his control even for a manifest crime, knowing that if he has done anything of the kind he will be punished with death.

Posted May 10, at Carthage, in the consulship of Constantine Augustus, for the fourth time, and Licinius, for the fourth time (315).

[2][260] *Emperors* CONSTANTIUS *and* CONSTANS *Augusti to Taurus, Praetorian Prefect (of Italy and Africa).* **pr.** None of the governors (*iudices*) shall dare to appoint or promote anyone without an imperial certificate of appointment (*probatoria*). **1.** We make an exception, however, in the case of the provincial office staffs who have charge of the public post. For the public welfare does not permit the denial of support to a compulsory public service (*munus*) of such magnitude.

Given May 27, at Milan; received July 8 in the consulship of Datianus and Cerealis (358).

[3][261] *Emperors* VALENTINIAN *and* VALENS *Augusti to Festus, Governor* (consularis) *of Syria.* The customary privileges extended and granted to the members of the provincial administration (*cohortales*) of Syria by Diocletian of blessed memory, We have likewise extended; and We order that they shall not be drafted to take charge of the haulage of public freight (*bastaga*) or to

[258] = C.Th. 1.13.1. Combine with C.Th. 8.4.18, 12.1.139. The date is corrected to May 30; Seeck had May 20.
[259] = C.Th. 8.4.2 (altered).
[260] = C.Th. 8.7.7. The date of issue is corrected to December 27, 356, by Seeck.
[261] = C.Th. 8.4.11.

bastagae, non ad functionem navicularíam devocandos, non invitos curialibus coetibus adscribendos, verum peracto labore militiae, pastus primipili competenti sedulitate functione transacta praerogativam his recusationis offerimus.

D. VI non. Oct. Valentiniano et Valente AA. conss.

[4] *Idem AA. et Gratianus A. ad Probum pp.* Officia rectorum provinciarum tuae magnificentiae litteris volumus admoneri, ut susceptos in officio proprio vel probatos cohortium nomine legionumve privilegiis aestiment inserendos.

D. XVI k. Iun. Modesto et Arintheo conss.

[5] *Idem AAA. Modesto pp.* **pr.** Quicumque per Osdroenam primipilarium maiore laetatur numero filiorum, unum loco suo veluti hereditario iure substituat, alterum pro amore patriae Edessenae curiae tradat obsequiis, ceteris quam voluerit militiam provisurus. sin autem duos tantum procreaverit, cohorti satisfacere cogatur et curiae. quod si unum procreaverit, eundem ordini patriae restituat, nullo contra hanc formam beneficio valituro. **1.** Damus sane licentiam tam patribus eorum quam ipsis, qui huius legis auctoritate civitatum obsequio adgregantur, ut, si quos curiales patrocinio principalium invenerint excusari, in medium proferant, ut et ipsi similibus officiis deputati pareant impetratis.

D. III non. Dec. Antiochiae post consulatum Gratiani A. III et Equitii vc.

[6] *Impppp. Gratianus Valentinianus Theodosius et Arcadius AAAA. ad Neoterium pp.* **pr.** Si apparitor diffugerit criminosus, edictum, quo revocari possit, adiecta condicione legibus subsequatur: cui nisi fuerit satisfactum, merito in latitantem a iudice pro qualitate peccati sententia

public duties as members of the guild of shippers (*navicularia functio*), nor shall they be enrolled in the curial assemblies against their will. We assuredly grant them the privilege of refusing these obligations, once their work in the imperial service is complete and they have discharged the duties of the office of quartermaster-general for provisions (*pastus primipili*) with due diligence.

Given October 2, in the consulship of Valentinian and Valens Augusti (365).

[4][262] *The same Augusti and* GRATIAN *Augustus to Probus, Praetorian Prefect (of Italy, Africa, and Illyricum).* We want the official staffs of the governors (*rectores*) of the provinces to be admonished by letters of Your Magnificence that they should determine that those who are accepted or approved for their own staff must be enrolled in the name of the cohorts and admitted to the privileges of the legions.

Given May 17, in the consulship of Modestus and Arintheus (372).

[5][263] *The same Augusti to Modestus, Praetorian Prefect (of the East).* **pr.** Any of the quartermasters-general (*primipilares*) in Osrhoene who rejoices in a great many sons may substitute one of them into his own place, as if by hereditary right; he may deliver another one, for love of his homeland, to perform duties in the municipal council (*curia*) of Edessa; and he may arrange for the others whatever imperial service may please him. But if he has sired only two sons, he shall be obliged to satisfy both the cohort (in which he serves) and the council. If he has sired one son he shall restore him to the curial order (*ordo*) of his homeland, and no special favor (granted him) shall avail against this general ordinance. **1.** We, of course, allow their fathers as well as the sons themselves who by the authority of this law are assigned to (curial) duty in cities, if they find that any decurions have been excused by the patronage of the leading members of the council (*principales*), to let this be known so that those decurions, having been assigned to comparable duties, may obey the orders effected for them.

Given December 3, at Antioch, in the post-consulate of Gratian Augustus, for the third time, and the vir clarissimus *Equitius (375).*

[6][264] *Emperors* GRATIAN, VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Neoterius, Praetorian Prefect (of Italy).* **pr.** If a subordinate official who has committed a crime should flee, the edict by which he may be recalled shall follow with terms specified in accordance with the laws. If he fails to make

[262] = C.Th. 8.4.12. Combine with C.Th. 12.1.78. This constitution was probably posted (not given) on May 16.

[263] = C.Th. 12.1.79.

[264] = C.Th. 8.4.15.

proferatur. 1. Veniam enim talibus non permittimus nec indulgentiis crimina sublevamus.

D. prid. id. Iun. Mediolani Arcadio A. et Bautone conss.

[7] *Imppp. Valentinianus Theodosius et Arcadius AAA. Tatiano pp.* **pr.** Ordinariorum iudicum apparitores, qui vel speculatorum vel ordinariorum attigerint gradum, nullo annorum numero, nulla stipendiorum contemplatione laxentur, priusquam primipili pastum digesta ratione compleverint. **1.** Quod si ante debitum locum, qui huic functioni habetur obnoxius, vel aegri corporis labem vel defessae senectutis extrema ad impetrandam quietem crediderit praetendenda, non prius otio condonetur, quam omne quod primipilo debetur expenderit. **2.** Eos etiam, qui pro sceleribus suis soluto militiae cingulo addicuntur infamiae, ne integro peculio sub hac occasione laetentur, ita condignae ultioni volumus subiacere, ut functioni quoque, quae extrema militiae debetur, nihil ex eorum facultatibus subtrahatur.

D. III non. Mai. Mediolani Timasio et Promoto conss.

[8] *Impp. Arcadius et Honorius AA. Euthymio vicario Asiae.* Speciebus primipilaribus adaerandis eadem pretiorum taxatio servetur, quae in venalibus publicis poterit reperiri.

D. V k. Mart. Constantinopoli Arcadio IIII et Honorio III AA. conss.

[9] *Idem AA. Clearcho pp. Illyrici.* **pr.** Per Illyricum, in quo plurima ac maxima necessitatum publicarum emolumenta officiis constat praesidalibus expediri, centeni numero singulis iudicibus obsecundent: nec ultra hunc modum vel ad militiam ullus adspiret vel coniventia iudicum perseveret. 1. Adhibendi autem sunt ad huiusmodi ministeriorum

satisfaction, sentence commensurate with the quality of his offense shall fittingly be passed upon the fugitive by the judge. **1.** For We grant no pardon to such persons nor encourage crimes by indulgence.

Given June 12, at Milan, in the consulship of Arcadius Augustus and Bauto (385).

[7][265] *Emperors* VALENTINIAN, THEODOSIUS, *and* ARCADIUS *Augusti to Tatianus, Praetorian Prefect (of the East).* **pr.** Subordinates of the provincial governors (*ordinarii iudices*) who have reached the (senior staff) rank of either *speculator* or *ordinarius* shall not be released (from duty) by any number of years nor in consideration of their terms of service (*stipendia*) until they have completed the duties of the office of quartermaster-general (*pastus primipili*) and rendered their account. **1.** But if any person subject to that duty should suppose, before he fills that compulsory position, that he may allege the prostration of a sickened body or the extremities of tottering old age in favor of obtaining rest, he shall not be rewarded with leisure until he has paid all that he owes to the office of quartermaster-general. **2.** We desire also that those who have been deprived of the belt of the imperial service (*cingulum militiae*) and have been adjudged infamous on account of their crimes, lest they make this the occasion of enjoying their property (*peculium*) undisturbed, shall be visited by so well-deserving a punishment that none of their property (*facultates*) shall be exempted from responsibility for the discharge of that obligation which is the last they owe to the imperial service.

Given May 5, at Milan, in the consulship of Timasius and Promotus (389).

[8][266] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Euthymius, Vicar of the Diocese of Asia.* In commuting supplies under the control of the quartermasters-general (*species primipilares*) into money, the same valuation shall apply as may be found for goods offered for sale in the public markets.

Given February 26, at Constantinople, in the consulship of Arcadius, for the fourth time, and Honorius, for the third time, Augusti (396).

[9] *The same Augusti to Clearchus, Praetorian Prefect of Illyricum.* **pr.** In Illyricum, where it is well known that the greatest and largest yields of public revenues (*necessitates*) are exacted by the official staffs of the provincial governors (*officia praesidalia*), a staff of 100 persons shall serve under each governor (*iudex*). No one beyond this number shall aspire to the imperial service or remain there with the connivance of the governors. **1.** Those who would fraudulently pursue vast personal gains in the name of the imperial service

[265] = C.Th. 8.4.16.
[266] = C.Th. 8.4.19.

obsequia non illi, qui vano militiae nomine immania lucra sectentur, sed qui necessitatem officii sollicitudinibus debitis exsequantur.

[10] *Idem AA. et Theodosius A. Anthemio pp.* Quicumque ad chartas vel tabulas vel quodcumque aliud ministerium cohortalis optaverit, non ante accedere permittatur, nisi eius nomen matriculis receptum primitus fuerit: poena proposita his, qui contra statuta caelestia crediderint suscipiendos aliquos aut quodlibet eis officium iniungendum.

D. XVI k. April. Constantinopoli Honorio VII et Theodosio iterum AA. conss.

[11] *Impp. Honorius et Theodosius AA. Anthemio pp.* Si quis ex grege cohortalinorum urguente criminis insectatione stipendiis fuerit exemptus, aut otio traditus quietis artibus immoretur, aut si ad pristina sacramenta precum miseratione maluerit repedare, indultum nostrae maiestatis oraculum amplissimae tuae sedi offerat adlegandum.

D. XIII k. Mart. Constantinopoli Honorio X et Theodosio VI AA. conss.

[12] *Impp. Theodosius et Valentinianus AA. Isidoro pp.* **pr.** Si cohortalis apparitor aut obnoxius cohorti ad ullam adspiraverit dignitatem, spoliatus omnibus impetrati honoris insignibus ad statum pristinum revocetur: liberis etiam in tali eius condicione susceptis fortunae patriae mancipandis. **1.** Quod si quis ex his ausus fuerit ullam adfectare militiam, nulla praescriptione temporis muniatur praeter eam scilicet, quae ex quadraginta annis colligitur: sed ad condicionem propriam retrahatur, ne ipse vel eius liberi post talem ipsius statum procreati quod cohorti debetur valeant declinare. **2.** Sed nec ad aliam cohortalinus vel cohortalini filius audeat adspirare fortunam, cui maiorum suorum

must not be employed for services in this sort of administration, but instead persons who perform the duties of the staff with due diligence.

(402–407).

[10][267] *The same Augusti and* Theodosius *Augustus to Anthemius, Praetorian Prefect (of the East).* Whoever may aspire to keep records (*chartae*) or accounts (*tabulae*), or to perform any other function of the provincial administration (*ministerium cohortalis*), shall not be permitted to obtain such a position unless his name has first been accepted on the register. A punishment is fixed for those who suppose that any persons might be accepted or any official duty assigned to them contrary to imperial (*caelestia*) statutes.

Given March 17, at Constantinople, in the consulship of Honorius, for the seventh time, and Theodosius, for the second time, Augusti (407).

[11][268] *Emperors* Honorius *and* Theodosius *Augusti to Anthemius, Praetorian Prefect (of the East).* If any member of the provincial administration (*ex grege cohortalinorum*) has been discharged from the service on account of prosecution for a crime, he must either devote himself to leisure and immerse himself in quiet pursuits, or if he would prefer to return to his former sworn duties by inspiring pity with his imprecations, he must lay before the office of Your Eminence an imperial enactment (*oraculum*) obtained as an act of grace (*indultum*) of Our Majesty.

Given February 17, at Constantinople, in the consulship of Honorius, for the tenth time, and Theodosius, for the sixth time, Augusti (415).

[12][269] *Emperors* Theodosius *and* Valentinian *Augusti to Isidorus, Praetorian Prefect (of the East).* **pr.** If a subordinate official in the provincial administration (*cohortalis apparitor*) or anyone obligated to join the provincial administration has obtained any position of rank (*dignitas*), he shall be deprived of all the insignia of the honor he has attained and recalled to his former position; his children, too, born while he is of that status (*condicio*), are bound to their father's fate. **1.** And if anyone of such status has ventured to aim at any (higher) position in the imperial service, he shall be protected by no lapse of time (*praescriptio temporis*) – except, that is to say, one acquired by a span of forty years; but he shall be sent back to his own station in life, so that neither he nor his children born while he is in that condition may decline the duties that they owe to the provincial administration. **2.**[270] Nor may any member of the provincial administration (*cohortalinus*) or his son dare to aspire to any

[267] = C.Th. 8.4.20.

[268] = C.Th. 8.4.26. The date is corrected to February 17, 406, by Seeck.

[269] The pr. and §1 = C.Th. 8.4.30. Combine with C. 10.32.55 (= C.Th. 12.1.188), C.Th. 12.1.187. C.Th. adds that the law was copied to Eubulus as Praetorian Prefect of Illyricum.

[270] Section 2 = C.Th. 8.4.28.

exempla praeiudicant. **3.** Sed etiam cunctos, qui diversarum rerum negotiationibus detinentur, trapezitas scilicet vel gemmarum argentique vestiumve venditores, apothecarios etiam ceterosque institores aliarum mercium quibuscumque ergasteriis adhaerentes iubemus a provincialibus officiis removeri, ut omnis honor atque militia contagione huiusmodi segregetur.

D. III non. April. Constantinopoli Isidoro et Senatore conss.

[13] *Idem AA. Thomae pp.* **pr.** Nullum ex primipilaribus, nullum ex principe cohortalis officii vel ad aliam posse militiam adspirare vel ministeriis sibi contra publicam utilitatem blandiri vel ad quamlibet aliam dignitatem ad praeiudicium praeteriti status accedere concedimus. **1.** Quod si contra hanc tam saluberrimam formam vel responsa caelestia quaedam militia aut dignitas audacter eliciatur, pro ingestis haberi, etiamsi speciali adnotatione nostrae indulgentiae eam obtinuisse videatur, nec adsertionem ei quoquo modo patere, qui se memoratis artibus publicae studet commoditati subtrahere, sed statim civitatis unde oriundus est curiae tradi praecipimus.

[14] *Imp. Leo A. Constantino pp.* **pr.** Quisquis cohortalibus adhuc obsequiis obligatus vel regimen provinciae vel cingulum cuiuslibet militiae dignitatisve quoquo modo meruit, ante omnia contra licitum usurpatis impetratisve careat, etiamsi ultronea nostra liberalitate ius gerendae provinciae vel militiae seu dignitatis cuiuspiam sibi iactaverit fuisse delatum. **1.** Dehinc universis solaciis condicionis quam spreverat defraudatus, ne quid eorum omnino per se vel interpositam personam possit adquirere, primipili tantum munus implere cogatur: mox curialibus civitatis, in qua natus est, in diem vitae suae functionibus

condition (*fortuna*) other than that to which the precedents of their forebears have destined them. 3. So, too, We order persons engaged in various trades, such as money-changers, vendors of gems, silver, or clothing, shopkeepers (*apothecarii*), and vendors of other merchandise, no matter to what workshop they belong, to be excluded from all provincial office staffs, so that every honor and the imperial service may be insulated from contamination of this kind.

Given April 3, at Constantinople, in the consulship of Isidorus and Senator (436).

[13][271] *The same Augusti to Thomas, Praetorian Prefect (of the East?).* **pr.** We permit no former quartermaster-general, no former Chief of Staff of the provincial administration (*nullus ex principe cohortalis officii*), to aspire to any other (position in the) imperial service, or flatter himself with responsibilities (*ministeria*) contrary to the public interest, or attain any other official position of rank (*dignitas*) to the detriment of his former status. **1.** But if any position in the imperial service or official position of rank is audaciously obtained contrary to this most beneficial ordinance or to imperial (*caelestia*) rescripts, We order it to be regarded as invalid (*pro ingestis*), even if it appears to have been validated by a special annotation (*adnotatio*) of Our Generosity, nor will a claim to this effect be available in any way to a person who devotes himself to working against the public welfare through the aforementioned trickery, but he shall be immediately delivered over to the municipal council (*curia*) of the city where he was born.

(442?).

[14][272] *Emperor Leo Augustus to Constantinus, Praetorian Prefect (of the East).* **pr.** Should anyone as yet obliged to perform the duties of the provincial administration (*cohortalia obsequia*) obtain the governorship (*regimen*) of a province, or the belt (*cingulum*) of any branch of the imperial service, or an official position of rank (*dignitas*) in any way, he shall above all be deprived of what has been unlawfully usurped and obtained, even if he boasts that his entitlement to the governorship, the imperial service, or some position of rank has been voluntarily conferred through Our generosity. **1.** He shall, moreover, be deprived of all emoluments of the status (*condicio*) which he spurned; lest he be able to obtain any of them at all personally or through a third person, he shall be compelled to fill only the compulsory duties of the office of quartermaster-general (*primipili munus*). He shall thereafter be assigned to the curial responsibilities of the city in which he was born for the remainder of his life. Accordingly, even those who have attained any kind of position in the imperial

[271] The date is corrected to 436–450. Seeck gives February 25, 442.
[272] pr. = C. 1.40.14 (given August 7, which Seeck prefers here as well).

inhaesurus, ita scilicet, ut etiam ii, qui post impletam talem militiam quodlibet militiae dignitatisve genus adfectaverint, curiae patriae suae restituantur.

D. VI k. Ian. Constantinopoli Leone A. IIII et Probiano conss.

LVIII De Apparitoribus Praefecti Annonae

[1] *Imppp. Valens Gratianus et Valentinianus AAA. Rufino pu.* Apparitores urbanae praefecturae annonario officio se non inserant, sed apparitorum aemulatione secreta ministerio suo annonae praefectura fungatur.

D. III id. Iul. Valente A. V et Valentiniano iuniore conss.

[2] *Impp. Arcadius et Honorius AA. Messalae pp.* Praefectus annonae canonem, qui ad officium suum pertinet, per compulsores suos exigat, et cum officio suo retineatur obnoxius, qui ad implendum canonem devotionis suae exactionem non ostenderit.

LVIIII De Diversis Officiis et Apparitoribus Iudicum et Probatoriis Eorum

[1] *Imppp. Valentinianus Valens et Gratianus AAA. ad Severum magistrum militum.* Si quando praefectus praetorio vel vicarius aut rector provinciae significaverit eum, qui chartis ac ratiociniis publicis invenitur obnoxius, ad praepositturam castri ac militum transisse, retractus illi adsignetur officio, a quo ad necessitatem praestandi ratiocinii devocatur: in reiecti vero locum is potissimum destinetur, cui meritorum adstipulentur insignia.

D. X k. Ian. Gratiano A. II et Probo conss.

service or official position of rank, and have completed such service, shall be restored to their native municipal council.

Given December 27, at Constantinople, in the consulship of Leo Augustus, for the fourth time, and Probianus (471).

Fifty-Eighth Title Subordinate Officials of the Prefect of the Food Supply

[1][273] *Emperors* VALENS, GRATIAN, *and* VALENTINIAN *Augusti to Rufinus, Praetorian Prefect.* The subordinate officials of the City Prefecture shall not interfere with the official staff of the Prefecture of the Food Supply (*annonarium officium*), but the rivalry among subordinates shall be eliminated and the Prefecture of the Food Supply shall discharge its own responsibilities.

Given July 13, in the consulship of Valens Augustus, for the fifth time, and the younger Valentinian (376).

[2][274] *Emperors* ARCADIUS *and* HONORIUS *Augusti to Messal(l)a, Praetorian Prefect (of Italy and Africa).* The Prefect of the Food Supply shall collect the taxes pertaining to his office through his own collectors of arrears (*compulsores*), and together with his official staff he will be held liable if he cannot show that the exaction of His Devotion was made so as to obtain the taxes due.

(399?).

Fifty-Ninth Title Various Official Staffs and Subordinate Officials of Magistrates and Their Certificates of Appointment

[1][275] *Emperors* VALENTINIAN, VALENS, *and* GRATIAN *Augusti to Severus, Master of Soldiers.* If the Praetorian Prefect, Vicar, or governor (*rector*) of a province shall at any time indicate that someone who is found to be obligated to (the offices of) public records and public accounts (*chartis ac ratiociniis publicis obnoxius*) has (instead) gone over to assume the position of commandant (*praepositura*) of a military camp and soldiers, he shall be dragged back and assigned to the official staff by which he is being drafted for the duty of keeping an account. In the place of the one who has been expelled should far better be assigned the person who has signal merits on his side.

Given December 23, in the consulship of Gratian Augustus, for the second time, and Probus (371).

[273] = C.Th. 1.6.7. Combine with C. 1.28.3. The recipient was actually City Prefect of Rome.

[274] Possibly combine with C. 12.55.3 (= C.Th. 1.12.7); C.Th. 11.7.15, 14.15.6 (etc.). These constitutions were given on or about September 28, 400, which Seeck prefers here.

[275] = C.Th. 8.7.11, the subscript of which adds that it was "issued to all Masters of Soldiers, Counts, and Dukes."

[2] *Impp. Gratianus Valentinianus et Theodosius AAA. ad Eusignium pp.* Nullus ex his, quos claruerit militia resolutos, indebita denuo sacramenta sine augustis adfatibus suscipiat. si quis autem id per obreptionem forte meruerit, quinque librarum auri multetur incommodo.

D. prid. id. Iul. Mediolani Honorio np. et Euodio conss.

[3] *Idem AAA. ad Eusignium pp.* **pr.** Nullus apparitor amplitudinis tuae vel de officiis palatinis ad eam provinciam, ex qua oriundus est vel in qua collocaverit larem, vel qui iam in huiusmodi officio fuerit commoratus, obtentu publicae necessitatis vel exsecutor privati negotii dirigatur. **1.** Etenim officii celsitudinis tuae primiscrinius tres libras auri fisci utilitatibus sine dilatione persolvet, si statuta fuerint temerata: apparitor vero, qui huic se muneri passus est deputari, militia spoliabitur.

2. Haec vero poena etiam ceteris inrogata est, ut, si domesticus aut protector, strator vel agens in rebus vel palatinus utriusque officii vel ad eandem provinciam, in qua natus est, vel ad eam, in qua collocarit larem, cum huiusmodi usurpatione perrexerit, matriculis quidem exemptus ipse, qui se voluit mitti, auri libram unam fisci viribus inferre cogetur, adiutores vero officiorum palatinorum ac numerarii comitum illustrium virorum sive actuarii libram fisci viribus solvant, nisi statuta fuerint custodita.

D. III non. Dec. Mediolani Honorio np. et Euodio conss.

[4] *Imppp. Theodosius Arcadius et Honorius AAA. Silvano duci et correctori limitis Tripolitani.* Qui vel exiguam rei familiaris substantiam habent, militare in apparitorum numero non vetentur.

D. VI k. April. Constantinopoli Theodosio A. III et Abundantio conss.

[2][276] *Emperors* Gratian, Valentinian, *and* Theodosius *Augusti to Eusignius, Praetorian Prefect (of Italy and Illyricum).* No person whom the imperial service has acknowledged as having been released therefrom shall again assume sworn duties (*sacramenta*) which are unowed without imperial assent. Anyone who perchance has surreptitiously done so shall be punished by a fine of 5 pounds of gold.

Given July 14, at Milan, in the consulship of Honorius, Most Noble Boy, and Euodius (386).

[3][277] *The same Augusti to Eusignius, Praetorian Prefect (of Italy and Illyricum).* **pr.** No subordinate (*apparitor*) of Your Magnificence or from the staffs of palatine officials (i.e., the *palatini* of the Imperial Benefactions [*largitiones*] and Privy Purse [*res privata*]) shall be sent into the province in which he was born or in which he has taken up residence, or (in which) he has already sojourned on official duties of some kind, either on the pretext of public necessity or as a court clerk (*exsecutor*) in connection with a private suit. **1.** The First Assistant Head (*primiscrinius*) of the official staff of Your Highness must, without delay, pay 3 pounds of gold into the accounts of the Treasury if this order is violated, and the subordinate who permitted himself to be assigned to such duty shall be discharged from the imperial service.

2. This punishment is to be visited upon the others as well, so that if a member of the Household garrison and guards (*domesticus aut protector*), an inspector of horses (*strator*), a courier (*agens in rebus*), or a member of either palatine staff should proceed with some such illicit purpose to the same province in which he was born or to that in which he has taken up his residence, he himself, who was willing to be sent, shall be stricken from the register and compelled to pay a pound of gold into the account of the Treasury; moreover, the principal assistants (*adiutores*) of the palatine staffs and the chief accountants (*numerarii sive actuarii*) of the Counts (of the Imperial Benefactions and of the Privy Purse) of *illustris rank* shall pay a pound of gold to the accounts of the Treasury if these regulations are not obeyed.

Given December 3, at Milan, in the consulship of Honorius, Most Noble Boy, and Euodius (386).

[4][278] *Emperors* Theodosius, Arcadius, *and* Honorius *Augusti to Silvanus, Duke and Governor* (corrector) *of the Border of Tripolitania* (limes Tripolitanus). Persons who have negligible private property should not be forbidden to enter the imperial service in the ranks of subordinate officials (*apparitores*).

Given March 27, at Constantinople, in the consulship of Theodosius Augustus, for the third time, and Abundantius (393).

[276] = C.Th. 8.7.18.
[277] = C.Th. 8.8.4.
[278] = C.Th. 12.1.133.

[5] *Impp. Honorius et Theodosius AA. Graccho pu.* Quicumque apparitores ob culpam vel neglegentiam fuerint iudicato discincti, ad nullam militiam adspirandi habeant facultatem: nec ex rescripto his ullus aditus reseretur, quos congruit poenae gravissimae subiugari, si contra inhibita quoque sacratissimis constitutis adspirare contempserint.

D. VIII k. Aug. Ravennae Honorio X et Theodosio VI AA. conss.

[6] *Impp. Theodosius et Valentinianus AA. Hierio pp.* **pr.** In his officiis, id est virorum spectabilium proconsulis Asiae comitis Orientis praefecti Augustalis et vicariorum, quos etiam monuimus sub viginti interminatione librarum auri, nemo aliter admittatur, nisi eum emissa *ex* sacris scriniis probatoria consecrarit. **1.** Quod si quis talis sub tua fuerit iudicatione convictus, profecto irritis his quae vetita contrectavit etiam congruam indignationem incurret.

D. X k. Iul. Nicomediae Theodosio XII et Valentiniano II AA. conss.

[7] *Idem AA. Anatolio magistro militum.* Ad splendidioris militiae privilegia, posteaquam priorem continuo labore compleverint, eos venientes admittimus, qui ea voto adipiscendi honoris crediderint expetenda, non eos, qui studio exercendae cupiditatis ambierint, ut velut in meliore fortuna positi aut ea scelera quae prius commisisse doceantur occultent aut alia deinceps possint impune committere.

[8] *Imp. Leo A. Iohanni magistro officiorum.* Viros spectabiles duces eorumque apparitores nec non limitaneos castrorumque praepositos

[5][279] *Emperors Honorius and Theodosius Augusti to Gracchus, City Prefect (of Rome).* Subordinate officials who have been deprived of the belt of their office by conviction on account of wrongdoing or negligence shall not have the opportunity of seeking entry into any branch of the imperial service. Not even by a rescript shall any entrance be unlocked for persons who ought rightly to be visited with a most weighty punishment, if they do not shrink from seeking that which has also been prohibited by these most imperial enactments.

Given July 25, at Ravenna, in the consulship of Honorius, for the tenth time, and Theodosius, for the sixth time, Augusti (415).

[6][280] *Emperors Theodosius and Valentinian Augusti to Hierius, Praetorian Prefect (of the East).* pr. Unless a certificate of appointment (*probatoria*) issued from the imperial bureaus (*sacra scrinia*) sanctions him, no person shall be admitted to the official staffs of the Proconsul of Asia, the Count of the East, the Augustal Prefect, and the Vicars, each of *spectabilis* rank, whom We have also admonished under a threat of 20 pounds of gold. 1.[281] If any such person shall be convicted by your judgment, his unlawful acts shall immediately be void, and he shall also bring appropriate displeasure down upon himself.

Given June 22, at Nicomedia, in the consulship of Theodosius, for the twelfth time, and Valentinian, for the second time, Augusti (426).

[7][282] *The same Augusti to Anatolius, Master of Soldiers (in the East).* We offer preferment to those ascending to the privileges of a more distinguished branch of the imperial service, once they have completed their previous appointment with unstinting effort, who believe that those privileges are worth seeking due to a longing for the attainment of honor, but not to those who strive after them with the object of gain, so that were they placed in a more powerful position they would hide the crimes they had previously learned to commit or would later be able to commit other crimes with impunity.

(438–443).

[8][283] *Emperor Leo Augustus to John, Master of Offices.* We direct that the Dukes of *spectabilis* rank and their subordinates (*apparitores*), as well as the border troops (*limitanei*) and the commandants (*praepositi*) of the camps, shall be summoned only by order of the tribunal of Your Sublimity and shall not be subject to the jurisdiction of other judges – reserving, however, to the Magnificent Masters of Soldiers of *illustris* rank the customary authority

[279] = C.Th. 8.7.20.
[280] pr. = C.Th. 8.7.21.
[281] Section 1 = C. 12.49.7.1.
[282] The date is restored conjecturally by Seeck to January 28, 443.
[283] Compare C. 12.5.3, 12.25.3.

tantummodo ex sublimis tui iudicii sententia conveniri nec aliis subiacere iudicibus praecipimus: illustribus scilicet ac magnificis viris magistris militum consuetudine ac potestate, si qua ad limites aliquos Orientis Thraciarum et Illyrici ex longo tempore hactenus obtinuit, reservata.

[9] *Idem A. Hilariano magistro officiorum.* **pr.** Probatorias memorialium et agentium in rebus, ceterorum nihilo minus apparitorum praetorianae per Orientem amplissimae praefecturae, eorum etiam, qui in diversorum iudicum officiis numerantur, ex sacris probatoriis solito more militiae sacramenta sortiri decernimus, non passim nec licenter solis auctoritatibus vel sacrarum litterarum exemplaribus: sed ex authenticis tantum sacris probatoriis manu nostra subscriptis et nostro arbitrio praestandis, ita ut nullus his dolus aut fraus possit adnecti, de his etiam, qui sunt verae et catholicae fidei, iubemus admitti. **1.** Aliter vero militantes, nisi ex his sint, quos solis auctoritatibus apparitioni adgregari vetusta consuetudo perdocuit, detecta fraude cuiuscumque accusandi studio non solum mendaci carere militia, sed etiam proscriptionis stilum subire decernimus et bonorum omnium amissione multamus.

[10] *Idem A. Erythrio pp.* **pr.** Hac sanctione decernimus, ut in posterum nemini licentia sit edendi exemplaria his, qui sociandi sunt cuicumque militiae, quam sine divinis probatoriis adipisci non possunt, sed periculo primatum uniuscuiusque officii ipsas authenticas sacras, quae divinam nostrae pietatis continent adnotationem, cum subscriptione administrantium, sub quorum iurisdictione consistunt, his qui militare volunt praestari: exemplaribus videlicet earum cum subscriptione eorundem iudicum apud singula quoque officia, prout convenit, reservandis.

1. Quamvis autem manifestum sit de huiusmodi probatoriarum observatione excepta esse certorum iudicum officia, tamen ne ullius

(*potestas*) established long before now on some of the borders of the Dioceses of the East, of Thrace, and of Illyricum.

(467–470).

[9][284] *The same Augustus to Hilarianus, Master of Offices.* **pr.** We order that the certificates of appointment (*probatoriae*) of clerks in the imperial bureaus (*memoriales*), of couriers (*agentes in rebus*), of others including not least the subordinates (*apparitores*) of the most magnificent Praetorian Prefecture of the East, and also of those enrolled on the official staffs of the various magistrates (*iudices*) – that by (such) imperial certificates of appointment shall appointments in the imperial service (*sacramenta militiae*) be obtained in the customary manner, and not indiscriminately and arbitrarily or pursuant solely to (magisterial) authority (*auctoritates*) or copies (*exemplaria*) of imperial letters; but only by authentic imperial certificates of appointment subscribed by Our own hand and granted at Our discretion, so that no deception or fraud can be connected therewith. We likewise order only persons who profess the true and catholic faith to be admitted.

1. We decree that persons in the imperial service under other conditions – unless they are among those persons whom ancient custom has permitted to be joined to the ranks of subordinate officials (*apparitio*) pursuant solely to (magisterial) authority – shall, when the fraud is detected, on the initiative of any accuser, not only be ousted from the fraudulently obtained imperial service, but shall also suffer the sentence of banishment, and We (also) punish them by the loss of all of their property.

(470?).

[10][285] *The same Augustus to Erythrius, Praetorian Prefect (of the East).* **pr.** We determine by this decree that no one shall hereafter have permission to issue copies (*exemplaria*; i.e., of certificates of appointment) to those who are to be associated with any (position in) the imperial service that cannot be obtained without imperial certificates of appointment (*probatoriae*); but, at the peril of the senior members (*primates*) of every official staff, the authentic imperial certificates themselves, containing the imperial annotation of Our Piety together with the signature of the magistrates (*administrantes*) under whose jurisdiction they stand, shall be delivered to those desiring to enter the imperial service. Copies thereof, with the signature of the same magistrates (*iudices*), are to be preserved by each official staff, as is proper.

1. Since it is well known, however, that the staffs of certain magistrates (*iudices*) are exempted from the foregoing rule as to certificates of appointment,

[284] Possibly combine with C. 1.23.6 (given March 27, 470), 12.19.10. Seeck gives this date here as well.

[285] The dates are restored.

ignorantiae relinquatur occasio, omnium officiorum, quibus necesse est per sacras probatorias militiae sociari, notitiam in sacris apicibus subdendam esse censuimus. 2. Sub hac igitur observatione omnes, qui sive in hoc sacro palatio nostro sive in aliis quibuscumque officiis deinceps militare cupiunt, qui tamen, ut dictum est, non possunt pro tenore sacrarum constitutionum vel vetere consuetudine nisi praecedentibus sacris probatoriis militiae sociari, sicut subnexa notitia demonstrat, adipisci praecipimus: scientibus his, qui ex aliqua parte praesentis nostrae serenitatis legis formam conìventia vel neglegentia quadam colludere temptaverint, non tantum amissione bonorum omnium, sed etiam capitis periculo utpote criminis falsitatis obnoxios semet esse plectendos.

3. *Et est notitia. Scrinii memoriae* probatoriae agentium in rebus, palatinorum largitionum, palatinorum rerum privatarum partis Augustae.

4. *Item scrinii sacrarum epistularum sic:* in officiis virorum illustrium praefectorum praetorio Orientis et Illyrici et urbis, officii proconsulum Asiae et Achaiae, officii praefecti Augustalis, officii comitis Orientis, officii comitis divinarum domorum, officii vicariorum Thraciae Ponti Asiae et Macedoniae et thesauriensium classis.

5. *Item scrinii sacrorum libellorum:* officii virorum illustrium magistrorum militum utriusque militiae in praesenti, Orientis et Illyrici, invitatorum, admissionalium, memorialium omniumque paedagogorum, cellariorum, mensorum, lampadariorum eorum, qui sacris scriniis deputati sunt, decanorum partis Augustae, cursorum partis Augustae, officii virorum spectabilium ducum Palaestinae, Mesopotamiae, novi limitis Phoenices, Osrhoenae, Syriae et Augustae Euphratensis, Arabiae et Thebaidis, Libyae, Pentapoleos, utriusque Armeniae, utriusque Ponti, Scythiae, Mysiae primae, secundae, Daciae, Pannoniae, officii virorum spectabilium comitum Aegypti, Pamphyliae, Isauriae, Lycaoniae et Pisidiae.

We have thought it best, lest the occasion of any want of knowledge remain, to append to these imperial decrees a schedule of all those official staffs for which it is necessary to be associated with the imperial service by means of imperial certificates of appointment. **2.** In accordance with this regulation, therefore, We direct that all persons who hereafter desire to serve in this Our imperial palace or on any official staff whatsoever, but who, as has been said, are unable to be associated with the imperial service unless, in conformity with the tenor of imperial constitutions or with established custom, imperial certificates of appointment are forthcoming, must obtain appointment in the manner prescribed by the appended schedule. Such persons should be aware that those who by any connivance or negligence attempt in any way to evade the general norm (*forma*) of the present law of Our Serenity will be punished not only by the loss of their goods, but also by capital punishment as though guilty of forgery.

3. *And the schedule is as follows: The bureau of memorials* (*scrinium memoriae*) (issues) the certificates of appointment of couriers (*agentes in rebus*), the palatine officials of the department of Imperial Benefactions, and the palatine officials of the Privy Purse of the Empress.

4. Likewise *the bureau of imperial letters* (*scrinium sacrarum epistularum*) (issues the certificates of appointment) for the official staffs of the Praetorian Prefects of the East and of Illyricum, and of the City Prefect, each of *illustris* rank; of the Proconsuls of Asia and of Achaea, of the Augustal Prefect, of the Count of the East, and of the Count of the Imperial Household (*comes divinarum domorum*); of the Vicars of Thrace, of Pontus, of Asia, and of Macedonia; and of the depot officials (*thesaurenses*) of the fleet.

5. Likewise *the bureau of imperial petitions* (*scrinium sacrorum libellorum*) (issues the certificates of appointments) for the official staffs of the Masters of Soldiers of both Infantry and Cavalry in the Imperial Presence, of the East, and of Illyricum, each of *illustris* rank; of the invitation-officers (*invitatores*), the ushers (*admissionales*), of the clerks of the imperial bureaus (*memoriales*), all of the pages (*paedagogi*), of porters (*[can]cellarii*), of quartering masters (*mensores*), of the lampkeepers (*lampadarii*) assigned to the imperial bureaus, of the doorkeepers (*decani*) of the empress, and of the couriers (*cursores*) of the empress; for the official staffs of the Dukes of Palestine, of Mesopotamia, of the new frontier of Phoenicia, of Osrhoene, of Syria and Augusta Euphratensis, of Arabia and the Thebaid, of Libya, of Pentapolis, of both provinces of Armenia (i.e., Armenia I and II), of both provinces of Pontus (i.e., Pontus Polemoniacus and Helenopontus), of Scythia, of Moesia Prima, of Moesia Secunda, of Dacia, and of Pannonia, each of *spectabilis* rank; and for the official staffs of the Counts of Egypt, of Pamphylia, of Isauria, of Lycaonia and Pisidia, each of *spectabilis* rank.

(471–472?).

LX De Exsecutoribus et Exactoribus

[1] *Impp. Arcadius et Honorius AA. ad provinciales et ad proconsules.* Ne per diversas provinciarum partes aut palatinus exactor accederet aut illustrium virorum apparitor vagaretur vel militaris terror inferret formidinem, hac lege sancimus, ut omnis memoratis intentio ad provinciae rectorem sit, cum eo agant, illo insistente disponente et agnoscente suo periculo rem peragant et impleant universa.

D. XVII k. Iul. Mediolani Olybrio et Probino conss.

[2] *Idem AA. Andromacho* pp. Quicumque e palatio nostro cuiuslibet tituli ad provincias commeaverit compulsor exactor admonitor portitorve praecepti, agens in rebus vel palatinus vel apparitor illustrium potestatum, hoc tantum potestatis adripiat, quod mandatum curae suae specialiter approbatur, nec quod iniunctum alteri fuit collegii iure praesumat, ne, dum hoc sibi invicem mutui officii licentia partiuntur, agant cuncti, quod singulis credebatur.

D. prid. id. Iul. Mediolani Olybrio et Probino conss.

[3] *Impp. Honorius et Theodosius AA. Palladio pp.* **pr.** Sive ex praetoriano officio sive illustris comitivae sedis largitionum nec non et rei privatae nostrae vel ex quacumque apparitione ad quamcumque necessitatem profligandam quis fuerit destinatus, sciat intra anni metas debere collectis ratiociniis ad proprium iudicem remeare eique suam efficaciam ostendere, quid eius instantia exactum fuerit quidve in debitis habetur vel penes quos resederit vel cuius culpa aut causa in eadem provincia fuerit derelictum. **1.** Quod si exacto spatio anni eius regionis visceribus praedator insidens deprehensus fuerit remorari, tunc absolutus cingulo militia abicietur, primoribus eius militiae decem librarum

Sixtieth Title Court Clerks and Tax Collectors

[1][286] *Emperors* ARCADIUS *and* HONORIUS *Augusti to the provincials and to the Proconsuls.* Lest a palatine official (of the Imperial Benefactions [*largitiones*] or the Privy Purse [*res privata*]) enter into the different parts of the provinces as a tax collector (*exactor*); or a subordinate (*apparitor*) of officials of *illustris* rank (of the Praetorian Prefecture, e.g.) roam around therein; or military terror instill fear therein: We ordain by this law that all the exertions of the aforementioned officials shall be directed to the governor (*rector*) of the province; they shall deal with him while he presses them on and arranges their efforts and acknowledges that they conduct their business and accomplish everything at his peril.

Given June 15, at Milan, in the consulship of Olybrius and Probinus (395).

[2][287] *The same Augusti to Andromachus, Praetorian Prefect.* Anyone who is dispatched from Our palace into the provinces in any capacity – be it as a collector of arrears (*compulsor*), tax collector (*exactor*), dunning agent (*admonitor*), or bearer (*portitor*) of an order; whether he is a courier (*agens in rebus*), a palatine official (of the Imperial Benefactions [*largitiones*] or the Privy Purse [*res privata*]), or the subordinate (*apparitor*) of officials of *illustris* rank (of the Praetorian Prefecture, e.g.), shall claim only the authority (*potestas*) which can be shown to have been assigned specifically as a matter of his concern; nor shall he presume, by right of collegiality, to do anything enjoined upon another, lest all might undertake what has been entrusted to specific persons as they share it out with one another in turn on the pretext of their mutual duty.

Given July 14, at Milan, in the consulship of Olybrius and Probinus (395).

[3][288] *Emperors* HONORIUS *and* THEODOSIUS *Augusti to Palladius, Praetorian Prefect (of Italy, Africa, and Illyricum).* **pr.** If any person has been dispatched from the official staff of the Praetorian Prefect, or from the office of the Count of the Imperial Benefactions of *illustris* rank, or that of Our own Privy Purse, or from any of the ranks of subordinate officials (*apparitio*) to collect any public obligation (*necessitas*), he is advised that within a year he must return with the collected accounts to his superior and report to him what he has accomplished, (i.e.,) what has been collected on his initiative, what remains in arrears, who is in arrears, and by whose fault and cause a delinquency had arisen in that province. **1.** But if he is found to have remained after the passing of a year, preying upon the vitals of this region like a vulture, he shall be deprived of the belt of his office (*cingulum*) and expelled from the imperial service, and the senior

[286] = C.Th. 8.8.6.
[287] = C.Th. 8.8.7. Combine with C.Th. 2.12.6, 7.12.3. The recipient was actually City Prefect of Rome; Seeck corrects the date to July 6, 395.
[288] = C.Th. 8.8.9.

auri multa proposita. 2. Si redire dissimulet, per vices officiorum ligatus ferreis nexibus cura provincialis officii ad debitum mittatur examen nec ei liberum sit, ut hoc se privilegio aut occasione defendat, quod sibi aliud negotium vel aliam necessitatem post iniunctam esse causetur, cum isdem licentiam auferamus in eadem provincia continuare exactionem.

D. x k. Oct. Ravennae Theodosio A. VII et Palladio conss.

[4] *Idem AA. Iohanni pp.* Nullam possessionem alterius pro alienis debitis publicis sive privatis praecipimus conveniri.

D. v id. Iul. Ravennae Honorio XIII et Theodosio x AA. conss.

[5] *Impp. Theodosius et Valentinianus AA. Volusiano pp.* Contra nostra praecepta si quisquam vetito ausu exsecutor audebit, licebit provinciae moderatori eundem correptum ad sublimitatis tuae iudicium sub prosecutione dirigere, licebit provinciali, etsi probatur obnoxius, exsecutoris contra vetitum exactionem sibi vindicantis temeritatem legitime repellere.

D. III k. Mart. Ravennae post cons. Felicis et Tauri vv. cc.

[6] *Imp. Zeno A. Arcadio pp.* **pr.** Sancimus, ut eum, cui ex iudicio tui culminis quocumque modo sive studio numerariorum aut tractatorum vel ipsorum iussu, qui pro tempore amplissimae tuae sedis administrationem suscipiunt, exactio publicarum pecuniarum iniungatur, minime prius liceat aliam sollicitudinem gerendam suscipere, antequam reversus iniunctae sibi causae responsum praebuerit. 1. Si tamen ita sors tulerit, ut in ea provincia, ad quam exsequendi causa publici negotii aliquis proficiscitur, alia quoque causa sit exsequenda, non prohiberi unum eundemque exsecutorem ab hac urbe regia proficiscentem duorum simul, non plurium negotiorum exsecutionem suscipere, dum ipsi quoque tertii negotii non sit iniungendi, antequam superioribus responsum portaverit.

members (*primores*) of that branch of the imperial service shall pay a fine of 10 pounds of gold. **2.** If he neglects to return, he shall be bound with iron chains by agents of the official staff and sent in the charge of the provincial officials to the proper tribunal; nor shall he be permitted to defend himself by the privilege or pretext that another transaction or duty was entrusted to him later, because We deprive these same persons of the prerogative of carrying out consecutive exactions in the same province.

Given September 22, at Ravenna, in the consulship of Theodosius Augustus, for the seventh time, and Palladius (416).

[4][289] *The same Augusti to John, Praetorian Prefect (of Italy).* We decree that the property of one person cannot be the object of a suit for the public or private debts of another.

Given July 11, at Ravenna, in the consulship of Honorius, for the thirteenth time, and Theodosius, for the tenth time, Augusti (422).

[5][290] *Emperors* THEODOSIUS *and* VALENTINIAN *Augusti to Volusianus, Praetorian Prefect (of Italy and Africa).* If with forbidden intrepidity a court clerk (*exsecutor*) dares to do anything contrary to Our orders, the governor (*moderator*) of the province is authorized to seize him and send him under escort to the tribunal of Your Sublimity, and a provincial is authorized lawfully to reject the effrontery of a court clerk who attempts to claim for himself an exaction contrary to Our prohibition, even if the provincial is proven to be liable (for the obligation).

Given February 27, at Ravenna, in the post-consulate of the viri clarissimi *Felix and Taurus (429).*

[6][291] *Emperor* ZENO *Augustus to Arcadius, Praetorian Prefect (of the East).* **pr.** We ordain that if a person is in any manner charged with the collection of public revenues by order of Your Highness or at the desire of the chief accountants (*numerarii*) or financial managers (*tractatores*) or at the behest of those who for the time being carry on the administration of your most magnificent office, he shall not at all be permitted to undertake any other assignment until he has, upon his return, rendered a full account of the matter (first) enjoined upon him. **1.** If it should turn out, however, that in the province to which a person goes for the purpose of carrying out some public business another matter also needs attention, it is not forbidden to charge one and the same court clerk (*exsecutor*) who is setting out from this imperial city to undertake to carry out two transactions, but no more; he must not take charge of any additional transaction until he has reported on the others.

289 = C.Th. 8.8.10. Combine with C. 4.4.1 and the other laws cited there. 412 is a possible alternate date.
290 = C.Th. 12.6.32.2. Combine with C. 10.72.15; C.Th. 11.1.35.
291 Possibly combine with C. 12.49.10. The date is corrected to 490.

2. Exsecutoribus his, qui secundam, si non simul duas, vel etiam tertiam causam passi fuerint exsequendam suscipere, non solum cinguli et bonorum suorum amissionem, verum etiam perpetui exsilii supplicium subituris. **3.** Eandemque hanc poenam numerarium quoque et eius adiutores, ad quorum curam quod violatum est pertinet, formidare.

[7] **pr.** Πᾶς ἄνθρωπος εἴτε θείαν κέλευσιν εἴτε ἀρχικὴν πρόσταξιν ἐκβιβάζων ὀφείλει πρότερον ἐμφανίσαι τῷ ἄρχοντι, ἵνα ὁ ἄρχων ἐξετάσῃ, εἰ μηδεμία πλαστοῦ αἰτία ἐστὶν ἐν αὐτοῖς ἢ κατὰ συναρπαγὴν ἢ ἐναντιούμενον νόμοις. **1.** Ὁ δὲ ἐκβιβασμὸς καὶ ἐγγράφως καὶ ἀγράφως γίνεται, δηλονότι τῶν θείων λογίων προκειμένων καὶ πάντων τῶν κτητόρων τῶν παρόντων ἅμα αὐτῷ τὴν ἐξέτασιν ποιουμένων.

2. Καὶ εἰ συνίδοι, παρέχει βοήθειαν· ἐὰν δὲ ἢ πλαστὸν εὕρῃ φανερῶς ἢ νόμῳ ἐναντιούμενον φανερῶς, δεῖ αὐτὸν μὴ ἐκβιβάζειν, ἀλλ' ἀναφέρειν εἰς βασιλέα διὰ τοῦ μαγιστριανοῦ, ἢ εἰς αὐτὴν τὴν ἀρχήν, ἐξ ἧς τὸ πρᾶγμα ἐγίνετο, τὸν δὲ ἐκβιβαστὴν ὑπὸ ἀσφάλειαν ποιεῖν τὴν ἐγχωροῦσαν, καὶ τὰ πρόσωπα δὲ τὰ αἰτιασθέντα ὑπὸ προσωπικὴν ἀσφάλειαν ἀζημίως· ὁ γὰρ ἐγχειρίσας αὐτῷ τὸ ἀζήμιον περιποιήσει, εἴπερ εὑρεθείη μάτην αὐτῷ ἐγχειρίσας. **3.** Εἰ γὰρ μὴ τοῦτο γένηται, ὁ μὲν ἐκβιβαζόμενος ἀπωθεῖται τὸν ἐκβιβασμόν· ὁ δὲ ἄρχων, εἰ πρὸς αὐτὸν ἡ κέλευσις γέγονεν, ἢ καί τις ἕτερος ἴσως πρός τινα ἕτερον ἐγένετο, ὑπὸ ἀσφάλειαν ὀφείλει ποιῆσαι τὸν ἐκβιβαστὴν τὴν ἐγχωροῦσαν. **4.** Εἰ δὲ καὶ δυνηθείη τις ἀπωθήσασθαι τὸν ἐκβιβασμόν, ὀφείλει μανθάνων ὁ ἄρχων ἀποστῆσαι τὸν ἐκβιβαστήν, ποιεῖν δὲ ὑπὸ ἀσφάλειαν προσωπικὴν τὸν αἰτιασθέντα καὶ μηνύειν. **5.** Εἰ δὲ ῥαθυμήσῃ τούτου ἢ ὁ ἄρχων ἢ ἡ τάξις αὐτοῦ ἢ πρὸς ὃν τὸ γράμμα γέγονεν, οἴκοθεν τῷ ὑπομνησθέντι ποιήσει τὸ ἀζήμιον καὶ ἐν ὅσῳ ἄρχει καὶ μετὰ τὸ παύσασθαι τῆς ἀρχῆς. **6.** Ὑπεξαιρεῖ δὲ ἡ διάταξις τοὺς προφάσει δημοσίων ἐνεχομένους. **7.** Εἰ δὲ λήμματος ἡττηθέντες οἱ ἄρχοντες μὴ ποιήσωνται τὴν ἐξέτασιν προκειμένων τῶν ἁγίων λογίων, ἢ καὶ παρίδωσι, καὶ εἰς χρήματα ζημιοῦνται καὶ ἐκβάλλονται τῆς ἀρχῆς καὶ εἰς σωτηρίαν κινδυνεύουσι.

8. Πᾶς δὲ νόμος ἐμφανιζόμενος ὀφείλει πρότερον γίνεσθαι τοῖς ἐπάρχοις καταφανής, τὸν δὲ διακομίζοντα αὐτὸν εἰς τὴν ἐπαρχίαν λαμβάνειν χρυσίνους ἕξ, τὸν δὲ ἄρχοντα σπουδάζειν διὰ προστάξεων οἰκείων πάσαις ταῖς πόλεσι ταῖς ὑφ' ἑαυτὸν φανεροὺς καθιστᾶν τοὺς νόμους, ἀζημίως παντελῶς μηδὲ τοῦ ἄρχοντος μηδὲ τῶν ἐκδίκων μηδὲ τοῦ διακομίζοντος.

2. Court clerks (*exsecutores*) who permit themselves to undertake a second transaction, or two at the same time, or even a third transaction (contrary hereto), shall experience not only the loss of the belt of their office (*cingulum*) and their property but shall also suffer the penalty of perpetual exile. **3.** The same punishment is to be feared by the chief accountant (*numerarius*) and his principal assistants (*adiutores*) in whose charge is the matter which has been violated.

(485–486).

[7][292] **pr.** Whoever carries out an imperial command or an order of a magistrate must first bring it to the attention of the governor, so that the latter may determine that it is no forgery, was not surreptitiously obtained, and is not contrary to law. **1.** This may be accomplished either with or without writing, in the presence, certainly, of the divine scriptures, and with all of the landowners who are present participating in the investigation with him.

2. If he finds everything in proper order, the governor shall render assistance; but if he finds it to be incontrovertibly forged or patently contrary to law, he must not carry it out but refer it to the Emperor through an official or to the same magistrate from whom the matter originated, requiring the court clerk meanwhile to give proper surety and the persons against whom the demand is made to give personal surety without expense. For the court clerk must indemnify the latter, if he is found to have summoned him without just cause. **3.** If this is not done, the person summoned may refuse the summons. For the governor to whom the order is directed, and similarly anyone else to whom it may be directed, must cause the court clerk to give suitable surety. **4.** But although anyone may refuse the summons, the governor, once he has learned of it, is nevertheless obligated to call the court clerk away, to cause the person from whom the demand is made to give personal surety, and to report the matter. **5.** And if the governor or his official staff, or the person to whom the order is directed, shall neglect this, he shall indemnify the person summoned out of his own property either during his time in office or thereafter. **6.** The constitution makes an exception in cases of persons who are liable for taxes. **7.** But if the governors, corrupted by money, fail to make an investigation with the Holy Scriptures before them, or indeed are guilty of complicity, they shall be punished by a fine, be removed from office, and stand in peril of their safety.

8. Every law, moreover, which is to be brought to the attention (of the governor), must first be shown to the (Praetorian) Prefect; the person who carries it into the province receives 6 solidi; the governor should hasten to cause the laws to be made public by edicts issued to all the cities subject to him, without any fees being paid either to the governor, the municipal defenders, or the messenger.

[292] From Bas. 56.17.58. Corcoran identifies this as a law issued by Justinian and added to the 2nd edition of C.

9. Ὁ δὲ κερδάνας διπλάσιον δίδωσι καί, εἰ μὲν ἄρχων ἐστίν, ἐκπίπτει τῆς ἀρχῆς, εἰ δὲ ἑτέραν φροντίδα εἶχεν, ἐκβάλλεται τοῦ φροντίσματος.

LXI De Lucris Advocatorum et Concussionibus Officiorum sive Apparitorum

[1] *Imp. Constantinus A. proconsuli Africae.* Si quis se a ducenariis vel centenariis vel fisci advocatis laesum esse cognoscit, adire iudicia et probare iniuriam non moretur, ut in eum qui convictus fuerit competenti severitate vindicetur.

D. VI id. Nov. Triveris. acc. XV k. Mart. Karthagine Constantino A. IIII et Licinio IIII conss.

[2] *Imp. Constantius A. Eubulidae vicario Africae.* **pr.** Praeter sollemnes et canonicas pensitationes multa a provincialibus indignissime postulantur ab officialibus et scholasticis non modo in civitatibus singulis, sed et mansionibus, dum ipsis et animalibus eorundem alimoniae sine pretio ministrantur. **1.** Provinciales itaque cuncti iudices tueantur nec iniurias inultas transire permittant.

D. III k. Iul. Leontio et Sallustio conss.

[3] *Impp. Arcadius et Honorius AA. Pompeiano proconsuli Africae.* Quotiens compulsor arguitur in depraedatione convictus, etiam non consulta clementia nostra poenam subeat legibus competentem.

D. prid. k. Ian. Mediolani Stilichone et Aureliano conss.

[4] *Impp. Honorius et Theodosius AA. Hadriano pp.* Curialibus et naviculariis omnibusque corporibus ita subveniri volumus, ut nihil apparitoribus universorum iudicum liceat, quod ad praedam provinciarum pertinet.

9. If any person receives any fee, he must pay back double the amount; if he is the governor, he loses his office; if he occupies another office, he shall be removed therefrom.

(April 529–November 534).

Sixty-First Title (Unlawful) Gain of Advocates and Extortions by Official Staffs or Subordinates

[1][293] *Emperor* Constantine *Augustus to (Aelianus,) Proconsul of Africa.* If anyone knows himself to have been injured by the *ducenarii*, the *centenarii* (i.e., senior staff officials), or the Advocates of the Treasury, he should not hesitate to go before the courts and prove the wrong, so that proper punishment may be visited upon the guilty person upon his conviction.

Given November 8, at Trier, (314), and received February 16, at Carthage, in the consulship of Constantine Augustus, for the fourth time, and Licinius, for the fourth time (315).

[2][294] *Emperor* Constantius *Augustus to Eubulidas, Vicar of Africa.* Aside from the customary and regular tax payments (*pensitationes*), many things are most improperly demanded from the provincials by members of official staffs (*officiales*) and advocates (*scholastici*) not only in the individual cities but also at post-stations (*mansiones*), inasmuch as they have supplies furnished them and their animals without payment. All governors (*iudices*) must protect the provincials, accordingly, and shall not permit such injuries to go unpunished.

Given June 29. in the consulship of Leontius and Sallustius (344).

[3][295] *Emperors* Arcadius *and* Honorius *Augusti to Pompeianus, Proconsul of Africa.* Whenever a collector of arrears (*compulsor*) is accused and convicted of plunder he shall suffer the penalty prescribed by law without referring the matter to Our Clemency.

Given December 31, at Milan, in the consulship of Stilicho and Aurelianus (400).

[4][296] *Emperors* Honorius *and* Theodosius *Augusti to Hadrianus, Praetorian Prefect (of Italy and Africa).* We want the decurions, the members of the guild of shippers (*navicularii*), and all corporate bodies to be protected in such a manner that nothing may be tolerated on the part of the subordinates (*apparitores*) of all the governors (*iudices*) which abets the plundering of the provinces.

(March 3, 414).

[293] = C.Th. 8.10.1. Combine with C. 10.19.1 (which names the addressee) and the other laws cited there. Seeck dates the law to November 8, 313.

[294] = C.Th. 8.10.2.

[295] = C.Th. 8.10.3. Combine with C. 9.26.1 and the other laws cited there

[296] = C.Th. 6.29.11, from which Seeck restores the date.

LXII De Primipilo

[1] *Impp. Valerianus et Gallienus AA. Domitio.* Commoda primipilatus post administrationem deberi incipiunt, et si is, qui ea percipere debuit, prius rebus humanis eximatur, heredibus petitio salva sit.

[2] *Impp. Diocletianus et Maximianus AA. Alexandro.* Obtentu nominis primipili civiles actiones ad alios iudices transferendae non sunt.

[3] *Idem AA. Domnae.* Utilitas publica praeferenda est privatorum contractibus: et ideo si constiterit fisco satisfactum esse ob causam primipili, poteris obligatam tibi possessionem dotis titulo petere, ut satis doti fieri possit.

[4] *Idem AA. Dionysio.* Cum ex sola primipili causa liberos, etiam si patribus heredes non existant, teneri divus Aurelianus sanxerit, si neque successistis patri vestro nec quicquam ex bonis eius tenetis, consequens est a paternis creditoribus vos non conveniri.

LXIII Publicae Laetitiae vel Consulum Nuntiatores vel Insinuatores Constitutionum et Aliarum Sacrarum vel Iudicialium Litterarum ex Descriptione vel ab Invitis Ne Quid Accipiant Immodicum

[1] *Imppp. Gratianus Valentinianus et Theodosius AAA. Floro pp.* **pr.** Quidquid nostrorum umquam nuntiari coeperit prosperorum, bella si desinent, si oriuntur victoriae, fastis si honor datus fuerit regalium trabearum, compositae pacis si erit efferenda tranquillitas, sacros vultus inhiantibus si forte populis inferimus, haec sine immodico pretio

Sixty-Second Title The Office of the Quartermaster-General

[1][297] *Emperors Valerian and Gallienus Augusti to Domitius.* The perquisites of the office of quartermaster-general (*primipilatus*) begin to be owing after the administration of that position (is completed), and if the person who is entitled to them is taken away from earthly affairs beforehand, the claim to them will be preserved for his heirs.

(253–260).

[2] *Emperors Diocletian and Maximianus Augusti to Alexander.* Civil actions are not to be transferred to other judges on the pretext of (an alleged privilege to this effect attaching to) the position of quartermaster-general.

(284–287).

[3][298] *The same Augusti to Domna.* The public welfare must take precedence over private contracts. If it is determined, therefore, that the Treasury has been satisfied with regard to a suit involving the office of quartermaster-general, you can (only then) claim the property pledged to you for your dowry, so as to satisfy such claim.

(287).

[4] *The same Augusti to Dionysius.* Since the deified Aurelian ordained that children are held liable, even though they are not their father's heirs, only in suits arising out of the office of quartermaster-general, it follows that you cannot be sued by your father's creditors if you did not become your father's successor and have none of his property.

(287–292).

Sixty-Third Title Announcers (*Nuntiatores*) of Occasions of Public Rejoicing or of (New) Consuls and Those Who Give Notice of Constitutions and Other Imperial and Magisterial Enactments Shall Not Receive Immoderate Fees by Levy or from Unwilling Persons

[1][299] *Emperors Gratian, Valentinian, and Theodosius Augusti to Florus, Praetorian Prefect (of the East).* **pr.** Whenever any event evincing Our good fortune is announced – when wars cease; when victories arise; when the honor of the bestowal of consular regalia is added to the calendar; when the repose that

[297] Compare Vegetius, *Epit. rei milit.* 2.8.
[298] For the date, Corcoran.
[299] = C.Th. 8.11.4, which has "without expense" for "without immoderate expense."

nuntiari excipique sancimus. **1.** Gerulum iubemus esse castissimum: indices nummarios esse prohibemus: iudices statuimus esse sollicitos, ne turpi colludio quaeratur ex miseris pretium gaudiorum. **2.** Quod si id sacrilega fuerit dissimulatione violatum, et accipientem pudoris fortunarumque manebit excidium et cogentem par poena multabit et officium triginta librarum auri vexatione quatiatur.

D. IIII non. Febr. Constantinopoli Merobaude II et Saturnino conss.

[2] *Αὐτοκράτωρ Ἰουστινιανὸς Αὔγουστος Ἰουλιανῷ ἐπάρχῳ τῶν πραιτωρίων.* **pr.** Θεσπίζομεν, εἴ τις ἐμφανίζει κατὰ χώραν ἢ ἀρχόντων οἰωνδήποτε ἢ ὑπάτων προαγωγὰς ἢ γενικοὺς τύπους τῶν ἐνδοξοτάτων ὑπάρχων ἢ καὶ ἑτέρου τινὸς τῶν ἡμετέρων ἀρχόντων, ἢ καὶ διατάξεων ἢ θείων κομμωνιτωρίων ἢ γραμμάτων γενικῶν μέντοι ἐμφανίσεις ποιοῖτο ἢ καὶ ἀνδριάντων βασιλικῶν καθιδρύσεις, μὴ εἶναι τούτῳ παρρησίαν περαιτέρω ἓξ νομισμάτων ἐφ' ἑκάστῃ μηνύσει ἢ ἐφ' ἑκάστῳ τύπῳ ἢ ἑκάστῃ διατάξει ἢ θείῳ κομμωνιτορίῳ ἢ γράμματι γενικῷ ἢ ἀνδριάντων καθιδρύσει κομίζεσθαι καθ' ἑκάστην ἐπαρχίαν, εἰς ἣν ταῦτα παρέλαβεν, ὥστε, ὁπόσας ἂν ἔχοι πόλεις ἡ ἐπαρχία, μηδὲν αὐτῷ διαφέρειν, ἀλλὰ τοὺς ἓξ μόνους κομίζεσθαι χρυσοῦς. **1.** Εἰ δέ τι πλέον κομίζοιτο, τοῦτο τετραπλάσιον ἀποδοῦναι κωλυόντων τοῦ τε ἄρχοντος καὶ τοῦ ἐπισκόπου καὶ τῶν πρώτων τῆς πόλεως καὶ πάσης πολιτικῆς καὶ δημοσίας βοηθείας. **2.** Ὁ μὲν γὰρ ἐπίσκοπος ὑπὸ ἀγανάκτησιν ἔσται βασιλικήν, ὁ δὲ ἄρχων καὶ ἐκπεσεῖται τῆς ἀρχῆς καὶ δημευθήσεται καὶ ἐξορισθήσεται καὶ ἡ τάξις δὲ κινδυνεύει. **3.** Μήτε διαγραφὴν γενέσθαι προφάσει τούτων τῶν αἰτιῶν ὑπὲρ τοῦ μὴ ἓξ χρυσούς, μήτε ὡς παρὰ ἑκόντων μηδέν, ἀλλὰ τὸν λαβόντα διδόναι τὸ τετραπλοῦν.

4. Καὶ ἡνίκα δὲ οἱ πολῖται βούλονται ἑαυτοὺς διαγράψαι τυχὸν ἢ εἰς ἔργον δημόσιον ἢ εἰς σιτωνίαν, ἢ αἰτοῦσι παρὰ βασιλέως τοῦτο ἐπιτραπῆναι, οὐ χρὴ ζημιοῦν αὐτοὺς οὐδὲν ὑπὲρ τοῦτο, ἵνα μὴ οἱ μὲν ἱερεῖς ἀγανακτῶνται, οἱ δὲ ἄρχοντες καὶ τῆς ἀρχῆς ἐκπίπτωσι καὶ ἐξορίζωνται καὶ δημεύωνται. ἡ δὲ τάξις εἰς σῶμα τιμωρεῖται, εἰ μὴ μηνυθῇ βασιλεῖ τὰ παρὰ τὴν διάταξιν γινόμενα. **5.** Ἐξουσίαν γὰρ ἔχουσιν οἱ διαγραφόμενοι

proceeds from the conclusion of peace is to be issued forth; when perchance We display the imperial countenances to the wondering multitude – We ordain that these occasions shall be announced and received without immoderate expense. **1.** We order the messenger to exercise the utmost restraint; We forbid the announcers to be too eager for fees; We adjure the governors (*iudices*) to take care lest a fee for their joys is extorted from the poor through detestable collusion. **2.** If this ordinance is violated by sacrilegious evasion, ruin of his good name and fortunes will await the receiver of money, a like penalty will penalize the (official) who compelled the payment, and his official staff will be visited with a penalty of 30 pounds of gold.

Given February 2, at Constantinople, in the consulship of Merobaudes, for the second time, and Saturninus (383).

[2][300] *Emperor* JUSTINIAN *Augustus to Julian, Praetorian Prefect (of the East).* **pr.** We ordain that if anyone should announce in a province the promotion of any magistrates or Consuls, or the general sanctions of the *viri gloriosissimi* Prefects or of any other of Our officials, or should publish decrees or imperial instructions or general letters, or even the erection of statues of the Emperor, he may not collect more than 6 solidi for each proclamation, each sanction, imperial instructions or general letter, or erection of statues, in each province to which he brings news of these things. Thus it shall make no difference how many cities the province should have, but he shall receive 6 solidi only. **1.** If he demands more, he shall pay it back fourfold. The governor, the bishop, the leading men of the city, and the whole official staff must prevent it. **2.** For the bishop will incur the displeasure of the Emperor; the governor will be removed from office, his goods will be confiscated, and he will be banished; and his official staff, too, will be endangered (if they permit it). **3.**[301] No levy in excess of 6 solidi shall be imposed for the sake of such announcements, nor indeed shall even voluntary gifts be accepted, and whoever does so shall repay them fourfold.

4. If by chance the citizens, however, want to impose a levy upon themselves at any time, either for some public work or for the purchase of grain, or to petition the Emperor to be permitted to do so, no loss should be inflicted on them on that account, lest (otherwise) the priests incur displeasure, and the governors be removed from office, their property confiscated, and themselves banished. The official staff will suffer bodily chastisement if they fail to notify the Emperor of violations of the constitution. **5.** Those upon whom a levy is (unlawfully) being imposed may legitimately resist those by whom the levy is

[300] Combine with C. 3.2.4 and the other laws cited there. The pr. and the beginning of §1 have been restored from 1.4.26.6–7; the remainder is restored from Bas. 56.17.67.

[301] Sections 3 and 4 = 1.4.26.15 (altered).

ἀντιλέγειν τοῖς διαγράφουσιν· εἰ δὲ μὴ δύνανται τοῦτο ποιεῖν, ἐπικαλεῖσθαι τὸν ἄρχοντα καὶ βασιλεῖ μηνύειν.

6. Οὐ χρὴ δὲ οὔτε τοὺς πατέρας οὔτε τοὺς σιτῶνας ἢ ἐθνικοὺς ἀποδέκτας παρέχειν ἐκ τῶν οὐσῶν ἐν χερσὶ προσόδων μηδὲ ποσότητα φυλάττεσθαι τῇ ἀφωρισμένῃ χρείᾳ. εἰ δὲ παραβῇ ὁ ἄρχων, οἴκοθεν ταῦτα καταβάλλει. χρὴ γὰρ ἀμείωτα τά τε δημόσια καὶ τὰ πολιτικὰ φυλάττεσθαι.

D. VIII k. Iul. Chalcedone Lampadio et Oreste vv. cc. conss.

being imposed, and if they are not strong enough to do so, they may call on the governor and notify the Emperor.

6. Neither the city magistrates (*pateres*), nor the grain-buyers (*sitônai*), nor the provincial tax-receivers (*apodektai*) must give away any of the revenues collected by them and in their hands, but must preserve it for the purpose for which it was intended. If the governor neglects this, he shall make restitution from his own property, for the funds of the Treasury and the public property of the city should remain unimpaired.

Given June 24, at Chalcedon, in the consulship of the viri clarissimi *Lampadius and Orestes (530).*

Glossary of Roman Law Terms

References are to titles within Justinian's Codex. Definitions for Roman legal terms rely heavily (at times, verbatim) on Adolf Berger, *Encyclopedic Dictionary of Roman Law* (1953), which readers are encouraged to consult for further information.

abigeus: a cattle thief, a rustler: C. 9.37.

abolitio: the dismissal of an accusation and of a criminal trial, e.g., through amnesty or the withdrawal of a complaint: C. 9.42–45.

acceptilatio: a formal oral mechanism for dissolving oral obligations; it is also used for dissolving non-oral obligations, by novating them through a stipulation (called the *stipulatio Aquiliana* after its inventor) and then dissolving them by *acceptilatio*: C. 8.43.

accessio: the accretion of one thing to another by natural or artificial means, so that they form an organic unity.

accusatio: usually, an accusation in a criminal proceeding; but the word is also used for civil lawsuits, especially when dishonest conduct is being alleged: C. 9.1–2.

acta (publica): records of official proceedings; *acta* is also used for a private legal declaration, an affidavit. A record-keeper is *ab actis*. The phrase *apud acta* or *in actis* refers to court records, especially if used as evidence.

actio: the bringing of a lawsuit, the basis for it, or the resulting trial. An *actio civilis* is one based on the *ius civile*. An *actio in rem* is an action based on a claim to a certain thing; while an *actio in personam* (or *actio personalis*) is based on an obligation of the defendant. An *actio temporalis* can only be brought within a limited period of time. An *actio utilis* (or *actio in factum*) is an effective or analogous action, formed on the basis of a legally recognized action. An *actio arbitraria* authorizes a judge to issue an interlocutory order bidding the defendant to satisfy the plaintiff's claim by restoring or producing a claimed object; if the defendant obeys, final judgment is forestalled. An *actio*

noxalis (noxal action) allows a defendant to escape further liability by surrendering to the plaintiff the person (slave or son) or animal that did the act in question: C. 3.41. An *actio rescissoria* seeks annulment of legal acts in specified circumstances, as when a Roman returns from captivity or public service. An *actio contraria* is a countersuit or counterclaim by a defendant. An *actio iudicati* is an action to enforce a judgment.

actio de dolo* or *actio doli: an action on deceit, *dolus*. *Actio dotis*: action for recovery of a dowry, called an *actio rei uxoriae* in classical law: C. 5.12–23, 7.74. *Actio familiae herciscundae*: an action for division of an inheritance. An *actio iudicati* is brought to enforce a judgment: C. 3.36, 38. *Actio communi dividundo*: action to divide commonly owned property: C. 3.37–38. *Actio finium regundorum*: action to settle boundaries: C. 3.39. *Actio ad exhibendum*: an action brought to force production in court of contested property or evidence: C. 3.42. *Actio Serviana*: an action to recover possession of property given as security. *Actio pigneriticia*: an action by a creditor for damage to a pledge: C. 4.24. *Actio de peculio vel in rem verso*: action against a *paterfamilias* or master, on transaction with a child's or slave's *peculium*: C. 4.26. *Actio quod iussu*: a suit by a third party who alleges that a transaction by a child or slave was authorized by the *paterfamilias* or master: C. 4.26. *Actio restitutoria*: an action granted to creditors against primary debtors when they lost their first action because of a woman's invalid novatory intercession. *Actio institoria* and *exercitoria*: see *institor* and *exercitor*: C. 4.25. *Actiones aediliciae*: actions in the Edict of the Aediles regulating sales in the Roman market: C. 4.58. *Actio redhibitoria*: an Aedilician action to rescind a sale because of a defect in the object of sale; *actio quanti minoris*: an Aedilician action for refund of the difference in price of a defective object of sale. *Actio praescriptis verbis* (called an *actio civilis incerti* by Justinian): a form of general contractual action with special terms set out in a preamble to the formula, for contracts falling outside the traditional list of contracts: C. 4.64. *Actio rei uxoriae*: an action by an ex-wife to recover her property from her husband or his family: C. 5.13. *Actio ex stipulatu*: action against a promisor on the basis of a stipulation: C. 5.13, 8.37–38. *Actio servi corrupti*: for losses stemming from the defendant's deliberate corruption of another's slave: C. 6.2. *Actio Calvisiana*: an action protecting the patron's right to inherit from a freedman, against fraudulent alienation following intestacy: C. 6.5.

actor: in private law, a manager of another's affairs: C. 5.61. Also, in some texts, a plaintiff.

actuarius: a quartermaster: C. 12.49.

ad responsum: a liaison officer to an official staff.

adfinis: a near relative by marriage.

adiacentia: appurtenances to property.

aditio hereditatis: informal acceptance of an inheritance; see *cretio*.

adiutores: assistant officers in branches of the imperial administration: C. 12.49.

adlecti: persons who had not held an office admitted by imperial dispensation to a title or rank associated with the office.

administratio: the exercise of a public office by an official, *administrator*, a name used for high officials: C. 1.49; 11.31, 38; 12.8. *Administratio negotiorum*: see *negotiorum gestio*. *Admincula*: functionaries.

admissio: admission to an audience with the Emperor, supervised by ushers (*admissionales*).

adnotatio: an Emperor's personal response to a petition.

adoptio: a procedure transferring a child in a father's power from one *paterfamilias* to another (*mutatio familiae*, change of household); distinguished from *adrogatio* where a *sui iuris* person enters the power of a *paterfamilias*, although the two institutions are sometimes confused in later law: C. 8.47.

adscripticius: in the late Empire, a farmer (*colonus*) who is registered for the census (*censibus adscriptus*) not in his own right, but in connection with the estate where he is a tenant or laborer. The term is used in the East, and translates the Greek ἐναπόγραφος (γεωργός). See *colonus*. The exact meaning of these categories is much debated.

adsertio: any assertion made in court. *Adsertor libertatis*: a person who defends the liberty of an alleged slave: C. 7.17.

adsessor: a salaried legal advisor who assisted magistrates and judges in judicial activity: C. 1.51–52.

adulterium: criminal adultery, normally by wives: C. 9.9.

adultus: a legal adult (roughly: 12 for females, 14 for males); *adulescens*: a young adult, less than 25 years old.

advocatus* or *togatus: one who speaks for another in court; in the late Empire, advocates were increasingly organized in Orders (*consortia*) associated with particular courts: C. 2.7, 9; 12.10, 61. The Treasury Advocates (*advocati fisci*) represented the interests of the imperial Treasury both extra-judicially and in courts: C. 2.8. An *advocatio* is, in one meaning, an informal local or regional Society of Advocates.

aedilis: a Roman magistrate charged especially with maintaining public order and security, particularly in the marketplace; the Aediles had an edict containing the *actiones aediliciae* for sale: C 4.58.

aequitas: fairness, equity, often used as a legal principle moderating strict law.

***aerarium* (*sacrum*)**: in the late Empire, the Imperial Treasury; see *largitiones sacrae*.

aestimatio: an appraisal of the value of property or of damages.

aetas legitima: full legal majority, although the term is used somewhat imprecisely.

affectus* or *affectio maritalis: affection between spouses, considered a legal requirement for marriage to continue.

agentes in rebus: in the later Empire, government couriers and general agents, organized into a corps, *schola*, and especially associated with the *cursus publicus*, see *curiosi*: C. 12.20–21.

ager, agri: a field or farm.

agger: a military or public road; the duty to repair it.

agnatio: a relationship among persons who are under the same paternal power, or who would have been if their first common male ancestor, as traced only through males, were still alive.

agnoscere: to take up a legal duty, or to seek one (e.g., *bonorum possessio*).

alienatio: alienation, the transfer of property through a transaction: C. 4.51–52.

alimenta: support payments: C. 5.26, 50.

alluvio: the natural accretion to land along a river course: C. 7.41.

alumnus: a foster-child or foundling.

ambitus: corrupt solicitation to obtain office: C. 9.26.

angaria: transport, compulsory service in the imperial post (*cursus*), by providing animals and carriages; requisition for such vehicles: C. 12.50.

animus: in many legal sources, a person's intent to accomplish an act with legal effects.

annalia: an annuity supported by an endowment.

annona: the grain supply, especially to Rome or Constantinople (*annona civica* or *civilis*), under the supervision of the *praefectus annonae*: C. 12.58; in the later Empire, a land tax in kind: C. 10.16. The *annona militaris* supplied the army: C. 10.16, 11.23–25, 12.38.

annus utilis: in procedural law, an effective year, 365 days not counting ones on which the party involved was unable to be in court for valid personal reasons (such as illness) or other acceptable excuses.

antipherna: a gift from husband to wife, as a counterpart to dowry.
apices sacrae: an administrative letter from the Emperor.
apocha: a written receipt for a payment; an *apocha publica* is for tax payments.
apostoli: a judge's report on a case, accompanying a litigant's appeal from his decision.
apparitor: a subordinate official in the offices of magistrates and imperial officials: C. 12.53–59. *Apparitio*: support staff.
appellatio: a litigant's appeal to a higher judicial court: C. 62–70.
aqua publica: the water supply; *aquaeductus*: an aqueduct for public use: C. 11.43. *Aquarius*: a subordinate officer in water administration
arbiter: an arbitrator, either on the basis of an arbitration agreement (*compromissum*) between private parties, or through appointment as a judge (*iudex*) in a trial. In the latter sense, *arbiter* is translated "judge arbitrator." *Arbitrium tutelae* is a ward's action against a *tutor*: C. 5.51. *Arbitratu boni viri* means "by the standards of an upright person."
arcarius: the treasurer in a public *arca*, treasury: C. 10.72.
archiater sacri palatii: the chief physician to the Emperor and his family: C. 12.13.
argentarius: a banker: C. 11.18.
arra* or *arrha: earnest money given to conclude a sale or a marital engagement.
articulus: a particular legal point, or a special provision in an enactment.
auctor: a guarantor; a predecessor in title who transfers his right to another (most commonly, through sale) and thereby guarantees that the acquirer will not be evicted from the thing transferred. If this guarantee is violated, the seller is liable to an *actio auctoritatis*.
auditorium: in legal usage, a courtroom.
aula: in administrative parlance, the Court of the Emperor.
aureus: a gold coin. *Aurum coronarium*: a tax to pay for the crown of a new Emperor: C. 10.76. *Aurum argentumve*: a special tax imposed on merchants every five years; also called *collatio lustralis* or *chrysargyron*: C. 11.1. *Auri massa*: gold bullion, managed by a bureau under the Count of Imperial Finances: C. 12.23.7.
bona: all of a person's property. *Bona vacantia*: an estate after its owner's death and before an heir enters into it; ownerless property more generally, including confiscated property: C. 10.10; see also *caduca*.
bona fides: honesty, upright behavior; also *fides sincera*. See also *possessio bona fide*.

bonorum possessio: the right to enter into possession of all or part of an inheritance; in post-classical law, effectively the right to inherit: C. 6.9–19; 7.72.

brevis (breve): a list or register used by officials; a list of tax-debtors or of military sutlers: C. 1.42.

caduca: property that escheats (*cadere in casum*) to the Treasury when it is left or bequeathed to a party who, under an escheat statute (*lex caducaria*), is incapable of acquiring under a will: C. 6.51; 10.10–12.

caelebs: an unmarried person, penalized under the Augustan marriage legislation: C. 8.57.

Caesariani: servants in the imperial household; in the later Empire, subordinate Treasury officials in charge of seizing property.

calumnia: trickery or deception, especially in bringing vexatious lawsuits or false accusations: C. 9.46. *Calumniatores*: false accusers.

cancellarius: auxiliary official in a high functionary's chancery, with secretarial duties: C. 1.51.

candidati: in the later Empire, members of the imperial bodyguard.

canon: a regular annual payment of rent for land held in *emphyteusis*, or a land tax more generally; in another usage, a legal rule. *Canon aurarius*: a tax levied in gold. *Canonicarius*: tax collector.

caput: most commonly, an individual person of whatever status. *Capita officii*: the heads of the official staff: C. 12.19. *Capitatio*: especially in the late Empire, a tax paid per head (*caput*), a poll tax: C. 11.49. See also *deminutio capitis*.

casarius: a cottager, evidently a class of bound tenant (*colonus*): C. 9.49.7.

castra: a military camp; *ex castris*: by military service. *Castrensis*: Steward, overseer of the imperial household: C. 12.5.

casus (fortuitus): (unavoidable) accident, an event that happens without human intervention or fault.

causa: in one usage, the purpose for which an action is brought, or the trial itself. A *causa liberalis* determines whether an individual is free or a slave: C. 7.16–18. *Causa iudicati*: an action brought to enforce a judicial judgment. The phrase *causa cognita* refers to the judicial hearing of a case or of some element of it.

causidicus: an advocate.

cautio* or *cautela: a formal guarantee or declaration, usually in writing. *Cautio Muciana*: a means whereby a legatee could receive a bequest with a negative condition (that something not be done): C. 6.40. *Cautio iuratoria*: an oath to perform a pre-existing legal duty. *Cavere*: to provide or promise.

census: a census, or taxation based upon the census (C. 4.47). *Censualis*: an official in the capital cities charged with taxation of Senators and with other duties related to public order: C. 10.71. *Censitor*: a tax assessor.

centenarius: government official with a salary of 100,000 sesterces.

cessio bonorum: surrender of property to creditors to avoid compulsory sale: C. 7.71.

chartae, chartulae: records. *Chartularius*: a late imperial official who handles tax registers: C. 12.49.

chirographum: a promissory note written by the debtor and held by the creditor: C. 8.26. A *chirographarius creditor* is one whose debt is secured only by a promissory note, and not by a pledge.

cingulum: belt of office, granted to high officials in the late Empire; by metonymy, their office.

citatoria: summonses to appear as witnesses in trials.

civitas: a political unit comprised of its *cives*; often in later sources, a city or a territorial unit: C. 11.32–33.

clarissimus: the honorific for those who reached senatorial rank, whether by birth, imperial appointment, or attainment of office: C. 3.24, 5.33.

classicus, classiarius (miles): marine: C. 11.13.

clientela: a relationship in which a weaker party, the *cliens*, is protected socially or legally by a stronger one, the *patronus*.

codicillus: a diploma of an official's appointment by the Emperor. *Codicilli*: a written document supplementary to a will, with further testamentary dispositions: C. 6.36.

cognatio: a blood relationship, as distinguished from *agnatio*, a relationship only through males.

cognitio extra ordinem: in the late Empire, the standard form of civil procedure, originally called "extraordinary investigation" to distinguish it from Praetorian (formulary) procedure; a form of procedure organized around administration of justice by state officials. *Cognitor*: the person presiding over a judicial hearing.

cohortales or ***cohortalini***: officials subordinate to Praetorian Prefects and the provincial governors in the late Empire: C. 3.25, 12.57.

collatio: a contribution of money, used for payment of taxes. *Collatio bonorum*: hotchpot, a rule requiring emancipated children, or daughters with a dowry, if they seek an intestate share of the estate of their *paterfamilias*, to contribute to the estate, prior to its division, all their acquisitions separate from the estate: C. 6.20. *Collator*: in public law, a taxpayer. *Collatio lustralis*: a merchants tax, see *aurum argentumve*.

collegium: an association of private or public character, including guilds of trades and crafts. *Collegiatus*: member of a guild.

collusio: a secret agreement between individuals to fraudulently obtain an illegal profit or to injure a third person at law: C. 7.20.

colonus: originally, a tenant farmer; in the late Empire, often a tenant farmer effectively bound to the soil, although technically a free Roman citizen. See C. 11.48 (with a fuller note), 50–53, 63–64, 69. *Colonus originalis*: a tenant bound by virtue of *origo*, the locale or estate where he or she was born; *censitus*: registered in the census. See also *adscripticius, casarius, inquilinus*. These definitions are still highly contentious, however.

comes: roughly, Count. There are many such Counts in the late imperial bureaucracy; these are among the more important: The *comes sacrarum largitionum* (Count of the Imperial Finances) was the highest officer in financial administration of the state and head of the state Treasury, with final judicial authority in tax matters: C. 1.32, 12.6. The *comes rerum privatarum* or *rei privatae* (Count of the Privy Purse) directed the administration of imperial real property: C. 1.33, 12.6. The *comes sacri patrimonii* (Count of the Imperial Patrimony) was the chief adminstrator of the Emperor's Patrimony. The *comes Orientis* (Count of the East) governed the diocese of the East, roughly Greater Syria. A *comes rei militaris* (Military Count) was a decorated commander: C. 1.47. The *comes domorum* (Count of the Household) superintended imperial estates in Cappadocia. *Comes commerciorum*: Count of External Trade.

comitatus: the imperial retinue consisting of all Counts (*comites*); the Chancery. *Comitiva consistoriana* or *comitatus sacer*: Imperial Council. *Comitiva*: Countship, of various ranks (*primi ordinis* is a Count of the First Order); *comitiva honoraria*: honorary rank of Count. *Comitatenses*: staff of the office of the *comes sacrarum largitionum*; in another meaning, military field officers.

commeatus: a military furlough; by extension, any leave of absence from service: C. 12.42.

commentariensis: a subordinate officer in the judicial branch of high officials; also, an official in a public prison who superintends corporal punishment, a head warden.

comminatio: a judicial warning or threat against a contumacious litigant: C. 7.57.

commissum: confiscation of goods, especially for violation of customs procedures: C. 4.61.

commodatum: a gratuitous loan of property that the borrower is to use and return: C. 4.23.

commodum: advantage, profit, or benefit, as in rights associated with a certain legal relationship.

compensatio: offset, especially of reciprocal debts within a lawsuit: C. 4.31.

compromissum: an extrajudicial arbitration agreement to submit a controversy to an arbitrator (*arbiter privatus*): C. 2.55. *Compromissarius*: a settlement arbitrator.

compulsores: collectors of tax arrears.

concubinatus: concubinage, a monogamous union of persons not legally married: C. 5.26.

condicio: a condition, a clause that makes the validity of a transaction or a testamentary disposition contingent on the occurrence or nonoccurrence of a future event: C. 6.25, 46. In another sense, the legal or social status of a person.

condictio: a claim *in personam* for restitution of unjust enrichment, brought in many forms: e.g., for recovering a payment made in error (*indebiti*: C. 4.5), or a payment made in anticipation of an expected event that fails to materialize (*causa data causa non secuta* or *ob causam datorum*: C. 4.6), or money paid for an immoral cause (*ob turpem causam*: C. 4.7), or for an illegal cause (*ob iniustam causam*: C. 4.9), or for the value of stolen property (*furtiva*: C. 4.8). Justinian creates a general *condictio ex lege* for prosecuting any claim (C. 4.9).

conductor: in public law, a lessee and holder of a public contract: C. 10.57. For private law, see *locatio conductio*.

confessio: a full or partial admission of liability: C. 7.59.

confiscatio: seizure by the Treasury of the estate of a condemned person: C. 9.48.

consanguineus: a blood-relation.

consensus: agreement, especially in the formation of a contract.

consilium: any group of advisors; in private law, a family council called by a *paterfamilias*. The *consilium principis* is the Emperor's council of advisors. *Consiliarius*: member of any council, but especially of the Emperor's *consilium*.

consistorium: Imperial Council in the later Empire.

consobrinus: a first cousin.

consors: partner, including a spouse and also a business partner (*socius*). *Consortium*: a guild; also used to mean *ordo*, a status or standing. *Consortium advocatorum* or *togatorum*: the Order of Advocates associated with various imperial courts: C. 2.7.

constitutio: a term embracing all forms of imperial legislation: C. 1.14. *Constitutio generalis*: an enactment specifically intended for application beyond an immediate case.

constitutum debiti: an informal promise by a debtor to repay a preexisting debt; it provides an independent basis for suing: C. 4.18.

consuetudo: long-standing custom: C. 8.52.

consul: during the Empire, the highest normal Republican magistracy; two Consuls normally gave their names to the year: C. 12.3. *Consularis*: an ex-Consul, often charged with official duties.

consultatio: a request for a legal ruling, from a lower-level judge to a superior who would rule on an appeal: C. 7.61–62.

contestatio: a declaration before witnesses or before a public official.

contubernium: domestic partnership, a permanent marriage-like relationship between slaves or freedmen; it lacks most of the incidents of marriage.

conubium: legal capacity to marry validly.

conventio: a generalized word for "agreement" between two parties; also, in later procedure, a summons to court or to perform a public duty (see *libellus*).

convicium: verbal offense, delivered in a crowd; a form of *iniuria*, affront.

cornicularius: an adjutant to a military commander; later, also to a higher civil official: C. 12.57.

corpus: a body, often applied to legal persons. *Corpus togatorum*: see consortium. *Corporator* or *corporatus*: member of a corporate body: C. 11.15.

corrector: in the late Empire, a high government dignitary, often a provincial governor (see *rector*).

corrumpere: to lower the value, esp. of another's property.

cretio: acceptance of an inheritance through a formal declaration; see *aditio*.

crimen (publicum): an accusation, or the crime itself: C. 3.15. *Crimen capitale*: a capital crime.

cubicularius: an imperial chamberlain: C. 12.5.

culpa: fault, especially carelessness. Later Roman law knows degrees of *culpa*, including *culpa lata* (serious fault, recklessness) and *culpa levis* (slight fault).

cura: guardianship. *Curator*: guardian of the economic interests of a *sui iuris* person under 25. *Curatores* were also appointed to protect the insane, *furiosi*, and spendthrifts, *prodigi*: C. 5.70. In public law, *curatores* are commissioners charged with branches of administration,

including imperial property. The various *curatores divinae domus* are in charge of the Imperial Patrimony. A *curator* may also be a municipal official with oversight of a special duty.

curia: municipal council, or the building where it meets. *Curialis*: member of a municipal council, a decurion: C. 3.25, 10.22. *Curia* is also used to designate the Roman Senate; *honor curiae* means senatorial rank.

curiosi: inspectors of the public post, associated with *agentes in rebus*: C. 12.22.

cursus (publicus): the imperial postal service: C. 12.50. *Cursor*: a messenger in the imperial postal service.

custodia: safekeeping, a high degree of responsibility for protecting another's property; in public law: protection (for shores or roads): C. 12.44.

damnum: loss or damage. *Damnum iniuria datum*: wrongful damage to property, actionable under the lex Aquilia: C. 3.35. *Damnum infectum*: threatened loss from the defective state of a neighbor's property.

debitor: one who is obligated to pay or perform, a debtor.

decanus: a low-ranking doorkeeper in the imperial palace: C. 12.26.

decretum: a formal disposition, even by private individuals, but usually referring to a magistrate's (including an Emperor's) order of a judicial or administrative character: C. 5.72; however, municipal senates can also issue *decreta*: C. 10.47.

decurio: member of a municipal senate (*curia*), elected for life: C. 10.32–35; the commanders of the *silentiarii*: C. 12.16. *Decuria*: an association or guild: C. 11.14–15.

dediticia condicio: the subordinate status of free persons who, after surrendering to Rome, lack all public rights and citizenship; also applied to freedmen whose liberties were severely curtailed, usually by virtue of their having committed some crime or delict while enslaved: C. 7.5.

defensor: a person who defends another's interests in a trial; the representative of a public corporate body. *Defensor civitatis*: Defender of the City, an imperial official appointed to defend the less privileged against exactions by the powerful, with some police power and jurisdiction in civil affairs: C. 1.55.

delator: an accuser in a criminal trial (often with a pejorative connotation): C. 10.11, 13.

delegatio: in private law, delegation, when one person gives an order to another to pay a debt to, or to assume an obligation towards, a third party, often as a form of novation: C. 8.41. In tax law, an assessment of the tax levied.

delictum: a wrongdoing, particularly one prosecuted in private law and punishable through a monetary penalty paid to the plaintiff.

deminutio capitis: a change in civil status, often with legal implications. Three types are distinguished: *maxima* or *magna*, loss of freedom; *media*, loss of citizenship; *minima*, loss of family relationships, usually through adoption or emancipation.

demonstratio: description; in litigation, a statement of the subject matter of a claim. *Demonstratio falsa*: an incorrect description of a person or object.

denuntiatio: notice, whether official or private.

deportatio: perpetual banishment, capital exile.

depositum: property consigned by its owner to another person for custody, or the contract effecting this; the term is eventually extended to include bank deposits where the depositary returns not the property itself, but its equivalent: C. 4.34.

descriptio: a tax assessment: C. 10.22, 36.

desertor: military deserter: C. 12.45.

detentio: in property law, the simple factual holding of property, without possession or ownership.

dies cedens (legati): the date on which a legacy falls due: C. 6.53. *Dies*: a deadline; *dies fatalis*: a judicial deadline: C. 7.63. *Dies utiles*: days on which certain acts can be performed in court; see *annus utilis*.

dignitas: respect and esteem associated with position of rank; by extension, a rank or office itself: C. 12.1.

dilatio: a continuance: C. 3.11.

diligentia: a high standard of carefulness in protecting another's property. *Diligentia quam suis (rebus)*: the standard of care that a person exercises in handling his own property.

dioecesis: a late imperial administrative unit joining several provinces and governed by a Vicar.

discussor: a late imperial official who audited public expenditure accounts: C. 10.30. An audit of records is a *discussio*.

divortium: divorce: C. 5.24.

dolus (malus): deceit, especially cunning or fraud. It may be actionable in its own right through the *actio de dolo*: C. 2.20; but *dolus* is often also used to describe deceitful conduct within a private transaction or litigation. See also the *exceptio doli*.

domestici et protectores: imperial guardsmen, often junior officers in training: C. 12.17.

domicilium: a person's domicile, permanent residence: C. 10.40.

dominus: in private law, a property owner. *Dominium ex iure Quiritium*: in classical law, full title to property, a category abolished by Justinian: C. 7.25.

domus divina **or** ***augusta***: in the late Empire, the Imperial Patrimony, the private property of the Emperor and his family: C. 3.26; 11.72, 77.

donatio: a gift or the promise of a gift: C. 8.53–54. A *donatio mortis causa* is a gift made in contemplation of the donor's death and effective upon his death: C. 8.56. A *donatio ante nuptias* is a premarital gift to a betrothed woman from her fiancé, reclaimable only if made under condition that a marriage follow: C. 5.3, 14. *Donatio inter virum et uxorem*: gifts between husband and wife during marriage: C. 5.16. *Revocatio donationis*: revocation of a gift: C. 8.55.

dos: dowry, property given to a groom by the bride or someone else on her behalf, and held by the husband during marriage: C. 5.12–15, 18–23; 7.74. *Dos profecticia*: a dowry given by the bride's father or other male ascendant, and reclaimable by him if a wife predeceased her husband; *dos adventicia*: dowry from another source, including from the bride.

duoviri (iuri dicundo): the two administrative heads of municipalities, and the highest judicial magistrates in Italian and provincial cities.

ducenarius: government official with a salary of 200,000 sesterces; see *centenarius*.

dux: Duke; the head of a military district in the later Empire, especially on the frontiers (*duces limitum*).

edictum: an edict issued by a magistrate, including the Emperor. The *edictum perpetuum*, Perpetual Edict, is the final statement of the Praetor's Edict, written by the jurist Julian under Hadrian. *Edictum peremptorium*: official summons to a contumacious defendant, threatening trial *in absentia*.

editio actionis: notice by a plaintiff to the defendant of an action being brought: C. 2.1.

emancipatio: the voluntary release of a child from paternal power: C. 4.13; 8.48–49.

embola felix: "Felicitous Embarcation," the shipment of grain from Alexandria to Constantinople.

emphyteusis: long-term lease of imperial or private land, with rights similar to, but shy of, ownership: C. 4.66; 11.62–63.

emptio venditio: literally, "purchase and sale," a contract for the exchange of property for money: C. 4.38–58.

epidemetica: a commutation payment for quartering of soldiers (*metata*): C. 12.40.

epistularis: secretary, the lowest equestrian rank. *Epistula* is also used of an Emperor's letter to a petitioner, or of a letter patent granting an appointment.

equites: in the late Empire, a recognized civil status short of the highest ranks: C. 12.31.

ergasterium, ergastulum: workhouse or workshop.

erogator: paymaster, especially in distributing military supplies.

error: mistake, a false knowledge or want of knowledge of legally important circumstances, whether factual or legal: C. 1.18.

evectio: an official warrant allowing use of the public post.

evictio: the expulsion of a holder of property, by its true owner: C. 8.44–45; 10.5.

evocatus: a person on reserve military service. *Evocatoria*: an imperial summons.

exactio: tax collection: C. 10.19–20; *exactor*: tax collector: C. 12.60.

exceptio: a defense; see *praescriptio*. An *exceptio doli* is a defense based on the other party's deceit either in a transaction or through abuse of judicial procedure. An *exceptio non numeratae pecuniae* expresses the defendant's objection that he did not receive money which the plaintiff seeks in restitution: C. 4.30. An *exceptio pacti* is a defense based on an agreement that effectively delays or blocks a cause of action. *Exceptio rei iudicatae*: a defense based on the assertion that the matter in question was settled in a previous trial. An *exceptio annalis* (or *temporis*) is based on lapse of a claim owing to a statute of limitations: C. 7.40. *Exceptio peremptoria*: a defense that can be interposed at any point in the trial and that, if proved, renders the plaintiff's claim void.

exceptor: a scribe or shorthand writer in the imperial service: C. 12.49. See also *notarius*.

excusatio: a claim for exemption from a public duty, such as tutelage or municipal services: C. 5.62–68; 10.48–59, 66.

exemplum, exemplarium: copy of an original document (*exemplar*).

exercitor: the owner or charterer of a ship, who could be sued directly, through the *actio exercitoria*, on business obligations assumed by a captain he employs: C. 4.25.

exheredatio: disinheritance: C. 6.28.

exhibere: in judicial procedure, to produce disputed objects or evidence in court: C. 3.42.

exilium: most commonly, exile as a punishment, accompanied by loss of Roman citizenship and property; deportation: C. 10.61.

existimatio (integra): spotless reputation, with no criminal conviction.

expilatio: despoilment, as of the property in an inheritance: C. 9.32.

expositio filii: the exposure and abandonment of a newborn child: C. 8.51.

exsecutio: in civil matters, a claim on a judgment debt: C. 7.53. *Exsecutores*; court clerks or bailiffs: C. 12.60; late imperial collectors of taxes and other Treasury debts.

extra ordinem: see *cognitio extra ordinem*.

extraneus: in the law of succession, an heir not subject to a testator's power at his death.

fabricensis: an armorer, a worker in a state munitions factory (*fabrica*): C. 11.10.

facere litem suam: "to make the suit one's own," a phrase referring to judicial misconduct that leads to liability for the judge; the category expanded over time.

Falcidia: see lex Falcidia.

falsum: any kind of forgery, falsification, or counterfeiting: C. 9.22–24.

familia: in one meaning, the *paterfamilias* and all those persons subject to his power, including slaves. *Familiaris*: family relation; associate.

favor libertatis: the policy that ambiguous documents be interpreted in favor of granting freedom to slaves; partiality for freedom. *Favor* is used in a similar way for children (*liberi*), minors (*pupilli*), marriage (*matrimonium*), and dowry (*dos*).

fenus nauticum: a bottomry loan given in connection with transport of goods by sea: C. 4.33.

fideicommissum: a testamentary trust, in which a testator directs another to carry out some performance for the benefit of a third person: C. 3.17; 6.42–46.

fideiussio: suretyship, through which a third party guarantees the debt of the principal debtor through a formal promise (called an *adpromissio*): C. 8.40.

fides: in one usage, fidelity to one's promises; in another, credit, the confidence others have in one's behavior, especially in paying debts.

fiducia: a fiduciary transfer based on the transferor's trust (*fides*) in the recipient.

filius: a son; often a child of either sex, although females are generally referred to in the feminine (*filia*). *Filiusfamilias*: a child subject to a father's power: C. 2.22; 4.13; 10.62.

fiscus: the imperial Treasury: C. 10.1, 8–9; and see 2,17, 36; 3.26; 7.3; 10.1–9. It is represented in trials by the *advocatus* or *patronus fisci*: C. 2.8.

foederati: "allied troops," originally barbarian, but later used of regular troops.

follis: see *gleba*.

forma: in one usage, a legal norm established by statute, imperial or magistral edict, or by decree of the Senate. The *forma perpetua* is the Perpetual Edict.

formulae iuris: the legal formulas used to frame lawsuits in Praetorian law: C. 2.57.

fraus: a detriment or disadvantage, often as inflicted deliberately on a victim: C. 7.75.

fruor: to enjoy, hence to exploit property. *Fructus*: "fruits," proceeds of property, including interest on debt, rents, and so on: C. 7.51. *Fructuarius*: a usufructuary.

fugitivus: runaway, fugitive; used of slaves and for free tenants bound to the soil (*coloni*): C. 6.1; 11.64.

functio: the performance of official or other duties, especially the duty to pay taxes.

fundus: a farm, or, more generally, a plot of land.

furiosus: an insane person.

furtum: theft, actionable both as a private delict and as a crime: C. 4.8, 6.2.

gladiatores: gladiators: C. 11.44.

gleba: a land tax in gold imposed on Senators, and later abolished; also called *follis* or *septem solidi*: C. 12.2.

gradus: a grade within the imperial bureaucracy.

habitatio: the personal right to use another's house as a dwelling: C. 3.33.

hasta fiscalis: a tax auction: C. 10.3.

heres: a person who through the law of succession enters into the rights and the place of the deceased: C. 4.17; 6.24. *Hereditas*: an estate. A *heres suus* is an heir who is under a decedent's paternal power; if he becomes *sui iuris* upon the death of his *paterfamilias*, he is a *heres suus et necessarius* with limited power to refuse the estate: C. 6.55. A *heres necessarius* is a slave manumitted and instituted heir in his master's will; he cannot reject the estate: C. 6.27. A *heres scriptus* is appointed heir by a testator in a valid will; a *heres legitimus* is an intestate successor through statutes: C. 6.15.

homicidium: killing, including manslaughter: C. 9.16.

honestiores: the upper classes, those of higher social classes distinguished by official position, wealth, or origin.

honor: in one meaning, an office and the dignity and privileges associated with it. *Honorati*: in the late Empire, current or past holders of high civil or military office: C. 11.20; *honorarius*: a person holding "honorary" rank.

horrea: a granary, or storehouse more generally: C. 10.26.

hospes: a guest in another's house; a quartered soldier. *Hospitalitas*: the right to quarter.

hostis: an enemy with whom Rome was at war.

humiliores: lower classes, often subject to harsher legal punishments than the better off (*honestiores*)

hypotheca: a security arrangement or hypothec over property, often one that allows the debtor to keep the secured property subject to the creditor's lien. See C. 8.13–35. A *hypotheca omnium bonorum* covers the debtor's entire property. A *hypotheca tacita* arises by operation of law, without express party agreement; C. 8.14. A *hypothecarius* is a secured creditor.

idoneus: upright; suitable as a debtor, taxpayer, or holder of a public duty.

illatio: an installment; a tax payment.

immunitas: immunity, especially from taxes: 10.25.

impensae: expenses made on property. They are generally divided into *necessariae*, necessary to prevent deterioration or loss; *utiles*, beneficial in improving property; and *voluptariae*, serving only to increase beauty or to ornament.

imperitia: lack of skill or knowledge, especially regarding legal rules.

imperium: in one meaning, the power of a magistrate's office.

impubes: a prepubescent minor (for females, below 12; for males, usually below 14).

incola: a long-term resident of a city who originates elsewhere: C. 10.40.

indictio: indiction, an extraordinary imperial requisition of grain from the owners of provincial land: C. 10.17, 43; a tax cycle or public exaction more generally.

indignus: unworthy, in a legal judgment of, e.g., a potential heir.

infamia: a legal stigma stemming from exercise of a dishonest profession or an adverse judgment for dishonesty: C. 2.11, 10.59. One so attainted is *infamis*.

inferiores: the more humble people; see *humiliores*.

infulae: "fillets," insignia of office.

ingenuitas: the status of a free-born person; in the late Empire, also used of freedmen.

iniuria: outrage or affront, an intentional private delict encompassing both bodily injury and offenses against the good repute of a free person: C. 9.35.

inofficiosus: one disregarding proper duties to relatives or patrons, particularly in writing a will: C. 3.28–30.

inquilinus: in the late Empire, a resident tenant, similar to a bound *colonus*.

inscriptio: in criminal procedure, an official record of an accusation; a criminal complaint: C. 9.2.

insinuator: public herald: C. 12.63.

institor: the manager of a commercial or industrial business, appointed by its owner; for the *institor*'s business obligations, the owner could be sued directly by the *actio institoria*: C. 4.25.

institutio heredis: the naming of an heir, within a will: C. 6.24–25.

instrumentum: the equipment necessary for reasonable use of a property. *Instructus*: provided with such equipment. *Instrumentum* is also used of a document.

intentio: in post-classical procedure, any assertion of the plaintiff that must be proved by him.

intentor: a surety guarantor, e.g., for payment of a judgment debt.

intercessio: taking upon oneself another's debt or liability for another. Such a delegatee is an *intercessor*.

interdictum: an order issued by a magistrate at the request of a claimant and addressed to another person who is ordered to do, or not to do, something: C. 8.1. On particular interdicts, see *quorum bonorum*: C. 8.2; *quod legatorum*: C. 8.3; *unde vi*: C. 8.4; *uti possidetis*: C. 8.6. The *interdicta exhibitoria* order defendants to produce a person (even a free person) or a thing; they include, among others, the interdicts *de homine libero exhibendo* and *de liberis exhibendis* (for production of a free person or a child in power: C. 8.8), and *de tabulis exhibendis* (for production of a document: C. 8.7). The *interdictum Salvianum* allows a landlord to obtain possession of a farm tenant's personal property that has been pledged: C. 8.9.

interest: in measuring civil damages, the extent of a litigant's interest in a certain performance having occurred, as in the phrases *id quod interest* or *quanti ea res est*: C. 7.47.

interlocutio: an order, statement, or preliminary finding during a trial: C. 7.45.

interminatio: a threatened statutory punishment for infraction of law.

interpellare: to initiate a lawsuit, or the action itself. *Interpellatio planaria*: informal complaint "out of court," *de plano* (literally, away from the elevated judge's tribunal).

interversor: embezzler.

invecta et illata: personal property brought into a farm or dwelling by a tenant, and obligated to the landlord by a *pignus tacitum*: C. 8.14.

irenarcha: a civic officer charged with maintaining public order: C. 10.77.

iudex: in the late Empire, any imperial official who has any jurisdiction; this title or *iudex ordinarius* is often used for provincial governors in their judicial role: C. 1.45, 48–49; 7.49. On the *iudex militaris* (military judge), see C. 1.46. A *iudex delegatus* or *pedaneus* is a judge whom a magistrate delegates to hear a specific case: C. 3.3. *Iudex delegatorius*: tax judge. *Iudex competens*: the appropriate judge for a particular trial.

iudicium: a trial, or the legal basis for a trial: C. 3.1. A *iudicium bonae fidei* is a trial in which the parties' conduct is measured by *bona fides*. *Iudicium de moribus*: an action by a husband against a wife, for misconduct: C. 5.17. *Iudicium publicum*: a criminal trial or court. *Iudicium* can also be the judgment in a testator's will, or the will itself.

iugum: a measurement of land (*c.* 0.6 acre); a property tax (*iugatio terrena*).

iuridicus: a senior provincial Justice with broad activity in judicial matters: C. 1.57.

iurisdictio: the power to set the legal rules used to adjudicate controversies.

ius: most commonly, law, a rule of law, or a right given by law; *iure* means rightfully, lawfully. *Ius strictum* is "strict law," legal rules unmitigated by considerations of fairness. See also ratio iuris. *Ius civile*: the law of a given people, especially the private law. *Ius vitae necisque*: the power of life and death over others. *Ius liberorum*: under the Augustan marriage legislation, privileges given to parents with the requisite number of children: C. 5.66; 8.58. *Ius mariti*: a husband's right to prosecute his adulterous wife; *ius extranei*: the right of a non-family member to do so. *Ius fisci*: the Treasury's rights as a privileged creditor: C. 7.73; 10.1–10. *Ius Italicum*: the set of legal privileges granted to favored non-Italian provincial cities, largely meaningless after the grant of universal citizenship in 212 CE and abolished by Justinian: C. 7.31.

iusiurandum: an oath sworn either during a trial or extrajudicially: C. 4.1.

iussio: an imperial pronouncement. *Iussum*: in public law, an order given by a magistrate within the limits of his power; in private law, especially an order given by a *paterfamilias* or master to a child or slave to conduct a transaction with a third party, who can sue the principal by the *actio quod iussu*: C. 4.26.

kalendarium: a debt book kept by money-lenders or municipalities.

largitiones sacrae: Imperial Finances, the state Treasury (*fiscus*) in the later Empire: C. 12.23.

laterculum: official register of all public offices and officers in the later Empire, kept by registrars, *laterculenses*.

latro, latrunculus: bandit, outlaw; *latrocinium*: highway robbery: C. 9.39.

Latinitas: in one legal usage, the status of freedmen who were manumitted by irregular procedure; *Latini Iuniani*, so-called after the lex Junia Norbana of 19 CE: C. 7.6.

legatum: a legacy, bequeathed to a legatee out of an inheritance: C. 6.37, 43. *Legatum per praeceptionem*: a legacy left on a preferential basis, before the estate is determined. *Legatum sub modo*: a legacy combined with a request that the legatee perform a certain act: C. 6.45.

legatus: an official delegated to hear civil and criminal cases: C. 1.35; an ambassador: C. 10.65. *Legatio*: an embassy: C. 10.65.

legitimi: statutory heirs upon intestacy: C. 6.15.

leno: a pimp: C. 11.41. *Lenocinium*: procurement of prostitution.

lex: a statute; in late imperial usage, extended to imperial constitutions: C. 1.14. *Leges generales* are imperial enactments of general application; *leges edictales* emanate from imperial edicts. The *lex regia* is Justinian's term for the *lex de imperio* granting power to an Emperor. *Lex* is also used for a term in a private contract or other document. A *lex commissoria* allows a seller to declare a sale void if the price is not paid by a set date.

***lex Cornelia* (81 BCE)**: referring most commonly to one of the criminal statutes enacted by Sulla. *Lex Fabia* (late Republican): against unlawfully appropriating a slave: C. 9.20. *Lex Iulia repetundarum* (59 BCE): criminalizing provincial extortion. *Lex Iulia Maiestatis*: a law on treason, either of Julius Caesar (46 BCE) or Augustus (8 BCE). *Lex Falcidia*: a statute of 40 BCE providing that legacies not exceed three-quarters of a testator's estate: C. 6.50. *Lex Aquilia*: a statute from the early third century BCE providing compensation for wrongful damage to property (*damnum iniuria datum*): C. 3.35. *Lex Iulia de maritandis ordinibus* (18 BCE), often joined by legal sources with the *lex Papia Poppaea* (9 CE): the Augustan marriage legislation, called the *lex Iulia Miscella* by Justinian: C. 6.40; 8.57. *Lex Iulia de adulteriis* (18 BCE): a law fixing the definition and prosecution of alleged adultery, and probably other sexual offenses as well: C. 9.9. *Lex Iulia de ambitu* (18 BCE): penalizing corrupt solicitation of office. *Lex Iulia iudiciorum publicorum* and *iudiciorum privatorum* (*c.* 17 BCE): two laws regulating criminal and civil procedure. *Lex Iulia de vi privata* and *lex Iulia de vi publica* (Augustan?): criminalizing violent acts. *Lex Aelia Sentia* (4 CE): restricting manumissions. *Lex Visellia* (24 CE): punishing freedpersons who falsely pretend to be free-born: C. 9.21. *Lex Iunia Vellaea* (28 CE?): with rules on designating and disinheriting posthumous children.

libellus: a small book; in law, a written complaint in a civil or criminal matter, or a written declaration. In the late Empire, a *libellus* from a plaintiff initiates a private lawsuit. A responding declaration is a *libellus contradictorius*. In private law, a *libellus famosus* is a defamatory publication: C. 9.36; publishing *libelli famosi* about the Emperor could also result in criminal prosecution.

liberatio: liberation, as from slavery (manumission) or from a debt: C. 8.42; 11.40.

liberi: children of either sex.

libertas: freedom, the status of a free person: C. 7.22. See also *favor libertatis*.

libertus: a freedman, especially in relation to his manumitter: C. 4.13; 6.4, 7; 10.58. *Libertus orcinus*: a freedman manumitted in his master's will.

lis: any lawsuit; both the trial and its object. *Litis contestatio*: joinder of issue; in post-classical procedure, the moment when a jurisdictional officer began formally to hear a case: C. 3.9. *Litem suam facere*: a delict whereby a judge, after gross misconduct, assumes the defendant's liability: C. 7.49.

locatio conductio: "lease and hire," a sprawling contract that covers most exchanges of money for a service, including lease of an object: C. 4.65; lease of imperial land: C. 10.71–73.

logographus: a bookkeeper in a public office: C. 10.71.

lucrum: profit or benefit.

luitio pignoris: redemption of a pledge: C. 8.30.

magister: a title indicating a person who exercises the highest functions in an organization, association, or public office: C. 12.9; also used of a teacher: C. 10.53; 11.19. *Magister militum*: the Master of the Soldiers, commander of an army division: C. 1.29, 12.4. *Magister officiorum*: the Master of Offices, the Chief of Staff among the court offices: C. 1.31, 12.6. *Magister census*: a high official charged with handling taxation of Senators and with wills.

magisterium (magisteria potestas): the office of a *magister* whatever his special functions were.

maiestas (laesa): the crime of high treason (very broadly construed): C. 9.8.

maior, maior annis: a full adult, over 25: C. 2.53.

maleficus: sorcerer (*magus*): C. 9.18.

manceps: a public contractor, especially to collect taxes or customs or to lease public land.

mancipatio: a ceremony for conveying title to property in the category *res mancipi*, effectively abolished by Justinian.

mancipium: frequently synonymous with *servus*, slave: C. 11.63. *In mancipio*: free persons conveyed by *mancipatio* to another, usually in noxal surrender. See also *res mancipi*.

mandatum: an order. In private law, a consensual contract in which one person orders another to act for him: C. 4.35; a *mandator* is one who orders or commissions another to do something, such as to extend credit: C. 8.40. In public law, a judicial or administrative instruction issued by the Emperor to imperial officials, esp. governors: C. 1.15.

mansio: a post station along major Roman roads; see *statio*.

manumissio: the release of a slave from his master's power: C. 4.14; 7.1–15. The Codex refers to a number of methods for manumission, both formal (*vindicta, testamento, fideicommisaria, apud consilium*) and informal (*inter amicos, per mensam*).

manus iniectio: symbolic seizure of an alleged or adjudged debtor or miscreant.

mathematicus: astrologer: C. 9.18.

matricula: register, e.g., of Advocates.

matrimonium: marriage, sometimes synonymous with *nuptiae*: C. 5.4, 6–7.

melloproximus: a deputy chief clerk.

memorialis: an official record-keeper, clerk, in a bureau of the imperial chancery.

mensores: quartering masters: C. 12.27.

mercator: merchant or tradesman: C. 4.63.

metallum: a mine in private or public ownership: C. 11.7.

metata: quartering of soldiers: C. 12.40.

metoeci: resident foreigners (metics); more commonly, bound tenants subject to transfer.

metrocomia: a "mother-village," a head village: C. 11.56; *metropolis*: a "mother city," a major regional city or capital.

metus: fear or duress, usually physical: C. 2.19.

militia: military service; in the later Empire, also employment in civil administration: C. 12.33.

ministerium: in administrative parlance, the office and activity of a public official or worker (*minister*). See also *statuti, supernumerarii*.

missio: discharge, as from military service; a *missio honesta* is an honorable discharge; a *missio causaria* is for a disability. *Missio in*

possessionem: a magistrate's order to seize the property of an adversary or of an estate: C. 6.43.

mittendarius: an imperial official who transmits messages to governors or collects taxes.

moderator: a provincial governor.

modius: a dry measure equivalent to about 8.73 liters, or, for wheat, about 6.75 kilograms.

moenia: walls; public buildings.

monetarius: a worker in the imperial mint: C. 11.8.

mora: delay by a debtor in paying a debt, or by a creditor in accepting payment.

mos, mores: custom, especially the prevailing values and usages.

multa: a pecuniary penalty, a fine.

municipium: a town with limited self-government and legal personality. *Municeps*: a citizen of a municipality: C. 10.39.

munus (civile), munera: in one usage, public services, charges, duties, or offices toward the state or city (*municipium*) of domicile: C. 10.41–46, 64. *Munera personalia*: duties attached to specific persons; *civilia*: civic services; *sordida*: "base services" involving physical labor.

mutuum: a loan; in classical Roman law, a gratuitous loan of a fungible such as money, but the word is used more widely in later sources.

natalium restitutio: the privileges of a free-born person, granted as a benefit by the Emperor to certain freedmen: C. 6.8.

naturalis: natural, by nature; a term also used for illegitimate children: C. 5.27. *Naturalis ratio*: natural reason, innate understanding.

navicularii: shipowners, organized into guilds with public duties: C. 11.2–4. *Naucleri*: shipmasters: C. 11.2. *Nauticus*: shipper. *Naufragium*: a shipwreck: C. 11.6.

necessitas: compulsion, exigency; compulsory service. *Necessarii*: close relations.

neglegentia: carelessness, tantamount to *culpa* (fault).

negotiator: businessman, especially on a larger scale: C. 12.34.

negotiorum gestio: the management of another's affairs, especially without that person's authorization: C. 2.18; 5.45.

nexum: a lien on pledged property.

nomen: a debt account; a demand or claim for payment of a debt. In another sense, the title of an office. *Dare nomen*: to enroll.

nominator: a person who proposes another for a tutorship or magistracy, often bound as a surety for the nominee's performance: C. 10.67–69; 11.34.

nota (censoria): in later law, legal ignominy tantamount to *infamia*.

notarius: a scribe or notary; in the later Empire, a confidential secretary to the Emperor, one of the corps, *numeri*, organized within a squad, *schola*, that was led by a chief secretary (*primicerius*) and his assistant (*secundocerius*), often with some degree of military responsibility: C. 12.7. See also *exceptor*.

novatio: novation, the transformation and transfer of a prior obligation into a new one, usually through a stipulation, in such a way as to destroy the prior debt: C. 8.41.

noxa: guilt or responsibility for a misdeed: C. 3.41.

numeri: military regiments of infantry or cavalry. *Numerarius* or *numeratus*: a chief accountant or auditor, also called *tabularii*: C. 12.49.

nummularius: a money changer: C. 11.18.

nuncupatio: a solemn oral declaration, before witnesses.

nundinae: a market or fair; the interval between consecutive markets: C. 4.60.

nuntiator: an informer as to criminal conduct; in later law, also a public herald: C. 12.63. *Nuntiatio operis novi*: protest by a neighbor against new construction.

nuptiae: marriage (synonymous with *matrimonium*) or a wedding: C. 5.4, 8.

oblatio votorum: a formal process for bestowal of vows for the Emperors: C. 12.48.

obligatio: a broad word designating both legal and moral duties, as determined by context: C. 4.10. An *obligatio verborum* is a stipulation or other formal oral undertaking. As applied to property, *obligatus* refers to a security lien.

obnoxius: obligated (*obligatus*), as a debtor or as security for a debt.

obsequium: a freedman's respectful behavior to his patron: C. 6.6. *Obsequium divinum*: imperial service.

octovarius: a collector of the 12.5 percent sales tax (*octava*) on market sales.

officium: in one meaning, the office or official staff of a magistrate, or the official duties of a magistrate: C. 1.40, 43–46, 48; 11.39. *Officialis*: a lower-grade official in the imperial administration: C. 12.47. *Officium iudicis*: a judge's duty, discretion.

opera, operae: labor both manual and intellectual. *Operae liberti*: the services owed by a freedman to his patron: C. 6.3.

operis novi (de)nuntiatio: a protest against new construction by a neighbor, when the protestor fears resulting damage to his own property.

opinio: in administrative law, a tax assessment. *Opinator*: tax assessor.
optimo iure: free from legal restrictions and charges.
optio: a low-ranking military or civil official.
oraculum: an oracle, used of an imperial enactment in the late Empire.
oratio (principis): the Emperor's speech proposing legislation in the Senate; it is often treated as equivalent to the *senatusconsultum* itself.
orbus: a married but childless person, penalized under the Augustan marriage legislation: C. 8.57.
ordo: in one meaning, a Senate or a municipal council; in another, status or station (e.g., *ordo minor* is a lower station). *Ordinarius*: in one meaning, a rank of distinction in government service.
originarius, originalis: citizen of a community by birth: C. 10.39. *Colonus originarius*: a tenant bound on basis of place of birth (*origo*): C. 11.48, 52.
pactum, pactio: an agreement of any kind between two parties. A *pactum nudum* is a simple, formless agreement lying outside the classical system of contracts; in later sources it often refers to the absence of an accompanying *stipulatio*.
pagani: in one meaning, civilians (as opposed to soldiers).
palatini: all officials in civil or military service in the imperial palace: C. 12.23, 30.
parangariae: vehicles for supplementary transport, or requisitions for them: C. 12.50.
parapherna: property belonging to the wife during marriage: C. 5.14.
paraveredi: requisition of supplemental mounts for public post.
parens: a parent or ascendant.
pascuum publicum: public pasture land: C. 11.61.
paterfamilias: the male head of an agnatic family descended from him: C. 4.13, 43; 10.62. A *pater civitatis* is a civic curator.
patria: place of birth; native country.
patria potestas: a father's power over his unemancipated agnatic descendants: C. 8.46.
patriciatus: in the late Empire, the highest rank at Court.
patrimonium: a person's entire property; also used of the Emperor's crown property: C. 1.34; 10.42; 11.62–65.
patrocinium: patronage and protection; in a trial, an advocate's legal assistance.
patronus: the ex-master of a manumitted slave, who had various duties towards him: C. 6.3–7. In a trial, a legal representative, an advocate.
peculatus: misappropriation of public funds or property: C. 9.28.

peculium: property granted by a *paterfamilias* to a child or slave for that person's use; it remains effectively under the recipient's control, although still belonging to the giver. Creditors of the *peculium* may sue the giver by the *actio de peculio*. See C. 4.26; 7.23. A *peculium castrense* is property acquired by a man in his father's power while the man is on military service (C. 1.3; 12.30 and 36); a *peculium quasi castrense* is a similar late imperial institution for public and church officials.

pecunia: money; sometimes used for an entire estate. *Pecunia maritima* or *traieticia*: a bottomry loan; see *fenus nauticum*.

pensio, pensitatio: an installment or tax payment.

peraequatio: an equitable tax adjustment, by an adjuster (*peraequator*): C. 11.58.

perduellio: treason; see *maiestas*.

peregrinus: the citizen of a state other than Rome, including non-citizens resident within the Roman Empire.

perfectissimus: a title of high officials of equestrian rank: C. 12.32.

periculum: danger, risk, as of the loss or deterioration of property; commonly used to express risk associated with legal procedure or contract: C. 5.38; 10.63; 11.34–35.

permissum: a discretionary permission that is allowed by a statute or by a magistrate.

permutatio: barter, the exchange of property for property: C. 4.64.

perpetuarius: a long-term lease holder, under the law of *emphyteusis*.

persecutio: an actionable claim.

persona: an individual, a human being, especially that person's legal status; by extension, a collective entity that functions legally as a person (*personae vice*). *Persona extranea*: a person outside a given *familia*. *Persona incerta*: in a will, a person who is not precisely designated, or whose existence is uncertain: C. 6.48. *Persona publica*: a public secretary.

petitio: a right of action, a claim. *Petitio hereditatis*: an action to claim an inheritance: C. 3.20–21.

philikon: "benevolence," a harbor tax.

pietas: dutifulness, respectful conduct, especially toward family members.

pignus: a pledge, contractual security for a debt. In some texts, *pignus* is associated with debtor's property held by a creditor to secure payment; in other texts, the word is used for security retained by the debtor (compare *hypotheca*). See C. 4.24; 8.13–32. *Pignus tacitum*: an implied pledge of property: C. 8.14. *Pignus praetorium*: a pledge

taken by a creditor on a magistrate's order: C. 8.21. *Distractio pignoris*: creditor's sale of a pledge after debtor default: C. 8.27.

pistor: baker, organized in a legally protected guild: C. 11.16.

pittacium: a short note or ticket, used in administering army food supply.

placitum: an informal agreement; of the Emperor, a constitution.

plagium: kidnapping: C. 9.20.

plebs: the common people; *plebeius*: a common person, one of low social status.

poena: a civil or criminal penalty for misconduct: C. 9.47. *Poena capitalis*: capital punishment.

pollicitatio: an informal unilateral promise, especially a donative promise of money or construction to a municipality.

ponderator: official weigher of money or bullion from taxpayers: C. 10.73.

portio virilis, pro portione virili: one's share of a benefit or liability.

possessio: the factual, physical control of a corporeal object, combined with the possessor's intent to hold it, normally as owner: C. 7.32; also, a possessed object. *Possessio vacua*: undisturbed possession of an immovable; a seller tacitly guarantees that no third party will successfully evict a buyer from possession. *Possessio bonorum*: see *bonorum possessio*. *Possessio momentaria*: a non-technical term referring to temporary and provisional possession settled through an interdict. *Possidens*: often, a landowner. *Possessor bonae fidei*: a person who takes possession of property belonging to another, but believes in good faith that he is acquiring ownership.

postliminium: resumption of legal rights by a citizen who regains freedom after enemy capture: C. 8.50.

postulatio: pleading in court, a body of rules governing who may bring a claim for himself or others: C. 2.6; a summons to trial.

postumus: a child born within ten months after the testator's death: C. 6.29.

potentatus: (abuse of) power.

potentiores: in the later Empire, people with economic and social power over others by virtue of their official position or wealth: C. 2.13–14.

potestas: in one usage, an official position and the power associated with it.

praeceptum iuris* or *praeceptio: a legal rule.

praedia: plots of land along with the buildings on them.

praefectus: the chief of an office in any branch of administration. The *praefectus praetorio* (Praetorian Prefect) was, in the late Empire, the

governor of one of the large prefectures, the head of a court of final instance, and a chief advisor of the Emperor in military and civil matters: C. 7.42; 12.4, 52; and see C. 1.27 for Africa, 1.26 for the East and for Illyricum. The *praefectus urbi* was the head of administration and had civil and criminal jurisdiction in the imperial capitals of Rome and Constantinople: C. 1.28; 12.4. The *praefectus annonae* (Prefect of the Food Supply) took charge of matters connected with food administration: C. 1.44; 12.58. The *praefectus augustalis* (Augustal Prefect) was governor of the diocese of Egypt: C. 1.37. The *praefectus vigilum* (Prefect of the Watch) acted as chief of police, with jurisdiction in some criminal and civil trials: C. 1.43.

praeiudicium: a preliminary judicial judgment of a question upon which a larger controversy turns: C. 3.8; 7.19; 9.31; prejudice or damage to a claim.

praelegatum: the legacy of specific property to an heir, in addition to his share.

praepositus: a person in charge, as the chief of a government bureau; a supervisor: C. 10.72. *Praepositus sacri cubiculi*: the Grand Chamberlain of the imperial household: C. 12.5. *Praepositi labar(or)um*: the imperial color guard: C. 12.18.

praerogativa: a privilege, see *privilegium*.

praescriptio: in late imperial procedure, a general term for a standard defense, synonymous with *exceptio* (q.v.). See C. 7.40; 8.35. A *praescriptio moratoria* or *dilatoria* is a defense delaying a trial for a specified time. A *praescriptio peremptoria* is one that makes the other party's claim void. *Praescriptio militiae aut fori*: a defense based on one's being on imperial or ecclesiastical service, or on an objection to jurisdiction.

praescriptio longi temporis: in late imperial law, a defense that allows a possessor of provincial land to use uninterrupted possession for ten or twenty years as a basis for defeating a property claim: C. 7.34–39. This defense was also available when an alleged slave had long lived as a free person: C. 7.22.

praesentales: soldiers or officials under one person's command, or in the Imperial Presence.

praeses provinciae: governor of a province: C. 1.40; 5.2.

praestatio: the performance of a legal duty; a payment.

praetor: a Republican magistrate with some judicial functions in the late Empire: C. 1.39, 12.2. *Praetoria*: official residences of magistrates.

pragmatica: see *sanctio pragmatica*.

precarium: request, sufferance; a gratuitous transfer of property to another, who holds it only as long as the grantor permits: C. 8.9. *Precario* or *precariis verbis*: the typical wording of a testamentary "request" directing an heir to undertake a trust (*fideicommissum*).

pretium: the money price fixed in a sale. *Pretium iustum*: an adequate or just price; *pretium verum*: a true price, evidently as fixed by a market.

primas: a person holding the top position in a government or local office or in a professional association: C. 11.29.

primicerius: a chief official; see *notarius*.

primipili* or *primipilares: in the army, the highest-ranking centurions, quartermasters-general; in the late Empire, commissaries entrusted by the Emperor with special military missions: C. 12.57, 62.

primiscrinius: a first assistant bureau chief (see *scrinium*).

princeps: in the later Empire, the Chief of Staff in a civil or military office. *Principalis*: in military service, an officer of lower rank; in other contexts, a chief civic magistrate. *Princeps* or *principatus*: the Emperor; the highest rank in an office.

privilegium: a legal exemption from specified general rules. *Privilegium fisci*: a privilege held by the Treasury: C. 7.73. *Privilegium dotis*: the right of a wife to recover her dowry from her late husband's estate, before heirs or creditors: C. 7.74.

probatio: a proof, or the means of proof: C. 4.19. *Probatoria*: an imperial decree appointing an official: C. 12.59.

proceres: the most senior members of imperial or military staffs.

proconsul: a governor with Proconsular power: C. 1.35.

procurator: a person who administers another's affairs on behalf of that person: C. 2.12, 48; or on his own behalf (*procurator in rem suam*). A procurator also often represents the interests of a litigant in court: C. 2.12. In administrative law, equestrian procurators of the Privy Purse (*procuratores privatae rationis*) head most offices concerned with financial administration: C. 10.72.

prodigus: spendthrift, whose affairs may be supervised by a *curator*: C. 5.70.

proferre sententiam: of a judge, to deliver or render a verdict.

professio: a declaration of family and property for the census; or other declarations.

professio censualis: a tax declaration. *Professor*: an upper-level teacher: C. 10.53; 12.15.

programma: a proclamation of the Emperor or a provincial governor: C. 7.57.

propinquus: a close relative; a neighbor.

proprietas: ownership; *proprietarius*: a property owner (*dominus*).
prosecutor: an agent appointed to convey public property: C. 10.74.
protectores: in the later Empire, imperial guardsmen, often seconded to high-ranking officers: C. 12.17; see domestici. *Protectoria dignitas*: the rank of the protectoriate, often strictly honorary. In the fifth century, the *scholae Palatinae* had replaced the *protectores* as a palace guard, and were in turn being supplanted by the *candidati*.
provocatio: in later Roman law, an appeal addressed to the Emperor: C. 7.64, 70.
proximi: chief clerks, assistants in imperial offices: C. 12.19.
pulsare: to sue.
pupillus: a *sui iuris* minor who is the ward of a *tutor*.
quaestio: a judicial examination, a trial; in the case of slaves whether accused or as witnesses, an examination under torture: C. 9.41. *Quaestio libertatis*: inquest into whether someone is free.
quaestor: a city official in charge of public games: C. 1.30, 12.6. From the early fourth century, the *quaestor sacri palatii* was the highest civil functionary in each half of the Empire, with responsibilities in drafting enactments and legal decisions for the Emperor.
querella inofficiosi testamenti: a legal complaint by a legitimate intestate heir who was omitted or unjustly disinherited in a testator's will: C. 3.28.
quod legatorum: an interdict available to an heir against someone holding estate property on the pretext that it was bequeathed: C. 8.3.
quod vi aut clam: the opening words of an interdict demanding return or repair of damage to real property: C. 8.2.
quorum bonorum: opening words of an interdict available to a Praetorian successor against anyone holding property belonging to an estate: C. 8.2.
rapina: robbery, theft of property by force: C. 9.33 (*vi bonorum raptorum*).
raptus: criminal abduction of a woman against her will or that of her parents: C. 9.13.
ratio iuris: the logic of the law; the consistency of a rule with the more general legal system. *Ratio naturalis*: reason in conformity with "natural" instinct. *Rationes privatae*: see *res privata*.
rationes, ratiocinia: accounts, account books, including imperial accounts; *rationes privatae (Caesaris)*: the imperial Privy Purse; *rationes publicae*: public accounts; *rationalis*: an imperial comptroller.
re integra: "while the matter is unchanged," when an agreement remains entirely executory.

receptum arbitri: agreement of a private arbitrator to settle a controversy: C. 2.55.

rector: governor of a province: C. 1.40.

rector provinciae: a provincial governor: C. 1.40. *Regimen*: governorship.

recusatio: objection to a judge.

redemptio: ransom, especially from Roman enemies: C. 8.50.

redhibitio: cancellation of a sale when goods are defective.

reditus: income, proceeds, as from taxes: C. 11.70.

refragatio: hindrance, especially a legal objection.

regesta: the records of a government official.

regula: an abstract legal principle.

relatio: in procedural law, a lower-level judge's report or referral of a legal question to a higher official or the Emperor: C. 7.61. See also *consultatio*.

replicatio: a counterdefense: see *exceptio* and *praescriptio*.

relegatio: non-capital exile, sometimes associated with confiscation of property, loss of citizenship, or confinement in a certain place.

relevare: to relieve from payment of taxes or from other public duties.

reliqua: arrears in payments owed to a private or public person, including tax arrears.

remunerationes: expenditures, especially from the Emperor.

reparatio: replacement as a remedy. *Reparatio temporum*: reinstatement, a device for undoing the consequences of delay in meeting a judicial deadline: C. 7.63.

replicatio: in civil procedure, a counterdefense, a defense to a defense.

repudium: notice to the other party of the sender's withdrawal from engagement or marriage.

requirere: to search after (a wanted person): C. 9.40.

res: most commonly, in property law, any property, including both corporeal and incorporeal things. *Res mancipi* (land in Italy, slaves, beasts of draft and burden, rural servitudes): an ancient property category requiring mancipation for conveyance of title; Justinian abolished the category: C. 7.25, 31. *Res litigiosa*: property in a pending lawsuit: C. 8.36. In civil procedure, *res* is both the object of the controversy and the litigation itself; a *res adiudicata* or *iudicata* is an adjudicated matter: C. 7.52, 54–57, 60. *Res lucrativae*: gainful acquisitions.

res privata (***Caesaris***): in administrative usage, the Emperor's Privy Purse (also *res dominica, rationes privatae*), his purely private property: C. 11.61.

res publica: the Roman state; a municipality (see also *civitas*): C. 11.30–33.

rescissio: rescission, i.e., cancellation, for instance of a contract.

rescriptum: the Emperor's written answer to queries from officials or to private petitions, especially on questions of law: C. 1.23.

restitutio: return or restoration, as of an inheritance: C. 6.25. *Restitutio in integrum*: restoration into a former legal position, where a person has suffered an inequitable loss or is threatened by one; it is granted most often when *sui iuris* persons under 25 are taken advantage of: C. 2.21–53. In criminal law: restoration of position after being convicted: C. 9.51.

retractio: revocation or rescission of a legal act; in procedural law, retrial.

reus: in private or criminal law, a defendant. A *reus stipulandi* is a creditor (promisee) by virtue of a stipulation; a *reus promittendi* is a promisor.

revocatio donationis: revocation of a gift: C. 8.55. *Revocatoria sacra*: an imperial summons to come to the capital city, usually to receive an office.

rusticitas: boorish ignorance, especially of country folk; it can excuse ignorance of law: C. 1.17.

sacra: in one meaning, the rituals performed on behalf of a *familia*; often identified with *patria potestas*. *In sacris*: under *patria potestas*. *Sacramentum*: a soldier's oath of allegiance to his standards and to the Emperor: C. 10.55.

sacrilegium: theft of religious property; in later extended usage, any offense against the sanctity of imperial law: C. 9.29.

salarium: an honorarium given to persons exercising a liberal profession.

salgamum: accoutrements, military provisions other than weapons and clothing: C. 12.41.

saltus: elevated woodland or pasture; large estates, especially those belonging to the Emperor or his family: C. 11.62–64, 66–67. *Saltuenses*: shepherds to the land (?).

sanctio: in one meaning, a sanction, a penalty for violating a law. *Sanctio pragmatica*: in the late Empire, an imperial enactment of a general and permanent validity (synonyms: *pragmatica, lex pragmatica*, etc.): C. 1.23.

satisdatio: a performance bond given to a creditor through a debtor's surety: C. 2.56.

schola: in the late Empire, a group of persons in the military or organized on military lines, a squad, under the command of a *tribunus* or *praepositus*: C. 12.29. *Scholae palatinae*: military units stationed in and around the imperial palace, under the command of a tribune or Count. *Scholares*: imperial guardsmen. *Scholasticus*: advocate.

scriba: a clerk in a court or office, a secretary: C. 10.71.

scrinium: in the late Empire, a subdivision or bureau of the imperial chancery: C. 12.9. Various *scrinia* are named from their functions: *a memoria* or *memoriae*, memorials, performing secretarial work on all imperial decisions; *ab epistulis* or *epistularum*, handling private and official correspondence; *a libellis* or *libellorum*, handling petitions; *cognitionum et dispositionum*, trials and dispositions ("arrangements") of cases. *Scriniarii*: employees in government bureaux: C. 12.49.

secundocerius: assistant chief; see *notarius*.

securitates: receipts, as for payment of taxes; synonymous with *apochae*.

sedes: the "seat" or office of a magistrate.

seditio: open rebellion against the government, especially by large numbers of people: C. 9.30.

senator: a member of the Roman Senate; an official with Senatorial status.

senatusconsultum, SC: a decree of the Senate, treated as law during the Empire. *SC Macedonianum* (Vespasian): a decree forbidding loans of money to sons under paternal power: C. 4.28. *SC Silianum* (10 CE) punished slaves found under the same roof as a master who was violently murdered. *SC Claudianum* (52 CE): permitting the owner of a male slave to enslave a free woman who persisted in having sex with the slave: C. 7.24. *SC Libonianum* (Claudius): voiding testamentary dispositions in favor of the will's writer: C. 9.23. *SC Velleianum* (56 CE): a law restricting women from acting as sureties: C. 4.29. *SC Trebellianum* (56 CE): regulating trusts that require an heir to restore an estate to a third party. *SC Turpilianum* (61 CE): restricting withdrawal of a criminal complaint (*tergiversatio*): C. 9.45. *SC Tertullianum* (Hadrianic) gave mothers a right of intestate succession to their children: C. 6.56. *SC Orfitianum* (178 CE) gave children the right to succeed to their mothers in preference to other relations: C. 6.57.

sententia: the verdict, the final judgment in a civil trial, rendered by a judge: C. 7.43–50, 55; 10.9, 50.

separatio bonorum: the separation of an heir's property from the estate he inherited, in order to protect the former from the decedent's creditors: C. 7.72.

sepulchrum: a grave or place of burial: C. 9.19.

sequestratio: deposit of contested property with a third party *sequester*: C. 4.4.

servitus: a servitude (easement) held by a dominant over a servient property, as a right of way or a right to convey water: C. 3.34.

servus: a slave. *Servitus*: slave status. *Servus hereditarius*: a slave in an inheritance. *Servus communis*: a slave owned in common. *Servus fugitivus*: a runaway slave: C. 6.1. *Servus corruptus*: a slave whose character is harmed by a third party: C. 6.2.

sicarius: in later law, any murder: C. 9.16.

signum: on a written document, a seal.

silentiarii: thirty officials charged with keeping order during imperial audiences, headed by *decuriones*, commanders: C. 12.16.

siliqua: a small civil coin, the basis of a sales tax in the late Empire; a sales tax.

societas: a contract of partnership: C. 4.37. *Socius*: a partner; *socius omnium bonorum*: a partner as to all the property of the partners.

solacia: compensation, indemnification; stipend or salary.

solemnia: formalities prescribed by law for certain acts; more generally, *solemnitas* means what is prescribed by law, i.e., law itself.

solidus: a standard gold coin in the late Empire. *In solidum* means "for the entirety" of a debt. *Septem solidi*: see *gleba*.

solutio: payment of a debt, or liberation from it: C. 8.42; 11.40.

species: merchandise, goods; a particular object; supplies: C. 10.27; taxes paid in kind.

spectacula: shows (synonymous with *ludi*): C. 10.41–42.

speculator: in one meaning, a highly qualified soldier or civil servant.

spondere: to promise formally to assume an obligation.

sponsalia: engagement or betrothal prior to marriage: C. 5.1. In the late Empire the eventual marriage may be guaranteed by payment of earnest money (*arra*).

sportula: a fee payable to lower-level judicial officials for conduct of legal business: C. 3.2.

statio: a public office; a district division of the Treasury. *Stationarius*: a military police officer assigned to a *statio*. *Stativa*: provision for lodging: C. 12.51.

statuliber: a slave manumitted by his master's will upon a suspensive condition (that something occur).

status: a legal situation or condition, as of a person: C. 3.22. *Statu integro*: a phrase, used in conveying property, that means "complete with all physical and legal incidents."

statutum: a law or enactment, a statute. *Statuti*: the members of a regular staff.

stellionatus: the crime of double-dealing, villainy; a catch-all crime of trickery or cheating: C. 9.34.

stipendium: a payment, especially for a soldier or public employee; accordingly, *stipendia* is length of service.

stipulatio: a formal oral promise by a debtor; in late classical law, largely replaced by a written document witnessing the promise. C. 8.37–39. A *stipulator* puts the question in the formal process, and so is the promisee. For *stipulatio Aquiliana*, see *acceptilatio*.

strator: a prison warden; in another meaning, an imperial groom or horse inspector (C. 12.24).

stuprum: criminal fornication, especially with an unmarried woman: C. 9.9.

subscriptio: in private law, a signature, especially to a legal document. In public law, the Emperor's signature, usually accompanying a *rescriptum* in answer to a petition.

substitutio heredis: the appointment of another heir by a testator in the event the first heir either cannot or will not accept the inheritance: C. 6.25–26. *Substitutio pupillaris*: a father's appointment of a substitute heir for his minor child: C. 6.26.

suffragium: a recommendation of a person for a position or a privilege by a recommender (*suffragator*), usually in return for an honorarium: C. 4.3. In another meaning, a privilege granted by law.

suggestio: a query or report from a lower to a higher official or to the Emperor.

sui iuris: not subject to *patria potestas*, the power of a *paterfamilias*; also used more generally, under his own authority

summae rationes, summa res: the general fiscal administration of the Roman state.

sumptus: expenses, especially on property (also *impensae*).

superindictio: in the later Empire, an extraordinary additional charge or tax: C. 10.18.

supernumerarii: additional staff members, beyond the regular staff in an office (the *statuti*), who are promoted to a regular staff position as vacancies arise.

supplicium capitale: capital punishment.

susceptor: a tax collector: C. 10.72; 11.17. *Susceptio*: tax collection.

syndicus: a representative of a corporate body or a group.

tabula: a writing tablet; a written document. *Tabulae nuptiales* or *dotales* are documents associated with arranging marriage and dowry. *Tabellio*: a private notary who draws up written documents for private

individuals. *Tabularius*: a subordinate tax official or archivist, or a civic secretary: C. 10.71; a chief accountant: C. 12.49. *Tabularium*: an archive, especially one of the imperial archives.

temo: a recruitment tax, paid in consortium by landowners in lieu of supplying a recruit.

tessera (frumentaria): a token for obtaining free grain in the capitals.

testamentum: a will, the solemn written declaration in which a testator names an heir or heirs, and otherwise disposes of his estate: C. 6.23. A *testamentum inofficiosum* is an undutiful will that omits or unjustly disinherits legitimate intestate heirs: C. 3.28.

testis: a witness, either to a transaction or in a trial: C. 4.20. *Testificatio*: a declaration.

thesaurus: a treasure trove, something valuable that has been hidden for so long that its owner can no longer be established: C. 10.15; in administrative law, an imperial treasury or storage depot. *Thesaurensis*: a late imperial official charged with imperial storehouses.

tiro: military recruit: C. 12.43.

titulus (iustus): title to property; in tax law, a taxpayer's account. *Titulus auri comparaticii*: the privilege of paying money in gold.

togatus: see *advocatus*.

trabea: official vestment; by metonymy, the consulship.

tractoria: warrant for use of the imperial post: C. 12.50–51.

traditio: physical delivery of property: C. 7.25, 32.

transactio: a voluntary extrajudicial settlement of a dispute: C. 2.4.

tributum: in later law, a general term for taxes: C. 10.16, 21; *tributarius*: a taxpayer.

turmarii: tax officials charged with the recruitment of cavalry.

tutor: guardian of a *sui iuris* minor; see C. 5.28–69, 71–75. *Tutela testamentaria*: tutelage imposed on minor children through a will: C. 5.28.

unde liberi: "whereby children," a provision in the Praetor's Edict allowing offspring, in the first instance, to claim the inheritance under Praetorian rather than civil intestacy rules: C. 6.15. Similarly named provisions order the following ranks of claimants: the agnates who are intestate heirs under civil law, and after them the cognates (*unde legitimi* and *unde cognati*: C. 6.15–17); spouses (*unde vir et uxor*: C. 6.18).

unde vi: "whence by force," a general title for three interdicts in the Praetor's Edict, all directed against forcible dispossession from land: C. 8.4.

universitas: a collectivity, especially one treated as a legal person. *Per universitatem*: "as an entirety."

usucapio: usucapion, acquisition of ownership of another's property through possession of it for a legally set period; this is not adverse possession, but rather a means whereby the right to property that has been informally conveyed can ripen into ownership. See C. 7.26–31.

usufructus: the personal right to use and exploit another's property without impairing its substance: C. 3.33. The holder is a *usufructuarius*.

usurae: periodic interest on debt; see C. 4.32; 5.56; 6.47, 54. Public law sets limits on the rate of interest that can be charged: *usurae legitimae*. Also, if a debt is not repaid and goes into delay (*mora*), pre-judgment interest may be due as a matter of private law.

uti possidetis: an interdict aiming to maintain an existing possessory situation, where a possessor has been disturbed by an adversary who threatens a suit over ownership: C. 8.6.

utilitas: the advantage or interest of a private individual; *utilitas publica*: the welfare of the state: C. 1.22.

vacantes: titular officials. *vacatio (munerum)*: exemption from public charges, services, or taxes: C. 10.45–46.

vacua possessio: see *possessio*.

vectigalia: a general term for public revenues, especially rents and other periodic payments, as well as taxes, imposts, and customs duties: C. 4.61–62. *Vectigal alabarchiae*: transit impost.

venalicium: the sales tax.

venia aetatis: an imperial privilege allowing full legal capacity to a person above the age of adulthood, but less than 25: C. 2.44.

veredi: post-horses.

versum in rem: what is turned to a father or master's advantage, from the transaction of a son or slave with his *peculium*: C. 4.26.

vestis militaris: a tax to provide clothing for soldiers: C. 12.39.

veterani: soldiers honorably discharged from service: C. 12.46.

vexillatio: cavalry squadron.

vicarius: after 314 CE, Vicar, the governor of a diocese in the later Empire, with civil responsibilities including the administration of justice and collection of taxes: C. 1.38; more generally, any deputy.

vicesima hereditatum: the 5 percent tax on inheritances: C. 6.33.

vicus: a village; a small territorial unit.

vindicatio rei: an action to recover property on the basis of title: C. 3.32; 7.38. *Vindicatio in libertatem*: an action in favor of a free person held by another as a slave (*causa liberalis*): C. 7.16–18.

vindicta: a rod, used for a symbolic gesture especially in manumission: C. 7.1.

violatio sepulchri: desecration of a grave, a crime: C. 9.19

vir bonus: an upright man, used as a standard in measuring reasonable conduct; synonymous with *vir honestus*.

vir clarissimus: an honorific given to Senators and high officials of senatorial rank, and to their wives: C. 3.24; 5.33. *Vir egregrius*: honorific for an imperial procurator of equestrian rank. *Vir eminentissimus*: the honorific of a Praetorian Prefect. *Vir gloriosissimus*: under Justinian, the honorific of the highest imperial officials. *Vir magnificus* or *magnificentissimus*: an honorific for high imperial officials. *Vir illustris*: an honorific title of high officials and their families in the later Empire; it carries certain personal privileges (C. 5.33). *Vir perfectissimus*: a honorific for high officials of equestrian rank; see C. 12.32. *Vir spectabilis*: an honorific title of higher officials, second in rank to *illustres*.

vis: force or violence, often associated with duress. *Vis privata* is force used against a private individual: C. 2.19; 8.4–5; 9.12. *Vis publica* is a crime committed with violence and prosecuted by the state: C. 9.12, 33. *Vis maior*, "greater force," is an external force that cannot be foreseen or averted by human effort, e.g., an earthquake.

vitium: a defect in an object or in the observance of a legal formality.

vocatio in ius: in classical law, a plaintiff's summons to a defendant to appear before a magistrate; in post-classical law, this summons is an official act in which the plaintiff does not participate. See C. 2.2.

voluntas: a person's intent or wish.

votum: a solemn vow. See also *oblatio votorum*.

Chronological List of the Constitutions in Justinian's Codex

This chronological list of constitutions derives directly from Appendix I to Krüger's 9th edition of the Codex (1914), pp. 489–509, and it relies on the dating used in his edition; the only alterations are typographical.

At the outset of his appendix, Krüger notes the following (our translation): "Our restored order follows the dates on which constitutions were given (*datae*) or, when they do not survive, the dates on which a constitution was received (*accepta*) or posted (*proposita*). The notes that proceed the dates (*d.*, *s.*, or the like) have been omitted. In constitutions that were given to private individuals (though these are lacking in the case of Diocletian) we have also suppressed the notations *pp.* and *acc.*, since scholars agree that these constitutions were actually given on the dates when they are described as posted or accepted. Except for the names of private persons, we have attached to the subscriptions, in italics, the persons to whom they were directed. However, both the sequence of Emperors and the designations of consulates that are restored in this tabulation quite commonly deviate from those given by historians, and you will easily see that this is usually due either to the errors of earlier Codices or the mistakes of the Justinianic compilers. Historical flaws in individual constititions, whether committed by the compilers or by scribes, are indicated in the edition itself; here we have either silently corrected them (for more significant textual changes a star * has been prefixed to the constitution's numbers) or we added a question mark. 'Twin' constitutions (*leges geminatae*) and those that should be combined we have connected with an ampersand (&).

Krüger, who also edited the Theodosian Codex and the fragments of the two pre-Theodosian codices, is obviously no mean authority on dating; the list below is therefore more than a historical curiosity. But Krüger, as a Romanist, was also a deeply conservative text

editor who disliked printing conjectures even when he recognized their likely validity. Already when the 9th edition of the Justinianic Codex was published, scholars such as Theodor Mommsen and Otto Seeck (along with Krüger himself) had demonstrated a significant level of error in the transmission of inscriptions and subscriptions to the Codex, and subsequent scholars have confirmed this. (Noel Lenski discusses the scholarship in his note for the introduction.) Since we are using Krüger's 9th edition as our target text, we have left Krüger's chronological list unchanged, but have referred to some of this scholarly discussions in notes on individual passages. Readers should be aware of this issue, although the report of the vast majority of constitutions is unaffected.

a. 117–138 *IMP. HADRIANUS A.*
sine conss. 6,23,1
a. 138–161 *IMP. TITUS AELIUS ANTONINUS A.*[1]
sine conss. 4,32,1. 5 25,1. 6,24,1. 6,37,1. 6,54,1. 7,43,1. 9,47,1
a. 146 CLARO II ET SEVBRO CONSS.
sine die 6,26,1
a. 150 GALLICANO ET VETERE CONSS.
IIII id. Oct. 2,12,1
a. 155 SABINIANO II ET SEVERO CONSS.
IIII k. Oct. 2,1,1
a. 161–169 *IMPP. ANTONINUS ET VERUS AA.*[2]
sine conss. 8,10,1. 8,46,1
a. 161 IPSIS III ET II AA.[3] CONSS.
id. April. 5,25,2
XVI k. Iul. 7,12,1?
viii k. Aug. 2,12,2
a. 162 RUSTICO ET AQUILINO CONSS.
XIII k. Mart. Romae 5,25,3
a. 169–180 *IMP. ANTONINUS A.*[4]
sine conss. 6,54,2. 9,18,1?
a. 169 PRISCO ET APOLLINARI CONSS.
VII k. Mart. 6,27,2

[1] *sic* 6,24,1. 6,26,1. 7,43,1 *(omisso A.)*. 9,47,1, *cf.* 3,31,1 *(not* 4): imp. Antoninus A. Pius 6,37,1: imp. Pius Antoninus A. 2,1,1: imp. Pius A. 4,32,1. 5,25,l: divus Pius 2,12,1. 6,64,1
[2] *sic* 8,46,1, *cf.* 7,12,1: divi fratres 2,12,2. 5,25,2
[3] AA. *om.* 2,12,2
[4] *sic* 6,27,2, *ubi Iustiniani eum cum Caracalla vel Elagabalo confuderunt:* imp. Titus Aelius Antoninus A. 3,31,1. *male*: divus Marcus 6,54,2

a. 170 CLARO ET CETHEGO CONSS.
vi k. Febr. Augurino proc. Afr. 3,31,1
IMP. PERTINAX A.
a. 193 FALCONE ET CLARO CONSS.
xi k. April. 6,27,1
x k. April. 4,28,1
***a.* 193–197 (196?) *IMP. SEVERUS A.*[5]**
sine die et conss. 2,47,1
a. 193 FALCONE ET CLARO CONSS.
v. k. Iul. *Victorino* 3,28,1
a. 194 SEVERO A. II ET ALBINO CONSS.
v k. Mart. 8,13,1?
non. Iul. 2,1,2
vi k. Oct. 2,23,1
xi k. Nov. 8,15,1
vii k. Dec. 2,3,1?
a. 195 TERTULLO ET CLEMENTE CONSS.
v id. Mart. 9,1,1
a. 196 DEXTRO II ET PRISCO CONSS.
k. Ian. 9,41,1
prid. k. Iul. 4,19,1
k. Oct. *6,39,1
iiii non. Oct. 3,15,1
iii non. Oct. 2,18,1
vii id. Nov. 4,26,1
id. Nov. 5,4,3
xii k. Dec. 6,83,1
xi k. Dec. 6,54,3
viii k. Dec. 4,26,2
vi k. Dec. 7,32,1
iiii k. Dec. 3,28,2. 4,14,1
a. 193–211 *IMPP. SEVERUS ET ANTONINUS AA.*[6]
sine conss. 2,11,1. 2,31,1. 4,32,2,4. 4,35,1. 4,39,1. 4,61,1–3. 4,62,1. 2. 5,3,1. 5,4,2. 6,9,1. 7,2,1. 2. 7,8,2. 7,12,1? 7,21,1. 7,46,1. 7,58,1. 8,50,1 *(Ovinio)*. 10,1,1. 10,41,1. 10,62,1. 11,32,1. 12,33,1

[5] *sic* 2,47,1. 4,14,1 (*a.* 196), *item* 2,3,1, *quae potius ad a.* 194 *quam ad a.* 200 *pertinet: reliquae omnes* impp. Severus et Antoninus AA

[6] imp. Antoninus A. *a.* 204 6,28,1?: *a.* 205 2,11,7. 8. 5,72,1. 9,1,2: *a.* 208 2,11,9.10. 8,25,2: *cf. Mommsen Zeitschrift jur Rechtsgeschichte* IX *p.* 101.

a. 197 LATERANO ET RUFINO CONSS.
v id. Ian. 2,11,2
xv k. Febr. 2,18,2
k. Febr. 8,17,1
non. Febr. 5,25,4
xiii k. Mart. 5,47,1. 7,4,1.
vi id. Mart. 5,54,1
xv k. April. 6,49,1
xii k. April. 8,16,1
iii id. April. 5,18,1
vii id. Mai. 3,26,1
iii id. Mai. 6,50,1
xi k. Iun. 4,15,1
viii k. Iul. 3,28,3
ii k. Iul. 2,30,1
k. Iul. 6,50,2
xiii k. Aug. 9,9,1
x k. Sept. 6,37,2
k. Sept. 4,30,1&8,32,1
viii k. Oct. 3,36,1
k. Nov. 2,50,1
non. Dec. 6,46,1
x k. Ian. 2,11,3
viii k. Ian. 8,2,1
a. 198 SATURNINO ET GALLO CONSS.
vi k. Mart. 2,11,4
v k. Mart. 4,28,2
v non. Mart. 2,38,1
id. Mart. 4,28,3
iii k. Iun. 6,53,1
k. Iul. 2,11,5
a. 199 ANULLINO ET FRONTONE CONSS.
viii k. Febr. 2,18,3
non. Mart. 5,4,1
k. Iul. 9,9,2
prid. k. Aug. 6,47,1
vi k. Oct. 3,33,1
k. Oct. 6,25,1
a. 200 SEVERO[7] ET VICTORINO CONSS.

[7] *vulgo* Severo A II.

VI k. Mart. 8,44,1
XII k. Mai. 8,37,1
XI k. Mai. 6,2,1
k. Iul. 3,31,2
XV k. Oct. 4,55,1
V k. Oct. 4,32,3?
id. Oct. 2,34,1&2,36,1. 8,40,1
VII k. Nov. 4,55,2
VII k. Dec. 2,3,1?

a. 201 FABIANO ET MUCIANO CONSS.
VII k. Mart. 5,58,1
XII k. Mai. 4,28,4
k. Aug. 5,12,1
III non. Dec. 2,18,4

a. 202 SEVERO III ET ANTONINO AA. CONSS.
prid. id. Febr. 2,3,2
VIII k. April. 2,3,3
III k. Sept. 2,1,3&3,9,1
V k. Oct. 4,32,3
sine die 7,33,1

a. 203 GETA ET PLAUTIANO CONSS.
non. April. 5,66,1
III id. Mai. 2,20,1
XIII k. Iul. 2,18,5
XIII k. Dec. 3,8,1
VII id. Dec. 2,11,6

a. 204 CILONE II ET LIBONE CONSS.
XV k. April. 6,35,1
k. Mai. 5,62,1
II k. Iun. 8,13,2
VI k. Iul. 6,28,1
k. Iul. 4,2,1
XV k. Aug. 6,53,2
XIII k. Aug. 5,15,1
VI k. Aug. 6,26,2
V k. Aug. 2,43,1. 6,53,3
X k. Sept. 2,12,3
VIII k. Sept. 3,17,1. 5,62,2
III id. Sept. 9,41,2
III k. Dec. 6,2,2

III k. Ian. 6,3,1

a. 205 ANTONINO A. II ET GETA II CONSS.

V id. Ian. 2,11,7
X k. Mart. 2,11,8
II k. Mart. 8,44,2
k. April. 3,1,1
VI (?) non. April. 3,15,2
V id. April. 1,54,1
XII k. Mai. 7,8,1&8,25,1. 9,32,1
VI k. Mai. 6,3,2
k. Mai. 8,13,3
VI id. Mai. 3,33,2
non. Iun. 4,53,1
k. Iul. 9,12,1
non. Iul. 4,32,5
Antiochiae XI k. Aug. 6,42,2
k. Aug. 5,53,1
V id. Aug. 3,31,3
id. Sept. 7,21,2
XII k. Oct. 9,1,2
IIII id. Oct. 5,69,1
prid. id. Oct. 8,15,2
III non. Nov. 6,9,2&6,55,1
IIII k. Ian. 5,72,1

a. 206 ALBINO ET AEMILIANO CONSS.

VII k. Febr,5,14,1?
III k. Febr. 7,53,1
III id. Febr. 2,3,4
id. Mart. 5,62,3
III k. April. 8,30,1
XII k. Oct. 5,37,1
k. Nov. 6,3,3

a. 207 APRO ET MAXIMO CONSS.

prid. non. Ian. 2,12,4
V k. Febr. 8,10,2
prid. non. April. 5,18,2
XVII k. Mai. 7,2,3
VI k. Mai. 8,28,1
II k. Mai. 5,37,2
k. Mai. 8,36,1

v k. Iul. 8,16,2
xvii k. Aug. 5,28,1
xii k. Oct. 3,36,2
id. Oct. 4,24,1
sine die 2,18,6

a. 208 Antonino A. iii et Geta iii Conss.
ii id. Febr. 8,25,2
xii k. Mart. 2,11,9
vi id. Mart. 3,28,4
vii k. Mai. 6,35,2
iiii k. Iun. *Quintiliano* 7,45,1
iii k. Iun. 8,13,4
iiii k. Aug. 2,11,10
k. Aug. 6,53,4
xvii k. Sept. 8,40,3

a. 209 Pompeiano et Avito conss.
id. Ian. 7,62,1
k. Mai. 7,74,1
id. Iul. 8,18,1
iii k. Ian. 7,8,3

a. 210 Faustino et Rufino conss.
iii non. Mai. 3,32,1
v k. Iul. 8,53,1
v non. Iul. 6,4,1
viii k. Aug. 8,44,3
prid. non. Nov. 8,37,2
vi k. Ian. 3,1,2

a. 211 Gentiano et Basso conss.
vi k. Mai. 6,37,3

a. (204)[8] 211–217 *IMP. ANTONINUS (CARACALLA) A.*[9]

sine conss.[10] 3,36,2. 3,4,7 1. 4,30,4. 4,31,1. 2. 4,32,8–10. 4,31,2. 4,39,2. 4,46,1. 7,16,1. 7,45,2. 7,52,3. 7,53,2. 7,54,1 (*procuratoribus hereditatium*). 7,72,1. 7,73,1. 8,35,3. 9,18,1? 9,45,1. 9,47,3–5. 9,51,1. 2. 10,39,1. 10,40,1. 10,42,1. 2. 10,53,1. 10,55,1. 10,67,1. 11,6,1. 11,30,1.2. 11,32,3. 11,33,1. 11,35,1. 11,36,1. 12,35,1. 2 (*militibus cohortis primae*). 3

a. 211 Gentiano et Basso conss.

[8] *cf. not. ad a.* 193–211
[9] impp. Severus et Antoninus AA. *a.* 213: 3,32,2. 4,5,1. 2. 5,23,1. *a.* 214: 3,13,1. *a.* 215: 5,6,1. 6,54,4. 7,2,4
[10] *tn iis constitutionibus, a quibus tituli incipiunt, haud raro dubium est, utrum Caracallae an Pio vel Marco vel etiam Elagabalo tribuendae sint*

k. Mai. 2,4,1
prid. k. Oct. 7,59,1
II non. Oct. 3,28,5
non. Oct. 7,1,1
non. Nov. 2,20,2
III id. Nov. 3,34,1
VI k. Dec. 3,38,1
V k. Ian. 6,45,1
sine die 9,40,1

a. 212 DUOBUS ASPRIS CONSS.
non. Ian. 5,75,1
III id. Ian. 5,16,1
VI k. Febr. 8,15,3
III id. Febr. 4,32,6. 8,43,1
III k. Mart. 2,12,5
V non. Mart. 2,53,1
non. Mart. 9,22,1
V id. Mart. 2,1,4
VI id. April. 8,8,1
id. April. *5,28,2
XIIII k. Mai. 6,3,4
VII k. Mai. 1,18,1
id. Mai. 8,17,2
III id. Mai. 6,3,5
id. Mai. 8,13,5
XVI k. Iun. 6,47,2
prid. non. Iun. 8,42,1
XV k. Iul. 6,24,2
VII k. Iul. Romae 3,28,6
VI k. Iul. 9,47,2
non. Iul. 10,9,1
pp. Romae V id. Iul. 10,61,3
XV k. Aug. 8,35,1
XI k. Aug. 8,44,4
id. Aug. 5,43,1
XVII k. Sept. 6,42,1
XIIII k. Sept. 5,37,3
VIII k. Sept. 4,25,1
non. Sept. 9,23,1
V id. Sept. 6,21,1

xv k. Oct. 8,44,5
xi k. Oct. 5,53,2
v k. Oct. Romae 5,51,1
prid. id. Oct. 5,58,2
xiii k. Dec. 5,71,1
non. Dec. *Carnuti 4,29,1
xiiii k. Ian. 7,49,1
xii k. Ian. 9,50,1
a. 213 ANTONINO A. IIII ET BALBINO CONSS.
prid. non. Ian. 4,65,1
non. Ian. 10,3,1
prid. id. Ian. 7,57,1
xv k. Mart. 8,35,2. 9,12,2
xii k. Mart. 5,16,2. 5,23,1. 7,52,1
xi k. Mart. 5,54,2. 6,21,2
vii k.Mart. 3,31,4. 6,44,1
k. Mart. Romae 3 37,1. 7,10,1
iiii non. Mart. 5,16,3
viii id. Mart. Romae 6,25,2
xii k. April. 9,20,1
xi k. Aprii. 5,14,2
id. April. 4,30,2
vi k. Iun. 3,31,5
k. Iun. 8,14,1
non. Iun. 5,51,2&5,56,1
id. Iun. 5,66,2
xv k. Iul. 4,1,1
viii k. Iul. Romae 5,39,1
v k. Iul. 6,37,4
iiii k. Iul. 6,29,1
prid. k. Iul. *Claudio Tryphonino* 1,9,1
k. Iul. Romae 4,65,2
iii non. Iul. 5,54,3
non. Iul. 7,65,1
xviii k. Aug. 7,4,2?
xv k. Aug. 9,9,3
xiii k. Aug. 5,44,1
x k. Aug. 3,8,2
viiii k. Aug. Romae 2,55,1
viii k. Aug. Romae 2,3,5. 5,41,1

VIII k. Aug. 5,36,1
VII k. Aug. 9,20,2
V k. Aug. 2,3,6
V k. Aug. Romae 8,22,1
IIII k. Aug. Romae 5,60,1
III k. Aug. 2,3,7. 3,33,3. 4,5,1. 4,50,1. 5,12,2. 8,13,6
III k. Aug. *Marcello* 9,49,1
VII id. Aug. 5,65,1
VI id. Aug. 6,38,1
III id. Aug. 2,4,2. 4,29,2. 3.
id. Aug. 7,26,1
id. Sept. 4,21,1. 6,37,6
XV k. Oct. 8,40,4
XII k. Oct. 5,37,4
III k. Oct. 2,7,1
V id. Oct. 8,17,3
II id. Oct. 7,75,1
XIIII k. Nov. 7,73,2
XII k. Nov. 3,32,2
VIII k. Nov. 3,44,1
k. Nov. 6,21,3
id. Dec. 9,23,2
XIIII k. Ian. 4,5,2
XIII k. Ian. 2,8,1
III k. Ian. 7,73,3

a. 214 MESSALA ET SABINO CONSS.
II non. Ian. 5,31,1
VIII id. Ian. 4,65,3
II id. Ian. 3,13,1
II non. Febr. 5,31,1
non. Febr. Romae 7,16,2
III id. Febr. 9,47,6
VI k. Mart. 8,14,2 1
VII k. Mai. 4,2,2
V k. Mai. 6,7,1
VI non. Mai. 2,37,1. 8,40,5
IIII k. Iun. 4,58,1
XI k. Iul. 7,53,3. 8,40,6
k. Iul. 6,30,1
III non. Iul. 5,31,2

id. Iul. 6,31,1
III k. Aug. 5,70,1
non. Nov. 5,40,1
XIIII k. Dec. 8,20,1
a. 215 LAETO II et CEREALE CONSS.
id. Ian. 5,13,2
prid. k. Febr. 9,16.1
VII id. Febr. 5,6,1
XIII k. Mart. 8,48,2
VII k. Mart. 9,32,2
III k. April. 8,16,3
II non. April. 2,24,1
VIII k. Mai. Romae 6,37,6
VIII k. Mai. *Rutiliano cons. Lyciae* 9,43,1
IIII id. Iun. 4,49,1
VII k. Iul. Romae 7,29,1
VI k. Iul. Romae 3,28,7
V k. Iul. 6,31,2
III k. Iul. 4,26,3. 4,30,3. 6,54,4. 7,73,4
III k. Iul. Romae 5,51,3
k. Iul. 3,34,2. 5,37,5. 5,53,3. 8,40,7
k. Iul. Romae 8,38,1
VI id. Iul. Romae 5,50,1
VI id. Iul. 6,46,3
V id. Iul. 6,37,7
IIII id. Iul. 5,31,3
III id. Iul. 5,31,4
VI k. Aug. 4,6,1. 6,42,2
X k. Sept. 3,26,3
VI k. Sept. 5,18,3
XIII k. Oct. 2,53,2
VII k. Oct. 9,6,2
k. Oct. 5,32,1
IIII non. Oct. Romae 4,32,7?
XV k. Dec. 4,7,2. 4,19,2
VII k. Dec. 7,2,4
VI k. Dec. 2,46,1
V id. Dec. 6,42,3. 8,17,4
prid. non. ... Romae 7,52,2

a. 216 Sabino II et Anullino conss.
III non. Ian. 9,32,3
VIII id. Mart. Romae 6,37,8
VI id. Mart. Romae 2,18,7
VII k. April. 9,41,3
V. k. April. 9,41,4
prid. k. Mai. 6,25,3
k. Mai. 3,44,2
III non. Iun. 7,53,4
XI k. Iul. 5,62,4
III k. Aug. 2,6,1
V id. Aug. 4,54,1?
k. Oct. Romae 8,18,2
V id. Oct. 4,54,1?
VI k. Nov. 4,35,3
XV k. Dec. 10,8,1
V k. Ian. 4,26,4

a. 217 Praesente et Extricato conss.
VIII k. Mart. 2,18,9&8,37,3

IMP. ANTONINUS (ELEGABALUS) A.[11]

a. 218 Antonino A. et Advento conss.
VI k. Aug. 2,18,8

a. 222–235 *IMP. ALEXANDER A.*

sine conss. 2,12,9. 2,24,2. 2,27,1. 3,36,4. 5. 4,30,5. 6. 4,31,6. 4,32,12. 13. 4,35,4. 5. 4,54,3. 4. 5,3,2. 3. 5,4,5. 5,6,1. 5,16,4. 5,39,2. 5,62,5. 7,2,5. 7,4,6. 7,8,6. 7,10,2. 7,11,2. 3. 5. 7,14,1. 7,16,4.5. 7,21,3. 7,26,3. 4. 7,27,1. 7,28,1. 7,30,3. 7,32,2. 7,46,2. 7,58,3. 7,62,2. 7,64,2. 8,32,2. 8,40,10. 9,9,4 (*Iuliano proc. Narbonensis*). 9,46,1. 3. 9,47,7–9. 9,49,2. 9,51,3–5. 10,40,2. 10,42,3. 10,44,1. 10,52,1. 10,60,1. 10,63,1. 10,68,1. 11,30,3. 11,37,1. 11,39,1. 11,40,1 (*quattuorviris et decurionibus Fabraternorum*). 12,1,1. 12,35,4

a. 222 Alexandro A. cons.[12]
III non. Febr. 9,1,3
XI k. Mart. 4,44,1
VIII id. Mart. 8,44,6
XIII k. April. 4,50,2
VIII k. April. 7,64,1
II k. April. 8,37,4

[11] *cf. not. ad a.* 211–217
[12] *sic vulgo: alias* Antonino IIII et Alexandro *vel* Antonino et Alexandro conss.

III non. April. 8,44,7
II non. April. 6,35,3
III k. Mai. 4,25,2. 5,51,4
k. Mai. 3,42,1
non. Mai. 7,56,1
VI id. Mai. 7,8,4
XVI k. Iul. 9,1,4
Id. Iul. 1,23,1
III k. Aug. 9,2,1
k. Sept. 4,54,2. 8,29,1
sine die 7,4,3? 4?
prid. id.Sept. 2,3,8. 7,4,5?
id. Sept. 4,14,3&6,2,4
IIII k. Oct. 2,3,9
k. Oct. 4,24,2. 9,1,5
id. Oct. 6,50,3. 8,34,1
XIII k. Nov. 2,50,2
VI k. Nov. 7,66,1
III k. Nov. 3,32,3?
k. Nov. 4,19,4? 5,34,1. 6,3,6
VII id. Nov. 3,35,1. 6,44,2
VI id. Nov. 4,57,1
XVI k. Dec. 6,21,4
XVI k. Dec. 6,21,4
XII k. Dec. 2,18,10
XI k. Dec. *Syro* 3,42,2&9,2,2&9,35,1
k. Dec. 4,65,4
III non. Dec. 7,66,2
VI id. Dec. 4,24,3. 5,12,3
XI k. Ian. 8,10,2. 8,44,9
V k. Ian. 6,50,4
III k. Ian. 8,29,2
a. 223 MAXIMO II ET AELIANO CONSS.
III non. Ian. 7,48,1
non. Ian. 2,51,3
id. Ian. 8,27,1
k. Febr. 4,48,1?
III non Febr. 8,38,2
VII id. Febr. 3,28,8&6,30,2. 5,49,1. 6,37,9
V id. Febr. *4,39,3&8,41,1

VI k. Mart. 2,12,6
k. Mart. 4,65,5
VIII id. Mart. 2,12,7
VII id. Mart. 2,1,5
V id. M. (*sic*) 7,19,1
IIII id. Mart. 4,55,3. 7,57,2
XVII k. April. 9,23,3
XII k. April. 2,42,1
VI k. April. 4,1,2
V k. April. 4,48,2
II k. April. 6,32,1
III id. April. 9,8,1
XIII k. Mai. 10,11,1
XII k. Mai. 4,24,4. 5,63,1
X k. Mai. 2,11,11. 4,20,2
VI k. Mai. 6,11,1&6,24,3. 8,22,2
III k. Mai. 6,2,5
k. Mai. 3,34,3. 4,32,12
III non. Mai. 9,22,2
non. Mai. 6,44,3. 6,58,1
VI id. Mai. 5,37,6
V id. M. (*sic*) 7,19,1
prid. id. Mai. 5,55,1&6,6,1
id. Mai. 3,28,9
III k. Iun. 7,8,5
id. Iun. 9,9,5
V k. Iul. 5,31,5. 6,42,4
V non. Iul. 3,44,3
VI id. Iul. 5,37,7
V id. Iul. 2,21,1
IIII id. Iul. 5,12,4
XVII k. Aug. 6,6,2
V id. Aug. 7,19,2
prid. id. Aug. 2,4,3. 3,28,10. 9,9.6.
id. Aug. 3,34,4
XIII k. Sept. 7,68,1
XI k. Sept. 6,26,3
VIII k. Sept 2,12,8
k. Sept. 3,42,3
prid. id. Sept. 2,3,8

xvii k. Oct. 4,39,4
xvi k. Oct. 8,29,3
xii k. Oct. 8,27,2
iiii k. Oct. 2,3,9. 4,48,3&8,56,1
iii k. Oct. 4,21,2
k. Oct. 4,31,3. 7,45,3
ii non. Oct. 8,35,4
iiii id. Oct. 6,12,1
ii id. Oct. 8,40,8
id. Oct. 8,14,3
xv k.Nov. 6,50,5. 8,46,1
vi k. Nov. 6,33,2
v k. Nov. 8,15,4
iii k. Nov. 4.56.1
k. Nov. 6,6,3
vi non. Nov. 3,44,4
iiii non. Nov. 9,2,3
iii non. Nov. 8,27,3
non. Nov. 4,30,7. 5,6,2
iii id. Nov. 7,11,1
id. Nov. 12,36,1
xvi k. Dec. 2,1,6
xiii k. Dec. 3,41,1
x k. Dec. 2,19,1. 7,71,1
vii k. Dec. 8,44,10
vi k. Dec. 7,19,3
v k. Dec. 8,40,9
ii k. Dec. 6,35,4
k. Dec. 4,56,2
non. Dec. 5.50.2
vi id. Dec. 4,26,5
iiii id. Dec. 6,16,1
xii k. Ian. 9,9,7
vi k. Ian. 4,29,4. 5,2,6?
v k. Ian. 5,28,3. 6,50,6

a. 224 IULIANO II ET CRISPINO CONSS.

iiii id. Ian. 6,15,1
id. Ian. *9,9,8
xvii k. Febr. 6,21,5
xv k. Febr. 6,42,5

x k. Febr. 4,57,3. 5,57,1
vii k. Febr. 9,9,9
k. Febr. 8,18,3
iii non. Febr. 9,8,2
vi id. Febr. 3,1,3
xvi k. Mart. 6,42,6
v k. Mart. 4,65,6
k. Mart. 4,39,5. 6,12,2
v non. Mart. 7,26,2
iii non. Mart. 5,29,1
non. Mart. 2,6,2
vii id. Mart. 6,35,5
vi id. Mart. 9,41,6
xii k. April. 6,47,3
vii k. April. 8,1,1&8,10,3&8,52,1
vi k. April. 6,25,4
xiii k. Mai. 4,24,5
xii k. Mai. 5,44,2
viii k. Mai. 3,44,5. 5,56,2
k. Mai. 6,2,6?
v non. Mai. 3,37,3. 9,1,6
iii non. Mai. 5,62,6
iii id. Mai. 7,11,4
xii k. Iun. 6,3,7
vii k. Iun. 5,28,4
iii k. Iun. 8,51,1
xv k. Iul. 4,29,5
xiii k. Iul. 5,56,2
xi k. Iul. 4,55,4
x k. Iul. 3,31,6
viii k. Iul. 3,44,6. 9,20,3. 12,36,2
vi k. Iul. 9,46,2
k. Iul. 2,11,12. 10,7,1
vi non. Iul. 7,35,1
iii non. Iul. 5,76,2
viii id. Iul. 4,51,1
iii id. Iul. 5,62,7. 6,20,1
iii id. Aug. 6,54,5
viiii k. Sept. 9,47,10
iii non. Sept. 10,8,2

IIII id. Sept. 6,20,2
II id. Sept. 6,3,7. 7,68,2
XVI k. Oct. 7,58,2
X k. Oct. 5,31,6&5,35,1
prid. k. Oct. 6,6,4
III id. Oct. 12,36,3
IIII k. Ian. 3,28,11

a. 225 FUSCO II ET DEXTRO CONSS.

VI id. Ian. 6,54,6
id. Ian. 4,56,3
XV k. Febr. 6,57,1
VII k. Febr. 4,55,6
IIII k. Febr. 5,62,8
III non. Febr. 9,23,4
non. Febr. 7,16,3
XV k. Mart. 6,42,7
X k. Mart. 2,1,7. 6,2,8. 6,54,7
prid. k. Mart. 8,16,4
VI id. Mart. 3,18,1
k. April. 7,4,7
VI id. April. 6,28,2
id. April. 4,24,6
XII k. Mai. 6,21,6
V non. Mai. 9,9,10
XV k. Iun. 6,42,8. 7,73,5
k. Iun. 6,23,2. 8,27,4
XVII k. Iul. 9,23,5
IIII k. Iul. 6,26,4
k. Iul. 5,34,2
VIII k. Aug. 5,57,2
VII id. Aug. 6,3,10
XVI k. Sept. 5,18,4
XV k. Sept. 7,4,8
VII k. Oct. 10,4,1
k. Oct. 2,1,8

a. 226 ALEXANDRO A. II ET MARCELLO CONSS.

VIIII k. Febr. 5,38,1
II non. Mart. 2,4,4
VI id. Mart. 3,33,4
VII k. April. 7,30,1

k. April. 3,33,5
III id. April. 5,12,5
k. Mai. 6,50,7
III non. Mai. 4,21,3
id. Mai. 9,50,2
VI k. Iul. 2,19,2
non. Iul. 5,38,2
V k. Aug. 2,43,2
k. Aug. 2,36,2
VIII id. Aug. 5,29,2
k. Sept. 9,9,11
IIII id. Sept. 9,49,3
k. Dec. 6,46,4
III non. Dec. 2,51,1
XIII k. Ian. 6,53,5

a. 227 ALBINO ET MAXIMO[13] CONSS.
v id. Ian. 4,65,7
XII k. Febr. 2,18,11
V k. Febr. 6,37,10
id. Febr. 5,16,5
III k. Mart. 2,3,10. 2,12,10
k. Mart. 2,4,5. 2,9,1
III id. April. 8,25,3
VI id. Sept. 7,57,3
XIIII k. Dec. 4,6,2
V id. Dec. 8,47,3
XI k. Ian. 9,22,4
IIII k. Ian. 9,22,3
VI k. Ian. 9,6,4

a. 228 MODESTO ET PROBO CONSS.
k. Febr. 5,62,9
V id. Mart. 7,66,3
XII k. April. 4,30,8
III id. April. 5,4,4. 5,29,3
id. April. 5,56,3
XV k. Mai. *ad rationales* 10,5,1
V id. Iun. 5,36,2. 7,21,4

[13] Aemiliano (*videlicet* Maximo Aemilio Aemiliano) 2,4,5. 9,6,4; *unde factum videtur, ut legum geminarum* 2,3,10. 5,14,1 *altera huic altera a.* 206 *adscriberetur, licet etiam in die dissentiant*

prid. id. Iun. 6,2,7
XV k. Iul. 4,50,3
k. Aug. 3,1,4
XIII k. Sept. 1,54,2
VI id. Oct. 4,29,6
a. 229 ALEXANDRO A. III ET DIONE II CONSS.
id. Ian. 5,43,3
V id. Mai. 2,40,1
prid. id. Mai. 2,12,11&5,61,1
XV k. Iul. 6,35,6 .
XII k. Iul. 6,21,7
k. Iul. 7,55,1
id. Aug. 5,62,10
V id. Sept. 5,43,4
XVII k. Oct. 4,31,4
XIII k. Nov. 2,11,13
VIII k. Nov. 5,54,4
VII k. Nov. 8,40,11
non. Nov. 5,17,1
sine die 4,31,5
XVI k. Dec. 3,38,2. 4,31,6&5,21,1
XIII k. Dec. 8,33,1
non. Dec. 2,3,11&4,47,1. 3,28,12. 5,15,2. 5,16,6
VI id. Dec. 5,37,8
XV k. Ian. 6,34,1&7,45,4
a. 230 AGRICOLA ET CLEMENTE CONSS.
VIII id. Ian. 2,4,6
III k. Mart. 2,3,12&3,42,4
prid. k. Mart. 4,28,5
IIII k. April. 2,2,1
XVI k. Mai. 5,37,9
non. Mai. 4,25,3
V id. Mai. 8,19,1
prid. id. Mai. 9,35,2
id. Mai. 8,24,1
XIIII k. Iul. 6,20,3
VIII k. Iul. 4,39,6&7,10,3
k. Iul. 3,33,6
XI k. Aug. 5,37,10
k. Aug. 2,18,12

xv k. Sept. 9,1,7
vi k. Sept. 8,40,12
iii k. Sept. 9,22,6
v k. Oct. 2,12,12
prid. k. Oct. 1,26,1
viii k. Nov. 2,18,13

a. 231 Pompeiano et Peligniano conss.
v k. Febr. 2,26,1
non. Febr. 8,44,11
v id. Febr. 9,34,1
x k. Mart. 6,2,8
v non. Mart. 6,37,11
non. Mart. 7,30,2
k. April. 7,4,9
xii k. Aug. 8,27,5
k. Aug. 4,65,8. 5,11,1
xiii k. Sept. 3,22,1
xiii k. Oct. 2,48,1
viii id. Dec. 5,36,3&5,62,11
v k. Ian. 4,19,3

a. 232 Lupo et Maximo conss.
k. Mart. 1,21,1
id. Mart. 6,35,7
k. Iun. 8,42,2
x k. Iul. *7,75,2
x k. Oct. 2,41,1
k. Oct. 5,16,7
xi k. Ian. 6,23,3

a. 233 Maximo ii et Paterno conss.
iii k. Mai. 8,16,5&8,17,5
iii k. Iul. 6,36,1
vi id. Iul. 2,33,1.
id. Sept. 6,50,8
v k. Oct. 5,16,8
iiii id. Oct. 3,26,4
viii k. Ian. 5,43,5

a. 234 Maximo ii et Urbano conss.
x k. Mart. 2,18,14
iii id. Mart. 5,46,1
vi k. April. 1,40,1

xi k. Mai. 4,32,14
iiii id. Iul. 4,34,1
vii id. Sept. 4,65,9
a. 235 Severo et Quintiano conss.
id. Aug. 1,26,2
IMP. MAXIMINUS A.
a. 236 Maximino A. et Africano conss.
v id. Ian. 2,3,13
iii id. Febr. 5,12,6[14]
a. 238–244 *IMP. GORDIANUS A.*
sine conss. 3,36,6.9. 10. 4,31,8. 9. 4,32,16. 4,34,4. 4,35,7. 4,45,1. 4,51,2. 4,52,1.2. 4,54,5. 5,6,3. 7,2,6. 7,8,7. 7,9,1.2. 7,21,5. 7,36,1. 7,46,3.4. 7,48,2. 7,50,1. 7,52,4. 7,58,4. 7,62,3. 7,64,3. 7,72,2.3. 8,40,13. 9,47,11. 9,49,4. 9,51,6. 10,1,2.3. 10,2,1. 10,39,2. 10,41,2. 10,46,1. 10,53,2. 10,61,2. 10,69,1. 10,70,1. 11,34,1.2. 12,35,5–7. 12,36,4
a. 238 Pio et Pontiano conss.
k. Ian. 5,70,2[15]
xii k. April. 7,26,5[15]
x k. Iul. 2,9,2
xvii k. Aug. 9,1,8
x k. Aug. 5,51,5
iiii k. Aug. 7,43,2
iii non. Aug. 6,3,11
viii id. Aug. 2,21,2
vi id. Aug. 2,19,3
xiii k. Sept. 8,27,6
xii k. Sept. 5,11,2
vi k. Sept. 2,11,14
k. Sept. 8,41,2
iiii non. Sept. 3,1,5
iii non. Sept. 4,35,6
non. Sept. 8,13,7
viii id. Sept. 10,11,2
vi id. Sept. 8,9,1
v id. Sept. 5,73,1
id. Sept. 4,14,4. 8,23,1
xvii k. Oct. 6,42,9
xii k. Oct. 4,29,7

[14] *adscribitur imp. Alexandro*
[15] 5,70,2. 7,26,6 *re vera Maximini sunt*

vii k. Oct. 5,16,9. 5,53,4
v k. Oct. 8,42,3
iii k. Oct. 6,21,8
k. Oct. 5,12,7
v non. Oct. 6,21,9
iii non. Oct. 2,22,1&4,13,1. 2,37,2. 2,52,1
prid. non. Oct. 6,24,4. 7,66,4
non. Oct. 4,29,8
prid. id. Oct. 8,42,4
id. Oct. 2,39,1
xv k. Nov. 6,50,9
xi k.Nov.2,52,2. *2,52,3&3,32,4. 5,62,2
viii k. Nov. 5,75,3
vii k. Nov. 8,42,5. 9,6,6
v k. Nov. 8,27,7
k. Nov. 4,34,2
viii id. Nov. 4,64,1
v id. Nov. 5,43,6
xv k. Dec. 2,26,2
vii k. Dec. 7,66,5
prid. non. Dec. 8,33,2
x k. Ian. 2,4,7

a. 239 Gordiano A. et Aviola conss.
vi id. Ian. 5,14,3. 5,31,7
iii id. Ian. 2,12,13
xv k. Febr. 6,35,8
x k. Febr. 5,62,13.8,56,2
iii k.Febr. 3,28,13. 5,71,2
iii id. Febr. 8,42,6
ii id. Febr. 3,32,5. 3,42,5. 4,21,4
viii k. Mart. 4,65,10
vi non. Mart. 9,1,9
vii id. Mart. 8,44,12
iiii id. Mart. 6,20,4
id. Mart. 5,64,1. 8,13,8&8,26,1
iii k. April. 5,16,10
iii non. April. 8,27,8
vii id. April. 5,70,3
vi id. April. 6,58,2
xi k. Mai. 8,25,4

k. Mai. 7,18,1
xvi k. Iun. 8,44,13
k. Iun. 8,47,1
iii non. Iun. 3,41,2
vi id. Iun. 9,45,2
v id. Iun. 8,41,3
iiii id. Iun. 7,43,3
xvii k. Iul. 2,11,15
xii k. Iul. 2,49,1
iii k. Iul. 5,65,2
iii non. Iul. 8,40,14
non. Iul. 4,29,9
vi id. Iul. 2,18,15
v id. Iul. 3,32,6&*4,34,3. 7,56,2
ii id. Iul. 9,35,3
xiiii k. Aug. 8,44,14
xii k. Aug. 6,23,4
vi k. Aug. 9,6,6
k. Aug. 9,1,10
iii non. Aug. 2,19,4. 8,28,2
v id. Aug. 5,37,11
id. Aug. 8,22,3
xv k. Sept. 3,1,6
xii k. Sept. 5,4,6
viii k. Sept. 4,2,3
k. Sept. 3,36,7?
non. Sept. 5,39,3. 6,20,5. 6,47,4
id. Sept. 1,54,3. 5,62,14
iii k. Oct. 8,13,9
v k. Nov. 10,3,3
viii id. Nov. 2,2,2. 3,35,2
id. Nov. 8,41,4
x k. Dec. 7,19,4
vii k. Dec. 5,3,4
vi k. Dec. 3,28,14. 6,13,1
v k. Dec. 8,40,15
iii k. Dec. 7,41,1
k. Dec. 4,58,2
iii non. Dec. 9,20,4
non. Dec. 9,9,12

III id. Dec. 6,42,10. 7,57,4
id. Dec. 3,6,1
XV k. Ian. 4,48,4
XIIII k. Ian. 2,4,8
XII k. Ian. 2,50,4
VI k. Ian. 2,19,5
II k. Ian. 8,40,16? 9,34,2
V k. ... 10,3,2

a. 240 SABINO II ET VENUSTO CONSS.
k. Ian. 5,11,3
X k. Febr. 7,2,7
VI k. Febr. 4,15,3
k. Febr. 5,12,8
VII k. Mart. 5,43,7
III k. Mart. 9,19,1
k. April. 8,29,4
VIII id. April. 8,45,2
VI k. Mai. 4,57,4
VII id. Mai. 9,41,6
VI id. Mai. 2,50,5
V id. Mai. 7,14,2
XV k. Iun. 6,44,4
XII k. Iun. 8,30,2
II k. Iun. 9,9,13
V id. Iun. 2,6,3. 5,14,4
III k. Iul. 4,21,5
non. Iul. 7,73,6
V id. Iul. 6,37,12
III k. Aug. 2,11,16
VI id. Aug. 6,45,2
id. Aug. 2,20,3
XVI k. Sept. 4,57,5
III non. Sept. 6,6,5
IIII k. Nov. 5,4,7
III non. Nov. *Domitio pp.* 1,50,1

a. 241 GORDIANO A. II ET POMPEIANO CONSS.
VIII id. Ian. 2,17,1
XII k. Febr. 7,57,5
III non. Febr. 2,38,2
XI k. Mart. 4,16,1

v k. Mart. 5,4,8. 5,64,2
non. Mart. 9,2,4
VI id. Mart. 2,30,2
II id. Mart. 8,53,2
v k. April. 3,35,3
k. April. 2,3,14
VI id. April. 2,4,9
VI id. Mai. 5,52,1
II id. Iun. 8,40,16? 8,50,2
v k. Iul. 5,16,11
prid. k. Iul. 10,11,3
k. Iul. 2,22,2
XIII k. Aug. 4,24,7. 6,40,1
III k. Aug. 3,44,7
VI non. Aug. 2,17,2
XV k. Sept. 6,30,3
k. Sept. 3,36,7?
VI id. Sept. 8,25,5
III id. Sept. 9,2,5
v k. Oct. 6,24,5
v non. Oct. 5,23,2
III non. Oct. 2,12,14. 5,37,12
v id. Nov. 6,50,10
XVI k. Ian. 5,73,2
XVI k. Ian. 6,42,11

a. 242 ATTICO ET PRAETEXTATO CONSS.

k. Febr. 3,3,1
XII k. Mart. 6,11,2
VI k. Mart. 9,32,4
k. Mart. 9,33,1
non. M. (*sic*) 4,32,15?
non. Mart. 9,9,14
VI id. Mart. 8,40,17
IIII id. Mart. 9,9,15
id. Mart. 5,75,4
XV k. April. 7,55,2
III k. April. 6,6,6
id. April. 9,34,3
v k. Mai. 4,10,1
VIII k. Oct 2,11,17

III id. Oct. 7,53,5

a. 243 ARRIANO ET PAPO CONSS.

VI k. Febr. 5,16,12
k. Febr. 3,33,7
IIII non. April. 9,2,6
III non. April. 9,16,2
VIII k. Mai. 5,37,13
XII k. Aug. 6,22,1
XV k. Nov. 1,18,2
VIII k. Nov. 5,62,15. 6,50,11
XVI k. Dec. 4,14,5
VI non ... 3,36,8

a. 244 PEREGRINO ET AEMILIANO CONSS.

VIII id. Ian. 9,2,7
id. Ian. 6,10,1

a. 244–249 ***IMP. PHILIPPUS A. ET PHILIPPUS C.***

sine conss. 3,36,11. 4,32,17. 5,6,4. 5,63,3. 7,2,8. 7,14,3. 7,43,5. 7,45,5. 7,53,6. 7,57,6. 7,62,4. 9,49,5. 10,39,3. 10,52,2.3. 10,53,3. 10,64,1. 11,31,1. 12,35,8

a. 244 PEREGRINO ET AEMILIANO CONSS.

II id. Mart. 3,42,6
prid. k. April. 2,4,10
VII k. Mai. 6,20,6[16]
VI id. Mai. 9,34,4
XVI k. Iul. 1,18,3. 3,44,8
XIII k. Iul. 9,1,11
II k. Iul. 2,43,3
XIII k. Aug. 5,34,3
X k.Aug. 5,34,4. 5,62,16.
VI k. Aug. 8,42,7
V k. Aug. 8,40,18
VI id. Aug. 4,65,11
XVIII k. Sept. 4,29,10
VIII k. Oct. 4,29,11
V id. Oct. 7,43,4
id. Oct. 6,36,2. 6,42,12
XVIII k. Nov. 6,49,2
XIII k. Nov. 5.43.8

[16] imp. Gordianus A. *inscribitur*

a. 245 PHILIPPO A. ET TITIANO CONSS.
k. Ian. 6,39,2
XVI k. Febr. 7,71,2
XV k. Febr. 9,32,5
VI non. Mart. 4,28,6
XV k. April. 9,22,6
IIII k. April. 8,10,4
III k. April. 5,38,3
VII id. April. 4,19,5
V id. Mai. 8,42,6
id. Mai. 4,19,6
XIIII k. Iun. 5,63,2
V k. Aug. 3,28,15
k. Aug. 8,44,15
prid. non. Aug. 5,37,14
XV k. Sept. 5,6,5
XIIII k. Sept. 3,29,1
XII k. Sept. 5,38,4
XVIII k. Nov. 2,26,3
XIIII k. Nov. 3,32,7
XII k. Nov. 5,48,1
IIII k. Nov. 4,65,12
VI k. Dec. 3,44,9
a. 246 PRAESENTE ET ALBINO CONSS.
k. Febr. 3,34,5
XV k. Mart. 4,2,4
XII k. Mart. 6,24,6
VIII k. Mart. 4,24,8. 6,42,1
XIII k. April. 5,67,1
X k. April. 7,57,6?
VI k. Mai. 6,20,7
XII k. Iun. 6,21,10
VI non. Iul. 6,21,12
IIII id. Iul. 5,46,2
a. 249 AEMILIANO ET AQUILINO CONSS.
X k. Mart. 9,32,6
XV k. Iul. 8,55,1
a. 249–251 *IMP. DECIUS A.*
a. 249 AEMILIANO ET AQUILINO CONSS.
XVII k. Nov. 10,16,3

XIIII k. Nov. 4,16,2

a. 250 DECIO A. II ET GRATO CONSS.

x k. Mart. 6,30,4

non. Mart 8,53,3

v k. April. 7,32,3

a. 250–251 *IMP. DECIUS A. ET DECIUS ET QUINTUS CC.*

a. 250 DECIO A. II ET GRATO CONSS.

VI id. Iun. 5,12,9

k. Dec. 3,22,2

II non. Dec 6,58,3

a. 252,253 *IMPP. GALLUS ET VOLUSIANUS AA.*

a. 252 GALLO II ET VOLUSIANO CONSS.

prid. id. Mart. 3,36,12

XI k. Mai. 2,18,16

a. 254–256(260)[17] *IMPP. VALERIANUS ET GALLIENUS AA.*

sine conss. 4,38,1. 4,62,3. 7,12,2. 7,43,6. 7,44,1. 9,51,8. 10,65,1. 12,62,1

a. 254 VALERIANO II ET GALLIENO AA. CONSS.

VI k. Mart 2,8,2

IIII non. April. 2,50,6

IIII non. Iul. 6,23,5

non. Aug. 6,21,13

a. 255 VALERIANO III ET GALLIENO II AA. CONSS.

XIIII k. Sept. 6,42,14

III k. Sept. 4,20,3

a. 255–260 *IMPP. VALERIANUS ET GALLIENUS AA. ET VALERIANUS NOB. C.*[18]

sine conss. 4,50,4. 7,16,6. 7,64,4. 10,2,2.10,42,4. 10,65,2. 11,36,3

a. 255 VALERIANO ET GALLIENO AA. UTRISQUE II CONSS.

XV k. Dec. 2,4,11

a. 256 MAXIMO II ET GLABRIONE CONNS.

XIIII k. Iun. 9,9,16

VI k. Aug. 3,29,2

VI id. Oct. Romae 6,42,15

XII k. Ian. 6,32,2

a. 257 VALERIANO IIII ET GALLIENO III AA. CONSS.

k. April. 4,6,3

XV k. Mai. 8,31,1

[17] *cf. not. seq.*

[18] et Val. nob. C. *a permultis constitutionibus abest partim incuria librariorum partim antiquiore vitio, cf.* 4,7,3. 4. 5,42,1. 2

xvi k. Iul. 6,30,5
vi k. Aug. 9,9,17
x k. Nov. 3,29,3
xii k. Dec. 6,25,5
a. 258 Tusco et Basso conss.
iii non. Ian. 5,71,3
viiii k. Mart. 4,29,12
id. Mai. Antiochiae 5,3,5&9,9,18
iii k. Iul. 9,22,7
prid. non. Iul. 9,45,3
ii id. Aug. 2,40,2&3,28,16
vi k. Dec. 8,54,1
a. 259 Aemiliano et Basso conss.
xvi k. Mart. 2,4,12
x k. Mart. 2,3,15
viii id. Mart. 4,65,13
id. Mart. 4,49,2
vii k. April. 5,17,2
v k. Mai. 4,6,4
ii non. Mai. 5,18,5
non. Mai. 9,20,5
xvi k. Iun. 8,46,4
xv k. Iun. 7,73,7
viii k. Iun. 4,65,14?
iii k. Iun. 4,22,1
xii k. Iun. 4,26,6
iii k. Iul. 9,22,8
non. Iul. 5,42,1
id. Iul. 4,34,5
id. Aug. 4,65,15
xiii k. Dec. 7,71,3
v k. Dec. 10,32,1
iii k. Ian. 4,35,8
sine die 5,45,1. 9,35,4
a. 260 Saeculare ii et Donato conss.
xiiii k. Febr. 4,10,2
iii k. Mart. 5,28,5&7,4,10
xv k. Mai. 5,71,4
vii k. Mai. 3,20,1&8,1,2. 8,7,1. 9,33,2
iii k. Mai. 5,71,5

prid. non. Mai. 9,45,4
prid. id. Mai. 8,17,6
id. Mai. 5,6,6. 5,36,4&5,42,2
VI id. Iun. 7,21,6
X k. Aug. 7,10,4
IIII k. Aug. 4,65,16
VIII k. Oct. 2,30,3
XIIII k. Ian. 2,11,18
sine die 10,16,2

a. 260–268 *IMP. GALLIENUS A.*[19]

a. 262 GALLIENO A. V ET FAUSTINO CONSS.
prid. non. Sept. 4,19,7
non. ... 3,8,3

a. 265 VALERIANO II ET LUCILLO CONSS.
VI id. Ian. 5,62,17
XIII k. Febr. 9,16,3
k. April. 5,44,3

a. 267 PATERNO ET ARCESILAO CONSS.
k. Nov. 5,44,4

a. 268–270 *IMP CLAUDIUS A.*

a. 269 CLAUDIO A. ET PATERNO CONSS.
VII k. Mai. 3,34,6

a. 270–274 *IMP. AURELIANUS A.*
sine conss. 5,3,6. 5,72,2. 7,16,7. 10,62,2

a. 270 ANTIOCHIANO ET ORFITO CONSS.
VII k. Nov. 1,23,2[20]

a. 274 AURELIANO A. ET CAPITOLINO CONSS.
k. Iul. 2,44,1

a. 276–282 *IMP. PROBUS A.*
sine conss. 5,4,9

a. 277 PROBO A. ET PAULINO CONSS.
III non. Mai. Sirmi 8,55,2

a. 278 PROBO A. N ET LUPO CONSS.
III k. Iul. 2,16,1

a. 280 MESSALA ET GRATO CONSS.
V k. Ian. 8,53,4

a. 283 (–284)[21] *IMPPP. CARUS CARINUS ET NUMERIANUS AAA.*
sine conss. 4,54,6. 5,3,7. 6,49,3. 7,64,6. 10,42,5. 10,43,1. 10,48,1. 11,36,3

[19] Impp. Valerianus et Gallienus AA. *a.* 262 3,8,3, *a.* 265 5,62,17
[20] *adscribitur Alexandro A.*
[21] *cf. not. seq.*

a. 283 Caro et Carino AA. conss.
id. Ian. 7,64,5
IIII k. Mart. 3,32,9
non. Mart. 5,71,6
V id. Aug. 8,14,4
VI id. Sept. 5,71,7
VI id. Nov. 7,2,9
prid. id. Nov. 6,42,16
XI k. Dec. 9,46,4
V k. Dec. 7,45,6
VIII k. Ian. 2,55,2

a. 284 *IMPP. CARINUS ET NUMERIANUS AA.*[22]

a. 284 Carino II et Numeriano AA. conss.
II id. Ian. 8,55,3
XVII k. Febr. 2,11,19
VI k. Febr. Komae 8,53,5
prid. id. Febr. 3,28,17
Hemesae XV k. April. 5,52,2
III k. April. 9,22,9
III k. Sept. 10,11,4

a. 284–292 *IMPP. DIOCLETIANUS ET MAXIMIANUS AA.*

sine conss. 2,16,2. 2,46,2. 3,36,13–15. 4,33,4. 4,35,9. 4,39,7. 4,46,2. 4,58,4. 4,64,2. 7,21,7. 7,32,5. 7,34,1. 7,39,1. 7,53,7. 7,62,5. 7,64,8. 9,2,8. 9,41,8 (*ad Sallustianum praes.*). 9,46,5. 9,47,12. 13. 9,51,9. 10. 10,1,4.5 (*ad Flaccum*). 10,2,3. 10,32,2. 10,33,1. 2. 10,39,4. 10,40,3–5. 10,42,6. 7. 10,43,2. 3. 10,44,2. 10,47,1. 10,48,2–4. 10,50,1–3. 10,51,2. 10,52,4.10,53,4. 10,55,2.3. 10,57,1. 10,59,1. 10,62,3 (*Crispino*). 10,65,3. 11,30,4. 11,36,4. 11,42,1. 11,55,1 (*ad Charisium*). 12,33,2. 12,62,2–4

a. 284 Carino II et Numeriano Conss.
id. Oct. 3,7,1
VIII k. Dec. 4,20,4[23]

a. 285 Diocletiano A. II et Aristobulo conss.
k. Ian. 6,34,2&7,64,7?
non. Aug. 2,53,3
XI k. Oct. 9,22,10
V k. Nov. 4,44,2
III non. Nov. 2,29,1&5,71,8. 6,23,6
III non. Nov. Atubino 4,48,5
sine die 5,4,10. 11

[22] *sic* 2,11,19. 3,28,17. 9,22,9. 10,11,4?: imppp. Carus Car. et Num. AAA. *reliquae*
[23] imppp. Car. Car. et Num. AAA. *inscribitur*

non. Nov. 5,4,12. 5,71,9
II id. Nov. 2,53,4
id. Nov. 10,32,3
XII k. Dec. 10,32,4
III non. Dec. 6,24,10
III id. Dec. 5,5,2

a. 286 MAXIMO II ET AQUILINO CONSS.
XIII k. Febr. Nicomed. 4,21,6
VIII k. Febr. 4,13,2
VI id. Febr. 9,43,2
IIII id. Febr. 2,3,16
IIII id. Febr. *Nicomed. 3,29,4&8,53,6
III id. Febr. 8,25,6
XVI k. Mart. Nicomed. 3,28,18
XII k. Mart. Nicomed. 7,35,2
II k. Mart. 3,29,5
IIII non. Mart. 6,14,1
V id. Mart. 8,47,2. 8,54,2
IIII id. Mart. 4,33,2
prid. id. Mart. 4,33,3?
XVI k. Mai. 2,26,4
XV k. Mai. 4,58,3. 6,37,13
XII k. Mai. 5,12,10. 6,42,17
VI k. Mai. 3,29,6
V k. Mai. 4,20,5. 7,10,5
IIII k. Mai. 2,24,3
IIII non. Mai. 3,34,7
VIII id. Mai. 4,38,2
V id. Mai. 3,29,7. 6,6,7. 8,42,9
XVI k. Iun. 3,42,7
XV k. Iun. 4,21,7. 8,18,4
XIII k. Iun. 8,15,5
prid. k. Iun. Tiberiade *4,10,3
XVI k. Iul. 8,47,3
XII k. Iul. 5,16,13
VIIII k. Iul. 2,3,17
prid. id. Iul.Tiberiade 1,51,1
X k. Sept. 4,1,3
II k. Sept. 6,37,14
prid. ... Sept. 7,16,8

k. Nov. 9,41,7
v k. Dec. 7,33,2
III non. Dec. [8,39]
id. Dec. 6,1,1
v k. Ian. 6,9,3
VI id. ... 10,32,5&10,62,4

a. 287 DIOCLETIANO III ET MAXIMIANO AA. CONSS.
VII id. Ian. 2,3,18
XII k. Febr. 6,6,8
XV k. Mart. 4,21,8
v k. Mart. 8,39,1
k. Mart. 8,46,5
prid. non. Mart. 5,37,15
III id. Mart. 9,20,6
prid. id. April. 4,12,1
VI k. Mai. 2,23,2
XIII k. Iun. 8,27,9
X k. Iul. 9,22,11
v k. Sept. 8,50,3
III non. Sept. 4,12,2
v id. Sept. 8,25,7
VIII id. Nov. 2,2,3
XVII k. Dec. 8,46,6?
XV k. Dec. 9,42,1
II k. Dec. 2,42,2
non. Dec. *ad Pompeianum* 9,9,19
VIII id. Dec. 3,44,10
VI id. Dec. *Maximo pu.* 9,20,7

a. 288 MAXIMIANO A. II ET IANUARIO CONSS.
XVII k. Dec. 8,46,6?

a. 289 BASSO ET QUINTIANO CONSS.
XIIII k. Sept. *Honorato* 7,56,3&9,2,9
XIII k. Dec. 4,19,8

a. 290 DIOCLETIANO IIII ET MAXIMIANO III AA. CONSS. (*vulgo* IPSIS IIII ET III AA. CONSS.)
III id. Ian. Sirmi 10,3,4
XVIII k. Febr. 8,13,10
XVII k. Febr. 6,23,7
non. Febr. 5,14,5
VIII id. Febr. 3,32,10

XVI k.Mart. *ad Honoratum* 2,10,1
XVI k. Mart. 2,11,20
III k. Mart. Hadrianop. 6,55,2
id. Mart. 6,42,18
III k. April. 7,43,7
k. April. 4,65,17
IIII non. April. Byz. 2,4,13
VIII id. April. 3,44,11
VI id. Mai. Hemesa *ad Charisium praes. Syriae* 9,41,9
x k. Iun. 6,24,8&6,26,5
VIII k. Iun. 5,30,1
VII k. Iun.Laodiceae 6,15,2?
v k. Iun. 8,50,4
XVII k. Iul. 3,38,3
XVI k. Iul. 6,50,12. *8,50,5
XIIII k. Iul. 7,20,1
x k. Iul. 7,75,3. 8,44,16
k. Iul. 4,1,4. 4,27,1. 6,23,8.9
IIII non. Iul. 2,4,14
VIII id. Iul. 1,18,4
VI id. Iul. 6,20,8. 9,35,5
IIII id. Iul. 4,49,3
id. Iul. 6,58,4. 8,53,7. 9,35,6
XVI k. Aug. 6,30,6
XV k. Aug. 2,4,15
III k. Aug. 4,7,3
k. Aug. 7,32,4
v id. Aug. 5,71,10
XIII k. Sept. 8,25,8
VIII k. Sept. 9,20,8
VI k. Sept. 9,41,10
v k. Sept. 2,11,21
IIII k. Sept 5,51,6
III k. Sept. 4,29,13
II k. Sept. Tiberiade 5,17,3
k. Sept. 8,47,4
VIII id. Sept. 4,49,4. 6,42,19. 8,53,8
VI id. Sept. 6,36,3
III id. Sept. 5,38,5
III id. Sept *Numidio correctori Italiae* 7,35,3

prid. id. Sept. 4,50,5
XII k. Oct. 2,40,3&4,49,5
XI k. Oct. 4,65,18
Sirmi XI k. Oct. 8,54,3
X k. Oct. 4,6,5. 8,25,9
III k. Oct 3,44,12. 6,37,15. 7,43,8
VI non. Oct 8,10,5
III non. Oct. 5,16,14. 8.27.10. 9,9,20
non. Oct. 4,10,4&5,74,1
VIII id. Oct. 1,19,1&7,13,1
XVI k. Nov. 3,38,4
XIIII k. Nov. 9,9,21
XII k. Nov. 9,9,22
XI Nov. 7,43,9
VII k. Nov. 5,18,6?
III k. Nov. 9,2,10
k. Nov. 9,9,23
V id. Nov. 8,44,17
XV k. Dec. 8,4,1
XIII k. Dec. Sirmi 2,3,19
XII k. Dec. 5,71,11
X k. Dec. Sirmi 2,28,1
V k. Dec. 9,41,11
prid. k. Dec. Sirmi *Agathoni* 9,16,5
k. Dec. 6,22,2?
III non. Dec. 4,1,5&6,42,20. 8,48,1
VI id. Dec. 9,23,6
id. Dec. 8,38,3
XV k. Ian. Sirmi 3,28,19
XIII k. Ian. 8,23,2

a. 291 TIBERIANO ET DIONE CONSS.

IIII k. Febr. 5,16,15
k. Febr. 8,50,6
III non. Febr. 8,60,7
V id. Febr. 4,1,6. 8,50,8
VI id. Mart. 5,16,16
V id. Mart 5,31,8. 8,48,2. 9,9,24
X k. April. 6,56,1
III id. Mai. 7,43,10
III id. Mai. Sirmi 9,41,12

k. Oct. 8,54,4
prid. non. Dec. Triballis 8,47,5
sine die 6,35,9

a. 292 HANNIBALIANO ET ASCLEPIODOTO CONSS.
IIII k. Mart *Crispino* 7,35,4
prid. k. April. *Crispino praes. prov. Phoenice* 1,23,3
VIII id. April. *have Crispine k. n.* 9,2,11
prid. id. April. *Scyrioni rationali* 10,10,1

a. 293–304 *IMPP. DIOCLETIANUS ET MAXIMIANUS AA. ET CC.*[24]
sine conss. 3,38,10. 4,30,10 (III id. Dec. ipsis conss.). 4.30.11. 4,31,10.11. 4,32,18–22 (id. Iul. ipsis conss.) 4,35,20. 4,37,2–4. 4,38,6. 12.13. 4,39,8. 4,44,10–13. 4,51,6. 4,52,5. 4,54,7. 8. 4,64,3–6. 5,3,10. 11. 13. 14. 5,4,13–16. 5,6,7. 6,2,19. 6,9,5. 6,36,4. 7,1,3. 7,2,13. 7,4,11? 7,11,6.7. 7,14,9.10. 7,16,40 (*ad Verinum*). 7,18,2. 7,27,3. 7,29,3. 7,34,2. 4. 5. 7,35,7. 7,36,2. 7,43,1i. 7,45,7.8. io. 11. 7,62,7–9 (*have Heraclida k. n.*). 7,62,11&10,40,7. 7,64,9. 7,71,4.5. 7,72,6. 7,75,6. 8,35,11. 8,48,4. 9,47,14.15. 9,49,6.9,51,11.12. 10,32,13. 10,40,6. 10,42,8–10 (*ad praefectos*). 10,43,4.10,47,2.10,48,5.6. 10,51,3.4. 10,52,5. 10,53,5. 10,54,1. 10,58,1. 12,36,5

a. 293 DIOCLETIANO V ET MAXIMIANO HH AA. CONSS. (*vulgo* AA. CONSS.[25])
k. Ian. * 1,18,5&2,3,20
k. Ian. Sirmi 3,34,8. 5,74,2. 6.26.7
VII id. Ian. Sirmi 4,7,4. 4,10,7&9,33,3
IIII id. Ian. 7,14,4
III id. Ian. 2,55,3?
XVII k. Febr. 8,17,7
V k. Febr. 7,29,2
k. Febr. 7,35,5
VIII id. Febr. 4,44,3
VII id. Febr. Sirmi 6,2,9
VI id. Febr. Sirmi 3,38,5?
VI id. Febr. 6,42,21
id. Febr. Sirmi 9,35,7
VI k. Mart 2,5,1
XIII k. Mart Sirmi 4,9,1?

[24] et CC.] et Constantius et Maximianus nobilissimi CC. 1,18,5, et Const. et Max. CC. 1,22,2; et CC. *om. libri ad* 6,42,21. 22 (*a.* 293). 2,26,5 (*a.* 294)
[25] *denominationem* AA. conss. *huius anni propriam esse probavit Mommsen Zeitfolge der Verordnungen Diocl. p.* 433

sine die 4,34,6.7
IIII k. Mart. Sirmi 3,32,11. 4.34.8
III k. Mart 8,13,11
III non. Mart. 5,39,4
v id. Mart 2,4,16
xv k. April. Ravennae (?) 6,8,1&7,9,3
v k. April. 8,13,12
k. April. Heracl. 8,55,4
sine die 7,16,9
IIII non.... 7,16,10
IIII non.April.Byzantii 8,47,6
III non. April. 2,12,15. 4,9,2
III non. April. Byz. 4,5,3. 5,30,2&5,31,9
prid. non. April. 7,14,5
non. April. Byz. 2,12,16. 4,10,5. 4,26,7. 4,44,4. 4,45,2
non. April. 5,11,4
VIII id. April. Byz. 4,29,14
VII id. April. Byz. *4,19,18
VI id. April. 3,32,12
VI id. April. Byz. 4,26,8. 4,49,6
v id. April. Byz. 4,5,4. 7,60,1. 8,8,2. 8,42,10
v id. April. 6,26,8. 7,27,2. 8? 50,9
sine die 7,33,3
IIII id. April. 7,33,4
prid. id. April. Byz. 3,22,3. 4,14,6
prid. id. April. 5,51,7
id. Aprii. 3,19,1. 3,32,13. 4,19,9. 6,2,10?&7,32,6
id. April. Byz. 5,70,4. 6,42,22. 7,60,2. 8,39,2
sine die 7,16,11
XVIII k. Mai. 4,19,10. 7,16,12
XVII k. Mai. Melantiae 4,49,7
XVI k. Mai. 5,51,8. 8,53,9
XV k. Mai. Heracleae 3,35,4
XIIII k. Mai. Heracl. 2,21,3. *6,9,4
XIIII k. Mai. 4,5,5. 4,16,3
XII k. Mai. 4,15,4. 5,34,5
XI k. Mai. 7,33,5
x k. Mai. Heracl. 5,12,11. 5,37,16
x k. Mai. 7,75,4
VIII k. Mai. 2,45,1. 10,32,6

VIII k. Mai. Heracl. 5,1,1&9,12,3.5,12,12.5,16,17
VII k. Mai. 7,14,6
VI k. Mai. 4,20,7
VI k. Mai. Heracl. *6,20,9
V k. Mai. Heracl. 2,21,4&2,24,4. 2,21,5. 3,42,8. 4,19,11. 4,65,19. 5,16,17&8,42,11. 6,50,13. 8,27,11. 8,55,5
V k. Mai. 4,49,8&4,52,3? 7,16,13. *8,53,10. 9,1,12
IIII k. Mai. Heracl. 7,16,14
III k. Mai. Heracl. *2,19,6. *2,20,4. *4,65,20. 8,13,13. 9,41,13
III k. Mai. *4,26,9. 8,38,4
sine die 8,44,18
prid.k. Mai.Heracl. 5,12,13. 5,71,12. 7,19,5. 8,17,8. 8,27,12. 8,53,11. 9,33,4
prid.k. Mai. 5,34,6. 7,1,2. 8,40,19. 8,44,19
k. Mai. Heracl. 8,13,14. 8,16,6. *9,20,9
k. Mai. Trallis 2,3,2&6,30,7&6,53,6. 5,3,8. 8,35,5
VI non. Mai. Mediol.(?) 4,24,9
V non. Mai. 1,22,1. 4,2,5. 5,14,6?
III non. Mai. 4,37,1
non. Mai. 4,24,10
VII id. Mai. 6,14,2
sine die 7,16,15
VI id. Mai. Hadrianop. 7,16,16
IIII id. Mai. Hadrianop. 8,13,6
IIII id. Mai. Paulino (?) 10,32,7
III id. Mai. 8,42,12
III id. Mai. Hadrianop. 8,50,10
II id. Mai. 4,6,6
XVII k. Iun. 8,53,12
XVI k. Iun. 4,57,6
XVI k. Iun. Beroeae *5,24,1
XV k. Iun. 8,13,17
XIIII k. Iun. Beroeae 6,59,2
X k. Iun. 7,16,17
VIIII k. Iun. 6,3,12
VIII k. Iun. Philippop. *2,17,3. *2,52,4
VII k. Iun. 8,42,13
VI k. Iun. 4,23,1
sine die 4,38,3
IIII k. Iun. 4,38,4

II non. Iun. 2,19,7
non. Iun. Philippop. 2,12,17
v id. Iun. 2,4,17
id. Iun. 2,20,5
xv k.... 6,23,10
xv k. Iul. Philippop. *4,49,9. 7.67.1
xv k. Iul. 6,55,3. 7,14,7
vi k. Iul. 3,33,8. 4,21,9. 8,44,20
vi k. Iul. Serdicae *8,44,21
IIII k.Iul. Serdicae 5,16,16
III k. M. 3,32,14
vi non. Iul. Philippop. 9,33,5
IIII non. Iul. Philippop. *5,12,14
prid. non. Iul. Philippop. 5,34,7. 6,23,12
prid. non. Iul. 6,23,11
vi id. Iul. Philippop. 6,26,6&6,49,4
v id. Iul. Philippop. 8,15,6
v id. Iul. 8,42,14
id. Iul. Philippop. *5,16,19. 7,16,18
XI k. Aug. 3,31,7?
VIII k. Aug. 2,45,1
vi id. Aug. 4,5,6
vi id. Aug.Viminacio 9,22,12
v id. Aug.Viminacii *5,16,20
III id.Aug.Viminacii *5,16,21
XVI k. Sept. 9,46,6?
XIIII k. Sept. Viminacio 4,50,6?
XI k. Sept. Viminacii 2,20,8
X k. Sept. 7,22,1
VIII k. Sept. 3,36,16
VII k. Sept. 4,6,7
VII k.Sept.Viminacio 6,2,11. 8,44,22
sine die 7,16,19
vi k. Sept. Viminacii *2,9,3. 6,50,14
vi k. Sept. 3,13,2. 7,16,20
sine die 8,50,15?
v k. Sept. 6,42,23? 8,42,15
v k. Sept.Viminacii 8,50,16?
v k. Sept. *Crispino* 9,9,25
III k. Sept. 2,4,18

k. Sept. Viminacii 8,35,6
v id. Sept. 4,5,7
IIII id. Sept. *Aristobulo sal.* *2,13,1
III id. Sept. Sirmi 4,12,3
xv k. Oct. 3,32,15. 8,53,14
xv k. Oct. Sirmi 8,48,3. 8,53,13.
XIIII k. Oct. Sirmi 2,4,19
XIII k. Oct. *2,42,3. 8,38,5
VIII k. Oct. Sirmi *5,71,13
v k. Oct. 5,21,2
IIII k. Oct. 2,4,20
k. Oct. Sirmi 4,36,1
v non. Oct. 2,4,21. 4,19,12
v non. Oct. Sirmi 3,41,3. 4,2,7. *4,26,10
non. Oct. Sirmi 6,38,2. 7,16,21 .
VIII id. Oct. Sirmi 4,65,21
VI id. Oct. 8,30,3
id. Oct. Sirmi 6,2,12. 6,15,3
XVI k. Nov. Sirmi *2,39,2. *4,25,4. 4,51,3. 5,37,17. *6,5,1. 6,24,9
XV k. Nov. 3,35,5. 8,42,16
XV k. Nov. Sirmi 4,44,5
XII k. Nov. Sirmi 6,17,1
sine die 8,40,20
XI k. Nov. 8,40,21
x k. Nov. 7,75,5
prid. non. Nov. 4,23,2
non. Nov. Lucione 9,20,10. 11
VII id. Nov. Sirmi 4,34,9
IIIid. Nov. Sirmi *3,44,13
id. Nov. Sirmi 3,32,16
id. Nov. 4,1,7 .
XVIII k. Dec. Sirmi *2,3,22
XVIII k. Dec 5,71,14 .
XVII k. Dec. Sirmi 2,3,23
sine die 8,27,13
XVI k. Dec. Sirmi 8,27,14
XV k. Dec. 4,2,6? 8,53,15
XII k. Dec. Sirmi 3,32,17
x k. Dec. Sirmi 4,16,4
VIII k.Dec. 2,51,2? 4,38,5. 5,11,5. 5,71,15

VII k. Dec. Sirmi 3,36,17
VI k. Dec. *6,20,10
V k. Dec. 7,16,22. 8,37,5. 8.53.16
sine die 4,44,6. 7
k. Dec. Sirmi *1,22,2. *6,2,13. 6,42,24. 7,2,12. 8,9,2. 8,13,18. 8,34,2. 8.42.17
k. Dec. 2,4,22. 2,19,9&*2,20,6&*2,31,2&4,44,8. 3,33,9. 4,19,13.14. 5,46,3. 8,25,10
II non. Dec. 5,21,3. 5,22,1
VI id. Dec. 2,42,4? 6,55,4
V id. Dec. 7,32,7
III id. Dec. 4,30,9
XVIII k. Ian. 3,36,18? 19. *4,29,15
XVII k. Ian. Sirmi 3,31,4
sine die 4,35,10. 7,72,4
IIII k. Ian. Sirmi 4,35,11
XVII k. Ian. Sirmi *2,3,24. *4,35,12. 6,30,8
XVII k. Ian. 4,2,8. 4,49,10. 7,72,5. 8,13,19
XVI k. Ian. Sirmi *2,17,4. 6,27,3. 6,30,9. *10. 6,58,5. 8,37,6
XVI k. Ian. 8,3,1. 8,19,2
XV k. Ian. 4,2,9. 8,50,11. 9,25,1
XV k. Ian. Sirmi 4,44,9. 6,39,3
XIIII k. Ian. Sirmi 9,2,12
XIII k. Ian. Sirmi 2,18,17. 3,33,10
XI k. Ian. Sirmi 6,15,4
X k. Ian. 4,49,11
VIIII k. Ian. 2,18,18. 3,32,18&8,43,2?
VIIII k. Ian. Sirmi 4,10,6
sine die 4,65,22. 23
VIII k. Ian. 2,29,2. 4,65,24. 5,3,9
VIII k. Ian. Sirmi 3,32,19. 5,12,15? 6,2,14. *6,5,2
VI k. Ian. 3,13,3. 4,19,15. 8,15,7. 8,53,11
VI k. Ian. Sirmi 6,55,5. 9,22,13
V k. Ian. Sirmi 3,34,9. *4,24,11. 6,31,4. 8,1,3
V k. Ian. 6,20,11. 8,24,2. 8,50,12. 8,53,18
sine die 7,16,23
IIII k. Ian. 7,14,8. 7,16,24
III k. Ian. Sirmi 4,10,7&9,33,3. 4,65,25. *5,17,4. 6,2,15. *7,19,6. 8,56,3. 9,22,14
sine die *ad Primosum praes. Syriae* 7,33,6

prid. k. Ian. Sirmi 5,37,18. 6,31,5&6,58,6. 8,44,23
prid. k. Ian. 5,51,9. 7,33,7
sine die 8,4,2
a. 294 CC. CONSS.[26]
k. Ian. 4,15,5
V k. Ian. 5,34,8
non. Ian. Sirmi 3,28,20&5,12,17. *5,12,16. 5,61,2
XVIIII k. Febr. 3,6,2
XVII k. Febr. Sirmi 6,37,16
XVIII k. Febr. 8,13,20
XVII k. Febr. Sirmi 4,29,16
XVII k. Febr. 5,59,1&8,37,7 .
XVI k. Febr. Sirmi 6,50,15. *16. 8,53,19
XIIII k. Febr. Sirmi *5,12,18
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a. 321 CRISPO II ET CONSTANTINO II CC. CONSS.
prid. id. Ian. Sirmi *ad Maximum* 3,1,9&7,62,16
XIIII k. Febr. Sirmio *Dalmaiio* 10,52,6?
VIII id. Febr. Serdicae *ad Claudium praes. Daciae* 3,28,28
III k. Mart. Serdicae *Petronio* 5,16,24
pp. V non. Mart. *Helpidio* 3,12,2
V id. April. Thessal. pp. III k. Iun. Rom. *ad Verinum pu.* 2,44,2?
XIIII k. Mai. *Hosio episc.* 1,13,2
XIII k. Iun. Sirmi *ad Bassum pu.* 7,66,6
X k. Iun. Aquil. *ad Bassum pu.* 9,18,4
VI k. Iun. Viminacio *Relpidio agenti vice pp.* 8,10,6
k. Iul. *ad Iunium Rufum cons. Aemiliae* 4,61,4
pp. V non. Iul. Rom. *ad populum* 1,2,1
III id. Iul. *Menandro* 4,61,5
XVIII k. Oct. Sirmio *ad Maximum pu.* 9,51,13
d. (pp.?) XII k. Dec. Rom. *ad Ianuarinum* 7,13,2&9,24,1
d. (pp.?) Romae k. ... *ad Bassum* 3,36,26

a. 322 PROBIANO ET IULIANO CONSS.
pp. Rom. VIII k. April. *ad Maximum* 3,11,5
prid. id. Iun. Sirmio *ad Maximum pu.* 7,16,42
VII k. Aug. Savariae *ad Lusitanos* 1,23,4
d. XV k. Ian. Serdicae *ad Severum* 5,71,18?

a. 323 SEVERO ET RUFINO CONSS.
d. (pp.?) id. April. Cp. *ad Florentium pp.* 1,56,1
d. id. April. Sirmi *ad Severum* 3,12,3
IIII k. Mai. *Aelio pp.* 12,35,9&12,42,1
XV k. Iun. Thessal. *ad Maximum pu.* 7,18,3&8,46,10
a. 324 CRISPO III ET CONSTANTINO III CONSS.
XIIII k. Febr. Sirmio *Dalmatio* 10,52,6?
pp. VII id. Iul. Carthag. *ad Hilarianum proc. Afr.* 10,32,16

a. 325 PAULINO ET IULIANO CONSS.
prid. non. Mart. [acc. ...] Trev. 10,75,1
III k. April. *Helladio* 2,6,5
x k. Iun. Nicaeae *Severo pu.* 1,19,2
XIII k. Aug. *ad Euphrasium rationalem trium provinc.* 10,72,1&10,73,1
III k. Aug. *ad Severum pu.* 3,1,10
pp. Beryto k. Oct. *Maximo pp.* 11,44,1
pp. VIII k. Ian. *ad Maximum vtc. Or.* 10,39,5
a. 326 CONSTANTINO A. VII ET CONSTANTIO C. CONSS.
III non. Febr. Heracleae *ad Euagrium* 9,4,2: *Africano* 9,9,28
pp. XV k. Mart. *ad Acindynum pp.* 12,50,2
id. Mart. Sirmi *ad populum* 2,27,2&4,32,25&5,37,22&5,72,4
pp. Nicomed. VII k. Mai. *ad Euagrium* 9,9,29
XVI k. Iun. *ad Euagrium pp.* 10,32,17
pp. x k. Iun. *ad Severum pu.* 12,30,1
pp. XVIII k. Iul. Caesareae *ad populum* 5,26,1
prid. non. Iul. Mediol. *ad Tertullum proc. Afr.* 9,24,2
VII k. Aug. Naisso. pp. Rom. non. Oct. *ad Bassum pp.* 2,52,5
pp. k. Sept. Gerasto *ad Bracilianum* 1,5,1
x k. Oct. Aquii. *ad Euagrium pp.* 2,19,11
x k. Nov. Mediol. *Severo* 8,5,1
prid. k. Ian. Sirmio 10,1,7
pp. XV k. ... Lastronae *Mastichiano pf. ann.* *6,62,1
a. 327 CONSTANTIO ET MAXIMO CONSS.
XV k. Iun. Serdicae *ad Afros* 10,21,1
XIIII k. Aug. pp. Romae ad senatum *ad Iulianum pu.* 2,52,6
prid. k. Aug. *Victori rationali urbis Rom.* 7,62,18
a. 328 IANUARINO ET IUSTO CONSS.
lecta VII id. Mai. Rom. *ad Aemilianum pp.* 11,48,1
IIII k. Ian. [acc. ...] Trev. *ad Maximum pp.* 1,40,2. 12,46,2
a. 329 CONSTANTINO A. VIII ET CONSTANTIO C. IIII CONSS.
XV k. Sept. Serdicae *provincialibus suis* 4,43,2
pp. VIII k. Oct. Rom. *ad populum* 1,19,3
III k. Oct. Serdicae 10,32,18
VIII k. Nov. Heracl. *ad Lucretium Paternum* 10,32,19
a. 330 GALLICANO ET SYMMACHO CONSS.
VI k. Mart. Bessi *ad Tertullianum* 3,39,3&8,4,5
IIII k. Mai. *Valeriano agenti vic. praef.* 1,18,11

xv k. Iun. *ad Maximilianum cons. aquarum* 11,43,1
lecta apud acta xii k. Iul. *ad Bassum pp.* 3,39,4
a. 331 BASSO ET ABLABIO CONSS.
k. Aug. pp. k. Sept. Cp. *ad universos provinciales* 1,21,3&*3,13,4&3,1 9,2&7,62,19&8,36,2
prid. non. Aug. *ad Euagrium pp.* 12,47,1
pp. k. Nov. Cp. *ad provinciales* 1,40,3
a. 332 PACATIANO ET HILARIANO CONSS.
prid. id. April. Marcianop. *ad Pacatianum pu.* 5,1,2
iii... Iun. *ad Maximum pp.* 6,36,7
xv k. Sept. Cp. *ad Tiberianum com. Hisp.* 6,1,6
a. 333 DALMATIO ET ZENOPHILO CONSS.
xiiii k. Mai. Cp. *Felici* 5,37,23
iiii non. Mai. Cp. *ad Severum com. Hisp.* 4,21,14&8,53,27
pp. v k. Oct. Cp. *ad populum* 10,53,6
** k. Nov. Aquis *ad Felicem* 11,8,2
iii id. Nov. Aquis *ad Pompeianum cons. Camp.* 1,22,4
a. 334 OPTATO ET PAULINO CONSS.
iii k. Mai. *Gerulo rationali trium prov.* 3,38,11
xiiii k. Iun. *Veroniciano vic. Asiae* 12,49,1
xv k. Iul. Cp. *ad Andronicum* 3,14,1
viii k. Sept. Naisso *ad Iulianum praes.* 4,20,9
a. 335 CONSTANTIO ET ALBINO CONSS.
xi k. April. Cp. *ad provinciales* 10,11,5
id. Iul. Cp. [acc. xiii k. Mai. Hispali] Nepotiano et Facundo conss. *ad Tiberianum vic. Hisp.* 5,3,16
d. (?) x k. Nov. Nicopoli *ad Periclem praes.* 1,40,4
a. 336 NEPOTIANO ET FACUNDO CONSS.
id. Mart *ad Calpurnianum* 3,8,4
lecta xii k. Aug. Cp. *ad Gregorium* 5,27,1
a. 337 FELICIANO ET TITIANO CONSS.
iiii non. Aug. *ad Maximum pp.* 10,66,1
sine die Naisso *ad Dalmatium* 5,17,3
a. 337–340 [*IMPPP. CONSTANTINUS CONSTANTIUS ET CONSTANS AAA.*][27]
a. 337 FELICIANO ET TITIANO CONSS.

[27] *Inscriptiones huius temporis quod ad imperatorum nomina attinet partim propter compendia scripturae partim propter compilatorum errores incertae sunt: constat tamen trium imperatorum nomina simul non legi, Constantem vulgo iungi cum Constantino, Constantini paucas, Constantii plerasque auctoris nomen solum proferre*

VIII (prid.) id. Dec. Thessal. *imp. Constantinus A. ad Egnatium Faustinum praes. Baeticae* 4,46,3&11,59,2

a. 338 URSO ET POLEMIO CONSS.

VI k. Aug. Sirmio *impp. Constantius et Constans AA.* (*imp. Constantius A.* 10,48,7?) *ad Catullinum vic.* 8,11,1&10,48,7?

a. 339 CONSTANTIO A. II ET CONSTANTE A. CONSS.

k. Febr. Serdicae *imp.* **Constantius A. ad populum* 6,9,9&6,23,15&6,37,21

III non. Febr. *imp. Constantius A. ad Uranium* 10,16,5

pp. prid. id. Mart. Heliopoli *imp. Constantius A. ad Dionysium* *6,9,8

id. Aug. Cp. *imp. Constantius A. ad Euagrium* 1,10,1

a. 340 ACINDYNO ET PROCULO CONSS.

XII k. Febr. Naisso *impp. Constantius et Constans AA. ordini civit. Constantinae Cirtensium* 10,32,20

a. 340–350 *IMPP. CONSTANTIUS ET CONSTANS AA.*[28]

sine conss. *Philippo pp.* 12,1,4: *ad Clearchum pu.*12,1,5?

a. 340 ACINDYNO ET PROCULO CONSS.

non. April. *Acindyno pp.* 9,4,3

V id. April. Aquileiae *ad Petronium vic. Afr.* 3,11,6

VII k. Iul. Mediol. *ad Titianum pu.* 9,19,2

prid. id. Aug. Bessae *Nemesiano com.* 10,32,21

V id. Oct. *Leontio pp.* 12,41,1?

a. 341 MARCELLINO ET PROBINO CONSS.

prid. id. Febr. Antiochiae *edictum ad Heliopolitanos* 11,66,1

VII id. April. *Albino* 7,62,20

VIII k. Iul. Lauriaco *ad Catullinum pp.* 10,71,1

a. 342 CONSTANTIO III ET CONSTANTE II AA. CONSS.

X k. Febr. *Marcellino praes. Phoenice* 2,57,1

prid. non. Dec. *Mediol. pp. Romae* VN *k. Ian. ad populum* 9,9,30?

a. 343 PLACIDO ET ROMULO CONSS.

VIII k. Febr. Bononiae *ad Italicum* 3,26,5?&11,75,1

prid. k. Iul. [acc. ...] Triv. *ad Titianum* 10,65,4

VI k. Sept. *clericis sal. dicit* 1,3,1

a. 344 LEONTIO ET SALLUSTIO CONSS.

III k. Iul. *Eubulidae vic. Afr.* 12,61,2

prid. non. Iul. *ad Leontium pp.* 10,66,2

V id. Dec. *ad Hieroclem cons. Syriae Coeles* 7,65,2

a. 345 AMANTIO ET ALBINO CONSS.

IIII id. Mai. Nizibi *Nemesiano com. larg.* 10,19,3

[28] *Constantii constitutiones pleraegue eum solum nominant*

a. 346 Constantio IIII et Constante III AA. conss.
non. Mai. Cp. *ad Veronicianum vic. Asiae* 12,23,1
id. Oct. *Theodoro praes. Arabiae* 9,47,18?
prid. non. Dec. Mediol. pp. Rom. XVII k. Ian. *ad populum* 9,9,30?
a. 347 Rufino et Eusebio conss.
v id. Mart. Hierapoli *Bonoso mag. equitum* 6,62,2
a. 348 Philippo et Salia conss.
xv k. Iul. Mediol. *Orioni c. r. p.* 10,14,1
a. 349 Limenio et catullino conss.
XVI k. Mart. *ad Bulephorum rationalem summae rei* 3,26,7
VIII id. Mart. pp. Rom. *ad Eustathium pp.* 10,19,4
v k. April. *ad Limenium pp.* 9,19,3
VIII id. April. *ad Leontium com. Or.* 6,14,3&6,30,15
III k. Iun. *Titiano* pp. 12,35,10
XII k. Oct. *ad Philippum* pp. 8,55,7
v non. Oct. Cp. *ad Marcellinum com. Or.* 8,11,2&10,37,1
v k. Ian. *Rufino pp.* 6,62,3
a. 350–351 *IMP. CONSTANTIUS A.*
sine conss. *ad Orfitum pu.* 12,1,6
a. 352 Constantio A. v et Constantio C. conss.
v k. Mart. Sirmi *ad Rufinum pp.* 6,22,5
a. 352 Constantio A. VI et Constantio II conss.
III id. Aug. *ad Euagrium pp.* 12,46,3
a. 354 Constantio A. VII et Constantio III conss.
k. Dec. *ad Taurum pp.* 1.11.1
a. 355 Arbitione et Lolliano conss.
XII k. Mart. Mediol. *ad Volusianum pu.*(?) 6,22,6
v k. April. *ad Orfitum pu.* 8,55,8
XI k. Aug. Mediol. acc. XII k. Sept. *ad Lollianum pp.* 12,22,1
VIII k. Aug. Messadensi. pp. Capuae *ad Lollianum pp.* 7,62,21
III k. Aug. *ad Volusianum pp.* 7,62,22
a. 355–361 ***IMP. CONSTANTIUS A. ET IULIANUS C.***
a. 357 Constantio A. VIIII et Iuliano C. II conss.
VIII k. Febr. Mediol. *ad populum* 9,18,5
k. April. Mediol. *ad Taurum pp.* 10,48,8
xv k. Mai. Medioi. *ad Taurum pp.* 12,22,2
III k. Mai. Med. *ad Dulcitium cons. Aemiliae* 11,48,2
k. Iun. Kom. *Olybrio pu.* 11,2,1
id. lun. Med. *ad poputum* 9,19,4
VIII k. lul. Med. *ad Taurum pp.* 12,50,3

v non. Iul. Med. *ad Thalassium pp.* 1,7,1
prid. non. Dec. Med. *ad populum* 9,18,6
VIII id. Dec. Med. lecta v k. Ian. apud acta *Felici episc.* 1,3,2

a. 358 DATIANO ET CEREALE CONSS.
v non. Mart. Sirmi *ad Taurum pp.* 3,26,8
VI k. Iun. Med. acc. (acc. Med.?) VIII id. Iul. *ad Taurum pp.* 12,57,2
d. (?) III non. Iul. Arimini *ad Taurum pp.* 9,18,7
XIIII k. Ian. Sirmio *ad Maximum praes. Ciliciae* 3,30,1

a. 359 EUSEBIO ET HYPATIO CONSS.
d. (?) et pp. Rom. in foro Traiani k. Nov. (pp. prid. k. Dec. 12,22,3) *ad agentes in rebus* 1,31,1&12,22,3
III k. Ian. *ad senatum* 1,39,1

a. 360 CONSTANTIO A. X ET IULIANO C. III CONSS.
XVI k. Iun. Hierapoli *Helpidio pp.* 12,37,1
d. epistula prid. k. Iui. Mediol. *ad Taurum pp.* 1,3,3

a. 361 TAURO ET FLORENTIO CONNS.
v non. Mai. *ad senatum* 7,62,23&12,1,7
XIIII k. Iun. *Olybrio* 3,29,9
IIII k. Sept. *ad Taurum pp.* 1,3,4

a. 361–363 *IMP. IULIANUS A.*
sine die *Atarbino* 11,70,1

a. 362 MAMERTINO ET NEVITTA CONSS.
non. Febr. Cp. *Sallustio pp.* 12,1,8
v k. April. 11,65,3
XV k. Mai. Cp. *ad Iulianum com. Or.* *1,4,1&*4,63,1
emissa XV k. Iul. *Germaniano pp.* 7,67,2
XV k. Iul. acc. IIII k. Aug. Spoletio 10,53,7
v k. Aug. Antiochiae *Secundo pp.* 3,3,5
v k. Sept. Antiochiae *Iuliano com. Or.* 10,32,22
III non. Sept. Antiochiae *Secundo pp.* 3,40,1
v id. Sept. *ad Mamertinum pp.* 12,50,4
VII k. Nov. [Antiochiae acc. XV k. April. Carthag.] Iuliano A. IIII et Sallustio conss. *ad Avitianum vic. Afr.* 8,10,7
pp. Beryto k. Nov. Iuliano *com. Or.* 10,32,23
pp. IIII non. Dec. Antiochiae *Ecdicio pf. Aegypti* 8,11,3&4

a. 363 IULIANO A. IIII ET SALLUSTIO CONSS.
lecta apud acta prid. non. Febr. *Secundo pp.* 2,12,23
prid. id. Febr. Antiochiae *ad populum* 9,19,5
XIIII k. Mart. Antiochiae *ad Secundum pp.* 4,47,3
k. Mart. Antiochiae *Leontio cons. Palaest.* 10,32,24

vii id. Mart. Antiochiae *ad Iulianum com. Or.* 8,35,12
pp. iii id. Mart. Cp. *Secundo pp.* 11,70,2?
viiii k. Mai. Salonae (?) *ad Mamertinum pp.* 10,73,2

a. 363–364 *IMP. IOVIANUS A.*

a. 363
v k. Oct. Edessa [acc...] Ioviano et Varroniano conss. *Secundo pp.* 12,37,2

a. 364 Ioviano A. et Varroniano conss.
v non. Ian. Ancyro *ad Apronianum pu.* *1,40,5.
d. xi k. Mart. Antiochiae *Secundo pp.* 1,3,5[29]

a. 364–367 (373) *IMP. VALENTINIANUS ET VALENS AA.*[30]

sine conss. *ad Ampelium pu.* 1,28,2: *ad Probum pp.* 4,60,1: *ad Modestum pp.* 10,32,30: *ad Equitium mag. eq. et ped.* 11,68,3: *ad Symmachum pu.* 12,1,9

a. 364 Divo Ioviano et Varroniano conss.
vi id. April. *ad Volusianum pu.* 10,26,1
viii k. Iun. *Philippop. *ad Symmachum pu.* 8,11,5
vii k. Iun. *ad Mamertinum pp.* 11,59,3
vi k. *Iun. Bonamansione *ad Victorem mag. mil.* 12,37,3
viii k. Sept. Arelate *Artemio praes.* 10,26,2
prid. id. Sept. Aquil. *ad Byzacenos* 10,32,25
xiii k. Oct. Aquil. acc. xv k. Nov. Salerni *ad Artemium correctorem* 12,54,1
iii non. Oct. Altino *ad Bulephorum cons. Campaniae* 11,47,1
viii id. Oct. Altino *ad Symmachum pu.* 11,27,1
prid. k. Nov. [acc ...] Rom. Val. et Val. AA. conss. *ad Mamertinum pp.* 10,72,3?
prid. k. Nov. Philippop. *ad Mamertinum pp.* 12,31,1?
prid. non. *Nov. Med. *sal. dicunt ordini civitatis Carthag.* 7,62,24
xv k. Dec. [acc ...] Hadrumeto Valentiniano et Valente AA. conss. *ad Bracontium vic. Afr.* 10,1,8?
vi id. Dec. [*Sallustio pp.?*] 3,40,2

a. 365 Valentiniano et Valente AA. conss.[31]
xi k. Febr. Med. *Valentino cons. Piceni* 9,3,1
iii k. Febr. Med. *ad Mamertinum pp.* 12,52,1
xiiii k. Mart. *Cp. edictum* 9,36,1: *ad Clearchum* 12,49,2

[29] *immo Iuliani lex est data a.* 363
[30] Gratianum *addunt a.* 366 4,61,7. 8,50,19, *cf.* 11,23,1 *et not. ad a. 366*
[31] *a compilatoribus et Iustiniani et Theodosiani Codicis anni* 365. 368. 370. 373 *passim confunduntur*

x k. Mart. Med. *ad Florentium c. s. l.* 4,61,6
VIII k. April. Med. *ad Symmachum corr. Lucaniae ei Brittiorum* 12,50,5
II non. April. Med. *ad Volusianum pu.* *1,28,1
XV k. Iul. Med. *ad Bracontium vic. Afr.* 10,16,6
V k. Iul. *Tyrici Senecae defensori* 1,55,1?
IIII k. Iul. Med. *ad Volusianum pu.* 10,32,28: *ad Germanianum c. s. l.* 11,8,3
III non. Iul. [*Heracliae ad Philippum vic.*?] 3,26,9
XV k. Aug. *ad Mamertinum pp.* 12,54,2?
VIIII k. Aug. *ad Volusianum pu.* 7,39,2
prid. k. Aug. Med. *ad Faventium vic. Italiae* 11,48,3
III id. Aug. Op. *ad Secundum pp.* *10,72,2
XV k. Oct. [acc. ?] Rom. *ad Volusianum pu.* l,19,5
VIIII k. Oct. Luceriae *ad Rufinum pp.* 11,61,1
VIII k. Oct. Med. *ad Germanianum c. s. l.* 11,62,3
VI non. Oct. *Festo cons. Syriae* 12,57,3
III id. Oct. *ad Germanianum pp. Gall.* 10,32,29
acc. (?) XV k. Dec. Hadrumeto *ad Bracontium vic. Afr.* 10,1,8?
XI k. Dec. *ad Probum pp. Gall.* 7,38,1
prid. k. Dec. *ad senatum* 9,15,1
IIII id. Dec. Parisiis *ad Cresconium com. metall.* 11,7,1
prid. id. Dec. Parisiis *Rufino pp.* 12,49,3

a. 366 GRATIANO NP.[32] ET DAGALAIFO CONSS.[33]
pp. Beryto IIII k. Febr. *ad Archeiaum com. Or.* 4,61,7?
XIIII k. Iun. Remis *ad Germanianum c. s. l.* 11,65,4
VIII k. Iun. *ad Festum proc. Afr.* 3,16,1
XVIII k. Iul. Remis *ad Iulianum pf. ann.* 11,23,1
V k. lul. Remis *ad Severianum ducem* 8,50,19
XV k. Oct. Mantebri *ad Florentium c. s. l.* 10,72,4
VII k. Dec. Remis *ad Valerianum* 9,46,7
XIII k. Ian. *ad Germanianum* 1,56,2
sine die *ad Ruricium praes. Tripol.* 11,48,5: *ad Germanianum pp. Gall.* 11,48,6

a. 367 LUPICINO ET IOVINO VV. CC. CONSS.
VI id. Ian. Rom. (?) *ad Germanianum c. s. l.* 10,72,5&11,7,2&11,11,1?

[32] A. *pro* np. 8,50,19. 11,23,1
[33] post cons. Val. et Val. AA. 4,61,7

pp. XIII k. Mai. *ad Germanianum c. s. I.* 11,63,2

a. 367(366)–375(377) ***IMPPP. VALENTINIANUS VALENS ET GRATIANUS AAA.***[34]

sine conss. *ad Theodosium mag. mil.* 4,41,1: *ad Iulianum pp. (pf. ann.?)* 11,11,2: *ad Maximum pp.* 11,48,7: *ad Probum pp.* 11,48,8: *ad Claudium* 11,75,2

a. 367 LUPICINO ET IOVINO VV. CC. CONSS.

XV k. Sept. Ambianis *ad Praetextatum pu.* 8,49,1
III k. Oct. *Aureliano pf. ann.* 11,3,1
III id. Oct. Trev. *ad Florianum c. r. p.* 6,4,2&11,68,4?

a. 368 VALENTINIANO II ET VALENTE II AA. CONSS.[32]

III k. Febr. Triv. *ad Praetextatum pu.* *10,53,9
III id. Mart. Trev. *ad Probum pp.* 10,6,1?
id. Mart. Trev. *ad Florianum c. r. p.* 11,62,4&11,66,2?
VIIII k. Mai. Trev. *Mauris Sitifensibus* 10,32,27?
prid. non. Mai. Trev. *Remigio mag. off.* 1,9,4?
pp. Rom. XV k. Sept. *ad Olybrium pu.* 2,6,6&7,85,4
prid. k. Oct. Agrippinae *ad Probum pp.* 11,55,2
III non. Nov. *ad Probum pp.* 1,55,2?
XIIII k. Dec. Marcianop. *Auxonio pp.* 12,39,1
id. Dec. Marcianop. *ad Auxonium pp.* 11,8,4
VI k. Ian. *ad Honoratum cons. Byzacii* 1,33,1
III k. Ian. Trev. *ad Viventium pp.* 7,61,2

a. 369 VALENTINIANO NP. ET VICTORE CONSS.

XIIII k. Febr. [acc.] Sirmi *ad Probum pp.* 10,53,8
pp. Beryto IIII k. Febr. *ad Archelaum com. Or.* 4,61,7
X k. Mart. Trev. *ad Viventium pp.* 10,24,1
VII k. Mart. Trev. *Olybrio pu.* 7,51,2
IIII k. April. *ad Florianum c. r. p.* 10,10,3
V non. Mai. Marcianop. *ad Auxonium pp.* 12,37,4
IIII non. Mai. Trev. *ad Olybrium pu.* 3,12,4
III non. Mai. Trev. *ad Probum pp.* 9,49,7
VI id. Mai. Trev. *ad Apodemium* 7,61,3
prid. id. Mai. *ad Artemium vic. Hisp.* 10,30,1
V non. Iul. Novioduni. acc. XV k. Aug. Marcianop. *Archelao c. s. l.* 10,2,4&11,9,1
VIII id. Iul. *ad Olybrium pu.* 9,8,4: *ad Claudium pu.* 1,4,2&7,65,4
prid. id. Oct. Trev. *ad Probum pp.* 9,42,3

[34] *Gratianum om. non solum eae constitutiones a.* 368. 370. 373, *quae errore compilatorum ad a.* 365 *relatae sunt, sed aliae quoque a.* 367–372

III id. Nov. Trev. *ad Viventium pp.* 10,3,5
indictione XII *Auxonio pp.* 11,13,1
a. 370 VALENTINIANO ET VALENTE III AA. CONSS.[35]
k. Mart. Trev. *ad Olybrium pu.* 2,6,7
VII id. Mart. Marcianop. *ad Felicem c. s. l.* 10,3,6
vi id. Mart. *ad Olybrium pu.* 10,53,10
d. (?) vi id. April. Sirmio *ad Probum pp.* 12,37,5
III id. April. *Olybrio pu.* 9,47,19
k. Dec. Triv. *ad Claudium proc. Afr.* 10,48,9?
prid. id. Dec. Cp. *ad Modestum pp.* 9,18,8?
a. 371 GRATIANO A. II ET PROBO CONSS.
XII k. Febr. *ad Probum pp.* 7,44,2
II id. April. *ad Felicem cons. (c. s. l.?)* 6,1,7
k. Mai. Cp. *ad Modestum pp.* 11,18,4?
XIIII k. Iun. Trev. *ad senatum* 9,43,3
III k. Iul. Contionaci *ad Probum pp.* 9,4,4
IIII id. Iul. Contionaci *ad Crescentem vic. Afr.* 11,59,4
III id. Iul. *ad Probum pp.* 6,3,13. 11,53,1
III id. Iul. Ancyrae *ad Modestum pp.* 10,32,31
XVII k. Aug. *ad senaium* 5,4,18
VII id. Aug. Contionaci *ad Maximum* 6,22,7
III id. Dec. Triv. *ad Ampelium pu.* 12,50,6
X k. Ian. *Severo mag. mil.* 12,59,1
a. 372 MODESTO ET ARINTHEO CONSS.
XVI k. Iun. *ad Probum pp.* 12,57,4
d. pp. Bersti (?) non. Iun. *ad Modestum pp.* 11,6,2
III non. Iul. Nasonaci. acc. III non. Sept. *ad Ampelium pu.* 12,4,1& 12,12,1
XII k. Sept. *Seleuciae *ad Philematium c. s. l.* 11,8,5
a. 373 VALENTINIANO ET VALENTE IIII AA. CONSS.[36]
pp. Beryto k. Ian. *ad Modestum pp.* 10,32,26
IIII id. Iun. Cyzico *ad Modestum pp.* 7,65,3
XIII k. Iul. Apolloniae *ad Zosimum praes. Epiri novae* 12,24,1
IIII id. Aug. Hierapoli *ad senatum* 1,55,3
XIIII k. Oct. Hierapoli *Modesto pp.* 12,43,1
XIIII k. Dec. Med. *ad Zosimum praes. Epiri novae* 12,52,2
a. 374 GRATIANO A. III ET EQUITIO CONSS.
pp. VII id. Febr. Rom. *ad Probum pp.* 9,16,7

[35] Valent. et Valente AA. conss. *pleraeque constitutiones, cf. not. ad a.* 365
[36] imppp. Valent. Val. et Grat. AAA *a.*376 9,41,16: *a.* 377 12,23,2. 12,50,7: *cf.* 3,12,5

III non. Mart. *ad Probum pp.* 8,51,2
pp. Rom. x k. April. *Simplicio vic.* 9,39,1
III non. Dec. Trev. *ad Probum pp.* 7,44,3
sine die *Tatiano c. s. l.* 4,63,2?

a. 375 POST CONS. GRATIANI A. III ET EQUITII VC.
v id. April. Trev. *ad Chilonem* 10,72,6
III non. Aug. *Chiloni proc. Afr.* 11,3,2
prid. id. Aug. Carnunti *Laodicio praes. Sard.* *9,1,19
III non. Dec. Antiochiae *Modesto pp.* 12,57,5

a. 376–378 *IMPPP. VALENS GRATIANUS ET VALENTINIANUS AAA.*[33]
sine conss. *ad Antonium pp.* 11,59,5

a. 376 VALENTE V ET VALENTINIANO AA. CONSS.
lecta in senatu III id. Febr. *ad senatum* 3,24,2?
VI id. Mart. Triv. *ad Hesperium proc. Afr.* 11,41,1
pp. XVI k. Mai. Romae *ad Maximinum pp.* 9,22,28
III id. Iul. *ad Rufinum pp.* 1,28,3&12,58,1
XV k. Oct. Trev. *ad Antonium pp. Gall.* 9,41,16
lecta k. Dec. *ad Gracchum pu.* 3,5,1&4,20,10

a. 377 GRATIANO A. IIII ET MEROBAUDE VC. CONSS.
prid. non. Ian. Trev. *ad Gracchum pu.* 12,1,10
VIII id. Ian. *Antonio pp.* 1,38,1
XII k. Febr. *ad Hesperium pp.* 1,38,2
VIII k. Febr. Antiochiae *Titiano c. s. l.* 12,23,2
III k. Mart. Triv. *ad Hesperium pp.* 12,50,7
III non. Mart. *ad Cataphronium* 1,3,6
prid. non. April. Antiochiae *ad Modestum pp.* 12,37,6
prid. non. Iul. Hierapoli *Fortunatiano c. r. p.* 10,2,5
v id. Aug. Hierapoli *Modesto pp.* 12,39,2
XVIII k. ... Hierapoli *ad Procopium* 12,1,11
XVI k. Nov. Cp. *ad Florianum vic. Asiae* 1,6,1
XIII k. Nov. *ad Modestum pp.* 8,10,8
IIII non. Nov. *ad Modestum pp.* 11,62 5

a. 378 VALENTE VI ET VALENTINIANO II AA. CONSS.
prid. id. Ian. Trev. *ad Antonium pp.* 4,19,24&9,31,1
III k. Febr. Trev. *ad Thalassium proc. Afr.* 7,65,5
XII k. Mai. Triv. *ad Ausonium pp.* 12,50,8
XV k. Sept. Rav. *ad Antonium pp.* 2,7,2

a. 379–384 (386) *IMPPP. GRATIANUS VALENTINIANUS ET THEODOSIUS AAA.*

sine conss. *ad Eusignium* pp. 1,29,1: *Palladio c. s. l.* 4,61,9: *Arintheo pp.* (?) 11,11,3: *ad Hesperium proc. Afr.* 11,66,3: *ad Nebridium c. r. p.* 11,66,4: *ad Florum pp.* 11,71,1

a. 379 AUSONIO ET OLYBRIO CONSS.

non. April. Triv. *ad Hypatium pu.* 7,65,6
prid. non. Iul. Scupis *Pancratio c. r. p.* 12,23,3
III k. Aug. Med. *ad Hesperium pp.* 6,32,4
III non. Aug. Med. acc. XIII k. Sept. *ad Hesperium pp.* 1,5,2
X k. Oct. Rom. *ad Potitum vic.* 7,48,4
k. Oct. *ad Syagrium mag. off.* 12,42,2
VIII k. Nov. *ad Potitum vic.* 3,2,1
VIII id. Dec. Sirmio *ad Hesperium pp.* 12,23,4

a. 380 GRATIANO V ET THEODOSIO AA. CONSS.

VIII id. Ian. *Eutropio pp.* 1,54,4
XVIII k. Febr. Thessal. *Neoterio pp.* 12,1,12
VIII id. Febr. Triv. *navicularììs Afris sal.* 11,6,3
pp. Carthagine III k. Mart. post cons. Ausonii et Olybrii *ad Eucherium* 11,8,6
III k. Mart. Thessal. *ad populum urbis Cp.* 1,1,1&9,29,1
prid. id. Mart. Aquil. post cons. Ausonii et Olybrii *ad Hesperium pp.* 11,8,7
XVI k. April. Thessal. *ad Neoterium pp.* 10,32,32
VI k. April. Thessal. *Albuciano vic. Maced.* 3,12,5
XV k. Iul. Thessal. *Eutropio pp.* 5,1,3?&5,2,1&6,23,16&9,49,8&12,7,1: *Neoterio pp.* 5,7,1: *Tatiano pp.* 8,36,3
XIIII k. Iul. *ad Syagrium pp.* 7,62,25
VIII k. Iul. Thessal. *Restituto pu.* 12,4,2&12,6,1
pp. id. Iul. Rom. *ad Syagrium pp.* 7,13,4&12,45,1
VI id. Sept. Sirmio *Neotiterio* 12,47,2?
XVI k. Dec. Thessal. *Eutropio pp.* 10,12,1
XV k. Ian. *Eutropio pp.* 5,9,1&6,56,4
III k. Ian. Cp. *Eutropio pp.* 9,3,2&9,4,5

a. 381 EUCHERIO ET SYAGRIO VV. CC. CONSS.

IIII id. Ian. Cp. *Eutropio pp.* 1,1,2
III non. Febr. Cp. *Eutropio pp.* 12,28,3
VIII k. Mai. *Aquil. *ad Valerianum pu.* 11,41,2*&3
III k. Iun. Cp. *Eutropio pp.* 5,9,2
III non. Iun. Cp. *Eutropio* 2,4,40
prid. non. Iun. Cp. *Eutropio pp.* 11,58,2
IIII k. Iul. Cp. 1,3,7

prid. non. Iul. Cp. acc. XII k. Aug. *Palladio c. s. l.* 4,61,8
XII k. Aug. Heracl. *Palladio c. s. l.* 10,6,2: *Eutropio pp.* 10,32,33
III k. Aug. Heracl. *Pancratio pu.* 1,2,2
VIII non. Sept. *Cynegio pp.* 5,20,1
IIII k. Oct. Cp. *Eutropio pp.* 5,34,12
a. 382 ANTONIO ET SYAGRIO CONSS.
VIII k. Mart. Cp. *Floro pp.* 1,19,4
III k. April. Cp. *Floro pp.* 11,9,2: *omnibus rectoribus prov.* 12,49,4
prid. non. April. *Pancratio pu.* 2,12,24&8,4,6
III id. April. Cp. *have Lampadi k. n.* 10,75,2
pp. Carthag. id. April. post cons. Syagrii et Eucherii *ad Hypatium pp.* 10,48,10
d. (?) id. Mai. Tyro metropol. pp. Beryto *Eutropio pp.* 12,43,2?
XV K. Iun. Cp. *Floro pp.* 4,19,25&9,46,9
VII k. Iun. Med. *ad proconss. vicarios omnesque rectores* 10,18,1
prid. id. Iun. Cp. *Matroniano duci et praes. Sardiniae* 9,27,1
XII k. Iul. Patavi *ad Severum pu.* 11,26,1
X k. Aug. Cp. *Floro pp.* 12,50,9
XV k. Sept. Verona *Flaviano pp. Ill.* 9,47,20
X k. Sept. *Floro pp.* 9,27,2
IIII k. Sept. Cp. *Floro pp.* 11,7,3
lecta III k. Sept. Capuae *ad Syagrium pp.* 10,48,11
pp. Beryto d. XII k. Oct. *Philagrio com. Or.* 12,50,10
X k. Nov. Cp. *Floro pp.* 10,32,34
VII k. Nov. Cp. *Panhellenio cons. Lydiae* 10,11,6
V id. Dec. *ad Hypatium pp.* 10,48,12
XV k. Ian. Cp. *Floro pp.* 5,9,3
a. 383 MEROBAUDE II ET SATURNINO CONSS.
XV k. Febr. Cp. *Nebridio c. r. p.* 11,59,6&11,71,2?
IIII non. Febr. Cp. *Floro pp.* 12,63,1
XI k. Mart. Med. *ad Hilarianum pp.* 6,57,4
III non. Mart. Med. *ad populum* 10,25,1&11,48,9
prid. non. April. Med. *Marcellino* 9,27,3
VIII id. April. Cp. *Postumiano pp.* 10,32,35
XIIII k. Mai. Med. *Hypatio pp.* 1,9,5
III k. Mai. Cp. post cons. Antonii et Syagrii *have Hypati k. n.* 10,72,7
VI non. Mai. Med. *ad Hypatium pp.* 4,44,15
XV k. Iun. Patavii *ad Hypatium* 1,7,2
VI k. Iun. Patavi *Mariniano vic. Hisp.* 9,2,13
III id. Iun. Cp. *ad Proculum* 8,11,6

xvi k. Iul. *Veronae *ad Basilium c. s. l.* 10,32,36
xvi k. Iul. Veronae. acc. prid. k. Aug. *ad Eusignium proc. Afr.* 1,15,1
xiiii k. Aug. Cp. *Postumiano pp.* 10,32,37
xii k. Aug. *Lolliano* 10,23,1
v id. Oct. Cp. *Nebridio c. r. p.* 12,23,5
vii k. Nov. Med. [acc.] post. cons. Merob. ii et Saturnini *ad Probum pp.* 12,23,6
pp. xvii k. Ian. *ad Ammianum c. r. p.* 2,9,4
sine die *Postumiano pp.* 11,63,3

a. 384 RICOMERE ET CLEARCHO CONSS.
xv k. Febr. Cp. *Cynegio pp.* 8,11,7&10,76,1

a. 384–392 (393) *IMPPP. VALENTINIANUS THEODOSIUS ET ARCADIUS AAA.*[37]

sine conss. 11,9,3: *Nebridio pu.* 1,43,1: *Fausio c. s. l.* 4,40,1: *Cariobaudi duci Mesopot.* 4,40,2: *ad Andromachum c. r. p.* 5,5,4: *Tatiano pp. Or.* 11,59,8: *ad Nebridium c. r. p.* 11,66,5: *Drepanio c. r. p.* 11,67,1

a. 384 RICOMERE ET CLEARCHO CONSS.
id. Febr. *ad Principium pu.* 1,48,2
vi non. Mart. Cp. *Cynegio pp.* 12,50,11
iii k. April. Cp. *Nebridio c. r. p.* 11,62,6
iiii d. April. Cp. *Cynegio pp.* 12,35,11
xii k. Iun. Med. *ad Praetextatum pp.* 12,8,1
iiii id. Iun. Heracl. *Trifolio c. s. l.* 12,23,7
viiii k. Aug. Heracl. *Trifolio c. s. l.* 11,8,8
vii k. Aug. Heracl. *ad senatum* 1,16,1
v id. Sept. Aquil. *ad Praetextatum pp.* 1,54,5
xv k. Oct. Cp. 10,71,2
viii id. Nov. Cp. *ad Cynegium pp.* 10,32,38
xiii k. Ian. Cp. *Florentio pf. Aug.* 9,30,1
v k. Ian. Med. [acc. ...] post cons. Ricomeris et Clearchi *Symmacho pu.* 9,29,2?

a. 385 ARCADIO A. ET BAUTONE VC. CONSS.
xi (?) non. Ian. Cp. *Theodoro defens. civit.* 1,55,4
k. Febr. Med. *ad Nicetium pf. ann.* 1,23,5
iii non. Febr. Cp. *Cynegio pp.* 8,11,8
xv k. Mart. Med. *ad Petagium c. r. p.* 7,62,26&7,65,7
v k. Mart. Med. *Neoterio pp.* 1,4,3
iiii id. Mart. Cp. *Trifolio c. s. l.* 12,23,8

[37] imppp. Grat. Val. et Th. AAA. *pleraeque constitutunes annorum 384–386, item 4,38,14 a.* 391: impppp. Grat. Val. Th. et Arc. AAAA. *multae constitutiones a. 385. 386*

xviii k. Mai. Med. *ad Neoterium pp.* 10,48,13
iii k. Mai. *ad Polemium pp.* 3,26,10
prid. k. Mai. Cp. *Cynegio pp.* 9,2,14
viii id. Mai. Cp. *Menandro vic. Asiae* 9,46,8
viii k. Iun. Cp. *Cynegio pp.* 1,11,2
k. Iun. *ad Principium pp.* 9,47,21
prid. id. Iun. Med. *ad Neoterium pp.* 12,57,6
xv k. Iul. Cp. *Cynegio pp.* 12,50,12
x k. Iul. Cp. 3,19,3
iiii id. Iul. Trev.(?) *Desiderio vic.* 9,44,1
xvi k. Aug. *Eutropio pp.* 9,29,3
viii k. Aug. *Paulino pf. Aug.* 1,3,8
pp. Alexandriae vii k. Aug. *Neoterio pp.* 3,39,5
xviii k. Oct. Aquil. *ad Licinium pp.* 11,60,1
xiiii k. Oct. Aquil. *ad Principium pp.* 12,53,1
viii k. Oct. Aquil. *ad Principium pp.* 10,16,7
vi k. Oct. Aquil *ad Principium pp.* 11,8,9
v id. Dec. Cp. *Cynegio pp.* 1,40,6
iiii id. Dec. Aquil. *Principio pp.* 12,49,5
iii id. Dec. Cp. *Cynegio pp.* 9,9,31&9,16,8
x k. Ian. Cp. *Cynegio pp.* 10,16,8

a. 386 Honorio np. et Euodio conss.
iii k. Febr. Cp. *Nebridio pu.* 11,20,1
xiii k. Mart. Cp. *Florentio pf. Aug.* 1,37,1
vi k. Mart. Cp. *Cynegio pp.* 11,62,7
iiii k. Mart. Cp. *Cynegio pp.* 1,2,3~3,44,14
prid. k. Mart. Cp. *Cynegio pp.* 12,19,1&12,21,1
pp. Hadrumeti vii id. Mart. post cons. Arc. A. et Bautonis vc. *ad Principium mag. off.* 1,31,2
vi k. April. Cp. *Cynegio pp.* 11,48,10&11,58,3
prid. k. Mai. Cp. *Clearcho pp.* 11,62,8
k. Mai. 7,71,6
vii k. Iun. Cp. *Cynegio pp.* 1,40,7
x k. Iul. Cp. *edictum ad provinciales* 9,27,4
iii k. Iul. Cp. *Nebridio pu.* 4,58,5
prid. non. Iul. Cp. *Cynegio pp.* 1,25,1
prid. non. Iul. Med. acc. iiii k. Sept. *ad Pinianum pu.* 12,28,4
prid. id. Iul. Med. *ad Eusignium pp.* 12,59,2
iiii k. Aug. Med. *Eusignio pp.* 11,7,4
non. Aug. Cp. *Cynegio pp.* 1,40,8

III non. Sept. Valentiae *Cynegio pp.* 10,16,9
VIII k. Nov. Cp. *Cynegio pp.* 11,51,1?&11,59,7&11,63,4&11,64,1?&11,64,2&11,68,5?
VI k. Nov. Cp. *Cynegio pp.* 10,72,8
XIIII k. Dec. Med. *ad Eusignium pp.* 7,69,1
VIII k. Dec. Cp. *Cynegio pp.* 10,34,1&10,72,9
III non. Dec. Med. *ad Eusignium pp.* 12,59,3
V id. Dec. Cp. *Cynegio pp.* 1,40,6
VIII k. Ian. *ad Eusignium pp.* 10,32,39
a. 387 VALENTINIANO A. III ET EUTROPIO CONSS.
prid. non. Mart. Med. *ad Eusignium pp.* 12,17,1
k. April. Cp. *Cynegio pp.* 10,32,40
V non. Iul. Cp. *Dextro c. r. p.* 7,38,2
prid. non. Iul. Cp. *Cynegio pp.* 10,32,41
a. 388 THEODOSIO A. II ET CYNEGIO CONSS.
prid. id. Mart. Thessal. *Cynegio pp.* 1,9,6
XV k. Nov. *Tatiano pp.* 11,10,1
a. 389 TIMASIO ET PROMOTO CONSS.
Med. X k. Febr. *Proculo pu.* 9,22,24
XIIII k. Febr. Med. *ad Trifolium pp.* 11,14,1
V k. Mart. Med. *Constantiano pp. Gall.* 6,55,9
VII non. Mai. Med. *Tatiano pp.* 1,26,3
III non. Mai. Med. *Tatiano pp.* 12,57,7
XVII k. Iul. [acc. ...] Trev. *ad Messianum c. r. p.* 8,4,7
VIII k. Aug. *Albino pu. Rom.* 6,1,8
VII id. Aug. Rom. *Albino pu.* 3,12,6
XVII k. Sept. Rom. *Albino pu.* 9,18,9
VIII k. Sept. Rom. *ad Albinum pu.* 11,17,1
VIII ... [acc. ...] Cp. *Pancratio pu.* 11,43,2?
V k. Sept. Rom. *Albino pu. Rom.* 11,43,3
VI id. Nov. [acc. ...] Triv. *Constantiano pp. Gall.* 1,48,3&12,19,2
IIII k. Dec. Cp. *Cynegio pp.* 10,72,10
X k. Ian. Med. [acc. ...] post cons. Timasii et Promoti *Polemio pp. Ill.* 1,40,9
III k. Ian. Med. *Proculo pu.* 5,33,1
a. 390 VALENTINIANO A. II ET NEOTERIO CONSS.
XII k. Febr. Med. *Tatiano pp.* 5,35,2
prid. non. Febr. Med. *Drepanio proc. Afr.* 9,3,3
XV k. Mart. Med. *Tatiano pp.* 9,2,15
k. Mart. ... *pf. Aug.* 10,40,8

prid. non. Mart. Med. *ad Albinum pu.* 9,12,8
VIII id. Mart. Med. *Rufino mag. off.* 11,10,2
prid. non. Iun. Med. *Severino c. r. p.* 9,27,5
pp. XV k. Iul. Triv. *Floro pp.* 12,50,3
XI k. Iul. Med. *Tatiano pp.* 1,3,9

a. 391 TATIANO ET SYMMACHO CONSS.
XI k. April. Med. *Tatiano pp. Or.* 10,48,14
XVII k. Mai. Med. *Severino c. s. l.* 1,28,4
V id. Mai. Concordiae *Flaviano pp.* 1,7,a
VI k. Iun. Vicentiae *Flaviano pp. Ill. et It.* 1,18,12&4,38,14: *Ricomeri com. et mag. utr. mil.* 12,35,12
XIII k. Iul. Aquil. acc. id. Ian. Hadrumeti post cons. Tatiani et Symm. vv. cc. *ad Magnillum vic. Afr.* 4,44,16
k. Iul. *ad provinciales* 3,27,1
prid. id. Iul. Aquil. *ad Alypium pu.* 11,15,1
XV k. Aug. Cp. *Tatiano pp.* 11,6,4

a. 392 ARCADIO A. II ET RUFINO CONSS.
XI k. Mart. Cp. *Romulo c. s. l.* 11,7,5
III non. Mart. Cp. *Potamio pf. Aug.* 1,55,5
id. Mart. *Tatiano pp.* 5,10,1
V id. April. Cp. *Tatiano pp.* 1,55,6
VI k. Iun. Cp. *Tatiano pp.* 3,12,7

a. 392–395 *IMPPP. THEODOSIUS ARCADIUS ET HONORIUS AAA.*[38]
sine conss. 11,9,3: *Rufino pp.* 11,52,1

a. 392 ARCADIO A. II ET RUFINO CONSS.
VII k. Iul. Cp. *Proculo pu.* 11,25,1
V k. Aug. Cp. *Apodemio pp. Ill.* 10,65,5
III k. Aug. Cp. *Potamio pf. Aug.* 12,50,14
prid. k. Aug. Cp. *Abundantio com. et mag. utr. mil.* 10,32,42
VII k. Sept. Cp. *Rufino pp.* 12,51,1
XVIII k. Oct. *Tatiano pp.* 2,12,25
prid. non. Nov. Cp. *Rufino pp.* 3,39,6
IIII id. Nov. Cp. *Marciano com. Or.* 10,40,9&12,1,13
VII id. Dec. Cp. *Rufino pp.* 9,9,32
sine die *Tatiano pp.* 11,25,2

a. 393 THEODOSIO A. III ET ABUNDANTIO VC. CONSS.
prid. id. Ian. Cp. *Addeo com. et mag. utr. mil.* 1,26,4: *comitibus et mag. utr. mil.* 1,46,1

[38] imppp. Val. Th. et Arc. AAA. *multae constitutiones a.* 392. 393

iii k. Mart. Cp. *Aureliano pu.* 8,11,9
xvii k. April. Cp. *Paterno* 11,7,6
vi k. April. Cp. *Silvano duci et correctori limitis Tripol.* 12,59,4
iii non. April. Cp. *Rufino pp.* 11,58,4
prid. id. April. Cp. *Rufino pp.* 10,19,5&10,32,43
prid. non. Iun. Cp. *Rufino pp.* 10,45,1
iiii id. Iul. Cp. *Rufino pp.* 9,24,3
viii k. Aug. *Aureliano pu.* 5,33,2
iii k. Aug. Cp. *Rufino pp.* 12,37,7
v id. Aug. Cp. *Rufino pp.* 9,7,1&10,32,44
iiii k. Oct. Cp. *ad Rufinum pp.* 6,17,2
iii non. Oct. Cp. *ad Flavianum proc. Afr.* 12,55,1
vi k. Nov. Cp. *Theodoto mag. off.* 12,40,1
iii k. Dec. Cp. *Rufino pp.* 11,58,5
... k. Dec. *Cynegio pp.* 5,5,5?
prid. non. Dec. Cp. *Rufino pp.* 9,9,33
iii k. Ian. Cp. *Infantio com. Or.* 1,9,7

a. 394 ARCADIO III ET HONORIO II AA. CONSS.
iii non. Mart. Cp. *Rufino pp.* 4,3,1
iii k. Iun. Heracl. *Rufino pp.* *12,56,1
iii k. Iul. Heracl. *Rufino pp.* 1,4,4&11,41,4
iii non. Iul. Cp. *Rufino pp.* 8,11,10
viii id. Nov. Tyro *Rufino pp.* 11,59,9

a. 395–402(406) *IMPP. ARCADIUS ET HONORIVS AA*[39]

sine conss. *Limenio c. s. l.* 1,40,10: *Anthemio pp.* 4,61,10: *Lampadio pu.* 4,61,11: *Nebridio com. Asiae* 11,50,2: *Florentino pu.* 11,17,2: *ad populum* 11,48,11: *Florentio* 11,48,12: *Hadriano pp.* 11,71,3: *Minervio c. s. l.* 11,71,4: *Minervio c. r. p.* 11,75,3: *Silvano c. r. p.* 11,78,1: *Pulchro mag. utr. mil.* 12,33,3: *Clearcho pp. Ill.* 12,57,9

a. 395 OLYBRIO ET PROBINO CONSS.
iii non. Mart. Med. *Basilio pu.* 12,48,1
xv k. April. Med. *Dextro pp.* 12,50,15
xvii k. Iun. Med. *Ennodio proc. Afr.* 7,62,27&10,32,45
xii k. Iun. Cp. *Theodoto pu.* 12,21,2
k. Iun. Cp. *Marcello mag. off.* 12,22,4
v id. Iun. Cp. *Rufino pp.* *11,5,1
xvii k. Iul. Med. *Messiano c. r. p.* 10,48,15: *ad provinciales et ad proconsules* 12,60,1

[39] imppp. Theod. Arc. et Hon. AAA. 1,37,2 (a.395) 11,43,2. 3 (a. 395) 11,67,2 (a. 396)

XI k. Iul. Med. *Eusebio c. s. l.* 8,11,11
prid. id. Iul. Med. *Andromacho pp.* 12,60,2
VI k. Aug. Med. *Petronio vic.* 8,2,3
VIII id. Aug. *Hadriano c. s. l.* 11,70,3
VIII... Cp. *Pancratio pu.* 11,43,2
V k. Sept. Rom. *Albino pu. Romae* 11,43,3
IIII k. Oct. Med. *Theodoro pp.* 10,32,46
V id. Oct. Cp. *Rufino pp.* 2,4,41
id. Oct. Med. *Florentino pu.* 6,60,2
prid. k. Dec. Cp. *Caesano pp.* 11,76,1
prid. non. Dec. Cp. *Rufino pp.* 1,37,2
VIII k. Ian. Med. *Pasiphilo* 8,4,8&9,2,16&9,87,1
VII k. Ian. *Ennodio* 6,30,16
IIII k. Ian. Cp. *Caesario pp.* 10,32,47

a. 396 ARCADIO IIII ET HONORIO III AA. CONSS.
XVI k. Febr. Cp. *Martiniano c. s. l.* 12,39,3
non. Febr. Cp. pp. Alexandriae Eutycheo *Gennadio pf. Aug.* 1,4,5
XV k. Mart. Cp. *Claudio pu.* 12,19,3
VI k. Mart. Cp. *Eutychiano pp.* 5,37,24
V k. Mart. Cp. *Euthymio vic. Asiae* 12,57,8
III k. Mart. Cp. *ad Iudaeos* 1,9,9
V non. Mart. Cp. *Clearcho pu.* 1,5,3
XII k. April. Cp. *Remigio pf. Aug.* 1,20,1
XII k. April. *Aeternali proc. Asiae* 3,31,11&6,23,17
VIIII k. April. *Caesario pp.* 8,12,12
VIII k. April. Cp. *Simplicio proc. Asiae* 1,35,2
V k. April. Cp. *ad Paulum com. domorum* 7,38,3&11,67,2
III k. April. Med. *Eusebio pp.* 11,58,6
VII k. Mai. Cp. *Caesario pp.* 11,46,1
V k. Iun. Med. *Hilario* *10,29,1
XVI k. Iul. *Hilario pp.* 12,37,8
XI k. Aug. Cp. *Nebridio proc. Asiae* 7,62,28
III non. Aug. Cp. *ad Africanum pu.* 2,7,3: *Caesario pp.* 9,49,9
IIII id. Aug. Med. *Apollodoro c. r. p.* 7,65,8
VI id. Dec. Cp. *Eutychiano pp.* 5,5,6
XVIII k. Ian. Cp. *Eutychiano pp.* 10,38,1
X k. Ian. Med. *Eusebio pp.* 11,2,2

a. 397 CAESARIO ET ATTICO CONSS.
V id. Ian. Med. *Iuliano proc. Afr.* 7,45,12
XI k. Mart Cp. *Eutychiano pp.* 10,78,1

vi k. Mart. Cp. *Remistheo duci Armeniae* 12,50,16
xvi k. April. Med. *Probino proc. Afr.* 10,32,52
xvii k. Mai. Med. *ad senatum et populum* 4,40,3&11,23,2
xv k. Iul. Cp. *Archelao pf. Aug.* 1,12,1
vii id. Iul. Cp. *Anatolio pp. per Ill.* 10,26,3
prid. non. Sept. Ancyrae *Eutychiano pp.* 9,8,5
vi k. Oct. Cp. *Africano pu.* 6,23,18
k. Nov. *Asterio com. Or.* 11,43,4
vi id. Nov. Cp. *Eutychiano pp.* 9,1,20
xv k. Ian. Med. *Vincentio pp. Gall.* 3,13,5: *Petronio vic. Hisp.* 7,32,11&8,5,2
xii k. Ian. Med. *Florentio pu.* 3,23,1&10,32,48
x k. Ian. Med. *Minervio c. r. p.* 1,33,2

a. 398 Honorio A. iiii et Eutychiano conss.

k. Febr. Cp. *Romuliano pu.* 12,35,13
iii non. Febr. Cp. *Eutychiano pp.* 1,9,8
viii id. Febr. Cp. *Osio mag. off.* 12,40,2
id. Febr. Med. *Theodoro pp.* 10,32,49
xii k. Mart. Med. *Vincentio pp.* 12,50,17
non. Mart. Cp. *Eutychiano pp.* 11,59,10
v id. Mart. Cp. *Simplicio com. et mag. utr. mil.* 11,61,2
viii k. April. Cp. 12,37,9
vi k. Mai. Med. *Theodoro pp.* 1,3,10
xii k. Iun. Med. *Victorio proc. Afr. et Dominatori vic. Afr.* 12,55,2
x k. Iun. Cp. *Eutychiano pp.* 12,37,10
viiii k. Iun. Med. *Firmino c. s. l.* 11,74,1
viii k. Iun. Med. *Theodoro pp.* 10,19,6
iiii k. Iul. Nicaeae *Severo pu.* 12,49,6
prid. non. Iul. Nicom. *Eutychiano pp.* 11,62,9
vi k. Aug. Mnizo *Eutychiano pp.* 1,3,11&12&1,4,6&7&7,62,29
v id. Oct. Cp. *Severo pu.* 8,11,14
viii k. Nov. Cp. *Eutychiano pp.* 10,32,50
id. Dec. *Eutychiano pp.* 8,11,15
xviii k. Ian. Cp. *Osio mag. off.* 11,10,3
xii k. Ian. Med. *Theodoro pp.* 1,24,1&8,11,13
pp. Rom. *Minervio c. r. p.* 10,16,10

a. 399 Theodoro cons.

vii id. Ian. Med. *Theodoro pp.* 7,62,30
iiii k. Febr. Rav. *Macrobio [pp. Hisp.] et Procliano vic. [v prov.]* 1,11,3
xiiii k. Mart. Med. *Messalae pp.* 11,3,3

IIII id. April Cp. *Eutychiano pp.* 11,62,10
XVI k. Iun. Med. *Messalae pp.* 10,75,3&11,65,5
VII k. Iul. Brixiae *Sapidiano vic. Afr.* 1,3,13
VII k. Aug. Cp. *Eutychiano pp.* 9,47,22
XIII k. Sept. Patavii *Apollodoro proc. Afr.* 1,11,4
XII k. Sept. *Messalae pp.* *1,54,6&4,44,17&9,41,17&10,32,51
prid. non. Sept. Altino *Messalae pp.* 11,23,3
Id. Sept. Med. *Stilichoni com. et mag. utr. mil.* 12,38,1
VII k. Oct. Cp. *Severino pu.* 12,10,1
III k. Oct. Altino *Messalae pp.* 12,55,3&12,58,2?
XII k. Dec. *Messalae pp.* 3,11,7
VI k. Ian. Med. *Messalae pp.* 1,51,3
III k. Ian. *Eutychiano pp.* 1,9,10

a. 400 STILICHONE ET AURELIANO CONSS.[140]
XVI k. Febr. Med. *Vincentio pp.* 12,40,3
XI k. Febr. Cp. *Aemiliano mag. off.* 12,40,4
pp. Rom. in foro Aproniano VIIII k. Febr. *Flaviano pu.* 11,2,3
prid. non. Febr. Rav. *Hadriano pp.* 1,3,14
III non. Mart. Med. *Flaviano pu.* 5,62,24
prid. id. Mart. Med. *Apollodoro proc. Afr.* 10,20,1
XIIII k. April. Med. *Stilichoni mag. mil.* 12,35,14
VI id. Iun. Med. *Benigno vic. urbis Rom.* 10,72,11
III k. Iul. Med. *Vincentio pp. Gall.* 11,48,13&*14&11,66,6
VI k. Sept. *Hadriano pp.* 11,59,11
XV k. Dec. Med. *Messalae pp.* 2,14,1&10,30,2&11,74,2
V k. Dec. *Messalae pp.* 12,50,18
prid. k. Ian. Med. *Pompeiano proc. Afr.* *9,26,1&10,72,12&12,61,3

a. 401 VINCENTIO ET FRAVITO CONSS.
III k. Mart. Med. *Limenio c. s. l.* 1,32,1: *Hadriano pp.* 10,16,11
VIII k. April. Med. *Hadriano pp.* 10,71,3
prid. k. April. Med. *provincialibus provinciae com.* 12,37,11
III id. Iul. Med. *Hadriano pp.* 10,19,7
VI k. Aug. *Nestorio c. r. p.* 11,73,1

a. 402–408 *IMPPP. ARCADIUS HONORIUS ET THEODOSIUS AAA.*[141]
sine conss. *Petronio pp.* 11,74,3

a. 403 THEODOSIO A. ET RUMORIDO CONSS.
VI k. Mart. Rav. *Hadriano pp.* 12,45,2
VII k. April. Rav. *Septimino proc. Afr.* 12,60,19

[140] Stilichone cons. 2,14,1
[141] imp. Arc. et Hon. AA. *a.* 404 1,3,15; *a.* 405 5,4,19. 5,27,2; *a.* 406 8,1,4. 11,4,1

III id. Iun. *Caesario pp.* 7,41,2
VI non. Oct. *Hadriano pp.* 3,27,2
a. 404 HONORIO A. VI ET ARISTAENETO CONSS.
VIIII k. April. Rom. *Hadriano pp.* 12,38,2
VI id. April. *ad Caecilianum vic.* 1,51,4
prid. k. Iul. Cp. *Anthemio mag. off.* 12,20,1
VIII id. Iul. Rom. *Exsuperantio Iulio et ceteris decurialibus* 11,14,2
IIII k. Sept. Cp. *Studio pu.* 1,3,15
a. 405 STILICHONE II ET ANTHEMIO CONSS.
III id. Iun. Nicaeae *Eutychiano pp.* 5,4,19
X k. Aug. Ancyrae *Aemiliano mag. off.* 12,27,1
prid. id. Aug. Ancyrae *Nestorio c. r. p.* 12,23,9
id. Nov. Cp. *Anihemio pp.* 5,27,2
VII id. Dec. Cp. *Anthemio pp.* 1,26,5
prid. k. Ian. Med. [*Caeciliano pp.* 1,55,7?]
a. 406 ARCADIO A. VI ET PROBO CONSS.
III id. Ian. Rav. *Longiniano pp.* 11,4,1
VIIII k. April. Rav. *Longiniano pp.* 12,45,3
V id. April. Cp. *Anthemio pp.* 12,37,12
V k. Iul. Cp. *Aemiliano pu.* 8,11,16: *Philometori c. s. l.* 11,8,10
XIII k. Aug. Cp. *Aemiliano pu.* 8,1,4
prid. id. Oct. Cp. *Anthemio pp.* 2,12,26
XI k. Nov. Cp. *Aemiliano pu.* 8,10,9
V k. Dec. Cp. *Anthemio pp.* 1,47,1 III
k. Ian. Rav. *Nestorio c. r. p.* 4,44,18?
a. 407 HONORIO VII ET THEODOSIO II AA. CONSS.
VIII k. Mart. Rom. *Senatori pp.* 1,5,4
XVI k. April. Cp. *Anthemio pp.* 6,30,17. 12,57,10
IIII non. Aug. Cp. *Anthemio pp.* 12,50,20
id. Oct. Rav. *Epiphanio pu.* 12,19,4
a. 408 BASSO ET PHILIPPO CONSS.
VI k. Febr. *Lucio c. s. l.* 10,72,13
III non. Febr. Rom. *Curtio pp.* 1,45,1
a. 408–423 (424) *IMPP. HONORIUS ET THEODOSIUS AA.*[42]
sine conss. *Gaisoni c. s. l.* 4,61,12: *Theodoro pp.* 4,63,3: *Anthemio pp.* 4,63,4. 11,64,3: *Maximino c. s. l.* 4,63,6: *Minervio c.r.p.* 11,75,3: *Eustathio pp. [Or.] et Nestorio pp. Ill.* 12,46,4: *Hadriano pp.* 12,61,4
a. 408 BASSO ET PHILIPPO CONSS.
III id. April. Cp. *Herculio pp.* 10,49,1

[42] impp. Arc. Hon. et Th. AAA. 1,4,8 (*a.* 408): Constantius *in hoc Codice om., cf.* 10,10,4

v k. Mai. Cp. *Anthemio pp.* 3,12,8
IIII k. Iun. Cp. *Anthemio pp.* 1,9,11
XVII k. Nov. *Theodoro pp.* 4,2,16
VII k. Dec. Rav. *Theodoro pp.* 1,40,11:. ... *c. s. l.* 12,43,3
III k. Dec. Rav. *Flaviano pp.* 2,15,1?
VII id. Dec. Cp. *ad Anthemium pp.* 10,23,2
id. Dec. *Theodoro pp.* 1,4,8

a. 409 HONORIO VIII ET THEODOSIO III AA. CONSS.
XIIII k. Febr. *Anthemio pp.* 11,2,4&11,8,6&11,28,1?
XII k. Febr. Rav. *Caeciliano pp.* *1,4,9&1,55,*7&8&9&4,20,11&9,44,2
k. Febr. Rav. *Caeciliano pp.* 1,4,10: *Theodoro pp.* 5,4,20?&5,8,1
VIIII k. Mart. Cp. *Monaxio pu.* 8,11,17
prid. k. Mart. *Anthemio pp.* 1,3,16
x k. April. Cp. *Anthemio pp.* 12,37,13
k. April. Rav. *Iovio pp.* 1,9,12&1,12,2
XIIII k. Aug. Cp. *Anthemio pp.* 1,45,2&10,74,1&11,2,5
VIII id. Aug. Cp. *Anthemio pp.* 11,41,5
XII k. Sept. Eudoxiopoli *Aetio pu.* 1,2,4&4,63,5
x k. Oct. Cp. *Anthemio pp.* 9,38,1
[III id. Dec. Rav. *Theodoro pp.* 1,4,11&8,50,20]
VIII k. Ian. Cp. *Anthemio pp.* 10,77,1
sine die *Monaxio pu.* 5,34,13

a. 410 VARANE CONS.
XVIII k. Sept. Rav. *Faustino pp.* 4,40,4?&11,2,6
VII k. Sept. Cp. *Anthemio pp.* 10,22,1
prid. non. Sept. Cp. *Isidoro pu.* 1,19,6&8,57,2&8,58,1
VII k. Oct. Rav. *Palladio proc. Afr.* 12,21,3

a. 412 HONORIO VIIII ET THEODOSIO V AA. CONSS.
v k. Febr. Cp. *Anthemio pp.* 11,28,1
prid. k. Febr. Rav. *Seleuco pp.* 11,59,12
XV k. Mart. Rav. *Melitio pp.* 10,48,16
prid. k. Mart. Rav. *Euchario suo sal.* 10,72,14
VI id. Mart. Rav. *Euchario proc. Afr.* 10,32,53
XVI k. April. Rav. *naviculariis per Africam* 11,6,5
id. April. Rav. *Probo c. s. l.* 11,62,11
XV k. Iun. Cp. *Anthemio pp.* 11,10,4
VIII k. Iun. Rav. *Melitio pp.* 1,2,5
VII k. Aug. Rav. *Iohanni pp.* 1,9,13
VIII id. Aug. Cp. *Philippo pp.* 1,9,14
VII k. Nov. Cp. *Anthemio pp.* 10,25,2

VI k. Ian. *Monaxio pp.* 1,40,12

a. 413 LUCIO VC. CONS. *in Oriente:* POST CONS. HONORII VIIII ET THEODOSII V AA. *in Occidente.*

XII k. Mart. Rav. *Iohanni pp.* 6,23,19

XII k. April. Cp. *Anthemio pp.* 1,6,2: *Prisciano pu.* 12,11,1&2&12, 13,1&12,14,1

prid. non. April. *Anthemio pp.* 8,11,18

V k. Mai. Cp. *Anthemio pp.* 3,13,6

VIII id. Iun. Rav. *Faustino pp.* 12,19,5

VII id. Iun. Rav. *Iohanni pp.* 12,23,10

prid. id. Iun. Rav. *Iohanni pp.* 12,40,5: *Gaisoni com. et mag. mil.* 12,42,3

a. 414 CONSTANTIO ET CONSTANTE CONSS.

V non. Mart. Rav. *Hadriano pp.* 12,40,6

prid. non. Mart. Rav. Iulian*o proc. Afr.* 2,21,8&3,6,3

XIIII k. Mai. *ad Anthemium pp.* 9,47,23

XIII k. Iun. *Mauriano com. domest. et vices agenti mag. mil.* 11,45,1

III id. Iun. Cp. *Probo c. s. l.* 8,16,8&11,48,15?&11,59,13

VI id. Aug. Rav. *Ursacio c. r. p.* 1,33,3

III k. Sept. Rom. *Iuliano proc. Afr.* 7,52,6

XIII k. Dec. *Constantio mag. mil.* 12,37,14

prid. k. Dec. Cp. *Monaxio pp.* 10,53,11

id. Dec. Cp. *ad Hypatium mag. mil. per Or.* 1,29,2

a. 415 HONORIO X ET THEODOSIO VI AA. CONSS.

XIII k. Mart. Cp. *ad populum* 2,19,12: *Anthemio pp.*12,57,11

III non. Mart. Cp. *Aureliano pp.* 9,12,9&9,28,1

VIII k. Aug. Rav. *Graccho pu.* 12,59,5

V k. Sept. Rav. *Symmacho proc. Afr.* 8,35,13

III k. Sept. Rav. *populo Carthaginiensi* 1,11,5

non. Sept. *comitibus et mag. mil.* 11,61,3

XIII k. Nov. Cp. *Aureliano pp.* 1,9,15

prid. k. Nov. Cp. *Urso pu. et Aureliano pp. Or. et Strategio pp. per Ill.* 12,16,1

III id. Nov. Cp. *Helioni mag. off.* 12,20,2

III non. Dec. *Aureliano pp.* 11,59,14

III id. Dec. *Seleuco pp.* 1,51,5

a. 416 THEODOSIO A. VII ET PALLADIO CONSS.

VII id. Ian. Rav. *Palladio pp.* 10,17,1

VII id. Febr. Cp. *Eustathio quaest. et Helioni mag. off.* 12,19,6

VI id. Febr. Cp. *Narsi com. et castrensi sacri palatii* 12,25,1

vii id. Mart. Cp. *edictum ad populum urbis Cp. et omnes provinciales* 6,23,20
v non. Mai. Rav. *Palladio pp.* 10,32,54
iii k. Iul. Cp. *Anysio c. s. l. et Tauro c. r. p.* 12,23,11
x k. Aug. Cp. *Urso pu.* 12,24,1
vi k. Sept. Eudoxiopoli *Monaxio pp.* 1,46,2
iii k. Sept Eudoxiopoli *Monaxio pp.* 9,47,24
x k. Oct. Rav. *Palladio pp.* 12,60,3
iii k. (non. 10,65,6) Oct. Cp. *Monaxio pp.* 1,3,17. 10,65,6
prid. non. Nov. Cp. *Helioni com. et mag. off.* 12,26,1
iii id. Nov. Cp. *Monaxio pp.* 12,18,1

a. 417 Honorario A. xi et Constantio ii conss.
prid. id. Mart. Cp. *Monaxio pp.* 8,53,28
prid. id. Mart. Rav. *Sebastio com. primi ord.* 11,58,7&11,59,15
viiii k. Nov. Cp. *Vitaliano duci Libyae* 1,51,6
vii k. Ian. Rav. *Palladio pp.* 12,53,2

a. 418 Honorio xii et Theodosio viii AA. conss.
iii non. Febr. Cp. *Monaxio pp.* 1,3,18

a. 419 Monaxio et Plinta conss.
vi k. Iul. Rav. *Palladio pp.* 11,48,16
viii k. Oct. *Monaxio pp.* 9,47,25

a. 420 Theodosio A. viiii et Constantio iii conss.
iii non. Mai. Cp. *Monaxio pp.* 8,10,10
viii id. Mai. Rav. *Palladio pp.* 1,3,19
xiiii k. Oct. Cp. *Eustathio pp.* 12,44,1
v k. Oct. Rav. *Maximo pu.* 6,55,10
iii k. Ian. Cp. *Patricio c. r. p.* 10,1,9

a. 421 Eustathio et Agricola conss.
vi id. Mart. Rav. *Palladio pp.* 9,9,34
viii id. Iul. Rav. *Palladio pp.* 9,40,3&10,1,10&10,10,4
prid. id. Iul. *Philippo pp. Ill.* 1,2,6&11,21,1

a. 422 Honorio xiii et Theodosio x AA. conss.
prid. id. Ian. Cp. *Scholastico v. s. com. et castrensi s. p.* 12,25,2
v non. Mart. Cp. *Eustathio pp.* 12,40,7
x k. April. Cp. *Eustathio pp.* 1,51,7&2,7,4
v id. Iul. Rav. *Iohanni pp.* 2,13,2&4,4,1&4,26,13&8,15,8&11,48,17&12,60,4
iii non. Nov. Rav. *ad Marinianum pp.* 5,1,4&5,9,4&5,18,11&5,19,1
viii id. Nov. *Cp. Florentio pu.* 12,5,1

a. 423 Asclepiodoto et Mariniano conss.

xvi k. Mart. Cp. *Asclepiodoto pp.* 1,2,7&11,75,4&12,37,15
non. Mart. Cp. *Asclepiodoto pp.* 11,60,2
vii id. Mart. Rav. *Venantio pp.* 12,16,2
vii id. Mart. Cp. *Asclepiodoto pp.* 12,39,4
iii k. April. Cp. *Asclepiodoto pp.* 7,51,3&7,62,31
v id. April. Cp. *Asclepiodoto pp.* 1,9,16
prid. k. Iun. Cp. *Asclepiodoto pp.* 1,51,8: *Macedonio mag. mil.* 3,21,2
vi id. Iun. Cp. *Asclepiodoto pp.* 12,60,4
viii id. Aug. Rav. *consulibus praet. trib. pl. senatui suo sal. dicunt* 4, 20,12&6,7,3&9,1,21&9,2,17&9,46,10
iii k. Oct. *Severino pu.* 8,10,11

a. 423–424 ***IMP. THEODOSIUS A.***

a. 424 VICTORE VC. CONS.
v id. Ian. *Severino pu.* 8,11,19
xvii k. Febr. Cp. *Maximino c. s. l.* 11,9,4
xvi(xiii) k. Mart. Cp. *Asclepiodoto pp.* 6,13,2&6. 36,8
vi k. Mai. Cp. *Sallustio quaestori* 1,30,1
iii k. Mai. *Helioni com. et mag. off.* 1,30,2
v id. Iul. Cp. *Maximino c. s. l.* 11,7,7
vi id. Oct. Cp. *Isidoro pp. Ill.* 1,2,8&10,16,12

a. 424–425 ***IMP. THEODOSIUS A. ET VALENTINIANUS C.***[43]

sine conss. *Maximino c. s. l.* 12,23,12

a. 424 VICTORE VC. CONS.
xvii k. Nov. Cp. *Maximino c. s. l.* 11,8,11
xviii k. Dec. Cp. *Asclepiodoto pp.* 7,39,3
xiii k. Ian. Cp. *Constantio pu.* 1,28,5

a. 425 THEODOSIO A. XI ET VALENTINIANO C. CONSS.
iii k. Mart. Cp. *Constantio pu.* 11,19,1
id. Mart. Cp. *Theophilo pu.* 12,15,1
iii non. Mai. *Aetio pp.* 1,24,2
viiii k. Iun. *Maximino c. s. l.* 11,8,12
id. Dec. Cp. *Valerio c. r. p.* 11,68,6

a. 425–450 ***IMPP. THEODOSIUS ET VALENTINIANUS AA.***

sine conss. *Cyro pp.* 10,71,4. 11,43,5.6. 12,8,2. 12,21,5. 12,50,21: *Hormisdae pp.* 11,22,1: *Eutychiano pp.* 11,43,7: *Iohanni c. r. p.* 11,77,1: *Eudoxio c. s. l.* 11,78,2. 12,23,13: *ad ... pu.* 12,1,15: *Apollonio pp.* 12,1,16: *ad senatum* 12,2,2. 12,3,1: *Sporacio com. domest.* 12,17,3: *Nomo mag. off* 12,19,7.8&12,21,6. 12,26,2: *Florentio pp.* 12,23,14: *Protogeni pp.*12,49,8:

[43] Impp. Hon. et Th. AA. 7,39,3 (*a.* 424): et Val. C. *om.* 1,28,5

Apollonio mag. mil. praes. et Anatolio mag. mil. per Or. 12,54,4: *Thomae pp.* 12,57,13: *Anatolio mag. mil.* 12,59,7

a. 426 THEODOSIO XII ET VALENTINIANO II AA. CONSS.

x k. Febr. Cp. *Hierio pp.* 9,48,1&9,49,10

VII k. Mart. Cp. *Acacio c. s. l.* 11,8,13

prid. non. Mart. Rav. *Basso pp.* 11,72,1

III k. April. Rav. *Basso pp.* 5,4,21?&6,7,4

VII id. April. Rav. *Basso pp.* 1,7,4

x k. Iul. Nicom. *Hierio pp.* 12,49,7&12,59,6

k. Iul. Nicom. *Acacio c. s. l.* 11,8,14?

VIII id. Nov. Rav. *ad senatum* 1,14,2&3&1,19,7&1,22,5: *ad senatum urbis Rom.* 6,30,18&6,55,11&6,56,5&6,60,3&6,61,1&8,55,9

VII k. Ian. Cp. *Cyro pu.* 2,7,5

sine die *Basso pp.* 11,48,18. 12,1,14

a. 427 HIERIO ET ARDABURE CONSS.

x k. April. Cp. *Valerio c. s. l.* 11,8,15

XII k. Iun. *Eudoxio pp.* 1,8,1?

XIIII k. Sept. *Helioni mag. off.* 12,40,8

prid. id. Oct. Cp. *ad Antiochum pp.* 1,50,2

a. 428 FELICE ET TAURO CONSS.

prid. k. Febr. Cp. *Procuto pu.* 12,5,2?

x k. Mart. Cp. *Hierio pp.* 2,57,2&5,3,17&5,4,22&5,11,6&6,18,1&6,24,11&6,61,2

XI k. Mai. *Florentio pp.* 1,4,12&11,41,6: *Hierio pp.*8,53,29

III k. Iun.Cp. *Florentio pp.* 1,5,5&1,6,3

v id. Iun. Cp. *Florentio pp.* 10,34,2&10,35,1

a. 429 FLORENTIO ET DIONYSIO CONSS.

pp. 1,14,4&11,71,5?

III k. Mart. Rav. *Volusiano pp.* 10,72,15&12,60,5

v id. Mart. *Florentio pp.* 6,62,4

VI k. April. Cp. *Florentio pp.* 1,19,8

v k. Mai. Rav. *Celeri proc. Afr.* 10,22,2&11,59,16

III k. Iun. Cp. *Iohanni c. s. l.* 1,9,17

III id. Iun. Rav. *ad Volusianum*

a. 431 BASSO ET ANTIOCHO CONSS.

x k. April. Cp. *Antiocho pp.* 1,12,3

III k. Mai. Rav. *Flaviano pp.* 4,61,13?&11,75,5

a. 432 AETIO ET VALERIO CONSS.

VIIII k. April. Rav. *Flaviano pp.* 12,10,3

v k. April. Cp. *Hierio pp.* 1,12,4

III id. Iun. Cp. *Heliodoro pu.* 12,17,2

a. 433 THEODOSIO A. XIIII ET MAXIMO CONSS.
v non. Iul. Cp. *ad Taurum pp.* 1,51,9
a. 434 ARIOBINDO ET ASPARE CONSS.
XIIII k. Iul. Cp. *Tauro pp.* 11,62,12
v k. Dec. Cp. *Leontio pu.* 11,24,2
XVIII k. Ian. *ad Taurum pp.* 1,3,20
a. 435 THEODOSIO XV ET VALENTINIANO IIII AA. CONSS.
IIII k. Febr. Cp. *Valerio mag. off.* 12,21,4
III non. Aug. Cp. *Leontio pu.* 1,5,6
VII id. Oct. Cp. *Hermocrati c. r. p.* 10,10,5
a. 436 ISIDORO ET SENATORE CONSS.
VIII id. Mart. Cp. *Apollonio c. s. l.* 11,9,5
III non. April. Cp. *Isidoro pp.* 10,32,55&12,57,12
prid. non. Iun. Cp. *Isidoro pp.* 10,32,56–59&11,28,2&11,29,1
v k. Sept. Apameae *Dario pp.* 10,17,2
a. 438 THEODOSIO A. XVI ET FAUSTO CONSS.
prid. k. Febr. Cp. *Florentio pp.* 1,5,7&1,7,5&1,9,19
prid. non. Nov. Cp. *Aureliano c. r.p.* 6,62,5?&11,10,5?
a. 439 THEODOSIO A. XVII ET FESTO CONSS.
XIII k. Febr. Cp. *Florentio pp.* 1,51,10. 3,25,1
x k. April. *Cyro pu.* 1,2,9&11,18,1
III non. April. *Florentio pp.* 1,24,3
VIII id. April. Cp. *Florentio pp.* 1,2,10&11,4,2
VII id. April. Cp. *Florentio pp.* 1,14,5&4,65,30
XIII k. Mai. Cp. *ad Florentium pp.* 2,7,6
III k. Iun. Cp. *Florentio pp.* 1,52,1
VI id. Iun. Cp. *ad Florentium pp.* 11,62,13
XV k. Iul. Cp. *ad Florentium pp.* 2,15,2
VI id. Iul. Cp. *ad Florentium pp.* 6,56,6&6,58,10&8,14,6
III id. Aug. Cp. *Thalassio pp.* 7,42,1
VII id. Sept. Cp. *Thalassio pp. per Ill.* 2,7,7: *Florentio pp.* 5,9,5 (=1,14,6)&6,61,3
prid. id. Sept. Cp. *Florentio pp.* 5,28,8 6,23,21&7,2,14
k. Nov. *Cyro pu.* 8,11,20
prid. non. Nov. Cp. *Aureliano c. r. p.* 6,62,5?&11,10,6?
VI k. Dec. Cp. *Florentio pp.* 9,27,6
a. 440 VALENTIANO A. V ET ANATOLIO CONSS.
XI k. Febr. Cp. *Cyro pu.* 8,11,21
non. April. Cp. *Cyro pp. et cons. design.* 1,14,7
XIII k. Iun. Cp. *Eudoxio c. r. p.* 11,66,7

xii k. Iun. *Cyro pp.* 3,4,1&7,62,32&7,63,2
xi k. Oct. Cp. *Cyro pp.* 3,23,2. 7,41,3
iii k. Ian. *Cyro pp. cons. design.* 2,7,8

a. 441 Cyro vc. cons.
prid. non. Mart. Cp. *Cyro pp.* 7,62,33. 12,54,3
xvi k. April. Cp. *Phlegetio com. et mag. off.* 1,31,3&12,29,1
xv k. Sept. Cp. *Cyro pp.* 1,55,10

a. 442 Eudoxio et Dioscoro conss.
v k. Mart. Cp. *Thomae pp.* 1,3,21&10,32,60
v id. April. *Artaxi praepos. s. cub.* 3,26,11
xii k. Sept. Cp. *Apollonio pp.* 2,7,9
v k. Ian. *Apollonio pp.* 10,30,3

a. 443 Maximo ii et Paterio conss.
v k. Febr. Cp. *Anatolio mag. mil.* 1,46,3
viii id. Mart. Cp. *ad Apollonium pp.* 10,35,2&10,36,1
prid. id. Sept. Cp. *Nomo mag. off.* 1,31,4&1,46,4&11,60,3
xvii k. Ian. Cp. *ad Apollonium pp.* 5,27,3

a. 444 Theodosio A. xviii et Albino conss.
xvii k. Febr. Cp. *Nomo mag. off.* 12,40,9
v k. Mart. *Zoilo pp. Or.* 1,51,11&12,9,1
v k. April. *ad Nomum com. et mag. off.* 1,24,4
x k. Mai. Cp. *Zoilo pp.* 10,12,2
xii k. Dec. Cp. *Hermocrati pp.* 10,28,1&11,59,17
sine die *Zoilo pp.* 12,36,6&12,52,3

a. 445 Valentiniano A. vi et Nomo conss.
iii id. Febr. Cp. *Florentio pp.* 1,3,22
xiii k. Mart. Cp. *ad Taurum pp.* 1,2,11&10,49,2

a. 446 Aetio iii et Symmacho conss.
xvi k. Nov. *ad senatum* 1,14,8

a. 448 Zenone et Postumiano conss.
xiiii k. Mart. Cp. *Ὁρμίσδᾳ ἐπ. πραιτ.* 1,1,3

a. 449 Protogene et Asterio conss.
v id. Ian. *Hormisdae pp.* 5,17,8

a. 450 Post cons. Protogenis et Asterii
v id. Ian. *Hormisdae pp.* 5,14,8
iii non. April. *Hormisdae pp.* 6,52,1

a. 450–455 *IMPP. VALENTINIANUS ET MARCIANUS AA.*[44]
sine conss. *Vincomalo mag. off.* 12,40,10

[44] imp. Marcianus A. *a.* 451 9,39,2. 10,5,2: *a.* 452 1,1,4

a. 450 VALENTIANO A. VII ET AVIENO CONSS.
v id. Oct. Cp. *edictum ad populum* 7,51,4
XV k. Ian. Cp. *Tatiano pu.* 1,39,2&12,2,1
sine die *Palladio pp.* 1,51,12?

a. 451 MARCIANO A. CONS.
XV k. Febr. Cp. *Palladio pp. Or.* 11,70,5
III id. Iul. Cp. *ad populum* 1,12,5
prid. id. Nov. Cp. *Palladio pp.* 1,2,12. 1,11,7
XII k. Ian. Cp. *Palladio pp.* 9,39,2
v k. Ian. Cp. *Palladio pp.* 10,5,2

a. 452 SPORACIO CONS.
VII id. Febr. Cp. *Palladio pp.* 1,1,4
IIII k. Iul. Cp. *Palladio pp.* 2,7,1.0
prid. non. Iul. Cp. *Palladio pp.* 1,3,23
sine die *Sporacio com. domest. et cons.* 12,3,2

a. 454 AETIO ET STUDIO VV. CC. CONSS.
prid. non. April. Cp. *ad Palladium pp.* 1,14,9&5,5,7

a. 455 VALENTINIANO A. VIII ET ANTHEMIO CONSS.
x k. Mai. Cp. *Palladio pp.* 1,2,13
VIII k. Mai. *Palladio pp.* 1,3,24
k. Aug. Cp. *Palladio pp.* 1,5,8&1,7,6
sine die *Palladio pp.* 1,51,12?

a. (451) 455–457 *IMP. MARCIANUS A.*
sine conss. *Constantino pp.* 4,41,2

a. 456 VARANE ET IOHANNE CONSS.
VIII … April. *Constantino pp.* 1,3,25?&1,4,13
XV k. Aug. *Constantino pp.* 10,22,3

a. 457–473 *IMP. LEO A.*
sine conss. τῷ δήμῳ 1,4,14&11,41,7: *Erythrio pp.* 1,5,10. 12,59,10: 1,5,11? *Viviano pp.* 4,42,2. 10,32,61. 11,16,1: *Constantino pp.* 10,32,62: *ad senatum* 10,32,63: *Leontico* 11,2,1: *Pusaeo pp.* 12,5,4. 12,50,22: *Hilariano mag. off.* 12,7,2&12,40,11: *Patricio mag. off.* 12,19,9. 12,20,3–5. 12,50,22

a. 457 CONSTANTINO ET RUFO CONSS.
id. Aug. Cp. 1,5,9

a. 458 LEONE A. CONS.
prid. non. Iul. Cp. *Aspari mag. mil.* 4,65,31?&12,35,15

a. 459 PATRICIO CONS.
v non. Mart. Cp. *Constantino pp.* 8,53,30
XV k. Oct. *Viviano pp.* 1,3,26

a. 460 MAGNO ET APOLLONIO CONSS.
k. Febr. Cp. *Viviano pp.* 2,7,11
a. 463 BASILIO ET VIVIANO CONSS.
x k. Mart. Cp. *Eusebio pp. Ill.* 2,7,12
a. 465 BASILISCO ET HERMINERICO CONSS.
v id. Nov. Cp. *Pusaeo pp.* 1,36,1&10,44,3?
a. 466 LEONE A. III CONS.
prid. k. (non.?) Mart. Cp. *Erythrio pp.* 1,3,27&1,12,6&9,30,2
a. 467–472 *IMPP. LEO ET ANTHEMIUS*[45]
sine conss. *Euphemio mag. off.* 11,10,6.7: *Iohanni com. et mag. off.* 12,5,3&12,25,3&12,59,8
a. 468 ANTHEMIO A. II CONS.
VI id. Febr. 1,14,10
VIII k. April. Cp. *Heliodoro c. s. l.* *10,23,3
prid. k. April. Cp. *Nicostrato pp.* 1,4,15&2,6,8
k. Iul. Cp. *Beliodoro c. s. l.* 10,23,4
XV k. Sept. Cp. *Nicostrato pp.* 1,3,28
XV k. Sept. *Nicostrato pp.* 5,14,9
XIII k. Sept. *Alexandro duci Aegyptiaci limitis ei pf. Aug.* 2,7,13
V k. Sept. *Nicostrato pp.* 9,12,10
k. Sept. *Nicostrato pp.* 10,19,8&11,54,1&11,56,1: *Callicrati pp. per Ill.* 6,60,1
sine die *Nicostrato pp.* 12,21,7?
a. 469 ZENONE ET MARCIANO CONSS.
VIII id. Mart. Cp. *Armasio pp.* 1,3,30
V k. April. Cp. *Callicrati pp. Ill.* 2,7,*14*
VII id. Sept. Cp. *Alexandro duci et pf. Aug.* *1,57,1&8,52,3
V id. Dec. Cp. *Armasio pp.* 3,12,9
a. 470 IORDANE ET SEVERO CONSS.
k. Ian. Cp. *Armasio pp.* 5,27,4
VI k. April. *Hilariano com. et mag. off. ac patricio* 1,23,6&12,19,10?&12,59,9?
sine die Cp. *Armasio pp.* 1, 2,14
a. 471 LEONE A. IIII ET PROBIANO CONSS.
k. Iun. Cp. *Ζήνωνι στρατηγῷ* 1,3,29
VII k. Aug. Cp. *Constantino pp.* 1,40,14&*12,57,14
sine die *Constantino pp.* 1,40,15
a. 472 MARCIANO CONS.

[45] imp.Leo A. *a.* 468 1,3,28. 6,60,4. 11,54,1? 11,56,1? 12,21,4: *a.* 470 1,23,6: *a.* 471 1,40,14. 15. 12,57,14: *a.* 472 2,7,15. 5,30,3. 6,20,17. 6,24,12. 8,11,22. 8,17,11. 8,37,10. 11,32,1

k. Ian. Cp. *Erythrio pp.* 8,37,10
v k. Mart. *Erythrio pp.* 5,9,6&6,20,17&6,61,4
v k.Mart. Cp. *Erythrio pp.* *6,24,12&*8,11,22&*11,32,3
prid. non. April. Cp. *Erythrio pp.* 1,3,32&33
k. Iul. Cp. *Erythrio pp.* 1,4,16&1,18,13. 5,1,5&5,6,8&*5,30,3. 2,4,42&8,17,11
xvii k. Ian. Cp. *Dioscoro pp.* *2,7,15
x k. Ian. Cp. *Dioscoro pp.* 1,3,34
... k. Ian. Cp. *Dioscoro pp.* *1,3,31
sine die *Dioscoro pp.* 1,11,8? 10,49,3. 12,33,4. 12,35,16. 12,49,9

a. 473 *IMP. LEO A.*

a. 473 LEONE A. V CONS.
pp. III id. Febr. 4,59,1
k. Iun. *Nepoti mag. mil. Dalmatiae* 6,61,5

a. 474 LEONE IUNIORE A. CONS.
xvii k. April. Cp. *Iustiniano pu.* 2,7,16
x k. Mai. 1,14,11
vi id. Oct. *Epinico cons. (c. s. l.?)* 10,15,1
sine die *Paulo pp. per Ill.* 2,7,17: *Hilariano com. et mag. off.* 12,25,4: *Eusebio mag. off.* 12,29,2?

a. 474–491 *IMP. ZENO A.*

sine conss. 1,2,15. 1,3,35. 11,57,1. 12,3,3: *Sebastiano pp.* 1,29,3. 4,66,1. 5,5,9. 10,32,64. 10,34,3. 11,69,2. 12,3,4: *Arcadio pp.* 3,24,3&12,1,17. 8,12,1. 12,49,10. 12,60,6: *Adamantio pu.* 4,65,32. 8,10,12. 11,43,8: *Basitio pp.* 5,8,2: *Aeneae c. r. p.* 7,37,2: *Δομνίκῳ* 10,3,7: *Sporacio* 11,43,9. *10: *Chryseroti praepos. s. cub.* 11,69,1: *Illyriciano mag. off.* 12,7,2&12,40,11: *Cosmae praepos. s. cub.* 12,16,4: *Longino mag. off.* 12,29,3: *Marciano mag. mil.* 12,35,17: *Catoni mag. mil.* 12,49,11

a. 475 POST CONS. LEONIS IUNIORIS.
k. Sept. Cp. *Epinico pp.* 5,5,8

a. 477 POST CONS. ARMATI VC.
x k. Mart. *Sebastiano pp.* 5,27,5
id. Dec. Cp. *Sebastiano pp.* 8,4,9
xvi k. Ian. *Sebastiano pp.* 1,2,16
x k. Ian. Cp. *Sebastiano pp.* 1,23,7

a. 478 ILLO VC. CONS.
k. Mart. Cp. *Sebastiano pp.* 5,9,7. 8,53,31
v non. Nov. Cp. *Alexandro v. i.* 9,35,11

a. 479 ZENONE A. II CONS.
k. Mai. *Sebastiano pp.* 3,28,29&5,3,18

III k. Iun. Cp. 6,34,4
k. Sept. Cp. *Dioscoro pp.* 5,31,11
v id. Oct. *Sebastiano pp.* 1,49,1
a. 480 BASILIO IUNIORE CONS.
k. Mai. Cp. *Sebastiano pp.* 6,23,22
v k. Ian. *Aeliano pp.* *2,21,9&*5,12,28&5,75,6
sine die *Aeliano pp.* 11,70,6?
a. 483 POST CONS. TROCONDAE.
XVII k. Ian. *Constantino pu.* 4,59,2
a. 484 THEODERICO CONS.
v k. April. Cp. *Sebastiano pp.* 1,3,36. 4,65,33. 8,4,10
id. April. *Sebastiano pp.* 1,3,37
k. Sept. *Iohanni mag. off.* 12,21,8
a. 486 LONGINO VC. CONS.
XII k. Iun. Cp. *Arcadio pp.* 4,20,14
k. Iul. Cp. *Basilio pp.* 9,5,1
a. 487 POST CONS. LONGINI.
VI k. Iul. Cp. 1,51,13&2,7,18?&*2,7,19&2,12,27?&3,3,6?&*7,51,5
a. 489 EUSEBIO CONS.
pp. k. Sept. Cp. *Dioscoro pp.* 6,49,6
a. 491–518 *IMP. ANASTASIUS A.*
sine conss. 1,2,17. 18. 1,4,17&1,4,18&10,27,3&12,37,19. 1,34,1.2. 1,42,1? 10,27,2? 11,1,1.2? 11,48,19. 12,37,18. 19: *Iohanni mag. mil. per Ill.* 1,29,4: *ad populum* 5,70,5: *Leontio pp.* 7,39,6: *Stephano mag. mil.* 7,51,6: *Polycarpo pp.* 10,32,66. 12,16,5: *Sergio pp* 11,43,11: *Eusebio mag. off.* 12,1,18. 12,5,5. 12,10,2. 12,19,11: *Polycarpo pp.* 12,16,5: *Celeri mag. off.* 12,19,12&12,20,6: *Longino mag. equ. ac ped.* 12,37,16: *Arcadio pp.* 12,37,17: *Spartiatio pp. Ill.* 12,49,12: *Armenio pp.* 12,50,23: *magistris mil.* 12,54,5
a. 491 OLYBRIO VC. CONS.
k. Iul. Cp. *Matroniano pp.* 1,22,6?
III k. Aug. Cp. *Matroniano pp.* 7,39,4&10,27,1&11,62,14
a. 492 ANASTASIO A. ET RUFO CONSS.
k. Ian. Cp. *Iohanni mag. mil. praes.* 12,35,18
k. Mart. Cp. *Eusebio mag. off.* 1,30,3
a. 496 PAULO VC. CONSS.
id. Febr. Cp. *Hierio pp.* 6,21,16
k. April. *Εὐφημίῳ ἐπ. τ. πραιτ.* 10,16,13
prid. k. Mai. *Euphemio pp.* 8,53,32
XII k. Aug. *Εὐφημίῳ ἐπ. τ. πρ.* 10,19,8

a. 497 ANASTASIO A. II CONS.
xv k. Mart. *Theodoro* 5,17,9
xi k. Ian. Cp. *Eusebio mag. off.* 2,7,20
a. 498 IOHANNE ET PAULINO CONSS.
prid. k. April. 10,19,10?
k. April. *Polycarpo pp.* 5,30,4
a. 499 IOHANNE CONS.
k. Ian. *Antiocho praep. s. cub.* 5,62,25
a. 500 PATRICIO ET HYPATIO CONSS.
xv k. Dec. *Thomae pp. Ill.* 2,4,43&2,7,21&7,39,5
a. 501 POMPEIO ET AVIENO CONSS.
xiii k. Ian. Cp. 8,36,4
a. 502 PROBO ET AVIENO IUNIORE CONSS.
xv k. Mart. Cp. *Constaniino pp.* 3,13,7
xii k. Aug. Cp. 6,20,18&6,68,11&8,48,5
a. 505 SABINIANO ET THEODORO CONSS.
k. *Ian. Cp. *Constantino pp.* 2,7,22
xiii k. Mai. *Eustathio pp.* 1,4,19&1,55,11
a. 506 AREOVINDA ET MESSALA CONSS.
x k. Aug. Cp. *Eustathio pp.* 4,35,22
xii k. Dec. Cp. *Eustathio pp.* 2,7,23
a. 510 BOETHIO VC. CONS.
v id. Aug. 1,5,11
a. 513 CLEMENTINO ET PROBO CONSS.
vi id. Febr. 1,42,2?
a. 517 ANASTASIO ET AGAPETO CONSS.
k. April. *Celeri mag. off.* 4,29,21: *Sergio pp.* 5,27,6
k. Dec. *Sergio pp.* 2,7,24
a. 518–527 *IMP. IUSTINUS A.*
sine conss. 2,7,28: *Theodoro pu.* 4,30,13: *Demostheni pp.* 5,4,23. 7,62,34: *Proculo quaest. s. pal* 12,19,13: *Tatiano mag. off.* 12,19,14
a. 518 MAGNO CONS.
k. Dec. Cp. *Appioni pp.* 7,63,3
a. 519 IUSTINO A. ET EUTHERICO CONSS.
v id. Nov. Cp. *Marino pp.* 5,27,7
k. Dec. Cp. *Marino pp.* 2,7,25
a. 520 RUSTICIO CONS.
v k. Iun. Cp. *Tatiano mag. off.* 7,63,4
a. 521 IUSTINIANO ET VALERIO CONSS.
k. Iun. Cp. *Demostheni pp.* 6,22,8

a. 524 IUSTINO A. II ET OPILIONE CONSS.
id. Febr. Cp. *Theodoro pu.* 2,7,26
XIII k. Dec. Cp. *Archelao pp.* *1,3,40&6,23,23
XII k. Dec. Cp. *Archelao pp.* 2,7,27
VIII k. Ian. Cp. *Licinio mag. off.* 12,33,5
a. 525 PHILOXENO ET PROBO CONSS.
k. Dec. Cp. *Archelao pp.* 7,39,7
a. 526 OLYBRIO VC. CONSS.
k. Dec. Cp. *Theodoro pu.* 9,19,6
a. 527 *IMPP. IUSTINUS ET IUSTINIANUS AA.*
a. 527 MAVORTIO VC. CONS.
x k. Mai. Cp. *Tatiano mag. off.* 1,31,5
sine die 1,5,12. 1,15,2. 3,1,12?&7,62,36?&4,20,16?: *Archelao pp.* 5,3,19: *Tatiano mag. off.* 12,19,15
a. 527–534 *IMP. IUSTINIANUS A.*
sine conss. 1,1,5. 1,2,20. 1,3,54. 1,4,20.32&4,66,4. 1,5,13–18. 1,10,2. 1,11,10. 1,29,6. 3,43,2. 4,21,22. 5,9,11. 6,25,6. 6,46,8. 6,48,1. 8,40,29. 10,32,68. 10,34,4.5. 10,35,4. 5. 12,17,5: *Zetae v. i. mag. mil. per Armeniam et Pontum Polemoniacum* 1,29,5: *Iohanni pp.* 2,7,28. 4,30,16. 4,34,12. 4,35,23. 5,3,20. 5,4,27. 28. 7,2,15. 7,32,12. 7,71,8. 8,53,37. 11,48,23. 12,3,5: *δουκὶ Θηβαΐδος* 3,2,2: *Menae pp.* 3,22,6. 12,34,1: *Iuliano pp.* 7,25,1: *Vigilantio com. domest. consulari atque patricio* 12,17,4: *Φλώρῳ κόμητι τῶν πριβάτων* 12,33,8
a. 528 DN. IUSTINIANO PP. A. II CONS.
id. Febr. Cp. ad senatum urbis Cp. c. Haec
k. Mart. Cp. Ἀταρβίῳ ἐπ. πραιτ. 1,3,41: Ἐπιφανίῳ ἀρχιεπισκ. Κωνσταντινουπ. καὶ πατριάρχῃ 1,3,42
k. Iun. Cp. *Menae pp.* 1,4,21&4,2,17&4*,20,18&4,21,17&4,30, 14&15?&5,15,3&10,22,4. 3,28,30&6,23,24&6,41,1. 4,20,17. 5,27,8&9&10,35,3&10,44,4? 6,20,19. 6,55,12&6,56,7&8,58,2. 7,3,1. 7,33,11. 7,70,1. 8,13,27. 8,53,33
III id. Dec. Cp. *Menae pp.* 1,53,1. 3,28,31&6,23,26. 4,32,26&7,39,8. 5,9,8&5,12,29. 5,16,25. 5,17,10. 6,23,25&8,37,11. 6,26,9. 6,37,22. 7,17,1. 8,16,9
sine die *Menae pp.* 1,2,19
a. 529 DECIO VC. CONS.
XV k. Febr. *Μηνᾷ ἐπ. πραιτ.* 1,3,43
XV k. Febr. Cp. *Μηνᾷ ἐπ. πραιτ.* 1,4,22&23&9,4,6&9,5,2&9,47,26
II k. April. Cp. *Menae pp.* 3,28,32
k. April. Cp. *Menae pp.* 1,20,2. 4,32,27. 5,9,9? 8,21,1. 9,44,3

VIII id. April. Cp. *Menae pp.* 2,44,3&5,74,3. *2,50,8&*6,21,37&*7,35,8. 4,21,18. 5,9,9? 5,14,10. 5,16,26. 5,60,3. 6,20,20. 6,24,13. *7,54,2&10,8,3. 7,62,37&7,64,10. 8,37,12. 12,33,6

VII id. April. Cp. *Menae v. i. pp. II ex praefecto huius almae urbis Cp. ac patricio c.* Summa

XV k. Oct. Chalcedone *Demostheni pp.* 1,4,24&8,51,3. *1,51,14. 2,58,1&9,41,18. 3,28,33&5,9,10. 4,1,11. *4,21,19. *4,32,28. 4,66,2. 5,27,10&6,57,5. 6,43,1. 6,59,11

X k. Oct. Cp. *Δημοσθένει ἐπ. πραιτ.* 1,4,25&3,43,1

recitata septimo milliario huius inclitae civitatis in novo consistorio palatii Iustiniani. d. III k. Nov. *Demostheni pp.* 1,2,22. 1,14,12. 2,55,4. 4,1,12. 4,34,11. 5,12,30. 5,30,5. 6,4,3. 6,30,19. 6,42,30. 6,61,6. 7,45,13&14? 8,53,34. 11,48,20

XV k. Dec. Chalcedone *Triboniano quaestori s. p.* 7,63,5

sine die *Demostheni pp.* *1,2,21. 1,5,19? 7,39,9. 7,62,38. 10,32,67

a. 530 LAMPADIO ET ORESTE VV. CC. CONSS.

XV k. April. Cp. *Iuliano pp.* *1,2,23&7,40,1. 4,20,19&*4,21,20. 4,29,22. 4,66,3. *5,12,31. 5,27,11&5,29,4&5,35,3. 6,23,27&*6,33,3. *6,61,7. 7,15,1. 8,33,3? 8,53,35&8,55,10

VI k. April. Cp. *Iuliano pp.* 2,55,5&4,20,20. 3,1,13. *14. *3,2,3. 6,23,28. 7,62,39. 8,40,26

VIII k. Iul. Chalcedone *Ἰουλιανῷ ἐπ. πραιτ.* 1,4,26&3,2,4&5&3,10,2? &7,45,15?&10,31,4&12,40,12&12,63,2

XI k. Aug. Cp. *ad senatum* 2,44,4&3,38,12&5,4,24&6,25,7. 4,65,35? 8,41,8. 11,48,21?

k. Aug. Cp. *Iuliano pp.* 3,33,12. 4,5,10. 4,28,7? 4,29,23? 24. 4,38,15. 5,20,2. 5,51,13. 6,2,20. 7,7,1. 7,15,2. 8,21,2. 8,37,13

k. Sept. Cp. *Iuliano pp.* 1,4,27&5,70,6&7&6,22,9

k. Oct. Cp. *Iuliano pp.* 1,4,28&5,4,25. 3,33,*13. *14. *15. 16. 4,5,11. 5,4,26. 6,2,21. 6,57,6&7,4,14&15

XV k. Nov. Cp. *Ἰουλιανῷ ἐπ. πραιτ.* 1,3,44.45.1,4,29

sine die 1,2,24

XIII k. Nov. Cp. *Ἰουλιανῷ ἐπ. πραιτ.* 1,2,25

XV k. Dec. Cp. *Iuliano pp.* 1,3,46. 2,18,24. 4,27,2. 6,2,22. 6,27,4. 6,29,3.4. 6,37,23. 7,4,16&17&7,7,2. 7,45,16

Cp. X k. Dec. ... *κόμητι τῶν πριβάτων* 1,5,20

XVIII k. Ian. Cp. *Triboniano viro eminent. quaestori s. p.* 1,17,1

sine die 7,5,1

a. 531 POST CONS. LAMPADII ET ORESTAE VV. CC.

x k. Mart. Cp. *Iuliano pp.* 2,58,2&3,1,15&16. 4,18,2. 4,21,21. 5,37,25. 5,59,4. 6,22,10. *6,23,29. 6,28,3. *6,38,3. 6,40,2. 6,43,2. 7,71,7. 8,40,27. 28? 11,48,22?

prid. k. Mai. Cp. *Iohanni pp.* 4,37,6? 6,27,5&6,46,6. 6,30,20.21. 6,35,11. 6,37,24&*6,42,31. 6,38,4

IIII k. Aug. Cp. *Iohanni pp.* 1,3,47. 1,4,30. *1,5,21. *3,28,34. 6,22,11&6,61,8. *6,24,14. 6,25,*8&*9&*10 &6,26,10&11. *6,27,6. *6,46,7

x k. Sept. Cp. *Iohanni pp.* *1,3,48. 5,37,26

VI k. Sept. Cp. *Iohanni pp.* 2,46,3

k. Sept. Cp. *Iohanni pp.* 1,3,49&1,5,22&3,28,37&6,22,12. 1,3,50&2,3,29. 2,41,2. 2,52,7. 2,55,6. 3,28,35&36&6,28,4. *3,31,12. 5,59,5. 6,43,3. 7,17,2? 7,47,1. 8,10,13. 8,39,4. *8,47,10. 8,56,4. 12,33,7

XV k. Nov. Cp. *Iohanni pp.* 1,4,31?&?,40,2? 3,33,17. 3,34,13&7,31,1. 4,1,13. 4,11,1. 4,51,7?&4,54,9. 6,23,30. 6,49,7? 6,58,12. 7,40,3. 8,40,28(*vel* 29). 8,53,36

k. Nov. Cp. *Iohanni pp.* 1,3,51. 2,3,30. 2,40,5. *3,1,17. *18. 4,18,3. 4,27,3. 4,29,25&5,13,1? 4,31,14. 4,39,9. *5,11,7. 5,14,11. 5,27,12. 5,37,27. 6,37,25. 6,40,3. 6,50,18. 6,58,13&8,47,11&8,48,6. 7,6,1. 7,15,3. 8,37,14.

v k. Dec. Cp. *Iohanni pp.* 1,3,52. *5,16,27. *6,42,3. 6,58,14. 7,33,12. 7,54,3. 8,17,12: *ad senatum* 6,30,22: *Floro c. r. p. et curatori dominicae domus et Petro v. i. curatori divinae domus serenissimae Augustae et Macedonio v. i. curatori et ipsi dominicae domus* 7,37,3

pp. k. Dec. Cp. 6,4,4

sine die *Iohanni pp.* 4,37,7

a. 532 POST CONS. LAMPADII ET ORESTAE VV. CC. ANNO SECUNDO.

VIII id. Mart. Cp. 1,44,2

k. Sept. *8,39,4

XV k. Nov. Cp. *Iohanni pp.* *3,10,3. *3,34,14. *5,37,28. 6,20,21. 6,21,18. 6,31,6. 6,35,12. 6,37,26. 6,38,5. 6,49,7? 8. 6,50,19. 7,72,10. *8,4,11. *8,10,14. 8,14,7. 8,25,11. 8,36,5. 8,37,15. *9,9,35

a. 533 DN IUSTINIANO PP. A. III CONS.

id. Mart. *Κωνσταντινουπολίταις* 1,1,6

VII k. April. Cp. *Ἐπιφανίῳ ... ἀρχιεπισκ.* 1,1,7

k. Iun. Cp. 3,2,6

VIII id. Iun. Cp. *Iohanni archiepisc.* 1,1,8

XV k. Dec. Cp. *Hermogeni mag. off.* 1,3,35&5,17,11&7,24,1&9,13,1& 11,48,24?

XVII k. Ian. *Cp. ad senatum et omnes populos* 1,17,2
a. 534 DN. IUSTINIANO PP. A. IIII ET PAULINO VC. CONSS.
VIII k. April. Rom. *Iustiniano A. Iohannes episc. urbis Rom.* 1,1,8
id. April. Cp. *Archelao pp. Afr.* 1,27,1?: *Belisario mag. mil. per Or.* 1,27,2
k. Iun. Cp. *senatui urbis Cp. et urbis Romae* 6,51,1
III non. Iul. Cp. *Iohanni pp.* 6,23,31
III id. Aug. Cp. *Ἰωάννῃ ἐπ. πραιτ.* 5,17,12
prid. id. Sept. Cp. *Ἰωάννῃ ἐπ. πραιτ.* 1,3,55
id. Oct. Cp. *Iohanni pp.* *6,58,15
k. Nov. Cp. *τοῖς πανταχοῦ γῆς θεοφ. ἐπισκόποις* 1,4,33&5,4,29?
prid. non. Nov. Cp. *Ἐπιφανίῳ ἀρχιεπισκ.* 1,4,34
sine die 6,23,32
XVI k. Dec Cp. *senatui urbis Cp. sal. c. Cordi*

Supplement to Krüger's list

Given here is a summary of recently discovered dating information that derives from manuscript evidence and is reflected in the text of these volumes. Most of the details can be found in the two articles by Corcoran, "After Krüger" (2009) and "New Subscripts" (2009).

a. 211: xv k. Iul. 7,72,1
a. 226: xvi k. April. 7,64,2
a. 239: iii k. Febr. 7,72,2
k. Mai. 7,72,3?
a. 240: k. Mart. 7,64,3?
a. 241: k. Mai. 7,72,3?
a. 245: 7,62,4?
a. 259: k. Iul. 7,64,4
a. 284: k. Dec. 7,64,6
a. 285: v k. Ian. 7,64,7
a. 287: 12,62,3?
a. 290: iiii k. Oct. 7,64,8
a. 293: non. Febr. 2,50,7
id. April. Byz. 7,72,4
xiii k. Oct. 2,46,2
a. 491–518 (Anastasius): *ἐπαρχ. πρ.* 1,11,9
a. 534: k. April. Cp. *Archelao pp. Afr.* 1,27,1